HUMAN RIGHTS IN UKRAINE – 2012

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REPORT

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This book considers the human rights situation in Ukraine during 2012, it is based on studies by various non-governmental human rights organizations and specialists in this area. Each unit concentrates on identifying and analysing violations of specific rights in this period, as well as discussing any positive moves which were made in protecting the given rights. Current legislation which encourages infringements of rights and freedoms is also analyzed, together with draft laws which could change the situation. The conclusions of the research contain recommendations for eliminating the violations of human rights and fundamental freedoms and improving the overall situation.

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FROM THE EDITORS

This report focuses on the human rights situation in Ukraine in 2012. It contains a "Civic Assessment of government policy in the area of human rights" and an in-depth analysis of specific aspects of the human rights situation during the period in question.

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Part I

CIVIL ASSESSMENT OF GOVERNMENT POLICY IN THE AREA OF HUMAN RIGHTS

STATE POLICY ON HUMAN RIGHTS IN UKRAINE IN 2012[1]

From 2005 to 2009 we reported the State's positive intentions with respect to human rights however State policy in this field was ineffective, unsystematic and chaotic.

In 2010–2011 we were forced to the conclusion that there was no policy at all, that human rights were not a priority for the country's leaders and that there were every more violations of human rights and fundamental freedoms.

In 2012 the State policy in this sphere changed somewhat and the human rights situation became more diverse and tapestry-like. One saw positive, sometimes successful, actions by the authorities in certain spheres, aimed at enabling Ukrainians to exercise their rights, however in other spheres there were either no changes or in fact the results of efforts led to even more violations.

SPECIFIC ELEMENTS

The reasons for the change in policy lay in the fear of sanctions from international bodies and total international isolation, as well as the need to demonstrate the regime's successes before the parliamentary elections. However 2012 fully exposed the main feature of this policy, that being to try to implement all recommendations from international bodies which don't encroach on the power of the Ukrainian leadership and ignore those which threaten that power.

On 26 January the Parliamentary Assembly of the Council of Europe [PACE] adopted its Resolution on the Functioning of Democratic Institutions in Ukraine. In it PACE expressed its concern over the trials of former government officials, criticized the principles for the functioning of the court and law enforcement systems; commented on the new electoral law; and spoke of the possibility of imposing sanctions against Ukraine if the latter did not fulfil the demands set out. The Resolution demanded that imprisoned opposition politicians be released and allowed to take part in the coming parliamentary elections without any impediment. It demanded reform of the court and law enforcement system, for example, the adoption at the Criminal Procedure Code [CPC]

Clearly the EU — Ukraine Association Agreement which the Ukrainian regime wants so much is impossible without implementation of the PACE requirements and recommendations. As early as 1 February the President created a working group for implementation of the PACE Resolution. Some recommendations were in fact implemented. However the country's leaders cannot understand that regardless of any successes, the West will not forgive them politically motivated criminal prosecution of political opponents who, in the view of

[1] Prepared by Yevgeniy Zakharov, Head of the UHHRU Board, KHPG Director.

numerous international and national experts, have not committed any criminally punishable offences. While Yulia Tymoshenko and Yury Lutsenko remain imprisoned, one can forget about Ukraine's European integration. More likely sanctions.

SUGAR COATING

So what achievements with respect to human rights has the regime had this year? An indisputably positive element was the adoption of a new CPC which, despite numerous failings, proved to be much better than could have been expected, as well as some other laws — on bar lawyers; on civic associations. There were attempts to fulfil the PACE recommendations regarding freedom of peaceful assembly which was violated on a large scale in Ukraine in 2012 through the preparation, with the participation of civic specialists, of a good draft law. There has not yet been any success in getting it adopted. The system of legal aid is developing, with regional centres created which will begin working from 1 January 2013. Admittedly, though, money has only been allocated for 4 months. What then?

The Prosecutor General spoke repeatedly in 2012 of the need to fight torture, and this year more law enforcement officers were prosecuted for those crimes than in 2010–2011.

The election of a young, energetic and progressive Human Rights Ombudsperson who speaks the same language as western people can also be considered a positive move for human rights. In her cooperation with the public, Valeria Lutkovska has successful begun creating national preventive mechanisms for prevention of torture and ill-treatment, mechanisms of parliamentary supervision over access to information and protection of personal data; and submission to parliament of recommendations regarding draft bills concerning human rights, some of which have been taken into account.

THE BITTER TASTE

Wherever the country's leadership saw a threat to its power or economic interests, it was brutal in its treatment of those whom it saw as encroaching on this power. In 2012 the use of the Prosecutor's Office, the Interior Ministry; SBU [State Security Service]; and tax bodies as instruments of repression against the opposition and civic movements continued, or even increased. The judicial system remained entirely dependent, with control over the courts being a key condition for maintaining power. There was no point in even talking about respect for the justice system. No PACE recommendation regarding judicial reform was implemented. Every time there was a clash between the economic interests of the elite in power and human rights, the interests of those in power won out. All "reforms" — tax, pension, medical, administrative, etc — as well as many ongoing actions by public authorities (reduction in the network of medical; educational; and cultural institutions; bus routes; local and fast trains, etc) were aimed at reducing the public deficit at the expensive of the population and with disregard for human rights. This has resulted in an increase in poverty and social inequality which seems particularly disgusting against the incredible increase in political corruption and corruption of high-ranking State figures; the squandering or use for the wrong purposes

of public funding. This is coupled by the imitation of a fight against corruption via selective criminal prosecutions with this in fact only increasing corruption.

The stifling of business, establishment of a criminal system of relations between business and those in power, according to the law of the fist, kill the market, competition, freedom of business enterprise and turn property rights into a pipe dream. This has forced people to move businesses to other countries or simply close up. All of this, together with the tax reforms, has, according to sociologists led to a halving of the number of Ukrainians who can be deemed part of the middle class.

The pension reform has not increased, but reduced pensions, while not reducing, but increasing the Pension Fund's deficit which in 2012 came to 7 billion UAH[2], and, finally, it has still remained unfair. Special pensions, for example, have not in fact been removed.

The system of social security is also unfair with the size of various types which is determined by the Cabinet of Ministers being based on the money in the budget. This means that the size of social payments to former Chornobyl clean-up workers; veterans of the Afghanistan War; Veterans of WWII; the disabled; solo mothers and other groups in society totally dependent on the will of the Cabinet of Ministers. This is despite the fact that the norms of the relevant laws on social guarantees have not been revoked, and remain in force.

Medical reform is effectively aimed against patients and doctors. In rural areas in the oblasts where the experiment was carried out, people, especially the elderly, can often simply not get to the hospitals which are now sometimes more than 100 kilometres away. Specialist doctors who are losing their jobs in large numbers due to the closure of their medical establishments are supposed to retrain in 6 months (where in the world is 6 months enough to gain a paediatrician's qualification?!) and find a job in general practice — family medicine. They moreover begin again from the lowest category.

The idea of saving on the public deficit at the expense of self-insurance of public sector workers has reached its logical conclusion in the concept of reform of the penal system. This envisages that penal institutions will look after themselves and earn what they need to exist. This is despite the fact that 50% of prisoners don't work since the State is unable to provide them with employment.

LEGISLATION AGAINST HUMAN RIGHTS

Administrative reform is being implemented through six draft laws submitted by the President's representative in parliament, Yury Miroshnychenko which have been passed in the first reading. This reform worsens the position of people with disabilities; believers; other groups of the population; seriously threatens environmental rights since it dissolves territorial departments of environmental protection of the Environment Ministry which at least to some extent prevented pollution of the environment.

A flagrant example of laws which violate human rights were laws passed in one day and signed by the President despite mass protest from various groups of the public — the Law on the Principles of Language Policy and the Law on Public Procurement which removes State-owned enterprises from mandatory tender procedure.

[2] http://siver.com.ua/news/pensijna_reforma_provalena_pavlo_rozenko/2012-08-04-10612

Another flagrant example of legislation which violates human rights was the Law on the construction of two nuclear reactors at the Khmelnytsky Nuclear Power Station. This was submitted by the Cabinet of Ministers and passed by parliament despite decisions and reservations from dozens of public hearings in places within the 30-kilometre zone around the station. Nor were there State environmental assessments (TEO or technical and economic justification) of the construction projects or the consultative referendum regarding the location of a nuclear institution which are mandatory by law. In accordance with the law there must be a trans-border environmental impact assessments with respect to all countries involved. A number of countries (Austria; Belarus; Hungary; Moldova; Poland; Romania and Slovakia) have said that the construction plans could adversely affect their territory and proposed to commence bilateral consultations with Ukraine. Yet they did not receive any answer to their information requests regarding this plan. The procedure for participation by the public of these countries and consultations with these countries was thus not completed. Moreover the nuclear plant plan with these reactors was drawn up in the 1970s and does not comply with modern safety requirements. Yet all this could be ignored with the prospect of almost 37 billion UAH from Russia for the construction!

Yet another telling example was the Law on a Unified State Demographic Register which envisages the creation of a huge database containing personal data on people living in the country (the list of data is not exhaustive) and used for the issue of biometric documents (their list is also not exhaustive). As well as passports, the internal "passport" or ID document; driving licence will also become biometric and will need to be replaced every 10 years.

This law flagrantly violates the Constitution, the Personal Data Protection Act; the right to privacy; and adds the burden of extremely expensive technologies to the State budget. Nevertheless all arguments regarding its unacceptability remained unheard and the entire system will function, against commonsense and the interests of Ukrainians who will be forced to regularly pay large amounts for biometric documents; and in the interests of the private SSAPS Corporation.

One has the impression that all legislative initiatives are aimed at satisfying the political and economic interests of the political and business elite (which are effectively merged) and against the rights and interests of ordinary Ukrainians whom Ukrainian politicians swear commitment to.

LOST FUTURE?

It is not surprising that despite the dirty election campaign; the use of administrative resources; bribery of voters; other considerable infringements of the electoral law; and the rigging of the results in some election districts; planning to gain more than 300 assured votes in parliament [a constitutional majority — translator], those in power cannot even form a majority without resorting to pressure and political corruption. All international institutions found these elections to have been non-transparent and unfair.

The leaders of the country should, finally, understand that Ukraine's European integration; the EU-Ukraine Association Agreement are incompatible with the existing domestic policy of the state which is flagrantly violating human rights and fundamental freedoms. Those circles in power see no other path but that of European integration. Are they capable of radically changing domestic policy?

POLITICAL PERSECUTIONS[1]

GENERAL

The Parliamentary Assembly of the Council of Europe adopted a Resolution 1900 (2012)1 "The definition of political prisoner" on 3 October, 2012. It includes such definition.

> *"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':*
>
> *a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;*
>
> *b. if the detention has been imposed for purely political reasons without connection to any offence;*
>
> *c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;*
>
> *d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,*
>
> *e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities." (SG/Inf(2001)34, paragraph 10)*
>
> *Those deprived of their personal liberty for terrorist crimes shall not be considered political prisoners if they have been prosecuted and sentenced for such crimes according to national legislation and the European Convention on Human Rights (ETS No. 5).*
>
> *The Assembly invites the competent authorities of all the member States of the Council of Europe to reassess the cases of any alleged political prisoners by application of the above-mentioned criteria and to release or retry any such prisoners as appropriate."*

The above definition does not explain the notion of "political motives". When talking about political persecutions of people by the Ukrainian authorities we use the following definition:

> *Political motives of the authorities are real, and not formally declared, foundations for the actions (or deliberate inaction) of the law-enforcement and judicial bodies, other subject of authority, which are used with the purpose of achieving at least one of these goals:*
>
> *a) preservation or strengthening of positions, recognized as unacceptable in a democratic society, by the state bodies, legal and physical entities, groups of interests, institutions of political, economical or financial power;*
>
> *b) putting an end to or changing the nature of a person's public activity by force;*

[1] Prepared by Ye. Zakharov, KhHRG, and O. Matviychuk, Civil Freedoms Center.

c) *illegal confiscation or/and redistribution of various forms of property for the benefit of the state and its bodies with no legal claim to it, legal and physical entities;*

d) *conducting national or local campaigns against crimes or specific infringements with no sufficient reason or real apparent threat.*

PERSECUTION OF THE POLITICIANS

The criminal persecutions of Yu. Lutsenko and Yu. Tymoshenko indubitably are caused by political motives, which makes them political prisoners. The European Court judgment of July 3 on the case *"Lutsenko v. Ukraine"* in fact confirmed this conclusion, in compliance with aforementioned PACE definition. The European Court revealed 6 different violations of the right to freedom and personal inviolability, protected by Article 5 of the European Convention and state violation of Article 18 of the Convention alongside with Article 5: the application of the CPC norms concerning the deprivation of liberty with the purposes not stipulated by the CPC, by means of detention and further holding in custody. The Court did not describe these purposes as political, but it follows naturally from the Court's deliberations.

Establishing the violation of Article 18 the Court pointed out that, as an opposition leader, the applicant's case was bound to attract a lot of attention. He had the right to respond to the "abuse of authority" charges through mass media. The European Court concluded that the arrest and detention were unlawful punishments for Lutsenko's public rebuttal of charges against him and pleading innocent. The decisions establishing the culpability of the state in abuse of law are extremely rare in The European Court practice — it is just the third one, although the Court received over 200 petitions on violations of Article 18. These violations of human rights are inacceptable in the countries-members of the Council of Europe.

In the nearest future The European Court shall pass a ruling on the case of Yu. Tymoshenko detained on August 4, 2011. The decisions on petitions concerning the violation of the right to fair trial are also anticipated.

No criminal cases against politicians have been registered lately. However, Arsen Avakov case is worth mentioning here. On 26 January, 2012 a criminal investigation was initiated against the former Governor of the Kharkiv Region Arsen Avakov under Article 365 §3 of the Criminal Code (exceeding power and official authority with grave consequences). Avakov was declared wanted by law-enforcement bodies internationally.

Arsen Avakov heads the Kharkiv regional branch of the Bat'kivshchyna Party. He was a successful Governor and one of the two main candidates for the position of Kharkiv Mayor at the October 2010 Local Elections. The elections were won by Gennady Kernes from the Party of the Regions, however his majority was extremely small and the elections were marred by numerous infringements of electoral legislation[2]. Arsen Avakov had the highest rating among Kharkiv politicians and would be the most likely winner in the Kharkiv majority constituency in 2012's parliamentary elections. The prosecution is aimed at slurring him and preventing him from taking part in the elections due in October 2012.

[2] http://khpg.org/en/index.php?id=1288995839

The criminal investigation itself seems extremely dubious. At first, on January, 6 a criminal investigation was initiated against officials of the Kharkiv Regional State Administration and the Kharkiv Regional Office of the State Agency for Land Resources over alleged unlawful appropriation of State-owned land in 2009. At that time the Kharkiv Regional State Administration's website in clear breach of the presumption of innocence reported that Avakov had committed a crime, having unlawfully appropriated 55 hectares of land. On January 26 a criminal case against Avakov himself was filed. On January, 31 a search of his flat was carried out. On the same day an order was issued to initiate criminal proceedings with him as the accused and he was declared on the international wanted list, with the Chervonozavodsky District Court issuing an order to remand him in custody.

So what does the alleged exceeding of power and official authority consist of? According to procedure the plan for land allocation is prepared by specialists from the State Agency for Land Resources, passed by a session of the Regional Council and approved by the Governor, after which the State Agency for Land Resources prepares and issues State acts confirming ownership for the land plots. According to an application from Ukrskladbud-Tsentr Ltd, the draft land allocation of 55 hectares of agricultural land which was owned by the limited liability company to use for other purposes was prepared and adopted by the session and on January 29 Avakov signed the relevant instruction. On March 17 Avakov cancelled that instruction since a change in the designated use of land covering more than 10 hectares is the prerogative of the Cabinet of Ministers, and not regional administrations. In this situation it seems highly odd to accuse Avakov of having in May 2009 signed State acts confirming the property rights of Ukrskladbud-Tsentr to land plots with changed designation. First, he did not have the right to sign such documents and, second, he could not have signed documents, the compiling of which had been cancelled by his own instruction.

The Italian court refused to extradite Avakov. He became the people's deputy as BYUT nominee and returned to Ukraine, but the criminal case is still under investigation.

THE LIQUIDATION OF KHARKIV "BASIS" BANK

The same political motives that triggered A. Avakov's case, were underlying the liquidation of the "Basis" bank which occurred in 2012. The bank allegedly was linked with A. Avakov. It is noteworthy that the criminal prosecution was begun immediately after the leader of the Bat'kivshchyna Party, Yulia Tymoshenko was moved to the Kachanivska Penal Colony in Kharkiv. The Kharkiv regional branch of Bat'kivshchyna has constantly demonstrated support for its leader and has organized daily protests against her prosecution and imprisonment. The criminal investigation against the head of the Kharkiv regional branch is clearly aimed at intimidating Kharkiv members of Bat'kivshchyna and getting them to stop their protests.

The protests never ceased, so the authorities found another way of weakening the activity of public and political structures affiliated with "Bat'kivshchyna" in Kharkiv on the verge of elections, silencing them and stopping their operation, i. e. closing down the "Basis" bank which served all of them — oblast' "Bat'kivshchyna" office, "Glavnoye" — the last indepen-

dent newspaper in town, the Public Initiatives Foundation, "Renaissance"charity foundation, the Research Center for Regional Policies and others.

"Basis" used to be a rather successful bank; in late 2011 it won the bidding on minting silver coins, and consequently, was thoroughly audited by the NBU. "Basis" troubles started when the National Bank forced it to set up a security deposit fund amounting to 140 million UAH, while the statutory fund of the bank constituted 120 million UAH. The stake-holders' meeting decided on capitalization, and external investors had to contribute 160 million UAH to the statutory fund. According to the "Basis" employees the expert assessment conducted by oblast' NBU department recommended not to establish provisionary administration, assuming that the bank was capable of coping with its problems on its own. On April 23 the bank expected the first tranche of 80 million UAH from a Western investor. However, the establishment of provisionary administration hindered the capitalization process. The provisionary administration was looking for investors but the reliable investors agreeable to make several transfers to the bank account were never found.

The Board Resolution of the National Bank of 23.08.2012 No. 357 revoked the banking license of "Basis" bank as of 28.08.2012, and the bank liquidation procedure was initiated.[3]

We believe that "Basis" joint-stock bank was liquidated deliberately. As mentioned above, the artificial obstacles for the bank operation were set up (i. e. the requirement of security fund), and later the capitalization process was hindered. All the efforts to improve the situation were cut short from the outside.

The deprivation of the joint-stock "Basis" bank clients of their accounts by NBU is a gross violation of their property right and of the Constitution, the Civil Code and Article 1 of the First Protocol to the European Convention.

POLITICAL PERSECUTIONS OF THE CIVIL SOCIETY MEMBERS

Human rights organizations in Ukraine register eventual increase in the scope of political persecutions in the country. In particular, in 2011 over 130 instances of individual persecutions, both with legal procedures and illegally, were registered. The fact that the human rights' activists, community leaders, journalists and politicians become the victims of the persecution gives grounds to conclude that the barometer of democracy in the country reached the critical point.

Political persecutions of the civil society members can be classified into the following groups:

— restrictions of fundamental human rights and freedoms, the exercising of which weakens the bodies of power, in particular, the right of expression and the right to peaceful gatherings;
— persecution of individuals and public organizations, caused by their direct operation in exercising and protecting rights and freedoms of citizens;

[3] http://www.bank.gov.ua/control/uk/publish/article;jsessionid=D7CABC8E6CEC74C22EC30689431D44A2?art_id=120703&cat_id=55838

— persecution of individuals and public organizations of national-patriotic nature for their activity aimed at promoting Ukrainian language, culture and history or protesting against glorification of the soviet past;
— curbing protest potential of the young generation: preventive talks and intimidation of the undergraduates and youth activists by the schools' administration and law-enforcers.

Being aware of this situation, the human rights organizations at the end of the last year publicized the information on political persecutions of the civil society in Ukraine[4] and demanded that authorities prove their adherence to the principles of democracy and international commitments and put an end to the persecutions on political motives; recognize that persecutions are taking place and take immediate measures to restitute the rights of the persecution victims.

Till now no official response from the authorities has been received. Meanwhile the FIDH for the first time in many years included Ukraine into the list of the states with the "most serious pressure on human rights' activists"[5]. The annual report of the Observatory on the protection of human rights' activists mentions Ukraine alongside with Iraq, Uganda, Afghanistan, Pakistan, Indonesia etc.

In 2012 the persecutions of the most vulnerable groups, i. e. human rights' and public activists, journalists and politicians, continued and gained momentum; therefore, the human rights organizations continued the monitoring of the political persecutions.[6]

You will find some exemplary cases demonstrating the persecutions of the aforementioned groups below.

RESTRICTIONS OF FUNDAMENTAL RIGHTS AND FREEDOMS

The instances of pressure and illegal banning of local TV broadcasting criticizing the regime are common. The national opposition channel TVi is constantly subjected to tax inspections, instigations of criminal proceedings and illegal switching off in different areas. These facts were referred to many a time in the petitions submitted by the international organizations "Reporters without borders" and "Article 19"[7].

The instances of use of physical force and threats against journalists for their coverage of events were registered. On September 20, 2012 the reporter of STB TV Channel Iryna Fedoriv received an anonymous phone call threatening her and her family with retribution for her investigation of the public corruption with respect to the destruction of Bilychy forest near Kotsyubinske settlement.[8] The beating of the journalist V. Lazebnik on May 4, 2012, when he was repeatedly hit on the head with an iron bar while performing his professional

[4] http://khpg.org/index.php?id=1321517294

[5] http://www.civicua.org/news/view.html?q=1741231

[6] http://helsinki.org.ua/index.php?r=a1b7c8

[7] http://www.radiosvoboda.org/content/article/24651357.html

[8] http://www.telekritika.ua/news/2012-09-21/75274

duties, has never been investigated. The militia officials refused to file a protocol and to arrest the assailant.

Generally speaking, public criticism of the authorities is becoming more and more dangerous. On March 27, 2012 at a press-conference the President of the Ukrainian Banks Association publicly stressed the need of discharging the current head of the NBU due to his unprofessional activity. Next day the Association was visited by tax inspectors with non-scheduled audit, which resulted in a fine. The statement of independent media trade union of Ukraine published on October 27, 2012 became another vivid example of the rigid censorship exerted by UNIAN leaders with respect to the site editors. They were disciplinarily punished for publicizing the news under the title "Picket on Bankova [street] — Yanukovich got a boot with the Christmas tree".

Other examples of persecutions for exercising the right to peaceful gatherings are also demonstrative. The organizers and attendees of the meetings are subject to all types of administrative punishments. Thus, on February 24, 2012 one of the organizers of public event at Maidan Nezalezhnosti was detained for distributing the condoms bearing the portrait of the Ukrainian president V. Yanukovich. The activist was sentenced to 15 days in administrative detention. Even informational and cultural events have become dangerous. E. g., on July 1, 2012, the organizers of photography exhibit "Human rights off side" were forced to dismantle it. The exhibit was to be shown to public at the time of the Euro-2012 football championship; one of its organizers Nazariy Boyarskiy was detained with administrative proceedings instigated against him[9].

The illegal use of force and special measures against the peaceful gatherings' attendees is worth a special mention. Thus, on July 3, 2012, following the passing of infamous law "On Principles of the State Language Policy" by the parliament of Ukraine, the spontaneous protest meeting started in front of the Ukrainian House in Kyiv. To disperse the peaceful gathering militia special unit "Berkut" used physical force and special measures against 200 protesters.[10] The illegal banning of small gatherings has become routine. E. g. on September 15, 2012 the activists of "Vidsich" [Rebuff] organization disseminating the movement booklets were detained. In the process of detention the students were injured, dragged along the pavement, had their clothes and belongings torn, etc.[11]

PERSECUTIONS FOR THE HUMAN RIGHTS' AND FREEDOMS' PROTECTION ACTIVITIES

More pressure is exerted on the human rights and public activists, engaged in protecting human rights and freedoms. The notorious case of Yu. Kosarev, a member of "Luhansk human rights protection group" who defended the rights of hired workers of "Uspensky quarry" company, is still to be considered by the court. On May 22, 2011 the company manager assisted by the militiamen beat Yu. Kosarev and his colleague S. Ihnatov in his own backyard. The beating was filmed on video and published on the Internet.[12] Meanwhile the criminal

[9] http://www.pravda.com.ua/columns/2012/07/3/6967917/

[10] http://helsinki.org.ua/index.php?id=1349343548

[11] http://maidan.org.ua/2012/09/zatrymannya-aktyvistiv-vidsichi-v-okruzi-maksyma-lutskoho-foto-video/

[12] http://www.youtube.com/watch?v=stNP4N01owo&feature=player_embedded

proceedings for resisting militia officers were instigated against them. Currently Yu. Kosarev and his colleague are in the pretrial detention center hospital. Yuriy ended up there after hunger strike, and Serhiy — after the surgery following the beating.

Here is another example. On May 24, 2012 the court passed a ruling ordering finding and arresting the "Tax Maidan" activist Rimma Belotserkivska. The criminal case against Rimma has been continuing for five years. In 2008 the woman supported Siverodonetsk residents who opposed illegal development near one of the multi-storey houses. At the time of the conflict a woman in charge of the new construction used a gas sprayer against her. The criminal proceedings for hooliganism however, were instigated against the activist.[13]

Characteristic inertia of the militia officials in cases where physical force is used against human rights and public activists is another disconcerting tendency. Thus, in early 2012 France granted political asylum to the leader of the Crimean branch of All-Ukrainian organization of people with disabilities and users of psychiatric help "USER" A. Fedosov. To remind the reader, in the fall of 2011 he became the victim of assault. It is noteworthy that it was the second beating of the activist; first occurred after he published the results of monitoring concerning the rights of people with disabilities and users of psychiatric help in 6 psychiatric hospitals in the Crimea. After the assault militia officials refused to register his grievance and did nothing to investigate the crime. Instead, several months later Fedosov was detained in relation to a crime committed allegedly 10 years ago (it means that A. Fedosov was 15 at the time). Due to the continued threats and complete inaction of the law-enforcers the human rights activist was forced to leave the country.

R. Shaposhnikov case has not been properly investigated yet. Shaposhnikov is the leader of "Road inspection" NGO which investigates the law-enforcers' operation. On March 24, 2012 unidentified persons pushed him into a car, took to a forest and beat him up. Prior to this event, on February 14, 2012 the operation of "Road inspection" site was temporarily suspended under the court ruling passed on a law-enforcers' petition.[14]

The killing of renowned environmentalist, editor of "Ekobezpeka" newspaper, head of the Ukrainian public movement "For the right to environmental safety" V. Honcharenko became the culmination of impunity. He died in a hospital on August 4, 2012 after receiving fatal body injuries. The environmentalist was severely beaten 4 days after press-conference, where he told the public that 180 tons of chemically contaminated metal scrap are stored in Saksahansky district of Kryvy Rih.[15]

PERSECUTIONS OF NATIONAL-PATRIOTIC NGOs

Criminal prosecution for damaging the soviet leaders' monuments is quite common. Thus, on August 22, 2012 militia of Komsomolsk city detained a 16-year old teenager who painted Lenin's monument. The boy painted a flower and a watermelon on the monument. Criminal proceedings for hooliganism, envisaging 1 to 5 years in prison, were instigated

[13] http://www.radiosvoboda.org/content/article/24591149.html

[14] http://roadcontrol.org.ua/node/1402

[15] http://www.khpg.org/pda/index.php?r=1.5.1.1.7

against the boy. As a matter of fact the monument presented neither historical nor architectural value.[16]

For the first half of the year 2012 a similar case involving young members of all-Ukrainian association "Tryzub" has been under consideration in the appellation court. To remind the reader, on December 28, 2010 the young men expressed their protest by damaging Stalin's bust and sawing the head off it. The monument was erected in the premises of the oblast' branch of the Communist Party In the course of investigation numerous interrogations and searches of nationalistic NGOs' members were carried out in all the regions of Ukraine. The detainees were charged with group hooliganism. When the case was transferred to the court, the prosecutor's office changed the charges to deliberate damage of property. All the accused were sentenced to 1–3 years in prison with deferment and fine of 110 thousand UAH[17]. In summer 2012 the appellation court confirmed the validity of this decision.

Over the year 2012 there were no new developments in the case of historian R. Zabily, the director of the national Museum "Lontsky Jail". On September 8, 2010 he was detained by the national security officers at a railroad station without court's warrant. After personal search his computer and external storage device with soviet times' documents were confiscated. Criminal proceedings on the charges of divulging the information which is state secret were instigated. The case materials are still treated as classified information. So far R. Zabily is a party to the case as a witness.[18]

We believe that the criminal case of so-called "Vasylkiv terrorists" I. Mosiychuk, S. Bevz and V. Shpara is politically motivated. They are charged, among other things, under Article 258 of the CC of Ukraine, with committing a terrorist act. The defendants allegedly intended to blow up Lenin's monument in a square of Boryspil town (Kyiv oblast'), while in fact this monument has been dismantled long ago. The proceedings go on and multiple violations of the right to fair trial have been registered in the process.

CURBING PROTEST POTENTIAL OF THE YOUNG

It must be said that the pressure on the young generation is the least studied phenomenon, due to the fact that it is difficult to check and involves a number of subjective factors. The students are reluctant to divulge or officially confirm the facts of persecution as they feel unprotected against schools' administration and the law-enforcers. That's why we publish here the information provided mainly by the youth organizations' leaders.

The practice of "preventive talks" conducted by the Security Service of Ukraine and militiamen with the activists of different youth organizations in various regions of Ukraine is common (in particular, "Foundation of regional initiatives", students' trade union 'Direct action" and others informed of such occurrences). From advice and recommendations to threats and intimidation, the young people get the message to abstain from participation in

[16] http://www.unian.ua/news/521656-pidlitka-yakiy-namalyuvav-na-pamyatniku-leninovi-kvitku-zatrimali.html

[17] http://news.dt.ua/SOCIETY/ruynivnikam_pamyatnika_stalinu_dali_termin_i_oshtrafuvali_na_110_000-93567.html

[18] http://www.web-accountant.ru/u-lvovi-suditimut-tyurmu/

protest actions; they are interrogated about the leadership of their organizations, sources of funding etc.

The Ministry of Education, Science, Young Adults and Sports as well as the institutes' administrations exert significant pressure on students and their self-governance bodies, if these latter do not support the ministerial policy. If the students and self-governance bodies' leaders publicly express their discontent with official educational policies or participate in the protest actions, their universities receive phone calls from the Ministry requesting that an "educational conversation" be held with the dissenters. To put an end to manifestations of discontent the educational institutions can resort to various measures, i. e. house arrest in the students' dormitory, as it happened to T. Konchenkova, the student of Shakhty pedagogical school.[19]

The authorities make a point of intimidating young people for any protest actions. Thus, on March 2, 2012 two students sticking "anti-presidential leaflets" in the streets of Kherson were detained. According to militia officials, "the leaflets made fun of the head of state in insulting and gross manner". The criminal proceedings were instigated; the students were charged with group hooliganism and forced to sign their consent not to leave the city, as a preventive measure. After investigation the case was closed and students fined for administrative infringement.[20]

On March 27, 2012 during the mass security action MAMA, conducted in the majority of oblast' centers of Ukraine in support of Kherson students, the militia officers in Donetsk detained B. Manyukov, O. Kiselyov and D. Dyadyk. The students were charged with another violation: "being in the proximity of the entrance to the Department of Interior in Donetsk oblast' [they] committed act of petty hooliganism, i. e. discrediting the acting head of the state President V. Yanukovich; carrying posters bearing the President's of Ukraine portrait, the slogans [describing the President as ex-con] and another slogan "For this leaflet the Kherson students were arrested". Despite the fact that the case is still under court consideration, D. Dyadyk was held administratively accountable by the head of militia department.[21]

[19] http://news.tochka.net/ua/116727-na-donbasse-uchitelya-zaperli-studentku-za-protest/

[20] http://www.pravda.com.ua/news/2012/03/6/6960161/

[21] http://helsinki.org.ua/index.php?print=1332998204

OPERATION OF THE SUPREME RADA OF UKRAINE OMBUDSMAN[1]

On April 29, 2012 Valeriya Lutkovska became the Ombudsman of the Supreme Rada of Ukraine.[2] This section reflects the results of monitoring of her operation for six months (May to October).

INTRODUCTION OF THE SECTORAL REPRESENTATIVES' INSTITUTE AND CHANGE OF THE SECRETARIAT STRUCTURE

Public hearing held in May contributed to identifying four major areas of the Ombudsman's operation:

— Implementation of national preventive mechanism in compliance with "Ombudsman+" model;
— Observance of social, economical and humanitarian rights;
— Observance of children's rights, non-discrimination and gender equality;
— Access to information and protection of personal data.

In August another aspect of Ombudsman's operation — observance of adherence to citizens' voting rights — was added on Advisory council's recommendation.

In May–August 2012 the Ombudsman appointed following sectoral representatives:

— Natalia Ivanova (Observance of social, economical and humanitarian rights);
— Yuriy Byelousov (Realization of national preventive mechanism in compliance with "Ombudsman+" model);
— Axana Filipishyna (Observance of children's rights, non-discrimination and gender equality);
— Olexandr Pavlichenko (Access to information and protection of personal data).
— Mykhaylo Chaplyha (observance of citizens' voting rights).

Prior to their appointments the sectoral representatives of the Ombudsman headed respective Departments and Offices in the new Secretariat. The process of Ombudsman's Secretariat restructuring continues. As of October 1, 2012 it has been 63.8% staffed. Public servants are appointed to the Ombudsman's Secretariat on the competitive basis. Terms and conditions of the competition are available on the Ombudsman's site.[3]

[1] Preprared by L. Koval, KhHRG.

[2] http://uamedia.visti.net/content/vidomosti-pro-kandidata-na-posadu-upovnovazhenogo-verhovnoyi-radi-ukrayini-z-prav-lyudini-0

[3] http://www.ombudsman.gov.ua/index.php?option=com_content&view=category&layout=blog&id=230&Itemid=230

NATIONAL PREVENTIVE MECHANISM BASED ON "OMBUDSMAN+" MODEL

In 2006 Ukraine ratified Facultative Protocol to the Convention against Torture, having committed itself to setting up the national preventive mechanism (NPM) within one-year period. This commitment has not been fulfilled over the next five years.

According to the priorities formulated by Valeriya Lutkovska, setting up of NPM in Ukraine immediately became one of the key areas in the new Supreme Rada Ombudsman's activity. Department for NPM realization was formed within the Ombudsman's Secretariat structure.

Over the summer the Department was staffed by experts by way of open competition. The specialists have experience of work within the institutions which are to be monitored or in the correctional facilities. The Department still needs to be staffed to full strength (as of October, 20, 21 positions were filled, while total number of positions amounts to 34).

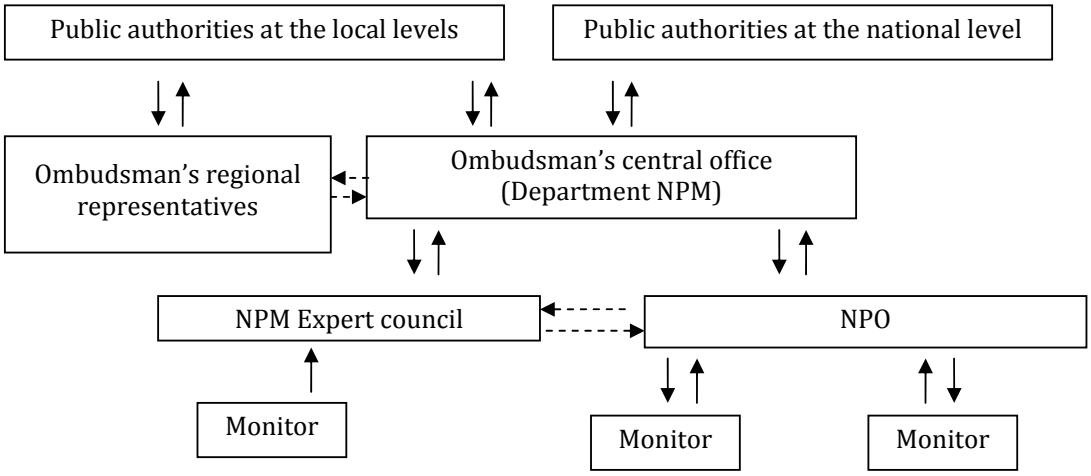
The passing of Law "On Amending the Law of Ukraine "On Supreme Rada of Ukraine Ombudsman" with regards to national preventive mechanism" by the Supreme Rada became a real breakthrough.

The passing of this law is a good example of joint effort undertaken by all the stakeholders. After broad public discussion on the possible NPM format, the model "Ombudsman+" was opted for as the most acceptable for Ukraine. For practical implementation of this model a new draft law was devised with the help of European Council experts and human rights activists. The draft was aimed at conferring legislative powers to Ombudsman 's Office with respect to the NPM implementation by way of introducing respective changes to the Law of Ukraine "On Supreme Rada of Ukraine Ombudsman".

The Law authorized the setting up of a special unit within the structure of the Ombudsman's Secretariat to address the issues of inadmissibility of torture and other cruel, inhuman and humiliating practices and punishments. It created the opportunity to involve (on contractual or pro bono basis) public activists, experts, scholars and specialists, including those from other countries, in regular monitoring of the penitentiary institutions.

From the very beginning the Department has been closely and fruitfully collaborating with non-governmental organizations. Together with human rights activists it elaborated the algorithm for NPM functioning on the basis of the "Ombudsman+" model. Under this algorithm regional Ombudsman's representatives, regional PR coordinators, NPM expert council, all-Ukrainian non-governmental "Association of independent monitors" (on the basis of the contract signed with the Ombudsman for one year) and other HR organizations get actively involved in the NPM realization.

The NPM Department shall schedule visits to the penitentiary institutions. The Ombudsman will ensure organizational support for these visits. Regional representatives will perform administrative functions locally (after this institute is established). Association of independent monitors will select, train and coach monitors in the course of one year (the contract is signed for this term). NPM Expert council will do the analysis and provide recommendations for the contracts to be signed with monitors. Final decisions will be made by the Ombudsman's Office. The contract signed between a monitor and the Ombudsman's office will grant legitimate powers to the monitors, full list of which will be submitted to the authorized body.



The chart of the national preventive mechanism in compliance with "Ombudsman+" model in Ukraine

The strategic goal of newly formed mechanism is strengthening protection against torture and cruel and inhuman treatment for the inmates of the penitentiary institutions through regular monitoring visits.

Currently the NPM strategic planning till the end of 2013 in Ukraine has been completed with the participation of leading NPM experts-members of HR orgnizations and financial support of "Renaissance" International fund.

The Department is developing methodology for torture and cruel treatment prevention, establishing working relations with specialized agencies and non-governmental organizations. The coordination of algorithms for visits to penitentiary institutions with State Penitentiary Service of Ukraine, Ministry of Interior and Ministry of Defense is practically completed. The Department intends to compile visiting algorithms for all 36 types of penitentiary institutions till the end of this year.

The Department staff together with Kharkiv Institute for Social Studies prepared and conducted a series of trainings. Thus, first training dedicated to the specific characteristics of NPM functioning in compliance with the requirements of Facultative Protocol to UN Convention against torture has been carried out by the expert from Prevention Subcommittee of the UN Committee against torture for the Department staff in charge of NPM implementation.

In September–October Kharkiv Institute for Social Studies together with the Department in charge of NPM implementation carried out three trainings on selection and coaching of the future visitors to penitentiary institutions. 50 trainees from all Ukrainian regions participated in the event.

The Department works with ministries and agencies to be visited within NPM framework. A number of working meetings with the officials from ministries and agencies in charge of penitentiary institutions took place.

In 6 month the Department staff and public representatives participated in monitoring visits to penitentiary institutions in the AR of Crimea, Dnipropetrovsk, Kyiv, Lviv, Odessa, Ternopyl, Kharkiv, Khmelnitsky and Chernyhyv oblast's. As of November 1, 2012 **136** institutions under the Ministry of Interior (62), Security Service (1), State Penitentiary and Bor-

der Control Services (23), Ministry of Defense (2), Ministry of Health (16), Ministry of Social Policy (25) and Ministry of Education, Science, Young People and Sports (4) have been visited. 24 visits were organized together with local activists in Volyn', Cherkasy and Kherson oblast's within the framework of a project, supported by "Renaissance" International Foundation. Every visit was followed by a report containing recommendations on eliminations of breaches of human rights discovered in the course of the visit. The reports were sent to the relevant ministries and agencies. While this report was prepared the processing of ministries' and agencies' responses to the Department recommendations still continued. The Department closely follows up the fulfillment of recommendations and uses additional measures if need arises.

For example, on July 19, 2012 a visit to Obolon' district department of Ministry of Interior in Kyiv took place. The conditions, in which the detainees are kept, interrogation rooms, system of admittance, registration logs, staff familiarity with respective legal and normative acts regulating observance of rights and freedoms, were monitored. A whole range of faults was uncovered and respective recommendations were offered to the Department management. Ministry of Interior responded that Ombudsman's recommendations were taken into consideration only partially. The Department in charge of NPM implementation filed a new appeal with the Ministry of Interior and warned about administrative liability in case of noncompliance with Ombudsman's recommendations.

Several surprise visits to the closed facilities were also organized with the goal of verifying the information concerning torture and cruel treatment. Specifically, the information on mass beating of the convicts in Kopychyntsy correctional facility No. 112[4], the beating of the attorney O. Veremeenko by the officers of Dniprovsky district militia department in Kyiv, beating of a UNHCR mandate refugee in Lukyanivka pre-trial detention center[5] was verified. After every visit a letter was sent to the prosecutor's office requesting thorough investigation.

However, no results of either 136 scheduled visits between June and October, or several surprise visits have been made public by the Department. At best, one could find on the Department's site the information to the effect that some systemic violations were uncovered in the course of the visit and respective letter was sent to the agency in charge. Lack of information concerning visits' results causes skepticism of public at large, towards the Department's operation with respect to NPM implementation, and to the Ombudsman's Office as a whole. This attitude is obvious in social networks, especially, on Facebook. Under p. 2 Article 21 of the Facultative Protocol to UN Convention against Torture only confidential information collected within NPM framework cannot be publicized. First interim Department's reports were published as late as November.[6]

[4] Surprise visit to Kopychyntsy CF No. 112 Ternoopyl obl. Investigation started.
http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1931:-112&catid=14:2010-12-07-14-44-26&Itemid=75

[5] Information about refugee Abuyev's beating in Kyiv PTDC is verified. http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1945:2012-08-08-06-42-22&catid=14:2010-12-07-14-44-26&Itemid=75

[6] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2161:-2012-&catid=228:2012&Itemid=230

Analysis of the Department operation with regards to NPM implementation, activities of other structural units in the Ombudsman Secretariat leads us to the conclusion that a uniform algorithm of response to the instances of human rights violations is established. The Secretariat checks up received information, then submits it to the bodies in charge with Ombudsman's recommendations and request to report on the measures taken. In case of non-compliance or partial compliance with the recommendations Ombudsman continues the dialogue with the head of the respective agency. Only in cases of deliberate and persistent non-compliance Ombudsman makes the information public or uses the administrative levers of influence.

The algorithm, described above, has a number of positive aspects. First, the appeal to respective bodies is accompanied by Ombudsman's recommendations. Second — Ombudsman supervises the fulfillment of recommendations and uses additional levers to ensure that fulfillment.

Unfortunately, no statistical data are available to confirm this statement, due to shortness of monitoring period and lack of well-organized system for data collection in the Secretariat.

Monitoring revealed that lack of funds is one of the major hindrances to the NPM implementation. On the one hand, the former Ombudsman left her office having practically exhausted the next year's budget. On the other hand, the NPM funding is not envisaged by the budget due to the absence of such area in the Ombudsman operation in the past. Successful fundraising became most instrumental in resolving this issue. Thus, office equipment needed for the full-fledged operation was granted as charitable donation by UNDP Office in Ukraine. The Department staff participates in the specialized trainings due to the grants, obtained by the respective NGOs.

The NPM funding situation can change as soon as 2013. The Law "On Amending the Law of Ukraine "On Supreme Rada of Ukraine Ombudsman" with regards to national preventive mechanism" stipulates state budget expenses for NPM. However, procedural barriers, related to state bodies operation, are still in place. Ombudsman cannot finance public monitoring visits. That is why the issue of adequate material support for regular monitoring activity within the NPM framework so far remains unresolved.

Another cause of concern is lack of public awareness or interest towards NPM in Ukraine despite its efficiency in preventing torture and cruel treatment in penitentiary institutions. Obviously, more comprehensive information policy in covering the issues of NPM and penitentiary system is needed.

COOPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS

Ombudsman pays due attention to developing new strategy for public relations. In order to ensure close cooperation with non-governmental organizations on the basis of openness and transparency, the Advisory Council under the Ombudsman was set up. It brings together human rights activists, trade union activists, journalists and scholars (total number — 28 members). The Council is chaired by Valeriya Lutkovska and Yevhen Zakharov.

Advisory Council goals include providing consultative support to the Ombudsman, conducting academic research, considering proposals with respect to better protection of human rights and fundamental freedoms by broader use of civil society institutes.

Six expert groups were set up under the Advisory Council:

— on immediate legal response to the violations of human rights;
— on monitoring of Ombudsman operation;
— on counteracting racism and xenophobia;
— on adherence to environmental rights of the citizens;
— on health care reform;
— on observance of migrants' rights;
— on human rights of persons with mental conditions.

It is too early yet to make any comment on these groups' operation.

In September 2012 the Advisory Council supported the Ombudsman's proposal on devising Strategic Plan for the development of Ukraine in human rights protection area. To make the implementation of this plan feasible, the Advisory Council experts, at the Ombudsman's request, prepared a summarized report on the UN and European Council recommendations for Ukraine and analyzed existing plans as to their compliance with Ukrainian commitments made to UN and European Council. The Strategic Plan was devised on the basis of this document.

Alongside with Advisory Council other consultative and advisory bodies are set up under the Ombudsman:

— Public committee for protection of active voting rights of the citizens;[7]
— Expert council on freedom of information and privacy protection, operating under the auspices of Department for information access and personal data protection;[8]
— Expert NPM council under The Department in charge of NPM implementation;
— Expert council for non-discrimination and gender equality[9] and Expert council for children's rights[10], under the Ombudsman representative for non-discrimination, gender equality and children's rights.

As of today, members of over 50 non-governmental organizations participate in the consultative and advisory bodies under Ombudsman.

The mechanism of interaction between Ombudsman Office and public representatives envisages, alongside with participation in the consultative and advisory bodies, participation in working groups, joint events (round tables, working meetings, conferences, seminars), cooperation on contractual basis etc.

On September 19, 2012 a memorandum on cooperation was signed between Ombudsman and all-Ukrainian Association of Ukrainian monitors of human rights on law-enforcement.[11]

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[7] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1912:2012-08-02-12-28-45&catid=14:2010-12-07-14-44-26&Itemid=75

[8] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1781:2012-06-18-14-07-32&catid=14:20010-12-07-14-44-26&Itemid=75

[9] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2182:2012-11-26-14-16-52&catid=14:2010-12-07-14-44-26&Itemid=75

[10] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2174:2012-11-20-16-44-02&catid=14:2010-12-07-14-44-26&Itemid=75

[11] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2036:2012-09-19-15-55-37&catid=228:2012&Itemid=230

It stipulates organization and implementation of joint events and projects aimed at improving the situation with regards to observance of human rights and fundamental freedoms, as well as public education on human rights issues. In October 2012 Ombudsman appointed regional coordinators on public relations members of the aforementioned Association — in three oblast's (Cherkasy, Volyn' and Kherson). Within the scope of their competences, defined by the contract, they represent Ombudsman in dealings with power bodies, international institutions and NGOs. According to the By-Laws, regional coordinators act as volunteers. At the first stage financial support for developing regional coordinators' network is provided by the "Renaissance" International Foundation. By the end of the year regional coordinators for Kharkiv oblast' and Sebastopol are to be appointed.

Meanwhile, the information about regional coordinators still cannot be found on Ombudsman's Web-site.

In September the first meeting of the working group for the protection of constitutional right of public transport workers to strike took place. The group includes the Ombudsman representative for social, economic and humanitarian rights Natalia Ivanova, representatives of relevant ministries and agencies and trade union activists.[12] The goal of this group is considering and preparing proposals for bringing Article 18 of the Law of Ukraine "On Transport" into compliance with the provisions of the Law of Ukraine "On Collective Contracts and Labor Treaties" and "on the Procedure for Resolving Labor Disputes (conflicts)", the norms of which have precedence over other legal acts in this area of public relations, and standards of international law and MOP recommendations.

In 6 months Ombudsman Office held over 30 events with non-governmental organizations (round tables, working meetings, conferences, seminars). They addresses the issues of NPM setting up, access to information, children's rights protection, non-discrimination, areas and perspectives of cooperation with trade Unions Federation; consultations with NGOs on developing draft laws related to observance and protection of human rights were held.

First steps were made towards interaction between Ombudsman and NGOs in the area of amending Ukrainian Law and devising draft laws concerning human rights and freedoms. Cancellation of Supreme Rada of Ukraine decision on accepting the first reading of the draft law "On Amendments to Criminal and Criminal-Procedural Code of Ukraine (on enhancing the liability for encroachment on individual honor and dignity (registration No. 11013 of 19.07.2012, submitted by Member of Parliament V. Zhuravsky) [13] was among the first positive results of this cooperation. The Ombudsman conclusion pointed out that this draft law provisions are contrary to the Constitution of Ukraine, European Convention on Human Rights and international commitments of Ukraine.[14]

Passing of the Law of Ukraine "On Supreme Rada of Ukraine Ombudsman" with regards to national preventive mechanism" on October 2, 2012 was another positive result of the

[12] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2030:2012-09-18-13-12-31&catid=14:2010-12-07-14-44-26&Itemid=75

[13] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2050:2012-10-02-09-34-35&catid=14:2010-12-07-14-44-26&Itemid=75

[14] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1910:2012-08-02-12-02-01&catid=14:2010-12-07-14-44-26&Itemid=75

collaboration between Ombudsman and non-governmental organizations.[15] Under this law Ombudsman is vested with authority to submit proposals for the amendments in Ukrainian legislation regarding protection of the citizens and individual rights and freedoms; familiarize herself with documents, including those of restricted access and request their copies from the power bodies, local self-governments, public associations, companies, institutions, entities regardless of form of ownership, prosecutor's office, including the court files. The NPM functions are vested in Ombudsman.

Another example of positive collaboration was manifested by well-coordinated actions of Ombudsman and NGOs with regards to the Law "On Unified State Demographic Registry and Documents confirming Ukrainian citizenship, identifying an individual or his/her social status", passed on October 2, 2012 and amendments to the Law of Ukraine "On Personal Data" (No. 10472-1), adopted on the same day. Both Expert council on freedom of information and privacy protection and Ombudsman requested that Presidential veto on these laws.[16] [17] [18] [19] They also coordinated their efforts in resisting the adoption of certain changes to legal acts by Supreme Rada (on children's rights to safe information space), registration No. 8711 of 20.06.2011, which banned homosexuality propaganda. Both Expert council on freedom of information and privacy protection and Ombudsman addressed the parliament with the request to cancel the decision on passing the said draft law in the first version (No. 8711), and also to reject similar draft laws — No. 10729 (on introducing changes into the Code of Administrative Infringements of Ukraine with respect to establishing liability for homosexuality propaganda), No. 10290 (on banning homosexuality propaganda aimed at children) and any other draft laws encroaching upon freedom of expression and disseminate discrimination in.[20] [21]

On the other hand, examples of different approaches to the laws and drafts passed by Supreme Rada, demonstrated by Ombudsman and non-governmental organizations also abound. Namely, in October 2012 the NGOs actively opposed passing of the Law "On amendments to some legal acts of Ukraine with regards to the use of auxiliary reproductive technologies", which restricts the age of women seeking artificial fertilization to 51 years. They argue that this provision is discriminatory to women as it artificially limits women's reproductive age.[22] The Ombudsman Office chose a different stand on the matter, claiming that surrogate motherhood is a source of human traffic in Ukraine due to lack of legal support. The law under discussion, in their opinion, could help. On November 2, 2012 the President returned the

[15] http://zakon1.rada.gov.ua/laws/show/5409-17

[16] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2089:2012-10-12-08-43-33&catid=228:2012&Itemid=230

[17] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2099:2012-10-15-11-16-31&catid=228:2012&Itemid=230

[18] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2091:2012-10-12-08-54-12&catid=228:2012&Itemid=230

[19] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2104:2012-10-16-06-28-25&catid=228:2012&Itemid=230

[20] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2055:2012-10-03-13-29-59&catid=14:2010-12-07-14-44-26&Itemid=75

[21] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2092:2012-10-12-08-59-47&catid=228:2012&Itemid=230

[22] http://ofenzyva.wordpress.com/2012/10/14/vidhylyty-8282/

draft law "On Amendments to some legal acts of Ukraine with regards to the use of auxiliary reproductive technologies" with his remarks to Supreme Rada for further consideration.

Supreme Rada's negligence of both the Ombudsman and the Expert council opinions is most alarming. On September, 9, Parliament passed the law "On Measures for Counteracting and Preventing Discrimination" without taking into account recommendations offered by the working group set up on June 26, 2012 under Supreme Rada Committee on human rights, national minorities and inter-national relations on Ombudsman motion. The group included Ombudsman, Ombudsman representative A. Filipishyna and members of NGOs and international organizations.

Under Article 3 of the Law on Ombudsman, this latter should assist in bringing Ukrainian legislation on human rights and freedoms into compliance with the Constitution of Ukraine and international standards in this area. The everyday reality, however, shows that Supreme Rada is not ready to take the recommendations into consideration, although the members or parliament stated that they expected support from Ombudsman in their law-making activities.

DE-POLITICIZATION OF OMBUDSMAN OPERATION

Ombudsman managed to complete almost all the tasks set for the year 2012. The operation of the institution changed dramatically. However, the Ombudsman perception by the public underwent almost no changes. The majority of public believes that Ombudsman is too politically engaged.

On May 17, 2012 at the meeting with journalists Valeriya Lutkovska publicly confirmed her plan to put an end to politicizing Ombudsman's office:*"I have firm intention of putting an end to politicization of Ombudsman's Office",* she stated. — *46 million Ukrainians need protection of their rights, therefore the Ombudsman's attention cannot be focused mainly on politicians. This in itself is discrimination of the majority, violation of people's right to approach their Ombudsman seeking help and receiving it…"*[23]

In order to depoliticize her office Ombudsman chose tactics which find neither understanding, nor support among public at large. To avoid accusations of political involvement Ombudsman prefers to remain silent on crucial public issues. Thus, we do not know Ombudsman's opinion regarding plainly unconstitutional law "On Principles of National Language Policy", passed by Supreme Rada on July 3, 2012. Probably, this omission is due over-politicized atmosphere around the law. Ombudsman refuses to comment criminal accusations brought up against politicians, specifically, against Yu. Tymoshenko and Yu. Lutsenko. The public is also unaware of the Ombudsman's stand with respect to human rights violation in the course of the recent election campaign.

Nevertheless, despite great caution exercised by Ombudsman in addressing crucial issues, her very reticence is perceived by the public as a sign of political engagement, thus putting Ombudsman independence in doubt.

[23] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1652:2012-05-17-15-58-32&catid=17:2010-12-07-14-45-33&Itemid=214

Ombudsman's silence with respect to socially important issues does not testify to her political indifference, but it does not contribute to depoliticization of Ombudsman operation.

That's why choosing appropriate depoliticization strategy is so important for Ombudsman operation. Efficient information policy should play key role in the process.

OMBUDSMAN INFORMATION POLICY

The new Ombudsman started her operation with significant changes in information policy, vividly manifested by public discussion on Ombudsman priority areas of operation and introduction of sectoral representatives' institute, initiated on May 15, 2012[24].

The Ombudsman official site immediately published complete information the structure and operation of the Ombudsman's Secretariat, as well as the information on its structural units, their heads, working hours, contact phone numbers etc. The information on public service's office operation, free phone numbers, postal, e-mail and Skype addresses, as well as detailed instructions on how to file an appeal with the Ombudsman and with the European Court on Human Rights are also available to public. Press-center publishes news on important events related to human rights issues in the "Human rights protection" column.

In the course of three months (July-September) the site was visited by over 43 thousand of Internet users, with 75% accessing it from Ukrainian servers.

The Ombudsman usually offers information on her operation to familiarize public with:

— Decisions made by the authorities who, in Ombudsman's opinion, restrict human rights and freedoms. For example, an open letter to President Yanukovich with the proposal to veto the law of Ukraine "On Amendments to the Law of Ukraine "On Personal Data Protection", passed on October 2, 2012[25];

— Operation and decisions of Advisory and advisory bodies under the Ombudsman. For example, publication of the recommendations on classifying public information as confidential, devised by the Expert council on freedom of information and privacy protection under the Ombudsman representative for access to public information and personal data protection in compliance with law of Ukraine "On Access to Public Information" [26];

— Various events with the participation of the Ombudsman office. E. g. round table entitled "The Law of Ukraine "On Measures for Counteracting and Preventing Discrimination": problems and ways of improvement"[27];

— Fulfillment of direct duties of Ombudsman or her representatives in defined areas. E. g. initiating the investigation on journalists' complaint following Brovary assault[28];

[24] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1639:2012-05-15-13-00-34&catid=17:2010-12-07-14-45-33&Itemid=214

[25] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2100:2012-10-15-11-30-15&catid=14:2010-12-07-14-44-26&Itemid=75

[26] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2109:2012-10-16-14-27-56&catid=14:2010-12-07-14-44-26&Itemid=75

[27] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2043:2012-09-28-06-57-14&catid=14:2010-12-07-14-44-26&Itemid=75

[28] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2123:2012-10-24-15-06-41&catid=14:2010-12-07-14-44-26&Itemid=75

— Official contacts with authorities and official representatives. E. g. Ombudsman's recommendation to the Head of the Central Election Board V. Shapoval to provide additional public information with the respect to video-recording at the polling stations, clarifying that the control over voting process in the closed booths is technically not feasible.[29]

Soon after being sworn into the office Ombudsman started her page on Facebook.[30] It is on this social network that vivid discussion around new Secretariat structure was initiated, involving Facebook users and taking their proposals into account.

Currently the page offers the news from the Ombudsman official site, which is rarely commented upon by the users, the number of which amounts to 383. Hence, the need for page further updating and visualization arises.

The Ombudsman introduced a number of new initiatives to further promote cooperation with media. E. g. she changed meetings with journalists into press-lunches[31]; she personally communicates with members of internet-communities[32]; an on-line conference was held[33]. These innovations, however, were not developed further. As of November 1, 2012, Ombudsman's participation in "Komsomolska Pravda" "hot line" (10.05.2012), web-conference on LIGA site (17.05.2012) and Valeriya Lutkovska meeting with the participants of "Ukrainska Pravda" forum (18.05.2012) remained isolated events.

Ombudsman's communication with media was most active in May 2012. More than 10 information meetings took place, including an interview on TV channel TRK, participation in Mykola Knyazhytsky TV program, participation in "In the first person" talk show at radio "ERA" channel and others. Over the next four months dynamics of media interaction showed tendency to slowing down. Contacts became scarce and forms of communication limited. At that time Ombudsman participated in "Portrait" project with Serhiy Dorofeyev on channel 5,[34] and gave two interviews to "Glavkom" and "Tyzhden.ua".[35] [36] At the beginning of August 2012 a large conference dedicated to Ombudsman's first 100 days in office was held. The analysis of questions posed to Ombudsman's press-service revealed that journalists were most interested in the following topics: criminal charges against Yu. Tymoshenko and Yu. Lutsenko, as well as draft law No. 11013 "On Amendments to Criminal and Criminal and Procedural Code of Ukraine with respect to enhancing liability for encroachment on individual honor, dignity and business reputation" (libel law).

In the course of 6 months Ombudsman's site published 167 accounts of her operation. Only one third of them, however, were disseminated by other mass media. Most often the information was made public due to electronic media. TV broadcasted the smallest share of Ombuds-

[29] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2117:2012-10-22-14-28-41&catid=14:2010-12-07-14-44-26&Itemid=75

[30] http://www.facebook.com/ombudsmanUA

[31] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1637:2012-05-15-09-16-03&catid=17:2010-12-07-14-45-33&Itemid=214

[32] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1660:-l-r&catid=17:2010-12-07-14-45 -33&Itemid=214

[33] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1671:-net-17-2012-&catid=213:2012&Itemid=21

[34] http://www.youtube.com/watch?v=tcrAU1N24Rg

[35] http://glavcom.ua/articles/7638.html

[36] http://tyzhden.ua/Politics/62379

man news. It is well known that the number of Internet users is twice lesser than the number of TV audience. Prevalence of electronic media as opposed to other means of communications narrows the audience to Internet users only, negatively affects PR of Ombudsman's operation. According to the poll conducted in September–October 2012 by the Center of Information on Human Rights, 19% of respondents know absolutely nothing about the Ukrainian Ombudsman.[37]

In order to enhance social legitimacy of Ombudsman's Institute press-service should pay more attention to the strategies of implementing Ombudsman's information policy.

Press-service should also address the need to cover Ombudsman's position on the issues of vivid public interest. It should be proactive in actualization of topics of substantial social significance, which are not adequately covered in mass media. E. g. the NPM setting up is in outside the focus of public and media attention.

On the average, press-service limits its information on Ombudsman's operation to one information block daily. The information flow is not well-balanced. Although press-service always makes Ombudsman's plans and intentions known to public, it fails to report on their final outcomes. E. g., monitoring revealed, that as of August 2, 2012 rights of 70 citizens were restored due to Ombudsman's intervention.[38] Ombudsman's site reported only one such incidence.[39]

Over 30 violations in information balance have been registered, i. e. when an event was announced, but the outcomes never made public. E. g., On July16, 2012 Ombudsman's site announced the beginning of monitoring, conducted by Secretariat on the motion from Ombudsman's representative for children's rights, non-discrimination and gender equality Axana Filipishyna. The monitoring focused on timely supply of medical drugs to children's oncological hospitals in the country. It was triggered by the information in mass media with regards to critical situation with medications supplies, which threatened children's lives. Media referred to the national program "Children's oncology and onco-hematology".[40] Monitoring results, however, were never made public. On August 6, 2012 Ombudsman's press-service released information to the effect that the Secretariat is verifying the information on alleged beating of Umar Khasanovich Abuyev during his stay in pre-trial detention center in Kyiv.[41] However, it was from another source that public learnt of the outcome, i. e. that criminal proceedings were instituted against detention center's officers. Ombudsman's site failed to make this information public. In August 2012 Ombudsman's Secretariat announced its own monitoring of parliamentary elections. However, by November 5, 2012 neither information on monitoring results nor Ombudsman's (even preliminary) statement with regards to elections was published.. Instead, we learnt about Ombudsman's Office active participation in the observation process from the member of "Alliance Maidan" NGO, which was the Office's partner in elections monitoring. They stated that due to the timely response for Ombudsman's representative several violations of voting rights at the polling stations on the

[37] http://humanrights.com.ua/news/9-top-novini/162-ukrajintsi-poskarzhatsya-v-oon-na-koruptsiyu-diskriminatsiyu-ta-katuvannya

[38] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1930:2012-08-06-15-11-51&catid=228:2012&Itemid=230

[39] http://www.ombudsman.gov.ua/index.php?option=com_content&task=view&id=1877&Itemid=227

[40] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1869:2012-07-16-09-22-19&catid=14:2010-12-07-14-44-26&Itemid=75

[41] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1945:2012-08-08-06-42-22&catid=14:2010-12-07-14-44-26&Itemid=75

Election Day were stopped. They also claimed that Ombudsman's recommendation and subsequent Resolution No. 1850 of 24.10.2012 passed by Central Election Board, contributed to better attendance of voters and their participation in the ballot. This Resolution introduced relevant changes into the video-recording protocol at the polling stations, namely, the decision was made to announce that video-recording is being done and to amend this information with written message in large type: "There is no video-recording in the closed ballot booths".[42] On October 28, **Ombudsman's site published the information received at Ombudsman's Office with regards to numerous violations of public voting rights at** 2012 elections.[43] It was the last elections' related message.

RECOMMENDATIONS

1. Introducing further amendments to the Law of Ukraine "On Ombudsman"
2. Developing strategy and technology for communications with media.
3. Timely publication of news on Ombudsman site.
4. Systematic coverage of the results of Secretariat structural units' operation, Ombudsman's and her representatives' operation.
5. Active use of various instruments enhancing public awareness with respect to Ombudsman institute.
6. Organizing free counseling in Ombudsman Office, together with NGOs.
7. Continuing collaboration with NGOs.
8. Broadening the network of local regional Ombudsman representatives.
9. Making information concerning regional coordinators open to the public on the Ombudsman site.
10. The Department in charge of NPM implementation will:
— Compile the reports on the results of each penitentiary institutions' monitoring visit; analyze and summarize systemic errors in the penitentiary institutions and reflect the analysis results in the annual report, alongside with recommendations for the competent bodies;
— In cooperation with public activists develop and implement viable mechanism for recruiting, training and certifying monitors of the penitentiary institutions;
— In cooperation with public develop and implement efficient information policy, aimed at step-by-step raising public awareness with respect to incarceration-related problems in Ukraine.
11. Organizing systematic data collection on public appeals and complaints and responses to them.
12. Devising strategy and technology for de-politicization of the Ombudsman operation.

[42] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2125:2012-10-25-08-29-08&catid=14:2010-12-07-14-44-26&Itemid=75

[43] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2132:2012-10-28-14-09-40&catid=14:2010-12-07-14-44-26&Itemid=75

CONSTITUTIONAL PROCESS IN UKRAINE IN 2012[1]

Constitutional Process in Ukraine in 2012 reflects a range of Conclusions and Decisions passed on the matter by the Constitutional Court of Ukraine and analytical activity of the Constitutional Assembly of Ukraine set up on January 25, 2012 by President Yanukovich's Decree No. 31/2012. Passing of the new Law of Ukraine "On all-Ukrainian Referendum" on November 6, 2012 became an important milestone in the constitutional process.

CONSTITUTIONAL PROCESS IN THE DECISIONS OF THE CONSTITUTIONAL COURT OF UKRAINE

In 2012 the Constitutional Court of Ukraine was proactive in passing a number of decisions and rulings, some of which may, based on their contents, be characterized as essential elements of the constitutional process in Ukraine. First of all, it concerns the Decision No. 2-rp/2012 of January 20, 2012 "In the case upon the constitutional petition of Zhashkiv regional council of Cherkassy oblast concerning official interpretation of the provisions of Articles 32.1, 32.2, 34.2, 34.4 of the Constitution of Ukraine"; Decision of January 25, 2012 "In the case upon the constitutional petition of the Board of the Pension Fund of Ukraine concerning official interpretation of the provisions of Articles 1, 95.1, 95.2, 95.3, 96.2, 116.2, 116.3, 116.6, 124.2, 129.1 of the Constitution, 4.1.5 of the Budget Code of Ukraine, 9.1.2 of the Code of Administrative Proceedings of Ukraine in system connection with some provisions of the Constitution"[2]; Decision No. 7-rap/2012 of April 4, 2012 "In the case upon the constitutional petition of 59 People's Deputies of Ukraine concerning conformity with the Constitution of Ukraine (constitutionality) of the provisions of Article 22.2 of the Law "On Elections of the People's Deputies of Ukraine" concerning proportional assignment of electoral voting stations abroad to all single-seat electoral districts established on the territory of the capital of Ukraine — city of Kyiv"; Decision No. 8-rp/2012 of April 5, 2012 "In the case upon the constitutional petition of 51 People's Deputies of Ukraine concerning conformity with the Constitution (constitutionality) of Article 52.5, paragraph 2 of Article 98.10, Article 99.3 of the Law "On Elections of the People's Deputies of Ukraine" (case on nomination of candidates for People's Deputies of Ukraine under the mixed electoral system)"; Conclusion of the Constitutional Court of Ukraine No. 1-в/2012 of July 10, 2012, in the case on the Supreme Rada petition to decide upon conformity of draft law on amendments to

[1] Prepared by V. Rechitsky, constitutional expert of KhHRG, UGUHR in the Constitutional Assembly of Ukraine.

[2] See commentary to 2 decisions. V. Rechitsky. The constitutional process in Ukraine: 2011 — early 2012. Current tendencies and summary. // Human rights in Ukraine 2011. HR organizations' report — Kharkiv, Human rights 2012. — pp. 22–28.

Constitution of Ukraine concerning immunity, with the Article s 157 and 158 of Constitution of Ukraine (the case on amending Articles 80, 105, 126, 149 of the Constitution of Ukraine).

Two first Decisions of the Constitutional Court of Ukraine will be commented upon in the report on human rights' protection in 2011 and early 2012. Meanwhile, the essence of the Decision of the Constitutional Court of Ukraine No. 7-rap/22 of April 4, 2012 is clarified below.

THE CASE ON VOTING STATIONS ABROAD

Bearer of right to constitutional petition approached the Constitutional Court of Ukraine with the motion to classify provisions of Article. 22 of Law of Ukraine "On Elections of the People's Deputies of Ukraine", stipulating setting up voting stations abroad by Central Election Commission under the auspices of diplomatic missions of Ukraine, in military units (formations), deployed outside Ukraine, concerning proportional assignment of electoral voting stations abroad to all single-seat electoral districts established in the territory of the capital of Ukraine — city of Kyiv, as unconstitutional.

The people's deputies of Ukraine claimed that the Law provision establishing proportional assignment of electoral voting stations abroad to all single-seat electoral districts established in the territory of the capital of Ukraine — city of Kyiv, violates the constitutional principles of equal and free electoral right to vote and be elected, do not create equal opportunities for people's deputies' candidates in single-seat electoral districts, and, therefore, are contrary to provisions of Article 1.2, Article 5.1, Articles 38, 69, 71, Article 76.1 of the Constitution of Ukraine.

In its deliberation over the case the Constitutional Court of Ukraine took into consideration the following: as far back as in its Decision No. 1-rp/98 of February 26, 1998 (case concerning Elections of People's Deputies of Ukraine) the Constitutional Court of Ukraine ruled that "fundamental principles of general, equal and direct election right, free and secret ballot for Ukrainian citizens at the elections of people's deputies of Ukraine" set up constitutional foundations for the legal regulation of electoral process" (paragraph 3, p. 4 of substantial part). Besides, under Article 77.3 and Article 92 of the Constitution of Ukraine, organization and procedure of elections of people's deputies of Ukraine are defined exclusively by the laws of Ukraine.

Under the law the voting stations abroad are set up to enable voting to the voters residing or temporarily staying in the territory of a foreign state. They are set up under Ukrainian diplomatic missions, in the military units (formations), deployed outside Ukraine, "with [their] proportional assignment of electoral voting stations abroad to all single-seat electoral districts established on the territory of the capital of Ukraine — city of Kyiv"; (Article 22.1, 22.2 of the Law). It is noteworthy that active electoral process is characterized by more or less equal influence of every voter on the ballot results.

According to the Constitutional Court of Ukraine, the principle of equal voting right is ensured not only by principles of equal public participation in the elections, but also by approximately equal influence of the votes on the results of ballot. (paragraph 1, p. 13 of the substantial part of the Decision No. 1-rp/98 of February 26, 1998). That is the reason why single-seat

electoral districts are set up by the Central Election Commission with due consideration of the **territorial factor (**within respective administrative and territorial unit of Ukraine) and **quantitative factor,** under which the number of voters in each single-seat district will represent approximately same part of the total number defined by the State Registry.

Under the Law on Elections, which establishes time framework, procedure and order of setting up single-seat electoral districts and voting stations (including those abroad), the Central Election Commission sets up voting stations abroad with their subsequent assignment to single-seat electoral districts of Kyiv. (Subparagraphs 2, 3, 4, paragraph 6, Chapter XV "Final and transitory provisions").

That's why the Central Election Commission sets up single-seat electoral districts based on number of voters in the Kyiv State Registry, with allowed the average 12% deviation from mean numbers, excluding the voters staying or residing abroad. Under the circumstances provision of the Article 22 concerning proportional assignment of electoral voting stations abroad to all single-seat electoral districts established in the territory of the capital of Ukraine — city of Kyiv disagrees with Article 18.2 of the Law which allows the average 12% deviation from mean number of voters in a single-seat district. Besides, assignment of electoral voting stations abroad to Kyiv electoral districts (taking into account the number of voters in the capital) leads to the total increase of the number of voters *unattached* to the territorial community in Kyiv.

Due to these factors the use of the Law provisions under which voters abroad vote for the people's deputies candidates in single-seat districts of Kyiv does not ensure adequate freedom of Kyiv voters in expressing their will. The constitutional principle of equal electoral right obliges the state to create equal opportunities for exercising both active and passive electoral right at all stages of the electoral process, as well as equal opportunities in protection of electoral rights. The legal stand under which "to all voters and all candidates for people's deputies of Ukraine equal election opportunities in exercising their electoral rights are granted and guaranteed by the Constitution of Ukraine" was formulated by the Constitutional Court of Ukraine in p. 10 of the substantial part of its Decision No. 1-рп/98 of February 2, 1998.

Therefore, provisions of the Law in force concerning proportional assignment of electoral voting stations abroad to all single-seat electoral districts established in the territory of the capital of Ukraine — city of Kyiv fail to provide equal opportunities for the candidates for people's deputies of Ukraine for single-seat districts in Kyiv. The law restricts or totally disregards these candidates' opportunities to influence the voters' choice, if these voters stay or reside abroad.

Besides, according to the ruling of the European Court on Human Rights in Strasbourg, the voters who stay or reside abroad (see *Hilbe v. Liechtenstein,* 1999) in the majority of cases are "a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, a country's day-to-day problems", and, therefore, **can** be deprived of active voting right.

That's why the Constitutional Court of Ukraine arrived at the conclusion that provisions of Article 22.2 of the Law on Elections concerning assignment of electoral voting stations abroad to single-seat electoral districts established on the territory of Kyiv is contrary to Article 38, Articles 69, 71 , Article 76.1 of the Constitution of Ukraine. On this basis it recognized provisions of Article 22.2 of the Election Law of November 17, 2011, as unconstitutional.

The Court's Decision was criticized in the "individual opinions" of the Constitutional Court judges P. Stetsyuk and V. Shyshkin. P. Stetsyuk, in particular, pointed out that the Court in its ruling on unconstitutionality of provisions of part 2, Article 22.2 of the Law on Elections concerning proportional assignment of electoral voting stations abroad to single-seat electoral districts established on the territory of Kyiv, should have specified what the essence of "contradiction" is. However, the Decision contains no such clarification. It means that assumptions made by the Constitutional Court, cannot be considered substantial as they are based on erroneous perception of the "deputy's mandate" by the Court. Any people's deputy of Ukraine is "plenipotentiary representative" of the Ukrainian people as a whole; he is called upon to protect national interests (Article 79 of the Constitution of Ukraine, p. 5, p. 2 of substantial part of the Constitutional Court Decision of July 7, 1998).

The allegation that assignment of electoral voting stations abroad to single-seat electoral districts of Kyiv does not ensure the equal opportunities of candidates for people's deputies of Ukraine for single-seat districts in Kyiv*, as their opportunities to influence the choice of the voters who stay or reside abroad are restricted,* cannot be considered a justified argument either. The Article 22 of the Law grants **active**, not passive electoral right, which in this case is just an organizational characteristic of the Ukrainian electoral process. Besides, the passing of 2011 Law on Elections by 366 people's deputies (over 80% of their constitutional number) and its immediate signing by the President testify to **political expediency** of such electoral procedure and order. And political expediency issues are beyond the Constitutional Court jurisdiction (see the Constitutional Court of Ukraine Decisions No. 1-rp/98 of February 26; No. 2-rp/2002 of January 30, 2002; No. 1-в/2002 of October 16 etc.)

P. Stetsyuk, therefore, argues that ruling on unconstitutionality of Article 22.2 of the Law, the Constitutional Court in fact *deprived Ukrainian citizens abroad of their electoral right in electing people's deputies of Ukraine in the simple-majority districts.*

As to the criticism, voiced by V. Shishkin, this latter called the resolution part of the Decision unmotivated. In judge Shishkin's opinion, constitutionality of a given norm of the law cannot be evaluated against another norm of the same law, and that's exactly what the Constitutional Court did. Obviously all the norms of a law have the same ranking and legal force.

Besides, ensuring the equal number of voters in single-seat districts remains an irresolvable problem. That's why equality in this case means *approximately equal number of voters in simple-majority districts.* That's why the Law established the margin of mean 12% deviation from average numbers. The Constitutional Court Decision's reading of the equality principle in absolute terms leads to classifying the whole Law on Elections as unconstitutional.

The European election standards (see pp. 26–28 of clarifications to the Venice Commission "For Democracy through Law" "Code of Good Practice in Electoral Matters" suggest the interpretation of **free** elections as such that do not recognize any restrictions of either active or passive voting right. I. e. the European documents safeguard the guarantees of **all** voters' access to the electoral process. The Court's reference to the case *Hilbe v. Liechtenstein* by no means is relevant for Ukraine, as the Ukrainian legislation does not stipulate restrictions of electoral rights on the basis of the voter's whereabouts.

To a certain extent, one can agree with P. Stetsyuk's and V. Shishkin's critical remarks. The fact that the Constitution of Ukraine grants **equal** electoral rights to all its citizens is the main argument in their favor. In other words, the citizens' whereabouts are of no importance

for the matter. In any case, this Constitutional Court Decision in fact depletes the number of voters abroad by half (potentially — several million voters), thus weakening their influence on the results of the ballot strategically important for the country.

NOMINATION OF THE CANDIDATES UNDER MIXED ELECTION SYSTEM

The case started with the petition of 51 people's deputies of Ukraine concerning conformity with the Constitution (constitutionality) of Article 52.5, paragraph 2 of Article 98.10, Article 99.3 of the Law "On Elections of the People's Deputies of Ukraine", as contrary to Article 76.1, Article 8, Article 38.1, and Article 71.1 of the Constitution of Ukraine. The deputies argued that the said Articles are unconstitutional due to the fact that the provision of Article 52.5 of the Law on Elections allows for including the same person into the lists of candidates both in the national and single-seat electoral districts, which is unfair.

In cases when the Central Election Commission finds out that the same person was elected as people's deputy in multi-seat national district and — at the same time — in a single-seat electoral district, this person should be considered a winner only in the single-seat district. As to the party list, the candidate, next to the one in question, should be considered elected. The subject of the constitutional petition, disagreeing with that wanted to prove that this order of defining election results is contrary to the principles of **equal electoral right.**

In its ruling on this matter the Constitutional Court referred to the provisions of Article 52.5, of the Law "On Elections of the People's Deputies of Ukraine", under which the same person can be nominated both in the national and single-seat electoral districts. Hence a candidate for people's deputies nominated by political party will have more opportunities to exercise passive electoral right than a self-nominated candidate who runs in a single-seat district.

The Constitutional Court pointed out that in its Decision. No. 1-rp/98 of February 26, 1998 it already specified that the principle of the equal electoral rights is not always observed with regards to the candidates on party ballots. They have more opportunities to be elected than the candidates running for single-seat districts. The violation of the equal electoral rights also occurs when one candidate is voted for twice. It proves that Article 52.5 of the Law on Elections contradicts Articles 8, 38.1, 71.1. and 76.1 of the Constitution of Ukraine.

The Court believes that the list of candidates elected by certain portion of all voters within a party ballot should be the only outcome of the elections in the national district. According to the Constitutional Court Decision. No. 1-rp/98 of February 26, 1998 the principle of the equal electoral rights is ensured not only by the equal voting conditions for all citizens, but also by the equal influence of everyone on the results of parliamentary elections.

That's why the Constitutional Court ruled that Article 52.2. of the Law "On the Elections of People's Deputies of Ukraine" does not comply with the Constitution of Ukraine. This Court's Decision also qualified paragraph 2, Article 98.10and Article 99.3 of the Election Law of 2011 as unconstitutional. The Constitutional Court Decision seems quite logical and well-justified.

INITIATIVE ON BANNING THE IMMUNITY

The Constitutional Court had to consider this case after the draft law on amendments to the Constitution of Ukraine envisaging banning of the deputies', presidential and judges' immunity was devised. We refer to the Resolution of the Supreme Rada of Ukraine "On including the draft project on changes to the Constitution of Ukraine re immunity into the agenda of Session X of the Supreme Rada of Ukraine of the 6th convocation and its submission to the Constitutional Court of Ukraine" of June 20, 2012.

The Supreme Rada of Ukraine approached the Constitutional Court with the motion to pass a decision on conformity of the draft law Election on amendments to the Constitution of Ukraine envisaging banning of the deputies', presidential and judges' immunity No. 10530 with the provisions of the Articles 157 and 158of the Constitution of Ukraine. The draft law stipulated changes to the Articles 80, 105, 126, 149 of the Constitution of Ukraine which establish the immunity of the President, People's Deputies of Ukraine and also judges of the general and constitutional jurisdiction. The subject of legal initiative wanted to ban the constitutional rule under which the people's deputies cannot be brought to criminal liability, detained or arrested without the Supreme Rada of Ukraine's consent (Article 80 of the Constitution of Ukraine.). The same draft law envisaged banning the Presidential immunity for the term of his presidency (Article 105 of the Constitution of Ukraine) and the immunity of the judges (Articles 126, 149 of the Constitution of Ukraine).

Considering the draft law in the Chapter of **the deputies' immunity** as to its conformity with Articles 15 and 158 of the Constitution of Ukraine, the Constitutional Court the Constitutional Court referred to the provisions already in place. Having revised the draft laws of the similar contents, the Court arrived at the conclusion that the banning of the deputies' immunity is not contrary to the provisions of Article 157 of the Constitution of Ukraine Constitution of Ukraine. (Conclusion No. 1-в/2000 of June 27, 2000; No. 2-в/2008 of September 10, 2008; No. 1-в/2010 of April 1, 2010).

The Constitutional Court of Ukraine considered separately the issue of the draft law proposal on eliminating Article 105.1establishing Presidential immunity for his whole term of office with regards to its conformity with provisions of Articles 157 and 158 of the Constitution of Ukraine. Earlier in its Conclusion No. 1-в/2010 of April 1, 2010 the Constitutional Court ruled that elimination of the clause concerning Presidential immunity from the Article 105.1 can lead to the restriction of citizens' rights and freedoms, guaranteed by the President. The Constitutional Court arrived at the conclusion that there are no grounds for introducing changes into the current legal provisions. As far as the judges' immunity goes under Article 126 of the Fundamental Law the judge cannot be detained or arrested prior to criminal verdict without the Supreme Rada of Ukraine consent. Under Article 149 of the Constitution of Ukraine this provision also applies to the judges of the Constitutional Court of Ukraine.

Having revised the proposed changes to Articles 126 and 149 of the Constitution of Ukraine the Constitutional Court of Ukraine ruled that they are not aimed at liquidation of independence or breach of the territorial integrity of Ukraine. Therefore they are not contrary to Article 157.1 of the Constitution of Ukraine Constitution of Ukraine. Nevertheless, the Constitutional Court the Constitutional Court in its Decision of December 1, 2004 in the

case on judges' independence as legal component of their status stated that their personal immunity is a factor of their independence. I. e. establishment of immunity means ensuring appropriate conditions for the administration of justice. Constitutional guarantees of immunity are stipulated by justice professional requirements. Well-known international documents also point out the need to ensure the judges' immunity. Namely, under pp. 1 and 2 of the "Basic Principles on the Independence of the Judiciary" (see Resolution 40/32 and 40/146 of the UN General Assembly of November 29 and December 13, 1985) the judiciary immunity should be guaranteed and stipulated by the fundamental law. Everyone shall respect the judges' independence and adhere to it.

Guarantees of the judges' independence are also addressed by the "European Charter on the Status of Judges" of July 10, 1998, Recommendations of the Committee of Ministers of the European Council "Independence, efficiency and role of judges" No. (94) 12, of October 13, 1994, Recommendations of the Committee of Ministers of the European Council concerning independence, efficiency and role of judges of November 17, 2010 No. (2010) 12 etc. Being aware of these provisions, the Ukrainian state has no right to ban constitutional guarantees of justice in force, setting forth high requirements towards judges and their profession.

The Court believes that the judges' immunity should not be regarded as their **personal privilege.** This institution is aimed at administering objective and unbiased justice, protection of personal and civil rights and freedoms. The banning of the judges' immunity could lead to significant restrictions of the court protection right, guaranteed by Article 55 of the Constitution of Ukraine. That's why changes to Articles 126.1, 126.3 and 149 of the Constitution of Ukraine, proposed by the draft law, are contrary to the Constitution of Ukraine.

The Constitutional Court of Ukraine recognized that provisions of Articles 157 and 158 of the Constitution of Ukraine banning the people's deputies' immunity are constitutional. Meanwhile it stated that the wish of the subject of legal initiative to ban personal Presidential immunity and the immunity of all Ukrainian judges' immunity does not meet the provisions of Article 157.1 of the Constitution of Ukraine.

CONSTITUTIONAL PROCESS IN THE OPERATION OF THE CONSTITUTIONAL ASSEMBLY

3 plenary meeting of the Constitutional Assembly of Ukraine were scheduled to be held in September-December 2012. These meetings had to take place alongside with its Coordination Office meetings. Each of the 7 Assembly's commissions had to hold their meetings once a month. The Constitutional Assembly Regulations adopted on September 21, 2012, laid foundations for the Assembly's operation. They sustain that the Constitutional Assembly shall be guided by the Ukrainian Law, as well as by generally recognized principles and norms of the international laws. In particular, it stressed the need to adhere to the principles of supremacy of law, collegiality, self-governance and transparency, openness and glasnost', independence, professionalism and scientific approach.

The Constitutional Assembly convened with the Head, deputy Head, secretary and over 90 members engaged as volunteers participating in its meeting. In order to devise recommendations on the amendments to the Constitution of Ukraine the Constitutional Assembly

set up the Coordination Office composed of the Constitutional Assembly Head, his deputy, secretary heads of the commissions and executive bodies of the Assembly.

The Constitutional Assembly set up 7 commissions on the following issues: 1)constitutional order and procedure for introducing changes to the Constitution of Ukraine; 2) personal and civil rights, freedoms and duties; 3) realization of rule of the people; 4) state government organization; 5) justice; 6) law enforcement; 7) administrative and territorial division and local self-governance.

Assembly's plenary meeting was considered valid if at least two thirds of the Constitutional Assembly members participated. Each of the Constitutional Assembly members voted in person; delegating of votes was prohibited. The Constitutional Assembly Decisions were approved at its plenary meetings by majority of votes in open ballot, apart from cases defined by the Regulations. The adoption of the "Concept of introducing amendments to the Constitution of Ukraine" and of the proposals of specific changes to the Constitution of Ukraine had to result in submitting respective documents to the President of Ukraine. Summary decisions of the Assembly shall be passed by at least two thirds of all the votes.

Between the plenary meetings the Assembly members work in the commissions and other working bodies according to the schedule. Each of the commissions had the authority to set up task forces including its members with the goal of devising amendments to the Constitution of Ukraine. The commissions' meetings were deemed valid if not less than one half of their members attended. The Assembly meetings, commissions' and other working bodies' meetings were open and transparent. This requirement was ensured by media representatives' attendance, coverage of Assembly operation on the President's of Ukraine site etc.

Analytical reports (published on September 21, 2012) and other materials (proposals submitted by the head of human rights commission V. Butkevich, papers of methodological seminar "Methodological aspects of the Constitution of Ukraine's updating" of October 24, November 29, 2012 etc) were the outcomes of the Assembly's operation[3].

REGULATIONS OF THE CONSTITUTIONAL ORDER FUNDAMENTAL PRINCIPLES

In his report "Issues of constitutional system improvement in Ukraine: experience and perspectives" the head of the constitutional system commission professor O. Skrypnyuk stated that not all the constitutions have structurally separate institutions making up the "constitutional system". Different fundamental laws have Chapters under different titles "Principles of constitutional system" (Armenia, Belarus', Russia), "Fundamental provisions" (Estonia, Georgia, Azerbaijan), but all of them regulate what we call the principles of the constitutional order.

Analysis of the Constitution of Ukraine of 1996 allows to conclude that its Chapter I "Fundamental principles" contains the basic provisions of the Constitution. In other words the constitutional operation foundations represent the set of principles, which have supreme legal force and significance in organizing the operation of the state and society as a whole. They define the format and organizational structure of the Ukrainian state; guarantee hu-

[3] The compilation of reports edited by V. Rechitsky is given below.

man rights and freedoms, restrict state authority and guarantee the rule of the people. These principles are the norms of direct action; they underlie the life and operation of the whole Ukrainian society.

Meanwhile **practical** implementation of the Fundamental Law proves that the Constitution of Ukraine in its current format fails to serve as an efficient barrier in the destructive competition between the branches of power. The examples of the recent past testify to that. Current situation is possible due to the lack of precise definitions of social and economic basics of the Ukrainian society, which is also manifested in the normative essence of the "Fundamental principles". From strictly legal point of view the regulations of the constitutional order principles fall under six groups of norms: 1) norms characterizing the state as sovereign and independent; 2) those that reveal the contents of the state operation; 3) those related to civil society; 4) those that define the state power organization; 5) those that lay foundations for the foreign policy; 6) those designating state symbols.

Currently these norms are in need of amendment. The civil society, meanwhile, is not strong enough in Ukraine and, therefore, cannot guarantee the irreversibility of democratic changes. The task, therefore, lies in strengthening the democratic foundations and civil society, which should also safeguard and guarantee constitutional order in Ukraine. Presently, there are serious discrepancies between constitutional norms and post-totalitarian reality with regards to real and not formal functioning of democratic, social and legal Ukrainian state.

Although democratic principle is fundamental for the Ukrainian constitutionalism, the civil society and public at large cannot control 1) state guarantees of personal and civil rights and freedoms; 2) people's rule in its completeness 3) democratic nature of Ukraine as a whole. The rule of the people implies not only legal appurtenance of power to the people, but also real exercising of authority in accordance with people's will and interests. Obviously some essential components of people's right to political representation are absent from current reality. Often reluctance and simple incapacity of people's representatives to carry out legislative activity lead to the lack of laws, which would specify the "General provisions".

There is also the problem of adequate functioning of the lawful state in Ukraine, where the principle of supremacy of law yet needs to be established. The Ukrainian state fails in its obligations in the social area. That's why, according to professor O. Skrypnyuk, the social area of the state's operation needs constitutional strengthening, while efficient mechanisms for state accountability to its citizens need to be established.

Real guarantees of personal and civil rights and freedoms remain crucial issues for the constitutional process in Ukraine. One of the basic principles of legal state is the system of well-developed individual rights and freedoms. Despite the long list of rights stipulated by the Constitution in force, the majority of them remain mere declarations, not supported by real legal relationships in the society. The gist of the problem is not only state's failure to meet its constitutional obligations, but also lack of constitutional mechanisms providing citizens with efficient tools in protecting their constitutional rights.

Priority state functions — administration of justice and law enforcement also are not fulfilled to full capacity. In particular, the mechanism of exercising and protecting human rights and freedoms, which would restrict the authority of state power institutes, is not yet set up unconstitutional level. Besides, the political climate in Ukraine is unfavorable for constructive dialogue and collaboration between various branches of power and, which is more

crucial, between the state and the civil society. We are referring to the rule of people, political system of Ukraine and to the mechanism of checks and balances and its reflection in the Constitution of Ukraine. We need to revise the distribution of authority between the President, the Supreme Rada, and the Cabinet of Ministers of Ukraine, to reduce the concentration of power in the center, to ensure cooperation between the legislative and the executive branches of power and their complete accountability to the public.

Another area of the constitutional amendments involves the court system improvement. Current law on court system and judges' status, new Criminal and Procedural Code meet the European standards. However, the changes in the domain of public influence on justice (the jury institute, changes in the procedure for Higher Council of Justice formation etc) are still not sufficient.

The issue of strict separation of competencies between the bodies of central power and local self-governments, development of local initiatives as such are still of crucial importance. Obviously, the introduction of the new model in self-governance should go hand in hand with administrative and territorial reform.

Generally speaking, the updating of the constitutional order, adjustment of its basic principles becomes completely pointless without protection of the progressive changes achieved by Ukraine. A natural constitutional order stipulates legal protection from numerous threats. Nevertheless the Constitution of Ukraine so far does not promote an institute for the protection of the constitutional order principles, while the provisions of Article 17 are too general. In fact, currently there are no efficient guarantees for the protection of the constitutional order principles in Ukraine.

RULE OF THE PEOPLE IN UKRAINE

As stated by the head of commission on the implementation of the rule of the people professor A.Selivanov, the Constitution of Ukraine in force cannot be considered the final stop on the way towards real democracy (power of people) in Ukraine. The sovereignty of the Ukrainian people means that the people can amend constitutional order by way of referendum. The foundations for the real exercising of democracy are laid by the constitutional principles: 1) only the society, the people define the essence of a state; 2) the main goal of the people's power is ensuring individual and civil rights and freedoms.

The analysis of the Ukrainian political and legal sources addressing the notion of "people's power" allows us to arrive at the conclusion that natural and legal "the rule of the people" theory is based on recognizing human rights and freedoms as the embodiment of specific social and cultural values of the Ukrainian society.

To understand the political supremacy of the people one should remember that the term "people" refers to a human entity endowed with body and soul, in the territory of the Ukrainian state. Hence natural rights of the people to govern it, constitutionally participate in the state affairs in various areas. First of all, we are talking about the sovereign right of the Ukrainian people to primary, constituent power. In this light the novel theories on *sovereign rights of the Ukrainian regions, with their inherently autonomous and transcendental nature* look rather dubious.

Only the **Ukrainian people** as one entity is a source of sovereign power, only the people is an integral social body, which represents the whole society. On the other hand, the unnatural representation of certain groups of population as independent political entities is the road to separatism, annihilation of the democratic values and achievements. That is why the Constitutional Assembly should take it for an axiom: the people have no claims to power, but are its immutable bearer with unlimited energy potential.

The people are the source and bearer of the supreme authority, a sovereign without limitations. As such it is capable of exercising its will with regards to any governmental and non-governmental bodies and institutions. The Constitution only reflects (registers) this status of the people; it does not vest it with the authority. Lamentably, in practical operation the status of the Ukrainian people **as the supreme political force** is ignored. One of the reasons for that is the lack of legal definition for the "sovereignty of the people". The constitutional language specifying that "the people are the only bearer of sovereignty and the only source of power in Ukraine" has not yet found its adequate reflection in the law. Hence, it is regarded as a political and not legal provision.

Actual weakness of the democratic institutions, low level of independence among the majority of Ukrainian population lead to the governmental suppression of people's sovereignty by means of excessive regulation of social relations. In many instances the authorities practically disable public initiative. In fact the fragmented developments presented as public initiative are more often than not governmental initiatives. We observe this phenomenon every time when the state substitutes independent public actions with its own initiatives. Thus the state in fact ignores the constitutional order in its relations with people as the foundation of the political system.

Currently the Ukrainian authorities have built a rigid vertical system, as confirmed by everyday political practice. The potential of people as the only source of power remains in this situation unclaimed even in the basic constitutional mechanisms. A powerful state-governed model model of ruling suppresses Ukrainian people's sovereignty, thus excluding democracy from the defining characteristics of the Ukrainian state.

The recognition of individual and civil human rights in Ukraine guarantees political equality of the citizens and the state in the face of the law; in real life, however, we register a growing tendency of state apparatus supremacy both centrally and locally. It means rigid control of the bureaucratic class over the life and activities of the Ukrainian society, culturally pluralistic and diverse. Eventually the favorable conditions for autocracy, bureaucratic governance of people, and neglect of humanitarian principles reappear in Ukraine.

The people's connection with the central authority and local self-governments becomes more and more immaterial, administrative only, which resulted in total loss of trust towards the state and its institutions among public at large. Besides, the Ukrainian legislator eventually removes legal barriers separating private and public areas of social life. The rule of the people for the umpteenth time is substituted by the power of bureaucratic apparatus; public officials promote their own interests at the expense of political freedoms and property rights of the Ukrainian people.

Real politics disfigures constitutional norms of the Article 13.1, 13.3, 14.1, 16.1 of the Constitution of Ukraine, transforming them into mere declarations. The essence of the constituent power of the people is lost, while the state apparatus more and more often appropriates the prerogatives. The Constitution of Ukraine must establish and guarantee the sov-

ereignty of people. The competencies of the institutions and officials of the governmental bodies and self-governments should be defined with this in mind. Nevertheless, specific legal language found in the Constitution of Ukraine currently in force promotes alienation of the real people's interests from the Ukrainian officials' intentions.

Therefore, we should recognize the need for changes in the doctrinal approaches to defining the category of constitutional order in the focus of empowering the Ukrainian people in setting up of the political structure. The state's attitude to the "rule of people" is already reflected in several Decisions of the Constitutional Court of Ukraine. E. g. in the Court's Decision No. 4-zp of 03.10.1997 one can read that the adoption of 1996 Constitution of Ukraine by the Supreme Rada is regarded as the act of people's will, manifested only **once**.

It is well-known that under Article 5 of the Fundamental law of the Ukr.SSR of 1978, the most significant political issues had to be addressed by nation-wide public hearing and referendum. Definitely, the developers of 1996 Constitution of Ukraine had no right to ignore this provision in their updating of the Fundamental law. The same procedure for public legitimizing of the Constitution was established by the conclusive provisions of the Constitutional agreement of June 8, 1995 which abolished referenda on any issue, with the exception of the adoption of the Constitution of Ukraine. In real life, however, these guarantees of the Constitution of Ukraine legitimacy were reduced to nil by the political leaders of Ukraine. The political elite postponed the implementation of the social ideals indefinitely, while the sovereignty of people remained only in the constitutional rhetoric.

Therefore we established the fact of total absence of efficient legal mechanisms which should safeguard the Ukrainian people's right to govern their own affairs. The state proved incapable of setting up a legal model for truly democratic governance. No wonder the discussion on who is entitled to interpret the sovereign people's will still goes on in Ukraine. That's why the conceptual changes to the Constitution of Ukraine are imminent. The legislator should enable the people's sovereignty to find adequate reflection in the constitutional order. In other words, Ukraine should treat updating of the Constitution of Ukraine as the modernization of the social agreement between the state and the political nation.

We can't bear any longer the situation when in the economic relations between the state and the people f Ukraine property rights to natural resources of the country belong to the people (Article 13 of the Constitution of Ukraine), but are exercised by the bureaucrats. Logically the Constitutional Court of Ukraine long ago should have filed public complaints with regards to the unconstitutionality of bureaucratic machinations with the objects of property right of the Ukrainian people.

The institute of people's power is based on the concept of active society united by common political interests. It also applies to exercising power of people in the regions and the Autonomous republic of Crimea. The power of people is a component of natural constitutional order. it requires separation of local self-governance from the functions of the state, restriction of power prerogatives for the benefit of private citizens and civil society.

The exercising of sovereignty by the Ukrainian people implies complete realization of its right to imperative manifestation of will, legislative activity. It applies to the Ukrainian politics as a whole, including the cultural and language policies. It implies the need for restricting state power in order to safeguard justice as the expression of the deepest spiritual aspirations of the people. The provisions of Article 1 of the Constitution of Ukraine and its introduction defining Ukrainian state as legal, social and democratic should be revised ac-

cordingly. Ukraine can become such a state only in the future. Today it bears only **isolated characteristics** of legal, social and democratic country.

Whatever the case, the Constitution of Ukraine should reflect the normative model for real and not declarative people's rule. Instead of general provisions, e. g. *citizens have the right to participate in*…; special mechanisms of public involvement in all the functions of all the branches of power should be implemented. The Constitution of Ukraine should include the list of issues which can be addressed by referendum only. Currently direct people's rule is extremely limited. Into the bargain, the situation deteriorates due to official suspicions at both central and local levels towards the free expressions of public opinion, spontaneous initiatives.

The court system also needs updating to enable citizens' participation in the administration of justice. However, even if the judges of the first instance courts were elected by the people and the judges of the appellate courts — by local representative bodies, we would anyway lack guarantees of protection against excessive governmental interventions into the administration of justice. That's why it would be expedient to re-introduce the institute of the judges of peace, elected by local population and administering justice on truly democratic principles into the updated Constitution of Ukraine.

CONSTITUTIONAL MODEL OF SELF-GOVERNANCE

Speaking at the Constitutional Assembly meeting on September 21, 2012 the head of the commission on self-governance, Chair of the state-building department of the National University "Yaroslav the Wise Legal academy of Ukraine" S. Seriogina stated that the development of Ukraine as a democratic and legal state is to a large extent defined by the efficiency of its local self-governance system.

Local self-governance is one of the democratic foundations of the constitutional system of Ukraine. That's why the local self-governance reform is the issue of utmost significance and importance.

The modernization process means for the Ukrainian statehood proper balance between political centralization and decentralization. It requires the updating of municipal legal institutions, which implies decentralization of public authority, bringing it closer to the people, establishing better conditions for actual satisfaction of human needs.

The local self-governance in Ukraine is also a form of territorial self-organization and independent operation, self-regulation and control. It reflects most completely the close connection between modernization of the statehood and progress in civil society.

The analysis of the 1996 Constitution shows that local self-governance as the object of lawful, social and democratic, constitutional and legal regulation is one of the underlying principles in the Ukrainian constitutional order (Article 7); the form of real people's rule (Article 5); the right of the territorial community to resolve the issue of local jurisdiction (Article 140); and an autonomous institution under the Constitution of Ukraine.

Although legal, organizational and material/financial foundations of local self-governance have been laid in the years of the Ukrainian independence, the municipal operation still is characterized by the permanent crisis. According to public surveys, traditionally nega-

tive public perception of the local self-governance so far remains unchanged. The local self-governance bodies are perceived by the public as lower echelons of the **governmental** and not self-governed authority, i. e. not as an embodiment of non-governmental interests of the Ukrainian citizens.

Currently an experiment on legislative "improvement" of local self-governance is going on in Ukraine. In fact, it is the incarnation of artificially cultivated state and not public administration. Despite a number of steps taken to improve local self-governance in Ukraine (E. g. "Program for governmental support and promotion of local self-governance in Ukraine") (2001), "Concept for governmental regional policy" (2001), "Concept for the program of legislative support of local self-governance" (2002), "State strategy for regional development till the year 2015" etc), no real progress has been registered with respect to non-governmental (public) initiatives.

It means that the efficient system of local self-governance, financially separated from the state, is not yet in place in Ukraine. The constitutional organizational model was not elaborated. The existing structure of local self-governance is regarded as transitory; it hinders not only the progress of the local self-governance, but the progress of the state as a whole. The local self-governance bodies and officials still are rigidly accountable to the state executive bodies. Incompetent separation of their functions on the constitutional and lower levels does not help either. The local self-governance is plagued by soviet-type state paternalism, i. e. the state is responsible for everything, thus leading to the rebirth of autocracy and centralization. Meanwhile the municipal philosophy has not yet found its implementation in Ukraine. Trying to separate local self-governance bodies and central power at the organizational level, the legislator got really entangled in its constitutional model. Under Article 7 of the Constitution of Ukraine local self-governance is a civil society — not a governmental — institution. In real life, however, the rule of people does not start where governmental competencies end.

The local self-governance essence is that it is set up as a result of spontaneous initiative of civil society. No wonder it is the best indicator of the state of democracy in the country. The local self-governance authority is different from that of the state (political power). In fact it is public non-governmental authority for local issues, restricted by the law. The local self-governance independence manifests itself in its autonomous authority, separated from the state.

On the other hand, neither state, nor local self-governance objectively can be isolated from each other. Self-governance is a specific type of public authority, independent mode of social governance. Neither are they supposed to overlap. Performance of functions delegated by the state is only a part of local self-governance competence.

In Ukraine the legal definition of a local self-government as given in Article 140 of the Constitution of Ukraine should be harmonized with the provisions of Article 3 of the European Charter of Local Self-Government, under which the local self-governance is the right and the real capacity of the territorial community to govern the matters of local jurisdiction, either independently or through local self-governance bodies, within the framework defined by the national laws. It is also noteworthy that the local self-governance bodies **are not a part** of the system of state executive bodies.

The local self-governance model envisages the existence of territorial communities capable of undertaking responsibility for resolving local issues. It stipulates the presence of

territorial communities not only in the villages and cities, but also in the territories where the community operates in a decentralized mode. The enlargement of municipalities which already proved efficient in the countries of the Western Europe is called for. In Sweden, in particular, the merging of municipalities occurred in 1952, while in 1977 their number decreased four times more. In Germany after the enlargement of the municipalities an average local community consists of 19 thousand members. In Denmark 1365 municipalities merged into 275 united municipalities where communities count approximately 18 thousand members. Belgium, respectively, reduced the number of its communes from 2669 to 589.

The amalgamated territorial communities also would be good for Ukraine. In this case the following provisions should be met: 1) the quality of social services must not deteriorate; 2) the territorial communities which have no common boundaries shall not be united; 3) the communities' enlargement shall be preceded by precise defining of the municipal competencies.

First of all the constitutional status of the territorial community has to be revised. Specifically, the competencies of the community should be broadened to include the issues of law enforcement, public safety, social security, environmental protection, development of the educational system, public health. Currently the Ukrainian citizens are separated from the local affairs and have no instruments to control municipal power. The low level of legal awareness of public also affects self-governance negatively.

It is high time to grant local self-governments the right of appeal to the Constitutional Court of Ukraine for verification of the constitutionality of the Laws of Ukraine, Presidential Acts, the Cabinet of Ministers of Ukraine, legal acts of the Autonomous Republic of Crimea, which restrict or violated the rights and interests of the territorial communities.

The Constitution in force rigidly regulates the local self-governments' system, which leads to the weakening of the local initiative in the majority of cases. While current legislation allows local councils to determine independently the organizational scope of their operation, the bureaucratic tendency still seems to prevail. In particular, the heads of oblast's, Kyiv and Sebastopol cities' and district councils, village, settlement and city councils are required to adhere to **standard** lists of staff members, approved by the addendum to the Cabinet of Ministers' of Ukraine Resolution No. 1349 of December 3, 1999.

The adoption of the 1996 Constitution failed to alleviate the confrontation between the local self-governance bodies and local state administrations; consequently the quality of administrative services remains low in Ukraine, causing destabilization of social, economical and political situation in Ukraine. It is fair to say that the current model of self-governance is absolutely incapable of ensuring sustainable conflict-free development of democracy at the local level.

The improvement of administrative services' quality requires higher level of glasnost', openness and public feedback. That's why it is high time to establish the rights of the local councils to determine independently their structure and system of their executive bodies, the size of staff and respective expenditures constitutionally.

The Constitution of Ukraine in force envisages the setting up of *executive bodies* at the basic level only. The rayon and oblast' councils should set up *executive apparatus* headed by the chairman. In the meantime the differences between the *executive apparatus* and *executive body* remain undefined. E. g. if the *executive apparatus* is not an *executive body*, who is responsible for the implementation of rayon and oblast' decisions? Under Article 119 of the

Constitution of Ukraine the local state administrations are only in charge of interaction with the local self-governance bodies and performance of delegated duties only.

It is high time to introduce the full-fledged system of regional and rayon self-governance in Ukraine. Constitutionalization of the regional and rayon self-governance implies the recognition of the new self-governance subjects: territorial communities' associations, territorial community in rayon and oblas't. Granting oblas't and rayon councils the right to set up its own executive bodies (departments, divisions etc.) is another requirement.

Innovations also call for revision of the constitutional state of the local state administrations. Their current over-centralized model only promotes bureaucracy and authoritarian governance. That's why depriving local state administrations of their delegated self-governance authority is a necessary step. The transformation of the local state administrations from governing into control and monitoring bodies at the regional and rayon levels could become the pivotal change. To make it happen, Article 118 of the Constitution of Ukraine stipulating the right of the deputies to express non- confidence to the heads to the local state administrations, shall be respectively amended.

PROTECTION OF HUMAN RIGHTS AND FREEDOMS

Proposals submitted by the head of the commission on human rights and freedoms professor V. Butkevich were not made public at the Constitutional Assembly meeting in September 2012. They were only submitted for the Secretariat and Coordination council consideration. Appreciating the importance of the issues addressed by professor V. Butkevich we offer the essence of his critical analysis below.

According to professor V. Butkevich, the discussion over constitutional rights and freedoms aimed at devising proposals for the Constitutional amendments as well as the analysis of the said proposals shall cover two areas: 1) evaluating the expediency (sufficient justification) of such amendments; and 2) defining conceptual, essential issues of rights and freedoms in need of updating.

As far as the expediency of the Constitution of Ukraine amendments are concerned, the facts and arguments confirm the necessity for such amendments. First, the language of numerous normative provisions of the Constitution of Ukraine does not reflect the essence and goal of its Chapters. Second, the Chapters which should address the guarantees for individual rights and freedoms or liability for their violations has either no relevant provisions at all, or mere declarations.

Generally speaking, the complete language of the issues related to human rights and freedoms in the Fundamental Law needs revision, from Preamble to "Final provisions" in the focus of: 1) the goal of the human rights and freedoms; 2) their social, economical and political principles; 3) legal essence; 4) implementation mechanism; 5) safeguards of implementation and liability for failure to comply. The issues related to the goal must be addressed in the Preamble; the principles — in the Chapter dealing with the fundamental values; the meaning of the specific rights and freedoms in the constitutional code of rights, while implementation mechanisms and guarantees — in the Chapters dealing with the state and local self-governance authorities.

The international operation of Ukraine and its legal position with regards to the international law seriously affect the progress of the state and society as a whole. That is why it is not enough to rely only on constitutional provisions sustaining that the ratified international treaties are part of the national law of Ukraine, while its international operation is aimed at safeguarding national interests on the basis of universally recognized international legal norms.

Ukraine ratified dozens of international treaties and agreements on human rights and freedoms completely disregarding the fact that their provisions are often conflicting (the state ends up in the situation when adhering to one convention means the breach of another). Besides, traditional Ukrainian caution with regards to human rights and freedoms' conventions sometimes comes in contradiction with its main goal, i. e. the principle of supremacy of law. That's why the Ukrainian position often remains unclear for its partners.

The non-conformity of the Ukrainian constitutional law with the norms of the European convention of 1950 on the protection of human rights and fundamental freedoms is obvious. As a result, the European Court on human rights twice passed pilot decisions under which Ukraine was obliged to change its national legislation. If the situation does not change for the better, Ukraine might end up in the situation when its parliament will have to work systematically on achieving conformity with the European Court's decisions, which can only be detrimental for the Ukrainian state prestige.

Besides, although the 1996 Constitution is not human rights manual per se, its basic provisions in this area should be specified, "decoded". It means that the terms like "legal state", "legitimacy", "principle of proportionality" "everyone has a right to housing" etc. should not just be there — positive commitments of the state guaranteeing the implementation of the said provisions should be added. This requirement seems especially relevant in the area of social (economic) rights, as it remains, so far, the realm of constitutional illusions and unjustified promises.

Summing up, 4 approaches can be identified in the problem dealing with human rights and freedoms. The Preamble shall offer only fundamental ideas, which permeate the whole text of the Constitution, and which are the basis for the majority of its provisions. 3 imperatives are worth mentioning here: 1) human dignity; 2) democracy and 3) supremacy of law. Further on, (in Preamble, Fundamental principles, Chapter II, Final provisions) the correspondence of norms related to human rights and freedoms to each of the structural elements of the Fundamental Law should be ensured. It means that general declarations of intentions, goals and motives laid down in Preamble and "Fundamental principles", shall not be transferred to the Chapter addressing specific rights and freedoms, while the Chapters dedicated to the mechanisms of exercising specific rights and freedoms and to competencies and accountability of the state authorities shall not duplicate Preamble provisions.

The classical triad people-individual-state, under which the state exists for the people, while the people defines mains tasks of the state for the benefit of individuals, should affect not only the general presentation of topics in the constitution, but also the language of its specific provisions, and their inter-relation. Currently the issue of precedence (i. e. who is the first, the second, and the third) in this triad is broadly discussed in Ukraine. The discussions are caused by the absence of precise definition in the Constitution of Ukraine.

The updated Fundamental Law, in particular, fails to answer the questions: 1) whether it was adopted "on behalf of the Ukrainian people, or only "for the Ukrainian people;

and 2) whether the Ukrainian state is a product of civil society or the embodiment of rigidly governmental ideological doctrine. Apparently only a constitution restricting state power for the benefit of civil society and guaranteeing respective rights and freedoms can be considered natural.

"General provisions" Chapter shall provide the definitions for the normative components underlying the whole text of the Constitution. Meanwhile, the Chapter II "Rights, freedoms and duties of the individual and citizen" is to be regarded as **legal and not ideological** Chapter. It shall contain 1) the list of the constitutional rights and freedoms 2) their essence and area of implementation; 3) requirements to the possible restrictions in their exercising. To achieve this goal the provisions of the current Constitution of Ukraine shall be compared against the models used by the European Convention of 1950 on the Protection of Human Rights and Fundamental Freedoms and The European Union Charter of Fundamental Rights 2000.

As to the mechanism for the exercising of human rights and freedoms, its components shall be clarified in the other Chapters of the Constitution of Ukraine. As is well-known, the current Constitution does not offer appropriate mechanisms at all. The updated Fundamental Law shall also look closely at the superficially synonymous terms, namely, the "Ukrainian people", the "Ukrainian nation", "the people", "and Ukrainian citizens of all nationalities". The excessive use of the adjective "Ukrainian", though, makes one suspect that the legislator is trying to convince the others, while remaining unconvinced himself.

The Preamble language "The Supreme Rada of Ukraine…is being aware of its responsibility to God, conscience…" seems quite vague. What is to be considered the Supreme Rada's "conscience"? What has the order under which a Member of Parliament votes on behalf of a dozen absent members, or one person undertakes the role of conductor in parliamentary orchestra, to do with conscience? Apparently, it is easier for the politicians to be accountable to God and conscience than to its own people.

Under the Constitution in force, the President of Ukraine shall "safeguard rights and freedoms of the citizens… for the benefit of all the compatriots". In fact, however, he has to do the same for the foreigners and stateless persons, as under the law they enjoy the same rights and freedoms. Therefore, the President must safeguard rights and freedoms not only of the citizens and not only for the benefit of all the compatriots. It is well-known that when a Ukrainian President phrased a resolution "to be resolved for the benefit of the Ukrainian citizens", the European Court on Human Rights in Strasbourg classified it as violation of human rights, because the president within the terms of his jurisdiction has to protect the rights of all people.

The updated Constitution of Ukraine should envisage the liability for the authorities disregarding its provisions, as well as liability of the officials and public servants for the abuse of law. Political parties and the people's deputies, in their turn, must be held accountable by the parliament not only for insult or slander (Article 80), but also for breach of their oath to "perform their duties for the benefit of all their compatriots" (Article 79). It is common knowledge that presently the deputies have no scruples in breaking their oath by ignoring plenary meetings and work in the parliamentary committees.

Besides, someone has to be held accountable for the fact that 94% of state or local self-governments' petitions requesting the banning of rallies and manifestation were satisfied by the Ukrainian courts, in violation of the Article 39 of the Constitution of Ukraine, which guar-

antees citizens' right to peaceful gatherings. The Ukrainian courts brazenly violate this rule using the clause "restrictions leading to complete banning", thus ignoring the classical principle of "proportionality" used in the systems of justice of the European Council members. While it is common knowledge that this principle is omitted in the Constitution of Ukraine, the fact that the European Court constantly demands that Ukraine complies with it, is known only to the narrow circle of officials with access to confidential information.

Many violations of the constitutional rights and freedoms can be found also in the operation of the executive branch in Ukraine. Partially it is due to lack of efficient legal liability for the violation of human rights and freedoms. A bureaucrat or an official in Ukraine only declares his/her readiness to be held accountable. But when the real administrative liability is imminent he/she is infinitely upset. When the criminal charges loom, the bureaucrat quickly acquires foreign citizenship and seeks asylum abroad. Lamentably the Constitutional Court of Ukraine also shows no concern about potential individual petitions addressing the violations of rights and freedoms.

Updating the Constitution of Ukraine the legislator should address the Preamble phrase "ensuring human rights and freedoms", which entails no formal obligations. Further on the Constitution stresses that the Cabinet of Ministers of Ukraine "undertakes measures aimed at ensuring individual and civil rights and freedoms" (Article 116 of the Constitution of Ukraine). But the Preamble provisions should be aimed at **all the state bodies without exceptions.** That is why the updated Fundamental Law shall establish specific guarantees for the protection of rights and freedoms, adequate legal forms and types of liabilities for the violations committed by any branch of the state power.

Human dignity also cannot be reduced simply to the "decent living conditions". The human dignity concept should become a fundamental principle stated in the Preamble, which is called to safeguard not only political democracy, but also supremacy of law. The "General provisions" Chapter, in its turn, should focus on the logic of protection of the most important human interests. It is common knowledge that currently this Chapter is a mere declaration. The constitutional principles are hanging there like decorative umbrellas covering unattractive reality: single citizenship proclaimed by the Constitution is amended by factual dual citizenship; division of power into legislative, executive and judicial branches is successfully combined with excessively developed legislative competencies of the executive branch; the supremacy of law is understood, in the best case, as the supremacy of a legal norm; local self-governance is guaranteed on paper only. Evidently, the Constitutional Assembly of Ukraine should put an end to the declarative statements on rights and freedoms, typical of Ukraine but not supported by any real means or resources. It is especially true of social-economic rights.

Besides, the updated Constitution should introduce systemic approach to the articles addressing human rights and freedoms. Currently the mechanism of the constitutional regulation begins with the description of topical state issues, then moves to the issues of rights and freedoms, and, finally, gets back to the state, sometimes mentioning in passing human rights and freedoms. Auxiliary additional elements and components are to be found between these categories and terms. Naturally, some legal digressions are inalienable parts of the Constitution, but the logic of the constitutional discourse cannot be completely random.

Embracing the dramatic changes occurring in the Ukrainian society, the Constitution of Ukraine shall take a firm stand with respect to equality principle (first of all, concerning ex-

isting disproportions in the incomes of "budget area" employees), and with respect to the principle of cultural, religious and language diversity (in particular, there have been attempts to eliminate Article 11 of the Constitution of Ukraine by the current law). Obviously, it is not enough to recognize Ukraine as a social state in order to resolve the underlying problems in the Ukrainian society.

The issues related to the protection of common workers' interests are addressed in the Chapter I — "Fundamental principles" of the Constitution only indirectly, which is definitely not enough. The institution of public appeal to the Constitutional Court for the protection of the constitutional rights and freedoms is virtually non-existent. Although the members of public can approach the courts of general jurisdiction seeking formal-legal protection of their constitutional rights and freedoms, the constant courts' refusals to consider such claims have become one of the characteristics of the Ukrainian justice. It is high time to enforce the judges' and courts' responsibility for their formal ("mechanical") rejections. At the constitutional level the abuse of the law widely spread in Ukraine should be efficiently opposed.

Chapter II of the Constitution of Ukraine "human and civil rights, freedoms and obligations " shall be logically harmonized with Chapter I "Fundamental principles". E. g. the Chapter I provisions defining all the constitutional norms as the norms of direct action (Article 8) cannot be implemented in practical operation due to legal peculiarities of the Chapter II of the Fundamental Law. On the other hand, the social focus of rights and freedoms (Chapter II of the Constitution) found no reflection in its "General Provisions". It is also noteworthy that the realization of the majority of the Articles (35 out of 41) of the Chapter II depend directly on "principles and order defined by the law". However, in this context the Articles lose their constitutionality de facto (as confirmed by practice). The general mention of their direct action is merely fictitious.

The Constitution should use precise language of the international legal acts, under which Ukraine has undertaken respective obligations. Such approach would allow to get rid of a whole range of misunderstandings in the constitutional use of law. E. g. if Ukraine officially promised to ban any manifestations of discrimination, it should be reflected in its Fundamental Law. I.e. the banning of discrimination cannot be equalized with existing constitutional negation of possible priviledges or restrictions. (Article 24). Ukraine expressed its commitment to safeguarding freedom of thought, conscience and religion, which is not the same as "freedom of ideology and conscience" (Article 35). In its turn, "freedom of expressing one's opinion" cannot be equalized with "freedom of thought and speech" (Article 34), as these articles address the issues, essentially different in their legal connotation.

Ukraine has to coordinate the Constitution in force with its international obligations and commitments. The consequences of Ukraine's joining international organizations, which use different guidelines in their operation, should also be taken into account. Thus, under the European Convention for Protection of Human Rights and Fundamental Freedoms (1950) Ukraine is committed to meet the requirements which are **not directly stipulated** by its Fundamental Law. Currently the Constitution of Ukraine does not contain a provision banning discrimination on the religious basis (in Ukraine this notion is referred to as "religious convictions"); national origins (the Constitution refers only to the "ethnic" origin); various types of birth (with respect to the rights of persons conceived in vitro or born from the surrogate mothers).

Even more discrepancies can be found between the Constitution of Ukraine and the European Union Charter of Fundamental Rights (2000). E. g. the Constitution of Ukraine bans discrimination on the grounds of political or other convictions, while the Charter treats "convictions" and "opinions" as two different manifestations of legal discrimination. The Constitution, as opposed to the Charter, does not contain banning of discrimination based on genetic characteristics, belonging to national minority, origins, limited capacity to work, age and sexual orientation. The claims that constitutional formula "based on other characteristics" covers the whole range of aforementioned characteristics are groundless, as not a single court in Ukraine would classify sexual orientation as "other characteristics".

The majority of social/economical rights are only declared in the Constitution of Ukraine which makes the Fundamental Law inefficient and vulnerable for criticism. It looks like here a conceptually new approach is also called for. Taking into account the fact that Ukraine already is or intends to become a party to a number of charters, codes and conventions of the European Council, the Chapter II of the Constitution should reflect the social and economic rights which are universally accepted by e. g. the European Council Charter of fundamental rights (2000).

The issues of state **discretion** in applying the restrictions in the exercising of individual constitutional rights are unjustifiably simplified. Thus, the European Convention for Protection of Human Rights and Fundamental Freedoms (1950) provides for the governmental intervention into the exercising of the right to immunity of the dwelling only for specified purposes, in compliance with the law and only when this intervention is **necessary in a democratic society**. The Constitution of Ukraine, on the other hand, is vague with respect to the **goal** of intervention. Obviously such phrases as "saving of individuals' property or life, need of persecution" etc. cannot be regarded as the definition of a "goal". The Fundamental Law remains completely silent on the issue of **democratic society** as a factor in applying the law**.** No wonder that the majority of the breaches of the right to the immunity of the dwelling in Ukraine, considered by the European Court, were committed "in line with the law'.

The constitutional rights and freedoms in Ukraine are restricted in conformity with the model "*rights and freedoms are exercised freely, with the exception of restrictions, stipulated by the law".* So, the restrictions are stipulated without any prior identification of the areas where they can be applied. Evidently, in this situation the constitutional restrictions can become unlimited.

Over the period of time which elapsed after the Constitution of Ukraine was adopted in 1996, many countries have introduced new individual and civil rights and freedoms. Specifically, the rights of elderly people, the rights of the disabled, the rights with respect to social rehabilitation, individual rights of access to official information and participation in public life etc. were added. All these and some other rights shall be analyzed in the focus of their potential inclusion into the Constitution of Ukraine. The ban against violations of the Fundamental Law norms, interpretation of the Constitution in the restrictive mode, human and body organs traffic, children's labor is also worth considering.

Other constitutional Chapters should include **specific obligations** of the state power bodies and local self-governments in the realization of the proclaimed rights and freedoms: setting up of specific realization mechanisms, guarantees and procedures for the restitution of the violated rights. Currently the Constitution of Ukraine contains only general provisions, e. g. "*The Supreme Rada of Ukraine defines human rights and freedoms and their guarantees;*

The President of Ukraine is the guarant of the rights and freedoms; the Cabinet of Ministers takes measures for ensuring human rights and freedoms…"

According to the Fundamental Law, the rights and freedoms are not a compulsory area of operation for the local self-governance bodies. Meanwhile the Congress of local and regional aurhtorities of the Council of Europe recognizes the issues of democracy and human rights and freedoms as fundamental.

Unfortunately, the Constitutional Court of Ukraine so far remains indifferent to the issues of human rights' and freedoms' protection. Obviously, no national constitution can be interpreted as a universal code of rights and guarantees of adherence to them. Nevertheless the authority of the state bodies combined with their responsibility should become in Ukraine the subject of constitutional control and supervision.

UPDATING THE REFERENDUM LEGISLATION

As was mentioned above, on November 6, 2012 the Supreme Rada of Ukraine passed a Law "On all-Ukrainian Referendum". The new law invalidated the former Law of Ukraine "On all-Ukrainian and Local Referenda" of 1991, passed before the 1996 Constitution of Ukraine and contrary to some of its provisions.

Under the new law, both adoption of completely new version of the Constitution of Ukraine and essential amendments to the current Fundamental Law can become the referendum subject. Referendum also has the power to cancel, seek invalidation or invalidate the law on amendments to the Constitution of Ukraine. The regular laws of Ukraine can be passed or rejected; amendments to the laws can be introduced (with the exception of budget, taxation and amnesty laws) by the same procedure. The law allows resolving any issues through all-Ukrainian referendum, with exception of those which cannot be brought to referendum under the Constitution of Ukraine.

All these factors beyond any doubt provide additional incentives for the operation of the Constitutional Assembly of Ukraine. The more radical are the changes introduced to the Fundamental Law in force, the lesser is their potential dependence on the Supreme Rada of Ukraine. *If the Constitutional Assembly of Ukraine will come up with the completely new Fundamental Law, it can be passed without people's deputies of Ukraine participation, i. e. exclusively on public initiative.*

Besides, a referendum has authority of banning any constitutional amendments introduced by the parliament earlier (with the exception of procedurally correct amendments to the Chapters I, III, XIII of the Constitution which envisage the use of referendum in the automatic mode).

It is clear that different political forces will perceive (and already perceive) the Law "On all-Ukrainian Referendum" in different ways. However, being aware of the fact that convocation of the Constitutional Assembly of Ukraine was called for by chronic parliamentary incapacity, the use of referendum as means of overcoming parliamentary failures looks expedient. If parliamentarism in Ukraine is really terminally ill, only the people can perform the functions of a surgeon.

Besides, the passing of the Law "On all-Ukrainian Referendum" gives real meaning to Article 5 of the Constitution of Ukraine concerning the sovereignty of the Ukrainian people. As reads part 3 of this Article, "The right to **determine and change the constitutional order in Ukraine belongs only to the people and may not be usurped by the state, its bodies or its officials**.**"** Precise legal interpretation of this norm means that all the norms of the Fundamental Law which determine or change the constitutional order in Ukraine, shall be changed by way of referendum (alongside with provisions of Chapter XIII of the Constitution of Ukraine).

In other words, the Law "On all-Ukrainian Referendum" in theory allows to abolish the changes to the Fundamental Law introduced by the Supreme Rada but failing to meet fundamental interests of the Ukrainian people. This law is a kind of moderate equivalent of "right of people to democratic uprising" present in Euro-Atlantic constitutionalism.

The critics of the new Law insist that this normative act practically deprived Ukrainian citizens of the right to participate in the local referenda. Here is what we respond to that: first, Chapter III of the Constitution in force does not stipulate an institution of local referendum (this type of referendum is envisaged only by Article 38 and 138 of the Constitution of Ukraine with respect to the Autonomous Republic of Crimea), so there is no direct unconstitutionality in this law; second, the newly passed law does not forbid the Supreme Rada to pass another — separate — law on local referenda. This last argument is even more substantial in the light of the Ukrainian law provisions concerning direct expression of people-'s will at the local level.

The passing of the Law "On all-Ukrainian Referendum", considered "outlandish" by some, caused most vivid discussion among legal community in Ukraine.[4] In particular, public activists and lawyers I. Koliushko and Yu. Kirichenko accused the Supreme Rada of Ukraine of unconstitutional rejection of its own prerogatives. The authors of publication claim that it is not about the parliament's stand per se, but about the desire of the parliamentary majority to acquire a priori control over the constitutional process.

The following can be said in this respect. First, as stated earlier the process of introducing appropriate changes into the Constitution of Ukraine is not limited to provisions of Chapter XIII. This process is also governed by the provisions of Article 5 of the Fundamental Law, which for a prolonged period of time had no substantiation in the current legislation. If the contents of this Article are interpreted precisely in accordance with the stated goal, then all laws addressing the constitutional order in Ukraine should be passed not by the Supreme Rada, but by the Ukrainian people **only**. E. g. that is how the form of governance in Ukraine should have been decided upon in 2004.

Second, the new Law "On all-Ukrainian Referendum" gives a real meaning to the concept of guarantees against potential **usurping** of people's sovereignty by the state. Clearly, not only legislative, but also executive and judicial branches of power, not to mention the President, can pose as "state usurpers". That is why the constitutional referendum can be the only legitimate and legal means of counteracting the state complot against inalienable rights, freedoms and interests of the Ukrainian citizens.

[4] See e. g.: Koliushko I., Kirichenko Yu. Parliament approved unconstitutional order of amending the Constitution of Ukraine, Legal bulletin of Ukraine, No. 46(907), November 17–23, 2012.

Obviously, organizing a referendum on public initiative without official support will be no easy task in Ukraine. However, as J. Talmon put it, starting with the year 1789, "it is not the kings' despotism, but unlimited parliamentary majority, totalitarian democracy that present real threat for the political freedom of the people".[5] Besides, according to T. Jefferson, even more knowledgeable in democracy-related issues, the people is the only political subject that cannot be corrupted. It seems relevant here to quote W. Chamberlin who sustains that the interests of the Ukrainian people practically at all times of its existence have been betrayed by its own leaders.[6]

According to A. Kwasniewski, the Supreme Rada of Ukraine of the 6th convocation was the richest parliament in Europe as to the wealth of its members. Meanwhile, as to income per capita Ukraine ranked 39th (out of 40) in Europe…"[7]

Third, the very operation of the Supreme Rada of Ukraine of the 6th convocation allows to determine deep crisis (if not death) of Ukrainian parliamentarism as such. If, for example, the foundations of the language policy for 45 million-strong population of Ukraine could be set up by approximately 80 people's deputies with someone else's mandates, led by M. Chechetov, who can stop another leader from orchestrating the voting on broadening, continuing or banning someone's rights or competencies?

Fourth, the opponents to the Law "On all-Ukrainian Referendum" presume political infantilism of the Ukrainian people. Beyond any doubt, people as well as parliaments can commit fatal political mistakes. But nothing insures better from further political failures than one's own experience. Written with the best of intentions the "Constitution of Europe" was annihilated by the average French and Dutch citizens. The people were not convinced by the document prepared by professional politicians.

In any case the crucial issue for Ukraine today is not the adoption procedure, but the essence and quality of the constitutional amendments. So far professional analytical and synthetic research with respect to the constitutional changes is open and transparent. And it is up to the Ukrainian people only to give an answer to the question whether they are ready to protect and restitute their rights and interests directly. The best obvious solution would be a specialized body, elected by the people with the aim of adopting the draft (or the amended version) of the Constitution of Ukraine — "The Constitutional Assembly", "Constituanta" etc.

As to the elementary comparison of the political opportunities of the Supreme Rada and the Ukrainian people, the people's deputies' reputation is totally noncompetitive. And does the passing of marginally liberal law on referendum not testify to irresponsibility of our parliament?

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[5] Talmon J. Political Messianism. — London: Secker and Warburg, 1960. — P. 318.

[6] Chamberlin W. The Ukraine. A Submerged Nation. — N.-Y.: The Macmillan Company, 1944. — P. 6–7.

[7] See on-line resource: www.epravda.com.ua/news/2010/10/18/252448/

Part II

THE OBSERVANCE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I. RIGHT TO LIFE[1]

1. IMPLEMENTATION OF GOVERNMENT MEASURES INTENDED TO PROTECT THE LIFE OF PEOPLE UNDER ITS CONTROL

The state is responsible for the life of people under its control, e. g. institutions of confinement or detention centers, armed forces, public hospitals (especially in places of treatment) and others.

There is an important problem of numerous violations of the right to life in institutions of confinement or detention centers (detention centers, investigative isolation wards, penal institutions, etc.). The terrible conditions, often unavailable or inadequate medical care lead to the death of people.

In this respect, we should pay attention to the movie "Lukyanivka. Prison No. 1"[2] created as a result of an investigation conducted by journalist of TVi Channel Kostiantyn Usov and premiered on April 2, 2012.

The above story produced major resonance in the Ukrainian society and first showed shocking scenes of inhumane living conditions of keeping suspected persons at Ukrainian investigative isolation wards: overcrowded cells, no basic sustenance conditions for human existence, threat to human health and more.

However, despite this, according to the information of mass media[3], which in July 2012 were let to enter Lukyanivka investigative isolation ward, the situation of prisoners in the ward underwent no changes and they still were kept in deplorable unsanitary conditions in overcrowded cells.

Concerning the Lukyanivka investigative isolation ward the Ombudsman of Ukraine in her interview for the media said that "the precise period at which the building was erected is not known and it was not designed to install modern ventilation. Even the most honest chief with huge investments cannot install normal ventilation system". However, she stressed the need to build new investigative isolation wards outside the cities that will meet modern standards[4].

In this regard it should be noted that out of today's 32 investigative isolation wards 14 were built over 100 years ago, 5 more than 200 years, 26 are located in downtown areas, which complicates the implementation of measures to improve conditions of detention[5].

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[1] Prepared by Mykhailo Tarakhkalo, jurist of the Kharkiv Human Rights Protection Group.

[2] Lukyanivka. Prison No. 1 (full version) / http://blogs.pravda.com.ua/authors/usov/4f7b6f67ec61a/

[3] Lukyanivka investigarive isolation ward. "Improvement" / http://www.pravda.com.ua/rus/articles/ 2012/07/ 12/6968632/

[4] The Ombudsman: there is a need to erect new investigative isolation wards / http://www.unian.ua/news/ 515617-upovnovajeniy-z-prav-lyudini-treba-buduvati-novi-sizo.html

[5] Annual report of the Ombursman of the Verkhovna Rada of Ukraine on the compliance and protection of human rights and freedoms in Ukraine / http://ombudsman.gov.ua/images/stories/07022011/Dopovid_8_1.pdf

In general, it should be stressed that the problem of overcrowding and substandard upkeep conditions in Ukrainian penitentiary institutions is a structural one and needs to be addressed directly because it may trigger, among other things, the spread of various diseases and, as a consequence, the death of detainees.

The new Criminal Procedure Code of Ukraine (hereinafter — CPC) adopted on April 13, 2012 (entered into force on Nov. 19, 2012) is intended to substantially reduce the number of people in custody awaiting sentencing. The planned performance may be achieved by introducing new types of prophylactic measures, mechanisms of existing non-custodial upkeep and changes in approach to preventive measures in the form of punitive detention.

However, given the long-term practice of imprisonment as the primary preventive measure, there remains a great concern about the new CPC nonrepudiation in courts.

Another key factor affecting mortality of persons deprived of their liberty is failure or improper medical care in places of unfreedom. This is due to the improper organization of work of the relevant sections of penal institutions and lack of funding, as well as refusals to let persons deprived of liberty to be treated at the institutions of the Ministry of Health of Ukraine.

In his interview, Chairman of the Committee of the Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement Viktor Shvets said that in 2012 the number of deaths in prisons increased compared to previous years[6].

Thus, according to the National report of the government on the human rights situation in Ukraine in the framework of the Universal Periodic Review for the first half of 2012, in the penitentiary institutions there died 537 people, of whom 30.1% (163 persons), i. e. almost one third, from AIDS[7].

In this respect, the particular concern was aroused by the information provided by the Government in the sixth periodic report of Ukraine on the implementation of the UN Convention against torture, according to which, as of June 1, 2012, only 1144 of 6347 HIV-infected persons in the institutions of the State Penitentiary Service of Ukraine, that is only about 18%, were receiving antiretroviral therapy[8].

Such an approach is unacceptable because AIDS is the most common cause of death in penal institutions.

Moreover, the European Court in its practice has repeatedly pointed to the need to provide persons deprived of their liberty with proper medical care in all cases[9].

Also there is a major problem of death rate from tuberculosis; so, 104 persons deprived of their liberty died from this disease in specialized TB hospitals during the first six months[10].

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[6] The Chairman of the Committee of the Verkhovna Rada: the number of deaths in places of imprisonment increases / http://www.bbc.co.uk/ukrainian/news_in_brief/2012/07/120718_ek_jail_suicid.shtml

[7] Draft of the National Report / http://www.minjust.gov.ua/upr/upr_project_dopovid.html

[8] The Sixth Periodic Report of Ukraine on implementation of UN Convention against Torture / http://www.minjust.gov.ua/0/41050

[9] See e. g. the Decision of European Court of Human Rights in the case *Todorov v. Ukraine* from Jan. 12, 2012 in the case No. 16717/05. / http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108578

[10] The Sixth Periodic Report of Ukraine on implementation of UN Convention against Torture / http://www.minjust.gov.ua/0/41050

In this regard, the sixth periodic report of Ukraine on the implementation of the UN Convention against Torture the government recognized that the situation concerning the condition of deaths in penal institutions and mortality in hospitals remains difficult.

It should be noted that due to the procrastination of time by the courts when considering materials for the release of seriously ill persons in 2012, 26 ill persons did not live to see a court decision[11] which is unacceptable, because the organization of the timely proceedings is one of the key responsibilities of any democratic state.

> *Thus on June 21, 2012, near the walls of the city health department the family and friends of prisoners of the Odesa colonies and investigation isolation ward held a protest. During the meeting, the Odesites held posters with dozens of names of people who were held at institutions of confinement and urgently needed medical care[12].*

However, in this context, it should be noted that some positive developments took place, namely on February 10 and May 10, 2012 there were adopted joint orders No. 212/20 525 and No. 769/21082 of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine "On approval of the interaction of health care institutions of the State Penitentiary Service of Ukraine with healthcare institutions on rendering medical assistance to persons arrested and convicted"[13], which regulate the procedure of rendering medical assistance to detained and convicted individuals, including outside the penal institutions. The most important point of these guidelines is the clarification of the provisions of national law, under which the decision on admission of persons deprived of their liberty to the hospitals of the Ministry of Health is made directly by doctors or doctors of the appropriate penal institution or ambulance called for. It should be noted that in the past, in order to obtain such permit, the authorities investigative isolation ward appealed to the court or investigator in the proceedings, and rather often than not they denied admission intending, among other things, to force a person to admit a crime that in some cases led to lethal consequences[14].

It is also necessary to emphasize the growing number of suicides in institutions of confinement: for the first six months of 2012 there were 32 cases of suicide. Per one thousand prisoners in terms of one year it means 0.42 cases, while in 2008–2010 the ratio made 0.27 to 0.30. That means the 1.5 times increase in the number of suicide cases[15].

Thus, there happened an indicant incident in Zaporizhzhia investigative isolation ward.

> *According to information provided by the prosecutor Zhovtnevy district of Zaporizhia Olexandr Vasiuk, March 5, the criminal action was brought over the improper performance of their professional duties by the medical staff of the specified investigative isolation ward, which*

[11] The Sixth Periodic Report of Ukraine on implementation of UN Convention against Torture / http://www.minjust.gov.ua/0/41050

[12] Relatives of the prisoners: people die without medical care at Odesa prisons / http://www.048.ua/article/160183

http://zakon2.rada.gov.ua/laws/show/z0769-12 / http://zakon2.rada.gov.ua/laws/show/z0212-12

[13] http://zakon2.rada.gov.ua/laws/show/z0769-12 / http://zakon2.rada.gov.ua/laws/show/z0212-12

[14] Annual report of the Ombursman of the Verkhovna Rada of Ukraine on the compliance and protection of human rights and freedoms in Ukraine / http://ombudsman.gov.ua/images/stories/07022011/Dopovid_8_1.pdf

[15] According to the information provided by the human rights organization "Donetsk memorial" / Penal system: approximate results / http://dt.ua/LAW/kriminalno-vikonavcha_sistema_priblizni_pidsumki-107476.html

resulted in serious consequences. Namely, the officials of the investigative isolation ward failed to provide adequate medical assistance to the prisoner. During aggravation of the illness he was not given necessary medications, but instead he was transferred to a separate cell, where he committed suicide[16].

This situation is of serious concern and stirs a suspicion if, in general, there exists effective monitoring of the psychological state of persons at institutions of confinement, and if there exists effective system of rendering psychological and psychiatric aid to such persons.

2. THE USE OF VIOLENCE BY STATE AGENTS

There remains the topical problem of violence in law enforcement agencies, which in some cases leads to death, including suicide.

At the same time it must be noted that the vast majority of cases of violent crimes (and in many cases there are other crimes as well) contain confessions of defendants received from them at an early stage of the investigation, often without an attorney and during unregistered arrest or detention for commitment of administrative offense, and so on. The above situation is not acceptable, especially in the light of the decisions of the European Court of Human Rights against Ukraine concerning this issue[17], and taking into consideration the number of such cases suggests that one method of detection of such crimes consists in coersion, and in some cases even torture, which can lead to death in custody.

A striking example is the case of Olexiy Khodakov who died during interrogation at Kovpakivsky Militia District Station of the Department of Internal Affairs of Ukraine in Sumy Oblast on January 17, 2012.

On January 18, 2012 the Public Prosecutor's Office in Sumy opened the criminal investigation into the death of 32-year old Olexiy at Kovpakivsky Militia District Station during a conversation with him of local operatives. The militia claimed that they never resorted to wrongful acts dealing with this man. The proceedings were undertaken under Part 3 of Article 365 of the Criminal Code of Ukraine (abuse of power, which caused grave consequences).

On this matter the prosecutor of Sumy said that on the corpse of Khodakov they found numerous injuries in the regions of head, trunk, upper and lower extremities, which in this case are considered together, as they led to traumatic shock and the consequent death. According to him, they found not only numerous bruises on the corpse, but traces of the handcuffs and even traces of strangulation as well[18].

The case of Vedeneyev, who died in hospital after visiting the Prymorsky Militia District Station of the Department of Internal Affairs of Ukraine in the Odesa Oblast, is also worth considering.

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[16] Suicide at Zaporizhzhia investigative isolation ward: the case brought before a court / http://reporter-ua.com/2012/03/06/samoubiistvo-v-zaporozhskom-sizo-po-faktu-nedobrosovestnogo-vypolneniya-professionalnykh-

[17] *Mikhalkova and others v. Ukraine*, No. 10919/05, January 13, 2011; *Dushka v. Ukraine*, No. 29175/04, February 3, 2011; *Nechiporuk and Yonkalo v. Ukraine*, No. 42310/04, April 21, 2011 and other decisions / http://hr-lawyers.org/index.php?id=1295954597;

[18] Death at militia station: Khodakov died of pain / http://rama.com.ua/smert-v-militsii-hodakov-umer-ot-boli/

On July 23, 2012 the public prosecutor's office, Odesa Oblast, opened a criminal case against the employees of the Prymorsky Militia District Station, Odesa, according to part 3 of Article 365 of the Criminal Code of Ukraine (abuse of power, which was accompanied by violence and serious consequences in the form of victim's death). According to prosecutors, the police brought 24-year old homeless named Vedeneyev to the militia station, from where he was later admitted to the City Hospital No. 1 with skull base fracture. At the city hospital the man died[19].

Another similar case: the case of brothers Avramenko.

On June 15, 2012, during militia "Poppy" raid in the Village Zdrahivka, Chernihiv Oblast, detectives found cannabis in the garden of the Avramenkos, seized 30 bushes and charged them with cultivation of narcotic raw material. However, the relatives and villagers claimed they saw themselves that cannabis was planted by the militia and that during the investigation they kept beating 23-year-old Ruslan, after which the young man could not stand the beatings and injustice of false accusations, and hanged himself on the ladder leaving a note to his relatives. Two weeks later his brother Volodymyr hanged himself as well. After the death of Ruslan, he repeatedly said that he had nothing to live for.

The Horodnia District Public Prosecutor's Office, after the jural fact of the death of brothers, opened a criminal case against the militia charging them according to paragraph 1 of Article 120 of the Criminal Code of Ukraine (leading people to suicide or attempted suicide, which is a consequence of person's ill-treatment, intimidation, coercion to illegal actions or systematic humiliation of human dignity)[20].

One should also pay special attention to the system of state control over the behavior of its representatives, particularly in the field of law enforcement.

The state control of storing and using weapons by law enforcers is still at a fairly low level.

In addition, the system of monitoring of the psychological state of law enforcers also arouses concern, when in some cases nobody actually performs periodic analysis of the psychological state of law enforcers; the controllers either checkmark them for appearances' sake, or simply fail to properly record the existence of mental disorders in law enforcers. Moreover, even if such facts are registered, the chiefs of law enforcing agencies or their subunits do not always adequately and timely respond to the presence of disorders and do not always assess the personality of subordinate law enforcers (problems with alcohol abuse, unjustified brutality, unjustified displays of aggression, etc.) in a proper way, which in some cases can lead to death.

In this respect, attention should be paid to the decision of European Court of Human Rights made on January 12, 2012 in the case *Gorovenky and Bugara v. Ukraine*:

The case concerns the murder by out-of-duty militia officer D. of two people and attempted murder of a few more.

The said officer was later convicted, but the government refused to indemnify for losses the relatives of those killed and wounded during the incident because the officer was out of duty.

[19] The public prosecutor's office opened a criminal case against Odesa militiamen, who had killed a homeless person/ http://dumskaya.net/news/prokuratura-vozbudila-ugolovnoe-delo-v-otnosheni-021075/ .

[20] The actions of militiamen in Chernihiv Oblast caused several suicides / http://svit24.net/events/42-events/29752-dejstvyja-mylycyonerov-na-chernygovshchyne-vzvaly-neskolko-

The European Court found the violation of positive obligation under Article 2 of the Convention (right to life).

The Court noted that the national authorities had repeatedly recognized that the chief of Mr. D. had failed to properly assess his personality and, despite the past disturbing incidents involving Mr. D. (when Mr. D. had been trained at the militia college, he had been temporarily removed from subunit commanding post for alcohol abuse; later, after the college, Mr. D. had inflicted another person minor injuries and had been three times made accountable for disciplinary breaches) had allowed him to carry weapons, which had led to tragic consequences.

Moreover, the national legislation prohibited carrying weapons by militia officers who did not have proper conditions for its storage; meanwhile the national authorities failed to check, where Mr. D. kept weapons at home, and whether there were necessary conditions for this.

Namely, the absence of a safe place could serve as a reason why Mr. D. always carried weapons with him, both on and out of duty.

The Court noted that in the course of civil procedures in national courts, they neglected the above findings and pointed to the absence of a causal link between the failure of the police officers to carry out national legislation and inadequate assessment of the personality of subordinates when issuing permits to carry weapons on the one hand and the fatal incident, on the other. For the national authorities it sufficed that D. was out of duty to rule out any possible responsibility of its command despite definite conclusions to the contrary in the case materials.

The Court, in this regard, noted that when issuing firearms to militia officers there should be not only technical training, but also the selection of militiamen allowed to carry such weapons, and with the utmost care at that.

The court decided that the police officer, who had shot and killed two people from his service weapon, had been issued the specified weapon in violation of the rules set by national law, because nobody had checked, where it would be kept out of duty and also nobody had properly assessed his personality, given disciplinary sanctions that had been imposed on him prior to contested events[21].

Also there occurred striking events at 5:30 on April 21 in a pizzeria in the neighborhood Sykhiv, Lviv, where six employees of the State Protection Service brutally beat two 29-year-old men. These men were drinking beer at a table talking. The bartender asked them to leave, because it would be closing time in half an hour. The men refused. The bartender called security who took men into the hallway and started beating with fists, rubber batons and feet. The video surveillance cameras recorded the event.

The victims were at Sykhiv District Station for 24 hours. Subsequently, they were hospitalized with serious injuries.

Following the said events the chief of main department of the MIA of Ukraine in Lviv Oblast ordered all eight thousand law enforcers under his command to undergo re-confirmation in a post. And noted that the psychologist should form an opinion about each of them[22].

[21] Gorovenky and *Bugara v. Ukraine,* No.No. 36146/05 and 42418/05, January 12, 2012 / http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108572

[22] Psychologists will check militiamen / http://gazeta.ua/articles/lviv-newspaper/434268

3. GENERAL STATE MEASURES INTENDED TO PROTECT LIFE

The statistics of injured and dead according to MIA: first six months of 2012[23].

			Injured from crimes			Dead incl.		
			Past yr	This yr	Evolution,%	Past yr	This yr	Evolution,%
Total			162 414	166 223	2.3	2706	3036	12.2
Per 10,000			35.7	36.5		0.5	0.7	
injured	grave and gravest crimes		65 005	65 556	0.8	2421	2767	14.3
	intentional (attempted) murder		1319	1290	–2.2	991	932	–6.0
	of that number	two and more person	113	120	6.2	63	76	20.6
	rape (attempted incl.)		310	238	–23.2	x	x	
	intentional severe bodily harm		1638	1650	0.7	399	369	–7.5
	banditry		1970	1881	–4.5	x	X	
	robbery		10 006	9921	–0.8	x	x	
	trafficking in people		170	150	–11.8	x	x	
	traffic accident		3777	4794	26.9	891	1313	47.4
Out of victims total	Deputies, all levels		35	28	–20.0			
	media persons		61	65	6.6		1	
	postal workers		78	54	–30.8	2		–100.0
	incl.	mail carriers	48	33	–31.3	2		–100.0
	doctors		880	786	–10.7	3	10	3.3 times
	retirees		19 143	18 711	–2.3	296	318	7.4
	foreigners		854	982	15.0	38	46	21.1
	managers		2684	3097	15.4	12	52	4.3 times
	finance and credit personnel		251	254	1.2	2	1	–50.0
	servicepersons		302	238	–21.2	2	8	4 times
	personnel	production service	677	437	35.5	21	17	–19.0
	public prosecutor's office		56	42	–25.0	1	1	
	courts		27	31	14.8	2	1	–50.0
	Bar		81	67	–17.3			
	SSU		21	23	9.5	1		–100.0

In this respect, it is worth noting that for the first six months of 2012 the number of victims of crime went up by 12.2% against the same period last year.

It should be noted that the number of fatalities in the commission of grave or especially grave crimes significantly increased (14.3%) in the first half of 2012. Also there significantly

[23] Criminality in Ukraine: state and structure (2012: 6 mos) / http://mvs.gov.ua/mvs/control/main/uk/publish/article/762153;jsessionid=B4B1AF57C657930D36B1166B52DEF228

increased the number of deaths from commitment of murders of two or more people (up to 20.6%!).

In our opinion, the units involved in direct detection and prevention of crime should have been reformed long ago in order to improve efficiency of their work and improve professionalism of their personnel.

In this respect, there remains a serious problem of duplication of functions in various units in the structure of individual law enforcement agencies and among various law enforcement agencies. For example, the allegations-of-violence control in the Ministry of Interior may be duplicated by the internal security service of the Interior Ministry and Prosecutor's Office. The new CPC partially tackles the problem; meanwhile there remains the major problem of duplication among operational units supposed to search for evidence or information about evidence and investigation bodies supposed to fix the obtained evidence. And those are but a few examples of such duplication.

There also remains the issue of excess workload in some units which are actually short of time performing their basic functions. For example, the subunits of district militia inspectors, which are supposed to maintain an ongoing dialogue with the residents in their neighborhoods and to prevent crimes through this dialogue, in practice, because of the incredible overload with minor functions, they are actually have no time to spare for proper performance jf their main priorities.

There is also serious concern about cases when the militia officers are ordered to work after hours without appropriate compensation and extra days off.

There is also a separate problem of inadequate technical equipment of law enforcement units, as well as perfunctory expert examination in criminal cases.

Taken together these problems substantially downgrade the system of crime prevention and impede their investigation, which, consequently, increases the number of crimes committed, including those that lead to fatalities.

Special attention should be paid to the significant increase in the number of deaths in road accidents. The death toll has increased by more than 47% compared to the same period last year.

> *For example, on July 7, 2012 at 119th kilometer Kyiv-Chernihiv-Novi Yarylovychi Highway the driver of SCANIA bus with 42 passengers on-road from Chernihiv to Kyiv lost control, got the bus into the oncoming traffic lane and outside the roadway, where it overturned, as a result of which 16 bus passengers were killed, and the driver and the remaining passengers were injured*[24]*.*
>
> *On September 15, 2012, in Khmelnytsky Oblast, the sightseeing bus toppled killing two and injuring 14 persons*[25]*.*

This situation is unacceptable and the public authorities are supposed to intervene immediately.

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[24] Up to now the bus driver carrying pilgrims and having an accident on Chernihiv highway has not accepted his fault leaving 16 passengers dead / http://www.unn.com.ua/ua/news/935744-vodiy-avtobusa-z-prochanami,-schozaznav-avariyi-na-chernigivskiy-trasi,-dosi-ne-viznav-svoeyi-vini-u-zagibeli-16-pasageiriv/

[25] The sightseeing bus crushed in awful road accident in Khmelnitsk Oblast / http://rkm.kiev.ua/kalejdoskop-sobytij/42503/

In our opinion, at the bottom of it is an improper quality of roads, including inadequate equipping them with accident preventatives and the problems associated with highway patrol, when in some cases patrolmen somehow fail to bring the traffic offenders to justice, which in its turn distorts public opinion concerning the need to execute traffic regulations.

Generally, there occurs a situation when traffic needs higher technical safety standards and a system of inevitable administrative and criminal liability, including regulatory agencies.

In addition, the frequent contract killings make a major problem. If earlier the hitmen targeted mostly businesspersons, politicians, and civil servants, recently the public figures have come to the front.

So, despite the promises and assurances of MIA top management to find paymasters and assassin's as soon as possible they are still beaver away at investigation of enforced disappearance in 2010 of Klimentyev Vasyl Petrovych, Editor of Kharkiv newspaper "Novyi Styl": paymasters are still unknown, and perpetrator is a wanted person.

On August 4, 2012, after serious bodily assault Volodymyr Honcharenko, ecologist, publisher of the newspaper "Ekobezpeka", head of the public movement of Ukraine "For the right of citizens to environmental safety", head of the association "Vtormet" died in hospital. It should be emphasized that he was assaulted by two unknown persons 4 days after the press conference at which he made public the information about storage in Kryvyi Rih of 183 tons of chemically contaminated and extremely toxic metal.

It should also be noted that there still exists a large number of cases of illegal arms trade. So, during the first six months of 2012 there were 6,269 crimes related to illegal arms trafficking[26].

There remains high mortality rate[27], child mortality rate including[28]. In this regard it should be noted that the health system needs urgent quality reforms, since the current reform, in the opinion of a number of experts, has serious shortcomings, namely the absence of clearly marked objectives, no regular reviews of reform strategies, lack of a clear-cut policy ensuring implementation of decisions, ignoring scientifically proven or proven practices, forms and methods of transformations, significant lobbyists' impact on decision-making (pharmaceutical companies), low rates of implementation, inconsistent and contradictory actions[29].

4. THE STATE MUST ENSURE THE EFFECTIVE INVESTIGATION OF DEPRIVATION OF LIFE

The duty of the State to protect the right to life implies that if a person has been deprived of life, an official inquest into it must be ordered. Such an investigation should be conducted promptly by an independent and impartial body; during this investigation all reasonable steps should be undertaken to secure the evidence concerning the incident, and so on.

[26] Criminality in Ukraine: state and structure (2012: 6 mos) / http://mvs.gov.ua/mvs/control/main/uk/publish/article/762153;jsessionid=B4B1AF57C657930D36B1166B52DEF228

[27] http://www.ukrstat.gov.ua/ Express-issues / The mortality rate of population of Ukraine from external causes in everyday life

[28] http://www.ukrstat.gov.ua/ Express-issues / Demographic situation in Ukraine

[29] Ukrainian health care system reform: current problems / http://novosti.mif-ua.com/archive/issue-26808/article-26830/

But it is not always the case, especially where the representatives of public bodies become alleged offenders.

It should be noted that, according to the national law, no full-blown investigation may be conducted without a formal act about institution of an action.

The only act allowing the institution of an action is an order to institute prosecution in the criminal case (Part 1 Article 98 of CPC of Ukraine), which creates a legal basis for further proceedings. According to the legislation of Ukraine, only after the institution of prosecution one can conduct investigations and other legal proceedings. The law makes no provision for conducting interrogations, searches, seizures, examinations and other investigations pending the order to institute prosecution. As an exception in a criminal case, in cases of emergency, the law allows inspection on the spot (Part 2 of Article 190 CPC, Ukraine), seizure of correspondence and electronic information tapping in order to prevent crime (Part 3. 187 CPC of Ukraine).

So common is the situation where the investigative body refuses to investigate a criminal case, not to conduct an investigation. Very often the refusal to institute criminal proceedings occurs in cases of deprivation of life committed by a law enforcer, deaths in hospital, deaths in road accidents, deaths in custody and others.

Later, these denials may be revoked by courts; however, more often than not it does not affect the effectiveness of the investigation, because initially they recorded no evidence.

Nevertheless, the new CPC of Ukraine solves the problem favorably providing entirely different rules for pre-trial investigations.

Thus, the pre-trial investigation begins at the moment the information about criminal offenses is entered into the Unified Registry of pre-trial investigations (its registration). Moreover, the denial to accept an application and register it or report a criminal offense is not permitted.

Also the new CPC solves the problem of crime victims' access to the records: the Article 56 of the new Criminal Procedure Code specifies mandatory access of the victim to investigation materials, even if the books are closed.

The quality of criminal investigations needs special attention. Very often they are conducted slowly and off-grade, especially in cases when the crime suspects are representatives of public bodies.

Particular attention should be paid to investigation of deaths in institutions of confinement, and also due to the use of lethal force by militiamen and institutions of confinement other public servants. In the vast majority of such cases the initial investigation is conducted by concerned authority (administration of institutions of confinement where the prisoner died or investigation agency of MIA, SSU, etc., an employee of which had used lethal force), which collects evidence of guilt or innocence of their employees, and only thereafter sends these materials to the prosecutor. In fact, the situation emerges when the prosecutor's office decides to institute criminal proceedings or refusal to initiate it solely on the basis of evidence collected by the concerned authority which does not satisfy the requirement of independence.

In this regard it should be noted that the new CPC stipulates foundation of the new investigating agency — the State Bureau of Investigation, which will investigate criminal offenses committed by high-standing officials according to Article 9 of the Law of Ukraine "On Civil Service", office employees category 1–3, judges and law enforcers.

It should be noted that in 2012 (as of October 15, 2012) the European Court made four decisions concerning violation of Article 2 of the Convention on Human Rights which stated improper investigation of deaths.

This decision: *Igor Shevchenko v. Ukraine*, No. 22737/04, January 12, 2012; *Sergiyenko v. Ukraine*, No. 47690/07, April 19, 2012; *Prynda v. Ukraine*, No. 10904/05 , July 31, 2012; *Fedorchenko and Lozenko v. Ukraine*, No. 387/03, September 20, 2012[30].

In these decisions, among other things, the European Court found that:

— The investigations were too protracted and led to no final judgment that, according to the European Court, largely undermined public confidence in the legal system;
— The investigations were too faulty, which were taken notice of by the national authorities, but they were not corrected in a timely manner;
— Many necessary investigative actions were either not performed, or were performed with undue delay and were not timely;
— During the investigation there occurred long periods without any investigation conducted.

Hence, in view of the decision of the European Court, it can be concluded that the tendency of ineffective investigation of deaths remains. The bodies of power make no effective alterations to improve the situation.

5. DISAPPEARANCE OF PEOPLE

Ukraine has not signed the UN International Convention for the Protection of All Persons from Enforced Disappearance. The said Convention entered into force on 23 December, 2010, thirty days after the number of member states reached twenty. As of October 15, 2012, already thirty-six countries ratified the Convention[31].

In this respect it should be noted that the case of disappearance of Vasyl Klimentyev has not been investigated yet. On February 6, 2012 chairman of the biggest private gas producer "Naftogazvydobuvannia" Oleg Seminsky disappeared[32].

6. RECOMMENDATIONS

1. Implement effective mechanisms for investigating deaths, particularly those caused by the actions of law enforcers, namely:

— To develop detailed guidelines fixing a minimum list of investigations to be carried out in every case of death for the investigation body could intercede for the criminal case to be closed. In case of unjustified refusal of investigators to follow the instructions they should be dismissed from work and disciplined;

[30] For more details, see: http://hr-lawyers.org/index.php?id=1339673504 or the official site of the European Court.

[31] http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

[32] Head of Nafrogazvydobuvannia Oleg Seminsky is missing / http://www.rbc.ua/ukr/top/show/glava-naftogazvidobuvannya-oleg-seminskiy-propal-bez-vesti-20022012124200

— To regularly train (retrain. investigative personnel in order to improve the quality of their work;
— To restructure law enforcement bodies, during which to minimize the functions and tasks virtually duplicated by various subunits and agencies, reduce the workload of individual law enforcers by reducing the number of minor functions and responsibilities (it is important to actually implement it), stop off-duty employment without extra day offs, and introduce an effective system of remuneration;
— To improve the material and technical equipment of law enforcement units;
— Improve the quality of expert findings.

2. Create effective crime prevention system. In this regard, among other things, it is necessary to improve the interaction of district militia inspectors with local population.

3. Create a system of practical inevitable responsibility for all cases of unjustified violence by law enforcers.

4. Set up an effective system of control of the use and storage of weapons of law enforcers. To grant right to keep and bear arms on the basis of thorough personality analysis of law enforcer. Create an effective system of responsibility of the heads of law-enforcement departments for permission granted to their subordinates to use arms without personality analysis or in the case of a formalist approach to such analysis.

5. Create an effective monitoring of psychological state of law enforcers and to dismiss them from work on the basis of psychologist's decision.

6. Conduct regular training and instructing of law enforcers involved in special operations intended to apprehend persons suspected of crimes.

7. Create a new system of investigative isolation wards outside the cities. Improve material and technical resources in institutions of confinement in accordance with the recommendations of the European Committee against Tortures.

8. Create an effective system of medical assistance in the institutions of confinement.

9. Reform the health care sector in accordance with the recommendations of experts in order to prevent the growth of mortality rates, including infant and child mortality rates.

10. Strengthen the technical standards of road safety and create a system of inevitable responsibility, including the regulatory agencies.

11. Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance, adopted on December 20, 2006 (UN General Assembly Resolution A/RES/61/177).

II. PROTECTION FROM TORTURE AND OTHER ILL-TREATMENT[1]

1. INCIDENCE OF TORTURE

Over the past few years a situation has emerged when practically anyone may become a victim of violence committed by militiamen. Previously, the greatest risk of being subjected to unlawful violence in militia was run by criminals; later the suspects, witnesses, their relatives (i. e., all people who somehow found themselves in the focus of interests of law enforcers) augmented the list. Today, everyone faces a potential risk: ordinary passerby, witness of events, and sometimes even a militia officer may be subject to unlawful coercion by law enforcers. This not only deprives a person of the possibility to build a behavioral strategy in order to assure themselves against the probability of facing beatings and torture, but also generates a constant distrust, apprehension and fear of law enforcers. It should be noted also that many militia officers do not expect trust and love from the public, believing that fear is a sufficient indicator of respect. However, militia are not working in a vacuum; it works with people, among people, and for people; therefore fear negates the results of law enforcement, undermines the credibility of militia, and makes it difficult for law enforcers in general[2].

The results of survey confirm the attitude of Ukrainians to the threat of becoming a victim of torture in militia[3]. Thus, only 1.5% believes that mistreatment does not threaten anybody. However, year in and year out this figure goes down. For example, in 2009 this opinion was shared by 2.5%, in 2010 by 1.8%. On the other hand, the majority of respondents (60.7%) believe that no one is immune from violence at the militia stations. Although in comparison with 2010, this figure dropped to 5, 4%, there is a significant increase in all categories of potential victims. Thus, 7.7% more respondents believe that unlawful violence endangers any perpetrator, 6.9% more respondents noted danger for the homeless. Another 7% were added to those who believe the potential victims include people, who offend militia or just poor people, 6.4% more include suspects here[4].

The Ukrainian government recognized that the problem of torture and ill-treatment of people in law enforcement institutions remains one of the most pressing issues[5]. It is men-

[1] Prepared by Zhanna Zaikina, lawyer of the HHRG.

[2] http://www.khisr.Kharkiv.ua/index.php?id=1321517429 # _ftn1

[3] The survey was conducted by Kharkiv Institute for Social Research in July/September 2011. They interviewed residents of Ukraine over 16 years old for four-stage probability sampling in five regions of Ukraine (Kyiv, Kharkiv, Lviv, Poltava oblasts and Crimea) using the method of structured interview according to place of residence of the respondent. The total of pollees made 3,000 people in 63 locations.

[4] http://www.khisr.Kharkiv.ua/index.php?id=1321517429 # _ftn1

[5] http://www.minjust.gov.ua/upr/upr_project_dopovid.html

tioned in the National Report on the situation with the human rights protection that the Ukrainian delegation presented to the members of the UN Human Rights Council in the second cycle of the Universal Periodic Review. In its National Report the Government, in particular, noted that during the first three months of 2012 the departments of internal security of Internal Affairs Ministry received 211 complaints of torture and bodily harm. At the same time, according to the Government, at the penal institutions the facts of torture and other ill-treatment are not common and are usually allowed only in rare cases.

However, the statistics of human rights organizations show that the scale of violence in Ukraine is much larger.

Only the UHHRU network of receptions registered 159 complaints of torture and other forms of ill-treatment (as of November 20, 2012).

Monitoring of unlawful violence in militia conducted by the Kharkiv Institute for Social Research in recent years is leading us to a disappointing conclusion: the rollback to the figures of 2004 is underway, when the estimated number of victims of ill-treatment by militia officers was more than 1 million people[6].

2. CASES OF TORTURE IN 2012

2.1. Beating of detainees

Igor and Nadiya Martynenko went to the Simferopol public prosecutor's office on November 1, 2012. They wrote a statement about causing grievous bodily harm to their son Artem Heraymovych that at the time, after beating, had been treated at home for five months. Artem claims that he was tortured by the militia. The tore his nostrils with iron hook.

In December 2011, Artem, who was drinking beer near the store, was arrested by two district inspectors Teliatnykov and Mykola Syzov for drinking alcohol in a public place and brought him to a militia department. At the Zaliznychny District Militia Department under senior district inspector Eldar Ibragimov they beat him up and took away passport. The parents were not informed about Artem's detention. They searched for him everywhere, and appealed to the militia. There they were assured that everything is fine: they saw their son with homeless, sometimes he comes to the department. On June 6, 2012 Artem came home. The man had his nose torn, he was all beaten, in scars, could hardly walk. Artem explained that in April he was in the intensive care department of Semashko hospital. The hospital confirmed that in late April Artem was delivered there by ambulance brigade from the investigatory isolation ward.

The parents contacted the Zaliznychny District Militia Station for explanations and the passport of their son. "When we came the first time, the militiamen asked whether he still was alive?" says father of Artem.

Artem has lost his memory, but partly he remembers what happened to him. He recalls that he was not tortured at the Zaliznychny District Militia Station, but in another place. By the description the parents identified that apparently their son was tortured at Kyiv Dis-

[6] http://www.khisr.Kharkiv.ua/index.php?id=1324389395

trict Militia Department. Now Artem recollects that a militiaman forced him to sign something, trusted some weapon into his arms though Artem refused to take it. When he refused, they thrust an iron hook into his nose."[7]

Now the Prosecutor of Zaliznychny District, Simferopol, is carrying out official checkup of keeping a law in criminal proceedings against Artem Heraymovych. According to the press service of the Public Prosecutions Department of ARC, the check revealed that severe injuries were caused by his cellmate in the detention facility (SIZO). In late April this year, on the grounds of fact relevant to the issue the Zaliznychny District Militia Department, Simferopol, initiated criminal proceedings and referred the case to court for decision on the application to the offender of compulsory medical measures.

The Prosecutor's Office of Zaliznychny District, Simferopol, is conducting now a checkup on the grounds of parents' complaint about the use of torture by the personnel of the Zaliznychny District Militia Department[8].

Unfortunately, the victims of ill-treatment by law enforcers usually receive from the prosecution standard answers regarding their allegations of torture, namely, that the action against law enforcers was dropped "for lack of corpus delicti".

A particular anxiety was caused by a letter of a staffer of Nikopol CD of MDMIAU in Dnipropetrovsk Oblast to the Minister of Internal Affairs of Ukraine, in which he complains about the behavior of his colleagues, who, in order to solve crimes, tortured suspects, planted drugs, etc. He describes the story of one of the suspects, which he witnessed. The officer says that at the request of the head of a militia unit the militiamen brutally tortured an innocent person for the purpose of forced admission of serious crime, and when tortures failed, the suspect was thrown out onto the street and threatened that if he started complaining, they would plant something forbidden on him[9].

In our opinion, this situation has occurred because in practice there are no effective safeguards that would have made it impossible to use evidence obtained from suspects during investigation if they claim to have given such testimony involuntary. It should be noted that the provisions of the new Criminal Procedure Code impose general prohibition on the use in court of testimony given to the prosecutor or investigator and require that such attestation be given in the presence of the judge only. Exceptions include only particular cases related to the necessity of obtaining testimony of a witness or victim during the preliminary investigation of the existence of danger to their life and health, illness or other circumstances that would preclude their examination in court or affect the completeness or credibility of evidence.

2.2. Beating of detainees and convicts

In 2005, for the antiterrorism purposes a special unit was created (see the order of the Department of Execution of Punishments of 10.10.2005, No. 167 (registered by Ministry of Justice of Ukraine on 16.02.2006 under No. 138/12012). Its terms of reference cover con-

[7] http://crimea.comments.ua/news/2012/11/06/085634.html

[8] http://crimea.comments.ua/news/2012/11/06/142755.html

[9] Militiaman from Nikopol city department protests against the cruelty of his colleagues / http://umdpl.info/index.php?id=1340286186

ducting surveys and searches of prisoners and persons detained, their things, search of other people and their belongings, as well as removal of prohibited items and documents. In practice, the main job of the antiterrorist unit was the use of mass beatings in the penal system to intimidate convicted and untried persons.

The mass beatings of prisoners by such special division was described in detail in the judgment of the European Court of Human Rights (hereinafter — the European Court of Justice) in the *"Davydov and Others v. Ukraine"*. In this case, the European Court found violations by Ukraine of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter — the Convention) in connection with mass beatings of prisoners in the Iziaslivsky penal colony No. 58 in 2001–2002.

Although the decision on state registration of the above order of the State Department for Execution of Punishment of Ukraine on the creation of this task force was abolished on the authority of theconclusion of the Ministry of Justice No. 15/88 dated 24.12.2007 and on January 14, 2008 it was removed from the State Register of legal acts; however the fighting men of anti-terrorist unit continue practicing in mass beating of inmates.

The Kopychintsi penal colony No. 112. On July 26, 2012 people in black suits and army greens and body armor vests with masked faces, armed with cans of tear or nerve-paralyzing gas, with handcuffs and batons came to the colony. In the colony a general search was declared.

The first day the search took place in a residential area of the colony. All convicts were thrust out of residential areas. Frightened and scared people waited for reprisals while masked men broke, crushed and spoiled everything that happened in their path. Approximately fifteen prisoners on the orders of the staff of the colony were singled out and taken to the headquarters where they were beaten, forced to strip naked, and squat.

The next day, on July 27, 2012, the masked riot continued at the intensive control station (ICS), cell-type facilities (STF), and disciplinary detention wards (DDW). Each cell was opened in turn, the sentenced were forced to run out and run through the so-called "corridor" formed by soldiers of the special unit standing on both sides of the prisoners. The soldiers from both sides of the "corridor" beat with sticks the prisoners who ran past them along the "corridor". Then followed the strip search: according to various sources, the prisoners were forced to squat naked over a hundred times, they were kicked, humiliated, and beaten with hands and feet.

Both Prosecutor's Office of Ternopil Oblast, and the Central Office of the State Penitentiary Service of Ukraine (DPSU) failed to comment on these events in the colony No. 112. The Central Office of DPSU said that they have no information about human rights violations in Kopychintsi penal colony.

However, the official site of the Central Office of DPSU in Ternopil Oblast informed that from July 26 to July 27 at the Kopychintsi Penal Colony of DPSU in Ternopil Oblast (No. 112) special tactical exercises took place for the consolidated fast-response unit of penal institutions with participation of the special force unit of the Central Office of DPSU in Zhytomyr Oblast. The training was conducted with a view to action in the event of such an emergency as riots among the prisoners, and to organize and conduct search in penal institutions. During the special tactical exercises the members of the special consolidated team of the fast response squad demonstrated hand-to-hand fighting with a weapon and without it, which helped to consolidate the theoretical skills of the personnel. Following the demon-

stration of special tactical training the actions of personnel and consolidated unit were rated "excellent"[10].

Thus, despite the opinion of the European Court on the inadmissibility of the use of military forces for intimidation and beatings of prisoners, as well as cancellation of the decision on state registration of the corresponding order on the creation of this task force, the practical training is going on involving armed troops in camouflage suits and masked faces for searches in prisons and investigatory isolation wards for training on prisoners and / or intimidation.

2.3. Torture by conditions of detention

Kyiv detention facility (SIZO). On April 2012, the Ukrainian TV channels showed a film of journalist Kostiantyn Usov "Lukyanivka. Prison No. 1"[11] and the general public for the first time saw the conditions, in which people are detained in Kyiv SIZO. The movie cuts were made from videos filmed by prisoners on mobile phones sneaked to them by administration personnel for pecuniary reward. Actually, one case of informal talks on sneaking a mobile phone to the SIZO and remuneration for "courier services" was also filmed. An officer of the SIZO was willing to provide such a service for UAH400.

The prison conditions shown in the movie differ a great deal from those typically demonstrated to delegations of international institutions, human rights defenders and journalists: two-by-twice dirty cells, dangerous fungi on the walls, and disgusting food. In some cells of Lukyanivka SIZO a dangerous fungus was discovered, and the quality of potable water, which the prisoners have to drink, is below the standard.

The full version of the film can be found on the website blog of Kostiantyn Usov: http://blogs.pravda.com.ua/authors/usov/4f7b6f67ec61a/.

Head of the Penitentiary Service Olexandr Lisitskov told reporters at a press conference that the management of DPSU in the Kyiv Oblast conducted an internal investigation: 90% of the facts presented in the journalistic investigation of Lukyanivka SIZO not substantiated[12]. However, Lisitskov did not deny that in the SIZO there were problems with fungus. As for the fact of sneaking mobile phones by personnel of SIZO for pecuniary reward, Lisitskov said that the results of inquiry among the personnel of SIZO and inmates did not corroborate such facts.

However, after the release of the controversial film the head of the Kyiv SIZO Yevhen Dombrowsky was suspended from office. Instead, they appointed Pavlo Holubovsky.

The newly appointed head of the SIZO said that there were no repairs carried out at the institution for 20 years[13]. After the release of the movie they had redone kitchens, renovated women's building, children's and medical enclosures, and shower rooms.

The Dnipropetrovsk Penal Colony-89 became the record-holder among Ukrainian penal colonies concerning the reports on human rights violations which were made public in the

[10] http://maidan.org.ua/special/pk/?p=4569

[11] http://blogs.pravda.com.ua/authors/usov/4f7b6f67ec61a/

[12] http://www.pravda.com.ua/rus/news/2012/04/12/6962640/

[13] http://www.unian.net/news/514290-nachalnik-lukyanovskogo-sizo-ubejdaet-chto-v-izolyatore-vse-spokoyno.html

last two years. It is in this colony last year there was a massive beating of prisoners with the use of the special unit of State Penitentiary Service of Ukraine (SPSU) (see more details in annual report for the year 2011). And in March of this year there was a hunger strike of prisoners with active TB, which published the video with their comments documenting horrific prison conditions[14].

The prisoners complained about the lack of treatment and proper nutrition for patients with tuberculosis and demanded from the administration of the institution to improve detention conditions, proper treatment and food. The prisoners also reported that the institution exerts pressure on prisoners demanding their legal rights and freedoms. Thus, the administration of the colony puts healthy people together with sick ones with an active form of tuberculosis[15].

The unverified sources inform that all prisoners (except two), who participated in the hunger strike and filmed video, were transferred to wards for healthy people, and only two remained in a specialized hospital for tuberculosis patients. One prisoner, Yuri Klevzhytsa, was brutally beaten and transferred to Volniansk colony. According to his wife, in the Volniansk colony her husband receives no treatment, even to the extent prescribed in Dnipropetrovsk[16].

Moreover, the administration of Dnipropetrovsk PC-89, instead of correcting the deficiencies and providing adequate detention conditions and necessary medical care for the inmates, attempted to resolve all issues through harassment of complainants, repression and torture.

Usually the Government explains the bad conditions of detention with limited financing of institutions of the SPSU. However, the problem of overcrowding in investigatory isolation wards is only partly related to the funding of the penal system. To a large extent it depends on the ideology and the system of criminal justice regarding detention in custody. In fact, in many cases there remains a presumption in favor of detention. The bailment and other security measures have not been fully implemented[17].

However, the requirement of the new Code of Criminal Procedure of Ukraine regarding the obligation of the judge to assess the weight of available evidence concerning the infringement of law by a suspect accused of a criminal offense, that is presence of a "reasonable suspicion" for imprisonment is quite a high standard, which was absent in the previous criminal procedural legislation of Ukraine and which should facilitate the unloading of SIZOs.

3. INVESTIGATION

According to the legislation of Ukraine, the public prosecution bodies are authorized to investigate complaints of ill-treatment by the personnel of the Ministry of Internal Affairs of Ukraine.

[14] http://khpg.org/index.php?id=1347976852

[15] http://khpg.org/ru/index.php?id=1331367285

[16] http://khpg.org/index.php?id=1338368067

[17] http://www.khpg.org/index.php?id=1308825893

The General Prosecutor's Office maintains that it controls violations of law by law enforcers. Deputy Head of the Department of Law Enforcement Control Pavlo Pawliuk says that they are continuously working to eradicate cases of torture performed by militiamen and the perpetrators are always punished[18].

However, the statistics of criminal cases instituted on the grounds of complaints of ill-treatment suggests that the Prosecutor's Office quite rarely takes legal steps in such situation.

Thus, according to Mr. Pavliuk, this year 36 criminal cases were brought before the court on the subject of violence used by law enforcers against 75 people, and that 23 employees are already in custody. This miserable outcome of the criminal prosecution of law enforcers who used torture, given that according to the same Mr. Pavliuk, for the last 9 months of this year the prosecution received 3600 complaints of ill-treatment[19].

This result indicates the inefficiency of the Prosecutor's Office as an organ that has to investigate complaints of ill-treatment.

Among the small number of complaints, which undergo investigation, the offense is often graded under Articles 364 ("misuse of authority or abuse of office") and 365 ("excess of authority or transgression of authority") of the Criminal Code of Ukraine, and not under Article 127 ("Torture") of the Criminal Code of Ukraine, which hides the real scale of the problem of torture in creating statistics of prosecution for torture.

An example is the criminal case opened in Khmelnytsky against two district militia station employees. At night the militia illegally detained 18-year-old student and brought him to the militia station premises where they forced him to confess to a crime he had not committed. The law enforcers resorted to physical and psychological violence causing minor bodily injuries[20]. Although in this case there exist all signs of torture within the meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading, Treatment or Punishment, the criminal case against the law enforcers was initiated by the Prosecutor5's Office of Dunayevetsky Region of Khmelnytsky Oblast on the grounds of crimes under Part 2 of Article 365 (abuse of authority accompanied by violence) and Part 1 Article 371 (obviously illegal detention) of the Criminal Code of Ukraine.

To a large extent the failure of the prosecution to conduct an effective investigation into a complaint of torture is associated with conflicting functions that it performs in accordance with national legislation. So, on the one hand, the prosecutors are responsible for checking the lawfulness of the actions of militia, and, on the other hand, they support the charges in court. And then, the prosecutors have close professional relationships with militia officers. This conflict of interests is detrimental to the effective investigation of complaints of torture. As a result, in Ukraine there exists a prevailing situation of impunity of militia officers who use ill-treatment during their daily work. This atmosphere of impunity is a major cause of the spread of torture in Ukraine.

Thus, Ukraine needs an independent body to investigate allegations of the use of ill-treatment by law enforcers. This body should meet five principles specified by the Europe-

[18] http://www.radiosvoboda.org/content/article/24736816.html

[19] http://www.radiosvoboda.org/content/article/24736816.html

[20] http://www.gp.gov.ua/ua/reegions_news_detail.html?_m=publications&_c=view&_t=rec&id=111921

an Court of Human Rights, namely: independence, adequacy, timeliness, public scrutiny and participation of victims in the proceedings. This body should not have any hierarchical or institutional connection with the militia or the government.

The provisions of the new Criminal Procedure Code of Ukraine provides for the establishment of the State Bureau of Investigation. The functions of this office should include an independent mechanism for investigating complaints against militia officers in accordance with the international human rights standards.

4. LEGISLATION

4.1. The Criminal Code of Ukraine

One of the reasons, which permit avoiding criminal liability under Article 127 of the Criminal Code of Ukraine "torture", is imperfect wording of this article.

It has been amended three times (*see* previous annual reports). As a result of amendments on 05.11.2009, they omitted the special subject of crime, i. e. the state agent, and with it went the nature and qualification of "torture" within the meaning of Article 1 of the UN Convention against Torture. Thus, the current version of the article does not meet the requirements of Article 1.4 of the UN Convention against Torture.

Unfortunately, in 2012, the provisions of this Article were not adjusted in line with the requirements of Article 1.4 of the UN Convention against Torture.

Therefore, the Ukraine's legislation still contains a keyhole that allows the militia officers to avoid criminal penalties for torture and hide the real scale of this phenomenon in statistics.

4.2. The new Criminal Procedure Code of Ukraine

At the same time, it should be noted that the entry into force of the new Criminal Procedure Code of Ukraine (hereinafter — CPC) should help eliminating some problems that led to ineffective investigation of allegations of torture in the past.

According to the criminal procedure legislation of Ukraine acting before the entry into force of the new Code of Ukraine, one could not hold a full investigation without a formal act of initiation of criminal case. The law did not provide for conducting interrogations, searches, seizures, examinations and other investigations pending the resolution on initiation of criminal case.

The provisions of the new Code of Ukraine foresee the mandatory criminal prosecution in all cases of circumstances which may indicate the commission of a criminal offense (Article 214 of CPC) allowing to tackle the problem repeatedly stated in the decisions of the European Court about multiple failures in initiation of criminal proceedings under relevant complaints and conduct all necessary investigations and gather evidence during the investigatory actions.

The shortcomings that led to the findings by the European Court of violations of Article 3 in connection with the ineffective investigation also include the refusal to recognize a person

a victim under criminal law and the victim's lack of access to materials of investigation in the course of preliminary investigation.

Under Article 55 of the new Criminal Procedure Code of Ukraine the victims in criminal proceedings may include, in particular, a natural person, who, as a result of criminal offense, suffered moral, physical or property damage. The victim may also be a person who was not the applicant, but who, as a result of criminal offense, suffered a loss and in this connection, after the start of criminal proceedings, filed for the initiation of the proceedings as a victim. The rights and obligations of the victim arise from the moment of submission of complaint about commission of a criminal offense against her/him or application for her/his admission to the initiated proceedings as a victim. These provisions should improve the situation, when victims for a long time were not recognized as victims in a criminal case.

Article 221 of the new Criminal Procedure Code of Ukraine provides for familiarization with the materials of pre-trial investigation before its conclusion. This provision together with the norms of Article 55 of the CPC of Ukraine mentioned above should fix the situation regarding the impossibility for parties to criminal proceedings to familiarize with the materials of the case (or pre-prosecutorial check) before the end of preliminary investigation.

The CPC contains a number of other safeguards against torture and ill-treatment. However, there still exists the concern about the distorted application of the Code in practice. For example, according to Article 240 of the new CPC the result of the investigative experiment is a separate form of evidence, so nothing can stop forcing the suspect to demonstrate the mechanism of the offense (even if the person committed no illegal acts) during the investigative experiment, and this evidence will be admissible from the formal point of view. There is still a possibility just plant some evidence on the suspect, and no code is able to prevent such a practice of criminal investigations. Therefore the role of courts is very important which should take a tougher stance in the analysis of evidence in the case and reject all of them which were obtained under questionable circumstances.

5. PRACTICE OF NATIONAL COURTS

5.1. The court practice of making militia officers accountable

This year, one with the Odesa court found five former militia officers guilty of torture. The ex-militia officers were sentenced to 5 years imprisonment with three-year probation period.

The investigation found that in January 2010, the employees of the District Militia Station detained and took to the station two locals allegedly suspected of involvement in the theft. During the "conversation" the militiamen used rubber batons to obtain testimony from detainees. Having failed, the militiamen began to apply electric current to the body of the victims and strangled them by putting plastic bags on their heads. Due to torture the citizens were forced to plead guilty to an offense which they did not commit[21].

It should be noted that this is a rare case when the militia officers were prosecuted for torture just under that article, which provides for liability for torture. In most cases, the na-

[21] http://newsru.ua/ukraine/14jul2012/abnormal.html

tional investigative bodies and courts use the keyhole in the legislation of Ukraine, as described in the previous section, and bring to book the torturers with shoulder straps to liability under Articles 364 ("misuse of authority or abuse of office") or 365 ("excess of authority or transgression of authority") of the Criminal Code of Ukraine.

Another trick, to which usually resort Ukrainian law enforcement bodies and courts to reduce indexes in statistics of prosecution of militia officers for torture committed by them, consists in the twist of sacking the law enforcers under investigation making them civilians at the time of sentencing. Hence, such cases of torture are not included in the statistics of MIA of Ukraine and courts concerning criminal prosecution of militia officers for torture.

6. PRACTICE OF THE EUROPEAN COURT

In 2012, the European Court found violations of Article 3 of the Convention in fourteen cases against Ukraine. Two cases, in which the European Court made decision on the violation of Article 3 of the Convention, should be emphasized.

Thus, in the case *Kaverzin v. Ukraine* (application No. 23893/03, judgment of 15.05.2012) the European Court stated that the ineffective investigating of complaints of torture is a systemic problem in Ukraine (*see* details below).

In the case of *Savitskyy v. Ukraine* (application No. 38773/05, judgment of 26.07.2012) the European Court ruled to pay the largest amount of compensation that had been ever imposed for the benefit of a citizen of Ukraine. The court ordered the state to pay €154,000 to Bohdan Savitskyy, who had complained of ill-treatment by militia and ineffective investigation.

According to Government Agent before the European Court of Human Rights Nazar Kulchytsky, such a record compensation is due to the fact that the person became disabled, group I. Savitskyy was not suspected of a crime; therefore the European Court decided that it indicates a higher level of militia brutality. The too long trial in Ukraine, which has caused a lot of mental suffering to the complainant, became an aggravating circumstance[22].

6.1. Regarding the statement by the European Court of systemic problems of torture by militia and ineffective investigation of complaints of torture

In the aforementioned case of Kaverzin the applicant complained that he was tortured by the militia after his arrest. The government failed to refute these allegations by providing reasonable arguments. The European Court concluded that the ill-treatment to which the applicant had submitted while in custody at the militia station should be classified as torture, given the severity of the applicant's injuries and intentional nature of inflicting injuries.

The European Court also found that handcuffing the applicant every time the applicant was leaving his cell, while at the Dnipropetrovsk colony, contains an element of inhuman and degrading treatment, and, accordingly, Article 3 had been violated.

[22] http://kp.ua/daily/270712/348849/

In addition, the Court concluded that the investigation of the complaints of torture was ineffective and stated that the ineffective investigation of complaints of torture is a systemic problem in Ukraine.

Specifically, the Court noted that in about 40 of its decisions it found that the authorities of Ukraine were responsible for ill-treatment, while in militia custody, and that no proper investigation was carried out on the applications of such abuse. More than 100 other cases pertaining to these issues are currently under examination of the Court. The above violations were the result of shortcomings of the legal settlement and administrative activities of national authorities regarding their obligations under Article 3 of the Convention.

The European Court noted that the alleged offenders belong to the most vulnerable groups among the victims of ill-treatment by the militia. The cruel treatment often occurred during the first days of detention of the victims, when they had no access to their lawyers, and their injuries could not be fixed properly or documented. Despite the fact that in each such case it is impossible to establish that the abuse was used to obtain confessions to the crime, the relationship between the prison abuse and the desire of the authorities to obtain incriminating evidence cannot be excluded. As noted in several reports and observations concerning the issue of brutal treatment in Ukraine, the evaluation of militia's work by the number of crimes solved has become one of the factors influencing the use of torture on criminal suspects.

Another common factor that leads to a violation of Article 3 of the Convention in the present case and in cases considered by the European Court in the past is the reluctance of prosecutor's office to take all reasonably necessary steps to immediate and urgent detection of the facts and circumstances relating to complaints of abuse, as well as providing relevant evidence. During the investigation the prosecutors often do with explanations from the militia. The militia's version of events is usually given preference, and no attempts are made to verify it with other methods of investigation.

The European Court maintains that such reluctance of prosecutors to take action in situations, where suspects were mistreated in order to obtain a confession, explain conflicting objectives of prosecution in a criminal trial: the prosecution on behalf of the state and control of legality of preliminary investigation.

Due to the fact that confessionary statements are often the gist of evidence in criminal proceedings, it is possible that prosecutors are not interested in conducting detailed investigations that could potentially be able to question the reliability of such evidence.

The appeals of prosecutors' decisions to evade criminal proceedings as a separate procedure under article 236-1 of the Criminal Procedure Code and in the course of trial the admissible evidence does not lead to needed improvements in legality control by procuracy. The judges rarely give an independent assessment of the reliability of evidence allegedly obtained under duress, if such claims were rejected by prosecutors.

This case, along with similar previous cases against Ukraine, in which the European Court found a procedural violation of Article 3, also shows that, despite the general prohibition of torture and inhuman and degrading treatment in Ukraine, in practice the government officials responsible for this cruel treatment often go unpunished. The absence of any meaningful effort by the authorities in connection with this situation strengthens the almost total impunity for the commission of such acts.

The European Court considers that Ukraine should immediately implement specific reforms in its legal system to ensure eradication of the practice of ill-treatment during detention, conducting an effective investigation under Article 3 of the Convention in each case, when the appeal is filed, which raised questions about abuse and that such investigations have effectively eliminated any imperfections at the national level.

6.2. Other decisions of the European Court in which the violation of Article 3 were found in connection with the use of torture and lack of an effective investigation into allegations of ill-treatment

In the case of *Klishyn v. Ukraine* (application No. 30671/04, judgment of 23.02.2012) the European Court concluded that given the fact of applicant's being under the control of the militia (the applicant was detained in district militia stations), the medical evidence (injuries were found on his body), consistent applicant's allegations of torture, and lack of government alternative version of events, all the injuries he did receive as a result of ill-treatment, which violates Article 3 of the Convention. The European Court also stated that investigation conducted by the state agencies of the allegations of torture did not meet the requirements of Article 3 of the Convention.

In the case of *Grigoryev v. Ukraine* (application No. 51671/07, judgment of 15.05.2012) the European Court noted that the absence of plausible version of the Government's causes of bodily harm inflicted to the applicant during his being under the control of law enforcers, there existed a fact of torture to obtain confessions to the crime. The European Court also found a violation of Article 3 of the Convention concerning the ineffective investigation into allegations of torture. The Court noted that, although the fact of causing bodily harm to the applicant was prosecuted, it was closed 5 times by the resolutions of prosecution. In this regard, the European Court noted that four of these resolutions (except the last one) were canceled on grounds of incompleteness of the investigation conducted. Moreover, closing the criminal case, the investigator clearly pointed out that despite the instructions of superior courts and prosecutors, he sees no need to carry out these instructions. The Court specifically noted that such behavior clearly demonstrated the bias of the investigator. In this case the court of appeal, considering complaint against the decision to terminate the case, pointed to the need for an investigation of the complaint by the Office of the Prosecutor General of Ukraine, but no investigation was conducted. On these grounds, the Court came to the conclusion about the inefficiency of investigation carried out.

In the case of *Savin v. Ukraine* (application No. 34725/08, judgment of 16.02.2012) the European Court held that the applicant had been subjected to torture in breach of Article 3 of the Convention. The Government did not dispute in this case the applicant's torture, because the national authorities had established that he had been beaten by a militia officer K. and the aim of the above cruelty had been to compel the applicant to admit to the crime.

The European Court noted that the investigation into allegations of torture lasted for more than ten years, during which the investigators six times refused to initiate criminal proceedings against militia officers; all of these decisions were later quashed by higher prosecutors as premature, illegal and taken from the depthless investigation. Taking into account all these transfers of cases and neglect of investigative guidelines by superior prosecutors

which seem a normal practice, the Court considers that such transfers reveal serious flaws in the investigation which pertain to structural problems in Ukraine.

The European Court also noted that the case against militia officer K. was closed on March 2, 2010 in connection with the end of the period of limitation. As a result, he was brought neither to court, nor nor penalized. Moreover, for ten years during the investigation he was suspended from duty once since January 2009 to March 2010; that is the investigation in no way impeded his career in law enforcement. In connection with the foregoing, the European Court found a violation of the procedural aspect of Article 3 of the Convention in this case and noted that the state has not met its obligation to conduct an effective investigation into allegations of torture.

In the case of *Yatsenko v. Ukraine* (application No. 75345/01, judgment of 16.02.2012) the European Court noted that the investigation was started with a delay, forensic medical examination of the victim was conducted too late, investigation repeatedly started from the beginning due to the refusal of investigators to adequately establish the facts of the case, in the course of the investigation significant blunders were made, which were revealed by the authorities themselves. In this regard, the Court concluded that there had been a breach of procedural obligations under Article 3 of the Convention regarding the fact that allegations of ill-treatment had not been investigated quickly and efficiently.

In the case of *Muta v. Ukraine* (application No. 37246/06, judgment of 31.07.2012) the European Court noted that the criminal proceedings against the attacker of the applicant lasted for eight and a half years up to the closing of the case in connection with the end of the arraignment period of limitation. The Court noted that the case was not complex, its circumstances were clear, they concerned only one episode, the number of witnesses was small; however, it took the national authorities more than eight years to investigate the matter. The excessive duration of the investigation and court proceedings were recognized by the national authorities. In light of the foregoing, the Court found that in this case the government had not carried out an effective investigation into the applicant's allegations of ill-treatment.

In the case of *Vasiliy Ivashchenko v. Ukraine* (application number 760/03, judgment of 26.07.2012) the applicant complained that he had been tortured by the militia during his arrest. The European Court rejected the Government's arguments that the use of physical force by militia was caused by the applicant's own behavior as unfounded. Furthermore, the Court noted that the applicant's explanation of the origin of injuries on his fingers was completely ignored by the Government. The government also did not attempt to challenge the applicant's arguments about the ill-treatment by the militia. Taking into account the relevant medical evidence and the arguments of the parties in the present case, the Court concluded that the applicant had suffered inhuman and degrading treatment by the militia on the day of his arrest.

In the aforementioned case *Savitskiy* the European Court noted that the Government was very far from providing a satisfactory and convincing explanation for the origin of the applicant's injuries. The Court considered that the applicant's injuries were the result of exceptional severity and led to serious and irreparable consequences for his health (he received disability group one). The Court concluded that the applicant had been ill-treated by the militia for intimidation and humiliation. In such circumstances, the brutal treatment, to which the applicant was submitted, the Court described as torture and found a violation of Article 3 of the Convention.

The European Court concluded that the investigation of allegations of ill-treatment by the militia were ineffective: because it lacked impartiality, objectivity and thoroughness, the

total duration was excessive, it did not ensure effective participation of the victim. Accordingly, there had been a violation of Article 3 of the Convention.

In the case of *Aleksakhin v. Ukraine* (application No. 31939/06, judgment of 19.07.2012) the national courts found that the militia had caused grievous bodily harm to the applicant, life-threatening at the time of injury. Cruelty consisted in the use of tear gas spray and beating resulting in the applicant's suffering from severe pain and invalidism. The European Court noted that there was no evidence that the applicant's conduct necessitated the use of force. Under these circumstances, the Court concluded that the applicant had been subjected to torture in breach of Article 3 of the Convention.

Although in this case the militia officer was convicted, the Court noted that imposing punishment on him, not connected with imprisonment for more than eight years after his wrongful conduct, the state actually contributed to the emergence of militiaman's "sense of impunity" instead of demonstration that the use of torture in any way was not allowed. In such circumstances the punishment of the militiaman was not adequate. In view of the foregoing, the Court concluded that the government did not conduct an effective investigation into the applicant's allegations of ill-treatment.

6.3. Conditions of detention

In the case of *Belyaev and Digtyar v. Ukraine* (applications nos. 16984/04 and 9947/05, judgment of 16.02.2012), the Court concluded that there had been a violation of Article 3 of the Convention of substandard living conditions at the investigatory isolation ward No. 25, Sumy, from 2001 to 2004, namely keeping applicants in overcrowded cells in unsanitary conditions with inadequate lighting, heating and water supply, as well as inadequate support of applicants with clothing and linens. In this regard, the Court noted that the official documents about the arrangements for the custody prepared by the prison administration and quoted by the government couldn't objectively reflect the real situation in the investigatory isolation ward because they were prepared by the party in interest.

In the case of *Todorov v. Ukraine* (application No. 16717/05, judgment of 12.01.2012) the European Court found a violation of Article 3 of the Convention concerning the applicant's lack of necessary medical care for his serious vision problems. The Court noted that the domestic authorities had failed to take all necessary measures to prevent the loss of vision by the applicant. In this regard, the Court stated that the failure to provide adequate medical aid to those who are in the penitentiary system was a structural problem in Ukraine.

In the case of *Ustyantsev v. Ukraine* (application No. 3299/05, judgment of 12.01.2012) the European Court found a violation of Article 3 of the Convention regarding inappropriate conditions of detention in investigatory isolation ward of Odesa, namely keeping in overcrowded cells without sufficient lighting.

In the case of *Iglin v. Ukraine* (application No. 39908/05, judgment of 12.01.2012), taking into account the fact that the government had failed to refute with detailed and accurate data the applicant's statement about poor lighting, ventilation, food, toiletries and quality of medical care provided to him in Dnipropetrovsk investigatory isolation ward No. 3, the Court concluded that the conditions of the applicant's detention were inhuman and degrading in violation of Article 3 of the Convention.

In the case of *Titarenko v. Ukraine* (application No. 31720/02, judgment of 20.09.2012) the applicant's statement about the overcrowded cell, lack of exercise, problems with ventilation and absence of daylight in the cell, which had not been refuted by the Government, were sufficient to warrant a finding of the European Court that the conditions of detention in the period from July 8 to July 15, 2002 in Debaltsevo temporary detention facility humiliated the dignity of the applicant that was a violation of Article 3 of the Convention.

7. GOVERNMENT POSITION

7.1. The Government National Report prepared in the framework the second cycle of the Universal Periodic Survey of Ukraine[23]

As noted above, the Ukrainian government recognized in its National Report on the State of Human Rights that the problem of torture and ill-treatment of people in law enforcement agencies remains one of the most acute[24].

According to the Government, the public prosecutions department permanently conducted inquiries into the detection of torture and other ill-treatment of detainees and prisoners. The results of the inspections showed that in the penal institutions the facts of torture and other ill-treatment were not common and were usually allowed only in rare cases.

In its National Report the Government noted, in particular, that the statistics of inspections in the bodies of internal affairs was not optimistic. During the first quarter of 2012 the units of the Ministry of Internal Affairs received 975 appeals of citizens on violations of their constitutional rights and freedoms, including 211 appeals about torture and bodily harm. During the inspections in 86 cases the information was confirmed. The non-punitive measures were taken against 99 militia officers, 32 criminal cases were initiated on violations by militia officers of constitutional rights and freedoms of the citizens.

In order to monitor human rights in militia the special department of the Ministry of Internal Affairs of Ukraine monitors human rights in the units of militia, which is responsible for departmental and public control of protection of human rights in the law enforcement bodies and agencies under the Constitution, Laws of Ukraine, Ukraine's international obligations in the field of human rights and international standards of law enforcement.

The government acknowledged in its national report that initiated in September 2011 in pursuance of Ukraine's commitments under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commission on the Prevention of Torture under the President of Ukraine was not a full-fledged national preventive mechanism in the sense of the Optional Protocol. In this regard, the Government informed about the steps taken for the implementation of the national preventive mechanism under the institution of Ombudsman by model "Ombudsman +" (see more details: section "National Preventive Mechanism" below).

[23] Universal Periodic Review is a new mechanism to monitor human rights, in which each of the 193 countries that are members of the United Nations reports to other countries on human rights every four years.

[24] http://www.minjust.gov.ua/upr/upr_project_dopovid.html

The government claims that the conditions of detention of suspects in detention facilities have improved: in most temporary detention facilities the law enforcement agencies the prison conditions envisage 4 sq m per person; all cells are equipped with individual berths and bathroom units. As of June 1, 2012 the internal affairs bodies operate 1,438 rooms for detainees and conveyed people. Of the total number of rooms 588 (or nearly 41%) are in line with international standards and requirements of departmental building codes. The conveyed people are provided with linens, cutlery, detergents and medical implements, including medical kits of two types (universal and prevention of HIV / AIDS).

To solve the problem of accommodation of persons taken into custody in 2011 in 42 correctional facilities they created district pre-trial detention centers for 2466 beds, in Kyiv investigatory isolation ward they opened a new building for regime detention of women for up to 180 beds, complete overhaul was carried out in 23 centers of bodies and institutions of the penitentiary system. In addition, in 39 correctional colonies they created houses of arrest for 1057 beds where to persons sentenced to detention, whose sentences had entered into force, were brought.

According to the Government, the number of women prisoners in penal institutions was brought down. In September 2010, they opened children's home in Chernihiv penal colony (No. 44) in the framework of the Ukrainian-Swiss Project "Support to Penitentiary Reform in Ukraine." Thus they realized the requirement of the European Court of Human Rights concerning the joint detention of incarcerated women with children up to three years, which promotes stability and continuity of family relationships, improves communication of mothers with their children.

As health care provisions for persons held in custody, the government in its national report said the following.

In order to respect the constitutional rights of citizens during their stay in special institutions of the agencies of internal affairs in 2008 they worked out internal regulations for temporary detention facilities. According to these rules, in order to provide necessary medical care to persons in temporary detention facilities the doctors of territorial health care centers carry out mandatory medical examination of detainees intended to detect injury or other diseases. All records are analyzed and all doctor's recommendations are immediately carried out to grant hospitalization of indicated persons.

During 5 months of this year 557 detainees and arrested persons were treated in the medical institutions of the Ministry of Health of Ukraine (MOH).

Thirty-two medical wings are responsible for medical protection of prisoners in detention centers. Moreover, medical services are rendered to prisoners and persons detained in hospitals of MOH. 147 medical units are open in penal institutions, detention centers, correctional facilities, and organized activities. Each medical unit and hospital has a dental office. In addition, there are 59 narcotics treatment and 21 infective offices. To provide skilled medical care or treatment of patients the regional (city) hospitals reserve 612 special rooms designed for 1347 beds; in 2012 more than 1.5 million patients received treatment there.

In 2012 they settled the procedure of interaction of health care and state penal system, including the legal framework for the free choice of doctor by person under arrest, examination and treatment in health care institutions both in urgent and routine medical situations, as well as invitation of foreign experts.

In 2011, for the first time the budgetary funds allocations permitted to renovate 30% of equipment in the institutions and agencies of the State Penitentiary Service of Ukraine (SPSU). The new 830 units of medical equipment and instruments (X-ray and reanimation equipment, laboratory and clinical examinations, diagnostic, surgical, dental, etc.) cost about UAH79.2.

The Government reports that TB prophylaxis is carried out on a regular basis. It includes a set of sanitary and anti-epidemic measures with obligatory current and final disinfection in hotbed, as well as full treatment of TB patients, continuous monitoring of medication therapy with follow-up control of symptomatic relapses and chemotherapy treatment. During 2011 and the first five months of 2012 preventive x-ray examination covered 100% of persons taken into custody.

The free voluntary testing is available for detection and prevention of HIV infection in penal institutions and detention centers. Every organization has a doctor responsible for providing medical care to HIV-infected. The additional infectiologists may be hired soon. An additional HIV-ward was opened at a hospital in Donetsk penal colony No. 124 in 2012 to improve the treatment of infected detainees.

The financial assistance from international organizations is actively attracted to address issues related to the timely diagnosis and treatment of HIV. As part of the World Bank project "Tuberculosis and HIV / AIDS in Ukraine" the equipment for 85 bacteriological laboratories, level I (investigatory isolation wards, institutions) and 10 laboratories, level III (TB hospitals) and expendable materials were purchased for $2,400,000.

After hearing the national report during the session the UN member states advised Ukraine to improve the prevention of torture. The majority of recommendations related to ensuring effective investigation into allegations of torture, creation of an independent body to investigate such complaints and prosecution reform.

8. VIEWPOINT OF INTERNATIONAL BODIES AND ORGANIZATIONS

8.1. The Parliamentary Assembly of the Council of Europe

In its resolution 1862 (2012) the Parliamentary Assembly of the Council of Europe (hereinafter — PACE) noted that it regretted the fact that Ukraine had not reformed public prosecution in compliance with the standards of the Council of Europe, while this reform had been one of the commitments made during its entry. Consequently, the prosecutor's office is an institution very much centralized and with excessive empowerment[25].

8.2. European Committee for the Prevention of Torture (CPT)

On November 6, 2012 the CPT published its annual report on human rights in institutions of confinement[26]. The report contains references to previous observations made by

[25] http://zakon3.rada.gov.ua/laws/show/994_a57

[26] http://www.kommersant.ua/doc/2061633?fb_action_ids=492317474136531&fb_action_types=og.likes&fb_source=aggregation&fb_aggregation_id=288381481237582

the CPT based on the CPT delegation's official visit to Ukraine from November 29 to December 6, 2011 focused on the conditions of detention of persons deprived of their freedom.

During its visit to Ukraine the CPT delegation visited Kyiv and Kharkiv SIZOs, temporary detention facilities in Irpin, Kyiv, Chuguyev, district militia stations of Kyiv, Kharkiv, Vyshhorod (Kyiv Oblast) and a special ward of the Kyiv City Clinical Emergency Hospital.

According to the CPT, the information collected during the visit demonstrates that the phenomenon of ill-treatment by law enforcement bodies of Ukraine remains widespread. The delegation of the Committee received many applications from prisoners, including from women and adolescents, that they were ill-treated during detention and interrogation. In some cases the delegation ascertained special cruelty, which can be considered torture, namely the use of electroshock, attempted suffocation with a plastic bag or gas masks, hanging in a stretched position, threat of death with a pistol aimed at the head. The report also stated that the situation in the penitentiary system of Ukraine was not improved.

The CPT delegation noted a number of administrative practices that might impede efforts to combat abuse and help create a climate of impunity. For example, the medical examinations of prisoners, detainees are conducted in the presence of militia officers. The detainees are often held in temporary detention facilities for over the legal 72-hour period. The cases of people, who complain about outrageous treatment by law enforcers, are sent for investigation to the same law enforcers. The lawyers are not allowed to assist detainees at the beginning of the actual deprivation of liberty during informal interviews with law enforcers.

The report of the CPT delegation noted that the conditions of detention in militia stations were generally satisfactory. The delegation was also satisfied with the conditions of detention of minors in Kyiv and Kharkiv SIZOs unlike the conditions of detention for all others: many cells were in poor condition, and access to daylight was very limited or did not exist. The delegation expressed concern about the overcrowding in cells, which it observed in both institutions. For example, in the Kharkiv SIZO the delegation found the cell having an area of 45 square meters accommodating 44 people. There are only 28 beds in the cell, so people were forced to sleep in turns.

In addition, the CPT delegation drew attention to the issue of medical support for Valery Ivashchenko, Yuriy Lutsenko and Yulia Tymoshenko, who are held in custody in an investigatory isolation ward in Kyiv. The delegation expressed concern that for each of these three individuals there had been significant delays of specialized medical examination outside the investigatory isolation ward[27].

8.3. Amnesty International

The Amnesty International has been carrying out a campaign "Stop the torture in Ukraine" in Ukraine for a year now. On October 19, 2012 the Amnesty International referred to the Presidential Administration a petition against the impunity of the militia, which contained over 25,000 signatures. Along with the signatures they delivered to the President of Ukraine an open letter asking for an independent mechanism for investigating

[27] http://www.cpt.coe.int/en/annual/rep-22.pdf 22 summary CEPT report (01.08.2011–31.07.2012)

crimes committed by militia officers. The letter was also supported by leading Ukrainian human rights organizations.

The open letter, in particular, maintains that local and international human rights groups continue to document cases of torture by militia in Ukraine, and notes the existence of culture of impunity through which complaints of torture are ignored. The complaints containing substantiated allegations receive from the prosecutor's office replies that the actions of law enforcers have no "elements of a crime".

Since the local prosecutors work closely with the militia in the investigation of ordinary crimes, they have no desire to investigate crimes committed by their colleagues in the militia.

To fulfill these requirements, Ukraine should establish a fully independent and provided with adequate resources authority to investigate all allegations of human rights violations by law enforcers, including militia[28].

9. ON NATIONAL PREVENTIVE MECHANISM

Having ratified in 2006 the Optional Protocol to the Convention against Torture (hereinafter — the Optional Protocol), Ukraine pledged to establish a national preventive mechanism, i. e. body (or bodies), which would make unimpeded visits to place of detention and monitor them in order to prevent torture.

Last year, to promote the implementation of Ukraine's commitments under the Optional Protocol there was created the Commission on the Prevention of Torture (hereinafter — the Commission)[29] as a permanent advisory body to the President of Ukraine. However, due to financial and structural dependence of Commission on public bodies, it failed to meet the basic requirements of the Optional Protocol.

On October 31, 2012 the President of Ukraine abolished the Commission by his Decree No. 619/2012. This decree was issued in connection with the fact that on October 2, 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 5409-VI "On Amendments to the Law of Ukraine "On the human rights commissioner of the Verkhovna Rada of Ukraine" concerning national preventive mechanism."

This law provides that now the Ombudsman has the right: to make proposals for the improvement of legislation of Ukraine in the sphere of protection of the rights and freedoms of people and citizens, familiarize her/himself with documents, including those containing restricted information, and to obtain copies of them in public agencies , local authorities, public associations, enterprises, institutions and organizations regardless of ownership, prosecutor's offices, including cases in progress.

The list of places of imprisonment, which the Ombudsman may visit without notice, is now much longer. This list includes places where people are forcibly held by a court decision or a decision of an administrative authority under the law, including temporary detention rooms for detainees and suspects delivered to the on-duty units of the law enforce-

[28] http://www.amnesty.org.ua/node/309

[29] http://www.president.gov.ua/documents/14032.html

ment agencies, temporary custodies for foreigners and stateless persons who illegally stay in Ukraine, temporary custodies for servicepersons, penal homes, penal institutions, homeless placement centers for children, comprehensive schools and professional schools of social rehabilitation, medical and social rehabilitation centers for children, special educational institutions, military units, detention quarters, disciplinary battalions, special care centers for suspects subject to administrative detention, city, district offices and departments and so on.

To perform the functions of the national preventive mechanism the Ombudsman in particular makes regular visits to places of imprisonment without prior notice of the time and purpose of visits and without limitation of their number; interviews persons to obtain information about their treatment and conditions of detention and interviews other persons, who can provide such information; puts forward proposals to public authorities, public bodies, enterprises, institutions and organizations regardless of ownership concerning the prevention of torture and other cruel, inhuman or degrading treatment or punishment; gets involved on a contractual basis (for a fee or free of charge) in regular visits to places of confinement the representatives of NGOs, experts, scientists and specialists, including foreign ones.

At the request of the Ombudsman the state authorities, government agencies, enterprises, institutions and organizations regardless of ownership should provide information on the number of people in places of confinement, number of places and their location, as well as any other information concerning the treatment of persons and their living conditions.

To implement the document signed by the President "On Amendments to the Law of Ukraine "On the human rights commissioner of the Verkhovna Rada of Ukraine" concerning national preventive mechanism" the Secretariat of the human rights commissioner now includes a separate department for the prevention of torture and other cruel, inhuman or degrading treatment or punishment: Department for implementation of the national preventive mechanism[30].

As of November 1, 2012 the employees of the department made monitoring visits to 136 institutions that are subordinate to the Ministry of Internal Affairs (sixty-two institutions), Security Service (one institution), State Penitentiary (twenty-three institutions) and Border Services (three institutions), Ministry of Defense (two institutions), Ministry of Health Care (sixteen institutions), Ministry of Social Policy (twenty five institutions) and Ministry of Education, Science, Youth and Sports (four institutions) in order to strengthen the protection of persons they hold against torture and other cruel, inhuman or degrading treatment or punishment.

According to the results of monitoring visits to the aforementioned public institutions the employees of the department found such common human rights violations in their activities as non-normal living space, absence or insufficient presence of ventilation on the premises, heating and lighting are in worn condition. In general the following rights of detainees are violated: right to privacy, honor and dignity, safe environment, access to fresh air[31].

[30] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2140:2012-11-05-13-29-39&catid=14:2010-12-07-14-44-26&Itemid=75

[31] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2161:-2012-&catid=228:2012&Itemid=230

10. RECOMMENDATIONS

1. The MIA of Ukraine should work out new criteria for evaluation of the performance of militia, non-quantitative indicators of clearance of crimes, but those that are based on the assessment of the quality of activities of law enforcement bodies by the population of Ukraine.

2. Liquidate the special anti-terrorist unit created by order of the SPSU of Ukraine in 2005 and stop the practice of mass beatings in penal institutions and detention centers.

3. Establish an independent body to conduct effective investigations into the allegations of torture by law enforcers and employees of the penitentiary system.

4. The government bodies should recognize the actual scale of torture. To attain this, the law enforcement agencies, penitentiary system and courts should keep statistical records of torture and publish their statistics.

5. The law enforcers, against whom complaints were lodged for their use of torture, should be suspended from their duties during an investigation or inspection, but not released until adjudgement by national courts.

6. To amend the provisions of Article 127 of the Criminal Code of Ukraine in order to conform to the requirements of the UN Convention against Torture.

7. To continue working together with the Ombudsperson and human rights NGOs to establish a preventive mechanism to keep out torture by model of "Ombudsman +".

8. Create effective mechanisms of public control over the activities of employees of the Ministry of Internal Affairs of Ukraine.

9. The courts should scrutinize the existence of "reasonable suspicion" when considering applications for a preventive measure in the form of detention as required by the new Criminal Procedure Code of Ukraine, which will help "relieving" overcrowded detention centers and ultimately bringing detention conditions in line with European standards.

III. RIGHT TO LIBERTY[1]

1. THE CRIMINAL PROCESS

In 2012 a significant reform of the criminal proceeding law started with the Criminal Procedure Code coming in force. The steps already taken give hope that many structural problems mentioned in the earlier reports will be resolved.

1.1. Unrecorded detention

The unrecorded detention still remains a crucial issue, related to the legal and practical systemic problems highlighted in the earlier reports. Specifically, the country was further criticized by the European Court on Human rights in this respect, e. g. on the cases *Grinenko v. Ukraine,* (No. 33627/06, November 15, 2012) and *Smolika v. Ukraine* (No. 11778/05, January 19, 2012.

The new CPC provides rather strong safeguards against arbitrary and unrecorded detention. As stated in our former reports, the unrecorded detention remained a problem due to certain imperfections of the legislative regulation, which stipulated a term up to several days between the moment of actual detention and its registration (writing down the detention protocol. The new CPC specifically spelled out (Article 209) that "a person is considered detained from the moment when he/she is forced under compulsion or order to stay with the authorized official or in the premises determined by the authorized official". Besides, other CPC provisions stipulate rather rigid procedure for detention registration and delivery to a militia ward, including the duty to investigate the cases of unjustifiably delayed delivery.

1.2. Reasonable doubt with respect to criminal offense

In the earlier reports we referred many a time to the faulty law, due to which the reasonable doubt provision applied to a suspect, detained or kept in custody, was not considered by the courts in their deliberations. One of the recommendations contained in the last year's report was "obliging the court to consider the validity of suspicion or accusation against person to be detained or taken into custody".

Article 177.2 of the new CPC provides an important guarantee against arbitrary measures. It means that not a single measure can be taken without the **reasonable suspicion.** It changes completely the practice which had been in place since 2001, governed by the rule "in considering the motion on detention, the judge is not allowed to investigate the evidence,

[1] Prepared by A. Bushchenko, UHUHR executive director.

evaluate it or by other means check the proof of the suspect's or the accused' guilt, consider and rule on the issues which are the matter of criminal court hearing on the merits of the case" (see the Resolution of the Supreme Court No. 4, p. 10 of April 25, 2003).

The CPC establishes the **obligation** to consider the validity of the suspicion, which under the definition of the European Court on Human rights "is a necessary precondition for the legality of custody" (*Nechyporuk and Yonkalo v. Ukraine*, No. 42310/04, §219, April 21, 2011 року). Article 177.2 broadens the definition of the "reasonable suspicion" to cover also other preventive measures.

Under the European Court on Human Rights practices, "the reasonable suspicion on which the detention is based is an important component of the guarantee against unjustified arrest and detention, stipulated by Article 5 §1(c) of the Convention". The ECHR defines that "the reasonable suspicion referred to in Article 5 §1(c) of the Convention envisages the circumstances or information which would convince an impartial observer that this person has, probably, committed certain offense" (*K.-F. v. Germany*, November 27, 1997, §57).

1.3. Unlawful arrest and detention in custody

The lack of valid justification of the decision to take in custody or reference to the grounds which cannot justify the custody, also remain a problem. Under the European Court on Human Rights practices " the persistence of a "reasonable suspicion" that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain elapse of time it is no longer sufficient.10 To continue pre-trial detention, the authorities have to give "relevant" and "sufficient" reasons and show that they had displayed "special diligence" in the conduct of the proceedings.(*Letellier v. France*, June 26, 1991, §35, Series A No. 207).

Passing decision in the case *Lutsenko v. Ukraine* (No. 6492/11, July 3 2012) the court referred to the applicant's delay in the familiarization with the case files. The European Court on Human Rights pointed out that "it is not convinced that the detention in this situation is an adequate reaction to the problem…Besides, the circumstances of the case testify that the investigator decided to apply such a severe measure to the applicant only ten days after studying the case files…Besides the studying of the case files is a right and not a duty of the accused and the time for this familiarization cannot be limited" (§68–69). The court also referred to pressure put on the witnesses by the applicant, who grants interviews to the media; the European Court though, was not convinced that it is a legitimate ground for detention, as exercising the right to free expression is not a violation. (§70–71). The refusal of the applicant to give evidence and plead guilty was also considered ground for detention, which is direct violation of the right to remain silent and presumption of innocence.

In the case *Korneykova v. Ukraine* (No. 39884/05, January19, 2012), addressing the detention of a 14-year old girl, the courts offered no substantiation of the exclusive circumstances, which under the law would justify such measure. The courts also failed to respond to defense's arguments with respect to lack of risk of escape or unlawful bearings of certain circumstances on the decision to keep the girl in custody (§§46–48).

In the case *Borysenko v. Ukraine* (No. 25725/02, January 12, 2012) the courts only mentioned in their rulings that earlier placement in custody is the correct measure, although,

under Article 5 §3 of the Convention reasonable suspicion of criminal offense eventually becomes insufficient and the courts should provide other grounds for detention. (§50). Moreover, there was a case in which the court rejected the applicant's motion for release, referring to its invalidity. The European Court believes that the decision in fact demanded that the accused proves his innocence, is contrary to the very letter of Article 5 §3of the Convention (§50–51).

Decision in the case *Todorova v. Ukraine* (No. 16717/05, January 12, 2012) also lacked substantiation of the necessity to keep the applicant in custody more than 5 years (§63).

The new CPC provides detailed description of the risks (Article 177), which might justify detention. Besides, the Code consistently adheres to the concept under which the burden of proof for any circumstances which can be interpreted in favor of the preventive measure is always placed on prosecution. Article194.1 establishes that "the judge, the court must establish or prove the circumstances provided by the criminal investigation parties, testifying to 1) the presence of reasonable suspicion of the criminal infringement committed by the suspect or the accused; 2) presence of sufficient grounds to believe that at least one of the risks quoted in Article 177 of the Code is in place, and investigator or prosecutor points it out; 3) insufficiency of use of more lenient preventive measures to eliminate the risk or risks mentioned in the motion". If the prosecution failed to prove circumstantial evidence, it is a sufficient ground for the release or use of a different preventive measure.

1.4. The use of detention for illegitimate purposes

The European Court on Human Rights referred to more cases when arrest or detention in custody was used for purposes not justifying deprivation of liberty. The European Court decision in the case *Lutsenko v. Ukraine* (No. 6492/11, July 3, 2012), addressing the detention and imprisonment of the former Minister of Interior of Ukraine was the most resonant one. The decision sustained that 'the prosecution bodies, requesting the detention of the applicant, directly pointed at the applicant's contacts with press as one of the reasons for his detention and accused him of twisting public opinion with respect to his felony, discrediting the prosecutor's office operation and influencing future court hearing with the goal of evading criminal prosecution. The Court believes that such substantiation, provided by the prosecutor's office clearly shows its efforts to penalize the applicant for public rebuttal of the accusations against him and plea of innocence, which is his right. Under the circumstances, the Court had nothing else to do but to rule that the restriction of the applicant's freedom was …used not only to deliver him to the competent body under the reasonable doubt of the crime, but also for other reasons" (§§108–109).

Similar violations were revealed in other cases as well. In its decision in the case *Klishyna v. Ukraine* (No. 30671/04, February 23, 2012), the national court ordering detention referred to the unwillingness of the applicant to plead guilty of committing a grave crime. (§92).

In the case *Koval et al. v. Ukraine* (No. 22429/05, November 15, 2012) the applicants were detained without any legitimate grounds; the militia just abused its authority in a civil-legal dispute.

It is noteworthy that detention as a measure against exercising one's right to free expression of opinion was popular in 2012, as demonstrated by the following examples.

On January 2, 2012 an activist M. Kytsyuk was detained in Sebastopol for taking away an umbrella with Party of Regions political slogans from the Father Frost effigy, under the city Christmas tree.[2]

In Volyn' oblast' a 73-year old retiree was detained for "staining" the billboard with the Yanukovich's New Year greeting.[3]

On February 24, 2012 the activists distributing condoms with Yanukovich's image on them were detained. Four activists were sentenced to 15 days in administrative detention.[4]

On March 2, 2012 two Kherson National Technical University undergraduates were detained for disseminating "anti-presidential leaflets" in the city street. Criminal proceedings were instigated against them for group hooliganism. Eventually the case was re-qualified as administrative infringement.[5]

On May 21, 2012 a picketer A. Ilchenko was detained by militia near the Presidential Administration building. From militia precinct he was taken to psychiatric ward, where the doctors did not find any reason to hospitalize him.[6]

On July 1, 2012 militia by force put an end to the final event of the itinerant exhibit "Human rights off side". One of the exhibit organizers N.Boyarsky was taken to the militia ward.[7]

On August15, 2012 the activists of "Vidsich"[Resistance] movement distributed the leaflets urging Kyiv voters not to vote for the Party of Regions and, specifically, for its candidate for majority precinct No. 222 in Solomenka district of Kyiv M. Lutsky. Three activists (K. Chepura, M. Hordiychuk and V. Tytarenko) were detained with the use of force and taken to the militia precinct, where the protocol accusing them of aggravated resistance to militiamen was compiled.[8]

More detailed information on the persecution of public activists for the expression of their opinion can be found in the Chronicle of political persecutions.[9]

1.5. Absence of the detainees at the court hearings on expediency of detention

In Korneykova's case the European Court established the violation of Article 5 §4 of the Convention, i. e. the absence of the applicant at the trial on expediency of her detention in the appellation court. As the courts in their decisions referred to the applicant's "character", the European Court believed her presence an essential element of the due court procedure. (For comparison, see below the case "*Molochka v. Ukraine*").

It is noteworthy that the new Criminal Procedure Code stipulates in Article 21.3 compulsory presence of every person, "at the hearing in the court of any instance, with respect to his/her rights and duties envisaged by this Code".

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[2] http://news.dt.ua/POLITICS/zhitelya_sevastopolya_suditimut_za_parasolku_partiyi_regioniv-95220.html

[3] http://www.pravda.com.ua/news/2012/01/17/6914608/

[4] http://nrusumy.org/news/proces/2012-03-30-716

[5] http://www.pravda.com.ua/news/2012/03/6/6960161/

[6] http://maidan.org.ua/2012/05/zatrymanyj-vidomyj-aktyvist-z-mykolajeva-anatolij-ilchenko/

[7] http://www.pravda.com.ua/columns/2012/07/3/6967917/

[8] http://maidan.org.ua/2012/09/zatrymannya-aktyvistiv-vidsichi-v-okruzi-maksyma-lutskoho-foto-video/

[9] http://helsinki.org.ua/index.php?id=1349257536

1.6. Regulation on deprivation of liberty in the new Criminal Procedure Code

It is noteworthy that the provisions of the new CPC concerning detention and imprisonment are much more progressive and detailed than respective provisions of the CPC of 1960.

Here is a brief description of certain novelties instrumental in resolving the problems addressed in our former annual reports:

1. In the report of 2004 and all the subsequent reports it was recommended "to determine the beginning of detention on suspicion of criminal or administrative infringement according to factual circumstances testifying to the person's actual deprivation of liberty". Article 209 of the Code stipulates that the detention starts at the "the moment when he/she is forced under compulsion or order to stay with the authorized official or in the premises determined by the authorized official".

2. In the report of 2004 and all the subsequent reports it was also recommended "to consider in all trials on expediency of detention or release all the factual circumstances related to the justification of detention of taking in custody, including: justification of suspicion or accusation which are the alleged grounds for detention of the suspect (the accused); justification of the term of detention prior to habeas corpus; to establish unambiguous presumption in favor of person's release and to place all the burden of proof of detention expediency on the prosecution". Articles 177 and 194 of the Code envisage respective provisions, as was stated above.

3. The earlier reports recommended "developing procedures which would promote bail in lieu of detention". The new Code provides a broad opportunity to use bail. In the majority of cases, the judge passing decision in favor of detention is obliged to determine the amount of bail bond, under which a person can be released (183.3). However, the flaw of CDC bail regulation, which beyond any doubt will lead to the narrowing of its application and systemic violations of Article 5 of ECHR and numerous European Court decisions against Ukraine, is the requirement that *bail* can be paid only in ***money equivalent.*** Therefore, the law excludes the possibility of mortgage bail (the most widely spread type of bail all over the world), securities etc.

4. The earlier reports recommended "reducing the marginal term of detention for the duration of pretrial investigation", which was done by the new CPC. The term of detention for the duration of pretrial investigation cannot exceed 12 months (Article 197.3).

5. The new CPC envisages the procedure for regular reviewing of the expediency of detention, both on the prosecution's and the defense's motion.

6. The new CPC does not establish the marginal term of detention in the course of court consideration of the case. The court, however, establishes the requirement of regular reviewing of the expediency of detention within the intervals not exceeding two month's period.

7. The Code offers rather flexible system of preventive measures apart from detention.

2. DETENTION WITH THE PURPOSE OF EXTRADITION

2.1. The justification of detention

The absence of adequate legal regulation of the detention with the purpose of extradition has been pointed out by the European Court in its numerous decisions of the years

2007–2009. On June 17, 2010 the Criminal Procedure Code was duly amended with the aim of filling this gap.

In its decision on the case "*Molochka v. Ukraine*" (No. 12275/10, April 26, 2012), the European Court referred to the new legal situation following these changes. The decision is important as the clauses introduced into the CPC on June 17, 2010 were transferred to the new Criminal Procedure Code practically without any changes.

The Court recognized the new regulation as generally satisfactory. However, in this case the Court mentioned that the applicant was held in custody for unreasonably long period of time, quoting the fact that for 11 months the prosecutor's office took no action towards the extradition of the applicant. (§§171–172). The European Court also made another important remark to the effect that temporary measures, applied by it to prevent the extradition of the applicant do not create a legal obstacle for the decision related to extradition procedure (§174).

2.2. Court reviewing in extradition procedure

The European Court also considered the applicant's complaints as to the scope of court reviewing of the legality of his detention with the purpose of extradition (Article 463 of the CPC of 1960). The Court established that the applicant participated in the hearing of the first instance court, while the applicant's absence at the appellation hearing did not violate " the equality of parties" in the circumstances of the case, as the applicant was represented by an attorney (§182).

The Court also studied the applicant's argument that in deciding upon the expediency of his detention the national court was not obliged to consider his arguments concerning his persecution by the Belarusian authorities and violations in criminal case against him. The European Court noted that the CPC envisages a special procedure for such cases — extradition verification with the possibility of court appeal — in the course of which the applicant's arguments were considered, and did not believe that the national courts are obliged to refer to the applicant's arguments while deciding the expediency of detention (§186–188).

The Court, however, remarked that the verification of detention legality by the national court should also include the issue of reasonable term of the applicant's detention. This issue was not considered by the courts, which led to the violation of Article 5 §4 of the Convention (§189).

3. RECOMMENDATIONS

1. Promoting the most complete implementation of the new Criminal Procedure Code provisions with respect to the protection of right to liberty; promoting the broad use of alternative preventive measures, as opposed to detention;

2. Preventing courts from establishing unreasonably high amounts of bail bond and promoting due consideration of individual circumstances, including the means of a person;

3. Changing the bail definition in the Code, so that other types of bail (mortgage etc) could be used alongside with money bail;

4. Eliminating provisions which establish the minimum bail and leaving the determination of bail bond amount exclusively to the court's and judges' competences.

IV. RIGHT TO FAIR TRIAL[1]

In 2012 all the negative anticipations with regards to the Law "On Judicial System and Status of Judges" of 2010 came true. The threatening tendencies, predetermined by the judicial system reform became routine. The system of justice never became more accessible or transparent, while the political pressure upon the judges increased. Under these circumstances the level of public trust towards judicial power rapidly reached the lowest indicator possible — no more than 3% of the population still trust Ukrainian courts.[2] A few laws promoting certain improvements in the judicial protection were almost lost against this background.

1. MANIPULATION WITH JUDGES' SELECTION PROCESS; PRESSURE ON JUDGES

The authorities persistently implemented the mechanism of selecting "accommodating judges" and castigating the disloyal judges. The judges' transfers occurred without competition or even with total disregard to the results of prior selection. Thus, in February 2012 the Supreme Judicial Qualification Board issued a recommendation on transferring 4 judges to the capital city courts. A month earlier due to the poor results on qualification tests, they were first appointed as judges of provincial courts.[3] This mechanism proved a simple way to circumvent the law requirements stipulating that a candidate with better test marks has a better chance of getting court position.

This step confirmed the suspicions of political engagement of the Supreme Judicial Qualification Board. First selection of judges under new rules took place in 2011; then the process of potential judges' assessment was not transparent. Despite totally computerized evaluation system, it took several days to evaluate the tests. After the criticism of the Supreme Judicial Qualification Board's operation in 2012 the first stage of the new selective process was completely transparent — the exam was held in one venue, results became known on the same day — test notebooks were scanned and processed with public representatives, mass media and candidates to the judges' positions present. In 2012, however, the Supreme Judicial Qualification Board lowered the passing score and admitted much more contestants to the next stage. At this stage the contestants had to do the written test and be interviewed. It means that respective marks were given not by the computer, but by the board members. So, it's quite possible that certain manipulations just shifted to the second selective stage.

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[1] Prepared by R. Kuibida, T. Ruda. Center for political and legal reforms.

[2] Correspondent: the level of trust towards Ukrainian courts is reaching square zero mark // Source: http://ua.korrespondent.net/ukraine/politics/1405614-korrespondent-riven-doviri-do-ukrayinskih-sudiv-nablizhaetsya-do-absolyutnogo-minimumu

[3] M. Zakabluk "Everyone loves Kyiv" or what is the reasoning behind the transfer decisions // Zakon i biznes — 2012. — No. 21 (1060); source: http://zib.com.ua/ua/9636-yakimi_pochuttyami_keruyutsya_suddi_pri_pereveden-ni_do_stoli.html

The judges' selection to the courts of higher instances and also for chief justices and their deputies took place behind the curtains. The transference of a number of judges from the Eastern oblast's to the capital became common; as a result a lot of vacancies opened in these oblasts.

The instances of putting disciplinary pressure on judge4s have become more common too, especially on behalf of the prosecutor's office.[4] Meanwhile, the judges' self-governance bodies proved incapable of performing their function of safeguarding the judges' independence.

Systemic problems in the Ukrainian judicial system once again have drawn attention of the European community. On January 26, 2012 Parliamentary Assembly of the Council of Europe passed a resolution "Functioning of democratic institutions in Ukraine" No. 1862. It reflected deep concern about the lack of independence in judicial system and about information from reliable sources on initiating disciplinary measures and removal of judges on the basis of the prosecutor's office complaints. The aforementioned judges passed the rulings which disagreed with the prosecutor's office opinion. This practice is one of the reasons for the decreased number of acquittals (less than half percent) and wide use of suspects' imprisonment at the stage of pretrial investigation.

In June 2012 the Supreme Rada, on the Presidential initiative, passed a Law "On Introducing changes into certain legal acts of Ukraine enhancing the guarantee of judges' independence", by which the prosecutors were forbidden to instigate disciplinary proceedings against judges while the case is still under consideration and the prosecutor is a party to it. The said Law was perceived positively, although it did not bring dramatic changes into the issue of pressure put on judges by means of disciplinary liability, as the prosecutor's office often demands that a judge be sued after passing a "non-guilty" verdict, although the alleged reason for suing is quite different (i. e. violation of the statute of limitations). If the court supports the prosecution, then the prosecutor's office usually suppresses discreditable information on judges.

It is also noteworthy that the levers entailing judges' liability are used not only by the prosecutor's office. The very fact of judges' accountability to the highest disciplinary bodies — the Supreme Judicial Council and the Supreme Judicial Qualification Board — forces many judges to remain loyal to the authorities even without any hints on behalf of the latter. And it is only too easy to find violations in the judge's actions (i. e. violation of the statute of limitations), as the judges are constantly overloaded with cases. Unfortunately, this lever is broadly used in practical operation.

2. POLITICIZATION OF JUSTICE

The tendency of political power to use the judges has become more evident and cynical over the past year. Numerous criminal cases against the opposition members, ending in complete support of the prosecution by the courts testify to the fact. The same is true of 90% of cases on banning peaceful gatherings by authorities, satisfied by the courts on totally absurd

[4] Such cases were reported, in particular, by the Center for strategic protection. See, e. g. The prosecutor's office finally ensured the desired verdict by putting out-of-court pressure on judges. 20.01.2012 // http://hr-lawyers.org/index.php?id=1327048950

grounds;[5] judges' preferences of dominating party in the course of parliamentary elections; imposing administrative liability for the authors of leaflets with slogans unfavorable for the officials, participants of spontaneous peaceful gatherings etc.

The Constitutional Court also manifests its loyalty to the political power by passing only decisions favorable for it. Thus, for example, the Constitutional Court granted authority to the Government to ignore social laws in force and to be guided, instead, by its own legal-normative acts when passing decisions in the area of social services[6]. It also made possible the punishment of journalists or other persons for collecting or disseminating information, especially concerning criminal record, disciplinary punishments, professional education and family links of politicians and bureaucrats of all levels[7].

For a prolonged time the Supreme Court remained the only judicial institution, which was not totally controlled by the power. In 2011, after V. Onopenko's term of office ended, the temporary decision was made, i. e. electing a neutral candidate P. Pylypchuk the Chief Justice of the Supreme Court. He spent all his life working in the judicial system, but less than a year later reached the age of 65 and sent in his resignation. The Constitutional provision stipulating that the Chief Justice of the Supreme Court is elected by judges themselves at their plenum became a hindrance for political power.

The officials once again started developing a mechanism to appoint a loyal Chief Justice of the Supreme Court. Thus, the people's deputy from the Party of Regions I. Tsarkov initiated the consideration of the draft law on introducing changes into Article 39 of the Law of Ukraine "On Judicial System and Status of Judges" (on creating favorable conditions for the operation of the Supreme Court of Ukraine) by the Supreme Rada. The draft law proposed giving priority in electing the Chief Justice of the Supreme Court to a person, which worked at least for one year as chief justice of a specialized court or as a secretary of the judicial chamber of the Supreme Court not less than six months. Apparently the draft law is aimed at electing the Chief Justice of the High Specialized Court for civil and criminal cases and former deputy from the dominating party L. Fesensko, who was transferred to the Supreme Court, the Chief Justice of the Supreme Court. It cannot be ruled out that after appointing an "accommodating" Chief Justice of the Supreme Court, some share of its former competences will be restituted to this institution.

After all the judges in the courts of all levels have been replaced by the loyal ones, the authors of the judicial reform decided to revive the levers of influencing courts through their heads. Therefore, the first reading of the draft law on improving certain provisions in the organization of judicial power No. 9740, initiated by S. Kivalov and D. Shpenov — active developers of the very laws on judicial system and status of judges. If approved this draft law will restore the supervisory functions of the heads of courts and grant them the right to establish judges' specialization. It will allow a totally legal circumvention of automatic distribution of cases among judges (currently the judges' specialization is defined by the meeting of

[5] M. Sereda, T. Pechonchik A gander's quill is not a threat, or how the courts ban the rallies // Source: http://www.pravda.com.ua/articles/2012/07/19/6969140.

[6] Ukraine and the supremacy of law: is there a way out? // Source: http://pravo.org.ua/politicreformandconstitutionslaw/humanrights/847-2012-02-13-12-47-27.html.

[7] The Constitutional Court of Ukraine allowed detention for divulging the information on politicians and bureaucrats // Source: http://pravo.org.ua/politicreformandconstitutionslaw/2011-12-14-18-23-49/934-c.html.

the respective court judges). The heads of courts were deprived of these competences in the course of judicial reform in order to decrease the judges' dependence on them. The restoration of the said competences will benefit loyally-minded heads of the courts and increase the official control over the courts.

Despite the legal restriction of the courts' heads competences in 2010, their role is traditionally preserved. E. g. when judges are selected for office in the courts of higher instances, the Supreme Judicial Qualification Board in violation of the law takes into consideration the courts' heads opinion, their approval of a candidate etc.[8]

3. THE INCREASE IN THE CLOSED NATURE OF THE JUDICIAL POWER AND DETERIORATION IN ACCESSIBILITY OF JUSTICE

On October 20, 2011 the Supreme Rada amended the Law "On accessibility of court decisions", to the effect that the list of court decisions to be entered into the Uniform State Registry of court decisions is approved by the Supreme Judicial Council. Many experts classified this step as the abolition of the registry as means of public control over the judicial power operation. Earlier pursuant to the law all the decisions made in the courts of general jurisdiction had to be entered into the registry. In February 2012 the Judicial Council approved the list, under which many important decisions would not be entered into the registry[9], specifically, the decisions of the higher specialized courts concerning approving the reviewing of cases in the Supreme Court, Higher Administrative Court decisions on remanding claims, leaving them without consideration in the first and last instances, e. g. in the cases against the President or the Supreme Rada. The resolutions in the majority of cases on administrative infringements (with the exception of cases on customs and corruption violations) became close. Hiding all these court decisions from public does not help in enhancing the judicial power authority; on the contrary, it further undermines public trust towards the courts.

In April 2012 the Supreme Radar, on the initiative of the people's deputy Yu. Karmazin, abolished the requirement of publicizing the income and expenditures declarations of judges and their family members on the Internet[10]. Formerly, the Law "On Judicial System and Status of Judges" envisaged obligatory publication of judges' tax declaration on the site www.court.gov.ua. Making the judges' declaration public had to be a way of preventing corruption, as it is quite easy to organize the verification of a judge's incomes if his actual means differ from those declared. However this progressive norm was never implemented in practice. The judges keep declaring their property, incomes and expenditures by submitting a copy of declaration to the courts where they work. Pursuant to the Law "On Principles of preventing and counteracting corruption" only the judges of the Constitutional, Supreme and other spe-

[8] Yu. Gaydina. Providing recommendations HJQB members checked the level of contestants' knowledge. // Zakon i biznes. — 2012. — No. 39 (1078); Source: http://zib.com.ua/ua/11907-vkks_zvernula_uvagu_suddiv_na_yakist_ihnoi_roboti.html.

[9] Judicial council made a disservice to the courts and public // Source: http://pravo.org.ua/2010-03-07-18-06-07/lawreforms/846-2012-02-28-10-20-17.html.

[10] Law of Ukraine "On introducing changes to some legal acts pursuant to the Law of Ukraine "on principles of preventing and counteracting corruption" of May 17, 2012 //Holos Ukrainy of June 12, 2012, No. 106.

cialized courts are obliged to publish their declarations — in the official printed publications of the respective courts. The declarations should be submitted prior to April 1 and published within next 30 days following the submission. Nevertheless, in violation of these requirements the declarations of the judges of the said courts have not been published.

Although in 2012 the judicial proceedings have become more expensive, as the amount of court fees became linked to the minimum wages, the government proposed to raise the fees even more, which in fact bans the indigent individuals from seeking court protection. The respective draft law on introducing certain changes to the legal acts of Ukraine (with respect to the court fees) was initiated by the Cabinet of Ministers in September, and in October it was already approved by the Supreme Rada in the first reading[11]. The draft law proposed, in particular, to introduce the court fees for the cases on administrative infringements and to increase the amount of fees twice for other cases. On the verge of parliamentary elections the parliament did not dare to pass this law and postponed its consideration.

Due to non-compliance with the pilot decision in the case *"Yu. M. Ivanov v. Ukraine"* concerning the use of general measures for resolving the non-compliance with the Ukraine courts' decisions for over two years, the European Court on Human Rights had to consider thousands of cases dealing with the same problem — compliance with the national courts' decisions. Indeed, in June 2012 the Supreme Radar finally passed the Law "On state guarantees for the execution of court decisions", which envisaged the mechanisms for executing the court decisions on obtaining money from the state bodies, enterprises, organizations and institutions — debtors-legal entities, with respect to which a moratorium on the forced expropriation was established. In these cases as the debtor is incapable of meeting his obligations, the compensation should be obtained from the State budget.

4. RECOMMENDATIONS

1. Amending the Constitution with the aim of harmonizing its provisions concerning judges' status, judicial system and Supreme Judicial Council with the European standards. Ensuring the rotation in the judicial corps through new procedures.

2. Establishing competitive principles for the judges' career advancement and ensuring the transparency of all stages in judges' selection.

3. Ensuring fairness and competitiveness of the disciplinary procedure, by setting up a special Disciplinary board; determining more accurately and narrowly the grounds for disciplinary liability and removal of judges from the office.

4. Strengthening the judges' self-governance system, guaranteeing proportional representation of judges of each jurisdiction; simplifying the system of the judges' self-governance, retaining only the judges' meetings in the respective courts, judges' convention and the Judges' council.

5. Redistributing the competences between the chief justice and the judges' meetings in favor of the latter, but not the other way round, as the head of the court should not be superior official for the judges.

[11] The draft law on introducing certain changes to the legal acts of Ukraine (with respect to the court fees) No. 11183 of September 6, 2012 // Source: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_2?pf3516=11183&skl=7.

6. Restricting the role of the Supreme Judicial Council, till its membership complies with the European standards, by introducing changes to the Constitution. In particular, restriction the competences of the Supreme Judicial Council in the process of the judges' first assignment; also abolishing the provisions of the Law "On Judicial System and Status of Judges" granting the Supreme Judicial Council the authority to assign and remove the heads of courts and their deputies.

7. Renewing the legal provisions on making all the judges' declarations public and also on entering all courts' decisions into the registry.

8. Providing the Supreme Court with efficient tools for ensuring equal application of norms of not only material but also of procedural law. It has to be an arbiter between the courts of various jurisdictions and guarantee that the courts of various jurisdictions would not reject the cases trying to shift them to one another.

9. Applying measures to ensure the execution of the decisions of the European Court on Human Rights, which contain the requirements to resolve the general problems, specifically, the problem of non-compliance with the Ukrainian courts' decisions in the disputes concerning pensions and other social issues. The responsible state bodies which are the debtors should immediately appeal to the government petitioning the need to introduce changes to the state budget in order to finance the execution of the court decisions, made in favor of the individuals — parties to the disputes. Hence, the court decision on such disputes should be executed within one year's period, at most. In establishing the amount of pensions and social subsidies taking into account the economic capacity of the state, it is expedient to adhere to the constitutional requirement stipulating that this amount cannot be lesser than minimum cost of living.

V. RIGHT TO FAIR TRIAL. CRIMINAL PROCESS[1]

This year was characterized by passing of the new Criminal Procedure Code in April, anticipating its coming into force and transfer to new judicial process by late November.

The new Code was welcomed by many international institutions, the Council of Europe and the UN Council on Human Rights among them. All the international organizations stressed the need for its adequate implementation.

Despite ample (and often relevant) criticism of the Code, it represents serious progress in reforming criminal justice system.

Besides, the introduction of free legal services in compliance with respective law was being prepared intensely. The same year another law "On the Bar and Attorneys' Operation" was passed.

1. VIOLATION OF RIGHT TO REMAIN SILENT AND RIGHT TO LEGAL ASSISTANCE

The practices of using initial explanations or testimony of the accused, obtained in violation of the right to remain silent and right to legal assistance, to secure a conviction remain a systemic problem, despite the numerous judgments of the European Court. In 2012 the European Court found several violations of Article 6 of the Convention in the national courts' decisions. In the case *Grinenko v. Ukraine* (No. 33627/06, 15 November 2012) the applicant suspected of committing an ordered murder, in his deposition as a witness, with no defence attorney present, made a statement which later was use for his conviction. Besides, in the course of further investigation, the applicant was interrogated only with assigned lawyer present, although the applicant had his own lawyer. It was a violation of Article 6 §§1 and 3(c) of the Convention. The same violation was established in the cases *Grigoriev v. Ukraine* (No. 51671/07, 15 May 2012), *Titarenko v. Ukraine* (No. 31720/02, 20 September 2012), *Khayrov v. Ukraine* (No. 19157/06, 15 November 2012), *Zamferesko v. Ukraine* (No. 30075/06, 15 November 2012), *Yerokhina v. Ukraine* (No. 12167/04, 15 November 2012), *Serhiy Afanasyev v. Ukraine* (No. 48057/06, 15 November 2012).

It is noteworthy that in *Grigoriev* case the administrative detention in criminal process was used once again to deprive the accused of his right to legal assistance. It is a systemic problem revealed in earlier reports.

In *Zamferesko* case the European Court also held that the applicant's testimony obtained by torture was used to convict him. The court stated that "the admission of statements, obtained as a result of torture or other ill-treatment … as evidence to establish the relevant

[1] Prepared by A. Bushchenko, UHHRU.

facts in criminal proceedings renders the proceedings, as a whole, unfair. This finding applies irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction" (§70). A similar conclusion was passed by the European Court in the case *Grigoriev v. Ukraine* (No. 51671/07, 15 May 2012).

In the case *Todorov v. Ukraine* (No. 16717/05, 12 January 2012) the Court established the violation of the applicant's right to fair trial, although the judges in their rulings did not refer to his testimony obtained without defence attorney. The Court commented that "impossible to exclude that the existence of the self-incriminating statements in itself influenced the way the investigation was conducted and the manner in which other evidence was taken and interpreted. This is particularly so since … the domestic judicial authorities never expressly reacted to the applicant's complaints of a breach of his right to legal assistance" (§79). Therefore, the European Court applied a version of "fruit of the poisonous tree" doctrine in its practice.

It is noteworthy that the European Court's judgments led to some changes in the judicial practices, i. e. certain convictions were quashed by the Supreme Court of Ukraine or High Specialized Court on civil and criminal cases.

In 2012 the convictions in *Nechiporuk*, *Balitskiy*, *Iglin* and *Maksimenko* cases were quashed pursuant to the European Court's judgment on violation of the right to fair trial (see 2011 report). In case of Nechiporuk and Balitskiy the criminal proceedings cases were remanded for further consideration by the trial court, so the trial goes on. Iglin and Maksimenko cases were submitted to the court of cassation.

Meanwhile the enforcement of other international bodies' decisions, in particular, the UN Committee on Human Rights, is not yet regulated by the law. In the last year report we pointed out that the Committee's conclusions on Shchitka and Butovenko cases were not taken into consideration.

The new Criminal Procedure Code was amended with number of rather radical clauses, addressing this problem. Pursuant to Article 95 §4 "the court can base its conclusions only on the testimony heard directly at the trial or obtained in due order stipulated by Article 225 of this Code. The court has no right to base its decisions on the testimony, given to an investigator, prosecutor or to refer to them". This clause is the clear implementation of the principle of "immediacy" (Article 23 of the Code). The court cannot base any conclusions on out-of-court testimony. Article 23 §1 of the Code envisages that "the testimony of the parties to criminal inquest is received by the court orally", while part 3 of the same article enforces cross-examination right for the defence. Besides, pursuant to Article 87 §2(5), the violation of right to cross-examination is always considered a serious infringement, which makes evidence unacceptable. The only exception to this rule is obtaining evidence in special order, envisaged by Article 225 for exceptional cases.

Besides, in Article 87 §1 the Code very strictly imposes the "fruit of poisoned tree" doctrine, stipulating that not only the evidence obtained through violations, but also the evidence, which would not have been obtained, if the former evidence had not been in place, are to be considered unacceptable. Therefore, the otherwise acceptable evidence, obtained with the help of information coming from unacceptable evidence, becomes unacceptable.

This model of proceedings will force the investigation bodies to proceed cautiously, as any doubts with respect to voluntary nature of obtained evidence can be fatal for all the probative materials, collected in the course of the inquest. However, these provisions will be efficient in practical operation only if the courts will interpret them conscientiously.

2. VIOLATION OF RIGHT TO WITNESS'S EXAMINATION IN COURT

The use of written testimony obtained from witnesses during pretrial investigation, is also very common. The European Court passing judgment in some cases of recent years classified it as violation of right to fair trial (see *Lutsenko v. Ukraine*, No. 30663/04, 18 December 2008; *Kornev and Karpenko v. Ukraine,* No. 17444/04, 21 October 2010).

In the case *Khayrov v. Ukraine* (No. 19157/06, 15 November 2012), the European Court established the violation of the right to the witness's examination in court, as the national courts in their decisions referred to pretrial testimony of one of the most important witnesses. The court refuted the argument that the witness's absence in court was recompensed by the sufficient opportunity for the applicant to question him during confrontation, pointing out that "that confrontation was carried out at an earlier stage of the proceedings when the applicant was not assisted by defence counsel. The confrontation was only recorded on paper, which would not have allowed the judges to assess the demeanour of the parties to the confrontation and properly form their own opinion as to the reliability of the statements made during that investigatory action" (§93).

In the case *Grinenko v. Ukraine* (No. 33627/06, 15 November 2012) the European Court, on the contrary, did not establish the violation of the right to the witness's examination in court. The Court took into account the fact that by the time of investigation the witness had died, and her testimony would not have a direct or decisive bearing on the applicant's conviction.

In 2012, *Leonid Lazarenko* was once again sentenced for life, after the first verdict was cancelled pursuant to the European Court's decision. It is noteworthy that significant violations of right to fair trial were registered in the course of the trial. Under the law in force the case was to be considered by a district, and not an appellate court. It means that, in violation of Article 6 of the Convention, the case was not considered by the "court designated by law". Besides, the co-defendant of Leonid Lazarenko, whose testimony constituted the grounds for the conviction, did not testify at the trial. Currently, Leonid Lazarenko is filing a complaint with the European Court on Human Rights concerning the new violation of his right to fair trial.

The problem described above can be resolved with the help of aforementioned provisions of the Criminal Procedure Code stipulating the unacceptability of out-of-court testimony.

3. RIGHT TO LEGAL ASSISTANCE IN THE HIGHER COURTS

In the case *Nikolayenko v. Ukraine* (No. 39994/06, 15 November 2012) the European Court found the violation of Article 6 §3(c) of the Convention, i. e. that the applicant sentenced for life by the court of appeals, was not represented by an attorney at the Supreme Court hearing. Pursuant to CPC the right to the assigned attorney's assistance did not cover the court of appeal hearings. The European Court ruled that "given the seriousness of the charges against the applicant and the severity of the sentence … the assistance of a lawyer at this stage was essential for the applicant" (§66).

4. KEEPING THE ACCUSED IN A CAGE DURING COURT HEARING

In the case *Titarenko v. Ukraine* the European Court considered the fact of keeping the accused in a cage against the provisions of Article 6 of the Convention. In its ruling, the Court did not find the violations of right to fair trial, stating that "during the hearings both the applicant and his lawyer were heard by the court, furthermore, the applicant's lawyer had not in any way been restricted from using whatever he needed in order to defend his client's interests. . The security arrangements undeniably limited communication between the applicant and his lawyer during the hearing. These limitations did not, however, amount to a complete lack of communication between the applicant and his lawyer; the applicant did not demonstrate that it was impossible to request that the lawyer's seat be brought closer to his "cage", or that they had been denied an opportunity for private communication when necessary" (§92).

5. BIMPORTANT NOVELTIES INTRODUCED TO THE CRIMINAL PROCEDURE CODE

The passing of Criminal Procedure Code of 2012 is an important step towards the reform of criminal justice in the country. The law-maker deviated from systemic approach under which the new CPC had to come in force alongside with the prosecutor's office reform and reforms in the other law-enforcement bodies. Although this fact might complicate and slow down real changes in the criminal procedure, the significance of progressive changes introduced by the Code cannot be underestimated.

1. The court's control over pretrial investigation was strengthened. Almost all the actions, which can be classified as significant interference with human rights and freedoms, shall be taken under prior court's warrant. The Code introduced the notion of investigation judge, responsible for the court control at the pretrial stages. If the actions requiring court warrant are taken without such a warrant, the testimony obtained through them is excluded.

2. The use of out-of-court testimony is banned. This novelty enhances the role of court as the arbiter of facts, ensures equalized stand of the parties and contributes to their competitiveness, reviving the principle of direct perception of evidence. Besides, it allows the shortening of the pretrial investigation period due to cutting down of bureaucratic steps, and also provides incentives for the parties to submit the case to the court as soon as possible.

3. The doctrine of competitive expertise is promoted. Under the new Code each party can use the expert's opinion, so that competitive expert conclusions can be submitted to the court. However, to make this development efficient the special budget funds should be allocated as experts' royalties in the cases, where defence is provided pro bono.

4. The detailed definition of various pretrial investigation procedures is provided, namely, for the search, preventive measures etc.

5. The authority of criminal prosecution to grant permit for attorney's participation in the case is banned. Only the defendant can make the decision on hiring an attorney (apart from pro bono cases).

6. The pro bono attorneys can be hired by the state only through the Centres of free legal assistance. It is an important preventive mechanism to avoid the hiring of "pocket attorneys".

6. SETTING UP THE SYSTEM OF FREE LEGAL AID

This year the important steps towards the formation of free legal aid system were taken.

The Presidential Decree No. 374/2012 of June 1, 2012 promoted the setting up of the Coordinative centre for legal aid and approved the national target program for the implementing of free legal aid system till the year 2018. Numerous Cabinet of Ministers' Resolution have also been passed with respect to free legal aid system: "On Approving the Order and Terms for contracting attorneys who provide free secondary legal aid on the permanent basis and attorneys who provide free secondary legal aid on the temporary basis"; "Reimbursement for the services of attorneys who provide free secondary legal aid to the persons, detained in administrative or criminal procedural order and also in criminal cases"; "On Introducing Changes to the Order on use of state budget funds for providing free legal aid to the citizens in criminal cases"; On Approving the Order for informing centres of free secondary legal aid about detentions". The respective orders of the Ministry of Justice of Ukraine have also been passed.

On July 2, 2012 the Order of the Ministry of Justice of Ukraine No. 968/5 launched the setting up of the first 27 centres providing free secondary legal aid in the Autonomous Republic of Crimea, oblasts and cities of Kyiv and Sebastopol. As of October 2012 all the 27 centres o for free secondary legal aid were duly registered by the state bodies as legal entities of public law and entered into the catalogue of the budget funds managers in the State Treasury Service of Ukraine. The centres' directors were appointed.

In Kharkiv, Khmelnitsky and Kyiv oblasts the centres for free secondary legal aid will be set up under the auspices of public defence offices in Kharkiv, Khmelnitsky and Bila Tserkva set up within the framework of International "Renaissance" foundation pilot projects.

In 2012 over 51 million UAH was allocated for implementing the free legal aid system. It is about 25 times more than over the former years. Nevertheless, even this funding is not enough. Under the Concept of the National Program for Setting Up Free Legal System for the years 2013-2017, the approximate amount of money needed for the program implementation in 2013 constitutes 139 million UAH.

7. RECOMMENDATIONS

1. Ensuring sufficient state budget funding for the programs aimed at setting up free legal aid system, including, among others, the costs of the expertise research.

2. Legitimizing the operation of private experts and expert offices.

3. Broadening the competences of the Supreme Court in the reviewing of cases in which significant violations of material and procedural law were revealed, envisaging, in particular, compulsory review for the cases which have the conclusion of an international agency, empowered by Ukraine to consider individual complaints.

VI. RIGHT FOR PRIVACY[1]

The right for privacy in Ukraine is protected at the constitutional level. Article 32 of the Constitution articulates as follows: "No one shall be subjected to interference in his private life and family matters, except when such interference is stipulated by the Constitution of Ukraine". Separate aspects of the right for privacy are protected by separate articles of the Constitution: protection of inviolability of domicile — by Article 30 of the Constitution, privacy of correspondence, telephone conversations, telegraph, and other communications — by Article 31, prohibition of collection, storage, use, and dissemination of confidential information about a person without his consent — by Article 32 of the Constitution, prohibition to subject a person to medical, scientific, or other experiments without his free consent — by Article 28 of the Constitution.

The exhaustive list of legal grounds and conditions for violation of the right for privacy enshrined in the law goes along with discrepancies and contradictions in the law enforcement practice.

Searches are still widely used in cases initiated for political reasons to exercise pressure on political, trade union and public figures.

For instance, on January 31, 2012, the apartment of Arsen Avakov, leader of Kharkiv regional organization of the "Batkivshchyna" Party, where he had been living for more than two years, was searched[2], and later the apartment, where his family lives, was searched, too, and during this search the police confiscated a photocopy of his passport, the identification card of the deputy of the regional council and money[3].

In May 2012, police officers searched the office of the independent trade union "Zakhyst Spravedlyvosy" (*protection of justice*) and made an attempt to confiscate the organization's documents, but failed to mention what the goal of this visit was. Mykhailo Volynets, MP (Yulia Tymoshenko's Bloc 'Batkivshchyna'), who is the vice-head of the trade union, believes that their office was searched to confiscate documents that belonged to Andriy Pavlovsky, MP (Yulia Tymoshenko's Bloc 'Batkivshchyna'), as their community liaison offices operated in these premises.[4] At the same time Andriy Pavlovsky connected this search to the public statement Volynets had made the day before that independent trade unions were planning wide protest actions against adoption of the new Labor Code and the Law on peaceful assembly.[5] The office employees refused to hand the documents to the police officers.

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[1] Prepared by Ruslan Topolevsky, Center for Legal and Political Research "SIM".

[2] Arsen Avakov's Old Apartment Searched // http://glavnoe.ua/news/n94512

[3] Traces Left After Search of Arsen Avakov's Apartment // http://www.kommersant.ua/doc/1863035

[4] BUT Politician's Office Searched | Ukrainska Pravda // www.pravda.com.ua/news/2012/05/17/6964700/

[5] BUT Politicians' Liaison Offices Searched // http://gazeta.ua/articles/politics/_u-prijmalnyah-byutivciv-volincya-ta-pavlovskogo-obshuk/436341

According to the Ministry of Internal Affairs' official statement, the search was conducted in connection with the necessity to conduct graphological expert assessment, for which they required an original of a document kept in the central office of the All-Ukrainian trade union "Zakhyst Spravedlyvosy". This was allegedly necessary for the investigation of a criminal case concerning forgery of documents in the neighboring oblast.[6]

In this regard, it is noteworthy that in June Hennadiy Moskal claimed that law enforcement agencies in Donetsk oblast had received an order to collect information concerning politically active members of the opposition, as well as concerning their immediate family, relatives and company, including photographs and biographical particulars of members of Donetsk regional organizations of the "Front Zmin" and "'Batkivshchyna' parties.[7]

Police officers denied such facts. Although, according to the statement of Oleksander Yaroshenko, head of Donetsk branch of the "Front Zmin" Party, during the last two years of their operation, 18 criminal cases have been initiated, 38 searches have been conducted and 47 court sessions have been held against members of the opposition parties.[8]

On January 20, 2012, the Constitutional court of Ukraine made a ruling in the case concerning official interpretation of provisions of paragraphs 1 and 2 of Article 32, paragraphs 2 and 3 of Article 34 of the Constitution of Ukraine on the constitutional submission from Zhashkiv rayon council of Cherkasy oblast.[9] Among other things, it considered the issue concerning what should be considered as information about personal and family life and, in particular, whether such information is to be treated as confidential information about a person; as well as, whether collection, storage, use and dissemination of information about a person is intrusion into his or her personal and family life.

In its ruling, the Constitutional Court of Ukraine, in particular, noted: "a systematic analysis of provisions stated in paragraphs 1 and 2 of Article 24, paragraph 1 of Article 32 of the Constitution of Ukraine gives grounds for the Constitutional Court of Ukraine to believe that the right for inviolability of personal and family life is guaranteed for each person regardless of their gender, political, property, social, language or other attributes, as well as the status of a public person, in particular, public servant, state or public figure that plays a certain role in political, economic, social, cultural or other sphere of state and public life".[10] It should be pointed out that the Constitutional Court of Ukraine groundlessly and inadmissibly expanded protection from discrimination to the status of a public person and equated necessity of protection of the right for protection of private life for a common citizen and a public person[11].

In such a way, to the opinion of the Constitutional Court of Ukraine, "information about personal and family life of a person includes any information and/or data about relations of property and non-property nature, circumstances, events, relationships, etc., concerning a per-

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[6] Police Considers Whether It Was Worth It To Search BUT Politician's Office // world.pravda.com.ua/news/ 2012/05/17/6964759/

[7] Law Enforcement Puts Together Dossier on Donetsk Opposition Politicians http://donetskie.com/novosti/2012/ 06/12/pravohraniteli-sobirayut-dose-na-donetskih-oppozitsionerov

[8] Donetsk Police Denies Putting Together Dossier on Local Opposition // http://donetskie.com/novosti/ 2012/ 06/13/militsiya

[9] http://zakon4.rada.gov.ua/laws/show/v002p710-12

[10] http://zakon4.rada.gov.ua/laws/show/v002p710-12

[11] Rechytsky V. Political and Legal Comment on Ruling of the Constitutional Court of Ukraine on the constitutional submission from Zhashkiv rayon council of Cherkasy oblast // http://zakon.org.ua/comment/138

son and members of his or her family, except for information, as stipulated by the laws, related to performance of functions or duties by the person that holds a position in an governmental agency or a body of local self-government. Such information about a person is confidential"[12].

In May 2012, Anatoliy Ilchenko from Mykolayiv, who was known for his speeches in protection of the Ukrainian language, was detained by police officers on Wednesday in Kyiv after the picketing of the Ministry of Internal Affairs, and for some time he was held in the psychiatric ward.[13]

Igor Mykhalko, speaker of the Chief Administration of the Ministry of Internal Affairs in Kyiv, claimed that after Ilchenko was detained for allegedly "obscene" poster concerning Minister Zakharchenko, they received information from Mykolayiv that Ilchenko was registered as a person with mental illness and so they called an ambulance from a local clinical psychiatric ward.[14] Later Ilchenko's representative informed that he was released from the psychiatric ward. In this regard, especially taking into account the decision of the European Court of Human Rights "*Fedorov and Fedorov against Ukraine",* it is inadmissible to use psychiatric treatment as punishment for expressing one's opinion.

In May 2012, the Security Service of Ukraine without proper service documents confiscated from Donetsk City Commercial Dental Care Center medical records of several thousand patients.[15]

In June 2012, Volodymyr Landyk, MP from the Party of Region, filed to the Prosecutor's Office a demand to initiate a criminal case for violation of the privacy of correspondence by the news website LB.ua under Article 163 of the Criminal Code (violation of privacy of correspondence committed against state or public figures). In a piece published on November 18, 2011, named "Landyk Sr. Saving His Son with Help of Spin Doctors and "Right" Comments on websites", the news website published photos with Volodymyr Landyk in the Parliament's debating chamber exchanging text messages concerning the fate of his son, who at that moment was on trial on a charge of beating a young woman.[16] After the editor-in-chief of LB.ua[17] officially apologized to the MP, the Prosecutor's Office closed the case on the grounds that "the news website's violation of the law in this specific situation did not cause significant harm"[18]. At the same time, the reviewers believed that if the news website had filed an appeal with the European Court of Human Rights, the right for dissemination of socially significant information would have prevailed over the right of inviolability of private life of a member of parliament[19].

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[12] http://zakon4.rada.gov.ua/laws/show/v002p710-12

[13] Protector of Ukrainian Languages Was Brought to Psychiatric Hospital for Two Posters // http://www.expres.ua/news/2012/05/17/66467

[14] Champion of Ukrainian Language Detained after Picketing Ministry of Internal Affairs // http://www.radiosvoboda.org/content/article/24583415.html

[15] Harsh Truth About Security Service of Ukraine // http://ord-ua.com/2012/05/14/gorkaya-pravda-o-sbu/

[16] Landik Demands to Start Investigation of Published Photos of His Text Messages Trying to Get His Son Off \\ http://www.pravda.com.ua/news/2012/06/27/6967625/

[17] Sonia Koshkina's Answer to Open Letter by Vladimir Landik // http://lb.ua/news/2012/07/04/ 159295_otvet_landiku.html

[18] Case against Lb.ua closed // http://www.pravda.com.ua/news/2012/08/3/6970151/

[19] Who Will Protect Interests of Ukrainian Society, or Landik's Case // http://www.telekritika.ua/svoboda-slova/2012-07-31/73767

In September 2012, it became known that the state penitentiary service installed surveillance cameras owned by the agencies of Internal Affairs in the Ukrzaliznytsia hospital in the ward, where Yulia Tymoshenko, ex-Prime Minister, is being held. Several cameras were installed by police in the hospital corridors.[20] Later, Yulia Tymoshenko stated that video cameras were installed also in the bathroom, in the shower and in the room where she has meetings with defendants. Later this was confirmed by People's Deputies Oleksandra Kuzhel, Tetiana Sliuz and Liudmyla Denysova, who visited Yulia Tymoshenko in the hospital ward.[21] Also, some videos from the camera at the colony emerged online, which, probably, were edited in such a way so that to put together actual and forged recordings.

In October 2012, patients of Lugansk regional out-patient department for drug addicts informed that their passports were being collected in the "voluntary-compulsory" order — allegedly to "ensure their voting turnover", according to Pavlo Skala, Policy and Advocacy Program Leader at the international charitable foundation "International HIV/AIDS Alliance in Ukraine". The passports were taken from more than 100 patients with drug addiction, who receive their substitution therapy treatment on a daily basis as outpatients, with the promise that they would get their passports back in the morning on the elections day on October 28. The patients confirmed this. At the same time, Anna Kniazeva, head of the outpatient department for drug addicts, claimed that they had been taking from their patients with drug addiction not passports, but their photocopies — in connection with the inspection by the Controlling and Auditing Service planned for November, but some patients had been unable to make a photocopy and because of that were giving their actual passports, but all these passports have been returned to them already.[22]

In November 2012, the wife of Yuri Lutsenko, ex-Minister of Internal Affairs, Iryna Lutsenko addressed Oleksander Lisitskov, head of the state penitentiary service, concerning wiretapping of her telephone conversation with her husband. She claimed that this followed from the content of remarks by the officers of the penitentiary service, in which they voiced issues she had been discussing only with her husband.[23]

Protection of personal data is done on the grounds of the Law of Ukraine "On Protection of Personal Data" (adopted on June 1, 2010)[24], which regulates relations concerning protection of personal data during their processing.

The Law's effect covers activities on creation of databases of personal data and processing of personal data in these databases except for databases of personal data, created by an individual — exclusively for non-professional personal or household needs; by a journalist — in connection with performing their professional duties; by a professional creative worker — for their creative activities. This Law regards all personal data, except for depersonalized personal data, as limited access information, except for the cases, in which the Law

[20] Jailors Claim Tymoshenko Is Watched by Police, Too // http://www.pravda.com.ua/news/ 2012/09/6/ 6972223/

[21] Female MPs Found Surveillance Cameras in Tymoshenko's Toilet and Shower // http://www.unian.ua/ news/547773-deputatki-znayshli-kameri-v-tualeti-i-dushi-timoshenko.html

[22] Passports Are Being Taken Away from Lugansk Drug Addicts // http://tvi.ua/new/2012/10/22/u_narkozalezhnih_luganska_zabirayut_pasporti

[23] Lutsenko's Wife Caught Jailors on Eavesdropping // http://www.pravda.com.ua/news/2012/ 11/10/ 6977224/

[24] http://zakon1.rada.gov.ua/laws/show/2297-17

prohibits to regard personal data of certain categories of citizens or their exhaustive list as limited access information. In particular, the category of limited access information is not applicable to personal data of an individual that runs to hold or holds an elected office / position (in representative bodies) or a position of public servant of the 1st category, except for information defined as such in compliance to the Law. In compliance with the Law, processing of personal data has to be performed only with the pre-established purpose, and if this purpose were changed consent must be obtained from the subject of personal data for its processing according to the new purpose, and the personal data themselves must be comparable to the purpose of their processing.

It is not allowed to process the data about an individual without his or her consent, except for cases defined by the law, and only in the interests of national security, economic well-being and human rights. And after the time period necessary for their purpose is over, personal data must be depersonalized.

Although this Law was adopted as part of implementation by Ukraine of provisions of the Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data[25], but its wording turned out to be not very accurate and it manifests some drawbacks and contradictions. For starters, failure to differentiate between general (surname, name, patronymic, nationality, place and date of birth) and sensitive personal data causes excessive hindrances and leads to grotesque situations when recording a person's surname and name can constitute — from the point of view of the Law's corresponding provisions — a violation of this Law. For instance, when a university professor keeps records of students' marks, in this Law's terms it is in fact processing of personal information.

Similarly, the requirement concerning necessity to process personal data for scientific, statistical and historic purposes in the depersonalized form can lead to an absurd situation, when using a person's surname, name, and patronymic in scientific and historic texts can be considered a violation of this Law, as can be collection of information about well-known historic figures, publishing of books about their life or memoirs, which contain a list of persons mentioned in them.

An issue that is still unregulated is the issue concerning dissemination of personal data, if they constitute social interest, in particular, in the context of the Law "On Access to Public Information". It should be also pointed out that the Law gives no answers concerning personal data of persons that died. There have been cases when researchers were denied access to archive materials, which contain data about persons that died, on the grounds of protection of personal data of these persons.

It is unclear what is to be done in case, when a person refuses from processing of personal data under conditions of contractual relations between the parties, for instance, in case of a warranty replacement of a malfunctioning household appliance or in case of labor relations, on in case of realization of the right for education by a person, who does not agree to his or her personal data being processed or submitted to some third parties.

The Law stipulates the duty of the holder of personal data to inform only in writing the subject of personal data about their rights in connection with inclusion of their data in the da-

[25] http://khpg.org/index.php?do=print&id=1332321075#_ftn14

tabase of personal data within 10 working days since the date of such inclusion. But it is unclear what should be done in case, when there is no postal address of such person available.

Unclear definition of conditions of removal of personal data can cause numerous conflict situations related to demands of subjects of personal data to remove their personal data, while without such personal data corresponding social relations are impossible altogether.

The Law also does not cover situations in case of processing of personal data disseminated in mass media.

Since January 1, 2012, legal responsibility for failure to provide information about databases kept by legal entities and individuals under the effect of the Law became effective.

On July 1, 2012, the penal sanctions for violation of the Law On Protection of Personal Data became effective. Violation of the Law entails responsibility in the amount of the fine from UAH8.5 thousand to 17 thousand or correctional labor up to 2 years or restriction of liberty for the period up to 3 years and up to 5 years for repeat violation.

On July 16, 2012, the Procedure of performance by the Personal Data Protection State Service of state control over observance of legislation on protection of personal data came into effect.

It should be mentioned that currently the identification number issued by the state tax administration is still the primary electronic classifier, based on which governmental agencies conduct collection and processing of personal data of citizens of Ukraine. The sphere of its application goes far beyond its purpose as intended by the law that introduced it — taxation management. If a person has no identification code it is impossible for him or her to get officially employed, to get access to pension coverage, to enjoy the right for education, to receive scholarships or bursaries and unemployment benefits, to obtain subsidies for utility bills, to open a bank account, to register as a private entrepreneur, to receive the state education certificate, etc. That is why, in fact, governmental agencies have adopted an administrative practice of deliberate violation of the Law of Ukraine on Unified register of individuals-taxpayers and they have been using the taxpayer's number for other purposes, not intended in this Law.

On October 2, 2012, the Verkhovna Rada of Ukraine adopted the Law "On Unified State Demographic register", which stipulates introduction of electronic passports for Ukrainian citizens. After wide-scale appeals by religious and non-governmental organizations to the President, on October 30, 2012, he vetoed this Law.

On November 20, 2012, the Verkhovna Rada of Ukraine adopted the Law "On Unified State Demographic register" in the new wording with suggestions from President Victor Yanukovych, with votes for it from 243 MPs.[26] It should be mentioned that during the voting on this Law, a part of the MPs' votes was received by using the voting cards of MPs who were personally absent from the hall.[27] This obviously makes legitimacy of this Law under question.

The Law stipulates excessive and inadequately wide inclusion of biometric data into the documents that identify a person. For instance, in compliance with this Law the following

[26] Parliament Approved Law On Biometric Passports With President's Proposals // http://www.day.kiev.ua/uk/news/071212-rada-uhvalila-zakon-pro-biometrichni-pasporti-z-propoziciyami-prezidenta

[27] In Summary: Fate of the law on biometric passports and tax on sale of foreign exchange // http://24tv.ua/news/newsVideo.do?pidsumok_dnya_dolya_zakoniv_pro_biometrichni_pasporti_ta_podatok_na_prodazh_valyuti&objectId=279937

documents to identify a person will be issued: the passport of a citizen of Ukraine; the passport of a citizen of Ukraine for going abroad; the diplomatic passport of Ukraine; the service passport of Ukraine; the seafarer's identity card; the crew member identity card; the identity card for return to Ukraine; the temporary identity card of a citizen of Ukraine; the driver's license; the identity card of a stateless person for going abroad; the identity card for permanent residence; the identity card for temporary residence; the migrant's identity card; the refugee's identity card; the refugee's travel document.

Although the Law, in particular, stipulates introduction of electronic passports — documents with an electronic carrier of biometric information for going abroad in compliance with the standards of the International Civil Aviation Organization (ICAO), but in this case it would have sufficed to introduce only issuing of the foreign passport. That is why, reviewers believe that adoption of this Law is related to lobbying efforts of EDAPS Consortium, which has been mentioned numerous times as connected to such draft laws.

The Law contains a statement, according to which persons that refuse, because of their religious beliefs, to have their personal information on a no-contact electronic carrier, are guaranteed a right not to receive such a document or not to have their information on a no-contact electronic carrier. This right is realized by means of submission of a notification to the relevant central body of executive power about the person's refusal to receive a document that contains a no-contact electronic carrier or to have their information on such carrier.[28]

The Law stipulates that the passport of a citizen of Ukraine is manufactured in the form of a card that contains a no-contact electronic carrier of information, and it must be issued to a person within 30 calendar days since the date the application for it has been submitted. The electronic passport is supposed to include the following data: the name of the state, the name of the document, a person's surname and name, gender, nationality, date of birth, the unique number of the record in the register, the number of the document, the expiry date of the document, the date the document was issued on, the authorized body that issued the document, the place of birth, the person's photograph and signature. If a corresponding application is submitted, the passport can also include the data of the person's parents or guardians.[29]

Until now, the issue concerning the legal grounds of surveillance in public areas has not been properly regulated. At the same time, police does not stop trying to install video cameras in public areas on the wide scale.[30] For instance, in Kyiv it is planned to install 11 thousand video cameras.[31]

In compliance to the European standards[32], Surveillance can take place, but it must comply with the following requirements: the zones under surveillance must be marked regular-

[28] Parliament Approved Law on Biometric Passports with President's Proposals // http://www.day.kiev.ua/uk/news/071212-rada-uhvalila-zakon-pro-biometrichni-pasporti-z-propoziciyami-prezidenta

[29] On Unified State Demographic Register and Documents That Attest Citizenship of Ukraine, Identify Person or Their Special Status // http://zakon4.rada.gov.ua/laws/show/5492-17

[30] Police Plans To Set Surveillance Cameras In Public Areas // http://www.pravda.com.ua/news/2012/05/17/6964691/

[31] Vitaliy Zakharchenko Exposes // http://www.kommersant.ua/doc/1936397

[32] European commission for democracy through law (Venice commission), Opinion «On video surveillance in public places by public authorities and the protection of human rights», Adopted by the Venice commission at its 70th plenary session (Venice, 16-17 March 2007) // http://www.venice.coe.int/docs/2007/CDL-AD(2007)014-e.asp.

ly; an independent body should be established at the national level for independent control concerning installation of surveillance cameras, as well as storage and use of information about a person.

Obligatory medical procedures, like centralized vaccinations of children, are still being actively discussed in mass media, first of all, in connection with quality of vaccines for inoculation procured by the Ministry of Health Care. In connection with this, some parents refuse to have their children inoculated while medical doctors warn about a threat of epidemics.[33]

On November 20, 2012, the new Criminal Code of Process became effective[34], which regulated several issues concerning the right for privacy, which earlier were not regulated. In particular, Article 253 stipulates that persons, whose constitutional rights were temporarily limited during undeclared investigatory actions, as well as a suspect, his or her defense attorney, during twelve months since such actions are seized, but not later than submission of the indictment to the court, have to be notified in writing by the prosecutor or by the investigator under the prosecutor's order about such limitation. But currently, the practice of application of the norms of the Criminal Code of Process concerning undeclared (investigatory) actions is still insufficient to come to a conclusion that it complies with the right for privacy.

The Ministry of Health Care developed a draft law, in compliance to which each Ukrainian citizen can become an organ donor postmortem, if they do not submit their written refusal to do so. At the same time, the population demonstrates a negative attitude to the presumption of consent for organ transplantation.[35]

RECOMMENDATIONS

1. The Law of Ukraine "On Protection of Personal Data" should be improved by elaborating it and removing the current gaps and contradictions, so that it, in particular, includes the following principles:

— general (surname, name, patronymic, nationality, date and place of birth) and sensitive personal data are differentiated, and different access modes are assigned for them;
— different identification numbers (databases of different governmental agencies) must be used separately, it is not allowed to create a unified code for accumulation of all information about a person;
— exchange of the collected information between governmental agencies must be clearly regulated and be performed on the grounds of the law or on the court order with notification of the person about this and with an opportunity to appeal such actions in court.

[33] In Uzhgorod, Parents of 800 Children Refuse to Inoculate Them // http://zakarpattya.net.ua/News/92890-V-Uzhhorodi-vid-shcheplen-vidmovylysia-batky-800-ditei; Vaccination At Pleasure: Threat of Epidemics Or Freedom of Choice? // http://glavred.info/archive/2012/01/18/140044-1.html

[34] http://zakon4.rada.gov.ua/laws/show/4651-17

[35] Ministry of Health Care Initiates Adoption in Ukraine of Postmortem Organ Donation // http://tyzhden.ua/News/65272

2. The administrative practice of illegal use of the taxpayer's identification number (code) for other purposes not stipulated by the law must be stopped. Application of the notion of "personal number" must be stopped, too, as its use is not stipulated by any laws.

3. Amendments should be made to the Law "On Unified State Demographic Register" to reduce the list of documents that require recording of the biometric data and to keep only the foreign passport in this list.

4. Amendments should be made to the legislation to stipulate annual publishing of the report with depersonalized data concerning retrieval of information from channels of connection in the course of undeclared investigatory actions.

5. The Ministry of Internal Affairs should stop groundless collection of sensitive personal data about persons (information about political affiliations, religious beliefs, sexual orientation, participation in the substitution therapy program, etc.).

6. A law and other regulatory acts should be adopted to protect rights of patients, in particular, concerning obligatory medical procedures and protection of confidential information about the state of health.

7. It is necessary to make amendments to the legislation and legal practices so that to remove contradiction between the obligatory nature of vaccinations for attending children institutions and the right for education for children, whose parents deliberately refuse to have their children vaccinated, especially when such vaccinations are counter-indicated for the child or can harm him or her.

8. Surveillance in public areas should be regulated, including conditions of storage and deletion of records.

9. The practice of using searches as a politically motivated tool to secure loyalty and persecute political opponents must be stopped.

10. Surveillance of inmates must be regulated in such a way that balances the security requirements and human dignity.

11. The legislation concerning preservation of the secret of adoption even from the child him — or herself should be amended. In particular, exceptions must be made from the provisions of the legislation that stipulate the absolute secret of adoption (articles 226, 229, 230 of the Family Code, article 168 of the Criminal Code).

VII. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION[1]

1. GENERAL OVERVIEW

The situation in this field did not change significantly, although certain negative tendencies, i. e. an increase in state regulation and restrictions in religious freedom can be traced. On the one hand, there is relative freedom. On the other hand, old problems, related partially to the old legislation[2], have not been resolved, while the new ones came into being with the passing of new law.

Citizens of all religious denominations enjoy sufficient freedom in exercising their rights. The state does not manifest any religious preferences; nor does it restrict any confessions.

Ukraine looks much better in comparison with other post-soviet state, as it ensures the basic level of religious freedom. Despite the fact that the old law on freedom of conscience and religious organizations is obsolete and somewhat rigid, its faults are to a large extent compensated by predominantly liberal administrative practices of the power bodies. Nevertheless, the lack of precise legal guarantees of religious freedom adds to instability and unpredictability of the situation, dependent on the state policy.

And the state policy in this respect remains inconsistent and unforeseeable. In 2012 certain preferences of the central power with regards to the Ukrainian Orthodox Church under Moscow Patriarchate (UOC MP) were registered. They were manifested in the authorities' stand concerning the lease of premises, allotment of budget funds for the renovations of the religious buildings used by this Church and other actions supporting this Church.

E. g. for a long time the state has been ignoring unauthorized construction of the so-called Tithe Monastery at the site of the former Tithe Church, carried out by UOC MP. Moreover, the official power publicly advocates the interests of UOC MP in this matter[3]. Thus, on April 9, 2012 the Ministry of Culture inaugurated the Tithe Church museum, and several months later P. Doroshenko (aka deacon Yaroslav, the minister of the UOC MP "Tithe monastery of the Saintly Virgin Nativity", functioning illegally in the territory of the National Mu-

[1] Prepared by V. Yavorsky, Board member of the UHUHR. Data provided by M. Vasin (Institute for religious freedom) were used in the Report. www.irs.in.ua

[2] See the review of legal faults with respect to freedom of religion in the HR Reports "Human rights in Ukraine — 2009–2010", which remain topical today. http://www.helsinki.org.ua/index.php?id=1298305235

[3] See e. g. The Tithe Church — Ukrainians' maturity test, Yu. Miroshnichenko, people's deputy of Ukraine (PR fraction), President Representative in the Supreme Rada "Ukrainian Pravda", December 17, 2012 http://www.istpravda.com.ua/columns/2012/12/17/103735/

seum of History of Ukraine) was appointed its director. This action provoked an understandable protest on behalf of the scholars.[4]

There are other preferences in the authorities' dealings with the dominant religion of the country. In particular, it concerns the allotment of lands for the construction of religious centers, restitution of the churches, confiscated by the soviet power etc. On the other hand, the power can hinder the development of other religions for the benefit of the dominant one. It is noteworthy, though, that predominance of different religious organizations varies from one region to another.

After the liquidation of the Department for the matters of religion, its functions were delegated to a special division of the Ministry of Culture. Meanwhile, a certain intermission in public meetings of the clergy and the authorities was observed. In 2011 the dialogue between the church and the power started, to be continued in 2012. These relations, however, were seriously complicated after the law was amended in late 2012 without any consideration of public opinion.

The state power should provide for equal opportunities for all the Ukrainian citizens irrespective of their religious affiliation, as was stressed by the President of Ukraine Yanukovich during his meeting with high clergy on March 21, 2012. The all-Ukrainian Church and religious organizations' Council, in its turn, prepared an appeal, drawing President's attention to the current social challenges[5]. The document contained specific proposals as to the legislative changes and cooperation between the religious organizations and the state.

On June 22, 2012, in compliance with the order of the Ministry of Culture No. 668 of June 22, 2012 the Expert Council on the freedom of conscience and religious organizations' activity started its operation under the Ministry of Culture. The Council is a consultative and advisory body, set up with the goal of providing professional recommendations, specialized consultations and studying crucial issues related to the implementation of state policy with respect to religion. Under its Bylaws, the main tasks of the newly formed Expert Council include: in-depth monitoring, analysis and evaluation of the processes taking place in the religious area, both in Ukraine and in the other countries; offering professional consultations and studying crucial issues related to the implementation of state policy with respect to religion, ensuring freedom of conscience and religion, activities of the religious organizations and other tasks, defined in the Bylaws.[6]

In July 2012 an attempt to revive the operation of the governmental Commission for ensuring the rights of the religious organizations was made. On July 25 the changes concerning Commission's operation and membership were introduced into the Cabinet of Ministers' Resolution.[7] Following the President's meetings with the all-Ukrainian Church and religious organizations' Council in March 2012 and in April 2011, respective Presidential orders were issued twice. However, under the government of the new convocation — between 2010 and

[4] See. In Tithe Church museum — conflict between scholars and clergy// UP, November 26, 2012 http://www.istpravda.com.ua/short/2012/11/26/101613/.

[5] See complete text of the appeal:
http://vrciro.org.ua/index.php?option=com_content&task=view&id=168&Itemid=1.

[6] Expert Council on the freedom of conscience and religious organizations'activity is set up under the Ministry of Culture, http://irs.in.ua/index.php?option=com_content&task=view&id=1082&Itemid=61.

[7] See. On changes to the Cabinet of Ministers' of Ukraine Resolution No. 953 of October, 30, 2008 http://zakon2.rada.gov.ua/laws/show/674-2012-%D0%BF/paran2#n2,

now — the Commission failed to convene. The meetings were postponed indefinitely, till one meeting actually occurred on October 22. No significant results were achieved.[8]

As far back as July 21, 2011 the all-Ukrainian Church and religious organizations' Council approached the President with the request to postpone the development of new version of the law on freedom of conscience and religious organizations. The appeal read: "Without consensus on the proposed legislative amendments the development of new version of the law on freedom of conscience and religious organizations should be postponed". Generally it can be explained by permanent and foreseeable administrative practice of applying this law and by the fear that any changes can lead to the restriction of religious freedoms, as it happens in many post-soviet countries. This stand was supported by the Ministry of Culture.

However, this attitude of the clergy and official power does not take into account the international commitments of Ukraine in the implementation of the European Court on Human Rights' Decision in the case "*St. Michael's parish v. Ukraine*". The case concerned substantial faults of the law on religious organizations regarding the grounds for refusal to register religious organization, lack of accurate definitions of "religious community" "religious organization" and other crucial issues. It is also noteworthy that the rulings concerning individual measures were not complied with either. As of today the changes to the religious organization bylaws remain unregistered, and the church built by the parishioners is managed by the people who seized the premises in the year 2000 (p. 27 of the European Court on Human Rights' Decision). Makarchykov and his parishioners have no access to the building. [9] We believe that the state postpones the registration of the new bylaws on purpose, as it would mean the restitution of the church to the Ukrainian Orthodox Church under Kyiv patriarchate.

On February 9, 2012 a meeting of working group on draft laws concerning freedom of conscience presided by first Deputy Minister Yu. Bohutsky was held in the Ministry of Culture. The participants discussed the order of religious organizations' operation, entrance, temporary stay, employment and residence of the foreign priests in Ukraine, as well as the improvements in the operation of the Commission for ensuring and exercising the rights of the religious organizations. The meeting of the working group also reviewed the fulfillment of the Decree of the President of Ukraine No. 24/2011 of January 12, 2011 "On Plan of measures for the implementation of Ukraine's commitments and obligations under its membership in the Council of Europe" , specifically the designing of the draft law "On restitution of the religious premises to the religious organizations" with the participation of the state officials, members of all-Ukrainian Church and religious organizations' Council, specialists and experts.[10]

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[8] See. The meeting of the government Commission for ensuring the rights of religious organizations postponed. .09.2012, http://www.irs.in.ua/index.php?option=com_content&task=view&id=1111&Itemid=61; The government Commission for ensuring the rights of religious organizations convened for the first time in 3 years (Photo) http://www.irs.in.ua/index.php?option=com_content&view=article&id=1133&Itemid=61.

[9] See more e. g. "Futile hopes: epilogue to the decision of the European Court on Human rights on the case *"St.Michael's parish v.s Ukraine"*, G. Druzenko, Religious information service of Ukraine, August 6, 2010; http://risu.org.ua/ua/index/expert_thought/analytic/37011/

[10] The meeting of the working group on the draft law on freedom of conscience took place on February, 9 http://mincult.kmu.gov.ua/mincult/uk/publish/article/272262.

However, on October 16, 2012 the parliament unexpectedly adopted contradictory changes to the law on religious organizations[11]. Numerous non-governmental organizations, human rights activists and religious organizations opposed this law[12]. Nevertheless, on November 21 the President signed the law anyway and on December 12, 2012 it came in force. Meanwhile, on December, 7 the President instructed the Ministry of Justice to devise the draft law on amendments to the Law of Ukraine "On freedom of conscience and religious organizations" without delay.[13]

The new version of Article 13 of the Law reads that "a religious organization becomes legal entity since the date of its state registration". In fact this law enforces state registration of a religious organization in two stages: first, it should register its bylaws, and then independently undergo the procedure of registration in compliance with the Law "On state registration of legal entities and physical entities — entrepreneurs" in the State Registration Service of Ukraine. This complex registration procedure is unjustified and unnecessarily complicated. In practice the registration process takes up to a year. It is noteworthy, that if the Registration Service reveals any shortcomings in the bylaws at the second stage, the whole registration procedure shall be started anew. This practice has been in place for a long time; currently only legal discrepancies were removed, and not to the benefit of the religious organizations. The registration procedure seems to be contrary to Article 9 of the European Convention on Protection of Human Rights.

The new reading of Article 29 of the Law grants authority to exercise state control over the conformity with the law on freedom of conscience and religious organizations to a number of power bodies:

- The Ministry of Culture, as specially authorized body of executive power on religious matters;
- All the other ministries and governmental agencies, services and inspectorates;
- Prosecutor's offices;
- Local state administrations (oblast' and rayon);
- Local councils (of oblast', city, village and settlements level).

At the same time the Law fails to provide clear definitions regarding forms and types of state control of these matters. It says only that control should be exercised within the terms of reference of the authorized bodies. This language places control functions beyond the scope of the laws in force, referring to sublegal acts, which specify the competences of executive power bodies in detail. The law does not provide a clear answer to the questions concerning

[11] See full text of the law "On changes to some legal acts of Ukraine re Ministry of Justice, Miistry of Culture,other central executive bodies, whose operation is governed and coordinated by respective ministers and State Spece Agency of Ukraine "http://zakon2.rada.gov.ua/laws/show/5461-17.

[12] See Open letter of NGOs and activists to the President of Ukraine V. Yanukovich on the need to veto draft law No. 10221 restricting the freedom of conscience in Ukraine зhttp://www.irs.in.ua/index.php?option=com_content&view=article&id=1140%3A1&catid=50%3Azv&Itemid=78&lang=uk; High clergy appeal to the President of Ukraine to veto the changes to the Law "On freedom of conscience" http://vrciro.org.ua/index.php?option=com_content&task=view&id=186&Itemid=1. See also: Public council of the Ministry of Culture proposes "one step" religious organizations; registration. http://www.irs.in.ua/index.php?option=com_content&view=article&id=1084%3A1&catid=34%3Aua&Itemid=61&lang=uk, All-Ukrainian Churches' council calls for non-complication of the registration procedure May18, 2012 http://www.irs.in.ua/index.php?option=com_content&view=article&id=1053%3A1&catid=34%3Aua&Itemid=61&lang=uk.

[13] President requests immediate changes to the Law "On freedom of conscience and religious organizations" to enhance the freedom of religion http://www.president.gov.ua/news/26318.html.

grounds, boundaries and ways of power intervention into religious organizations' operation. It is contrary to the international standards, and may have long-term negative impact.

Amendments to Article 30 of the Law delegated the authority of granting approvals for preaching or other canonical activity, religious services conducted by foreign priests, preachers, mentors, other members of foreign religious organizations, to the Ministry of Culture. It creates further contradictions in the acts regulating operation of foreign priests, teachers and students of religious schools, volunteers etc.

Besides the legislative changes retain the licensing order for peaceful gatherings of believers and religious organizations (Article 21.5 of the Law), which directly contradicts Article 39 of the Constitution of Ukraine. We want to remind here that local self-governance bodies use this provision systematically forbidding the believers to exercise their constitutional right.

Extremely active involvement of churches and religious organizations in parliamentary elections is another negative phenomenon of 2012. Before that involvement used to be less active. Under experts' assessment, it happened in all the regions of Ukraine, with churches of all denominations involved. The ways of clerical participation have become more diverse too: from giving blessings to various projects funded by the candidates to granting them religious awards, to open campaigning in the temples and at the rallies. In many cases it was not just a token participation of high clergy or abuse of sacred topics, but plain campaign held by priests of different denominations for certain candidates (predominantly for so-called "self-nominated "ones). And it was happening with complete disregard of numerous appeals of the Heads of Churches demanding the banning of these campaigns.[14]

The special Report of the US State Department assessed the freedom of religion [in Ukraine] rather positively[15]. The Report reads that religious freedom is well protected at the legislative level while the government pays due attention to it. "The government does not show any tendencies towards improvement or deterioration of situation with respect to the protection of right to religious freedom" — says the Report. However, there is a further remark to the effect that in the disputes the local level authorities sometimes take sides with specific religious communities. The problem of property restitution still exists, although it is eventually being resolved by turning communal property to the religious organizations' ownership.[16]

The issues of religion-based discrimination still remain crucial, but the majority would accept this situation as far as it concerns public life only. Especially, if one takes into account the complete absence of legal tools of fighting the discrimination.

Religious network in Ukraine[17] as of January 1, 2012 is represented by 55 confessions with 36 500 religious organizations (35 861religious organizations last year), including

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[14] Battle is done, or what damage campaigning priests can cause … // RISU, November 1, 2012 року, http://risu.org.ua/ua/index/editorial_column/50089/

[15] "International Religious Freedom Report for 2011", Bureau of Democracy, Human Rights and Labor, US Department of State, USA, http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dlid=192873

[16] See also Ukrainian translation http://risu.org.ua/ua/index/all_news/ukraine_and_world/international_relations/49072/; http://www.irs.in.ua/index.php?option=com_content&view=article&id=1103%3A1&catid=34%3Aua&Itemid=61&lang=uk

[17] See more: Informational Report of the Ministry of Culture of Ukraine on situation and tendencies of development for religion and state-confessional relations in Ukraine (for 2011), http://www.irs.in.ua/index.php?option=com_content&view=article&id=1034%3A1&catid=51%3Astats&Itemid=79&lang=uk. See also Religious organizations in Ukraine (as of January 1, 2012 p) http://risu.org.ua/ua/index/resourses/statistics/ukr2012/47891/.

85 centers and 290 departments), 35 013 religious communities (with 30 880clergymen in charge), 471 monasteries (with 6769 monks), 360 missions, 80 fraternities, 201 religious schools (with 1975 students), 12 899 Sunday schools. More and more printed materials are published by the churches' media; currently they amount to 390 titles.

Confessional division of the religious organizations shows that Orthodox religion is predominant in Ukraine — 18 279 parishes (52.2% of total number of religious centers in the country) as opposed to 17 071 (51.6%) as of January 1, 2009. At the same time, their share in the total number shows a tendency to decrease, while the increase in the number of religious communities is lesser than all-Ukrainian indicator. The Ukrainian Orthodox Church is the most numerous among the Orthodox churches; its network covers 67.5% of the Orthodox communities in the country.

As of January 1, 2012 the religious organizations use 23 495 temples and prayer houses. In response to the parishioners' request 234 churches and prayer houses were transferred to the religious organizations for ownership and use in 2011. 300 houses of worship were built in 2011 with the help of local executive power bodies, local self-governments and off-budget funds. Over this period of time the major religious organizations have built respectively: UOC — 138 churches, UGCC — 72, UOC KP — 39, all-Ukrainian Council of Evangelical Baptists' Churches — 5, the Union of Churches of Evangelical Christians in Ukraine — 6, UAOC — 8 houses of worship. Besides, religious organizations use 6791 rented premises and 971 former churches. Religious organizations satisfy their needs for houses of worship by 66.1%., including Trans-Carpathian (Hungarian) reformist church — 93%, UOC — 84.6%, RCC — 90.4%, UGCC– 76.9%, Church of the Seventh Day Adventists — 64.3%, all-Ukrainian Council of Evangelical Baptists' Churches — 68.5%, the Union of Churches of Evangelical Christians in Ukraine — 64.7%, UOC KP — 64.5%, UAOC — 59.7%, Jewish organizations — 48.2%, Moslems — 26.7%. Religious communities received 338 places of worship for common use.

2. FREEDOM TO PRACTICE RELIGION OR FAITH

2.1. Formation and operation of the religious organizations

The old issue of religious organizations' registration still remains unsolved. On the average the registration of the organizations' bylaws takes from 9 to 18 months. The procedure violates the European standards in many aspects; it is very bureaucratic and not clearly defined. Nevertheless, the religious organizations accept it, because after the registration there is practically no control over their operation as long as it does not involve foreign nationals.

In our earlier reports we deliberated a lot on the legislative provisions with respect to the registration of religious organizations. No significant changes occurred in 2012, so our earlier assessment of the situation still applies. The only difference is the double registration enforced in December 2012.

The Ministry of Culture of Ukraine approved the Standard for administrative services, i. e. the registration of the religious organizations' bylaws (statute) and amendments to them. Respective Order No. 366 of April 18, 2012 was registered in the Ministry of Justice on August 22.[18]

[18] Available here: http://zakon2.rada.gov.ua/laws/show/z1415-12

The scientologists' communities for a long time were refused registration without any justification. They function unregistered since 2002. In 2009-2011 these communities appealed to the court seeking the cancellation of refusals. Their appeal was satisfied, but on June 25, 2011 Kyiv Municipal State Administration once again refused to register the bylaws of the "Kyiv Church of Scientology" in Dniprovsky district. The community appealed this refusal. On February 22, 2012 the Circuit Administrative Court of the City of Kyiv[19] classified the refusal to register the bylaws as illegal and ordered another review of the documents submitted for registration. The Court decision read "*First of all, neither the appealed State Administration instruction, nor aforementioned conclusion of the State Committee of Ukraine on nationalities and religions No. 7/4-13-85 of July 27, 2011, nor any other case-related materials provide any clarification as to what bylaws provisions of the "Kyiv Church of Scientology" are contrary to the Law of Ukraine. At the court hearing the respondents' representatives also failed to quote such [bylaws] provisions. Therefore, the respondents' claim that the provisions of the bylaws of "Kyiv Church of Scientology" in Dniprovsky district, submitted for registration, are contrary to the Law of Ukraine have no merit for the court*". On September 27, 2012 this decision was supported by Kyiv Appellate Administrative Court[20]. The Highest Administrative Court of Ukraine instigated the cassation proceedings on October 19, 2012.

On June 23, 2012 Ternopyl Circuit Administrative Court recognized the actions of Ternopyl oblast' State Administration, i. e. its failure to respond to the bylaws' registration request submitted by a religious organization "Christian religious community" Ternopyl Church of Jesus Christ" as illegal and ordered the reconsideration of the documents for the further decision compliant with law in force.[21]

Granting religious organization the status of non-profit organization is an important part of registration, as it exempts it from income taxes, in particular, on voluntary donations — the main source of subsistence for almost all religious organizations. Despite provisions of Article 18 of the Law "On freedom of conscience and religious organizations" stipulating that "monetary and property donations, as well as other incomes of the religious organizations are not subject to taxation", in fact the religious organizations cannot enjoy this benefit without tax service's decision on including it into the Registry of non-profit institutions and organizations.

Having acquired the status of legal entity by going through *double registration* procedure, the religious organization has to submit its bylaws to the State Tax Service of Ukraine to be registered as non-profit organization and entered into the Registry of non-profit institutions and organizations under the order established by the Order of the State Tax Inspection of Ukraine No. 37 "On Approving the Provisions on the Registry of non-profit institutions and organizations" of January 24, 2011.

The State Tax Service often refuses to grant the status of non-profit to a religious organization and include it into the Registry of non-profit institutions and organizations on formal and unjustified pretexts.

In practice religious organizations end up in the situation when taxation bodies request that they introduce changes into their statutory documents (thus pushing them towards dou-

[19] Court decision is available here:: http://www.reyestr.court.gov.ua/Review/22117601

[20] Court decision is available here:: http://www.reyestr.court.gov.ua/Review/26347497

[21] Court decision is available here:; http://www.reyestr.court.gov.ua/Review/25578557

ble registration) without which, according to them, the non-profit status cannot be granted. To give just one example, the taxation bodies contest the notion of "dissemination of religious literature" and "promotion of religious values and books through advertising" etc.

2.2. Organization and conducting of religious peaceful gatherings

The Law on freedom of conscience and religious organizations, in violation of Article 39 of the Constitution, establishes the licensing order for religious peaceful gatherings. In fact public religious peaceful gatherings face even more obstacles, based on discrimination, intolerance or arbitrary interpretation of the law.

Over the year 2012 the draft law on freedom of peaceful gatherings was prepared for the second reading in parliament. Its authors, however, stated that this law cannot be applied to religious organizations. The transitory provisions, however, envisage changes to the law on freedom of conscience and religious organizations aimed at abolishing the licensing order for peaceful gatherings of religious organizations and their holding under general order. If adopted these amendments would signify a serious progress in this matter.

On August 1, 2012 the court of Dzerzhinsky district in Kharkiv found four individuals guilty of administrative infringement under Article 185-1 of the Code of administrative infringements (breach of the peaceful gatherings' order)[22]. In the course of court hearing they refused to plead guilty, clarifying that on July 20, 2012 they were just playing Hindu musical instruments and praising God at "Sarzhyn Yar" site. They also stated that they had submitted notification, but militia officials had approached them, informed them that they had no right to do that and had written a protocol. The court ruled that the actions of the individuals *violated Article 185-1, part. 1 of the Code of administrative infringements, as the case materials show that although the notification on religious meeting with incantations of holy names has been submitted by the organizers on 16.07.2012, the permit for the meeting was not granted ten days before the event, as stipulated by the Law of Ukraine "On freedom of conscience and religious organizations; therefore, the judge qualifies the actions of the culprits as violations under 185-1, part 1 of the Code of administrative infringements.* The court, however, only issued an oral warning and closed the case. As far as we know, this decision was not appealed in court.

On May 30, 2012 the Church of Grace under the all-Ukrainian Council of Evangelical Baptists was forbidden from holding educational/recreation event for children "The Happy Playground" by the Sumy executive committee. The organizers tried to hold the event without permit, with the resulting conflict between the Baptists, on the one side, and the priests, the activists of UOC (MP) and bureaucrats — on the other. The Baptists stressed that under Article 23 of the Law "On freedom of conscience and religious organizations" they have the right to conduct cultural and educational activities without any permits. Their opponents claim that they had violated the prohibition issued by the executive committee, and the volunteers' actions can be only qualified as children's recruitment to a religious organization.[23]

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[22] See court rulings here: http://www.reyestr.court.gov.ua/Review/25524537, http://www.reyestr.court.gov.ua/Review/25524364, http://www.reyestr.court.gov.ua/Review/25524340, http://www.reyestr.court.gov.ua/Review/25547748

[23] Sumy bureaucrats and UOC MP activists prevented Baptists from organizing a children's party // RISU, http://risu.org.ua/ua/index/all_news/community/freedom_of_conscience/48275/

On July 19, 2012 the court of Zarichny district (city of Sumy) passed a ruling on the claim filed by a religious community of the Jehovah's witnesses "Sumy-South" against the executive committee of Sumy city council. This ruling canceled the executive committee decision to ban public religious services on July 20, 21, 22, 2012 at the "Yuvileyny" stadium (city of Sumy, Gagarin str.9). Referring to the practice of the European Court on Human Rights, the court in its ruling stated that the executive committee in its decision provided no grounds justifying the decision.[24]

2.3. Rights of foreign nationals and stateless persons

The legislation keeps restricting the freedom of religion for the foreign nationals and stateless persons. The restrictions imply the impossibility to set up religious organizations and preach or conduct other religious activities. These restrictions apply even to persons permanently residing in Ukraine. The foreign nationals are allowed to preach exclusively on official invitation from a registered religious organization (although the registration is not compulsory) and permit from the official bodies of power in charge of religious matters. Lack of permit entails administrative liability for the foreign nationals (i. e. fines), and warning with possible subsequent coercive disbanding — for the religious organizations.

We believe that the requirement of official permit for the foreign national is a redundant discriminatory measure. In order to eliminate potential public threat it would be enough for a foreign national to have an official invitation from a registered religious organization. In the process of registration the authorized bodies can verify the religious doctrine, and later, exercise control over the religious organization's operation. Hence, a foreigner coming to proselytize the same religion does not pose a direct threat to the public interests, and the obstacles are unjustified in a democratic society.

However, the situation with seeking approval for religious activity has only been deteriorating, especially over the last two years.

The Ministry of Culture of Ukraine introduced an unofficial practice of 30-days' term for the consideration of the religious organizations' petitions requesting the permits for the foreign clergy to practice their religion in Ukraine.

Such a long term for acquiring permit for religious activity violates the right to freedom of religion and complicates international ties and relations between the religious organizations, guaranteed by Article 24 of the Law "On freedom of conscience and religious organizations".

The Ministry of Culture of Ukraine also introduced the practice of *two-stage approval* of the religious operation for foreign nationals staying in Ukraine for prolonged periods of time. For justification, the officials refer to the provisions of Article 4.6 and Article 5.6 of the Law "On legal status of the foreign nationals and stateless persons". In actual life, it happens as follows:

1) first, the Ministry of Culture officials request that the inviting organization submits a document on "*issuance of type "D" visa"*(valid for 45 days and needed exclusively to apply for temporary stay in Ukraine) with the copy of the foreigner's passport;

2) next, after the foreigner's arrival to Ukraine, the officials of the Ministry of Culture request that a religious organization submits another petition seeking the document certifying

[24] Court decision is available here: http://www.reyestr.court.gov.ua/Review/25378206

foreigner's temporary stay in Ukraine with the copy of the foreigner's passport with"D"visa and stamp of arrival in it.

It is noteworthy that two-stage procedure for approving religious activity of foreigners in Ukraine is not directly required by the Law "On legal status of the foreign nationals and stateless persons". It was introduced by the Ministry of Culture as the body in charge of religious matters.

So, the regulation of the religious activity of foreigners and stateless persons in Ukraine, stipulated by Article 24.4 of the Law "On freedom of conscience and religious organizations" was arbitrarily transformed by the Ministry of Culture into highly bureaucratized complicated procedure, which testifies to the deterioration of administrative practice in this area, leading to the restrictions of rights of the foreign nationals and stateless persons to practice religion in Ukraine. It also caused complications in the relations between Ukrainian religious organizations and their foreign counterparts. Oddly enough, it is the Ministry's of Culture responsibility to provide support to the religious organizations in the international religious movements and business contacts under Article 30 of the Law "On freedom of conscience and religious organizations" and the Ministry of Culture Regulations.

Paragraph 10 of the procedure for registration, issuance and delivery of the certificate on temporary stay, approved by the Cabinet of Ministers' of Ukraine Resolution No. 251, of March 28, 2012, establishes the term of validity for one year only. It means that foreigners, including the clergy, have to apply for the renewal of their permit on annual basis.

This innovation narrows the scope of rights for the foreigners who earlier could obtain a certificate for temporary stay valid for up to three years, under the Cabinet of Ministers' of Ukraine ResolutionNo. 811 of August 5, 2009.

Due to this policy the number of foreign clergymen invited by the religious organizations decreased dramatically. In У 2011 Ukraine was visited by 6 176 of foreign nationals (in 2010 –by 6 930). The State Committee on nationalities and religions, and, eventually, the Ministry of Culture issued permits for 2272 for the foreign nationals (in 2010 the official body in charge of religious matters issued permits for religious and other canonical activities to 2675foreigners). The structural subdivisions of the state administration in charge of religious matters certified invitations for 3904 clergymen (in 2010 — for 4255). Among the visitors there were 2263 (2249) American citizens, 1181 (1385) citizens of Israel; 784 (925) Polish citizens, 276 (358) Asian nationals, 191 (269) Africans; 191 (197) –German citizens; 172 (136) Turkish citizens, and 578 (825) other countries' nationals.[25]

3. THE STATE AND RELIGIOUS ORGANIZATIONS: PRINCIPLES OF NON-EQUALIZATION AND NEUTRALITY

Adherence to these principles is one of the crucial issues in the administrative practice of power bodies, which is often based on the support of the religion, predominant in the area, and discrimination of religious minorities. First of all, it is due to the fact that the power bod-

[25] See more: Informational Report of the Ministry of Culture of Ukraine on situation and tendencies of development for religion and state-confessional relations in Ukraine (for 2011) http://www.irs.in.ua/index.php?option=com_content&view=article&id=1034%3A1&catid=51%3Astats&Itemid=79&lang=uk.

ies struggling for their electorate traditionally manifest their support of the predominant religions. Apparently this patronage implies indirectly that the organizations of predominant religions have mores rights.

This phenomenon is vividly manifested in property matters, and, in particular, allotment of land plots for the construction of churches or restitution of the church property confiscated by the soviet power. In addressing these issues the authorities' preferences are implemented in practice. Positive decisions are made, with insignificant exceptions, for the benefit of the organizations representing predominant religions. It is noteworthy that religious organizations most widely spread in a given territory (oblast') are considered predominant in this context. Their affiliations can differ from one oblast' to another, but mostly they are under UOC MP or UOC KP.

As a result some religious organizations can get land plots for the construction of their churches, while the other cannot. In some cases, which become more and more frequent, UOC MP simply seizes land plots for the construction of their churches without any legal grounds or documents. The authorities fail to react to such illegal actions.

In March 2012 100 famous Ukrainians in Crimea appealed to the President of Ukraine Yanukovich asking him to protect Ukrainian population of the peninsula from religious discrimination. Archbishop of UOC KP for Simferopol and Crimea the Reverend Kliment said that both he and his parishioners were shocked to learn that Simferopol city council refused to allot a land plot for the construction of Christ the Savior Cathedral in Simferopol (Decision of February 16, 2012). According to him, 2008 city council members gave their consent for the allotment. In some years the Eparchial Department prepared the feasibility study and cathedral blueprint, spending a lot of money in the process. Finally, in February 2010 the clergymen received the Act on allotment of the land plot and approval of all the documentation by all the agencies and authorities under the Ukrainian legislation in force.[26] It was only on July 3, 2012 that the municipal authorities allotted about 0.49 ha for the construction of Christ the Savior Cathedral. For the first time in 15 years this church was allotted a land plot for the construction of a house of worship in Crimea .[27]

In July 2012 the Synod of UOC KP asked V. Yanukovich to resolve the situation in Donetsk oblast', namely the biased treatment of Kyiv Patriarchate by municipal authorities. The Episcopate reminded that the attempts to seize the Ascension Cathedral in the village of Kamyanka Telman rayon Donetsk oblast' have been going on for two years. In contempt of the Decision of the Highest Administrative Court of Ukraine of 2011 establishing the legality of the Instruction issued by the Head of Donetsk oblast' administration in 1996 with regards to the transfer of the dilapidated church to the religious community of Kyiv Patriarchate, another court hearing on the same case was set up with the direct and indirect bureaucratic support with the goal of obtaining the court ruling in favor of the Moscow Patriarchate followers. On July 17, 2012 Donetsk Circuit Administrative Court reconsidered the case and took the church away from the parishioners.[28] On September 13, 2012 Donetsk Appellate Administrative Court de-

[26] Ukrainians in the Crimea protest against religious discrimination Radio Svoboda, March 9, 2012 http://www.radiosvoboda.org/content/article/24510699.html.

[27] Kyiv Patriarchate in the Crimea obtained a land plot for the house of worship // BBC Ukraine, July 3, 2012. http://www.bbc.co.uk/ukrainian/entertainment/2012/07/120703_church_orthodox_crimea_ko.shtml.

28 Court decision is available here:: http://www.reyestr.court.gov.ua/Review/25365569.

clined the appeal of the decision submitted by the parishioners.[29] As far back as March 2012 in spite of the Decision of the Highest Administrative Court of Ukraine, which assigned the church to the community, the municipal power suggested a joint service with UOC MP followers.[30] The UOC KP Synod also complained that after 2010 many patrons, who used to support the church, stopped doing it claiming that they do not want to "get into trouble with authorities because of their support of Kyiv Patriarchate". " These facts reflect only a small portion of the problems which Donetsk eparchy of UOC KP, the clergy and believers face on everyday basis, due to the biased attitude demonstrated by many municipal officials in Donetsk oblast'. This prejudiced treatment of UOC under Kyiv Patriarchate is happening at the background of systematic and full-scope support for the Moscow patriarchate in Donbass region. This is a violation of the constitutional principle of the equality of all confessions in the face of the law and equal treatment of different Churches by the state" — reads the UOC KP appeal.[31]

In 2012 the Catholics of Sebastopol still did not get back the former St. Clement church. The building is currently a communal property and served for a long time as children's movie-house "Druzhba". Currently it is vacant and in dilapidated condition. "There are no grounds to transfer an historical building in the city center to the Catholics' ownership, as the Catholicism always fought against the Orthodoxy" — stated a member of "Sebastopol Communists" fraction in the city council A. Maltsev. The Roman-Catholic community informed that they were offered wither to buy the building or to build a new one. On April, 2012 over 100 Sebastopol Catholics attended the Easter Mass in front of the church building.[32]

4. RECOMMENDATIONS

1. The Ukrainian legislation should be harmonized with the requirements of Articles 9 and 11 of the European Convention on the protection of human rights and fundamental freedoms in consistency with judicial practice of the European Court on human rights. The Guiding Principles for the analysis of legislation on religion or faith, approved by OSCT Parliamentary Assembly and Venetian Commission in 2004[33] would be instrumental in the process.

2. In order to eliminate the discriminatory administrative practices and conflicts between confessions prйcised legal norms on grounds, procedures and timeframes for the restitution of the church property should be devised. A detailed plan for the restitution of the church property with specified procedures and timeframes for each church would also be helpful. If the restitution of the church property is not feasible, certain compensation for the construction of new churches or allotment of new land plots should be provided for.

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29 Court decision is available here:: http://www.reyestr.court.gov.ua/Review/26063762.

30 Donetsk oblast' state administration gets involved in the conflict around Ascension Cathedral // RISU, March 6,2012 http://risu.org.ua/ua/index/all_news/community/land_and_property_problems/47156/.

31 See more: Appeal of the UOC KP Holy Synod re violation of the believers' rights in Donetsk region. // RISU, http://risu.org.ua/ua/index/resourses/church_doc/uockp_doc/49002/; UOC KP filed complaint to Yanukovich against his compatriots, RISU, http://risu.org.ua/ua/index/all_news/state/church_state_relations/49003/.

32 Sebastopol Catholics held Easter service in front of the cathedral, which was never restituted to them. http://risu.org.ua/ua/index/all_news/community/land_and_property_problems/47701/.

33 Freedom of religion and faith in Ukraine in the context of adherence to the European standards/ Ed. By V. Yavorsky/ UHUHR, Center for political and legal research "SIM" Kharkiv, Folio, 2005. Available on UHUHR web-site: http://www.helsinki.org.ua/index.php?id=1137518398.

3. Local self-governance bodies should revise their legal acts which contain discriminatory provisions and additional restrictions of the right to the freedom of faith, peaceful gatherings, lease of premises, land plots' allotment and restitution of the church property, not stipulated by the law. Clear legal principles of allotment land plots for the construction of houses of worship should be devised.

4. The obligatory procedure for official approval of foreigners' activity including preaching, religious teaching, performing religious rites or other canonical activities, should be cancelled (Article 24.4 of the Law of Ukraine "On freedom of conscience and religious organizations"). The invitation from a legitimate religious organizations whose dogmas have been approved by the state expertise, should suffice for the said activities of the foreign nationals in Ukraine. Two-stage registration procedure for the foreigners staying in Ukraine temporarily should be eliminated, while the term for registration should be shortened as currently it contradicts the law in force.

5. The Cabinet of Ministers of Ukraine should oblige the Ministry of Interior, the Ministry of Foreign Affairs and other central power bodies to develop the set of changes to the Cabinet of Ministers 'of Ukraine Resolution No. 25 of 28.03.2012. The representatives of the all-Ukrainian Council of Churches and religious organizations should be involved in the process. The goal of these changes would be extending the term of legal temporary stay in Ukraine for the clergymen-foreign nationals, in conformity with the term stated in the invitation and not exceeding 3 years.

6. State tax service of Ukraine, together with the representatives of the all-Ukrainian Council of Churches and religious organizations should devise the changes to the Regulation on the Registry of non-profit institutions and organizations, approved by the Order of the State Tax Administration of Ukraine No. 37 of 24.01.2011, with the goal of simplifying the procedure of granting the status of non-profit to the religious organizations, specifically, by their automatic inclusion into the Registry of non-profit institutions and organizations, and clearly defining the grounds for the exclusion of a religious organization from this Registry, in particular, if the said organization conducts entrepreneurial activity.

VIII. FREEDOM OF EXPRESSION[1]

1. OVERVIEW

The main challenges to freedom of opinion, speech and mass media (the media) in 2012 included the legislative initiatives of people's deputies, electoral campaign, establishment of final television space monopoly for at the local level and pressure on independent media by the tax authorities and prosecutors. According to experts, the lack of media market in Ukraine and, therefore, the dependence of journalists on media owners also has a dramatic negative impact on media freedom in Ukraine. The negative trends of 2011 persist as well: obstructing journalists performing their professional duties, spread of self-censorship, conflicts around the redistribution of broadcasting market, and more.

2. FREEDOM OF SPEECH AND LEGISLATIVE INITIATIVES

In 2012, the Verkhovna Rada of Ukraine didn't preoccupy itself with establishing greater legal safeguards for freedom of expression and freedom of the media; in particular, it didn't get moving the process of adoption of a law on public broadcasting, protection of professional journalists, etc. The attempt to stop the activities of the National Expert Commission for the Protection of Public Morals, activities of which in itself was a violation of Article 34 of the Constitution of Ukraine, by the way of adoption of a law ended in failure. Moreover, the threat to freedom of expression was created by legislative initiatives of Verkhovna Rada of Ukraine. It includes, in particular, the attempts of the Verkhovna Rada of Ukraine to adopt: 1) the bill on amendments to the Criminal Code and Criminal Procedure Code of Ukraine to strengthen responsibility for attacks on the honor, dignity and business reputation of the person from 19.07.2012 No. 11013; 2) Bill amending some legislative acts (on protection of children's rights to secure information space) from 20.06.2011 No. 8711; and 3) Bill on the ban of children-targeted promotion of homosexuality from 30.03.2012 No. 10290.

Adoption of the bill on establishing criminal liability for defamation could, according to experts, become a serious challenge to freedom of expression in Ukraine, because it would entail prosecution of independent journalists, who exposed the abuses of power, and, consequently, increased self-censorship. Today, thanks to solidarity of civil society and the media environment it became possible to make the Verkhovna Rada of Ukraine to refuse to adopt the law. The Bills No. 8711 and No. 10290 were no less threatening to freedom of expres-

[1] Prepared by Oksana Nesterenko, Expert of the Kharkiv Human Rights Protection Group on freedom of expression of views.

sion. However, if the bill No. 10290 was withdrawn, the bill No. 8711 was approved despite the collective appeals from civil society and international experts with the requirement to abandon its approval.

The only positive development in 2012 in the legislative activity of the Verkhovna Rada of Ukraine in the regulation of the media was working on a new version of the Law of Ukraine "On Television and Broadcasting"[2] which should create more guarantees for audiovisual media and by introducing an auction make the process to obtain a license for broadcasting channels more transparent and less corrupt, respectively.

3. THE RIGHTS OF JOURNALISTS AND THE MEDIA

in 2012, the Mass Media Institute recorded 65 cases of using physical force against journalists during discharge of their professional duties[3], which means 40 cases more (approximately two and a half times more) than the "Reporters without Borders" registered in Ukraine in 2011; according to MMI, 33 attacks[4] were committed for political motives[5]. According to a survey by the Mass Media Institute, the biggest splash of violations occurred during the election campaign. One of the main motivations of attacks on journalists is also their coverage of topics that expose corruption and fraud. For example, on September 26, 2012 journalist Dmitry Volkov, television program "Hroshi", was assaulted, when he returned home from work. Since, according to the journalist, one of the attackers shouted "you dig it and we make short work on you"[6], there was every reason to believe that the attack was committed with regard to professional activity of the journalist, particularly in the investigation of land issues in Kyiv. Another example: the beating of the journalists of the "Road Control" during shooting of the illegal activity of private car-park[7].

The check-ups by tax inspectorate and prosecutor's office became another tool that was actively used to suppress the media, which, despite all adverse conditions, retain their independence from government. The TVi case became the most vivid example. The pressure that TVi experienced during 2011 continued last year, only the instrument changed: the main leverage intended to stop the activities of TVi consisted in a series of check-ups by the tax authorities in violation of tax laws. The "Ukrainian Week" also informed about pressure after the World Newspaper Congress and World Editors Forum in Kyiv. However, unlike the history with TVi, the pressure was imposed by blocking its access to its readers[8].

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[2] The first text of the new Law on Television http://www.telekritika.ua/official-documents/2012-12-03/77171

[3] Chulivska I. The journalists were beaten 65 times in 2012 http://imi.org.ua/content/65-raziv-pobili-zhurnalistiv-u-2012-rotsi

[4] Quoted after Yakubets N. Beaten, but consolidated http://www.telekritika.ua/expert/2012-01-06/68492

[5] Chulivska I. Journalists were beaten 65 times in 2012 http://imi.org.ua/content/65-raziv-pobili-zhurnalistiv-u-2012-rotsi

[6] Barkar D. Journalists beaten again, and independent media thrown out of the media market http://radiosvoboda.org/content/article/24722200.html

[7] The goon squad beats journalist during filming? http://www.pravda.com.ua/news/2012/11/27/6978261/

[8] "Ukrainian Week" confirms the pressure after the World Newspaper Congress http://www.telekritika.ua/news/2012-09-27/75432

The journalistic movement "Stop Censorship" told about the danger of introducing internal censorship in UNIAN, one of the most influential news agencies of Ukraine. In particular, it is a fact that the leadership of the UNIAN agency established a ban on putting online on UNIAN's site the names of Viktor Yanukovych, Azarov and Volodymyr Lytvyn in a negative context and site editors were obliged to coordinate all news with these names with the administration. The item of news titled "Bankova picket: shoes with a Christmas tree brought to Yanukovych," which appeared on the agency's website on October 26, was immediately removed. Then two site editors — Liubov Zhalovaha and Valentyna Romanenko — were informed that they would be fined UAH200 each for mentioning the names of the President in a negative context[9]. The journalists of television channels, especially news channels, also spoke on censorship.

In general, the study of the situation with ensuring media's freedom and journalists' rights in Ukraine in 2012 shows the following trends:

1) the number of violations of journalists' rights indicates the absence for the last ten years of progress and even the existence of serious setbacks in the area of securing the rights of journalists in Ukraine, and demonstrates the dangerous tendency to collapse of democracy in Ukraine. This means that there were no real legislative reforms aimed at strengthening the guarantees of freedom of speech and, in particular, to guarantee the rights of journalists, lack of an independent judicial authority as a reliable guarantee of freedom of expression and protection of journalists;

2) the interconnectedness of phenomena such as violations of journalists' rights and political situation in the country. In other words, the curbing of violations of journalists' rights in Ukraine is directly proportional to the level of respect for media freedom on the part of political party in office, that is, in Ukraine the views of the dominant political forces have a greater impact on all spheres of public life than the law, which is the traditional instrument of regulation of social relations in the established democracies;

3) Despite all the pessimistic predictions concerning the fact that the Ukrainian media have ceased to be "watchdogs of democracy", the available results suggest that the Ukrainian journalists continue to play a significant role in social life, expose corruption and abuse of power, cover uncomfortable issues for the administrators, moreover, the audience listens to their opinions, because only a strong opponent is worth to be suppressed. The proof of this is in the fact that most violations of journalists' rights happen precisely during electioneering;

4) Unfortunately, Article 15 of the Constitution of Ukraine is still nothing but fine words, which for the last decade have failed to become fully a part of the culture of communication among adherents of different viewpoints in Ukrainian society. This, in particular, shows the inability of the authorities to take criticism.

4. FREEDOM OF SPEECH AND MEDIA DURING THE ELECTIONEERING

In 2012, the elections put to the test the media before the start of electioneering; the independent TV and radio broadcasting companies, urban media journalists, editors, which showed professionalism, fully felt the pressure. Thus, during the election campaign, the Mass

[9] "Stop Censorship" informs about systematic censorship in Ukraine, for example UNIAN http://www.telekritika.ua/news_cenzura/2012-10-29/76336

Media Institute recorded an increase in violations of journalists' rights. During the period from July 30 to October 31 the experts of the Mass Media Institute found 185 violations, of which 115 were directly connected with the parliamentary elections and / or were practiced by the candidates[10]. Among the most common violation during this period the experts named obstruction of journalists to perform their professional duties — 98 cases. It was followed by beating of journalists — 37 cases, and, the third from the top — 32 lawsuits against mass media[11].

One of the most common ways of pressure on journalists and the media during this campaign was actions filed against the media demanding to ban the latter for the period of election campaign. In particular, due to claims of parliamentary candidates the court forbade the publication of newspapers "Osobysty Pohliad"[12], "Molodohvardeyets"[13], "Nash vybir" until the end of the elections. The second top example includes five claims of one nominee against several media; however, he had lost all lawsuits.

Another example of the use of the judicial authorities as an instrument of pressure on journalists was the civil complaint of nominee (now people's deputy) Yuliy Yoffe against the editor of the "Tretiy Sector" Oleksiy Svietikov concerning the protection of honor and dignity, and recover of moral damages. Yoffe said that the defendant, who had posted on the website of NGO "Committee of Voters of Ukraine" his article "Majority system once again", wrote that Yuliy Yoffe was a member of political group of Firtash-Liovochkin thereby discrediting him and inflicting moral damage worth one million hryvnias. According to the Council of Kharkiv human rights protection group, the "apparent discrepancy of claims for moral damage suggested that the lawsuit was actually filed to protect the honor and dignity, but to "retouch" the critical position of the defendant and make it look more loyal. This powerful tool of pressure on people, who express independent views, was widespread in Ukraine in the late nineties. The lawsuit of people's deputy from the Party of Regions Yuliy Yoffe against Oleksiy Svietikov may indicate that in Ukraine pressure on society is increasing, the purpose of which is to limit freedom of expression."[14]

5. RESTRICTIONS ON FREEDOM OF EXPRESSION OVER PUBLIC MORALITY

The first event in 2012, which showed a lack of understanding in the Ukrainian society for values of the freedom of expression, particularly in the fine art, was the closure of the exhibition "Ukrainian body" at the Center for Visual Culture at the Kyiv-Mohyla Academy,

[10] Election 2012: three months — 185 cases of violations of journalists' rights http://imi.org.ua/content/vibori-2012-za-tri-misyatsi — 185-vipadkiv-porushen-prav-zhurnalistiv-0

[11] Election 2012: three months — 185 cases of violations of journalists' rights http://imi.org.ua/content/vibori-2012-za-tri-misyatsi — 185-vipadkiv-porushen-prav-zhurnalistiv-0

[12] Due to the action filed by the deputy the court suspended the newspaper "Osobysty Pohliad" until after the electionshttp://vybory.mediasapiens.ua/2012/08/31/cherez-pozov-deputata-sud-zupynyv-vypusk-hazety-osobystyj-pohlyad-do-zavershennya-vyboriv/

[13] PR candidate managed to ban the publication of "Molodohvardeyets" http://imi.org.ua

[14] As regards the claim of people's deputy of Ukraine Yuliy Yoffe to human rights activist and journalist Olexiy Svietikov http://www.khpg.org/index.php?id=1355779266

which was perceived by artistic coterie, as a manifestation of censorship, while the administration of the academy treated these art works as "promotion of pornography"[15]. However, the signs of pressure on the freedom of expression over public morality was less obvious, as well as the activity of the National Expert Commission of Ukraine on Protection of Public Morals in 2012 than a year earlier. Major scandal involving this commission was its statement about the need to check if cartoons "Masha and the Bear," "Cinderella," "Beauty and the Beast," "The Lion King," "The Jungle Book," "Sambo," "101 Dalmatians," " Pinnokio", "Shrek "," Luntyk" "Teletubbies", "Pokemon", "The Simpsons" and other threaten children, because the secure information environment for children is extremely important for the National Commission on Morals[16]. However, this was nothing but hullabaloo on the official website, although the existence of the National Expert Commission of Ukraine on Protection of Public Morality remains a serious threat to freedom of expression in Ukraine.

Next the National Expert Commission of Ukraine on Protection of Public Morals in 2012 set about the computer games Manhunt II, Mortal Combat, God of War III, which, according to the latter, violated the Law of Ukraine "On Protection of Public Morals" and should be banned.

6. RECOMMENDATIONS

1. Delete the word-combination "information security" from the first part of Article 17 of the Constitution of Ukraine.

2. To amend the electoral legislation of Ukraine regarding regulation of the media during the election process.

3. Decriminalize the acts under Article 301 and 338 of the Criminal Code of Ukraine. These articles of the Criminal Code of Ukraine provide for criminal liability for "desecration of the state symbols of Ukraine" (Article 301) and "the spread of items, images, works of pornographic nature" (Article 338).

4. Repeal the Law of Ukraine "On protection of public morals." Liquidate the National Expert Commission of Ukraine on Protection of Public Morals. Amend the Law of Ukraine "On Television and Radio", and in this connection to replace open tenders with open auctions for broadcasting licenses associated with the use of frequency resources, as well as broadcast on free channels of multichannel networks.

5. Amend the Law of Ukraine "On Television and Radio" and in this connection to replace open tenders with open auctions for broadcasting licenses associated with the use of frequency resources, as well as broadcast on free channels of multichannel networks

6. Adopt the Law "On privatization of the media in Ukraine", which shall provide for a program to reform state and municipal media by changing their management and financing in accordance with the recommendations of the Council of Europe and OSCE.

7. Repeal the laws "On the coverage of functioning of the state and local governments in Ukraine by mass media" and "On state support of mass media and social protection of

[15] Kapliuk K. "Ukrainian Body" locked down http://www.dw.de/українське-тіло-закрили-на-ключ/a-15745037

[16] Decision No. 2 dated September 6, 2012 // http://www.moral.gov.ua/solutions/372

journalists", and provide for cancellation of certain benefits for public media journalists and equalize them in rights with the journalists of private media.

8. Draft a bill on the rights of journalists, using the achievements of the State Committee for Television and Radio, and draft the bill No. 9175 dated February 27, 2006 "On the protection of the professional activities of journalists." This problem is of practical importance, because, for example, the rights of journalists working for TV and radio are not defined yet.

9. Cancel procedure permitting registration of print media that does not comply with the requirements of Article 10 of the European Convention on Human Rights and Fundamental Freedoms.

10. Amend the legislation making it possible to identify the real owner of the media, especially television and radio stations, as well as cross-ownership of print, electronic and other media to implement effective control over the concentration of media in the hands of one owner or his family, antitrust restrictions on the media market in accordance with the recommendations of the Council of Europe (for example, Recommendation No. R (94) 13), OSCE, and European Union, as well as implementation of necessary procedures intended to punish violators of the law on concentration of media.

11. Ensure quick and transparent investigation into all allegations of violence and deaths of journalists, as well as cases of interference in journalism.

12. Step up control over the use of the State Committee for Television and Radio Broadcasting through numerous cases of abuse of power by this authority. In particular, make transparent the system of ordering creation of broadcasting programs, publishing and other services with public funds. During consideration of the draft amendments to the Constitution of Ukraine to transfer the powers of this body to the National Council for Television and Radio, and then liquidate it.

13. Amend the Law on Television and Radio to bring it into conformity with the standards of the Council of Europe, OSCE and the European Union as well as the Convention on Transboundary Television recently ratified by the European Parliament.

IX. THE RIGHT OF ACCESS TO INFORMATION[1]

The analysis of the right of access to public information in 2012 indicates the absence of any progress towards greater information openness of the Ukrainian authorities, in particular, all negative trends in the observance of this law, which were described in the report for 2011 (*see*: Report of the human rights organizations. Human rights in Ukraine — 2011) were observed during 2012 as well.

Chronologically, the first event in 2012, which demonstrated the unwillingness to accept the paradigm of openness, was the decision of the Constitutional Court of Ukraine in the case of constitutional lodgment of Zhashkiv District Rada, Cherkasy Oblast, on official interpretation of the provisions of the first, second paragraphs of article 32, second and third paragraphs of article 34 of the Constitution of Ukraine" on January 20, 2012, No. 2-rp/20122[2]. Another signal that the Ukrainian government is not internally ready for more openness, despite all declarations and statements by senior government officials, was the refusal to let have the oath of the President of Ukraine by the administrative apparatus of the Verkhovna Rada of Ukraine and the Secretariat of the Constitutional Court of Ukraine. Interestingly, their reasons were different: if the Verkhovna Rada of Ukraine referred to the fact that the document contained personal data about a person, such as the signature of the President of Ukraine, the Secretariat of the Constitutional Court explained its refusal by the fact that this information was for official use only[3]. Therewith, neither the Verkhovna Rada of Ukraine, nor the Constitutional Court of Ukraine were impressed by the fact that the oath of the President of Ukraine was definitely a public event, and, accordingly, the text of the document that had been previously published was an open information. There is no need to furnish proofs that this information is of public interest and in view of part 2 of Article 6 and Article 9 of the Law of Ukraine "On access to public information" it cannot be classified as restricted information. Equally surprising is the argument that the signature of the President of Ukraine is a personal information with restricted access and therefore cannot be lent out. After all, by that logic, any instrument of any authority cannot be lent out, because it contains the signature of the official responsible, and even if we accept the logic of the administrative apparatus of the Verkhovna Rada of Ukraine, in accordance with part 7 Article 6 of the Law of Ukraine "On access to public information" it means limited access to information and not the document. Thus, under these circumstances, the administrative apparatus of the Verkhovna Rada of Ukraine had to cross out the signature of the President, if they believed that this was confidential information and lend out this document. However, earnestly, this

[1] Prepared by Oksana Nesterenko, Expert of the Kharkiv Human Rights Protection Group on freedom of expression of views.

[2] *See*: Commentary of V. Rechytsky to this Decision: http://www.khpg.org/index.php?id=1328294578

[3] Leshchenko S. Secret signature of Yanukovych // http://www.pravda.com.ua/articles/2012/07/20/6969203/view_print

situation shows lack of commitment to information transparency of the top authorities of Ukraine, and thus calls into question the existence of real democracy in Ukraine.

In turn, the Verkhovna Rada of Ukraine has not adopted the expected amendments to other laws in order to bring them into conformity with the Law of Ukraine "On access to public information" and the changes adopted, such as the Law of Ukraine "On Personal Data Protection" do not solve the existing conflicts, which certainly does not promote respect for the right of access to information. In particular, the Law of Ukraine "On Personal Data Protection" contains a norm specified by part 2 of Article 5 that "personal data, except for the impersonalized personal data, by their access mode belong to classified information." This norm does not contain the reservation as follows: except for cases specified in part 5 of article 6 of the Law of Ukraine "On access to public information" and other cases, if the information is socially necessary." There is also no provision that "the personal information associated with the performance of his/her professional duties, including education certificates, certificates and other documents proving his/her qualification, materials from personnel files relating to or connected with acts of duty (missions, awards, reprimands, etc.), and so on is not a classified information." This creates collision between the rules of law in the area of access to information and protection of personal data and is a pretext for denial of right to information in the field of management of budget funds, public and municipal property, especially plots of land, which ultimately negatively affects the transparency of public authorities and local self-government.

For example, every second refusal to provide information on the transfer of the plots of land to private persons is justified by local bodies of self-government that this information refers to information about a person and constitutes personal data. Although part 5 Article 6 of the Law of Ukraine "On access to public information" specifies that "the access to information about management of budget, possession, use or disposal of public, municipal property, including copies of relevant documents, condition of receiving these funds or property, family name, name and patronymics of physical entities names of legal entities, which have received the money or property cannot be limited."

In general, the jobbery on the protection of privacy was one of the main reasons to limit unauthorized access to information in 2012, which shows the lack of understanding of the concept of privacy by officers as such, because the main goal of protecting the right to privacy guaranteed by Article 32 of the Constitution of Ukraine is the protection of private life, which really should be protected from the looks of strangers (except for public figures, or when the disseminated information is socially necessary), but at the same time professional life, especially professional duties of officials and personnel, their qualifications, as well as documents confirming them, should not be considered confidential information about a person to which access may be restricted. Anyway, the availability of part 2 of article 5 of the Law of Ukraine "On Protection of Personal Data" is a sufficient argument for refusing to provide information about certificates that confirm the qualifications of a person. For example, the Shevchenko District Court, Zaporizhzhia, refused to provide copies of the certificate of completion by the secretary of the judicial session Petrov S. V. of training in "Technical perpetuation of trial" justifying it by the fact that this information was confidential (personal data). That's why the adjustment of the Law of Ukraine "On Protection of Personal Data" to the Law of Ukraine "On access to public information" is one of the pressing issues that are important for the improvement of the right of access to information.

Another example of mismatch of the Law of Ukraine "On access to public information" and the Law of Ukraine "On Information", which was not dealt with in 2012, is part 2 of Article 16 of the Law of Ukraine "On information", according to which "the legal regime of tax information is determined by the Tax Code and other laws of Ukraine", although according to the Law of Ukraine "On access to public information" this information may be classified as restricted only in accordance with the three-tier test. This collision between the provisions of the laws in practice leads to the inclusion of public information to classified information, including the office information in violation of p. 2, p. 5 of Article 6 and Article 9 of the Law of Ukraine "On access to public information." In particular, the Kremenchug Joint State Tax Inspectorate of Poltava Oblast of the State Tax Service denied the request of "SPF "Tekhvahonmash" Ltd. to access to public information, which was to obtain printouts of personal account card of "SPF "Tekhvahonmash" on value-added tax on goods produced in Ukraine (works, services), payment code 14010100 for the period from 01.10.2009 till 30.09.2012 owing to the fact that the tax inspectorate considers this information the office information. However, despite the illegality of such a decision, as this information is about the legal entity, which requested this information, and in accordance with part 2 of Article 6 and Article 9 of the Law of Ukraine "On access to public information" it cannot be labeled as office information, that is classified information, the court under part 2 of Article 16 of the Law of Ukraine "On Information" came to terms about the legality of classification of relevant information as an office information, and referring to the Law of Ukraine "On access to public information" about the existence of this type of classified information, however, without mentioning provisions of the law permitting it only on the basis of the three-tier test[4].

Equally absurd is the situation, when the officials and employees of state and local governments are called to official account for violation of Article 212-5 of the Administrative Code of Ukraine, namely for violation of registration, storage and use of documents and other information media containing confidential information, which is the property of the state, despite the fact that the basis for administrative liability for violations should be the Law of Ukraine "On access to public information" and the new Law of Ukraine "On information", but none of them provides for liability for violation of registration, storage and use of documents and other information media, as far as the general category of classified information is not specified by any of these laws. Moreover, the Article 7 of the Law of Ukraine "On access to public information" and part 2 of Article 21 of the Law of Ukraine "On information" clearly specify that the subject of authority cannot classify the information about their activities as confidential information. However, as Article 212-5 of the Administrative Code of Ukraine has not been abolished, and in addition the Resolution of the Cabinet of Ministers of Ukraine dated November 27, 1998 No. 1893 "On Approval of the Regulations on the procedure for registration, storage and use of documents, files, books and other physical media containing office information" has not been adjusted in accordance with the Law of Ukraine" On access to public information", Article 212-5 of the Administrative Code of Ukraine continues to be quite popular in law enforcement by SSU and Ukrainian judges. So in 2012 we documented 14 cases of calling to administrative account under this section notwithstanding the provi-

[4] *See*: http://www.reyestr.court.gov.ua/Review/27537389

sions of the Law of Ukraine "On access to public information" that legislative acts of Ukraine shall apply to the extent not inconsistent with this Law.

Strictly speaking, we are not talking only about the formal absence of the term "confidential information, which is the property of the state" in the Law of Ukraine "On access to public information", because instead, following the logic of the Cabinet of Ministers of Ukraine, a new term "office information" was introduced, and about the conceptual difference between these two notions. However, in accordance with part 2 of Article 6 and Article 9 of the Law of Ukraine "On access to public information" the public information can be classified as the office one only in very limited cases, while the inclusion of information about government activities to confidential information was determined at the discretion of state authorities. And unlike the Law of Ukraine "On information" as amended in 1992, the Law of Ukraine "On access to public information" implies that access is limited to information, but not the document. So, given the above, based on the spirit and letter of the Law of Ukraine "On access to public information", the only responsibility that may occur for dissemination of office information may be disciplinary responsibility taking into account the nature of this information.

Generally, it seems very strange that when the mode of access to information is determined by the subject of authority itself, it cannot independently, after assigning it to the category of office information, determine the order of registration, storage and usage, and change its own decision and make it open in case, if the grounds for attributing it to the office information expired. Even more surprising is the fact that these actions must be externally monitored and administrative responsibility occur, if during the inspection the SBU finds that the order has been violated, because the subject of authority determines on his own to what extent it is important for him to prevent the leak of information.

The only positive point of legislative changes in 2012 was the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine", in particular, changes to part 6 of Article 6 of the Law of Ukraine "On access to public information", which broadened the range of people, information about property, income, expenses of which specified in the declaration do not belong to the classified information. These changes should promote greater information transparency.

The law-making by the Cabinet of Ministers of Ukraine does not raise positive expectations as well. Notwithstanding the provisions of the Law of Ukraine "On access to public information", which put an obligation on the Cabinet of Ministers of Ukraine to bring in the two-month term following the enactment of the law its regulations in accordance with the Law of Ukraine "On access to public information" after formal changes in 2011 of the Resolution No. 1893 "On Approval of the regulations on the procedure for registration, storage and use of documents, files, books and other physical media containing officey information," the Cabinet of Ministers of Ukraine has not complied with this requirement. This is particularly a concern due to the fact that the Resolution No. 1893 continues to influence the practice of access to public information. Thus, the analysis of denials in the provision of information by subjects of authority suggests that the relevant resolution of the Cabinet of Ministers of Ukraine, namely, the regulations under which "lists of data that contain office information, and other shall be approved by ministries and other central executive bodies, Council of Ministers of the Autonomous Republic of Crimea, Kyiv and Sevastopol city state administrations" are widely used to justify the refusal to provide information without understanding that the office information may be classified as such only in the case of categories of information under Article 9 of

the Law of Ukraine "On access to public information" subject to a set of requirements under part 2 of Article 6 of the Law of Ukraine "On access to public information."

Another factor that complicates access to public information is **unjustified classification of information about the activities of state and local governments as office information**. The analysis of the lists of office information approved by central authorities, as well as the Constitutional Court of Ukraine suggests their inconsistency with the spirit and the letter of the Law of Ukraine "On access to public information" including requirements of part 2 of Article 6 and Article 9 of the Law. For example, the Constitutional Court of Ukraine includes into the list of official information the items as follows: the constitutional petitions and appeals, research and expert opinions. It should be noted that this is not only contrary to the Law of Ukraine "On access to public information", because the petitions and appeals, as well as research and expert opinions do not belong to the category of office information pursuant to Article 9 of the Law, but also is a violation of p. 7 of Article 6 of the law and international standards, since the access must be limited to information, rather than to the document as a whole. It is noteworthy that, taking into consideration the special place of the Constitutional Court of Ukraine in the state mechanism, the activities of this body should be fully open to the public, because all, without exception, issues being considered by the CCU are of public interest. Therefore, classifying this information as the office one contradicts the paradigm of openness and additionally is a signal to other public bodies about optional character of implementation of the Law of Ukraine "On access to public information."

Moreover, classifying of petitions and appeals as an office information is not consistent with the practice of the European Court of Human Rights, in particular the decision in the case *"Tőrsaság a Szabadsőgjogokűrt"vs. Hungary"*[5], which dealt with the rejection by the Constitutional Court of Hungary to solve constitutional query for information. The European Court noted in that decision that "a complaint for the abstract consideration of legislation, especially by members of parliament, is certainly an issue of public interest … The monopoly of the Constitutional Court on information is a type of censorship and can lead to a situation when the media and public controllers will not be able to play their vital role in connection with the provision of accurate and reliable information on issues of interest for the community in public debate." The lists of office information are not also an example for imitation: Ministry of Health of Ukraine, Ministry of Internal Affairs of Ukraine, State Tax Service of Ukraine, State Migration Service and other central bodies of executive power. Since the latter are also formed in violation of p. 2 of Article 6 and Article 9 of the Law of Ukraine "On access to public information".

Still unsolved at the legislative level is the problem of access to archives, despite the results of the expert survey and monitoring of archives published by the "Liberation Movement Research Center" in early March 2012 that showed serious problems in this area and conclusion that one of the reasons for unsatisfactory conditions of access to archives is imperfect legislation[6], the Verkhovna Rada of Ukraine has not moved a single step in resolving this issue during the second half of 2012,.

The elections to the Ukrainian parliament in the fall 2012 showed indisposition of Ukrainian authorities to promote greater information transparency. Despite certain guarantees

[5] Case of Társaság a Szabadságjogokért *v*. Hungary. The historic decision of the European Court of Human Rights // http://www.khpg.org/index.php?id=1241463238

[6] Researchers: cases of restriction of access to archives is still very frequent // maidan.org.ua

providing open information about the nominees (section 2, part 2 of Article 13, section 5 p. 1 of Article 54, part 2 of Article 63 of the Law of Ukraine "On Elections of People's Deputies of Ukraine") and well-known principle of the European Court of Human Rights (*Lingens v. Austria* from 08.06.1986): "The amount of information about a public person, access to which is limited, must be much less than the amount of information about a private person," the Central Election Commission of Ukraine still refused to provide copies of complete autobiographies of nominees.

However, the greatest concern is the formation of judicial practice in the area of access to information. The analysis of 80 court decisions in cases of appeal for illegal refusals to give access to public information demonstrates the unwillingness of judges to perform in-depth analysis of this category of cases, formal approach to their consideration and, in many cases, lack of understanding of the spirit and the letter of the Law of Ukraine "On access to public information" and general immaturity of these decisions. In particular, out of the analyzed judgments 65% (52 decisions) were made in violation of material law. In none of the cases, when it was a denial of access to public information through its classifying as an office one, the judges failed to properly apply the three-tier test to check the legality of the decision of the authorities on the subject of legality of classification of relevant information as an office one. However, in accordance with part 2 of Article 6 of the Law of Ukraine "On access to public information" only in the presence of the set of conditions specified by this article, the question may arise about the classification of a piece of public information as an office one. In particular, in none of these decisions the judges did not substantiate, what interest is endangered by disclosure of this information, what will be the extent and character of harm from disclosure of this information, and why the damage from publication of this information is greater than the public's right to know. In fact, the judges denied the claim for formal reasons, namely due to the fact that this information belonged according to the list of an organ to office information. In other cases, the courts have agreed that lawful refusal to provide information was directing people to the official website of the institution, while part 2 of Article 22 of the Law of Ukraine "On Access to Public Information" by contrast, indicates illegality of such actions.

The analysis of these judgments suggests that the root cause of this state of affairs is the effect of total secrecy paradigm inherited from the Soviet era, the belief that is inherent in the majority of the Ukrainian society that the information security is more important than the freedom of information and the lack of understanding that freedom of information and open government is the basis for fighting corruption, human rights violations and creation of conditions for a free market and highly competitive economy. Almost a quarter century has passed since that time, however, most of the judges who hear cases related to access to information received Soviet legal education, or in the first decades of Ukrainian independence, that is, when the Soviet approach to freedom of information dominated. That is why the Constitutional Court of Ukraine adopts a decision which contains no clear idea that public figures should be more open to the public than private ones, and judges of the administrative courts do not apply the three-tier test under Article 6 of the Law of Ukraine "On access to public information" in matters relating to dispute over the lawfulness of the authorities to classify public information as restricted information. For the use of three-tier test it is necessary first to understand the importance of information transparency of the authority. While, as in other Western countries, although the laws do not contain this standard de facto, the judge in cases involving disclosure consider whether referring to classified information had

a legitimate aim, or disclosure of this information could harm the legitimate aim and what can cause more harm — publicity or secrecy of this information.

So, there is a great need for special training programs for judges, which will consist of two parts: theoretical and practical. The theoretical part should include an explanation of the importance of open government and freedom of access to information. The practical part should be presented in the form of training on the use of access to information, including the application of part 2 of Article 6 of the Law of Ukraine "On access to public information", explaining what socially important information means.

In general, the analysis of the practice of ensuring the right of access to information by state and local authorities suggests that all efforts of the authorities during 2012 were directed not to bring it into conformity with the Law of Ukraine "On access to public information", but on the contrary, trying to maintain the status quo, in other words, to make formal changes without actually reforming their own practice relationship that is between the authorities and the citizens of Ukraine in the sphere of relations under the new paradigm, which is embedded in the Law of Ukraine "On access to public information. "

In the end, we must note that recommendations made in the report in 2011 still remain valid.

RECOMMENDATIONS

Constitutional Court of Ukraine

1. Bring in accordance with part 2 of Article 6, p. 9 of the Law of Ukraine "Resolution of the Chairman of the Constitutional Court of Ukraine on August 30, 2011 No. 57/2011 "On classifying information, created by the Constitutional Court of Ukraine, as the office one and procedure in handling material carriers of such information".

Verkhovna Rada of Ukraine

1. Exclude Article 212-5 of the Administrative Code of Ukraine.

2. Reform archival legislation including amendments to the Law "On National Archival Fund and Archival Institutions".

3. Adopt a law on public access to collegial meetings of the authorities and their agencies.

4. Change the law "On Information", "On access to public information" and "On Personal Data Protection" in order to comply and achieve compliance with international human rights agreements to which Ukraine is a party, including: 1) in part 2 of Article 5 of the Law of Ukraine "On Personal Data Protection" to add a provision reading "personal data is not classified information in cases, when the information is socially necessary, and in cases under p. 5 of Article 6 of the Law of Ukraine "On access to public information" and other laws".

5. In order to implement Article 11 "Protection of the person disclosing the information" of the Law of Ukraine "On access to public information" to amend the Criminal Code of Ukraine. In particular, to envisage an article on relieve of accusers (i. e. persons specified under Article 11. Law on access) from criminal responsibility for disclosure of classified information. In addition, to adopt a bill on the Protection accusers in order to implement the provisions of Article 11 of the Law of Ukraine "On access to public information".

6. To review the norms of article 15 of the Law of Ukraine "On State Secrets" and provide a classification only of texts containing state secrets, and not the documents as a whole.

Commissioner of the Verkhovna Rada of Ukraine

1. To develop executive course and organize training of executives and personnel responsible for providing information and classifiers in public and local self-government bodies and courts in all 27 regions of Ukraine.

2. To develop recommendations for harmonizing of the legislation of Ukraine in the field of access to information with the Law of Ukraine "On access to public information".

Cabinet of Ministers of Ukraine

1. Revoke the Decree of the Cabinet of Ministers of Ukraine dated November 27, 1998 No. 1893 "On Approval of the Regulations on the procedure for registration, storage and use of documents, files, books and other physical media containing office information".

2. Open all regulations labeled "off the record" and analyze documents for official use, if they should be classified.

3. Ensure publication and open access to all decisions of local administrations (at the level of oblasts and cities of Kyiv and Sevastopol).

President of Ukraine

1. Cancel the Decree of the President of Ukraine No. 493 from 21.05.1998 "On Amendments to Some Decrees of the President of Ukraine on state registration of legal acts."

The central executive bodies

1. Bring the list of official information in accordance with part 2 of Article 6, part 9 of the Law of Ukraine.

Security Service of Ukraine

1. Analyze the "Body of state secrets" in terms of the validity of classifying information using the three-tier test for the presence of "damage" and the impact on the "public interest" and article 6 of the Law "On Access to Public Information."

Local self-government bodies

1. Bring the list of official information in accordance with part 2 of Article 6, p. 9 of Ukraine, and if there is no information that should be classifies in accordance with the norms of the above law, to annul these lists.

2. Comply with the Law of Ukraine "On access to public information" concerning publication of draft decisions of local self-government bodies (part 3 of article 15.)

3. Bring the practice of responding to requests for information regarding the disposal of budgetary funds, public or communal property in accordance with part 5 of Article 6 of the Law of Ukraine "On access to public information".

X. ILLEGAL RESTRICTION OF PUBLIC ACCESS TO COMPREHENSIVE CITY PLANS[1]

1. THE LAW THAT DOES NOT WORK

Inefficiency of the practical implementation of the new information and urban development legislation, specifically of the declared provisions on access to urban development documentation, Comprehensive city plans in particular, is a constant source of disappointment.

Article 17, p. 11 of the Law of Ukraine "On Urban Development Regulations" specifies that "*access to urban (populated areas') development materials is provided by its publication on the web-site of a local self-government and in local periodical printed media as well as in public areas of the self-government premises, with the exception of the sections which constitute classified information under the law. These sections can be included into the plan as separate chapters.*"

The quoted provisions of the Law are supported by a number of constitutional norms, international agreements, ratified by Ukraine, Laws "On Access to Public Information," "On Local Self-governance in Ukraine" etc. Despite all that parts of these provisions are systematically violated.

The access to the overwhelming majority of the Comprehensive city plans is restricted by the marks "For office use only" and "State Secret." Often local self-governance bodies tend to declare the availability of urban development plans for the public, hiding the fact that the access to them is restricted.[2] The same is true with respect to the full contents of these documents, in particular, the fact that they contain some parts with classified information. As a rule this information is not published in the open sources, but is only provided on special demand. Therefore, 31 million of Ukrainian city dwellers have no access to the public documents.

2. WHAT THE COMPREHENSIVE CITY PLAN IS AND WHY IT IS SO IMPORTANT FOR THE PUBLIC

The Comprehensive city plan is the main document in the system of urban development documentation at the local level. It describes the actual status of populated areas, determines major domains of development, planning and construction for the next 15–20 years.

[1] V. Shcherbachenko. Eastern Ukraine Center for Civic Initiatives.

[2] Confirmation can be found in topical monitoring of the Eastern Ukraine Center for Civic Initiatives (http://cityplan.in.ua/books) and in the answers to information requests of all 459 city councils of Ukraine (http://cityplan.in.ua/cities).

The Comprehensive city plan is a regulatory-legal act. Its regulatory nature is defined by the fact that it is an official written document, adopted by the authorized regulatory body (local council) in the format stipulated by the law[3] by the due procedure.[4] The Comprehensive city plan is aimed at regulating social relationships (development, land use, spatial planning) and refers to legal norms. It is of non-personified nature, is devised for multiple uses and is compulsory for all the institutions and companies involved in the urban development and use of land for different purposes.

The Comprehensive city plans are the documents aimed at counteracting chaotic development of a city. They are devised on the basis of the state construction, fire, sanitary-hygiene and other norms, which thus become components of the development and construction requirements regarding specific facilities and buildings. Zoning is an important part of the Comprehensive city plan. Under this document a city is divided into functional zones (residential, industrial, recreational, commercial, manufacturing etc.). Construction of facilities in these areas can be conducted only in compliance with their functional characteristics. As regulatory documents Comprehensive city plans are called to prevent the breaches of law and violations of public interests protected by the law. Nevertheless, due to their secret nature, they perform this function only partially.

Unavailability of the Comprehensive city plans prevents public from controlling and opposing non-sanctioned development, conducted without appropriate agreement with the local community, in violation of construction, fire, sanitary and other norms. Some buildings constructed with disregard to the said norms pose a direct threat to life and health of the residents.

Unavailability of the Comprehensive city plans makes the city dwellers unaware of the factors which affect real cost of their property and conditions of life. The Comprehensive city plans' components determine the districts for further renovations and new development areas. In the areas destined for reconstruction the dwellers' property can be confiscated under the pretext of "common good" or "public needs." The fair compensation is not always paid. Development of new commercial and logistics centers, industrial and transportation facilities usually lead to the increase in air pollution and noise, deterioration of the quality of life and the decrease of residential property value. Unavailability of the Comprehensive city plans deprives the residents of the opportunity to learn in advance about the administrative decisions which determine their conditions of living and property value. As a result the right of the residents to uninterrupted ownership of their property is violated.

The secrecy around Comprehensive city plans leads to the violation of another right, i. e. to participate in public governance. Having no access to a Comprehensive city plan the citizens cannot follow and control the bureaucrats' actions or check their conformity with the official master plan. They are unable to keep track of the investments into public infrastructure facilities in accordance with strategic priorities for their city development; or to verify the legitimacy of certain bureaucratic decisions on the land use and construction issues.

It is noteworthy that Comprehensive city plans include information concerning environmental situation (i. e. zones of chemical, noise, radiation contamination), the restriction of access to which is directly prohibited by Article 50 of the Constitution of Ukraine.

[3] Specified by DBN.1B.1-15:2012 "Structure and Contents of Comprehensive City Plan of a Populated Area."

[4] Under Article 17 of the Law of Ukraine "On Urban Development Regulations."

3. HOW COMPREHENSIVE CITY PLANS ARE DEVELOPED

In order to better understand why the Comprehensive city plans remain unavailable let's have a look at the contents and format of these documents. Comprehensive city plan for a populated area is compiled of textual materials (explanatory note and principal provisions) and graphic part (maps and layouts of the analytical and computed nature). Both textual and graphic portions of the document usually contain some classified information (predominantly, information for internal use only, but also information classified as state secret).

In the Comprehensive city plans prepared over the last years with the use of GIS technologies[5], classified information can be easily separated from unclassified data. It is a simple and cheap procedure. New information and urban development law requires the separation of various types of information with different levels of confidentiality. However, the majority of Comprehensive city plans for the Ukrainian cities were devised without GIS technologies. The images were transferred to the large paper or canvas sheets.[6] They are not available in electronic format. It is very difficult, if not completely impossible to separate classified information (if it is there) from the open data on the maps and plans developed in the years 1960-1990 of the past century.

Devising a new Comprehensive city plan in compliance with the requirements of the new law costs, as a rule, over one million UAH[7] (several million for big cities)[8], which is an impressive amount for a city council budget.

On the other hand, it is fairly easy to separate open and classified information in the textual portion of a Comprehensive city plan. Retouching of certain text fragments is possible in textual documents written even several decades ago. Unfortunately this practice is not popular at all due to the lack of interest among professional teams involved in the preparation of Comprehensive city plans or among the officials in charge of urban development documentation.

4. WHAT TYPE OF CLASSIFIED INFORMATION IS INCLUDED INTO COMPREHENSIVE CITY PLANS?

The list of classified information which can be found in the Comprehensive city plans is rather short. It covers information on networks and sources of water supply, coordinates of these facilities etc.[9] The information concerning actual resources, locations of surface or un-

[5] GIS technologies allow registering, storing, modifying, analyzing and reproducing all forms of geographic information. They enable combing model images of an area (electronic maps, charts, space and aerial images of the Earth surface) with the database presented as charts (of statistical data, lists, economic indicators etc).

[6] Format of maps in the Comprehensive city plan was different, but the size was defined as 0,8м x 1,0м.

[7] 1 000 000 UAH is approximately equal to 125 000 USD or 95 000 EUR.

[8] The Comprehensive city plan cost depends on the size and population of the city and on the urban development documents stipulated in the contract. Fair bidding in contracting the executor of a Comprehensive city plan is an important factor in the final cost.

[9] The Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine. Pp. 1–3 of the list of classified information for the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine, approved by the Ministerial Order No. 68 of 06.06.2011.

derground reserve water supply sources for the cities of Kyiv and Sebastopol are considered state secret under 2.3.2 of the "Catalogue of Information Classified as State Secret."[10]

P 2.2.10 of the same document classifies as state secret "information containing specific indicators on the systems (charts) of external networks of electrical and heat energy, gas pipelines, needed for enterprises, institutions and companies manufacturing arms…"[11]

The Comprehensive city plans include sections describing engineering and technical measures for public defense, the access to which is restricted by the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine and the Ministry of Emergency of Ukraine[12].

Nevertheless, the main reason for restricted access to the Comprehensive city plans is the fact that the graphic component is presented in the form of large-scale maps and blueprints (at the scale from1:2000 to 1:25000), designed within the systems of coordinates USK-2000, SK-42 or within the local system of coordinates. These maps and blueprints are still classified under the respective lists of central executive bodies as confidential.

The analysis of confidential information lists within the structure of the Ministry of Defense, Ministry of Regional Development, Construction and Housing and Communal Services, State Committee of Ukraine for Land Resources and some other central executive bodies reveals numerous contradictions in determining the level of confidentiality with regards to the same mapping data.[13] De-facto one ministry treats certain mapping-geodesic data as confidential and establishes administrative liability for divulging it, while another ministry regards the same data as open information, which can be disseminated freely.

Many leading specialists of the central executive bodies agree that the use of the single criterion of the maps' and blueprints' scale and system of coordinates in determining the confidentiality level of information is obsolete and does not meet current needs. With the development of GIS technologies, significant portion of information has become available due to satellite imaging from space, while spatial coordinates of isolated objects can be determined within 1m range using simple watches, cell phones, lap-tops and cameras equipped with GPS devices.

Obviously the situation described above is absurd; nevertheless, the central executive body till recently has not undertaken any initiative aimed at resolving the problem. Only

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[10] Security Service of Ukraine. On Approving the List of Data Constituting State Secret: Order No. 440 // VRU of 12.08.2005 Access regime: http://zakon3.rada.gov.ua/laws/show/z0902-05/page3

[11] Ibid.

[12] Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine. P. 6 of the List of Classified Information for Ministry of Regional Development, Construction and Housing and Communal Services, approved by the Ministerial Order No. 68 of 06.06.2011. Pp. 29, 33,35 of the List of Classified Information for the Ministry of Emergency of Ukraine, approved by the Ministerial Order No. 75 of 26.07.2011.

[13] E. g. as of September 20, 2011 the Ministry of Defense of Ukraine classified the information concerning "city plans at the scale 1:10 000 and 1:25 000 (irrespective of forms and types of the carriers) in the territory of Ukraine created within the state coordinates system USK-2000 or coordinates system SK-42, which include complete set of data for familiarization with and evaluation of the area, orientation, localization of objects, finding dimensions for various types of economic and defense activities" as "for office use only." Meanwhile the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine treats as classified the city blueprints at the scale 1:10 000-1:20 000, while the State Service of Geodesy, Cartography and Cadastre classified only "city and other settlements' blueprints at the scale 1:5000 та 1:2 000 in the local system of coordinates." For more detail see "How the Comprehensive City Plans Become Secret and What Consequences It Has for the Public: Materials of Public Monitoring of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine activity in Compiling the List of classified information. / EUCCI. : Edited by V.Shcherbachenko — Luhansk, 2012. // http://cityplan.in.ua/books.

in 2012 several inter-departmental meetings addressing this issues and possible solutions were held.

The representatives of non-military central executive bodies quoted definitive stand of the Ministry of Defense of Ukraine[14], strengthened by the decisions of the military department establishing restricted access to the maps and blueprints[15] as the main reason for such inertia in declassifying the information. The military, in their turn, are trying to shift the responsibility for restricting access to non-military maps and layouts (including urban development documentation), claiming that Comprehensive city plans are not military documents, and their "aim, order, procedure and methods of devising, as well as structure are determined by the regulatory and legal acts beyond the scope of state defense."[16]

Finally, after first Vice-Prime Minister's of Ukraine V.Khoroshkovsky's order, the decision was passed obliging the Center of Military and Strategic Research under the National University of Defense of Ukraine to carry out a special study in the first half of 2013. The study will be aimed at establishing and justifying criteria to determine the confidentiality level for information found in mapping and geodesic materials. It is expected that the outcomes of the study will become the basis for the decisions which will ultimately resolve the issue of restricted access to the Comprehensive city plans.

The most probable solution lies in declassifying the large-scale maps and blueprints. Meanwhile, mapping and geodesic materials with textual part which enables detailed familiarization and evaluation of an area for military operations or terrorist acts[17] will remain classified information further on.

However, till these decisions are made, the public access to urban development documentation will remain illegally restricted. Lamentably, alongside with the fact that the said documents are designed on topographic-geodesic basis, considered classified information, there are other hindrances on the way to the public access to urban development documentation.

5. OTHER FACTORS INTERFERING WITH THE COMPREHENSIVE CITY PLANS' OPENNESS

An incomplete list of factors impeding public access to urban development documentation include convenient concealment of land use and construction information by corrupt local officials, bureaucrats' reluctance to accept new format of information relations, life-long tradition of secrecy with respect to public information.

Devising Comprehensive city plans which will be open for the public (with separation of classified information) has been technically possible with the help of GIS technologies for

[14] The letter of the Minister of Regional Development, Construction and Housing and Communal Services of Ukraine A. Blyznyuk No. 12/20-14-996 of 19.04.2012 to the Cabinet of Ministers of Ukraine.

[15] Ministry of Defense of Ukraine. Minutes of the Expert Board meeting under the state expert for the issues of secrecy — the commander of army support forces of Ukraine No. 1 of 22.01.2010.

[16] Letter No. 335/2/1942 of 16.06.2011 by the head of the Chief Department of educational and social and psychological support of the Armed Forces of Ukraine Major-General O.Kopanytsya in response to information request from EUCCI.

[17] E. g. the height of plant, factories and other stacks and chimneys, towers, explanatory sign on industrial facilities, electric power plants, hydropower plants, substations, characteristic of electric power and communication lines, gas pipelines, oil and oil products pipelines and compressor stations etc.

some years already, practically since the moment when these technologies were first used for designing the said plans. However, none of the agents participating in the preparation of Comprehensive city plans ever initiated the introduction of the needed changes. Let's have a look at these agents.

The city council, vested with authority to act on behalf and in the interests of the local community, decides to devise a Comprehensive city plan, pays for it and is its owner. The executive committee of the city council chooses the executor by way of bidding (a state research institute of urban planning), which is contracted to develop the Comprehensive city plan. Different parts of the Comprehensive city plan can be compiled by various contractors (E. g. aerial photography can be performed by one company, while another will deal with the main part of the plan and the third one — with writing basic historic and architectural substantiation). The topographical basis for the complete plan is set up by the data within USK-2000 and SK-42 co-ordinates system, regarded as classified information by certain central executive power bodies and treated as such. In the majority of cases the urban planning institutes mechanically transfer the requirement of restricted access on the materials they use in devising Comprehensive city plans. When the city council receives these plans from the contractors they are already marked as classified information.

As a result the city council as the owner of a Comprehensive city plan faces absurd situation — due to the "classified" nature of materials it contains, the plan cannot be made public or divulged to the community. The Comprehensive city plan marked as "classified information" cannot be published either in mass media or in the city council web-site, or discussed with public at large. The city council has no authority to declassify the information contained in the Comprehensive city plan[18], as it is within the competence of the developer only. The urban planning institutes, in their turn, cannot declassify the information either, because they use the topographical data regarded as classified information by certain central executive power bodies.

Each of the institutions involved in this vicious circle could contribute to the problem resolving. The city councils could order a Comprehensive city plan version for general use, i. e. with maps not containing the classified information. Instead the city councils limit their intervention to ordering some visual materials needed for public hearings. Only in the recent years the city councils started to approach the urban planning institutes with the request to declassify the information, although the institutes should have done it much earlier on their own initiative. The specialized Ministry, under which the urban planning institutes function, so far did not request to declassify the materials used in Comprehensive city plans by introducing new technologies.

Why this reluctance and delays in introducing changes? Apparently the possibility to maneuver public information gathered using tax-payers' money, is advantageous for a certain group of individuals who have access to this restricted information. What are these advantages?

The information important for the urban development and implementation of the new business initiatives (communications' charts and information concerning their capacity,

[18] Cabinet of Ministers of Ukraine. On Approving the Instruction on Registration, Storage and Use of the Documents, Cases, Publications and Other Material Carriers of Information Containing Classified Data. Resolution No. 1893// VRU of 27.11.1998. — Access regime: http://zakon2.rada.gov.ua/laws/show/1893-98-%D0%BF

planning restrictions to be counted with in construction, information on functional designation of the adjacent plots, their exact boundaries etc.) is available for the narrow circle only. The architects are obliged to seek special permits to familiarize themselves with urban development documentation almost on every occasion. The information concerning Comprehensive city plans thus becomes a commodity to be sold by local bureaucrats at their own discretion to the potential investors and designers.

Under paragraph 34 of the aforementioned "Instructions on Registration, Storage and Use of Documents…" the representatives of the outside institutions are granted the permit to use select classified documents in accordance with regulations passed by the institutions' (structural subdivisions') CEOs[19]. In real life the decision on granting or refusing the permit to use Comprehensive city plan is made by the city Mayor or the chief architect and is not based on any definite criteria. This system of randomly granted access to the urban development documentation leads to corruption risks.

Besides, favoritism, nepotism and other manifestations of corruption in allotting land plots and granting construction licenses combined with the secrecy around Comprehensive city plans contribute to economically unjustified decisions, sometimes even detrimental for the budget, in the choice of investors.

Another aspect of current practice of restricting the access to information is the monetary system of incentives for the officials for keeping secrecy. The employees with the access to confidential information (i. e. the majority of Comprehensive city plans before 2007 and some of the more recent plans), receive increased salaries from the national and local budgets.[20] There are no incentives either for the researchers of the urban planning institutes developing Comprehensive city plans or for the local self-governments' officials to put an end to the practice of classifying public documents as secret.

Traditions also play a significant role in keeping Comprehensive city plans closed for public. They have been considered confidential since soviet times, while people handling them have been regarded as VIPs. Despite the fact that currently the Comprehensive city plans' status has changed, they are still kept under the regime of secrecy in special departments of the city councils and rayon state administrations (RDA). These departments are often managed by the former military, brought up under the soviet system and not ready to accept realities and needs of the new information relations in the open democratic society. Personal stand of these managers often gets into the way to more open information relations between public and bodies vested with state power, including the task of ensuring availability of the Comprehensive city plans.

The current system of granting access to the urban development information and privileges which it bestows on the limited group of people do not encourage the officials to replace it by more open and transparent system.

Total ignorance of local self-governments' officials with respect to the information legislation norms is another reason of Comprehensive city plans' unavailability. The officials do not know or understand the principle, under which specific piece of information and not

[19] Ibid.

[20] The Cabinet of Ministers of Ukraine. On types, amounts and order for compensations paid to the employees with the access to state secret: resolution No. 414 // VRU of 15.06.1994. — Access regime: http://zakon2.rada.gov.ua/laws/show/414-94-%D0%BF

the document is to be treated as classified, especially as far as the urban development documents are concerned. The practice of analyzing a document for classified information, restricting access to certain pages or retouching certain paragraphs is not implemented by the majority of the city councils' officials.

Often the information requests are not sent to the entities authorized to handle the Comprehensive city plans. It is especially true of small towns where the Comprehensive city plans are usually kept with the rayon state administration. The city councils do not direct the requests to the rayon state administrations, advising the petitioner to approach the RDA in person. And when the city councils manage to direct the requests to the RDA, this latter responds to the city council and not to the petitioner.

As a result all the components of the Comprehensive city plans for the majority of the Ukrainian cities remain classified information. In everyday life it means that an average citizen has no access to these documents unless he/she works in a urban planning institute or is an employee of a city council with the access to specific information. The author of this study is aware of a single occurrence in the whole history of independent Ukraine, when in the course of public hearing on Comprehensive city plan in Odesa the head of the department of architecture and urban development gave an oral order to let 20 representatives of the local community familiarize themselves with the complete version of the Comprehensive city plan, including the classified information.

6. HOW THE ACCESS TO NON-CLASSIFIED INFORMATION IN THE COMPREHENSIVE CITY PLANS CAN BE ENSURED IN OTHER UKRAINIAN CITIES?

Availability on the web-sites. Due to the substantial volume of the Comprehensive city plans, their publication on web-sites in electronic format is the most efficient and the cheapest way of providing public access to them. However, the monitoring, conducted for three years by Eastern Ukraine Center for Civic Initiatives and its partners, shows that only about 15% of the Ukrainian cities made *some portions* of their Comprehensive city plans open for public on their web-sites.[21]

As a rule, the site shows only an insignificant portion of the Comprehensive city plan textual part — basic provisions and/or main blueprint. The cases when several maps and blueprints are available on a web-site are rather exceptions than general rule. The situations when web-sites have no links to Comprehensive city on the city council home pages, do not have a functional retrieval system, while the available maps and blueprints are hard to read due to the low resolution capacity.

Mass media coverage. The provisions of the Law "On Urban Development Regulations" concerning media coverage of the Comprehensive city plan in local media cannot be implemented to the letter. The Comprehensive city plan is too big a document (sometimes over 10 volumes of text only, each consisting of dozens if not hundred pages), to be published in full by the local press. Sometimes in the course of public hearing preceding the adoption of Comprehensive city plan some provisions of this documents are published in the local media as

[21] Monitoring reports available at http://cityplan.in.ua/books

well as interviews and commentaries provided by the officials with regards to the plan. Information is printed in the communal publications at the local council expense, which means that the information offered in them is usually unilaterally positive.

*Comprehensive city plans' availability in the city councils' premises***.** In 2012 over 90 out of 459 city councils of Ukraine (mainly of the small cities) declared the availability of the Comprehensive city plans in their own premises. The visits to these city councils revealed that an adequate mechanism for public access to Comprehensive city plan has not been developed yet. As a rule, the interested party has to obtain approval from one of the high officials of the city council. There are no actual premises, where one could study the documents; the search for the documents or their retrieval from the secret department can be time-consuming.

It is only the small towns with declassified plans or the oblast' centers where the Comprehensive city plan was recently devised, that offered this service to the public. Usually these centers designed special maps not containing classified data for public hearings (the so-called demonstration hand-outs). The same materials are open for public in the city councils.

Comprehensive city plans on written request. This form of access to the Comprehensive city plan is not mentioned in the Law of Ukraine "On Urban Development Regulations;" it is, however, covered by the Law of Ukraine "On Access to Public Information," as Comprehensive city plan falls under the category of public information.

As opposed to the practices of Western democratic countries, the hard copy of Comprehensive city plans of the Ukrainian cities cannot be obtained on request. One of the reasons for that is that routinely these plans are prepared as a technical document (i. e. a set of separate books and graphic materials), for limited professional use only, and not as a public document in the reader-friendly format convenient for familiarization and distribution. In the democratic countries the Comprehensive city plan as a complete document is available on the city council web-site, while the hard copy can be purchased at the cost price right in the city council. In the Ukrainian scenario the owners of the Comprehensive city plans, i. e. the city councils, do not have large-scale Xerox machines to make copies of these important urban development documents for all the stake-holders.

7. RECOMMENDATIONS

1. The Military and Strategic Research Center under the National University of Defense of Ukraine should specify the criteria determining the level of confidentiality with respect to the information in the maps and geodesic materials, and ensure the availability of the Comprehensive city plans for the public.

2. The urban planning institutes should revise the expediency and legitimacy of the "classified" marks on the Comprehensive city plans, developed by the respective institutes and ensure the declassifying of information in conformity with the Ukrainian legislation on information and urban development.

3. The Ministry of Regional Development of Ukraine should set up and implement practical mechanisms to ensure public access to Comprehensive city plans, devised without the use of modern GIS technologies.

4. The Minister of Regional Development, Construction and Housing and Communal Services of Ukraine and urban planning institutes should set up the new standards for the Comprehensive city plans of the populated areas in Ukraine, in the format convenient for familiarization, copying and dissemination.

5. State power bodies and local self-governments should train their specialists with regards to the norms of the Ukrainian legislation on information and urban development in order to provide for adequate public access to open (urban development) documentation.

6. The Prosecutor's office should ensure constant supervision over the local self-governance bodies with respect to the legitimacy of their treating Comprehensive city plans as classified information and unwarranted restrictions of public access to the said Comprehensive city plans.

7. The public should exercise permanent control over state power bodies' and local self-governments; compliance with the Ukrainian Law provisions concerning the availability of the Comprehensive city plans for the public.

XI. FREEDOM OF PEACEFUL GATHERINGS[1]

1. INTRODUCTION

Right to peaceful gatherings is guaranteed to the citizens of Ukraine by Article 39 of the Constitution of Ukraine. Article 11 of the Convention on Protection of Human Rights and Fundamental Freedoms and Article 21 of the International Covenant on Civil and Human Rights to which Ukraine is a party, imperatively define that any restrictions of the right to peaceful gatherings are acceptable only in cases when they are "*necessary in a democratic society*". Besides, Article 11 of the decision of the European Court is the source of the right in the national legal system.

The Decision of the Constitutional Court of Ukraine No. 4-rp/2001 of 19.04.01 rules that *"the determination of specific dates of advance notification and specific forms of peaceful gathering, their mass nature, venture, time etc are subject to legislative regulations."* The same Decision defines the right to peaceful gathering as "inalienable and inviolable", which is "one of the constitutional guarantees of civil right to freedom of ideology and conscience, thought and speech, right to freely express one's opinions and convictions, to use and disseminate information, right to free development of one's personality etc."

Monitoring of freedom of peaceful gatherings revealed a number of legislative regulatory and law application issues, as well as conditions which seriously affect the opportunity to practical exercising of the right to peaceful gatherings and, to a certain extent, pose a direct threat to the very essence of this right, restricting its contents and scope.

13 city councils of the oblast' centers of Ukraine (Kyiv, Vinnitsa, Donetsk, Zaporizhzhya, Ivan-Frankivsk, Simferopol, Ternopyl, Kharkiv, Kherson, Cherkassy, Chernivtsy, Chernyhyv) are guided by the Decree of the Presidium of the Supreme Rada of the USSR No. 9306-XI of 28.07.88 "On the Order of organizing and conducting meetings, rallies, street marches and manifestations in the USSR". On 24.10.2011 the deputy Minister of Justice in his letter No. 15783-0-26-11/10.2 advised that the Decree is valid in Ukraine on the basis of the Supreme Rada of Ukraine Resolution No. 1545-XII of September 12, 1991 "On the Order of temporary validity of certain USSR legal acts on the territory of Ukraine". This resolution, in particular, stipulates, that "before relevant legal acts of Ukraine are passed, the legal acts of the USSR are applicable with respect to the issues not regulated by the Ukrainian Law if they are not contrary to the Constitution and laws of Ukraine".

The Decree is contrary to the Constitution of Ukraine as it determines the "licensing" nature of the peaceful gatherings and refers to non-existent state of the USSR, regulating the relations between non-existent citizens of the USSR by non-existent executive committees of the people's deputies' councils, evaluating the said gathering from the point of view of their

[1] Prepared by N. Zubar and O. Severyn, NGO Information Center "Maidan-Monitoring". See more on: http://maidanua.org/monitor/page/index/1

conformity or non-conformity with Constitution of the USSR, constitutions of the union and autonomous republics", i. e. non-existent constitutions of non-existent entities.

It is the provisions of the Decree that cause the majority of court bans on peaceful gatherings in Ukraine.

2. STATISTICS AND TERMINOLOGY

Despite declarations made by both law enforcers and state officials that hundreds of thousands protest actions and rallies are conducted all over the country (V. Litvin, "160.000 actions in2011"[2]) we managed to get the accurate statistical data as to the number of the peaceful gatherings defined by Article 39 of the Constitution of Ukraine. The surveys conducted in all the city councils of the oblast' centers, Kyiv and Sebastopol showed that in 2011 about 7.600 notifications on peaceful gatherings were submitted. Taking into account the rate of public activity outside oblast' centers it gives us the annual figure of no more than 16.000 peaceful gatherings. The peaceful gatherings held without prior notification of the Ukrainian authorities were not numerous.

When asked to comment on 10-times difference in the statistical data, PR Department of the Ministry of Interior advised that it did not keep specific data on " peaceful gatherings", as there is no legal requirement to do so, while the statistics on so-called "mass events" covers religious, cultural, sports, artistic and other similar events[3].

The concerts, football matches and the like are not peaceful gatherings under Article 39 of the Constitution of Ukraine; therefore, we propose to base the statistical data on the number of notifications submitted the the authorities by the organizers, and not on the militia reports.

Over the 9 months of the year 2012 we registered 78 instances of restrictions of the right to peaceful gatherings[4], which were socially resonant. Not all the cases of restrictions were covered by mass media, due to the fact that in many regions of the country media are not free. For comparison, in the year 2011 the courts passed only 113 rulings on the restrictions of the right to peaceful gatherings in the oblast' centers. We expect that the number of similar rulings will increase significantly in 2012; in some cities, e. g. Kharkiv the bans have become all-embracing.

3. RESTRICTIONS OF THE RIGHT TO PEACEFUL GATHERINGS IMPOSED BY LOCAL GOVERNMENTS

3.1. Local normative acts regulating organization and carrying out of the peaceful gatherings

Survey of the city councils of the oblast' centers of Ukraine showed that 12 city councils (in Dnepropetrovsk, Zhitomir, Zaporizhzhya, Kyiv, Lutsk, Poltava, Rivne, Simferopol, Sumy,

[2] Litvin: 160 thousand protest actions happened in the course of a year. http://news.dt.ua/POLITICS/litvin_za_rik_proyshlo_160_aktsiy_protestu_pri_povniy_zgurtovanosti_vladi_z_vr-94809.html

[3] How many peaceful gatherings are held in Ukraine? http://maidan.org.ua/2012/04/skilky-zh-vse-taky-v-ukrajini-vidbuvajetsya-myrnyh-zibran-a-aktsij-protestu/

[4] Freedom of peaceful gatherings on "Maidan-Monitoring" map http://maidanua.org/monitor/reports/?c=1

Uzhgorod, Kharkiv, Kherson) or their executive committees have adopted their own normative acts on the order of organizing and holding peaceful gatherings.

However, under Article 144.1 of the Constitution of Ukraine '*the local self-governance bodies make decisions obligatory for implementation in the given territory, within the terms of their references defined by the law".* Under sub-paragraph 3, p. 1 "a" Article 38 of the Law of Ukraine "On local self-governance" No. 280/97-SP of 21.05.97 "*the issues of conducting gatherings, meetings, rallies, manifestations and demonstrations, sports events, shows and other mass events* ***in compliance with the law****; enforcing public law and order in the course of these events"* fall under the competences of the executive bodies of local councils. Currently Ukraine has no law (or other legal act) regulating the issues of conducting gatherings, meetings, rallies, manifestations and demonstrations etc, while Article 39 of the Constitution of Ukraine provides for the restrictions of the right to peaceful gatherings by courts only in compliance with the law, and not by the local self-governance bodies.

Therefore, sub-paragraph 3, p. 1 "a" of Article 38 of the Law of Ukraine "On local self-governance" does not grant to the city council (or its executive body) the authority to legally regulate the conducting of peaceful gatherings — due to the absence of the law which would govern these issues. Today the local self-governance bodies can only appeal to court to seek restrictions of the right to peaceful gatherings.

Besides, under p. 1 of Article 92.1 of the Constitution of Ukraine "*civil and individual rights and freedoms, guarantees of these rights and freedoms; main obligations of the citizens are determined by laws exclusively".*

Therefore, neither Constitution nor any laws of Ukraine vest city councils (or their executive committees) with the authority to pass such decisions, and, generally, to interfere into the domain of constitutional and legislative regulation. Under Article 19.2 of the Constitution of Ukraine *"the state power bodies and local self-governments, their officials must act only on the basis, within the scope of authority and in the ways stipulated by the Constitution and laws of Ukraine".* Therefore, such decisions go beyond the boundaries of legitimate competences granted to local self-governments and are illegal beyond any doubt.

Alongside with their illegal adoption, practically all the local normative acts contain anti-constitutional provisions with respect to the time frames for the notifications on peaceful gatherings, bestow on organizers and participants of the said gatherings obligations not stipulated either by the Constitution or the laws of Ukraine, limit the area of potential gatherings.

With all that said, in April 2012 we approached the Prosecutor's office with the request to verify the legality of the decisions made by the local self-governments. As a result, the Prosecutor's offices of Lutsk[5], Zaporizhzhya[6] and Kherson[7] contested respective decisions; the offices in Simferopol and Zhitomir reported that respective decisions were cancelled by the courts. In Dnipropetrovsk, Poltava, Sumy, Kharkiv the communications with the Prosecutor's offices with respect to city councils' decisions still go on.

[5] It is easier to hold peaceful gatherings — in Lutsk only http://maidan.org.ua/2012/06/myrno-zbyratysya-stane-vilnishe-poky-scho-lyshe-u-lutsku/

[6] Illegal decision of Zaporizhzhya local authorities on peaceful gatherings contested http://maidanua.org/monitor/reports/view/279

[7] Peaceful gatherings should become easier to hold in Kherson too http://maidan.org.ua/2012/06/u-hersoni-tezh-maje-staty-vilnishe-myrno-zbyratysya/

We got in touch with Ternopyl city council regarding the illegality of intended "Provisions with respect to peaceful public acts in Ternopyl". The deputy mayor notified us by the letter No. 3778/05 of 20.06.12 that *"the requirements are duly noted and will be taken into account".*

The petition requesting to recognize the Supreme Rada of Ukraine Resolution No. 1545-XII of September 12, 1991 "On the Order of temporary validity of certain USSR legal acts on the territory of Ukraine" as illegal and invalid in the part where the USSR legal acts define rights and obligations of the Ukrainian citizens (i. e. affecting the nature and scope of these rights) was submitted to the Supreme Rada of Ukraine. The Highest Administrative Court of Ukraine did not consider the petition on the grounds of statute of limitations. On 22.06.12 a complaint was sent to the European Court on Human Rights with reference to the violation of Article 6 of the European Convention on Human Rights ("right to fair trial") by Ukraine.

3.2. Practice of administrative restrictions of the right to peaceful gatherings

Local self-governance bodies all over Ukraine pass decisions illegally restricting the right to peaceful gatherings.

Thus, in Krasnograd, Kharkiv oblast' the city council forbade religious meetings in the open and limited the peaceful gatherings in the city center to holidays and memorial days only[8], although the official statistics shows that only 5 gatherings a year occur in the city. This decision was contested by the Prosecutor's office.

In Yenakiyevo (Donetsk oblast') on the verge of the football championship EURO2012, in June 2012 the city council declared moratorium on mass events and meetings "in order to prevent mass events and protest actions".[9]

The executive committee of Brovary city council by its decision No. 394 of 21.08.2012 ruled that all the peaceful gatherings in the city should be held in one location only.[10]

3.3. Refusal to register the notifications on peaceful gatherings

Some local self-governments simply refuse to register the notifications on coming actions. E. g. in Simferopol[11] or Odessa, where the city council rejected the notification on group physical exercises claiming that organizers were "unauthorized"[12]. Similar cases were registered in Kharkiv, Dnipropetrovsk, and Donetsk.

3.4. Specifics of the restrictions of the right to peaceful gatherings in Kharkiv

Kharkiv is the leader with respect to the number of court decisions banning peaceful gatherings. Over the year the city council refused to provide figures concerning the number

[8] Ban on religious meetings in the open http://maidanua.org/monitor/reports/view/10

[9] In Yenakiyevo a moratorium on protest actions was issued prior to EURO-2012 http://maidanua.org/monitor/reports/view/217

[10] Brovary city council by its decisionNo. 394 of 21.08.2012 ruled that all the peaceful gatherings in the city should be held in one location only http://maidanua.org/monitor/reports/view/273

[11] On peaceful gatherings in Simferopol http://maidanua.org/monitor/reports/view/264

[12] Odessa city council banned…morning exercises just in case http://maidanua.org/monitor/reports/view/205

of petitions referring to the restrictions of the right to peaceful gatherings, even after repeated appeals to the Prosecutor's office. Finally statistical data for 2010, 2011 and first half of 2012 together were obtained from the oblast' Department of Interior. The city authorities appealed to the court 52 times in total. For comparison — in 2011 Kyiv authorities filed 21 claims with court, while in Kyiv they receive three times more notifications on peaceful gatherings than in Kharkiv.

E. g. on 06.09.2012 at 2:00 pm the city council filed a petition concerning the banning of peaceful gathering which was to be held by "Svoboda" all-Ukrainian association in support of TVi Channel, and at 2:02 the judge I. Nurulayev already instigated the proceedings on the case. At 2:08 the respondent I. Shvaika was informed by phone that the case would be heard by the court at 3:00. The court ruled in favor of the authorities[13].

In the week between August 9 and August 16, 2012 the local authorities of Kharkiv submitted and "won" 5 claims on banning the protest action in support of the Ukrainian language, with the attendance rate not exceeding 20 persons. When it became clear that the participants of the protest actions simply changed the venue of the gathering to evade the court's ruling, they were fined for the alleged violation of public areas regulation — i. e. causing damage to the grass lawn, committed by someone else.

The utility companies' employees stole the protesters' property twice. The protesters twice became victims of the assaults, which occurred after militia officers have left the protest venue. The law enforcement bodies and local authorities passed no judgment on these assaults.

The steps taken in Kharkiv to ban peaceful gatherings are the concentrated manifestations of the processes going on in the whole country.

4. COURT BANS ON PEACEFUL GATHERINGS

The imperfections and lack of consistency in everyday practices of the administrative courts in Ukraine in considering the petitions from the authorities on the restrictions of the right to peaceful gatherings are evident (Article 182 of the Code of Administrative Proceedings of Ukraine).

In violation of Article 11 of the European Convention on Human Rights, which reads that any restriction of the right to peaceful gatherings can occur only when it is "necessary in a d democratic society", and a range of Decisions passed by the European Court on Human Rights, which define the exceptional nature of such restrictions, the Ukrainian courts in 2010 after investigations satisfied 83% of all the claims filed by the local authorities with respect to banning of peaceful gatherings, while in 2011 this figure amounted to 88%. Moreover, we are aware that the majority of "restrictions" mean complete banning of peaceful gatherings, although the European Court on Human Rights many a time classified such banning as violation of Article 11.

Often the courts passing decisions which ban peaceful gatherings refer to the illegal (as shown above) local "customs" and "provisions" with regards to peaceful gatherings, in-

[13] In Kharkiv the operation of Article 39 of the Constitution of Ukraine is safely blocked! http://maidanua.org/monitor/reports/view/276

stead of referring to Article 39 of the Constitution of Ukraine, Article 11 of the European Convention on Human Rights, and Article 21 of the International Covenant on Human Rights, as well as the practices of the European Court on Human Rights.

It is a common practice to hold the hearings on these cases in the evenings or at night, without due notification of the respondents or providing them with the chance to properly prepare to the hearing on the case instigated by the authorities.

The lack of efficient (prior to the date of the peaceful gathering) appeal procedure on the rulings concerning restrictions of the right to peaceful gatherings.

4.1. Data from the Unified Registry of the court decisions

As of the first half of 2012[14] the courts passed only 8 rulings in favor of the peaceful gatherings' organizers on 106 claims filed by the local administrations and local self-governance bodies (92, 5%). For comparison, in 2011, 203 decisions have been registered and 89.4% of them satisfied the authorities' requests. In the second half of 2012 the number of courts' bans increased (due to the "Language Maidan" and election meetings). 29 out of 106 claims were filed in Kharkiv; all of them were satisfied. The quoted data cannot be considered complete as not all the court decisions are entered into the Unified Registry.

4.2. Territorial aspect

According to the official responses received from the city councils of the oblast' centers, the largest number of notifications on the peaceful gatherings are filed in Kyiv (24% out of 7700 in 2011), Lviv (10%), and Kharkiv (6%). The rayon centers receive, on the average, 6 notifications per year. As to the ratio between the number of notifications and the size of population, Lutsk ranks first (2 per 1000 residents), with Simferopol and Lviv ranking second (1 per 1000 residents). In other cities this ration is lesser than 1.

4.3. The grounds for the court banning of peaceful gatherings

Most often the courts use the following justifications as the grounds for the banning:

1. Breaches of local order established for peaceful gatherings.
2. Simultaneous counter-meeting often fabricated only to justify the necessary ruling. The courts then ban both meetings.
3. The claim that "Gatherings obstruct fairs, shows etc".
4. "Failure to ensure public law and order".
5. Potential damage to public use areas.
6. Potential traffic jams.
7. "Interfere with rest and leisure of other people".
8. "Not everyone shares the views expressed by the organizers".

[14] Registry of administrative courts decisions on the claims re peaceful gatherings for 2012 (Center for political and legal reforms) http://www.cppr.org.ua/index.php/-12/586

For example, Zhitomir circuit administrative court banned a meeting on the grounds that "City residents and guests with children visit central area of the city for leisure, and the "protect TVi" rally might cause their negative reaction and justified resentment"[15].

Cherkassy circuit administrative court forbade any political actions in Soborna Square in the city center between July 16 and September 10 claiming that the "residents want a fair".[16].

4.4. Special cases

At the time of elections to the Supreme Rada of Ukraine some local councils started to treat meetings of the candidates with their electorate as "peaceful gatherings" and tried to ban them under any pretext. Allegedly due to the counter-meetings the court banned a an opposition candidate's meeting with the voters in Chernyhyv on 01.10.2012[17], in the settlement Kominternivske, Odessa oblast' on 15.08.2012[18].

On 13.10.2012 in Kharkiv the court banned A.Yatsenyuk's meeting with voters under the pretext that the Liberty Square is a recreation site for the city dwellers, and the meeting can become a public nuisance. Meanwhile, the CPU and Party of Regions' rallies were held in the Square without any hindrances. The court decision read that "holding a meeting directed against the authority is not possible". The action was prohibited for "other participants" as well.[19]

The new Language law passed by the Supreme Rada on July 3 became another source for rally activities for the 9 months of 2012. The protest actions swept over dozens of Ukrainian cities. The peaceful gatherings were banned by the courts in Kharkiv, Donetsk, Brovary, Simferopol, Dnipropetrovsk, Zaporizhzhya, Cherkassy, and Kyiv[20]. In Kyiv the court ruling read " Restrict the right to peaceful gatherings by means of prohibiting citizen Toruba V.M. and other subjects, who exercise their right to peaceful gatherings, from conducting any actions between July 4 and 9 2012 near the Supreme Rada, Presidential Administration, Cabinet of Ministers' buildings, center for business and cultural cooperation "Ukrainian house" and in the European Square "[21].

In Kharkiv the protests against the Language law were banned by the court 6 times. In all the cases the court never allowed the respondents to come up with the defense and dis-

[15] TVi supported in Zhytomir is banned too. http://maidanua.org/monitor/reports/view/277

[16] The Court banned political actions on Soborna square in Cherkassy http://maidanua.org/monitor/reports/view/237

[17] The Court banned peaceful gathering of "Bat'kivshchyna" in Chernyhyv on 01.10.2012 http://maidanua.org/monitor/reports/view/288

[18] The Court forbade opposition's meetings with voters in Kominternivske http://maidanua.org/monitor/reports/view/261

[19] Authorities banned Yatsenyuk's rally in Kharkiv by court decision http://maidanua.org/vybory2012/reports/view/1373

[20] Banning and restriction of "language" protests http://maidan.org.ua/2012/07/mova-pro-test-na-svobodu-myrnyh-zibran/

[21] The Court banned peaceful gathering between July 4 and Yanukovich's birthday http://maidanua.org/monitor/reports/view/212

regarded any respondents' arguments. In 2 cases out of 6 the respondents were not even informed about the hearing. [22] [23] [24] [25]

5. VIOLATION OF THE FREEDOM TO PEACEFUL GATHERINGS BY THE LAW-ENFORCEMENT BODIES.

5.1. "Sanctioned " and "non-sanctioned" mass events

The Order of the Ministry of Interior No. 404 of 28.07.94 established the By-laws for the militia patrols of Ukraine (hereinafter — "The By-laws") which defines "main tasks, the order of organization and tasks of militia patrol and point-duty service" and is obligatory for "all the staff of the ministry and departments of interior in charge of public order and safety in public places".

As of today a set of provisions of the Section XV of the Bylaws *("Protection of public order and safety in the course of mass events")* is contrary to the legal acts of higher judicial order.

a) Definition of the categories of " peaceful gatherings" (pp. 331-336), as meetings, rallies, demonstrations, street marches, picketing. These definitions are spelt in Article 39 of the Constitution of Ukraine, and only the Constitutional Court of Ukraine has the authority of its official interpretation. The Ministry of Interior does not have the competence to interpret the definitions found in the Fundamental Law (as it is tantamount to the interpretation of the constitutional norms).

b) Time frame for submitting notifications on peaceful gatherings (10 days, as per p. 337). Meanwhile:

— Article 39 of the Constitution of Ukraine does not contain any restrictions as to the time frames for notifications to be submitted by the public with regards to peaceful gatherings Under the ruling of the Constitutional Court of Ukraine No. 4-rp/2001 of 19.04.01 *"determining exact time frames for advance notifications <...> Is the matter of legal regulations"* — but the Ministry of Interior is not a legislative body and is not vested with authority to define any time frame.

Besides, the same p. 337 of the Bylaws mentions the possibility to "ban" a peaceful action. Without a special clause that such ban can be imposed by the court only (Article 39 of the Constitution of Ukraine) this provision poses a threat as the law-enforcers might conclude that they have the authority to ban any meetings.

c) P. 338 of the By-laws reads that "*an actual conducting of a meeting, non-sanctioned by the local state executive bodies can be the reason for stopping gatherings, rallies, street marches and demonstrations; decision concerning banning (stopping) of the event as it violates the order of its organizing and holding* [can be passed]". This statement contradicts the provisions of the aforementioned Article 39 of the Constitution of Ukraine, which determines that

[22] http://maidanua.org/monitor/reports/view/109

[23] The Court banned Language Maidan in Kharkiv http://maidanua.org/monitor/reports/view/252

[24] The Court bans language protests in Kharkiv http://maidanua.org/monitor/reports/view/258

[25] The Court once again banned language protest near Shevchenko monument in Kharkiv http://maidanua.org/monitor/reports/view/262

the restrictions on peaceful gatherings can be imposed by court only under the current law and stipulates not random but departmental principle of holding meetings.

d) Similarly, pp. 339 and 340 of the By-laws mentioned some "sanctioned" and "non-sanctioned" mass events, with p. 340 establishing the rules for the militia officers' operation with respect to the "non-sanctioned" meetings — including the possibility of detaining the "organizers or active participants", while the context allows for interpretation of "breach of public order" or/and "unlawful actions" as attendance of "non-sanctioned" meetings or their organization. It contradicts the Constitution of Ukraine) which does not establish an obligation to seek "sanctions" for exercising public rights.

Summing up: the aforementioned norms of the Bylaws do not comply with Article 19.1 and 19.2 of the Constitution of Ukraine or with the competences of the Ministry of Interior, defined in the Law "On Militia" and enforce restrictions of the right to peaceful gatherings not stipulated by Article 39 of the Constitution of Ukraine). These restrictions apparently cannot be described as "*necessary in a democratic society"* (p.2 Article11 of the Convention on Protection of Human Rights and Fundamental Freedoms).

5.2. "Isolated protests"

Inadequate official response to the "isolated protests" is another problem, brought to life by the deficient legal regulations and law-enforcers' training. Thus, in Lviv, militia officers detained a person who "*without advance notice was displaying a poster in a public area*") (the letter of Chief Department of the Ministry of Interior in Lviv oblast' No. C-4/31 of 14.02.12[26]); a protocol accusing her of an administrative offense under Article 185-1 of the Code of Ukraine on Administrative Infringements ("Violation of the order for organizing and holding gatherings, meetings, street marches and demonstrations") was written. However, Article 39 of the Constitution of Ukraine requires prior notification on "peaceful gatherings' while behavior and actions of a single individual irrespectively of what he/she carries, can by no means be considered " a gathering".

That's why we approached the Ministry of Interior of Ukraine demanding that militia officials are properly instructed on these matters. The only response we got was that our proposal "*will be considered in devising the Bylaws on enforcing public order and patrol and point-duty service*".

5.3. Use of plain-clothes law enforcers

Within the context of the newly prepared normative act of the Ministry of Interior on enforcing public order we insist on banning the practice of using plain-clothes militia officers to safeguard public order during peaceful gatherings (and before the implementation of court decisions on the restrictions of peaceful gatherings). On the one hand, this practice does not help in ensuring appropriate behavior and responsibility of the said officers (as was demonstrated in the course of the protest action against the demolition of the buildings in St. An-

[26] Request re "isolated protest" left Lviv militia dumbfounded. http://maidan.org.ua/2012/01/vid-zapyta-pro-odynochnyj-protest-lvivskij-militsiji-vidibralo-movu/

drew's descent in Kyiv[27]), while on the other, it is disorienting for the peaceful gatherings' participants, as provokes them to actively oppose the illegal actions of the persons who (in their judgment) cannot be recognized as militia officers performing their duties. The legal regulation of this matter is also advisable.

5.4. Law-enforcers' interference with the goal of preventing citizens from attending the peaceful gatherings

The most outrageous interference occurred in Zaporizhzhya on 26.06.12: the militia prohibited the action in support of the victims of torture claiming that the accusation of torture is slanderous.[28]

Militia officials often demand "permits" from the meetings' organizers. Thus, on 17.06.2012 in Kharkiv, during zoo-protection action a protocol was written under Article 185-1 of the Code of Ukraine on Administrative Infringements ("Violation of the order for organizing and holding gatherings, meetings, street marches and demonstrations") on the grounds that the organizers, according to militia staff did not have "the permit" to carry out the meeting. The court classified organizers' actions as the breach of the Article 185-1 and issued a warning[29].

5.5. Unjustified stopping of peaceful gatherings and detaining of their participants by the militia officials

On 03.07.2012 in the Liberty Square (Kharkiv) militia detained the protesters using force[30].

On 1.07.2012 the action "Human rights in an offside" was to be held in Kyiv. However, its organizer was detained by militia. The Ministry of Interior by way of explanation advised that Kyiv State Administration filed a petition with court to restrict the peaceful gatherings in the area adjacent to "Olimpiyski" stadium for two organizations "…and others as well".[31]

The most violent rout was organized by the militia against the tent-town residents protesting against the Language law in Cherkassy on 06.07.2012. The ratio between the number of the protesters and law-enforcers was 3 to 30. In response to our request militia officials stated that the detainees were provided with medical assistance.

6. STATE MONITORING OF THE PEACEFUL GATHERINGS

Under subparagraph 9, p.4 of the Standard bylaws for the departments of interior and public relations in the oblast' state administration (Resolution of the Cabinet of Ministers of

[27] SAM activists seek punishment for the militia officer whe beat a girl near Akhmetov's office http://palm.news-ru.ua/ukraine/14apr2012/sam.html

[28] In Zaporizhzhya the protest in support of torture victims was banned. http://maidanua.org/monitor/reports/view/202

[29] Zoo-defendant will go on trial for peaceful gatherings without permits http://maidanua.org/monitor/reports/view/193

[30] The tents on Kharkiv Maydan lasted 1.5 hours. Militia detained the protesters. http://maidanua.org/monitor/reports/view/211

[31] Nazariy Boyarskiy taken into custody during protest action in support of Ales Belyatsky http://maidanua.org/monitor/reports/view/207

Ukraine No. 128 of 05.03.08) these departments are vested with authority to monitor the peaceful gatherings. However, the survey focused on the methods and results of this monitoring showed complete lack of system and transparency in this activity. Only Poltava oblast' state administration provided the monitoring results, while not a single oblast 'state administration could explain the methods used in the monitoring, and some unambiguously stated that neither methods nor respective normative acts were in place. Moreover, despite the statement from Donetsk oblast' state administration that monitoring results are submitted to the Administration of the President of Ukraine and the Cabinet of Ministers of Ukraine, the said authorities negated any collection or analysis of such data.

Therefore, as under Article 19 of the Constitution of Ukraine the state power bodies and their officials must act only on the basis, within the competences and in the ways stipulated by the Constitution and laws of Ukraine, so far the monitoring activity of the oblast' state administrations remains outside the legal field, i. e. has no goal or order determined by legal norms. Lack of public awareness with respect to this activity is contrary to the norms of publicity and transparency of state authority.

7. CIVIL SOCIETY AND PEACEFUL GATHERINGS

A draft law No. 2450 "On peaceful gatherings", which caused debates among public activists is still to be considered by the Supreme Rada. Some of the activists supported the amended draft, while others claim that it will annihilate the possibility of peaceful gatherings. Over the year the hearing on this draft law has been postponed three times. Finally the Supreme Rada rejected a related law on diminishing the liability for the breach of the peaceful gatherings' order and on the introducing respective changes into some laws, and postponed the hearing on the draft law No. 2450 indefinitely.

8. RECOMMENDATIONS[32]

1. The Supreme Rada of Ukraine should officially recognize the Decree of the Presidium of the Supreme Rada of the USSR No. 9306-XI of 28.07.88 "On the Order of organizing and conducting meetings, rallies, street marches and manifestations in the USSR" as invalid in Ukraine (irrespective of adopting a special law on peaceful gatherings) and make its application impossible to the state authorities and local self-governance bodies.

2. The Supreme Rada of Ukraine should immediately amend the Code of Administrative Proceedings of Ukraine with the provisions aimed at ensuring the right to efficient appeals against court decisions directed at the restriction of right to peaceful gatherings.

3. The Supreme Rada of Ukraine should legislatively ban the involvement of plain-clothed law-enforcement officers in the peaceful gatherings to ensure public order.

4. The Ministry of Interior of Ukraine should immediately introduce changes to the by-laws of patrol and point-duty service of the militia of Ukraine to harmonize it with Article 19

[32] Appeal to the authorities with recommendations for changes http://maidan.org.ua/2012/06/majdan-monitorynh-prypynyty-systemni-porushennya-prava-na-myrni-zbory/

of the Constitution of Ukraine and the Ministry of Interior competences defined by the Law of Ukraine "On militia".

5. Local councils and prosecutor's offices should cancel all the local orders and provisions regulating peaceful gatherings.

6. The Ministry of Justice of Ukraine should provide official interpretation of the law concerning isolated protests.

7. In compliance with p. 3 of the Resolution of the Plenum of the Higher Administrative Court of Ukraine No. 6 of 21.05.12[33] the Court should summarize the existing judicial practices and approve the Plenum Resolution " On judicial practice of hearing and ruling over the cases concerning the right to peaceful gatherings by administrative courts", in particular, taking into account unacceptability of court restrictions of the right to peaceful gatherings for unspecified group of people ("…and all other persons").

8. The Supreme Rada of Ukraine in its law-making activity should take into account NGOs' proposals on protection of the right to peaceful gatherings, spelt in their Joint Declaration[34].

[33] The Resolution of the Plenum of the Higher Administrative Court of Ukraine No. 6 of 21.05.12 "On Practice of applying the law by the administrative courts in the hearings on rights to peaceful gatherings (meetings, rallies, marches, demonstratios etc.)" http://www.vasu.gov.ua/ua/plenum__vas.html?_m=publications&_t=rec&id=2327&s=print

[34] Joint Declaration on the right to peaceful gatherings. http://maidan.org.ua/2012/09/spilna-zayava-hromadskyh-orhanizatsij-schodo-zahystu-svobody-myrnyh-zibran-v-ukrajini/

XII. FREEDOM OF ASSOCIATION[1]

1. OVERVIEW

The situation with freedom of association is gradually deteriorating compared to previous years. This is due to the general deterioration of the environment for NGOs, in particular, an increase in pressure from the authorities and curtailment of possibilities of cooperation with the authorities. At the same time, the new legislation for NGOs was adopted, which may bring about significant improvements in freedom of association next year.

The Ukrainian legislation does not meet international standards and largely unduly restricts freedom of association. However, this was partly made up for by positive administrative practice which did not use in full all legal restrictions. However, in recent years this practice has gradually worsened: the number of inspections by certifying bodies kept increasing, as well the number of requirements during the registration or re-registration of NGOs, which are not specified by the law, and number of actions for liquidation of public organizations.

On March 22, 2012 the Parliament passed a new law "On public associations"[2], which had been developed and promoted by NGOs for several years. It will take effect on January 1, 2013. In general, the new law on public associations is in line with European standards and practice of the European Court of Human Rights. It also eliminates issues identified in the judgment of the European Court of Human Rights *Koretsky and others v. Ukraine*. Specifically, Section 10 of Article 12 of the new law clearly defines the grounds for refusal to register an association:

1) the presence in the statute and decisions reflected in the minutes on the formation of public association of provisions conflicting with the Constitution of Ukraine, Article 4 of this Law;

2) violation of Articles 7 and 10 of this Law (requirements for founders and name of association).

In addition, it contains no restrictions on the territory of activity of the association, possibility of involvement of volunteers, and possibility to independently determine their activities.

However, it may be fully estimated only after it enters into force. In 2012, the regulation was carried out under the old law.

On July 5, 2012 parliament passed the long-awaited law "On Charity and Charitable Organizations"[3]. On July 31 it was sent to the President, but of the Report preparation date[4] the

[1] Prepared by Volodymyr Yavorsky, Member of the UHHRU Board. The section also contains comments by Tetiana Yatskiv, Center for Public Advocacy (Lviv). See, e. g., T. Yatskiv, Review of judicial practice in protection of rights of civil society organizations in 2012, http://www.lawngo.net/index.php?itemid=2015

[2] See: http://zakon2.rada.gov.ua/laws/show/4572-17

[3] See: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=37599.

[4] December 3, 2012.

President neither signed the law, nor vetoed it. This is an overt violation of the Constitution: the law is not enacted yet, and nobody knows the exact date when it happens. According to many experts, this law takes into account the international standards on freedom of association and positive experience of regulation in other countries and is also a major step forward intended to improve situation with freedom of association in the future.

2. CREATING ASSOCIATIONS

There are many obstacles to the creation of associations, including NGOs. The situation is aggravated not only by certain provisions of the law on associations, which violate international standards, but also the lack of clear definition of the grounds for refusal of registration. In general, the registration procedure is not sufficiently clear, allowing the legalization body not to register the association of citizens or to delay such registration for many months without any reasons whatsoever.

There is no official statistics of refusals to register in the country. According to experts, the incidence is rather high. In most cases they will return your documents for revision without refusal, which reduces the number of refusals of registration, but, in fact, it is against the law, because such actions are not required by law.

Such refusals are different in content, but most often they violate the European Convention on Human Rights and the Constitution. In particular, such refusals do not even determine how the possible shortcomings of the statute threaten the interests specified in Article 11 of the Convention or the second paragraph of Article 39 of the Constitution, national security, public order, public health or the rights of others. Often, such refusals are groundless and are based on rather arbitrary interpretation of the statute of the organization and legislation.

Next case also illustrates the problem of ineffective legal remedies against the willfulness of registration bodies. In this case, having received the refusal of registration, the founders went to court, spent three years on litigation, and as a result, having received a positive judgment, they failed to register the organization. Since, according to law, the court cannot compel the registration, and can only cancel the order turning down the registration; therefore there can be an infinite number of such refusals to register. In fact, the appeals yield no positive results.

> *In previous Reports on human rights in Ukraine, we described the case of public organization "Association of Falun Dafa". Since 2001, its founders legalized the organization by notification. And since 2006, they are seeking legal status for public organization. The founders received five refusals of registration with different arguments. After the first two failures they changed the statutory documents. They lodged a complaint concerning the third refusal in 2009. The case went up to the Supreme Administrative Court, which approved the decision of the local court and canceled the order refusing registration of the NGO. During the judicial reviews, the organization received the fourth refusal, although it had not filed new documents. When they turned to the executors, on May 7, 2012 they received the fifth refusal of registration. After that, the founders decided to appeal to the European Court of Human Rights for violation of the freedom of association.*

Here are more examples of appeals filed against refusals of registration.

In February 2012 the Central Administration of Justice in Kyiv sent the public organization "Committee for Socio-Economic and Legal Policy" the notification demanding to bring the documents into compliance with the current legislation to enable their consideration. The founders of the organization filed a complaint against refusal to register. On March 30, 2012 the District Administrative Court of Kyiv decided to partially satisfy their appeal and ordered the Central Administration of Justice in Kyiv to re-consider the registration of NGO "Committee for Socio-Economic and Legal Policy" and pass judgment in accordance with the active legislation of Ukraine[5].

In the Volyn Oblast, the Youth Association "Volyn Human Rights Group" was refused registration. The dispute arose from the fact that the association planned to carry out its activities in two oblasts, but the law does not clearly specify who should register such organization. The foundation registration notification was sent to the Ministry of Justice of Ukraine for consideration, which sent this application for registration down to Central Administration of Justice in the Volyn Oblast. The latter issued an Order No. 144 of March 28, 2012 on the basis of legal opinion from 03.28.2012 refused to legalize the Youth Association by way of notice of establishment. Although the procedure of refusal of registration of public organizations deciding to go legal by notification is not specified by law at all. The organization believed that under Article 14 of the Law of Ukraine "On Public Associations" the legalization of public organizations whose activities cover the territory of two or more political subdivisions is conducted by the appropriate higher authority, i. e. the Ministry of Justice of Ukraine. As a result of legal expertise the registration authority recognized the name and the goal of social organization as inconsistent with the legislation, and that the legislation contains different interpretations of the term "region". On April 19, 2012 the Volyn District Administrative Court turned down the appeal against the order refusing registration. Refusing to allow the NGO's appeal the Court adjudicated that the appeal about sending legalization notification to the registration body of the Ministry of Justice of Ukraine cannot be allowed because Ukrderzhreyestr is not included in the structure of the Ministry of Justice of Ukraine[6].

Moreover, there are cases of illegal refusal of state registration of changes in the NGOs' constituent documents. As a result of legal expert evaluation, the bodies of legalization motivate the refusals of registration by changes in constituting documents. Very often they are based on nothing but the conviction of the registration authority.

The resolution of Lviv Administrative Court of April 19, 2012[7] satisfied the lawsuit of NGO "Public accusation" against the Main Department of Justice in the Lviv Oblast and ordered the Justice Administration to register changes in the statutory documents of the organization. The organization changed its name from the NGO "Public accusation" to NGO "Revealing occupational incompetence of officials and corruption "Public accusation." The legalizing body explained its position that the legislation provides a comprehensive list of bodies (officials) designed to reveal the incompetency of civil servants. According to officials, since the purpose of the plaintiff under the statute does not provide for revealing incompetence of officials and corruption, respectively, the new name of the organization (NGO " Revealing occupational incompetence of officials and corruption Public accusation") conflicts with other

[5] Resolution of the District Administrative Court of Kyiv on March 30, 2012 in case No. 2a-2893/12/2670 http://www.reyestr.court.gov.ua/Review/23674153

[6] Decision of Volyn District Administrative Court on April 19, 2012 in case No. 2a/0370/961/12 http://www.reyestr.court.gov.ua/Review/23688390

[7] Resolution of Lviv Administrative Court of April 19, 2012 in case number 2a-894/12/1370 filed by the NGO "Public accusation" in the Main Department of Justice in the Lviv Oblast for recognition and wrongful commitments, cancellation of order and take action. http://www.reyestr.court.gov.ua/Review/24011393

provisions of the statute, including the purpose of the NGO set out in paragraph 2.1 of the statute, because it directly informs that the goal is to identify incompetency of officials and corruption. However, the court in its decision did not agree with these arguments and found that there was no evidence presented that the change of name of the NGO Public accusation would result in grounds for restricting the activities of such organizations under Article 4 of the Law of Ukraine "On Public Associations".

During registration there is a mandatory filing stage making organization registered as a nonprofit organization and assignment to it of nonprofit status. This frees the organization from paying income tax. The State Tax Service grants this status according to individually procedure. In fact, it is a necessary additional step of registration because without it the NGO is acting as a company and is significantly limited in financial activities.

On September 11, 2012 the State Tax Service of Ukraine published on its site the draft order of the Ministry of Finance of Ukraine "On Approval of the Register of non-profit institutions and organizations"[8], whereby the order granting the status of non-profit NGOs should be changed. The experts think that the project could endanger public organizations. In particular, it does not clearly define the terms of the status assignment to non-profit non-governmental organizations[9]. However, by the end of the year the current order remained unchanged.

In the light of obtaining non-profit status it is interesting to look at the decision of the Supreme Administrative Court of Ukraine made on September 18, 2012 in the action of Kalush city public organization of the All-Ukrainian Society "Lemkivshchyna" against the resolution of Ivano-Frankivsk District Administrative Court of October 10, 2008 and the decision of the Lviv Administrative Court of Appeal of December 21, 2009[10]. In this case the tax agency refused to enter the organization into the register because its statute contains no exhaustive list of activities as required by §7.11.13, §7.11 of the Art.7 of the Law "On Corporate Income Tax". The Supreme Administrative Court of Ukraine admitted that the tax agency and courts had acted unlawfully and overturned their decision because the statute of the organization did not contradict the legislation, and the tax legislation establishes a comprehensive list of activities, the income from which is taxable.

3. THE LIQUIDATION OF POLITICAL PARTIES

Basing on the results of monitoring of the activities of political parties the Ministry of Justice continued the mass practice of filing lawsuits about liquidation of political parties.

Here are some examples from the practice of the Supreme Administrative Court of Ukraine.

On November 13, 2012 the Supreme Administrative Court of Ukraine rejected the appeal of the Ministry of Justice of Ukraine in an attempt to cancel the registration certificate of the politi-

[8] See: http://www.sts.gov.ua/regulyatorna-politika-/regulyatorna-politika/2012-rik/61832.html.

[9] Ministry of Finance decided to change the procedure for granting non-profit status of NGOs, UCIPR http://www.ucipr.org.ua/publications/minfin-virishiv-zminiti-poriadok-nadannia-statusu-nepributkovosti-nuo/lang/www.transparency.org.

[10] See the full text of the decision: http://www.reyestr.court.gov.ua/Review/27479915.

cal party "Kozak People's Party"[11]. The Ministry of Justice brought an action before the court in 2010, but the District Administrative Court of Kyiv on September 30, 2011 dismissed the lawsuit and the Kyiv Appeal Court on April 18, 2012 upheld this decision. The political party was founded in 2010, but failed to set up the required number of cells within 6-month period. The Supreme Administrative Court of Ukraine in its ruling stated that: "In accordance with the provisions of the Law of Ukraine "On Political Parties in Ukraine" and allowing for the decision of the Constitutional Court of Ukraine on October 16, 2007 No. 9-rp/2007 and Article 36 of the Constitution of Ukraine, the violation of six-month term, during which a political party ensures the creation and registration of its structural formations in fourteen administrative-territorial units of Ukraine, cannot be absolute grounds for revocation of the certificate of a political party.

Article 37 of the Constitution of Ukraine provides for exceptional cases when the activities of legalized associations are prohibited by the courts, in particular, their activity intended to liquidate the independence of Ukraine, change of constitutional order by force, violation of its sovereignty and territorial integrity, undermining its security, unlawful seizure of state power, propaganda of war, violence, incitement to ethnic, racial, or religious hatred, attacks on human rights and freedoms, health of population… "

On October 9, 2012 the Supreme Administrative Court of Ukraine[12] also rejected the appeal of the Ministry of Justice and upheld the decision of the District Administrative Court of Kyiv of June 30, 2011 and the decision of the Kyiv Administrative Court of Appeal of March 29, 2012 in the case of cancellation of the registration certificate of the political party "Pariya Ukrayinskoyi Molodi" dated September 8, 2010, for reasons of non-compliance with the provisions of part six of Article 11 of the Law of Ukraine of April 5, 2001 No. 2365-III "On Political Parties in Ukraine" demanding to ensure that within six months from the date of registration the political party should set up and register in the manner prescribed by this law its oblast, city and regional organizations in most regions of Ukraine, Kyiv, Sevastopol, and the Autonomous Republic of Crimea. The court stated: "The Court of First Instance, with which the Court of Appeal agreed, rightly basing on the fact that at the time of the trial the requirements of the part six of Article 11 of the Law No. 2365-III (including the decisions of the Constitutional Court of Ukraine of June 12, 2007 No. 2-rp/2007 and of October 16, 2007 No. 9-rp/2007) to ensure the formation and registration in the manner prescribed by this Law its oblast and city (in Kyiv and Sevastopol) organizations in most regions of Ukraine the defendant had executed."

On April 3, 2012 the Supreme Administrative Court of Ukraine partly allowed the appeal of the political party "Zakon i poriadok"[13]. The court decided to revoke the Award of the Regional Administrative Court of Kyiv of April 6, 2011 and the award of the Kyiv Administrative Court of Appeal of October 25, 2011, and send the case for a re-trial by the court of first appearance. The court ruling read: "The courts of previous instances have found that according to the certificate No. 181-pp. the Ministry of Justice on April 23, 2010 registered the political party "Zakon i poriadok". In violation of Part 6 of Article 11 of the Law of Ukraine "On Political Parties in Ukraine" within six months from the date of registration the political party failed to ensure the set up and registration in the manner prescribed by this Law of its oblast, city and district organizations in most regions of Ukraine, Sevastopol and the Autonomous Republic of Crimea. The plaintiff, as the body that had registered the political party on the basis of Ar-

[11] The full text of the decision is here: http://www.reyestr.court.gov.ua/Review/27479915.

[12] The full text of the decision is here: http://www.reyestr.court.gov.ua/Review/26441654.

[13] See full text of the decision: http://www.reyestr.court.gov.ua/Review/23548579.

ticle 24 of the above law applied to court for cancellation of the registration certificate of the defendant on the grounds of non-compliance with Article 11 of the Law of Ukraine "On Political Parties in Ukraine". The courts also found that by the time of trial by the court of first appearance the defendant had registered its oblast organizations in fifteen oblasts of Ukraine.

> *The court of first appearance denying the claim referred to the circumstances that by the time of adjudication of this case the defendant had fulfilled the requirements of Part 6 of Article 11 of the Law of Ukraine "On Political Parties in Ukraine" registering party oblast organizations in fifteen oblasts.*
>
> *The Court of Appeal annulling the decision of the trial court and satisfying the claims proceeded from the fact that the certificate of registration of a political party shall be revoked because after six-month period the defendant failed to register its oblast, city and regional organizations in most oblasts of Ukraine, Sevastopol, and the Autonomous Republic of Crimea, that is failed to satisfy the requirements of Article 11 of the Law of Ukraine On Political Parties in Ukraine"...*
>
> *The courts of previous instances found that by the time of the decision of the trial court the political party "Zakon i poriadok" had set up and registered in accordance with the law the oblast structural units in fifteen oblasts of Ukraine, which exceeded one half of the administrative-territorial units of Ukraine listed in Part 6 of Article 11 of the Law of Ukraine "On Political Parties in Ukraine".*
>
> *However, the courts of first and appeal instance failed to review the arguments of the defendant regarding the gravity of reasons for violating the terms of registration of oblast and city organizations that submitted objective reasons for violating the terms of registration of oblast branches of the party, the said circumstances were not adequately assessed in legal sense by the courts which prevents the court of cassation to determine the correctness of the findings of the courts of previous instances."*

4. TEMPORARY PROHIBITION OF ACTIVITIES AND LIQUIDATION OF NGOS

Numerous decisions to liquidate NGOs were observed.

In late March 2012 the SSU informed through the media that it had discovered the extremist religious organization of Wahabee Muslims. According to SSU, the leaders of the NGO "Straight Way" distributed the brochure "Violation of monotheism" written by Sunni theologian Abdul Aziz ar Rayyis. It contained calls to religious enmity and hatred, and promoted the ideology of Islamic fundamentalist Wahabism. As the Deputy Prosecutor of Odesa Serhiy Neykov told the media, they instituted a criminal case against the leaders of the NGO "Straight Way" under Article 161, part 1 (deliberate acts aimed at inciting national, racial or religious enmity and hatred). They also reported that the apartments of the two leaders of the "Straight Way" — Egyptian Oda Khaled and Syrian Masri Mohammad — were searched. They found the explosives — four TNT charges, two electric detonators to them, smoke bombs, and training grenade RGD-5. They also found a lot of Wahabee literature with calls to the religious war against heretics and tutorials for subversives. Both Oda Khaled nicknamed "Abdulkarim" and Mohammad Masri were detained. The NGO was registered in 2008. It placed the work on a broad footing only in 2010 by renting an office in a former one-story store. As it turned out, under the guise of "social organization" a real mosque was discovered[14].

[14] See more: SBU sealed mosque in Odesa: two persons Wahhabi are at the investigatory isolation ward, explosives found in their apartments// Segodnia Daily, March 30, 2012,

On May 4, 2012 the District Administrative Court delivered the judgment[15] compulsory dissolution (liquidation) of NGO "Straight Way" for inciting ethnic and religious hatred. In its judgment the court stated: "As seen from the conclusion of religious experts of the State Committee of Ukraine on Nationalities and Religions, the content of the brochure "Violation of monotheism", which was distributed by Public organization "Straight Way" contains a number of basic provisions and definitions contradicting the current legislation of Ukraine and should not be distributed in Ukraine. These materials contain calling for inciting religious hatred and enmity, propagate Islamic fundamentalist ideology of Wahabee movement recognized in many countries as a radical extremist sect of Saudi Arabia, members and supporters of which use radical political measures against members of other religions and beliefs…".

On June 14, 2012 the Odesa Administrative Court of Appeal upheld the judgment of May 4[16].

Another example also occurred in Odesa and is quite a dangerous technology of closing the unwanted NGOs.

The NGO "Human Rights Organization "Altera"was registered by the Main Administration of Justice in the Odesa Oblast in October 2011. An outsider has filed a lawsuit against the actions of the Main Administration of Justice involving the NGO as a third person, who demanded to cancel the order for registration of the organization. At first, the court kept repeatedly returning the claim, but on April 23, 2012 the Odesa District Administrative Court decided[17] to satisfy the claim and cancel the order for registration. Notably, there were no NGO's representatives in the courtroom. The verdict read: "…The plaintiff notes that he accepts and shares the goal of creating and main tasks of the NGO "Human Rights Organization "Altera" and wants to become a member as such right is granted him under Article 36 of the Constitution of Ukraine, Articles 1, 6 of the Law of Ukraine "On Public Associations" and the statute of the organization. Thus, violations of the law committed during the registration of NGO "Human Rights Organization "Altera" disregarding his rights as a person who intends to become a member of this organization. In addition, the plaintiff stated that the statute of the organization does not comply with clause 6 of Part 2 of Article 13 of the Law of Ukraine "On Public Associations" and the general principles of the establishment and operation of public associations…

The Court holds that the order of the Main Administration of Justice in the Odesa Oblast No. 1110 — o/d from 13.10.2011 about the registration of the NGO "Human Rights Organization "Altera" should be cancelled based on the following:

.. §2.2.5 of Section 2 of the statute of NGO "Human Rights Organization "Altera" provides for the right of organization to generalize judicial practice. However, paragraph 3 of Part 1 of the article of the Law of Ukraine "On the Judicial System and Status of Judges" specifies that the authority of generalization of judicial practice in Ukraine is endowed with high specialized courts …Thus, the NGO "Human Rights Organization "Altera" along with any other persons is entitled to exercise informal generalization of judicial practice. In paragraph 3 of Part 1 of article of the Law of Ukraine "On the Judicial System and Status of Judges" there is no term "official". However, as noted above, this norm of the law implies a formal generalization of judicial practice. Given the above, the statute of the organization had to mention the right of organization to carry out informal generalization of judicial practice only.

In addition, the statute of NGO "Human Rights Organization "Altera" does not define the procedure of accountability of the executive body of the organization through its main body — the

[15] The decision is available here: http://www.reyestr.court.gov.ua/Review/24011680.

[16] The decision is available here: http://www.reyestr.court.gov.ua/Review/24965962.

[17] See the full text here: http://www.reyestr.court.gov.ua/Review/24011782.

general meeting — as well as procedures for members of the organization through their parent body securing the control of the executive body of the organization …

Given the above, it appears that the statute of NGO "Human Rights Organization "Altera" does not include the order of internal reporting and control declared in the statute of the organization …

…The court deems that the provisions of subparagraph 3 of part 1 of section 5 of the statute concerning the applicability to the members of disciplinary measures in the form of disqualification are against the law …"

There are also many examples when the legalization authorities exercising control over the legality of the NGO submit claims for its liquidation. The biggest number of lawsuits was initiated in the Autonomous Republic of Crimea and Odesa Oblast. In other oblasts the legalization authorities do not especially use this right. It should be noted that the number of examples increased over the past few years.

On April 12, 2012 the District Administrative Court of the Autonomous Republic of Crimea allowed the claim of Leninsky District Administration of Justice of the Autonomous Republic of Crimea against the NGO "Eastern-Crimean Society for Renewable Energy" about the forced dissolution (liquidation) of the Public organization[18]. The Justice Administrations motivated the claims by the fact that despite repeated appeals and warnings the Public organization failed to submit information about the implementation of statutory activities, it is not situated at the legal address, it has neither records management nor accounting, produces no financial reports on taxes and obligatory payments, makes no payments in the manner and amount prescribed by law in violation of Articles 24, 26 of the Law of Ukraine "On Public Associations" and harms the interests of the state despite the inability of the state and its authorized agencies (tax inspection, pension fund) to control the financial and economic activities of the NGO which also evades meetings and re-election of statutory organs.

They also allowed the claim of Leninsky District Administration of Justice of the Autonomous Republic of Crimea about forced dissolution against the Public Organization "Lenin District NGO "Protecting Children of War" by the resolution of the District Administrative Court of the Autonomous Republic of Crimea on July 26, 2012. The resolution reads: "As of March 2006 the Leninsky District Administration of Justice of the Autonomous Republic of Crimea and Registration service of Leninsky District Administration of Justice of the Autonomous Republic of Crimea received no records of the meetings of the statutory bodies about the re-election of the said bodies. The founders and members of the governing body of the public organization "Leninsky District NGO "Protecting Children of War" failed to respond to the inquiries of registration service of Leninsky District Administration of Justice of the Autonomous Republic of Crimea (from 11.04.2012, No. 02/02-01/09/340, 11.04.2012 No. 02/02-01/09/341) and submitted no materials on statutory activities."[19]

The District Administrative Court of the Autonomous Republic of Crimea allowed the claim of the Main Department of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea against the Crimean republican public association "Crimean Tatar Block" about forced dissolution (liquidation) of the public organization[20].

On 22 August 2012 the resolution of the Odesa Regional Administrative Court allowed the claim of Reni District Administration of Justice of Odesa Oblast against the Reni regional public organization "Ukrainian Social Democratic Youth" about the forced dissolution (liquidation) of the association of citizens.

[18] Decision of the Administrative Court of ARC on April 12, 2012 in case No. 2a-2036/12/0170/6; http://www.reyestr.court.gov.ua/Review/24077714

[19] Decision of District Administrative Court of ARC on July 26, 2012 in case number 2a-6243/12/0170/13; http://www.reyestr.court.gov.ua/Review/25456129

[20] Decision of the District Administrative Court of ARC in case No. 2a-13523/11/0170 / http://www.reyestr.court.gov.ua/Review/21566758

Interesting is the following judgment: the legalizing organ initiates the audit of the organization suggesting working out a new redaction of the statute. The organization and its members are satisfied with the current version of the statute, and the legislation from the moment of registration until the check underwent no changes. After the failure to meet the "requirements" the officials initiated action to terminate the organization.

On December 09, 2010 the Odesa Regional Administrative Court decided to allow the claim of Ovidiopol District Administration of Justice of Odesa Oblast and the Public organization "Public Association "Zoria Dolyny" was forcefully dissolved (liquidated). The respondent filed an appeal.

The legalizing authority performed an inspection of the NGO "Public Association "Zoria Dolyny", which is confirmed with the act of 06.10.08, in the course of which the breaches were established: the purpose of the NGO "Public Association "Zoria Dolyny" and Section 2.2. of the Statute are contrary to Article 3 of the Law of Ukraine "On Public Associations"; §3.2 specifies that the members of the association may include individuals over 18 years old, which violates Article 12 of the Law of Ukraine "On Public Associations"; §3.8, §3.9 of the Statute give the members of the "Public Association "Zoria Dolyny" the right to be informed about the activities of the NGO "Public Association "Zoria Dolyny" (except confidential info), the restriction violates the principles of the establishment and operation of public associations, in particular the principles of equality of members and transparency fixed by Article 6 of the Law of Ukraine "On Public Associations"; §9.4 of the Statute specifies that funds consist of, including other revenues received by legal means, which violates §7.11.3 of the Law of Ukraine "On Corporate Income Tax"; in confirmation of the location of organization the latter submitted the decision of the executive committee of Novodolynsk Village Rada, while legally the association was non-existent. Also, the act contains proposals to amend the Statute or present a new redaction and provide a proof of legal address of the organization, of which to inform the district administration of justice within a month. The defendant failed to comply with the comments of the act of inspection, and therefore the plaintiff issued a warning to prevent violations of legislation No. 497-01-101 from 19.06.2009 according to Clause 1 of Article 28 of the Law "On Public Associations". Due to the neglect of warning by public organization "Public Association "Zoria Dolyny" and in order to prevent violations, the plaintiff went to court demanding to liquidate the organization.

On July 11, 2012 the Resolution of Odesa Administrative Court of Appeal partially allowed the appeal of the organization and repealed the resolution of the District Administrative Court of December 9, 2010 and adopted a new resolution in the case in which it dismissed the case of ***Ovidiopol District administration of Justice in Odesa Oblast v. the NGO "Public Association "Zoria Dolyny"*** *about the forced dissolution (liquidation) of the said NGO*[21]*.*

The Court noted that " justifying their claims the plaintiff, and subsequently the Court of First Instance proceeded from the fact that the non-governmental organization "Public Association "Zoria Dolyny" failed to account for the warning of Ovidiopol District Administration of Justice in Odesa Oblast No. 497-01-101 from 19.06.2009 about bringing the statute in line with the requirements of the law and considered it a good cause for the forced dissolution (liquidation) of the association, on the basis of Article 32 of the Law of Ukraine "On Public Associations". However, this position is erroneous based on the fact that, in accordance with the foregoing provisions there is no such reason for liquidation of the organization as non-compliance. The Civil Chamber notes that such penalty as the liquidation of public organization is an extreme measure and is applicable in cases mentioned in Article 32 of the Law "On Public Associations", namely actions which by their nature are systematic or act in flagrant violation of the requirements of the legislation of Ukraine. However, the plaintiff discovered no such circumstances. In this case, as the result of inspection by the controlling authority and non-fulfillment of its requirements the

[21] Resolution of Odesa Administrative Court of Appeal of 11 July 2012 in case No. 2-a-3380/10/1570 http://www.reyestr.court.gov.ua/Review/25295128

said authority used warning to bring the social organization to justice. The text of the plaintiff's judgment bears no clear indications that the latter ordered the defendant to commit any act; therefore one cannot assume that the warning remained unheeded. Moreover, the plaintiff's decision itself looks like penalty for committing a violation, but not the obligation to perform certain actions. Given the above, the Civil Chamber believes that the court of first instance violated the rules of substantive and procedural law in deciding the case, and therefore the judgment is subject to cancellation with the adoption of a new resolution."

Unlike other legal bodies, the public organization cannot be stopped by the court adjudication in the case of a claim filed by a tax authority, if the organization fails to submit tax accounts. However, in cooperation with the public prosecution bodies and legalizing body such claims bring about positive results.

On the one hand, the Tax Authorities are empowered to manage tax accounts. However, they cannot initiate action for termination of NGOs on this basis under the law. Article 46 of the Law "On State Registration of Legal Entities and Individual Entrepreneurs" implies that one of the cases of termination of state business registration of an individual entrepreneur is a judgment on the cessation of business of the individual entrepreneur. Pursuant to part 2 of Article 46 of the said Law the grounds for a court decision on cessation of business of the individual entrepreneur are as follows: adjudication in bankruptcy; entrepreneurial activity prohibited by law; failure to submit to the state tax service the annual advance VAT report; and financial statements according to law. Thus, the law indicates that possibility concerning entrepreneurial activity only.

There are other examples where the courts decide on claims of the tax administrations intended to curb public organizations that do not submit tax returns. This practice is maintained by courts in different oblasts, because the NGOs did not appeal the decision (even failed to appear in court hearings, so the founders and members were not interested in continuing the activity of the organization), and they took effect.

5. RECOMMENDATIONS

1. Ensure proper implementation of the Law "On public associations".
2. The President must sign the new law "On Charity and Charitable Organizations".
3. Remove Article 186-5 of the Administrative Code, which establishes the responsibility for managing or participating in unregistered public organizations.
4. It is necessary to thoroughly investigate cases of harassment of civic activists and citizens' associations.
5. The State Registration Service should summarize the practice of filing lawsuits intended to liquidate political parties and public organizations and to bring it into line with the requirements of Article 11 of the European Convention on Human Rights, Article 37 of the Constitution of Ukraine and practice of the European Court of Human Rights.
6. Higher Administrative Court of Ukraine should summarize the judicial practice concerning claims for liquidation (annulment of the certificate of registration) of political parties and public organizations.

XIII. FREEDOM OF MOVEMENT AND CHOICE OF PLACE OF RESIDENCE[1]

1. OVERALL REVIEW

In general, the freedom of movement is granted by law and in practice. However, some elements of this freedom suffered undue restrictions imposed by the authorities in recent years. And 2012 failed to change the principal trend.

As of August 1, 2012 the domicile registration of citizens and the issuance of passports now cover the terms of reference of the new institution — the State Migration Service (SMS)[2]. The passport offices at housing offices were closed down on September 1. However, the SMS has a much smaller staff, which immediately triggered long lines to SMS offices. As of January 1, 2013 the foreign passports will be issued by SMS units only irrespective of domicile registration which is rather a positive innovation.

Also, on July 27, the MIA approved new rules for processing and issuing passports to the citizens of Ukraine[3].

On August 5, 2012 the law on domicile registration of physical persons came into force: the Law "On Amendments to some laws of Ukraine on registration of primary and secondary residence of physical entities in Ukraine"[4]. It stipulates that the registration and crossing off the register are carried out in the same place and on the day of turning to the registration authority. It means that a person no longer needs to go, for example, to the old place of registration for cancellation of registration, but rather apply to the territorial division of SMS at the new place of residence, which will immediately issue cancellation of registration and new domicile registration. Another positive trait of this law is that now the domicile registration is not tied to the registration and crossing off the register of persons liable to military service and draftees. It was a very serious barrier during registration. In addition, the grounds for cancellation of registration are expanded significantly. If earlier it was an application or a court decision, now the crossing-off the register is also possible in the case of termination of grounds for the use of housing or legal grounds to stay in Ukraine for foreigners and stateless persons. For example, in the case of termination of the lease the registered person may be crossed off the register following the written request of the owner of housing. Previously, the court ruling was needed.

However, the alleged drawback of this law includes cancellation of peculiarities of residential registration of homeless. In particular, until now they could register at the center of

[1] Prepared by Volodymyr Yavorsky, Member of the Board UHHRU.

[2] See: http://dmsu.gov.ua/

[3] See: http://zakon2.rada.gov.ua/laws/show/z1089-12

[4] See: http://zakon2.rada.gov.ua/laws/show/5088-17

registration or center, where they had been granted asylum. Now they have no such right. It worsens the situation for people who own no habitation and who have no legal basis for the registration of residence. In practice, millions of citizens live under such conditions illegally renting accommodations and having no place to be registered. Moreover, it is legally impossible to rent accommodations with the possibility of future registration of residence, because the owners of such housing are unapt to tolerate it.

Another significant legislative change consisted in the adoption of the Law "On the Unified state demographic register and documents confirming the citizenship of Ukraine, identity a person or her/his special status." On September 6 it was adopted in the first reading, and already on October 2 it was adopted as a whole. However, the law was deprecated by different groups of the public[5], Ombudsman, etc. The President vetoed it, but on November 20 the Parliament re-adopted the law accounting for the President's proposals and on November 29 the president signed it. The law specifies that all documents establishing one's identity, including a passport, driving license, etc., should contain biometric data. All personal data collected during the issuance of these documents are stored in the Unified State Demographic Register that will be controlled by the State Migration Service of Ukraine. According to the requirements of this law, since January 1, 2013 the newly designed documents will be issued meeting the requirements of the law. In practice this means that within two months it will be necessary to place the work on a broad footing across the country for biometric-data-of-citizens readout. Moreover, now in order to obtain a passport, both domestic and foreign one, one will have to submit her/his biometric data, which will certainly create long lines across the country. Especially notable problems will emerge in remote areas and villages, as all citizens now have to personally apply for a passport in order to perform proper biometric data readout. It is easy to guess that it will create difficulties in the movement for citizens.

This law, among other things, provides for the creation of an automated database of citizens that will contain the information about their registration. Leaving aside the issue of privacy protection, it should be noted that the chosen system will not meet the best standards in this area and is rather intended for uncontrolled personal data collection in a single register. In particular, the law does not even specify the list of needful information about a person to be collected, does not discriminate on the exchange of information among the authorities, does not determine the intended use of collected information etc. The law does not clearly define who, on what grounds, following what procedure and to what extent can access the data of the registry. The law combines in one database the functions of registration of physical entities and certification, which is not practiced in any European country, as it creates vast opportunities for abuse[6].

In 2012, there emerged the problem with foreigners coming to Ukraine for volunteering. Late in 2011, the new law "On Legal Status of Foreigners and Stateless Persons" was adopted[7]. According to this law, the State Migration Service began demanding from foreign volunteers coming for a long stay in the country to submit the letter "of a public body responsible

[5] See, e. g., Advocates urge the President to veto the Law of Ukraine "On the Unified State Register of population", http://helsinki.org.ua/index.php?id=1349453405.

[6] See in more details: Guidelines in the field of registration of the population, OSCE, 7 October 2009, http://www.osce.org/ru/odihr/39497?download=true.

7 See: http://zakon2.rada.gov.ua/laws/show/3773-17

for implementation of volunteer programs, or a volunteer organization." However, these legal requirements failed to take into consideration that Ukraine has no such responsible public agency and organizations of volunteers cannot be registered, because there are no regulations specifying which authority is responsible for their registration. Accordingly, the SMS refused to issue a permit to foreigners for permanent residence in Ukraine, and some were prohibited from entering our country[8].

The negative trend of mass introduction of curfew for minors by local governments continued.

No new decisions of the European Court of Human Rights on this issue were made. However, there remains the problem of significant time spent on criminal case investigations, which in the case of recognizance not to leave as a preventive measure constitutes a violation of the freedom of movement. Ukraine has not complied with the general arrangements of the European Court of Human Rights on this issue in the cases of *Nikiforenko v. Ukraine* (application number 14613/03), *Pokhalchuk v. Ukraine* (application number 7193/02), and *Merit v. Ukraine*. The legislation was not amended and practice of investigative agencies remained unaffected. Although the newly adopted Criminal Procedure Code provides specifies new juridical regulations for this problem, but it is hard to say whether it will change the current investigation routine.

It is worth noting that like in 2010-2011 the militia went on limiting the freedom of movement, so that the people could not get to Kyiv to participate in peaceful assemblies. The militia without explanations or on formal grounds blocked vehicles (buses and vans) carrying participants of peaceful assemblies from other cities. In such cases, the carriers were often threatened with license forfeit. In all cases the militia denied the illegality of their actions. In particular, these cases were often reported by the political party All-Ukrainian Union "Svoboda"[9]. Although there was a positive move by the MIA issuing Order No. 170 of February 14, 2012[10] annulling Order of MIA from May 11, 2010 No. 170 "On approval of the Instruction on the actions of agencies and units of the bodies of the Ministry of Internal Affairs intended to organize and maintain public order", which allowed militia officers to stop such columns going to participate in peaceful gatherings. The new order has not been adopted though. But despite the cancellation of the previous order and absence of a new one, as you can see, this practice is still there.

There also remains the problem of incomplete transition from residence permits by registration upon notice: many procedures are inconsistent limiting the free choice of residence. The implementation of many social rights is tied down to the domicile registration, which is often the cause of failure to register a change of residence.

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[8] See: EVS volunteers are forced to live in Donetsk illegally, http://eu.prostir.ua/view/254998.html; The volunteers leave against their will // Newspaper "Kommersant Ukraine", No. 165 (1655), 18.10. 2012, http://www.kommersant.ua/doc/2046989.

[9] See, for example: Police has blocked the buses with Svoboda members on their way to Kyiv. Instead MIA isaccompanying columns of "bagmen", http://www.svoboda.org.ua/diyalnist/novyny/033556/; Police threatens carriers already in Ternopil: entrepreneurs are prohibited to provide buses for nationalists going to Kyiv to take part in March of UPA Fighters and 25th Congress of "Svoboda", http://www.svoboda.org.ua/diyalnist/novyny/033553/; Poltava carriers are threatened with taking away permits and are forced to turn down "Freedom"'s requests for the trip to Kyiv for Fighters' March on October 14, http: // www.svoboda.org.ua/diyalnist/novyny/033545/. In Rivne, Svoboda blocked the road Kyiv-Chop protesting against police arbitrariness, http://www.svoboda.org.ua/diyalnist/novyny/033560/; In Sumy, police threatens carriers of nationalists intending to participate in the Fighters' March in Kyiv, http :// www.svoboda.org.ua/diyalnist/novyny/033542/.

[10] See text of the order here: http://zakon.nau.ua/doc/?uid=1041.50625.0.

The "Ukrzaliznytsia" significantly reduced the train operation, which, according to human rights activists and the public, seriously restricted the freedom of movement. Especially many complaints about train operation were tabled after the introduction of summer schedule for trains[11]. In response to these appeals of human rights activists and the public, several trains were restored.

The reduction in the number of foreigners who have been denied entry to Ukraine, which takes place for the second consecutive year, deserves attention. Overall, for 9 months in 2012 the border guards denied entry into the country to 3541 persons[12], which is significantly less than in the previous years and which can be noted as a positive trend (2008: 24 760 persons; 2009: over 17 000; 2010: over 15 000, for 9 months of 2011: 4981.)

According to the State Border Service, in 1991–2011 they detained about 132 080 of illegal migrants, including:

— 116 200 persons were detained for illegal crossing or attempted illegal crossing of the state border;

— 15 830 people for violation of the rules of stay in Ukraine and other offenses;

In addition, according to the State Border Service, for the same period, another 135 053 foreigners as "potential illegal migrants" were not allowed to enter Ukraine. The courts made decisions on deportation of almost 34 858 foreign offenders.

There was also a significant drop in the number of illegal migrants apprehended, especially on the border on the EU (1999: 14 651 persons; 2011: 1828 persons)[13].

2. FREEDOM OF MOVEMENT: CURFEW FOR MINORS

Since early 2009, the local governments began to massively ban minors' stay unaccompanied on the streets and in public places.

In 2012, the number of cases of actual introduction of curfews for children even increased.

In particular, on June 6, 2012 the Kirovograd City Rada adopted a similar solution. The document bans the stay on the street of children under 14 from 10:00 pm to 6:00 am, children under 18 — from 11:00 pm to 5:00 am unaccompanied by parents or adoptive parentis.

On June 15, 2012 the Olexandrivska Village Rada of Olexandrivsky Region of Kirovograd Oblast decided to limit the stay of kids in public places by 9:00 pm in winter and 10:00 pm in summer, of minors by 10:00 pm[14].

In November 2012, they planned to impose a curfew in Cherkasy[15].

On the whole, there are no problems with the ban on minors stay at night unaccompanied at the entertainment establishments. However, while limiting their stay on the street they interfere with the freedom of movement, which is protected by the European Convention on Human Rights and the Constitution. Such interference should be carried out in accor-

[11] See, e. g., Bring back trains, http://www.mediaport.ua/articles/82853/vernite_poezda.

[12] Information from the State Border Service, http://www.dpsu.gov.ua/ua/activities/osd_results/osd_results_1.htm.

[13] Results of the State Border Service of Ukraine for 1991–2011, http://www.dpsu.gov.ua/upload/file/dpsu_1991_2011_% 281% 29.pdf.

[14] Olexandrivka: minors' stay curfew and restricted sales of alcohol, http://gre4ka.com.ua/society/komendantska-hodyna-3.html.

[15] "Teenagers ordered to keep to the rules of time and place", Http://mch.com.ua/nashi-novini/1549-pidlitkam-tut-ne-chas-i-ne-miscze.

dance with the law. That is, the interference with human rights can be determined solely by the law, and not by the decisions of local governments. The restrictions on freedom of movement are allowed only in the manner specified by the law on the legal regime of the state of emergency. This law stipulates that such limitation can be implemented under certain conditions in a particular area and for a clearly defined period of time. In addition, such decision of a public body is a disproportionate restriction on the freedom of movement, because it is not limited in time and not necessarily protects the rights of the child, i. e. it is an unnecessary limitation in a democratic society. In this regard, the establishment without exception of permanent restrictions on minors' stay on the streets is a violation of freedom of movement.

The UHHRU with the help of the Foundation for Strategic Affairs tried to appeal against two local acts imposing curfew.

In Chernihiv, the Resolution of Desniansky District Court of Chernihiv on June 10, 2010 the local decision was canceled. Up to now the appeal filed by local authorities has not been considered.

In contrast the Simferopol local court rejected the claim on May 16, 2011. On October 24, 2011 its decision was upheld by the Court of Appeal. Until now the reversal of a case on appeal has not been considered, although the cassational proceedings were initiated by the Supreme Administrative Court in December 2011.

3. RECOMMENDATIONS

1. Complete the reform of legislation on domicile registration, taking into account the positive international law practice[16] and the law of Ukraine on freedom of movement and choice of residence.

2. In the field of domicile registration to abolish determined by law on freedom of movement and choice of residence the procedure of registration of temporary location (such a procedure is stipulated by law, but it is not used in practice);

3. Consider broadening the grounds for registration of residence (such as it is made in the law on voters' register), as well as reviewing legislation to eliminate the dependence of the rights of residence. It is also necessary to abrogate provisions which stipulate that registration provides rights of possession or use of the dwelling. It is necessary to simplify the procedure for canceling registration in private homes at the request of the owner in the absence of existing leases of the premises. And it is also necessary to eliminate the interdependence of the fact of registration with the right of this home in the state and municipal housing funds. Without these steps it will be impossible to create a realistic system of registration, and millions of people actually will live not at the place of registration.

4. Local self-government bodies shall revoke the decision on the curfew for minors as contrary to the Constitution and international law.

5. It is necessary to amend the law "On administrative oversight" regarding possible restrictions on freedom of movement of persons released from institutions of confinement.

6. The MIA must stop the practice of obstructing passage of buses and other vehicles that carry participants of peaceful meetings, and thereby to stop practicing illegal restrictions on their freedom of movement.

[16] See, e. g., Guidelines in the field of registration of the population, OSCE, October 7, 2009, http://www.osce.org/ru/odihr/39497?download=true

XIV. PROTECTION OF VULNERABLE GROUPS AGAINST DISCRIMINATION, XENOPHOBIA AND HATE CRIMES

INTRODUCTION

In 2012 the government attempted to resolve problems related to discrimination, racism and xenophobia by passing an anti-discrimination law. On 14 May a draft Law on the Principles of Preventing and Countering Discrimination was tabled in the Verkhovna Rada. The bill, drawn up by the Justice Ministry and instantaneously adopted in its first reading, was just as immediately subjected to devastating criticism from civic organizations. MPs did not, however, take the results of public discussion about the bill into consideration, nor did it wait for the opinion from the Council of Europe and recommendations from the European Commission. On 6 September it adopted the law. Not one suggestion from the working group made up of civic organizations and the office of the Human Rights Ombudsperson, created with the agreement of the Verkhovna Rada's profile committee was taken into account and reflected in the bill passed.

On 13 September 2012 the Coalition against Discrimination in Ukraine, which is made up of 34 civic organizations from various regions of Ukraine, as well as other civic organizations and activists, addressed an appeal to President Yanukovych calling on him to veto the bill. This call was ignored and the law came into force. Human rights organizations now face the task of getting amendments made to it.

Legal issues linked with discrimination have been considered in detail in previous years' reports. This section analyzes the situation for certain vulnerable groups who suffer most from discrimination, racism and hate-related crimes — immigrants; Roma; Crimean Tatars; members of the LGBT community; drug addicts; and those with HIV/AIDS.

Yevhen Zakharov

1. IMMIGRANTS[1]

Discrimination against non-Ukrainian citizens can be usefully studied by considering several mutually linked aspects:

— a crisis of tolerance in Ukrainian society and spread of everyday xenophobia against immigrants;

[1] Prepared by V. Batchaev, Association of Ukrainian monitors of human rights' observance by law enforcement bodies.

— the activities of radical movements supporting acts of violence against immigrants;
— analysis of the situation as regards immigration in the country;
— the influence of the mass media on the level of xenophobia against immigrants;
— the political component linked with discrimination against immigrants in Ukraine;
— the level to which discrimination against immigrants is countered by the law enforcement bodies, their level of prejudice and distrust of foreigners;
— manifestations of migrant-phobia in normative legal documents and state immigration policy.

1.1. Crisis of tolerance in Ukrainian society and spread of aggressive xenophobia against immigrants on an everyday level

It can be said that the level of animosity within Ukrainian society to foreigners has over recent years been slowly, but steadily rising and that specifically migrant-phobia has become the most widespread form of xenophobia in Ukraine. Unfortunately Ukrainians are gradually losing features which were previously inherent — hospitality and goodwill in their attitude to immigrants; calm acceptance of other people's customs; respect for the religious sentiments of foreigners, and others.

Such changes in the attitude to people from other countries are clearly seen in the results of social research. The following are just some examples.

According to research regularly carried out by the Academy of Sciences' Institute of Sociology, the index of social distance according to the Bogardus scale has risen from 4.4 (the wish to be separate) in 1994 to 5.1 (the wish for isolation).[2]

During the course of a survey carried out among foreign students by the Duma Centre for Legal and Political Research, almost 44% of the foreign nationals asked said that they had, in one way or another, suffered in Ukraine from race-related harassment.[3]

The research carried out by the Institute of Human Rights and Prevention of Extremism and Xenophobia, together with the Kyiv International Institute of Sociology showed that 37% of Ukrainian citizens believe it necessary to restrict the presence of foreign nationals in the country; 23% of those surveyed said that only some members of foreign countries should be allowed into the country; while 9% were overall negative towards immigrants to the country. Where immigrants were from a country seen by Ukrainians as poor, 19.4% of the respondents were against them being allowed in.

The same research found that almost 8% of Ukrainian citizens hold radical, extremist views in relation to foreign nationals, which include justifying the possibility of physical violence against them.[4]

Certain types of xenophobia in relation to foreigners can undoubtedly be seen in any country however for Ukraine the main threat lies in the growing popularity within the population of xenophobia in relation to immigrants and support of the idea that discrimination against them is possible, or even advisable. A mentality of migrant-phobia and the possibility

[2] http://www.niss.gov.ua/articles/500/

[3] http://www.centrduma.org.ua/news/odoleet_li_kharkovskaja_milicija_rasizm_i_ksenofobiju/2012-01-30-5

[4] http://www.ihrpex.org/upl/doc/otchet1_1_8.pdf

of discriminating against foreigners which was previously supported by individual groups in society, but was in practice manifested in covert ways, has gained popularity in recent years. It has become entrenched in people's consciousness as a norm in their attitude to immigrants, and manifestations of this are gradually becoming more widespread and demonstrative. Such processes can be viewed as a challenge to Ukrainian society which due to certain political, economic and social problems, is presently at the crossroads, and needs to choose between tolerance and xenophobia towards foreign nationals.

At present the range of forms of discrimination demonstrated in Ukraine is fairly broad: from the activities of radical organizations which overtly espouse racism and see their aim as being to push immigrants out of Ukraine, to a supercilious and sneering attitude from average citizens; from overtly chauvinistic speeches from certain politicians to racist graffiti on walls and material seeped in hatred on certain websites which circulate ideas about racial inequality and calls to acts of violence.

The vulnerability of Ukrainian society to the disease of migrant-phobia and its tolerance for acts of discrimination against foreign nationals is demonstrated by monitoring of reports in the mass media carried out as part of the project.

The article "Undeclared war by Sumy skinheads" (the newspaper "Your Chance") reports of leaflets being circulated in Sumy which call on the population to fight "the foreign plague". In the leaflets, foreigners are accusing of spreading drugs and contagious diseases in Ukraine, while the increase in unemployment and rise in prices are linked with the arrival of immigrants.[5]

The website "Ukrinform-sport" informed that the UEFA Disciplinary Committee had fined the Lviv "Karpaty" football club 25 thousand EUR for a racist stunt by its fans. During a European League match in which "Karpaty" played against the Turkish "Talatasaraj", fans of the Ukrainian team raised a banner with the words in Turkish: "Turkish pigs, get out of Europe!"

According to information from the initiative group "Football against Superstition", this is not the first racist stunt by fans of the Lviv club. "Karpaty" fans often bring banners to the stadium with images of the Celtic cross which is considered the official neo-Nazi symbol; portraits of Mussolini, etc. It's stressed that similar banners are not infrequently raised by fans of other Ukrainian clubs.[6]

Many such examples can be cited.

The movement against immigrants in Ukrainian society has been getting stronger by the year and gaining popularity among various groups in society and increasing the number of its supporters. Creating civic formations, they try to act in a more organized and active fashion and influence all sphere's of public life.

A typical example can perhaps be seen in the civic organization "Stop Immigration!" which aims to get radical changes introduced to migration legislation, including: abolition of the Readmission Agreement; permission to immigrate to Ukraine being granted only to ethnic Ukrainians and people whose immigration is in keeping with Ukraine's national interests; abolition of the right of children born to foreigners on Ukrainian territory to

[5] http://shans.com.ua/index.php?m=nr&id=37290&in=339

[6] http://sport.ukrinform.ua/news/2/p42596/?SECTION_ID=2&ID=42596%2F&PAGEN_4=3

have Ukrainian citizenship; abolition of the right of spouses of Ukrainian citizens to receive Ukrainian citizenship; a ban on foreign nationals working as vendors at markets; acceptance of refugees only from countries which border Ukraine and ethnic Ukrainian refugees; cancellation of the visa-free regime with CIS countries; cancellation of residence permits and expulsion from Ukraine of foreign nationals whose presence does not bring the country any profit.[7]

Such cases demonstrate that tension in the relations between the Ukrainian public and immigrants is on the increase and discriminatory attitudes are in one form or another supported by a broad part of the population. At present what is widespread in Ukraine is so-called "everyday" xenophobia and discrimination which for the moment is not manifesting itself in wide-scale and overt extremism. Under certain circumstances, however, it could easily and swiftly move into a more radical phase — a skinhead movement — with active use of violence against immigrants.

1.2. Acts of violence against immigrants

There are a number of organizations in Ukraine of varying degrees of radicalization which espouse either the idea of protecting white race purity as a whole, or the line that "Ukraine is solely for Ukrainians". These are capable of resorting to planned and organized acts of physical harassment of foreign nationals.

Monitoring carried out by the Kharkiv Human Rights Group identified 62 hate-related crimes, including 27 attacks on foreigners from countries beyond the former USSR. 48 foreign nationals were injured which is considerably more than in 2009–2010 (in 2011 our monitoring of violence against the same category of foreign nationals showed that 35 people had been the victim of violent attacks; according to Interior Ministry data, 33 people suffered, yet not one of those attacks was classified as a hate-related crime.

It is quite difficult to assess the scale of violence against immigrants committed for racist motives for a number of reasons. These include the failings in official statistics from the law enforcement bodies; the lack of an objective investigation into such cases; and the deliberate efforts by law enforcement officers to hide and not make them public, and to classify such attacks as other types of crimes, etc.

Yet perhaps the main factor in the latency of hate crimes is the reluctance of foreign nationals to officially report attacks on them because they don't believe that there will be a proper reaction to such reports. To some degree this is also the result of the steady rejection by Ukrainian society of a tolerant attitude to foreign nationals, after all immigrants understand that without support from the public the state has no interest in objectively and effectively examining their appeals for protection against discriminatory actions. The public, in tolerating this or that form of discrimination against foreigners accordingly influence the authorities to the same degree as the latter can impact upon the spread of xenophobia in society.

So do the Ukrainian public really have grounds for wariness, and at times downright animosity towards immigrants?

[7] http://immigration-stop.org.ua/?page_id=90

1.3. Analysis of the situation with immigration in the country

As a rule, xenophobia against foreign nationals is based on the following widespread, yet fundamentally wrong, stereotypes:

1.3.1. "There is an unprecedented rise in Ukraine of the overall number of immigrants who arrive in the country in ever greater numbers with each passing year"

No "immigration boom" in Ukraine over recent years has been seen. 20.2$ of the immigrants presently living in the country came between 1991 and 1994; 25% from 1995-1999; 21.2% from 2000–2004; 25.3% from 2005–2009; 7.3% during the period covering 2010 and 2011. Immigration of foreign nationals into Ukraine is a fairly even process without the likelihood of a significant increase (*information published by Oleksandr Feldman, MP and founder of the Institute of Human Rights and Prevention of Extremism and Xenophobia in the article "Sociology against Migrant-phobic Propaganda", the Internet publication "Ukrainska Pravda"*)[8]

1.3.2. "Millions of foreigners who come to Ukraine, stay"

In 2011 22.910.848 foreign nationals and stateless persons (hereafter foreigners) were admitted into the country. During the same period the exit from Ukraine was registered of 22.189.032 foreigners (*letter form the Administration of the State Border Guard Service* from *08.02.2012 No. 26/M-56 to an information request from the Association of Ukrainian Human Rights Monitors on Law Enforcement).* Thus almost 97% of foreigners who entered Ukraine later left the country. The remainder of 3% or 721.816 people does not indicate the number of immigrants who have remained in Ukraine illegally, but simply the number of foreigners who arrived in the country over the period when the count was undertaken. This figure is relatively small since on average almost 2 million foreigners visited Ukraine each month.

1.3.3. "Immigrants seriously worsen the crime situation in Ukraine"

In 2011 3.778 crimes were committed by foreigners in Ukraine, this constituting 0.7% of the registered total number of crimes ((515.833). During this period police brought charges of committing a crime against 225,517 people, of whom only 1,2% (2.651 people) were foreign nationals or stateless persons. We thus see that the ratio between the number of foreigners believed to have committed crimes to the overall number of foreigners who visited Ukraine in 2011 is 0.01% (*data from Interior Ministry official statistics*)[9]

1.3.4. "Immigrants spread "atypical" infectious diseases and threaten the sanitary and epidemiological situation in the country"

The Health Ministry's Central Sanitary-Epidemiological Station in a letter dated 26.11.2007 informed that over all the years since Ukraine gained independence, there has

[8] http://www.pravda.com.ua/articles/2012/01/4/6834902/

[9] http://mvs.gov.ua/mvs/control/main/uk/publish/article/717134;jsessionid=C242B37681AC893912059013C3629CB2

not been one proven case where immigrants caused an outbreak of "atypical" illnesses in Ukraine.

In a response from 20.02.2012 No. 03.20/17/34-P to an information request from the Association of Ukrainian Human Rights Monitors on Law Enforcement, the State Sanitary-Epidemiological Administration informed that the Health Ministry did not keep any statistics regarding outbreaks of infectious illnesses among foreigners.

1.3.5. "Immigrants compete with Ukrainians on the job market"

As of January 2012, only 5,802 foreign nationals who were temporarily living in the country had work permits (*statistical data from an Interior Ministry report, form 10-1P).* Immigrants may undoubtedly work illegally, however in Ukraine this is not on a wide scale due to the general slump in the country's economy and the serious liability envisaged by legislation on employers who use foreign nationals' labour. Furthermore, foreigners usually only get illegal work doing low-prestige jobs which Ukrainians refuse to do.

1.3.6. "Ukraine has an ill-considered attitude to granting immigrants permission to be in the country as a result of which at the present time there are a considerable number of foreign nationals living permanently in the country. This constitutes a threat to national security and could leave to the "dilution" of the Ukrainian people"

As of 01.01.2012 211.143 foreigners were living permanently in Ukraine on residence permits. This is less than 0.5% of the total population of the country whereas according to demographic assessments, the critical mass of immigrants is considered to be 10–12% (*statistical data from an Interior Ministry report, form 10-1P*).

1.3.7. "Ukraine is very easy on asylum seekers and grants refugee status to an unwarrantedly large number of immigrants who later get a certificate giving them the right to permanent residence in Ukraine".

At present in Ukraine there are 980 refugees on the record (as of June 2010 1,081 refugees were living in the country). In 2011–2012 not one refugee in Ukraine received permission to immigrate (*statistical data from an Interior Ministry report, form 10-1P*).

1.3.8. "Ukraine is an attractive country for immigrants. Having legalized their position in the country, foreigners bring in their relatives and friends"

Only 23% of immigrants surveyed said that the standard of living in Ukraine is better than in their country. 21% said that it was worse living in Ukraine, while 31% believe that the standard of living in Ukraine and the standard in the country they are from do not differ significantly. One in four of the immigrants said that it was better in other CIS countries, while 30% said that they did not see any difference between the standard of living in Ukraine and in other CIS countries.

48% of the immigrants surveyed said that friends from their country do not want to leave at all. 21% expressed the opinion that their fellow countrymen would like to move to European countries, but not to Ukraine. Only 15% named Ukraine as a country in which their relatives or friends would like to remain (*information published by Oleksandr Feldman, MP*

and founder of the Institute of Human Rights and Prevention of Extremism and Xenophobia in the article "Sociology against Migrant-phobic Propaganda"[10]).

1.3.9. "Immigrants in Ukraine are overwhelmingly people from poor Third World countries, people with another faith, culture and mentality"

Of the total number of immigrants, approximately 87% are citizens of countries within the former USSR, including around 68% who are nationals of Russia, Belarus or Moldova (*statistical data from an Interior Ministry report, form 10-1P).*

1.3.10. "Immigrants who've settled in Ukraine are the "social dregs" of society, a poorly educated group of the population inclined to lead a parasitic lifestyle"

Foreigners who have received permits to immigrate and have documents certifying the right to permanent residence in the country share the same employment rights as Ukrainian citizens. The overwhelming majority of such immigrants (74%) are working. Of the total number not working — 42% are studying; 19% are on maternity leave; and 13% are officially unemployed. 51% of the immigrants have higher education; 22% — secondary specialized; and 34% have completed secondary education (*information published by Oleksandr Feldman, MP and founder of the Institute of Human Rights and Prevention of Extremism and Xenophobia in the article Sociology against Migrant-phobic Propaganda").*

1.3.11. "Immigrants don't integrate into Ukrainian society"

80% of immigrants communicated fluently with the local population in Russian or Ukrainian. 65% of immigrants who have underage children speak to them both in their native language, and in Ukrainian or Russian; 23% speak to them only in Ukrainian or Russian and only 12% speak to them only in their native language. Furthermore, 68% of the children of immigrants go to ordinary schools and 7% to specialized schools. 62% of those surveyed would like their children to get a higher education in Ukraine. 91% of the respondents have friends among the local population to whom they always turn for help. 80% believe that they can count on help from their neighbours.

The index for the level of integration of immigrants in Ukraine, on a scale of 0 to 100 is quite high, standing at 78 points (*information published by Oleksandr Feldman, MP and founder of the Institute of Human Rights and Prevention of Extremism and Xenophobia in the article Sociology against Migrant-phobic Propaganda").*

1.3.12. "The scale of illegal immigration of foreign nationals to Ukraine is constantly on the increase. Ukraine has become the dumping ground for illegal migrants who can't get into Europe. There are so many illegal migrants in Ukraine that there's nowhere to keep them"

The number of illegal migrants detained in 2011 (13.298) had not risen, but on the contrary had fallen by 8.2% since 2010, and in 2012 it was four times lower than in 2011. On average, temporary holding centres for foreigners of the State Border Guard Service in 2011 were 30–50% full. There was an analogous situation with the numbers in Interior Ministry

[10] http://www.pravda.com.ua/articles/2012/01/4/6834902/

special centres for keeping illegal migrants. Over 9 months of 2011, the Chernihiv centre was 29% full; the Volyn centre — 27% *(letter from the State Border Guard Service Administration dated 08.02.2012 No. 26/M-56 and the letter from the State Migration Service dated 10.02.20112 No. 8/3-104 to an information request from the Association of Ukrainian Human Rights Monitors on Law Enforcement), in 2012 the degree to which the centres were filled was considerably lower than in 2011.*

Ukraine's Accounting Chamber asserts that "the capacity of the temporary holding facilities for illegal migrants significantly exceeded the real need for such units. The situation has developed where there are two guards for one illegal migrant…" (official site of the Accounting Chamber; material entitled "When will the Migration Service begin working?"[11]).

1.3.13. "Among illegal migrants in Ukraine, there are a very large number of people from countries in Africa, South-East and Central Asia"

From the total number of illegal migrants detained in 2011 (13.298), almost 93% (12.341) are citizens of former Soviet republics (*statistical data from an Interior Ministry report, form 10-1P).*

1.3.14. "By signing a readmission agreement with the European Community, Ukraine has got itself into a trap — we will be handed hundreds of thousands of illegal migrants from Europe"

In implementation of the above-mentioned agreement, 240 foreigners were received from the authorized bodies of EU member states in 2011. In 2009 there were 712 foreigners; in 2012 — 398. (*Letter from the State Border Guard Service Administration dated 08.02.2012 No. 26/M-56 to an information request from the Association of Ukrainian Human Rights Monitors on Law Enforcement).* Over the first 9 months of 2012 only 99 people were received.

Clearly the increase in intolerance towards immigrants is not exclusive to Ukraine. Due to social and economic problems a crisis of tolerance and certain disillusionment with the principles of multiculturalism is being seen in many European countries. However unlike some of those countries, the immigration situation in Ukraine is still far from critical and does not pose a significant threat to national security. Immigrants are not trying to exert influence on the police and processes of state governance; are not demanding that separate economic, religious and cultural privileges be set aside for them through legislation; and they are virtually not competing with Ukrainians for accommodation or employment.

We thus see that the spread of discriminatory sentiments in Ukrainian society is not so much caused by social and economic factors, but is to a greater extent the result of an ill-considered position by the mass media, politicians and the authorities on this issue.

1.4. The impact of the mass media on the level of xenophobia towards immigrants

The impact of the media on people's awareness cannot be overestimated, and in fact in many cases it is precisely the media which formulates the public's position regarding this or that phenomenon. Unfortunately in Ukraine the media usually paint the image of foreigners

[11] http://www.ac-rada.gov.ua/control/main/uk/publish/article/16738219

coming to Ukraine in black colours, presenting the entire spectre of burning migration issues as being solely about illegal immigration. In this they focus attention purely on its negative consequences (which for Ukraine are very often only potential) and broaden negative stereotypes to cover all foreigners as a whole. At present demonstrations of intolerance towards immigrants have become a bad custom. Nor are they only resorted to by little-known publications, with them used also by popular publications and television channels positioning themselves as democratic and liberal.

Over recent years in Ukraine a clear trend can be identified towards reduced sensitivity by the media to public expressions of xenophobic and discriminatory sentiments. In their attempts to gain popularity and increase their audience of information users, journalists and editors quite often ignore certain norms of professional ethics and communicate with the public in language that has clear features of hate speech. Clearly media publications, aside from those with a radical bent, as a rule avoid publishing direct calls to discrimination against immigrants, however they quite often publish material which in a covert manner elicit a negative attitude to foreigners, and thus provoke the public and the authorities to the same kind of discrimination. Both the average person and officialdom begin to believe that immigrants are a potential threat and that therefore certain restrictions of their rights are a blessing for each individual Ukrainian and for society as a whole.

The most widespread methods for such "information diversion" against the image of immigrants are:

1.4.1. Publication of material solely on negative subjects: crime; fraud; extremism; illegal migration; the spread of dangerous illnesses; contempt for Ukrainian culture; etc) which creates the idea that their presence in the country is a threat to public safety

A recent trend should be noted towards a reduction in the number of cases where the media mention the specific ethnic original or citizenship of an immigrant in connection with a crime having been committed. This is undoubtedly a positive factor. At the same time, the press continue to focus attention on the "alien nature" of the alleged offender, with the headlines sensational and creating in the minds of the reader a generally negative image of immigrants — "killer foreigner"; foreigner rapist; foreigner swindler; and foreigner invader.

The following are some of the articles, etc.

— *"In Zaporizhya a foreigner shoots Ukrainian in the head", (*http://gazeta.ua/articles/np/_na-zaporizhzhi-inozemec-prostreliv-ukrajincevi-golovu/404830*)*

— *"In the Crimea foreigner beats and rapes disabled woman"* (http://ru.tsn.ua/chorna-hronika/v-krymu-inostranec-izbil-i-iznasiloval-zhenschinu-invalida.html)

— *"40-year-old foreigner rapes small girl"* (http://www.gorod.cn.ua/news_26867.html)

— *"Foreigner rapes woman in the toilet of a private cafй in Kyiv".* (http://tsn.ua/ukrayina/gvaltivnika-inozemcya-spiymali-na-garyachomu-u-kiyivskomu-kafe.html)

— *"HIV-positive foreigners allowed into Ukraine""* (http://koordinatorudpn.livejournal.com/256407.html)

1.4.2. Use in the article of information from unknown sources or incorrect treatment of data; references to unnamed or "own" experts; manipulation of statistics in order to create the idea that there is a considerable threat posed by the presence of immigrants in Ukraine

Examples:

— **"***Xenophobia on the increase in Ukraine***"** (http://novynar.com.ua/worldabus/155889)

— **"***Most hired killers in Ukraine are carried out by people from the Caucuses — Interior Ministry***"** (http://zaxid.net/home/showSingleNews.do?bilshist_zamovnih_ubivstv_v_ukrayini_skoyuyut_kavkaztsi__mvs&objectId=1123077)

— **"***Venal problem, or why Ukraine is rejecting its own migration policy"* (http://cripo.com.ua/?sect_id=5&aid=107277)

— *"Instructions for a propagandist"* (http://orientyry.com/analityka/pamyatka-propahandysta-2.html)

1.4.3. The use in material of special vocabulary — terms which elicit an unfriendly attitude to immigrants ("occupation"; "invasion"; "colonies of immigrants"); offensive names for the immigrants' ethnic origin; setting immigrants against Ukrainians

Examples:

— *"Ari chopped a Ukrainian's finger off"* (http://hvatitbuhat.info/?p=1720)

— *"Hunt for negroes opened at Ukrainian resorts"* (http://ecity.cn.ua/world/2257-na-kurortah-ukrainy-otkryta-ohota-na-negrov-foto.html)

— *"Ukraine is turning into a desert inhabited by Africans"* (http://ru.tsn.ua/ukrayina/ukraina-prevratitsya-v-pustynyu-kotoruyu-zaselyat-afrikancy-i-aziaty.html

1.4.4. Publication of material accompanied by photographs aimed at provocation, with content that is offensive and degrading for immigrants — "foreigner behind bars"; "foreigner — beggar"; "foreigner — foreigner — beast"

Examples:

— *The article "Near "Ornava" "black" blood spilled. Arabs fight with Negroes for our whores" in "New Ternopil Newspaper", with a photo collage which associates black foreign students with monkeys;* (http://www.report.if.ua/portal/novyny/ternopilska-gazeta-obrazyla-arabiv-iz-negramy-ta-sprovokuvala-mizhnarodnyy-skandal)

This kind of media position which inculcates a sense of wariness and animosity towards immigrants is for many Ukrainians a kind of justification for the possibility of using violence against foreigners.

The prevalence of discriminatory sentiments towards immigrants in Ukraine is also reflected in the sharp rise in manifestations of so-called cyber-hatred on the Internet. Xenophobic slogans; calls to discrimination against immigrants and to acts of violence against them are freely circulated over the websites of radical organizations, personal blogs and so-

cial networks. Judging from the commentaries, they find support in the first instance among young people.

A telling example in this respect is the Ukrainian web resource "Stop Immigration"[12]. This is the mouthpiece for a civic organization of the same name and actively pushes a negative attitude to both illegal immigrants and to the lawful immigration of foreigners to Ukraine.

"No immigrants, illegal or illegal, come here to bring good to Ukraine. Yet this society, which is so attractive to foreigners, was created from the work of many generations of Ukrainians. Giving the right to live in it and the prospect of citizenship, we make migrants co-owners of our national heritage and essentially give away for free what our parents left us".

An even more aggressive discriminatory position with respect to immigrants is demonstrated by the web-resource of the Social-National Assembly[13]:

"Immigration, both legal and illegal, undermines the vital forces of the Ukrainian Nation and State. It is not for nothing that parallels are drawn between the present situation and the time of Koliyivshchyna (the Cossack and peasant uprisings against Poland in 1768–1769 — *translator*). On the eve of Koliyivshchyna, like now, the native population was oppressed and exploited through social pressure, and a carte blanche was given to aliens. We all know the outcome. Ukrainians drove out the occupiers. The same thing is happening now too. Ukrainians are being destroyed. Each year there are hundreds of thousands less Ukrainians. At the same time thousands of immigrants (mainly from Asia and Africa) are pouring into Ukraine. We are seeing the planned substitution of ethnic Ukrainians by multicultural rabble. We need to have a new Koliyivshchyna which will put everything in its place"

Despite the fact that Ukraine is a signatory to the Additional Protocol to the Convention on Cyber-Crime which concerns criminalization of acts of a racist and xenophobic nature carried out via computer systems, the competent bodies in Ukraine are continuing to pay no attention to countering cyber-hate on the Internet.

1.5. The political component linked with discrimination against immigrants in Ukraine

It must be noted that the problem with the spread of discrimination against immigrants in Ukrainian society is closely linked with the energetic activities of certain political forces which, hoping to increase their electoral rating, publicly resort to statements of unconcealed animosity towards foreigners and suggest that their rights and liberties should be restricted. Ukrainian society is effectively pushed the idea that "love of Ukraine means not loving non-Ukrainians". Most typical in this respect is the activity of the All-Ukrainian Association Svoboda [VO Svoboda] whose leaders push the idea that Ukraine's security is endangered by immigration of foreigners; claim that there need to be limits placed on tolerance; and insist on legislative restrictions on the rights and freedoms of immigrants.

In the organization's declared "Programme for the protection of Ukrainians", VO Svoboda proposes heightening control over the presence of foreigners in Ukraine; giving privileges to Ukrainian students with respect to hostels attached to academic institutions; and allowing

[12] http://immigration-stop.org.ua/

[13] http://sna.in.ua/

foreigners to obtain Ukrainian citizenship over under exceptional circumstances and after living in Ukraine for 10 years, etc.[14].

"The migration issue is, undoubtedly, a question of Ukrainians' survival as a nation. Whether we will be the masters of our land, or be inexorably turned into a minority without rights, it is this choice which faces us", the leader of VO Svoboda Oleh Tyahnybok asserts. "Before our eyes a radical change is being made to the ethnic structure of the country's population. Our cities are more and more filled with people who have come from the countries of Asia, Africa, the Caucuses — markets, hostels, even entire blocks are becoming zones of their total domination. The issue of migration is not simply immediate, it is flagrantly so. And it needs to be resolved immediately and systematically, and the insurgence of immigrants from Third World countries stopped. Otherwise, in just some two generations, we will disappear as a nation.""[15].

In their public rhetoric, the leaders of this political force often try to demonstrate the need for "anti-immigration" measures by resorting to unchecked statements; distorted or incorrectly interpreted data; they draw certain parallels with a general European crisis of multiculturalism and assert that rejection of the principles of tolerance towards immigrants is a kind of indicator of "European thinking".[16].

Since VO Svoboda positions itself as being in opposition to the present regime which is rapidly losing the trust of the Ukrainian public, the ideas of the organization, including those regarding the possibility of discriminating against immigrants supposedly in defence of Ukrainian authenticity and national interests, are becoming more and more popular among Ukrainians.

It should be noted that certain officials also resort to overly discriminatory actions in Ukraine, claiming that this is prompted by concern for the interests of native inhabitants.

In the article "**The Mayor of Feodosiya ordered that all negroes be ejected from the embankment**" (Internet publication "NEWS.ru.ua) it is stated that "… the Mayor of Feodosiya demanded that negroes not be allowed on the city's embankment. He stated this at a working meeting of the Feodosiya Executive Committee. "There mustn't be even one negro there. they pester passers-by and don't let attractive girls get past at all. They flog them something or other, some kinds of magic suitcases. People shy away, this is not how it should be"[17].

1.6. The level to which discrimination against immigrants is countered by the law enforcement bodies. Xenophobia in police bodies

The Ukrainian authorities' concentration on ensuring effective protection of immigrants from acts of hate-based violence and discrimination remains at an extremely low level. Despite the present position of human rights organizations which are warning of danger and pointing to the prevalence of intolerance towards immigrants and cases where physical force

[14] http://www.svoboda.org.ua/pro_partiyu/prohrama/

[15] http://www.tyahnybok.info/dopysy/zmi/013068/

[16] For example, O. Tyahnybok's article: "The Readmission Agreement is a crime against the nation" http://www.tyahnybok.info/dopysy/zmi/013068/, the article by S. Udovychenko "Vietnamese people beat up adolescents with sharpened pikes" http://www.kharkiv.svoboda.org.ua/dopysy/dopysy/017067/ and others.

[17] http://rus.newsru.ua/ukraine/22jul2011/nonigro.html

is used against them, Ukraine's government does not see countering discrimination and xenophobia as one of its priority tasks. As a rule, officials only acknowledge the existence of a problem only at the level of certain cases, referring in their conclusions exclusive to reassuring data from law enforcement bodies which amount only to adding up the number of criminal cases initiated under the Article of the Criminal Code in question (*Article 161 Infringement of citizens' equality on the grounds of their racial, ethnic origin or religious convictions*).

According to data from the Prosecutor General's Office, in 2009 4 criminal cases were initiated under Article 161 of the Criminal Code; in 2010 — 6 ; in 2011 — 2. Of these the following number reached the court and the person was convicted: in 2009 — not one case; in 2010 and 2011 — three cases each year (*response from the Prosecutor General's Office from 17.02.2012 No. 23-132vykh-12 to an information request from the Association of Human Rights Monitors in Law Enforcement. The Prosecutor General's Office refused to provide information as to the number of cases where some of those under investigation are foreign nationals, citing secrecy of the pre-trial investigation.*

Such figures clearly fail to reflect the real situation regarding discrimination in the country and are to a greater measure evidence of the law enforcement structures' impotence in countering this negative phenomenon.

Limited application of Article 161 of the Criminal Code is to do with a number of factors, among which it is useful to highlight the main two:

— the lack of specificity in the article itself which makes it extremely difficult to prove intent to commit a crime specifically on the grounds of racial or ethnic enmity;
— the lack of a developed algorithm within the law enforcement bodies for proceedings under this article.

Such an extremely small number of precedents for applying Article 161 arouses doubts as to the point of its very existence, at least in its present form.

People from the Interior Ministry usually explain the passiveness of the police in ensuring criminal prosecutions of people believed to have committed hate crimes by the fact that the initiating of a criminal case under Article 161 is within the competence of the Prosecutor's Office. Such explanations made some sense before the introduction of the new Criminal Procedure Code [CPC]. However police bodies do not use other possible levers of influence on the situation — for example, Article 67 of the Criminal Code which considers the committing of a crime on the basis of racial, ethnic or religious enmity or discord as an aggravating circumstance. Article 67 can be applied without passing the criminal investigation from the police to the Prosecutor's Office, while establishing motives of enmity makes it possible for the investigator to make the appropriate additional classifications of any criminal acts envisaged by the Criminal Code, from hooliganism and the inflicting of bodily injuries to destruction of property, desecration of religious places of worship or of graves. However this practice is not widespread within police bodies with this, on the one hand, making the sentences for crimes more lenient, and on the other, reducing the statistical data regarding the real number of hate-related crimes.

As a rule, the law enforcement bodies give attention only to highly publicized cases of physical violence against immigrants. However, even in such cases the police try to treat the motives for the crime as being on an everyday level. If the assailants did not have obvious markers indicating that they're part of the skinhead culture — the relevant style of clothes; Nazi symbols; tattoos; haircut etc, they don't view the attack on a foreigner as racially moti-

vated. Even when overtly racist slogans, suggesting with offensive epithets that there is no place for certain groups in Ukraine, are chanted during the attack, the police treat them as everyday insults and not as an indicator of the ideological motivation for the crime.

The law enforcement bodies almost don't react at all to cases where the rights of immigrants are infringed, unless acts of violence are involved. Insults to the national honour and dignity of foreigners; incitement to enmity through the use of campaigning methods; restriction of rights through the lack of citizenship go unnoticed by the law enforcement people.

The lack of anti-discrimination legislation in Ukraine and the specific features of the structure of legal relations in the link "police-prosecutor-court" encourage the police to consciously change the classification from "hate crime" to "everyday" crimes which are less difficult to investigate, as well as to try to hide them altogether from their records.

Police officers in the Sumy oblast succeeded in arresting people whom they believed to have set fire to a room in a hostel where three students from Nigeria were living. They proved to be an 18-year-old student and 21-year-old guard in a private security firm. Both belonged to a milieu of football and graffiti fans. Despite the fact that near the window of the room which was set alight swastikas were daubed, as well as the clear enough words "Go home", the police did not find any signs of a hate crime in this case, and initiated a criminal case against the two young men over deliberate destruction or damage to property[18]. The sentence — 2 years and 8 months imprisonment does not seem commensurate with the crime committed. We can cite other similar examples of police reluctance to see xenophobia and racism as motives of a crime.

During a survey of foreign nationals in Kharkiv carried out by the Kharkiv Human Rights Group at the end of 2011, 21% of the respondents said that there was no point in turning to the police for protection since the police don't respond.

23.1% said that they had come under pressure from the police themselves. 13.2% asserted that the police had insulted them; 9.9% had suffered threats; while 3.3% were subjected to physical violence.

79,1% of the foreign nationals asked had been detained by police officers. In 67% of these cases the police checked their documents; in 13,2% — they demanded money, and in 2.2% they looked for drugs. 7% of the respondents said that the police had stopped them without given any explanation.

More than half of the respondents reported that the police had detained them even when they had had documents with them.

Most often the foreign nationals obtained their release by paying the police money (45% of those surveyed). Only 8.8% of the foreign nationals succeeded in proving that they were right and 6,6% were released after being held for lengthy periods (from 30 minutes to 6 hours)[19].

There is no doubt that false stereotypes and negative prejudices regarding immigrants seen in Ukrainian society are typical of any particular group of people including those united by their work. Nonetheless the police represent an armed body of power which enjoys fairly broad powers to take autonomous decisions, including with respect to applying punishment and coercion. For these reasons, support from police officers of the idea that the interests of

[18] http://shans.com.ua/?m=inews&nid=2856

[19] http://dozor.kharkov.ua/zhizn/obwestvo/1103585.html

Ukrainian citizens can be protected via restriction of the rights of immigrants poses as serious threat to the latter.

The police, like any other law enforcement or enforcement body, are a clearly structured and hierarchical structure built on the basis of single-handed adoption of managerial decisions and their mandatory enforcement by all ranks below. The level of xenophobia among law enforcement officers and the prevalence of cases of discrimination against immigrants are thus directly dependent on the degree to which the Interior Ministry's heads understand the importance of deliberate efforts in developing a tolerant attitude to foreigners among subordinate personnel.

Unfortunately starting from 2010 the relevant educational work with personnel from law enforcement bodies which had previously been actively carried out by the Department for Human Rights Monitoring within the Interior Ministry (dissolved in 2010 on the order of the former Minister of the Interior, Anatoly Mohylyov) and by the Public Councils under regional departments of the police has at present virtually stopped.

However it would be incorrect to think that law enforcement officers violate the rights of foreign nationals solely due to a negative attitude to the latter. The level of corruption among Ukraine's police is rather high, and in many cases the police see immigrants as a target for extortion and illegal profit. Even where they are legally in the country, foreign nationals are always in a position of considerable dependence in respect to members of the law enforcement structures.

One of the factors promoting manifestations of discrimination against immigrants within the police force are the wrong accents placed by the Interior Ministry on priorities for carrying out work with foreigners and the excessively strict position on ensuring measures to counter illegal immigration. With respect to immigrants, the law enforcement bodies carry out solely functions of control and punishment with an almost total absence of the functions of providing assistance or consultation.

At present the effectiveness of a police department's work in the immigration sphere is assessed according to:

— the number of illegal migrants found;
— the number of foreign nationals expelled from the country;
— the number of foreign nationals charged with administrative offences;
— the number of foreign nationals banned entry to Ukraine;
— the number of foreign nationals placed in special police units;
— the number of foreign nationals whose period of being allowed to be in Ukraine is reduced (*departmental reporting from the Interior Ministry, form 10-IP)*

The Interior Ministry's management constantly and insistently pushes personnel to achieve specifically these indicators and demands that territorial bodies of the Interior subordinate to the Ministry that their results for identifying foreign infringers are no worse than during the previous year. Clearly under such circumstances the police have a direct interest in their being as many foreign infringers as possible.

We should note that the top people in the Interior Ministry, endeavouring to prove that harsh methods are needed to counter infringements of legislation by immigrants, focus the attention of their subordinates on the negative risks of immigration processes and spread among police personnel traditional stereotypes which create the subconscious image in rank and file police officers of an "immigrant — enemy".

"In some districts there is a concentration of representatives of certain ethnic groups (Chinese, Vietnamese, countries of the Caucuses and others) whose activities are connecting with trading; lease relations with the use of land; various forms of criminal offences, including spreading drugs. The majority of migrants are not engaged in production, and simple want a leading role in the above-mentioned spheres of activity. Given the present demographic crisis further concentration of such people in particular inhabited areas could lead to social conflicts arising between them and the local population. Moreover, among people from this category there are a good number of carriers of dangerous diseases, for example, tuberculosis, HIV/AIDS, malaria, etc".

"Illegal migrants have recently begun penetrating our country more and more often in order, firstly, to use its territory as a transit route for the economically developed countries of Western Europe. Secondly, in order to obtain legalized status in Ukraine for an indefinite period (using procedure for applying for refugee status, as well as student and other channels.

Among those who come to Ukraine in violation of established procedure, there have proven to be people complicit in crimes and other offences. There have been cases where ethnic criminal gangs have been created by illegal migrants" (*excerpts from a letter from the State Department on Citizenship, Immigration and Individual Registration Matters of the Interior Ministry, dated 20.04.2011* No. 49/3-3398, sent to territorial division of the Department in different oblasts).

Such "inoculations of distrust" lead to police officers being prejudiced towards immigrants and carrying out actions with obvious signs of discrimination, of which the following are the most widespread:

— unwarranted refusal to allow immigrants to extend their stay in Ukraine;
— reduction in the period that immigrants are allowed to remain in Ukraine for insignificant administrative faults or for far-fetched motives altogether;
— making demands which restrict the right of immigrants to move freely around Ukraine;
— unwarranted checks of immigrants' passport documents and taking them by force to police stations in order to carry out a check on lists of offenders;
— unlawfully entering immigrants' homes in order to inspect them;
— unlawful personal examination of immigrants and of their cars;
— taking the decision to remove an immigrant from Ukraine on trumped up grounds and creating conditions making it impossible to appeal such decisions;
— taking the decision to ban an immigrant from entering Ukraine without the proper explanation of the grounds for taking such a decision.

It is mainly immigrants from the countries of Africa; the Caucuses; Southwest, Central and Southern Asia who mainly suffer from such treatment. Foreign students are especially at risk, as well as people who crossed Ukraine's border under non-visa procedure. Because the latter do not have a visa stamp in their passports, they don't have the opportunity to confirm with documents the purpose for coming to Ukraine and the period they plan to remain in the country.

Obviously infringements of immigrants' rights in Interior Ministry bodies are not solely due to the Interior Ministry leadership's support for excessively strict measures of influence on the immigrant situation in the country. The level of discrimination against foreigners in the enforcement and law enforcement structures is directly dependent on the legal frame-

work in which they have to work. The normative legal acts, including departmental documents, should not in any way stimulate discrimination but should, on the contrary, be some kind of protection against any of its manifestations appearing.

1.7. Manifestations of migrant-phobia in normative legal documents and state immigration policy

We should first note that Ukraine, having chosen European immigration legislation and international human rights standards as its model, back at the beginning of independence officially declared its course as towards the development in the country of a national law-based regime for foreigners being in the country, with the latter having, with the exception of certain restrictions, virtually the same rights, freedoms and duties as Ukrainian citizens. This principle of mutual relations is enshrined in Article 26 of Ukraine's Constitution and Article 3 of the Law on the Legal Status of Foreign Nationals and Stateless Persons.

However, in later development of legislation, which the Interior Ministry was actively involved in, the country's authorities gradually, yet unremittingly moved away from those declared principles for building mutual relations with immigrants, narrowing and restricting their rights. The government, in spite of its officially declared national legal framework, in practice chose a course of constant restrictive and coercive measures with respect to immigrants, while practically ignoring other more humane, while no less effective, levers of influence on the migration situation — immigration amnesty; a well-considered policy, beneficial to the country, for employment of foreigners; measures to promote their adaptation into the Ukrainian community, etc. The main direction of State immigration policy became aggressive while at the same time not always effective countering of illegal migration with widespread infringements by the enforcement bodies of foreigners' rights and interests.

The stance of aggressive prejudice and mistrust in their attitude to immigrants which is supported by state authorities has always been condemned by Ukraine's human rights community which has sometimes forced the government to avoid more progressive normative legal acts which are more favourable for foreigners.

On 25.12.2011 a new Law on the Legal Status of Foreign Nationals and Stateless Persons (No. 3773-VI) came into force, this being fundamentally new and considerable more humane in its attitude to immigrants.

Among the progressive norms of the new law which bring in an attitude to immigrants by the State which better considers their needs, the following should be noted:

— a decision to prohibit entry into Ukraine is taken with respect to an immigrant not because of an infringement of legislation committed during their previous stay in the country, but solely in cases where the foreigner has not fulfilled the administrative penalty imposed by the court;
— an immigrant shall not necessarily be prohibited from entering Ukraine if the decision is taken to forcibly return him or her to their country of permanent residence, and thirty days, not five, are granted for leaving Ukraine;
— the period during which a foreigner is banned from entering Ukraine after attempting to illegally cross the state border has been reduced from ten to three years;
— the broad list of grounds for reducing the period in which an immigrant is allowed to be in the country has been revoked. It is established that such a reduction in the

time period may be made where the foreigner has lost the grounds for remaining any longer in the country;

— a fundamentally new procedure for "voluntary return" of a foreigner to his or her country of origin has been introduced. This is in its essence not an act of coercion, but a measure of assistance since it is carried out at the wish of the immigrant and with the support of the state authorities,. International and civic organizations;
— a norm stipulates that forced return or expulsion of immigrants is not possible to countries where their life or freedom is in danger, where they could face execution, torture or ill-treatment;
— an extended list of categories of immigrants who have the right to receive a temporary residence permit;
— more specification of the procedure by which a foreigner confirms having sufficient financial means which is one of the requirements for the adoption of a positive decision allowing the person to be in Ukraine.

Such changes without any doubt deserve a positive assessment however the new Law on the Legal Status of Foreign Nationals and Stateless Persons has not removed all risks of potential discrimination against immigrants.

The most significant flaws in this normative legal act with respect to safeguarding foreigners' rights and freedoms are as follows:

— the law continues to grant unwarrantedly great powers in resolving conflicts of interest between foreigners and the State to the law enforcement bodies, and not to the courts. For example, while it is exclusively the prerogative of the court to take a decision imposing a fine on a foreign national for infringing the rules on being in Ukraine (Article 203 of the Code of Administrative Offences), the law enforcement bodies are able to take decisions on reducing the period of time that an immigrant may be in the country; on the person's forced return to the country of their permanent residence; and a ban on their entry into Ukraine. This is despite the fact that forced return; the termination of registration and a ban on entering the country are much more severe punishments than a fine and cause the immigrant considerably more material and moral damage.
— unlike the previous version, the revised law does not have a separate section "The main rights, freedoms and duties of foreign nationals and stateless persons" with articles on the rights of immigrants to work; education; healthcare; social protection; accommodation, etc, and only states that "*foreign nationals and stateless persons who are in Ukraine on lawful grounds shall enjoy the same rights and freedoms, and also have the same duties as Ukrainian citizens with exceptions established by Ukraine's Constitution, laws and international agreements".* This rejection by the bill's authors of a more detailed declaration of the rights of foreigners is ill-advised since the range of rights which the immigrants have depends first and foremost on the status under which they are in Ukraine. For example, only foreigners who are permanently resident in Ukraine have the right to engage in labour activities on the grounds and according to the rules of procedure established for citizens of Ukraine. Other categories of foreign nationals must receive a work permit from the relevant authorities. It is also only foreigners who are permanently resident in Ukraine who have the same right to education as Ukrainian citizens, while other immigrants pay for their studies according to separately envisaged rules of procedure. The lack of clear regulation in the new law of the rights and freedoms of

foreigners, including with the status under which they are in the country taken into account undoubtedly complicates the mechanism for exercising their rights;

— the law does not contain clearly defined procedure for the enforcement agencies carrying out measures of coercion or punishment with respect to immigrants. This sets the groundwork for discrimination against them by the authorities, with officials retaining the right at their own discretion to pass decisions banning an immigrant's entry into Ukraine; reduction in the time period that they can be in the country; their forced return or expulsion; justifying such decisions through general formulations like "in order to protect the legitimate interests of persons living in Ukraine; "in the interests of public order"; "due to the need to protect citizens' health". The legislators have also retained the norm making it possible to detain and forcibly expel an immigrant from Ukraine merely on the supposition that the foreigner intends to avoid leaving the country following a decision is passed on his or her return to their country of residence.
— the law does not ensure that immigrants have proper access to the justice system. A foreigner is granted the opposition to appeal to the court against a decision passed to forcibly return or expel him or her, but such an appeal does not stop these coercive procedures from being carried out;
— the law does not specify the grounds for refusing to extend a foreigner's period of stay in Ukraine. At present these grounds are stipulated by an Interior Ministry Order, the provisions of which are excessively strict and fail to comply with the more humane principles of the new law.

Furthermore, implementation of the progressive norms of the new Law on the Legal Status of Foreign Nationals and Stateless Persons is made more difficult by the fact that a number of subordinate acts have not been adapted to comply with it, including normative documents of the law enforcement structures.

Yet perhaps the main threat to ensuring enforcement of the humane provisions of the revised legislation lies in the range of implementers — the state authorities who are made responsible for implementing the legal norms in everyday life. In Ukraine the central executive authority which ensures implementation of State policy in the migration sphere is the newly created State Migration Service. Our analysis of the powers assigned this body and the directions of activities specified for it gives grounds for considering that reform of immigration legislation may become the latest attempt by the authorities to unite what cannot be united — to ensure civilized relations between the State and immigrants while keeping the priority role in creating these relations with the Interior Ministry which has traditionally had a prejudiced attitude to foreigners.

The format for the newly created State Migration Service proposed by the government has not met the human rights community's expectations. A Presidential Decree from 6 April 2011 State Migration Service No. 405/2011 passed "Provisions on the State Migration Service of Ukraine" according to which the work of the Service is run on the basis of Interior Ministry orders. Such work is directed and coordinated by the Minister of the Interior who not only proposes a person for appointment as Head of the State Migration Service and agrees the candidacies for heads of its territorial divisions, but also deals with issues of reorganization of the central body's structure and the divisions of the migration service; delegates representatives of the Interior Ministry to its collegiate body; considers proposals from the State Migration Service on formation of State policy in the migration sphere; agrees the annual plan for the

Service's work and oversees its implementation. Thus, instead of creating a new civilian state body which would merge the fragmentary powers of various departments regarding work with foreigners and would take on functions regarding migration issues which are not appropriate for law enforcement and enforcement structures, yet another body for overseeing foreigners has been created in Ukraine, a kind of "daughter enterprise" of the Interior Ministry.

Under such conditions it is extremely likely that the activities of the State Migration Service will not be focused on implementing the humanitarian missions — promoting immigrants' social adaptation and monitoring observance of their rights and freedoms by the State authorities — but based on the enforcement and punitive principles seen in the work of the law enforcement bodies with the harsh stance typical of them in treating foreigners.

It is undoubtedly the case that in many European countries the migration service is within the police structure or closely linked to it. However for Ukraine such experience can hardly be considered optimum since Ukraine's Interior Ministry is not a body implementing general internal policy, but merely an instrument for fighting crime and a means of maintaining law and order, with its own narrow tasks and the priorities in work which these entail.

In conclusion, one can say that at present in Ukraine discrimination against immigrants in the form of unconcealed violence has not for the moment become a large-scale and common phenomenon. However, a trend caused by a number of social and economic factors towards an overall increase in the level of xenophobia in the country, combined with the passive position taken by the authorities with respect to countering this negative phenomenon, gives grounds for predicting a possible sharp rise in the number of cases of radical acts with respect to foreigners against a background of heightened popularity of extremist ideas and marginalization of Ukrainian society.

Ukraine is formally endeavouring to maintain a fairly high level of tolerance towards immigrants with equality of the rights of foreigners and Ukrainian citizens enshrined in the Constitution and in the Law on the Legal Status of Foreign Nationals and Stateless Persons. In international acts aimed at preventing discrimination and racism which Ukraine has ratified, these are recognized as criminal offences, etc. However such intentions are to a large extent declarative, and are effectively rendered meaningless by the lack of a decent anti-discrimination law with algorithms for countering various forms of discrimination; by overtly migrant-phobic provisions of certain departmental normative legal acts; by the inaction of the competent bodies with respect to fighting hate crimes and discrimination; and by the existence of xenophobia within the police.

The government should draw up and introduce a comprehensive range of normative legal, economic, social, promotional and other measures which will not only ensure proper protection of immigrants from violence on the part of radical organizations, but will also prevent discrimination against foreigners within the State authorities and on an everyday level.

Fundamental change is vitally needed in the attitude of the law enforcement bodies to investigating cases of discrimination against immigrants, in the first instance of acts of violence against them. The present system for countering hate crimes in Ukraine is extremely ineffective, including as a result of flaws in existing legislation.

The authorities need to ensure that all forms of enmity or animosity from the public to foreigners are countered, and must actively fight demonstrations of discrimination and xenophobia in the mass media which should not encourage these negative phenomena and understand that xenophobia and hate crimes are closely linked with one another.

2. ROMA[20]

According to the research done by the National Institute of the social studies under the President of Ukraine "Assessment of the Ukrainian society tolerance rate: risks and possibilities of achieving national unity" the social distance index with respect to the Roma people (gypsies) has always been high — from 5.1 in 1994 (reluctance to see this social group members as the citizens of the state, while accepting them as guests) to 6.1 in 2010 (extreme intolerance — xenophobia, total banning them from the country.[21]

The survey carried out by Kyiv International Institute of Sociology in February 2010, showed that there 6 ethnic groups, towards which Ukrainians show the tolerance rate less than 50%: the Germans (38%), the Gypsies (37%), the Rumanians (36%), the Canadians (36%), the Americans (35%) and the French (33%). Ukrainians traditionally do not tolerate Afghanis, Gypsies and Chechens. Taking into account the fact that the majority of population has no dealings with the members of these groups in their everyday life (with the exception of gypsies), this intolerance can be regarded as the result of certain persistent negative stereotypes in mass consciousness, formed by the negative information concerning the situation in the respective countries of origin of these ethnic groups or in the areas of their compact settlements.

The reason for the low tolerance rate of the Roma can be found in the fact that all the prior efforts of the official bodies to regulate the this group's integration into the social structure of the modern Ukraine disregarded objective life style of the Roma and specific relationship with the Ukrainian citizens of other ethnicities. Legends and myths always surrounded these people, from the moment of their arrival in Europe in the 13th century. And things that we do not understand always breed fear. The whole history of the Gypsies is the story of their struggle for physical, social and spiritual survival, of their uniform desire to search better life in the new lands, for themselves and their families. The people that eventually became the Roma, in order not to disappear completely from the face of Earth, die of hunger and raise their children in the hostile surrounding with different language, religion, traditions and customs, had to offer the fruits of their labor or their talents to the people that surrounded them. When these fruits were rejected by the society, the Gypsies were forced to live "by the right of living creatures on Earth". That is why the Gypsies were not understood by the majority of people surrounding them, and, therefore, not tolerated. The Roma, which came to Europe from the Balkans in early 15th century, brought a new physical type of person — of medium height, very dark-skinned, with black hair and handsome regular features. They also brought their own language, incomprehensible for the rest of society. Only in the late 18th century the linguists would identify it as a language close to the ancient Sanskrit and all the modern Hindu languages of India.

The Gypsies' ancestors brought the feeling of freedom and rejection of the legal framework which bound the other nations. They always tried to follow the ancestral law, living autonomously.

In Europe it is common belief that treatment of ethnic minorities is extremely important for the development of freedoms, democracy, fundamental human rights and for the general improvement of social climate, irrespective of how numerous the groups of "non-title" ethnicities are. Modern European standards in ethnic policies stipulate active support of the

[20] Prepared by N. Kozarenko, UMHR Association.

[21] http://www.niss.gov.ua/articles/500/

ethnic minorities and implementation of the political correctness and tolerance in all the areas of public life, from mass culture to staffing and employment policies. Ukraine so far legs behind as compared to the all-European progress in this respect.

It is common knowledge that there is no accurate statistical data with respect to the number of the Roma population in all the countries of Europe, including Ukraine. In 1989, the USSR census results showed that 47 915 Roma lived in Ukraine, while its total population amounted to52 million. It means that in 1989 Roma accounted for approximately 0.9% of the Ukrainian population. In 2001, i. e. 12 years later, according to the data of the all-Ukrainian census, the Roma population constituted about 47 587 persons, while the population of Ukraine decreased to approximately 47 million[22].

According to the data of the2001 census, the majority of the Roma people live in Trans-Carpathian oblast'(14 004), Donetsk oblast' (4106), Dnipropetrovsk oblast' (4067),Odessa oblast' (4035), Kharkiv oblast' (2325), Luhansk oblast' (2284) and the Autonomous Republic of Crimea (1896). In some regions, e. g. the Trans-Carpathian oblast', the Roma, according to some estimates, account for 3% of the population. However, the numerous studies lead us to believe that in fact that figure is much higher. Under the data of the National Academy of Sciences, it amounts to almost 200 000, while some Roma organizations collaborating with ERRC insist that this number is even larger — approximately 300 000 persons.

Currently the scope of discriminatory attitudes towards the Roma is still rather high in Ukraine: from superior, arrogant, stigmatizing treatment of the Roma by other citizens to openly anti-Roma speeches delivered by some politicians, law-enforcers and mass media.

Says vice president of the Roma women's fund "Chirikli", EC consultant on the Roma matters Zola Kondur[23] "The current situation of the Roma community in Ukraine is critical, [it] requires direct and serious governmental and public attention". The mentioned that according to census results, almost 48 thousand Roma live in Ukraine; the Roma NGO, however, claim that between 200 thousand and 400 thousand Roma currently reside in Ukraine. Z. Kondur stated that the majority of the Roma are unemployed, uneducated and have families with a lot of children. She also added that they can be classified as one of the poorest categories of the population. At the same time Z. Kondur mentioned that the actual Roma situation in Ukraine is accounted for by social, political, economical and cultural causes.

Analyzing the Roma situation for 40 years, we arrived at the conclusion that in the course of the last two years we went back to the 90-ies, as the cases of assaults against Roma, their killings and persecutions in Europe have been registered. So far no such cases have been registered in Ukraine, but here we face a different problem — discrimination, inaccessibility of certain services available for the title nation" — "Chirikli" vice president pointed out.

V. Likhachev argues that[24] "due to the social/economic, cultural and historical reasons the major portion of this ethnic group belongs to the poorest walks of society. Persistent negative stereotypes of mass consciousness with respect to the Roma are still alive in the Ukrainian society. Most respectable media are not ashamed to exploit these stereotypes, offering the generalized image of a whole people as drug-dealers and criminals. The law-enforce-

[22] State Committee on Statistics of Ukraine, all-Ukrainian census of 2001. http: //www.ukrcensus.gov.ua/g/d5_other.gif

[23] http://human-rights.unian.net/ukr/detail/196897

[24] http://www.sova-center.ru/racism-xenophobia/discussions/2010/05/d18722/

ment bodies sometimes organize preventive actions which can be classified as discriminatory without exaggeration".

> *According to sociological studies[25], the Roma, (the Gypsies) in Ukraine are the most discriminated ethnic group, the least integrated into the society; they face xenophobic manifestations pretty often. This statement is fully supported by the Roma from Myrhorod. E.g. in January of this year a family with children (the husband being Roma, and the wife –Ukrainian) entered a cafeteria. They ordered potato pancakes and pierogis. Before the waiter could save them, they were approached by the militiamen, who ordered them to leave immediately. The Roma couple tried to seek the reason on which they were thrown out of the public catering place, obviously they did nothing wrong, neither did they disrupt public order. The law enforcers, who, naturally, forgot to introduce themselves, provided no explanation and just threatened the family — "if you are not leaving voluntarily, then you are in big trouble…" They also insulted the woman saying that she and "the likes of her spoil the Ukrainian nation". The family, close to tears, had to take boxes with their food and go home.*

Evidently, the correct resolving of the problems related to the Roma situation in Ukraine calls for comprehensive, systematic and long-term program, similar to the programs which proved efficient in other countries of the Eastern Europe (e. g. Hungary and Rumania).

In 2012 Kharkiv Institute for social studies (NGO) conducted a "Study of legal needs of the Roma population" funded by the "Renaissance" foundation. In their everyday life the Roma most often have to deal with the following issues:

— employment-related problems;
— getting the appropriate documents;
— education problems;
— housing and communal problems;
— medical care;
— property/ownership problems;
— hostile and prejudiced attitude on behalf of the law-enforcers;
— social discrimination as a whole.

The experts identify the **following reasons** of the said problems: first, the cultural peculiarities, norms and customs of the Roma, which account for their specific mode of life: big families living together, methods of children upbringing, dealings with "gadzho" (people of other nationalities", trust to their own families etc. Second, it is negative attitude to the Roma, persistent in the society.

2.1. Observance of the Roma rights in the criminal justice

Numerous cases of the abuse of authority by the officials are among the key problems related to the violations of human rights in Ukraine since its independence. The Roma represent an especially vulnerable category of people in this sense, because their treatment by the law-enforcers and the measures used against them are more often than not based on stereotyping and identifying the Roma with criminals.

CERD commented upon the arbitrary actions of militia with respect to the Roma and members of other ethnic minorities, asylum seekers and non-citizens of different origins, i. e. their arrests and searches, pretrial detentions, based on race prejudices and presump-

[25] http://gazeta.zn.ua/LAW/net_plohih_natsionalnostey,__est_plohie_lyudi.html

tion of guilt. The Ukrainian government received the following recommendation: "The Committee proposes the state to strengthen further attention to the trainings on human rights for the militiamen, facilitate investigation in the cases related to arbitrary actions of militia with respect to the Roma and persons of different nationalities, efficiently investigate complaints and petitions, find the culprits, ensure the necessary protection and compensation for the victims and to include the information on the number and specifics of the considered cases, the passed verdicts and recommendations and information on ensuring the necessary protection and compensation for the victims of such actions into the next report. The state was therefore recommended to pay attention to CERD General Recommendation No. 27: Discrimination against Roma (2000), pp. 12–14) and CERD General Recommendation No. 30: Discrimination against Non-Citizens (2004), pp. 18–24). See UN CERD, Draft Concluding Observations of the Committee on the Elimination of Racial Discrimination, UKRAINE, CERD/C/UKR/CO/18, August 2006, p. 12.

Prejudice on behalf of the law-enforcers and judicial power is an obstacle the Roma people encounter in terms of their rights, equal to the rights of other citizens, and equality in the face of the law. On the other hand, the Roma community is more controlled by the law enforcement bodies as compared to others. Often hostile and regular contacts with militia enhance the Roma's vulnerability and the use of illegal (often corporal) punishments against them, even without proven guilt.

> ***The Gypsies' settlement attacked in Kyiv.*** *The Gypsies themselves claim that they recognized some of the assailants as the law enforcers, who earlier came to the settlement and collected 10–15 UAH from them. The Gypsies set up their camp in the open at Bereznyakivska street in Kyiv. Today unknown individuals shot the dog and set the camp on fire. About 70 Roma, who came to the capital from Berehove, Trans-Carpathian region, lived in this camp. The majority of the residents were children. They set up their tents in a ravine between the Dnipro river and railroad tracks. They earned money collecting scrap metal. Sometimes the local residents helped them with food and clothing. On June 1, 15 plain-clothes men shot from the pistol 8 times, twice — into the air and twice aiming at the dog. They told the Gypsies to get packed and move on, and then set the tents on fire. Almost all the belongings and documents were burnt. According to the Roma, they recognized several militiamen they knew. The militiamen used to visit the camp earlier, collecting 10–15 UAH. Meanwhile the Chief Militia Department refused to provide any comment of the event.*

2.2. The database compiled on the basis of racial characteristics

The investigation methods used by militia with respect to the Roma and the fact that the Roma community suffers from the excessive and obsessive attention on behalf of the law enforcers confirm that persecution on account of race still exists. The report of the "Traffic stop — 2006" organization states that no other country has ever demonstrated such centralized and diligent attempts of the law enforcement bodies in collecting the database using fingerprints and photo-catalogues for the people of the Roma ethnicity. The international observers more than once pointed out these practices. For the first time the European Center for Gypsies Rights published a detailed description of these practices in 1997 report on Ukraine. The organization members interviewed the militiamen in Uzhgorod, who confirmed the existence of such database, claiming that it is a "preventive measure" in crime-fighting. The Roma are regarded as potential felons and one of the officers explained that the database is aimed at resolving social and by no means racial problems. Other international structures also referred

to such cases in their reports. E. g., in 1999 and 2002 the European commission against racism and intolerance made a statement to the effect that Ukrainian law enforcement bodies in their operation are using tactics, based on racial profiling. These attitudes seem to be characteristic of the militia practices 15 years later. The situation never changed and today we can tell that there are no positive developments in this area.

2.3. Lviv militia discriminates the Roma[26]

The executive director of the European Center for Gypsies Rights Dezideriu Gergei approached the Prosecutor General of Ukraine V. Pshonka and the Minister of Interior A. Mohylyov on account of information that reached the Center, i. e. that Lviv militiamen "illegally fingerprint people" and "verify the documents in a discriminatory way" among the Roma population of the region.
In particular, according to the official site of the Institute of the human rights and extremism and xenophobia prevention, over September and October 2011the Roma living in this area "were subjected to a premeditated campaign of personal data collection (ID checks, fingerprinting, taking photos)", while the markets and Roma's dwellings were raided and searched (UNIAN information).

It was stressed that under the law militia can only check the papers and fingerprint people "if there are legal grounds to suspect a person of committing a crime". Besides, the unlawful actions of the law enforcers not only violate the Constitution, but also break a number of international commitments which constitute an inalienable part of the national legislation of Ukraine, in particular — the European Convention on protection of human rights and fundamental freedoms, Conventions on the liquidation of all forms of discrimination and the International Pact on civil and political rights.

2.4. There are no bad nations, only bad people[27]

Last year a lamentable case happened in Myrhorod. Four Roma, who arrived from Luhansk oblast' to attend a relative's funeral, were detained at the railroad station several minutes prior to their transit train departure. Their tickets were not used, they were insulted and fingerprinted in the militia precinct, a lot of money was taken away from them, and one man had his hair burnt with a militiaman's lighter. Despite my appeals, Myrhorod militia refused to recognize the facts of extortion, torture, moral and physical pressure exerted on the Gypsies. The rumors have it, though, that the sadistic officer does not work in militia any more.

The leaders of Myrhorod militia present at the meeting claimed that they have not heard about the said facts before. The Gypsies indeed are usually afraid of filing complaints against the illegal actions of the militiamen, as the supervisors of the culprits can always find a pretext to take their revenge on the claimants for "dishonoring" a law-enforcer.

The printed and electronic mass media contribute to the strengthening of anti-Roma stereotypes which identify the Roma people with crime, drugs and some vague "danger". Ukrainian mass media publish materials provoking racial discrimination and enhancing negative attitude to the ethnic minorities, the Roma people included; they disseminate hostile stereotypes among population at large. The journalists constantly draw their readers' attention to the Roma and numerous dangers allegedly represented by them; reporters often advise their public to stay as far away as possible from the Roma, to be alert and avoid any potential contact.

[26] http://umdpl.info/index.php?id=1319605807

[27] http://gazeta.zn.ua/LAW/net_plohih_natsionalnostey,__est_plohie_lyudi.html

The monitoring of the "hate speech" at the well-known sites and MIU media for the period between April 2011 and April 2012 showed that out of 42 hate contents 31 were targeted against the Roma. We do not want to conclude that the goal of these texts is to create an image of a villainous Gypsy in the public consciousness, projecting this image on the whole group, that the openly discriminatory slogans (i. e. "Do not deal with Gypsies", "Do not let them in", "Do not meet their eyes", "Avoid any contacts") reflect a well-organized hate campaign, unleashed through militia internet resources. More probably, the information and PR agencies of the MIU simply wanted to warn the public about the cases of certain infringements to avoid their repetition in the future. However, it was done without due consideration or professionalism, ignoring the fact that the law does not allow for the protection of one group by restricting the rights of another.

These texts are degrading for the dignity and honor of the Roma and rouse hostility towards them, thus contributing to the openly biased and negative perceptions with respect to this ethnic group. Such actions can be classified as the intent of inciting interethnic hatred.

The provisions of Article 161 of the Criminal Code of Ukraine "The violation of the citizens' equality on account of their racial, national origin or religious beliefs" treat these actions as crimes, while the commentary to it states that " any actions aimed at significant increase in the feelings of hostility, unfriendliness and disgust of certain groups of population with respect to the other ethnic or racial groups of religious communities, diminishing of positive characteristics of a given nation are defined as the actions aimed at rousing interethnic hostility and hatred, at humiliating national honor and dignity".

One does not need to be an expert in interracial relations to recognize these materials as intolerant and not contributing to the mitigation of interethnic tensions in the society. The Article 5 of the Law of Ukraine "On Militia" unambiguously obliges any militiaman to be tolerant, to respect personal dignity, treat every person humanely and protect everyone's rights irrespective of the person's ethnic origin, nationality, religious beliefs and convictions.

2.5. Discrimination in the accessibility of social and economic services

The major part of the Roma population in Ukraine lives in extreme poverty with minimum access to the basic social services. Although there is no sufficient data on ethnic minorities, the fact that the majority of the Ukrainian Roma are indigent and sometimes, incredibly poor, is evident.

Despite this fact, or may be, due to it, the poorest families not always can get access to public subsidies. E. g. in Poltava region after the hurricane which happened in the summer of 2012, the Roma, due to the discriminatory policies of local bureaucrats never received the state subsidies for the renovation of the houses demolished by the hurricane.

2.6. Who is to be held responsible for the actions of the village mayor passing arbitrary judgments in the aftermath of the terrible hurricane, while one quarter of the village population never received any support?[28]

Almost 50 residents (mostly, Roma, and some Ukrainians — one fourth of the whole population in total!) were cheated by L. Rybalko (the village mayor) "like kittens", according to Mr. Checehtov description. Like in a kids' fairy tale she distributed the state subsidies on the principle "This one

[28] http://maidanua.org/2012/07/propuscheni/

will get it, and that one will get, but the other one never will", as if she were distributing her own money! As if she were not a "village mother", as good mayors are sometimes referred to by the villagers, but a cruel and perfidious stepmother, although her office obliges her to treat all the people with due respect irrespective of their ethnicity or skin color, as they are all equal citizens of Ukraine.

And why "they will never get it"? Because she does not like the Gypsies. Because she promotes xenophobic attitudes — a village farmer and council member, and too active village women shouted calling for burning all the Gypsies' houses down (probably, inspired by the TV news about the arson in the Gypsies' camp on the eve of EURO-2012), charging them with neglecting their vegetable gardens, lack of registration, of disappearing for months (going to Moscow to earn some money-author*).*

The poor people face serious obstacles on the way to medical care, regardless of their ethnicity. But, unlike the other Ukrainians, the Roma often fall victims to discrimination and prejudice, which bar their access to the social services, including the medical ones. Disregard of the traditional Roma mode of life in the medical assistance also hinder their access to quality medical services.

2.7. How the Gypsies live in Kyiv[29]

Everyone was open and friendly. They invited me to their dwellings (I can't find the right name for those). I was surprised to see that everything was neat and clean inside. I took pictures of the kids, then showed them the photos to their utmost joy.

Due to discriminatory refusals to examine and treat the Roma and to other reasons, mentioned above, the health of the majority of the Roma people is worse than among other categories of the population. Cardio-vascular problems, stresses and contagious diseases, especially TB, are very common in the Roma community, while no efficient state policy addressing these issues is in place.

[29] http://makarolia.wordpress.com/2012/11/10/як-живуть-цигани-в-києві/

I don't know how they will survive the winter. Almost all of them are staying in Kyiv, as they have nowhere to go. We'll get back to them offering some help.

The Ukrainian Roma in fact are experiencing discrimination in all the areas of life, i. e. access to education, housing services, health care, employment and social services.

There are two most common types of the Roma discrimination. Direct discrimination of the Roma occurs most often due to the contemptuous attitude towards them combined with the disregard of their needs. It is manifested in direct or indirect rejections on account of their race, barring their access to services, information or other benefits which constitute inalienable part of the fundamental economic and social rights. The indirect discrimination is manifested in hindering the Roma access to economic and social rights due to their status of "pariahs" in Ukraine. It is also noteworthy that the Roma women are subject to the double

discrimination, on behalf of society — being the Roma, and on behalf of their own community — being females (gender discrimination).

The active stand of the international organizations and the Council of Europe concerning the situation with the Roma, found its reflection in the international legal acts, i. e. recommendations and resolutions of the Committee of ministers and the Parliamentary Assembly of the Council of Europe — recommendations Rec(2001)17 and Rec(2005)4 aimed at rectifying the situation with Roma and travelers employment and economic status in Europe, Rec(2008)5 on state policies with respect to the Roma and travelers in Europe, No. 1557(2002) on legal situation with the Roma in Europe, No. 1924 (2010) on the Roma situation in Europe and respective actions of the Council of Europe. Another recommendation Rec(2006)10 of July 12, 2006 addresses the countries' obligation to ensure the best access to the health care services for the Roma.

In 2008 the Council of Europe conducted a number of meetings with the representatives of various ministries and governmental bodies of Ukraine with the goal of better understanding and improving the Roma situation in Ukraine as well as identifying their needs. Later, in November 2008 the Council of Europe held a seminar on the health care for the Roma in Ukraine. It was attended by the representatives of the Ukrainian ministries, UNICEF Children Fund, International Migration Organization, World Bank, Embassy of Norway in Ukraine, National Roma Agency, (Rumania), Romani Criss (Rumania) and Ukrainian Roma NGOs. The participants pointed out the need to address the problems of health care in the Roma communities and stressed that the high morbidity level among the Roma is directly related to the lack of the regular medical check-ups, appropriate and timely medical care, mutual distrust between patients and non-Roma physicians, lack of money and incentives to visit a doctor etc. The seminar resulted in devising and adopting the Declaration "On the need of Roma mediators in health care issues in Ukraine". The need of the Roma to get adequate medical and social services, provided by the medical professionals and power officials make this work extremely important. The Roma should be treated in a positive, non-discriminatory and respectful way, in the atmosphere of effective dialogue aimed at resolving their vitally important issues. The practice of mediation is widely spread in Europe and all over the world. These services are offered to the most vulnerable categories of society — the disabled, the migrants, different ethnic groups, including the Roma.

The program for Roma mediators already function in the 15countries, including France, Rumania, Serbia, Hungary, Macedonia, Moldova, Italy, Bulgaria, Greece, Germany, Finland, Ukraine, Czech Republic et al. In many countries the everyday operation showed the need and efficiency of the mediators in various areas, so that currently such mediators are operating in cultural, educational, health care, employment relations and other areas.

Significantly the international community and international organizations — UN, Council of Europe and European Union — treat the mediation as efficient and natural integration method for the "social inclusion" of these categories of population into social and even public and political life. That's why lately a number of relevant international documents mandatory for all the member countries, including Ukraine, have been devised.

Since 2011 the program for Roma mediators has been included into the list of the Council of Europe priorities in compliance with the Strasbourg Declaration adopted on October 20, 2010 at the meeting of high officials representing the member countries of the Council of Europe.

3. CRIMEAN TATARS[30]

3.1. Introduction

As it is known, the Crimean Tatar people in their modern history had firsthand knowledge of tragic deportation of 1944 and decades of forced detention in internal exile on the territories of the Central Asian republics and RSFSR. Their returning to the historical native land — to the Crimea — began in the late eighties and in the 1990s thanks to the mass national movement developed as early as in the mid-fifties. And although the repatriation process is still underway (by different estimations, outside of Crimea there remains up to 150 thousand persons) the main part of the Crimean Tatar people already lives on the territory of the ARC, where its number reaches 280 thousand men[31].

The repatriation of the Crimean Tatars and their subsequent integration into the Ukrainian society occurred in difficult conditions, when Ukraine as a young state received statehood with the dismantling of the USSR and went about actively transforming the social and economic and political system. The Ukrainian state assisted insofar as it was able battling with its own economic problems, but obviously in volumes that remained insufficient for needs of the people coming back home. The repatriation was not supported by other states formed on the post-Soviet territory, and actually took place thanks to the public initiative of the Crimean Tatars overcoming numerous obstacles: storming economic crisis, questions of citizenship, trouble spots of national tension in places of former residence. But the greatest problems the Crimean Tatars experienced already on their arrival in the Crimea: prohibition and restraint of resettlement in certain regions, unemployment, non-allocation by local authorities of the land parcels for habitation building, ignoring of cultural and educational needs of repatriates, refusal in returning of cult buildings, artificial obstacles at employment etc. Under these conditions the Crimean Tatars did not bring up restitution questions (the restoration of property or rights previously taken away, conveyed, or surrendered during deportation).

And without that the heavy socially-psychological condition of the Crimean Tatars, who were exposed to the most difficult problems, was aggravated with comprehension and sensation of discrimination character of the state policy in relation to them as to undesirable repatriates. Thus, the inequality and discrimination of the Crimean Tatars in various spheres of public life remains in Crimea already throughout more than two decades; according to earlier studies, only forms and acuteness of their display undergo changes[32].

2012, as well as previous years, was saturated with the facts and events of discrimination character.

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[30] Elvedin Chubarov, senior fellow at the Research-and-Development Center of the Crimean Tatar Language and Literature (Department of History) of the Crimean Engineering and Pedagogical University.

[31] Address by President of the Mejlis of the Crimean Tatar People Mustafa Dzhemilev delivered at a meeting of board members of the Platform of European Memory and Conscience / http://qtmm.org/новости/2167-выступление-председателя-меджлиса-крымскотатарского-народа-мустафы-джемилева-на-встрече-членов-совета-платформы-европейской-памяти-и-совести

[32] Elvedin Chubarov. The review of problems on inequality and discrimination in Ukraine. The Autonomous Republic of Crimea //Report "The Crimean Survey", No. 3–4 (21–22) 2003, p. 191–229.

3.2. Social and economic sphere

3.2.1. Demesne relations[33]

The aggravation of present real-estate problems in Crimea connected with non-allocation by local authorities of the land parcels for habitation building began in 2003–2004, and was caused by a number of reasons.

Firstly, in 1988–1990, a considerable part of the Crimean Tatars returning home, because of restrictions on settlement in a number of regions of the Crimea and bull housing market, settled in off-the-wall areas, where they could purchase a small house or apartment, as a rule, in rural steppe areas. In the prevailing majority those were former city dwellers, so, they could not find here a job matching their education and qualifications. They had to live in unusual social and economic environment without hope to resettle having moved to lived-in parts of the peninsula.

Secondly, a considerable part of repatriates returning to the Crimea purchased transitional housing from 16 to 28 sq m, or built cabins and lived rough. For the past of 15–20 years their families expanded, children of the first settlers became adults, and this time there arose a question of their dwellings.

Thirdly, the economic situation in depressive rural regions following the long period of deterioration began stagnating and edging out excess rural population. As it is known, on the average in the developed countries the rural population makes 7%, in the Crimea this indicator exceeded 20%, 13% of the Crimean peasants in the long term should migrate from villages to areas with better employment conditions. During the division of rural land into shares the repatriates on the average got 2–3 times less land, than local occupiers, and the Crimean Tatars became the first to be hound out of villages and find a place of their own in the Crimean cities and tourist regions where it was possible to get work and support their families.

The authorities of Ukraine and autonomy failed to promptly respond to economic, demographic and national processes in the Crimea. Moreover, the local authorities, as well as 15 years ago, in 2003–2004 began to refuse granting building plots provoking the second wave of an aggravation of the land allocation problem.

Therefore the Crimean Tatars had to resort to their former experience of self-arrangement acquired in the late eighties and early nineties. In the uptown Yevpatoriya and Simferopol, in a number of settlements of Simferopol Region and Big Yalta the Crimean Tatars occupied at self-will plots of land and built prototype models of houses to designate so-called "protest glades" against the stand of the authorities on the land issue. As a rule, those were frameworks of small buildings up to 20 sq m with walls and roofs. In Alushta, Feodosiya, and Leninsk regions the Crimean Tatars as law-abiding citizens applied to allocate them plots in tracts of land on which they wished to settle.

As a result about 15 thousand persons became claimants on the building plots in the cities of Yevpatoriya, Simferopol, and also the Simferopol Region of which about 11 thousand were Crimean Tatars and 3.5–4 thousand of Slavic population. There are housing areas, where Slavic and Crimean Tatar population are half-and-half. They actively cooperate among themselves achieving together allocation of building plots.

[33] The survey of demesne relations was carried out on the basis of the interview with Chairman of Land Commission of Mejlis of Crimean Tatar People Zevdjet Kurtumerov.

Since 2004, the Ukrainian state and, in particular, the Crimean authorities created various governmental commissions and working groups with participation of ministries and departments connected with land issues. But all their total conclusions and suggestions were turned down by the authorities: the decisions were delayed and lame excuses were made, for example, absence of a development plan, belonging of plots to various ministries and departments etc. Even in the areas controlled by a city or settlement the plots were not allotted: they were not transferred to any other users and had the status of reserve lots.

The state didn't want to satisfy requirement of repatriates for the building plots responded to the seizure of plots and beginning of residential construction by passing on January 11, 2007 the Law No. 578-v "About amendments to some legislative acts of Ukraine concerning strengthening of responsibility for unauthorized seizure of the plots of land". According to this law, the Criminal Code of Ukraine was amended with article 197-1 "Unauthorized seizure of the lots and unauthorized construction". If earlier the Ukrainian legislation treated the seizure of plots and unauthorized construction as an administrative offence with the maximum punishment in the form of the money penalty at a rate of UAH180, now criminal liability was introduced[34].

When V. Yanukovych assumed the presidential office all previous groundwork of land commissions was turned down. The Council of Ministers of ARC created a new working commission, and 2010 was spent making an inventory of land areas in the Crimea, were protest rallies prevailed. It prepared about 80 acts of de jure occupation of these areas and was disbanded. In 2011, it was replaced by the land commission of the Council of Ministers of ARC on freeing of illegally seized plots of land. The Crimean Tatars were against such name of the commission; however the Council of Ministers left it as it was explaining that it held good in law while the commission would actually solve the land issues in the Crimea. This commission started working since February 2011 having received powers only on the city of Simferopol and the Simferopol Region. Its limited sphere of influence was explained by the authorities telling that the areas covered by protest rallies in other regions had their users: the Ministry of Defense, Ministry of Agrarian Policy, Academy of Agrarian Sciences etc.

Across Simferopol and Simferopol Region, from time to time, the land certification procedure moves ahead a little, but it is not a steady process. For example, the decision of the Simferopol City Rada of February 2011 on allotment to the deported of the area Lugovaya–2 (493 applicants, total area 42 hectares) has not been executed yet. Besides, in this area, where 99% of applicants were Crimean Tatars, Moslems by creed, the city authorities planned building a church and other objects.

In the area Krymavtogaz beyond the loop road Simferopol — Yalta they planned to initiate housing construction. In 2011 the Simferopol City Rada changed the purposive appointment and designated it as a urban green zone. The same the City Rada did in other areas, for example a lot on General Vasilyev Street (17 hectares) having defined it as an industrial storage zone. Now, before allocation of lots in these areas, they have to change their status by the decision of the Cabinet of Ministers of Ukraine. Such actions of the city authorities display the general policy concerning the Crimean Tatar people coming back home.

On the threshold of parliamentary elections, the Crimean power decided to legalize two small areas: Lavandove Pole for 40 plots of land on the territory of microdistrict Fontany and

[34] Law of Ukraine "On amendments to some legislative acts of Ukraine on greater responsibility for unauthorized occupation of the land plots" / http://zakon3.rada.gov.ua/laws/show/578-16

an area for 70 plots of land near the loop road Symeiz–Radhospna Streets. On the occasion the Simferopol city executive board solved its problems having allocated 27 sites for persons on the waiting list.

The City Rada prepares its decision on the lot "Petrovsky heights": since 2004 there have been 1026 Crimean Tatars and 447 Slavs, who laid claims to land plots here. Despite it, today 1304 sites there are already developed and the city lays claims to 30% of lots. That is, when the claimants need almost 200 lots more, the city administrators wish to take away additional thirty percent of land for urban needs artificial aggravating situation among people of different nationalities and violating their constitutional laws.

Despite the letters of the Council of Ministers of ARC concerning the transfer of territory, for example, a lot on Balaklavska Street, Simferopol, belonging to the Ministry of Defense of Ukraine, the Cabinet of Ministers of Ukraine, which is empowered to transfer the territory, and its ministries do not respond to these claims. The site development level here is about 50%; people with families live in the newly built houses, but things are still where they started with the legalization of the lots.

In 2007, the VR ARC included the new areas on the territory of Mirnovska Village Rada (347 hectares) and Chistenkivska Village Rada of Simferopol Region into the bounds of the city; however, they are not allotted to people yet. Meanwhile there are also good examples in the Simferopol Region, where Trudovska and Urozhaynenska Villaga Radas allotted plots of land to Slavs and the Crimean Tatars.

More complicated is the situation with the land in the Yalta, Alushta, and Sudak Regions. In 2009, Y. Tymoshenko's government declared the 5-year moratorium for any transfer of the territory of association "Massandra" in these regions. While the moratorium is operative, the Council of Ministers of ARC cannot change anything before the alterations are made by the Cabinet of Ministers of Ukraine or the president.

Former Prime Minister Vasyl Dzharty tried to make important improvements concerning the land issues. Within a week he not only endorsed all documents on the Cathedral Mosque of Crimea (22, Yalta St., Simferopol), but also defined the strategy and algorithm of solving the land issues in the Crimea. He publicly repeated that everybody, who acquired a right to a land lot, would receive it, and first of all those who owned capital structures in different degrees of readiness (foundation, frames or house with a roof) and, especially, who already lived in them.

After his death the authorities withdrew from these arrangements and now the decision of the land problem in the Crimea has been stagnating for more than a year.

The new round of tensity around the land issue started with the incident, which took place on the night of December 1, 2012. On one of "protest glades" located along the Moscow thruway near the settlement of Molodizhne of Simferopol Region about 2:00 am more than one hundred small houses were ruined by a big group of youngsters numbering about one hundred persons. On the site there was a militia detachment, which, in fact, provided protection for the thugs. About twenty Crimean Tatars, the participants of the "protest glade", which did not offer resistance, witnessed the attack fairly believing that the main objective of the night pogrom was provoking the direct conflict.

The responsibility for the incident was taken by the party "Russkoye Yedinstdvo". Later, in the statement of December 7 the party leadership called the actions "the natural response of our Party to appeals of citizens-proprietors of land plots with the request to assist in clearing

the land lots of unauthorized structures"[35]. "Russkoye Yedinstdvo" Party leader S. Aksionov told the correspondent of QHA news agency: "The relatives of people having judicial awards, which oblige them to take down structures, turned to the "Russkoye Yedinstdvo" to help them to pull down the unauthorized constructions and structures. All proprietors had judicial awards. In this case, we help them."[36] S. Aksionov and other party leaders were not confused by neither time, nor methods of "help" to doubtful proprietors (allegedly, they were given certificates already after the "protest glade"), nor possible consequences of such frightening action. It is plain as a pikestaff that having taken the functions of the state executive service this Crimean political organization used the problem land-use situation to promote its political image.

Talking with VR ARC Deputy R. Chubarov S. Aksionov said: the leadership of "Russkoye Yedinstdvo" does not exclude that it will continue "restoring justice" on those territories, where judicial awards exist[37].

Mejlis Chairman M. Dzhemilev opined on a probable connections of two events of the night: the arson of the watchman's cabin on the site of future Cathedral Mosque and pulling down of 100 structures on "the protest glade" of Crimean Tatars believing that the administration was somehow involved. In his opinion, the inactivity of security, law enforcement and defense confirms the coordination of the incident with the authorities[38]. Characterizing the latest developments in the Crimea at the instance of the assistant to the ambassador of Great Britain in Ukraine Martin Dey, M. Dzhemilev named them dangerous and reaching critical level of international tension on the peninsula. "No other state in the world discriminates indigenous population like Ukraine," told the politician. He said that the investigations conducted by the law enforcement bodies of the autonomy with fanfare now are nothing but declarations[39].

First Deputy Chairman of Mejlis R. Chubarov did not exclude that the part of Crimean militia management had been involved in illegal actions. In his opinion, the explanations of press center of the main headquarters of the Ministry of Internal Affairs of Ukraine in the Crimea that militia allegedly, having obtained the real-time data, took public order under protection, were not objective. To offer effective protection they would rather have stopped 100 thugs doing nasty job at night without proper empowerment by the officers of justice[40]. In his interview to "Glavkom", answering the question, whether he intends "to make parliament consider the issue of disputable territories and why the created commissions work so inefficiently, R. Chubarov said: "Certainly, we will. We were just approaching this problem,

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[35] http://russ-edin.org/index.php?option=com_content&view=article&id=1444:-l-r-&catid=6:article&Itemid=18

[36] Aksionov sees no provocations in pogroms in Molodizhny / http://qha.com.ua/Aksionov-ne-vidit-provokatsionnih-deistvii-v-pogromah-v-molodejnom-119599.html

[37] The Mejlis has a list of illegal settlements where "Russkoye yedinstvo" can set up future pogroms / http://krymtatar.in.ua/index/article/id/573

[38] In pogroms of illegally seized lots Dzhemilev sees the "the muzzle of power" / http://crimea.comments.ua/news/2012/12/03/135742.html

[39] "No other state in the world discriminates indigenous population like Ukraine," told Head of Mejlis Mustafa Djemilev / http://qtmm.org/новости/2280-я-не-знаю-в-мире-иного-государства-где-столь-ярко-проявляется-дискриминация-к-коренному-народу-как-в-украине-глава-меджлиса-мустафа-джемилев

40 Chubarov: If the Crimean militia leaders, who knew of the impending pogrom in Molodizhny, are not named and punished publicly, we may conclude that the illegality had been agreed and approved by the authorities / http://qtmm.org/ru/новости/2248-чубаров-если-не-будут-наказаны-и-публично-объявлены-те-руководители-крымской-милиции-знавшие-о-погроме-в-молодежном-то-мы-можем-прийти-к-выводу-что-незаконность-была-согласована-и-одобрена-всей-властью

but someone decided to precipitate the events without waiting until the commission goes into the question at large and starts trading."[41]

The events of December 1 bevame a dominating theme during the All-Crimean Rally devoted to the International day of human rights organized by Crimean Tatar public organizations with support of Mejlis of Crimean Tatar People in Simferopol on December 10, 2012. More than three thousand persons took part in the rally held under the slogan "My Voice Matters". The resolution of the rally read: "The on-going discrimination of human rights in Ukraine, open ignoring of necessity of restoration of the rights Crimean Tatars by the Ukrainian state are the main obstacles on the way of Ukraine to creation of the civil society, which should provide for equality, justice and worthy living conditions for all citizens"[42].

People's Deputy of Ukraine G. Moskal stated that these events were provoked by certain power structures interested in resignation of the chairman of the Crimean government of A. Mogiliov. Crimean expert A. Klymenko thinks that it is necessary to look for the paymasters of these actions outside of "not only Crimea, and Ukraine as a whole", and "possibly, foreign special services" are behind it. They have for an object to destabilize situation in the Crimea on the large-scale, and maybe in the whole country and consequently the SSU should join militia and participate in investigation of such incidents[43].

Political analyst S. Kostinsky's believes that Crimea together with all country is included into a strip of economic instability that aggravates existing social and ethno-confessional contradictions, provokes growth of popular protest sentiments and, accordingly, causes radicalization of marginal political forces and social groups. He believes that the deterioration or improvement of international relations in the Crimea directly depend on political will of the republican authorities and resolute, sometimes rigid actions of law-enforcers[44].

It is necessary to notice that Chairman of the Council of Ministers A. Mogiliov at his press conference on December 11 commented on the political situation in the autonomy and said: "The responsible authorities should give the legal evaluation. I would not advise political office-bearers or figures to get into this theme because it is very sensitive and difficult and can lead to major conflicts in the Crimea". He also has added that the special commission of the Council of Ministers is working on this problem[45].

3.2.2. Housing

Twenty five years after the start of repatriation approximately 53% of Crimean Tatars have housing problems: they do not have habitation or the condition of their habitation does not meet the minimum standards. In the Crimea out of 300 settlements of dense residential development or residence of Crimean Tatars only 65% are provided supplied with potable

[41] Rafat Chubarov: The Crimean militia sides with the bandits / http://glavcom.ua/articles/8884.html

[42] Resolution of the All-Crimean Rally devoted to the International Day of Human Rights / http://qtmm.org/новости/2285-в-симферополе-прошел-общекрымский-митинг-посвященный-международному-дню-прав-человека

[43] Who is behind the ethnopolitical situation in the Crimea? http://www.radiosvoboda.org/content/article/24787495.html

[44] Expert predicts a deterioration of inter-ethnic climate in the Crimea / http://www.kianews.com.ua/node/50923

[45] Mogiliov on the demolition of buildings in the Molodizhny / http://qha.com.ua/Mogiliov-o-snose-postroek-v-molodejnom-119900.html

water, 30% gas supply, and 87% electric supply. Practically all 300 settlements have no surfaced roads, indoor sanitation, schools, kindergartens, and first-aid and midwife stations etc.

The sharp reduction of financing proceeding since 2011 at the expense of state and republican budgets testifies that the solution of housing problem for repatriates will be their personal business and financial burden.

According to the Republican Committee of ARC on Affairs of Inter-Ethnic Relations and Deported Citizens, as of December 1, 2012 out of UAH45,340 thousand assignable from the State budget and ARC budget on the Program of settlement and provision of the necessary facilities for the deported citizens only UAH15.9 million were allocated in the past year, which made 35.2%[46].

The Bill of Ukraine "About the State Budget of Ukraine for 2013" submitted by the government for consideration of Verkhovna Rada of Ukraine the budget item "The settlement and provision of the necessary facilities for the Crimean Tatars and persons of other nationalities which had been deported from the territory of Ukraine" stipulates only UAH10,928 thousand, which is well below the needs of homecomers[47].

Hence, in the foreseeable future many dense settlements of Crimean Tatars, where dozens of thousands of families of the Crimean Tatars are solving domicile problems on their own, will remain without roads, kindergartens, schools, medical institutions, and gas supply. Against the background of insufficient attention to social problems of the Crimean Tatars the problems of humanitarian development of the Crimean Tatars redouble demanding financial support: the preparation and edition of textbooks for schools with Crimean Tatar training language, development of mass-media in native tongue, preservation and restoration of the monuments of history and culture of the Crimean Tatars etc[48].

With the adoption and enactment by the Verkhovna Rada of Ukraine of the Law of Ukraine No. 4220-VI from December 22, 2011 "About amendments to some acts of law of Ukraine about strengthening of responsibility and improvement of government control in urban development"[49] the new insurmountable difficulties emerged for returning and settlement of Crimean Tatars. According to the norms of the above law, after January 1, 2013 the developers face large penalties and other sanctions if the houses, in which their families live, are not commissioned. Thus, dozens of thousands of Crimean Tatar families, who have come back to the Crimea with huge deprivations and without support of the state, become and object of the unprecedented financial pressure legalized by the state.

On May 18, 2012, the participants of the All-Crimean memorial service in memoriam of the victims of deportation called to the president, parliament and the government of Ukraine for urgent emendation of the law specifying for returnees special procedure of building and

[46] In 2012, the program of provision of the necessary facilities for deported citizens was financed at 35% / http://krymtatar.in.ua/index/article/id/590

[47] Mustafa Dzhemilev: "The State Budget of Ukraine for 2013 should provide at least UAH50 million for the resettlement of Crimean Tatars" / http://qtmm.org/новости/2261-мустафа-джемилев-в-государственном-бюджете-украины-на-2013-год-на-обустройство-крымских-татар-должно-предусматриваться-не-менее-50-млн-гривен

[48] Speech by Chairman of the Mejlis Mustafa Dzhemilev meeting with diplomats accredited in Ukraine / http://qtmm.org/новости/1965-выступление-председателя-меджлиса-м-джемилева-на-встрече-с-аккредитованными-в-киеве-дипломатами

[49] The Law of Ukraine "About amendments to some acts of law of Ukraine about strengthening of responsibility and improvement of government control in urban development" / http://zakon3.rada.gov.ua/laws/show/4220-17

putting into operation of individual houses and excluding excessive expenses for them and other payments[50].

Along with discrimination in land management and problems with habitation the Crimean Tatars have firsthand knowledge of all consequences of the monopolized economy, total corruption and omnipotent bureaucracy. For example, a person receiving a parcel of land cannot start building before obtaining a building design, and the minimum cost of the project makes UAH10–15 thousand. The haywire connection to his strip of land may be carried out if there is a state certificate on land ownership, which can be received in two years at the best. While there is no state certificate, one cannot conclude contracts with the city gas supply and water supply services. For example, in Dobrovsky Village Rada the domestic gas feed and official registration of papers on gas supply cost UAH22,000, power supply line costs from UAH10,000 to UAH15,000. Thus, the developer, besides building expenses, should seek facilities to cover the said initial expenses to the tune of UAH50–55 thousand, which is a crushing sum for a man from the street with low income. It hampers housing construction, increases financial requirements at filing and delays building terms. And after all, having built the house, he has to put it into service, which also carries a price and which is a very bureaucratized procedure. Such situation first of all concerns Crimean Tatars because they own about 80% of houses built.

It is the thorny issue in the South, where prices for lots of land, building materials and services are exorbitant. Only men of means and large building companies can build there; therefore there is a scarce Crimean Tatar population, though before the deportation the density of Crimean Tatar population was the highest in this region.

The discrimination of Crimean Tatars by the authorities is also traced in the issuance of permits for laying supply lines. For example, in Simferopol, outside the airport "Zavodskoye", there is an area with 345 lots, on which 36 houses were built, and on other sites there are foundations and cases of houses. In 18 from 36 houses there are residents, but their houses have no electric power, water, and gas supply lines. The authorities refuse to issue permits for laying utility lines, because the Crimean Tatars settle too close to the airport and intervene with its development. At the same time, nearby there is another not-Crimean-Tatar land area with cottages and garages located already on the territory of the airdrome, the owners of which have all permits for utility lines.

3.3. Political public sphere

3.3..1. Legislation

The Crimean Tatars consider the absence of restoration of their rights in independent Ukraine throughout 20 years from the beginning of mass returning to the Crimea from places of compulsory residing in republics of Central Asia and RSFSR as continuation of the discrimination practiced in the USSR.

According to the Crimean Tatars, the only way out of the situation is the adoption by the Ukrainian parliament of special laws. This view was accentuated on January 11, 2012

[50] Resolution of the All-Crimean meeting in memoriam victims of the genocide of Crimean Tatars, deportation of May 18, 1944, and decades of enforced confinement in places of exile: "The removal of obstacles in the legislation of Ukraine for the return and resettlement of Crimean Tatars" / http://www.avdet.org/node/6081

by Chairman of Mejlisa and People's Deputy of Ukraine M. Dzhemilev during parliamentary hearings "Ethno-national policy of Ukraine: achievements and prospects" while representing the project "Concepts of the state ethno-national policy"[51]. He said: "…the presence of some unresolved questions in this sphere and, in particular, the further ignoring of necessity of the decision of the problems connected with returning, settlement and restoration of the rights of Crimean Tatar people is an essential barrier on the way of development of democracy in Ukraine, assertion of the elements of humanism and democracy in the Ukrainian society, the all-around development of individuals and ethnic communities, formation of Ukrainian political nation"[52].

By results of parliamentary hearings "Ethno-national policy of Ukraine: achievements and prospects" held on January 11, 2012 in the Verkhovna Rada of Ukraine the Committee of the Verkhovna Rada of Ukraine on human rights, national minorities and international relations at its session on March 21, 2012 confirmed the draft resolution of the Verkhovna Rada of Ukraine "On recommendations of parliamentary hearings about: "Ethno-national policy of Ukraine: achievements and prospects" and recommended to take it as a basis and adopt as a whole[53].

Among the recommendations addressed for the leading public figures there were advices to improve legislation on public ethno-national policy, in particular, strengthening of responsibility for the actions intended to kindle national, racial or religious hostility, and also to promptly consider the bill "About restoration of the rights of the persons deported along ethnic lines"[54].

On May 18, 2012, Mejlis Chairman M. Dzhemilev speaking at the service in memoriam of deportation victims said: "…According to these recommendations two bills on the concept of ethnopolicy in Ukraine developed by Mejlis of Crimean Tatars and Cabinet of Ministers of Ukraine were already brought in the parliament. For the first time in the legislation of Ukraine both bills define the notion concept "indigenous people", which give the chance to pass new acts in future on protection of the rights Crimean Tatars on their native land, as indigenous people of Ukraine. It also gives Ukraine a chance to sign the Declaration of the United Nations on the rights of indigenous people"[55].

On July 5, 2012, the Verkhovna Rada of Ukraine considered the resolution "About recommendations of parliamentary hearings about "Ethno-national policy of Ukraine: achievements and prospects"; however it killed the bill. The power-holding faction polled only 42 ayes. M. Dzhemilev thinks that, in the first place, the reason of the failure of the document was the uncooperative attitude of presiding first vice-speaker Adam Martyniuk and all faction of the Communist Party of Ukraine[56].

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[51] The Bill on the concept of the state ethno-national policy / http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=42769

[52] M. Dzhemilev: ignoring the rights of Crimean Tatar people hampers the develop,emnt of democracy in Ukraine / http://www.avdet.org/node/5332

[53] Protocol No. 69 of the meeting of the Committee of Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations of March 21, 2012 / http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art_id=47203&cat_id=46329

[54] http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_2?pf3516=10247&skl=7

[55] Address of Chairman of the Mejlis of Crimean Tatars M. Dzhemilev to a rally on May 18, 2012 / http://www.avdet.org/node/6081

56 The ruling coalition is to blame for the failure / http://www.avdet.org/node/6291

The bill "About restoration of the rights of the persons deported along the ethnic lines", after being vetoed by President L. Kuchma in 2004, repeatedly returned for consideration in the government and committees of the Verkhovna Rada of Ukraine. President of Ukraine V. Yanukovych, having visited the Crimea in August 2010, requested from the Cabinet of Ministers to consider the bill No. 5510 registered in the Verkhovna Rada of Ukraine and work out measures for its adoption, which was not fulfilled. The international organizations, including the Supreme Commissioner of OSCE on affairs of national minorities, time and again reminded of the necessity to pass this law.

The bill was considered in parliamentary session on May 16, 2012. The bill failed to poll necessary votes for its adoption in the first reading (177 ayes with necessary 226), the people's deputies voted (366 ayes) to return it to the Committee on human rights, national minorities and international relations as requiring improvement. During discussion it was fiercely opposed by leader of CPU faction P. Symonenko, whose speech was full of insults of national and human dignity of the Crimean Tatars.

People's Deputy M. Dzhemilev thinks that results of voting for the bill "About restoration of the rights of the persons deported along the ethnic lines" on the eve of the 68th anniversary of genocide of Crimean Tatars should be treated as demonstration of disrespect of the parliament of Ukraine to the victims of genocide of Crimean Tatars and obvious unwillingness to restore Crimean Tatars in their rights[57].

At last, on June 20, 2012 the Verkhovna Rada of Ukraine in the first reading passed the bill No. 5515 "About restoration of the rights of the persons deported along the ethnic lines" with 356 ayes out of 420 registered in the sessional hall of the parliament. According to the author of the bill M. Dzhemilev, the yes-vote was due to the intervention of the president, which had supported it two years ago as well, and the position of the Supreme Commissioner of OSCE on national minorities and personally Knut Vollebжk, who had sent to the Verkhovna Rada of Ukraine a positive expert estimation. M. Dzhemilev also told that definitive acceptance is possible only after parliamentary elections, when the new structure of legislative power of Ukraine will be created[58]. Early in December 2012 109 amendments to the bill were submitted. Chairman of the Standing Commission of VR of ARC on international relations and problems of the deported citizens R. Ilyasov expressed fears that they can emasculate the essence of the document[59].

The subject of infringements of the rights of the Crimean Tatars is under continuous monitoring of the reputable international organizations. The UN Committee on liquidation of racial discrimination in its final remark following the review of the report of Ukraine about its observance of the International Convention about liquidation of all forms of racial discrimination[60] made on August 17–18, 2011 at the Committee session (on August 8 — Sep-

[57] The Verkhovna Rada killed the bill / http://www.avdet.org/node/6082

[58] The Verkhovna Rada of Ukraine adopted the bill of Ukraine "On the restoration of the rights of persons deported along ethnic lines" in the first reading / http://qtmm.org/новости/1549-верховная-рада-украины-приняла-в-первом-чтении-законопроект-украины-о-восстановлении-прав-лиц-депортированных-по-национальному-признаку

[59] Ilyasov: more than 100 amendments of the bill on deportees were received / http://krymtatar.in.ua/index/article/id/591

[60] The International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination. Reports submitted by member-states under article 9 of the Convention. Nineteenth to twenty-first periodic reports due in 2010. Ukraine [January 8, 2010] / http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.UKR.19-21_ru.doc

tember 2, 2011) made a number of conclusions formulated in points 16 and 17 of the section "C. Issues causing concern and recommendations" directly related to the Crimean Tatars.

> *"16. The committee expresses its concern over the absence of legislation on indigenous people, which would provide realization of guarantees given to the indigenous people and national minorities in articles 11 and 92 of the Constitution (article 2 (2)).*
>
> *The Committee insistently urges the member-states to adopt the legislation protecting the rights of the indigenous people and guaranteeing them economic, cultural and social development, and also to consider the problem of ratification of the Convention No. 169 about indigenous and tribal people in the independent countries (1989) carried by International Labor Organization (ILO).*
>
> *17. The Committee is still strongly concerned by the information on difficulties, to which, according to obtained information, the Crimean Tatars, who have come back to Ukraine, are exposed including absence of access to lots of land and employment, insufficient possibilities for studying their native tongue, hate-language statements in their address, absence of political representation and access to justice. The issue of restitution and indemnification for loss of more than 80 000 private houses and about 34 000 hectares of agricultural land as a result of deportation still causes serious concern, especially taking into account that 86% of the Crimean Tatars living in the countryside had no right to participate in restitution of agricultural lands as they did not work at the state enterprises. The committee also is interested in measures on improvement of realization of human rights of representatives of other ethnic groups deported in 1944 (article 5b), d) v) and e) i), iii) and v)).*
>
> *The Committee recommends the member-state to provide for restoration of political, social and economic rights of the Crimean Tatars, including property restitution, land, or indemnification for its loss according to the Civil Code or the special law which should be adopted with that end in view. Besides, the Committee recommends the member-state to present in its next periodic report the updated information on realization of human rights of representatives of other ethnic groups deported in the past"*[61].

About the necessity of passing special laws helping to restore the rights of Crimean Tatars, including the necessity of indemnification and land allocation spoke during its visit on January 24, 2012 to the Crimea the members of delegation of Advisory Committee of the Frame convention of the Council of Europe on protection of national minorities having familiarized themselves with the complex of problems of the Crimean Tatars. the delegation headed by President of Advisory Committee Reiner Hofmann intended to prepare the estimating report on Ukraine in the context of discussion of issues of protection of human rights in Ukraine and also the rights of national minorities[62].

On June 1, 2012 at the session of Committee on migration, refugees and displaced persons of Parliamentary Assembly of the Council of Europe held in the Parisian Office of the Council of Europe Chairman Giacomo Santini (Italy) offered People's Deputy of Ukraine M. Dzhemi-

[61] The International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination. Seventy-ninth Session, August 8 — September 2, 2011. Consideration of reports submitted by member-states under article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Ukraine. / http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/454/84/PDF/G1145484.pdf?OpenElement, in addition, the UN recommended Ukraine to ensure the rights of the Crimean Tatars / http://qha.com.ua/v-oon-porekomendovali-ukraine-obespechit-prava-krimskih-tatar-105903.html

[62] The visit of the delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities / http://qtmm.org/новости/994-визит-делегации-консультативного-комитета-рамочной-конвенции-по-защите-национальных-меньшинств

lev through the Secretariat of the Committee to begin the procedure of initiation of consideration of the Crimean Tatar issue in the Parliamentary Assembly of the Council of Europe[63].

For two years now the Mejlis of Crimean Tatars has been aspiring to involve the international community in rendering assistance to the Ukrainian state in returning, settlement and restoration of the rights of Crimean Tatars. In October, 2011 the accredited representatives of the United Nations, CE, EU, OSCE, the governments of the leading European states, Canada, the USA and Turkey, who gathered in Kyiv, supported the initiative of Crimean Tatars about holding the international forum intended to work out and adopt special international program concerning restoration of the rights of Crimean Tatars in their Motherland, maintenance of its safety and development guarantees in Ukraine. The High Commissioner of OSCE on affairs of national minorities also submitted to the top officials of Ukraine corresponding offers on holding in the fall of 2012 in Kyiv an international forum intended to work out and adopt special international program of assistance to returning, settlement and restoration of the rights of Crimean Tatars.

At the second annual meeting of the leaders of Mejlis with heads of diplomatic missions accredited in Ukraine and international organizations held on September 18, 2012 in Kyiv, the activity of the representative body of the Crimean Tatars got further support. In particular, the representative of the Secretary General of the Council of Europe on coordination of programs of cooperation of the CE of V. Ristovski assured the leaders of Mejlis that the expressed opinions on current position of Crimean Tatars completely coincided with recommendations of the European community and the international organizations. He said that the CE "will continue meaningful dialogue with the Ukrainian power and support the idea of holding the International forum. We think that it can strengthen dialogue between the representatives Crimean Tatars and the government of Ukraine and promote unification and inclusion of the Crimean Tatars into the social and cultural life of the society"[64].

The law "About basics of the state language policy" passed by the Verkhovna Rada of Ukraine in July, 2012 alerted the Crimean Tatars despite the assurances of its authors that it would expand the use of regional languages. According to People's Deputy M. Dzhemilev, if Russian receives the special status in the regions of Ukraine, "the Crimean Tatars, as well as ethnic Ukrainians, will have no stimulus to study their native tongue, because they know Russian not worse than Russians." The authors' citation of the European charter about tongues of national minorities is inconsistent, as the charter is directed at protection of the languages which are under threat, while Russian is not a threatened tongue[65].

By the law, the language can be considered regional if in a certain region there live more than 10% of given language speakers. However, the Verkhovna Rada ARC postponed till the

[63] The Head of the Mejlis proposed to start an investigation procedure by the PACE of the situation with the solution of Crimean Tatar problem / http://qtmm.org/новости/1502-глава-меджилса-предложил-начать-процедуру-расследования-комитетом-пасе-ситуации-с-решением-Crimean Tatar-проблемы

[64] The offices of the European Union and the Council of Europe in Ukraine support the idea of the International Forum / http://qtmm.org/новости/1972-представительства-европейского-союза-и-совета-европы-в-украине-поддерживают-идею-проведения-международного-форума%20%20%20%20Mustafa%20Dzhemilev:%20For%20Crimean%20Tatars%20the%20adopted%20law%20on%20languages%20is%20unacceptable%20/%20http://qtmm.org/новости/1606-мустафа-джемилев-для-крымских-татар-принятый-закон-о-языках-неприемлем

[65] Mustafa Dzhemilev: For Crimean Tatars the adopted law on languages is unacceptable / http://qtmm.org/новости/1606-мустафа-джемилев-для-крымских-татар-принятый-закон-о-языках-неприемлем

fall voting on granting Russian the status of the regional language in the autonomy. One of the reasons of such step can be that the Crimean authorities wait for amendments to the law when "the passing barrier" for the regional language can be raised from 10% to 30% in the fall. And then the Crimean Tatar language applying along with Russian for the regional status, will not obtain it[66]. This supposition is corroborated by the first steps of the working group created by the order of the President of Ukraine to amend the law[67]. In particular, the document does not provide for the status of regional language for the tongues of national minorities, but only intends to protect them, if not less than 30% of language speakers live in the area.

M. Dzhemilev estimates the law as unacceptable for the Crimean Tatars, and thinks that the situation with Crimean Tatar language should not depend on the number of its speakers. "The Crimea is the national territory of the Crimean Tatars, the Crimean Tatars are indigenous people. by some estimations, during the genocide of 1944 about 46% of the Crimean Tatars were killed out, and we now in the homeland make 13% of the population. Then, if they killed more, we would not have the right to language? Such approach does not suit us". He sees the way out for the development of Crimean Tatar language in its recognition as one of official languages in the Crimea[68].

At the same time deputies of VR ARC R. Ilyasov and S. Kadzhametova sent an appeal to the government of Crimea "About granting the equality in the rights of usage and application of Crimean Tatar language and its free development in the ARC by the Law of Ukraine "On the basics of the state language policy" signed by prominent representatives of Crimean Tatar intelligentsia. The appeal reminds that from 1921 till 1944 Crimean Tatar language alongside with Russian had the status of a state language in the Crimea and was not been restored in this status after the restoration of autonomy. The document reads: "At the same time the realities, in connection with the adoption of the law of Ukraine "On the basics of the state language policy", compel the Crimean Tatars to use as much as possible … the ways of restoration of the status of Crimean Tatar language and its free development in the Autonomous Republic of Crimea." The authors of the document suggested their amendments concerning Crimean Tatar language and the plan of measures on enforcement of the law in ARC[69].

3.3.2. Elections and representation in the bodies of state power

The representation of the Crimean Tatars in the bodies of state power of Ukraine in ARC remains at a stably low level and throughout last decade practically does not show the tendency to positive changes.

As it is known, to Verkhovna Rada of Ukraine of the last two convocations, as a result of elections 2007 (on the basis of proportional system) and 2012 (on the basis of the mixed sys-

[66] Timur Tarpan. Legitimate "arbitrariness" / http://www.avdet.org/node/6468

[67] According to the new redaction of the "language law", the tongues of national minorities will not obtain the regional status / http://www.avdet.org/node/6540

[68] Mustafa Dzhemilev: Russian chauvinism is well-rooted in Mogiliov / http://qtmm.org/новости/1569-мустафа-джемилев-в-могилеве-очень-прочно-сидит-русский-шовинизм

[69] The deputies of the Verkhovna Rada of Crimea Remzi Ilyasov, Safure Kadzhametova and representatives of the Crimean Tatar intellectuals appealed to the leadership of autonomy / http://qtmm.org/новости/2092-депутаты-вр-арк-ремзи-ильясов-сафуре-каджаметова-и-представители-крымскотатарской-интеллигенции-обратились-к-руководству-автономии

tem), only one representative of the Crimean Tatars — Head of Mejlis M. Dzhemilev — was elected. R. Chubarov appearing in these two election campaigns on the list of the same political force on a passing place failed to get to the Ukrainian parliament. Except for the "Batkivshchyna", no other political party put Crimean Tatars on the passing list. Nobody from the Crimean Tatars won the elections in majority districts though two of them upped to the second place with support from 15% to 19% of voters. The results of elections were manufactured due to such preferences of the voters as "friends", "ethnically close". Analyzing the reasons of so scanty representation, the Kurultai of Crimean Tatars noted: "… despite frequent change of the electoral legislation, in Ukraine, unlike many democratic countries, the international experience on maintenance of the guaranteed representation in parliament of the indigenous people and national minorities was not implemented.[70]"

Mejlis Chairman M. Dzhemilev maintains: "Any civilized state should ensure that all social classes, all minority people making the Ukrainian society are presented in legislative body for sure. For example, in Hungary, Romania, Slovakia they use quotas. In Romania there live only about 30 thousand Crimean Tatars; all the same, in the parliament they have one guaranteed seat. Moreover, they can stand for election with a party ticket". Some experts believe that not only the leaders of the state have no political will to implement the idea of selective quotas for national minorities, but also the society is not ready to it, though at the level of Crimea or some other areas it is feasible[71].

As a result of local elections in 2010, the Crimean Tatars had 6 deputies in the Verkhovna Rada of ARC that makes 6% of Crimean members of parliament. Four of them had the ticket of the People's Movement of Ukraine and were elected by Crimean Tatars, and two had tickets of the Party of Regions of Ukraine and were elected by Russian-speaking voters.

123 deputies (9.2% of the deputies of this level throughout the autonomy) were elected to the city and regional radas. 870 deputies or about 16% of deputies of this category inn ARC were elected to the rural and township radas[72]. Apparently, on republican and regional (regional and township) levels the degree of representation of the Crimean Tatars is essentially lower, than their share in the population of Crimea (about 13%). And only on the local (rural and township) level the degree of representation is a bit higher that can be explained by public activity of the Crimean Tatars and smaller influence of the big-time politics on relations between ethnic groups in local communities.

However, in the state executive bodies the level of representation of the Crimean Tatars sharply decreased in the last two years that was caused to a considerable degree by "strengthening of discrimination of the Crimean Tatars in public employment, further reduction of already insignificant number of representatives of the Crimean Tatars in the public authorities of the autonomy."[73]

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[70] Resolution of Kurultai on Election of People's Deputies of Ukraine and the tasks of the national self-government bodies of the Crimean Tatars / http://qtmm.org/новости/1702-постановление-курултая-о-выборах-народных-депутатов-украины-и-задачах-органов-национального-самоуправления-крымскотатарского-народа

[71] Dzhemilev: Ukraine needs real change of electoral laws / http://www.radiosvoboda.org/content/article/24771091.html

[72] Report of Mustafa Dzhemilev / http://www.avdet.org/node/6334

[73] Address of the Chairman of the Mejlis of the Crimean Tatars M. Dzhemilev to the rally on May 18, 2012 / http://www.avdet.org/node/6081

There was also a noteworthy discussion on October 2, 2012 in Kyiv at a quadrilateral meeting on Crimean Tatar problem with participation of Minister for Foreign Affairs of Turkey A. Davutoglu, Minister of Foreign Affairs K. Hryshchenko, Chairman of the Council of Ministers of ARC A. Mogiliov and Chairman of Mejlis M. Dzhemilev. The hot discussion concerned two issuess: restoration of a dialogue of the government of Ukraine with Mejlis and adequate representation of the Crimean Tatars in all branches of executive power in the Crimea.

The first issue of discussion dealt with the problem that with election of V. Yanukovych the head of state in 2010 such important communicator between the Crimean Tatars and authorities as the Council of Representatives of Crimean Tatars under the President of Ukraine ceased to work. It was created in 1999 by President L. Kuchma as the form of introduction of Mejlis of Crimean Tatars into a legal field of Ukraine and this body should have included only 33 members of Mejlis. In the ruling body reformatted by the Decree of V. Yanukovych in August 2010 there remained only 8 members of Mejlis and 11 more persons representing public organizations in partial opposition to Mejlis were introduced. The Mejlis disagreed with the change of the principle of formation of the Council, the most part of which evades the democratic procedures of election by Crimean Tatars. Therefore the Council of Representatives of Crimean Tatars became an incapacitated body and the direct meetings of the representatives of the people with the president came to an end, "due to results of which the head of state gave instructions to the public agencies responsible for the solution of the most actual problems of the deported."[74]

During the four-party meeting M. Dzhemilev offered to issue a new decree of the president with restoration of former norm of formation of the Council; however, A. Mogiliov did not welcome the offer and suggested to carry out compulsory registration of Mejlis by the Ministry of Justice as public organization, which would provide a legal basis for dialogue of authorities with the Mejlis. In his turn, M. Dzhemilev rejected the possibility of registration of Mejlis as a public organization as it a representative body of plain folks.

For the matter of representation of the Crimean Tatars in executive bodies of the autonomy, A. Davutoglu noticed that, according to M. Dzhemilev's statement, their number in authorities is within the scope of 3% in spite of the fact that they make about 13% of population of the autonomy. According to A. Mogiliov, the number of Crimean Tatars in the authorities makes not less than 12%. In connection with data divergence, A. Davutoglu suggested to conduct authoritative research to define the exact figures and to take necessary measures, if there is a misbalance.

A. Mogiliov repeated that there is no discrimination along ethnic lines in the autonomous republic and the number of the Crimean Tatars in executive bodies corresponds to their general proportion in the population of the autonomy.

M. Dzhemilev, in his turn, said that the earlier figure of 3% is obsolete, and now the Crimean Tatars are presented in the power structures of an autonomy even less because during last two years further ethnic cleanings of personnel in the administrations were performed. He gave A. Mogiliov the list of 19 Crimean Tatars, which in the past had held responsible posts in the central and regional structures of executive power of the autonomy and had been sacked during last 2 years[75]. Many of them were sacked without prior reprimands.

[74] Ibidem / http://www.avdet.org/node/6081

75 Soon there will be no Crimean Tatars elevated to dominant positions / http://www.avdet.org/node/6409

M. Dzhemilev commented: "They were simply told that they "didn't fit in with their new colleagues" and they were replaced by people of other nationalities, and only in two or three cases appointees were Crimean Tatars, though the latter either were ruling party members or opponents of Mejlis of Crimean Tatars."[76] This list in November 2012 was appended by one more name: Emine Avamileva, the Deputy Chairwoman of the Republican Committee of ARC on the Affairs of International Relations and Deported Citizens, was signed off[77].

3.4. Humanitarian sphere

3.4.1. Education, Crimean Tatar language, TV and radio broadcasting in native tongue

- Education

In October 2010 the VR ARC adopted the Concept of Education in Crimean Tatar Language[78]. Though now there are certain legal preconditions for the development of Crimean Tatar language, its position still remains difficult and uncertain.

Now in Autonomous Republic Crimea there are 546 general educational organizations with 175 836 pupils, 33 428 (19%) of them are Crimean Tatars. Out of the total number of Crimean Tatar children only 5498 (16%) pupils can be trained in native Crimean Tatar language: 2919 pupils on the basis of 180 classes at 15 schools with Crimean Tatar training language; 2579 pupils in 223 classes with Crimean Tatar language of training on the basis of schools with 2, 3, and Russian training languages.

The general body of Crimean Tatar children — 27 930 pupils (84%) — study at schools with Russian and Ukrainian training languages: 19985 (59%) study their native tongue as a subject or optional class 1.5 and 2 hours per week, which it is obviously not enough for studying native tongue and rich native literature; 7845 (25%) pupils do not study native tongue in any form that on 9% exceeds coverage of children trained in native tongue.

In 2012–2013 school year 765 first-graders went to 45 classes with Crimean Tatar language of instruction on the basis of 38 schools: 21 class (356 pupils) on the basis of 15 schools with Crimean Tatar training language; 24 classes (409 pupils) on the basis of 23 schools with Russian, 2, and 3 languages of instruction.

According to S. Kadzhametova, the Chairperson of Association of Crimean Tatar Educators "Maarifchi", as of September 1 of 2011–2012 school year the situation in educational sphere was problematic. So, in areas densely populated by Crimean Tatars the parents of 826 first-graders expressed their desire to train their children in classes with Crimean Tatar training tongue. The first national classes had to be opened on the basis of 59 schools; however 286 children of Crimean Tatar origin were refused for various reasons to go to first classes with Crimean Tatar training tongue at 23 schools. Parents were openly blackmailed

[76] Four-party meeting on the Crimean Tatar problem / http://qtmm.org/новости/2020-четырехсторонняя-встреча-по-крымскотатарской-проблеме

[77] Avamileva was replaced by Sumulidi Junior / http://qha.com.ua/mesto-avamilevoi-zanyal-sumulidimladshii-119179.html

[78] Aider Adzhimambetor, Yunus Seitkhalilov. VR ARC adopted the Concept of Education in Crimean Tatar Language / http://poluostrov.com.ua/novosti/krym/745; see also: Concept of Education in Crimean Tatar Language in the Autonomous Republic of Crimea / http://www.rada.crimea.ua/app/1032

and felt under pressure by some departments of education and directors of schools that was direct infringement of constitutional laws citizens[79].

The number of schools with Crimean Tatar training language did not increase during the last decade; it froze on figure 15, though the "Regional program of development of the general secondary education in Autonomous Republic of Crimea for 1999–2010" targeted at the total of twenty schools. The number of schoolchildren, who are not studying their native language, increases from year to year, because of unsolved organizational questions and other reasons.

Teacher of the Crimean Engineering-Pedagogical University (CEPU) M. Settarova says that if at schools with Crimean Tatar training language have sufficient amount of hours for native tongue and literature, at other schools from year to year there is a reduction of time for studying of language down to 0.5 hour a week or no hours at all. Because of reduced teaching load the number of teachers of Crimean Tatar language was halved. One more problem: insufficient quantity of curriculums, textbooks, handbooks, absence of differentiated programs and textbooks in Crimean Tatar per types of schools. The existing language and literature textbooks are intended for schools with Crimean Tatar language of training and calculated for certain quantity of hours. The language and literature textbooks for schools with Russian and Ukrainian training languages are absent; there are no textbooks for elective courses. The third problem: nobody trains teachers of school subjects, there are no terminological dictionaries, on the basis of which original and translated textbooks on all school subjects could be created.

As far as the help of the state in the development of education in Crimean Tatar is practically not felt, the unwillingness of local authorities to coordinate the decisions in sphere of education with representatives of the public is perceived very painfully. So, Association "Maarifchi" regarded the appointment by the Simferopol City Rada to the post of director of school No. 42 Eskender Tarhan as brazen interference of authorities with the development of education and violation of the rights of Crimean Tatars on education in native tongue. As a powerful argument the "Maarifchi" named his lack of line-of-business education, absence of necessary experience in the sphere of school management, knowledge of Crimean Tatar language, knowledge of problems of schools with Crimean Tatar training language."[80]

The local authorities are in no hurry to support efforts of the public founding preschool institutions. So the symbolic is the history of the kindergarten no.1 "Sevinch" with two groups groomed in Crimean Tatar and two groups groomed in Ukrainian opened in Bilohorsk on September 1. Earlier in its building there was the Crimean Tatar school No. 4 closed down in 2003 by the order of the Bilohorsk City Rada despite the protests of parents and public. After repeated appeals the regional administration promised to open a Crimean Tatar kindergarten under condition of attraction of investors by Crimean Tatars. The reconstruction of the building was carried out due to inspiration of Mejlis and Association "Maarifchi" and support of Turkish Agency for international cooperation and development (AICD), and in 2009 its official presentation took place. However the executive committee authorized the opening of

[79] It's good that the parents began to recognize their duty to the children and the people, and demand to ensure the constitutional right to instruct their children in the mother tongue / http://qtmm.org/новости/1902-сафуре-каджаметова-радует-что-родители-начали-осознавать-свой-долг-перед-своими-детьми-и-народом-и-требуют-обеспечения-конституционных-прав-на-обучение-детей-на-родном-языке

[80] Emine Musafarova. "Maarifchi" will complain to Wallebek about the administration of Akmesdzhit / http://qha.com.ua/maarifchi-pojaluyutsya-vollebeku-na-vlasti-akmesdjita-114586.html

the kindergarten only three years later, on the eve of September 1, 2012 having changed its status. Under instructions of Chairman of the District State Administration O. Rusetsky, the decision contradicted standard documents and standing of educational institutions in native training language; therefore more than half of Crimean Tatar kids had no chance to go to the kindergarten[81].

- Crimean Tatar language

CEPU lecturer M. Settarova maintains that the application field of Crimean Tatar language is mainly family circle, partially in education, limited in mass-media — some newspapers and magazines, broadcasting time on radio and TV. In her opinion, the reasons of such situation originated in the post-deportation period, when absence of education in native language in places of exile led to native tongue oblivion among the most active part of the society — youth. The Crimean Tatar students in high schools of Ukraine and Crimea are also deprived of possibility to be trained in native language. Today in rare young families the Crimean Tatar language environment is created[82].

The discrimination of Crimean Tatar language triggered deep assimilation. Here's a conspicuous fact. 746 schoolchildren go to Chystensky teaching and educational center-gymnasium near Simferopol; more than half of pupils, teaching staff and employees are Crimean Tatars. Despite it, the first Crimean Tatar class was opened only in September 2011. The supervising teacher Elzara Nimetullayeva told in her interview about difficulties she ran into: "Times were difficult; the children neither spoke, nor understood the language of their people. It was necessary to speak more Russian and stage by stage to pass over to Crimean Tatar. Gradually children started mastering Crimean Tatar language."[83]

The disastrous condition Crimean Tatar language listed by UNESCO as one threatened by disappearance was discussed on June 17, 2012 at the meeting of the leaders of Mejlis with President of the PEN International John Ralston Saul. The Mejlis expressed its opinion that substantially this situation was connected with the state of education in Crimean Tatar, the development of which was rendered impossible due to official barriers and which held up exclusively thanks to the public initiative and enthusiasm of Crimean Tatars and their public bodies[84].

The 4th International conference of PEN International Urals-Altai held in Simferopol from June 18 till June 21 adopted the draft resolution on a pitiable situation with Crimean Tatar language. The final motion was supposed to be accepted in the form of the separate document during the International PEN Congress in Seoul in September 2012. The conference zeroed in on the necessity of observance by the states of the norms of international law in the sphere of language rights of indigenous people and national minorities. The reform of education system in Ukraine does not allow for the condition Crimean Tatar language and urgent

[81] The new Sevinch Kindergarten with two training languages has been inaugurated in Karasubazar / http://www.avdet.org/node/6543

[82] The decline of the number of Crimean Tatar language teachers / http://www.avdet.org/node/6264

[83] High-day farewell to ABC book was held in the village school Adzhy-Kal (clean) / http://qtmm.org/новости/1481-праздник-прощания-с-букварём-прошел-в-школе-села-аджы-къал-чистенькое

[84] President of the PEN International John Ralston Saul visited the Crimean Tatar Mejlis / http://qtmm.org/новости/1541-меджлис-крымскотатарского-народа-посетил-президент-международного-пен-клуба-джон-ралстон-соул

measures to be taken for its revival; therefore there is a real threat of language assimilation of Crimean Tatars[85].

The same is the estimate of the condition of Crimean Tatar language made by Academician of the NAS of Ukraine, head of department of the O. Potebnia Institute of Linguistics of the NAS of Ukraine, Honored Worker of Science and Technology of Ukraine, Doctor of Philology, Prof. Hryhoriy Pivtorak: "In Ukraine only three languages need protection: Karaim, Gagauz, and Crimean Tatar."[86]

- TV and radio broadcasting in native tongue

Early in June 2012 the management of the State Television and Radio Broadcasting Company KRYM demanded that the editorial staff of Crimean Tatar edition include into the "Haberler" ("News") program broadcasting only 13 minutes daily the coverage of activity of the central authorities, in particular, of the president of Ukraine and the Cabinet of Ministers of Ukraine. Fulfillment of this requirement would lead to cuts in timing of "Haberler" with no time left for coverage of events of political, social and cultural life of Crimean Tatars and Crimea.

This event triggered the all-round discussion in mass-media; the situation was reviewed at the meeting of the leaders of Mejlis of Crimean Tatars with the management of the State Television and Radio Broadcasting Company KRYM paying attention to the extremely unsatisfactory material and technical basis of creative association of Crimean Tatar programs of the State Television and Radio Broadcasting Company KRYM and unfairly small volume of broadcasting of the State Television and Radio Broadcasting Company KRYM in Crimean Tatar language: 26 minutes daily (on Sundays there's no broadcasting in Crimean Tatar)[87].

3.4.2. Historical memory and toponymy

In 2012 the three-year discussion and adversarial position of public bodies to the initiative of the group of aviators "Vatan Kanatlary" (Wings of the Motherland) suggesting to name the International airport "Simferopol" after twice Hero of the Soviet Union Amet-Khan Sultan went on. Two years ago, in October 2010, the deputies of the Verkhovna Rada of Crimea turned down the suggestion of the action group. However, the given initiative drew a wide response of Ukrainian and international public. The subsequent numerous appeals of the action group to various departments and state structures of Ukraine and ARC were fruitless[88]. Answers of some Crimean officials were overtly amateurish; their arguments had nothing to do with the requirements of Ukrainian legislation. For example, they said that the issue of naming Simferopol airport after Amet-Khan Sultan should be decided at a local referendum, while the legislation of Ukraine does not provide for conducting referenda concerning assignment of names of outstanding people to such objects.

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[85] PEN: There is a real threat of linguistic assimilation of Crimean Tatars / http://www.avdet.org/node/6209

[86] Expert: in Ukraine Karaim, Gagauz, and Crimean Tatar languages need protection / http://krymtatar.in.ua/index/article/id/533

[87] Conference on the development of the creative association of Tatar Programs of the State Television and Radio Broadcasting Company KRYM / http://qtmm.org/новости/1507-совещание-по-вопросам-развития-творческого-объединения-крымскотатарских-программ-гтрк-крым

[88] Appeal to A.V. Mogiliov / http://www.avdet.org/node/5380; Премьер-министру Украины Азарову Н. Я./ http://www.avdet.org/node/5761

Chairman of "Vatan Kanatlary" N. Beytulayev at his press conference on February 1, 2012 said that it is a problem of discrimination. He underlined that the initiative in support of airport renaming was not a display of Crimean Tatar nationalism, and the thing was that Amet-Khan Sultan was not only the Crimean Tatar, but, first of all, the outstanding pilot and the native of Crimea, the only Crimean Tatar twice awarded the title of the Hero, and the society should be proud having such a Hero[89]. The draft decision about naming the International airport "Simferopol" after twice Hero of the Soviet Union Amet-Khan Sultan was registered in the Verkhovna Rada of Ukraine in September 2012. The project was submitted by People's Deputy Gennady Moskal for consideration of the Committee for culture and spirituality and Committee for Transport and Communication[90].

The same is about immortalizing the Crimean Tatar heroes of the WWII and the facts adduced at the session of the Standing Commission of the Verkhovna Rada of ARC for International Relations and Affairs of Deported Citizens March 29, 2012. The case in point was the creation of the Alley of WWII Heroes, natives of Crimea. In Simferopol, in Gagarin Park, in 2010, on the orders of the city rada the Alley of Fame was created featuring ten stelas with inscribed names of 60 Heroes of the Soviet Union; however, only ten of them are natives of Crimea. In its turn, out of these 10 Crimean names only two names belong to the Crimean Tatars: twice Hero of the Soviet Union Amet-Khan Sultan and Abduraim Reshidov, where the name of the latter was misspelled as Abraim. "At the press conference in 2010, where I mentioned the names of eight heroes of the Great Patriotic War of Crimean Tatar origin, many of those present doubted this fact and seemed surprised," noted Chairman of the Standing Commission R. Ilyasov[91].

Against the background of indifference and counteraction to the establishment of monuments immortalizing the outstanding Crimean Tatar figures the Crimean authorities consider it possible to attend the ceremonial inauguration of the commemorative sign to the Russian Field Marshal Count Peter von Lacy, under whose command the most atrocious campaigns of the Russian Empire in Crimea were carried out in first half of 18th century. Early in December 2012, in the Nizhnegorsk Region, the ceremony was attended by the permanent representative of the President of Ukraine in Crimea V. Plakyda, Minister of Culture of Crimea A. Plakyda, Minister of Regional Development and Trade of Crimea S. Verba, Chairman of the Republican Committee for Protection of Monuments L. Opanasiuk. Expressing his indignation with actions of government officials, head of deputy fraction "Kurultai-Ruh" in the VR of the ARC R. Chubarov declared: "So, while one party searches for ways to dialogue and evaluation of the past with a view of mutual cooperation for the sake of the future of Crimea and all its inhabitants, another party consisting of government officials hastily erect new barriers and obstacles to the consent."[92]

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[89] The unwillingness of the authorities to name the airport after A.Sultan is nothing but discrimination. / http://www.avdet.org/node/5404

[90] The Ukrainian parliament will decide whether the airport be named after Amet-Khan Sultan / http://www.avdet.org/node/6637

[91] Remzy Ilyasov: "The Alley of WWII Heroes of Crimean origin should be in Simferopol" / http://www.avdet.org/node/5764

[92] The Mejlis is outraged with the inauguration of the monument to Lacy / http://qha.com.ua/v-medjlise-vozmuscheni-ustanovkoi-pamyatnika-lassi-119772.html

Another kind of discrimination of Crimean Tatars in the cultural domain is ongoing disregard of government bodies of the problem of restoration of historical toponymy of the Crimea. Crimean historian O. Gaivoronsky defines its importance as follows: "The issue of revival of historical toponyms of Crimea is not about the tactical political trading, but about the restoration of the most valuable non-material monument of cultural heritage."

The authorities keep silence and the Crimean Tatar public initiates and realizes its own initiatives. So, on June 13, 2012 the International public organization "Bizim Kyrym" turned to the authorities of the autonomy and suggested to start restoring historical toponymy as a protected object of the non-material cultural heritage of Ukraine. The members of the public organization ask the Verkhovna Rada and Council of Ministers of ARC to make corresponding decisions on installation at the entrance to the settlements of AR Krym of information-index signs with their historical place names along with preservation of the existing official names assigned at the times of USSR[93].

There were precedents for it already, though not without vandalism. So, on June 30, 2012 the inhabitants of the urban village Gvardeyskoye once again restored the taken down road sign with the historical name of their settlement Sarabuz. According to the local Mejlis (national Crimean Tatar self-government body), the first time this index stood for two days, but then unknown persons took it down. It was restored, and the second time it stood for fourteen months. For the purpose of preservation of the unique historical name the urban village rada decided to name Sarabuz the area, which had been earlier called Vokzalny[94].

3.4.3. Hatred speeches

At the session of the Verkhovna Rada of Ukraine, during the discussion of the bill No. 5515 "On the restoration of the rights of persons deported along ethnic lines" on May 16, 2012, that is on the eve of the regular anniversary of the memory of victims of deportation of Crimean Tatars, head of parliamentary fraction of CPU P. Symonenko delivered a speech justifying crimes against Crimean Tatars committed by the Stalin's regime in the USSR, i. e. deportation of people on May 18, 1944 from their native land and forced detention in exile for several decades.

Citations from P. Symonenko's speech:

> *"…The reasons for deportation consisted, first of all, in the fact that the events of 1941–1944 on the occupied territory in Crimea gave grounds to the Soviet government to make such decision. The majority of Crimean Tatars fulfilled their duties of soldiers and went to the fronts of the Great Patriotic War and were killed in action and their deeds we honor today, as well as those, who was awarded the title of the Hero of the Soviet Union; at the same time, for the defense of Crimea 2 divisions, and it's more than 20 thousand men, of Crimean Tatars were completely armed and the task was posed to defend the Crimea."*
>
> *"…The same day they went to the side of Hitler and swore to Hitler to fight on the side of Hitler, the same 20 thousand. These representatives helped to uncover and hand over to enemies all caches prepared for guerrillas in Crimea, they were on patrol in concentration camps in Crimea, where hundreds of thousands of Soviet soldiers and innocent citizens, I mean, first of all, civilian population perished. They ripped up stomachs of pregnant women, the evidence of which was given to all*

[93] The Bizim Kyrym insists on restoration of historical toponymy / http://www.avdet.org/node/6188

[94] Step by step / http://www.avdet.org/node/6282

courts, where they were convicted for their evil deeds and crimes. In 1944 the Soviet government decided to divide guilty and innocent; this forced exile of the Crimean Tatar people was intended to rescue Crimean Tatars and take them out of the Crimea. Why? Because these evil deeds would necessarily lead to a civil war. And I do not doubt that the consequences might be much more serious. At the places of exile, they received education, they became academicians, they headed major enterprises, and so this operation was carried out for rescue of the Crimean Tatars[95].

The speech scandalized and aroused a wave of indignation among the Crimean Tatars, strong attacks and comments followed. The All-Crimean mourning meeting in memoriam of the Crimean Tatar victims of genocide on May 18, 2012 in Simferopol adopted the manifest "On the threat of revival of Stalinism in Ukraine and protection of foundations of democracy in Ukraine and the world". The participants of the meeting riveted attention to the fact that "the justification from the platform of the parliament of Ukraine by People's Deputies of Ukraine of the criminal deportation of Crimean Tatars and national minorities, which had been carried out by the Soviet regime, direct insults all Crimean Tatars, individual citizens and their descendants." The meeting demanded that public authorities and law enforcement bodies "express their official position in connection with the said statements in the parliament of Ukraine both in the form of political statements, and in the form of procedural decisions and actions according to the current legislation of Ukraine." The resolution also called upon the governments of democratic states, PACE, OSCE and EU parliament to forbid P. Symonenko entry to the countries of Europe[96].

There were also similar statements of the Mejlis of Crimean Tatars, Crimean Tatar political and public organizations.

SSU ex-head, Chairman of the political advising committee of the party "Nasha Ukrayina" V. Nalyvaychenko demanded that "the Prosecutor-General institutes criminal proceedings against the head of the Communist Party Peter Symonenko for his shameful attempts to use the parliamentary platform and justify the crime of deportation, which led to death of more than 46% of the evicted Crimean Tatars"[97].

The former political prisoners of the Communist regime of the USSR also stood up for Crimean Tatars: "Deputy Symonenko is ready smear the whole nation and once again to condemn it without evidence shamelessly repeating the arguments of NKVD agents and chasteners. The communist Deputy is against justice in relation to victims of injustice. He shamelessly accuses and not in the buffet where comrades mess around, but from the platform of national parliament. And the high-ranking officials — the President and the Chairman of the Government — keep silence. And everybody is shocked by the bald lie of the political villain."[98]

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[95] Transcript of debate on the Bill of Ukraine "On the restoration of the rights of persons deported on ethnic grounds"/http://qtmm.org/стенограма-дебатів-по-законопроекту-україни-про-відновлення-прав-осіб-депортованих-за-національною-ознакою

[96] On the threat of revival of Stalinism in Ukraine and protection of foundations of democracy in Ukraine and the world / http://qtmm.org/новости/1384-об-угрозе-возрождения-сталинизма-в-украине-и-защите-основ-демократии-в-украине-и-мире

[97] Valentyn Nalyvaychenko: Symonenko should bear criminal responsibility for his justification of the crimes of Stalinism / http://qtmm.org/новости/1358-валентин-наливайченко-симоненко-должен-понести-уголовную-ответственность-за-оправдание-преступлений-сталинизма

[98] Former political prisoners of the communist regime defended the rights of the Crimean Tatar people / http://qtmm.org/новости/1390-бывшие-политические-узники-коммунистического-режима-выступили-в-защиту-прав-крымскотатарского-народа

However, neither the President of Ukraine, nor the Chairman of the Verkhovna Rada, nor other representatives of public bodies of Ukraine and ARC expressed their attitude toward the "hatred speech" of Ukrainian communist No. 1 from the high parliamentary platform. It is necessary to notice that similar xenophobic statements P. Symonenko's pronounced in one of his public addresses in 2010.

On August 22, on the central square of Simferopol, CPU leader P. Symonenko conducted a meeting with three hundred of his constituents in Crimea. The Crimean Tatars revolted with thecynical and offensive statements of P. Symonenko uttered in the Verkhovna Rada of Ukraine on May 16, 2012 also began to move in. The Crimean Tatars held national colors and banners with inscriptions: "No to fascist revival in Ukraine!", "Bring Petro Symonenko to trial!", "Symonenko, get away from Crimea!". During P. Symonenko's speech they chanted "Fascist", "Shame", and threw chicken and quail-finch eggs at the orator. After the action P. Symonenko escorted by the special detachment of the Ministry of Internal Affairs urgently left the square.

First Deputy Chairman of Mejlis R. Chubarov commented on the event: "In any normal country the politician, who tried and justified the acts of genocide against anybody, from the moment of his stepping down from the platform would cease to exist as the public politician. The tragedy of Ukraine, tragedy of Crimea consists in the fact that the moral monsters justifying mass acts of atrocity against anybody — Ukrainians, Crimean Tatars, Jews — can use his status of the People's Deputy of Ukraine and drive about the country under the protection of the Ministry of Internal Affairs and address people, who are not aware of the scales and perpetrators of those crimes that befell the previous generations…"[99]

The example of intolerance of the top officials towards the Crimean Tatars on the brink of elementary ignorance, disrespect and even the insult was demonstrated by Chairman of the Rada of Ministers of ARC A. Mogiliov. So during his press conference after the session of the Crimean government on May 29, 2012 in Simferopol, answering a question of a journalist, he declared that he considered the Crimean Tatars as a diaspora living on the territory of the peninsula. A. Mogiliov underlined that in Crimea there is a "big enough diaspora of Crimean Tatars", which have the right to file applications, complaints and other documents in Crimean Tatar. When the QHA journalist attempted to correct the prime minister, A. Mogiliov began insisting on his understanding of the term: "From my point of view, the diaspora is the nationality living in any territory which is defined along language, ethnic lines and so on. I am firmly convinced that any people, who are not the prevailing population in any territory, may be called by others a diaspora. I think so; I have a right to consider so."[100]

The statement of the Head of the Council of Ministers started a new wave of protests among the Crimean Tatar public. The known Ukrainian and Crimean experts offered some versions of such "slip": ignorance of definition of the term "diaspora"; perception of Crimean Tatars as a "continuation" of Turkey and Turkish diaspora that is understood by the official as a certain threat (Igor Semyvolos); "communicative failure" of Mogiliov testifying to its political incompetence (Olexandr Bogomolov); lack of understanding by officials that Ukraine is a polyethnic and polyconfessional state, ambiguity of concepts "the title nation", "the indigenous people" (Gulnara Bekirova)[101].

[99] Crimean Tatars staged "warm welcome" for Petro Symonenko / http://avdet.org/node/6509

[100] Mamut Mestafa. Freudian slip / http://www.avdet.org/node/6094

[101] Elmara Mustafa, Timur Kurtumerov. Officials behave like children / http://www.avdet.org/node/6094

The situation with A.Mogiliov's statement that the Crimean Tatars living on the peninsula belong to diaspora reemerged on June 6 at the press conference in Simferopol on the occasion of signing by the Council of Ministers and the government of Komi Republic (Russian Federation) of the cooperation agreement. The journalist of ATR television channel asked the Head of the Republic Komi Vyacheslav Gayzer if he names ethnic Komi living in the republic a diaspora as far as they are in minority. V. Gayzer answered in the presence of A. Mogiliov: "Certainly not; what does the *diaspora* mean? It is the indigenous people, the Komi Republic is one of the centers of Finno-Ugric world and accordingly, under our constitution, Komi language is the state language."[102]

On June 29, 2012, during a talk show "Gravitation", Leader of Coordination Committee of Russian Organizations of Sevastopol and Taurida Vladimir Tiunin, understanding that the audience of ATR television channel includes mostly the Crimean Tatars, expressed ideas fomenting international discord. He did not consider the deportation of 1944 as an infringement of the rights of Crimean Tatars, because "the reason for deportation of Crimean Tatars, in my opinion, consisted in mass treachery and collaboration, in killing of Russian people in concentration camps."

On July 27, V. Tiunin held a rally on the Lenin Square in Simferopol with participation of Russian and "Cossack" organizations of Crimea, which numbered 30 persons. Over there V. Tiunin expressed his negative attitude to the bill about deported having told that the victim of political repressions were not supposed to get any financial grants and denied the fact of deportation having named it a "resettlement" to "the blossoming warm Uzbekistan".

The Crimean Tatar public figures and lawyers T. Gafarov and R. Osmanov applied to the Office of Public Prosecutor of ARC about the commission of the crime specified by p. 1 Article 161 of the CC of Ukraine: "infringement of equality of citizens depending on their racial, national identity or religious beliefs."[103]

Earlier the criminal case on V. Tiunin was opened under article 161, part 1 "Fomenting international discord" as a result of the picket organized by him on the building site of the Cathedral Mosque in Simferopol on July 29, 2010 under the slogan of "No to building a mosque on the blood of our children." In July 2012 the Central District Court of Simferopol sentenced V.Tiunin accused of fomenting international discord under Article 161 p. 2 of CC of Ukraine to two years and six months of imprisonment with a trial period of one year, and depriving him of the right to occupy posts of the head of public organizations and associations for a period of three years[104]. However, in September the Appeal Court of Crimea reversed the judgment of the Central District Court and submitted the case to retrial having agreed with the lawyer that there had been one-sidedness and incompleteness of judicial examination, and actually justified the conduct of pro-Russian activist[105].

The position of the Simferopol District Militia Department, which decided to look into the application about perpetration of a crime in the days of the Great Patriotic War, may be called rather strange, legally doubtful and offensive for the Crimean Tatars. The appeal was authored

[102] Now the Head of Komi gave Mogilev to understand that the Crimean Tatars in Crimea are not diaspora / http://an.crimea.ua/news/crimea/politika/uje-glava-komi-dal-ponyat-mogilevu--chto-krimskie-tatari-v-krimu--ne-diaspora/

[103] To arraign for inciting ethnic hatred! / http://www.avdet.org/node/6299

[104] The 2.5 yr sentence for pro-Russian activist / http://www.avdet.org/node/6413

[105] The court acquitted Tiunin, who had abused Crimean Tatars / http://qha.com.ua/oskorbivshego-krimskih-tatar-tyunina-sud-opravdal-117267.html

by the activist of pro-Russian organizations, chairman of the Crimean organization of a marginal party "SPAS" (Social-patriotic assembly of Slavs) G. Sivak, who asked to examine and institute criminal proceedings against Crimean Tatar collaborators guilty of war crimes in the days of the Great Patriotic War. G. Sivak wrote in his appeal about 15,000 Russian citizens of the USSR allegedly killed in the concentration camp "Krasny" in the Village of Mirnoye, Simferopol Region, by collaborators from the 147th and 152th Tatar voluntary SD battalions. According to the central administrative of the Ministry of Internal Affairs of Ukraine in ARC, after verification of evidence the case will be submitted to the Office of Public Prosecutor for adoption of a decision[106]. From there the materials were redirected to the SSU, which in August 2012 refused to commence proceedings. Then G. Sivak appealed the decision in the Kyiv District Court of Simferopol adding a new provocative and xenophobic statement at the press conference, which was hastily broadcast by the information agency showing no special tolerance toward the Crimean Tatars[107].

The head of the Ukrainian government also showed the demonstrative presentiment towards the Crimean Tatars. On October 18, 2012, while visiting Crimea and answering questions from the hall on the state of financing of the Government program of returning and settlement of the deported citizens, Prime Minister of Ukraine M. Azarov urged the Crimean Tatars to stop calling themselves deported. "Just stop calling yourselves deported," answered the Prime Minister. "You joined our population, became its organic part." After these words the audience started applauding. People's Deputy M. Dzhemilev made a neatly remark: "Certainly, we are the Crimean Tatars, and *deported* is not our nationality. But the budget, which is signed by Azarov, has an item: "the expenses connected with settlement of the deported persons". The Prime Minister should read attentively the documents, which he is signing. But we have other fish to fry: Azarov has gathered a special sort of public at the Russian theater. He would like very much to please this audience before the elections. The majority here are chauvinists, and his statement got the hands…"[108]

On November 27, 2012 the press conference under the slogans "Nobody is forgotten! Nothing is forgotten! Nobody will forget the collaborationism of 1941–1944!" was held at the information press center of Simferopol; it was staged by the Leader of Coordination Committee of Russian Organizations of Taurida and Sevastopol V.Tiunin and the Chairman of Russian Society of Crimea A. Los. They have expressed a regret that "Crimean Tatar collaborators had safely avoided the deserved punishment having hidden behind the back of the people. The Stalinist regime had to punish in succession and ruthlessly those from them, who were guilty and involved in killing of the Soviet people. However, instead of carrying out of thorough investigatory actions for finding-out of a full picture of participation of the Crimean Tatars in punitive actions against local population and prisoners of war, establishing of all guilty persons … the Crimean Tatars were resettled in densely populated areas of Moslems with the subsequent domestication with write-off of concrete incriminations."[109]

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[106] Crimean militia eagerly rushed to check the reckless statement of the provocateur from the marginal party "SPAS" / http://crimea24.info/2012/07/09/krymskaya-miliciya-ryano-brosilas-proveryat-bezumnoe-zayavlenie-provokatora-iz-marginalnojj-partii-spas/

[107] Crimean resident sued the SSU for refusing to investigate crimes of collaborators / http://www.nr2.ru/crimea/402197.html

[108] Mustafa Dzhemilev: "It is Azarov's last month in the office and he can afford himself to talk nonsense" / http://qtmm.org/новости/2112-азаров-работает-премьером-последний-месяц-может-себе-позволить-говорить-глупости-мустафа-джемилев

[109] Flying the track of peace / http://www.goloskrima.com/?p=8678

On November 28, 2012, during the session of the Crimean parliament, during examination of the question on the announcement of the territory of the former concentration camp in the state farm "Krasnyi" a historical monument of local value Deputy of VR of ARC from Party of Regions Greek woman O. Kovitidi hinted that the Crimean Tatars were not without guilt. After the film showing about the concentration camp at the state farm "Krasnyi" she told: "With all due deference to Chubarov, it seems to me that one cannot take the floor after such piece of art. My grandfather was tortured to death at the state farm "Krasnyi". And one more thing about traitors… There were no Greek traitors. All deported did not deserve that deportation: they were Greek, Bulgarian, Armenian, and German. Some know, for what they had been deported. We, Greeks, do not know it till now. There are things about which it is better to keep silence." It is known that the Stalinist regime deported the Crimean Tatars, Germans, Greeks, Armenians and Bulgarians from Crimea. In her unambiguous phrase O. Kovitidi pointed at the Crimean Tatars, who, in her opinion, were deservedly deported.[110]

On November 29, 2012 during the talk show the "Open Policy" the State TV and Radio Company "Crimea" broadcasted the activity of Islamic party "Hizb-ut Tahrir" and the ex-deputy of the Verkhovna Rada of Crimea and pro-Russian public figure O. Rodivilov named the program "a feast of illegal immigrants". He opined that the Mejlis of Crimean Tatars and "Hizb-ut Tahrir", between which the basic discussion took place, were "not legalized". O. Rodivilov characterized the Mejlis as "the organised criminal group" and in in strong terms addressed the self-settlers in Myrny Village (former Sarayly Kyyat) and warned that if "… Avdet, Sebat, and others do not withdraw" from the territory of the former concentration camp in the village, they "will be pitchforked". O. Rodivilov was behind the creation of memorial complex in Myrny Village, where on the territory of state farm "Krasnyi" the Nazi concentration camp was set up during the WWII. In reply to such statement the guest of the program Deputy of Verkhovna Rada of Crimea R. Chubarov and representative of public organization "Human Rights Movement of Crimea" E. Kadyrov announced about their intention to go to the public prosecutor's office[111].

Late in November, 2012 in the Simferopol gymnasium No. 11, the teacher of Russian language and literature with more than 20-year experience of work E. Menshova insulted sixth-graders the majority of which were Crimean Tatars. The sixth-graders waited for the lesson to begin behind the closed door of the study-room. One schoolgirl recorded the insults of the teacher addressed at first to one pupil, then all pupils and at last to all Crimean Tatars. "I have remembered this mug for a long time. I would like to box him on the ear to draw blood. I'd kick you out of the house, leave school myself and let you burst in shivers, because this society does not need you all the same. Lo, theses Crimean Tatars run the show here. Wonna go to the Tatar school? Plumb out of here!" After the parents' meeting and intervention of the Ministry of Education and Science of ARC the teacher gave in her resignation[112].

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[110] This week. Kovitidi believes that the Crimean Tatars were deported reasonably / http://www.avdet.org/node/6960; One more lie about the Crimean Tatars / http://qha.com.ua/o-krimskih-tatarah-snova-skazali-nepravdu-119472.html

[111] The head of the "Russki blok" promised to pitchfork the residents of unauthorized buildings in Sarayly Kyyat / http://www.avdet.org/node/6960

[112] An international conflict in one of the schools in Simferopol: the teacher promised to kick pupils out of the house and drove them out to the "Tatar school" / http://crimeantatars.org/pages/news.aspx?id=6203#.UL8uVuS6cZn

The similar incident occurred at the Simferopol house for aged people, managed by former Soviet dissident A. Seitmuratova. During her on-the-spot check at the house for aged people the SES employee Yanakina started drawing up the formal note on violation of the rules of storage of the foodstuffs delivered as humanitarian supplies. A. Seitmuratova disagreed with the note formulation and refused to sign it. The discussion between the manager and employee of the sanitary-and-epidemiologic station ended with the statement of Yanakina: "The Crimean Tatars are traitors, they sold Crimea". The incident became a point of issue at the session of the Standing Commission of Verkhovna Rada of ARC for international relations and affairs of deported citizens[113].

3.4.4. Religious discrimination

As is known, the allocation of fixity area in Simferopol in March 2011 to the Spiritual Guidance of Moslems of Crimea (hereinafter referred to as RBMC) for erection of the Cathedral Mosque became the central event in the religious life of 2011. In several months the RBMC received the state certificate on this building site area and opened competitive bidding for the draft design of the future Cathedral Mosque[114]. It was the end of senseless opposition of the Simferopol city rada to the aspiration of the Crimean Moslems to receive in a lawful way the building site for the main temple on the peninsula. However, despite this happy news, the religious sphere in 2012 remained one of the most discriminating for the Crimean Tatars.

In 2012, the conflict concerning the plot of land in the area of Buky Dobrovsky Villaga Rada, which had been earlier allocated for building a mosque and later taken away by local authorities, went on. The Village Rada has transferred the given plot of land to the books of local housing office, which, in its turn, used to organize various fairs there. Soon followed the arrest of Housing Office Chief S. Korniyenko for taking a UAH10,000 bribe; his second job was the Chairman of the Local Organization of the Party of Regions. The residents of the Dobrovsky Valley collected more than 338 signatures under the appeal to the authorities of the autonomy to resolve the dispute[115].

The Dobrovsky Village Rada actively involved local "Cossacks" in its "struggle" against legitimate rights of local Moslems for carrying out gatherings of citizens. Having received the notice from Moslems about their intention to organize a gathering of residents, it informed the representatives of the Cossacks and the latter immediately made an application for their actions in the same place and at the same time. The similar scheme had been tested Dobrovsky Village Rada earlier, on the day of namaz for Kurban-Bayram on November 6, 2011[116].

On December 6, 2011, the Simferopol District Court (judge Tomashchak A. S.) found guilty of carrying out of unauthorized mass actions two Moslem citizens — D. Ibragimov and I. Abdulayev, punishment — penalty at a rate of UAH200. Actually both were condemned for

[113] The Crimean Tatars were called the traitors of their Motherland at Simferopol SES / HTTP://CRIMEA24.INFO/2012/12/13/V-SIMFEROPOLSKOJJ-SEHS-KRYMSKIKH-TATAR-OBOZVALI-PREDATELYAMI-RODINY/

[114] Results of 2011 /http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=550%3A-2011-&catid=1&Itemid=30&lang=ru

[115] The issue with the mosque stirs all Mamut-Sultan / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=549%3A2012-01-16-11-54-29&catid=1&Itemid=30&lang=ru

[116] The Cossacks writing a letter to Budanov / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=551%3A2012-01-16-14-22-19&catid=1&Itemid=30&lang=ru

the Mohammedan prayer organization — namaz — on a place of future building of a mosque in the area of Buky: D. Ibragimov during celebration of Kurban-bayram and I. Abdulayev a little later. D. Ibragimov and I. Abdulayev learnt about this decision at the turn of January 2012 from court orders sent to their addresses; i. e. they had not been informed in advanceabou the forthcoming sitting of the court. The review of the cases of D. Ibragimov and I. Abdulayev confirmed the absence of notices of appointment or subpoenas. In connection with infringement of procedural rights by district court the Moslems went to the Appeal Court of ARC with request for restoration, on a good reason, of the missed terms on appeal. In the middle of February 2012 the Appeal Court of ARC taking into account the disregard of the legal procedure by the district court recalled the sentence[117].

The similar situation is observed in the Village Heroyskoye, Saky Region, where local authorities delayed for 8 years the allocation of the land plot for building a mosque. When the religious community prepared all necessary documents to get the state certificate, the newly elected village chairman came to a conclusion that this land would rather be used for other purposes and suggested to compromise an action on another plot of land.

In the kindergarten No. 8 "Berezka", Old Crimea District, during the nap time, in the presence of head manager Natalia Zaytseva and tutor Galina Plaksina the orthodox cleric baptised by aspersion both children and premises on January 19. In this group 17 out of 28 children were Crimean Tatars, whose parents practice Islam. Tutor Emiliya Mamut tried to interfere with carrying out of this ceremony, however her actions were suppressed. Next day the manager in the rough form demanded the tutor to write the letter of resignation of her own free will. E. Mamut said that she considerd the actions of administration of the kindergarten illegal, violating constitutional religious rights of citizens and their children. She appealed to the mayor, Office of Public Prosecutor of the Kirov Region, state labor inspection of ARC, Kirov MRO GU SSU in ARC, Kirov RO GU of the Ministry of Internal Affairs of Ukraine in ARC, RBMC[118]. On the given fact the Office of Public Prosecutor decided to initiate disciplinary proceedings against the administrator of the preschool center. The Office of Public Prosecutor opined that the actions of the kindergarten administrator and the cleric violated the current legislation of Ukraine on regulation of religious relations[119].

On April 19, 2012 the same ritual was performed in the comprehensive school no.43 of Simferopol. The clergyman visited the school on the Easter eve and sprinkled with holy water grade schoolchildren among whom there were both Christians and Muslims[120].

In his appeal to the Minister of Education and Science, Youth and Sports of AR of Crimea V. A. Dzoz, Head of Simferopol and Crimean Diocesan Administration of UOC Lazar E.Ablayev, Mufti of RBMC, expressed his protest against such wrongful practice, because the Muslim creed of children and their families does not anticipate fulfillment of any Christian rituals, church chanting, reading of psalms, prayers etc. Similar rash actions affecting Moslems cause

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[117] The Court of Appeal acquitted convicted Muslims of Mamut-Sultan / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=569%3A2012-02-15-10-00-51&catid=1&Itemid=30&lang=ru

[118] While asleep, the children were aspersed in Old Crimea / http://www.avdet.org/node/5372

[119] Office of Public Prosecutor: children in Eski Kyyryme were baptized by aspersion illegally / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=581%3A2012-03-01-14-08-07&catid=1&Itemid=30&lang=ru

[120] Baptism by aspersion of children becomes systematic / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=625%3A2012-04-20-12-38-10&catid=1&Itemid=30&lang=ru

trouble and conflicts that can lead to interreligious confrontation. Moreover, such actions are illegal under Article 6, 28 of the Law of Ukraine "On preschool education", Articles 6, 8, 9 of the Law of Ukraine "On education", and contradict requirements of Article 35 of the Constitution of Ukraine. E. Ablayev asked to take immediate measures to stop the above incidents and explain the managers of preschool and school establishments, and also priests of Simferopol and Crimean Dioceses of UOC the inadmissibility of infringement of the rights of Muslim pupils guaranteed by the Constitution[121].

The officials of the Ministry of Education and Science, Youth and Sports of Crimea lent their ear to the appeal. In his response Minister V. Dzoz informed that the director of comprehensive school, I-III levels of accreditation, no.43 of Simferopol N. V. Andreychuk was reprimanded for his permission to perform the ritual of sprinkling water at school. The minister noted that "in order to stop further interventions of religious organizations into the teaching and educational process of educational institutions of the autonomy the order No. 431 "On observance of legislation of Ukraine while carrying out actions in educational institutions of ARC from 4/20/2012 was sent down to the city and regional boards of education."[122]

on March 7, 2012 at the press conference in Simferopol the Archbishop of Simferopol and Crimea of the Ukrainian Orthodox Church of Kyiv Patriarchy Klyment announced in everyone's hearing about deliberate fueling of conflict by the authorities between the Crimean Tatars and Ukrainians. So in February the deputies of the City Rada decided to refuse to allocate the plot of land confirmed in 2008 for building the Cathedral of the Redeemer near the Ukrainian gymnasium on Kyiv Street explaining that in 2011 the general plan of town development changed. Then the City Rada officials told the archbishop that because of the "unauthorized acquisition" by Crimean Tatars, which occupy about 200 hectares, there was a great need in land for building of apartment houses. And this very site of 1.5 hectares solves all questions of building of these apartment houses accommodating three thousand people. They advised the archbishop to come to an agreement with the Crimean Tatars and convince them to free the illegally seized land, on which the apartment houses would be built, and afterwards the UOC KP would get the promised plot of land. The head of UOC KP in Crimea underlined that it was already the second attempt of the authorities to cause a clash between Ukrainians and the Crimean Tatars instead of structurally dealing with the question of allocation of the building site for the church[123].

In September 2012 the group of parents of 18 pupils of the Krasnogvardeysky spiritual educational institution — madrasseh of hafiz — maintained that their children were deprived of their rights to receive secular secondary education guaranteed by the Constitution of Ukraine: the local evening school refuses to admit them to school. One of parents Yunus Reshitov informed that they are "constantly intimidated with annulment of parental rights", while trying to close the madrasseh. Madrasseh teacher Rustem Memetov regarded such actions as discrimination along religious lines. The administration of the evening school refused to comment on the situation for the RBMC press-service until the chief of regional

[121] Statement of Crimean Muftiate on another fact of baptism by aspersion of children in the school No. 43 in Simferopol / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=626%3A-43-&catid=50&lang=ru

[122] Director of school No. 43 was reprimanded because of ritual of sprinkling water / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=664%3A--43------&catid=1&Itemid=30&lang=ru

[123] This week / http://www.avdet.org/node/5600

management of education would permit it, but unfortunately there was no way to get him on the phone. The parents of pupils sent the joint letter to the President of Ukraine, Minister of Education of Crimea and Ukraine requesting to intervene[124]. Before this event the madrasseh was continuously inspected by all kinds of organizations — SES, complex commissions of representatives of Krasnogvardeysk Regional Administration including department of education — and parents of pupils were constantly pressurized. In this connection the RBMC addressed to the state leaders describing the technology of pressure upon the spiritual educational institution intended to close it. The RBMC riveted attention to the local policy of double standards: counteraction to revival of traditional Islamic spiritual education of Crimean Tatars and at the same time indulgence towards Islamic radicals[125]. Head of the Department of Education of Krasnogvardeysky District State Administration Vladimir Tchertkov invented nothing better than naming the facts of RBMC on hafiz madrasseh as "fictions"[126].

The assistant to the mufti of Crimea A. Ismailov in his interview to Radio Freedom told that the officers of SSU and local authorities threatened parents with revocation of parental rights, if they did not take away their children from the madrasseh. The parents of their own will send children to study the Quran and basics of the world religion — Islam. Therefore here the officials hamper the realization of individual rights of people on studying of their identity, their religion". The participation of law enforcers in this campaign suggests that it is something more than the local initiative probably intended to close all five Islamic educational institutions under the RBMC in Crimea[127].

In Crimea, the fact of the use of religious factor in election campaign of the nominee of the Party of Regions B. Deych was noticed as well. So in the "Sudak" special of the republican newspaper "Krymskaya Gazeta" from 10/9/2012 the third page featured the article "Boris Deitch is the peacemaker, who had never offended neither national, nor religious feelings of Crimean Tatars" allegedly authored by the Assistant to the Mufti of Moslems of Crimea A. Ismailov. In this connection A. Ismailov issued the statement, in which he told that he had not given this material to the newspaper and categorically protested against tampering with his name and ecclesiastical rank for electioneering of a nominee or political party in order to attract the voices of Moslems. He also emphasized that the RBMC as the religious organization according to the Law of Ukraine "On the freedom of worship and religious organizations" does not take part in election campaigns of any political parties and majority nominees[128].

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[124] Students in Kurmansky madrasseh denied access to secondary education / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=764%3A2012-09-21-14-45-42&catid=1&Itemid=30&lang=ru

[125] Address of the RBMC to the President, Prime Minister, public prosecutor and ministers of education of Ukraine and Crimea / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=766%3A2012-09-24-14-17-32&catid=1&Itemid=30&lang=ru

[126] Kurman authorities claim that the information on the madrasseh is nothing but "fiction" / http://qha.com.ua/vlasti-kurmana-uveryayut-chto-informatsiya-po-medrese-vidumka-117308.html

[127] In the Crimea the authorities tend to close the hafiz madrasseh / http://www.radiosvoboda.org/content/article/24721333.html

[128] Disclaimer to the article in "Krymskaya Gazeta" / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=778%3A-q-q&catid=1&Itemid=30&lang=ru. The name of Ider Ismailov was used for agitation for Deitch / http://qha.com.ua/imya-aidera-ismailova-ispolzovali-v-agitatsii-za-deicha-117906.html

On December 1, 2012, about 5 am, in Simferopol, the unknown persons attacked the cabin of the security guard on the building site of the future Cathedral mosque with Molotov cocktails. The cabin took fire from one of such petrol bombs, but the guard managed to put the fire off. The Religious Board of Moslems of Crimea regarded this attack as one more display of xenophobia in relation to the Moslems of Crimea, provocation of certain forces, which are against stability and peaceful co-existence on the territory of the peninsula[129].

3.4.5. Vandalism

- Conflicts around projects on old Muslim cemeteries

Since 2008, the Moslems of Simferopol Region kept demanding from the Dobrovsky Village Rada to prevent building of an orthodox temple on the territory of the old Muslim cemetery in Lozovoye Village. Numerous requests addressed to the former and present Chairmen of Dobrovsky Villaga Rada came to nothing. On December 21, 2011 the session of Dobrovsky Villaga Rada under the chairmanship of I. Budanov, despite protests of Moslems of the Dobrovsky valley, decided to give a further effect to the decision of the 18th session of the 5th convocation passed on June 18, 2008 "On permission granted to the Simferopol and Crimean Diocese to carry out design and exploratory work for temple building in Lozovoye Village" (former name: Village of Eski Orda).

The RBMC press-service DUMK stated that "I. V. Budanov's intolerant position is an example for some local haters of Islam from among the Cossacks, which, having dried behind the ears, began demanding to remove the Tatar cemetery from the Village of Krasnolesye."[130] Mufti of Crimea E. Ablaev wrote the official letter to Metropolitan of Simferopol and Crimea Lazar with the request to prevent building on this territory[131]. Metropolitan of Simferopol and Crimea Lazar in the letter from February 8, 2012 wrote to Mufti E. Ablaev and Head of Dobrovsky Villaga Rada I. Budanov stating that the Simferopol and Crimean Diocese refuses to build church on the plot of land allocated by local authorities, where Muslim cemetery had been in the earlier times[132].

The conflict situation around the former Muslim cemetery in the Village of Semenovka (former: Village of Kyten), Lenin District, continued in 2012. The local authorities issued the state certificate on the plot of land near the Azov coast located on the territory of the former Muslim cemetery for building of the diving center. During execution of earth-moving work the bone remains of burial places were found. The criminal case was opened against activist, Zevid Gaziev, who tried to protect the old cemetery from modern vandals; the complaint in this case was filed by the Mysovsky Villaga Rada. The court obliged Z. Gaziev to take down the memorial sign earlier erected on the territory of the graveyard. The court of appeal instance left the decision in force. Z. Gaziev refuses to take down the memorial stone; the en-

[129] Statement of the Muftiate of Crimea on the attack on the territory of the Juma-Jami / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=805%3A2012-12-01-12-55-43&catid=1&Itemid=30&lang=ru

[130] Dobrovska Village Rada permitted building of a church on the bones of Muslims / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=558%3A2012-01-25-09-11-58&catid=1&Itemid=30&lang=ru

[131] An Orthodox church to be built on the old Muslim graveyard /http://www.avdet.org/node/5383

[132] Metropolitan Lazar: there will be no church on the Muslim graveyard / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=567%3A2012-02-10-13-46-58&catid=1&Itemid=30&lang=ru

forcers of the judgment and State Land Control Service fined him for a total of UAH1190 and ordered to take the memorial stone down during 10 days[133].

This year the intolerable situations were created by old and ongoing intentions of the enterprise "Krymavtotrans" to build a public toilet or other structures on the territory of the old Muslim cemetery in Alushta. On April 13 in Alushta the rally was held against vandalism on the former Muslim cemetery, where today there are coach station, row of shopping stalls, cafй, and bars. Earlier the city authorities conducted exploration on the prospective building site and found human bone remains.

On April 17 the city rada considered the issue together with the representatives of the RBMC, executive committee of Alushta and local activists, which conference was ignored by the "Krymavtotrans" enterprise. The City Rada decided to suspend civil works and study the situation from the point of view of legislation[134]. Contrary to public opinion and position of Executive Committee of the City Rada of People's Deputies the "Krymavtotrans" enclosed the territory of the future toilet with a fence. The Religious Board of Crimea requested that the city authorities of Alushta allot this plot of land on the territory of the old Muslim cemetery to the RBMC for erection of the memorial sign "Djurbe" (Muslim memorial)[135]. Mayor of Alushta S.Kolot responded with the letter suggesting that the RBMC should come to an agreement with the "Krymavtotrans" about transfer of a part of the territory of the old Muslim cemetery to the books of RBMC[136].

In June 2012 in the Village of Verkhnesadovoye (former Village of Duvankoy), Nahimovsky District of Sevastopol, the fact of mass vandalism in the past in relation to the old Crimean Tatar cemeteries was elicited. So, during repair work (replacing windows and doors) in the apartment house built in 1952 many tombstones called bashtash (10 whole and 5 splinters) were found, the earliest of which was dated 1800. Such finds in the village became typical at carrying out of repair works in their housing estates by local residents. Before deportation the majority of residents of the Village of Duvankoy were Crimean Tatars (750 families). big Muslim cemetery "Azizler" was situated behind the mosque in the village; after deportation of Crimean Tatars the new villagers used tombstones for domestic needs[137].

- Vandalism on Muslim burial ground

On March 20, 2012 the new act of vandalism came out: the unknown perpetrators ruined and violated tombs on the Muslim cemetery of the Village of Mirnoye (former Village of Sarayly-Kyyat), Simferopol Region. As a result of pogrom the tomb of Gulsum Mamet, b. 1920, was completely destroyed, on a tomb of Seitkhalil Amet-ogly the gravestone was bro-

133 Scoffing at the remains of the ancestors of the Crimean Tatars continues / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=591%3A2012-03-12-17-51-39&catid=1&Itemid=30&lang=ru

134 The City Rada considered the issue of the old Muslim cemetery / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=621%3A2012-04-18-08-04-47&catid=1&Itemid=30&lang=ru

135 The RBMC will not permit to build toilet on the territory of old Muslim graveyard /http://www.avdet.org/node/5940

136 The Alushta authorities are ready to solve the problem with the old Muslim graveyard /
http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=666%3A2012-05-31-12-06-19&catid=1&Itemid=30&lang=ru

137 The tombstones are immured in Duvankoy houses / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=695%3A2012-07-04-18-14-22&catid=1&Itemid=30&lang=ru

ken, on two other monuments there remained traces from attempts of their destruction. Besides, two more tombs were run down by a truck[138]. The RBMC regarded this and previous acts of vandalism as purposeful attempt of destabilization of interdenominational world in Crimea and requested that the law enforcers take immediate measures and determine the identity of perpetrators and punish them according to their deserts according to the existing legislation of Ukraine[139].

On March 21, 2012 the Simferopol Regional department of the Headquarters of the Ministry of Internal Affairs of Ukraine in Crimea announced that the militia established the identity of the pogrom suspect. However, the announcement was accompanied with unpersuasive version about casual and unintentional character of perpetration. The version maintained that the car of the Mirnoye villager, b. 1979, which decided to visit the tomb of his relative on this cemetery, skidded and damaged several gravestones. The investigating officers ignored other obvious traces of attempts of destruction on remained tombstones, which couldn't be linked to the run-down. At the same time, according to RBMC lawyer I. Kajmakan, this case is unprecedented, because for the first time in many years the law enforcers managed to catch the malefactor. Usually the criminal proceedings are instigated on the fact of perpetration, but the guilty persons are never found and do not bear responsibility as set forth by laws.

- Destruction of monuments to the Crimean Tatars

Late In the evening on March 18, 2012 the vandals scoff at the monument honoring national hero Alim Azamat (Crimean Robin Hood) on the roadside of the highway Bilohorsk — Feodosiya near the Village of Cheremysovka (Корьrlikoy). The unknown persons left traces of their "revel" around the monument, shot at lanterns from their hunting guns, sent a bullet from a government-issued weapon through the metal charity box. N. Yunusov, Head of Bogatovsky Villaga Rada, informed the neighborhood militia inspector about the case, however it came to nothing[140].

On May 22 the unknown persons vandalized the territory of the burial place of righteous man Eskender located in 3 km from the Village of Novoulyanovka (former Village of Otarchyk), Kuibyshev Village Rada and known as "Karly Aziz"[141]. Both the bashtash and gravestone were completely destroyed. The character of the damages allows asserting that blows were inflicted with a sledge hammer, the monument fragments were not found. The RBMC representatives on the scene of the crime filed an appeal to the law enforcement bodies with request to instigate criminal proceedings on the given fact. The tombstone had been already broken

[138] Impunity encourages vandals / http://qtmm.org/новости/1137-безнаказанность-поощряет-вандалов

[139] Statement of the Muftiate of Crimea on the fact of the act of vandalism at the cemetery in Sarayly Kyyat / Mirnyi http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=598%3A2012-03-20-16-40-30&catid=1&Itemid=30&lang=ru

[140] People or vandals: who wins? http://www.avdet.org/node/5893

[141] Azizes are tombs of the saints and holy places. The cult of holy places and holy men is an integral part of the centuries-old culture of the Crimean Tatar people. In almost every village of the Crimea there were holy places (Aziz yer). According to experts, on the peninsula there are at least 300 such sites. Today more than 100 shrines are found and catalogued. The Carly Aziz is a grave of the righteous man, who died in 1318 of Hijra. According to legend, the water from the spring, which emerged after his burial, has healing properties, as well as the area itself. Karly Aziz grave is a place of pilgrimage for Muslims of Crimea.

by vandals in the small hours of August 13, 2011 and fragments had been thrown into the water reservoir nearby. Also the fence and two benches were broken. Though the criminal case was opened and investigation started, the perpetrators were not found. The tomb of the righteous person was restored by local Mejlis and Muslim community[142].

In the small hours of May 28, 2012, near the Village of Alekseyevka, Pervomaisky Region, on the site of the former Village of Kyyrk Cholpan the unknown persons destroyed the gravestone on the grave of Kyrk Aziz erected in 2006. The kind of destructions of the relic also indicated that a sledge hammer, crowbar and other heavy tools were used. The militia instigated criminal proceedings under Article 297 of the Criminal code of Ukraine "Violation of a tomb"[143].

In the small hours of July 17 the memorial board to Twice the Hero of the USSR Amet-Khan Sultan in Simferopol, immured on the house on the square of the same name was profaned. The criminal proceedings were instigated upon the fact of desecration under p. 2 Article 296 of the Criminal code of Ukraine, i. e. hooliganism. On July 19 on this area the action initiated by the Crimean public organizations "Youth against vandalism" with more than seventy participants took place[144].

Also in early August 2012 the memorial complex in memoriam of victims of deportation of the Crimean Tatars in Salgirka Park in Simferopol was vandalized one more time. The unknown persons covered with violet paint the plates with the names of republics to which the Crimean Tatars were deported, and on the fences of botanical park of TNU painted Nazi symbol — swastika. The vandals did not touch the plate with the inscription "Russia". On asphalt near the plates there were painted inscriptions: "Ukraine where?". The Head of the Secretariat of Mejlis Zair Smedliayev and members of Simferopol regional Mejlis came to the crime scene, videotaped and photographed daubs on the monument, and also informed about the case the Kyiv branch of the headquarters of the Ministry of Internal Affairs of Ukraine in ARC[145].

In Bilohorsk the new act of vandalism took place on a burial site of three sacred ulamas[146] of 9–12 c. In the small hours of September 1, 2012 the unknown persons destroyed the fence of the burial place "Azizler" and painted a swastika on the memorial stone. The militia officers drove to the crime scene only after the phone call of Deputy of the VR of ARC S. Kadzhametova to the Head of the Regional State Administration O. Rusetsky. The officers of SSU and RDIA drew up the report, videotaped and photographed the damage. The criminal proceedings were instigated under p. 1. Article 297 of the CC of Ukraine — violation of a tomb[147].

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[142] Karly Aziz destroyed again / http://www.qirimmuftiyat.org.ua/index.php?option=com_content&view=article&id=658%3A2012-05-25-04-51-54&catid=1&Itemid=30&lang=ru

[143] In Pervomaisk Region the vandals destroyed the gravestone to Kyyrk Aziz / http://qtmm.org/новости/1492-в-первомайском-районе-вандалы-разрушили-надгробный-памятник-захоронения-къыркъ-азиз

[144] Youth against vandalism / Appeal / http://www.avdet.org/node/6338

[145] In Simferopol the unknown perpetrators disfigured with swastika the memorial to the victims of deportation / http://qtmm.org/новости/1812-в-симферополе-неизвестные-изуродовали-свастикой-мемориал-жертвам-депортации

[146] Literally "knowledgeable scholars", recognized and respected experts in the theoretical and practical sides of Islam.

[147] The Muslim sanctuary Azizler was vandalized in Kyarasubazar http://qtmm.org/новости/1901-в-карасубазаре-осквернена-мусульманская-святыня-азизлер

4. LGBT COMMUNITY[148]

4.1. Social and demographic characteristics

According to various public surveys conducted in different countries in different periods of modern history homosexuals constitute between 1–2% and 5–6% of every country's population, irrespective of political regime or religious culture. Thus, e. g. according to the results of the research carried out between early 19th and late 20th centuries in the USA and Australia, the share of people who consider themselves homosexual varied from 1 to 10%. The discrepancies in the obtained data can be explained by difficulties in organizing surveys and establishing sampling criteria, lack of terminological clarity.

Sociological surveys in Ukraine show that the number of homosexuals can be assessed between 420 thousand and 1.2million, i. e. 0.9 to 2,6% of total population.[149]

Under the results of the research conducted in 2009 by the Ukrainian NGO "Nash svit" [Our world][150], the number of men having sex with men varies between 95 and 213 thousand men at the age between 15 and 49. Taking into consideration the error factor, their average number can be estimated at approximately 150 thousand. The earlier publications based on statistical data quoted the figure of 1 million homosexuals in Ukraine.[151]

These substantial differences in figures are due to the fact that not all homosexuals are ready to make their sexual preferences public, while the majority of homosexuals tend to conceal their status, fearing condemnation and persecution. Some scholars believe that the number of homosexual men is 3–4 times larger than the number of lesbians, but these claims are difficult to verify, as there are no accurate data with respect to LGBT-community in our country.

Currently it is believed that young gays and lesbians represent a high risk suicidal group, as they face a lot of problems in their interaction with environment. They can be misunderstood by their families, neighbors, classmates or co-students, or persecuted by aggressive heterosexuals. The specialized publications also mention that persons with homosexual orientation are more prone to alcohol or drug abuse.

4.2. Attitude of society

The surveys of public opinion conducted in the years 2002 and 2007 showed that 33,8% and 46,7% of Ukrainians respectively considered the equalizing homosexuals' rights with the rights of other citizens impossible.[152] In September 2010, on the other hand, sociological Center "Socis" found out that 65% of Kievites believe that homosexuality is a kind of

[148] Prepared by O. Martinenko, Association of Ukrainian monitors of human rights' observance by law enforcement bodies.

[149] http://politikan.com.ua/0/0/0/21378.htm

[150] "Set'" and "Nash svit" against HIV/AIDS Collection of articles. — K., 2010. — Access regime: http://www.gay.org.ua/

[151] M. Hovorukhina, UHUHR. Homosexuals in Ukraine — big policy issue (the papers of the seminary "Monitoring and protection of homosexuals' rights in Ukraine of February 23, 2007)

[152] Sociological service "TNS-Ukraine" on the "Nash svit" order http://gay.org.ua/publications/gay_ukraine_2007-r.pdf

perversion or mental disease.[153] Meanwhile sociological surveys conducted by Gorshenin Institute showed that 74.7% students-respondents found homosexual relations inacceptable, and 72% of Ukrainians were negatively predisposed towards sexual minorities' representatives.[154]

The surveys conducted among militia staff in 2003–2004 by L. Moroz and S. Yakovenko within the framework of the British Council program in Ukraine, aimed at promoting tolerance towards marginal groups of society among militiamen, revealed that the main reason for prejudice is lack of knowledge and irrational perception of those who are different — in skin color, language, beliefs or sexual preferences.[155]

These attitudes are deeply rooted in the history and culture, religious and political aspects of public life. Homophobia as the consequence of public negative attitude towards LGBT-community is, on the one hand, a very common phenomenon, but, on the other hand — a very complicated one, due to its varied manifestations. Today Ukrainian researchers identify several types of homophobia. With reference to O. Mostyaev's book "Homophobia as psychological and social problem in modern Ukraine" we will describe some of them.[156]

4.2.1. Teenage homophobia

Teenagers are characterized by aggressive non-acceptance of homosexuality. Teenage groups willingly participate in the persecution of the adult gays or their peers, who are different, thus trying to prove their own conformity with masculine or feminine stereotypes, overcome their own homosexuality. Fear of homosexuality is a cause of psychological trauma for heterosexual teenagers as well, especially for the attractive ones, i. e. boys looking like girls or girls with masculine way of walking, dressing up and entertaining themselves.

4.2.2. Homophobia as a disguise

Popular among homo- and bisexual individuals, allows them to conceal their needs from the others, condemning homosexuality. This type of homophobia is a means of averting any suspicions of their homosexual preferences.

4.2.3. Internalized homophobia

Internalized homophobia is also typical of homosexuals and bisexuals who are afraid of homosexuality or find it disgusting, as they cannot either face their own homosexuality or exclude homosexual behavior from their options. Some of them suppress homosexual desires and aspirations (latent homosexuals), while the others do not do that, by suffer from negative emotions, i. e. fear, anxiety, guilt with respect to their families. Hypocrisy and big-

[153] http://www.vsenovosti.in.ua/news/095469

[154] Research "Family through the eyes of Odessa students" http://www.prochurch.info/index.php/news/more/16764, phone poll "Morality in Ukraine" http://www.unian.net/ukr/news/news-413171.html

[155] Human rights. Militia interaction with marginal groups of population in Ukraine. Trainers' handbook/ Ed. L. Moroz and S. Yakovenko. — K., 2003. — 204 p.

[156] O. Mostyaev. "Homophobia as psychological and social problem in modern Ukraine". http://feminist.org.ua/news/n10/example/index.php?id=196

otry are the main causes of this type of homophobia. Some most ardent homophobes have been known to practice homosexual behavior and sanctimoniously hide it.

4.2.4. Compensatory homophobia

Compensatory homophobia can develop in women as an emotional compensation for the lack of personal life. Both personal experiences of homosexuals rejecting sexual intercourse and lack of emotional and erotic feelings during women's intercourse with men can contribute to this type of homophobia.

Most often homophobia is manifested in two ways:

— Hate speech, degrading certain person or a whole social group on the grounds of their sexual orientation; homosexuality is identified with perversion, disease or unnatural phenomenon;
— Homophobic actions aimed against LGBT and heterosexuals, resembling LGBT or supporting them.

The human rights activists believe that lack of information, domination of patriarchal family, traditional or newly acquired religious zeal, governmental approval of anti-homosexual movement contribute to the high level of homophobia in Ukraine. The educational institutions and mass media responsible for bringing up of public awareness ignore these issues.

4.3. Attempts of institutional discrimination

In late 2006 the head of the Ukrainian Greek-Catholic Church cardinal Huzar proposed amending law in force with provisions which would define the notion of "matrimony" exclusively as a union between man and woman, and also define the term "sexual minority". He claimed it would stop legalization of same-sex families and marriages in Ukraine, prevent child-bringing up in such families.

On May 15, 2007 a regular meeting of all-Ukrainian Council of Churches and Religious Organizations presided by the Ukrainian Orthodox Church was held. It adopted the Declaration "On negative attitude towards homosexuality and attempts to legalize the so-called same-sex marriages (i. e. registration of the same-sex partnerships)".

On June 10, 2010 the Christian Churches of Ukraine issued a Declaration "On negative attitude towards sin of homosexuality, its propaganda in the society and attempts to legalize the so-called same-sex marriages", which reads as follows: "*…we are definitely against the interpretation of homosexual way of life and behavior as something natural…against considering homosexuality a human right, …against its promotion as just another way of sexual life…*".[157]

On 28.09.2010 Kyiv Mayor L. Chernovetsky by his instruction No. 768 ordered preferential treatment of public movement "All together!" and obliged municipal state administration and other departments to support the festival of the said movement. During this festival the stage was erected in front of the mayor's office, while the speakers called for introducing criminal liability for homosexual propaganda, and disseminated homophobic slogans, e. g.

[157] http://www.risu.org.ua/ru/index/resourses/church_doc/ecumen_doc/36168

"Homosexuality = AIDS", "Registration of the perverts' partnerships is a threat to the state security of Ukraine".[158]

Practically for the whole period between 1991 and 2008 the requirement for the Ministry of Interior of Ukraine to submit the official statistical form (No. 7) to the State Committee on Statistics remained in force. This form contained the data on "persons of homosexual orientation" as a group of high risk for HIV-infection. This statistical document inherited from the soviet times was officially abolished in 2008; in practical operation, however, the agencies counteracting human trafficking still keep this statistics, justifying their actions by professional expediency stipulated by the law.[159]

In 2009 the Ukrainian government recognized that men having sex with men are one of the high risk groups with respect to HIV-infection ("National target program for HIV prevention, treatment, care and support for the HIV-positive and AIDS patients for the years 2009–2013"). At the same time Article 10, p. 21 of the Law of Ukraine "On militia" determines that militia officers according to their competences should identify persons belonging to high AIDS risk groups and duly inform the health care institutions about such persons; on health care institutions' motion and prosecutor's sanctions these persons should be brought in for compulsory examination and treatment. It means that militia is charged with the task of identifying homosexuals, which can be interpreted as state interference into the private life and illegal collection of confidential personal information.

On September 7, 2012 the Eparchial council of Sumy eparchy of the Ukrainian Orthodox Church made an official statement protesting against the registration of "Gay-alliance" association in Sumy (The decision on registration of the local branch of all-Ukrainian "Gay-alliance-Ukraina" association was made by the Chief directorate of justice in Sumy oblast' on August 22). The UOCh clergy protested against official registration of "depraved organization which desires to pass a hideous vice for public activity".[160]

4.4. Crimes against LGBT

Over the years 2010–2011 LGBT activists have registered 83 crimes and hate incidents, 7 of which included hate speech, 6 — rape of the victims, and 18 consisted in homophobic manifestations which had negative consequences for the victims.[161]

The analysis shows that the following homophobic infringements are the most common:

— Homophobia with hooliganism and body injuries. The hooliganism is rooted in the instincts of aggression and self-assertion.

— Homophobia with assault or robbery. Here the lucrative motives prevail. Young criminals assault the persons who visit traditional homosexuals' meeting places, not expecting serious opposition or resistance and hoping for the law-enforcers' connivance. Their declared motive is to "to teach perverts a lesson", assert themselves among their peers, but also to have some material gains.

[158] http://love-contra.org/index.php/news/issue/628/

[159] Step forward, two steps back. LGBT situation in Ukraine in 2010-2012 — K.: Center "Nash svit", 2011. — 152 p.

[160] http://www.segodnya.ua/news/14286134.html

[161] Step forward, two steps back. LGBT situation in Ukraine in 2010-2012 — K.: Center "Nash svit", 2011. — 152 p.

— Blackmail and extortion with the goal of achieving some political, economic or other goals, or just getting some money by threats to make the sexual orientation of the blackmailed persons public. The blackmail might consist in accusing the heterosexuals in high official positions of alleged homosexuality, thus causing undesirable political, legal and economic repercussions for them, their discredit, or removal of economic competitors.
— Heinous homophobic crimes — rapes (of lesbians by males; of homosexuals or androgynous or effeminate men — with the help of bottles, sticks etc.), and killings caused by pathological hatred. The killings of gays are characterized by unusual bestiality — they are accompanied by tortures, stabbings, and mutilations as a "punishment" for person's sexual orientation.
— moral and psychological blackmail of the homosexuals with the threats to reveal their orientation. Then the victims face public degradation and violence, even from their family and friends. A teenager recognized as gay in the family might be subject to isolation, physical violence, attempts to "cure" him/her; in some cases parents renounce their parental rights, so the teenager is condemned to loneliness and even suicide.[162]

Violent crimes against homosexuals are often perpetrated by the individuals with low social and economic status, young adults (up to 28 years of age) from bad neighborhoods, with no education, work or family; members of various subcultures (skinheads, ultra-nationalists, religious fanatics), sadistically- inclined persons, criminal elements.[163]

Unfortunately the representatives of the official bodies, and, first of all, of the law enforcement entities, too tolerant with respect to the crimes against LGBT communities, are often involved in the crimes.[164]

> *On November 20, 2010 an LGBT NGO "Insight" organized a number of events to commemorate the transgender victims of violence. One event included a movie which was to be shown in the Modern Art Center of Kyiv-Mohyla Academy. At the time of the event about 10 masked people tried to enter the center. Luckily they were detained by the "Insight" activists at the entrance. Two of the activists were injured by the assailants. Besides, the assailants tried to spread tear gas from several cans at once; some of the viewers were affected by it. When the felons understood they would not be able to get into the movie-hall, they disappeared.*[165]

> *The militia detachment called from Podil district militia department (Kyiv) was very reluctant to take evidence from the victims and refused to take the statement from those involved in the incident. The commandos from the ultra-rightist organization "National union" were probably responsible for the assault, as it was on their site that the information sustaining that assault was committed by "the unknown patriots resembling the activists of the "national union" appeared next day.*[166]

[162] S. Yakovenko and N. Kozarenko materials for Methodological recommendations on HIV and mend having sex with men for the law-enforcement bodies within the project of the Center for Social Expertise. 2012 .

[163] http://gender.at.ua/publ/2-1-0-136

[164] http://www.gay.org.ua/publications/gay_ukraine_2010-r.doc

[165] http://www.bagnet.org/news/summaries/ukraine/2010-11-21/84359

[166] www.naso.org.ru/main/150-razgrom-transvestitov.html

On December 11, 2010 in Kyiv downtown an "AntiYolka" action was conducted by several leftist and one LGBT organizations. The goal of the action was the protest against the current social policy of the Ukrainian authorities, while LGBT were directly mentioned only a couple of times — in the slogan "LGBT rights — human rights" and on rainbow flag. First the action was planned in a different venue, with more pronounced anti-homophobic agenda, but Kyiv branch of the nationalistic party "Svoboda" [Liberty] announced their own counter-action at the same venue and time. Despite the fact that the action was moved to another venue and its agenda became more socially targeted, a group of young people who called themselves "Christian youths" attacked the action activists after the event, shouting homophobic slogans.[167]

4.5. Illegal actions of law enforcers

Some crimes and violations of human rights are committed by the Ukrainian law enforcers themselves. The "Nash svit" report states that, over the year 2010, 43% (35 incidents) out of 79 registered violations of human rights of homosexuals were committed by the law enforcers.[168]

> *Thus, in April 2010 Ihor B. was beaten severely by the militia officers right in the lobby of the Central MI Department in Donetsk city, with dozens of people witnessing the incident. Ihor just requested that militia officers adhere to the legal procedure for detention. Eventually he abandoned the efforts to defend his rights, as both he and his mother were threatened by militiamen. He was also forced to sign the papers claiming that he had no grievances against militia.*
>
> *In January 2010 Olexander Z. was detained by militiamen from the Pervomaysky district militia ward (Chernivtsy) only because he happened to be in the venue of regular gay meetings. Apart from the fact that no legal procedural norms were observed during his detention, he was photographed and fingerprinted without any grounds.*
>
> *In March 2010 a Mykolayiv resident Kh. was summoned to militia ward to testify in a homicide case, in which a gay person was killed. After the official deposition which proved that Kh. did not know the victim, he was taken to another room, where four militiamen proceeded to insult and humiliate him, threatening to divulge the fact of his sexual orientation to his family and demanding the information about all the gays he happened to know. Illegally they confiscated his cell phone and wrote down all the numbers they found there. They let him free only after several hours.*

The results of human rights' violations' monitoring for 2008 addressing the accessibility of the basic services for HIV/AIDS prevention, treatment, care and support for men who have sex with men, conducted by the Center of Social Expertise on UNDP request show that "the overwhelming majority of respondents- men who have sex with men (60%) — had over the last 4 years to deal with law enforcement bodies staff on various issues, and only one third of respondents (27%) felt no prejudiced attitude in the course

[167] http://hr-activists.net/news/5176/

[168] "The review of human rights issues with regards to LGBT in Ukraine in 2010" , Center "Nash svit".

of this interaction".[169] The most common infringements committed by the law enforcers included the following:

— Unjustified, in respondents' opinion, verification of papers or personal search, especially in the venues of meetings between men who have sex with men (29%).
— Extortion of bribes to avoid personal problems, according to 11% of respondents;
— Violation of procedural norms at inquest and pretrial investigation stages — non-sanctioned detentions in militia wards, unwarranted searches, forced photographing and fingerprinting (9% of the respondents);
— Coercion to get information on other men who have sex with men, or illegal copying of numbers from the cell phones (9% of the respondents);
— Blackmail with threats to divulge the facts of sex with men or commercial sexual services (8% of the respondents).

4.6. Legal regulation of the relations between LGBT and society, official response to LGBT needs

On March 31, 2010 the Committee of Ministers of the Council of Europe unanimously adopted "Recommendations for counteracting discrimination based on sexual orientation and gender identity". The document recommends the countries — members of the Council of Europe a range of measures for introducing changes into the law and policies ensuring LGBT rights in such areas as labor relations, education, freedom of associations and peaceful gatherings, private and family life, health care, sports; taking into consideration homophobic factor in dealing with felonies and determining respective liability. Ukraine' support of this document means that for the first time in history our country has recognized at the international level that sexual orientation cannot constitute the grounds for discrimination.

On April 29, 2010 the Parliamentary Assembly of the Council of Europe, following the suite of Committee of Ministers adopted two more documents condemning discrimination based on sexual orientation or gender identity. They are the Resolution 1728 (2010) and the Recommendations 1915 (2010). Both documents, as well as the Committee of Ministers' Recommendations, are aimed at providing for LGBT civic equality ЛГБТ and counteracting the violations of human rights and discrimination on the grounds of sexual orientation or gender identity, and hate crimes against LGBT in the countries — CE members.

The changes introduced to the CC of Ukraine in force can be classified as steps towards recognizing the acceptability of homosexual relations alongside with heterosexual ones, specifically — the part of CC of Ukraine enumerating the types of felonies does not any longer treat voluntary sexual relations between same-sex persons as socially dangerous crime.

Nevertheless, the general state of things with LGBT legal protection leads us to conclude that the country has not achieved significant progress. Thus, the national legislation still does not ban the discrimination based on sexual orientation or gender identity. The passing

[169] Z. Kis'. Men who have sex with men // Challenges and counteracting HIV/AIDS and human right in Ukraine/ Ed. A. Skurbati. Compiled by V. Ryabukha.— K.: UNDP in Ukraine . — 2008.

of the Law of Ukraine "On public morality" and development of draft laws envisaging obvious repressive measures "for homosexual propaganda" confirm that the authorities are unready to provide guarantees for all the groups of population.

The departmental documents of the ministries still contain discriminatory norms. E. g. the Ministry of Health order No. 385 of 01.08.2005 prohibit homosexual persons from becoming blood donors. The Ministry of Health order No. 60 of 03.02.2011 directly mentions homosexuality as counter indication for sex correction.

The judicial practices reflect the status quo. Not a single court of any jurisdiction has ever ruled in favor of LGBT on cases instigated because of the sexual orientation of the plaintiffs.

In early October 2009 commandos from nationalistic organization "S. Bandera Trident" organized an attack on participants and guests at the presentation of the homosexual poetry book. The assault included insults, physical violence, throwing of furniture etc. The joint petition of Ukrainian LGBT organizations submitted to the Chief Directorate of the Ministry of Interior in Kyiv was answered only 8 months later. The Kyiv militia administration advised that no corpus delicti was found in the assailants' actions, so there were no grounds for instigating proceedings against them.[170]

In July 2010 Kharkiv city council filed a claim with the circuit administrative court on banning a peaceful gathering of the sexual minorities. The court, having considered the road inspection information that potential march could disrupt traffic and even lead to casualties, satisfied the claim.[171]

We can give only isolated positive examples of judicial practices in protecting LGBT-community interests. Thus, the ruling of the Donetsk court of September 2010, finding guilty a militiaman who had beaten a gay, became a second ruling of this nature in the whole Ukrainian history. This case, by the way, became known not only because the gay decided to openly oppose militiaman, but also due to the claim, filed by the victim's attorney under Article 161 of the CC of Ukraine, stating that the violation of the victim's rights was of discriminatory nature.[172]

4.7. Raising public awareness with respect to LGBT issues

The letter sent to the country leaders by LGBT organizations in 2007 was one of the first attempts to draw attention to the problem. It contained six requests:

— Legal banning of discrimination based on sexual orientation in all areas of public life;
— Legalizing common-law partnerships for homosexuals;
— Granting social and economic rights in full scope, equal to the rights of heterosexual partnerships, to homosexual families;
— Recognizing same-sex marriages between Ukrainian and foreign nationals contracted in other countries or registered in the civil registry offices abroad, as legal;
— Implementing nationwide programs for gays' and lesbians' social support;

[170] "The review of human rights issues with regards to LGBT in Ukraine in 2010" , Center "Nash svit".

[171] http://www.city.kharkov.ua/uk/news/view/id/3944

[172] "The review of human rights issues with regards to LGBT in Ukraine in 2010" , Center "Nash svit".

— Taking heed of gays' and lesbians' rights in developing and implementing normative/legal acts.

The letter was signed by all the renowned Ukrainian LGBT-organizations, i. e. "Gay-Forum of Ukraine", "LiGa", "Gay-alliance", "Chas zhyttya+", "Women's network" Center, and "Nash svit". Although the letter encountered officially reserved and reasonably tolerant reaction with regards to LGBT problems, the commentary by the former head of the Committee for human rights, national minorities and inter-national relations L. Hrach is most indicative in this context. He announced that "…homosexuality is an abnormality brought to life by immoral and vicious human nature. And, although the rights of these people really need protection, society treats them as pariahs."[173].

On October 2, 2009 public hearing on observance of human rights by the law-enforcement bodies was held in the Ukrainian House. At the plenary meeting the "Social action" coordinator M. Butkevich drew attention to the instances of aggressive homophobia registered in Lviv and Kyiv, while O. Zinchenkov, who represented LGBT organizations "Nash svit" informed about the cases of homosexuals' rights violations, committed by the law enforcers. The leader of "Gay-Forum of Ukraine" S. Sheremet explained these incidents by ignorance and erroneous understanding of homosexuality as pathological phenomenon by the law enforcers.

On January 18, 2010, at the 45th session of the UN Committee for the liquidation of all forms of women's discrimination, the shadow reports of the Ukrainian NGOs were made public. Specifically, they pointed out that the Ukrainian legislation did not envisage the banning of discrimination based on sexual orientation, although homosexual women face a lot of violations of their rights and freedoms. Hence the crimes against these women are not qualified as hate crimes. On the reports' results the Committee members addressed 9 questions to the Ukrainian delegation with respect to the observance of LBT women's rights in Ukraine.[174]

On April 10, 2010 Ukrainian LGBT-organizations for the umpteenth time submitted a petition on amending the first draft of the Labor Code of Ukraine (No. 1108 of 04.12.2007) to the speaker and the heads of specialized committees of the Supreme Rada. Taking into consideration the Cabinet of Ministers' Recommendations, leaders of LGBT community proposed amending the list of "discrimination at work place" criteria with sexual orientation and gender identity. However, this time, as opposed to prior occurrences, they did not receive even a formalized answer from the Ukrainian Parliament members.[175]

In 2011 the permanent advisory group on LGBT issues approached the Ministry of Interior of Ukraine with the proposal to set up inter-agency working group under the ministry, with the aim of monitoring the adherence to human rights, responding to violations, devising respective recommendations, training Ministry of Interior staff on LGBT issues. The Ministry of Interior, however, refused to set up such a group.[176]

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[173] M. Hovorukhina, UHUHR. Homosexuals in Ukraine — big policy issue (the papers of the seminary "Monitoring and protection of homosexuals' rights in Ukraine of February 23, 2007).

[174] "The review of human rights issues with regards to LGBT in Ukraine in 2010" , Center "Nash svit".

[175] "The review of human rights issues with regards to LGBT in Ukraine in 2010" , Center "Nash svit".

[176] Step forward, two steps back. LGBT situation in Ukraine in 2010–2012 — K.: Center "Nash svit", 2011. — 152 p.

The efforts of LGBT community to publicly denounce the discrimination against its members always meet resistance and end up with violence. Attempts to organize May gay parade every year were either banned or disrupted by militant homophobes. The disruption of gay parade in 2012 in Kyiv which was to be held within the framework of the international forum-festival "Kyiv Pride 2012" and the mugging of a leader of the Ukrainian LGBT community S. Sheremet in May 2012 became the most renowned events on this list.[177].

Within several weeks the social networks were swarming with communications "Gay parade will not happen", "Let's get ready to defend the capital", who invited "strong men to defend the city from gay propaganda". The sexual minorities' representatives were scared for their life and decided to abstain from mass street actions involving slogans and megaphones.

On schedule hundreds of protesters carrying the slogans "We are for the real families!", "No to vice!" gathered near the metro station. Masked young people with gas containers, believers with the crosses, icons and slogans of degrading content were among them.

According to "Segodnya" [Today] newspaper, the action started with the reporters' meeting in a secret place.

> "*For security purposes let's get together at the exit from "Darnitsa" metro station — invited one of the action organizers A. Marchenko. The militiamen just in case chased away all the peddlers in the station vicinity; they kept asking the passers-by about their destination. In a couple of hours the organizers advised that the march was revoked as too many people might be subject to violence".*
>
> *"The action was to take place on the Embankment. 150 gays from all over Ukraine had to march 300m towards Poshtova square with slogans demanding freedom of speech and equality" — announced the organizers.*
>
> *Immediately, right in front of us, an unidentified masked man assaulted the action curators and with the words "You moron…Go…" sprayed the contents of gas container into the crowd. Then, according to organizers, eggs were thrown at them inside the metro station, and the leader of "Gay-Forum of Ukraine' S. Sheremet was assaulted by six masked individuals who kicked him with their feet".*[178]

At the end of the day the organizers announced that gay parade had happened. "We will conduct it annually in hope to be finally heard" — stated S. Sheremet.

The sociologists are positive that xenophobia towards LGBT community is deeply rooted in the backwardness of Ukrainian society. "We are a rather closed patriarchal society, which is most intolerable to everything different. Sexual minorities can expect tolerant treatment only when our people would go abroad more often, observe similar mass actions and start to take them for granted" — opines sociologist I. Bekeshkina.

The photograph reflecting the beating of S. Sheremet was the only Ukrainian picture among the 45 Most Powerful Photos of 2012[179], clearly testifying to the striking contrast between the Western and the Ukrainian attitude to LGBT community.

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[177] http://www.segodnya.ua/regions/kiev/v-kieve-shectero-muzhchin-zhectoko-izbili-nohami-lidera-hej-parada.html

[178] http://www.segodnya.ua/regions/kiev/v-kieve-shectero-muzhchin-zhectoko-izbili-nohami-lidera-hej-parada.html

[179] http://www.buzzfeed.com/mjs538/most-powerful-images-of-2012

5. DISCRIMINATION OF PEOPLE WITH DRUG ADDICTION[180]

5.1. Social group of people with drug addiction and its peculiarities

Special research shows that in Ukraine the actual number of drug users exceeds 500 thousand persons. Results of other research give an even more staggering number — 1 million persons, and half of them are injecting drug users.[181]

Even the official statistics of the twenty years of combating illegal drug trade in Ukraine shows that the number of people that use drugs illegally is growing steeply. For comparison, in the early years of independence of our country, in 1991 the Ministry of Internal Affairs of Ukraine had on file 31 thousand persons with the history of drug misuse, in 1995 there were already 55.7 thousand such persons on file, in 2001 — more than 91 thousand persons, and as of January 1, 2012 — 151.7 thousand persons. The share of persons with drug addiction officially on file has grown from 0.18% of the total number of the population of Ukraine in 2001 to 0.33% — in 2011. In reality, as we can see, these numbers are manifold larger. This is a huge part of the nation with its own physiological, marginal and other peculiarities.

According to all attributes (steadiness of the community, peculiarities of the role and place in the system of the society's social connections, consolidation based on a certain objective attribute, etc.) people with drug addiction constitute the social group with a series of certain peculiarities.

As this group's way of life fails to comply with the customs characteristic of the society these people belong to but does not violate its legal norms, it gives grounds to state that this social group is marginal.

According to the provisions of the national and international legislation, drug addiction is a disease, and so it is a disease that is one of the major objective attributes of the abovementioned social group. Besides drug addiction, members of this social group are on a wide scale afflicted by other concomitant diseases connected with injection drug use. These are, first of all, HIV/AIDS and hepatitides. The share of injecting drug users in the overall number of the HIV-infected constitutes about 70%[182]. As the statistics show, the share of people with drug addiction among the newly identified cases of HIV infection is gradually declining, but the absolute number of new HIV cases among this category of people is growing.

According to the stance of the European Commonwealth, people with drug addiction are victims of the organized drug crime. For the sake of their own personal gain, drug sellers keep expanding the circle of their clientele and hook on drugs more and more new victims, whom they recruit predominantly among the youth. Drug pushers seek, first and foremost, solvent clients, that is why drugs are also consistently making their way to the environments of youth from well-off and wealthy families (in prestigious educational institutions of all levels, etc.).

The environment of people with drug addiction is characterized by proselytism[183]. People that already are using drugs need new people introduced to this addiction. They require them as the environment, in which everybody stays in the same intoxicated condition; as cli-

[180] Prepared by Sergiy Shvets, Association of Ukrainian Human Rights Monitors on Law Enforcement.

[181] http://radnuk.info/statti/558-kruminolog/14724-2011-01-18-23-55-56.html

[182] http://library.khpg.org/index.php?id=1160065168

[183] Desire to turn others into one's faith; fervent adherence to newly adopted beliefs.

ents, to whom they push drugs; and finally, as test subjects, on whom the single dose of a new drug is tested. It is believed that during the time of his or her drug "career", each drug addict introduces 13–14 persons to drug addiction.

As the environment of people with drug addiction, due to their physiological and marginal peculiarities, is easily susceptible to committing transgressions of the law, the criminal organizations use these peculiarities for their benefit. People with drug addiction do their bidding by committing robberies and murders and pushing drugs.

People with drug addiction fall victim to stigmatization and discrimination. Persecution by the authorities and aggression by the regular population render a person with drug addiction an outcast in the society. For such person, it is easier to keep using drugs and stay among others with the same problem than to try to deal with their addiction and quit. As a result, in its turn, the whole issue tends to be swept under the rug, what significantly increases the risk and conflicts with the societal interests. Failure to observe the rights of people with drug addiction, in particular, of those who live with HIV, impacts negatively efficiency of the control over proliferation of drug addiction and HIV infection in Ukraine.

The absolute majority of people that suffer from drug addiction are unable to adequately protect their rights due to physiological and other peculiarities.

5.2. Social group of people with drug addiction as an object of discrimination

The state policy of counteraction to drug addiction exhibits a rather strict nature, repressive towards people with drug addiction. Under the current drug policy, a legitimate existence in the society of a social group of injecting drug users is deemed inadmissible. Under such conditions, people with drug addiction experience severe discrimination both from the society in general and from the governmental agencies, in particular.

Moreover, due to their vulnerable position, they are virtually deprived of the possibility to insist on redressing of their violated rights and bring to responsibility the ones guilty of such violations. When analyzing the reporting statistics of the prosecutor's offices', what sticks out is actual absence of criminal cases it would have initiated, within its competence, based on the facts of illegal actions of the police against people with drug addiction, or blatant violation of rights of people of this category for getting medical help, including those that caused grave consequences. The analysis of the judicial statistics also suggests that the degree of actual judicial protection of rights and lawful interests of people with drug addiction is extremely low.

5.3. Discrimination in the sphere of labor relations

When it becomes known (officially or otherwise) about the person's drug addiction, in predominant majority cases his or her employment gets terminated. As a rule, formally the dismissal is conducted due to different grounds, say, like reduction of personnel, reorganization of the enterprise or organization, the employee's neglectful attitude to duties, uncovering of other violations. The list of bogus reasons in each concrete case differs what creates an appearance of the lawfulness.

When drug addicted people apply for a job they are, as a rule, rejected.

5.4. Discrimination in the social and household sphere

Most people with drug addiction are unemployed but they, being unable to enjoy their rights, do not apply to employment agencies, do not receive unemployment benefits or social welfare, cannot get their application for utility bills subsidy processed. And if they still do apply they are predominantly rejected. Were these issues resolved it would have significantly mitigate negative consequences of drug addiction, but availability of social services for this social group in the country still is rather problematic.

Another wide-spread problem is that people with drug addiction often get groundlessly deprived of their parental rights and their children are not allowed to attend children's institutions.

The right of people with drug addiction for housing is being consistently violated. Such violations include seizure of their housing by criminal organizations through schemes and machinations, losing their housing due to the court decisions, illegal eviction from their place of residence by close relatives or guardians.

5.5. Discrimination in the sphere of health care services

As a result of stigmatization, medical doctors' negative attitude to this social group of the society and doctors' incompetence, accessibility of health care services for people with drug addiction constitutes a significant problem. For a drug addicted person or a person with the positive HIV status, it is often extremely difficult to get emergency medical treatment or to have a surgery. They systematically encounter refusals to be admitted to hospitals; they get forcibly discharged as soon as their status becomes known, or they get medical services of a very low quality, what is extremely inhumane and impairs even more their health, which was not great to start with. The emergency ambulance refuses to transport people with drug addiction and people that live with HIV/AIDS. In some cases it is possible to arrange for medical assistance by paying for services that are otherwise to be rendered free of charge.

When health care workers refuse treatment and professional assistance to citizens with drug addiction, as a rule, they refer to various reasons, like, for instance, absence of necessary equipment, lack of medications, necessity of registration or getting into a queue and other groundless motives.

Refusal of admission to hospital in case of the overdose goes along with referral to a specialized ward of a psychiatric hospital, even though in distant locations and towns there are no such wards.

Requests for emergency medical treatment for drug addicted people made according to the established procedure are not responded to properly. Such requests are systematically met with refusals to send an ambulance to the specified address and with recommendations to turn to the specialized ward of a psychiatric hospital. Such failure to provide timely medical help sometimes leads to lethal consequences.

When women with drug addiction give birth, the medical personnel tries to get them discharged as soon as possible and explain this by reduction of the risk of possible contracting of the HIV infection.

Confidential data of the examination results of drug addicts with the status of people that live with HIV get disclosed rather often.

The fear of disclosure of their status and getting on file is also a valid reason for people from this social group to be reluctant to seek medical assistance and undergo necessary examinations.

5.6. Discrimination by the law-enforcement agencies

People that suffer from drug addiction have a compulsive psychophysiological need to use psychoactive substances. This means that because of their diseased condition they, no matter what sanctions threaten them, they will regularly use narcotic substances or psychotropic drugs, at least in the minimum amount necessary for them, to prevent the substance withdrawal, which causes them suffering of both physical and psychological nature.

Based on the results of the 18th International AIDS conference, which took place in July 2010 in Vienna (Austria), more than 17 thousand persons signed the Vienna Declaration, which calls for global decriminalization of people with drug addiction.[184] In compliance with the legislation of Ukraine and the World Health Organization documents, drug addiction is a disease, and that is why application of criminal penalty, and, moreover, such strict one as deprivation of freedom, that is caused by a disease (according to the international classification, the underlying cause), possesses all attributes of discrimination on the grounds of the state of health. The European Convention and the UN Treaties on civil and political rights and on economic, social and cultural rights obligate the participant states, and Ukraine being one of them, to secure the rights stipulated therein free of any discrimination.

At the same time, the old repressive approaches to conducting the so-called war on drugs predominate in Ukraine now. In the "crimes-drug addiction" chain, the state's effective drug policy, as well as the provisions of the criminal, criminally-remedial, criminal-labor and administrative legislation place emphasis not on combating drug addiction (substance addiction) as a disease and not on combating proliferation of drugs, but on criminal prosecution of sick people with drug addiction.

High criminalization by the effective legislation of Ukraine of actions of sick people with drug addiction is one of the most significant reasons of cruel discrimination of persons of this social group by the law-enforcement agencies, in particular, by the police. This discrimination goes along with a series of kinds of systematic violations of drug addicts' rights. At that, due to their vulnerable position, persons of this social group are virtually deprived of the possibility to have their violated rights redressed and to bring those guilty of such violations to responsibility. And impunity of the police impunity leads to recurrences.

5.7. Discrimination of persons with drug addiction through the lens of the structure of crime in Ukraine

According to the data of the official statistics of the Ministry of Internal Affairs, in 2011 the total of 515,833 crimes was recorded, and of them — 53,539 crimes in the sphere of illegal drug trade, what constitutes 10.3% of the total number. In the general structure of crime in Ukraine, drug-related crimes hold the second place (the top place by numbers is held by offenses against property).

[184] http://www.civicua.org/news/view.html?q=1498460

In some regions of Ukraine, this indicator is significantly higher than the average in the state — to create an impression of the vigilant war on crime. In particular, the Administration of the Ministry of Internal Affairs of Ukraine in Cherkasy region during 2011 recorded the total of 11,182 crimes, of them 1,815 crimes connected to illegal drug trade, what constitutes 16.2%. In the records of the Administration of the Ministry of Internal Affairs of Ukraine in Lugansk region, the share of drug-related crimes constitutes 14.9%.

Almost one third of the indicators concerning the official field activities of the Administration of the Ministry of Internal Affairs of Ukraine at the Southern Railway is formed at the cost of drug-related crimes. In 2011, this subdivision recorded the total of 1,891 crimes, of them 556 crimes in the sphere of illegal drug trade, what constitutes 29.4%. A similar situation can be observed in activities of the Administrations of the Ministry of Internal Affairs of Ukraine in Prydniprovska, Lviv, Odesa, South-Western Railways, where the share of drug-related crimes registered in 2011 constitutes 16.3%, 19.0%, 19.3%, and 22.6% of the total number, respectively.

In the state-wide structure of crime connected to illegal trafficking in narcotic drugs and psychotropic substances, illegal actions with narcotic drugs and psychotropic substances (purchase, possession, manufacture, production, traffic, shipping) committed without intent to sell in connection with personal consumption (Article 309 of the Criminal Code of Ukraine) hold the leading position (54.2% of the total number of recorded drug-related crimes). In 2011, 27,289 such persons were brought to criminal responsibility, what constitutes 73.8% from the number of persons brought to responsibility for all drug-related crimes, and 12.1% from the number of persons brought to responsibility for all crimes. This circumstance shows that the indicators of official field activities in the sphere of illegal drug trade are achieved predominantly not by combating drug business and distribution of narcotics, but by confiscating drugs from users.

In some Administrations of the Ministry of Internal Affairs (Chief Administrations of the Ministry of Internal Affairs) of Ukraine, the priority of repressions against people with drug addiction is even more expressed. For instance, during 2011, the officers of the Chief Administration of the Ministry of Internal Affairs of Ukraine in the city of Kyiv recorded 4,554 crimes in the sphere of illegal drug trade, of them 3,397 (74.6%) were crimes without an intent to sell in connection with personal consumption. That is, 8 out of 10 crimes concerned people with drug addiction.

A similarly pronounced repressive tendency against people sick with drug addiction can also be observed in activities of the police in Zaporizhzhia, Kyiv and Kharkiv regions, as well as on Donetsk, Odesa, Prydniprovska, and South-Western Railways (respectively, 60.1%, 66%, 67.7%, 58.4%, 48.2%, 70.8%, and 61%).

The police's discriminatory repressive treatment of people with drug addiction is also manifested in the official statistics of the Ministry of Internal Affairs concerning the number of persons brought to criminal responsibility and taken in custody.

For commitment of all crimes (under all Articles of the Criminal Code of Ukraine), in 2011 the total of 225,517 persons was brought to criminal responsibility. For committing crimes in the sphere of illegal drug trade, during this period 36,960 persons were brought to criminal responsibility, what constitutes 16.4% of the total number, that is, almost one in every six persons.

In some regions this tendency is even more obvious. For instance, in the city of Kyiv for crimes defined in all Articles of the Criminal Code of Ukraine, the police brought to criminal responsibility the total of 11,103 persons, of them 3,559 persons were brought for drug-related crimes, what constitutes 32.1%, that is, one in every three persons.

In 2011, of all people brought to criminal responsibility (under all Articles of the Criminal Code of Ukraine) 41,610 persons were taken in custody. During this period, 8,343 persons were taken in custody for committing crimes in the sphere of illegal drug trade, what constitutes 20.1% of the total number. In particular, in Zaporizhzhia region, of those taken in custody one in every three was charged with illegal actions with narcotic drugs. On Lviv Railway it was almost every other.

For committing criminally prosecuted offences in the sphere of illegal drug trade without intent to sell them, in 2011 3,764 persons were taken in custody, what constitutes 44.9% of the number of those taken in custody for all drug-related crimes, and 9.0% of the number of those taken in custody for all crimes defined in the Criminal Code of Ukraine. In some regions and on some railways this indicator is significantly higher.

When analyzing the official statistics of the Ministry of Internal Affairs, it is important to keep in mind that, besides illegal production, manufacture, purchase, possession, traffic or shipping of narcotic drugs without an intent to sell in connection with personal consumption (Article 309 of the Criminal Code of Ukraine), the legislation also stipulates criminal responsibility for some other actions connected with illegal drug trade. Among them there are also some other offenses connected with personal consumption of drugs, and these criminal offenses are predominantly committed by people with drug addiction. These offenses, too, contribute to the statistics of the police activities.

Use of funds earned through illegal drug trade (Article 306 of the Criminal Code of Ukraine) is rather often incriminated to people with drug addiction who use money from selling a dose of narcotic drugs to buy ingredients for manufacture of the same narcotic drug for themselves to cope with withdrawal symptoms. In 2011, 121 crimes qualified under this article were registered, and this constitutes 0.23% of the total number of recorded drug-related crimes.

In 2011, 2,731 facts of sowing or growing of white poppy or cannabis were registered (Article 310 of the Criminal Code of Ukraine), this constitutes 5.1% of the total number of recorded drug-related crimes. Based on these facts, 2,547 persons were brought to criminal responsibility, which is 6.9% of the total number of people brought to criminal responsibility for drug-related crimes. Of them, 132 persons were detained, which is 6.9% of the total number of people taken in custody for drug-related crimes. Yet, the official statistics does not answer the question as to in how many cases those who committed such illegal action were people with drug addiction, who were growing these drug-containing plants for personal consumption.

The same can be said concerning organization or running of a location for illegal consumption, production or manufacture of narcotic drugs (Article 317 of the Criminal Code of Ukraine). In 2011, 1,965 crimes of this category were registered, which is 3.7% of the total number of recorded drug-related crimes. For these crimes, 1,496 persons were brought to criminal responsibility, what constitutes 4.1% of the total number of persons brought to criminal responsibility for drug-related crimes. Of them, 521 persons were taken in custody, which is 6.2% of the total number of persons taken in custody for drug-related crimes. In the

police activities, the subjects of this category of crimes are predominantly people with drug addiction, who undertake these criminal actions for personal consumption of drugs. For this reason we can assume that police activities to investigate this category of crimes are predominantly criminal prosecution of people with drug addiction.

In 2011, only 15,578 crimes were registered in the sphere of illegal trafficking in drugs (Article 307 of the Criminal Code of Ukraine), what constitutes only 29.3% of the total drug-related crimes. For these crimes, 6,478 persons were brought to criminal responsibility, what constitutes 17.5% of the total number of persons brought to criminal responsibility for drug-related crimes. But if we analyze the aggregate of people brought to criminal responsibility for selling drugs even with such correlation of the recorded crimes based on Articles 309 and 307 of the Criminal Code of Ukraine, we will find out that the majority of the convicted sellers are people with drug addiction, who were committing the so called "forced" sale to obtain the funds necessary for purchase of a dose of narcotic drugs for mending the withdrawal symptoms. As to the number of sellers who are in the illegal drug business and do not use drugs, that is, those involved into the so-called "clear" sale, in inconsiderable.

The statistical and other data presented above show quite clearly that **modern combating with illegal drug trade in Ukraine is directed predominantly not against drug business, but against its clients — the people suffering from drug addiction.**

The Ministry of Internal Affairs' official statistics does not answer the question concerning the number of falsified criminal cases and the number of other cases, where the due procedure was disturbed by gross violations of the fundamental rights of people with drug addiction. For this reason, responses to such questions are to be found in other sources, in particular, mass media, results of surveys and focus groups, etc.

5.8. Violation of rights of people with drug addiction at formation of statistical indicators of official field activities

In Ukraine, the underground narcotic market is very well developed. Even more, we can already state with surety that in our country there is a drug business, which diffused into all agencies called to fight this phenomenon, and became a high-profit industry developed by officials of very high levels.

Combating against drug trade is significantly complicated by the fact that the criminal structures in Ukraine are merging with the analogous transnational criminal structures, and for production of drugs they involve the technological and scientific potential of the national chemical industry. They create underground laboratories where new types of drugs are being produced. There are corruption links between the drug business ring leaders and representatives of executive, legislative, and judicial power, as well as the law-enforcement agencies. Under such circumstance, activities of the law-enforcement agencies in the sphere of illegal drug trade are predominantly directed not against the drug business, but against its victims, people suffering from drug addiction.

A high level of criminalization of people with drug addiction, among other things, is used by the bodies and subdivisions of the Ministry of Internal Affairs of Ukraine to form statistical indicators of their official field activities and to mislead the society about how successfully they really counteract the crime.

According to Article 2 of the Law of Ukraine "On Police", identification and investigation of crimes, as well as finding people who committed them, is one of the major tasks of the police. For this reason, one of the important indicators for evaluating the efficiency of the activities of the Ministry of Internal Affairs is the ratio of the crimes solved in general to the number of crimes that have been processed during the reporting period. According to the results of 2011, this ratio is 55.3%.

In total in 2011, 578,000 crimes were processed, 237,224 of them remained unsolved. The number of the crimes in the sphere of illegal drug trade that were processed is 58,860 (10.2% of the total number). The crimes of this category are actually quite obvious (solved) since the moment they are detected and the people who committed them are detained, and for this reason at the cost of such cases the agencies artificially inflate the ratio of resolved crimes in the reporting period.

In compliance with the established criteria, a crime is considered solved if the investigation of the criminal case is over. Yet it is quite clear that confiscating drugs in the amount of a daily dose of consumption from a person with drug addiction and finishing the investigation of the criminal case associated with it is significantly easier than identifying a person who committed some other crime, even if this crime is quite grave, when the culprit is not obvious.

Police is also reluctant to make efforts to identify unknown people who committed crimes in the sphere of illegal drug trade, as well. People with drug addiction, detained for possession of drugs for personal consumption, as a rule, testify that they purchased the drugs from unidentified people. Yet the investigators are reluctant to start new criminal cases against some unknown people involved into selling of the narcotic drugs. Such actions are violation of both the Criminal Code of Practice and the registration discipline, concealing unresolved crimes from registration with the goal to receive positive official statistical indicators. Such a situation is caused by the current system for evaluation of the efficiency of the police activities.

The circumstances mentioned above are the major factor that brings the police to discover as many crimes as possible in the sphere of illegal drug trade committed by people with drug addiction, who, according to the EU position, are victims of the organized drug crime.

As observations over the police daily activities show, a considerable part of statistical indicators of the official field activities concerning combating illegal drug trade is conducted with falsifications and other malversations that go along with systemic violation of the basic rights of people with drug addiction, who, due to their physiological peculiarities, are unable to adequately protect their rights.

The major typical violations of the rights people with drug addiction in the police activities include:

— conducting proceedings in absence of the relevant proceeding documents;
— conducting proceedings without witnesses;
— using the condition of drug intoxication when conducting proceedings and when composing the proceeding documents;
— using the condition of withdrawal (withdrawal symptoms) when providing investigation and field procedures, pressuring individuals to the point where they, due to their physical sufferings, are forced to confess to a crime they did not commit, take the blame themselves or slander other individuals, etc.;
— forcing to confess against themselves, in violation of Article 63 of the Constitution of Ukraine;

— not explaining their rights to the accused, as required by the procedural legislation;
— depriving people of the right for defense, in particular, refusal to provide the services of a lawyer, failure to inform about the right to have a legal defender, or informing about this with a delay;
— illegal use of physical force and special measures against the detained individual during inquest or investigation;
— creating the relevant conditions and forcing to pay bribes;
— use of torture, knowingly illegal detainment, knowingly illegal initiation of criminal case, and conducting other forms of abuse against people with drug addiction.

5.9. Falsifications at bringing drug addicted individuals to responsibility

Falsifications are one of the most common means the Ministry of Internal Affairs uses to achieve the statistics indicators with, at the cost of violation of the basic rights of people with drug addiction. Quite often, drug users are being brought to criminal responsibility for the actions they never committed; they are often used for various provocations. Numerous publications in mass media show the scale and motivation of such actions by the law enforcers.

After the publication 'Police planted drugs on "golden youth" and then demanded money' as of February 11, 2011, the head of the department of combating illegal circulation of drugs of Suvorivskyi Rayon Department of the Administration of Ministry of Internal Affairs in Khersonska oblast, and two his subordinates were detained for systematically coercing drug addicts to plant drugs on other drug addicts.[185] The police officers committed these illegal actions both to achieve the statistical indicators and also to blackmail and demand bribes for not bringing the victims to criminal responsibility.

The publication "In Kyivska oblast, policeman plants drugs to get the plan done" informs that the acting head of the City Department of Obukhiv Rayon department of the Chief Administration of the Ministry of Internal Affairs in Kyivska oblast, to achieve his statistical indicators, forced a dug addict to confess illegal storage of drugs, gave him 12.5 g of cannabis and drew the relevant falsified documents to bring the drug addict to criminal responsibility.[186] The publication "Shevchenkivskyi Department for Combating Illegal Drug Circulation" speaks about falsification of criminal cases in the sphere of illegal drug circulation.[187]

The police officers of Dnipropetrovska oblast were brought to criminal responsibility for planting drugs on a woman. Threatening to start a criminal case against her, they demanded her to pay them USD 1000. This is what the publication "Police planted drugs on a woman"[188] is about. The publication "Drug addicts are being tortured" tells how police officers of Bakhchysaraiskyi district police department of the Autonomous Republic of Crimea used torture against individuals addicted to drugs to receive their confessions for the crimes they never committed.[189]

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[185] http://www.ukr.net/news/milicionery_podbrasyvali_narkotiki_zolotoj_molodjozhi_i_potom_trebovali_ot_nih_dengi-5292411-1.html

[186] http://www.segodnya.ua/news/14234878.html

[187] http://ord-ua.com/2011/01/31/shevchenkovskij-obnon/?lpage=1

[188] http://mignews.com.ua/ru/articles/98062.html

[189] http://www.ark.gp.gov.ua/index.php?section=n&newsid=2812

The provided examples are characteristic to all regions of the state, and such cases are very widespread.

In police practice, when confiscating the drugs, the detainee is first searched, then handcuffed or otherwise restrained, and delivered to the police station, where such detainee is brought to one of the service rooms. After this, attesting witnesses are invited, restraints are removed, and "personal examination" (in fact, a search) is conducted, during which they "find" the drugs. At that, the detainee's claims that the drugs have been planted are, as a rule, ignored.

Because an official opinion of an expert is required on the quantity and nature of the confiscated substance to initiate a criminal case, and preparing such an opinion can take certain time, police officers perform the detainment procedures not in the order specified in the provisions of the Criminal Code of Practice of Ukraine, and to avoid court control later, they falsify the underpinning for the administrative detainment according to the procedure specified by Article 263 of the Administrative Offences Code of Ukraine.

Among other types of falsification, falsification by police officers of weight of the confiscated narcotic substance is a rather widespread one. Packaging of the confiscated material evidence is conducted in such a manner that it allows further falsification of the package's weight content at any stage of the pre-investigation check. The substance confiscated with violation of the legislation is sent for further examination to criminalistic subdivisions of the agencies of internal affairs, and weighting of the substance by the experts is conducted without attested witnesses, which enables them to regulate the weight to meet the necessary minimum sufficient for initiating a criminal case. With the criminalistic experts' existing dependence from the heads of agencies of internal affairs, it is impossible to mend the situation and secure proper control over legality of their actions. In addition, due to lack of the criminalistic subdivisions' technical capabilities for precise weighting of the confiscated substance we should consider arguable the legality of bringing individuals to criminal responsibility. For an example we can refer to the procedure for establishing the weight of acetylized opium, where an amount of 0.005 grams is enough to initiate a criminal case, yet there are no licensed devices or scientifically underpinned methodology for identifying such weight.

It is not uncommon that police officers in their pursuit of positive statistics stoop to provocations to bring drug-addicted individuals to criminal responsibility for selling drugs. Abusing their investigators' rights, the operatives create situations where the drug addicts are forced to sell their "fix" under the instigating policemen's control.

Of great concern is falsification of materials of field purchases to bring drug users to criminal responsibility for selling drugs. The problem of provocation and falsification of crimes by police officers who exploit imperfections of the existing application practice of field purchases and use their results as evidence has a national scale. This can be seen from the numerous reports of Ukrainian and international organizations, publications in mass media, and complaints of individuals.

Analysis of the statistical and other data shows that the prevalent majority of the field purchases is conducted in relation to drug users, at that in most cases the volume of drug that was presumably sold does not exceed the limit of average daily amount of consumption. Considering the procedure of field purchase, we can assume that in case of confederacy of two operatives, they can officially compose the materials sufficient to initiate a criminal case, without any actual field work. The scale, at which such methods are used, is disturbing.

The consequences of using the evidence received through falsifications of field purchases are destructive for dozens and hundreds of individuals with drug addiction, who are accused of crimes based on such grounds. The facts described in the article "Drug addicts provocateurs as a new weapon of police" are a typical example of field purchases falsification, which is characteristic for all regions of the country, without any exceptions.[190]

A similar typical example of how the materials of falsified field purchase are used as proper and sufficient evidence is provided in the article "The mincemeat of justice".[191] The irrefutable evidence provided in this article shows that the accusations against the resident of the Nova Kakhovka city, Khersonska oblast, is built on the materials of a falsified field purchase. As a consequence, the accused is under arrest for more than a year already, and the existing practice of court proceedings does not allow to make a just resolution and to award an absolutory sentence. This case is yet another evidence of mass bringing to criminal responsibility of drug addicts based on falsified materials of field purchases and of the social hazard generated by such falsifications.

The nature of the social hazard of the existing practice of using in court of the materials of field purchases is rather objectively described in the article "JSC Voroshylivskyi Department for Combating Illegal Circulation of Drugs" and in the commentaries to this publication.[192] The provided facts show how widespread is the use of this investigative measure by officers of the law enforcement agencies for extorting bribes from drug addicts.

5.10. Torture of people with drug addiction

In Ukraine, police brutality against people with drug addiction and police torturing drug addicted is not uncommon, and such actions constitute a gross violation of the international treaties of Ukraine, such as the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Conventions against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment and other international treaties, as well as of the national legislation of Ukraine.

The marginal status of the people of this category makes them easy prey for police officers forming the statistical indicators for their investigative and service activities. Police uses drug addiction as a tool for forcing the people with drug addiction to testify: the prospect of suffering from withdrawal makes such people very vulnerable and easily to subdue under the pressure of police.

In its turn, a high level of stigmatization of this social group causes, as a rule, impunity of police officers, who commit illegal actions. Still, there have been several separate cases when police officers and officials were brought to criminal responsibility for abuse of people with drug addiction. For instance, three officers from Bakhchysarayskyi District Police Department were condemned to serve different terms in prison for torturing people with drug addiction to receive their confessions.[193]

[190] http://life.pravda.com.ua/scandal/4cc5a2ebc926d/

[191] http://www.vgoru.org/modules.php?name=News&file=article&sid=10052

[192] http://ord-ua.com/2010/12/02/ooo-voroshilovskij-obnon/

[193] http://www.ark.gp.gov.ua/index.php?section=n&newsid=2812

5.11. Economic consequences of discrimination of the social group of people with drug addiction

The statistical data provided above gives grounds for statement that the present-day war on illegal circulation of drugs in Ukraine comes down to repressions against clients of the drug trading business, the people suffering from drug addiction, not against the drug trade business itself.

The mere expenses for investigation, court proceedings and keeping in prison the people with drug addiction cost the government hundreds of millions UAH.

The taxpayers' funds are being spent not on fighting against the drug trade business, against spreading drug addiction and the infectious diseases associated with it, not for treating the people suffering from drug addiction and for promoting healthy lifestyle, but for criminalistic and administrative procedures in relation to the people suffering from drug addiction, keeping dozens of thousands of them in prisons, for financing the drug addiction-related corruption and the system of extortion that prosper under the facade of "combating drug-related crimes" in the agencies and divisions of the internal affairs.

Therefore, discrimination and excessive criminalization of people with drug addiction is a heavy burden for the economy of Ukraine, and considerably reduces the efficiency of measures taken to fight the organized illegal drug sale business. The existing system of combating the illegal circulation of narcotic drugs in Ukraine is built on the repressive governmental policy towards the people with drug addiction, which is inefficient and overly expensive.

If the level of discrimination and criminalization of the people with drug addiction is reduced, the funds spent for investigations, court proceedings and keeping the drug addicts in prisons can be used to resolve burning social issues, in particular, for treatment and prevention of drug addictions.

5.12. Negative impact of discrimination and excessive criminalization of persons with drug addiction on health of the country population

The HIV/AIDS proliferation rates in Ukraine are among the highest in the world. Today, the epidemical situation with the HIV infection in Ukraine is characterized by the increase in AIDS morbidity and mortality indicators. As of July 1, 2011, health care institutions of Ukraine had 115,275 HIV-infected persons under dispensary observation, of them 16,764 persons were diagnosed with AIDS.

According to the UNAIDS estimates, the indicator of incidence of HIV infection is at least 1.4% of the adult population, that is, at the level of more than 360 thousand persons in the age cohort from 15 to 49. Among the countries of Europe, Ukraine remains most affected by the HIV epidemics.

During the entire period of observation over the epidemics, 22,607 persons have died from the diseases associated with AIDS. Ukraine still belongs to the category of countries with the concentrated stage of the HIV epidemics, where the concentration of the disease is observed in specific high risk groups of population, in particular injecting drug users. It is the injecting drug use currently that is the driving force of the HIV epidemics (58% of all officially registered cases), and the epidemics of hepatitis C.

At the same time, discrimination of drug users and excessively high criminalization of their actions is one of the main barriers in the way of stopping and controlling proliferation of drug addiction in Ukraine and its side-effects, in particular, the HIV/AIDS epidemics; moreover, it also promotes rapid growth of the number of persons with drug addiction and HIV-infected people.

5.13. Negative impact of discrimination of persons with drug addiction on the criminogenic situation in the state

In addition to the devastating impact on health of the people, drugs influence the general criminogenic situation in the state. Every year, people under influence of drug intoxication commit about 4 thousand lucratively inclined violent crimes, among which homicides and attempted homicides, causing grave bodily injuries, assaults related to robbery, robberies, thefts.

Drug addiction is closely related to crimes and is, metaphorically speaking, a fruitful soil for committing various crimes, first of all those lucratively inclined and violent ones. Illegal purchase of drugs requires considerable financial expenses. The price of drugs at the black market exceeds pharmacy prices, for the most common types of drugs, by dozens and hundreds times.

Drug addiction is closely related to violent crimes. Drug use causes unmotivated malignancy, feeling of anxiety, subconscious fear, and rather often it causes aggression. Being in the condition of drug intoxication, people with drug addiction often commit crimes against person: murders, bodily injuries, rapes, hooliganism, and so on. Such crimes are more and more often motivated by the drive to obtain drugs, or money to buy them.

Because proliferation of drug addiction is in direct proportion to discrimination and excessive criminalization of actions of persons with drug addiction, deterioration of the criminogenic environment in the country also comes as a consequence of this discrimination and excessive criminalization of persons with drug addiction.

5.14. Conclusions

1. People with drug addiction form a social group with peculiarities specific to it, in particular:

— members of this social group are stigmatized and discriminated against, and suffer predominantly in the spheres of labor relations, social amenities, health care services, and by the law-enforcement agencies;
— their disease (drug addiction) is the key objective attribute of this social group;
— this social group is a favorable environment for proliferation of concomitant diseases connected with injection drug use, — HIV/AIDS, hepatitides, etc.
— members of this social group are the victims of the organized drug crime;
— the absolute majority of members of this social group, due to physiological and other peculiarities, are unable to adequately protect their own rights;
— this social group is marginal;
— this social group is characterized by proselytism and desire to recruit new members;
— the number of people involved into this social group is constantly growing;
— this social group is a favorable environment for breaking the law, and is used by the criminal structures for their purposes.

2. Discrimination, stigmatization of people with drug addiction and excessive criminalization of their actions causes negative economic consequences, and is a heavy burden for the economy of Ukraine. Hundreds of millions UAH are spent by the government just for investigation, court procedures and holding in prison of people with drug addiction. These are the funds that should have been spent on combating the illegal drug trade, prevention of proliferation of drug addiction and of concomitant infectious diseases, treatment of drug addicts, and promotion of healthy way of life.

3. Discrimination, stigmatization of persons with drug addiction and excessive criminalization of their actions promotes rapid growth of numbers of this social group, proliferation of HIV/AIDS and of other dangerous infectious diseases — like hepatitides, etc., as well as negatively impacts the overall criminogenic situation in the country.

4. Failure to take immediate and coordinated actions concerning making impossible these negative phenomena will inevitably cause:

— increase of forced governmental expenses to eliminate the consequences of this discrimination;
— rapid growth of the number of individuals involved into this social group, proliferation of HIV/AIDS and other dangerous infectious diseases, like hepatitis, etc.;
— proliferation of drug addiction and deterioration of the overall criminogenic situation in the country.

6. CONCLUSIONS AND RECOMMENDATIONS

Summarizing, one can conclude that the discrimination of the vulnerable categories of society in Ukraine has developed some permanent characteristics, became common phenomenon and is often manifested by open violence. The main areas of the discrimination are employment, education, and health care, social and legal areas. Ethnic or social background, as well as the skin color provides main reasons for the discrimination.

Recommendations

1. Priority measures in this matter should include immediate amendments to the law on counteracting discrimination and their implementation in the Ukrainian society.

2. Efficient measures for preventing and counteracting discrimination based on race, ethnicity or other characteristics in the judicial areas, including due punishment for the said infringement, should be introduced.

3. Efficient legal assistance in the cases of discriminatory actions against the vulnerable categories of society in employment, education, health care, social and civil activity, housing, should be promoted.

4. Making public the information on counteracting the discrimination of the vulnerable categories of society, promoting clear understanding of the fact that racism and xenophobia are not to be tolerated in the country.

5. Promoting collaboration between the members of the vulnerable groups of society and militia departments in every oblast'.

XV. RIGHT OF CITIZENS TO FREE ELECTIONS AND PARTICIPATION IN REFERENDA[1]

The rights to free elections and participation in the referenda were disregarded in 2012, both with respect to the national legislation and elections process. Arbitrary and non-transparent adoption of certain normative/legal acts led to mass violations of the election rights of the citizens; sometimes these latter were unable to exercise their rights at all. E. g. after the hasty passing of the Law of Ukraine "On All-Ukrainian Referendum"[2] the local referenda became impossible, as they were not stipulated by the aforementioned Law, while the previous Law "On Conducting All-Ukrainian and Local Referendum" was invalidated by the law-makers.

The erroneous, non-transparent and thoughtless steps in law-making have become common. First of all, they are not politically expedient; second, the persistent problems which have not been resolved for years, became the source of election rights' violations; third, monopolization of authority by a single political force and extensive use of administrative resource combined with inertia and even helplessness of the law-enforcement bodies in election rights protection and the selectivity of justice are evident. The elections of this year have added some nuances to the "routine" picture: extremely high level of indirect "buying of votes" used by the candidates in the majority districts and actual refusal of the law-enforcers to investigate these violations, which occurred literally "under video-cameras" and were witnessed by the whole country.

In general last year 282 extraordinary elections of the city, settlements and village heads and dozens of interim and repeated elections of the local councils' deputies took place in Ukraine.[3] However, the elections of the people's deputies of Ukraine made the headlines. In our survey we analyzed the major tendencies with respect to observing election standards in the course of the national elections summarizing the reports submitted by the national and international observers and information collected by public activists and journalists.

1. ELECTIONS OF THE PEOPLE'S DEPUTIES OF UKRAINE[4]

1.1. General assessment

According to the assessment done by the most renowned national public organizations of observers, the elections of the people's deputies of Ukraine of 2012 were marked by viola-

[1] Report prepared by D. Beliy, Kherson branch of the Ukrainian Voters' Committee (UVC).

[2] S. Kononchuk "People's rule on order" http://electioninfo.org.ua/index.php?i=1275

[3] See http:// zakon2.rada.gov.ua/laws/main/1357911460732835/page6 та http://www.drv.gov.ua/portal/!cm_c ore.cm_index?option=ext_static_page&ppg_id=193&pmn_id=133

[4] Report prepared on the basis of materials of the Final report on the results of observation over the elections of people's deputies of Ukraine conducted by the UVC NGO, Election Observation Mission Final Report1 OSCE/BDIHR,

tions of the fair and democratic elections' standards and became the most questionable nationwide elections since 2004.

Members of "Opora" [Support] public network pointed out that the elections of the people's deputies were characterized by artificial restrictions of competitiveness in the elective process and grave violations of the equal opportunity principle for the parties and candidates; the use of illegal technologies in mobilizing administrative resource and bribing of voters. All these factors had their decisive impact on election campaign and did not help in ensuring reliability of its results. In "Opora" observers' opinion, these violations were systemic.[5]

Members of all-Ukrainian NGO "Alliance Maidan" created an interactive map of the elections-related violations and published it on "Maidan" site. The violations uncovered by them in all the regions of the country can be classified as follows:

— preferential treatment or direct support of some subjects of the elective process by the authorities alongside with the discrimination of others;
— mass deliberate distortion of facts in lieu of providing objective and unprejudiced information to the voters;
— numerous free or discounted services for the voters, offered with the purpose of urging them to vote for a certain candidate or party;
— unstable and non-transparent election law allowing for various manipulations.

Public activists sustain that the state that "failed to provide citizens' protection from manipulation and illegal coercion, which becomes, alongside with corruption, a serious public threat", bears the lion's share of responsibility for the violations.[6]

The Ukrainian Voters' Committee stated that the violations of elective standards were registered at all stages of the election campaign, even prior to its official launching. The most gross violations included:

— campaigning conducted with bribes and use of administrative resource;
— procedure for setting up election commissions;
— counting votes in single-mandate districts.[7]

The international experts' assessment mainly overlapped with the assessment offered by the local public observers. Thus, under the Statement of the international experts on preliminary results and conclusions, the parliamentary election of October 28, 2012 were characterized by the lack of equal opportunities for the participants, mainly, due to the abuse of administrative resource, insufficient transparency in election campaign and partisan funding, and to the lack of appropriate media coverage. Some developments preceding the elections in fact became a step backwards in comparison with the previous elections in Ukraine. The vot-

"Opora" NGO reports; see: http://www.osce.org, www.enemo.eu, www.cvu.org.ua та www.opora.org.ua . Information provided by the members of UHUHR.

[5] Statement of "Opora" NGO on elections of people's deputies of Ukraine on October 28, 2012 http://oporaua.org/news/3372-zajava-gromadjanskoji-merezhi-opora-shchodo-provedennja-vyboriv-narodnyh-deputativ-ukrajiny-28-zhovtnja-2012-roku

[6] 40days left before elections: fair competition or fighting without rules? http://maidanua.org/2012/09/40-dniv-do-vyboriv-chesni-zmahannya-chy-boji-bez-pravyl/ see also Systematic violations of the Election Law. 2 days before the elections http://maidanua.org/2012/10/systematychni-porushennya-zakonu-pro-vybory-2-dni-do-holosuvannya/

[7] Final report of the UVC on the results of observation over the elections of people's deputies of Ukraine in 2012 http://electioninfo.org.ua/index.php?i=1315

ers had a choice of candidates from different parties. The Election Day was rather quiet and peaceful. The ballot process and counting of votes was assessed positively. The process of establishing final results was assessed negatively due to the insufficient transparency[8].

1.2. Election legislation remains unstable and imperfect

Amendments to the law regulating the elections of the people's deputies in 2012 violated a number of fundamental election rules spelled out in the Code of good practice adopted by the Venice Commission in 2002, i. e. requirements stipulating stability of election law, impossibility of changing election system or defining the boundaries of election districts less than a year before elections.[9]

First, the Law on elections of the people's deputies of Ukraine was passed by the Supreme Rada in November 2011, while the election campaign was officially launched in summer 2012. The Law "On Specifics of Ensuring Openness, Transparency and Democratic Nature of the Elections of the People's Deputies of Ukraine" was passed less than a month prior to the beginning of election process without public discussion.

During election campaign the rules for the use of important elective procedures were changed, in particular, the order of lots casting for the members of circuit and district election commissions, changes of ballot venue without changing the voting address etc.

Second, the boundaries of single-mandate election districts were established three months prior to the official launch of the election campaign.

Third, the law-makers consistently ignore the voters' rights to the repeated ballot in case of annulment of the results in local election districts.[10]

None of these factors were beneficial for the stability of the election law.

Also, introducing amendments to the election law, the people's deputies systematically ignore the recommendations of the international experts and observers' missions compiled on the basis of previous elections' results and analysis of the draft law "On elections of the people's deputies of Ukraine".

It is noteworthy that the election law was passed at the time of acute political confrontation without any prior public discussion or consideration of public experts' opinion. Thus, once this law is implemented, there was no way to define its gaps and flaws and avoid future problems

These events resulted in the violations of election rights. The Ukrainian Voters' Committee in its summarizing report pointed at the lack of representation from some parties and candidates in the election commissions; abuse of administrative resource; frequent changes in the membership of circuit and district commissions; violations in establishing the ballot results in single-mandate election districts.

It is noteworthy, that the election law of 2011on elections of the people's deputies, although deficient in many cases, provided for fair and transparent elections. As noted in the

[8] See preliminary results and conclusions of OSCE/BDIHR, OSCE PA, PACE, EP and NATO PA of October 29, 2012 and interim report for the period after November 9, 2012.

[9] See Code of good practice in Electoral Matters (Guidelines and explanatory report, adopted by the Venetian commission at 52nd session (Venice, October 18-19, 2002) — Ukr. Edition, p. 9

[10] See p. 3.3.of the Code of good practice in Electoral Matters

final report of the observers' mission of OSCE/ BDIHR the law, if implemented appropriately, created solid foundations for democratic elections.[11]

1.3. International standards were disregarded in electoral districts' formation

The Code of good practice in electoral matters stipulates that electoral districts' boundaries under single-mandate system requirements, shall be set impartially and with due account of the opinions of the commission composed predominantly of independent members, including an expert in geography, a sociologist and proportionate number of parties' members, and, if need arises, representatives of national minorities, with due consideration to the size of population, geographic criteria for administrative division and even, when possible, historical boundaries.[12]

In preparation of the elections of the people's deputies these principles were not fully considered, which fact led, in our opinion, to certain pre-election machinations of "gerrymandering" type, i. e. the process when boundaries are redrawn to get some advantages for a given candidate.

When electoral districts were set in Ukraine, public observers noted the cases when administrative boundaries of rayons or cities of oblast' order were disregarded; the territories of settlements and villages were divided between different single-mandate districts; the areas of compact national minorities' settlements were not taken into account, as well as other infringements revealed in the majority of Ukrainian oblast's. (See Chart 1). Thus, in 15 out of 27 regions of the country the principle of uninterrupted boundaries was disregarded. **At the same time in 2012 the number of regions where the electoral districts were set in violation of the principle of boundaries' integrity, has increased significantly as compared to 2002.** E. g. if in 2002 not a single electoral district within the boundaries of Vinnitsa, Odessa, Kharkiv, Cherkassy, Chenyhyv oblast's and the city of Kyiv was subdivided into several parts by the areas of other districts, in 2012 the principle of integrity was not observed while establishing electoral districts.

Chart 1

Observance of the principle of uninterrupted boundaries in 2002 and 2012

Region	2002	2012	Region	2002	2012
Autonomous Republic of Crimea	–	–	Odessa oblast'	+	–
Vinnitsa oblast'	+	–	Poltava oblast'	+	+
Volyn' oblast'	+	+	Rivne oblast'	–	+
Dnipropetrovsk oblast'	–	–	Sumy oblast'	+	+
Donetsk oblast'	–	–	Ternopil oblast'	+	+
Zhytomir oblast'	+	+	Kharkiv oblast'	+	–

[11] OSCE/BDIHR Election Observation Mission Final Report1 Warsaw, 3 January 2013 — P. 1.

[12] See P. 2.2. of the Code of good practice in Electoral Matters.

Transcarpathian oblast'	–	–	Kherson oblast'	–	–
Zaporizhzhya oblast'	+	+	Khmelnitsky oblast'	+	+
IvanoFrankivsk oblast'	+	+	Cherkassy oblast'	+	–
Kyiv oblast'	–	–	Chernivtsi oblast'	–	+
Kirovohrad oblast'	+	+	Chernyhyv oblast'	+	–
Luhansk oblast'	–	–	Kyiv	+	–
Lviv oblast'	–	–	Sebastopol	–	–
Mykolaiv oblast'	+	+			

Notes: "+" — the principle of integrity of district boundaries observed;, "–" — not observed. Differences between regions are shown in grey.

Source: final report of the UVC NGO on results of observation of elections of the people's deputies of Ukraine in 2012.

As compared to 2002 the number of districts randomly divided into several parts without any justification increased substantially (from 8 to 23.) Here are some examples.

- Vinnitsa oblast'

The territory of electoral district No. 12 was divided into 4 parts, separated by the territory of the electoral district No. 11. This division is unnatural, as all the electoral districts formed in the oblast' in 2001 had uninterrupted boundaries.

- Donetsk oblast'

In 2001, when districts were established within Donetsk oblast', only electoral district No. 50 was divided into several parts, while other districts' boundaries were integral due to the administrative and territorial structure of the oblast'. In 2012 the number of the districts artificially divided increased to 5 (districts No.No. 50, 52, 53, 55, 56).

- Luhansk oblast'

In 2002 only one district of Luhansk oblast' was artificially divided into several parts (district No. 110), while in 2012 the number of these districts increased to 5 (districts No.No. 107, 108, 110, 111, 112).

- Kharkiv oblast'

In 2002, artificially formed enclaves did not exist in the oblast' territory. In 2012 such an enclave came into being due to the separation of some electoral districts from the main area of the electoral district No. 172 (respective districts ended up at the territory of the electoral district No. 170).

- Cherkassy oblast'

District No. 195 was artificially divided into several parts, although the boundaries of all the electoral districts set up for 2002 elections were uninterrupted.

- Chernyhyv oblast'

The territory of the electoral district No.No. 210 made up in 2012 of two parts separated by Nosivka rayon, was included into electoral district No. 209. This division is artificial. In 2002 the boundaries of all the electoral districts were uninterrupted.

- City of Kyiv

Formed up in 2012, electoral district No. 221 is artificially divided into two parts by the territory of the electoral district No. 211. Meanwhile, not a single electoral district set up in Kyiv in 2001 was divided into several parts.

1.3.1. Division of the territories under village and settlements councils between several districts

- Vinnitsa oblast'

The territory under Ilkiv village council (Vinnitsa rayon) was divided between the districts — the polling precinct No. 050149 was attached to district No. 11, and the polling precincts No.No. 050150 and 050151 — to district No. 12.

The territory under Ksaverivka village council (Vinnitsa rayon) was divided between the districts No.No. 11 and 12, each having one polling precinct located in the territory under the village council.

- Kyiv oblast'

The village of Ruda (Skvira rayon) was divided between the districts No.No. 91 and 92, each having one polling precinct located in the territory under the village council.

1.3.2. Disregard of compact settlements of the national minorities in setting electoral districts

In some areas of Ukraine the portion of national minorities is quite substantial among the total number of voters. These minorities tend to reside in compact settlements, which fact should be taken into account in drawing electoral districts' boundaries. Nevertheless, the information provided by the regional offices of the Ukrainian Voters' Committee, testifies to the fact that the interests of the national minorities are not fully taken into account in establishing single-mandate districts.

- Chernivtsi oblast'

A part of Sadhora rayon in Chernivtsi, earlier comprising one electoral district No. 202 with its center in Chernivtsi, with polling precincts No. 730481 — 730486, became a part of single-mandate electoral district No. 203 with its center in Novoselytsa town. As a result, about 9 000 voters speaking Ukrainian language ended up in the district where Rumanian-speaking population is predominant. Besides, the electoral district No. 203 also absorbed parts of Storozhyntsy rayon villages (Velyky Kuchuriv, Kamyana Mykhalcha, Snyachiv, Hlybochok, Tysovets), where Ukrainian language is predominant. On the other hand, a number of Rumanian-speaking villages of Storozhyntsy rayon, which formerly were a part of the district No. 204, were included into the district No. 202, so that about 10 000 Rumanian-speaking voters had to vote in the area where Ukrainian-speaking population is predominant. Therefore, the interests of Rumanian-speaking electorate were ignored in Chernivtsi oblast'.

- Trans-Carpathian oblast'

In establishing single-mandate electoral districts and organizing elections of 2002 the Central Election Commission met the interests of compact Hungarian settlements in Trans-Carpathian oblast'. As a result, electoral district No. 72, covering parts of Uzhgorod, Berehove, Vynhradiv, Khust and Tyachiv rayons was formed. In 2012, however, compact Hungarian settlements were divided between 5 districts (68, 69, 71, 72, 73), significantly decreasing the opportunities for minorities' representation in the parliament. Therefore, the interests of Hungarian electorate were ignored in Trans-Carpathian oblast'.

Partially such "selective geometry" can be accounted for by the fact that the Law in force "On Elections of the People's Deputies of Ukraine" banishes the possibility of exceeding the anticipated deviation in the number of voters per district from approximate average number of voters in single-mandate districts (while in 2002 electoral districts could be formed, exceeding the said deviation). The impact of political factors on the configuration of electoral districts' boundaries cannot be ignored either. Thus, while establishing electoral districts No. 182 and 183 (Kherson), the smaller part of the Dniprovsky and Suvorivsky districts of the Kherson city, comprising the area of the neighboring villages with about 20 thousand voters residing in them, was transferred from electoral district No. 182 to electoral district No. 183. Observers believe that this division substantially increased the chances of the candidate representing official party, who ran in the electoral district No. 182, of getting more votes than the other candidate not representing the ruling power. Ultimately this latter refused to run for the seat at all.

The division of Chaplyntsy rayon (Kherson oblast') which formed a "red belt" of sorts in the southern part of Ukraine between two neighboring electoral districts (185 and 186) immediately decreased the chances of majority candidates from the CPU in these electoral districts. The communists, as a result, lost in both districts, although in the district 186 the CPU ranked first on party lists.[13]

Hence, in the process of establishing electoral districts election standards were distorted leading to manipulations and violations of election rights.

1.4. Certain CEC decisions led to the violation of equal election rights

Both national and international observers noted that the CEC provided technical support for the elections in due time and order stipulated by the law. The CEC ensured the functioning of the web-site to cover the voting process at the polling stations, regularly updated voting information on its own site, and ensured the Internet users' access to operational information of the District Election Commission on the ballots results in the districts and specific stations.

However, we believe that some CEC decisions led to the violation of equal election rights.

First, the draw procedure used in appointing members of the District Election Commission (hereinafter — DEC) and Precinct Election Commissions (hereinafter — PEC) (the CEC resolutions No.No. 69 and 895) led to serious misbalance in the commissions' composition for the benefit of unpopular parties, which practically did not participate in the election campaign.

[13] See article "Analysis: Kherson oblast' redistricted for the benefit of the Party of Regions" http://politics.kherson.ua/publikacii/2012-06-16-11-09-17/9106-2012-05-01-19-22-54.html

Second, the CEC decision on providing for voting at the place of voters' stay, without changing the voting address in electoral districts only *(*resolution No. 893) prevented mass "migrations" of voters on the election day, but restricted the voters' right to ballot and contradicted the Law "On State Registry of Voters".

In our opinion, after the facts of the abuse of so-called "voters' migrations" were uncovered, the CEC had to initiate the verification of these facts by law-enforcement bodies instead of restricting citizens' voting rights.

Third, the CEC refused to sum up the results of ballot in five "problematic" single-mandate districts. As a reminder — under the Law "On Elections of the People's Deputies of Ukraine" the CEC must determine the elections' results and is authorized to call for another election only in cases spelled out unambiguously, while inability to determine the elections' results in a single-mandate or state electoral districts is not on the list of the said cases.

Fourth, the CEC reacted to gross violations of the election law in five electoral districts only, having ignored many other districts where serious violations in the ballot count and establishing the election results occurred, while the differences in the number of votes obtained by two candidates, who got the majority of votes, were insubstantial. E. g. the situation in Nova Kakhovka electoral district No. 184, where the difference in votes in favor of Party of Regions' winning candidate M.Dmytruk and self-nominated candidate I.Vynnyk constituted 22 votes only. The protocols of the same PEC with wet seals, reflecting different voting results were revealed.[14]

As a result, the CEC efforts in ensuring the legality of the election process were criticized by the observers. Here are the conclusions compiled by the international experts "Despite the fact that the CEC is the principal state body responsible for the ensuring the uniform use of the election law, in practice it failed to take sufficient steps to regulate the most important aspects of the election process. Especially it concerned such aspects as ensuring the transparency in determining the voting results, adherence to the rules of conducting election campaign, prevention of indirect voters' bribing, response to the violations with respect to mass media and providing for efficient satisfaction of complainants' appeals".[15]

1.5. Imprisonment of opposition leaders in lieu of fair removal of political opponents from the election process

The scandalous imprisonment of the opposition leaders Yu. Tymoshenko and Yu. Lutsenko in violation of the fair justice norms, and, as a result, their elimination from the election process has become widely known and puts in doubt the democratic nature of the elections.

1.6. Registration of "doubles", i. e. popular politicians' namesakes as election manipulation

In many single-mandate electoral districts several candidates with the same names, and sometimes, same first names and patronymics, were nominated. It created the background for cheating the voters on the election day with the purpose of reducing popular candidates'

[14] See article "Ivan Vynnyk: I feel betrayed by the Ukrainian state" http://politics.kherson.ua/publikacii/2012-06-16-11-09-17/9673-2012-11-13-12-08-48.html

[15] Joint statement on preliminary results of of OSCE/BDIHR, OSCE PA, PACE, EP and NATO PA of October 29, 2012

chances for victory, by having voters give their votes for his "double" — a "technical" candidate. The "Opora" observers identified 31 electoral districts, where the "doubles" ran for the seat. This technology was used against 44 candidates.

The single-mandate electoral districts had the largest number of candidates-namesakes: district No. 80 — three Volkovs, No. 98 — three Boykos, No. 122 — three Cossacks, No. 225 — three Parkhomenkos. In some districts pairs of namesakes were registered. In electoral district No 92 (Kyiv oblast') pairs of Hudzenkos, Svitovenkos and Tytarenkos were found; in electoral district No 91 — pairs of Boykos and Poplavskys, while electoral district No. 98 had two Mishchenkos and Polishchuks on the lists. Luhansk oblast' electoral districts could also boast of large number of namesakes: 104 (2 Vasylenkos, 2 Shapovalovs, two Honcharovs), No. 108 (2 Moshenskys, 2 Ternikovs), No. 109 (2 Makarovs, 2 Medyanyks). In electoral district No. 160, (Sumy oblast') pairs of Bilous's and Nohas were found, while electoral district No. 191 in Khmelnitsky oblast' had two Shpaks and two Bondars on the lists.[16]

The "Opora" members sustain that this "technology of non-competitive struggle" was used within the legal field, so the CEC had to register all the "doubles" that provided the required set of documents and reliable personal information.

According to the UVC some "doubles" abstained from participation in the ballot even before the voting took place in parliamentary elections of 2012.

Formation and operation of the election commissions still remains a crucial issue for the Ukrainian elections. This time the problems were predetermined by the law and had a "systemic" impact.

The representatives of ruling power got the majority among the election commission seats.

As stated above, the CEC approved the draw among parties in setting up the DEC (resolutionNo. 69 of April 19, 2012), which first led to representation of less-known political parties without their own structures in many oblast's, in the majority of DEC in the country[17]. Respectively, the influential parties, which participated in the elections de facto, e. g. UDAR or "Svoboda" were not represented in the DEC.

[16] See "Political geography of "doubles"– August 24,2012 — "Opora" site http://oporaua.org/news/2104-politychna-geografija-qdvijnykivq

[17] The following parties acquired representation in the DEC:

Christian-democratic party of Ukraine (nominated only 3 candidates in single-mandate districts; on draw results gained representation in 219 DEC);

"Iedyna rodyna" (nominated only 1 candidate in single-mandate districts; on draw results gained representation in 212 DEC);

"Iedyny tsentr" (nominated 9 candidates in single-mandate districts; on draw results gained representation in 43 DEC);

"Ukrainian Anarchists' Union"); (nominated 2 candidates in single-mandate districts; on draw results gained representation in 220 DEC);

"Rus iedyna" and "Bratstvo" (nominated respectively 3 and 1 candidates in single-mandate districts; gained representation in 225 DEC each);

People's environmental party (nominated only 1 candidate in single-mandate district; gained representation in 32 DEC);

"Ruska iednist'"(nominated 5 candidates in single-mandate districts; o gained representation in 221 DEC);

"Molod' do vlady" (nominated 1 candidate in single-mandate district; gained representation in all 225 DEC).

The graph devised by "Opora" members very clearly shows the lack of proportionality in the DEC representation (see the chart).

Chart 2
Value of nominated candidates for MPs
and DEC members of parties that received quota places in the DEC

	Parties that won seats in DEC	Number of candidates from parties		Number of DEC from parties
		In single-member districts	In lists	
1	Molod' do vlady	1	0	225
2	Rus iedyna	3	0	225
3	People's Labour Union of Ukraine	3	17	225
4	Bratstvo	1	0	225
5	Green Planet	18	225	225
6	Russian block	10	34	223
7	Ukraine ahead!	109	149	223
8	Ruska iednist	5	0	221
9	Ukrainian Anarchists' Union	2	0	220
10	Liberal Party of Ukraine	9	55	219
11	Christian-democratic party of Ukraine	3	0	219
12	Iedyna rodyna	1	0	212
13	Ukrainian People's Party	37	0	178
14	Iedyny tsentr	9	0	43
15	People's environmental party	1	0	32
16	Civic solidarity	4	0	5
17	Women's Solidarity Ukraine	11	0	4
18	Narodniy Ruh of Ukraine	2	0	1
19	For itself	1	0	1

Source: NGO "Opora" web-site
http://oporaua.org/vybory/parlamentelections

At that stage many random people became members of the DEC. Some of them had no relevant expertise, while the others even resided in remote regions. Sometimes, the DEC membership came as surprise to these individuals. Hence, the problems at the first stage of commissions' operation arose. Here are some examples.

- Lviv oblast'

3 members of the DEC of electoral district No. 121 resided permanently in the Autonomous Republic of Crimea or Kyiv and would not answer to the phone calls. The same situation occurred in the electoral district No. 123.

- Luhansk oblast', Severodonetsk

The DEC No. 106 could not convene as required by the due to the lack of quorum. On the second try the commission managed to convene with minimum quorum, i. e. 10 members. As it turned out, three DEC members resided permanently in the Autonomous Republic of Crimea: the DEC deputy head — unemployed I.Krasylnykov ("Bratstvo"[Fraternity] party); a commission member — unemployed K.Dzykovych ("Russian block" party) and her colleague entrepreneur ("Rus'iedina" [unified Russia] party). Two other DEC members live in Kyiv oblast' — Yu.Vyakhireva ("Iedina Rodina"[Unifted Family] party) and Ye. Cherednichenko ("Ukrainian Anarchists'Union"); another member –O.Postupalsky ("Ruska iednist'" [Russian Unity] party) resides in Khmelnitsky oblast'.

- Kherson oblast'

The operation of two DEC at once was threatened. Two newly appointed commission heads failed to appear for the DEC meetings — the head of Suvorivska DEC No. 182, 75-year representative of the "Russian block" S. Hrushin from Symferopol and the head of Tsuriupinsk DEC 20-year old T. Yevsovych ("Iedyna Rodina"[One Family] party). Other commission members had no phone numbers or other contact information for the newly appointed heads, so they had to organize themselves and conduct the first meetings in the order stipulated by the law.

- Cherkassy oblast'

In electoral district No. 194 21-year old I.Semesheva ("Ukrainian Anarchists'Union") was appointed the head of DEC, and failed to appear at the first commission meeting. After the opposition appealed to Cherkassy Administrative Court complaining of inaction of the DEC No. 194 head, it turned out that I.Semesheva has nothing to do with the "Ukrainian Anarchists' Union", which promoted her to the commission. Moreover, she stated that she never applied for the position of the DEC head. I.Semesheva further stated that she only applied for the position of observer on behalf of the party "United leftists and peasants".

At the second stage a number of replacements occurred in the DEC. Over August-November of 2012 dozens of decisions were made by the CEC concerning the changes in the DEC composition[18]; as a result the primary DEC composition was changed by more than 50% by the election date. The DEC rotations continued even on the elections eve. These frequent changes in the DEC composition had a negative impact on the organization of electoral process in general and, to a large extent, invalidated the CEC attempts to organize the DEC members' training on electoral matters.

As a result of these replacements the majority of DEC became controlled by the Party of Regions.

[18] See, in particular the CEC resolutions No.No. 645, 693, 709, 737, 766, 780, 794, 817, 831, 844, 856, 876, 890, 918, 936, 949, 970, 991, 1002, 1029, 1043, 1073, 1098, 1119, 1120, 1121, 1144, 1166, 1185, 1205, 1224, 1253, 1280, 1301, 1322, 1344, 1369, 1394, 1461, 1550, 1649, 1685, 1714, 1754, 1786, 1826, 1853, 1874, 1892.

1.7. Here are some examples from the regional UVC reports

- Autonomous Republic of Crimea

The Secretary of the DEC No. 3 represented the "Bratstvo" party and at the same time was the member of city council representing the Party of Regions. The deputy head of the DEC No. 5 was nominated by the "Ukrainian Anarchists 'Union"); although at the former parliamentary elections her represented the Party of Regions in the DEC. The head of the DEC of the district No. 4 from the "National Labor Union of Ukraine" prior to her appointment was the member of the local Party of Regions branch.

- Donetsk oblast'

Out of 18 members of the DEC of the electoral district No. 57 10 worked in the "Illyich Mariupol metallurgy works". They were promoted to the commission by the Party of Regions and the People's Party, Russian block, the "Ukrainian Anarchists'Union"); Liberal Party of Ukraine, parties "Iedyna rodyna", "Bratstvo", "Ruska iednist'", Ukrainian Green Party, "Rus iedyna". The head, head's deputy and the secretary also used to work at the plant.

- Odessa oblast'

At the meetings of the DEC of the district No. 135 the fact that out of 18 commission members 16 represented the Party of Regions was made public. In any case, 6 members (including the leadership) worked in Odessa Law Academy, headed by the candidate from this district S. Kivalov.

- Kherson oblast'

After changes in the DEC membership, the majority in all commissions and total control over all the DEC was gained by the Party of Regions. 56 commission members out of 90 either represented the Party of Regions or were linked to this party in their former activities. Altogether they were nominated by 11 parties. Thus, the head of Suvorivskk election commission No. 182 A. Murashkin was nominated by the "Russian block". At the same time he is a member of Kherson TEC nominated by the Party of Regions. The deputy head of the DEC No. 183 T. Kreiza, this time nominated by the political party "Molod' do vlady", in 2010 the head of the DEC for the presidential candidate V. Yanukovych. The secretary of this commission A. Kirova nominated by the People's Party fraction, at the same time represents the Party of Regions in Kherson oblast' TEC.

The DEC No. 184 was headed by the representative of the Liberal Party of Ukraine M. Hryhorets, who earlier was a member of this commission, but represented the Party of Regions.

The secretary of the DEC No. 185 O. Poliheshko was nominated by the "Russian block", but at the same time she is a member of Kakhovka TEC from the Party of Regions.

- Chernivtsi oblast'

7 members of the DEC of the electoral district No. 20 were linked to the Party of Regions. Similarly to other DEC, formally they were nominated not by the Party of Regions, but by the other parties — the aforementioned People's Party, Russian block, the "Ukrainian Anarchists' Union"; Liberal Party of Ukraine, parties "Iedyna rodyna", "Bratstvo", "Ruska iednist'", Ukrainian Green Party, "Rus iedyna" etc.

It is noteworthy that under the UVC experts' evaluation, the DEC operation was controlled not only by the Party of Regions, but also by other political forces and candidates in the single-mandate election districts.

1.8. The similar situation was observed in the appointment of PEC

On September 13, 2012, right before the draw, the CEC cardinally revised the procedure for the draw and, by its resolution No. 895 introduced the same mechanism that was used in setting up the DEC.

The draw process revealed a lot of violations. According to "Opora" observers' report, "the setting up of PEC was conducted in a manner incomprehensible for the majority of the election process subjects, without any transparency or due control. Many DEC members in charge of draw did not adhere to the established order. The changes in draw order, introduced by the CEC, had a negative impact on the process as a whole and transferred the negative practices of one-time draw from DEC to PEC."[19]

As a result, many random people ended up as commission members and had to be replaced right after their appointment. In some districts the PEC composition was changed up to 70-80%. The actual control over the PEC operation was seized by the Party of Regions.

Therefore, in the process of forming district and polling stations' commissions, manipulations with the so-called "technical parties" led to the disproportionate representation of one political force, i. e. the Party of Regions, in the commissions' composition. Such manipulations were observed in all the regions of the country, and we can classify them as systemic attempts to gain control over the election commissions.

1.9. The lists of the voters were better as compared to the previous elections

At the stage of compiling and verifying voters' lists the observers uncovered a number of problems: inclusion of the so-called "dead souls" and "doubles" into the lists; absence of some voters' names from the lists, although these voters participated in the previous elections; assigning the destroyed and unfinished buildings, restaurants, commercial facilities etc. to the electoral districts. However, these instances were much fewer as compared to the last elections.

According to "Opora" evaluation, 55% of the polling stations had no problems with respect to the voters'lists; in 42% of the polling stations between 1 and 50 voters could not find their names in the lists of one district; in 3% of the polling stations these figures amounted to 50–100 voters.[20]

1.10. Main types of violations revealed in the course of elections

The observing campaign of this year differed from all the former ones — several large scale public initiatives involving the voters to uncovering of the election standards' violations were implemented in the country.

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[19] See "Opora" report No. 6 http://oporaua.org/news/2710-shostyj-zvit-za-rezultatamy-zagalnonacionalnogo-sposterezhennja-parlamentski-vybory-2012-veresen

[20] See "Opora" statement of October 30, 2012 http://oporaua.org/news/3372-zajava-gromadjanskoji-merezhi-opora-shchodo-provedennja-vyboriv-narodnyh-deputativ-ukrajiny-28-zhovtnja-2012-roku

First of all, the "Alliance Maidan" activists publicized an interactive map of violations on "Maidan" site.[21] The creators of the map claimed that "our map does not and cannot cover all the violations. It can only strive to represent the real picture, and the level of this approximation reflects, to a certain extent, the level of civil society maturity: readiness to discuss the coercion openly, capability of overcoming one's fears and collecting the documentary evidence and appealing to the law, whatever it might be".[22] By all account this initiative is very impressive as to the number of uncovered violations, registered by the public activists.[23] In Ukraine such open, transparent and highly visual reflection of violations is unprecedented. Over the whole monitoring period 7062 notifications of violations have been received; 1632 of complaints were represented on the Map[24]. Usually only the most typical violations, registered by the observers, find their way to the monitoring reports. And despite of the fact that the violations reflected on the Map (see chart 2) are not representative of the violations of public right to vote, they nevertheless show main tendencies of the election campaign of this year, which converge with the official reports compiled by the observers.

Chart 2

Election violations reflected on the interactive map of "Maidan" site

Types of violations systematized by "Maidan"	**number**
Violation of campaigning process	878
Administrative resource	469
Bribing of voters	401
Fraud	286
Violations in the commissions' operation	199
Violations on the election day	194
Violation of the equality principle	187
Violation of financing rules	165
Obstruction of pre-election campaigning	113
Use of force	86
After the voting	98
Violation of the rules for providing information	56
Coercion	55
Violation of mass media rights	41
Violations in compiling the voters' lists	26
Restrictions of appeal	4
Communications with authorities	53

Source: "Maidan" site

[21] "See a violation — tell about it!" Interactive Internet hub of documentary information, made through crowdsourcing Інтерактивний інтернет-хаб документальної інформації, створеної шляхом краудсорсінгу, про факти порушень на виборах народних депутатів України 2012. ВГО "Альянс Майдан"

[22] http://maidanua.org/2012/09/40-dniv-do-vyboriv-chesni-zmahannya-chy-boji-bez-pravyl/

[23] Precondition is said organizers all violations confirmed by photos, video, or official documents.

[24] See: http://maidan.org.ua/vybory2012

This information provided "Alliance Maidan" activists with arguments confirming systematic violations of the election rights, perpetrated by the authorities. According to the candidate of law O. Severyn "At this stage of the election process we already have enough grounds to sustain that serious obstacles to in ensuring free choice for voters have been created. Specifically, we are talking about:

1. Use of administrative resource, i. e. the violations of legal provisions and principles of equal, unbiased treatment of candidates and parties by the subjects of authority, i. e. granting preferential treatment or direct support to some of them, while discriminating the others.

2. Fraud, linked to administrative resource — mass cheating of the voters, when the routine fulfillment of tasks, stipulated by the law for public officials using budget funds, is presented as the result of the operation of a candidate or a party. It is contrary to the provisions of the Law of Ukraine "On the Elections of the People's Deputies of Ukraine" stipulating for the voters the opportunity of expressing their free will based on "objective, unprejudiced information" provided to them.

3. Indirect bribing of the voters — in violation of p. 13, Article 174 of the Law "On Elections…" certain benefits and services are offered to the voters free of charge or at the discount rate to urge them to vote for a given candidate or party. As of today, the state charged by Article 3 of the Constitution with the "responsibility for its operation" remains the most serious culprit due to its failure to provide

a) stability, transparency, clarity of election law, i. e. adherence to the principle of legal determination;

b) the setting up of election commissions by transparent and legitimate process;

c) protection of public against manipulation and illegal coercions, which is becoming, alongside with corruption, the biggest social threat".[25]

The conclusions drawn by the public activists who realized this brilliant initiative, were fully confirmed by the national observers. Thus, UVC and "Opora" identified the following negative tendencies:

1.11. Obstructing pre-election campaigning and participation in the elections

The cases of obstructing campaigns, both prior to and after the beginning of the electoral process were common. The number of such incidents increased with the approaching of the Election Day. The major violations perpetrated by the official bodies' representatives included banning of the campaigning events, restricting parties' and candidates' access to mass media, where they wanted to place their election materials, to advertising resources etc.

1.11.1. Examples of obstruction of pre-election campaigning

- Autonomous Republic of Crimea

In October (city of Yevpatoria, electoral district No. 4), militia officers blocked the delivery of concert equipment to the campaigning event organized by the candidate M. Kotlyarevsky.

[25] 40 days before elections: fair competition or fight without rules? http://maidanua.org/2012/09/40-dniv-do-vyboriv-chesni-zmahannya-chy-boji-bez-pravyl/ see also Systematic violations of the Election law: 2 days before elections http://maidanua.org/2012/10/systematychni-porushennya-zakonu-pro-vybory-2-dni-do-holosuvannya/

On October 19, 2012 the court ruled that the stadium chosen as the venue of the event, was in a precarious condition, and, consequently, banned the event.

The Crimean Committee of the CPU informed that on October 21, in the city of Krasnoperekopsk, the CPU activists had been assaulted by the youngsters identifying themselves as the members of the Party of Regions. Militia remained inert and refused to take any action to detain the culprits.

The candidate from a single-mandate electoral district No. 5 I. Sahaydak stated that his campaign was deliberately disrupted by the local authorities in the city of Kerch. He claimed that the advertising agency contracted to install respective big boards, removed them on the order of the executive committee of the city council.

- Vinnitsa oblast'

The candidate from the electoral district No. 16 O. Lantukh shared the information that on October, 4 between 8.00 pm and 8.20 pm the oblast' TV channel VDT-6 had to transmit his pre-election program paid for by public funds. However, at 7.30 pm the cable transmitter was switched off in the town of Mohylyov-Podilsky, and the signal was restored only at the end of the program.

- Donetsk oblast'

In September the head of Makiivka city CPU committee V.Rudneva stated that the meeting between the CU leader P. Symonenko with the students of Makiivka Economics and Humanities Institute was banned without any justification. The rector just cancelled it two hours before the scheduled time, referring to the recommendations allegedly received from the city education department.

- Zaporizhzhya oblast'

In August the "Udar" party declared that the authorities influenced the decision of advertising agencies not to install two big boards announcing the party leader V. Klychko visit to Zaporizhzhya.

A similar incident was registered in the electoral district No. 74. The candidate from the said district P.Sabashuk informed that an official of the municipal investment agency in charge of the advertising prohibited Sabashuk's election materials from being advertised on the big boards.

- Kyiv oblast'

In September the activists of the "Udar" party headquarters for Kyiv oblast'made it known that the law-enforcers in Brovary illegally dismantled two campaign tents of the party and confiscated all the informational materials distributed there.

In the town of Vyshgorod, which was the center of electoral district No. 96, 3 big boards, showing the "Udar" candidate D. Kreynine, were dismantled. Eventually they were replaced with the Party of Regions' boards.

The candidate from "Bat'kivshchyna" O. Kishchuk suffered intimidating messages and threats left by the anonymous persons on his cell phone. He was also threatened directly by the bureaucrats from the rayon state administration. According to the candidate, someone tried to put his house in Knyazhychy village on fire, using flammable mixture.

On September 11, in Brovary, militia put down the campaign tent of "Bat'kivshschyna". As became known later, the information materials stolen in the action, were found in the public works department of Brovary executive committee.

The village council head in Svitylnya village (Brovary rayon) banned campaigning on behalf of any parties, but the Party of Regions. He also gave an oral order to remove all the election-related printed materials (if they did not promote ruling party or its candidates) from the mail boxes.

- Mykolaiv oblast'

The candidate from the electoral district No. 128 S. Isakov on a press conference of August 9 informed about the pressure exerted by the head of rayon administration (M. Kruglova) through the member of city council O. Omelchuk (in charge of outside advertising in Mykolaiv)on the owners of ad carriers with the purpose of making them break the contracts they signed with Isakov for his election campaign materials.

- Kherson oblast'

The candidate from the electoral district No. 185 (SPAS party) Ye. Kovalenko advised in October that the mayor of Kakhovka city O. Karasevych and the head of rayon militia department on October 18, 2012 hampered the campaigning event in favor of the said candidate. Specifically, the activists were distributing and spreading the candidate's brochures, when the mayor started to reprimand them rudely. The activists ignored him. Then a militia detachment was called and detained one of the campaigners.

- Khmelnitsky oblast'

In August, the "Bat'kivshchyna" representatives approached two communal services agencies seeking their support in providing facilities for their meeting in the town of Shepetivka. However, they met with the oral refusal, while the houses' caretakers received the orders to remove all the leaflets announcing the rally from the walls and invitations — from the mail boxes.

- Chernivtsi oblast'

In August the city council of Storozhynets (electoral district No. 202) filed a petition with the court requesting the banning of festivities planned by the opposition parties for August 23–24, during which their candidates had to meet the voters in the central square of the city. The city council leaders explained that the square would be used as fair-grounds at the same time.

- Sebastopol

In September, pressure was put on the candidate D. Byelik representing the "Russian block"party in single-mandate electoral district No. 224. The officials from Gagarin rayon state administration with the local militia officer and the management of "Zhylservice No. 23" office for 1.5 hours were trying to get into the apartment of the head of communal services agency No. 99, with which D. Byelik had a contract for renting the advertising board on the house No 22, POR. Their request was for the materials to be removed. On September 10, the prosecutor's office and the militia officials crashed into D. Byelik's apartment to

do the search there. At that time D. Byelik did a presentation in the Sebastopol city council. On September 19, at night-time D. Byelik's campaigning materials were removed from 14 bill-boards. Also, the candidate claimed that some of advertising agencies' owners were summoned to the city council and required to break the contract with D. Byelik under the threat of license removal or physical destruction of the advertisement carriers.

1.12. Pressure on candidates

Although the instances of politically motivated pressure on candidates in the course of election campaign were not systematic, they were observed in many regions and consisted, mainly, in obstructing the campaigning process or exerting pressure on businesses linked to the candidates.

- Mykolaiv oblast'

Electoral district No. 132. Over the month of October the pressure was exerted on "Kornatskys' Agrofirma" LTD, belonging to the united opposition candidate A. Kornatsky. As a result of this pressure the candidate had to leave Ukraine.

- Kherson oblast'

Electoral district No. 186. On October18, 2012 the law-enforcement bodies conducted the search of the market and the house belonging to the candidate F. Negoy.

- Kyiv oblast'

Over the month of October the tax inspection was auditing the operation of an agricultural enterprise belonging to the candidate from a single-mandate district No. 92 V. Gudzenko, who was competing with the candidate S. Kashuba nominated by the ruling party.

In Bila Tserkva district over the month of September such pressure was exerted on two rating candidates simultaneously — L. Dryhalo (the candidate from the People's Party) and the candidate O. Marchenko, nominated by both "Svoboda" and United opposition. The pressure consisted in random verifications of the companies, controlled by the candidates, organized by tax inspection, fire inspection, labor safety department, sanitary/epidemiological service etc. They checked up L. Dryhalo's meat factory and O. Marchenko's granite quarry.

- Zaporizhzhya oblast'

On August 1 the tax militia filed a criminal claim against the self-nominated candidate P. Sabashuk (electoral district No. 74). Although the prosecutor's office insisted on detention as preventive measure, the court established another preventive measure in the form of bail amounting to 17 000 UAH. All the Sabashuk's property was placed under arrest. Nevertheless, Sabashuk continued his campaigning, so in September the prosecutor's office requested another preventive measure in the form of bail amounting to 4 million UAH.

The use of public resources for campaigning, PR advertising on the state-run TV channels, participation of public officials in pre-election campaigning during the working hours.

The election campaign of 2012 was characterized by the unprecedented (at least, since 2006) involvement of public servants and local self-governments' officials in the campaigning process. The numerous facts testifying to it were reported in all the regions of the country.

- Zaporizhzhya oblast'

Over September the heads of rayon administrations and relevant departments of the administrations were constantly present at the meetings with the Party of Regions' candidates. E. g. the UVC registered the fact of the head of Berdyansk state administration Chepurny campaigning for the candidate V. Baranov at the opening of the children's playground in one of the rayon villages.

- Zhytomir oblast'

In September the head of the culture and tourism department in Zhytomir oblast' state administration Yu. Hradovsky, who is the soloist of "Drevlyany" band, during his working hours participated in the concerts in support of the candidate from a single-mandate district No. 67 self-nominated V.Razvadovsky.

- Chernivtsi oblast'

On September 1 the secretary of the city council of Novodnistrovsk M. Lutchak openly campaigned for the candidate A. Semenyuk nominated by the Party of Regions in electoral district No. 204, at the ceremony celebrating the beginning of the new school year.

On September 16, 2012 the servicemen of the state fire department No. 8 (town of Sokyryany, Chernivtsi oblast') under the Ministry of Emergencies of Ukraine, instead of performing their direct duties, were sticking political ads of the candidate A. Semenyuk (Party of Regions, electoral district No. 204), to the bill-board using their professional equipment. The poster read "Revive and restore. Semenyuk Artem".

- Ternopil oblast'

In a single-mandate electoral district No. 66 the spouse of the head of the oblast' state administration N. Khoptyan was self-nominated for the candidate to the people's deputies. Subsequently, in September the so-called "meetings with self-governance activists" were held in many towns and villages. At these meetings the leaders of the rayon state administrations, during their working hours, actively encouraged public to vote for N. Khoptyan.

- Donetsk oblast'

Not only representatives of local self-governments, but also high officials of the central executive bodies were involved in campaigning in favor of specific candidates and parties.

Thus on October 15, 2012 the Minister of education, science, young adults and sports of Ukraine D. Tabachnik paid a business visit to the town of Slovyansk. The Minister had a met with the professors and students of the Slovyansk college of the National Aviation University and Donbas State Pedagogical University. The local media informed that this visit was made possible due to the leader of "Nash region" NGO, the Party of Regions candidate in electoral district No. 47 O. Azarov.

On September 7, 2012 the Prime Minister of Ukraine M. Azarov inaugurated the new sports center with the pool, work-out and fitness facilities in the reconstructed G. Petrovsky's park (electoral district No. 44). During this event the officials highlighted the Party of Regions' achievements and its local representatives' contribution to the renovation of the urban infrastructure.

1.13. *Bribing of voters has become extremely common*

Bribing of voters has become one of the most common violations of the election law. The candidates to the people's deputies resorted to bribes all over the country.

The observers believe that this election-related corruption was possible due to the legal gaps, inertia of the law-enforcement bodies in investigating facts of bribing, lack of judicial practice in identifying the infringement and establishing all the circumstances of the violation.

The "Opora" activists stated that "courts in different regions passed controversial rulings on very similar cases. The political parties either failed to introduce efficient mechanisms to curb the operation of the candidates using bribes, or were not motivated to do so".[26]

The observers also registered the facts of direct bribing of voters. Specifically the regional UVC reports referred to the following facts.

- Volyn' oblast'

The residents of Kivertsi town and rayon informed that buying of votes in the elections to the Supreme Rada of Ukraine was prepared on the order from I. Yeremeev (electoral district No. 23). The voters willing to sell their vote received 200 UAH in exchange for their passport data and identification code. Then they were promised the same amount for the "right" voting. In this respect Kivertsi town council even supported the deputy inquiry submitted by I. Kosmyna ("Svoboda") to the prosecutor general of Ukraine, prosecutors of Volyn' oblast' and Kivertsi rayon requesting the verification of the "buying of votes" by I. Yeremeev.

- Vinnitsa oblast'

The leader of the oblast' headquarters of the "Bat'kivshchyna" united opposition L. Shcherbakivska advised that the heads of certain village councils influence the voters using network marketing principle: each voter receives about 1000 UAH for voting for a certain candidate or party; if he/she brings another voter, willing to vote the same way, then the original voter is granted additional 200 UAH, while the new one gets 1000 UAH. Allegedly the voters had to receive the cell phones to prove their votes — they would make pictures of the ballots, and then hand the phones to the next bunch of voters.

Also in Mohylyv-Podilsky the meeting of O. Kaletnik "champions" was organized. The tickets to the meeting were distributed in strict accordance with the lists of participants, who later signed the statements to the effect that they "support O. Kaletnik's activity" and received 50 UAH each. According to the UVC estimates, the purpose of this meeting was organizing the network of voters' bribing in the electoral district No. 16.

[26] http://oporaua.org/news/2710-shostyj-zvit-za-rezultatamy-zagalnonacionalnogo-sposterezhennja-parlamentski-vybory-2012-veresen

- Chernivtsi oblast'

On September 17, 2012 the candidate R. Panchyshyn (electoral district No. 204) announced that he received reliable information on the facts of direct bribing of voters in this electoral district. He claimed that a group of people was visiting households in every village, offering 150 UAH for each vote. To get the money the citizen had to provide his/her passport data, the copy of identification code and leave his/her signature confirming support of a given candidate. Allegedly this signature was a guarantee that the voter would vote for the said candidate.

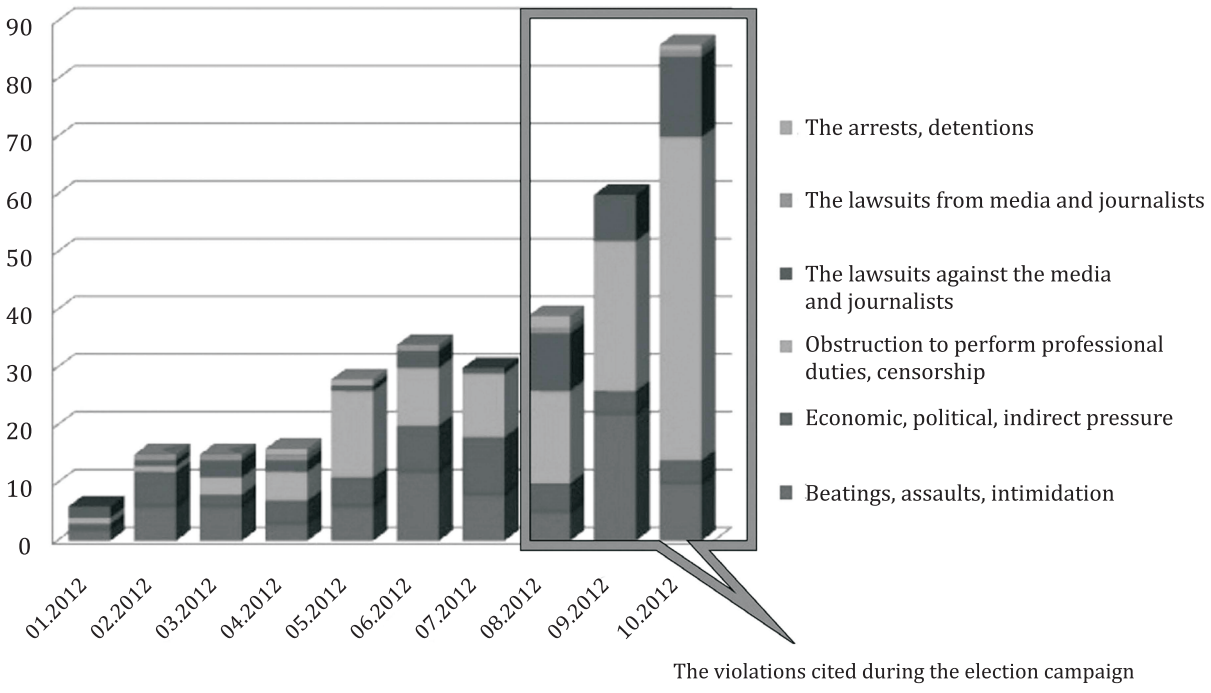
- Odessa oblast'

The election campaign of V. Chorny bore the signs of violations of the election right by bribing the voters. He offered every adult resident of Kyiv district in Odessa up to 1600 UAH if he wins the parliamentary elections. The candidate stressed that the payment would be made irrespective of the voter's choice.

1.14. The violations of the journalists' rights: 2012 can compete only with 2004

According to the results of the "Freedom of Speech Barometer" monitoring conducted by Mass Media Institute with the purpose of assessing the observance of journalists' rights, the rate of the violations of these rights was constantly increasing in the course of the election campaign in Ukraine. Thus, between July 30 and October 31 the experts of Mass Media Institute registered 185 violations, 115 of them directly related to parliamentary elections and/or were perpetrated by the candidat4es to deputies. (See graph 2).

Graph 2. The number of journalists' rights violations in 2012 according to Mass Media Institute



Source: imi.org.ua

The obstruction of journalists' professional operation was the most common violation — 98 cases. 37 instances of the reporters' muggings and intimidations were also revealed; 32 claims against media were filed with the courts.

The journalists were banned from attending the meetings of candidates with their electorate and mass events organized by the candidates; if allowed to attend they were forbidden to take pictures or make videos.

The journalists investigating the bribing of voters were especially victimized.

On October 15 in Berdychev (Zhytomir oblast') a journalist of the internet-publication "Holos UA" K. Kovalenko was beaten by the persons unknown to him. The reporter investigated the bribing of voters in electoral district No. 63 by the candidate M. Petrenko. "On October 15 about 9.30 pm the strangers of solid stature twisted my arms and pushed me inside the SUV, where I was beaten, tortured and intimidated, so that I would not even think of making the information public" — reported the journalist.

On October 22 the reporters' team of "Pohlyad" program (Kirovohrad TV and Radio Broadcasting company) — journalist K. Yushchynen and cameraman I. Fomichenko were held by force in the office of the "Bat'kivshchyna" candidate O. Tabalov, while their captors tried to take away their camera and cassettes. Earlier the journalists videotaped Tabalov's actions, including bribing of voters, tampering with the election documents and other violations.

On October 22, anonymous persons vandalized the car belonging to the reporter of the Trans-Carpathian oblast' newspaper "RIO" O. Podebriy. The journalist investigated the bribing of voters by the Party of Regions' candidate V. Kovach in the Seredne settlement (Uzhgorod rayon). The incident occurred in the evening of the day when Podebriy talked to the villagers.

On October 28 on the day of parliamentary elections in Ukraine, 16 instances of obstruction of journalists' operation were registered, as well as one assault and a case of indirect pressure. The most common violation consisted in banishing journalists from the voting venues.

A lot of DDoS-attacks on the Internet publications site, paralyzing its operation, were registered.

In total the record number of violations of the journalists' rights over the last 10 years was registered in the elections of 2012. 329 of such facts were revealed before the year 2012 ended, i. e. 3.5 times more than over the whole previous year. The former record figure — 190 cases — was registered in the year of presidential elections 2004.[27]

1.15. Violations of the citizens' election rights at the time of voting

The official observers of the UVC stated that in general the voting process per se was organized in compliance with the election law requirements; nevertheless some problems were revealed in its organization and implementation (although they were not systemic). The "Opora" observers' assessment was more critical. Although they also noted that the Election Day did not bring forward any mass or systemic violations which would have significant impact on the voting results, their report stated that "rather frequent instances of illegal actions and abuses perpetrated by various subjects of election process in different districts make it impossible to describe the election process as fair and democratic."

[27] See IMI final reports http://imi.org.ua/content/vibori-2012-za-tri-misyatsi-%E2%80%94-185-vipadkiv-porushen-prav-zhurnalistiv-0

The "Opora" public observers were most concerned with numerous cases of violations of the voting confidentiality, illegal distribution of ballots among the voters and centralized transportation of the voters to the polling stations, combined with bribes.[28]

On the election day the "Opora" observers noted the following violations: taking pictures of the ballots (in 3% of the polling stations), violations of the voting confidentiality, i.t. voting outside the booths or with unauthorized persons present in the booths (in 3% of the polling stations), distributing ballots without seeing the voters' passports (in 2% of the polling stations), providing transportation for the voters (in 1% of the polling stations), vandalizing the voting boxes (in 1% of the polling stations), (see graph 3).

№	Name violation	Interest
1	Violation of secrecy of the ballot	3%
2	Photography ballots	3%
3	Issuance of ballots without a passport	2%
4	Deliveries voters	1%
5	Damage to the ballot box	1%

Source: "Opora" NGO site

According to "Opora" in 91% of polling stations no violations were found.[29]

1.16. Ballot count and establishing the voting results were accompanied by gross violations

As opposed to the voting itself the ballot count in some districts was characterized by numerous violations and other issues which resulted in repeat elections in 5 single-mandate electoral districts and put in question the legitimacy of elections in some other electoral districts (E. g. in the electoral districts No.No. 11 and 14 in Vinnitsa oblast', although the election results in these districts were confirmed by the court rulings). The UVC observers identified the following most crucial issues at that stage:

The majority of electoral districts failed to organize the ballots collection appropriately.

On October 28–29 2012 one could see long lines of PEC at the DEC entrances. Meanwhile by morning many DEC managed to process less than 50% of ballot count protocols (electoral districts No. 11, 13, 14, 15, 17, 18, 74, 75, 80, 92, 94, 95, 96, 98, all districts of Lviv and Kherson oblast's etc.)

The flaws in the organization of election paperwork collection resulted in leaving documentation packages unattended, without commission members' supervision.

[28] See "Opora" final report on October 28, 2012 election results http://oporaua.org/news/news/3373-zvit-gromadjanskoji-merezhi-opora-za-rezultatamy-sposterezhennja-v-den-golosuvannja-na-vyborah-narodnyh-deputativ-28-zhovtnja-2012-roku

[29] See "Opora" statement of October 30, 2012. http://oporaua.org/news/3372-zajava-gromadjanskoji-merezhi-opora-shchodo-provedennja-vyboriv-narodnyh-deputativ-ukrajiny-28-zhovtnja-2012-roku

Thus in Kyiv oblast' (electoral district No. 95) the PEC of Vyshneve and Boyarka polling stations on DEC instructions left the election documents at the stations and went home to sleep till 3:00 pm. Meanwhile between 2:00 and 4:00 am the head and deputy head of the said DEC disappeared so that protocols could not be submitted. The election documents were also left unattended till 10:00 am of October 29, on the order from the DEC of the electoral district No. 98 (Boryspil). In the electoral district No. 107 (Luhansk obalst') after a short wait the members of 10 PEC from Stakhanov town left the premises of the DEC and went back to Stakhanov with their protocols. Their vehicles were stopped by the Motor vehicles' road inspection and escorted back to the DEC No. 107 by Lysyschansk militia officials.

1.16.1. Violations in establishing the voting results in the districts

In some districts establishing of the voting results was accompanied by serious violations, which could and did affect the final election results: opening and tearing apart the boxes containing election documents, (electoral districts No.No. 11, 14, in Vinnitsa oblast'), confiscation of election documents by the law-enforcers (electoral district No. 132, Mykolaiv oblast'), deliberate defacing of the ballots in support of a candidate who got an insufficient advantage over another candidate; the obstruction of observation over the establishing of voting results exerted by "Hard-looking" men carrying the reporters' IDs, instances of violence and hooliganism, entering erroneous data to the "Elections" IAC database (electoral district No. 121, Lviv oblast' electoral district No. 132, Mykolaiv oblast'; electoral district No. 159, Khmelnitsky oblast') etc. Electoral districts No.No. 11, 14, 20, 90, 94, 132, 194, 197, 223 revealed the largest number of violations. In 5 districts the violations were so gross that the CEC refused to establish the voting results and appealed to parliament to allow another election round for these districts.

The law-enforcement bodies never properly investigated the violations, which became known to the public.

1.16.2. The CEC refusal to establish the voting results in 5 single-mandate electoral districts

On November 5, 2012 the CEC adopted a Resolution on impossibility of establish the voting results and results of the people's deputies of Ukraine elections on October 28, 2012 in the single-mandate electoral districts No. 94, 132, 194, 197 and 223 and approached the parliament requesting another elections round in these 5 districts. Parliament, in its turn, charged the CEC with the duty to repeat elections in these districts and calculate the scope of needed funding. It must be said that the CEC did not have any legal authority to do that. Another question arises, as to why these 5 electoral districts have been targeted? As the "Opora" leader O. Ayvazovska states in the summarizing analytical essay, "The situation in e. g. electoral districts 11 and 14 in Vinnitsa oblast' was very similar to the situation in electoral district No197 in Cherkassy oblast'. Meanwhile the establishing of the voting results in electoral district No194 of Cherkassy presented no difficulty at all. The opposition candidate M. Bulatetsky won with 15% advantage over self-nominated candidate V. Zhukovska. Besides, the final protocol on the results of count in the district was signed by a legitimate commission, and the election documents neither were destroyed nor disappeared."[30]

[30] O. Ayvazovska. How the elections were forged http://oporaua.org/articles/3589-jak-gartuvalysja-vybory

The lack of opportunity to revote for the voters in the districts where the elections were recognized as invalid, was another problem. To remind the reader, these elections created a precedent when about 30 thousand ballots on partisan lists in 27 polling stations were invalidated by the court ruling. It happened in electoral district No. 94 (Kyiv oblast'). [31]

This problem should be resolved at the legislative level.

2. CONCLUSIONS

We hereby affirm that the elections of the people's deputies of Ukraine of 2012 were conducted with the violations of the standards for fair and democratic elections and became the most questionable national elections after the year 2004.

The election legislation remains unstable and imperfect, which leads to its numerous violations.

Some violations, namely, the use of administrative resource in favor of the Party of Regions and its candidates at the time of election campaigns, manipulations with election commissions composition, aimed at disrupting the principle of equal opportunities for the parties and candidates, massive indirect bribing of voters, were systemic.

Violations of election standards were observed at all the stages of election campaign.

Thus, the electoral districts were formed only 3 months prior to the launching of election campaign, instead of one year earlier as required by the international standards. In establishing the electoral districts geographical boundaries of the areas were disregarded for rayons, cities and cities of oblast' significance; village and settlements' councils' territories were divided between different single-mandate electoral districts; the areas of compact minorities' settlements were not taken into account. These instances can be regarded as the attempts to use "election geometry" for the benefit of certain candidates.

The election campaign was shadowed by the imprisonment of opposition leaders Yu. Tymoshenko and Yu. Lutsenko, who were brutally excluded from the election process.

Formation and operation of the election commissions remains a crucial issue for the Ukrainian electorate. This time the problems were generated at the legislative level and led to monopolization of the influential levers in election commissions' operation by the ruling power. Obstruction of election campaigning and hindrances to participation in the elections, created by the authorities, were common occurrences.

Various types of pressure were used by the law-enforcement bodies against the most active candidates who could be a real threat and competition for the ruling power candidates.

As to the number of violations of journalists' rights the campaign of 2012 is compatible only with the presidential elections campaign of 2004.

It must be said that in general the Election Day passed without any serious violations, although, according to "Opora" assessment, instances of violations, i. e. illegal actions and abuses perpetrated by various subjects of the electoral process made it impossible to describe the election process as fair and democratic.

As opposed to the voting itself the ballot count in some districts was characterized by numerous violations and other issues which could and did affect the final results of the elections.

[31] See http://electioninfo.org.ua/?i=1265

The law-enforcement bodies demonstrated their complete helplessness in the face of violations which took place in the DEC establishing the voting results. Even after numerous notifications on violations the law-enforcers failed to investigate the facts.

3. RECOMMENDATIONS[32]

1. The state power bodies should study thoroughly the lessons of the 2012 elections, to eliminate the flaws in the electoral process organization for the repeat or interim elections of the people's deputies of Ukraine and presidential elections of 2015. Relevant amendments, based on the analysis results, should be introduced into the Law of Ukraine "On Elections of the People's Deputies of Ukraine".

2. Persons culpable of election law violations should be prosecuted.

3. Prior to presidential elections of 2015 the codification of the election legislation should be carried out; the possible revision of election system for parliamentary elections taking into account the Council of Europe and Venetian Commission recommendations should be considered.

The Supreme Rada of Ukraine

- Should introduce the following changes related to territorial division into the Law of Ukraine "On Elections of the People's Deputies of Ukraine" and other relevant laws determining the order for the elections of the people's deputies of Ukraine:

— enforce the principles of the integrity of boundaries between electoral districts (with possible exceptions due to the peculiarities of administrative and territorial structure of Ukraine), taking into consideration the actual administrative and territorial structure as well as the areas of compact settlements of national minorities;
— establish the electoral districts' boundaries by law for at least ten years' term, with mandatory consultations with parties, experts, national minorities representatives and other potential stakeholders;
— reduce the minimally required number of voters at the precincts to ensure due order of voting and count of votes;

- With respect to the setting up and operation of the election commissions:

— make strict differentiation between the parties-subjects of the election process, stipulating that if the party candidates are registered in the single-mandate electoral districts, the party can nominate the candidates only to the election commissions of the aforementioned electoral districts, while the right to be represented in the DEC rests only with the parties that nominated the candidates in the nationwide electoral districts;
— define the general draw principles, envisaging separate draws for each DEC and PEC;
— consider the possibility for the candidates in the single-mandate electoral districts to nominate candidates to DEC;

[32] Based on UVC final report.

— provide for compulsory training on election legislation for all the DEC and PEC members, with due order established for this training;
— consider the possible reduction of PEC membership if the minimum number of voters at the precincts is reduced;

• With respect to the voters' registration, compiling and adjusting the voters' lists

— ensure mechanisms that would allow the voters free change of voting venues without changing their voting addresses within the national electoral district and introduce the efficient public control mechanisms to monitor the changes of voting venues without changing their voting addresses, similar to control instruments used to monitor voting envisaging the use of "leave to vote in other venue".
— establish the terms for the resolution of disputes, related to amendments of voters' lists, allowing to avoid introduction of any changes on the day of elections (with the exception of technical errors or typos);

• With respect to election campaign regulation

— harmonize the rules of the parties' funding with the rules of election campaigns' funding, taking into account the recommendations of Venetian commission, OSCE/BDIHR, the Committee of Ministers of the Council of Europe, Group of states against corruption in order to bring these rules into compliance with the international standards;
— implement more efficient mechanisms of preventing public servants' involvement in election campaigns and bribing of voters, by establishing effective and commensurate sanctions for the violations;

• With respect to organizing the voting, count of ballots and establishing the elections' results

— consider the possibility of simplifying the procedures of preparations to voting, voting itself, and count of ballots at the polling stations while retaining the mechanisms aimed at preventing potential abuses and falsifications;
— provide for the printing of ballots in the languages of national minorities in the areas of their compact settlements;
— provide for repeat voting in the districts were the voting was recognized invalid;

• With respect to the status of official observers and authorized persons

— provide the opportunity for public observers to monitor the election process all over Ukraine, and not only within specific single-mandate electoral district, and also for their registration at the early stages of the process;

• With respect to appeals against the actions or inaction at the time of elections and liability for the violation of election law

— consider the possibility of prolonging the term for the grievances consideration by election commissions up to 3–5 days;
— consider the possibility of narrowing the election commissions' competences in considering election disputes, and, for a long-term prospective(under existing mechanism for commissions' formation) — referring the election disputes to the courts' competences;

— provide for appellate review of all the courts' rulings on election disputes, including the rulings of the Highest Administrative Court of Ukraine;
— establish effective and commensurate sanctions for the violations of all the restrictions and bans stipulated by the law, by means of introducing respective changes to the Code of Ukraine on Administrative Infringements and the Criminal Code of Ukraine.

The President of Ukraine and the Cabinet of Ministers of Ukraine should

— consider the possibility of implementing the measures, within their terms of authority, aimed at holding the executive power officials responsible for the violations of the election law, including participation in election campaigns;
— consider the possibility of implementing the measures, aimed at further reforming of the election law, taking into account the lessons of the 2012 election campaign and ensuring its proper codification, e. g. by setting up a new working group for reforming the election law;
— consider the possibility of adopting an act (acts), defining the standards for the government and executive power officials' operation in preparation to the elections.

The Prosecutor's General Office and the Ministry of Interior of Ukraine should

— consider the possibility of implementing the measures within their terms of reference, aimed at holding all the persons culpable of violating the election law, legally liable;
— make public the information on the outcomes of courts' hearings on administrative and criminal violations;
— implement the measures, aimed at enhancing the level of competence, knowledge and skills of the prosecutors and the Ministry of Interior officials on the issues of election law, protection of election rights, response to violations etc.

Central Election Commission should

— consider the possibility of compiling, publishing and discussing the report on CEC operation in preparation to the elections of the people's deputies of Ukraine, the uncovered problems and ways of their resolution;
— consider the possibility of developing recommendations for the further improvement of the Ukrainian election law, taking into account the results of the recent elections, including proposals on establishing the electoral districts' boundaries, training for commissions' members etc.
— consider the possibility of setting up a center or a sub-division under the CEC Secretariat, which would operate on the permanent basis and be in charge of the training for commissions' members;
— consider the possibility of early publication of draft CEC election acts on its web-site for general public information, and also of consultations preceding the adoption of these acts.

XVI. RIGHT OF PROPERTY[1]

1. GENERAL OVERVIEW

The importance of property rights as one of the key human rights is defined in the Universal Declaration of Human Rights according to which everyone has the right to own property single-handed as well as in association with others. No one shall be arbitrarily deprived of his property.

Unfortunately, Ukraine is very far from being able to guarantee the people's right to own, use and dispose of their property. Moreover, very often the state itself becomes the primary violator of property rights.

The system of registration of estate in real property in Ukraine is one of the main problems in guaranteeing this right. The reforms in this area are carried out very slowly, and today the main elements of this reform are not introduced. In 2012, there still was no single body responsible for registration of rights to real property, the only clear procedure and a single register, which would be open to the public. All this contributes to the fact that up to now the ownership of real estate remains illusory.

There are still problems with the investors' possessory rights who have invested their money in construction, and heirs, who are trying to inherit unfinished project. Due to deficiencies in the legislation, thousands of people cannot protect their right to property.

Also, there is the issue of limitation for appeals of invalid transactions, which reduces guarantees of the inviolability of property rights.

Despite the adoption of the Law of Ukraine "On state guarantees of implementing adjudication" the situation with the implementation of the decisions of national courts protecting property remains extremely difficult. Despite the fact that this law comes into force early next year, many of its provisions cannot be applied, because there are no necessary amendments to other legislation covering this area. And in addition, up to now there have been no guarantees that the necessary funding for the measures specified by this law.

It should be noted that there still exist problems with the use of the Law of Ukraine "On the alienation of land and other immovable property located thereon, which are private property, for public use or for reasons of public necessity." It is especially true in the context of sufficiently vague definitions of social need and social necessity in this law, which leads to many conflicts during the land buyout.

There also remains an unresolved situation with the moratorium on sale of agricultural land. In 2012, they once again failed to adopt necessary legislation for the formation of a land market and, consequently, the moratorium would not be lifted.

[1] Prepared by M. Shcherbatiuk, UHHRU.

It is important to note that in 2012 there still existed significant problems concerning the violation of property rights by the agencies of internal affairs. In particular, the actions of the State Traffic Militia when seizing vehicles and then bringing them to paid parking place or illegally collecting money for the provision of compulsory service.

So, despite certain attempts by the state to improve legislation intended to guarantee property rights, these actions of state bodies are still insufficient to make a real difference in this area.

2. GUARANTEES OF OWNERSHIP

2.1. The state registration of estate in real property

The weak position of Ukraine in the ranking of Doing Business-2012 may be an evidence of problems in national registration of estate in real property. For the ease of registering the rights of property, our state occupies the infamous 166th place out of 183 countries (annual one point decline). According to experts, in order to register property in Ukraine one needs to spend 117 days, which is almost four times higher than in Europe and Central Asia (33 days)[2].

Until now there have been serious problems with the system of registration of rights to real estate in Ukraine. The reform of this system has been underway for years without any positive results.

In particular, there remains the problem of multiple agencies involved in this system. The registration of estate in real property may be performed by BTI, State Agency of Land Resources, which issues papers on land property, and the Ministry of Justice of Ukraine, which keeps records of ownership of real estate and mortgages.

It would seem that the government decided to centralize registration at one agency. In 2010, the Verkhovna Rada passed the new redaction of the Law of Ukraine "On state registration of estate in real property and its encumbrances," and in 2011, the Cabinet adopted the decree "On the approval of state registration of estate in real property and encumbrances and procedure of issuing records from State register of real rights on real estate." The essence of these documents consisted in creation of the new agency under the Ministry of Justice of Ukraine, which acquires the exclusive right of registration of estate in real property — Ukrderzhreyestr."

The "Ukrderzhreyestr" had to really get going on January 1, 2012. But something went wrong and a new date for inauguration was set for January 1, 2013. Nominally the administrivia were to blame (personnel issues and logistics). However, in practice not all top groups of interest were accounted for.

In fact, the top administration failed to dot the i's and cross the t's in the field of property rights registration which resulted in the draft by deputies Yuri Miroshnychenko and A. Pinchuk No. 10140 "On amendments to some legislative acts of Ukraine on state registration of

[2] The BTI reform: the further you get the harder the going, Vasyl Pasochnyk "Dzerkalo tyzhnia. Ukraine", No. 21, June 8, 2012 http://dt.ua/ECONOMICS/reforma_bti_scho_dali_v_lis-103489.html

rights to real property." Its leitmotif: "elimination of duplication of functions among different departmental affiliations" concerning the registration of land rights. In actual fact, the lawmakers are eager to review the Law of Ukraine "On State Registration of Rights to Real Estate and Its Encumbrances", which specified the centralization of these functions only in the Ministry of Justice of Ukraine.

However, despite these legislative initiatives, certain steps concerning the issue of a single government agency responsible for state registration of rights to real property were made. Thus, according to the Decree of the President of Ukraine No. 965/2011 of 5 October 2011, which becomes operative as of January 1, 2013, the authority of Derzhzemahenstvo concerning the state registration of ownership and other property rights to land expired. That is the Derzhzemagentstvo will keep the function of state registration of the land as the property in the state land cadastre. In its turn, the "Ukrderzhreyestr" will carry out the state registration of ownership and other real rights to land.

Also adopted was the Law of Ukraine "On amendments to some legislative acts of Ukraine concerning the improvement and simplification of state registration of land and property rights to real estate," which is intended to improve and simplify the procedure of state registration of land and property rights to real estate. Specifically, the law provides for the possibility of application for state registration of rights in paper and in electronic form by introducing the mechanism of civil cadastral registrar, giving notaries powers of the state registrar of rights to real property arising from notarial acts, namely, implementation of notaries public ownership registration, the registration of which was conducted in accordance with the legislation in force at the time of their occurrence, in a notary act of real estate, suspended project, and state registration of rights in the commission of notarial acts with such objects. They have also defined the procedure of interaction of the agencies of state registration with the state executive service[3].

But at the same time there remain risks of violations of the right to peaceful ownership during inventory-of-property reform. Therefore two bills "On technical inventory of real property" are registered at Verkhovna Rada today. The first one No. 10286 was authored by deputies Yu. Voropayev, S. Osyka, and O. Chernomorov; the second one No. 10286-1 by officials headed by M. Azarov[4]. These documents are fundamentally different. If legislators option captures the current status quo and fixes for BTI utilities exclusive right to provide services of technical inventory, the variant proposed by the Cabinet offers to admit to this market private institutions — legal entities and natural persons-entrepreneurs.

"The adoption of regulatory act will do away with monopoly utilities in the area of technical inventory of real estate creating a transparent and competitive environment in this field," assured the government in the explanatory note to the bill.

Logically, the market competition is expected to improve service and bring down consumer prices, or isn't it? The BTI community draws prospects in dark colors: service prices will go up, system will plunge into chaos leading to mass destruction of buildings.

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[3] Anatoly Leshchenko: the seller and buyer of real estate deals only with a notary http://www.epravda.com.ua/publications/2012/06/11/326006/

[4] Cabinet proposes to abolish the monopoly of the BTI as of 2013; Dzerkalo Tyzhnia, April 11, 2012 http://news.dt.ua/ECONOMICS/kabmin_proponue_skasuvati_monopoliyu_bti_z_2013_roku-100317.html

"If parliamentary bill provides for approval of tariffs on technical inventory by local governments, the private enterprises under their charters will set the sky high prices. In addition, it means the decline in the quality of service due to lack of qualified personnel and training programs in their preparation," predicts chairman of the BTI Association Ukrtekhinventaryzatsiya Leonid Chernenko. He believes the technical inventory prices will go up because proprietors will receive their licenses at the Minregionbud. "It builds risks of corruption into it. Perhaps the highest bidder will get a license. And then this money will be ripped off the customers of technical inventory," predicts Leonid Chernenko[5].

According to Dmitry Pavlenko, director of the analytical center "Legal protection of BTI", by January 1, 2013 the BTI shall place all inventory records at the archive of "Ukrderzhreyestr" because, they say, private entities will work blindly: without the bases of comparison they will not be able to determine whether there were any changes in real estate. And this is a room for abuse. "More than 60% of real estate has a big percentage of wear. When buildings start crumbling on the heads of passers-by, it will be too late to justify oneself," notes D. Pavlenko. "Taking away property accounting functions from local government shows the willingness of persons concerned to nullify data on real estate legitimizing existing unlicensed construction."

The proponents of preservation of current positions of BTI do not exclude the possibility of resulting mounting fraud, including the loss of their property by owners. "The records digitalization may take years of time and millions of hryvnias. It will also pave the way for crooks who specialize in property misappropriation. It is envisaged that there may be ten-to-twenty such structures in each city. Will it be easier or harder to falsify documents? And the fact that today there are some cases and the BTI is not always to blame wouldn't justify massive future rigging. The number of attacks against apartments of elderly population will increase significantly," expects L. Chernenko[6].

It should be noted that on June 5, 2012 the government bill was turned down by the Verkhovna Rada of Ukraine; instead they adopted the deputies' bill No. 10286 "On the technical inventory of real property." However, in July the President of Ukraine vetoed this bill and it is now with appropriate amendments will be reconsidered by the Verkhovna Rada of Ukraine. And one of the main observations of the President was that the law retains existing utilities' monopoly — Bureau of Technical Inventory — to carry out technical inventory of real property, while the law and the establishment of requirements for different business entities carrying out one type of activity and impossibility of such activities by individual entrepreneurs are actually creating benefits for the Bureau of Technical Inventory and public utility companies in doing this type of business.

Therefore, this important aspect of state registration of estate in real property remains problematic, including the fact that at the state level there is no consensus on reformation of the system of technical inventory of property.

There also remains the problem of closedness of registers carrying information on property rights in Ukraine. Unlike many developed countries, where in order to reduce corrup-

[5] The BTI reform: the further you get the harder the going, Vasyl Pasochnyk "Dzerkalo tyzhnia. Ukraine", No. 21, June 8, 2012 http://dt.ua/ECONOMICS/reforma_bti_scho_dali_v_lis-103489.html

[6] The BTI reform: the further you get the harder the going, Vasyl Pasochnyk "Dzerkalo tyzhnia. Ukraine", No. 21, June 8, 2012 http://dt.ua/ECONOMICS/reforma_bti_scho_dali_v_lis-103489.html

tion, this register is open, in Ukraine such initiatives are unlikely to ever find support, because in this case the general public may learn who owns the former state-owned villas and elegant estates in Koncha Zaspa and Pushcha Vodica.

2.2. Legal regulation of joint ownership of condominiums

The inefficient state registration of ownership of real property, as well as difficulties in exercising their rights of joint ownership of condominiums are major problems in the realization of the right to peaceful ownership. In 2012, the problem riveted special attention in connection with the efforts of the State to regulate legislation in this sector.

Thus, on March 15 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendments to some legislative acts of Ukraine about associations of co-owners of condominium," which was intended to improve conditions for the management of their buildings by association of co-owners of condominiums (ACOC).

However, the law contains a number of problems that could hamper the implementation of their rights of ownership of condominiums. In particular, in the opinion of the Heads of associations of co-owners of condominiums of Ukraine, the law not only would have made it impossible to create new associations of co-owners of condominiums in Ukraine but would threaten the existing ACOCs with serious contradictions and inconsistencies in the text of the document[7].

The President of Ukraine Viktor Yanukovych agreed with this and in April 2012 vetoed the law "On amendments to some legislative acts on associations of co-owners of condominiums.

In particular, it was noted that under the law the said mechanisms would not contribute to solving urgent problems of setting-up and operation of associations of co-owners of condominiums, were conceptually flawed and unbalanced, failed to fully protect the rights of homeowners, namely:

- Provisions of the bill create the risk of violations of constitutional property rights, may lead to uncontrolled alienation of land plots belonging to associations of co-owners of condominiums, on which there are residential buildings;
- The law does not take into account the rules of civil and land legislation and narrows compared to the Civil Code of Ukraine and current Law of Ukraine "On associations of co-owners of condominiums" the scope of rights of owners of common property in the apartment building, which is a violation of Article 22 of the Constitution of Ukraine;
- The law does not provide solutions to existing problems of creating condominiums in newly built homes, improving procedures of the organization of such associations in the homes of the old building, does not resolve the issue of further activity condominiums established prior to enactment other than that provided by this Act, the principles of which may adversely affect the rights of holders of residential and non-residential premises in these apartment buildings;
- A number of provisions of the law can lead to an artificial increase in fees for utilities, which adversely affects the interests of the co-owners of condominium;

[7] Head of the associations of co-owners of condominiums asked Yanukovych to veto the crazy bill http://blogs.pravda.com.ua/authors/montyan/4f7312d2275c2/

— The bill contains internal inconsistencies, contradictions, gaps in legal regulation that will allow unfair officials to use the rules taking their choice in all matters concerning creation and activities of co-owners of condominiums, and also create risks of unequal application of the law.

The Verkhovna Rada of Ukraine agreed with these remarks, and on May 25, 2012, removed this law from consideration[8].

2.3. Guarantees of protection of property rights on corporate rights

Despite the fact that the Law of Ukraine "On Joint Stock Companies" greatly improved the safeguards for the protection of property rights to corporate rights, this year again, there emerged new significant corporate conflicts in this area.

The practical application of the Law of Ukraine "On Joint Stock Companies" also detected many gaps in this legal act. In particular, the controversial law contains the requirement of binding definition in the company's charter of consequences of default of shares redemption, because according to the provisions of the Civil Code of Ukraine the legal consequences of non-execution of one's commitments may be imposed by law or contract only.

There are also flaws in the Law on company's legal actions which may stir up outside interest. Thus, if the supervisory board majority consists of linked-in persons, the supervisory board loses the right to make decisions about committing transactions by the stock company with these officials and their affiliates. The decision to commit such a deed can only be adopted by the stockholders' meeting.

These requirements of the Law of Ukraine "On Joint Stock Companies" may jeopardize the efficient operation of the corporation, because it is logical that closely associated shareholders controlling the stock company set up this corporate management and are interested in the effective direction of their property.

In order to prevent violations of the rights of shareholders and to ensure transparent and efficient operation of the company the way out of this situation may consist in embodiment in the law of prior approval by the stockholders' meeting in the course of year of certain legal acts which arouse interest.

The analysis of judicial practice resulting from corporate disputes adjudication after the adoption of the Law of Ukraine "On Joint Stock Companies" suggests that the situation is improving, although there are still many problematic aspects.

One of the controversial issues that have arisen since the adoption of the Law of Ukraine "On Joint Stock Companies" is the question of the grounds for the invalidation of a significant transaction committed in violation of the established procedure.

Although the procedure for executing major deeds thoroughly was settled by the Law of Ukraine "On Joint Stock Companies", no provision of this Act or any other regulation specifies the legal consequences of the breach, including the possibility of recognition of such transaction invalid. In this case, the courts by analogy apply the provisions of Article 72 of the Law of Ukraine "On Joint Stock Companies", which provides for the recognition of the deed arousing interest invalid due to violation of the procedures for its conclusion. However, this raises

[8] The Rada turned down a bill on ACOCs http://news.finance.ua/ua/ ~ / 1/0/all/2012/05/25/280050

the question of how to recognize the significant deed void, as contrary to the law (part 1 of Article 203 of the Civil Code of Ukraine), or as one transacted by a person with special disability (part 2 of Article 203 of the Civil Code of Ukraine) . Up to now there is no clear position on this issue, including judges[9].

It is important to note that the weakness of protection of property rights show the presence of extensive corporate conflicts in Ukraine in 2012, in particular, as an example, there is the corporate dispute of "Soyuz-Viktan" and the situation with Nemiroff[10].

The case of "Soyuz-Viktan" is about the collection by Rodovidbank of assets of this bankrupt horilka company. The bank seeks a court order to recover from the company's property assets the total of UAH400mln. The Court has already seized one of the company's flagship brands — Medoff™, now owned by British entrepreneur Nile Smith. The latter has called the actions of Rodovid Bank a raid and declared his readiness to assert his rights in international courts[11].

The situation with the Nemiroff™ shows the weakness of property rights protection in Ukraine. In this case the problem of majority shareholders emerged in connection with long-term barriers hampering company's management, which had been set up by minority shareholders. But only in September 2012, the Supreme Administrative Court of Ukraine made a decision confirming the illegality of actions of Nemiroff's minority shareholders aimed at blocking corporate decisions of majority shareholders. Also on August 28, 2012 the District Court of Nicosia (Cyprus) lifted the prohibition imposed earlier on the basis of a claim of Nemiroff's minority shareholders, which did not allow the Cypriot holding companies to make decisions and carry out actions aimed at changing the management of Ukrainian wholly owned subsidiaries of the group[12].

2.4. Failure to comply with the decisions of judges protecting property

In March 2012, the European Court of Human Rights has once again underlined the seriousness of the problem of non-enforcement of national court decisions in Ukraine. It added that even after the pilot judgment on Yuri Ivanov's case had been implemented, the Ukrainian government took no measures to eliminate this problem. It was also noted that in 2,500 similar cases are currently pending before the court. In addition, the European Court has decided to resume consideration of similar applications, which has become an important assessment of the state concerning the problem of non-implementation of judicial decisions.

It was only after the European Court of Human Rights had revived the case of Ukraine for non-implementation of judicial decisions by the state the steps were taken to solve this problem. For example, the draft law "On state guarantees for the implementation of court decisions" was finalized and articles limiting socio-economic rights were dropped. It should be noted that this was done not to lend an ear to the comments of civil society, but because

[9] Court rulings: activated direction http://jurist.ua/?article/112

[10] Foreign investors are deterred from Ukraine due to the impunity of unscrupulous borrowers http://news.dt.ua/ECONOMICS/inozemnih_investoriv_vidlyakue_vid_ukrayini_bezkarnist_nesumlinnih_pozichalnikiv3-100556.html

[11] Rodovid Bank shoots the works http://www.kommersant.ua/doc/1996894

[12] Once more the majority shareholders of Nemiroff control "Alco Invest" http://community.hiblogger.net/vse_o_reiderstv/1356829.html

these legal provisions were already contained in other laws. And on June 5, 2012 this law was passed by the Verkhovna Rada of Ukraine and signed by the President of Ukraine.

The positive aspect of the law is the implementation of procedures intended for recourse recovering of compensation for sums paid by the budget program. So, in accordance with Part 1 of Article 6 of the Law, the paid judgment shall be deemed the budget losses now. The reimbursement of the aggrieved party is carried out now by a respective official or employee, through whose fault the payment of compensation took place. However, given that the relevant law provides the charge-off of funds from the accounts of individuals and the payment of compensation at the expense of fiscal program there remains an uncertain issue of deciding in which case the right of recourse will be exercised: in the case of recovery from the accounts of individual subjects or in the case of implementation of compensation. There are other questions about the practical aspects of the application of the law on subrogation reimbursement, particularly relating to the formulation of the objective offense of an officer or official[13].

Although the provisions of law on the introduction of a mechanism to respond to prolonged non-enforcement of legal judgment determine the possibility of compensation for non-enforcement of domestic judgment, the amount of the compensation is set at the lowest level possible (3% per annum). And it may significantly impede the effective use of this mechanism. Even if you compare the size of liability with inflation (in the state budget for 2012 the Ministry of Finance of Ukraine's inflation forecast amounted to 7.9%.), it becomes clear that this responsibility will not be a stimulating factor for the timely execution of court decisions. Moreover, the state will rather benefit from paying this minimum amount of compensation than execute the judgment.

In addition, the state failed to tackle the basic problem of non-enforcement of decisions protecting the property, namely financing the implementation of the decisions of national courts where the state is the party to be charged, as well as future decisions of domestic courts concerning current trials. The matter covers thousands of decisions that due to their non-enforcement will sooner or later be filed with the European Court of Human Rights, which will entail an unconditional obligation of the state to pay these costs. Although the law defines the possibility of monetary compensation at the expense of the special budget program, in fact, it only means only an obligatory budgeting of such expenses. But, unfortunately, the law fails to determine the amount of public financing.

Another significant problem of the said law is that it contains a provision under which the Cabinet of Ministers of Ukraine determines the list of documents required for submission to the Treasury to get adjudicated funds. This will adversely affect the rights of beneficiaries. According to the former First Deputy Minister of Labor and Social Policy Pavlo Rozenko, it is unclear what will the list of documents be and whether the person entitled to a benefit will have to prove that s/he will be "fit for space mission." He also expressed the opinion that this law helps "the state to legalize the right not to carry out the decisions of the courts"[14].

[13] State guarantees of adjudication implementation http://soter.Kyiv.ua/publications/state_guarantees_execution_court_decisions

[14] Former Deputy Minister of Labor and Social Policy Paul Rozenko http://economics.unian.net/ukr/detail/130130

But the most important is the fact that becoming operative as of January 1, 2013 the law will actually be effective only since 2014. The final provisions of the law stipulate that the Cabinet of Ministers of Ukraine shall prepare and submit to the Verkhovna Rada of Ukraine before January 1, 2014 suggestions for amending the laws of Ukraine resulting from this very law. This means that by adopting this law, the government postponed the solution of this systemic problem at least for a year, since its provisions cannot operate without corresponding amendments to other laws and regulations. At the same time it may take the Verkhovna Rada more than one year to considerer the bill be considered by; therefore it is equally unknown when the mechanisms implied in law will become operative. So, it is still unclear when and how the decision of national courts where the defendant is the state will be carried out.

One evidence that the government is not ready for the enactment of the Law "On state guarantees of execution of judgments" is contained in the answer of the State Treasury Service of Ukraine to the request of the NGO "War veterans — Chornobyl invalids" which states that for September 2012 this public body has no explanations concerning the application of the above law.

A number of pressing systemic issues relates to the fulfillment of court decisions by the enforcement service. In particular, the improvement of the State Executive Service requires taking the following measures: the need for stimulating the executors to ensure effective enforcement of court decisions, expand guarantees of executors' independence from external interference, ensure security of state agents in the performance of official duties; develop effective mechanisms for enforcement of judgments both of national courts, particularly in cases against the state, and the decisions of the European Court of Human Rights; improve recruitment to the State Executive Service[15].

2.5. Problems in the implementation of guarantees of property rights in the field of construction

There is an important issue of ensuring property rights of investors in frozen construction projects. To date, only in Kyiv for various reasons they have stopped the construction of more than 50 residential buildings with a total area of more than 1 million square meters (about 12 000 apartments)[16].

According to chairman of KSCA Olexandr Popov, often the complicated legislative mechanism impedes the restart of construction works. "The law prohibits local governments to intervene in the investment activities of business entities. In this behalf we officially appealed to the government to change the law so that we can help people to solve their problems."

As an example, we can show the problems faced by investors of the residential building on the 4-A Simya Sosninykh St. in Kyiv. In particular, in this case 650 families who have invested in the housing project on Simya Sosninykh St. and 250 families, the investors of the same on the Staronavodnytska St. cannot get their apartments because for five years now the issue of the completion of the house remains unsolved. It should be noted that this condominium was to be commissioned in 2006.

[15] 5th Session of WG: "Implementation of court judgments as a component of the right to a fair trial" http://www.niss.gov.ua/articles/781/

[16] The construction of 50 apartment houses has been frozen in the capital http://news.liga.net/ua/news/capital/733262-u_stolits_zamorozheno_bud_vnitstvo_50_zhitlovikh_budink_v.htm#

The complexity of the situation shows that even the Kyiv City State Administration on 12.09.2012 was forced to give the order, which made the Main Department of Housing of the Kyiv City Rada (Kyiv City State Administration) and utility enterprise for construction of apartment houses "Zhytloinvestbud- UCB" to take steps to complete the construction of residential buildings on 4-A Simya Sosninykh St. in Svyatoshynsky District of Kyiv and pipelines and networks to these buildings.

According to executive director of the All-Ukrainian Public Organization "Relief Association for the Aggrieved Investors" Tetiana Yakovenko, the most common problems faced by investors who have invested in housing construction include fraud and poor performance by developers, clonal real estate developers, raiding, preferential treatment by developers of construction projects, developer's rebranding intended to hide a bad reputation, bankruptcy of developers, dual income on mortgages, misuse of funds, as well as a "family business" developers.

"Practice shows that the developer's bankruptcy is a disaster for people who committed their capital. If the developer is adjudged to be a bankrupt and is excluded from the Unified State Register, the investors at worst remain with their suspended project, with which nothing can be done. They have some property rights, but in order to restart the construction works, they need land rights, building permits, and some facilities," explained T. Yakovenko[17].

In order to protect the right of ownership of such people, their investments should be legally protected and the person's proprietary right to the object under construction should be recognized, so that in the event of adverse developments the owners of these property rights could retain the ownership of the unfinished project, and go on interacting with the state in addressing these issues.

Another problem consists in embarrassing registration of property descent rights to objects which failed to be commissioned in their lifetime or arrange ownership to their dwellings built or other buildings. The judicial practice is also a real hassle in this case. So, today the notaries still refuse to issue a certificate of inheritance for such projects as an inherited real estate due to the absence of relevant legal documents establishing rights. In some cases, the courts of original jurisdiction for various reasons (absence of conflict and, consequently, lack of potential appeal decision, wish to help people get out of "stalemate" situation etc.) satisfy these claims of heirs and thus recognize the right of ownership to this property as an inherited immovable property. There is a large majority of such cases. But if the defendant or any interested person not involved in the case, whose rights relate to the decision, lodge a complaint, and the decision of the court of original jurisdiction will be canceled.

In other cases, courts refuse to satisfy such claims. Often these common law actions are not taken notice of and then they are returned without any consideration (decision YEDRSR: No. 15793542 from 24.05.2011, No. 16780204 from 22.02.2011)[18].

This situation needs to be addressed urgently because the property rights of these people remain unprotected.

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[17] Who's the owner of the unfinished apartment? http://www.unian.ua/news/481682-hto-gospodar-nedobudovanoji-kvartiri.html

[18] Serhiy Kostiukovych Ownership of inherited property: current problems and solutions http://www.yurincom.com/ua/consultation/faq/?id=8830

2.6. Invalid legal actions: limitation for appeals

In late 2011, the rules on a longer statute of limitations applicable to the claim for annulment of the legal action (E. g., contract) committed under the influence of violence or deception (was 5 years old), requirements of the application of insignificant effects of the legal action (E. g., contract which is void by operation of law, limitation of action of 10 years) were repealed.

The important thing is that the guarantees canceled as larger period of limitation were established by the legislator in connection with the need to protect against violations of constitutional rights and freedoms of man and citizen, destruction and damage of property or misappropriation of it, i. e. an offense which contains elements of a crime. It is advisable to pay attention to the fact that these norms was not about worthless legal action itself, but the consequences of the vile deed, which may be hidden for a long time, in connection with which the legislator specified the ten-year deadline for filing a claim with the above-mentioned reasons. Now there are no such additional guarantees for the owner.

Moreover, they overturned the norm, whereby limitation of action did not cover the request of the owner or other person to recognize illegal legal act of public authority, authority of the Autonomous Republic of Crimea or local governments, which violated his property rights or other proprietary right.

It should be noted that this legal provision was a means of regulations of part 5 Article 13 of the Constitution of Ukraine, which obliged the state to ensure the protection of all subjects of property rights. Having withdrawn the above provision the state made weaker the safeguards for private owner.

According to lawyers, including Leonid Tarasenko (Law Holding): "If earlier the owner could go to court to protect her/his violated rights of property at any time (if it was a quashal of the illegal decision of the government or local authority which violated ownership), now will have three years only (general limitation of action) for this." "Besides, once again there is this burdensome adoption of legislative resolution at the Verkhovna Rada of Ukraine, which on the quiet amends procedural law and without any justification (in a memorandum to the bill nothing is said about it) cancels several provisions relating to limitation. Obviously, this provision is aimed at legitimizing those long-standing decisions of the authorities that violate the right of ownership. The ownership becomes less strict, as one of the guarantees of its inviolability is revoked."

3. ACTIVITIES OF AUTHORITIES LIMITING OWNERSHIP

3.1. Purchase of private land allotments for public use

In 2012, the government attempted to improve the legal regulation of purchase of private land allotments for public use which had been mentioned in the reports of human rights organizations[19]. In particular, as of September 5, 2012 the Law of Ukraine "On amendments

[19] Report on human rights in Ukraine 2011 http://helsinki.org.ua/index.php?id=1332325240

to some legislative acts of Ukraine regarding termination of land use at them for public use" came into force.

The Parliament has enacted that the size of the redemption price of the land is set by the decision of executive authority or local self-government that exercises its redemption, or set by the court.

In addition, the Parliament decided that the land plots for public purposes might be redeemed not only at the expense of state and local budgets, but also of funding entities that had initiated the alienation of such land for public use. The deputies determined that the amount of the redemption price of land should be fixed by the decision of the executive authority or local self-government that exercises its redemption, or set by the court.

Also, since the entry of this law into force, the lease agreement on the state or municipal land property may be terminated in the event of a decision to allocate the area for public use. Until then, the rule covered only the repurchase for public use of privately owned land.

However, these changes did not resolve one of the major concerns of the Law of Ukraine "On alienation of land and other immovable property located thereon, which are in private ownership for public use or social necessity" because of fuzzy definitions of social needs and social necessity, and actual duplication of listed objects.

In particular, Volodymyr Lapa, CEO of Ukrainian Agribusiness Club (UABC) remarks that there is a risk that local authorities will act in the interests of the initiator of land parcel redemption. Therefore it will interfere with interests of farming entities. "For example, a farmer took on lease the parcel of land for 10 years, bought under recognizance of agricultural production machinery, fertilizers, and farm premises. And then there emerges a third person who initiates the alienation of leased land for public use. The list of motives for social needs is rather long: from recreation centers and sites of environmental significance to the creation of a zoo," said the head of UABC[20].

The severity of the problem is corroborated by the presence of conflict in the application of legislation on redemption of land plots for reasons of social necessity.

So, there is an ongoing conflict with the redemption of land in the Lviv Oblast for social necessities for road interchange under construction for Euro 2012.

> *The battle of land at the newly built stadium has been going on for about two years now. For construction of the girdle road near the new stadium the Lviv Oblast State Administration decided to redeem land parcels. They bought land at the price of UAH625 per one hundred square meters, which is 40 times less than the market price. The local press maintains that this was a "voluntary-compulsory" process. In this way all in all they redeemed 15 hectares of land.*
>
> *Several residents waged a battle of ownership: nobody offered them a swap and the price was too low. Then the Oblast State Administration decided to carry out judicial alienation giving reasons of public necessity. Later, under pressure from the community the local authorities went back on their word and withdrew the petition. Lviv prepared for Euro-2012 without the conflict girdle road.*
>
> *However, this wasn't an end of it. As it turned out, in 2012, almost six months after the court had dismissed the action on compulsory alienation of land the "Directorate for preparation for Euro-2012" appealed to the Supreme Administrative Court for action dismissal. As a result, the case was sent for retrial to the Lviv Administrative Court of Appeal. As Andriy Petryshyn, the*

[20] The new norm of "land" law unlocks land purchase for public use — expert http://www.ukrinform.ua/ukr/news/nova_norma_zemelnogo_zakonu_rozblokue__vikup_dilyanki_dlya_suspilnih_potreb___ekspert_1742414

landowners' representative, noted that the landowners hadn't a slightest idea about hearing in Kyiv. "This is a kind of nonsense," outraged Petryshyn. "Nobody has built any roads, there is no public need, the championship is coming to an end, but they still want to expropriate land." He does not rule out that the land as a "tasty morsel" near the stadium riveted interest of certain influential individuals, and not the state."[21]

On May 15, 2012 even the Lviv Oblast Rada appealed to the Cabinet of Ministers of Ukraine and the Prosecutor General of Ukraine for protection of landowners near the football stadium on the Stryiska-Kiltseva Doroha St. in Lviv from encroachment on private property[22].

There is one more example of problems in this area concerning the redemption for public use of land parcels in Brovary intended to improve traffic safety, which triggered conflict between the owners of land and Brovary City Rada. Thus, the owners of these land plots were not informed of this need and the decision to redeem these land plots, and in this case there is a very real possibility of improvement in traffic safety on the stretch of road without redemption of land plots. This situation also clearly shows that the vagueness of legal definitions leads to different interpretations of these concepts in practice[23].

The questions about the adequacy of redemption of land plots was brought up in the case of redemption of the downtown building on 1, Shevchenko St., which the city rada plans to bring down in order to lay down streetcar tracks[24].

3.2. Moratorium on sale of agricultural land

As has been stated many times in the reports of human rights organizations, the establishment of a fully functioning market for agricultural land (one of the most important elements of which is freedom of trade) is one of the topical problems of land reform in Ukraine, which affects the interests of society and its future. This problem also applies the protection of the right to peaceful enjoyment of possessions of many people living in our country.

Today in Ukraine there is a moratorium on the sale of agricultural land, which expires on January 1, 2013.

In early October 2012, the deputies defeated the proposal to extend the moratorium for another year, and also approved in first reading the bill on the land market and the law on creating the State Land Bank. The latter was signed by the President of Ukraine. The observers interpreted this as preparation for the implementation of full-scale privatization of agricultural land in Ukraine[25].

It should be noted that the problems of establishing a full-fledged land market are rather complicated and complex. On the one hand, the landowners who are not involved in tillage and do not live in the village, find themselves in a position where they have property but

[21] Land conflicts: "Under Cover of Euro-2012" http://myland.org.ua/index.php?id=3454&lang=uk

[22] The conflict of the road junction near the "Arena Lviv" continues in court http://zik.ua/ua/news/2012/05/16/348699

[23] For whose "public use" do they forcibly alienate private land of Brovary residents? http://pravo-znaty.org.ua/dlya-chiyih-suspilnih-potreb-u-brovarchan-primusovo-vidchuzhuyut-privatni-zemelni-dilyanki/

[24] Lviv authorities want to bring down the building for interchange without offering decent replacement http://zik.ua/ua/photoreport/2012/09/19/369214

[25] The Council came close to extending the moratorium on land sales http://www.bbc.co.uk/ukrainian/business/2012/10/121016_agricultural_lands_ban_ko.shtml

are unable to dispose of it. "This new form of serfdom or linking people to the property, which they are not able to use," said Deputy Chairman of the State Agency of Land Resources of Ukraine Artem Kadomsky during a roundtable[26]. Also, many experts emphasized that in Ukraine the shadow privatization of land was underway.

Meanwhile, on the other hand, the legislation in this area remains underdeveloped. Adopted in first reading, the Law of Ukraine "On Land Market" does not bear scrutiny, and there is no mutual opinion on many key areas of the law. Furthermore, due to shortcomings in the legislation there exist very significant risks concerning the land buy-up by oligarchs and foreigners, land speculation, and corruption.

The case studies conducted by Razumkov Center clearly demonstrated that the majority of citizens of Ukraine now are against the land market. They also showed that an average Ukrainian is not well-informed about the land issues[27].

It is important to say that the Verkhovna Rada of Ukraine decided to revert to the moratorium in the bill No. 11315 "Amendments to the Land Code of Ukraine", which was submitted for consideration after voting for the moratorium had not taken place. This bill prolongs the moratorium on sale of agricultural land up to the enactment of the law on agricultural land, and there is a high probability that it will be adopted and signed by the end of 2012.

3.3. Introducing temporary administrations in banks

In April 2012, the National Bank of Ukraine, after a long break, resumed the practice of introducing temporary administrations. The Kharkiv Bank "Basis" co-owned by persecuted oppositionist and former governor of Kharkiv Oblast Arsen Avakov became the first to fall under the steerage of such administration. There was no pleasing news this past May as well. Thus, on May 17, the Fund of Deposit Guarantee for Physical Entities (FDGPE) announced the relegation to a category of temporary members (except for the bank "Basis") two more financial institutions: Interbank (Kyiv) and UNICOMBANK (Donetsk).

Many depositors were unable to recover their deposits, although the term of the contract had expired. Typically, the bank clerks explained that the temporary administrator imposed a moratorium on the return of deposits, i. e. introduced respite of payments on debt obligations of the bank to depositors.

It should be noted that the imposition by the interim administration of a moratorium on granting creditors' (depositors') demands does not entitle the bank to stop returning deposits.

The Law of Ukraine "On the System of Deposit Guarantee for Physical Entities" specifies that restrictions on bank performance of its duties shall not apply to deposit payments under expired contracts and bank account agreements. These payments are made to the amount of compensation guaranteed by the Fund.

It should be noted that until now certain troubled banks do not allow deposited money after the period of the deposit had expired, others establishing draw-out limits, transfer the deposit to the card account explaining the lack of funds, and, in fact, misappropriate property.

[26] Dmitry Kalynchuk: Ukrainians are accustomed to a moratorium on land sales http://tyzhden.ua/Economics/48336

[27] Dmitry Kalynchuk: Ukrainians are accustomed to a moratorium on land sales http://tyzhden.ua/Economics/48336

3.4. Violation of property rights by militia

The militia's schemes of illegal dispossession of citizens and setting complications in the use of property are very diverse and depend on position and rank. The units of State Traffic Militia are in the van in this field, which is a result of legalized permission to ensure their activities by non-state funding sources, inconsistencies of the legal framework governing the activities of this body.

The topicality of this problem highlights the lack of effective mechanisms for public control of violations of property rights by the militia.

According to the study conducted by the Association of monitors of human rights abuse by law enforcers the most common violations of property rights in the militia include as follows:

— Acquisition of property of citizens by militiamen through theft, robbery, plunder, extortion, murder and other general crimes.
— Illegal seizure of transport vehicles (hereinafter — TV) and taking them to special paid areas or parking and illegal collection of payments for the provision of coercive services related to the transportation and storage of unlawfully seized TVs.
— Illegal collection of payments for the provision of coercive services related to the transportation and storage of seized transport vehicles.
— Forcing citizens to re-register property and funds to militiamen as a result of fraud.
— Illegal exaction of money during administrative and licensing procedures (technical inspection, registration of TV, taking state exams for a driving license, endorsement of architectural projects, giving permits to use transport vehicles, issuing blank certificates-accounts, TV acceptance certificates, license plates, etc.).
— Illegal collection of money under the pretext of providing information services (presence or absence of arrears for fines, etc.).
— Illegal fines for regulations that are not enforceable.
— Creating conditions for depriving citizens of property in the form of soliciting and receiving bribes.
— Cooking up materials of wrong acts with subsequent occupancy of property of citizens through fraud or extortion of bribes.
— Cooking up materials due to which the citizens are dispossessed of property in the form of unlawful fines.
— The unlawful seizure of property by the implementation of criminal and administrative procedures and failure to return property seized as a result of misappropriation or loss.
— The unlawful organization of private businesses on militia's premises aimed at the ungrounded seizure of citizens' property (business units of the enterprises of MIA of Ukraine "Inform Resources" and "Document Resources", etc.).
— Forcing physical and legal entities to make contributions to the accounts of charities *promoting militia* and other *militia charities*[28] [29].

[28] The issue of property rights abuse by militia in Ukraine: status and challenges. The Association of monitors of human rights in law enforcement area. http://umdpl.info/files/docs/1330624392.pdf

[29] Monitoring of ownership in the activities of traffic inspection of MIA of Ukraine: analysis of violations and finding ways to tackle the problem. The Association of monitors of human rights in law enforcement area. http://umdpl.info/files/docs/1330624468.pdf

4. RECOMMENDATIONS

1. Create a transparent and efficient system of state registration of rights to real estate.

2. Improve the protection of rights of land owners, create mechanisms for combating forced seizure of land, and adopt legislation regulating the fundamental aspects of the functioning of the land market.

3. Take measures to address the non-satisfying judgments of national courts protecting property, including better judicial control over the execution of court decisions, as well as lift the moratorium on the forced sale of state enterprises. Moreover, to ensure prompt implementation of the Law "On state guarantee of satisfying judgments" and allocation of sufficient financial resources for its implementation.

4. Promote transparency and simplification of procedures for construction of housing, and to ensure the rights of investors in this area.

5. Ensure effective legal regulation of the rights of association of owners of condominiums.

6. Improve the legal regulation of joint stock companies in order to prevent the illegal seizure of enterprises and organizations in Ukraine, as well as the emergence of corporate conflicts.

7. Regulate appropriation of land and housing on the grounds of social necessity in strict accordance with the Constitution of Ukraine and international obligations of Ukraine.

8. Ensure an effective mechanism to protect the rights of owners of "problem" banks managed by temporary administration.

9. Take measures to prevent violations of property rights by the militia.

XVII. ECONOMIC AND SOCIAL RIGHTS[1]

1. GENERAL OVERVIEW

Having undertaken the commitment of becoming a socially oriented state, Ukraine should have aimed its efforts at enhancing its citizens' well-being, paying special attention to the most vulnerable categories of society.

In reality, however, Ukraine is very far from implementing relevant changes while systemic problems, registered in this area, testify to the decrease in protection of social and economic rights.

Lamentably, the life quality standards are also going down, while indicators of relative and structural poverty are increasing. Same is true of the cost of living as a bottom line indicator for the whole social security system. Currently it does not reflect the basic needs of an individual, as it does not take into account the whole set of necessary expenditures and is based only on the minimum set of food products and obsolete list of consumers' goods and services.

Besides, the indicator of guaranteed basic subsistence is still used in defining certain types of social protection. It means that in fact the state is incapable of ensuring even basic living standards. Although this indicator is, in fact, much higher for certain categories of population, it is still widely used.

The guarantees of such essential elements of right to adequate living standards as food and water quality and safety also remain questionable. The experts state that the efforts of the government to change this critical situation for the better proved inefficient.

The right to adequate housing was in the center of the state's attention in 2012. Authorities were proactive in implementing an ambitious program of affordable housing. The reality, however, proved that the program was majorly based on populism, and not on the real desire to achieve progress in this area. As a result the program failed to provide affordable housing and for the umpteenth time showed lack of understanding of the problem by the state authorities.

Trying to exercise their right to privatization of their rooms in dormitories Ukrainians faced serious difficulties due to the imperfections and faults in respective legislation and lack of uniform judicial practice.

The reforms in the social protection areas were limited to the governmental measures aimed at "manual adjustment" of the amounts of social benefits according to budget capacity and to traditional increases in pensions and subsidies by several dozens of hryvnas preceding the elections. No systematic activity in reforming social protection system has been carried out; moreover, aforementioned "manual adjustment" of the amounts of social benefits only reduced the guarantees of social and economic rights.

[1] Prepared by M. Shcherbatyuk, UHUHR.

The adoption of Strategy for reforming the system of social services, which became a guideline document in the area, is, certainly, most welcome. The implementation of the previous Reform Concept, however, does not leave much ground to optimism.

The results of pensions' reform also look bleak. The reform unfortunately did not lead to the increase in pensions, and such an increase can be hardly expected in the future. It also failed in making pension system fairer and in decreasing the Pension Fund deficit. On the whole, none of the goals declared by the reform have been achieved.

2. RIGHT TO THE ADEQUATE LIVING STANDARDS

2.1. Guarantees of the right to the adequate living standards

Right to the adequate living standards is one of the fundamental social and economic human rights. It was proclaimed as far back as 1946 in the Article 25 of the Japanese constitution. In 1948 this norm was reflected in the international law, i. e. in part 1 of the Article 25 of the General Declaration of Human Rights. — "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services." Similar provisions, though, without mentioning living standards, can be found in the Article 11of the American Declaration of Rights and Duties adopted in April 1948.

Further on this right was secured in part 1 of the Article 11 of the International Covenant on economic, social and cultural rights ("everyone's right to standard of living adequate for himself and his family, including food, clothing and housing" and in the p.1 of the Article 4 of the European Social Charter "the right of workers to reimbursement which ensures standard of living adequate for them and their families". The guarantees of this right are specifically stressed in the Article 27 of the Convention of the Child's Rights and the Article 28 of the Convention on the Rights of the Disabled.

It is noteworthy that the quality of life in Ukraine in 2012 has further deteriorated. According to the data obtained by Legatum institute in the research on defining Legatum Prosperity Index Ukraine now ranks 71st among 142 countries[2]. In this rating it is preceded not only by its neighbors Russia and Belarus, but also by Columbia, Botswana and Paraguay.[3]

Significantly, 8 sub-ratings were factored in into this rating: level of economic development, individual freedoms, quality of life and some others. The economic development level was evaluated in the focus of Ukraine's adherence to the requirements of adequate living standards, and, in particular, affordable nutrition and housing. Statistical data used in the rating were obtained from the UN Organization, World Bank, OECD, WTO, Gallup, Economist Intelligence Unit, IDC, Pyramid Research et al.

Alongside with quality of life, efficiency in overcoming poverty is another important factor in assessing the guarantees of appropriate living standards. Keeping absolute, rela-

[2] Legatum Prosperity Index 2012 http://www.prosperity.com/Ranking.aspx

[3] Improvements Ukrainian way: In the prosperity rating Ukraine went down to 71st position. http://ubr.ua/finances/macroeconomics-ukraine/pokrashennia-po-ukrainski-v-reitinge-procvetaniia-ukraina-opustilas-na-71-u-poziciu-174899

tive and structural poverty at low levels is among the most significant criteria in this assessment.

Expert Lyudmila Cheren'ko (Institute of Demographics and Social Studies under NASU) evaluated Ukrainian progress against one of the criteria of population poverty, i. e. absolute poverty, pointing out the aggravation of situation with regards to other criteria, i. e. relative and structural poverty, as well.

Thus, the absolute poverty index for the country in 2011 showed decrease as compared to the year 2010 — from 16,8 to 14,6 based on the criterion of cost of living; by international index — 5 USD per day per capita based on purchasing capacity — from 2,5% to 1,7%.[4]

At the same time the expert drew attention to the key criterion of the poverty level, i. e. relative poverty. It shows how the revenues of society are distributed and what the underlying principle of distribution in various walks of society is. If this index is stable, then the results of economic growth regardless of its characteristics are proportionately distributed among various population groups — the indigent will not get the same share of profits as the rich. In fact the gap between them and the well-off people will grow even deeper with economic growth.

According to L. Cheren'ko positive changes in relative poverty index were registered in 2010; then in Ukraine this index amounted to 24.1. The year 2011 marked end of crisis, but the indicators show that there is no return to the situation before crisis. The index which amounted to 24.1% in 2010, in 2011became 24,3%.

The structural criterion reflects the ratio between the budget of Ukrainian citizens and consumption. Under this indicator people who spend more than 60% of their budget on food, are considered poor. "While in 2010 41.2% Ukrainians fell under this category, in 2011this figure increased to 41.5%. The growth seems insignificant, but the positive tendency, alas, ended. Today we are several years back, at the level of 2006" — concluded the expert.

These objective signs of the deterioration of situation for certain population groups are confirmed by self-identification of the Ukrainian citizens: 60% called themselves poor in 2011, while in 2010 this figure constituted 57.8%.

Evaluating the actions of power bodies in overcoming poverty, L. Cheren'ko argued that some efforts to improve the situation have been made, but reforms, especially related to social domain, were incomplete. "The principle of revenue distribution needs serious revisions" — claimed the expert.[5]

Senior UNDP program manager Kateryna Rybalchenko confirmed that the share of population, whose consumption indexes are lower than actual cost of living, continues to grow, despite the fact that the country meets international index (i. e. 5 USD per capita per day), and the number of poor among children and employed population is decreasing. In 2011, this index amounted to 25.8 as opposed to 23.5 in 2010. This problem still waits to be solved.[6]

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[4] In Ukraine the poverty levels in the cities and in the villages are converging — expert http://economics.unian.net/ukr/detail/143731

[5] B In Ukraine the poverty levels in the cities and in the villages are converging — expert http://economics.unian.net/ukr/detail/143731

[6] In Ukraine the poverty levels in the cities and in the villages are converging — expert експерт http://economics.unian.net/ukr/detail/143731

The poverty levels in the urban and rural areas show a tendency to convergence due to the deterioration of life quality indicators in the cities.

"For the fourth year in a row we have been observing convergence of poverty levels in the city and in the village. On the one hand, it is a positive sign, as before 2008 these indexes tended to diverge, creating larger gap between the city and the village. Over the recent years this gap has been diminishing, but not due to the improvements in the villages. On the contrary, the urban life indicators deteriorate, especially, in small towns" — stated L. Cheren'ko.

Meanwhile, the number of those who can be described as "middle class" (i. e. the group of population which can afford not only food, but also clothing, housing and leisure) decreased in Ukraine between the years 2008 and 2012. The gap between the poor and the rich has been growing over the same time period.

The Director of Kyiv International Institute of Sociology V. Paniotto confirms that the percentage of population considered "middle class" currently decreased from 10% in 2008 to the figure twice smaller.

However, the sociologist argues that people have tendency to conceal their revenues. For example, as far back as 1995 the sociologists found out that the Ukrainians' expenditures in that year were twice higher than their incomes. On the other hand, the researchers analyzing the living standards of the Ukrainians have virtually no access to the information concerning the richest members of the society, although the property gap is evident in Ukraine.[7]

The ratio between total incomes of 10% of the richest and the poorest groups of population constitutes 5.3, including urban population — 5.4 and rural population — 4.6. The reality, however, is much worse, in the expert opinion: the actual ratio between total incomes of 10% of the richest and the poorest groups of population is assessed by them at 40 times.[8]

Increase in poverty and inequality of the society is caused, first of all, by irregular distribution of the revenues from the economic growth, deterioration of living conditions for families with many children, young adults, retirees, and low salary levels.

In 2012 the low indicator of cost of living in Ukraine still presented a serious problem, as this most important factor of social security system fails to reflect the real situation in Ukraine. Although the bureaucrats more than once stressed the need to solve this problem it remains unsolved causing a lot of frustration for Ukrainian citizens.

The established value for the cost of living ignores the whole range of necessary payments: for education, pre-school establishments for children, medical services etc. The cost of living index used today is a chimera, a curtain behind which the state tries to hide its incapability of fulfilling its promises in the social area.

Trade unions, and, specifically, the Federation of the Trade Unions of Ukraine, also point out the low index of the cost of living, adopted in the budget.[9]

Under calculations carried out by the National Forum of the Trade Unions, a healthy Ukrainian citizen needs 3980 UAH to satisfy his bare minimum needs. If a person is sick

[7] Over the last 20 years poverty level increased substantially in Ukraine http://www.epravda.com.ua/news/2012/08/24/332727/

[8] On poverty in Ukraine // Trade unions bulletin http://www.psv.org.ua/arts/Spetcvipusk/view-1246.html

[9] Cost of living as of September 2012 http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=9551%3A-----2012-&catid=71%3A2009-08-01-15-59-55&Itemid=37&lang=uk

or has additional cultural needs (E. g. buying a book, attending theater or movies), he/she needs a minimum of 5000 UAH. Meanwhile the cost of living is calculated at the mean value of 1044 UAH, with average wages for the major part of Ukraine 2719 UAH, and, for some oblast's (E. g. Ternopyl) — 1904 UAH.[10]

Besides, the mechanism for calculating this index seems rather dubious. Under the Law of Ukraine "On Cost of Living" the "consumer basket" including food products, merchandise and services used to define the cost of living is revised at least once in 5 years.

Procedure for scientific and public evaluation of the "consumer basket" including food products, merchandise and services is defined by the Resolution of the Cabinet of Ministers of Ukraine No. 1767 of 24.09.1999. Therefore, the 'basket' has not been revised for 13 years.

According to the official information provided by the Ministry of the Social Policy of Ukraine the relevant steps aimed at updating the list of food products, merchandise and services were taken as far back as 2005. The Draft Resolution of the government "On the approval of the list of food products, merchandise and services for the main social and demographic groups of population" devised on the basis of the expert board evaluation was considered by the Cabinet of Ministers of Ukraine in February, 2006, but no final decision was made.

The Ministry also claims that in 2011 a new Draft Resolution taking into account the results of the recent scientific and public evaluation of the list of food products, merchandise and services, carried out in December 2010, has been devised and submitted to the Cabinet of Ministers of Ukraine, according to the information received from the Ministry of Economic Development as the main agent. Currently the Cabinet of Ministers of Ukraine decided to postpone the decision with regards to the Draft Resolution of the Cabinet of Ministers of Ukraine "On approving the list of food products, merchandise and services for the main social and demographic groups of population" (Protocol of the meeting of the Cabinet of Ministers of Ukraine No. 41 of 31.05.2012).[11]

This attitude clearly shows that the issue is not among the priorities of current government.

It is noteworthy that the shameful practice of using the index of the "guaranteed level of cost of living" in allotting certain types of social benefits continued into 2012. It means that the government either cannot or won't meet even minimum requirements stipulated by the budget. Despite Presidential declaration that this indicator should be banned and numerous trade unions' and NGOs' appeals[12] the index is still there.

On the other hand, starting July 1, 2012 persons who lost their capacity for work and the disabled are entitled to "guaranteed level" at 100% of the cost of living index. However, for the children this index is still a far cry from 100%, amounting presently to 75%. For the working population this index has never been revised and constitutes lamentable 21% of the cost of living.

[10] Ukrainian citizens needs at least 4 thousand to survive — estimates http://www.radiosvoboda.org/content/article/24708850.html

[11] Re: the list of food products, merchandise and services http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=A30932EBE4C3A22529FB701284D81791?art_id=144736&cat_id=138242

[12] On poverty in Ukraine // Trade unions bulletin http://www.psv.org.ua/arts/Spetcvipusk/view-1246.html

2.2. Quality and safety of food products

Ukraine ranks only 44th in the international rating with respect to affordability and quality of the food products. The rating was conducted by The Economist Intelligence Unit for 105 countries. As far as availability and safety of the food goes, Ukraine precedes Thailand, Peru and Tajikistan.[13]

As a basis for rating the experts chose the "food confidence" index. It means that people at any time have physical, social and economical access to sufficient and nutritive food, which meets their dietary needs for active and healthy life. The main components of the "food confidence" index include: affordability (family's expenditures for food as compared to other expenses; availability (adequate offer, average daily delivery), quality and safety of the products (in compliance with food standards).

The quality of food products deserves a special discussion. As a member of NGO "Zdorovya" [Health] M. Lysenko points out, the soviet standards, which are not that bad, are still in force in Ukraine. The Ukrainian producers, however, find the cracks in the law, abusing the imperfections of the control system.[14]

Quoting the data collected by State Food Inspection she claims that about 97% of sausage products in Ukraine contain synthetic materials and dyes, to give just one example. Same is true of other products as well.

The manufacturers do not spare chemical components in their produce. Noteworthy, the majority of additives in Ukraine are used by the EU countries also. The difference is that there the law obliges the manufacturer to enumerate all the chemical elements added to the product, with E-codes, on the packing. The Ukrainian producers are smarter: if a product contains, for example, sodium glutamine (E-621), they would write "taste enhancer" on the pack.

Besides, the manufacturers often (almost in 80% of cases, according to information from the State Food Inspection) cheat the buyers — they replace ingredients for the cheaper ones, which sometimes are health hazardous.

The State Committee for Food Standards claims that the majority of fakes occur in meat and dairy products. Vegetable oils are often detected in milk, butter, hard cheeses and cream, although they are not supposed to be there; soy, dyes and preservatives are often found in sausage and frankfurters.

The experts from the State Committee for Food Standards in total monitored 200 tons of dairy products in 2011. As a result 35% of the products were rejected and removed from the sales. The situation with meat is no better. Out of 400 tons of meat and meat products tested last year, 36% were rejected. Main causes for rejection: more moisture, than allowed by specifications, in the sausage; presence of starch, microbiological faults.[15]

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[13] Ukraine ranked 44th in the world in food quality rating http://news.dt.ua/SOCIETY/ukrayina_stala_44-yu_u_sviti_za_yakistyu_produktiv_harchuvannya-105275.html

[14] Ukrainians cannot afford healthy high quality foods http://ridna.ua/2012/07/ukrajintsyam-ne-po-kysheni-korysni-ta-yakisni-produkty/

[15] Ukrainians cannot afford healthy high quality foods http://ridna.ua/2012/07/ukrajintsyam-ne-po-kysheni-korysni-ta-yakisni-produkty/

Good quality and safety of the food products brought to Ukraine also remain a problem. Thus Director General of the "Lvivstandartmetrologia" company O. Kosyn'sky state, that 90% of the food products imported to Ukraine, are not fit for consumption.[16]

The aforementioned problems related to ensuring good quality and safety of the food products are obvious; therefore, in 2012 the issues of legal support in ensuring high quality and safety of the food products were actively discussed both in governmental structures and in the legislative body of Ukraine. In May 2012 a respective governmental draft law was submitted to the Supreme Rada. It was, however, criticized by the people's deputies and till today has not been considered by the Supreme Rada even in the first hearing. In the same year 2012 the government submitted to the parliament draft law No. 11008 "On novel food products".

In experts' opinion, this draft law contains serious faults. In particular, the Article 2 of the draft law puts biologically active supplements (which are to be registered in compliance with the Law of Ukraine "On safety and quality of the food products") and novel food products containing and manufactured from GMO ingredients outside the scope of the said law. The state registration for this latter group of food products is not required either by the Law of Ukraine "On safety and quality of the food products" or any other normative and regulatory acts. In other words the products containing GMO are exempt from state registration and can be freely disseminated in the Ukrainian territory. The draft law also envisages that after novel food product is duly registered it can be produced and circulated by any market operator.

The President of the expertise center "Test" V. Bezrukiy opines that it is totally unclear why this law is needed. "Taking into consideration the fact that the Law of Ukraine "On safety and quality of the food products" contains a paragraph referring to "new products", the introduction of a new law specifically addressing these products seems unnecessary. Appearance of new products is a constant phenomenon, technologies are permanently changing, new ingredients and their combinations come into being. The Ministry of Health issues hygienic conclusions on each ingredient. These conclusions specifically address the safety factors. So the introduction of the new law and registry are totally inexplicable, if all the new products are currently under control. The Ministry of Health presently does not even have the list of nutritive additives (E-indexed), and they want to introduce a new products registry! Doubtless it will hinder appearance of new products in the markets without no effect as to the food safety" — says the expert.[17]

Therefore, we come to the conclusion that despite some efforts to amend the law with regards to good quality and safety of the food products, at present no real changes have been made and the situation remains complicated enough.

2.3. Ensuring good water quality

Under the official data Ukrainians today are drinking the worst water in Europe.[18] Almost 80% of the drinking water comes from the surface sources. The majority of river basins, under classification of water bodies by level of pollution, can be described as polluted

[16] Expert: 90% of the imported foods in Ukraine are unfit http://bei-food.blogspot.com/2012/10/90.html

[17] The law on "novel food products" can poison the manufacturers' life http://economics.unian.net/ukr/detail/135573

[18] Life quality starts with water quality http://www.day.kiev.ua/231675

or much polluted. This information comes, in particular, from press-service of the Ministry of regional development, construction and housing and communal economy.[19]

In spite of serious recession in industrial operation within recent years, and consequent decrease in the discharge of waste water into the river basins, the tendency of environmental deterioration of these reservoirs still persists. The water reservoirs of I i II categories do not meet the standards either in sanitary-chemical or in sanitary-microbiological indicators.

"High levels of technogenic loads on water reservoirs and the use of deficient technologies in the treatment of water aimed at changing its quality and making natural water potable only in situations when source water comes from the surface sources of the I class do not allow for providing high quality and safe water for the population. As of today, practically all water sources can be approximately classified as III class while the conditions and equipment of the treatment facilities have not practically changed" — informed acting Minister of the regional development, construction and housing and communal economy of Ukraine O. Alipov.[20]

According to his statement, Dnipropetrovsk, Luhansk, Donetsk and Zaporizhzhya oblast's have most serious deviations from sanitary-chemical norms in the water composition, while Donetsk, Luhansk and Kirovohrad oblast' have most deviations from bacteriological norms.

Meanwhile the implementation of the national program of improving water quality is beyond any criticism. The collegiate of the Counting Chamber, having studied the results of the audit concerning the efficiency of the budget funds allocated for the national program of Ukraine "Drinking water for Ukraine" for the years 2006–2020, concluded that the program goal has not been achieved. The operation of the Ministry of regional development, construction and housing and communal economy of Ukraine in 2011 and that of the Ministry of housing and communal services of Ukraine in 2010 with regards to the issues of high quality drinking water supply for Ukrainian population was unsatisfactory. No significant changes in this area have been introduced; budget funds are used inefficiently and contrary to the legislation in force.

The efficiency of program's first stage, i. e. till the year 2011, amounted only to 16.9%. Some program provisions contradicted the law requirements towards national programs. Specifically, the document did not enumerate other sources of funding, apart from the state budget. It meant that the whole burden of the program implementation fell on the rank-and-file taxpayers' shoulders.

In October 2011 a new version of program, amending the majority of faults, was prepared. It also changed the areas of its implementation. However, it still lacked any provisions concerning the necessary measures for the development and renovation of the water-pipes networks, despite the fact that their technical condition is critical, the losses of water amount to one third, and in some areas, 40–50% of the total input. Instead, almost half of budget funds are to be allocated for the construction of local facilities for additional water treatment. The document provides no answer to the question, who and how will pay for the

[19] Drinking water quality seriously deteriorated in Ukraine http://news.dt.ua/SOCIETY/v_ukrayini_znachno_pogirshilasya_yakist_pitnoyi_vodi-105505.html

[20] Drinking water quality seriously deteriorated in Ukraine http://news.dt.ua/SOCIETY/v_ukrayini_znachno_pogirshilasya_yakist_pitnoyi_vodi-105505.html

operation and maintenance of these facilities and how it will affect the final cost of the water for the consumers.

The Counting Chamber also points out that planning and coverage of state budget costs for program implementation is inadequate and insufficient. Under the most constrained budget funding some portion of money (almost 113 million UAH) allocated by the Ministry of finance and National Treasury in the late 2011. As a result, in some regions the work never started, while in the others its scope was very limited.[21]

The budget costs allocated in 2011 and first half of 2012 for the reconstruction and development of the centralized sanitation systems were used by the Ministry of regional development, construction and housing and communal economy of Ukraine unsystematically and in violation of legal requirements. This conclusion was made by the auditors sent from the Counting Chamber.

Meanwhile the technical condition of the systems and treatment facilities is constantly aggravating, making the problem of quality drinking water supply even more acute. Over the said time period the Ministry of regional development, construction and housing and communal economy of Ukraine failed to ensure adequate funding or efficient implementation of the tasks formulated by the national programs in the sanitation area, i. e. National program for reforming and developing housing and communal economy for the years 2009–2014 and National program "Drinking water in Ukraine" for the years 2006–2020.

The Counting Chamber audit established that the ministry's operation was not aimed at specific end result, while planning and funding of the state budget for the implementation of the said programs remained unsatisfactory. The measures are not structured, without any visible progress for a number of budget terms.[22]

The Ministry of regional development, construction and housing and communal economy of Ukraine recognizes the funding problems, stating that currently the program is financed only at 20% against the total sum stipulated by the respective law.[23]

2.4. Realization of the adequate housing right

The realization of right to housing, declared by the Article 47 of the Constitution is not guaranteed in real life.

The level of citizens' incomes, at the present housing and renting costs does not allow them, in overwhelming majority, to satisfy housing needs for their families. The public can only pay such amounts of money through mortgages, which are offered by the banks at current average rate of 15.3% per year with the down payment at the amount of 30–40% of the whole property value. State social standards (cost of living, first of all) do not include public expenses for rent or purchase of housing at its market value.[24]

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[21] Good quality drinking water is becoming a luxury http://www.ac-rada.gov.ua/control/main/uk/publish/article/16739143;jsessionid=5809CA209431D52610036E948F5419E7

[22] From treatment facilities towards high quality water: the programs are in place, but the funding is not http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740309

[23] National program "Drinking water for Ukraine" is funded at 20% of actual need http://minregion.gov.ua/ index.php?option=com_k2&view=item&id=2560:derzhprograma-pitna-voda-ukra%D1%97ni-f%D1%96nansu%D1%94tsyana-20-v%D1%96dsotk%D1%96v-v%D1%96d-potrebi&Itemid=222&lang=uk

[24] Affordable housing: utopia or near future? http://www.psv.org.ua/arts/suspilstvo/view-1136.html

The housing prices in Ukraine are inordinately high, while the country is facing its permanent shortage. This was the conclusion of the UN European economic commission. In particular, if these prices are compared against the actual average wages, Kyiv is catching up with such megapolises as New York and London, leaving Moscow behind, conclude the UN commissioners.[25]

As of today, each Ukrainian on the average disposes of only 23 square meters of housing — almost twice less than in Europe and thrice less than in the US. Now about 1.3 million are waiting in line to get an apartment, while the real number of people in need of housing improvement is many times bigger.

As far as the housing quality goes, there are obvious problems of wear-and-tear of the houses, especially in the so-called "hotel-type" houses and "khruschchovka"s, which were built half a century ago. The rate of housing renovations now amounts to one hundred years (average life term of a house is 50 years).

About 90% of the total housing fund was built 20 or more years ago. Naturally, the condition of water and heat supply systems, sanitation is close to breakdown point. If the housing and communal problems are not dealt with immediately in the nearest future they can become social problems of first magnitude, alongside with poverty in the country.[26]

In order to address this problem the program "Affordable housing" was introduced by the head of the state among other social initiatives in March 2012. In its declaratory part it stipulated possibility of obtaining low interest-rate mortgages for the term of 10–15 years. Potential participants in the program were promised that the absolute value of interest rate will not exceed 3% of total cost per year.

However, right after that many experts expressed their doubts as to the feasibility of the program goals, describing it as populist. The readiness to allocate budget money for mortgaging caused mistrust. By certain estimates, annual direct expenses of the state then could have reached 20–25 billion UAH. "This money can be found within the budget — argued one of the analysts. — It will mean, however, the downsizing of all the other programs."[27]

The government, however, immediately offered its own vision of the mechanisms for the low-interest mortgages in the country. Right after the President's social declarations, the Cabinet of Ministers clarified that no one intended to grant mortgages from the state budget. State money should go to cover the difference between the declared social rate and the real rate offered by the commercial banks. This approach, however, was met by the analysts, with a measure of skepticism as well. Taking into account that in March average effective rate for mortgages in Ukraine reached 24.35% a year, the bankers were far from assuming that the government would be prepared to pay over 20% of the mortgage rate.

The skeptics were right, to a certain extent. After April amendments to the budget of 2012 and approval of Resolution I No. 343 of the Cabinet of Ministers of Ukraine which legitimized the "Order of reducing the cost of mortgage credits…", the conditions under which the borrowers could access the inexpensive mortgage plan, and the governmental money resource for the program implementation in the current year were clarified. The Cabinet of

[25] The prices of housing are inordinately high in Ukraine — UN http://news.dt.ua/ECONOMICS/v_ukrayini_nepomirno_visoki_tsini_na_zhitlo,_-_oon-100043.html

[26] Two or three percent look like fantasy http://dt.ua/ECONOMICS/koli_dva-tri_vidsotki__fantastika-98870.html

[27] Affordable housing is unaffordable http://news.finance.ua/ua/~/2/0/all/2012/07/04/282808

Ministers of Ukraine first quoted 2 billion UAH for target use, but the state budget granted twice smaller amount for the "Affordable housing" program in 2012. And the government-approved Order established the highest mortgage rate reimbursed by the state at 16% and shortened the payment cycle from 15 to 10 years.[28]

Evidently, the state undertook the commitment to recompense no more than 13% of the bank mortgage. The borrower, moreover, had to meet certain criteria as to his/her annual income — not less than 55 thousand UAH per year for the family consisting of three persons. Only those who in fact needed "improvement of living conditions" were qualified to participate.

The implementation of "Affordable housing" program started in mid-May, less than two weeks after the Cabinet of Ministers of Ukraine Resolution No. 343 was made public. First "cheap mortgage" was granted to a Sumy city resident. The event was broadly covered by media. Looked like such a dynamic launching makes the fulfillment of the task (i. e. providing housing for over 30–35 thousand families by the end of 2012) set up by the Cabinet of Ministers of Ukraine quite feasible. But the initiative started to slow down as early as May 23, 2012; the need for "adjustment of the mechanisms" of low-interest mortgages arose.

The program turned out unrealistic in terms of payments made by the families waiting in line for better housing, while unfinished construction as the only cheap housing available proved unattractive for potential clients. That is why in late May the aforementioned Order was amended by widening the circle of potential beneficiaries. It was allowed to grant mortgages not only for unfinished construction, but also for the apartments, which were built in the former years, but not sold.

These amendments, however, did not help. By mid-June only 40 low interest mortgage contracts have been signed; by the end of the month only 30 million UAH out of 72 billion UAH, stipulated by the state budget in 2012, were allocated for the program. At the same time the number of residents willing to take part in "affordable housing" program amounted to 7.5 thousand, while developers could offer by that time 4.7 thousand apartments.

Although the Ministry does not advertise this fact, too rigid requirements towards borrowers in the earlier versions of the document significantly decreased the acceptance of a program by its key agents, i. e. banks. Out of all the numerous banking institutions of the country "Oshschadbank" was, probably, the only bank which dealt with lowing the mortgage interests on the regular basis within the framework of the state program. And even this bank operated on enforced-voluntary basis. The seven commercial banks which announced their engagement in "affordable housing" participated in the program only partially, within limited number of mortgages in a couple of Ukrainian oblast's.

All these developments led to "Gerzhinvestproekt" management rejection of the idea to build "presidential neighborhoods" in fall of 2012. "Affordable housing" will be reduced from the national program into a usual social assistance program.[29] In general, authorities' operation in the implementation of this program can hardly be qualified as efficient.

[28] Affordable housing is unaffordable http://news.finance.ua/ua/~/2/0/all/2012/07/04/282808

[29] President's national project "Affordable housing" is closed down http://news.dt.ua/ECONOMICS/prezidents-kiy_natsproekt_dostupne_zhitlo_zakrivayut-110485.html

The members of vulnerable categories of society and young adults, in particular, also find it difficult to exercise their right to the adequate housing. The "Affordable housing" program and the program of low interest mortgages enabling the purchase of apartments by the citizens in need of housing improvements, are not popular among the young.

According to V. Hryshchenko, the head of all-Ukrainian "Ukrmologzhytlo" Association, the young people describe these programs as "Housing affordable to the rich", as in the first case, immediate payment constitutes 70% of the housing cost, and in the second — 25% of the housing cost. Both amounts are unaffordable for the young.

V. Hryshchenko stated that according to the association study, a young person considers him/herself successful if he/she earns 4 thousand UAH per month. None of the Ukrainian regions can boast of an average salary at this rate. "Therefore, all these programs are not fit for the young" — he summed up.[30]

The Prime Minister of Ukraine M. Azarov also points out, that in order to meet the requirement for affordable housing mortgage the young people in Ukraine should earn 5–6 thousand UAH a month.

Despite the fact that the term of the state program completion was moved from the initial 2012 to 2017 it will hardly be instrumental in resolving, even partially, the housing problem the young adults of Ukraine are facing.

The housing for the orphans and children deprived of parental care also remains a crucial issue. As of today, 38 thousand children in this category need housing.

According to the information provided by the Prosecutor General Office of Ukraine, the local authorities and self-governments fail to introduce a network of public housing for the orphans and children deprived of parental care. Only 19 institutions of this type operate in Ukraine. Definitely is not enough to satisfy the needs of the children, but even these institutions are sometimes used contrary to their goals.[31]

Thus, the director of Khmelnitsky oblast' social hostel accepts the minors to this institution without proper instructions from the oblast' social centers for the children, families and young adults. As a result the students of the local agrarian lyceum reside in the dormitory, although they are entitled to rooms in the lyceum dormitory free of charge. In the meantime the young people leaving orphanages are obliged to rent apartments.[32]

In 2012 the problem of Ukrainian citizens residing in the hostels and dormitories and not owing their homes also remained crucial. After the Law "On ensuring the realization of property rights by the residents of the dormitories/hostels" was passed, Ukrainians residing in the hostels and dormitories and not owing their homes, acquired the right to privatize residential and auxiliary premises in the said dormitories. However, due to the poor control on behalf of the state authorities, courts and prosecutor's offices, inertia of local self-governments the provisions of the law are not adhered to. Significant number of appeals and com-

[30] "Affordable housing" and mortgages are not popular with the young — expert http://economics.unian.net/ukr/detail/137607

[31] Prosecutors defend children's housing and property rights http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=100945

[32] Prosecutors defend children's housing and property rights http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=100945

plaints submitted to the Supreme Rada Committee by the dormitories' residents, point out the violation of their right to housing.

I.Lysov, the first deputy head of the Supreme Rada Committee, stated that the implementation of the first law passed three years ago and enabling dormitories' residents' privatization of their apartments showed inefficient operation of power in the process. About 500 thousand of Ukrainians could not exercise their right in privatizing their housing.[33]

I.Lysov stressed that today eviction of dormitories' residents without providing them with the alternative housing as required by the law is a most acute problem. Same applies to local self-governments' procrastination in the privatization processes. The owners of the dormitories which became the part of the statutory capital of the associations, set up in the process of privatization, refuse to transfer them to public ownership.

3. RIGHT TO SOCIAL PROTECTION

3.1. System of social protection and social security

The current system of public benefits needs reforming, as the procedure for their receiving is not systematized and does not allow performing the functions of the adequate social protection. The reforms consisting in cancellation of benefits for those who do not qualify and switch to target assistance and social services were defined by the President of Ukraine V. Yanukovich as a priority area for modernizing social security system. However, harmonizing the system with material status of various categories of population should go hand in hand with salaries' increase, needed to recompense the lost benefits.

The conclusions concerning insufficient targeted assistance were confirmed by the experts from the Institute of Demographics and Social Studies under NASU. In particular, the Head of the department of living standards studies L. Cheren'ko stated that "the major share of benefits in Ukraine is received by well-off people… 10% of the poorest Ukrainians receive only 2% of the benefits, while 10% of the richest people get 22%. The whole population was divided into ten groups — from the poorest to the richest. This curve is growing depending on the group, i. e. the richer the person is the more social benefits he/she gets from the system". L. Cheren'ko also stated that "practically each Ukrainian family (household) has at least one beneficiary of social services, receiving at least one benefit. If we add all the governmental social programs, assistance for the children, housing subsidies etc., we'll see that over half of Ukrainian population participates in the governmental social programs"…[34]

At the same time, despite the proclaimed goals the actual state measures aimed at reforming of the social protection system were inefficient. Thus, analyzing the Project for the improvement of public social assistance system results, the Counting Chamber of Ukraine pointed out that in 2011 its implementation gained momentum, but the Ministry of Social Policy managed to meet only one third of all the efficiency indexes for the project.

[33] Compliance with the laws of Ukraine with respect to the housing rights of dormitories' residents was discussed at the hearing of the Committee on construction, urban development, utility economy and regional policy http://portal.rada.gov.ua/rada/control/uk/publish/article/news_left?art_id=306376&cat_id=37486

[34] Main benefits in Ukraine are enjoyed by the rich http://news.dt.ua/ECONOMICS/bilshist_pilg_v_ukrayini_otrimuyut_naybagatshi_gromadyani-107536.html

Improvement of the social assistance system should enhance its targeted nature and simplify the procedure for receiving the benefits, specifically, by means of "one stop" method. The Ministry of Social Policy lingered with the project implementation — instead of 2.5 months stipulated by the international agreement it took six.

The Counting Chamber also revealed that "one stop" techniques cannot be implemented in 100% in any region of the country. Indeed, the time needed to process an application for social assistance shortened, but the indicator of the number of processed application is lower than anticipated, due to the lack of the necessary modernization and insufficient administrative capacity both at the regional and at the local levels. The situation has not changed since last year. No analysis and monitoring of the subsidies' payments have been conducted.

The lack of control over the project implementation at the central and local levels was also noted.[35]

The fact is the government decided not to introduce any innovations and chose the successful technique tested at the time of the pension reform, i. e. benefits reforms had to be implemented exclusively at the citizens' cost.

Two years of rhetoric with respect to the need of the radical changes in the benefits distribution resulted in only two draft laws submitted to the Supreme Rada by the government. The first one (No. 9127) stipulated "manual adjustment" of the benefits for the "children of war", "persons affected by the Chernobyl NPP disaster", "Afghanistan war veterans", the disabled and war veterans and other categories. This initiative provided authorities with the tool enabling them to decide at its own discretion when benefits are to be withheld, when they should be significantly increased to demonstrate the efficiency of power operation and its reforms to the public (e. g. on the eve of elections). By the way, the goal, phrased in this law, was achieved by the state in 2012 through respective amendments to the law on budget, so that today the amount of various types of public assistance is defined by the Cabinet of Ministers of Ukraine on the basis of the available budget resources.

The second draft law (No. 9516) proposed restricting the right of single mothers to public assistance.

Thus the public received an unambiguous message from the government: the culprits of all the defects of social policy in Ukraine are "children of war" "persons affected by the Chernobyl NPP disaster", "Afghanistan was veterans", the disabled and war veterans, and, obviously, single mothers.

An idea made public by vice Prime Minister S. Tyhypko concerning the "indirect evaluation of public revenues" was another novelty in the Ukrainian reforms. The "income monitoring" program was supposed to cover 2.5–3 million families — beneficiaries of social subsidies and benefits for families with low income, single mothers, recipients of child care assistance till the child reaches the age of 3.[36]

The response of public, experts and mass media to this "reform initiative" was easy to predict. The consequences of incompetent and unwise bureaucratic actions is evident — the reform of the public assistance system, so badly needed for this country, was once again postponed indefinitely.

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[35] Slow modernization of the social protection system http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740165

[36] Stagnation era http://economics.lb.ua/state/2012/02/21/137919_epoha_zastoyu.html

Only on August 8, 2012 The Concept for reforming social services system (adopted in 2007) was replaced by the approved Strategy for reforming the system for delivering social services. In fact this new document recognized the fiasco of the former Concept and rephrased the same tasks, which were put forward in 2007 and never fulfilled. However, assessing the earlier measures, taken by the state in order to achieve the goals, one becomes most doubtful as to its capacity and good will needed for the implementation of the new Strategy.

One of the Strategy provisions stipulating annual revision of the amount of funding needed for its implementation in compliance with available budget can only increase these doubts.[37] Most probably, the tasks of the Strategy will never be fulfilled due to the lack of financial resources.

3.2. Housing and communal benefits and subsidies as a component of social protection

The Ukrainian system of allotting funds from the state to the local budgets to cover benefits and subsidies granted in housing and communal services, is faulty and cannot ensure fairness and justice in the process. This was the conclusion of the Counting Chamber Collegiate on the results of the respective audit.

In the course of the audit this body pointed out that a number of regulatory norms stipulate benefits for certain categories of population, apart from the vulnerable categories of society, and, therefore, lead to their irregular distribution. Persons entitled to benefits and members of their families enjoy these benefits without any restrictions or considerations with regards to their incomes. Such principles of rendering social services are contrary to the principles of fair and unbiased distribution of the social wealth among the citizens.

The reimbursement mechanism, under which the utility companies are recompensed for non-received payments for their services to the welfare recipients, causes debts and inefficient subvention costs management. The use of clearing agreements (pay-offs) between the budget and utility companies as well as restrictions in monetary subventions are among the major causes of this situation. As a result, the debt of local budgets to the utility companies providing services out of subvention costs increased by 535.8 million UAH. Meanwhile the subvention appropriations are 448.2 million UAH short of the planned indicators. It affects negatively the results of economic operation and quality of the services provided to the population.

So far no feasibility study on specific norms of energy use as a basis for calculating the amount of subsidies has been conducted. In calculating the amount of discounts and subsidies, the obsolete norms for natural gas use, which have not been revised for over 15 years, are used. It does not help its saving. Instead the need for larger subsidies arises.

The subventions allocated to utility companies (in 2011the amount exceeded 6 billion UAH) to reimburse the cost of services to benefits recipients can only partially mitigate the problems in the area of communal services. There are still other factors to be addressed in this sector — the rate of wear and tear of the equipment, excessive losses of energy and wa-

[37] On approving the Strategy for reforming social services system http://zakon2.rada.gov.ua/laws/show/556-2012-%D1%80

ter resources, tariff rates, constrained financial and economic situation of the utility companies (in 2012 the enterprises of the industry faced losses amounting to 2.5 billion UAH).[38]

3.3. Guarantees of social protection for elderly citizens

Unfortunately the measures pompously described as "pension reform" did not eliminate numerous detrimental phenomena inherited by the Ukrainian state from the era of "highly developed socialism".

The first one is the excessive number of tax and pension obligations which arise when a person is legally employed and receives lawful salary.

This causes a lot of problems in Ukraine, both in financial and social areas, as legal waged labor becomes economically unprofitable; creates the situation when an alternative extrinsic source of funding to cover overhead expenses is needed, or calls for scheming with the goal of concealing the real amounts of main source — legal wages.

As a result the "shadow" economy thrives, wages are "converted", national currency is not secured, inflation grows etc, while in the social area diligent, honest and highly efficient labor is discredited and hopes for external support and other anti-social phenomena come into existence.

Pension reform was introduced exclusively at the rank-and-file citizens' expense. The retirement age for women was increased by 5 years; insurance term was increased by 10 years; the pensions were calculated at minimum rate; the rights of working pensioners, persons affected by the Chernobyl NPP disaster, the disabled and the veterans restricted. Meanwhile, the pension system for the bureaucrats and recipients of "special" pensions remained in fact the same. Following the reform, two pensions systems are functioning in Ukraine: one is for average citizens, whose pension is calculated at 45% of their salaries; the other is for the bureaucrats, whose pension constitutes more or less 80–90% of their salaries.[39]

So, the pension reform failed to resolve any of the issues it addressed. First, it did not increase the amount of pensions and it is hardly bound to happen in the nearest future. On the contrary, the pensions are constantly downsized. Even the public authorities had to admit that at present they are incapable of ensuring the desired level of pensions for the whole retired population of retirement age.[40]

Second, it never made Ukrainian pension system more just. The comparison of pensions is quite demonstrative: an average pension of a rank-and-file citizen constitutes about 1400 UAH, the serviceman pension — 2 thousand UAH, Chernobyl liquidator — 3 thousand UAH, customs control officer — 4.5 thousand UAH, prosecutor — 6.5 thousand UAH, judge — 7.5 thousand UAH, member of parliament — 15.5 thousand UAH. According to the Pension Fund the largest pension in Ukraine as of October 2012 amounted 15 624 UAH, the smallest — to 882 UAH.[41]

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[38] Counting Chamber of Ukraine. System of housing benefits and subsidies is not all fair http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740208

[39] Social policy failures http://glavcom.ua/articles/5801.html

[40] The "regionals" confirmed that decent pensions are not to be expected in Ukraine http://news.dt.ua/ECONOMICS/regionali_viznali,_scho_gidnih_pensiy_v_ukrayini_poki_ne_bude-107842.html

41 Deputies, judges and prosecutors have the highest pensions http://www.pravda.com.ua/news/2012/11/19/6977711/

Third, this pension reform by no means would balance the budget of the Pension Fund. Despite of public promises made by Serhiy Tyhypko to the effect that the reform would decrease the budget deficit of the Pension Fund, in 2012 the said deficit grew from 57 billion UAH to 65 billion UAH.[42]

Approving pension reform the government undertook three obligations: devising the draft law on legalization of the salaries; draft law on uniform method of calculating pensions and cancelling special pensions, promised by S. Tyhypko personally and updating the pensions calculated on the basis of 2007 salaries by January 1, 2012. Only this latter promise has been fulfilled. That's the only measure undertaken by the government on the eve of elections.[43] It did not change, however, the otherwise dismal picture.

4. RECOMMENDATIONS

1. Reforming social benefits system: separating legal norms guaranteeing social and economic rights and norms granting certain benefits on the grounds of specific office or merits;
2. Putting an end to non-compliance with legal norms guaranteeing social and economic rights;
3. Providing full funding to ensure guarantees of the social and economic rights stipulated by the law; putting an end to "manual adjustments" in establishing the amounts of social assistance;
4. Improving the cost of living estimates; specifically approving the new list of food products, merchandise and services, using new calculation methods for this index;
5. Rejecting the "rate of cost of living coverage" index as it groundlessly lowers the minimum social guarantees proclaimed by the law;
6. Enhancing control over the quality of food products as well as quality and safety of drinking water;
7. Introducing measures aimed at supplying affordable housing; banning unjustified evictions (e. g. from dormitories) and violations of the right to affordable housing for the vulnerable categories of society;
8. Providing adequate funding and clear and efficient implementation mechanisms for social housing programs; developing the network or reintegration; social hostels for the homeless;
9. Improving social protection for the vulnerable categories of society with regards to increased utility services' tariffs; specifically, introducing transparent and efficient model of housing and communal discounts and subsidies';
10. Decreasing eventually the share of direct public funding of social needs and enhancing the share covered by the citizens due to the increase in their incomes, first of all, salaries, pensions and other types of social transfers;

[42] Pension reform crashed — Pavlo Rozenko http://siver.com.ua/news/pensijna_reforma_provalena_pavlo_rozenko/2012-08-04-10612

[43] Serhiy Tyhypko — Decent pensions — governmental duty to the elderly citizens http://www.kmu.gov.ua/control/uk/publish/article?art_id=245083012&cat_id=244276429

11. Ensuring direct connection between social benefits and sources/mechanisms of their cost reimbursement for the providers;

12. Introducing uniform approaches in defining the amount of state budget expenditures for the cost reimbursement to the providers of services at discount rates;

13. Reforming the pension reforms further on by introducing legal provisions ensuring accumulative nature of this system; creating reform-favorable environment;

14. Avoiding random increases in the amount of minimum pensions; introducing indexation which will allow to bring the pensions increase into compliance with consumer costs indices, estimated for various income groups of population;

15. Improving monitoring and regulations of non-governmental pension funds with due regards to international expertise and consultations;

16. Ensuring enforcement of the national courts' rulings with respect to payment of social benefits by the state.

XVIII. RIGHT TO WORK[1]

1. OVERVIEW

The right to work serves as one of the foundations for the whole range of economic and social rights. Its implementation creates material values and provides for further accumulation of wealth. The state also declares its importance. However, the violations of the law, which establishes guarantees for labor rights, become commonplace in Ukraine, and government actions on granting employment and the right to work continue to be ineffective.

The official unemployment rate is still at a fairly low level; in fact out of 20 million people of working age only 13 million are officially employed and about 5 million people are out of the legal labor market. In addition, wages being offered by the vacancies are so low that no one wants to work for such low pay, and so many vacant positions remain open for years.

There exist huge problems regarding the right to a decent remuneration of labor. The share of wages in the cost of goods and services remains low. About 60% of the population receives below UAH2500, and the salary of a large proportion of people is below the minimum level.

There also persists the problem of wage arrears. It remains at high level, and particularly acute this issue is with miners, doctors and teachers.

The employees of government-financed organizations are usually lower-paid salaried workers. This is due, in particular, to the fact that despite legislative guarantees the salaries of employees of the 1st wage grade of the unified scale of rates is set lower than the minimum wage. And despite the demands and protests of trade unions, the state does not change anything in this area.

The safety arrangements and precautions remain unsatisfactory in Ukraine. The state managed to decrease the number of industrial accidents in the mining industry, but it still remains rather high. Moreover, the traumatism in low risk areas increased, primarily in water supply and sewerage systems, socio-cultural sphere, light and textile industries. There is also the problem of inadequate investigations of cases of traumatism and occupational diseases and concealment of such cases.

Until now the international treaties protecting the rights of migrant workers, especially those who are not registered in the host countries have not been ratified. Moreover, there are countries with a large number of Ukrainian labor migrants, with which Ukraine has no signed bilateral agreements that could be used to protect the rights of these people.

Another significant problem for the protection of labor rights in Ukraine is related to weakness of trade unions. In labor relations the employers continue to dominate employees, and unions often play a role of "departments of social protection" under the company's

[1] Prepared by M. Shcherbatiuk, UHHRU.

administration. It is also important to note the weakness of legislation aimed at protecting union leaders and employers' liability provisions for violation of trade union rights. However, the lack of authority in the majority of trade unions is still the major problem; therefore the activity of trade unions to protect the rights of its members is very low.

2. GUARANTEED EMPLOYMENT

There was no appreciable progress in reducing unemployment in 2012. One reason is the lack of hoped-for large foreign investments. And domestic entrepreneurs in the majority do not see the sense in risky investments in large projects, creation of new and even preservation of existing jobs.

According to the research of sociological group "Rating" conducted in Ukraine from May 11 to June 14, 2012 54% of Ukrainians consider unemployment the most important problem for Ukraine[2].

In 2012 in Ukraine, one in five young people under 25 had no work, and the same is true of those who are over 50 years old. 40% of university graduates are arranged to work not according to their specialism. Only one in ten staffers has a chance to improve their skills[3].

However, according to the State Statistics Service, the reported unemployment rate in Ukraine in July 2012 decreased by 2.1%, or 9.2 million people, and on August 1 made 437.8 thousand, which is 1.6% of the working age population.

But if we take as a basis the methodology of the International Labor Organization (ILO), the level of unemployment in Ukraine in January-March 2012 was 8.4% (population aged 15–70). According to the ILO, in the reporting period there were 1.845 million people unemployed.

These figures are confirmed by the Ministry of Social Policy, which in one of its reports said that at the end of summer of 2012 in Ukraine the unemployment rate made 7.8%, youth unemployment — 20%, 10% unemployment among people of retirement age and 30% — in rural areas[4].

The trade union organizations claim even larger scale unemployment. Thus, according to the National Forum of Trade Unions of Ukraine M. Yakibchuk, actually there are 5 million unemployed in the country, and that does not include seasonal fluctuations, while in summer there occurs seasonal employment[5].

In general, there are two main problems concerning the labor market in Ukraine. The first one is linked to black economy. According to Prime Minister of Ukraine Mykola Azarov, out of 20 million people of working age only 13 million are officially employed and about 5 mil-

[2] Ukrainian named unemployment and corruption the biggest problems of the country http://news.dt.ua/SOCIETY/ukrayintsi_nazvali_naybilshimi_problemami_krayini_bezrobittya_i_koruptsiyu-105857.html

[3] A quarter of employable Ukrainians, or nearly 40% of all employed people, are working without official clearance, that is in shadow. http://news.dt.ua/ECONOMICS/5_mln_ukrayintsiv_pratsyuyut_nelegalno, _-_azarov-99972.html

[4] A quarter of employable Ukrainians, or nearly 40% of all employed people, are working without official clearance, that is in shadow. http://news.dt.ua/ECONOMICS/5_mln_ukrayintsiv_pratsyuyut_nelegalno, _-_azarov-99972.html

[5] Explosive moment http://dt.ua/ECONOMICS/vibuhonebezpechniy_moment__41_pratsivnikiv_gotoviy_zalishiti_kompaniyu,_otrimavshi_taki_sami_posadu_-107205.html

lion people are out of the legal labor market. Thus, only 13 million pay contributions to social funds. Of these, according to expert of Razumkov Center Pavlo Rozenko, one half is paying them with lower limits[6]. Besides, these workers are totally unprotected. The employer is under no social obligation against them; s/he feels no responsibility in this case[7].

The second problem is cheapness of labor. The employment does not protect people from poverty. Thus, Director of the Kyiv Oblast Job Center Vasyl Yakobinchuk said that employers offer them low-wage jobs only, which attract very few job-seekers. He also said that in almost 30% of vacancies submitted by employers to the job service propose minimum wage. (Today the minimum wage in Ukraine is UAH1,094.) Thus a very small proportion of vacancies exceed the average wage[8].

According to the survey conducted by portal rabota.ua, 55% Ukrainians believe that their salary does not meet the level of their education and skills. More than a quarter of respondents indicated that they were significantly underpaid. Case in point: 41% of respondents are willing to leave the company for another offer with the same position and the same salary. It would be difficult to make a decision for 12% of respondents, and only 16% do not intend to change jobs. Even more deplorable picture emerged after the survey of respondents of the portal rabota.ua concerning their readiness to change jobs for higher position and higher salary. The loyalty to their employer is shown only by 7% of Ukrainian people. More than half of respondents would agree to leave the former job[9].

It should be noted that only 100,000 Ukrainians officially earn more than UAH18,000 a month.

Also on the labor market there are very serious regional deformations. Former head of the Ministry of Economy Bohdan Danylyshyn noted that the average regional labor supply exceeds demand by 30 times, including in the Ivano-Frankivsk Oblast by 329, Volyn — 137, and Lviv — 103 times. From 20 to 50% of the unemployed in regions do not work more than one year[10]. On the other hand, there are regions where the situation looks much better.

The Verkhovna Rada of Ukraine became concerned about employment of compatriots and adopted the Law "On Employment". It will take effect on January 1, 2013. But nobody knows if it helps people and be an effective tool to combat unemployment.

Representative of the International Labor Organization (ILO) in Ukraine Vasyl Kostrytsia noted that this law will have a positive impact on the development of modern labor market[11]. The trade union organizations, including the National Forum of Trade Unions of Ukraine, noted that the state is not acting now as a controller, but as a regulator of relations between

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[6] Expert: the law on employment will not improve the situation on the labor market http://gazeta.ua/articles/business/440472

[7] A quarter of employable Ukrainians, or nearly 40% of all employed people, are working without official clearance, that is in shadow. http://news.dt.ua/ECONOMICS/5_mln_ukrayintsiv_pratsyuyut_nelegalno, _-_azarov-99972.html

[8] Employers offering low-wage jobs to to the Job Center, Kyiv Oblast http://economics.unian.net/ukr/detail/146401

[9] Explosive moment http://dt.ua/ECONOMICS/vibuhonebezpechniy_moment__41_pratsivnikiv_gotoviy_zalishiti_kompaniyu,_otrimavshi_taki_sami_posadu_-107205.html

[10] Former head of the Ministry of Economy Bohdan Danylyshyn notes that the differentiation of the total per capita income between different regions is more than 3 times. http://news.dt.ua/ECONOMICS/dohodi_zhiteliv_riznih_regioniv_ukrayini_vidriznyayutsya_bilsh_nizh_na_70-103956.html

[11] Kostrytsia: Law on employment will reduce unemployment http://zib.com.ua/ua/pda/10506.html

the employer and employee, but also emphasize the fundamental flaw of this law[12] [13]. Thus, according to Head of the National Forum of Trade Unions of Ukraine Myroslav Yakibchuk, the new law "On Employment" is intended only to change the subordination of unemployment insurance, and not to solve the unemployment problem in the country[14]. He also noted that today the fund is, in fact, the united body; it is managed by employers, state and its own policyholders, 15 representatives each. Now they offered to cut the number of representatives to five and, moreover, to actually subordinate the fund to the minister of social policy. This law does not address the problem of legal employment; however it contains some progressive provisions. The purpose of the bill is to expand the powers of individual officials and step up the state influence in the field of labor relations.

Deputy Chairman of the National Forum of Trade Unions of Ukraine Hryhooriy Kabanchenko noted that the new law contains several provisions that clearly need to be changed. Vice prime minister Tigipko, allegedly at the request of trade unions, rejected the idea of free semiannual training for young specialists. The law contains a provision under which a probationary employee signs a contract, but no article of the agreement specifies that this training should be should be paid for in any case[15].

In his turn, Head of Federation of Small and Medium Enterprises of Ukraine Vyacheslav Roy said that it is a populist bill[16].

Also member of the Party of Regions Vasyl Khara (former Head of the Trade Union Federation) said that the approved law destroys the social insurance system and converts the Social Insurance Fund into a department of the Cabinet. "If you look at this bill and read it, you can but clap up, because the question is right, the question is relevant. But, in my opinion, this bill today is more populist than practical, unfortunately," said Khara[17].

According to Pavlo Rozenko, expert of the Razumkov Center, the bill on employment, which is designed to solve the problems of the labor market, is openly declarative, general and pre-electoral. "Rather, it shows the public how the government takes care of the problems of employment. But there are no real rules and mechanisms that fundamentally change the situation on the labor market," said the expert[18].

Also, it seems that the laws on employment and on the promotion of investments in priority sectors of the economy, which the Party of Regions is so proud of, have been adopted too late. As recently reported the newspaper "Odeski Visti" quoting Mayor of Izmail Andriy

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[12] Yakibchuk: 6 billion each year is spent, and jobs are not created, the money disappear somewhere http://www.nfpu.org.ua/2010-06-04-18-42-03/2011-05-11-00 -43-46/303--6-.html

[13] Trade unions do not believe the Tigipko's bill on youth employment http://gazeta.ua/articles/business/_profspilki-ne-viryat-u-zakonoproekt-tigipka-pro-pracevlashtuvannya-molodi/431145

[14] Trade unions accused the government of imitation of solution of the problem of unemployment http://economics.unian.net/ukr/detail/129994

[15] Trade unions accused the government of imitation of solution of the problem of unemployment http://economics.unian.net/ukr/detail/129994

[16] Trade unions do not believe the Tigipko's bill on youth employment http://gazeta.ua/articles/business/_profspilki-ne-viryat-u-zakonoproekt-tigipka-pro-pracevlashtuvannya-molodi/431145

[17] MPs approved a law against unemployment http://ukr.lb.ua/news/2012/07/05/159485_nardepi_prinyali_zakon_protiv.html

[18] Expert: the Law on employment will not improve the situation on the labor market http://gazeta.ua/articles/business/440472

Abramchenko, the Izmail Commercial Sea Port cut 200 people, that is every tenth worker, and Ukrainian Danube Shipping let out 350 specialists, which made almost 12%.

In Ukraine the downsizing was begun by the auto industry, which suffered greatly from Russia's introduction of utilization fee. In September, the Zaporizhzhia Automobile Plant, the largest Ukrainian car maker, cut 2012 production plans by 18–25% allegedly attributed to the cost-reduction optimization of production. In practice it turned out to be a personnel reduction. The same "medicine" for critical problems was prescribed by other leading automobile companies: "Bohdan" and "Eurocar". According to the media, 30% of staff was sacked at the Bohdan plants in Lutsk and Cherkasy. The "Eurocar" cut 800 skilled employees. According to Oleg Boyaryn, Chairman of the Supervisory Board of the Company, the plant may be shut down in 3 to 4 months[19].

The small business is also actively following the trail. Fewer Ukrainians are working for small businesses and individual entrepreneurs. By 2011 the number of employed workers summarily dropped by more than 0.5 million.

During the year the number of employed working for physical persons–entrepreneurs–decreased by 443,000 down to 2.37 million, and in small businesses (businesses employing less than 50 persons and with annual turnover below UAH70 million) decreased by 75,000 down to 2.07 million workers[20].

3. UNEMPLOYMENT RELIEF

In 2012, the Ukrainian Government went on slightly increasing minimum size of unemployment benefits for the formerly insured employees; the size of the benefits made as follows: January 1: UAH825; April 1: UAH841; July 1: UAH847; October 1: UAH860; and December 1: UAH872. At the same time, the payments to the officially unemployed remained at the level of 2011, i. e. UAH544.

It will be recalled that the living wage in 2012 was as follows: January 1 — UAH1017; April 1 — UAH1037; July 1 — UAH1044; October 1 — UAH1060; December 1 — UAH1095.

It should be noted that 37–39% of the unemployed who are registered with the state employment service, receive the minimum benefit, currently making only 76.9% of subsistence and by UAH221 below the poverty level[21].

In fact, in 2012, they continued ignoring the legal provisions of the Law of Ukraine "On State Social Standards and Social Guarantees" and the Law of Ukraine "On compulsory social insurance against unemployment" specifying that the amount of such benefit should not be less than the minimum subsistence for the working person.

At the same time, up to now function the final provisions of the law "On compulsory social insurance against unemployment", which are in contrast to many articles of the same Law, which define minimum benefits in the amount of subsistence and specify that before

[19] On the verge of upheaval http://news.finance.ua/ua/ ~ / 2/0/all/2012/11/13/291157

[20] Entrepreneurs in Ukraine resort to massive layoffs http://www.segodnya.ua/economics/business/Predprinimateli-v-Ukraine-massovo-uvolnyayut-svoih-sotrudnikov.html

[21] Beyond poverty http://www.psv.org.ua/arts/Spetcvipusk/view-1248.html

the stabilization of economic situation in Ukraine the minimum unemployment benefits for certain categories of citizens are determined by the board of the Fund of compulsory state social insurance of Ukraine in the case of unemployment during the approval of the budget of the Fund based on its actual capabilities.

This provision provides the legal basis for the state to establish the size of benefits at a level that is insufficient to provide even lower-than-minimum conditions for human survival.

Unfortunately, the trade unions have not managed to convince their social partners represented by employers and the state bodies that there is an acute necessity of raising the minimum unemployment benefit to a subsistence level designated by law. Such solution needs additional UAH40 million. And this is despite the fact that fund of compulsory social insurance against unemployment is the only social insurance fund, which for the third consecutive year has the beginning-of-the-year balance about UAH300 million. However, at the expense of compulsory social insurance for unemployment benefits they finance non-insurance payments and employ about 16,000 officials, personnel of the Job Center[22].

Moreover, this situation is already fixed in the law "On Employment", which comes into force on January 1, 2013. It removes the guarantees of payment of minimum unemployment benefits in the amount of the subsistence minimum, allowing the government to manually set the size of the aid.

4. ENSURING DECENT WORKING CONDITIONS

The low income of the majority of Ukrainian citizens, especially wages, which remain the main source of livelihood, provoke poverty among the working population and exacerbate social tensions. In most countries, the main criteria for determining the level of minimum wages include the needs of workers and their families with regard to the level of wages prevailing, social welfare and revenue volumes and GDP growth rates, employment, balance of payments and others. Based on them, the compromise is reached between the social needs of the population and the economic opportunities of society.

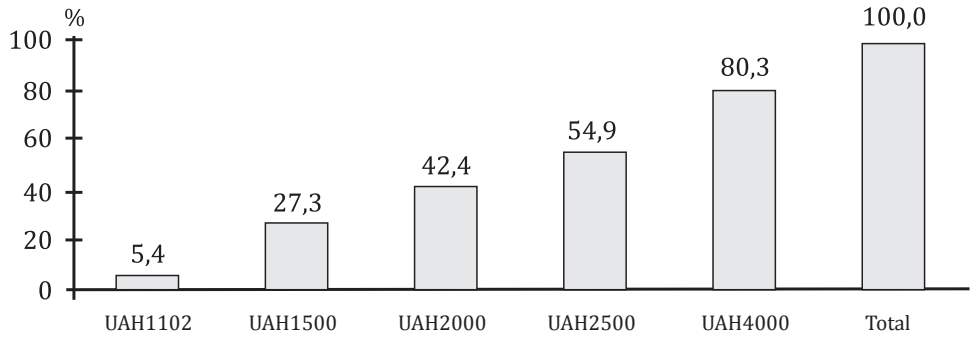

Fig. 1. Distribution of employees by salary for September, 2012 (cumulative)[23]

[22] Beyond poverty http://www.psv.org.ua/arts/Spetcvipusk/view-1248.html

[23] Data of the State Statistics Committee http://www.ukrstat.gov.ua/

All European countries have long concluded that the minimum wage should also include costs for family upkeep, as reflected in the ILO conventions No. 131 "On the minimum wage" and European Social Charter (revised) ratified by Ukraine, Constitution and the Law of Ukraine "On Remuneration of Labor." However, Ukraine still goes on setting the minimum wage at illegally undervalued subsistence level, guided by residual expenditures from the State Budget.

Today, there is quite a number of people who gets paid at a level even below the minimum wage. And more than half of all workers receive wages lower than UAH2500.

As a result, despite the fact that the state economy is developing in the direction of the market, one of its main indicators — the price of labor — is increasingly moving away from its real valuation.

The analysis of current policies and practices of wage planning in Ukraine demonstrates the policy of limiting cash revenues and orientation of wages at subsistence level. At the state level, they regulate only minimum wage, which, unfortunately, is not an adequate social guarantee. The wages actually ceased to perform reproductive, stimulating and social functions; it provides a level of not more than 20% of the reproduction of labor. In addition, today the wage in income structure is critically low, that is about 40% instead of the maximum allowable 65% limit that fails to motivate highly productive and quality labor[24].

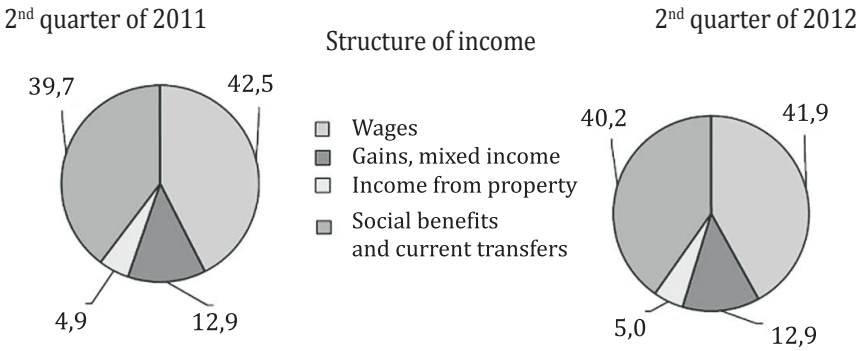

Fig. 2. Structure of personal income[25]

Also it should be noted that the mechanism of indexation of personal income intended to increase their purchasing power in the face of rising prices for consumer goods and services introduced in 1991 is imperfect and does not reach such goal as maintaining adequate standard of living of the working population.

According to the Accounting Chamber of Ukraine, the numerous changes of the mechanism of indexation of wages gradually restricted the right of workers to obtain additional income. Indistinctive determination of the baseline month, which starts indexing wages, affects the income of those, who, in particular, locked out in connection with the reorganization (liquidation) of the company, institution or organization, hired by a new institution by transfer or substitute employee etc[26].

[24] The level of wages in Ukraine must be fair http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=7809%3A2012-04-11-11-57-14&catid=59%3A2009-07-30-20-02-19&Itemid=34&lang=uk

[25] Data of the State Statistics Committee http://www.ukrstat.gov.ua/

[26] Does income indexation make employee of a government-financed organization richer? http://www.ac-rada.gov.ua/control/main/uk/publish/article/16739913

Despite the fact that wage indexation has been introduced to maintain the standard of living especially of the most vulnerable citizens, the income of this category is not covered by the existing mechanism. This applies, in particular, to public sector employees of 1–5 wage categories of the unified wage rate distribution, whose wage varies quarterly with the change of the minimum wage. Indexing in such cases does not apply.

The problem of establishing efficient income indexing needs urgent legal settlement. Unfortunately, the draft amendments to the Procedure of cash income indexing prepared by the Ministry of Social Policy does not propose corrections in the current indexation of wages of employees of government-financed organizations[27].

The problem of wages of employees of government-financed organizations remains unsolved. The practice of gross violation of the law "On Remuneration of Labor" stays the same: from January 2012 official rate of pay according to the 1st tariff level makes UAH773, and the minimum wage is UAH1073, the difference is UAH300. Although by law the official rate of pay according to the 1st tariff level should be greater than the minimum wage.

In November 2012 the Trade Union of Education and Science Personnel addressed an appeal to the Government about the need to stipulate in the State Budget 2013 expenditures on education to the extent necessary to implement the unified schedule of charges for public sector employees on the basis of the basic official rate of pay according to the 1st tariff level not less than the minimum wage[28].

Also, the Accounting Chamber of Ukraine notes that wages in the public sector is unduly low, its size in 2011 and the first quarter of this year was less than the average wage in the economy[29].

In Ukraine the situation with wage arrears remains complicated. According to the State Statistics Service of Ukraine, in Ukraine, in July 2012, the arrears of wages increased by 2.5% and reached UAH986.04 million. The rise of accrued personnel compensation was recorded in 10 oblasts, in Kyiv and Sevastopol. Accordingly, the debt reduction was observed in 14 oblasts and the Autonomous Republic of Crimea. As of July 1, 2012 the highest level of wage arrears (over UAH100 million.) was recorded in Donetsk Oblast — UAH179.419 mln and in Kharkiv Oblast — UAH100.035 million[30].

In 2012 there were serious problems with arrears of wages of doctors and teachers. In particular, in the fall of 2012 the Trade Union of Education and Science Personnel appealed to the Prime Minister about the underfunding of the sector. The trade union stressed that the lack of financial support for the educational sector in 2012 threatens with the inability to pay wages to employees of educational sphere in the majority of territories of Ukraine in November-December this year and prevents the creation of conditions for the life of educational facilities.

The appeal of the trade union reads that, according to the operational data of organizational units of the trade union, in most areas the need of additional education expenditures

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[27] Does income indexation make employee of a government-financed organization richer? http://www.ac-rada.gov.ua/control/main/uk/publish/article/16739913

[28] Appeal of the Trade Union of Education and Science Personnel http://osvita.ua/doc/files/news/323/32386/zvernennya-do-mikoli-azarova.pdf

[29] Does income indexation make employee of a government-financed organization richer? http://www.ac-rada.gov.ua/control/main/uk/publish/article/16739913

[30] Wage arrears in Ukraine are close to a billion http://news.dt.ua/ECONOMICS/zaborgovanist_po_zarplati_v_ukrayini_nablizilasya_do_milyarda-107674.html

in local budgets is about UAH5.4 billion, including payroll of 2.4 billion. The need for additional funds for the higher education institutions under the Ministry of Education makes UAH711.3 million. Moreover, for the payment of wages they need additional UAH101.2 million, educational maintenance allowance — UAH109,1 million, for public utilities — UAH369.4 million[31].

The Free Trade Union of Medical Workers of Ukraine, in its turn, demanded repayment of wage arrears to employees of medical sphere[32].

In 2012, the miners also faced the problems of wage arrears. And among the major causes of indebtedness, particularly in the mining industry, is the lack of an effective management system at the coal-mining enterprises, absence of proper control of the activities of public enterprises by the Ministry of Energy and Coal Industry. High loss ratio at coal mines, lack of working capital, practice of selling coal at prices lower than its actual cost and without pre-payment, as well as partial payments and late payments for realized coal have negative impact on timely payment of wages to miners[33].

5. SECURING OF LABOR SAFETY

The state's guarantees of labor safety are wheels within wheels. The trouble is there is no complex program document on labor safety. The Derzhgirpromnahliad has been working out the draft national program for improving safety, health and working environment for 2012-2016 for over a year now. However, there is still no legally defined mechanism of penalties on legal entities and individuals for failure to comply with relevant laws, regulations and orders of Derzhgirpromnahliad. This condition significantly reduces the effectiveness of the supervisory activities of the state.

There are other problems that affect the efficiency of state supervision over the observance of legislation in this area. Thus, during the verification of cost-effectiveness by the State Service of Mining Supervision and Industrial Safety of Ukraine in Dnipropetrovsk and Zaporizhia oblasts by the Accounting Chamber of Ukraine it turned out that, despite the number of inspections by public supervision agencies of these areas, they essentially did not affect the number of accidents compared to other oblasts. They also noted that almost one third of the funds allocated to ensure labor safety were spent ineffectively[34].

The labor safety at the Donetsk coal mines remains problematic. Thus, in 2011 at these enterprises more than two thousand people were injured, seventy-four were killed. The coal industry accounts for two thirds of all occupational injuries, including deaths[35].

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[31] Appeal of the Trade Union of Education and Science Personnel http://osvita.ua/doc/files/news/323/32386/zvernennya-do-mikoli-azarova.pdf

[32] Health professionals demand to cancel medical reform http://gazeta.ua/articles/politics/_medpracivniki-vimagayut-skasuvati-medichnu-reformu/433208

[33] Miners face wage arrears http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740390

[34] The number of inspections increases, but the number of injuries is not reduced http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740452

[35] "Uninhabited" coal mine crackdown http://dt.ua/ECONOMICS/bezlyudne_vugillya__i_zakruchuvannya_gayok-101887.html

For 10 months in 2012 there exists a positive trend of reducing occupational injuries in coal mines; however, the numbers remain very high: about three thousand people injured (in the past year: 3,526), 104 people fatally (previous year: 149)[36].

However, according to S. Ya. Ukrayinets, Deputy Chairman of the Federation of Trade Unions of Ukraine, there remains a serious concern about the increase in fatal accidents in low-risk areas, primarily water supply and sewerage systems, socio-cultural sphere, light and textile industry, etc. He also stressed that today there is a need to tackle two major problems of state supervision: first–inspectors are denied free control of jobs, as required by the Convention of the International Labor Organization, and the second — critical shortage of inspectors, the number of which is constantly reduced[37].

In addition, there exists a sad statistics: the number of hidden accidents has reached 25%, which, in particular, is due to the fact that a person is employed with violations of the law, and in case of an accident they conduct improper investigation. It is also important that today the managers are trying not to associate with the production nearly 50 percent of accidents attributing them to domestic injuries outside the work activity[38].

One example of improper investigation of occupational disease is the appeal of Serhiy Marchuk in January 2012 to the Federation of Trade Unions of Ukraine concerning improper investigation of occupational disease, which he had received while working at the company Mine "Stakhanov" of the SE "Krasnoarmeyskugol." Only after the intervention of trade unions he was able to get a statement that his illness was a work-related disease[39].

6. STATE CONTROL OF OBSERVANCE OF LABOR RIGHTS

According to the auditors of the Accounting Chamber of Ukraine, the control of adjustment of wages of public sector employees was insufficient and ineffective for the prevention and elimination of violations in this area, particularly because of insufficient staff of government labor inspectors (1.5 thousand enterprises per one state labor inspector), filling of only 60% of the manning table of Derzhpratsi, delays in reforming its structures and staff[40].

The Federation of Trade Unions of Ukraine notes that in Ukraine, after the introduction of restrictions in 2009 for labor inspectors of Derzhpratsi and Derzhgirpromnaglyad became a real violation of ILO Conventions No. 81 and 129 on labor inspection ratified by our country.

Deputy Chairman of the FPU Ukrayinets S. Y. emphasized that the Law of Ukraine "On Government Oversight (control) of economic activity" as well as relevant resolutions of the Cabinet of Ministers, which regulate scheduled inspections by state agencies and establish their

[36] Coal industry: decrease in injuries and accidents http://www.kmu.gov.ua/control/uk/publish/article?art_id=245776871&cat_id=244277212

[37] Limited control provokes injuries http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=9485%3A2012-10-31-10-32-08&catid=1%3A2009-06-19-18-32-02&Itemid=149&lang=uk

[38] Annually Ukraine loses UAH30 billion due to occupational accidents http://www.fpsu.org.ua/index.php?option=com_blog_calendar&year=2012&month=07&day=30&modid=67&lang=uk

[39] Safe work: new procedure, the same priorities http://www.psv.org.ua/arts/Ludina_i_pracia/view-877.html

[40] Does indexation of income make employees of a government-financed organizations richer? http://www.ac-rada.gov.ua/control/main/uk/publish/article/16739913

frequency, hinder normal inspection and, in fact, does not allow the inspectors to perform their duties as defined by the ILO Convention.

It should be noted that twice — in 2010 and in the summer of 2012 — the ILO Committee of Experts considered the compatibility of national legislation with the provisions of ILO Conventions and acknowledged facts of direct violation of the norms of the Convention by Ukraine No. 81. The recent decision of the Committee of Experts is as follows: the Government of Ukraine is asked to report on measures taken to ensure the emendation of the Law of Ukraine no 877 "On the Principles of State Control of Economic Activities" in order to bring it into conformity with the provisions of ILO Conventions.

7. PROTECTING LABOR RIGHTS OF MIGRANT WORKERS

Every year thousands of Ukrainians travel abroad to seek their fortunes. Most of them are on the move because of the inability to find a job in Ukraine and have decent wages and working conditions.

According to the UN, in 2010, there were 215 million migrants worldwide, including 150 million of economically active population, i. e. migrant workers. There are many Ukrainians among them. The official statistics in our country does not show the actual level of migration. It is evidenced by the differences among Ukrainian and foreign data, where our countrymen find jobs. For example, in Russia in 2010 they counted 27.5 thousand Ukrainian migrant workers, while according to our statistics there are only 5.9 thousand. In Italy believe that they employ 30.4 thousand Ukrainian citizens, and we count only 0.2 thousand. Therefore, the ILO, analyzing labor migration, relies not on statistics, but on the results of the statistical survey conducted in 2008. The latter showed that four years ago nearly 1.5 million Ukrainians worked abroad, mostly in Russia (48.5%), Italy (13.4%), and Czech Republic (12.8%). Among them there were 484.8 thousand women and 991.3 thousand men. The lowest average age of Ukrainians, who found job was in Russia and the Czech Republic, the highest one in Italy and Spain[41].

The experts are at variance concerning the number of migrant workers from Ukraine: 7 million and 8 million. So, there is no accurate information on this. The statistical straggling shows that Ukrainian migrants have both legal and illegal status abroad. For the ILO, both categories are equal and counted. However, the regulated status usually guarantees migrants social protection. According to statistics, 35.1% of migrant workers from Ukraine had permission to stay and work, 39.9% had a temporary registration, and 25.6% were without official status.

The migrant workers have the same rights and freedoms as other workers. Therefore all ILO conventions cover them. However, understanding the special needs of these migrants two specific Conventions — No. 97 "On migrant workers" and No. 143 "On abuse of migration and provision of equal opportunities and equal treatment for migrant workers" — were developed. The first document was adopted in 1949, and even the ILO Committee of Experts acknowledged that some of its provisions became obsolete. The Convention No. 97 establishes standards on procedures for hiring and working conditions. In addition, it guarantees the right to membership in trade union organizations and the right to collective agreements.

[41] Ukrainian migrant workers need protection of the unions http://www.kvpu.org.ua/uk/news/6/1720/ukrainski-trudovi-migranti-potrebuyut-zakhistu-profspilok

The main difference of Convention No. 97 from No. 143 is in the fact that it applies only to migrant workers with regulated status. It also does not apply to seamen, artists, and frontier workers. The Recommendation 86 to the Convention contains the definition of the term "migrant worker" as a person, who migrates from one country to another for employment otherwise than on his own account and includes any person who is determined according to the law as a migrant worker. The Convention No. 143 applies to migrant workers both with regulated status and without it. It guarantees equality in employment, provision of social protection and access to social services for migrants and local workers.

In addition, the Convention No. 143 covers also the family members of foreign workers. There is also another important document in this area: "The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" (UN, 1990). It distinguished 8 categories of migrant workers: frontier worker, seasonal seaman employed on offshore installation, migrant worker on the move, project worker, freelancers and self-employed.

Unfortunately, all these international regulations were not ratified by Ukraine, and therefore they have no direct implementation now. However, they contain practical international standards. According to the Confederation of Free Trade Unions of Ukraine, we have no national legislation on the internal and external labor migration. The main law that regulates internal migration is "On freedom of movement and choice of residence in Ukraine", which provides the legal basis for work in different regions of Ukraine. According to the presidential decree, last year they developed a concept of state migration policy, but it was nothing but plans for the future. The Ministry of Social Policy is currently working on a draft law on foreign labor migration. Executive Assistant to the International Organization for Migration in Ukraine Anastasia Vynnychenko said that on October 23, 2012 the first meeting of the working group on the draft law took place[42].

Many comments followed, particularly about the fact that it was only declarative and actually applied only to regulated areas of migration, which was already sufficiently regulated. The debate among experts zeroed in on the interests of all categories of migrant workers to be accounted for. There were comments on the terminology of the draft and international standards. This document has to be discussed and finalized[43].

The state still needs a work to do and sign bilateral agreements with countries, where Ukrainian migrants abide, because there is a large number of countries, where Ukrainian migrants work without any agreement covering them.

8. ENSURING THE RIGHTS OF TRADE UNIONS

According to the analytical report of the National Institute for Strategic Studies "Regarding the state of social and labor relations in Ukraine and the main directions of reforming them", the relationships between employees and employers are characterized by the domi-

[42] Ukrainian migrant workers need protection of trade unions http://www.kvpu.org.ua/uk/news/6/1720/ukrainski-trudovi-migranti-potrebuyut-zakhistu-profspilok

[43] Ukrainian migrant workers need protection of trade unions http://www.kvpu.org.ua/uk/news/6/1720/ukrainski-trudovi-migranti-potrebuyut-zakhistu-profspilok

nance of the latter. The main reasons are as follows: low volume of jobs in the labor market, command-authoritarian behavior of modern Ukrainian business and weakness of domestic trade union movement.

In Ukraine, unlike Europe, the tradition of trade unionism was abolished. Everybody's accustomed to formal membership, and the so-called independent unions failed to become a worthy alternative to the official ones. There is also such hold-over of sovietism as politicization of trade unions.

At large enterprises and public institutions thee traditional (post-Soviet) unions run the roost going on with their Soviet-era functions as "departments of social protection" under administration and intermediaries between employers and employees. According to experts, such limited field of activity cannot effectively protect the interests of working people. At the same time, there are only a few alternative, independent trade unions, which tend to defend the interests of employees. In addition, their participation in social dialogue is complicated by rigid criteria of representativeness established by Articles 5–7 of the Law of Ukraine "On the social dialogue."[44]

Furthermore, often such free trade unions are working in very difficult conditions. Thus, Chairman of the Free Trade Union of Health Professionals of Ukraine (VTUHPU) Oleg Panasenko says that the newly created centers of trade unions are under pressure. We set up a trade union in the Kyiv hospital, the premises of which somebody wanted to get," said Oleg Panasenko. We managed to defend the building: our claims were redressed, and the session of Kyivrada adopted a proper decision. Despite this success, the personnel of the clinic were forced to return to the old trade union[45].

The fact that the newly formed unions were under pressure was confirmed by Head of Zaporizhzhya Regional Confederation of Free Trade Unions of Ukraine Serhiy Chyzhov. Particularly acute for the branches is the problem of dismissals of union activists.

The trade unions at the enterprises controlled by TNCs in Ukraine encounter obstacles. Deputy Chairman of the Federation of Trade Unions of Ukraine Ye. M. Drapyaty says that the management of TNC enterprises despises the legislation of Ukraine and ILO Conventions. According to the member organizations of the Federation of Trade Unions of Ukraine, the enterprises of TNCs implement the system of fines, both openly and surreptitiously intimidate workers and frighten them into obedience, discriminate members of trade union[46].

At an international conference "Activities of TNCs in Ukraine and the strategy of trade unions" the speakers stressed that the trade unions faced pressure from administration of TNC-controlled enterprises during creation of trade unions and collective bargaining. There is discrimination on the basis of trade union membership, trade union activists work under pressure and later they are sacked on flimsy reasons.

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[44] Strengthening the legal guarantee of the trade unions http://kvpu.org.ua/uk/news/6/1687/posiliti-pravovi-garantii-diyalnosti-profspilok

[45] Meeting of the Heads of Trade Unions: the challenges and ways to meet them http://www.kvpu.org.ua/uk/news/6/1667/zasidannya-radi-goliv-kvpu:-pro-problemi-i-shlyakhi-ikh-podolannya

[46] Putting the TNCs' activities under control of trade unions http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=9506%3A2012-11-01-13-34-24&catid=1%3A2009-06-19-18-32-02&Itemid=149&lang=uk

The examples of TNCs violating the trade union rights include the international chain s of hypermarkets "Ashan", "METRO Cash & Carry" and others[47].

Violations of trade union rights at public enterprises are laid in wait at every turn. There is an example of pressure on the free trade union of railroad workers, namely its Kharkiv branch, exerted by the administration of the state enterprise "Ukrzaliznytsia". President of the Free Trade Union of Kharkiv Car Bay No. 1 "Southern Railroad" O. Ambrosimov says that they meet with difficulties using the premises of the trade union, pressure is put on "Ukrzaliznytsia" employees, who are members of this trade union, their labor rights are violated. Legal proceedings are initiated against the President of this branch of trade unions for allegedly submitting false information regarding the activities of Ukrzaliznytsia[48] [49] [50].

To improve the situation in this area the measures should be taken to strengthen the legal safeguards of the trade unions: to strengthen the legislative provisions aimed at protecting union leaders, to increase the employers' responsibility for violations of trade union rights, to ensure control over the implementation of the ILO Convention No. 135. Maybe, it is worth amending the Law of Ukraine "On Trade Unions, Their Rights and Guarantees" with a norm establishing the right of a joint representative body of trade unions to represent trade unions and associations in the meetings of the Cabinet of Ministers of Ukraine, collective bodies of ministries and other executive authorities, and local self-government bodies.

9. RECOMMENDATIONS

1. Increase the sum of unemployment benefits to subsistence level, and make the necessary changes to the legislation specifying the safeguards to obtain this assistance at this level.

2. Reduce the high unemployment especially among the most vulnerable population, primarily young people, people approaching retirement age, persons with disabilities.

3. Increase the share of wages in GDP and production costs.

4. Harmonize the minimum wage with the requirements of the European Social Charter and implement effective indexation of income.

5. Ensure the effective implementation and differentiation of wages in the public sector through the application of a single tariff, eliminate the practice of setting salary (rate of remuneration) of the employee and the tariff level at a rate lower than specified by the law on salaries.

6. Take measures to improve wages in bodies of state authority to improve the social protection of ordinary workers, eliminate the system of hidden wages fixed by the appoint-

[47] Multinational companies: slavery for hire? http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=8714%3A2012-08-02-07-39-29&catid=226%3A2012-08-02-07-27-34&Itemid=159&lang=uk

[48] How the management of Kharkiv car bay No. 1 violates law http://vppz.org.ua/normative_acts_zakon.php

[49] Press Conference "Lawsuits as a tool to pressure the media and and free trade unions" http://www.sq.com.ua/rus/article/press_centr/press_konferenciya_sudebnye_presledovaniya_kak_instrument_davleniya_na_smi_i_svobodnye_profsoyuzy/

[50] Abrosimov: Railroaders are not allowed to come to Kyiv to protest and are threatened with dismissal http://zaxid.net/home/showSingleNews.do?zaliznichnikiv_ne_pustili_do_kiyeva_na_miting_i_pogrozhuvali_zvilnennyam__abrosimov&objectId=1264712

ment of various awards and bonuses, which are more dependent on loyalty to leadership than on productivity.

7. Reduce the arrears of wages to employees of government-financed organizations, and take measures to cut wage arrears in companies and organizations of all forms of ownership.

8. Improve the system of job safety in order to reduce occupational injuries and diseases, including emendation of the legislation in this area, as well as the implementation of prevention programs.

9. Improve enforcement of standards and requirements of job safety. ensure prompt and effective investigation of cases of traumatism.

10. Improve state control over observance of labor rights, introduction of effective mechanisms to respond to these violations.

11. Conclude bilateral agreements in the field of employment and social protection of migrant workers with the countries, in which a significant number of our jobseekers abide and with which there are still no such agreements concluded.

12. Ratify the relevant international instruments enhancing the protection of migrant workers in the area of employment and social protection.

13. Ensure strict observance of the rights of trade unions to promote the establishment of a strong independent trade union movement.

XIX. RIGHT TO HEALTHCARE (SOME ASPECTS)

1. ABOUT HEALTHCARE REFORM[1]

INTRODUCTION

According to the State Statistics Service, the natural decrease in population in Ukraine in 2012 made 124,996 people[2].

During two years (2011–2012) perinatal centers[3] were opened in Kirovohrad, Donetsk, Kharkiv, Dnipropetrovsk, Donetsk, Kyiv, Simferopol, and Poltava; however, the number of children, who died in the perinatal period[4], not only decreased, but tended to go up — 4769 (4704 in 2011).

In 2012, the number of infants (children under 1 year), who died of cancer, almost doubled (42 in 2012, 26 in 2011).

Mortality from cancer of the adult population also tended upwards: 204 dead per 100 thousand of population in 2011 (194.9 in 2011).

Mortality from HIV-related diseases remained at the same level: 12.1 deaths per 100 thousand of population (total of 5042 Ukrainians).

The modern medicine is a knowledge-intensive and resource-intensive branch. However, only attraction of real financial resources can overcome the above selected examples of failure of the health care system.

In the consolidated State Budget of Ukraine for 2012 the health expenditures made UAH55.2 billion, 12.9% more than the reported figure in 2011. But, given the increase in prices of medicines, goods and services that all residents of Ukraine felt in 2012, the 12.9% increase in expenditures is almost incomplete compensation for keeping the branch afloat.

The Communications Department of the Ministry of Finance denies reports of "cuts" in health care expenditures for 2013[5]:

> *"As to the underfunding of health care, it's no secret that this issue has not come up today, but it was a pressing problem for the previous governments.*

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[1] Prepared by Andriy Rokhansky, Institute of Legal Research and Strategies.

[2] http://www.ukrstat.gov.ua/

[3] National Project: "New Life — New quality of maternal and child health care."

[4] January–November 2012.

[5] http://www.minfin.gov.ua/control/uk/publish/article?art_id=353252&cat_id=326268

These are long-standing problems of the healthcare branch, which cannot be solved in one stroke, since they need restructuring of the entire system of health care and finding new (not just budget) sources of funding.

In this regard, last year we started to implement the program of economic reforms for 2010–2014 "Prosperous Society, Competitive Economy, Effective State" in 4 regions with a pilot project intended to reform the health care system.

In particular, the pilot regions will permit to test new approaches to the organization of health care and methods of funding to distribute the health budget by type of care that will improve health care and expand the availability and quality of medical care.

The reforms of health care in the pilot regions and adopting these practices to other regions will regulate and optimize the network of health facilities, which will provide ground for the introduction of compulsory health insurance and thus attract additional sources of funding in the branch."

As always, on paper, on the sites of the Ministry of Public Health, and regional health administrations the reform looks bright, modern, but its practical implementation is beside the mark, as we know from eyewitnesses of reforms: pensioners, young mothers, doctors, farmers, youth, and the disabled.

Also, in the first place, the human rights organizations are greatly concerned over helpless people, mentally ill, detainees held by law enforcers or convicted in criminal cases, HIV-positive people and more.

The right to health is a basic inalienable right of every human being. The implementation of this right is an integral part of the right to life. This section of the "Report of human rights organizations" is dedicated to the violations of the rights to health by the ridiculous healthcare reform and includes recommendations of the human rights organizations on restoration of rights.[6]

"THE STATE OF MEDICINE IS A FACE OF POWER"[6]
(*About healthcare reform in Ukraine*)

1.1. In Donetsk, the majority of persons interviewed by RFE heard nothing either about the reform of health or of family doctors[7]

Commentary by a reader: I know nothing about Donetsk, but in Donetsk Oblast people know a lot about the reform. For example, in the city of Zhdanovka, 5 km from Yenakiyevo, earlier there was one hospital, and everything was well-trodden. Now there are two hospitals: the older one and the new hospital of family medicine. Now, say, if you want to make an appointment to see a surgeon, you have to see a family doctor in the first place, who, if necessary, refers you to a surgeon in the old hospital. And it is so with all medical specialists. You can't go to the old hospital, without seeing the family doctor first.

Commentary by a reader: Most have not heard? You'd better ask the personnel of dental clinics and their patients. They have been improved and stabilized for a year now. Due to re-

[6] Head of Vinnytsia Regional State Administration Mykola Dzhygha.

[7] http://www.radiosvoboda.org/media/video/24705136.html # relatedInfoContainer

forms they were turned out from the premises usually located in urban centers. In Donetsk they happened to temporarily defend themselves, although the city rada there tried to raid the dental clinic with the help of SSU (search, etc.). Actually the wanted to take away the premises near the "Donetsk City", and to drive the dentists as far as to Putilovka into a dilapidated building.

> *This is the oldest dental clinic Donetsk with more than fifty-year history. Twenty-seven years ago, being communal clinic, it was first to become a self-supporting enterprise. Doctors were able to survive in the most difficult years of the first decade of the "independence" and now they annually treat about 40,000 patients. Among patients there are many pensioners and disabled people who receive discounts and preferential service*[8].[9]

Point on the map: the Kostiantynivsky area, in which medical reform failed to make roots[9]

Some villagers of Kostiantynivsky Region of Donetsk Oblast demand to revise the innovations in local healthcare system. They maintain that because of closing down of the round-the-clock hospital in the former Yekaterinovsky local hospital which was turned into an out-patient clinic, the villagers were deprived of the rights to timely medical care.

"What have entered the head of the officials? Let them come here and see for themselves how the hospital can be destroyed in six months after having survived since the 50s of the last century. Only last year they finished the top overhaul," says one of Yekaterinovka's old residents.

> *Yekaterinovka's inhabitants:*
>
> *"Do you want to know, how many people died only in our village for the last six months? The woman died: labile blood pressure and high blood glucose level. Earlier, after all, as an in-patient you could get on a drip, and now what? She's got no relatives. Who will drive her to Kostiantynivka? The only city hospital does not admit peasants. Therefore she died after the next attack."*
>
> *"The guy, 45, beaten black and blue. No free beds at the hospital. So, he left back home and, on the way home, died," another villager adds.*

People boil over the fact that because of introduction of medical reform now there is nobody to treat rural children. It appears that per 10 out-patient clinics and 23 medical assistants and obstetric stations, which are a part of Kostiantynivsky center of primary medical and sanitary aid, there is only one pediatrician seeing children at the regional center.

"There's nothing for it," and the physicians make a helpless gesture, "you can get from them no more than one rate for the children's doctor" (the total of the population of Kostiantynivsky Region makes 22 thousand people).

1.2. The collapse of the pediatric service

The Volyn Oblast is not included into the program of "medical experiments". But, as Fedir Koshel, Head of City Rada Health Department, says the healthcare reform in Lutsk began several years ago. The oblast has common problems: Lutsk mothers do not want their babies to

[8] http://pauluskp.livejournal.com/196852.html

[9] After the publication of "062 Donetsk" http://062.ua/news/v-donecke/kto-vedet-statistiku-smertnosti-lyudi-umirayut-iz-za-novoy-medicinskoy-pomoshchi

be examined by a family "doctor," who had worked his way through the six-month advanced training courses and retrained for a new profession. This is evidenced by statistics: the center of primary health care at the first Lutsk clinic renders medical service to 50,759 adults and 342 children only.

The reform in its literal sense requires significant financial investments, first of all, into modern medical equipment. If the doctors continue working with the existing resource base, there is no sense in starting the reform[10].

"Why break effective medical mechanism today?" asked the doctor with 20 years of experience. "They want to retrain us all and make family doctors. This is nonsense. To become a family doctor one must study from 8 to 10 years, rather than six months of casual retraining. After all, the organisms of an adult and a child are different, as well as the treatment. Especially it concerns children under one year old. I am afraid that these reforms will only destroy the pediatric service. Family medicine will begin working when our colleges will train appropriate professionals. I'm not talking about the diagnostic equipment that is currently used in our clinics, and access to it. You should start with buying the equipment, going about personnel training, and then proceed with working out statutes and changing sign plates."

1.2.1. "The penalty for failure to appear"

According to the newspaper *Segodnia*[11] the notices about the need to register in clinics "in accordance with the Law of Ukraine "On the reform of the health system" appeared on almost every house. Doctors, like politicians during electioneering, go stumping and inviting Kyivites to book an appointment with them and promising to grant sick leaves without health inspection and advice even at night time. Physicians' position is understandable: they will be paid extra money for each patient.

The notices surprise people; they reckon that unregistered residents will be fined. "I called the clinic. And I was told that it is a must. In fact, we will be fined for failure to appear," said the Kyivite from the Ernst Street.

1.2.2. Doctors say that they are not ready to perform the functions assigned to them as part of a pilot project of health system reform[12]

The health officials agree that "the family medicine in Ukraine is far from ideal," but argue that "the work of established family medicine centers is getting right, conditions for general practitioners are improving, and equipment is being purchased."

However, most family doctors still do not share this optimism.

"Unreadiness of material and technical basis and unpreparedness of doctors for their a round of duties simply discredits the very idea. People have to see family doctors, but family doctors are not ready to carry out routine functions," says family doctor Ruslan Dobrovolsky.

Moreover, the current clinics and outpatient departments of family medicine treat patients of different age groups under the old scheme.

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[10] http://vidomosti-ua.com/news/48748

[11] http://news.liga.net/ua/news/capital/728583-u_stolits_budut_prokhoditi_vibori_l_kar_v.htm #

[12] http://www.radiosvoboda.org/content/article/24705089.html

"We're lucky our doctor is a former pediatrician and she knows how to handle a child. But I am outraged by the situation that the children are sitting with adults in the same lines and contact with ill people. Therefore I do my best to avoid going to the hospital and only on the phone tell them what to jot down in the medical record," says Alina, a young mother who entrusts her baby to the family doctor.

1.2.3. Another failed attempt to implement medical insurance from January 1, 2013

As stated in the purpose of health reform, the reorganization and optimization of the network of medical institutions, distribution of medical care at different levels and other measures are carried out to further compulsory health insurance, which in turn will dramatically improve the financial "climate" of the branch.

To promote legislative support for reforms, another bill "On compulsory state health insurance" was proposed to the Verkhovna Rada of Ukraine on August 13, 2012.

The purpose of the bill was to introduce as of January 1, 2013 the mandatory state social insurance based on the three-level system of health insurance. According to the bill, the nature of these levels was as follows:

— Level 1: joint system of compulsory health insurance based on the principles of solidarity and subsidies and payment of insurance benefits at the expense of the Medical Insurance Fund;
— Level 2: cumulative system of compulsory health insurance based on the principles of accumulation of means of insured persons by the Cumulative insurance fund;
— Level 3: system of private health insurance based on the principles of voluntary participation of citizens.

The first and second levels of the health insurance system belong to compulsory health insurance. The second and third levels of insurance system belong to cumulative health insurance.

The bill specified that citizens of Ukraine may participate and receive insurance payments from different levels of the health insurance system. Also, the bill defined principles and mechanisms of the system of compulsory health insurance, its object and subject, their rights and obligations, persons subject to compulsory health insurance, mechanism of calculation and payment of insurance fees.

The suggested contractual regulation of mandatory health insurance was as follows:

— The contract (policy) of health insurance concluded in favor of the insured person between the Medical Insurance Fund and / or the accumulative insurance funds and insurers;
— The contract for rendering medical services to be concluded between the Medical Insurance Fund and / or the accumulative insurance funds and health care providers; it includes a list of medical services, their cost, scope, methods and frequency of treatment, quality criteria, standards of care, preventive measures, responsibility, etc.;
— Cooperation agreement entered into by the health care providers at various levels includes a list of medical services provided by involving relevant professionals or sending patients for necessary treatment to other health care providers.

But it should be noted that, according to the Central Scientific Expertise Department[13], the proposed changes in the bill, especially concerning the abolition of the laws of Ukraine

[13] Conclusion of the Main Scientific and Expertise Department from 26.09.2012, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=44150

"On compulsory state social insurance against temporary disability benefits and expenses related to the birth and burial" and "On compulsory social state workmen's compensation insurance and against occupational diseases that caused disability" and others may destroy current system of compulsory social insurance specified by the legislation of Ukraine on compulsory state social insurance and basic laws on social insurance.

In general, the analysis of the content of the bill indicates that it does not provide for achieving the goals and objectives declared in the letter of explanation and its implementation will not help to solve the main problems of the functioning and development of the health system in Ukraine related to ensuring of the constitutional rights citizens of Ukraine to free medical care, creation of "conditions for effective and accessible to all citizens health care" (Article 49 of the Constitution of Ukraine).

1.2.4. Dnipropetrovsk: as a result of medical reform the pediatrics is practically destroyed

Tetiana Okhotnyk, public activist, mother of two preschool children, told the edition *Dnepropetrovsk. Kommentarii*[14] : "In the spring mothers faced the situation when they came to policlinics and didn't know where to go further. For example, on Vorontsov three districts of pediatricians transferred to adult policlinic, to an unadapted wing."

"Children's policlinic on Yuvileyny was closed, the premises were adapted for a notary office, partially closed in Novomoskovsk. Actually all children's policlinics ceased to exist as such," generalizes Tetiana on information on "excesses" of medical reform which parents share among themselves at city forums.

The main problem, as it appeared, was that in the newly-created out-patient clinics in one turn to the doctor or for doing medical tests there stood adults, children, babies, pregnant women, sick and healthy; also there was only a small number of family doctors of due qualification. Besides, the policlinics of the Soviet construction aren't adapted to provide separation of flows of patients.

According to activists of the independent parental movement "For Our Children", who found each other in the Internet, this reform was half-baked. The doctor's consulting room for children is next to the psychotherapist's room, on Sofia Kovalevska the same is near the room of the dermatovenerologist. In Novomoskovsk medical tests are done near the fluorography room. Mothers in Novomoskovsk were more than once witnesses of delivery for medical examination of prisoners at the time of reception of ordinary patients. One more example from Novomoskovsk: mother came to the domiciliary out-patient clinic to make the cardiogram to the child. However, the "adult" doctors refused to perform the procedure as they had not been trained to decipher the "children's" cardiogram.

Thus, the transformations are carried out quickly and without preliminary preparation of doctors, offices, and patients.

For example, in the Pobeda residential district the children's policlinic on Kosmichna St. served 15–20 thousand children. In one week, according to the decision of the oblast health department, this policlinic was reformed, and six pediatricians were transferred to 22, Geroyiv St., where 3 out-patient clinics were created.

[14] http://dnepr.comments.ua/news/2012/06/01/112313.html

"As a result, the endless lines to the reception, high-gained tickets, two-hour lines to do blood tests. To get to the ENT, the mother with her child has to come to Geroyiv, spend the time standing in line for pediatrician, get the referral, go to Kosmichna, receive a ticket and see the doctor. To make the detailed test of blood, it is necessary to go to Fuchik St. via 22, Geroyiv St. While earlier everything was in one building, doctors of all levels, out-patient clinics, massage, and exercise therapy," complain parents.

Parents are outraged by the methods of carrying out reforms: "They open a new children's perinatal center where they can spend hundreds thousands hryvnias for rescue of one child, and, on the other hand, they destroy pediatrics. It's irrational. In one week they ruined the system, which took them dozens of years to be built."

Iryna Derevyanko, public activist, said: "Why to open the perinatal center, bear children, save their lives, if already in a month this child will go to an out-patient clinic and be put at risk of infection with all adult diseases?" Many mothers complain that during an appointment the doctor, say, diagnoses "bronchitis"; however, after continuous clothing and undressing, transition or moving to other buildings, lines to do tests, and lines to see the narrowly focused specialist the child will already be diagnosed pneumonia."

Tetiana Okhotnyk added that "we kept struggling for two months to bring back the day of the healthy child, which had always been on Tuesdays. The patient would be stopped at the reception for sure. And now it is impossible: the therapist never stops his/her appointments. And for the most part his patients include sick adults."

Parents believe that, certainly, reforming of medicine is necessary. However, the transformations should be carried out depending on the needs of this or that district or city. So, in their general opinion, in large districts in the city it is more expedient to keep children's policlinics and it is more expedient to apply the principle of the organization of medical aid in out-patient clinics in the remote areas.

1.2.5. 12 clinics are to disappear in Dnipropetrovsk[15]

This decision was adopted at a session of Dnipropetrovsk Oblast Rada on 21.12.2012. The ruling majority vote ignored both outraged patients under the walls and warnings of opposition in the hall. The government says: innovations are needed for efficient use of budget money, some medical institutions will be merged, medical personnel will not be sacked. Meanwhile, the opponents of the decision warned: like all medical reforms in the oblast, it was not publicly debated.

Such decisions should not be allowed to be adopted without public hearings or public debate. There are merging hospitals situated on different banks of the Dnipro linked with a bridge. The seventh hospital is merged with the emergency hospital. Who suggested such nonsense? Where is the logic? I understand that someone wants to get his/her opponent under. Why do they liquidate our doctors? The whole country is laughing at our medical experiments, and people cry for their children and elderly people are dying," opined Victoria Shylova, the Deputy.

"I ask to stop ruining clinical hospitals in Dnipropetrovsk. And the second point: the supervisory boards of hospitals still do not know about their reorganization. What about our local self-government then?" adds Deputy Kateryna Vidiakina.

[15] RL. http://www.radiosvoboda.org/content/article/24805620.html

On December 21, 2012, in the morning, about two dozen patients of the 7th hospital came to the walls of Dnipropetrovsk Oblast Rada despite ringing 15-degree frost. Protesters came spontaneously, without slogans and resolutions. It turned out that on the square, near the Christmas tree, all meetings are banned, and militia enclosed the area and asked the protesters away.

Hryhoriy, patient of many years at the seventh hospital was outraged: the institution had a good cardiology department, and now he could not undergo elective heart treatment there. "It's not something like sore stomach, when you can make do with a pill. This is your heart. If it stops, it's as good as lost," the man told the RFE.

1.2.6. The government does not take into account the opinion of the representatives of NGOs, independent trade unions and deputies[16]

Victoria Shylova, the Deputy of Dnipropetrovsk Oblast Rada, called the health reform a "plague". Ms. Shylova noted that 95% of oblast residents opposed the reform in this format, which not only failed to bring medicine closer to people, but, quite the contrary, it increased the distance to the nearest clinic up to 80–100 km." Only local officials do not notice this.

Chairman of the NGO of disabled workers, victims, families of workers killed at work in Dnipropetrovsk Oblast "Myr" Serhiy Shubnykov commented: "During 15 years, the health standards are constantly revised. If earlier I could be treated at the hospital for a month, then later this term gradually decreased. Now, if in 7 days a patient does not recover, the qualification of the physician is prejudiced. But there are situations when it is simply impossible to make a recovery in such a short time, e. g. in the case of infarction."

The NGO "Myr" promoted the formation of the initiative group "Against healthcare reform" in the Dnipropetrovsk Oblast. Its activists are currently trying to reach the power to close down the pilot medical reform. The dialogue with the authorities follows a well-beaten track: correspondence in vague terms. Despairing of success, people resorted to peaceful assembly to initiate a local referendum among the population.

However, after the application about the rally in Dnipropetrovsk on April 27was filed, the Administrative Court officers called Serhiy Shubnykov. They told that the City Rada of Dnipropetrovsk filed a counterclaim, and the court ordered the banning of peaceful action.

On the eve of the peaceful assembly in Dnipropetrovsk the representatives of the Free Trade Union of Medical Workers of Ukraine, initiative group "Against healthcare reform" and of "Myr" organization came to tell about their problems to Kyiv. They convince that they were forced to come, because they may not deliver information at the regional level. "All channels of communication in Dnipropetrovsk Oblast are blocked. We cannot speak on any channel, so we give a press conference in Kyiv for the authorities to hear us," says Victoria Shylova.

"This health reform project is not for people but for officials," says Serhiy Shubnykov.

No one disputes the need to reform the existing health care system, but few expected just such a result.

In some cases, they carry it to the point of absurdity. As Victoria Shylova told, with funds earmarked for reform they purchased tomographic scanner worth UAH8 million, which is

[16] "Health reform: regular improvement or ticket to the kingdom come?" http://life.pravda.com.ua/health/2012/05/3/101606/

standing idle for six months now until they purchase the software (costs about the same). Its servicing costs about UAH5 million annually, which the budget of the local hospital, of course, cannot afford. Therefore, patients have to pay a charitable contribution to the tune of UAH380 to UAH1500.

The pilot oblast is against such an experiment on human beings. So, the guests from Dnipropetrovsk ask, if it is feasible to give the go-ahead to such healthcare reform.

1.2.7. The ambulance will no longer aid you

Soon the centers of emergency medical care will emerge in Ukraine consisting of emergency units and unified dispatching department equipped with GPS. But most doctors reasonably believe that the reform will be a profanation.

Maxym Ionov, doctor at Kyiv emergency station, Chairman of the Free Trade Union of Emergency Doctors[17]:

In summer of 2012 the Verkhovna Rada of Ukraine hastily pushed forward the half-baked Law "On emergency medical care", which entered into force on January 1, 2013. This means that now the can issue orders and regulations in its sole discretion bypassing legal procedures and expert analysis on the part of other government agencies.

Moreover, on 21.11.2012, the Cabinet of Ministers of Ukraine adopted a resolution that clearly defined the work of Emergency medical care (the name EMC in accordance with the law since 01.01.2013). Namely: it strictly regulated the on call arrival time of EMC teams (10 minutes in urban and 20 minutes in rural areas); differentiation of *urgent* and *not urgent* calls and introduction of temporary EMC bases. These measures are intended to create Centers of emergency medical care and disaster medicine with departments of emergency medical care, as well as a unified dispatching with GPS plus temporary emergency bases.

- What happens in practice?

Maxym Ionov: Over time people may forget about the quality of medical care, and here's why. Today, the main purpose of officials is arrival time and subsequent emergency hospitalization plus austerity plan. Already "tomorrow" they will determine the main parameter criterion "to bring the patient alive/dead", and "the day after tomorrow" the question of quality of medical care will disappear by itself.

From 1 January 2013 the house call may be carried out not by a doctor, but a medical assistant, and in a few years by some paramedic. The emergency team will have no medical preparations, no equipment, no assistant (only a driver) and nobody with medical experience! For me, as a doctor, there is a difference between hospitalization of the patient with acute coronary syndrome (myocardial infarction) undergoing intensive therapy with defibrillator (assistant's level) or admit him after pre-hospital thrombolysis, as our experts in cardiac resuscitation do.

Why, taking up the question of EMC brigade's arrival in 10 minutes, nobody brings up a question of horrific road conditions, extremely worn medical vehicles, traffic congestion, rudeness on the part of drivers of other vehicles, unreadable house number and street names, or their absence, passages and driveways and approach roads to receptions? And the list may go on.

[17] Read more about about the problem of first aid on "Maidan" http://maidanua.org/2013/01/likar-maksym-ionov-shvydka-do-vas-bilshe-ne-pryjide/

- GPS-navigators

GPS-navigators. Many employees and citizens were delighted with the expectations of GPS-navigation. With great relief they came to know that now it would be easier and faster to find the correct address. But no such luck! The GPS-navigators were installed not to facilitate the search for an address, but for control and monitoring of the emergency team on dispatcher's monitor in order to know where the team is located and what it is doing. Although, truth be told, everybody knew this info. The team went on reading a map unable to find a proper driveway to answer the call. However, the total control over fuel and lubricants was established, and the administration was not interested in long traffic jams, because the monitor did not show these jams.

- Extra bases for EMC teams

The similar experiment in Kharkiv showed complete disorganization of these innovations. Virtually they created 30 such bases, but EMC teams were sent just be on call near clinics or medical institutions, in some cases just on the street, with no minimum ability to satisfy their physiological needs (eating, hygiene needs, etc.). All this led to protests and criticism from both the population and the medical personnel who found themselves in terrible conditions.

- Qualified personnel

Qualified personnel. The last decade was one of the main problems of the ambulance service. Today throughout Ukraine there is a continuous outflow of skilled personnel. The reasons are simple: poor working conditions and miserable wages, young professionals are not motivated, experienced doctors and nurses go over to institutions with more relaxed and better paid working conditions in the private sector.

Maxym Ionov: We are in the midst of restructuring of the health care system, which, according to officials, involves optimization of medical institutions, while in reality it means their closure, sale or complete ruin. The same is about the ambulance service. Officials undertake to "reorganize" it without even miserable investments, and it means that the old system will be ruined and the new one will not be created. You cannot build a house without money, without buying building materials. But our ministerial officials deem it possible.

1.2.8. "Reformed" pediatric service in Vinnytsia

Olga, Vinnytsia resident, says: "This is about health reform. My son is 10 years old and as many years we go to children's clinic, we often come here. However, current conditions are a real trial. Yesterday we went to see the oculist, the endless line at the door to the office, turned around and went home. I decided to return early in the morning. Reception twice a week from 9.00 am to 03.00 pm! Before the reform the reception was on a daily basis! We came before 9.00, but there were so many people as if they stayed overnight there… Maybe 30 people waited in a line. And I hoped to be with my child among the first! We lined up and were admitted to the doctor's room on the fourth hour of the day. Six hours in the line! Six! All are tired of waiting. This happened for the first time in 10 years. Well, maximum waiting time was half an hour. Well, an hour, sometimes … But not six hours, it's almost a workday! Terrible! The doctor was tired as well and I understand it. Without lunch and breaks. It gives a pain in the neck. Children are hungry. Nobody expected that we would wait so long.[18]"

[18] http://zotov-news.blogspot.com/2012/08/blog-post_27.html?showComment=1348840302830#c2413223154375357146

Vinnitsa association "Parents against healthcare reform" gathered nearly 30,000 signatures of Vinnytsia residents against such model of health reform, which is currently being tested in Vinnytsia Oblast.

1.2.9. Villagers to the President: exclude our settlement from pilot health reform

Voronovytsy urban type community, Vinnytsia Oblast, 20 kilometers from the oblast center, gathered together to pass a decision and appeal to the Oblast State Administration and the President of Ukraine requesting to exclude their settlement from pilot medical reform. This action was caused by government's attempts to close a large regional hospital, which served about twenty thousand inhabitants of Voronovytsy and nearby villages[19].

"They now call it "optimization," says Viktor Stetskiv, head of the Voronovytska Settlement Rada. "Indeed, it is closing. There is a gradual reduction of personnel and beds. Already from 80 to 50. And what does the number of beds mean? It means medical staff that serves them, and public funding. And as a result, many patients cannot get proper treatment. Officially we serve 14,000 people from nearby villages and unofficially about 20 thousand. Many residents of neighboring villages of Tyvrovsky Region are unable to get to their local hospital: there are no regular buses and they go to our hospital. And we do not deny reception. Moreover, historically the hospital was built jointly by neighboring collective farms. But here arises the problem of "the emergency aid". Tell me, who should visit the patient, who is not registered in our hospital? Then … there appeared family doctors. The sick man calls in a doctor, but how he can reach the neighboring villages? The "ER" is an independent service. And they want to include it into the disaster medicine. But I do not see the logic: there were no disasters here from time immemorial."

1.3. Intermediate results of health reform in 2012

1. There was no coordination of legal basis of the pilot project of reforming the medical branch with the provisions of the Constitution of Ukraine, Budget Code of Ukraine, Economic Code of Ukraine, Civil Code of Ukraine, Code of Laws of Ukraine on Labor, and Law of Ukraine "On payment for labor"[20].

2. The process of unconstitutional reducing existing network of medical institutions and the establishment of payment for services in the health sector went on.

3. The Law of Ukraine "On emergency medical aid" does not take into account the essential features of the emergency medical care. The existing infrastructure in the administrative-territorial units is ignored: the state of roads and the state of public transport.

4. The primary care centers in the pilot regions, especially not within the oblast center, in rural areas provide no opportunities for patients to reach them, including the elderly and patients with disabled locomotive system.

5. By the end of 2012 the primary care centers in the pilot regions were understaffed with medical personnel with appropriate qualification and left without facilities for diagnosis and treatment of the most common diseases, injuries, poisoning, pathological, physiological (pregnancy) states.

6. Non-transparency of the reform. 10.24.2012 the CMU approved the resolution No. 1113 "On approval of the creation of hospital districts in Vinnytsia, Dnipropetrovsk, Donetsk

[19] http://amm.net.ua/pid-vazhkim-chobotom-medichnoyi-reformi.html

[20] Read more in: "Human Rights in Health Care — 2011" http://library.khpg.org/index.php?id=1340911384

oblasts and Kyiv." Paragraph 12 of the Procedure of public consultations on the formulation and implementation of public policy (approved by the resolution of the Cabinet of Ministers of Ukraine No. 996 from 03.10.2012) specifies that the draft resolution of the CMU needs mandatory public discussion. The paragraph 8 of the note of explanation to the aforementioned draft resolution of the Cabinet of Ministers ordered the Ministry of Public Health of Ukraine to upload the text to its site for discussion. However, this document was never uploaded to the site of the Ministry of Public Health of Ukraine[21].

The negative consequences of the implementation of health reform go on coming out

— The out-of-practice doctors and professionals are lost for the branch.
— Collapsing pediatric service.
— Population linking health reform to the deterioration of health care, especially for vulnerable groups.

1.4. Recommendations

1. Bring the provisions of the Law of Ukraine No. 3612 of 07.07.2011 "On the procedure for health care reform in Vinnytsia, Dnipropetrovsk, Donetsk oblasts and Kyiv" and the Law of Ukraine No. 3611 of 07.07.2011 "On Amendments to the Basic laws of Ukraine on healthcare intended to improve the medical care" in compliance with the Constitution of Ukraine, Budget Code of Ukraine, Economic Code of Ukraine, Civil Code of Ukraine, Code of Laws of Ukraine on Labor, and Law of Ukraine "On payment for labor"[22].

2. Prevent reduction of network hospitals and introduction of paid medical services in accordance with the current Constitution of Ukraine

3. Strengthen monitoring by law enforcement agencies of the mechanisms of "reorganization" of medical institutions and compliance with applicable laws on economic and labor law.

4. Strengthen control of NGOs of the implementation of health reform.

5. Increase the "transparency" of decision-making on all issues of implementation of health reform, including the conduct of public hearings, regulations, adoption of which requires the use of this mechanism for implementation.

6. Disseminate information on the measures and steps of implementation of health reform in advance of the actual administrative actions.

7. Develop centers of primary health care based on a complete set of specially trained professionals with appropriate qualifications in light of international experience (10-year training).

8. Amend Article 49 of the Constitution of Ukraine on elimination of provisions for free treatment to guarantee a certain list of free medical services (minimum basic level guaranteed by the government).

9. Having amended Article 49 of the Constitution of Ukraine to identify sources of health funding: state budget and fund of compulsory medical insurance.

10. Suggest Ombudsman of Ukraine to take personal control of health care reform in order to prevent violations of basic inalienable human rights to life and health.

[21] http://medreformadn.blogspot.com/2012/11/blog-post_21.html # more

[22] "Human Rights in Health Care — 2011" http://library.khpg.org/index.php?id=1340911384

2. LAW OF UKRAINE "ON PSYCHIATRIC CARE" IN THE CONTEXT OF HUMAN RIGHTS[23]

Law of Ukraine "On Psychiatric Care" was adopted on 22.02.2000, and ever since has complicated life of both mentally ill and their families. It is no exaggeration to opine that this law barred psychiatric assistance in the form in which it existed in the Russian Empire and the USSR. Many believe this is a positive step, because in Soviet times there was a repressive psychiatry, and many dissidents were victims of it. But in Soviet times alongside the repressive psychiatry, there existed traditional effective and efficient psychiatric care.

All mentally ill received the necessary aid quickly and efficiently. And, although the hospital environment in Soviet times was rather modest, patients were not hungry and had necessary drugs free of charge.

Now all this is up in the air. Food in psychiatric hospitals is extremely bad and free medical preparations are prescribed not on the basis of their efficacy, but because of their cheapness. However, it was hit the hardest not by the lack of money, but by the above law. Article 11 of the Law specifies the informed consent of the patient for medical examination: "*The psychiatric examination is conducted by the psychiatrist at the request or with the informed consent of the person*." That is, if a person is competent, neither relatives nor, especially, third parties can organize psychiatric examination without patient's consent. But we all know that one of the symptoms of endogenous illness — schizophrenia, bipolar disorder, etc. — includes the absence of critical evaluation of one's condition. Thus, the schizophrenic would never agree to be examined by a psychiatrist because s/he feels healthy, and any attempt to treat the condition s/he ascribes to hostile forces. The only thing now for the relatives of the patient at the signs of illness is to wait and see, or what? Call a psychiatrist? Can do. But under the law the psychiatrist visiting the patient should introduce himself, tell that he is a psychiatrist and ask if the patient wants to be examined. Of course, most patients refuse to be examined, and the psychiatrist goes away empty-handed. But the patient remains ill. And sometimes, quite often, s/he poses a hazard to herself / himself and to her / his people.

The untimely treatment may lead to suicide and have serious consequences for the patient's family. There is a lot of examples, because the KhPG assists relatives of such patients. Here's one such example:

> *One woman addressed a complaint to the KhPG: her daughter is mentally ill and constantly beats her grandson and herself.*
>
> *The woman called for emergency psychiatric aid, but her daughter flatly refused to be examined. She called the law, which can call an ambulance, but does it very reluctantly and rarely. In this case, the militia arrived to tell that it was nothing but domestic discord. The "domestic discord" ended in disaster: the sick woman beat her child which was taken to the hospital with a concussion. Then the KhPG appealed to the board of guardians and office of a public prosecutor. The board of guardians deprived her of parental rights, and the grandmother became the guardian of the under-age grandson. But nobody concerned himself with the sick woman and no one treated her. Neither the law enforcers, nor the office of a public prosecutor turned to physicians, and, of course, the patient herself did not want to be treated.*

Another example concerns a situation which is in the process of being solved.

> *The patient V. had mental disorders from little up, repeatedly underwent treatment at a psychiatric ward for adolescents, was registered in an out-patient psychiatric facility, but had no es-*

[23] Prepared by Inna Zakharova, member of KHPG.

tablished diagnosis of "schizophrenia". His illness was diagnosed as abnormal personality, and he was found unfit for military service. At the age of 28, he suddenly began to consider himself a girl, and began dressing in ladies' wear and taking female hormones estrogens. His parents failed to realize at once that it was a manifestation of mental illness, but when they learned that he also had raised credits and had not refunded money, bought three cars, and generally had made a lot of funny things, they understood that this was a manifestation of the disease, which he had had still in his youth. Assuming that V. was a threat to himself, the parents called an acute psychiatric aid. The ambulance brought V. to a psychiatric hospital, but he refused to be examined by the psychiatrists, and he was released from sanitary inspection room. The parents went to court, but the court refused their request and did not schedule a psychiatric examination. Now the parents do not know what is happening to their son: he broke kinship. They know only that the bank, where he raised credits and did not refund money, brought an action before the court to seize his property. And in this case, the court worked quickly giving permission for the arrest of the V.'s property. Once again the parents of the sick man, with new documents this time, went to the law to appoint a psychiatric examination of V. But nobody knows what will come out of it.

According to psychiatrists, the courts and the militia very unwillingly give permission for compulsory treatment and examination leaving patients without any medical assistance.

In one case, the neighbors helped to manage the situation with aggressive insane. The sick man N. had been diagnosed as schizophrenic, but was not deprived of legal capacity. He was not treated and the disease aggravated. N. became aggressive, beat his children and wife. Every day his neighbors heard screams and fights. However, the law did not bother to intervene on the grounds that it was a ***family affair****. Then the neighbors knocked at the door during a fight, and, when N. began threatening them, called the law. The N.'s psychosis state was evident, and militia called a psychiatric emergency aid. N. has been hospitalized and is undergoing treatment now. The KhPG staffers advised neighbors to do it. And fortunately, the neighbors were courageous and not indifferent.*

The psychiatrists cannot work properly because of this law. They see that the person is ill and is dangerous to his relationship, but they have no legal leverage to treat him. Only due to the fact that our state-paid workers are timid and usually do not resort to public actions we do not have protests by psychiatrists who really worry about this law and related situation. The KhPG applied to Minister of Health Ms. Bohatyriova with request to revise the law, but we've received no reply until now.

The sick people, not only their relatives, are constantly turning to us. They often complain of some fictional problems. But we see that they should be treated. However, our appeals to psychiatric clinics are in vain, because the patients do not give "conscious" consent to medical examination and treatment, they do not realize that they need such assistance.

As to repressive psychiatry, the law does not protect against it. In independent Ukraine there still exists repressive psychiatry. We ran into it in the case of patient R.

He had a long-standing diagnosis of schizophrenia. But he rarely underwent treatment and kept off the out-patient psychiatric facility. Naturally, he did not receive necessary medical preparations. So, he was not under medical supervision, when the whole story occurred, with which the KhPG is concerned now. Therefore, it's not possible to diagnose the current stage of the disease.

According to official version of investigators and court, R. beat the girl so badly that she went to the hospital, where she underwent surgery. According to R.' mother, the militia denied him of liberty unlawfully; they beat him black and blue before he was taken to neurosurgery with a concussion; but he could not beat the girl, because at that time he was elsewhere. We will not go into these details further, because we are interested in the medical part of this story. The investigators brought R. to undergo psychiatric examination, which confirmed the presence of a mental illness. On this basis, the court ruled to bring R. to a psychiatric hospital with strict supervision, which is located in Dnipropetrovsk, having recognized him as socially dangerous.

This would not have happened, if the Law of Ukraine "On Mental Health Services" had not left the fate of R. at his discretion, and he had received the timely treatment (if he really inflicted bodily blows, as the investigators concluded).

However, in the psychiatric hospital with strict supervision they started treating him with potent neuroleptic beyond drugs, which was certified by the Kharkiv Regional Psychiatric Hospital No. 3. During her visits, mother saw her son grown thin and in convulsions. The KhPG lawyers forwarded an inquiry addressed to the head doctor with a request to inform, what medications were used in the treatment of R., but got no answer and had to begin legal action against the hospital. The court ordered the head doctor to answer the KhPG lawyers. And only after that, they began treating R. with other medications. Thus, we see how an illness that was either not treated, or treated insufficiently can cause tragic consequences. But the law does not protect us against the repressive psychiatry.

Now the legal proceedings R. *v.* Militia and *v.* investigator are underway. The KhPG experts represent R. in court.

The relatives of another patient turned to us to help them hospitalize sick man A. This sick man A. turned to KhPG complaining that the SSU pursues him trying to kill. The former wife of A. filed an application that A suffers from mental disease. In 2007 he was treated in KhOPH No. 3. Now his condition has declined. The wife appealed to the head of the department where her ex-husband was treated. The doctor said that it was necessary to hospitalize him immediately. But A. does not want to hear about it, because he feels healthy. He constantly pursues his ex-wife and daughter, who had to leave Kharkiv; he tried to penetrate the apartment of elderly parents of his wife and broke the door. His wife called the militia, told them about the disease of A., asked them to help hospitalize him. But the militia conducted an interview with A. persuading him to behave in accordance with generally accepted norms and left; nevertheless the problem persists.

Now A. continues to haunt his wife and her parents. The appeal of KhPG to the out-patient psychiatric facility led to nothing. They explained that A. may be hospitalized after simultaneous calling an ambulance and militia, if the militia wants (!) to take part in it. So until now the problem is not resolved.

There is another unacceptable thing in the Law "On Psychiatric Aid". Part 2 of Article 11 of this Law reads:

The psychiatric examination is conducted by a psychiatrist at the request or with the informed consent of the person; of persons under 14 years of age (minors) — at the request or with the consent of a parent or other legal representative; of a person legally recognized incompetent — at the request or with the consent of her/his guardian. In case of disagreement with one parent or absence of parents or other legal representative of a minor the psychiatric examination is conducted by decision (agreement) of the agency of guardianship, which may be appealed (Article 11 as amended by the Law No. 1033-V (1033-16) of 17.05.2007).

That means that a mentally ill child may be examined only by the consent of both parents. But one of the parents may not realize that a child needs psychiatric examination. S/he may be just afraid of contacts with psychiatrists, which happens at every turn.

Several years ago a young woman separated from her husband appealed to the KhPG. Despite the fact that their 5-year-old son was mentally retarded, her husband, who very rarely saw his child, did not give consent for examination of the child by a psychiatrist. So, the boy grew up without proper medical supervision and, therefore, his condition deteriorated. Then the KhPG experts arranged for the doctor to examine the child.

But the law does its dirty work. And how many children are left without medical assistance?

In our opinion, it is necessary to form a working group of leading mental health professionals and develop a new redaction of the Law of Ukraine "On Psychiatric Aid".

3. VIOLATION OF THE RIGHT TO HEALTH CARE IN PENAL SYSTEM[24]

What is to be done when a person is in custody, if her/his health is deteriorating by the day and the appropriate institution subordinate to the State Penal Service of Ukraine (SPSU) cannot provide the necessary medical care? If a person is convicted and the judgment against her/him has entered into force, the procedure of person's release for health reasons in accordance with Article 84 of the Criminal Code of Ukraine may be applied. Considering all the circumstances, the court endorses the release and the person can be treated in a civilian hospital.

But what is to be done with those sick people who are still accused (suspects)? In the case of the life-threatening disease the court cannot release them for health reasons.

As for altering the preventive measure of detention and resorting to alternatives not associated with imprisonment, even in such cases, when a person suffers from a failure to get medical aid and her/his life and health are in real danger, the courts are slow to protect human rights and adopt new and innovative solutions for detention in custody. It should be noted that in a pilot decision of the European Court of Justice (the Court), in the case *Kharchenko v. Ukraine*, on 10.02.2011 the Court opined that the abuse of arrest in Ukraine is a systemic violation and Ukraine within six months should take certain measures to correct these deficiencies.

If at the national level they cannot achieve the transfer of a patient from the institution subordinated to the SPSU for treatment in a civil hospital and the person needs immediate medical attention, the lawyers appeal to the Court according to the Rule 39 of Regulations of the Court on taking urgent measures to protect the life and health of the person.

But it so happens that despite the judgment on the urgent measures that is compulsory for Ukraine the urgent measures are not taken.

This happened in the case of Professor Anatoly Temchenko, former rector of the Kryvy Rih University:

This happened in the case of Tamaz Kardava, in which the delay in providing treatment resulted in a tragic death.

Morbidity and mortality in penal institutions[25]

Indexes	01.01.2004	01.01.2008	01.01.2009	01.01.2010	01.01.2011	01.07.2011	01.01.2012	01.07.2012
Number of prisoners	191677	149690	145946	147716	154027	157866	154029	152076
Died	824	729	765	761	808	601	1 169	440
Per 1,000 prisoners	4.30	4.87	5.24	5.15	5.25	7.61	7.59	5.79
Number of suicides	41	54	40	44	44	28	59	32
Per 1,000 prisoners	0.21	0.36	0.27	0.30	0.29	0.355	0.383	0.42

[24] Prepared by Volodymyr Bocharov-Tuz, The All-Ukrainian Charity Organization "Network of the NGOs worked in the penitentiary sphere".

[25] Prison portal http://ukrprison.org.ua/statistics/1344593701

Indexes	01.01.2004	01.01.2008	01.01.2009	01.01.2010	01.01.2011	01.07.2011	01.01.2012	01.07.2012
Active TB infection patients	9080	6 195	6079	5667	5486	5393	4822	5007
Per 1,000 prisoners	47.37	41.4	41.65	38.36	35.62	34.2	31.3	32.9
HIV positive	1917	5017	5073	6069	6020	6438	6910	6347 –8.15%
Per 1,000 prisoners	10.0	33.5 / + 15%	34.8 / + 3.6%	41.1/ +18%	39.1	40.8	44.9	41.7

As seen from the table, in 2008 the number of HIV positive persons in penitentiary system of Ukraine constantly increased. During 2012, there was no fundamental change in the situation with the provision of antiretroviral therapy for HIV-positive convicted persons and prisoners.

So, at the beginning of 2012, the antiretroviral treatment was provided for 986 persons. According to the penal service, there were 1,100 persons on the list for antiretroviral treatment.

At the end of year, the number of prisoners on the list for antiretroviral treatment, who did not receive any drugs, began increasing. A number of factors contributes to this.

Firstly, the number of prisoners appointed for antiretroviral therapy and undergoing examination in multipurpose hospital units of SPSU increased.

Secondly, the stock of ARV preparations in colonies is usually far below the need. This happens because the SPSU usually undersupplies the hospitals in the colonies. For example, if the sanitation service orders 20 schemes, the SPSU supplies no more than 9–10. Therefore the prisoners, who have been brought to the hospital to undergo antiretroviral therapy, are denied medication by the management of sanitation service.

Another example. At the beginning of the year, only at the Chernihiv penal colony No. 44 20 people urgently needed ART therapy. The colony had no preparations to treat these prisoners. There was enough medical preparations only for those, who were already undergoing medical treatment. The stock of medical preparations was calculated approximately for three months. The similar situation occurred in other colonies. For example, at the end of the year in Kirovohrad PC No. 6 more than 10 HIV positive prisoners needed ARV drugs.

The NGO *Soniachne Kolo* from Odesa turned to the ACO "Network of organizations working in the penal system" on behalf of the ill prisoner in Kherson specialized hospital in the colony No. 7: "C. E., born in 1970, Kherson Oblast, Holoprystanska PC No. 7, CD-44 cells / ml blood, viral load 3 000 000, TB of lymph nodes, undergoes TB treatment from September 2012. The sanitary service has no ARV drugs in store, the convict needs ARV therapy in the absence of proper preparations." Lately the situation extremely deteriorated; the NGO *Soniachne Kolo* is located at a distance from Kherson AIDS center; in the meantime, the representatives of the NGO made arrangements for antiretroviral therapy for S.E. for one month. According to the latest tests, the patient's CD-4 shows 40 cells/ml of blood.

According to the clinical protocol of antiretroviral therapy for HIV infection in adults and adolescents, "all HIV positive patients undergo screening for hepatitis C virus (hereinafter: HCV) by detection of antibodies to HCV (B-III). The positive result of the study should be con-

firmed by the presence of HCV RNA in the blood by PCR (A-II)." However, this requirement is not satisfied regularly. In late 2012, the situation somewhat improved due to SPSU's receiving humanitarian aid.

In 2012, there were reports of interruption of taking of ARV drugs by prisoners, the antiretroviral therapy was discontinued. One of the reasons consisted in the earlier practice of ARV treatment in the penal system of Ukraine. Thus, HIV positive prisoners were supplied drugs not only by the SPSU, but also by the Centers for prevention and control of AIDS. However, if the convicted, who received antiretroviral drugs at the AIDS center, moved from one penal institution to another, s/he had difficulties with access to therapy. Most often this situation arose, when the sentenced was transferred to institutions located far from AIDS Centers, which complicated the timely supply of drugs.

This practice is in conflict with the Regulations adopted on September 5, 2012, which schedules the conduct of antiretroviral therapy. The regulation clearly defines entities responsible for the ARV treatment in prisons. The Centers for Prevention and Control of AIDS should provide drugs to all persons in need of treatment prior to the entry into force of the verdict. After the entry into force of the judgment the obligation to provide ARV treatment of prisoners is assigned to health care institutions of the penal service.

In addition, in 2012 there were problems with the provision of certain schemes of antiretroviral therapy for HIV positive prisoners. In June 2012, convicted Dmitry in interoblast hospital of SPSU the doctors in charge prescribed the ART scheme that included the Truvada medicine. The drug was given with a margin of three months. But in the colony, in which Dmitry was serving a sentence, this drug was not available. In order to avoid omission of drug administration to the convicted, they modified the scheme of ARV treatment. As a result, a new scheme of ARV therapy was now supplied by the regional center against AIDS.

In order to prescribe and start the antiretroviral treatment of sentenced Mykhailo M., he was transferred from correctional facility No. 97 to the interoblast hospital in correctional facility No. 124, where he was prescribed antiretroviral therapy. Having issued drugs, they immediately sent him back to the correctional facility No. 97 in violation of the clinical protocol of prescription of ART: "The main indicator for deciding on the start of ART is the number of CD4-lymphocytes. The decision on the prescription of ART should be based on the results of two separate tests of CD4-lymphocytes conducted at intervals of 14–28 days to exclude laboratory error and other causes of indicator deviation (e. g., intercurrent disease. "According to the convicted, while in Donetsk investigatory isolation ward, he declared a hunger strike because of intense side effects of ARV treatment. In his appeal he demanded that he be given the opportunity to undergo treatment in the interoblast hospital until the side effects of treatment alleviate.

In 2012, there remains an acute problem of undermanned staff of infection disease doctors in the colonies. Due to the lack of such specialists, often the HIV positive prisoners were limited in their access to services of infectious disease doctors.

The exceptions include the interoblast SPSU hospitals and institutions, where service is rendered by infectiologists of oblast (city) Centers for prevention and control of AIDS. However, more often the colonies that are located far from the Centers of prevention and control of AIDS are not able to implement the sick-call of HIV positive prisoners by the infectiologists. Moreover, the administration of the colony cannot open new jobs for medical professionals in staffing establishment of health units.

Both prisoners and prisoners in penal institutions often cannot undergo quality medical diagnostics. The SPSU is doing its best to upgrade medical equipment, but these measures and the intensity of the upgrade process are not enough.

In 2012, there were complaints of poor diagnosis of tuberculosis. Early in 2012 the convict Ivan K. underwent examination in multi-field hospital of SPSU at the Dnipropetrovsk investigatory isolation ward and was prescribed to undergo the antiretroviral treatment. Having received the prescription, he returned to the colony. Less than in a month later he died, because during examination in multi-field hospital of SPSU the doctors failed to diagnose the extrapulmonary tuberculosis. This diagnosis was made in TB hospital under Ministry of Health, where he was moved due to a sharp deterioration in health.

In addition, during 2012 there were complaints of prisoners of the absence of supply of medications. A limited stock of medications in the medical units of colonies forms the basis for corruption. For example, in 2012 convicted Mykola L. turned to the medical unit asking to extract a tooth. The dentist used local anesthetic lidocaine, which is a very weak painkiller sometimes used in the case of tooth extraction. At the same time, the dentist had Ultracain as well, which kills pain much better. However, for such a drug the dentist demanded "donation" to the tune of a pack of cigarettes. There were also complaints from prisoners about the absence of other medications: hepatoprotectors, fluconazole (medicine for opportunistic infections).

There happened a paradoxical situation: the ACO "Network of organizations working in the penitentiary field" was addressed to in the case of the problem with prevention of vertical transmission in HIV positive pregnant woman in the investigatory isolation ward. According to clinical protocol, she had to start taking drugs. But soon she was convicted and sent to Melitopol female colony for minors. The problem was that this institution was unadjusted to keep the sentenced mother with the child. The temporary solution was found in this case: the mother an her child stay at the investigatory isolation ward for the time being.

Recommendations

1. To legally determine the grounds for selecting a preventive measure in criminal proceedings with due regard to the state of health of the subject of criminal prosecution.

2. Implement an effective mechanism for altering the preventive measure on the basis of the health status of the subject of criminal prosecution.

2. The SPSU shall work out a mechanism for predicting an adequate supply of medical preparations, particularly drugs for antiretroviral therapy in medical units of penal system taking into consideration the likely number of patients, including HIV positive ones.

3. The SPSU shall provide for continuity of antiretroviral therapy in connection with the transfer of convicts from one penitentiary institution to another.

4. The SPSU shall design a procedure for infection disease doctors to treat HIV positive convicts (manning table, planning extended counseling).

5. The SPSU shall work out special prison regulations for HIV positive mothers with a child in detention.

4. JUDICIAL PROTECTION OF THE RIGHT TO HEALTH[26]

4.1. Protection of patients' rights in cases against Ukraine: practice of the European Court of Human Rights in 2012

Judging by the European Court for 2012[27] and previous years, you can make a definite conclusion that patients' rights may be protected by reference to a violation of Article 8 of the Convention, if the process and results of failure and / or lack of care has not been such that may actually be recognized as torture and / or inhuman or degrading treatment. If the effects of failure or lack of medical care are more significant, one should refer to a violation of Article 3 of the Convention (or Article 2, if the case results in the death of a person) and ask the Court to recognize these actions as such that are qualified as torture and / or ill-treatment.

It is significant to note that the decision by the European Court of Human Rights (hereinafter: the Court) under Articles 2, 3, 8, 14 of the Convention against Ukraine concerning violations of patients' rights in health care cases in 2012 were not accepted. This may mean both a lack of violations by the government of patients' rights (which does not seem to be true) and lack of competence of applicants from Ukraine, the complaints of which are recognized as unacceptable, or they do not submit complaints data at all.

Analyzing the Court's practice in 2012, it should be noted that the proportion of cases involving patients' rights is very low. This, in our opinion, is due to several aspects:

1. The text of the European Convention on Human Rights does not contain a separate article that defines the human right to health.

2. The time-varying legal position of the Court on qualification of the violation of patients' rights according to Article 2 (right to life), 3 (prohibition of torture), 8 (right to respect for private and family life), and 14 (prohibition of discrimination). In its decisions of previous years, the Court in various ways interpreted objectively similar situation with violations of patients' rights taking as a basis the consequences caused by actions or inactions of a doctor. If these actions led to the death of the patient, the Court could find a violation of Article 2 of the Convention; in the case of affliction the Court could find a violation of Article 3 of the Convention; in the case of misery the Court could find a violation of Article 8 of the Convention; if the activity or inactivity of doctors, according to the Court, were aimed at discriminating of individuals based on gender, age, race, etc., the Court could find a violation of Article 14 of the Convention.

3. The difficulty and complexity of these cases, the reluctance of the Court to analyze precisely the objective side of the activity of doctors and provide a juridical appraisal. Instead, the Court is ready to address issues concerning the availability of a thorough investigation in the criminal process on damnification of a patient through actions or inactions of a doctor in a particular state.

However, analyzing the decisions against Ukraine made by the Court in 2012, we can notice certain trends.

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[26] Prepared by Natalia Ohotnikova, KHPG expert on medicine cases.

[27] Read more: http: // hr-lawyers.org.

Thus, in the case *Todorov v. Ukraine* (application No. 16717/05, judgment of 12.01.2012) the Court drew attention to the permanent absence of guarantees by Ukrainian authorities of the rights of patients in prison.

Before his arrest the applicant was diagnosed with immature cataracts in both eyes and atopic dermatitis. After admission to the investigatory isolation ward the applicant was examined by medical personnel of the investigatory isolation ward and placed under observation by a specialized clinic because of aggravated immature cataract in both eyes, diffuse eczema, and chronic gastritis. During his stay in the investigatory isolation ward the applicant's medical condition only worsened. He needed an urgent operation on his eyes, lest he completely lost his sight. In this case, the applicant had a number of skin diseases that impeded its implementation. The Court noted that, although the applicant refused an operation on his eyes, his refusal was associated with doctor's recommendation, which indicated the need for priority treatment of skin diseases of the applicant, as this largely determined the success of the operation on the eyes. The Court considered that such refusal was not unreasonable. The Court pointed out that the national authorities recognized the impossibility of rendering the applicant necessary medical care in the investigatory isolation ward and twice petitioned the applicant's release for this reason, but both requests were rejected by the national courts, as a result of which the applicant received no timely necessary medical assistance. The Court concluded that the domestic authorities failed to take all necessary measures to prevent the loss of sight by the applicant. On September 9, 2005 the doctors diagnosed the complete loss of vision by the applicant, and in this connection he was granted the first disability group. In fact, this was the fault of state agents that did not provided necessary medical aid to the person in need of it.

In connection with these results, the Court noted that failure to provide adequate medical assistance to those who are kept in the penal system is a structural problem in Ukraine.

A similar failure to grant the rights of the patient, leading to serious consequences, was observed in the *Kaverzin v. Ukraine* (application No. 23893/03, judgment of 15.05.2012). According to the applicant, his disability was the result of lack of proper and particularly timely treatment. According to him, his eyesight damage was not properly diagnosed in January 2001, which led to the inability to obtain necessary treatment. The applicant claimed that as soon as doctors discovered the damage, he should have been taken to the hospital and examined by a doctor, who specialized in ocular diseases. The Court also gave special importance to the fact that the damage to the eye of the applicant was not considered by the authorities within six months from the time it was discovered in January 2001. The government has not provided any explanation for the delay in granting the applicant the necessary medical aid. Within the framework of the resolution the Court held that there was a violation of Article 3 of the Convention because of the lack of proper medical assistance to the applicant in connection with damage to his eye in the period from January to September 2001.

Unfortunately, the Court tried no purely medical cases against Ukraine in 2012, but the legal position of the Court on the assessment in terms of the provisions of the Convention illustrates the case *G.B. and R.B. v. the Republic of Moldova* (application No. 16761/09, judgment of 18.12.2012).

The applicants were born in 1968 and 1966 respectively and reside in Ştefan Vodă. They are husband and wife. On May 4, 2000 the first applicant had to deliver a baby. The Head of the Department of Obstetrics and Gynecology of the District Hospital of Ştefan Vodă, Mr. B.

performed a cesarean section. During the procedure, he removed her ovaries and Fallopian tubes without her consent. As a result of this operation, the first applicant, who was thirty-two at the time, was suffering from early menopause.

In 2001 the first applicant had to receive medical treatment intended to counter the effects of early menopause, including in the form of hormone replacement therapy. According to her doctors, she should continue this treatment until she reaches the age of 52–55, after which further treatment would not be needed.

According to neurologist, since November 5, 2001 the first applicant was suffering from asthenic-depressive syndrome and osteoporosis. On February 18, 2002 doctors discovered that the first applicant had hot flashes, neuroses, and frequent palpitations. On May 8, 2002 the asthenic neurosis was diagnosed. As a result of the examination conducted by the medical team on March 18, 2003, the removal of the ovaries and Fallopian tubes of the first applicant was unnecessary, and the operation led to her sterilization.

On July 26, 2006 the psychiatrist and psychologist found that the first applicant was suffering from long-term psychological problems and that she continued to show signs of post-traumatic stress disorder.

On March 15, 2005 the district court of Căuşeni found B. guilty of medical negligence, which caused serious damage to health and bodily integrity of the victim. He was sentenced to six months in prison; the sentence was suspended for one year. The Court relied on medical reports and found, in particular, that B. could not inform the applicants of sterilization within ten days after the event. The ovaries of the first applicant could be saved, but B. failed to do it.

On May 11, 2005 the Court of Appeal upheld that decision. On August 2, 2005 the Supreme Court overruled the judgments of lower courts and made its own judgment recognizing B. guilty, but freed him from criminal liability, because the limitation period for his conviction had expired.

It is important that the Court corroborated the legal assessment of such violations, which is confirmed by the following.

As the Court has pointed out in previous cases, the notion of "private life" is a broad term that cannot be exhaustively defined. It covers, in particular, the physical and psychological state of the person (see *X and Y v. the Netherlands*, March 26, 1985, §22, Series A, No. 91, *Pretti v. the United Kingdom*, No. 2346/02, §61, ECHR 2002-III). In particular, a medical intervention, which is contrary to the patient's desire, is qualified as an interference with his or her rights under Article 8 of the Convention (see *Glass* ..., §70).

In this case, the domestic courts found infringement of the rights of the first applicant. Although the courts have not directly addressed to Article 8 of the Convention, they found that there was a serious interference with the physical and mental integrity of the first applicant without her knowledge or consent.

The devastating impact on the first applicant of the lost ability to reproduce, and the subsequent long-term health problems makes it a particularly serious interference with her rights under Article 8 of the Convention, which requires a fair compensation.

In the light of the foregoing, the Court finds that the first applicant had not lost the status of the victim, and that there has been a violation of Article 8.

Therefore, the Court is prepared to consider medical errors at least in the context of a breach of Article 8 and prescribe compensation for material and moral damages by the state.

4.2. Analysis of the practice of national courts for 2012 concerning the protection of patients' rights

Analyzing the practice of national courts on the basis of data included into the Unified State Register of judgments (hereinafter: the Register), we can also make some generalizations about the major trends of the domestic jurisprudence in 2012.

4.2.1. A small number of cases of criminal prosecution of persons, who commit crimes aimed at violating the rights of patients

Thus, in the Register we have found for the period under investigation only four sentences for which the persons were held liable for the crime under Article 140 of the Criminal Code of Ukraine (improper performance of professional duties of medical or pharmaceutical worker). Interestingly, 3 of 4 sentences are in fact acquitting judgments, which is generally very rare for domestic litigation.

What is decisive, in all four cases, the consequences arising from the improper performance of duties by a medical officer was the death of patients.

So, in case No. 1–25\12, for which the sentence was imposed by Vyshgorod District Court of Kyiv Oblast, the story line included the circumstances as follows.

On 11.02.11, Person_4, as the head of department, therapist of the therapy department for socially-disadvantaged persons of Kyiv City Clinical Hospital No. 1, without the approval of the deputy chief doctor of the medical unit, ordered a company car "Toyota", registration no._1, and ordered to prepare for transporting patients Person_7, Person_8, Person_11, Person_6 and Person_10 and gave verbal instructions to subordinate employees Person_12 and Person_13 to help the latter intending to carry these persons outside of Kyiv and leave them there to free the therapy department for socially-disadvantaged persons of Kyiv City Clinical Hospital No. 1 for patients. Once Person_7, Person_8, Person_11, Person_6 and Person_10 at approximately 15 hours boarded the car, Person_4 gave the driver of the above car Person_14 verbal instructions to take him along with these patients to Vyshhorod, where Person_4 at the public transport stop located at Person_15 Street left patients Person_7, Person_8, Person_11, Person_6, and Person_10, though Person_4 realized that the cast-offs would not be able to protect themselves and survive, as temperature outdoors ranged from 0 to +1 degrees C, the patients were left without money, the patient Person_7 was an invalid having no toes on the left foot, patient Person_9 had pathological dysfunction of the lower extremities in the form of paraplegia of the low extremities with high reflexes, presence of abnormal neurological symptoms and muscle contracture, patient Person_6 had toxic encephalopathy with convulsive syndrome and dysfunction of tendons, patient Person_8 had peg leg at the middle third, patient Person_10 was unavailable for productive voice communication and had dysfunction of the left limbs. On 11.02.11, about 18 hours, Person_7, Person_8, Person_11, Person_6, and Person_10 were delivered by the ambulance to the accident and emergency department of Vyshhorod Central Regional Hospital, where the condition of the latter was diagnosed as "general hypothermia."

On February 11, 2011, about 22 hours 10 minutes, Person_7 died in Vyshhorod CRH due to ischemic heart disease. The fact that it was a result of the impact of low temperatures did not find its confirmation in court.

According to the results of the trial, Person_4 was found guilty of crimes committed under Part 1 of article 135 of the Criminal Code of Ukraine and received a penalty of 1 year imprisonment.

Under Article 365 Part 3, Art.140 Part 1 of the Criminal Code of Ukraine Person_4 was justified.

In the case No. 0110/1844/2012 the person adjudged guilty for causing injuries that led to the death of the victim was found guilty of a crime under Article 140 of the Criminal Code of Ukraine, but immediately released from liability in connection with the lapse of time.

The story line of the case is as follows: Person_2 working as a surgeon at the surgical department of the Territorial Medical Association of Sudak City Rada, on 25.10.2003, about 20-00 hours, was on night duty and without the approval from the head of the surgical department alone decided to perform puncture of soft tissues of the upper third of the left shoulder and conduct subsequent surgery of patient Person_3, which was treated with a diagnosis of "posttraumatic hematoma of the left shoulder with damage to the neurovascular bundle, syndrome of crushing of the soft tissues of the left shoulder"; as a result of these actions the victim suffered injury of left axillary artery, which led to external bleeding resulting at about 00-55 hours INFO_2 in death of Person_3.

Almost similar are circumstances of case No. 1-398/11, by the sentence in which the defendant was found guilty of the indictment under Part 1 of Article 140 of the Criminal Code of Ukraine and acquitted.

The only case that ended with the verdict was the case No. 2320/1119/12, in which the verdict convicted the person who, while performing her duties improperly, caused death of the patient.

According to the data established by the court, the guilty person from 09-15 till 14-00 hrs improperly performed his professional duties as a result of negligent treatment of them, which had serious consequences for the patient. So, from 12-15 h., when patient Person_6 was transferred to the intensive therapy unit of anesthesiology and intensive care department of public institution "Cherkasy Oblast Oncologic Dispensary", where she remained under the supervision of a physician-anesthesiologist Person_5, who during intensive care and during resuscitation, having everything to carefully supervise vital functions in the postoperative period until their recovery and stabilization, due to improper performance of his professional duties, negligent, careless attitude towards them, which resulted in a bad, indifferent, undiligent, inattentive, careless, negligent their performance, allowed the introduction by a person unidentified during investigation, materials relating to which were allocated in a separate proceeding, into the body of Person_6 of medication Lidocaine, injection of which was not foreseen at this stage of treatment, that led to serious consequences for the patient in the form of death of Person_6 that was confirmed at 14-00 hrs INFO_3, which, according to the conclusion of the forensic test No. 579 from 12.10.2011 carried out by the appointed commission, died from poisoning with Lidocaine against the background of severe intoxication caused by a generalized form of stomach cancer, while, according to the conclusion of additional forensic examination No. 10-k of 07.02.2012 carried out by the appointed commission, the most likely input of Lidocaine into body of Person_6 was an injection; however Lidocaine was introduced into the body of Person_6 during the period of time counted by minutes, dozens of minutes before death.

Now we can on the basis of this quick analysis conclude that the national law enforcement practice still goes the way of indulging the low level of legal and moral responsibility of physicians.

4.2.2. Positive decisions of the courts sustaining the claims for compensation for material and moral damages only for serious reasons and / or criminal prosecution if the person is guilty of violating the rights of a patient

So, in case No. 1305/2-129/10, the decision on which was adopted on August 27, 2012 by the panel of judges of the chamber of civil cases of the Appeal Court of Lviv Oblast in the argument of the legal position of court special attention is paid to the fact that the person found guilty of causing personal damage to life and health of the plaintiff was prosecuted.

According to the story line of the case, on July 20, 2007, during the delivery maternity patient Person_3 in Horodok Central District Hospital (hereinafter: CDH) occurred intrauterine fetal asphyxia leading to serious consequences — death.

The materials of the criminal case showed that fetal death was caused by the fact that Person_6, who worked as head of obstetrics and gynecology department of Horodok CDH, during plaintiff's childbirth improperly discharged his professional duties due to unfair attitude towards them.

The resolution of Horodok District Court of Lviv Oblast on June 16, 2009 found Person_6 guilty of committing an offense under Part 1 Art.140 of the Criminal Code of Ukraine (the failure or improper performance of medical or pharmaceutical professional duties as a result of neglect or unfair treatment of them, if this resulted in serious consequences for the patient), but released from criminal liability in the manner and under the conditions specified by paragraphs "g" and "d" of Articles 1, 6 of the Law of Ukraine "On Amnesty" on December 12, 2008, and closed the criminal proceedings.

The appeals court made a decision, which was a rarity in domestic practice: the decision of Horodok District Court of Lviv Oblast from November 16, 2010 had to be changed increasing the amount of monetary compensation for moral (non-property) damage to be recovered from Horodok Central Hospital of Lviv Oblast in favor of the Person_3 from UAH30 000 yo UAH 80 000 (eighty thousand).

We believe that the main reason for such procedural resolution, according to the text of the decision, was the proof with the help of criminal proceedings of the doctor's guilt of improper performance by a medical or pharmaceutical worker of his professional duties as a result of neglect or unfair treatment of them, which caused grave consequences for the patient, in this case, the death of a child.

4.2.3. Unpreparedness of courts to satisfy claims against hospitals and doctors responsible for causing damage to life and / or health of patients.

According to the Register, in 2012 27 decisions were made in the framework of civil proceedings of the so-called "docnjrs' cases."

Thus in 18 of 27 cases analyzed appeals were dismissed in full, in 9 cases the courts ruled on partial or full satisfaction of the claim.

This trend is typical for previous years as well. Despite the increase in the number of decisions made on the merits of "docnjrs' cases", the courts still follow the same trend as in

previous years: they dismiss appeals for compensation for material and/or moral damage in whole or in part.

4.2.4. The ungrounded position of forensic experts on the evaluation of actions and/or inaction of doctors and consequences of their actions and causal relationship among them is rather frequent

Thus, the testimony presented by the forensic expert in the case No. 1-25\12 was included into the verdict as an established fact that there had been no causal connection between leaving of several patients by the doctor on the street at low temperature and the death of one of them the next day.

Questioned in court the forensic Person_22 explained that the death of Person_7 occurred from chronic ischemic heart disease with the development of cardiac decompensation. The findings of histological examination indicate the signs of influence of low temperature on the body of Person_7. At the same time he pointed out that on the body of Person_7 there were signs of frostbite, which were had formed long before death, as evidenced by the necrosis of feet. He could not tell how the stay at a low temperature in the open air for several hours before death influenced the death of Person_7. He explained the Court that the effect of low temperature showed as a point hemorrhages on the mucosa of renal pelvises, kind of macroscopic abnormalities. The hypothermia was not the cause of death of Person_7; the cause of death was the coronary heart disease. The effect of low temperature is a probabilistic supposition.

As far as there was no other evidence of the relationship between the impact of low temperatures and the onset of death of Person_7, the court did not establish a causal link between the actions of the doctor and the patient's death and, as a consequence, the defendant was acquitted under Article 140 of the Criminal Code of Ukraine.

In civil proceedings there is a similar situation: in case No. 2-5428/11 about damages caused by the damage to health, according to the conclusions of the commission investigating the quality of health care rendered to the patient Person_1 from 14.12.2009 contained in the file (P. 61–62), the occurrence of such postoperative complications in the plaintiff as osteomyelitis can be explained by a liability to disease due to: anatomical and physiological features of the structure of the lower extremities, namely the lack of a sufficient number of muscles, muscle atrophy, and increased content of subcutaneous adipose fiber.

That is the forensic experts most frequently are taking the side of their fellow doctors not confirming a causal relationship between the actions or inaction of doctors and such consequences as damage to health of the patients.

4.3. Recommendations

1. Lawyers: study in more details the practice of the European Court of Human Rights in order to understand the logic and precedent-related practice of the Court concerning the "docnjrs' cases."

2. To rivet the attention of the lawyers to the fact that the patients' rights in the European Court of Human Rights can be protected by reference to a violation of Article 8 of the Convention, if the process and results of inaction and / or lack of proper care have not been such as to be recognized as torture and / or inhuman or degrading treatment. When the effects of

inaction or lack of proper medical care are more serious, one should refer to a violation of Article 3 of the Convention and to ask the Court to recognize these actions as torture and / or cruel treatment, or Article 2, if they resulted in death.

3. Make a collection of samples of claims in "doctors' cases" in the framework of civil proceedings in the national process with reference to the provisions of the Convention.

4. To rivet the attention of the lawyers to correct wording of claims in national proceedings, indicating not only the material and moral damage as a claim, but also require recognizing the actions or inactions of medical workers illegal.

5. Participants of criminal and civil proceedings should more widely resort to alternative assessment as additional arguments in support of the claim.

6. Courts during adjudication should account for the degree of effects that were caused as a result of actions or inactions of the defendants, analyze the findings of forensic and expert testimony in judicial proceedings within the context of their objectivity and validity of the findings and relevant factual circumstances.

7. The state expert institutions should make the disciplinary responsibility system more effective in the case of the low level of expertise, incomplete examination of all circumstances and materials, etc.

XX. RIGHTS OF THE PERSONS WITH DISABILITIES[1]

1. GENERAL OVERVIEW

On December16, 2009 the Supreme Rada of Ukraine ratified the UN Convention on the Rights of Persons with Disabilities.(Hereinafter — the Convention) and its Facultative Protocol[2], and on March 6, 2010 these treaties became valid in the territory of Ukraine.

The Convention supplements other international treaties on human rights. It does not stipulate any new/specific rights for the persons with disabilities. Mainly the Convention stresses the state's obligation to adhere to these rights and ensure equal access to them for the persons with disabilities.

The ratification of the UN Convention on the Rights of Persons with Disabilities and its Facultative Protocol by Ukraine implies introducing cardinal changes to the existing approaches to disability, i. e. to current understanding of "disability" as a "pathology of society" and not as a person's "imperfection" due to his/her health condition.

The amended Law of Ukraine "On Basics of Social Protection for the Disabled in Ukraine" describes a person with disability as follows:

> *"Article 2. A disabled person is a person with consistent disorder of the body functions, which, in the course of interaction with the environment, can lead to the restriction of his/her activities; therefore the state is obliged to create the conditions which would enable that person to exercise his/her rights in the same way as other citizens and to ensure his/her social protection".*

This definition, however, does not guarantee its realization in actual life. Lack of clarity in the definition of "disability" engenders the situation when medical model of "disability", addressing only health indicators, is still applied in Ukraine. As a result not only the existing external obstacles are not removed, but the new barriers, stereotyping and segregation are promoted.

In their Alternative Report to the UN Committee on the Rights of Persons with Disabilities[3] non-governmental organizations underline lack of integrated approach in the development of relevant policies. More often than not the policies with regards to persons with disabilities are considered to be the responsibility of a specific ministry or department, namely the Ministry of Social Policy and State Service for the Disabled. Other ministries and departments in their operation fail to take into consideration the rights of the disabled and refuse to be responsible for their implementation.

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[1] Prepared by L. Bayda, NADU and M. Shcherbatyuk, UHGHR.

[2] On December16, 2009 the Supreme Rada of Ukraine ratified the UN Convention on the Rights of Persons with Disabilities by the Law of Ukraine No. 1767-VI of 16.12.2009. The General UN Assembly adopted the English title of the document "Convention on the Rights of Persons with Disabilities". In Ukrainian translation and SR ratification process the official title "Convention on the Rights of the Disabled " was used. The word "persons' was omitted.

[3] Alternative Report to the UN Committee on the Rights of Persons with Disabilities was prepared by the Expert Board of the NGOs with the goal of collecting and summarizing objective information concerning realization and guarantees of the rights of persons with disability in Ukraine following the Convention ratification.

After Convention ratification the state undertook several steps in the direction of introducing the Convention standards into the national legislation, although many laws still remain mere declarations and are aimed at ensuring social assistance and not the observance of rights of the persons with disabilities. The adequate approach should address all the areas of life and activity of the disabled, their full incorporation into the life of society.

The Alternative Report also points at the absence of departmental control over the implementation of the normative and legislative acts.

The introduction of changes in compliance with the Convention standards does not mean that the officials would adhere to them. Corruption, scarce funding, lack of the public servants' responsibility create new challenges and new needs with respect to relevant services, economic relief and exercising of rights of the disabled persons.

In 2012 the State Target Program "National Action Plan for the realization of the UN Convention on the Rights of Persons with Disabilities till the year 2020" was adopted.[4]

This program, however, will remain a mere declaration if it is not supported by due monitoring, funding and clearly defined responsibilities of the parties.

The practical operation of the non-governmental organizations shows that information on the implementation of state target programs aimed at resolving important social issues, including the ensuring of the disabled rights, is not disseminated and does not reach public at large. There is no governmental monitoring which would analyze the results of the programs' implementation, there are no surveys with the participation of the programs' beneficiaries, and, therefore, their efficiency cannot be evaluated. The social programs are funded from the state and local budgets, as well as from the other sources. Nevertheless, it is extremely difficult to get information on the implementation of any program, as the respective data are not publicized on the official sites.[5]

According to official data as of 01.01.2011 2 709 982 persons with disabilities reside in Ukraine.[6]

Statistical data collection with regards to the disabled in Ukraine is not coordinated with the social model of disability and is deficient.

Lack of reliable statistical data with regards to the disabled does not allow for developing practical policy or its efficient implementation.

The rights of the persons with disabilities are still violated — especially, the right to education, health care, employment, participation in political and cultural life, access to justice, to information etc.

The state does not introduce any measures aimed at guaranteeing due respect to the persons with disabilities, cultivating tolerant attitude towards them.

Inadequate use of the universal design principles and of the sign-language is just one example of the problems in the implementation of the law protecting the rights of persons with disabilities.

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[4] Program approved by the Cabinet of Ministers' of Ukraine Resolution No. 706 of August 1, 2012.

[5] Sources: Sites of the Cabinet of Ministers' of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Health, Ministry of Regional Development, Construction and housing and Communal Services of Ukraine; oblast' state administrations' sites. Source: NADU.

[6] National Report on measures aimed at the implementation of Ukraine's commitments under the Convention on the Rights of Persons with Disabilities. K-2012.

In 2011 the changes reflecting the language and standards used in the Convention, were introduced into the Law "On Basics of Social Protection for the Disabled in Ukraine" and the Law "On the Rehabilitation of the Disabled in Ukraine".[7] In particular, the changes stipulated the use of the definitions "discrimination on the basis of disability", "reasonable adjustments" and "universal design" in compliance with the Convention.

Meanwhile, the concept of inter-sector approach to, let us say, universal design, is non-existent in Ukraine, despite the fact that the approach, based on the human rights and oriented at the whole society, must be reflected in all national and regional programs.

"The use of sign-language as the language of persons with impaired hearing and means of communication and learning, protected by the state"[8] is a necessary precondition for the development of the inclusive society. However, today we are facing the lack of subtitles or sign-language interpretation on TV, in the movie-theaters or on videos, despite the fact that this service is guaranteed by the Ukrainian Law.

The real value of this guarantee was demonstrated by the non-compliance with court decision on the procedure for the use of sign-language.

Court against the discrimination of the disabled or how the state takes care of the persons with impaired hearing.

> *The Cabinet of Ministers' failure to comply with the law made a deaf person file a claim with the court. In his claim the man demanded that court classifies the inertia of officials who failed to comply with the said requirement as illegal, and obliges the Government to adopt it. The court passed a ruling in favor of the deaf claimant. The judges ruled that the Cabinet of Ministers neglected their responsibility stipulated by the Law. The Appellate Court supported their colleagues from the court of the first instance and once again highlighted the officials' inertia. Currently not only the Law, but also the court ruling obliges the Cabinet of Ministers to put an end to the discrimination of the persons with impaired hearing. However, it looks like public officials do not take any heed of these decisions, as they are further disregarded. President, on the other hand, issued another instruction (Order 588/2011) to ensure access to mass media for such persons by way of subtitling and implementing sign-language interpretation in news and theme programs, movies and videos. So far the issue has not been resolved; persons with impaired hearing still face the problems with respect to the access to information.*[9]

Besides, the state does not encourage private businesses providing services in the format acceptable and affordable for persons with disabilities.[10]

At the state policy level the principles of respect, independence and self-sufficiency of the persons with disabilities are not promoted at all.

The situation on public means of transportation is but one example of such disrespect. A disabled person buying a train ticket at the same price as the rest of passengers,

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[7] Source: Law of Ukraine "On Amending some laws of Ukraine concerning the disabled rights" No. 4213-VI of 22.12. 2011 http://zakon2.rada.gov.ua/laws/show/4213-17

[8] Source: Law of Ukraine "On Basics of Social Protection for the Disabled in Ukraine", Article 23. http://zakon1.rada.gov.ua/laws/show/875-12

[9] Court against the discrimination of the disabled or how the state takes care of the persons with impaired hearing. http://i-law.kiev.ua/?p=335

[10] Source: National report on human development 2011. Ukraine on its way towards social integration. Independent publication of UNDP in Ukraine, prepared in close collaboration with local and international experts.

cannot use the services in full scope.[11] Traveling for 8–10 hours by train disabled passenger cannot use the bathroom or other services, which under the law in force should be available to this category of passengers. According to official data, only 19 train coaches in Ukraine currently have bathrooms and compartments equipped for the disabled persons. It is a paradoxical situation, as the number of potential users amounts to hundreds passengers.

The rights of young persons with disabilities staying in the public institutions of social protection are also violated. After turning 18, or, sometimes, 21 (in cases stipulated by law), young people with disabilities are transferred to the mental institutions for the elderly or the disabled under the auspices of the Ministry of Social Policy. In these institutions they are condemned to total isolation for the rest of their lives. The Ukrainian practice of "placing" young disabled persons into the public care institutions of closed type prevents their inclusion, as they are kept in separation from the other members of society and creates barriers for the exercising of their rights. They become dependent on the system and cannot find their proper place in the society as its full-fledge members, with due access to education, employment and independent living.

The institutions fail to meet the UN and European standards for general care and treatment of persons with disabilities. After Ukraine became independent, neither state reports nor monitoring results with respect to the conditions in the said institutions and adherence to human rights of the disabled there, have been made public. There was no special report prepared by the Ombudsman on human rights on these issues. Under the Article 16 of the Convention, the state "ensures efficient monitoring by independent bodies of all the institutions and programs offering services to the people with disabilities". This requirement supplements the Article 33 of the Convention.

> *"That is really a horrendous and complicated archaic system we inherited from the soviet regime. The main culprit is Ukrainian independent state, which till now has no social policy at all — the Ministry of Social Policy is there, but the social policy does not exist!" (Executive secretary of the Association of the Ukrainian Psychiatrists).*[12]
>
> "*Conditions in which the patients in mental institutions are kept should be evaluated separately in each individual case. At the same time, all the institutions have similar characteristics — they are closed for the public inspection…(Executive secretary of the Association of the Ukrainian Psychiatrists).*
>
> *The rights of the inmates of the Ukrainian mental institutions are violated systematically, conclude the members of the non-governmental organization "Committee against organized crime and corruption". These violations include beatings, forced labor, use of prohibited medical drugs. Recently the law-enforcement officials filed a claim on the fact of beating which resulted in death of an inmate of psycho-neurological institution in Odessa oblast. The human rights activists argue that it is not an isolated case of cruel treatment of mental patients.*[13]

Deinstitutionalization and setting up of the support network for the independent living of persons with disabilities are not among the first priorities for the state today.[14] These issues are addressed by the non-governmental organizations only.

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[11] Source: http://zakon1.rada.gov.ua/laws/show/875-12. The discounted tickets are available for the disabled in Ukraine between October 1 and May 15 of a given year — 50% of regular price.

[12] Source: http://life.pravda.com.ua/society/2011/04/20/77652/view_print/

[13] Source: http://khpg.org/index.php?id=1282858839

[14] Source: Моніторинг дотримання прав осіб з психічними порушеннями, ВГОІ "ЮЗЕР", 2010р

The non-governmental organizations of the persons with disabilities reveal systematic violations of the Article 3 of the Convention, i. e. respect of a person's dignity, self-sufficiency, and, in particular, freedom to make independent choices.

The state does not either promote or implement the principle of including persons with disabilities into social life. Persons with disabilities are not perceived as equal participants of the social and economic development of the country; they are separated from political, cultural life, education and health care.

The annual Presidential Report to the Supreme Rada of Ukraine and Cabinet of Ministers of Ukraine on the young people's situation in Ukraine (2012 p)[15] does not contain any analysis as to the issues concerning young adults with disabilities. This age group of population seems non-existent. Setting up its policy the state disregards the needs of the young people with disabilities, thus excluding them from social life. Lack of statistical data on this age group, neglect of its problems proves that current state policy and system are by no means inclusive.

The problem of separation of the persons with disabilities from the health care system is another problem. In fact, medical institutions and services are physically inaccessible for this category of population. It is obvious discrimination due to the disability. Existing comprehensive system of social protection does not cover all the users and is inefficient (lack of accurate statistics, absence of integrated services, lack of awareness concerning available programs of social support etc).

It is noteworthy that the state does not monitor the observance of the disabled rights by private sector.

Thus, the monitoring of social infrastructure components (hotels, hostels, sport facilities etc) carried out within the frame of the international project by UEFA and National Assembly of the Disabled of Ukraine "Football without borders"(2012) demonstrated inefficiency of the state control mechanism in enforcing modern construction norms and regulations in the new developments and refurbishments of the existing structures. It makes access to the objects of public use virtually impossible for the persons with disabilities. Noteworthy, the hotel owners received tax relief from the state as an incentive to build and start operation of the hotel complexes. [16].

ATM available for public use remain inaccessible for the persons with disabilities. They are placed in such a way that a person on a wheelchair cannot use keys and buttons on it; ATM options are shown on a display, so that a blind person or one with impaired vision cannot read them. The architectural design of over 80% of all banks makes them inaccessible[17].

2. RIGHT TO EDUCATION

The right to education is guaranteed by the Article 53 of the Constitution of Ukraine[18] and legislation in force[19]. All these laws, however, were passed before the UN Convention on

[15] Source: http://dsmsu.gov.ua/index/ua/material/7106

[16] "Lost rights" Alternative Report to the UN Committee on Rights of Persons with Disabilities, K-2012.

[17] Source: Monitoring of objects designated for public use, NADU, 2011.

[18] Constitution of Ukraine. — K.: presa Ukrainy, 1997.

[19] Law of Ukraine "On preschool education//Supreme Rada of Ukraine Bulletin, 2001, No. 49.
Law of Ukraine "On comprehensive secondary education " // Supreme Rada of Ukraine Bulletin, No. 28.

the Rights of the Persons with Disabilities has been ratified by Ukraine, and, therefore, do not meet its main provisions.

Today, the law uses various definitions and terms: "children and young adults with disabilities", "children and young adults with special educational needs", "children in need of adjustment of physical/mental development", "persons with physical and mental defects", "persons with physical limitations". None of these definitions gives a clue to the understanding of disability from the social model point of view and, hence, complicates the fulfillment of the international obligations of Ukraine.

Following the Convention ratification non-governmental organizations drafted legislative-normative changes supporting the implementation of the inclusive model in education. They were reflected in the Cabinet of Ministers' of Ukraine Order "On approving action plan with regards to introducing inclusive and integrated education in the comprehensive educational establishments till the year 2012", No. 1482-p. of 03.12.2009; Concept for the development of the inclusive education in Ukraine; Order of the Ministry of Education and Science; Young People and Sports of Ukraine No. 912 of 01.10.2010; Law of Ukraine "On introducing changes into the legal acts regulating comprehensive secondary and preschool education (concerning the organization of the educational and training process) No. 2442-VI of 06.07. 2010; the Cabinet of Ministers' of Ukraine Resolution "On introducing inclusive education in comprehensive secondary educational establishments" No. 872 of 15.08 2011[20] and others.

Today it is difficult to collect statistical data concerning the number of children with disabilities and accessibility of high quality education for them at their place of residence, as these issues fall under the terms of reference of different Ministries — Ministry of Education and Science; Young People and Sports of Ukraine; Ministry of Health, Ministry of Social Policy of Ukraine. The majority of children with disabilities are educated in the special boarding-type schools.

Non-governmental organizations point to the lack of departmental control over the realization of right to education with regards to the disabled persons and non-compliance with the law in force stipulating inclusive education.

The Ministry of Education and Science Order "On carrying out monitoring study of the inclusive education implementation in Ukraine" No. 898 of 22.09.2010 reads in p. 1.5. "Based on the results of each monitoring phase prepare summarized statistical data (The Institute of the Innovative Technologies is responsible for this part) and the evaluation of learning content (Ministry of Education and Science is responsible). Statistical data never appeared on the Institute of the Innovative Technologies site; same applies to the information concerning the educational content on the site of Ministry of Education and Science, Young People and Sports.[21]

Article 15 of the Cabinet of Ministers' of Ukraine Order "On approving action plan with regards to introducing inclusive and integrated education in the comprehensive educational establishments till the year 2012", No. 1482-p. of 03.12.2009 concerning the setting up of "unobstructed access for the children in need of physical/mental development adjustment"

Law of Ukraine "On vocational education:, Supreme Rada of Ukraine Bulletin 1998, No. 32.
Law of Ukraine "On higher education"// Supreme Rada of Ukraine Bulletin 2002, No. 20
Law of Ukraine "On childhood protection"// Supreme Rada of Ukraine Bulletin, 2001, No. 30.
Law of Ukraine "On Basics of social protection for the disabled in Ukraine"// Supreme Rada of Ukraine Bulletin, 1991, No. 21.

[20] Source: Ukrainian-Canadian project "Inclusive education for children with special needs in Ukraine".

[21] Source: http://iitzo.gov.ua/monitoryng_v_osviti.html ; http://mon.gov.ua/

to the buildings and facilities of general education with inclusive and integrated education is not fulfilled.

Separation of children with disabilities from education.

> *Only 55% of children and teenagers with physical or mental disability attend schools. Totally in Ukraine as of September 2010, 28 623 children of school age (6–18 years) with physical or mental disability did not attend school regularly.* [22]

According to data provided by the Ministry of Education and Science, Young People and Sports of Ukraine 11% of educational establishments are fully accessible for children with special educational needs, while 39% are partially accessible. The Ministry of Education and Science, Young People and Sports of Ukraine itself is totally inaccessible for persons with disabilities due to the architectural design of the building.

Meanwhile, first deputy of the Minister of Education and Science; Young People and Sports of Ukraine, speaking at the Parliamentary hearings "Education in rural areas: crisis tendencies and ways of overcoming them" on 15.08.2012, stated that "between the years 2009 and 2011 the number of preschool educational establishments in rural areas increased by 384 and now amounts to 9216 kindergartens… Kindergartens of new, state–of–the–art designs also opened in rural areas".[23] For the year 2012 an unprecedented sum of 352 million UAH, including 20 million UAH for the school-buses for children with special needs was allocated. It will make possible the purchase of over 900 school-buses and over 40 specialized school-buses — the same number of buses has been purchased over the whole duration of the program. Therefore the need for the transportation means will be completely satisfied over the years 2012–2013. This approach is the result of well-planned governmental policy."

Consequently, the question arises — who will be transported and where by the aforementioned Ministry, if schools are inaccessible due to their architectural design? Lack of understanding of disability issues, absence of uniform educational policy leads to wasteful use of funds and increase in educational costs for persons with disabilities.

New educational facilities are built without any heed of the governmental construction norms, so that later they need additional costs for reconstructions; additional funds are allocated for the transportation of "normal" children and children with "special needs"; computers are being purchased without any consideration to the needs of the blind students. Lack of adjustment in the school system leads to isolation of the children with disabilities, their separation from the system and their further incapacity to integrate into society. We witness "planned" violation of the children's rights.

In 2011 a specialized National Report "Education for persons with disabilities in Ukraine" was compiled. Unfortunately it was never published on the official sites of the respective ministry and departments; neither was it ever made public. This report, although prepared after the Convention ratification, failed to reflect the essence of policy with regards to education for persons with disabilities, its priorities and further development.

Focus-groups, surveys, visits to the educational establishments within the frame of the study, organized by the NGOs, helped to identify the main obstacles the children with disabili-

[22] Source: National report on human development 2011. Ukraine on its way towards social integration. Independent publication of UNDP in Ukraine, prepared in close collaboration with local and international experts.

[23] Source: http://static.rada.gov.ua/zakon/new/par_sl/sl1403112.htm

ties come across in their efforts to get preschool or secondary education: children's stay in the special institutions seems to be the only option available for this category; properly trained teachers, capable of teaching children with disabilities are scarce; architectural inaccessibility of the facilities and structures prevent children from obtaining the same level of knowledge as "regular" children; insufficient collaboration between special and regular schools; lack of support (appropriate services); insufficient number or total lack of learning materials aimed at children with different nosologies (i. e. children with mental retardation); lack of programs adapted for specific needs of children with different nosologies; lack of uniform monitoring system in acceptance of children with disabilities to schools and their subsequent graduation.[24]

Discrimination of children and young adults with disabilities in the exercising of their right to education definitely is in place in Ukraine — they are rejected by comprehensive schools or higher educational establishments on the grounds of their disabilities.

Current policy in the area of education for persons with disabilities does not meet provisions which take human rights into consideration. Lack of understanding of disability as diversity results in the fact that today the educational system in Ukraine bears no responsibility in ensuring the right of persons with disabilities to education and cannot provide for the exercising of this right.

3. RIGHTS OF THE DISABLED WOMEN IN UKRAINE

As of today no state policy addressing the rights of disabled women in line with the Convention standards has been developed in Ukraine. In the state report to the UN Committee on the Rights of Persons with Disabilities there is no mention of compliance with the Article 6 of the Convention, which guarantees full and equal realization of human rights to the disabled women. Unfortunately, ensuring and exercising of rights by disabled women at the state level has not been studied even after the Convention ratification. The analysis of the disabled women situation in several Ukrainian regions has been performed by NGOs of persons with disabilities, specifically by the National Assembly of the Disabled of Ukraine.

The State target program "National plan of action for the implementation of the Convention on the Rights of Persons with Disabilities" till the year 2020 mentions no action plan aimed at the implementation of the Article 6 of the Convention.

The Ukrainian Constitution and Law guarantee the women's rights. The Law of Ukraine "On ensuring equal rights and opportunities for men and women" No. 2866-IV[25] of 8.09.2005 formulates principles and provisions concerning equal rights and opportunities for men and women. Nevertheless all legislative-normative acts aimed at safeguarding women's rights, ignore the need to ensure the observance of the disabled women's rights.

Girls and women with disabilities are often discriminated and cannot exercise their rights. It is especially true as far with regards to women with mental and psychological disorders. They are kept in public care institutions or in the families, where they are subject to violence, rape and cruel treatment and have no levers to defend their rights.

[24] Source: Ukrainian-Canadian project "Inclusive education for children with special needs in Ukraine". Monitoring of the stages of inclusive education implementation, NADU, VF, Canadian Center for Disabled Studies,К., 2010.

[25] Source: http://zakon2.rada.gov.ua/laws/show/2866-15

There are no available official data concerning violence against women with disabilities, and it is a cause for concern for the non-governmental organizations defending the rights of the disabled. The Law of Ukraine "On domestic violence prevention"[26] does not offer any special provisions with regards to the women with disabilities. The interests of the said group of population are also disregarded in the crisis centers set up by state administrations on the motion of the authorized executive bodies. No public awareness campaign on these issues has ever been held.

Women with disabilities practically have no say in the decision-making processes, are not represented in the bodies of executive or legislative power. According to the official data in 2012 there were only 32 women among 450 deputies to the Supreme Rada, and not a single disabled woman who would lobby the interests of this group of population. In the whole territory of Ukraine there is only one woman-member of a city council on a wheelchair. There are no official data as to the involvement of women with disabilities in public service, executive bodies of power, education or health care.

Girls and women with disabilities are not properly informed with respect to the issues of reproductive health and family planning, gender and disability. Current state policy does not target this group as its first priority.

"The list of rehabilitation services is in place, but it does not differentiate between men and women, despite the fact that women need special care and attention in getting rehabilitation services. Does it mean that a disabled person is sexless creature?!"

The National Assembly of the Disabled of Ukraine points out that no professional psychological or medical consulting is offered to women with various types of disabilities. Forbidding architectural design of hospital buildings, low quality of health care services do not allow women with disabilities to use these services at the same level as other women or to realize their right to start a family and become a mother. Medical personnel are poorly informed about the needs of women with disabilities.

According to the results of the monitoring carried out in 2011 by the "Berehynya" non-governmental organization (AR of Crimea), women with disabilities face serious complications in obtaining health care services. 65% of women with disabilities visit out-patient clinic less than once in a year; 11% prefer self-treatment; 13,3% of women with disabilities mentioned inappropriate attitude and language of physicians; 18,9% of physicians stated that examination of such women causes certain difficulties; 76% of women mentioned absence of elevator and usual location of the gynecologist's office on upper stories of the building; 100% of women with disabilities are not content with the level of available medical services in their area or city.[27]

The right of girls and women with disabilities to health care is violated in Ukraine.

Not a single women's health clinic has a ramp for the wheelchairs or an entrance accessible for the disabled; adequate medical equipment to serve the women with loco- motor system problems.

According to the data collected by Luhansk "AMI-SKHID"NGO sightless women are not able to find their way around in the clinics without an escort, as the needs of the blind are not taken into consideration; women hard of hearing find it difficult to communicate with physicians.

The delivery wards with their entrances, rooms, toilets and lack of elevators are completely out of reach for this group of population.[28]

[26] Source: http://zakon1.rada.gov.ua/laws/show/2789-14

[27] Source: UPR, Report of the Ukraine Coalition of Organizations of People with Disabilities (UCOPD), 2012

[28] Source: "AMI-SKhID" NGO Resolution of all-Ukrainian seminar "Women with disabilities- myths and reality", Luhansk, 01.10.2012

Moreover, the state does not pay due attention to the problems of disabled mothers bringing up healthy children, or families bringing up children with disabilities. No professional psychological consulting is offered either to women with disabilities or to families bringing up girls with disabilities. It sets up additional barriers for the integration of girls and women with disabilities into community.

The rights of women with disabilities to respect, family life, independent living and inclusion into society are violated.

> *Children's hospitals are inaccessible due to their architectural design. A paraplegic mom on a wheelchair has to seek external assistance every time she needs to take her child to a doctor. At the time of a visit she waits outside, communicating with the doctor by phone.*
>
> *Kindergartens and schools are equally inaccessible due to their architectural design. A disabled mom cannot attend teachers-parents meeting or school celebration; has no way to communicate with teachers, which is extremely detrimental for both mom's and child's psychological state. A child eventually gets used to the fact that the mother is excluded from participating in the school life. As a result some kids develop complexes.*[29]

Some families suffer from lack of understanding. Parents of a disabled daughter do not see any opportunities for her development and fail to guide her in her studies and further employment (it applies to the girls with motion problems, severely impaired vision or hearing, developmental problems etc). The families are stigmatized as "second-rate" (inferior) and are in bad need of legal, psychological and social assistance to help them overcome their internal problems.

Complete inaccessibility of social infrastructure institutions due to their architectural design makes the use of high-quality services totally impossible for women with disabilities.[30]

Therefore, one can conclude that the state policy aimed at ensuring rights of women with disabilities and their inclusion into the social life is non-existent in Ukraine. Women with disabilities are discriminated on the grounds of their disability and gender.

4. RIGHT OF ACCESS TO INFORMATION FOR PERSONS WITH DISABILITIES

The legislation in force guarantees access to information for persons with disabilities. Meanwhile practical implementaion of this right, including provisions of Article 21 of the Convention, reveals a number of essential faults. The issues of access to information for persons with disabilities has not been studied at the state level. Only some aspects have been analyzed. For example, the amount of air-time with subtitling and sign-language interpretation within the system of National TB Company under the state order is calculated.

Specifically, the Ukrainian Association of the Deaf carried out a study on criteria and forms of sign-language use. Learning and information Center of the Ukrainian Association of the Blind together with the National Assembly of the Disabled of Ukraine analyzed the availability of web-pages of the central bodies of executive power and other official bodies as well as in-

[29] Source: "AMI-SKhID" NGO Resolution of all-Ukrainian seminar "Women with disabilities- myths and reality", Luhansk, 01.10.2012

[30] Source: "AMI-SKhID" NGO Resolution of all-Ukrainian seminar "Women with disabilities- myths and reality", Luhansk, 01.10.2012 .

ternational NGOs.[31] The analysis' results lead to the conclusion that web-pages of the central bodies of executive power and other official bodies, local self-overnments are only partially available for the sightless people. It means that this group of population is not properly informed about normative regulations and delivery of public and administrative services.

According to data collected by the Ukrainian Association of the Blind in 2011 periodical publications in Braille started in October 2011 (i. e. the issues published between January and October 2011); over the year 2011 readers got no books in e-format, due to the insufficient funding and lack of mechanisms for replicating this literature (absence of copy-right legislation with regards to audio-books on CDs or digital carriers).

Under the data of State Committee for TV and radio broadcasting in 2010 state TV companies customized programs for the people with impaired hearing at total scope of 5460 hours per year, which means only 30 minutes a day. While the dubbing and captioning in the national language is obligatory for foreign movies distributed in Ukraine (the Ministry of Culture data; Law of Ukraine "On Cinematography"), there is no similar requirement towards the movies or entertainment shows made in Ukraine.

According to the data collected by National Assembly of the Disabled of Ukraine persons with intellectual deficiency and mental health problems suffer most from lack of available information. The "simplified reading" method appropriate for this category is at the initial implementation stage and only non-governmental organizations promote it.[32]

Braille's alphabet is used only partially in mass media and other publications in relief-dotted font. The dissemination of official information by means of radio broadcasting is a positive factor; nevertheless, just one channel of information is not enough to ensure complete availability of information concerning public services.

5. RIGHT OF PERSONS WITH DISABILITIES TO PARTICIPATE IN POLITICAL AND PUBLIC LIFE

Under the Constitution of Ukraine persons with disabilities should have the opportunity to freely elect and be elected. The right to "freely elect" in practice means that a voter is a full-fledge participant in the election process. The laws, however, do not contain compulsory requirement concerning accessibility of election facilities and materials, as well as the verification and amendments of voters' lists. Persons with disabilities are practically deprived of opportunity to actively participate at this stage of election process.

Under the Resolution of the Central Election Board No. 5 of January 19, 2012 the ballot should take place in special premises, adequately equipped and located, as a rule, at the ground floors of the buildings with ramps, free entrance and exit. This provision, however, was disregarded in preparations to the elections to the Supreme Rada of Ukraine in 2012, and, therefore, remains a mere declaration. Usually polling stations are located at schools, other educational establishments which are inaccessible, due to their architectural design, for people with limited mobility, including persons with disabilities.

[31] Source: monitoring of access to information, K-2010.

[32] Source UPR, Report of the Ukraine Coalition of Organizations of People with Disabilities (UCOPD), 2012

The principles of reasonable adjustments and concept of universal design enabling equal access in compliance with Article 2 of the Convention are ignored. It violates the rights and human dignity of persons with disabilities as well as the principles of non-discrimination and equal opportunities.

The Ukrainian Law stipulates that pre-election campaigns can be carried out in any forms and by any means which do not contradict the Constitution of Ukraine and Ukrainian laws.[33] Organization of public events is one of the forms of the pre-election campaign. The legislation stipulates that executive bodies and local self-government bodies shall provide the premises "appropriate for public events" within pre-election campaigns[34]. As the accessibility (architectural) is not one of the criteria of "appropriateness" for public events, the persons with disabilities are deprived of the possibility to participate in the said pre-election public events.

The legislation stipulates that materials related to pre-election campaigns, e. g. information posters, are printed at the costs of state budget Ukraine allocated for the elections, and also from the candidates', political parties' and blocks'(subjects of the election process) funds.[35] The Central (territorial) election board ensures the printing of information posters of the the candidates, political parties and blocks, registered with the respective election board, using the funds from the state budget of Ukraine. The posters should be uniform in their format, size and printing techniques, established by a respective election board. They should be placed in the polling station premises.[36] This practice of the uniform presentation of the candidates, political parties and blocks in printed materials, covered by the budgetary funding, is aimed at ensuring complete equality of all the participants in pre-election campaign. However, there are no provisions enabling persons with impaired vision familiarization with pre-election information.

> *Within the framework of election campaign of 2012 in Volyn' oblast' a program "Your choice" was offered to the electorate. It revealed that special needs of different groups of population can be used to falsify the ballot results. In particular, one of the speakers said in the program:"I can talk about the voting rights of persons with disabilities. They are facing serious problems as far as access to information goes, and, specifically, in their familiarization with current legislation. Lamentably, this problem is addressed chiefly by the organizations of the disabled, who publish legal and normative/regulatory documents, thus guaranteeing observance of voting rights for the persons with disabilities.*
>
> *As of today the documents in this format are scarce. Only the Law "On Elections of People's Deputies of Ukraine" is available in Braille script. The information published by the political par-*

[33] Part 1 Article 58 of the Law of Ukraine "On elections of the President of Ukraine", part 1, Article 66 of the Law of Ukraine "On elections of the people's deputies of Ukraine", part 3 Article 50 of the Law of Ukraine "On elections of the deputies to the Supreme Council of the Autonomous Republic of Crimea, local councils and the heads of village, settlements and city councils".

[34] Part 6 Article 58 of the Law of Ukraine "On elections of the President of Ukraine", part 8, Article 66 of the Law of Ukraine "On elections of the people's deputies of Ukraine", part 2 Article 51 of the Law of Ukraine "On elections of the deputies to the Supreme Council of the Autonomous Republic of Crimea, local councils and the heads of village, settlements and city councils".

[35] Article 59 of the Law of Ukraine "On elections of the President of Ukraine", Article 67 of the Law of Ukraine "On elections of the people's deputies of Ukraine", Article 52 of the Law of Ukraine "On elections of the deputies to the Supreme Council of the Autonomous Republic of Crimea, local councils and the heads of village, settlements and city councils".

[36] Part 1,3 Article 59 of the Law of Ukraine "On elections of the President of Ukraine", part 1,3 Article 67 of the Law of Ukraine "On elections of the people's deputies of Ukraine", part 1,2 Article 52 of the Law of Ukraine "On elections of the deputies to the Supreme Council of the Autonomous Republic of Crimea, local councils and the heads of village, settlements and city councils".

ties is also hardly available. Does it mean that not a single political party is making its program public in Braille script? Lamentably, yes.

A sightless person cannot read the information offered at the polling stations. Now, let's have a look at the voting procedure at the voters' place of residence. The preparation of the Alternative Report to the UN Committee made it evident that the majority of complaints with regards to the violation or restriction of voting right, relates to the voting at the voter's domicile and to the voting by persons with disabilities. To ensure ballot for the sightless persons the authorized assistants helped them through the recent election campaigns. Again, here the danger of violation of confidence arises, but the blind always come to the polling stations with their family members. Availability of special forms and documents in Braille script still poses a problem…"[37]

According to the NADU, not a single law states the requirements concerning equal access to mass media election campaign for the persons with disabilities, in particular, with hearing impairments, by way of obligatory subtitling and sign-language interpretation of election campaign TV programs.

The special voting procedure so far remains the only guaranteed and efficient mechanism within the reach of persons with disabilities in Ukraine.

As to the ballots, the Central Election Board prints them out in Braille script for the use of sightless voters only for the elections of the people-s deputies of Ukraine, in the amount of two Braille ballots per polling station. For special polling stations such ballots can be printed out on the request of the circuit election board.[38] Unfortunately this provision exists on paper only –it was not implemented in 2012 elections to the Supreme Rada of Ukraine.

In spite of constitutional guarantees ensuring every citizen's participation in state governance, the election and public service laws in force do not provide any mechanism enabling such participation for persons with disabilities. The current Law of Ukraine "On Public Service", passed in 1993 by no means is aimed at ensuring constitutional guarantees. Moreover, principles and procedures, stipulated by the Law are contrary to the democratic principles of public administration and public service.

6. RECOMMENDATIONS

1. Ensuring implementation of the National Action Plan for realization of the Convention on the rights of persons with disabilities (including sufficient funding).

2. Devising and adopting necessary amendments aimed at bringing the legislation into compliance with the requirements of the UN Convention on the Rights of Persons with Disabilities. It is expedient to enforce practical mechanisms for the implementation of the main standards in the protection of the disabled rights.

3. Accelerating the passing of the Law of Ukraine "On compulsory state social medical insurance" with the goal of enhancing accessibility of health care services for persons with disabilities. Introducing counseling for women with disabilities and families bringing up girls with disabilities on the issues addressing disability and reproductive health. Providing for

[37] Source: "Your Choice" program 27.09.2012. http://volynpressclub.org.ua/index.php?option=com_content&view=article&id=172:2012-09-27-13-33-32&catid=6:-2012&Itemid=13

[38] Part 6 Article 83 of the Law of Ukraine "On elections of the people's deputies of Ukraine".

architectural accessibility of the counseling centers, specifically, for women with loco-motor problems, impaired hearing or vision.

4. Amendments of Constitutional legislation of Ukraine is called for, as the terms "equality" and "non-discrimination" used in the law with regards to the disabled are not equivalent and differ substantially in their essential meaning.

5. Undertaking appropriate steps (under the auspices of the Ministry of Health) envisaging incentives, including the financial ones, for psycho-social and rehabilitation treatment for the persons with mental disorders.

6. Promoting the system of the inclusive education, including upgrading of the educators, identifying sources and volumes of the needed state funding. Ensuring publications of learning manuals for the children with impaired vision or hearing and with mental disorders. Engaging persons with disabilities as educators.

7. Ensuring adherence to the principles of accessibility, universal design and reasonable adjustments, taking into account individual needs in the educational establishments.

8. Offering special training and upgrading for educators on the issues of disability, inclusive learning, support for children with disabilities, creating environment without barriers in the educational establishments.

9. Introducing monitoring and control system for inclusive education; making monitoring results public.

10. Engaging public organizations of persons with disabilities into decision-making with respect to the right to education.

11. Implementing the requirements of the Ukrainian Law, which stipulate development of individual rehabilitation programs for every person with disability.

12. Devising efficient mechanism for supplying technical rehabilitation means and medical devices for the persons with disabilities or money reimbursement if these means and devices are purchased by the disabled themselves. This mechanism should be based on the principles of target assistance, feasibility and efficiency.

13. Ensuring the exercising of right to work by persons with disabilities. In particular, setting up the institute of professional assistants who would accompany disabled persons in the course of their professional operation.

14. Promoting deinstitutionalization and autonomous living in the community with complex support for the persons with disabilities, who need permanent care and assistance, eventually decreasing the number of specialized institutions and replacing them with assisted living complexes for 8-16 disabled persons within communities

15. Eventual reforming of care and guardianship system for people who are not aware of their actions and respective consequences; removing restrictions in economic, proprietary, political and other rights of the aforementioned persons, including those enumerated in the Article 32 of the Law of Ukraine "on the Basics of social protection of the disabled in Ukraine".

16. Introducing the system of the supported decision-making, with services of the qualified assistants for persons with disabilities, who are not aware of their actions and respective consequences.

17. On the basis of Article 29 of the Convention introducing changes into the law in force with the aim of discrimination eliminating and creating conditions under which persons with disabilities will be able to fully participate in the political and social life.

18. Introducing control over the abidance with law in force ensuring non-discrimination of persons with disabilities in the election process.

19. Introducing universal design principles to ensure access to all the areas of political and social life for persons with disabilities.

20. Organizing training for the officials in charge of the elections and monitoring at the polling stations on the issues of disability, communications with persons with various nosologies, appropriate equipment, information access etc.

21. Amending Law of Ukraine on gender issues with due consideration to the needs of persons with disabilities.

22. Compiling national report on realization and protection of the rights of disabled women in Ukraine, and their integration in the society. The organizations of the disabled people should actively participate in the compilation of the report.

23. Introducing public monitoring of the state of women and girls with mental and developmental disorders residing in the public care institutions.

24. Ensuring protection against violence for women with disabilities in the mental hospitals and other institutionalized establishments.

25. Providing high quality health care services for women with disabilities, in accordance with their individual needs in this area. Organizing training for medical services providers on the issues of disabled women needs and communication ethics.

26. Promoting positive image of women with disabilities in mass media.

27. Ensuring active involvement of women with disabilities' employeyment in education, social work and health care.

28. Amending legislation in force in compliance with the Convention standards with regards to accessibility of information for persons with disabilities.

29. Introducing efficient control over the implementation of current law and Article 21 of the Convention concerning the accessibility of information for persons with disabilities.

30. Obliging central and local bodies of power to use methods and formats which make information accessible for persons with disabilities, customizing information products and information concerning availability of public services.

31. Using administrative and incentive levers through dialogue and social responsibility of private sector in disseminating information in formats and means accessible for persons with disabilities.

32. Using incentives for the broadening of audio-books market, supporting publications in Braille alphabet, customizing the information according to "simplified reading" methods in cultural and educational centers.

33. With the participation of the disabled' NGOs introducing standards as to the forms, criteria and time for subtitling and sign-language interpretation of the programs (news blocks, official information, programs for children and young adults, legal and health care information) both for public and commercial TV broadcasters; promoting (be means of positive incentives, among others) adaptation of paper publications for e-format to make them available for sightless persons.

34. Introducing new technologies aimed at ensuring self-sufficiency and independence of persons with disabilities in their access to information.

35. Promoting universal design principles in the new information and communication technologies.

XXI. ENVIRONMENTAL RIGHTS[1]

1. RIGHT TO SAFE ENVIRONMENT

Article 50 of the Constitution of Ukraine proclaims every citizen's right to environment, safe for human life and health, and to compensation of any damage caused by the violation of this right. Similar right is stipulated by Article 9 of the Law "On Environmental Protection". The state is a guarantor of observance of this right. Its mission in this context should consist in maintaining safe and healthy environment, non-exhaustive use of the natural resources. This can be achieved by integrating environmental policy as priority component into the state policy, in compliance with sustainable development principles.

Information provided by the Ministry of Environment[2] and State Statistics Service of Ukraine once again confirmed that technogenic impact on the environment has been increasing over the year 2012, presenting ever increasing threat for the environment, public health and adherence to environmental rights.

After drastic decrease in the indicators of emissions of main pollutants into the air in the late 90s, these indicators have been constantly increasing over the next 11 years[3]. Oddly enough, the amount of emissions has not diminished even in the recent years marked by the economic recession. As compared to 2010 atmospheric emissions' indicators increased in 20 Ukrainian oblast's. It testifies to the fact that the economy of the country is still oriented at wasteful use of non-renewable resources, obtaining and redistribution of the natural riches. Rhetorical inaction of the power bodies is barely concealed behind endless declarations of the structural modernization of economy, transfer to sustainable development and priority implementation of innovative resource-saving technologies.

In 2012 the black metallurgy, thermoelectric power plants, coal mining, oil and cement industries remained principal sources of pollution. Their emissions into the air and production waste constitute up to 90% of the total volume of emissions. The highest rates of increase in atmospheric emissions are registered in the industrialized regions, where the technogenic load on environment is unprecedented as compared to the world and European indicators: first of all, in Donetsk, Dnipropetrovsk, Luhansk and Zaporizhzhya oblast's. The largest volumes of emissions, as usually, are registered in the cities with prevalent metallurgical, coal-mining, chemical and heat-and-power industries: Mariupol, Kryvy Rih, Ze-

[1] Prepared by O. Stepanenko, member of UHUHR board, executive director of "Zeleny svit" NGO, head of "Helsinki initiative — XXI".

[2] National reports on the environmental situation in Ukraine for the years 2010 and 2011. http://menr.gov.ua/content/article/9921; http://menr.gov.ua/content/article/11797

[3] Statistical handbook "Environment of Ukraine" for 2011 of the State Statistics Service of Ukraine — http://www.ukrstat.gov.ua/

lenodolsk, Debaltsevo, Burshtyn, Dniprodzerzhinsk etc. In 2011 the highest rates of pollution exceeding 5 maximum acceptable concentration rates were registered in 3 cities: in Kremechuk — 2 cases of carbon oxide pollution, in Krasnoperekopsk — a case of hydrogen chloride pollution, in Rivne — 4 cases, all related to phenol.[4] However, the state standards of the atmospheric air quality, as well as WHO standards for specific pollutants are exceeded in almost all big cities of Ukraine.

It must be said here that atmospheric air pollution is ranking first as to the level of chemical hazards for people's health, due to the fact that pollutants are most widely spread and permeate various environments. The respiratory way of their penetrating human body also presents grave health risks, first of all causing respiratory and oncological diseases. Thus, in Kremenchuk the summary cancer risk caused by 9 main chemical cancerogenes only amounts to 9.2×10-3; in Dnipropetrovsk — to 6.8×10-3, and in Kyiv — to 4.9×10-3 respectively. Nitro-substitutes, chrome, benzol, chlorine-organic compounds, and especially dioxins are the main "contributors" to cancer risks. The scientists believe that every subsequent doubling in the environment pollution indicators lead to the increase in morbidity by certain%. In particular, the cancer rate increases by 5% on the average with every doubling of cancerogeneous benzopirene in the air. Analysis of the epidemiological research data shows that doubling in the environment pollution indicators with other equal components of the impact is manifested in the general morbidity increase by 20%, and respiratory diseases — by 26%.

Under the Ministry of Health data, the population of Ukraine is not only decreasing at one of the highest rates in the world; the life expectancy is decreasing also — today it is 12–14 years shorter than respective index in the European countries. In 2011 the life expectancy at birth constituted 65.8 years for males (66.5 in the cities and 64.4 in the rural areas), 75.7 years for the females (76 in the cities and 74.9 in the rural areas)[5]. Over the last 12 years the incidence of malignant tumors has grown almost 1.5 times in Ukraine[6].

It looks like the unsatisfactory environmental situation, threatening demographic tendencies, increase in morbidity and lethality rates call for the thorough study of the situation, analysis, evaluation and prognosis in public health; implementation of preventive measures, first of all, cutting down the pollution emissions and rendering the waste harmless.

Meanwhile, out of 600 projects for the reduction of emissions, which were planned within the framework of 2011 programs, only 458 were implemented[7]. The rates of introducing environmental protection measures in production and communal economy remain much slower than anticipated practically in all regions: technical modernization, commissioning of the gas-treatment systems is postponed "till better times". The bodies of control do not provide enough incentives for the companies to introduce technological innovations which would decrease negative impact on environment. E. g. State Ecological Inspection in Kyiv oblast' for the whole year failed to carry out instrumental-laboratory control of the emis-

[4] National report on the environmental situation in Ukraine for 2011 http://menr.gov.ua/content/article/11797

[5] Annual report on public health condition in Ukraine and sanitary/epidemiological situation/ ed. By R. Bohatyryova, 2012

[6] State Statistics Service of Ukraine. Morbidity of population http://www.ukrstat.gov.ua/

[7] National report on the environmental situation in Ukraine for 2011 http://menr.gov.ua/content/article/11797

sions in the oblast' enterprises, despite the fact that it was licensed to do so and had all the necessary measuring tools[8].

For many years environmentally friendly electric means of public transportation have been cut down in the Ukrainian cities, for the benefit of automobiles. E. g., the length of street-car routes decreased by 231.4 km (11%)[9] between 1998 and 2011. In the meantime the number of cars and volumes of car emissions are on the permanent increase. The self-governance bodies do not use the international experience of curbing the number of personal vehicles, restricting their access to the central city areas, recreational and residential zones. The main thing is they do not implement systemic policy of developing public and bicycle transportation.

The use of bio-ethanol, environmentally clean mixed gasoline and bio-diesels would also help in improving urban environment and fulfilling the obligation undertaken by Ukraine at the IV Conference of the Ministers of Environmental Protection of the countries — EU members, i. e. banning the use of ethylated gasoline. However, the "Ethanol" state program, adopted by the government as far back as 2000[10], under which the bio-ethanol, bio-diesel, high-octane oxygen gasoline additives production should have been organized in Ukraine in 10 years, was never implemented due to the lack of funding. New similar program currently exists only as a concept under discussion.[11] While national market requires 5 million tons of bio-ethanol, in 2011 only 9 thousand tons was produced in Ukraine, while there was no bio-ethanol production at all between 2005 and 2010.

The results of surface water reservoirs monitoring, provided by the State Epidemiological Service of Ukraine, shows that despite economic recession and decrease in waste discharges over the last years, the environmental condition of water reservoirs is aggravating by all indicators. The reason for that is that both industrial enterprises and communal services companies are used to save money on waste water treatment facilities; either they do not have such facilities at all or the available facilities are under-loaded or morally and physically obsolete.

Environmental inspections found most drastic violations in Ternopil oblast'(the exceeding of norms found in all companies without exceptions), Dnipropetrovsk oblast' (at 91% of the inspected enterprises) and Donetsk oblast' (79%).[12] The highest rate of deviations from the water quality norms as to the chemical indicators is registered in Luhansk oblast' (100% of samples) and Dnipropetrovsk oblast' (63,4%), as to the bacteriological indicators — in Odessa (37%), Ivano-Frankivsk (33,9%), Chernyhyv (21,4%) and Kharkiv (18,2%) oblast's.

The data provided by the Ministry of Regional Development of Ukraine, show that about 4.6 million residents of 261 urban settlements (161 cities and 100 settlements) in 25 regions

[8] Report "On the results of State Ecological Inspection and its territorial branches operation in 2012" http://dei.gov.ua/index.php?option=com_content&view=article&id=945:rezultaty-roboty-dei-ukrainy-ta-ii-terytorialnyh-organiv-za-2012-rik&catid=35&Itemid=272

[9] http://www.ukrstat.gov.ua/operativ/operativ2005/tz/tz_rik/tz_u/ts_u.htm

[10] CMU Resolution of July 4, 2000, No. 1044

[11] http://170820.minagro.web.hosting-test.net/page/?13274

[12] Report "On the results of State Ecological Inspection and its territorial branches operation in 2012" http://dei.gov.ua/index.php?option=com_content&view=article&id=945:rezultaty-roboty-dei-ukrainy-ta-ii-terytorialnyh-organiv-za-2012-rik&catid=35&Itemid=272

of the country systematically get water with physical/chemical and bacteriological characteristics seriously deviating from the norms. The dwellers of 1200 villages do not have guaranteed water supply sources due to the natural or technogenic causes, so that they have to use imported water. The majority of these villages are located in Zaporizhzhya (37.4%), Mykoalaiv (16%), Dnipropetrovsk (11.4%), Odessa (2.5%), Kirovohrad (3.1%) and Kherson (3,0%) oblast's[13].

Meanwhile, the governing bodies of the country do not seem concerned about ensuring the citizens' right to good drinking water. On the contrary, the issuance of temporary licenses to sell "drinking water which does not meet the normative requirements" to the consumers has become routine. Till the last year these temporary licenses were absolutely illegally issued to water supply companies by the Derzhspozhyvstandart, although Article 23 of the Law "On Drinking Water and Drinking Water Supply" stipulates that the water supply companies must "restrict or stop the operation of the central drinking water supply companies if the need to respond to deterioration of water quality in drinking water sources arises, and it cannot be improved to meet the state standards requirements". However, in October 2012 "the people's elects" amended this article, legitimizing the supply of poor quality water to the consumers. Now water companies have the right "to accept temporary deviations in drinking water quality from the state specifications only if they are licensed by the central executive power body in charge of state policy for technical regulations, the license being based on the conclusions of the central executive power body in charge of state policy for sanitary and epidemiological well-being of the public".

Energy consuming and raw materials-based (aka wasteful and non-competitive) economy of Ukraine still accounts for high indicators of waste annual formation and accumulation. Over the last ten years the total volumes of industrial and domestic waste production in Ukraine have been on the constant increase.[14] The recent years brought no changes to this tendency: the volumes of industrial waste production (I–IV classes of hazard) have grown in 2011 as compared to 2010 from 419 million tons to 444 million. Totally 13 267 million tons of waste were accumulated in 2010, while in the next year this amount increased to 14 422 million tons (only in special landfills and in the industrial yards, not taking into account spontaneous dumping places in the remote areas).

It must be said that domestic waste which has of late become a real plague for the residential areas and recreational zones used by Ukrainian public, under official statistics in 2010 accounted for only 3% of the total volume (12,4 million tons), while industrial and coal-mining waste accounted for 93.5%[15]. The reluctance to set up an efficient system of domestic waste management based on reducing the volumes of its formation and maximum recycling of the secondary raw materials, becomes especially obvious when compared to the situation in the EU countries. There only 39.8% are deposited in the city dumps, while in Ukraine this figure amounts to 93%; recycling and composting amount to 39.9% та 3% respectively.

[13] National report on drinking water and drinking water supply for 2011://minregion.gov.ua/images/Pidrozdily/MEDVED/_._2011_.pdf

[14] Concept of the state policy for waste management (draft)

[15] National report on the environmental situation in Ukraine for 2010 http://www.menr.gov.ua/ND_2010.pdf

The generation of the new types of waste is on the rise, e. g. electronic waste: video and audio players, house-aid devices, computers, networks' and telecommunication equipment. In EU countries the share of this type of waste is growing three times quicker than domestic waste. In the developing countries this rate will be even larger, and while in the EU countries up to 50–80% of electronic waste is recycled, here they end up in the dumping sites. As energy-saving bulbs are becoming more and more widely used (annually up to 20 million such mercury-containing bulbs are brought into the country), the waste containing mercury and its compounds is growing in volume.

The Ministry of Environment has "updated" its site with the lists of 10 and 100 companies respectively, which are the largest pollutants of environment.[16] The situation in this respect remains stable: the same names are to be found among the "dirtiest ten": Dniprodzerzhynsk plant "Dzerzhynsky Kombinat ", Mariupol "Illich Kombinat", "Zaporizhstal" company, Kryvy Rih "Arcelor Mittal", Burshtyn EPP… For the umpteenth time the question arises: if the negative impact of monstrous pollutants cannot be mitigated over the years and they cannot be forced to pay fines for damages to the environment and public health, then, probably, it is high time to use severe sanctions, up to complete decommissioning of these enterprises?

In fact considerable number of environmentally hazardous industries is simply ignored. E. g. Horlivka chemical factory in Donetsk oblast', former military plant which has accumulated a lot of toxic and explosive waste, including about 2.5 thousand tons of mononitroclorbenzol, the raw matter of I class of hazard. In 2009 500 containers (32 tons) of this poison have been repacked with the help of Blacksmith Institute (USA) foundation. However, 11.6 thousand tons of soil contaminated with mononitroclorbenzol, still remain at the factory territory. Besides, about 30 tons of explosive waste from trotyl production also is stored there in the burial site, the life term of which has expired long ago. There is no monitoring of the chemical processes in the burial site, so the threat of explosion persists. And nearby, at the "Styrol" plant two ammoniac storage reservoirs, 10 thousand cubic meters each, are located as well as cisterns with oleum and ammoniac and the railroad… Solutions for Horlivka chemical factory were envisaged in the "State Program for handling toxic waste", but practical steps have been postponed so far.[17]

The news available at Prosecutor's General Office web-portal contains information on crimes against environment and violations of the environmental rights. Thus, the PGO advised that over the last ten years the total area of waste treatment facilities and burial waste dumps has increased more than twice in Ukraine. Over 1 thousand out of 6 thousand objects do not meet the safety requirements; over one third is not inventoried. PGO imitates frenzied activity aimed at fighting violations in waste handling. If one is to trust its information, 3.8 thousand officials have been held accountable (half of those working in state control bodies) and 79 criminal cases filed with courts on the basis of inspections carried out by the prosecutors in 2012. 112 damages' claims were submitted for total amount of 32.5 million UAH. 52 of them were satisfied with damages paid at the amount of 12.5 million[18].

[16] http://www.menr.gov.ua/content/article/201

[17] http://himprom.ua/eksklyuziv-krovyanoj-yad-vyvezli-iz-ukrainy-new640; http://ru.decovita.com.ua/article/a-24.html

[18] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=114268&fp=110

However the universal environmental principles stipulating that "the pollutants have to pay" and "the perpetrator pays the damages" are not recognized in Ukraine. The State Ecological Inspection of Ukraine provided official figures of calculated damages for the violation of environmental law in 2012 — 1 billion 660 million UAH. The SEI filed claims and grievances for the total sum of 995 million UAH of compensatory damages. The real amount of damages paid in 2012 to the state budget constituted only 47.3 million UAH or 5% of total damages claims and 47% of the respective figure retrieved in 2011[19]!

The unprecedented fact that by the end of 2012 the majority of Ukrainian oblasts did not have efficient and viable programs for environmental protection is also worth mentioning. The former programs' period of validity has terminated in 2010 — 2011, but no reports on their completion have been submitted by state administrations, in violation of the provisions of p. 3. 5 of Article 119 of the Constitution.

Instead the local offices of the Ministry of Environment are being totally reorganized to meet the requirements of the odious law "On amendments to some legal acts of Ukraine (concerning optimization of competences of executive bodies in the area of environment and natural resources, including at the local level)", passed on October 16, 2012: the state environmental protection departments are closed; as of January 2013, 21 state ecological inspections in the regions were shut down.

It means that currently the environmental protection system is completely ruined, while the largest loss of experience, human potential and resources is occurring in the process. Meanwhile the state administrations are not eager to undertake the competences of the structures liquidated by the Ministry of Environment or to develop environmental protection programs for future operation.

Apparently, the steps of higher echelons of power, serving big capital interests, are aimed at further marginalizing of environmental protection policies in the state policy of the country. Raw-materials' oriented economy, which is traditionally cherished by the authorities, deprives the country of any prospective development, leads to the increase in pollution volumes, exhaustion of natural resources, waste of natural capital, with less and less time for modernization, and, therefore, to the increased threat and hazards for current and future generations.

2. RIGHT OF FREE ACCESS TO ENVIRONMENTAL INFORMATION

It looks like the Ministry of Environment has finally responded to acute criticism on behalf of the NGOs concerning the long-lasting violation of Article 25-1 of the Law "On Environmental Protection", which stipulates annual preparation of the National report on current environmental situation, publishing it on the Internet, printing in hard copies and submitting for the Supreme Rada consideration. Over the year 2012 the Ministry was hastily "repaying the debts" as far as the access to information goes, so that its official web-site now offers

[19] Report "On the results of State Ecological Inspection and its territorial branches operation in 2012" http://dei.gov.ua/index.php?option=com_content&view=article&id=945:rezultaty-roboty-dei-ukrainy-ta-ii-terytorialnyh-organiv-za-2012-rik&catid=35&Itemid=272

three long-due annual national reports: for the years 2009[20], 2010[21] and 2011[22]. The report for 2008 probably will be never compiled and nothing can be done about it…

However, the institutionally weak Ministry of Environment has no capacity to ensure complete conformity with the provisions of the aforementioned article of the fundamental environmental law with respect to information support which should be provided by the high official bodies. These latter are interested in environmental information only in the light of potential redistribution of natural resources between the financial/political groups. That is why for eight years the National reports on current environmental situation have not been considered by the Supreme Rada or edited as a separate publication. It still is available as PDF-file only on the ministerial page on the Internet.

Compiling of Regional reports on current environmental situation seems to be rather problematic also. The Ministry of Environment web-portal contains the reports for 2009[23], the territorial departments' sites — reports for 2010 and, to a certain extent, for 2011.

The law, however, does not require the environmental information to be provided by the oblast' departments for environmental protection. Under the law, it is the task of the ARC Council of Ministers, oblast', Kyiv and Sebastopol state administrations. And it is logical, because these bodies have the necessary authority and competence to seek the needed information from all the state structures involved in environmental monitoring. This information divulged in the mass media, controlled by them, has the best chance of being properly perceived by the public and of contributing to prioritization of environmental issues. Nevertheless, looking for environmental information on web-portals or printed publications of the state administrations will be plain waste of time — you will not find it there as it was never there. In 2012 the situation remained the same: the regional reports on current environmental situation are published only on the web-portal of the Ministry of Environment and with much delay.

As in the previous years, we observe constant delays in publications of the special Ministry of Environment reports — in the course of 2012 not a single new report was published on its web-portal.[24] So far the report on the fulfillment of the state program for setting up national environmental network for 2006 remains the "freshest" piece of news on the portal.

"Ekologia-Pravo-Lyudyna" NGO (EPL) has analyzed the changes introduced over the year into the normative acts of the Ministry of Environment concerning information relations — with respect to the new law "On Access to Public Information" and new version of the law "On Information". The analysis demonstrated that in general the Ministry of Environment orders are brought into compliance with legislative novelties. However, EPL criticized certain regulatory acts treating public information as confidential, establishing the costs of copying and printing information materials, and setting up a list of types of environmental information to be published on the Ministry of Environment web-site.[25]

[20] http://www.menr.gov.ua/content/article/9919

[21] http://www.menr.gov.ua/content/article/9921

[22] http://menr.gov.ua/content/article/11797

[23] http://menr.gov.ua/content/article/7789

[24] http://www.menr.gov.ua/content/article/6010

[25] http://epl.org.ua/fileadmin/user_upload/dodatky_do_anonsiv/analiz_normdoc_pravky_Lizy.docx

The former reports on observance of environmental rights already referred to the ruling of Circuit administrative court of Kyiv, passed on the EPL claim against the Ministry of Environment. EPL asked the court to classify the ministry's inaction, i. e. failure to publish the results of state environmental expert examination on its official web-site as illegal. On 22.11.2012 the administrative court of Kyiv supported this ruling and obliged the ministry to publish over 100 conclusions of the examination on its site.[26] The court rulings came in force, but the ministry is in no hurry to comply with them. So far not a single conclusion of the environmental examination has been published on its site. Visiting the page of the State Environmental Expert Evaluation makes this fact evident.[27] Moreover, the information has not been updated at all since 2011, testifying to the degradation of one of the most important institutions of the state environmental policy in Ukraine. The publicizing of the conclusions of the environmental examination by some regional departments of the Ministry of Environment are more of exceptions than of a rule.

As compared to the Ministry of Environment the State Statistics Service appears more accurate in divulging of environmental information. E. g. in 2012 it published statistical reference-book "Environment in Ukraine" with summarized information for the previous year and dynamics of certain indicators of anthropogenic impact on environment over the last twenty years.[28]

The Prosecutor's General Office, on the other hand, probably was too busy looking for criminal offence in the activities of the opposition leaders. For two years in a row it failed to submit annual analytical information on law abidance in the country for the years 2010, 2011 and 2012 or to publish it on its own web-portal, as required by Article 2 of the Law of Ukraine "On Prosecutor's Office").[29] That is why notifications on crimes against environment or violation of environmental rights can be found only randomly in prosecutor's offices news and mass media.

The Ministry of Regional Development which for many years has been ignoring the provision of Article 9 "On Drinking Water and Drinking Water Supply" by not compiling or publishing National report on the drinking water quality and state of drinking water supply, finally responded to the criticism. The most recent 'water" report dates back to 2006. Despite the rumors on availability of 2009 report, not a single mention of it was found on the portal of the Ministry of Regional Development. Only on April 23, 2012 it appeared on the ministerial site.[30] However, it was January 30, 2013 that became the real celebration day for the seekers of information of drinking water quality in Ukraine. On this day the ministerial site published abundant information on drinking water quality — two reports (for 2010 and 2011) appeared on site at once![31] However, closer examination of the information leaves no grounds for celebration — the Ministry of Regional Development confirmed that some

[26] http://epl.org.ua/novini/anons/backPid/393/article/5331/

[27] http://menr.gov.ua/content/article/7550

[28] http://www.ukrstat.gov.ua/

[29] http://www.gp.gov.ua/ua/vlada.html

[30] http://minregion.gov.ua/index.php?option=com_k2&view=itemlist&task=category&id=375%3Avodopostachannya&Itemid=167&lang=uk&limitstart=20

[31] http://minregion.gov.ua/index.php?option=com_k2&view=itemlist&task=category&id=375%3Avodopostachannya&Itemid=167&lang=uk

oblast' communal and utility services departments failed to provide information for the years 2010–2011, while the others simply replaced the year 2009 to 2010 and 2011 in their respective reports[32]. Some data submitted in the reports turned out misinformation; e. g. reports claimed that centralized water supply covers 100% of the cities in Ternopil, Kharkiv and Chernyhyv oblast's, which apparently is not true.

Practically the majority of Ukrainian oblasts do not publish regional programs of environmental protection, while many oblasts do not have them at all. We want to stress once again that their development is the constitutional duty of oblast' state administrations (Article 119 of the Constitution), which have neglected it so far. In practical operation this duty was performed by the territorial departments of the Ministry of Environment which now face the liquidation process. On opening e. g. the web-page "oblast' programs for environmental protection" of the Ternopil oblast' state department[33], you will find notification: "You are not allowed to use this resource. You have to enter the system as a user". The system is very difficult to enter, may be due to the fact that the former oblast' program for environmental protection terminated in 2011, and the new one has never been developed. The situation in the majority of Ukrainian oblasts is very similar…

3. EXERCISING THE RIGHT TO PARTICIPATE IN ENVIRONMENTAL DECISION-MAKING PROCESS

3.1. Report of the NGOs "Public assessment of the national environmental policy" for 2011

The devising of the annual report "Public assessment of the national environmental policy" became the most vivid demonstration of collaborative effort of non-governmental organizations. The preparation of this report is required by the National plan of action in environmental protection in Ukraine for the years 2011–2015"[34]. Earlier a similar document was compiled by a group of NGOs in 2003[35]. The current report has been compiled within the framework of the project supported by the European Union[36]. In December 2012 5 regional hearings on draft report, with 220 participants representing 200 organizations, were held.

The report reflected public opinion on the current state and tendencies of development in environmental policy of Ukraine. The group of authors, proceeding from their own expertise and study of the materials, analyses the state environmental policy in 8 sections of the report, 339 pages in total.

The report, as stated in its text, should be used for the everyday operation of "governmental officials, Presidential Administration, deputies of all levels, environmental experts,

[32] National report on drinking water and drinking water supply for 2011http://minregion.gov.ua/images/Pidrozdily/MEDVED/_._2011_.pdf

[33] http://ecoternopil.gov.ua/index.php?option=com_content&task=view&id=9&Itemid=39

[34] http://zakon2.rada.gov.ua/laws/show/577-2011-%D1%80/page3

[35] http://www.ecoleague.net/34903999-195.html

[36] Project"Additional support of the Ministry of Environment of Ukraine in the implementation of sector budget support"

NGO members, mass media professionals". At the same time it is noteworthy that the Action Plan does not stipulate any specified procedures for consideration and implementation of proposals contained in the "Public assessment of the national environmental policy" on the official level.

On December 25 the task force in charge of compiling the 2011report submitted the results of its operation to the Ministry of Environment. Lamentably, the ministerial officials were not present at the ceremony. Soon the report was published on web-portal of the Ministry of Environment in the "PR" section — "Aarhus center". [37] The government, presidential administration and the Supreme Rada of Ukraine so far have not responded to the report. Neither was it covered by the national media. This neglect vividly demonstrates the "readiness" of power establishment to the dialogue with civil society. On the other hand, however, this situation creates incentives for NGOs in search of the new, more efficient forms of self-organization to prevent the total failure of the environmental policy.

As of the beginning of 2013 the new task force for the development of "Public assessment of the national environmental policy — 2012" has been set up.

3.2. Public protests against the plans of non-traditional gas production

Over the years 2011–2012 discussions around the criteria of acceptability of large-scale projects concerning the production of shale gas and non-traditional gases involving fracking technology, have been going on in Ukraine. It is well-known that these technologies may have a serious negative impact on environment. Thus, the drilling and use of the boreholes for shale gas extraction in Olesk deposit and non-traditional gas extraction in Yuzivka deposit can lead to numerous environmental problems unprecedented for Ukraine.

Some European countries have already introduced moratoria on the use of fracking for non-traditional gases production. In September this year the International Union for Environmental Protection passed resolution No. 118 calling the states to stop issuing licenses for gas production by hydro-explosion and to ban its use in the proximity of drinking water sources, in seismic areas, scarce water resources' areas, seismic cracks and natural preserves.

Public environmental protection organizations are concerned about lack of transparency in the projects for shale gas production and their open lobbying by some officials, including the minister E. Stavitsky.

At the end of the year a group of renowned environmental NGOs of national and international levels submitted an open letter to the European parliament, expressing their concern about environmental hazards posed by potential large-scale production of shale gas in Ukraine. The writers of the letter suggested that the European parliament does not support hazardous projects.[38] The appeal was signed by the leaders of the environmental research Bureau, "Mama-86", All-Ukrainian environmental league, "Pechenehy" NGO, EPL, and National Eco-center of Ukraine.

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[37] http://menr.gov.ua/content/category/265; http://www.menr.gov.ua/media/files/PublicAssessmentReport2011UKR.pdf

[38] http://epl.org.ua/novini/anons/backPid/1/article/5256/

3.3. Public protests in Mariupol

Environmental protest actions in Mariupol in 2012 were the largest environmental events of the year. They were brought to life by unprecedentedly high levels of pollutant emissions from metallurgy works of the city, in particular, from "Illyich Kombinat", "Azovstal", "Azovelektrostal". Only after a number of radical street actions, like, e. g. short-term closing of traffic in the central part of the city for the rally on October 13, the protesters managed to draw the authorities' and companies' owners' attention to their pledge, i. e. the non-resolved environmental issues, and to start the negotiations process.[39]

The most massive rally counting 5 thousand attendees took place on November 4 under the slogan "Stop smog!" and ended with resolution addressed to the President, government, ministers of environment and health, Ombudsman, the proprietor of "SKM" and "Metinvest" companies R .Akhmetov and others. The rally participants demanded the modernization of technological processes in the 'metallurgy giants", implementing efficient control over the emissions and toxic compounds content in the air, declaring Mariupol the zone of environmental disaster, providing preventive care for children at the cost of the owners of polluting enterprises etc.[40]

3.4. Public protests against the implementation of HEPP construction programs in the Carpathian region

Recently the regional bodies of authority approved the plans for small HEPP construction in the Carpathians, unprecedented as to their scope. 330 HEPP have to be built in Trans-Carpathian region, 50 to 150 — in Ivano-Frankivsk and Bukovyna region, about 20 — in Lviv region. Over 30 HEPP are planned to be built on some river, Cheremosh in particular. Experts sustain that the construction of that many HEPP can pose a very serious threat for biological and landscape diversity of the Carpathian Mountains. The projects, which are not based on due scientific substantiation, can lead to irretrievable ruination of river and mountain ecosystems, creating a number of hazards for environmental safety of mountain settlements. They are nothing but the repetition of the soviet nature-taming practices. Looks like neither natural disasters nor international scandals taught the "new times' Bolsheviks" a lesson. Currently in order to launder money through "green tariffs" on electric power they are ready to destroy the natural heritage in the Carpathian Mountains.

March 14 was proclaimed an "International day against dams, for the rivers, water and life". On that date the all-Ukrainian public campaign "Let's save Carpathian Mountains from small HEPP construction" uniting the NGOs, tourist clubs' members, scientists and journalists, was launched.[41] Over the year a number of working meetings (including meetings in the Supreme Rada of Ukraine) were held, several information requests and appeals were submitted and court claims filed within the framework of this campaign.

[39] http://kisloroda.net.ua/news/view/13; http://kisloroda.net.ua/news/view/19

[40] http://kisloroda.net.ua/news/view/31

[41] www.pryroda.in.ua/miniges

4. REALIZATION OF RIGHT TO ACCESSIBLE JUSTICE ON ENVIRONMENTAL ISSUES

As in the previous years, the isolated precedents of successful protection of environmental rights in courts were created by the non-governmental organizations.

Over the year several court cases were won the EPL public organization. On its petition Odessa appellate administrative court on November 6, 2012 passed a decision concerning allotment of reserved lands for the needs of "Energoatom" company.[42] The court classified the Mykolaiv oblast' council decision of 2006 on allotting 27.72 ha of the lands belonging to landscape park "Granite and steppe Pobuzhzhya" as illegal. The courts questioned the possibility of permanent use of these lands by "Energoatom" and re-established their primary designation, i. e. environmental protection zones. The courts passed important conclusions: the allotment of especially valuable lands, like the land of the national preserves, can be approved only by the Supreme Rada. Disputes arising under these circumstances fall under the jurisdiction of public law, as the national preserves' fund has nationwide importance. It means that unlimited number of individuals has the right of court appeal against disputable decisions made by the subjects of authority in respect to these lands.

On August 30, 2012 Lviv economic court fully satisfied EPL claim against an enterprise-pollutant, in the dispute related to the environmental information. The court obliged the subjects of economic activity to provide environmental information on request, and respectively, obliged the defendant to provide the documents sought by EPL in this dispute, i. e. the papers with justification of the emissions scope and report on emissions inventory. This court's judgment is most characteristic as an example of how an NGO finally got hold of the design documentation kept in the companies.[43]

In 2012 EPL appealed the legality of the "Procedure for public involvement in the discussions on decision-making concerning environmental issues". This document was approved by the government on the day prior to the latest Meeting of the Aarhus Convention parties and has been repeatedly criticized for non-conformity to the Convention standards.[44] The NGO won administrative trial in the first instance court and now intends to proceed with the court of higher instance.

Kyiv environmental and cultural center and "Ekopravo" have filed 5 joint claims over the year; two of the claims ended in overwhelming victory of the environmentalists, while two more are currently under the court's consideration.

Thus, on October 9 the Highest Administrative Court of Ukraine ruled in favor of the "Roztochchya" natural preserve in the case *"KECC and "Ekopravo" v. Ministry of Education"*, having invalidated the ministerial order under which the preserve was to be "reorganized", i. e. deprived of the legal entity status.[45] Ominously, not a single body appealed to by environmentalists (i. e. the President, national Academy of Sciences of Ukraine, the Prosecutor's

[42] http://epl.org.ua/novini/anons/browse/1/backPid/393/article/5280/

[43] http://epl.org.ua/novini/anons/backPid/393/article/5362/

[44] CMU Resolution No. 771 of June 29, 2011 "On approving the order of public involvement into discussion on decisions which can affect the environment".

[45] HACU Resolution of 09.10.12 on case No. К/9991/15496/11 re: cassation appeal of the Ministry of Education and Science of Ukraine against the decision of the Circuit administrative court of Kyiv of 13.01.2011 and Resolution of the Kyiv Administrative Court of Appeals of 10.03.2011.

General Office, academic elite of the National Forestry University of Ukraine) supported the "Roztochchya" grievance against the arbitrary actions of the minister of education D. Tabachnik. Only due to the perseverance demonstrated by non-governmental organizations, the law was restituted and the preserve saved.

On the next day the same Highest Administrative Court of Ukraine put the final full stop in the case *"KECC and "Ekopravo" v. Ministry of Environment"*, which had lasted for two years. The Court passed a resolution concerning the ministerial appeal against the Circuit administrative court of Kyiv resolution and appellation court resolution, which twice classified its order No. 289 of 09.06.2008 as illegal. The said order approved another list of confidential data within the system of the Ministry of Environment".[46] The case was won by "Ekopravo-Kyiv" attorney G. Levina.

The Prosecutor's General Office informed about their winning cases concerning illegal allotment of lands belonging to the natural preservation funds. Thus, on petition submitted by the deputy Prosecutor General, Lviv economic court of appeals annulled a number of Tarniv village (Ivano-Frankivsk oblast') council decisions passed over the years 2001–2011 ordering the transfer of 25 ha of reserve lands of the Carpathian national natural park to an economic operation entity for a long-term lease, and also invalidated the land-lease contract.[47]

The Prosecutor's General Office also achieved outstanding results in the long-lasting bureaucratic case involving the illegal allotment of natural reserve "Zhukiv Island" lands in Koncha-Zaspa for development. According to PGO information recently published on its web-portal[48], the Highest Administrative Court of Ukraine finally satisfied its cassation appeal and annulled the verdict passed by the court of lower instance. The verdict kept in force an odious decision of the Kyiv city council, which, as far back as 2007, transferred 44 ha of the reserve lands on Zhukiv Island to a "housing cooperative" represented by 4 members, as a property, free of charge, while almost 60 ha more were given out for a long-term lease. Is it possible that triumphant GPO statement on the liquidation of the ill-famed "cooperative" on Zhukiv Island comes true? With time, we'll see…

Finally in December 2012 the Prosecutor's General Office won two more trials related to the protection of Koncha-Zaspa reserve lands against illegal privatization. First the Highest Economic Court satisfied the cassation appeal of the prosecutor's office for Kyiv oblast' and invalidated the state property titles of a commercial enterprises for 260ha of land belonging to the water fund in Obukhiv raion (Kyiv oblast').[49] Soon after that Kyiv oblast' Court of Appeals left in force the decision of the Obukhiv raion court on the GPO petition and classified the ordinance of the Obukhiv raion state administration concerning free privatization of 75 ha of the protected land of the water fund under Kozynka village council worth 122 million UAH, "with the purpose of individual farming" as illegal. Let's hope that the individuals craving for hard farmers' labor will comply with this court's decision, and that the new

[46] HACU Resolution of 10.10.12 on case No. 38197/10 re: cassation appeal of the Ministry of Environment against the resolution of Circuit administrative court of appeals, city of Kyiv of 06.08.2010 and Resolution of the Kyiv Administrative Court of Appeals of 4.11.2010

[47] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=115109&fp=60

[48] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=115418&fp=40

[49] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=114195&fp=110

"seekers of farming lands" in Koncha Zaspa would not replace them. Then, finally, these lucrative land plots will be returned to the state.[50]

In many cases, however, the courts passed the decisions unfavorable for the environmental protection community. Thus, on October 9, 2012 the Highest Administrative Court of Ukraine, availing itself of Kyiv city state administration's inertia in the matter, annulled the resolution of Kyiv Court of Appeals of 21.06.12 which temporarily suspended illegal process of appropriation of 4 thousand ha of suburban Kyiv forests (i. e. so-called "Bilychy forest" which is a part of the Svyatoshyn forestry enterprise) unleashed by the managers of Kotsyubynske settlement. By its decision the HADU deprived the Kievites of priceless recreational areas with the purpose of their further development through construction[51].

More and more often the courts ignore the legal guarantees of access to information contained in the conclusions of state ecological inspections and in the sections dealing with assessment of investment projects' environmental impacts. Many a time the members of public are unable of defending their right to environmental information in court. Thus, in January 2012 the Highest Specialized Court of Ukraine for civil and criminal cases refused to open an appeal investigation on the petition of environmental NGO "Zeleny svit", claiming the violation of the right of free access to environmental information.[52].In this case the judges of three instances ignored the legislative norms in force, which stipulate that the subjects of economic activity in charge of environmental information are to be treated as information managers obliged to provide the information on request[53].

5. PERSECUTIONS ON ACCOUNT OF ENVIRONMENTAL PROTECTION ACTIVITIES

5.1. Assassination of the environmentalist V. Honcharenko

On August1, 2012 environmentalist, leader of the public movement "For the right of the citizens to environmental safety", editor of "Ekobezpeka" newspaper Volodymyr Honcharenko was severely beaten and died in the hospital as a result of the sustained injuries.

Family, friends and colleagues of V. Honcharenko connect this crime to the deceased' active public work aimed at protecting environment, environmental rights, uncovering of corruption cases and counteracting irrespoonsibility of the local bureaucrats with respect to environmental protection. On July 27, at his last press-conference V. Honcharenko told about 180 tons of chemically contaminated metal scrap stored in Kryvy Rih.

On August 10 142 NGO members sent a collective appeal to the President of Ukraine and chief executives of the law-enforcement bodies demanding to take under their control the investigation of this impudent killing. Besides, several human rights' organizations approached the Aarhus Convention Bureau, filing a grievance against the Ministry of Environ-

[50] http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=114265&fp=110

[51] http://kiev.pravda.com.ua/publications/4a7189bcf38fa/

[52] Section "Assessment of environmental impact" of the working project "Exploration of Pylypchanksy gypsum quarry in Borshchiv raion Ternopil oblast'

[53] Articles 25, 25-1 of the Law of Ukraine "On Environmental Protection", pp. 2–3 Article 13 of the Law of Ukraine "On Access to Public Information"

ment inertia in investigating the facts, the divulging of which, in their belief, led to the public activist's death.[54] By the end of 2012 the investigation of V. Honcharenko's assassination was not closed yet.

5.2. Court persecution on account of environmental protection and journalists' activities

On September 6, 2012 Dzerzhynsky district court (Kharkiv) opened the case on protection of honor, dignity, business reputation and moral damages at the amount of 158 thousand UAH against the journalist O. Perehin and NGO "Zeleny front".[55] The petitioner claimed that his dignity was suffered from the publication concerning restriction of right to public use of the forest resources by the villagers of Zhovtneve and Borshchiv (Kharkiv oblast') on "Zeleny front" site.[56] This claim triggered another case against the leaders of the environmental protection group and the activists from the aforementioned villages, who demand the restitution of their environmental rights, violated by tree-cuttings in the forest, which is in the petitioner's private property. An earlier case on protection of honor, dignity, business reputation and moral damages against citizen V. Strashko ended in peace settlement[57].

According to "Anglers' association of Ukraine", in 2012 the State Agency for fish resources of Ukraine approached Obolon' district court in Kyiv seeking protection of their business reputation against the president of the said association A. Nelipa.[58] This latter believes that he was sued by the Agency on account of his critical position towards the Agency's operation, frequently expressed by him in his letters to the authorities, mass media etc. A. Nelipa won the case in the court of the first instance. On October 25 the Kyiv Court of Appeals, upon considering the appeal submitted by the Agency, arrived at the conclusion that the court of the first instance passed a well-grounded, legal and valid decision in favor of the Anglers' association. The arguments of the appeal do not refute this decision, and there are no grounds for its annulment.

5.3. Pressure exerted on the Public Council under the Ministry of Environment

Since its first steps, the Ministry of Environment tried to launch a public dialogue. The Public Council under the Ministry of Environment was set up in 1995 and became one of the first Ukrainian institutions of this type. It united all-Ukrainian and international organizations registered by the Ministry of Justice, whose statutory operation was related to environmental protection.

The PC in its current composition was set up in summer 2011 in compliance with the Resolution of the Cabinet of Ministers No. 966 of 03.11.2011. The council efficiently col-

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[54] http://www.aarhusclearinghouse.org/news/1000433/?year=0
http://k-z.com.ua/proisshestviya/22732-nazvano-peredbachuvani-prichini-zhorstokoji-smerti-ekologa-volodimira-goncharenka, http://pryroda.in.ua/blog/v-dnipropetrovsku-vbyto-ekoloha-volodymyra-honcharenka/, http://www.radiosvoboda.org/content/article/24668606.html,
http://www.helsinki.org.ua/ru/index.php?print=1344855597

[55] http://www.zfront.org/slovo-v-zaschitu-cheloveka-s-uschemlennym-dostoinstvom/

[56] http://www.zfront.org/nash-otvet-sherloku-holmsu/

[57] http://www.hr-lawyers.org/en/index.php?id=1265035383

[58] http://www.ribaki.org.ua/forum/printthread.php?t=1926

laborated with the Ministry of Environment. The ministerial site has the records of their meetings.[59]

The conflict between the Ministry of Environment and PC arose around the dismissal of the director of the Carpathian Biospheric reserve F. Gamor. The motion demanding the dismissal was initiated by Rakhiv raion and Trans-Carpathian oblast' administrations. The main reason for dismissal apparently consisted in the director's intent to broaden the territory of the reserve in conformity with the Presidential instruction. It looked like the circles involved in forests' use in this area were not enthusiastic about this broadening.

The majority of the PC member over the year remained critical of the minister E. Stavitsky's stand concerning the admissibility of shale gas production by fracking.[60] The PC especially demanded the divulging of the assessment of environmental impact of the projects, funded by the US government. So far this assessment has been concealed from public at large both by Ukrainian and American state structures.

On August 21, 2012 at the meeting between the minister and the NGOs the scenario of the PC raiding was proposed. Eventually the minister arbitrarily got rid of "unaccommodating" PC, annulling his predecessor's order on council composition, and, eventually, passing the order on setting up a new council, consisting of more loyal members.[61]

6. RIGHT TO GENERAL AND SPECIAL USE OF THE NATURAL RESOURCES

Article 13 of the Constitution stipulates the right to ownership of land, deposits, atmospheric air, water and other natural resources and sustains that every citizen has the right to use the natural objects of public ownership under the law "On Environmental Protection" (Article 3) which guarantees free general use and paid special use of resources for the economic activity. The next article of the law stipulates that the rule of people of Ukraine in the area of environmental protection and use of natural resources is realized under the provisions of the Constitution, both directly, through referenda natural resources, and indirectly, through the bodies of public authority. There have been no precedents of public referendum over the years of the Ukrainian independence. On the contrary, the practice when public was isolated from environmental decision-making by the authorities was quite common. Such practices have been observed over the year 2012. E. g. the notification on development and public discussion of the draft law " On amendments to the Water and Land Codes of Ukraine (with respect to water objects' lease)" was posted on the ministerial site on April 9, 2012, leaving only 7 days for the proposals, while the governmental instruction envisages the minimum term of 30 days.[62] Evaluating the draft law positively as a whole, it is noteworthy that some innovations introduced into it seem controversial and have decisive significance. Thus, for the first time in Ukraine the concept of private ownership of natural water reservoirs has been introduced.

[59] http://www.menr.gov.ua/content/category/273

[60] Statement of the head of all-Ukrainian Environmental League T. Tymochko in Aarhus Center under the Ministry of Environment of Ukraine — http://www.youtube.com/watch?v=wzT16UHsM5M&feature=plcp

[61] Order of the Ministry of Environment and Natural Resources of Ukraine No. 569 of 29.10.2012

[62] http://www.menr.gov.ua/content/article/10526

7. THE RIGHT TO COMPENSATION FOR THE DAMAGES TO HEALTH CAUSED BY AN ENVIRONMENTAL DISASTER

Due to the vagueness of legislative provisions, flaws in the current legal and administrative practice in most cases it is difficult to establish cause and result connection between the aggravation of environmental situation, natural disasters and their impact on human health. Therefore the recognition of the huge number of people affected by the Chornobyl disaster and establishment of the constitutional guarantees and legal procedure for compensating the damages to their health looks like a unique occurrence in Ukraine.[63] However, the paradox of law application by our rulers, as usual, led to the fact that the relevant legal guarantees are "suspended' on annual basis, when the state budget is passed, while the amounts of the "compensation" promised by the government turn out to be hundreds of times lesser than the amounts stipulated by the law. The attempts of the affected people to defend their right in court end up with mass noncompliance with court decisions and efforts to change the law disregarding public interests.

Thus, the law "On State Budget of Ukraine for 2012" for the umpteenth time suspended the validity of some articles of "Chornobyl" law and vested the competence of establishing the amount of respective payments in the Cabinet of Ministers, thus violating the right to environmental damages' compensation in the amount stipulated by the law. The results of voting for the state budget 2012 can be found on the Supreme Rada site.[64]

8. ASSESSMENT OF ADHERENCE TO INTERNATIONAL ENVIRONMENTAL PROTECTION CONVENTIONS

8.1. The UN EEC Convention on access to information, public participation in decision-making and access to justice on environmental issues (Aarhus Convention)

The former reports mentioned that three past meetings of the Aarhus Convention parties in Almaty (2005), Riga (2008) and Kishinev(2011) classified Ukraine as country systematically failing to comply with its provisions: the Convention implementation strategy has not been developed, judicial system and court practice are not harmonized with its provisions, defined procedures for public participation in decision-making have not been established and practical mechanisms for the Convention implementation have not been devised.[65]

Until now neither Cabinet of Ministers nor the Ministry of Environment informed Ukrainians public about fulfillment of the Parties' meeting recommendations. Moreover, for 8 years the government has been hiding from public the conclusions of the three Aarhus Convention meetings, most unfavorable for Ukraine. They have never been published in Ukrainian language in the national media.

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[63] The Law of Ukraine "on Status and Social Protection of the individuals affected by the Chornobyl disaster".

[64] http://w1.c1.rada.gov.ua/pls/radac_gs09/g_frack_list_n?ident=24371&krit=66

[65] Decision 2/5b "Ukraine's fulfillment of its Aarhus Convention commitments" II meeting of the parties Almaty, 27.05.05 — http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.8.r.pdf

Decision III/6f June 11-13, 2008 года "Ukraine's fulfillment of its Convention commitments" — http://www.unece.org/fileadmin/DAM/env/pp/mop3/ODS/ece_mp_pp_2008_2_add_14_r_Ukraine.pdf

Decision IV/9h "Ukraine's fulfillment of its Convention commitments": http://www.unece.org/env/pp/mop4/mop4.doc.html

The previous "Action Plan for the implementation of the Aarhus Convention parties' decisions III/6f", approved by the governmental ordinance No. 1628-r of December 27, 2008", the goals of which had to be achieved as far back as 2009, was never realized. The implementation of the next "National Action Plan for the environmental protection for the years 2011–2015" approved by the ordinance No. 577-r of May 25, 2011, has never even started..[66]

Despite the development of two draft laws "On Assessment of Environmental Impact" and their anticipated submission to the Supreme Rada for consideration in July 2012, neither of them has been passed. There is no official information concerning the approval procedures for the said draft laws on the web-sites of the Ministry of Environment, Cabinet of Ministers or the Supreme Rada.

Hence, on June 29, 2012 the Committee on adherence to Aarhus Convention concluded that Ukraine failed to fully comply with earlier recommendations of the Convention Parties, and, therefore, sanctions, in the form of warning, cannot be lifted. The Committee once again suggested that Ukraine provides information on fulfillment of the Convention recommendations, especially in legislative process, prior to November 30, 2012.[67].

The "National report on observance of human rights and freedoms in Ukraine" compiled within the framework of the Universal Periodical Review (UPR) for 2012, the government found "insufficient progress in harmonizing Ukrainian legislation with the Espoo and Aarhus Conventions' requirements". However, the analysis of causes and ways out of this situation do not look convincing.[68]

It must be mentioned here that the stake-holders report in the context of Ukraine's evaluation by UPR in 2012 for the first time contains a section dwelling upon Ukraine's adherence to environmental rights, prepared by the non-governmental environmental organizations.[69] This report offers the following proposals: fulfilling the recommendations of the Aarhus Convention meetings; developing the strategy of its implementation, strictly defining procedures for public participation in decision-making and practical mechanisms for the Convention implementation; harmonizing Ukrainian law with Aarhus Convention provisions; developing draft laws on the amendments to Water, Land and Forestry Codes of Ukraine, Natural Resources Code, aimed at bringing them into compliance with the international environmental protection Conventions; ratifying the UNECE Protocol on pollutant release and transfer registers),and amendment on GMO to Aarhus Convention.

It is also noteworthy that in the course of UPR in the UN Human Rights Council another proposal was submitted by Rumania to the effect that Ukraine should do its utmost to bring its national legislation into compliance with the Espoo and Aarhus Conventions to ensure the general exercising of right to the environment safe for human life and health.[70] In order to

[66] http://zakon2.rada.gov.ua/laws/show/577-2011-%D1%80

[67] P. 52–55 Protocol of 37 meeting of the Committee on adherence to Aarhus Convention http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC37/ECE.MP.PP.C.1.2012.5.aec.pdf

[68] http://www.minjust.gov.ua/upr/upr_project_dopovid.html

[69] http://epl.org.ua/fileadmin/user_upload/dodatky_do_novyn/UPR_Ukraine_EPL-2012.pdf; http://greenworld.in.ua/news/1337442130

[70] UN Council on human rights, working group on Universal periodic review 14th session, Geneva, October 22 — November 5 2012 — http://www.minjust.gov.ua/upr/urp_secondcycle.html

comply Ukraine will have to supply specific information on human rights in this focus at the next Council meeting.

8.2. ESPOO Convention

For 13 years the number of Espoo Convention decisions, not fulfilled by Ukraine has been growing. Two meetings of the Convention Parties in a row charged Ukraine with violating the Convention by non-compliance with its commitments on designing and constructing deep-water navigable canal "Danube-Black Sea" through "Bystre" gorge (on Rumania's grievance).[71]

These decisions have never been published by media in Ukrainian language. Currently it is not known whether the Ministry of Environment, Cabinet of Ministers or Inter-Agency coordination council on realization of the ESPOO Convention decisions in Ukraine (i. e. the decisions of the 5th Parties' meeting with respect to Ukraine) has considered the said decisions, and, if so, what conclusions were made by the official power. No information on the subject was posted on the Cabinet of Ministers' official site.

It also remains unknown who currently heads the Inter-Agency coordination council on realization of the ESPOO Convention decisions in Ukraine, when its last meeting was held, what proposals have been introduced by the Ministry of Environment (as national coordinator on ESPOO Convention matters) to Inter-Agency coordination council. No information is available on the implementation of the Ukrainian strategy for the ESPOO Convention fulfillment which, under proposal 12 of the meetings of Parties had to be developed in 2009 (MOP Decision IV/2).[72] The "Strategy for ESPOO Convention decisions' implementation in Ukraine" was devised by the expert group as far back as 2010 within the European commission project for helping Ukraine in the implementation of Aarhus Convention and ESPOO Convention decisions has been never approved by the Government.[73] As of now not a single proposal contained in the Strategy has been fulfilled.

The Cabinet of Ministers' of Ukraine response No. 17-12/998 of October 11, 2012 to the information request submitted by "Zeleny svit" environmental NGO No. 04–09 of September 25, 2012, addressed to the Prime-Minister of Ukraine M. Azarov does not contain relevant information on the essence of the questions.

Ukraine still has not ratified the Protocol on Strategic environmental assessment to ESPOO Convention.[74] Although the relevant law was stipulated by 2012 Action Plan for the implementation of the national program for customizing Ukrainian law in conformity with EU legislation,[75] its draft has neither been approved by the government nor submitted to the parliament.

On October 2, the Ministry of Environment published the draft law "On introducing amendments to some laws of Ukraine on account of ratification of the Protocol on strate-

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[71] Decision IV/2 — http://www.unece.org/fileadmin/DAM/env/documents/2008/eia/ece.mp.eia.2008.4.r.pdf. Decision V/4 — http://www.unece.org/fileadmin/DAM/env/documents/2011/eia/decision.V.4.r.pdf

[72] http://www.unece.org/fileadmin/DAM/env/documents/2008/eia/ece.mp.eia.2008.4.r.pdf

[73] Report materials on the Project "Help to Ukraine in implementing Aarhus and ESPOO conventions" http://menr.gov.ua/content/article/9447

[74] http://zakon2.rada.gov.ua/laws/show/995_b99

[75] http://zakon2.rada.gov.ua/laws/show/156-2012-%D1%80. CMU Ordinance No. 156-r of March 28, 2012 "On approving the action plan for the implementation in 2012 of all-Ukrainian program for harmonizing the Ukrainian legislation with the EU legislation".

gic environmental assessment to the Convention on assessment of environmental impact in trans-boundary contents".[76] Under preliminary assessment, the draft law is formal and incapable of bringing the institutions of environmental monitoring into compliance with European standards as far as strategic aspects go. It is also noteworthy that the draft law does not specify the need for timely public information and opportunity for submitting proposals in the assessment of the planned activities, which can have negative impact on environment.

9. LEGAL ACTS ADOPTED IN 2012, WHICH THREATEN WITH VIOLATIONS OF ENVIRONMENTAL RIGHTS

9.1. Law "On Amending some legal acts of Ukraine (on optimizing competences of executive bodies in the area of environment and natural resources, including at the local level) – draft law No. 10218

The draft law registered by the people's deputy Yu. Miroshnichenko on 28.08.2012 passed y the Supreme Rada of Ukraine on 16.10.2012 with procedural violations of the Supreme Rada regulations, disregarding critical position of the Committee on the environmental issues, land use and liquidation of the Chornobyl disaster aftermath, and ignoring collective appeals of the NGOs, recommendations of the Chief Department of Justice and Chief Scientific-Expert Department of the Supreme Rada this draft law proposing to reject it. Many draft law provisions do not comply with the Constitution and Laws of Ukraine and ignore the requirements of the Constitutional Court of Ukraine.

Its coming in force can lead to the ruination of the nationwide system of the environmental policy, renders the realization of its main components, constitutional guarantees of environmental safety, Ukrainian laws and international treaties in the areas of environmental protection and observance of the citizens' human rights impossible.

This law liquidates the territorial bodies of the Ministry of Environment of Ukraine in charge of the complex management of environmental protection and coordination of the activities of all the power bodies responsible for the implementation of the environmental policy. The governmental competences will be transferred to the local state administrations. These competences cannot be fully realized without the territorial bodies of the Ministry of Environment. The introduction of this novelty will lead to massive complications in the exercising of the entrepreneurial rights and right to the natural resources' use by the physical and legal entities. Therefore, the clauses of Articles 1, 3 and 5 of the Constitution of Ukraine will be inevitably violated. E. g. the oblast' state administration in the respective region will concentrate all the competences of the liquidated territorial bodies of the Ministry of Environment, that's why the operation of the administration will be hindered by numerous appeals of stake-holders from the whole region.

These innovations are contrary to the principles of the executive power bodies' operation established by Articles 6, 19, 92 and 120 of the Constitution. Evidently any changes in the system of the central executive bodies should be aimed at safeguarding their integ-

[76] http://menr.gov.ua/content/article/11495

rity and systematic structure. Any other approach is fraught with systemic disorganization in their operation, and as a result, will entail the violations of human rights.

President V. Yanukovych disregarded the appeals from non-governmental organizations and did not veto the draft law.

9.2. Law "On amending some legislative acts of Ukraine to improve the procedure of land plots' allotment and change of their designated use" (registered by the people's deputy Yu. Miroshnichenko as entry 11116[77])

On 02.10.2012 the Law was passed by the Supreme Rada in the second reading. The presidential veto was not used in spite of respective appeals from the scientists and non-governmental organizations.

Many provisions of the law are contrary to other laws of Ukraine, its international agreements; they pose a threat for the system of rational natural resources' use and environmental protection by excessive liberalization of the procedure for land plots' allotment for economic use. It stipulates a lot of changes into the articles "On Land Use", "On Land Protection", Land, Water and Forestry Codes of Ukraine on natural resources, which will deprive the environmental protection agencies of authority to approve all the materials related to land allotment, restrictions of economic activities, sites of economic operation facilities etc. Its coming in force will lead to the deterioration and reduction of the natural areas, especially of valuable lands, the lands of water and natural reserve fund, and, therefore, to the negative environmental impact and violation of the international environmental protection treaties signed by Ukraine.

9.3. Violations of legal procedures in decision-making with respect to the construction of the energy units No. 3 and 4 of the Khmelnitsky NPP

Under ESPOO Convention the construction of the new reactors stipulates prior consultations with all the stake-holders on the basis of the trans-boundary strategic environmental assessment. Under Article 3 of the ESPOO Convention Ukraine is responsible for arranging joint trans-boundary environmental assessment with the participation of all affected countries prior to passing a decision on sanctioning or implementing the planned activity.

However, before the conclusion of the consultations on August 16, 2012 the Cabinet of Ministers of Ukraine (CMU) submitted the draft law "On location, design and construction of the energy units No. 3 and 4 of the Khmelnitsky NPP" No. 11088 to the Supreme Rada. This draft law was initiated by M. Azarov and the CMU headed by him.[78] On September 6 the Supreme Rada passed the law No. 11088. The government which proposed the law violated a number of Ukrainian laws and international treaties addressing the environmental rights of the citizens.

[77] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=44198

[78] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=44161

Under clause 2, Article 2 of the Law of Ukraine "On order of decision-making on location, design and construction of the nuclear units, designated for the handling of radioactive waste, which have nationwide significance" the Supreme Rada of Ukraine makes the relevant decisions only if the local bodies of executive power agree to the construction to be conducted in their area. In fact, the explanatory note to the draft law contains no information with respect to the approval of the said objects by the local bodies of executive power.

Article 5 of the said law enumerates a number of documents justifying the adoption of the law on location, design and construction of the nuclear units, designated for the handling of radioactive waste, which have nationwide significance. Specifically, it relates to the document containing the results of the consultative referendum on this issue, if it was held in the administrative/territorial units. This document was not submitted by CMU at the time of the draft law submission.

Under Articles 3 and 5 of the Law of Ukraine "On order of decision-making on location, design and construction of the nuclear units, designated for the handling of radioactive waste, which have nationwide significance" the draft law in question should be accompanied by:

The conclusions of the state environmental expert assessment; results of the consultative referendum with respect to the nuclear unit; report on the ways of informing the neighboring countries about potential impact in the trans-boundary context in compliance with the law.

The list of documents quoted in the draft law No. 11088 does not contain the conclusions of the state environmental expert assessment. The technical and economic substantiation of the projects for the construction of the energy units No. 3 and 4 of the Khmelnitsky NPP which, under the law of Ukraine "On environmental expert assessment", was to be held by the Ministry of Environment of Ukraine, never took place. Under Article 13 of this Law the environmental expert assessment is mandatory for the types of operation and objects of increased environmental hazard, while the lists of these types of operation and objects are compiled by the CMU. According to the CMU Resolution No. 554 of July 27 1995 "On the list of operations and objects of increased environmental hazard"[79] the nuclear power plants fall under this category.

The consultative referendum on the NPP construction was never held. At the time of submitting the draft law No. 11088 to the Supreme Rada the CMU ignored the fact that Ostrih city council, Kopytkivska and Myrotynska village councils of Rivne oblast' in 2011disagreed to the construction of the units 3 and 4. Zdolbuniv raion council and Bushcha village council of Rivne oblast' passed no decision on the matter (addendum 30.08.2012)[80].

The public hearings were not held in all the settlements within 30-km zone around Khmelnitsky NPP. The majority of these hearings' decisions contain substantial warnings and proposals, which so far were not taken into consideration either by the Ukrainian government, or "Energoatom".

Under Article 3 of the ESPOO Convention Ukraine is responsible for arranging joint transboundary environmental assessment with the participation of all affected countries prior to passing a decision on sanctioning or implementing the planned activity. Under Convention

[79] http://zakon2.rada.gov.ua/laws/show/554-95-%D0%BF

[80] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=44161

the construction of the new reactors requires consultations with all the stake-holders on the basis of the trans-boundary environmental assessment, which have not even started yet. Austria, Belarus, Poland, Slovakia, Hungary, Moldova Rumania recognized that the construction can negatively affect their territories, and proposed to start consultations with Ukraine. The report on the ways of informing the neighboring countries about potential impact in the trans-boundary context, attached to the draft law (addendum of 30.08.2012)[81], does not contain any information on the results of consultations between Ukraine and the countries involved. The said report contains, instead, the letter of the Austria Government, dated August 27, 2011, reminding that Austria as far back as on 10.03.2011, requested additional materials on units 3 and 4 of the Khmelnitsky NPP for the expert assessment, but never received them. The report also contained another letter — from the Ministry of Environment of the Belarusian Republic, stressing Ukrainian non-compliance with Articles 2, 4 , 6 and 8 of ESPOO Convention with respect to providing information on environmental impact assessment concerning the construction of units 3 and 4 of the Khmelnitsky NPP and ensuring public participation in the relevant discussion.

The Ministry of Environment, responding to the letter sent by Rivne "Ekoklub" NGO on September 6, 2012 confirmed that as of today the ministry is just "anticipating recommendations and proposals from the state bodies and public of these countries in according with the ESPOO Convention procedure. Therefore the procedure of public participation from the countries-stakeholders and consultations with the foreign countries are not completed"[82] According to the Ministry of Environment[83], as of October10, 2012 it received project-related comments from Austria, Belarus and Rumania. The comments were sent for processing and consideration to the higher executive bodies.

Currently the Committee on implementation of the ESPOO Convention is considering the grievance of the Belarusian "Ekodom" NGO against Ukraine for violating the Aarhus Convention and ESPOO Convention when making decisions on designing, environmental expert assessment and construction of the units No. 3 i 4 of the Khmenitsky NPP.

After the law No. 11088 came in force, Ukraine has violated articles 3–6 of the ESPOO Convention, which can lead to negative consequences at the international arena. Due to this law the CMU was nominated for the human rights' activists' anti-prize "Thistle of the Year" for the grossest violations of human rights.[84]

10. RECOMMENDATIONS

1. The Cabinet of Ministers should implement the decisions of the meetings of the Parties to Aarhus Convention with respect to Ukraine in compliance with the law "On fundamental principles (strategy) of state environmental policy of Ukraine till 2020".

[81] http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=44161

[82] http://www.ecoclubrivne.org/complete_new/ua/150

[83] The Ministry of Environment letter No. 20062/17/10-12 of 2.10.2012 in response to "Zeleny svit" request of 25.10.2012

[84] http://helsinki.org.ua/index.php?id=1352198687, http://helsinki.org.ua/index.php?id=1352198824.

2. The Cabinet of Ministers should set up an Inter-agency working group to ensure the implementation of the Aarhus Convention provisions in Ukraine, headed by one of the vice prime ministers.

3. The Cabinet of Ministers, the Ministry of Justice, the Ministry of Environment should develop the draft laws on amending Land, Forestry and Water Codes of Ukraine to reflect the provisions of the international environmental protection Conventions, principles of sustainable development and integral management of natural resources.

4. The Cabinet of Ministers the Ministry of Justice, the Ministry of Environment should develop the draft laws on amending the laws: "On Environmental Expert Assessment", "On Regulations of the Urban Development", which will restore the credibility of the environmental expert assessment and the evaluation of the environmental impacts; public information and participation in this activity.

5. The Cabinet of Ministers should finalize and approve the strategy and the National Action Plan on raising public awareness in sustainable development matters.

6. The Cabinet of Ministers should, the Ministry of Environment, the Supreme Rada of Ukraine should accelerate the ratification of the UNECE Protocol on pollutant release and transfer registers, and amendment on GMO to Aarhus Convention, protocol on strategic environmental assessment to ESPOO Convention, implement the provisions of the protocols in the national legislation, develop the draft resolution "On approving the procedure for the assessment of environmental impact in the trans-boundary context".

7. The Cabinet of Ministers, the Ministry of Environment, the Supreme Rada of Ukraine should devise the draft laws " On amending the Law of Ukraine "On regulations of urban development", " On the assessment of environmental impact" "On introducing changes to some legal acts of Ukraine with respect to the ratification of the protocol on strategic environmental assessment to ESPOO Convention concerning the assessment of environmental impact in the trans-boundary context to restore the credibility of the environmental expert assessment and the evaluation of the environmental impacts; public information and participation in this activity.

8. The Cabinet of Ministers should initiate the convocation of Inter-Agency coordination council for the implementation of the ESPOO Convention in Ukraine, which would consider the issues of the ESPOO Convention parties' decisions with respect to Ukraine; of approval and realization of the strategy of the ESPOO Convention decisions' implementation in Ukraine; to authorize one of the vice prime-ministers to perform the functions of the national coordinator on the Aarhus Convention and ESPOO Convention implementation; to ensure participation of NGO members in the operation of the said council.

9. The Ombudsman should submit a petition to the Cabinet of Ministers of Ukraine, containing the proposal of implementing all the Constitutional and legal provisions, ESPOO Convention and Aarhus Convention provisions with respect to the information access, public participation in the decision-making concerning design, expert evaluation and construction of the units No. 3 and 4 of the Khmelnitsky NPP.

10. The Ombudsman should submit a petition to the Supreme Rada of Ukraine containing the proposal of conducting the consultative referendum on the project of construction of the energy units No. 3 and 4 of the Khmelnitsky NPP in conformity with Article 5 of the Law of Ukraine "On procedure for decision-making concerning the location, design, construction

of the nuclear units and objects, designated for handling the radio-active waste, which have the nationwide impact".

11. The Ombudsman should submit a petition to the Cabinet of Ministers of Ukraine, containing the proposal of initiating the procedure for the strategic environmental assessment of the blueprints, programs and law related to the construction of the units No. 3 and 4 of the Khmelnitsky NPP. If the government fails to respond adequately, the Committee on the ESPOO Convention implementation should be approached with the grievance against the Ukraine's actions, the government which violates both Aarhus Convention and ESPOO Convention, as well as a number of the Ukrainian laws regulating the environmental rights of the citizens by passing the decisions concerning the designing, expert assessment and construction of the units No. 3 and 4 of the Khmelnitsky NPP.

12. The Ombudsman should, using the favorable situation (i. e. Ukraine's leadership in the OSCE), propose the following steps to its representatives' mission in this organization:

— Approaching the parliaments of the OSCE region countries, which have not yet ratified the Aarhus Convention and the ESPOO Convention, first of all, Russia and the USA, with the proposal of doing it in the nearest future;
— Approaching the parliaments of the OSCE region countries, which have not yet ratified the Protocol on strategic environmental assessment to ESPOO Convention, (Belgium, Bosnia and Herzegovina, Cyprus, France, Georgia, Greece, Ireland, Italy, Latvia, Macedonia, Moldova, Great Britain, Ukraine) with the proposal of doing it in the nearest future;
— Promoting a special resolution at the next OSCE Parliamentary Assembly, concerning steady consideration of the citizens' right in designing, expert evaluation, strategic environmental assessment and construction of the Khmelnitsky NPP and Belarusian NPP.

XXII. WOMEN'S RIGHTS AND GENDER DISCRIMINATION[1]

The report of human rights advocacy organizations on observance of human rights in Ukraine for 2012 continues the tradition of the previous years concerning coverage of the topics of women's rights and gender equality. Analysis of the situation for 2012 compared to 2011, 2010 and 2009 gives reasons to believe that most of the tendencies mentioned in previous reports keep developing, the general social and political context shows no significant changes, the efforts made to institutionalize the gender policy are insufficient, and anti-gender movements, which find support from deputies of various levels, are getting stronger. The year 2012 is the year of the new parliamentary elections, and this boosted discussions around the issues of political participation of women.

On May 24, 2012, the State Registration Service sent a letter to non-governmental human rights advocacy organizations of Ukraine (No. 434-08-19-12-8), including — the "La Strada — Ukraine" Center and the All-Ukrainian Non-Governmental Organization "Women's Consortium of Ukraine", with which it demanded to provide, within two weeks, complete information about the organizations' activities. As the grounds for such demands the State Registration Service mentioned numerous letters from the public, in which people expressed their protest against these organizations' activities and demanded to ban operation of human rights advocacy organizations, based on the imaginary conclusions that they presumably were undermining the institution of family and the state itself, as well as the traditional moral values. Every organization mentioned in the letter of the State Registration Service, sent their responses, indicating that they were conducting their activities in the directions stipulated by the organizations' charters, in compliance with the effective legislation of Ukraine, including international treaties, whose binding authority the Verkhovna Rada of Ukraine granted consent for. No response from the State Registrar has been received.

Moreover, anti-gender movements are getting more active; their representatives keep disseminating unveracious information, including information about the content and the directions of policies on protection of human rights and on equality of men and women. The organization that calls itself the Ukrainian Faithful Greek Catholic Church, which is an unacknowledged church (sect) that branched off the Ukrainian Greek Catholic Church several years ago, and whose leader is a wanted person, conducts active propaganda. Their website is operational and is being updated constantly, showing a high level of awareness and quick response. For example, their letter to the Prime Minister Mykola Azarov with a demand to abolish the Expert Council in the issues of consideration of addresses concerning facts of sex-based discrimination, established under the Ministry of Social Policy of Ukraine,

[1] The section was prepared by the experts of the International women's advocacy center "La Strada — Ukraine" — K. Levchenko, L. Kovalchuk, M. Yevsiukova, O. Kalashnyk, K. Cherepakha, M. Lehenka, V. Mudryk, O. Dunebabina, and of the Informational and Consulting women's center — O. Suslova.

appeared on their website on September 9, 2012[2], while the documents on establishment of this Council were displayed on the website of the Cabinet of Ministers of Ukraine on August 15, 2012[3]. After familiarization with several online resources, one can't help but believe that there is indeed an ongoing attack against the human rights advocacy and women's organizations in Ukraine[4].

Denial of the principles of equality of women and men and of the gender policy of Ukraine in 2012 was reflected in the regional polices. For example, according to the resolution of the Oblast council as of June 21, 2012, No. 12/13, Volyn oblast council held the session hearings on the topic "Clarification of essence of gender policy and problems and risks it brings to Ukrainian society". As stated by the initiator of the event Antonina Yevtodiuk, the head of Volyn Regional Non-governmental Organization "Christian Movement for Life", candidate of philosophical sciences, professor of the department of philosophy, political science and law at Lutsk National Technical University — these days, homodictatorship is being implemented in Ukraine. In addition to women and men, to her opinion, one more sex is being introduced, that is, gays, lesbians, bisexuals or other minorities"[5]. The initiators for the session hearings suggested that the Verkhovna Rada of Ukraine should conduct the parliamentary hearings on the topic "Clarification of essence of gender policy and problems and risks it brings to Ukrainian society"; they also insisted on necessity of monitoring of the essence and dangers of gender programs, which are being implemented in the region, and monitoring of agreements Lutsk city council came into with the gender organizations, which are representatives of foreign gender foundations"[6]. More similar examples can be provided, and this proves both the situation's gravity and the necessity of strengthening the governmental gender policy and its informational and educational component.

On the website of the Ministry of Social Policy, the pages "Family policy" and "Gender policy" are virtually blank (the latter only lists information about the Expert council[7]). The websites of other central governmental agencies (which are, according to the Law of Ukraine of Ukraine "On Securing of Equal Rights and Opportunities for Women and Men", tasked to implement he policy of Equal Rights and Opportunities for Women and Men) have no such sections at all. The Ministry of Social Policy actively cooperates with the organizations that act against women's rights, gender equality, and juvenile justice.

In June of 2012, more than 20 women's non-governmental organizations sent letters to the Minister of Social Policy Serhiy Tihipko and the Minister of Education and Science, Youth and Sports Dmytro Tabachnyk and asked for a meeting concerning the risks of the growing

[2] www.uogcc.org.ua

[3] http://mlsp.kmu.gov.ua/labour/control/uk/publish/article;jsessionid=1D346A03DC0EAB946AD998096819183E?art_id=143284 &cat_id=102037

[4] http://stopgender.wordpress.com/, www.uogcc.org.ua

[5] http://volynrada.gov.ua/news/u-volinradi-vidbulis-sesiini-slukhannya

[6] http://volynrada.gov.ua/projects/pro-rekomendatsiyi-sesiinikh-slukhan-z-pitannya-na-temu-z-yasuvannya-sutnosti-gendernoyi-po. Thanks to participation of Oksana Yarosh, director of Volyn Regional Non-governmental Organization "Gender Center", and Maria Alekseyenko, head of the All-Ukrainian Non-governmental Organization "Women's Consortium of Ukraine", in the hearings, an alternative variant of the hearings recommendations was presented. As of the beginning of October, neither variant has been approved.

[7] http://www.mlsp.gov.ua/labour/control/uk/publish/category?cat_id=138979

anti-gender movements, but received no response, what shows that the opinion of the public and experts on this topic is being ignored.

1. INSTITUTIONAL MECHANISM

The women's rights and compliance with the principles of gender equality are the spheres of the policy where (according to the international standards, in particular the UN Convention on the Elimination of All Forms of Discrimination against Women) the positive obligations of the state constitute an important point. Therefore, an operational and competent institutional mechanism for introduction of such policy is a necessary pre-condition for its efficiency. The administrative reform that launched in practice in 2010 has still not been completed; its second stage related to reformation of the managerial structures on the regional and local level has not started yet, so in fact there is no vertical structure of administration from the authorized specialist in the Ministry of Social Policy to the oblast and rayon state administrations. Coordination of work, just like in the previous year, was not conducted. The Public Council under the Ministry of Social Policy in 2011 and in 2012 in fact did not work. Only in September 2012, the next scheduled process of its formation was initiated. In connection with this, the initiatives concerning improvement of the regulatory support and practical activities are being implemented too slowly, the state program of facilitation to promotion of gender equality, which was supposed to be adopted yet in the end of 2010, is still absent, and the Law of Ukraine "On Securing of Equal Rights and Opportunities of Women and Men" remains but a declaration. Since October 1, 2012, structural changes in the Ministries of Social Policy took place, which caused an even greater weakening of the mechanism. Also, as the experts are expectably concerned, after the parliamentary elections are over it is possible that the sub-committee for international legal issues and gender policy is eliminated from the structure of the Committee of the Verkhovna Rada of Ukraine in the issues of human rights, national minorities and international relations.

The report "New Ombudsman's 100 days"[8] provides a detailed analysis of the activities in this sphere in 2012, according to the Ombudsman's main functions — control, receiving and considering complaints concerning the facts of gender discrimination, and coverage of the issues of gender discrimination in the annual report[9]. In the structure under the Ombudsman, a Division has been established, which is in charge of observance of children's rights, non-discrimination and gender equality and within whose framework the department[10] in the issues of observance of children's rights, the department in the issues of non-discrimination and the department in the issues of gender equality will operate. Also, the position of the Ombudsman's Commissioner in the issues of observance of children's rights,

[8] More detailed information on the activities of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights in the direction of protection of women's rights and promotion of gender equality is presented in the report "100 днів нового Омбудсмана"/New Ombudsman's 100 Days/.

[9] The Law of Ukraine "On Securing of Equal Rights and Opportunities for Men and Women", article 9. Access address: http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1834-2006-%EF

[10] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=1693:2012-05-25-16-52-42 &catid=14:2010-12-07-14-44-26&Itemid=75

non-discrimination and gender equality was preserved in a modified form. At the same time, several complaints sent to the Ombudsman indicate low efficiency in this sphere. For example, in response to the complaint of Ms. D. concerning sex-based discrimination in connection with the discriminatory statement of the Minister of Education and Science, Youth and Sports of Ukraine Dmytro Tabachnyk[11], the answer was given, as of August 17, 2012, stating that "value judgments are not subject to refutation and proof of their truthfulness" and for this reason, "there are… no legal grounds for taking the measures to respond on the part of the Commissioner for human rights"[12]. In response to the complaint of Ms. L. concerning the fact of gender discriminatory advertisement being widespread, a response was received (as of August 17, 2012) stating that "The Commissioner for human rights is not authorized for direct resolution of the issues in question"[13]. From the experts' point of view, such response contradicts the legislation of Ukraine, including the Laws "On the Commissioner of the Verkhovna Rada of Ukraine for human rights" and "On Securing of Equal Rights and Opportunities for Women and Men". At the same time, some measures were taken concerning this complaint: an address was sent to the State Inspection of Ukraine in the issues of protection of consumer rights, with a request to take the appropriate measures. In public domain there is no information about other cases initiated by the Commissioner concerning the facts of sex-based discrimination, as there is no information about any activities initiated by the Commissioner in this direction.

In the Verkhovna Rada, the inter-faction deputy association "Equal opportunities"[14] continued to function, its priority task being to defend equal opportunities for men and women in the issues of employment, education, access to health care, and participation in social and political life of Ukraine. At the same time, the deputies of the Verkhovna Rada who are members of another inter-faction group "For spirituality, morality and health of Ukraine" (2009)[15] are ever more actively speaking against the policy of gender equality and women's rights.

2. INTERNATIONAL COMMITMENTS AND ACTIVITIES AT THE INTERNATIONAL LEVEL

On October 24, 2012, Ukraine reported in the United Nations Human Rights Council within the framework of the second round of the Universal periodic review on human rights. The government prepared a report[16], which was discussed during consultations with NGOs and independent experts on numerous occasions. Yet, its sections dedicated to the issues of

[11] Табачник впевнений, що в магістратурі і аспірантурі краще вчаться некрасиві дівчата. — http://www.pravda.com.ua/news/2012/05/17/6964716/

[12] The Commissioner's response and written permission to use it in the monitoring activities of the "La Strada — Ukraine" Center was sent by Ms. D. to the "La Strada — Ukraine" Center. The entry number — B/X 436 as of August 22, 2012.

[13] The Commissioner's response and written permission to use it in the monitoring activities of the "La Strada — Ukraine" Center was sent by Ms. L. to the "La Strada — Ukraine" Center. The entry number — B/X 435 as of August 22, 2012.

[14] http://portal.rada.gov.ua/rada/control/uk/publish/article/news_left?art_id=292268&cat_id=37486

[15] http://ecbua.info/index.php?option=com_content&view=article&id=1236%3Asi-i-l-s-&catid=118%3A2011-04-28-08-46-58&Itemid=163&lang=ua

[16] http://www.minjust.gov.ua/0/41950

women's rights presented only partial information. The Coalition of non-governmental organizations prepared and sent to the United Nations Human Rights Council its report[17], whose paragraphs were included in the general report on Ukraine[18]. In addition, representatives of the delegations of the member states in the United Nations Human Rights Council suggested recommendations and questions to the Government of Ukraine[19].

The Council of Europe, in cooperation with the Government of Ukraine, developed and approved the Council of Europe Action Plan for Ukraine for 2011–2014, within which several of the proposed projects are aimed to eliminate gender discrimination[20] (projects 1.3.1.,1.3.2, and 1.3.3.). As of September of 2012, implementation of these projects has not yet started. In October 2012, the delegation of the Council of Europe visited Ukraine to plan the launch of the projects and conducted some meetings with representatives of governmental institutions and NGOs.

In 2012, the Ministry of Foreign Affairs of Ukraine conducted the procedure of nominating the Ukrainian candidate, expert for gender issues, Olena Suslova[21], to the UN Committee on the Elimination of Discrimination against Women, which increased the level of the national experts' awareness concerning the use of international instruments for protection of women's rights. During the voting in the UN, the candidature from Ukraine was not supported.

After the structural changes in the Council of Europe, the Steering Committee for Equality between Women and Men was disbanded, and the Gender Equality Commission of the Council of Europe was established. Serhiy Kyslytsia, director of the Department for international organizations of the Ministry of Foreign Affairs of Ukraine, was elected as the vice-head of this Commission.

A new structural subdivision of the UN, UN Women, started working. Ukraine is represented in this structure by the officers of the Permanent Mission of Ukraine to the United Nations in New York. In Ukraine, Oksana Kyseliova, activist of the women's movement, was assigned as a representative of UN Women. There is no sufficient information about the work of UN-Women in the country.

3. REGULATORY ENACTMENTS ADOPTED IN THIS SPHERE AND PROJECTS. COMPLIANCE WITH THE INTERNATIONAL LEGAL STANDARDS IN THE SECTOR OF HUMAN RIGHTS

In September of 2012, the Verkhovna Rada adopted the Law "On Principles of Prevention and Counteraction to Discrimination in Ukraine". It was heavily criticized by the public. The major issues with its text were expressed several times[22]. They are also articulated in

[17] http://la-strada.org.ua/ucp_mod_library_showcategory_55.html

[18] http://www.ohchr.org/RU/Pages/WelcomePage.aspx

[19] http://www.la-strada.org.ua/ucp_mod_library_view_190.html

[20] http://coe.kiev.ua/uk/DPAInf(2011)17E%20Action%20Plan%20Ukraine.pdf

[21] http://portal.uwf.kiev.ua/index.php?page=news&id=101

[22] http://www.pravda.com.ua/columns/2012/05/17/6964708/

the statement of non-governmental organizations[23], in particular: this Law offers definitions that do not cover all manifestations of discrimination, and, moreover, it is declarative and fails to provide for introduction of responsibility for discriminatory actions. It is too early to discuss, to what extent it will influence protection from sex-based discrimination.

On October 2, 2012, the Verkhovna Rada of Ukraine adopted the draft law No. 8282 as of March 23, 2011, on amendments to some legislative acts of Ukraine (concerning limitations in use of assisted reproductive technologies) in the first reading, which bans women over 51 years of age to use assisted reproduction technologies[24].

On February 23, 2012, the draft law No. 10112 "On amendments to Article 167 of the Tax Code of Ukraine concerning revision of tax on income of natural persons" was submitted to the Verkhovna Rada of Ukraine. This draft law provides for tax rates higher by 17% for "irresponsible" citizens, who failed to find time to have kids before they are 30 years old[25].

On March 12, 2012, the draft law No. 10170 was registered concerning ban on artificial termination of pregnancy (abortion), which is violation of women's reproductive rights. Over one hundred NGOs and activists came up with an open letter and address to the government concerning prevention of such steps that would inevitably cause increase in the numbers of illegal abortions and, as a result, disabilities and maternal deaths[26]. These protests are provoked by the speeches of religious leaders[27] and the increasing influence of the church on secular life, as mentioned in the previous reports. The draft law has not been considered. It received negative evaluation, including from the Chief Scientific and Expert Department of the Verkhovna Rada, and caused active protests of women's and other NGOs[28].

On March 15, 2012, the draft law No. 10210 "On amendments to some legislative acts of Ukraine concerning ban on possession and (or) use of alcohol and tobacco products to individuals under 18 years of age and to pregnant women" was registered. The proposal of the draft's authors was to impose fines for pregnant women and minors who smoke or use alcohol[29].

On May 15, 2012, the Verkhovna Rada of Ukraine considered the draft law "On amendments to some laws of Ukraine (on securing of equal rights and opportunities for women and men in the sphere of labor)", registration No. 8487, as of May 12, 2011, and recommitted it to the relevant Committee in the issues of human rights, national minorities and interethnic relations[30]. It was never considered after that. The draft proposed, in particular, quotas for the elections to the Verkhovna Rada and to the bodies of local self-government, as well as harmonization of the definition of discrimination with the UN Convention on the Elimination of All Forms of Discrimination against Women.

On August, 29, 2012, the Ministry of Internal Affairs of Ukraine sent to all its structural subdivisions the Letter No. 13234 containing the methodological recommendations con-

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[23] http://www.facebook.com/#!/lastradaukraine as of September 13)

[24] http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=39973

[25] http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1 pf3511=42672?id=&

[26] ht t p : //w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=42765)

[27] http://www.ugcc.org.ua/news_single.0.html?tx_ttnews[tt_news]=7701&cHash=98dfa8195e6a0f34f015adf7c10229af

[28] http://maidan.org.ua/2012/05/zaboroneno-zaboronyaty-za-pravo-zhinky-vybyraty/

[29] (http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=42765)

[30] http://w1.c1.rada.gov.ua/pls/radac_gs09/z_pd_list_n?zn=8487

cerning the dress code for the staff of the Ministry of Internal Affairs[31], which is a precise copy of the Decree of the Cabinet of Ministers of Ukraine No. 155 as of 2010[32]. These recommendations are sexist and discriminatory in their essence.

In September 2012, work on development of the state program for implementation of gender equality for 2011–2015 (*sic*) was renewed. Discussions with experts were held. Yet even if it were adopted in 2012, the governmental funding for its implementation is possible only starting from 2014.

4. EXAMPLES OF VIOLATION OF WOMEN'S RIGHTS

The report of human rights advocacy organizations on the situation with observance of women's rights (2011) described the major systemic violations of women's rights[33]. Sexism and discrimination in the media. Proliferation of fundamentalist and anti-gender movements. Discrimination on the labor market and in labor remuneration. Discrimination in the political sphere, in access to medical care and education, in access to justice. Double discrimination of rural women, female migrants and refugees, etc. All above-mentioned tendencies persist. They come in new forms of manifestation, showing serious miscalculations in the governmental policy.

4.1. Sphere of employment and labor remuneration

During the raid of inspectors of the State Labor Inspection of Ukraine, conducted on February 10, 2012 (inspection of 2.5 thousand enterprises), over 900 violations were detected in the sphere of rights of working women and men — untimely payment of child care leave allowance, engaging pregnant women and mothers of children under three years of age to kinds of work that are forbidden for them by the law, non-payment of sick leaves, etc. The difference in salaries of women and men for the work of the same value is over 25% to the benefit of the latter[34]. In March of 2012, the Ministry of Social Policy published the numbers stating the difference on the level of 8%[35], which requires additional studies.

4.2. Political sphere

Women's representation on the higher tiers of power and on the decision-making positions remains very low. Statistics did not change compared to the previous year. The elector-

[31] http://www.facebook.com/valentyna.mudrik/posts/398740810195625#!/photo.php?fbid=371761132900977&set= a.371761119567645.85949.269875056422919&type=1&theater

[32] http://www.pravda.com.ua/columns/2010/10/13/5470671

[33] http://khpg.org/index.php?r=1.6.14.1

[34] This was the statement made by Olivier Adam, the United Nations Resident Coordinator in Ukraine, in the course o the round table discussion on the occasion of the International Women's Day on the topic "Gender and Career."

[35] http://www.wcu-network.org.ua/ua/possessing-equal-rights/news/Ukrainsk_cholovki_zarobljajut_na_chvert_blshe_nzh_ zhnki

al process of 2012 followed the trend. While in 2002 the number of women-candidates running for the Parliament in the majority constituencies was 456, and was by no means in line with the people's desire to become a European nation and with the declarations of the government, in 2012 the number of registered women-candidates was 67 persons fewer compared to the elections ten years earlier. That is, 389 women versus 2,720 men[36]. The share of women in the party lists is 19.14%, that is, 533 women of 2,785 candidates in party lists[37].

4.3. Sexism and discrimination in media sphere

During 2012, the sad tradition of sexist and discriminatory statements from the highest-ranked officials of the state persisted in Ukraine. In February of 2012, Anatoliy Mohiliov, the Prime Minister of the Autonomous Republic of Crimea, during the meeting of the Verkhovna Rada of Crimea offended politician Oleksandra Kuzhel. "I understand that in your age women have certain problems with their psychoemotional state", he said in response to Ms. Kuzhel's critical remarks before the voting on appointment of the new head of the criminal police[38]. On the eve of the 8th of March, Volodymyr Lytvyn, the Chairman of the Verkhovna Rada, expressed his opinion on "the women's place"[39]. Referring to "the tradition and the Christian mentality, according to which man is a superior being, as woman was created from the rib of Adam, accordingly, this makes her inferior", the speaker of the Parliament expressed doubts in women's political and professional qualities. "I think, here a natural principle must be in effect, not just enforcement in form of the relevant law"[40].

The Minister of Education and Science, Youth and Sports Dmytro Tabachnyk did not want to be left behind here. On May 17, 2012, he stated that girls that study at the master's courses and PhD programs are "not very beautiful"[41]. The Prime Minister's apology for him is hardly less discriminatory[42].

On March 18, during the elections of the mayor of Obukhiv, people's deputy Petro Melnyk tried to force another people's deputy, Iryna Herashchenko, from the polling station. He took her under her arms, lifted her and tried to carry her out from the polling station[43].

The monitoring of mass media and advertising shows that both the media and advertising are overflowing with sexist and gender-discriminatory images and this constitutes violation of human rights and causes reproduction and aggravation of the negative gender stereotypes[44]. Sexism in mass media feeds the existence of such problems as sexual exploitation,

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[36] Андрій Капустін. Мажоритарка. Десять років по тому. — "Дзеркало тижня. Ukraine". — No. 32, September 14, 2012. — Access address: http://dt.ua/POLITICS/mazhoritarka_desyat_rokiv_po_tomu-108785.html

[37] Ігор Гуцуляк. Вибори-2012 в контексті Цілей розвитку тисячоліття: http://dt.ua/SOCIETY/vibori-2012_u_konteksti_ tsiley_rozvitku_tisyacholittya-107887.html

[38] http://www.unian.ua/ news/487519-mogilovnahamiv-kujel-na-sesijikrimskogo-parlamentu.html

[39] http://www.pravda.com.ua/news/2012/03/2/6959875/

[40] http://la-strada.org.ua/ ucp-_mod-_news_list_show_241.html

[41] http://maidan.org.ua/2012/05/neharni-zauchky-idut-na-ohlyadyny-do-tabachnyka/

[42] http://www.pravda.com.ua/news/2012/05/18/6964822/

[43] http://www.pravda.com.ua/news/2012/03/19/6960930/

[44] Ґендерна політика в Україні. Ґендерний дайджест. — 2012, No. 2. — Access address: www.la-strada.org.ua (Section "Library") ; Ґендерна політика в Україні. Ґендерний дайджест. — 2012, No. 3. — Access address: www.la-strada.org.ua (Section "Library").

trafficking in human beings and discrimination of women in the sphere of labor. The cause of this situation is that the legislation in the sphere of mass media and advertisement lacks a standard aimed to disallow reproduction of gender stereotypes and sexism.

A positive step on the way to resolve the problem of the spreading sexism in advertisement was signing of the Standards for gender non-discriminatory advertisement by the most influential representatives of the advertisement industry on September 30, 2011, which were registered on July 30, 2012 by the State Enterprise "Ukrainian Scientific, Research and Educational Center for Problems of Standardization, Certification and Quality" No. 3259575212249, under the initiative of gender experts and the Ukrainian Association of Marketing Consultants[45]. Under the Association, the Industrial Gender Committee operates, which, both on its own initiative and in response to complaints, considers the facts of spreading of gender discriminatory advertisement. In September 2012, the meeting of this Committee took place, where complaints against discriminatory advertisement were considered. Yet online there is no information available about its activities.

4.4. Right for health care

Free and accessible medical care has been problematic for a long time already. The price for childbirth medical care is also growing, and this affects not just families in general, but, first and foremost, women. In a government-owned maternity house it is about UAH 17 thousand, and in a private one — over 40 thousand[46]. Shutdown of the feldsher-midwife stations in rural areas causes impairment of rural women's access to medical services.

4.5. Legal means for protection against gender discrimination

Analysis of the situation in Ukraine shows that the country has failed to establish either judicial or extrajudicial systems to address complaints on the facts of sex-based discrimination. Several actual attempts to file complaints against discrimination have never been resolved positively. When "La Strada — Ukraine" tried to sue, in compliance with the administrative procedure, the Cabinet of Ministers of Ukraine and the Ministry of Internal Affairs of Ukraine for the admission rules to the higher educational institutions of the Ministry of Internal Affairs of Ukraine that are discriminatory against women as well as for the gender discrimination experiment, the Administrative Court of Kyiv city did not find any facts of sex-based discrimination. The issue here is both absence of experience of successful court practices in such cases and the judges' failure to apply international treaties ratified by Ukraine[47].

On June 8, 2012, the Minister of Social Policy signed (for the third time (!!!) since the Council was established: Two previous Decrees were issued by the Ministry of Ukraine for the Issues of Family, Youth and Sports) the Decree on resumption of work of the Expert Coun-

[45] http://www.uam.in.ua/upload/medialibrary/5dc/5dc788367bdff143a6a104fe8e7719b0.pdf

[46] Катерина Стулень. Во сколько обходится украинцам рождение ребенка. — Сегодня, 10.09.2012. — Access address: http://www.khpg.org.ua/index.php?id=1347226456

[47] http://lastrada.org.ua/ucp_mod_news_list_show_236.html;
http://la-strada.org.ua/ucp_mod_news_list_show_236.html.

cil for consideration of complaints against sex-based discrimination[48]. In September, the first meeting was held, during which three incoming complaints were accepted for consideration. At the time of preparation of this report, no results of the consideration are available. According to the draft State Program for facilitation to implementation of gender equality for 2012-2015, similar councils must be established in every oblast.

On July 31, 2012, the "La Strada — Ukraine" Center sent to the UN Commission on the Status of Women a written request "Sexism in advertisement and media in Ukraine as stereotyped attitude to women's role and duties". The request included analysis of the problem of sexism in advertisement and in media in Ukraine, legal analysis of the mechanism of complaints against such manifestations of discrimination, and recommendations to the government concerning elimination of this phenomenon[49].

4.6. Activities of non-governmental organizations

Activities of NGOs play a decisive role in supporting the principles of gender equality in the modern policy in Ukraine. Among them, one should mention the Ukrainian Women's Foundation[50], the Museum of history of women's and gender movements[51], the Western Ukrainian center "Women's Perspectives", the International Women's Advocacy Center "La Strada — Ukraine"[52], the Informational and Consulting Women's Center[53], the Women's Consortium of Ukraine[54], the International Non-Governmental Organization "School of Equal Opportunities", "Successful woman", the Non-Governmental Organization "Vira. Nadia. Lyubov", the Non-Governmental Organization "Development of Democracy", "Project Kesher", "Rozrada", the Kyiv Center for Gender Studies, and others. Activities in these directions in Ukraine are supported with rather limited resources by such donors as the Ukrainian Women's Foundation, the International Renaissance Foundation, the Friedrich Ebert Foundation, the Matra Programme, as well as by the Embassies of the U.S., Germany, Canada, Netherlands, Switzerland, Denmark and others. Low level of funding available for the projects and programs in this sphere is a serious problem. Regardless of this, we can single out several important initiatives that are performed by Ukrainian NGOs.

4.7. Monitoring of facts of gender discrimination

The "La Strada — Ukraine" Center initiated "monitoring of everyday life". The goal is to document and collect instances of gender discrimination in the educational sphere, culture and media, as well as in the labor and social spheres, and to prepare, based on its results,

[48] Decree of the Ministry of Social Policy of Ukraine as of June 8, 2012 No. 345 "On Expert Council in the issues of consideration of addresses concerning facts of sex-based discrimination". — Access address: http://www.mlsp.gov.ua/labour/control/uk/ publish/article;jsessionid=C0C7CF308EFB57E24ED1AF61F4F1D883?art_id=143284&cat_id=102037. The Decree's text became available in public domain on the Internet only on August 15, 2012.

[49] http://la-strada.org.ua/ucp_mod_library_view_210.html

[50] http://www.uwf.kiev.ua/index.htm

[51] www.gender.at.ua

[52] www.la-strada.org.ua

[53] www.empedu.org.ua

[54] www.wcu-network.org.ua

a number of addresses and claims to various institutions, in particular, to the Expert Council under the Ministry of Social Policy or to the Commissioner for human rights[55].

4.8. Gender Award and Anti-Award

The Informational and Consulting Women's Center, in cooperation with the International Women's Human Rights Advocacy Center "La Strada — Ukraine", conducted the expert assessment and identified artifacts for Gender Anti-Award "Poison of the season — 2012". The anti-award is granted twice a year — on June 22 and on December 22. The award is granted to those who continue to propagate, reinforce and disseminate outdated gender stereotypes and derogatory sexist views[56]. Twice a year, awards for "Gender quality" are granted — in the end of March and September.

4.9. Museum of history of women's and gender movement and its website[57]

Became an online center for formation of the modern public opinion concerning women's rights and gender equality, thanks to the initiative's support by various NGOs; it also offers educational, cultural and informational programs.

With support of the Matra Foundation, the Informational and Consulting Women's Center launched a project aimed to ***improve the opportunities of rural women***[58].

On May 19, 2012 the representatives of the Women's Democratic Network (WDN), the All-Ukrainian Association "Women's Consortium of Ukraine", the All-Ukrainian Association "Women's choice", the Institute of Democracy and Social Processes, the Kyiv Institute for Gender Studies, the Public Association "European choice" initiated establishment of the ***Network of public control over gender equality during elections– 2012.*** Within the framework of its activities, the qualitative and quantitative monitoring of the electoral process during the parliamentary elections of 2012 was conducted in the following spheres: the nomination of women by political parties in multi-mandate and majority constituencies; the process of electoral campaigns on national and regional levels; adherence to the principles of human rights, development of gender equality, and social justice in pre-electoral programs[59].

4.10. Establishment and operation of the network of centers for gender education

In 2011, on the initiative of the Regional gender resource center and with support from the Chief Department for the issues of Family, Youth and Sports of Kharkiv Oblast State Administration, a project was developed in Kharkiv named "Creation of gender education cen-

[55] More information: http://la-strada.org.ua/ucp_mod_news_list_show_291.html

[56] One can learn about the artifacts and get more information about the contest itself at the websites of the Informational and Consulting Women's Center (http://empedu.org.ua/content/genderna-anti-vidznakaotruta-sezonu-lito-2012) and the "La Strada — Ukraine" Center (http://la-strada.org.ua/ucp_mod_news_list_show_297.html).

[57] www.gender.at.ua

[58] www.empedu.org.ua

[59] http://www.wcu-network.org.ua/ua/about/ads/Stvoreno_Merezhu_Gromadskogo_ kontrolju_za_rendernoju _rvnstju_ na_viborax_-2012

ter — basis for introduction of gender-based approaches in higher education". As of the middle of 2012, the All-Ukrainian network of gender education centers consists of centers and departments of 18 higher educational institutions. The Kharkiv Oblast Gender Resource Center coordinates the network's activities. In March 2012, development of the concept of activities of the All-Ukrainian network and of the concept of a gender-sensitive higher educational institution was started. Further development of the work of the Centers of gender education at higher educational institutions will be facilitated by support of the Ministry of Social Policy of Ukraine and the Ministry of Education and Science, Youth and Sports of Ukraine.

The goal of the independent feminist initiative "***Feminist Offensive***"[60], which conducted a number of actions in 2012, is to draw the public's attention to violation of women's rights in labor remuneration, access to political decisions, access to leadership, in reproductive rights and in cultural stereotypes. The project takes together knowledge, art and politics, seeking new strategies to overcome gender inequality[61].

4.11. Gender strategic platform

The Gender Strategic Platform, an open forum for discussion of the perspectives of development of the gender policy in Ukraine, also continued its work. During its meetings, important documents and declarations were discussed and developed, and they became an assembly point for many NGOs.

From November 25 to December 10, Ukrainian organizations participated in the ***International event "16 days against gender-based violence***". Over ten organizations, the members of the Gender Strategic Platform, developed a joint action plan and published it on their websites[62].

The portal ***"Vsi Rivni"***[63] plays an active role in educating the population and disseminating information about the issues concerning women's rights, protection of children's rights, gender equality, counteraction to violence, trafficking in human beings, and discrimination.

5. RECOMMENDATIONS

Practical recommendations from the previous report are still valid[64]. The following ones are to be added:

For the Cabinet of Ministers of Ukraine and central bodies of executive power

1. To uphold the legislation in the part of mandatory discussion with the civil society of drafts of regulatory enactments and drafts of governmental programs; to provide adequate governmental funding for them and to include qualitative indicators for the progress status.

[60] The group's website — http://ofenzyva.wordpress.com/

[61] http://platfor.ma/organizers/4f4a6bba0ebdc/

[62] www.gender.at.ua and others.

[63] www.vsirivni.org.ua

[64] http://www.helsinki.org.ua/index.php?id=1332329555

2. To set up a system of mandatory gender education for public servants of all levels. To include the questions on the Law "On Securing of Equal Rights and Opportunities for Women and Men" to the list of mandatory questions for certification of public servants of all levels.

3. To perform ongoing monitoring of implementation of the Law of Ukraine "On Securing of Equal Rights and Opportunities for Women and Men".

4. To perform mandatory gender and legal expert assessment of regulatory enactments and draft laws submitted by any of legislative initiative entities.

5. To adopt the State Program for facilitation to promotion of gender equality in the Ukrainian society for 2013-2016.

For the Central bodies of executive power and Oblast state administrations

6. To conduct educational events for the public in the sphere of women's rights and gender equality on a regular basis.

7. To develop and implement effective mechanisms (both judicial and extrajudicial) of responding to complaints against gender discrimination. To establish Expert councils for gender issues on the regional level. To adopt amendments to the Provision on Expert Council to harmonize it with the Law of Ukraine "On Securing of Equal Rights and Opportunities for Women and Men" and with the Provision on the Ministry of Social Policy.

8. To develop a program for counteraction to anti-gender movements and to start its implementation using the resources of the central bodies of executive power and engaging NGOs.

9. To bring the activities of the regional structures in charge of implementation of the Laws of Ukraine "On Securing of Equal Rights and Opportunities for Women and Men", and "On Prevention of Violence in the Family" into compliance with these laws.

10. The Ministry of Education and Science, Youth and Sports of Ukraine should support the initiative of higher educational institutions concerning establishment of centers for gender education and include support of such centers in the activities of the State program for promotion of gender equality for 2012-2015.

11. To create sections "Gender policy" on the websites of all bodies of executive power, and to provide regular updates on the progress of implementation of the Law of Ukraine "On Securing of Equal Rights and Opportunities for Women and Men".

12. To conduct gender expert assessment of the departmental regulation enactments and, in case it is necessary, to bring them into compliance with the Constitution of Ukraine and the Law of Ukraine " On Securing of Equal Rights and Opportunities for Women and Men".

For the Commissioner of the Verkhovna Rada of Ukraine for human rights[65]:

13. In the annual report on the status of observance of human rights in Ukraine for 2012, to cover the status of observance of women's rights and gender equality.

14. To invite into the Consultative Council the representatives of NGOs that are working actively and professionally in the sphere of promotion of gender equality, protection of women's rights, and to make this process transparent.

[65] The recommendations concerning improvement of activity of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights are presented in more detail in the report "100 днів Омбудсману" /Ombudsman's 100 Days/. — Access address: -- http://library.khpg.org/files/docs/1347027978.pdf

15. To conduct training for the officers of the Secretariat of the Commissioner for human rights concerning the practice of application of the international standards and norms of the national legislation on women's rights and gender equality in the activities of the Commissioner of the Verkhovna Rada of Ukraine for human rights and the officers of the Secretariat[66].

16. The Commissioner should create an effective and transparent mechanism for responding to complaints about facts of sex-based discrimination, engaging independent experts for this sphere and representatives of specialized non-governmental organizations. To develop a mechanism for the Commissioner to implement Article 22 "Complaints against sex-based discrimination and sexual harassment" of the Law of Ukraine "On Securing of Equal Rights and Opportunities for Women and Men".

17. Taking into account the low level of gender culture in the Ukrainian society, including that among public servants, as well as proliferation of anti-gender movements that seriously threaten the democratic values, to pay more attention on the official website to the issues of protection of women's rights and gender equality and thus to use it as a tool not only for spreading information, but also for educational purposes.

To International and donor organizations

18. To extend the funding of the women's organizations' programs aimed to facilitate women's rights and to promote gender equality.

[66] The experts in women's rights and gender issues who participated in discussion of the report expressed their willingness to conduct such trainings if the Commissioner requests so.

XXIII. CHILDREN'S RIGHTS[1]

As of January 1, 2012, the number of children in the age of 0–17 in Ukraine is 7 971 638 persons. In the period of January — August 2012, 346 929 children have been born, the number of infants that died in the age of less than one year — 2957 persons[2]

The assessments, conclusions and recommendations stated in the report "Human rights in Ukraine — 2011" are still valid in 2012. It is confirmed by the data of the state, non-governmental, and international organizations that are working in the sphere of protection of children's rights in Ukraine. According to the data of the "La Strada — Ukraine" Center, during 9 months of 2012 the National hotline in the issues of prevention of violence and protection of children's rights received calls from 3,346 children. Children mostly have complaints about the problems in interpersonal relationships, violence in the family and at school. According to the analysis of appeals and complaints received in the Office of the Commissioner of the President of Ukraine in Children's Rights for the period August 2011 — April 2012[3], major violations of children's rights are: disregard to the child's opinion; disregard to the child's interests during conflicts between parents or failure to perform lawful obligations towards the child (willful neglect of maintenance, kidnapping of children, etc.); violence against the child (both in the family and outside); violations of children's rights for health care and education. The Commissioner in Human Rights also receives complaints about violation of children's rights — mostly with similar issues.

Most assessments concerning violation of children's rights in Ukraine are provided by adult specialists. The opinions of children themselves as to violation of their rights are rarely, if ever, taken into account in discussions of this issue. In this report we suggest we start with the children's opinions as to prevailing of violations of their rights in Ukraine[4]. In particular, here we use the data from the national-scale survey of children in the ages of 10–17 commissioned to Oleksander Yaremenko Ukrainian Institute for Social Studies[5].

The administrative reform affected this sphere as well, what caused new problems and challenges, as well as led to the need to catalyze the activities of governmental agencies and improve the national policy concerning protection of childhood. At the same time, these activities lack consistency, effective coordination, adequate staffing and methodological sup-

[1] The section was prepared by the specialists of the International Women's Advocacy Center "La Strada — Ukraine" — N. I. Bochkor, T. I. Buhaets, M. V. Yevsiukova, K. B. Levchenko, M. M. Legenka, and V. V. Mudrik.

[2] Letter from the State Statistics Service of Ukraine as of October 23, 2012, No.15/1-30/1323ПІ.

[3] http://www.president.gov.ua/news/24064.html

[4] The idea of the structure of the report "Children's Rights in Ukraine — 2012" was proposed by M. V. Yevsiukova.

[5] The Analytical Report based on the results of survey of children in the age of 10–17 within the framework of the project "Children's Rights in Ukraine: facts and challenges after 20 years of independence". — Access address: http://www.president.gov.ua/news/24361.html

port. As a consequence, in the society there are manifestations of failure to understand the notions and principles of children's rights, what results in numerous facts of violations, corporal punishments, violence, antagonism against development of mechanisms for protection of children's rights, in particular, of juvenile justice, etc.

It is difficult yet to estimate how the reform in the sphere of health care will affect observance of children's rights in the sphere of health care. But abundance of citizens' complaints about the reform leaves little for hopeful projections[6].

Thanks to creation of the national mechanism for prevention of torture[7], monitoring visits have been conducted to boarding institutions for children, which brought to light numerous violations of dwelling conditions of children, facts of cruel treatment of children and so on. In Ukraine there are only two special penitentiary facilities left, where women prisoners can stay with their children (Chernihiv and Odesa oblasts). In the fall of 2012, the society was agitated by the case of mutilation in Odesa penal facility[8] — this case is a symptom of deep-rooted problems in these facilities, which go on unnoticed by the public.

The year 2012 brought new challenges connected with the initiatives to abolish the secret of adoption, with engaging of children in the electoral process and in the course of parliamentary elections[9], with churches' growing interference with the educational process, with politicization of the issues related to observance of children's rights, etc. The state fails to respond to this and to articulate a clear stance in this regard, so the society keeps misunderstanding these phenomena and "anti-juvenile justice movements" keep proliferating. There are more and more programs and materials about children's rights in the informational space, but not always these issues and ways of addressing them are covered comprehensively and meaningfully.

1. INTERNATIONAL CONTEXT

On February 28, 2012, during the 19th session of the United Nations Human Rights Council, the Optional Protocol to the Convention on the Rights of the Child on a complaints mechanism was opened was signing. As of October 29, 2012, it has been signed by 35 UN member states and Thailand and Gabon have ratified it[10]. Ukraine did not sign this Protocol in 2012, despite appeals from non-governmental organizations, which in February 2012 petitioned the Ministry of Foreign Affairs of Ukraine and the Commissioner of the President of Ukraine in Children's Rights concerning this issue[11].

On October 24, 2012, Ukraine went through the second circle of the Universal Periodic Review. For this review, the state report was prepared with a section on protection of

[6] http://www.pravda.com.ua/inozmi/svoboda/2012/04/25/6963465/

[7] http://portal.rada.gov.ua/rada/control/uk/publish/article/news_left?art_id=319917&cat_id=37486

[8] http://polemika.com.ua/news-100757.html#title

[9] http://www.pravda.com.ua/news/2012/10/17/6974900/

[10] http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en

[11] The appeals were sent by the Center "La Strada — Ukraine" as of February 16, 2012, registration No. 89/12 and 90/12.

children's rights[12] as well as the report of the Coalition of non-governmental organizations and ECPAT "On the state of observance of children's rights in Ukraine"[13], written using the materials on this topic of the "La Strada — Ukraine" Center and the All-Ukrainian Network Against Commercial Sexual Exploitation of Children[14]. The issues raised by the Universal Periodic Review working group included the policy of protection of children's rights. The final recommendations contain provisions as to necessity for Ukraine to harmonize its legislation with the provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child and realization of the National Action Plan on implementation of the UN Convention on the Rights of the Child for the period till 2016, as well as to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption[15].

On June 20, 2012, the Verkhovna Rada of Ukraine ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[16]. But the draft law concerning harmonization of the Ukrainian legislation with the provisions of this Convention has not been adopted even in the first reading due to its shortcomings. The draft law "On Making Amendments to Some Laws of Ukraine concerning Counteraction to Child Prostitution" as of December 6, 2011, No. 9540, (which was developed to harmonize the legislation with the provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Council of Europe Convention No. 201) in July 2012 was postponed from consideration.

Ukraine's signing of the Council of Europe Convention No.210 on preventing and combating violence against women and domestic violence[17] possesses great significance for the policy of observance of children's rights, as well. For instance, it provides definition of such kinds of violence as bullying, which are widespread in children's and youth environment but are not defined in the national legislation in any way; it articulates the standards of the governmental policy for combating domestic violence, which affects children as well, etc. In more detail this topic is covered in the section "Violence against women and domestic violence".

2. THE INSTITUTIONAL MECHANISM AND LEGISLATIVE INITIATIVES

In 2012, gaps and shortcomings of the administrative reform, which was launched in 2010, are still being felt. The system for protection of children's rights in Ukraine still lacks coordination. Responsibility for children is distributed between different ministries and departments; cooperation between them is far from effective or even non-existent[18]. The co-

[12] п. С. Защита прав детей: (рекомендации 2, 12 и 31), Раздел III. Достижения, выполнение рекомендаций и проблемы в сфере защиты прав человека. — Access address: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/160/35/PDF/G1216035.pdf?OpenElement

[13] www.civicua.org/main/data?t=2&c=1&q=1813086

[14] http://la-strada.org.ua/ucp_mod_library_view_192.html

[15] http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights24October2012am.aspx

[16] http://zakon2.rada.gov.ua/laws/show/4988-17

[17] http://www.kmu.gov.ua/control/uk/publish/article?art_id=244679884&cat_id=244276429

[18] Альтернативна доповідь до Ради ООН з прав людини "Про стан дотримання прав дитини в Україні". — Access address: www.civicua.org/main/data?t=2&c=1&q=1813086

ordinating body on formation and securing of implementation of the governmental policy concerning children is the Ministry of Social Policy, in which the Department of protection of children's rights and adoption started operating only at the end of 2011. Since October 1, 2012, it was reformed into the Department of Family and Children. The Cabinet of Ministers of Ukraine adopted the Decree No. 415 "On Making Amendments to Some Decrees of the Cabinet of Ministers of Ukraine on the Ministry of Social Policy"[19], concerning amendments to regulations on activities of different agencies and institutions for children.

On March 7, 2012, during the extended session of the Cabinet of Ministers of Ukraine, the President presented the Social initiatives[20], and announced establishment of a new institute in social protection of the population — the institute of social district inspectors[21]. The system of social district inspectors is a brand new approach to addressing problems of Ukrainian families. Its goal is to prevent problems in the family and protect children's rights. Social work should aim to prevent problems, not to overcome their consequences[22]. In June 2012, the campaign was launched to create the corps of inspectors, which will consist of 12 thousand persons. In October, 9 thousand specialists were selected, they all received initial training[23]. As of October 15, 2012, neither the Cabinet of Ministers of Ukraine, not the Ministry of Social Policy have developed or adopted any regulations that would specify the authority and sphere of duties of the newly established position.

On October 31, 2012, the Cabinet of Ministers of Ukraine made amendments to Appendix 2 to its Decree as of April 18, 2012, No. 606 "On Approval of the recommended lists of structural subdivisions of regional, Kyiv and Sevastopol city, district, rayon in Kyiv and Sevastopol state administrations". In particular, by the decision of the Government, the Service in issues of children was added to this list[24].

In 2012, the process was initiated to re-organize shelters for children into centers for social and psychological rehabilitation[25]. According to official data, as of January 1, 2012, in Ukraine 67 shelters and 51 centers for social and psychological rehabilitation of children have been in operation[26].

In 2012, some changes took place in regulation of activities of the Intersectoral Committee in the issues of protection of childhood. On May 31, 2012, the Cabinet of Ministers of Ukraine adopted the Order No. 483 "On making amendments to the Provision on Intersectoral Committee in the issues of protection of childhood"[27], which changed the status and task of the Intersectoral Committee. In particular, it stipulates that the Committee is a temporary advisory body established by the Cabinet of Ministers of Ukraine with the purpose of

[19] http://zakon2.rada.gov.ua/laws/show/415-2012-%D0%BF

[20] http://www.president.gov.ua/news/23275.html

[21] http://www.kmu.gov.ua/control/ru/publish/article?art_id=245044332&cat_id=244276429

[22] http://www.unian.ua/news/506944-12-tisyach-sotsialnih-dilnichnih-rozpochnut-robotu-u-veresni.html

[23] http://chernivtsi.comments.ua/news/2012/10/09/150709.html

[24] http://www.kmu.gov.ua/control/uk/publish/article?art_id=245750947&cat_id=244276429

[25] http://amn.net.ua/ukr/news/events/1780

[26] Национальный доклад Украины Данный в рамках второго цикла Универсального периодического. Access address: http://www.minjust.gov.ua/upr/

[27] http://zakon2.rada.gov.ua/laws/show/483-2012-%D0%BF

preparing proposals concerning implementation of the governmental policy in the issues of protection of children's rights and interests. The Committee's key functions now include:

— facilitation to securing of coordination of actions of bodies of executive power in the issues of protection of childhood;
— preparation of proposals concerning formation and implementation of the governmental policy in the issues of protection of children's rights and interests;
— identification of ways, mechanisms and means for resolution of the issues that emerge during implementation of the governmental policy in the sphere of protection of childhood[28].

As of October 15, 2012, the updated list of members of the Intersectoral Committee has not been approved; the Committee has not held a single meeting.

The reforming of the criminal police in cases of children is still underway and there are ideas to use it as a base for establishing the juvenile police within the system of internal affairs of Ukraine[29]. The model of improvement of services in the sphere of criminal justice concerning juveniles is being piloted in Ivano-Frankivsk[30].

The year 2012 showed that the improvement of the policy on protection of childhood and children's rights in Ukraine has been driven by the Commissioner of the President in Children's Rights, although his key function is that of monitoring the situation with observance of children's rights in Ukraine, not implementation of the policy. Recommendations based on the monitoring results serve as the foundation for decrees of the President, which form the state policy on protection of childhood. On August 31, 2012, the President issued the Instruction concerning improvement of protection of children's rights and lawful interests[31]. On October 22, 2012, — the Decree No. 609/2012 "On the National Strategy on Prevention of Social Orphanhood for the Period till 2020" which aims to secure realization of each child's right for being raised in the family, growing in a safe family environment, to improve effectiveness of operation of governmental agencies and bodies of local self-government on prevention of social orphancy, and to enhance the system of provision of social services to children and families with children[32].

During the period of operation of the office of the Commissioner of the Verkhovna Rada of Ukraine in human rights under the supervision of the newly elected Commissioner, it received 221 appeals, of which more than 60% concern the issues of protection of children's rights. The major response forms are requests to the authorized authorities and provision of explanations to citizens. The Commissioner's activities concerning protection of children's rights are at the initial stage and are conducted not in full scope[33].

On April 13, 2012, the new Criminal Code of Process of Ukraine was adopted (it came into effect on November 19, 2012). The Code presupposes inclusion of the principles of ju-

[28] http://www.kmu.gov.ua/control/uk/publish/article?art_id=245265653&cat_id=244274160

[29] http://mvs.gov.ua/mvs/control/main/uk/publish/article/725303;jsessionid=247EAC2EFB682F2FCC7E58EE5DC53933

[30] According to the data of the Ministry of Internal Affairs as of September 20, 2012 http://www.kmu.gov.ua/control/publish/article?art_id=245607021; http://www.president.gov.ua/news/25449.html

[31] http://www.president.gov.ua/documents/15017.html

[32] http://www.president.gov.ua/documents/15098.html?PrintVersion

[33] http://library.khpg.org/files/docs/1347027978.pdf

venile justice in criminal proceedings concerning children: criminal proceedings concerning a juvenile are conducted by an investigator that is directly authorized by the head of the body of prejudicial inquiry to perform prejudicial inquiries concerning juveniles. In court, a juvenile's case is to be heard by a judge that is authorized in compliance with the Law of Ukraine "On the Judiciary and the Status of Judges" to conduct legal proceedings concerning juveniles. It is planned to introduce a similar specialization for prosecutors that participate in criminal proceedings concerning children. The state is gradually advancing towards juvenile justice by introducing the system of corresponding governmental agencies.

3. THE MAJOR VIOLATIONS OF CHILDREN'S RIGHTS IN UKRAINE. THE CHILDREN'S RIGHT TO EXPRESS THEIR OWN OPINIONS AND TAKING THESE OPINIONS INTO ACCOUNT IN UKRAINE

48% children surveyed believe that the children's right to express their opinion is violated, one in every three pointed out that this right is violated by parents, one in every four — by a school or university teacher. 44% believe that the children's right for free conversation with friends, relatives, parents and obtaining of useful information is violated.

The results of surveys and monitoring concerning observance of children's rights show that the children's interests and opinions are not being analyzed and not taken into account. In 2012, this problem attracted some attention from governmental agencies — it was caused by appeals from children to the Commissioner of the President of Ukraine in Children's Rights[34] in this issue. Disregard for children's opinion is especially obvious in court proceedings. Courts give no heed to children's opinions and don't take these opinions into account when resolving disputes and cases concerning children (deprivation of parental rights, place of the child's residence, abuse and cruel treatment of children, etc.)[35]. On June 1, 2012, for the first time in the years of independence the President had a meeting with children and listened to their opinions on different issues. The majority of proposals made by young people referred to the necessity to learn to listen to children's needs.[36]

3.1. The children's right for protection from cruel and inhumane treatment and abuse

56% children believe that in Ukraine the right for protection from cruel, inhumane treatment and abuse is violated.

54% mentioned violations of the right for wholesome nutrition. The children believe their parents to be major offenders.

48% stated violations of the children's right for love and care from parents. The children of the age group of 10–13 (52.6%) feel it most acutely.

[34] http://www.president.gov.ua/news/24064.html

[35] Судовий розгляд справ, пов'язаних з вчиненням насильства в сім'ї в Україні: проблеми відповідності міжнародним стандартам і шляхи вдосконалення: наук.-практ. посіб. для суддів / Євсюкова М. В., Христова Г. О., Шаповалова О. А. та ін. / за заг. ред. Шаповалової О. А., Павлиш С. О. — К., 2011. — С. 137–138.

[36] http://www.president.gov.ua/news/24399.html

Cruelty and abuse against children happen both in the family and outside of it. According to the official statistics of the Ministry of Social Policy[37], during 9 months of 2012 the subdivisions of this Ministry received appeals from 560 children concerning violence in the family, and 1,478 children were registered with them in this regard. During 9 months of 2012, the National hotline in the issues of prevention of violence and protection of children's rights received 400 calls concerning cases of cruel treatment of children; mostly these were cases of violence in the family.

Children that experience violence in the family are also facing disregard for their rights and interests from the bodies authorized to protect their rights. The analysis of calls received by the National hotline run by "La Strada — Ukraine", as well as of court proceedings shows that law-enforcement agencies pay no regard to rights and interests of children that witness violence in the family. A child that witnesses violence in the family against other family members in fact becomes a victim of psychological violence. Such situations are not addressed or resolved, and law-enforcement agencies react only when violence is taking severe forms and its consequences for the child become more visible.

There exist consistent problems concerning resolution of cases related to children in courts. For instance, cases on determination of the place of the child's residence or deprivation of parental rights can last for years. Before the issue with whom of the parents the child will reside is finally settled, this child, by the court decision, can be taken away from one of the parents and given to the other. By doing this, courts give no consideration to the fact that such events can be traumatic for the child and affect his or her psychological and emotional state.

There also exists the problem of violence against children in educational institutions, which is confirmed by appeals from children themselves[38] and by information in mass media[39]. As the system of operation of education institutions, especially boarding ones (including orphanages), is permeated by the principle of hiding of such facts and mutual cover-up, currently it is impossible to realistically assess this situation. The problems the children in boarding institution experience most often and most often call the National hotline about concern cruel treatment of children by employees of the boarding institution and by peers and elder children. Of greatest concern is such cruel treatment by employees of boarding institution, as these are the people authorized to protect children's rights and interests, instead they violate these rights cruelly. This situation is extremely difficult to change as most violations of this kind are concealed and the convoluted child is afraid and does not know where to look for help.

In 2012, the National Hotline in the issues of prevention of violence and protection of children's rights received a call from A., a boy from an orphanage in Kirovograd region, who complained about cruel treatment from tutors and the management, about the psychologist's disregard for his problems and about bullying from his peers. At first, the boy kept silent, but then he did dare to tell the psychologist that he was being beaten, that corporal punishment was applied to him by both tutors and by the head of the institution. To keep A.

[37] Letter from the Department of Family and Children of the Ministry of Social Policy of Ukraine as of October 18, 2012, No. 3223/0/57/12-зв.

[38] Основні порушення прав дітей на основі аналізу звернень та скарг, які надійшли до Уповноваженого Президента України з прав дитини. — Access address: http://www.president.gov.ua/news/24064.html

[39] http://life.obozrevatel.com/boiling/59416-shkolniki-zhazhdut-krovi.htm

silent, it was planned to send him for treatment to a psychiatric institution. Only the urgent intervention from the Commissioner of the President in Children's Rights (by referral from the "La Strada — Ukraine" Center) helped to redress the situation, the boy was transferred to a small family child care home.

3.2. The right for medical assistance

53% participants of the survey mentioned violations of the right for medical assistance. This right is most often violated by medical specialists

The major problems in the sphere of health care of children are still lack of proper examination and objective diagnostics for children; significant drawbacks in the material and technical facilities of medical institutions (poor state of beds, mattresses, bed sheets, insufficient provision of medications, obsolete equipment); assistance to disabled children, etc.[40] In 2012, the issues still unresolved include: limited access of children in rural areas to health care services, insufficient funding for payment for medical services (as it is difficult or impossible to obtain such services for free) [41].

The expenditures of the State budget-2012 do not cover the actual needs in providing disabled children and severely ill children with medications, rehabilitation services, immunoprophylaxis, etc. The treatment of Gaucher disease is covered at 25% of the required level, "Renal failure (dialysis)" — at 37%, "Primary immunodeficiency" — at 10%. The expenses for treatment of certain diseases (autism, epilepsy, mucopolysaccharidosis) are not included at all. The item "Children's oncology and oncohematology" is funded at the level of 45% of the necessary. Insufficient funding, lack of transplantation methods of treatment, absence of rehabilitation and special palliative care go along with violation of the children's right for parental care when in medical institutions. Parents are not allowed to stay along with their inpatient children older than 6. One in every five children in Ukraine requires, to this or that extent, attention of the child psychiatrist, but the state program concerning provision of such help is still not in place. Of the medications procured for state funds, applied in pediatrics and sold in drug store chains, 70% do not have the evidentiary basis[42].

In the spring of 2012, the President of Ukraine gave the Cabinet of Ministers of Ukraine the task to develop a separate program concerning rehabilitation of children with infantile cerebral paralysis[43] and promised that in 2012, UAH 60 mln. would be allocated for implementation of the rehabilitation programs[44]. In fact, in 2012 the state allocated for rehabilitation of children with infantile cerebral paralysis the amount of UAH 16 mln., thus increasing

[40] Основні порушення прав дітей на основі аналізу звернень та скарг, які надійшли до Уповноваженого Президента України з прав дитини. — Access address: http://www.president.gov.ua/news/24064.html

[41] Нерівні можливості для дітей в Україні: аналіз та рекомендації для політики / Черенько Л. М., Полякова С. В., Шишкін В. С., Заяць В. С., Васильєв О. В., Новосельська Т. А., Демчук М. В., Київ: 2011.

[42] Основні порушення прав дітей на основі аналізу звернень та скарг, які надійшли до Уповноваженого Президента України з прав дитини. — Access address: http://www.president.gov.ua/news/24064.html

[43] Ibid.

[44] http://health.unian.net/ukr/detail/231563

the funding of the program "Measures on rehabilitation of patients with infantile cerebral paralysis at the International Clinic of Rehabilitation" by three times[45].

In April 2012, 180 cases of HIV-infection in children were registered[46]. The level of awareness among school students about HIV/AIDS in general and about ways of transmission of HIV-infection is still very low (17.2%)[47].

3.3. Sexual exploitation of children and child labor

52% believe that there are cases of sexual exploitation of children.
47% believe that children experience labor exploitation.

During 9 months of 2012, the agencies of internal affairs registered 226 crimes concerning molestation of minors (article 156 of the Criminal Code of Ukraine), 58 crimes concerning sexual intercourse with persons that have not yet reached sexual maturity[48]. During 6 months of 2012, 61 children suffered rape (including attempted rape), of them — 18 young children. Among the registered crimes, there were nine cases related to child pornography (article 301 of the Criminal Code of Ukraine), and four related to child prostitution (article 303 of the Criminal Code of Ukraine); 41 children were found to engage in prostitution, and they were held administratively liable according to article 181-1 of the Code of Ukraine on Administrative Offences[49]. In 2011, the number of teenage girls engaged in the sphere of commercial sex was 15 000 persons[50].

Such data allows to state that the scope of the problem is rather large, and the official statistics reflect but the top of an iceberg. Today Ukraine is unable to effectively respond to cases of commercial sexual exploitation of children, both at the legislative and practical levels. There is no system of prevention of sexual violence against children and sexual exploitation of children, no system for provision of assistance to children-victims. Even if information about such crimes does reach the law-enforcement agencies, they rarely are solved or make it to the court. The center for social and psychological rehabilitation "Sofia" for girls, who suffered sexual violence and sexual exploitation, run by the NGO "Vira. Naida. Liubov", the only one of this kind in the entire country, in 2012 did not operate — due to lack of funding. The problem is not only in lack of such centers, but also in providing the governmental structures with specialists, who would be able to provide the professional assistance to children-victims. The school curricula do not contain separate courses on development in children of skills to counteract the risks of sexual abuse against them.

[45] http://www.dcp.org.ua/news/6749.html

[46] The data of the International Charitable Foundation "International HIV/Aids Alliance in Ukraine" http://www.aidsalliance.org.ua/cgi-bin/index.cgi?url=/ua/library/statistics/index.htm

[47] Готовність підлітків захистити себе від інфікування ВІЛ / Інститут економіки та прогнозування НАН України, Український інститут соціальних досліджень ім. О. Яременка, Представництво Дитячого Фонду ООН (ЮНІСЕФ) в Україні, 2010.

[48] Letter from the Department of informational and analytical support of the Ministry of Internal Affairs of Ukraine as of October 22, 2012, No. 16,1К-197 зі.

[49] Letter from the Department of criminal police in cases of minors of the Ministry of Internal Affairs of Ukraine as of July 23, 2012, No.58/1-713.

[50] Оцінка чисельності дітей та молоді вікової групи 10–19 років, що відносяться до груп ризику / ЮНІСЕФ; Укр. ін.-т соц. дослідж. ім. О. Яременка. — К., 2011. — 48 с.

Most activities in the area of prevention of sexual violence and protection of children's rights in 2012 were initiated and conducted by non-governmental organizations. For instance, the "La Strada — Ukraine" Center, in cooperation with the Ministry of Internal Affairs and Kharkiv National University of Internal Affairs, with the financial support from the international organization ECPAT, in 2012 established in Kharkiv two specially equipped "green rooms" for questioning of children, who suffered from violence and exploitation (in 2011 such rooms were established in Kyiv and Odesa). The methodological recommendations on equipment and use of such rooms in operation of the Criminal Police in Cases of Children have been developed, published and distributed among scientists and field workers of the Ministry of Internal Affairs of Ukraine[51]; trainings for specialists have been conducted.

In 2011–2012, in Ukraine the activities were conducted on development and implementation of the Code on Protection of Children from Cruel Treatment on the Internet and Informational-Communicational Resources[52], initiated by "La Strada — Ukraine" with the support from the Office of the Commissioner of the President of Ukraine in Children's Rights and with financial support from the international organization ECPAT. The Code covers the issues of protection of children from violence on the Internet, including from child pornography. In compliance with the Code, the providers undertake to inform their clients about responsibility for these crimes and about ways to safeguard against them. The Code has been signed by mobile operators "Kyivstar" and "MTS*", and "Ukrtelecom" supported the initiative.*

The "La Strada — Ukraine" Center cooperates with the reception center for children under the chief department of the Ministry of Internal Affairs of Ukraine in Kyiv. In 2010-1012, the Center trained 14 volunteers, who conducted the prevention work in reception centers of Lviv, Donetsk, Kharkiv, Odesa and Simferopol.

The problem of child labor is still in the shadows. According to the data of the Ministry of Internal Affairs[53], during 9 months of 2012, 31 criminal cases were opened concerning child exploitation (article 150 of the Criminal Code of Ukraine — 3 cases, article 150-1 of the Criminal Code of Ukraine — 28). In 2011, the number of such cases was 94 (14 — article 150, 80 — article 150-1 of the Criminal Code of Ukraine). The official data do not reflect the entire scope of the problem.

3.4. Child's right for care and guardianship

48% believe that the state does not always take care of children-orphans and children deprived of parental care and attention, or cares not in full scope

As of October 1, 2012, foster homes and small family child care homes raise 11,261 children, which constitutes 11.7% from the total number of children-orphans and children deprived of parental care and attention. In Ukraine, 695 small family child care homes and 3,737 foster families are operating. Of children-orphans and children deprived of parental care and attention, 1,445 were adopted by citizens of Ukraine and 588 children — by foreigners[54].

[51] http://www.la-strada.org.ua/ucp_mod_library_view_170.html, http://www.la-strada.org.ua/ucp_mod_library_view_169.html, http://www.la-strada.org.ua/ucp_mod_library_view_168.html

[52] http://www.la-strada.org.ua/ucp_mod_news_list_show_233.html

[53] Letter from the Department of informational and analytic support of the Ministry of Internal Affairs of Ukraine as of October 25, 2012, No. 16,1К-1362зі.

[54] Letter from the Ministry of Social Policy of Ukraine as of October 24, 2012, No. 3371/0/57/12-зв.

At present, orphancy is a social problem, as majority of children without guardianship have living parents. In Ukraine, parents still can give up their child by handing him or her over to an orphanage (boarding school).

During the last year, the number of children in boarding schools increased by six times[55]. More than two thirds of Ukrainian children-orphans that reached full legal age have no place to live. To the experts' opinion, this situation is caused by the authorities' inability to provide children with cheap social housing. In their turn, the governmental officials insist that orphans mostly are left without a roof over their heads because of their own social inaptitude[56].

Rights of children deprived of parental care are violated both in boarding institutions and in foster families by their guardians. There are known cases when guardians were giving their fosterlings not to boarding schools, but to foreigners and in doing so were ignoring the laws of Ukraine that provide that such actions can be conducted only after the foster family is checked by special agencies. For instance, on May 7, 2012, the prosecutor's office of Dnipropetrovsk oblast started a criminal case against a guardian (part 1 of article 169 of the Criminal Code), who illegally gave away his underage sister to be raised abroad. This man came with his sister to Italy where in compliance with the local legislation he formalized guardianship for his sister to foreigners but ignored the legislation of Ukraine[57]. In July 2012, it became known about a case of violence and murder of two adopted children by their adoptive parents, as well as kidnapping of a stranger child. A family with many children was registered with the social service but this did not prevent the tragedy[58], which shows its superficiality or total lack of effectiveness.

The Commissioner of the President of Ukraine in Children's Rights initiated abolition of the secret of adoption[59]. This problem has been widely discussed during the round table discussions by governmental and non-governmental organizations[60]. Obviously, such changes require educational work among citizens and precise actions of governmental agencies.

3.5. Right for education

48% mention violation of the children's rights for education

The last year research[61] showed that in Ukraine there are problems in children's equal access to pre-school, secondary and extracurricular education: lack of vacancies in children's pre-school institutions mostly in large cities, problems with access to educational institu-

[55] Місто, February 8, 2012, "Кому вигідно щоб діти-сироти залишались сиротами" http://www.misto.vn.ua/ua/home/interview/4345

[56] "Соціально непристосовані сироти" http://sirotstvy.net/ua/press_centre/about_problem/735.html

[57] "Усе найкраще дітям, або Кому вигідне існування сиріт в Україні" http://sirotstvy.net/ua/press_centre/about_problem/559.html?pg=3

[58] http://www.unian.ua/news/518209-mati-gerojinya-z-luganskoji-oblasti-ne-ziznaetsya-u-vbivstvi-usinovlenih-ditey.html

[59] http://www.president.gov.ua/news/25009.html

[60] http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2041:2012-09-25-06-43-33&catid=14:2010-12-07-14-44-26&Itemid=75.

[61] Нерівні можливості для дітей в Україні: аналіз та рекомендації для політики / Черенько Л. М., Полякова С. В., Шишкін В. С., Заяць В. С., Васильєв О. В., Новосельська Т. А., Демчук М. В., Київ: 2011.

tions in rural areas, difficulties of access to education for children with disabilities and children with special educational needs, poor technological infrastructure of educational institutions, few schools having access to the Internet, low level of legal literacy. In 2012, in the published Global Gender Gap Report, by the indicator of boys and girls' equal access to education, Ukraine holds the 22nd place[62].

According to the data of the project "I gave a bribe for my child"[63], which aimed to map bribery in Ukraine in the sphere of family relationships, protection of children's and women's rights, during the first month of the project they received 21 reports. Of them, 86% were cases when people gave bribes, and 14% were cases when citizens informed that they did not give bribes. According to the project's data, the most expensive region of Ukraine for children to live is the Autonomous Republic of Crimea. In Sevastopol, it would cost parents up to UAH 3,000 to secure their child a place in a kindergarten, which is about the level of the capital. The cheapest bribe for a child to be admitted to the kindergarten — in Donetsk oblast — costs UAH 300. In Kyiv, a bribe demanded for a child to be admitted to the first form of a gymnasium is USD 1,000. Interestingly, the cost to skip inoculation of one's child in medical institutions does not depend on the region — and is estimated as UAH 450–500[64].

3.6. Children's rights in contact and conflict with the law

43% are aware of the cases when children that committed a crime were subjected to torture and humiliations

In 2011, the Concept of development of criminal justice for minors in Ukraine[65] and the action plan for its implementation was adopted. In 2012, by the Decree of the President a working group was established in the issues of implementation of the Concept[66]. There is no information about the state of implementation of the action plan adopted in October 2011 in open access.

3.6.1. Initiatives of non-governmental organizations as to protection of children's rights.

To follow the recommendations of the UN Committee on the Rights of the Child and to facilitate observance of children's rights, in Ukraine the NGO Coalition "Children's Rights in Ukraine" was established[67]. There are many non-governmental organizations actively working in this direction, among which the All-Ukrainian NGO "School of Equal Opportunities", the All-Ukrainian NGO "Service of Children's Protection"[68], the Ukrainian Foundation "Children's

[62] http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf

[63] http://vsirivni.com.ua/habar

[64] http://www.vsirivni.com.ua/news/ya-dala-khabar-vlashtuvannya-ditini-u-dityachii-sadok-v-ukra-n-koshtu-materyam-v-d-300-do-3000-

[65] Права людини в Україні — 2011. Доповіді правозахисних організацій. Розділ XXI Права дитини. http://khpg.org/index.php?r=1.6.14.1

[66] http://zakon1.rada.gov.ua/laws/show/26/2012-%D1%80%D0%BF

[67] http://khpg.org/files/docs/1327514545.pdf

[68] http://www.vsirivni.com.ua/organizations/vseukra-nska-gromadska-organ-zats-ya-sluzhba-zakhistu-d-tei

Welfare"[69], the International Charitable Foundation "Father's Home"[70], "Ukraine without Orphans"[71] as well as others. In connection with the growing number of calls from children to the National Hotline in the issues of prevention of violence in the family and protection of children's rights, as well as in observance of the international standards in the sphere of protection of children's rights, the "La Strada — Ukraine" Center is working on establishment of a separate hotline for children, which will be launched in January 2013. The trainers of the Center's National Trainers' Network in 6 months of 2012 conducted 1,465 events for 14,111 persons. In the second half of the year this work was continued. The information about the initiative and their activities can be found online on these organizations' websites. Activity of private funds and support of activities of non-governmental organizations for protection of children's rights should be mentioned, too.

When improving the laws and advancing the protection of children's rights in practice, one thing not to get overlooked is work with the population, as the society demonstrates a rather lenient attitude towards violations of children's rights. It is necessary to teach people to show zero tolerance to such violations, what would facilitate observance of children's rights in Ukraine and prevention of violation of these rights.

4. RECOMMENDATIONS[72]

1. To secure effective redistribution of functions after the administrative reform among bodies of central and local power and coordination of actions for complete coverage of the state's obligations concerning children's rights.

2. To resume operation of the Intersectoral committee in the issues of protection of childhood. To update its composition, by including in it the representatives of non-governmental organizations that are engaged in protection of children's rights in Ukraine. To conduct regular sessions of the Intersectoral committee in the issues of protection of childhood.

3. To develop the mechanism to include children in the process of adoption of decisions in the issues concerning protection of childhood and protection of children's rights. Within that, to develop the mechanism to consider children's opinions in resolution of the issues that concern the children themselves.

4. To develop and submit for consideration of the Verkhovna Rada of Ukraine the draft law on harmonization of the legislation of Ukraine with the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. In particular, to develop the provisions on comprehensive counteraction to child prostitution and child pornography; to criminalize seduction of children through use of the informational-communicational technologies; to introduce correctional programs for persons that commit crimes of sexual nature against children; to create the database on persons that commit-

[69] http://www.ccf.org.ua/

[70] http://otchiy-dim.org/

[71] http://www.ukrainabezsyrit.org/

[72] In 2012, the recommendations of the last year report are still valid, in particular, No. 3, 4, 5, 7, 8, 11, 12, 13, 15, as well as the recommendations in the Alternative Report to the UN Human Rights Council "On the State of Observance of Children's Rights in Ukraine", which was prepated by a coalition of Ukrainian NGOs.

ted crimes of sexual nature against children; to start the system of rehabilitation for children that suffered from sexual violence and exploitation.

5. To research the issue concerning the average age of reaching sexual maturity in Ukraine and based on that to set in the legislation of Ukraine the age of consent for entering the sexual encounter.

6. To develop the effective methodology for monitoring of violations of children's rights in educational and boarding institutions and to secure the effective mechanism for bringing to responsibility the officials guilty of violations of children's rights.

7. To provide for and secure sufficient funding from the state budget to support disabled children and seriously ill children for procurement of medications, medical products, rehabilitation services, immunoprophylaxis, etc.

8. To conduct a large-scale informational and educational campaign among the population of Ukraine concerning necessity to abolish the secret of adoption and to include in the support programs for adoptive parents the issues related to the secret of adoption.

9. To keep equipping and using, within the framework of the criminal proceedings, the "green rooms" for questioning of children that suffered from violence and exploitation.

10. To conduct the wide-scale informational campaigns concerning children's rights and to support the operation of the National hotline in children's rights.

XXIV. VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE[1]

In the previous reports "Human rights in Ukraine" (2011, 2009–2010, 2008), information concerning gender-related violence was presented mainly in the context of the problem of domestic violence, which remains a widespread violation of human rights in Ukraine in 2012, as well. But the year 2012 was choke-full of events that indicated other forms of gender-based violence are just as prevalent, in particular, physical and sexual violence against women outside family.[2]

Issue of terminology[2]

The UN Declaration (December 20, 1993) on the Elimination of Violence against Women outlines the foundation for definition of gender violence. According to article 1 of the Declaration, violence against women means the following:

"any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

Article 2 of the Declaration establishes that the international community acknowledges the pervasive nature of the forms of violence against women. The definition includes (but is not limited by): physical, sexual and psychological violence, happening both within family and publicly, including beating, sexual violence against girls, dowry- related violence, rape in marriage; female genital mutilation and other traditional practices that harm women; violence outside marriage; violence related to exploitation, sexual harassment and intimidation at work and in educational institutions; forced pregnancy, abortion and sterilization; trafficking and forced prostitution; violence by, or with the connivance of, the government.

The development programs, in particular those of UNFPA, use the following definition, which can be applied in the Ukrainian context:

"Gender-based violence is violence involving men and women, in which the female is usually the victim; and which is derived from unequal power relationships between men and women. Violence is directed specifically against a woman because she is a woman, or affects women disproportionately. It includes, but is not limited to, physical, sexual and psychological harm (including intimidation, suffering, coercion, and/or deprivation of liberty within the family, or within the general community). It includes that violence which is perpetrated or condoned by the state".

(UNFPA, Gender Theme Group, 1998)

[1] The section was prepared by specialists from the International women's advocacy center "La Strada — Ukraine" — K. Levchenko, M. Yevsiukova, T. Bugayets, O. Kalashnyk, K. Cherepakha, I. Mydlovets, Ye. Setpaniuk, and from the Informational-Consulting Women's Center — O. Syslova.

[2] Механізм моніторингу and протидії ґендерному насильству і дискримінації (Аналітичний звіт) / За заг. ред. О. Суслової — К.: СПД Москаленко О. М., 2009 — с. 10–11.

1. GENERAL SITUATION CONCERNING VIOLENCE AGAINST WOMEN

***Domestic violence*.** Every year, the number of persons on the police register for committing acts of domestic violence grows (tables 1 and 2).

Table 1

Year	2010	2011	6 months of 2012
In total, individuals who are being registered by the police for violence in family	104,892	109,468	111,094
Number of women	7,212	7,920	8,283
Number of men	97,260	101,105	102,149

Table 2[3]

Year	Registered in the current period	Issued official warnings on inadmissibility of committing violence in the family	Issued restraining orders	Found persons that committed administrative offences, stipulated by article 173-2 of the Code of Ukraine on Administrative Offences	Number of persons fined
2010	44,088	50,750	2,706	58,209	29,890
2011	87,540	98,597	5,026	104,039	67,202
6 months of 2012	47,219	51,363	2,239	54,719	30,873

According to the data of the Ministry of Social Policy of Ukraine[4], during 9 months of 2012, 84, 989 applications concerning violence in the family have been submitted, of them from women — 71, 714. The number of persons on the police registers for committing violence in the family amounts to 110,057 persons.

1.1. Physical and sexual violence against women

2012 made the problem of sexual and physical violence against women highly visible. The case of Oksana Makar (Mykolayiv) was the epitome of the issue. The young woman was raped by three men, who tried to burn her alive after the act. Immediately after the police was notified, all three suspects were detained but later two of them were released. Such a course of events caused a huge uproar in the society. As a result of wide public engagement,

[3] The tables were composed based on the statistical data from the Ministry of Internal Affairs of Ukraine.

[4] Letter from the Department of Family and Children of the Ministry of Social Policy of Ukraine as of October 18, 2012 No. 3223/0/57/12-зв.

the case was under a lot of scrutiny from the authorities and the pre-trial investigation was commenced on it. Makar died on March 29, 2012[5].

Another case was that of Oleksandra Popova. In the course of a household quarrel, an 18-year girl was severely beaten by a 22-year citizen Kosinov. The girl spent 72 days in a coma. The Leninsky Court of Mykolayiv convicted the man for 12 years in prison[6].

There are a lot of cases concerning rape. In the period of 2009-2011, the law enforcement agencies received more than 7,000 applications and reports about cases of rape, but only 2,071 criminal cases were opened.[7] During 9 months of 2012, the law enforcement agencies registered 1,584 such applications and reports, concerning which 440 criminal cases were opened for crimes committed that fall under article 152 of the Criminal Code of Ukraine "Rape", and in 993 cases opening a criminal case was denied for applicants. The total of 363 cases was referred to the court.[8] According to the data of the State Court Administration of Ukraine[9], as of the beginning of 2012, there were 263 cases under article 152 of the Criminal Code of Ukraine in courts, during 6 months of 2012 another 214 cases concerning rape made it to courts. The courts hearings were held for 242 cases, of them in 207 convictions were made, and 250 persons were convicted.

But an even larger number of rapes stays in shadow because women are afraid to ask for protection, are unable to counteract violence by themselves, and they do not believe that the existent legal system is going to protect them. And the available official statistics prove how complicated it is to bring these cases to logical conclusion and to punish abusers through courts. Also, the society shows different attitudes to such manifestations of violence. A lot of people believe it is the victims who are guilty for what happened to them[10]. Spousal rape is not an additional qualifying attribute and is not considered as a separate crime.

Another issue here is that specialists, in particular, social workers, as well as victims themselves, fail to identify the problem.

The indicators concerning murders of women, rape of women and girls are available but their numbers do not reflect the actual situation in the society, as these data are collected not on all indicators[11].

Sexual violence against girls is not considered as a separate problem, just as a general problem of violence against children.

Sexual harassment of women, in particular, at the working place, is another widespread phenomenon in Ukraine. During 10 months of 2012, the National "hotline" on prevention of violence and protection of children's rights received 7 calls (6 from women, 1 from a man) with complaints concerning sexual harassment at the working place; mostly this is

[5] http://www.rbc.ua/ukr/top/show/delo-oksany-makar-dvoe-iz-treh-obvinyaemyh-chastichno-priznali-12062012214000

[6] http://ua.for-ua.com/ukraine/2012/09/17/174239.html

[7] Letter from the Department of Informational and Analytical Support of the Ministry of Internal Affairs of Ukraine as of October 22, 2012 No.16,1К-197.

[8] Ibid.

[9] Letter as of October 23, 2012 No. інф/К-238/12.

[10] Чому суспільство вважає, що жертви зґвалтування самі в цьому винні? / http://www.pravda.com.ua/columns/2012/03/31/6961852

[11] The statistical data of the Ministry of Internal Affairs and the State Court Administration of Ukraine often do not accord with each other.

'vertical' harassment, that is, the superiors harassing their subordinates[12]. But there is no official statistics. This is connected both with lack of effective legislation in this sphere (in particular, impossibility to prove the fact of sexual harassment), concealment of facts, and with prevalence of consolidated gender stereotypes, due to which the victims fail to identify the problem and consider sexual harassment to be a "normal" phenomenon[13].

Bulling and other kinds of violence. The notion of "bulling" is not covered in the national legislation, so, correspondingly, there is no information about the number of persons, in particular women, who encounter it.

There is no data on ***violence among migrant women and female refugees*** available. There is no information about the number of women in Ukraine, who underwent genital mutilation procedures.

Gender violence committed by or with the connivance of the state. This type of violence till now has been and still is outside the attention of both the state and the public, that is why the road to development and implementation of practical steps in this sphere will be a long one.

The Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to participant countries concerning protection of women against violence, adopted on April 30, 2002, emphasizes the necessity to criminalize violence being committed by or with the connivance of the state.

77. to criminalize all forms of physical, sexual and psychological violence being committed or allowed by the state or officials, no matter where it is happening, but especially in prisons and detention centers, psychiatric institutions, etc.;

78. to criminalize all forms of physical, sexual and psychological violence being committed or allowed in the situations where the responsibility for what happened can be vested in the state or in the third person, for instance, in boarding schools (orphanages), centers for senior citizens and other institutions.

1.2. New international documents and activity at the international level

Ukraine's signing in 2011 of the Convention of the Council of Europe No. 210 on preventing and combating violence against women and domestic violence will influence positively implementation of the governmental policy on combating violence. The Convention contains provisions concerning eradication of both the usual forms of violence against women, like physical and sexual violence, stalking, sexual harassment, domestic violence, and the issues that are not very widespread but still do exist in Ukraine, in particular, women's circumcision, forced marriages, 'honor' crimes. In connection with this, the legislation will require the corresponding analysis as to its compliance with the provisions of this Convention and significant updating.

On June 7, 2012, in the Verkhovna Rada a round table discussion "Prevention of violence: harmonization of the Ukrainian legislation with the standards of the Council of Europe"[14]

[12] According to the data of the International Women's Advocacy Center "La Strada — Ukraine".

[13] The data of the Informational-Consultative Women's Center.

[14] http://la-strada.org.ua/ucp_mod_news_list_show_292.html; http://portal.rada.gov.ua/rada/control/uk/publish/article/news_left?art_id=311264&cat_id=37486

was held to clarify the plans concerning its ratification, which facilitated invigoration of work in the direction of preparation of a correct translation of the Convention[15], what is a precondition for its ratification. In particular, there was no consensus as to translation of the phrase "domestic violence". After the official translation was received, the Ministry of Social Policy of Ukraine got an assignment from the Cabinet of Ministers to conduct the analysis of compliance of the Ukrainian legislation to provisions of the Convention and within one month to prepare the amendments to the legislation (the specified time span shows the lack of understanding of the topic and shallow approach to ratification of the Convention and to harmonization of the legislation with its provisions). The existent assessments of the Ministry of Justice of Ukraine concerning compliance of the Ukrainian legislation to the provisions of the Convention No. 210 are incomplete and require additional work. In September 2012, the "La Strada — Ukraine" Center created the public expert working group to work on the issues of compliance of the legislation of Ukraine to the provisions of the new Convention No. 210 and prepare recommendations on improvement of the legislation; this group sent proposals to the Ministry of Social Policy concerning support of this work and inclusion of representatives of different Ministries and departments.

The issues of violence against women have been reflected in the state report and reports from non-governmental organizations within the framework of the second round of the UN Human Rights Council Universal Periodic Review[16]. In the process of the hearing of the state report, which was held on October 24, 2012, the countries — participants of the session gave Ukraine a series of recommendations concerning improvement of protection of human rights in Ukraine, among which as improvement of investigation of all acts of violence against women and of domestic violence[17].

The Action Plan of the Council of Europe for Ukraine for the years 2011–2014[18] includes the project directed at prevention of and counteraction to violence against women and preparation for ratification of the Convention No. 210. As of the end of 2012, the plan of the project has been developed, but the implementation is yet to commence.

1.3. Legislation of Ukraine

The previous reports addressed the issues of legislative securing of counteraction to violence in the family[19]. In 2012, some amendments have been made at the level of regulations but no significant improvements to the legislation.

On June 20, 2012, the Ministry of Social Policy and the Ministry of Internal Affairs of Ukraine adopted the joint Order No. 371/549 "On making amendments to the order of the Minister of Ukraine in the issues of family, youth and sports and the Ministry of Internal Affairs of Ukraine as of September 7, 2009, No. 3131/386"[20]. By the new Order, the Instruc-

[15] The official translation of the Convention 210 appeared in July of 2012.

[16] The link to the report is on La Strada web site.

[17] http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights24October2012am.aspx

[18] http://coe.kiev.ua/uk/DPAInf(2011)17E%20Action%20Plan%20Ukraine.pdf

[19] http://helsinki.org.ua/index.php?r=a1b7

[20] http://zakon1.rada.gov.ua/laws/show/z1158-12

tion concerning the procedure of interaction between departments (sections) in the issues of family, youth and sports, the children's services, the centers of social services for family, children and youth and corresponding divisions of agencies of internal affairs in charge of prevention of violence in the family was brought in technical compliance with the provisions of the administrative reform. In particular, the words "the Ministry of Ukraine in the Issues of Family, Youth and Sports" are replaced with the words "the Ministry of Social Policy of Ukraine", and "departments (sections) in the issues of family, youth and sports" are replaced with "structural divisions in charge of implementation of the governmental policy concerning prevention of violence in the family". The Order was registered in the Ministry of Justice of Ukraine on July 10, 2012, under No. 1158/21470.

On July 4, 2012, the Cabinet of Ministers of Ukraine issued the Command No. 430-p "On Making Amendments to the Action plan within the National Campaign "Stop Violence!" for the period till 2015"[21], and on July 11, 2012, adopted the Decree No. 617 "On Making amendments to the Procedure of consideration of applications and reports on acts of violence in the family or actual threat of such acts"[22]. But these amendments are also merely technical and make no changes in the content of either the Procedure of consideration of applications and reports on acts of violence in the family, or the Action plan within the campaign "Stop Violence!", they are only about the new names of the authorized agencies.

On September 17, 2012, the Ministry of Social Policy issued Decree No.581 "On approval of recommendations on conducting of the annual event "16 Days against Violence"[23]. The title of the Decree somehow lost the word 'gender' from the name of the world-wide event (which exactly about eradication of gender violence). Such approach of the Ministry of Social Policy can be connected with the existent anti-gender movements in the country and the Ministry's concerns about possible criticism from them. This also shows that the Ministry of Social Policy, which is a specially authorized central body of executive power in the issues of securing of equal rights and opportunities for women and men, is reluctant to express the official position concerning the gender policy of the state. The Action "16 Days against Violence"'s major task in 2012 is to attract the public's attention to the burning topics for the Ukrainian society — including eradication of violence in the family, counteraction to trafficking in human beings and cruel treatment of children, gender-based violence and securing of equal rights for women and men; to encourage partnership between governmental agencies, state institutions and non-governmental organizations in addressing the issues of violence in the family and protection of women's rights in Ukraine; to conduct informational campaigns to raise awareness of the population of Ukraine in the issues of prevention of violence in the family, cruel treatment of children and to promote in the consciousness in all strata of the population concerning zero tolerance towards violence; to conduct local or regional events, public hearings in the issues of prevention of violence in the family, gender-based violence and trafficking in human beings; to support representatives of social institutions concerning popularization of the social effect and results from

[21] http://zakon2.rada.gov.ua/laws/show/430-2012-%D1%80

[22] http://zakon1.rada.gov.ua/laws/show/617-2012-%D0%BF/paran2#n2

[23] http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=144533&cat_id=138973

asking for held in the situation of domestic violence; to promote establishment of the violence-free ideology in the Ukrainian society.

According to the information of the Ministry of Social Policy of Ukraine, in 2012 the work on improvement of the Law of Ukraine "On prevention of violence in the family" was resumed, the updated version of the Law was developed and submitted for consideration of the Cabinet of Ministers[24]. As of November 1, 2012, no draft laws on this topic have been submitted by the Cabinet of Ministers for consideration of the Verkhovna Rada of Ukraine. No public discussions in this regard have been organized.

On May 31, 2012, the Cabinet of Ministers approved the Concept of the State Targeted Social Program for Support of Family till 2016[25], which, among other things, emphasizes gravity of the problem of domestic violence, which leads to divorces and is one of the preconditions of proliferation of crime in the society[26]. The Concept specified that violence in the family is especially dangerous because it harms children, who are immediate victims of violence and witnesses to its manifestations, and when they grow up they apply this negative experience in their own families. Violence in the family is a public problem, which has to be addressed at the level of the state. According to the approved Concept, the Program for Support of Family till 2016 is designed along three directions — formation of the positive image of family; promotion among young people of the responsible attitude to marriage and parenthood so that they have wanted children; securing of social support for families in hardships and families on the brink of hardships, to help them preserve family, avoid children being taken away from their families, combat violence in the family, and to provide necessary social services by conducing effective preventative work. The Program is supposed to be implemented by governmental agencies and bodies of local self-government, as well as non-governmental organizations. It is planned that the Program will be funded at the cost of the state budget and local budgets, as well as from other sources. As of November 1, 2012, the draft Program was not brought up for public discussion.

It is still an issue with the Ukrainian legislation that it lacks a definition of the gender-based violence. No regulations concerning protection of women from other forms of violence have been developed.

1.4. Weak institutional mechanism for prevention of violence in the family as precondition for violation of human rights

The problems of degradation of the institutional mechanism have been reflected in the previous reports[27] and in sections of the Report on women's rights and counteraction trafficking in human beings. In 2012, more staff changes took place at the level of the Ministry of Social Policy of Ukraine. The Department of family policy was reformed into the Department of gender policy and children's recuperation, and the Department of adoption and protec-

[24] http://portal.rada.gov.ua/rada/control/uk/publish/article/news_left?art_id=311264&cat_id=37486

[25] http://zakon2.rada.gov.ua/laws/show/325-2012-%D1%80

[26] But the program was supposed to be approved as early as at the beginning of 2011, as the previous program ended in 2010. So, for two years, no such program was effective in the country.

[27] http://helsinki.org.ua/index.php?id=1332334988 ; http://helsinki.org.ua/index.php?id=1298365038

tion of children's rights — into the Department of family and children, which incorporated the Department of family policy (the issue of counteraction to violence in the family). But the issues of violence against women still receive little to no attention.

Because of the weak institutional mechanism and close to nonexistent interaction between the agencies and institutions, charged with the tasks of implementation of the governmental policy on prevention of violence in the family and eradication of gender-based discrimination, the activities in this sphere lack in effectiveness, especially in regard of protection of victims of violence. Another issue is that of discrepancies and lack of cohesion in statistical data of agencies and institutions, charged with taking measures to prevent violence in the family, in particular, the Ministry of Social Policy and the Ministry of Internal Affairs of Ukraine (each agency keeps their own reporting systems, which are not harmonized with each other). There is no system in place for regular training of officers of law enforcement agencies, judges, and social workers concerning the effective provisions of the legislation in the sphere of combating of domestic violence and gender-based violence. In 2012, the number of cases has grown when it is denied that violence in the family is violation of human rights[28]. Because of weakness of the institutional mechanism for prevention of violence in the family, the state has failed to adequately respond to these movements.

The correctional programs for abusers, introduced by the law in 2009, are not operating. Very few persons are referred to these programs, and even fewer complete these programs. For instance, according to the statistics of the Ministry of Internal Affairs, in 9 months of 2012, ___ abusers have been referred to the correctional programs (in 2011, 3,742 persons were referred there)[29]. According to the data of the Ministry of Social Policy, there are 2,414 such persons, of them 569 completed these programs (in 2011, 4,240 persons were referred, 396 completed such programs).

1.5. What assistance is provided to victims of violence

The Law "On prevention of violence in the family" does not provide for obligatory establishment of crisis centers. They have to be established by local state administrations on submission of the specially authorized body of executive power, but there is no procedure for identification of the needs of the region. As a matter of fact, there is virtually no funding for activities in the sphere of prevention of gender-based violence, in particular, for provision of assistance to people who suffered from such violence. This leads to non-observance of the legislative provisions. As a result, more and more complaints on inactivity and actions of different governmental agencies are received at the National "hotline" on prevention of violence and protection of children's rights. During 9 months of 2012, it received calls from 8,001 persons, of them 68.8% women and 31.2% men. In the total amount of calls, 12.3% are about violence in the family, of them: 51.9% — about physical violence, 35.0% — psychological violence, 7.6% — economic violence and 5.5% — sexual violence. Extreme cases of domestic violence are reported in 0.8% from the total number of calls.

[28] http://www.pokrov.lviv.ua/?p=2601 ; http://www.pokrov.lviv.ua/?p=1291

[29] The Report on the state of counteraction to violence in the family during 6 months of 2012 and 12 months of 2011 by the Ministry of Internal Affairs of Ukraine. The data on the number of people, who completed the correctional programs, was unavailable.

According to the data the Ministry of Internal Affairs, during the period of 2010 — 6 months of 2012, the law enforcement agencies issued referrals for rehabilitation in specialized institutions to 390 victims of domestic violence (table 3).

Table 3[30]

Year	2010	2011	6 months of 2012
Number of victims of domestic violence, who were referred to specialized institutions for rehabilitation	114	170	106

According to the data The Ministry of Social Policy[31], the number of persons covered by the social services in regard of violence in the family in 9 months of 2012 amounts to 9,593 persons (not disaggregated by sex or age). The monitoring of specialized institutions for victims of violence in the family[32] showed that in many cases these people are not identified as victims of violence and are classified as "those in hardships".

1.6. Violation of the rights of people who suffer from violence in family

Violence in family relates to many human rights, in particular, a right for life, a right to be free from inhumane treatment, a right for respect to personal life, personal sanctity and so on. Victims of violence face double violation of their rights, including because of lack of response and low effectiveness of activity of governmental agencies, which have authority to protect citizens from violence in the family. In 9 months of 2012, the National "hotline" received about 200 complaints on ineffectiveness or inactivity of governmental agencies. Most complaints are about systematic breeches by officers of law enforcement agencies (71.2%): they do not respond to complaints and do not come when called, while emphasizing that violence in the family is a problem of this separate family and does not require addressing by law enforcement agencies; protection of the abuser's rights (the husband is a co-owner of the house or a father of the child, so his detention, arrest, or issuing a restraining order against him may violate his rights), "hanging" calls usually are left without response, and in case of physical violence other forms of violence, especially psychological, are left unnoticed. Other complaints include 7.1% — on the Ministry of Health Care, 10.6% — on the Ministry of Social Policy, and 5.1% — on the Ministry of Justice. Here are several examples of complaints received by the National "hotline":

[30] According to the statistics of the Ministry of Internal Affairs of Ukraine.

[31] Letter from the Department of family and children of the Ministry of Social Policy of Ukraine as of October 18, 2012, No. 3223/0/57/12-зв.

[32] It was conducted in 2012 by the "La Strada — Ukraine" Center together with the Ministry of Social Policy with the support from AVON. The monitoring's goal was to obtain information about specialized agencies and institutions, which operate in different regions of the country, as they are the bodies to which the consultants of the National "hotline" on prevention of violence and protection of children's rights refer people, who call from different regions or requie a shelter in Kyiv. The monitoring gave a clear picture of the actual situation with shelters, opportunities to provide and receive assistance. The monitoring visits have been made to 50 agencies and institutions.

"The woman has been suffering from her husband's physical violence for 13 years already. They have a child of 11 years. The woman is trying to escape the husband but he finds her and lives with her by force. ***The police do not want to do anything, as he has the right to live together with his child.*** *What can be done?"*

"A woman has been living with her husband for 3 years. They have a little daughter. The husband started to beat both the wife and the daughter. What can be done? ***She already called the police, but the police do not act. They tell her that these are just light traumas so she just should get a divorce****".*

"I have been living with my husband in a civil union for a year and a half. At first we had relationships like in a fairy-tale, but later everything changed — he started to drink often and humiliate me, even beat me several times. ***I called the police, but they told me that these are my family issues and I should take care of this myself****. Tell me what to do?"*

It is still problematic to protect the rights of persons, who suffer from domestic violence, but formally they do not comply with the description of a family member as stipulated in the Law of Ukraine "On prevention of violence in the family". These people can be former spouses or relatives who do not live together. Officers of law enforcement agencies address such cases formally and fail to apply other norms of the legislation to protect the rights of victims of such violence.

"The actions of citizen M. comply with the definition of the administrative offence as specified in article 173-2 of the Code of Ukraine on Administrative Offences of Ukraine (committing violence in the family, failure to observe the restraining order or failure to complete the correctional program) only formally. So, in compliance with the effective legislation of Ukraine, M. cannot be brought to responsibility as he does not run the household together with M., you are not connected by shared home and you have no mutual rights of moral and material nature.

At the same time, we inform you that if you have any claims of civil nature against M., in compliance with articles 297 and 299 of the Civil Code of Ukraine, you have the right to appeal to the local court as to addressing the issue of protection of your dignity, honor and sanctity of your reputation."

From the answer of the Section of Public Security, the Chief Department of the Ministry of Internal Affairs of Ukraine in Lugansk region to the complaint on the instance of violence.

The rights of victims of violence in the family are violated in courts of Ukraine, as well. Victims of domestic violence that suffered light traumas or battering or torture have to apply to court by themselves according to the procedure of private prosecution. In most cases such persons compose their applications by themselves but these applications have to comply with the requirements for the prosecution conclusion, which is usually composed by the investigators and prosecutors with education in law. It is not surprising that victims of violence make mistakes in these applications. Judges review such cases rather formally, do not explain to the victims of domestic violence the mistakes in their applications and refuse to accept them and open a case[33]. When criminal cases on domestic violence are considered

[33] Судовий розгляд справ, пов'язаних з вчиненням насильства в сім'ї в Україні: проблеми відповідності міжнародним стандартам та шляхи вдосконалення. Науково-практичний посібник для суддів / Євсюкова М. В., Христова Г. О., Шаповалова О. А. та ін. / За заг. Ред.. Шаповалової О. А., Павлиш С. О. — К., 2011. — С. 110–111.

in court, the sentences are rather short or are replaced with probation[34]. In 2012 there was a huge scandal about the sentence of 15 months in prison Rovenkivsky city court of Lugansk region gave to an ex-police captain, who cruelly murdered his wife — a police senior lieutenant herself, and threw their little son to a side of the road[35]. Such inadequate conviction of the court of the first instance shocked Ukraine[36]. The court of appeal of Lugansk region cancelled the decision of the first instance and gave him a life sentence[37].

A positive shift in the society is the spreading of awareness that violence is not just a problem of families in crisis, it happens in well-off families as well, as it does in the families of officers of law enforcement agencies; this topic gets more mass media coverage (for instance, the scandal with the nephew of Hanna Herman[38]).

1.7. Activities of non-governmental organizations concerning counteraction to gender-based violence

NGOs act as key subjects of activities to combat violence in the family in Ukraine. In 2012, their activities were concentrated on providing assistance to victims of such violence, in particular, ***monitoring of special agencies and institutions that provide assistance to victims of violence in the family***[39], ***operation of the National "hotline" on prevention of violence and protection of children's rights***, whose consultants provide informational, psychological and legal counseling. People call there also to get consultations concerning resolution of psychological problems, problems of interpersonal relations, counteraction to violence and cruel treatment of children, establishment of custody over children, divorce and issues related to it, gender discrimination, etc. The National "hotline" is an effective mechanism for provision of social assistance and further referral of persons who suffered from violence. In 2012, the "La Strada — Ukraine" Center has been working on 15 cases concerning violence in the family and gender-based violence (psychological and secondary legal assistance, facilitation in obtaining a temporary shelter, etc.). In 9 cases, secondary legal assistance has been provided. In 2012, the "La Strada — Ukraine" Center helped to prepare and submit a complaint to the European Court of Human Rights, the first of the kind from Ukraine, on behalf of Natalia M. and her little son (violations of their rights and of the norms of the Convention — Articles 3, 8, 13 and 14).

As the system of assistance to victims of violence in the family is far from perfect, in 2012 the non-governmental organizations initiated several projects on development of the optimal model of providing assistance and protection to victims of domestic violence. The International Charitable Foundation "Ukrainian Foundation for Public Health" continued implementation of the project ***"Freedom from violence: expansion of rights and opportunities***

[34] Ibid, p. 105.

[35] http://ntn.ua/uk/news/courts/2012/06/21/8172

[36] http://tsn.ua/ukrayina/luganchan-oburiv-virok-milicioneru-yakiy-porizav-na-shmatki-druzhinu.html

[37] http://www.lot.lg.ua/index.php?mod=openday&m=08&y=2012&d=30&archid=9004

[38] Oleg Bokalo violently assaulted his pregnant wife, two girls who tried to protect her and a police officer — a woman-investigator. A criminal case was opened against Bokalo under part 4, article 296 of the Criminal Code of Ukraine — hooliganism. [http://zik.ua/ua/news/2012/07/23/360083]

[39] http://www.la-strada.org.ua/ucp_mod_news_list_show_301.html

of girls and women in hardships"[40]. In 2012, a draft program for girls (14–18 y. o.) and women, who survived violence or belong to the risk group, has been developed — it will be piloted in Kyiv, with further elaboration based on proposals from the experts — participants of the program[41].

The Ukrainian Women's Fund together with the "La Strada — Ukraine" Center launched the project ***"Providing assistance to victims of violence in family and prevention of proliferation of domestic violence"***, which aims to support non-governmental organizations (in 10 regions), which provide services to victims of violence in the family, and create the unified methodology for providing assistance to victims of violence[42]. The International Renaissance Foundation, within the framework of the program "Supremacy of Law", supported several projects, directed at building of NGOs' capacity to provide services to victims of violence in the family and legal empowerment of women, who suffered from domestic violence[43].

Non-governmental organizations again joined the annual World-wide campaign "16 Days against Gender Violence", which in 2012 is taking place under the motto " From Peace in the Home to Peace in the World"[44].

In 2012, the non-governmental and international organizations in Ukraine were participating in implementation of the all-Ukrainian social project "Let's Do It Together!", which was tied in to the European Football Championship-2012. Its framework included the campaign "Red Card", to attract attention to the social problems, including those of domestic violence, sexual exploitation, disdain to women's rights, etc. These negative phenomena received a red card from well-known Ukrainian sportspeople and showbiz stars: footballer Andriy Shevchenko, strongman Victor Virastiuk and singers Ani Lorak and Gaitana.

A serious problem in operation of non-governmental organizations is unstable funding and lack of financial support from governmental agencies and local self-government.

2. RECOMMENDATIONS[45]

1. To conduct analysis of the national legislation of Ukraine in the sphere of counteraction to gender violence as to its compliance to international standards, in particular, to the provisions of the new European Council convention on combating violence against women and domestic violence. Based on the obtained results, to develop and to make comprehensive amendments to the national legislation, especially in the parts with the definition of gender violence, prevention, counteraction and providing services to victims. To develop and to adopt a separate program for prevention of gender violence in Ukraine.

2. To adopt governmental standards concerning provision of services and organization of preventative work in the sphere of counteraction to violence in the family on the national

[40] http://www.healthright.org.ua/project9_1

[41] http://www.healthright.org.ua/node/221

[42] http://www.uwf.kiev.ua/konkurs.htm#2012_violence

[43] http://www.irf.ua/index.php?option=com_content&view=article&id=9006&Itemid=116

[44] http://gender.at.ua/news/2012-12-10-1047

[45] Рекомендації минулих доповідей залишаються актуальними.

level, whose outline is being already developed together with NGOs and international organizations.

3. To guarantee the governmental support to operation of "hotlines", establishment of shelters and NGO-based assistance centers for women concerning assistance in cases of violation of women's rights, gender discrimination, gender-based violence, in particular, violence in the family, and trafficking in human beings.

4. To develop provisions concerning the state order from non-governmental organizations of services directed at prevention of violence in the family and provision of assistance to victims.

5. To turn the attention of law enforcement agencies to necessity to address the situations of violence in the family, witnessed by children, timely respond and take special measures as to prevention of violence in the family.

6. To introduce into advanced training curricula for officers of law enforcement agencies, judges, social workers, and medical specialists the topics concerning combating gender violence in the family.

7. To secure the opportunity to introduce at the local level correctional programs for persons, who committed acts of violence in the family through training of personnel for such work and engagement of a wider circle of organizations to such work alongside with the crisis centers.

8. To establish under the Ministry of Social Policy the intersectoral working group as to harmonization of the Ukrainian legislation with the provisions of the Convention of the Council of Europe on eradication of violence against women and domestic violence, which should include representatives from the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Education and Science, Youth and Sports of Ukraine, the Ministry of Health Care, the General Prosecutor's Office, the State Migration Service of Ukraine, people's deputies of Ukraine, scientists, independent experts, representatives of non-governmental and international organizations.

9. To develop and introduce the training programs as to formation of the violence-free behavioral model among children and youth through institutions of secondary and higher education.

10. To conduct regular informational and educational campaigns among the wide public, directed at eradication of gender-based violence in Ukraine

11. To harmonize the keeping of statistics by agencies and institutions, vested with the task of implementation of the governmental policy on prevention of violence in the family.

XXV. TRAFFICKING IN HUMAN BEINGS AS A VIOLATION OF HUMAN RIGHTS[1]

1. THE OVERALL STATE OF THE SITUATION. STATISTICS. NEW TRENDS

Trafficking in human beings keeps a burning problem for Ukraine. During January 2000 — June 2012, 8,676 persons that suffered from trafficking in human beings, received assistance from the Agency of the International Organization for Migration in Ukraine (during January-June 2012 — 510 persons). During this period, the "La Strada — Ukraine" Center provided assistance to more than 1,500 persons (during January-June 2012 — 32 persons) that suffered from trafficking in human beings and violence. During January-June 2012, officers of the bodies of internal affairs discovered 109 crimes related to trafficking in human beings. At that, the very problem of trafficking in human beings undergoes changes, what created complications for finding victims and rendering them assistance, for conducting prevention work, as well as for effective investigation of such cases. According to the data of the International Organization for Migration in Ukraine, there is a certain decrease, in particular, in the number of victims that come back from the countries of the European Union (5.5% in January-June 2012, 18% in 2011, compared to 28% in 2010). Russia and Poland are becoming the most popular destination countries for Ukrainians. The cases of internal trafficking in human beings constitute tp to 8%; victims of these crimes are mostly children and young girls, who are being exploited in beggary and in commercial sex. In most cases Ukraine is becoming more of a destination country for trafficking in human beings — for the purpose of labor exploitation in agriculture and at construction. In 2010, 8 victims were found, in 2011 — 23, in January-June 2012 — 54. Of the foreign citizens that suffered from trafficking in human beings, 43% are citizens of Moldova. The number of cases of labor exploitation is growing. For instance, 83% persons that received assistance in January-June 2012 (more than 2/3 in 2011) suffered from trafficking in human beings with the purpose of labor exploitation, and 10% (25% in 2011) suffered from sexual exploitation[2].

According to the information of the Ministry of Social Policy, as of October 2012 the status of the person that suffered from trafficking in human beings was granted to 7 persons.

Information about detention of criminals engaged in the crime of trafficking in human beings and occurrences opened under article 149 of the Criminal Code of Ukraine is rarely covered by mass media. Moreover, information about such cases brought to court, results of

[1] Was prepared by K. B. Levchenko, L. G. Kovalchuk, K. C. Cherepakha, O. K. Kalashnik, M. V. Yevsiukova, V. Mudryk. — The International Women's Advocacy Center "La Strada — Ukraine".

[2] The data used was from the statistical and analytical materials of the Agency of the International Organization for Migration in Ukraine for the years 2010–2011 and the first half of 2012.

court proceedings, sentences passed in these cases and those guilty be put to justice, etc. is virtually non-existent in the informational space. Lack of positive information does not promote the victims' desire to cooperate with the law-enforcement agencies and creates distrust in the just resolution of such cases.

Beyond that, erosion of the institutions and structures that have to organize work on counteraction to trafficking in human beings, in particular, of the Ministry of Internal Affairs and of the Ministry of Social Policy, in 20100–2012 can lead to growing of negative trends in the next 2–3 years.

2. NEW REGULATORY ACTS

During the first half of 2012, the Cabinet of Ministers adopted a whole series of statutory instruments as implementation of the Law of Ukraine "On Counteraction to Trafficking in Human Beings":

1. On the National Coordinator in the sphere of counteraction to trafficking in human beings (Decree of the Cabinet of Ministers of Ukraine as of January 18, 2012 No. 29[3]).

2. On Approval of the State Targeted Social Program on counteraction to trafficking in human beings for the period till 2015 (Decree of the Cabinet of Ministers of Ukraine as of March 21, 2012, No. 350[4]).

3. On Approval of the Provision on formation and operation of the Unified State Register of crimes of trafficking in human beings (Decree of the Cabinet of Ministers of Ukraine as of April 18, 2012, No. 303[5]).

4. On Approval of the Procedure of establishment of the status of the person that suffered from trafficking in human beings (Decree of the Cabinet of Ministers of Ukraine as of May 23, 2012, No. 417[6]).

5. On Approval of the Procedure of payment of financial aid to persons that suffered from trafficking in human beings (Decree of the Cabinet of Ministers of Ukraine as of July 25, 2012, No. 660[7]).

6. Procedure of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings (Decree of the Cabinet of Ministers of Ukraine as of August 22, 2012, No. 783[8]).

The adopted documents specify the provisions of the Law and determine the ways for its implementation. The major positive moments include: establishment of the status of the persons that suffered from trafficking in human beings makes it possible to receive assistance, including financial, from the state; different state structures' responsibility for activi-

[3] http://zakon2.rada.gov.ua/laws/show/29-2012-%D0%BF

[4] http://zakon2.rada.gov.ua/laws/show/350-2012-%D0%BF

[5] http://zakon2.rada.gov.ua/laws/show/303-2012-%D0%BF

[6] http://zakon1.rada.gov.ua/laws/show/417-2012-%D0%BF

[7] http://zakon2.rada.gov.ua/laws/show/660-2012-%D0%BF

[8] http://zakon1.rada.gov.ua/laws/show/783-2012-%D0%BF

ties in the sphere of provision of assistance to the victims is determined; separate provisions cover provision to assistance to children and foreign citizens.

In a compliance with the adopted documents, the Ministry of Social Policy is authorized as the national coordinator in the sphere of counteraction to trafficking in human beings. But the corresponding changes were not reflected in the Provision on activities of the Ministry, which was approved by the Order of the President as of April 6, 2011, No. 389/2011, although since it was approved amendments to the Provision were made three times already[9].

The introduced National mechanism of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings covers only one direction of counteraction — protection of the victims and provision of assistance to them while such directions as prevention, combating, or coordination are left disregarded.

The documents mentioned above were adopted with significant delay, what shows that observance of the one-month time period determined in the Law is at least unrealistic.

Moreover, setting a one-month time period contradicts the Decree of the Cabinet of Ministers "On securing of public's participation in formation and implementation of the governmental policy", in compliance with which the drafts of the regulatory acts have to be obligatorily brought to public discussion. The time period for such discussion must be at least one month. Obviously, it also takes time to prepare these documents, as well as to update them based on the results of the public discussion. As the practice shows, it takes about 4 to 6 months, which has to be necessarily reflected in the law.

In the Law of Ukraine "On country-wide program "National action plan on implementation of the UN Convention on the Rights of the Child till 2016" in the section on elimination of trafficking in children, sexual exploitation, and other forms of cruel treatment of children, the annual action plan mentions only conducting of prevention work against cruel treatment of children in families in complicated life circumstances. In 2011 and 2012, no money is allocated in the State budget for implementation of the objectives of the corresponding section of the Plan.

An obvious example of restriction of women's rights under the guise of combating trafficking in human beings is the draft of the Law on making amendments to certain legislative acts of Ukraine (concerning limitations in application of assisted reproductive technologies) No. 8282[10], which is directed at counteraction to trafficking in human beings by means of limiting women's rights despite the obligations Ukraine has undertaken in compliance with article 16 of the UN Convention on the Elimination of All Forms of Discrimination against Women[11]. On October 16, 2012, it was adopted by the Verkhovna Rada. Application of the practices of combating the crime of trafficking in human beings by means of limiting citizens' rights is not a new, but still inadmissible situation for Ukraine[12]. The Special Commissioner

[9] http://zakon2.rada.gov.ua/laws/show/389/2011

[10] http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=39973

[11] On October 16, the Verkhovna Rada is planning to limit the women's right to use the assisted reproductive technologies: http://www.facebook.com/lastradaukraine

[12] In the international experience of combating trafficking in human beings, the strategies can be divided into the empowering and the repressive ones. The repressive strategies are the ones within which the measures implemented limit the human rights. For instance, strickter conditions of the visa regime, additional screenings for citizens at airports before leaving for abroad and so on in cases of external trafficking in human beings. The states adopt both the empowering and the repressive strategies. But all recommendations of international documents and institutions suggest it is necessary to give up the repressive strategies and introduce the empowering strategies. There is also the no-

in the issues of counteraction to trafficking in human beings, especially women and children, mentions this in almost every presentation and in reports as does each report of the GRETA monitoring group, which conducts monitoring of observance of the Council of Europe Convention on Action against Trafficking in Human Beings, and all directives of the European Union. This principle of work is also fundamental in the Law of Ukraine "On Counteraction to Trafficking in Human Beings". The provisions of the draft law No. 8282 are repressive with a high degree of possible collateral, as it limits women's reproductive rights after they reach a certain age.

3. MAJOR PROBLEMS OF VIOLATION OF RIGHTS OF PERSONS THAT SUFFER FROM TRAFFICKING IN HUMAN BEINGS

Article 17 of the Law of Ukraine "On Counteraction to Trafficking in Human Beings" determines that to secure observance of rights stipulated by the Law, persons that suffered from trafficking in human beings can be referred to one of the centers of social services for family, children and youth, the social service centers or the centers of social and psychological rehabilitation of children and shelters for children, in case when a victim is a minor. But, in compliance with the provisions of the specified institutions developed based on "Standard Provision on Center of social and psychological aid" (Decree of the Cabinet of Ministers of Ukraine as of May 12, 2004, No. 608), "Standard Provision on Center of social and psychological rehabilitation of children" (Decree of the Cabinet of Ministers of Ukraine as of January 28, 2004, No. 87) and "Standard Provision on Territorial Social Service Center (provision of social services) (Decree of the Cabinet of Ministers of Ukraine as of December 29, 2009, No. 1417), such category of persons like those who suffered from trafficking in human beings is not included in the list of persons that are entitled to receive services in these institutions. Besides, the monitoring results of institutions that render assistance those who suffered from domestic violence and trafficking in human beings conducted in June-October 2012 by the "La Strada — Ukraine" Center[13] prove there are actual problems with *access to services for those who suffered from trafficking in human beings*, and namely the limitation as to these persons' age (up to 35 years of age), availability of registration at admitting to the centers of social and psychological assistance, etc. Besides, there are *issues with identification of those who suffered* from trafficking in human beings among the total number of clients (persons in difficult life circumstances) of the mentioned institutions. Experience of implementation of the referral mechanism for those suffered in the pilot oblasts[14] showed that as a result of

tion of collateral damage, which is used to describe the consequences from introduction of strategies that harm human rights, in particular, the risk groups and victims. Sometimes, under the guise of the "good intentions" of combating the trafficking in human beings the measures are introduced that contradict the concept of protection of human rights, for instance, the procedure of the so called "volunteer deportation". The UN, the Council of Europe, the Organization for Security and Cooperation in Europe and the European Union insist on necessity to stick to the advocacy approach in activities on combating of trafficking in human beings.

[13] More detailed information can be found in the section on violence against women and gender violence.

[14] Working materials of the pilot component of the project "Development of the national mechanism of referral in Ukraine".

trainings conducted and education of specialists that work in the mentioned institutions, the number of those identified as suffered from trafficking in human beings, is growing.

Another unresolved issue is concerning *provision of assistance to victims of trafficking from other countries,* satisfaction of their needs in protection and assistance during their stay in Ukraine.

There are *no provisions on establishment of the rehabilitation and deliberation period* for persons, concerning whom there are reasons to believe that they have suffered from trafficking in human beings, in the Law and in the corresponding statutory instruments, and this also leads to violation of the rights of the victims, especially citizen of other countries. It is considered expedient to include the mentioned provisions, as they are articulated in the key international documents, to the national regulations, taking into consideration the available experience of other countries where the rehabilitation and deliberation period has already become the established norm.

Despite the fact that the Law of Ukraine "On Counteraction to Trafficking in Human Beings" contains provisions concerning *necessity to assess risks* associated with the victim's return to the country of origin (article 16 "Rights of the person that suffered from trafficking in human beings" and article 24 "Returning or retaining of the child that suffered from trafficking i children"), the regulatory documents that were adopted as a part of implementation of the law do not contain a clear procedure for conducting of assessment of such risks. Also, this procedure is not included in the provisions that guide the activities of the subjects that perform measures in the sphere of counteraction to trafficking in human beings.

There are complexities and violations during the process of *compensation to the victims of the property, moral and physical harm* they have suffered as a result of the committed crime of trafficking in human beings, as well. They include the investigators' formal approach to explaining to the victims about their right to claim compensation; necessity to prove the fact of moral sufferings; remoteness of the expert centers and low number of attested court experts-psychologists; absence of the practice of international cooperation on protection of the property rights of citizens of Ukraine; the imperfect legislative mechanism for recovery of the compensation; inefficiency of article 1177 of the Civil Code of Ukraine concerning the state's obligations to compensate losses to the victims, etc.[15].

The *standards* for rendering of services in the sphere of counteraction to trafficking in human beings, which have been developed and submitted to the Ministry of Social Policy by the group of experts-representatives of the state, non-governmental, and international organizations as early as in 2010, still *have not been adopted*.

4. INTERNATIONAL CONTEXT

In the course of the Ukrainian state preparing for the second round of the Universal Periodical Review on human rights in the United Nations Human Rights Council, the non-governmental organizations of Ukraine prepared the topical reports. The questions of the state of counteraction to trafficking in human beings were included into the report of the Coalition

[15] "Реалізація права потерпілих від торгівлі людьми на компенсацію та відшкодування в Україні: аналіз ситуації", 2012.

of non-governmental organizations in the issues of promotion of the gender equality, counteraction to trafficking in human beings and domestic violence[16]. The international association "La Strada" together with the "La Strada — Ukraine" Center submitted a separate report in the issues of counteraction to trafficking in human beings[17]; the international organization ECPAT, to which the All-Ukrainian network against commercial sexual exploitation of children is a member, submitted the report on the issues of counteraction to commercial sexual exploitation of children, which included the topic of counteraction to trafficking in children[18].

In compliance with the Recommendations of the UN Committee on the Elimination of Discrimination against Women based on the results of consideration of the sixth and seventh consolidated report on implementation by the state of the UN Convention on the Elimination of Discrimination against Women, Ukraine had to present to the Committee its interim report on implementation of articles 31 (counteraction to trafficking in human beings) and 33 (representation of women). The "La Strada — Ukraine" Center, together with other NGOs, prepared the alternative report on the status of Ukraine's implementation of article 31 and submitted it to the Committee[19]. The Final observations pointed out the policy's negative aspects, and namely: (1) The core causes of trafficking in human beings are not being addressed, (2) Funding for shelters is still insufficient, (3) In general, the resources allocated for combating trafficking in human beings are inadequate, (4) The scope of international cooperation to bring the perpetuators to justice is insignificant. These observations are still valid, even after two years and a half. As of October 2012, both projects are yet to launch.

The four-year Council of Europe Action Plan for Ukraine (2011–2014) contains two projects related to the topic of counteraction to trafficking in human beings: Project 1.3.3 "Formation of a mechanism of prompt reaction to problems of persons in difficult living conditions, including prevention of domestic violence, combating human trafficking and gender discrimination through the creation of an All-Ukrainian smart line of prompt reaction" and Project 2.2.6 "Project to combat trafficking in human beings in Ukraine"[20]. As of October 2012, the projects have not been launched. But the delegation of the Council of Europe visited Ukraine to develop the project applications.

In June 2012, the European committee adopted the Strategy of elimination of trafficking in human beings for the period of 2012–2016. The International association "La Strada" greeted adoption of the Strategy and at the same time prepared the address to the European Commission, in which emphasized the necessity to put priority on the rights of victims over the issues of migration control, to expand opportunities for victims to receive compensation of the harm they suffered, to support activities of NGOs of different countries in this sphere[21].

In the spring of 2012, the UN Special Commissioner in the issues of counteraction to trafficking in human beings presented her annual report for the period from March 1, 2011, to

[16] http://www.la-strada.org.ua/ucp_mod_library_view_190.html

[17] http://www.la-strada.org.ua/ucp_mod_library_view_191.html

[18] http://www.la-strada.org.ua/ucp_mod_library_view_192.html

[19] http://www.la-strada.org.ua/ucp_mod_library_view_136.html

[20] http://coe.kiev.ua/uk/DPAInf(2011)17E%20Action%20Plan%20Ukraine.pdf

[21] http://ec.europa.eu/anti-trafficking/download.action?nodeId=a301b2cf-40ec-4026-a1a0-b04675979fce&fileName=The+EU+Strategy+towards+the+Eradication+of+Trafficking+in+Human+Beings+2012-2016.pdf&fileType=pdf

February 29, 2012. It contains the recommendations to governments of the countries concerning improvement of activities on counteraction to trafficking in human beings[22].

In June 2012, the annual report on the activities concerning counteraction to trafficking in human beings by different states was presented. Ukraine was categorized as belonging to the second group, which means that the government takes measures to counteract trafficking in human beings, yet the efforts are insufficient. A separate paragraph is dedicated to recommendations for Ukraine concerning improvement of its activities in this sphere[23].

In 2012, Ukraine nominated 2 candidates for membership in the GRETA monitoring group, established to monitor implementation of the commitments taken by the states that participated in the Council of Europe Convention on Action against Trafficking in Human Beings. They were women who represented non-governmental organizations — Kateryna Levchenko, the President of the "La Strada — Ukraine" Center, and Elvira Mruchkovska, the head of the Association of citizens "Suchasnyk".

In the end of 2012, the GRETA monitoring group will start the process of assessment of implementation by Ukraine of the Council of Europe Convention on Action against Trafficking in Human Beings, which will continue in 2013.

5. WEAK INSTITUTIONAL MECHANISM FOR PREVENTION OF TRAFFICKING IN HUMAN BEINGS

The course of the governmental policy and the commitments that Ukraine undertook in the sphere of counteraction to trafficking in human beings by signing a number of international and national documents, require strengthening of the activities in this sphere, as well as capacity building of the human resources of the authorized structures. Instead, we can observe weakening of the governmental mechanism for counteraction to this phenomenon. The new functions vested in the Ministry of Social Policy, in particular, concerning establishment of the status of a person that suffered from trafficking in human beings, the authority of the National Coordinator for the governmental policy in this sphere, and others, call for significant organizational and human resources support on both the central and regional levels. At the same time, according to the international standards, the structural subdivision that is responsible for counteraction to trafficking in human beings must be of the highest possible level to be able to effectively organize coordination and interaction between all involved structures and institutions.

In addition, the Department for combating cyber crime and trafficking in human beings in the Ministry of Internal Affairs was reduced to the Administration for combating trafficking in human beings and crimes against morals. In practice, all these changes cause difficulties in combating the crimes and distraction of officials to other activities, just as it was happening in 2005.

Coordination of work in the sphere of combating trafficking in human beings, implementation of the gender policy, and counteraction to domestic violence were all performed

[22] http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18_En.pdf

[23] http://www.state.gov/documents/organization/192598.pdf

through the Intersectoral coordination council in the issues of family, gender equality, demographic development and counteraction to trafficking in human beings, established in 2007. It was criticized for poor performance and, among other things, for lumping together too many issues and for lack of concrete response actions. The state programs on these mentioned issues expired in 2011-2012, so, in 2011–2012 this Council did not operate.

6. INITIATIVES OF NON-GOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

Just like in the previous years, non-governmental and international organizations were active in implementation of the activities concerning prevention of trafficking in human beings and providing assistance to the victims of this crime.

The Center "La Strada — Ukraine" and the members of the National Trainers' Network actively engaged in the prevention and educational activities in the sphere of counteraction to trafficking in human beings. Two hundred trainers from the Network were conducting events on concrete topics in 14 oblasts of Ukraine. During 6 months of 2012, they conducted 1,465 events for 44,111 participants (of them, 13,121 specialists and 30,990 persons from risk groups).

In connection with Euro-2012, the soccer championship, which was held in Ukraine, several initiatives have been implemented focused on raising public awareness concerning the danger of trafficking in human beings and creating opportunities to get assistance in case of need: the national campaign "Red Card" (posters, billboards and city lights with well-known Ukrainian singers and athletes that providing the telephone number for the National hotline for the issues of counteraction to trafficking in human beings (Kyiv, Donetsk, Lviv, Kharkiv).

During the period when the matches of the final part of the European soccer championship were held in Ukraine, the "La Strada — Ukraine" Center extended the consulting hours for the National hotline for the issues of counteraction to trafficking in human beings and for the National hotline for prevention of violence in the family and protection of children's rights, secured availability of English-speaking consultants, and extended the range of topics for consultations.

The OSCE projects coordinator in Ukraine was implementing the project "Extension of coverage of the National mechanism of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings in Ukraine". In cooperation with the Ministry of Social Policy, a number of activities were conducted with representatives of the oblast branches relating to implementation of the National mechanism of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings — in Chernivtsi, Khmelnytsky, Vinnytsia, Lugansk, Donetsk and Kharkiv oblasts. The work on identification and providing assistane to those who suffered from trafficking in human beings continued in the pilot regions of the National interaction mechanism. By the end of June 2012, in Donetsk and in Chernivtsi oblasts, representatives of the governmental entities, in cooperation with non-governmental organizations, conducted work with 528 individuals, 446 of which are still in the process of identification. All victims received medical, psychological, legal and other assistance, based on the results of needs assessment. The training for trainers was conducted in Lugansk, Chernivtsi, Kharkiv, Vinnytsia, Khmelnytsky and

Donetsk oblasts, with the vision of creating regional teams of specialists from the entities working within the Interaction Mechanism.

In 2012, the mission of the International Organization for Migration continued its activities and implementation of its projects aimed at extension of coverage of the National mechanism of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings in the Autonomous Republic of Crimea, Dnipropetrovsk, Ternopil, Kherson and Lviv oblasts. Presently, based on the results of work in all five regions, the needs have been identified for the following steps:

- a need in methodological recommendations provided by the Ministry of Social Policy of Ukraine with detailed explanations concerning
  - the procedure to establish the status of a person that suffered from trafficking in human beings,
  - the national interaction mechanism,
  - provision of material assistance for the victims
  - identifying the specific local structures that are responsible for granting official certificates about the victim status;
- a need in the further in-depth training of the specialists in the entities within the interaction mechanism;
- a need to train new specialists in social work, who are presently being mass-recruited in each region to work as district inspectors;
- allocation of funds for the priority needs of the identified victims, for their transportation to the institutions that provide assistance, for work of additional specialists as needed, etc.

7. RECOMMENDATIONS

Recommendations contained in the report for 2011 are still valid for 2012. The status of their implementation is described in the table below.

	Recommendations of 2011	**Status of implementation for the recommendations in 2012**
1	Grounding of the policy of counteraction to trafficking in human beings on the international documents, including the latest recommendations of the UN Committee on the Elimination of All Forms of Discrimination against Women, with introduction of the indicators to measure progress and allocation of the budgetary funding.	Partially. Planned in the State targeted social program for counteraction to trafficking in human beings for the period till 2015.
2	Engaging of NGOs that work in the sphere of counteraction to trafficking in human beings and independent experts for development of the regulatory documents, which enable operation of the national referral mechanism.	Partially implemented.
3	Continuation of follow-on work and lobbying of the State program for counteraction to trafficking in human beings for 2012–2016, adjustment of the developed project and indicators.	The Program has been adopted. The implementation period for the program starts in 2013.

4	Development of drafts laws necessary for harmonization of the Ukrainian legislation with the Council of Europe Convention on Action against Trafficking in Human Beings.	Implemented.
5	Preparation of the scientific and practical commentary for the Law "On Counteraction to Trafficking in Human Beings".	Implemented.
6	Adoption of the standards concerning implementation of services in the sphere of counteraction to trafficking in human beings on the national level.	Not implemented. The Standards have been developed, but not approved yet.
7	Preparation of information from NGOs for the UN Committee on the Elimination of Discrimination against Women concerning implementation of clause 33 of the Committee's Final Provisions concerning the results of Ukraine's presentation of its sixths and seventh periodical reports on implementation of the UN Convention on the Elimination of Discrimination against Women.	Implemented.
8	Preparation of information from NGOs for the UN Human Rights Council concerning activities on counteraction to trafficking in human beings for the second Universal periodic review on human rights.	Implemented.
9	Monitoring of implementation in 2012 of the provisions of the Major Directions of Economic and Social Development of Ukraine in the sphere of counteraction to trafficking in human beings	Not implemented.
10	Monitoring of implementation of the Law of Ukraine "On Counteraction to Trafficking in Human Beings".	In progress.

Recommendations based on the results of the analysis of the situation in 2012

To the President of Ukraine

1. To make amendments to the Provisions on the Ministry of Social Policy of Ukraine as a coordinator in the sphere of counteraction to trafficking in human beings, in compliance with the adopted documents on counteraction to trafficking in human beings.

To the Cabinet of Ministers of Ukraine, central bodies of executive power:

2. To make amendments in the Decree of the Cabinet of Ministers of Ukraine and to add activities in such directions as prevention of and counteraction to trafficking in human beings to the National mechanism of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings.

3. To make corresponding amendments of the documents of the Cabinet of Ministers of Ukraine, in particular, the standard provisions on subjects of provision of assistance to persons that suffered from trafficking in human beings, and namely, centers of social and psychological aid, centers of social and psychological rehabilitation of children and social service centers so that to secure access to these services for persons that suffered from trafficking in human beings.

4. To include into the regulatory documents provisions that would introduce and regulate establishment of the rehabilitation and deliberation period for persons, concerning whom there are reasons to believe that they have suffered from trafficking in human beings.

5. To develop and approve the procedure for assessment of risks associated with the victims' return to the country of origin.

6. In 2013, to prepare and submit to the Group of Experts on Action against Trafficking in Human Beings (GRETA) information concerning the state of counteraction to trafficking in human beings in Ukraine.

To the oblast state administrations

7. To develop regional programs on counteraction to trafficking in human beings, submit for approval to sessions of the regional councils and allocate necessary funding for their implementation.

To international and donor organizations

8. To keep allocating resources for the programs for combating trafficking in human beings in Ukraine and providing assistance to the victims.

XXVI. OBSERVANCE OF THE FOREIGNERS' RIGHTS[1]

1. GENERAL OVERVIEW

The human rights' activists expected that changes for the better would occur over the year 2012, as for the first time in history favorable conditions for the development and implementation of conceptually innovative, more humane model of "foreign nationals — authorities" relationship have been created in Ukraine.

This process was called to life by three factors:

— EURO-2012 championship held in Ukraine;

— final delegating of authority with respect to immigration process control to the State Migration Service of Ukraine, which, despite all the errors committed in the course of its setting up and ensuring its legal support, is essentially more civilized power body than the Ministry of Interior, and, therefore, a body less prone to applying penal measures against the immigrants;

— introduction in late 2011 of cardinal changes into the normative-legislative acts of Ukraine regulating the immigration relations, and, first of all, passing the laws of Ukraine "On Legal Status of Foreigners and Stateless Persons" and "On Refugees and Persons in Need of Additional or Temporary Protection".

Due to the aforementioned factors the pressure exerted on the immigrants by the law-enforcement bodies in 2012 had to — and, generally, did — decrease substantially, as demonstrated by the results of the analysis of the State Migration Service operation, operation of the Ministry of Interior and the State Border Control Service of Ukraine.

> *According to the data collected by the aforementioned agencies, for the 9 months of 2012 as compared to the same period of the past year, the number of illegal migrants deported from Ukraine on the initiative of the law-enforcement bodies decreased more than 4 times (in 2011– 10.756 persons, in 2012 — about 2.500 persons), on the border control initiative — almost twice (in 2011 — 1000 persons, in 2012 — 585 persons).*
>
> *The number of the immigrants brought to administrative liability by the militia for the violation of the regulations of their stay in Ukraine under Article 203 of the Code of Administrative Infringements of Ukraine also decreased significantly, almost 1.5 times– from 40.729 persons in 2011 to 28.868 persons in 2012.*
>
> *The number of foreigners banned from crossing the state border decreased from 11.817 to 10.054 persons.*

Characteristically, this mitigation in law-enforcers' attitude towards immigrants did not contribute to the aggravation of migration, criminal, or sanitary/epidemiological situation

[1] Prepared by V. Batchayev, AUMOHR.

in Ukraine, i. e. to the increase in threats which are permanently used by the power bodies to intimidate the citizens and justify the need to use drastic and cardinal measures against immigrants.

> *While the number of the foreigners who visited Ukraine over the 9 months of 2012 has increased by over one million persons (6%) as compared to the same period in the last year (2012 — 19.913.121, 2011 — 18.828.993 foreigners)*
>
> — *the number of crimes perpetrated by foreigners decreased by 4%, from 2.989 cases in 2011 to 2.874 cases in 2012;*
>
> — *the average number of inmates in the detention centers for the illegal immigrants under the State Migration Service of Ukraine, did not exceed 26%, those held in the centers of border control agencies constituted 30-45% of the total capacity depending on the region;*
>
> — *only 99 illegal immigrants, i. e. twice less than over the respective period in the last year, have been admitted to Ukraine on EU special representatives' request in compliance with the treaty on readmission signed with the European community– 179 persons.*

Obviously these statistical data by no means should be regarded as the consequence of unsatisfactory operation of the State Migration Service of Ukraine. First of all, they reflect more serious attitude of its leaders with regards to the immigrants' rights, and, possibly, the rejection of artificially increased figures, related to counteracting illegal migration, typical of militia operation, when the "efficiency" of work was achieved by using flaws and gaps in the immigration law to present foreigners as criminals, deprive them of the right to effective appeal against the militia actions, faking the documents etc. Is the current liberalization a sign of the intent to build a conceptually innovative and efficient model of "foreign nationals — state" relationship, or just a temporary step aimed at beautifying Ukrainian image for EURO-2012? The priorities of activities chosen by the State Migration Service of Ukraine and the results of its operation in 2013 will provide the answer to this question.

2. EURO-2012

The steadfast attention of the international community to the foreign fans' reception in Ukraine at the time of the European football championship, inevitably had to — and did — affect the general attitude of the law-enforcement bodies to the foreigners– for the time of the championship militia had to mitigate their traditional severe methods of dealing with immigrants and temporarily suspend active "pressing" of foreign nationals.

One can argue that due to these modifications in the law-enforcement bodies' operation the numerous pessimistic forecasts and media warnings of the type "Ukrainian militia poses a threat for the foreign nationals" never came true.

The monitoring revealed no massive violations of the rights of foreigners at the time of EURO-2012, which brings us to the conclusion that the Ministry of Interior succeeded in combining the large-scale operations aimed at safeguarding public order with the due observance of the rights of foreigners. National law-enforcers proved that they can be not only tolerant, polite and even courteous to the foreign guests, but also that they know how to avoid potential conflicts, abstain from bribe-taking and corruption or made-up foreigners'

accusations of non-committed crimes in order to hold them administratively liable for the said transgressions.

The Ukrainian militia demonstrated that with the good will of the Ministry of Interior high officials, the law-enforcement body can within the short term dramatically change their operatives' attitude to the foreigners and transform the militia from "immigrants' heads' hunters" to "the state representatives ready to help".

Numerous notifications published in press-media conveying the message that the "Ukrainian militia was strictly forbidden to stop foreigners for the time of EURO-2012, while the Ukrainian citizens did not enjoy the same privilege" testify to the fact that law-enforcement bodies were concerned only about favorably impressing the foreign guests and creating the positive image.

"Ukrainian militiamen were strictly forbidden to stop foreigners for the time of EURO-2012"[2]

"Amnesty International informs that the Ukrainian militia received an order to let foreigners be for the time of EURO-2012; specifically, Max Tucker's article posted on the site of Amnesty International addresses the issue[3].

Tucker reminds about the AI warning of the threat posed by the Ukrainian militia, issued prior to the tournament." We detailed numerous cases where police electrocuted, suffocated or savagely beat their victims in order to extort money, extract a confession, or simply because of the detainee's ethnicity or sexual orientation," — he wrote.

"In the event, Euro 2012 fans were spared such treatment. So how did the Ukrainian authorities manage to bring this brutal, ill-equipped and underfunded force into line to effectively police a major sporting event? The answer, of course, is they didn't. According to militia sources, the officers received an order to avoid physical contacts with the European fans, i. e. "Don't touch them" — a human rights protection organization informs.

"The foreign fans were largely ignored by militia at the time of the tournament. Ukrainians reporting public order offences (urinating, vandalism, verbal abuse) were asked "who is doing it, Ukrainians or foreigners?" If the answer was "foreigners" the police refused to turn up. Fans brawling outside the Olympic stadium in Kyiv were surrounded by police, but not dispersed — the officers simply waited for the fight to end." — writes Tucker.

The author of the article notes that if a severe instruction from above sufficed to keep militia on a leash far from foreign fans, much more drastic measures would be needed to free Ukrainians from abuse of those who should protect them.

Let's remind that, according to the official data Ukraine was visited by 1.8 million of foreign guests. With so many tourists, especially taken into account the passionate nature of football fans and their love of drinking, one could have feared an outburst in the violations of public law and order. The Ukrainian law-enforcement bodies, however, have compiled only 15 administrative protocols against the foreign fans for the whole duration of the championship".

[2] http://www.rbc.ua/ukr/top/show/amnesty-international-ukrainskoy-militsii-zapretili-trogat-inostrannyh-04072012205700

[3] http://livewire.amnesty.org/2012/07/04/euro-2012-fans-escape-serious-police-abuse-but-what-human-rights-legacy-for-ukraine/

Obviously, no orders or instructions are capable of changing the militiamen mentality right away; therefore, the cases of traditional "non-European" treatment of the foreigners by Ukrainian militia were registered in various regions of Ukraine — unexplained stopping of people in public places, unjustified ID checks, extortion of money under the threat of detention. These cases were numerous.[4]

3. THE STATE MIGRATION SERVICE OF UKRAINE

The State Migration Service of Ukraine in 2012 failed to meet the expectations, first of all, due to the complicated and unjustifiably lengthy process of its setting up in various regions of the country. The territorial branches of the service in charge of citizenship, immigration and registration of the physical persons under the Ministry of Interior of Ukraine, which preceded the State Migration Service of Ukraine in dealing with foreign nationals, were finally liquidated in October, and for the whole year of 2012 three agencies operated in Ukraine simultaneously, i. e. the State Migration Service, migration control militia and the service for citizenship, immigration and registration of the physical persons. All of them performed similar functions and tasks, which led to contradictions, conflicts, confusion and even certain destabilization of their activity.

The State Migration Service of Ukraine failed to enter an active phase of operation, so that many foreign nationals, physical and legal entities inviting them to Ukraine stated that the red-tape in the state migration bodies' formation led to numerous problems and misunderstandings, which made positive developments and conceptual innovations null and void. The foreign nationals mostly suffered from bureaucratic red-tape while applying for various types of documents to the State Migration Service of Ukraine, i. e. obtaining citizenship, immigration permits and temporary residential permits etc.

Apparently, no new power institution can ensure efficient and full-fledge operation at once, especially in the area of the immigration processes management due to the need of adjusting it with current legislative and regulatory basis, well-grounded choice of highly qualified staff, coping with material and technical support issues etc. However, the unprecedentedly lengthy procedure of delegating respective functions and competences to the State Migration Service of Ukraine was caused, first of all, by the fact that the appearance of a "new player" in the immigration area met with the covert but substantial opposition on behalf of the managers of the structures vested with authority to deal with foreigners and get the funding needed for the purpose.

4. OBTAINING THE REFUGEE STATUS

Statistical data offered by the State Migration Service of Ukraine do not prove that the coming of the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" in force facilitated the procedure for the immigrants seeking protection in Ukraine.

[4] See. http://www.pravda.com.ua/news/2012/05/4/6963932/, http://investigator.org.ua/news/51098/, http://www.unian.net/news/498001-v-kieve-militsiya-sodrala-s-nemtsev-20-evro-za-nochnoy-promenad.html, http://gazeta.ua/articles/life/_majzhe-10-gostej-evro-2012-davali-habar-najbilshe-vimagala-miliciya-opituvannya/448401, http://ua.korrespondent.net/journal/1364173-korrespondent-vidkrittya-ukrayini-zavdyaki-futbolu-evropejci-viyavili-bilya-sebe-dobrozichlivu-krayinu, http://5.ua/newsline/184/0/93581/ and other examples

While the number of the foreigners who filed petitions with SMS has increased almost twice (for 9 months of 2012 — 1.558 persons, while for the similar period of 2011 — 890 persons), the number of foreigners who actually received protection in Ukraine significantly diminished — for 9 months of 2012 only 48 immigrants got the refugee status, status, 50 — the status of persons in need of additional protection, while for the same period last year the refugee status was granted to 133 people.

On the other hand, this situation may be caused by SMS un-readiness to provide full-scope and timely consideration of the petitions of immigrants seeking protection in Ukraine.

Analyzing the specific characteristics of the relations between the law-enforcement bodies and immigrants in 2012 we cannot omit a typical case, which become widely known not only in Ukraine, but also in the whole world — the kidnapping of the citizen of Russian Federation opposition activist L. Razvozhayev, who was seeking the refugee status in Ukraine, by the Russian security forces on 19.10.2012.

"KODNAPPING OF RUSSIAN OPPOSITION ACTIVIST: UKRAINE IS DEPENDENT"[5]

"Razvozhayev approached the Office of the UNHCR. From there he was directed to a HIAS partner company

"On Friday Razvozhayev was registered by this organization in Kyiv so that he could be given the needed help" — informed O. Makovska, PR consultant of UNHCR for Belarus, Moldova and Ukraine.

"He left the office at lunch time and never came back, leaving his belongings in the office. The lawyers were concerned and informed the Office of the UNHCR, then tried to get in touch [with their client], but there was no connection; so they reported missing person to militia" — told Makovska.

The organization staff heard screams from the streets, but on stepping out, they only noticed a black car without license plate. Razvozhayev was nowhere to be found.

On Sunday it became known that he was back to Moscow. At the closed hearing in Basmanny court he was convicted to two months' incarceration as preventive measure.

When exiting the court building and on the way to the pretrial detention center the opposition activist managed to cry out to the reporters "Tell them I've been tortured and threatened with death. They tortured me for two days. I was kidnapped in Ukraine".

The Ministry of Interior's response to the event was unexpected — in fact the militia authorities recognized the right of foreign special services to kidnap people from the territory of Ukraine.

"Pre-investigation verification has been conducted by the MIU between October 19 and 29; I can foresee, however, that no criminal proceedings on the person's kidnapping will be instigated. Probably the petition on opening criminal case will be rejected…had it been the criminals kidnapping a person, than the criminal proceedings would have been instigated beyond any doubt. But as the kidnapping was committed by the law-enforcers from another country, I don't think they hadn't shred their plans in advance" — said MIU speaker V. Polsihchuk. — It was not a case of criminals or terrorists kidnapping a person, but an operation of the law-enforcers from another country in the Ukrainian territory".[6]

[5] http://www.pravda.com.ua/articles/2012/10/23/6975186/

[6] http://www.unn.com.ua/ua/exclusive/989056-mvs-ukrayini-ne-porushuvatime-kriminalnoyi-spravi-schodo-v

Apparently such position of the law-enforcers caused uproar and protest among public at large.

> *"The official reaction is identical to the response to a Palestinian engineer's kidnapped from Ukraine — then the crime was never investigated. Earlier there was another case concerning the disappearance of asylum seeker from Uzbekistan Khamidullo Turgunov. Only in the second half of 2012 the notifications of illegal extradition from Ukrainian territory of asylum seekers from Russia and Uzbekistan were made public.*
>
> *Looks like Ukraine is not only incapable of guaranteeing foreign nationals' safety during their stay in the country, but also is an active accomplice to their rights' violations.*
>
> *We are upset with lack of adequate reaction of Ukrainian power structures to the incident. The scarce commentary offered by the several public agencies representatives (from the MFA, MI and DBC) and the silence of all the rest demonstrate either the bewilderment or infinite cynicism. In any case the state bureaucrats obviously do not consider the gross violation of human rights and freedoms a matter deserving their serious attention" — that's how the actions of power and the law-enforcers were characterized by "Center Social Action" NGO.*[7]

It can be added that open and even demonstrative inertia of the *law*-enforcers in investigating the facts of special services' kidnapping of foreign nationals from Ukrainian territory shows that the power bodies in their attitude towards foreigners are guided not by the norms of national and international law, but, first of all, by political interests and relations which exist with the country of the immigrant's citizenship or origin.

5. NORMATIVE AND LEGAL ACTS

In 2012 the legal regulation of the order of the immigrants' entry and stay in the territory of Ukraine involved no collisions or drastic changes in the immigration policy, characteristic of the last year. The novelties referred predominantly to adjusting the current normative and legal acts to the new version of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", which came in force in December 2011.

The Ministry of Interior of Ukraine updated the normative and legal departmental documents to a certain extent, by devising a number of orders and registering them with the Ministry of Justice, specifically

- the MIU Order No. 363 of 25.04.2012 "On approving the procedure for the consideration of petitions from the foreigners and stateless persons concerning the extending the term of their stay in Ukrainian territory";
- joint MIU, ADBC and SS of Ukraine Order No. 353/271/150 of 23.04.2012 "On approving the instruction on forced return and forced removal of foreigners and stateless persons from Ukraine"
- joint MIU, ADBC and MOH of Ukraine Order No. 336/268/254 of 17.04.2012

"On providing common and medical services to the foreigners and stateless persons held in the centers of temporary stay for the foreigners and stateless persons staying in Ukraine illegally and in the centers of temporary detention and special facilities";

[7] http://noborders.org.ua/sfery-dijalnosti/bizhenci-ta-shukachi-prytulku/zayava/

— the MIU Order No. 321 of 13.04.2012 "On approving Instruction for registration of the place of residence and whereabouts of physical persons in Ukraine by the State Migration Service of Ukraine";
— the MIU Order No. 142 of 20.02.2012 "On approving the By-laws for the department of migration control militia under the MIU".

The MIU Order No. 84 of 02.02.2012, registered with Ministry of Justice "On approving the standards for administrative services granted by the the State Migration Service of Ukraine departments" deserves special attention. It stipulated a number of standards for administrative services to be offered to the foreigners and stateless persons, including

— Standard for administrative service of issuing the immigration permit to the foreigners and stateless persons;
— Standard for administrative service of issuing a permit for permanent or temporary residence;
— Standard for administrative service of issuing an invitation to the physical persons without visa documents needed by foreigners and stateless persons to enter Ukraine;
— Standard for administrative service of issuing an invitation to the legal entities without visa documents needed by foreigners and stateless persons to enter Ukraine;
— Standard for administrative service of extending the term of stay in the territory of Ukraine for the foreigners and stateless persons .

The devising of these Standards with specific description of SMS staff duties and regulation of the issuance of various documents to the immigrants ensures certain transparency of the documents' issuance procedure, facilitates the control over the officials' actions and the appeal procedure if these actions are illegal.

However, the MIU active involvement in bringing the normative and legal documents into compliance with the legislative novelties lasted only till mid-2012. Further on this activity was suspended, and probably that was the main cause of legal collisions and obvious non-compliance of certain MIU Orders with more humane essence of the Ukrainian laws.

The "Instruction on procedure for MI departments of Ukraine for banning foreigners and stateless persons from entering Ukraine", approved by MIU order No. 410 of 07.07.2011 and registered by the Ministry of Justice of Ukraine as entry No. 934/19672 on 29.07.2011 is an example of such order. This document is based on the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" (version of 05.04.2011), which is no longer in force, but, according to the Supreme Rada data, has never been invalidated by the MIU, and, therefore, technically remains in force, (http://zakon1.rada.gov.ua/laws/show/z0934-11), despite the openly repressive nature of its provisions, i. e. possibility to ban a foreigner from entering Ukraine for 10 years, lack of mechanism which would allow foreigners to appeal the decision etc.

The aforementioned orders were prepared by the MIU in compliance with the respective laws and resolutions by the CMU, that's why they contain the same faults, mainly, the right of immigration officials to resolve the matters at their own discretion, based on subjective judgment with respect to an immigrant, his/her actions; to make decisions which restrict the foreigners' rights and freedoms. Whether deliberately, or by simple omission, the law-makers contributed to the spreading of corruption among SMS officials, by failing to specify in detail the principles of use of restrictive and coercive measures against the immigrants (rejection

of extending the term of stay or issuing the temporary residence permit, banning entry to Ukraine, forced return or removal of an immigrant etc.) The vague language of the normative and legal acts restricting the immigrants' rights as well as the existence of the norm under which the foreigners' rights can be restricted and coercive methods used against them not on account of the committed felony, but on the basis of assumption of alleged attempt to commit a transgression so far remain the major flaws of the national immigration law.

6. CONCLUSIONS AND RECOMMENDATIONS

In 2012 certain positive tendencies in the law-enforcement bodies' treatment of the foreigners staying in Ukraine were registered — traditional and infamous (from human rights standpoint) rigid course of action envisaging strict control and target use of force and penal practices with respect to foreigners has been replaced by somewhat milder and more liberal one. However, it is too early to pass any judgment on cardinal changes in the immigration policies of Ukraine, as the positive steps might have been temporary and brought to life mainly by EURO-2012 held in Ukraine, when a need to embellish the image of Ukraine in the eyes of European community became vital.

That is why it is better to abstain from assessing the operation of the State Migration Service of Ukraine as the instrument of implementation of the state immigration policy, as the priorities of the said operation remain unclear to public and its main focus in the future — humanitarian-social or penalizing-coercive is hard to predict. The State Migration Service of Ukraine, despite its significant potential, failed to launch serious operation in 2012, concentrating mainly on resolving its internal organizational issues.

Meanwhile, the role of the State Migration Service of Ukraine as seen by the authorities, and, in many cases, the stand of its leaders will define the observance of the immigrants' rights in Ukraine, as, even the amended immigration law leaves room for the abuse of authority by SMS officials and restriction of immigrants' rights.

It must also be said that as long as the State Migration Service of Ukraine remains under the auspices of the MIU, it inherits all the negative attributes of the former migration agencies of militia — non-transparent modes of receiving profit from the commercial entities of MIU, high corruption rate among employees, formal and bureaucratic treatment of the immigrants' problems, safeguarding of corporate interests instead of the rights and lawful interests of people.

XXVII. RIGHTS OF SERVICEMEN[1]

1. SOME COMMON PROBLEMS

There has been a long-standing need to reform the Ukrainian Constitution, including the regulations of military service and status of servicepersons. In our opinion, the wording of part 2 of Article 65 of the Constitution of Ukraine[2], which reads: "Citizens shall perform military service in accordance with law", which is incorrect. This is due to the fact that the term "perform" reflects the military service as a heavy duty, burden, and punishment and should not apply to military service. In this regard, the Basic Law, unfortunately, starts an idea of military service not as a special kind of public service, but as an anomaly of social life.

In this regard, in terms of legal technique, the sentence "Citizens shall perform military service in accordance with law" in part 2 of Article 65 of the Constitution of Ukraine should be rephrased in the reformed Constitution of Ukraine: "Citizens of Ukraine shall serve in the army or do alternative (non-military) service in accordance with the law" because the term "serve" in this context and according to contemporary understanding is consistent with civilized forms of military service, and to specify that only the citizens of Ukraine are concerned. (In Russia, for example, there is a different situation: its Constitution[3] clearly states that the citizens of the Russian Federation shall perform military service, but current legislation allows doing service foreigners as well. The incorrectness of this situation is discussed in special publications[4]).

Thus, the term "serve" is most clearly consistent with the process of military service in a modern democratic state, and therefore it should be used both in the Constitution of Ukraine, and in the current legislation.

Regarding the need to fix not only military, but also an alternative (non-military) service in part 2 of Article 65 of the Constitution of Ukraine, it is necessary to point out that the latter should be seen not only as a right, but as a duty as well. This is due to the fact that the alternative (non-military) service is performed by a citizen of Ukraine who has appropriate reasons to serve in the army, if needed. It means that the citizen, who must perform military service and whose religious beliefs contradict this, has the right to replace the said obligation with alternative (non-military) service; that is such a citizen can choose the variant of behavior. But after such a choice and realization of the right of doing non-military service, the citizen

[1] Prepared by Yevhen Grygorenko.

[2] Constitution of Ukraine adopted at the Fifth Session of the Verkhovna Rada of Ukraine, June 28, 1996 // Vidomosti Verkhovnoyi Rady Ukrayiny. — 1996. — No. 30. — p. 141.

[3] Constitution of the Russian Federation of December 12, 1993 // Constitutions of foreign countries: manual. / V. O. Seriogin, Yu. M. Kolomiyets, O. V. Martseliak et al. / under the editorship of VA Seriogin. — Kharkiv: "Finn", 2009. — p. 221–242.

[4] Zakomoldyn R.V. On securing military secrets in reforming military legislation / RV Zakomoldyn // Voyenno-yuridicheskyi zhurnal. — 2008. — No. 3. — p. 11.

of Ukraine fulfills her/his duty that is directly related to the existence of military duty and which replaces the latter.

In Part 1 of Article 1 of the Law of Ukraine "On alternative (non-military) service"[5] there is a clear statement that such a service is introduced instead of statutory military service and aims at fulfilling the duty to society. P. M. Rabinovych rightly notes that in the case of alternative (non-military) service the citizen is not exempted from military service, but only "requalification" or replacement takes place[6]. Moreover, in support of this thesis, we should quote part 3 of Article 43 of the Constitution of Ukraine[7], which states that the alternative (non-military) service shall not be considered the forced labor. That is the alternative (non-military) service for its legal nature can be considered a right-duty.

In addition, it is noteworthy that the Disciplinary Statute of the Armed Forces of Ukraine in Article 4 contains a provision stating that military discipline requires that each soldier observes the Constitution and laws of Ukraine, Military oath, strictly complies with military regulations, orders of commanders; be vigilant, secure state and military secrets, follows certain rules of conduct of military personnel specified by military statutes, strengthens military fraternity; shows respect to officers and to each other, keeps a civil tongue and respects the military etiquette; behaves with dignity and honor, does not allow herself/himself impropriety and keeps others away from unworthy acts.

It should be emphasized that the Basic Law of our country in Article 3 affirms that an individual, his life and health, honor and dignity, inviolability and security shall be recognized in Ukraine as the highest social value. Based on the fact that the disciplinary statute is one of the most important acts that directly regulates military discipline, the duties of servicepersons concerning the discipline, types of incentives and disciplinary measures, right of officers as to their application, as well as the procedure for submission and consideration of applications, proposals and complaints, it would be appropriate to amend Article 4 of the Disciplinary Regulations of the Armed Forces of Ukraine with provisions that the military discipline also requires each of the military to respect the rights and freedoms, honor and dignity of other soldiers, and respect the individuality of each.

It is also very important that the military discipline means perfect and strict adherence by all servicepersons to military order and all rules established by military statutes and other laws of Ukraine; therefore fixing the foregoing provision will clarify the issues covered by military discipline and reduce certain percentage of harassment among servicemen.

In conclusion it should be noted that it is worth riveting attention to questions arising from the liquidation of military courts and military procurator's offices. The use of relevant terms (military prosecutor, the military prosecutor's office) in the legislation remains an open question. The Law of Ukraine "On amendments to some legislative acts of Ukraine on the improvement of public prosecution," which was adopted on September 18, 2012,

[5] On the alternative (non-military) service in Ukraine: the Law of Ukraine from December 12, 1991 No. 1975-XII // Vidomosti Verkhovnoyi Rady Ukrayiny. — 1992. — No. 15. — Article 188.

[6] Constitution of Ukraine: Scientific and Practical Commentary / VY Tatsiy, Y.P. Bytiak, Yu.M. Hroshevoy et al. — Kharkiv: Pravo Publishers, Kyiv: Concern "Publishing House "In jure", 2003. — p. 192.

[7] Constitution of Ukraine adopted at the Fifth Session of the Verkhovna Rada of Ukraine, June 28, 1996 // Vidomosti Verkhovnoyi Rady Ukrayiny. — 1996. — No. 30. — Article 141.

becomes effective as of December 1, 2012[8], changed in the Statute of Internal Service of the Armed Forces of Ukraine, Statute of garrison and guard services of the Armed Forces of Ukraine, Disciplinary Statute of the Armed Forces of Ukraine, Law of Ukraine "On the Military law enforcing service of the Armed Forces of Ukraine" the words "military prosecutor" to "appropriate prosecutor." The latter term involves certain confusion about what is meant by "appropriate".

2. SUPPLY OF WEAPONRY AND MILITARY EQUIPMENT TO THE ARMED FORCES OF UKRAINE AS A FACTOR OF NATIONAL SECURITY AND CONDITION FOR OBSERVANCE OF HUMAN AND CIVIL RIGHTS

Under modern conditions of human civilization the complex, complicated and multifaceted security problem is the most urgent problem of international community and every individual country. Therefore the developed countries are paying considerable attention to the above problem by taking appropriate measures and addressing necessary domestic issues in order to create prerequisites ensuring national security. Moreover, in order to ensure global and their own safety, the individual sovereign states coordinate and combine their efforts with other states working in this direction.

The problem of national security of Ukraine also was and is quite relevant and significant. Therefore the Ukrainian state makes steps to ensure it. Currently there is an appropriate legal framework, which is a system of normative legal instruments regulating a wide range of issues directly related to national security of Ukraine, which is maintained under the Constitution of Ukraine as the Basic Law of the state and society. It is within the specified framework of normative legal instruments the Ukrainian state organizes, builds and realizes its own politics intended to ensure national security.

Regardless of this, there are plenty of problems in the area of national security of Ukraine. They include many objective and subjective factors, as well as the fact that this is a complex issue embracing all aspects of public and social life. That is it should be tackled with a combined effort of all agencies of the state mechanism, as well as the active position of each individual. Moreover, by definition this specific problem cannot be solved for good and all, but requires persistent, targeted and hard work aimed at ensuring continuous guaranteeing and tackling security issues, forecasting probable and possible new hazards and their prevention and also overcoming or minimizing impact of existing negative factors.

Today, there are real and potential threats to the national security of Ukraine, which show up in attempts to set up and operate illegal paramilitary groups and attempts to use military units for the benefit of certain forces, foreign military build-up near the borders of Ukraine distorting the balance of power, dangerous lowering the supply of military equipment and weapons of the new generation for the Armed Forces of Ukraine, other military formations, which threaten to decrease their combat capabilities, pile-up of obsolete weaponry useless

[8] On amendments to some legislative acts of Ukraine on the improvement of Prosecution: Law of Ukraine adopted on September 18, 2012 No. 5288-VI // Holos Ukrayiny. — No. 182.

for the Armed Forces of Ukraine, as well as military equipment, arms, poor levels of social protection of servicepersons, citizens placed on the retired list and their families.

The government policy on national security aims at speeding up the reform of the Armed Forces of Ukraine and other military formations to ensure their maximum efficiency and ability to give an adequate response to the real and potential threats to Ukraine, to strengthen the monitoring of the armament and security of defense facilities and the social protection of servicepersons and their families[8]; however, the real state of the national security of Ukraine remains quite vulnerable.

A number of factors points to a vulnerability of the situation. The assessment that the state of arms of the Armed Forces of Ukraine is close to a critical point was published by the Centre for Research of Army, Conversion and Disarmament in the newspaper of unofficial information "Narodnyi ohliadach" back in 2008[9]. At the time 93% of weapons and equipment in the Land Forces already exhausted their resources. In the Air Force, of 172 aircraft in service of Joint Rapid Reaction Force, the unit of the Air Force of Ukraine with best fighting efficiency, 62, i. e. 37%, were unfit for combat. In Navy no one of 10 surface ships, attached to the Joint Rapid Reaction Force, is fully serviceable technically. The Ministry of Defense of Ukraine reported that by the end of 2007 70-80% of the principal nomenclature of rocketry and artillery, about 50% of fighters and surveillance aircraft, 60% of bombers, and 20% of fighter-bombers had become unusable.

At the time they noted that by the end of 2011 the Ukrainian Armed Forces would come close to the limit of their existence as a functional structure. Therefore, the question of immediate rearmament of the Armed Forces of Ukraine was put point-blank."

The expert believes that a possible way out of the situation is urgent, realistic analysis of needs of Ukrainian army in rearmament independently from departmental interests. Then should follow the new prioritization of the development of military-industrial complex and proper coordination of the weapons development programs for the Armed Forces of Ukraine. The next step would be the implementation of priority programs of rearmament of the Armed Forces of Ukraine with the active involvement of advanced technology from abroad through joint ventures and attraction of leading world companies in order to design military equipment for the Armed Forces of Ukraine. In this regard the contacts with European clients were considered the most promising.

Meanwhile, according to the Centre for Research of Army, Conversion and Disarmament, the Ministry of Defense was going to spend $2.4bn on the rearmament of the Ukrainian Army in 2009-2011. In 2009, the cost of rearmament, purchasing new weapons and equipment had to make $600M. In 2010, these costs had to reach about $800 M and about $1bn in 2011. "This situation creates favorable conditions for the development of broad cooperation of domestic military-industrial complex with the NATO countries. Such cooperation can provide a new technology and investment Ukrainian enterprises of the defense-industrial complex. The Europeans have already stepped into the defense-industrial sector of Ukraine. The most

[8] On the Basics of National Security of Ukraine: Law of Ukraine, June 19, 2003 No. 964-IV // Vidomosti Verkhovnoyi Rady Ukrayiny. — 2003. — No. 39. — Article 351.

[9] Balance, prudence and temperance: the condition of arms of the Ukrainian army is critical // http://sd.org.ua/news.php?id=15296

striking example is the project to create a corvette for Ukrainian Navy, where about 40% of components will be supplied by European companies", said the expert[10].

The Head of the Research Center of the Army reported: "In 2006-2010 only the land forces received more than 400 units of military equipment. The list of nomenclature is rather impressive: from comprehensive simulator for the crew of T-64B tank to night vision goggles to ONB-300 and fire-extinguishing tanker ATs-40. But despite the long list, the key idea is the same: over the past two decades, not only the land forces, but all Ukrainian army received no samples of military equipment that would strategically affect the defense capacity of the country. Perhaps that is why the Ukrainian army keeps buying only ready-made machines: by 2015 they plan to buy more than 300 and upgrade more than 240 armored fighting vehicles for the Army. Such voluminous buys of armored fighting vehicles can hardly be considered a norm, despite the fact that, according to military experts, only a fifth of combat aircraft and one fourth of combat helicopters in service in the Armed Forces of Ukraine may take off (!). And only less than one half of surface-to-air missile systems is in good order."[11]

Is it possible in this situation to say that the country has an adequate air defense against potential aggression? Moreover, experts say that by 2016 the Armed Forces of Ukraine will have no suitable aircraft missiles or missile systems for air defense. According to military experts, the resource of maintainability and level of possible upgrading of combat aircraft will be exhausted by 2020. While Ukraine adds to its armory fire-extinguishing tankers (which may be unrelated to defense capacity) and tires, other countries are buying aircraft, missiles and modern air defense complexes[12].

The White Book published in February 2011, states: over the past five years in the Armed Forces of Ukraine a series of planned activities remained unfinished: in particular, the optimization of the management of the Armed Forces and the creation of a single automated control system. Only eight (14.4%) of planned 55 combat aircraft were modernized, 21 surface-to-air missile systems were not upgraded and a new one S-300 was not purchased, the same with two AN-70 aircraft and 14 radars "Pelican". The level of serviceability of aircraft (24%), helicopters (36%), ships and support vessels (7%) is rather low,

The modernization of combat helicopters remains a dream for the time being. And there is no info on assignment of means for these needs. For example, neighboring Poland has decided to modernize 16 MiG-29 of the 32 existing aircraft. So, even for perfunctory modernization Warsaw will lay out $3 million per an aircraft. As for the fighter aircraft of the Armed Forces of our country, the serious improvement of tactical and technical characteristics may require at least $4-5 million per each MiG-29. The 2012 budget inspired a sort of optimism. And in terms of rearmament, the total amount for these needs should exceed UAH2.8bn, or $350 million. However, compared to other states, Ukraine is an outsider. Let us recall neighboring Poland again: over the last decade it increased the cost of rearmament from $700 million up to $1.76bn in 2010. By the way, it's almost the total sum of Ukrainian defense budget for basic, guaranteed fund. For military procurement Sweden plans to spend $1.36bn in 2012. It is noteworthy that the state, which, unlike Ukraine, is not at the intersection of

[10] Balance, prudence and temperance: the condition of arms of the Ukrainian army is critical // http://sd.org.ua/news.php?id=15296

[11] Army for parades? // Http://dt.ua/POLITICS/armiya_dlya_paradiv-92925.html

[12] Army for parades? // Http://dt.ua/POLITICS/armiya_dlya_paradiv-92925.html

geopolitical interests of major global players, spends almost four times more on weaponry. Meanwhile Ukraine, having increased its defense spending, cannot compete even with small Czech Republic, which spends on the purchases of new defense systems $450–500 million a year. And in2012, our country has a only slight chance to get ahead of Belarus, which spends up to $150 million annually[13].

At the same time, it should be noted that in 2011 the Chief Inspector of the Ministry of Defense of Ukraine in his interview for the magazine "Viysko Ukrayiny" noted that 90 percent of the armored vehicles of the Armed Forces of Ukraine are morally and physically obsolescent. He emphasized the fact that in 19 years of independence only 93 new and upgraded models of combat military equipment produced by domestic enterprises of the defense-industrial complex were put in service. This quantitative indicator of total new combat military equipment does not exceed 10 percent; the other 90 percent is obsolescent[14].

It is believed that "in two decades of Ukrainian independence the army greatly lost its former prestige in society and remains an unpopular institution of the state (however among other state institutions the army traditionally enjoys more confidence). Twenty years of budgetary financing of the army according to the leftover principle led to its apparent degradation, outflow of professional servicepersons, who do not believe in the prospects of the defense sector, and low attractiveness of the contract service. The experts estimate not only technical condition, but combat skills, but also morale in the army much lower than required for adequate response to modern challenges and threats"[15].

But despite the above (as if positive) intentions, favorable conditions and forecasts, in May 2012, the Defense Minister of Ukraine during a board meeting of the defense department acknowledged the critical state of armaments and military equipment in the Ukrainian army. "The state of armament and military equipment directly affects the level of combat readiness of the Armed Forces of Ukraine. Therefore the issue of the restoration of technical condition of weapons and military equipment is very serious," he said. According to him, the current state of weapons and military equipment of the Armed Forces of Ukraine is rated as critical and characterized by rapidly shrinking their technical availability. More than half of the samples of armed military vehicles need modernization and renewal[16].

However, quite the opposite opinion about this situation was expressed by the Director of Finance Department of the Ministry of Defense, which said that the 2012 budget appropriations for the restoration and repair of military armed vehicles increased by 2.4 times and total UAH708 million. Moreover, he said, through the effective use of budgetary funds they managed to allocate additional UAH111.2 million, which in 2012 will permit to carry out a significant amount of work to restore the weapons and military equipment. In particular, they plan to restore and repair 53 aircraft, 30 helicopters, 14 surface-to-air missile systems,

[13] Army for parades? // Http://dt.ua/POLITICS/armiya_dlya_paradiv-92925.html

[14] Awful truth about Ukrainian Army: 90% vooruzhenyy nepryhodno // http://www.dnepr.on-nash.dp.ua/mnenie/unasbolsenetarmii

[15] Army for parades? // Http://dt.ua/POLITICS/armiya_dlya_paradiv-92925.html

[16] Salamatin: condition of arms and military equipment in the Ukrainian army is critical // http://economics.unian.net/ukr/detail/129390

14 combat ships, 274 units of weapons and military equipment of combined arm nomenclature etc[17].

After that, according to the Ministry of Defense of Ukraine, "for the first five months of 2012, after the restoration and repair, the troops added to their armory 11 combat aircraft, 6 helicopters, 8 surface-to-air missile systems. Another 6 aircraft are undergoing modernization at public enterprises of the defense-industrial complex"[18].

But this kind of report was duly refuted. "The Defense Ministry annually declares that they annually put into service 5-7 samples of weapons and vehicles. In 2011, according to official figures, they supposedly effected breakthrough and put into service 10 new models at once. But Ukraine is a specific country and the adoption does not mean that these models will go into service in the Army in the next decade. At the same time, what really comes to subdivisions (albeit in small lots and even as single samples) includes a variety of fitness equipment, secondary equipment, devices, or, as in the Navy, rescue equipment. That is something that does not affect dramatically the combat efficiency of the army. They may come in handy, but they are not strategically important types of weapons. Simply put, these "new models" adorn the statistics, but not the army[19].

It is worthy of notice that the term of the State program of development of weapons and military equipment of the Armed Forces of Ukraine for the period 2006–2011 ran off in 2011, and by this time they have failed to adopt the act regulating the development of such weapons. But Ukrainian state authorities seem quite satisfied with this situation, because in September 2012 the Government of Ukraine signed the Protocol between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on amending the Agreement between the Government of Ukraine and the Government of the Republic of Poland on mutual deliveries of weapons and military equipment and services for military-technical branch[20].

Moreover, the procedure of settling accounts by the Ministry of Defense of Ukraine with the executors of the restoration and repair of weapons and military equipment of the Armed Forces of October 14, 2009 was canceled in August 2012 on unknown reasons. The weapons and military equipment of Ukrainian army do need updating and repair, or don't they? Until now, there is no valid act regulating relations in this area.

The above analysis of weapons and military equipment in service in the Armed Forces of Ukraine concerns only one direction, the implementation of which is reflected in the condition of National Security and Defense of Ukraine, direction, implementing of which the national policy on national security had set itself, i. e. strengthening control of arms and security of military installations. And, unfortunately, even without going into details, we can have an idea and make our own conclusions about the state of the army in Ukraine, the state of

[17] Salamatin: condition of arms and military equipment in the Ukrainian army is critical // http://economics.unian.net/ukr/detail/129390

[18] Salamatin: condition of arms and military equipment in the Ukrainian army is critical // http://economics.unian.net/ukr/detail/129390

[19] Armed Forces of Ukraine: when arms adorn the report, but not the army // http://wartime.org.ua/1410-zs-ukrayini-koli-ozbroyennya-prikrashayut-dopovd-ale-ne-armyu.html

[20] On the Protocol between the Government of Ukraine and the Government of the Republic of Poland amending the Agreement between the Government of Ukraine and the Government of the Republic of Poland on mutual deliveries of weapons and military equipment and services in the military-technical field: Cabinet of Ministers of Ukraine of 26 September 2012 No. 708-p. — Uriadovyi Kuryer. — 2012. — No. 179.

the national security of Ukraine, ability to protect its borders and create real conditions for ensuring the rights and freedoms of people and citizens.

3. ON DEFERMENT OF MILITARY SERVICE

In our state there exists an adequate system of training boys to participate in national defense in case of aggression. But not all people can undergo such training in time, because life is multifaceted and not predictable. The legislator took it into account and provided for recruits the opportunity of deferment of military service for family reasons, for health reasons, for education and for continuing professional activities. It certainly is one of those numerous steps that Ukraine must make to be democratic, social, and legal state.

However, it should be noted that the legislation created obstacles for the proper exercise of the right of citizens to deferment of military service. In particular, problems arise in practice in relation to the provision of such deferments for Ukrainian citizens who take classes in foreign universities. The issue is that part 8 of Article 17 of the Law of Ukraine "On Military Duty and Military Service" specifies that deferment of military service for education for the entire period of study is given to citizens of draft age who are enrolled in higher education institutions on full-time basis, including obtaining the next higher educational qualification of higher education.

Apparently, this provision does not specify which institutions of higher education are meant: Ukrainian or foreign. However, the presence of directions contained in part 9 of this article (right to defer military service for reasons of education may mean that this also concerns citizens of Ukraine enrolled in schools abroad within the framework of international agreements of Ukraine) indicates that part 8 refers only to Ukrainian universities. Therefore, the person, who gets education abroad at her/his own expense and not under international agreements of Ukraine, formally and legally is not entitled to deferment.

At the same time, it should be noted that the above Law contains a provision that allows in cases not covered by Law the deferment of military service for citizens. Specifically, part 15 of Article 17 of the Law specifies that in cases not covered by this Law the deferment of military service may be provided in accordance with the decisions of the draft board of the Autonomous Republic of Crimea, oblast and Kyiv City draft boards on the proposal of the district (city) draft boards.

Therefore, to resolve the issue of granting deferment to citizens of Ukraine going to educational institutions abroad the part 8 of Article 17 of the Law of Ukraine "On Military Duty and Military Service" should be amended as follows: "the deferment of military service for education for the entire period of study is granted to citizens of draft age who are studying in higher educational institutions of Ukraine and abroad on full-time basis, including the period of postgraduate studies."

4. VIOLATION OF SERVICEMEN'S RIGHT TO VOTE AND TO BE ELECTED

In the Ukrainian legal practice there is a bad tradition to adopt electoral laws before the elections. That also goes for the Law of Ukraine No. 4061-VI "On Elections of People's Deputies of Ukraine" dated November 17, 2011 published in the *Holos Ukrayiny* Daily on Decem-

ber 10, 2011. That is this law was passed in less than a year before the regular parliamentary elections (October 28, 2012). It contains no revolutionary changes of servicemen's right to vote freely. Part 3 of Article 6 of the law almost completely reproduces Article 217 of the Statute of Internal Service of the Armed Forces of Ukraine. However, adopting the election law the authors enmeshed in military terminology and wrote: "To ensure the conditions for free expression of servicemen's will on the Election Day, they are granted a leave to vote not less than four hours." But no leave can be granted in this case but a leave pass as specified in Article 217 of the Statute (for free expression of servicemen's will on election day the leave pass is granted for at least four hours). That is the legislator instead of the term "lease pass" in the electoral law used the term "lease" that does not comply with the provisions of Article 216 of the Statute of Internal Service of the Armed Forces of Ukraine containing differentiation of such terms as *leave*, *leave pass*, and *secondment*.

Therefore the election laws should be amended by removing the term "leave" when it comes to enabling the military to exercise their civil right to vote, and replace it with the term "leave pass" and avoid such a substitution of concepts in future. Because *leave*, *leave pass*, and *secondment* have different backgrounds, timing, purpose and reason of granting.

In this regard it should be noted that when presidential elections of Ukraine were held the servicemen were granted leave passes so they could vote. According to the Ivano-Frankivsk *Reporter* Weekly "the leave-pass schedule in military units is prepared in advance to grant all servicepersons the possibility to express their will in electing the head of state". "It should be emphasized that for several elections now all soldiers and officers have been voting at general polling stations. There are no closed polling stations in military units. This is considered a manifestation of the democratic development of our society and the army in particular." The commanders of some military units stressed that "sometimes we hear about the alleged pressure on soldiers and officers as to whom they should vote for. But it is not so. Everyone, without exception, conscripts, regardless of their achievements, violations of military discipline or other factors that generally affect granting a lease to the city were issued the lease passes for four hours. And nobody controls how and where they will go. After all, to take or not to take part in the elections is the matter of conscience of every citizen. S/he can participate in elections, if s/he wants to. We do not require any evidence whether the soldier visited the polling station or not"[21].

As to the provisions of the Statute of Internal Service of the Armed Forces of Ukraine granting equal opportunities for free expression of conscripts' will on Election Day, it also contains certain exceptions. In particular, Article 217 of the Statute specifies that to ensure the free expression of conscripts' will on the Election Day they are issued lease pass for no less than four hours, except for the duty detail. But further it reads that the voting of duty detail soldiers can be done in out-of-duty hours only. In practice such instructions lj not grant the right to vote for the said persons. Therefore, there is a need in clearer (imperative) regulation of this matter.

However, there is a disturbing and nihilistic situation fixed in part 6 of Article 3 of the Law of Ukraine "On the Election of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local radas and village, town and city mayors", which specifies that the con-

[21] Soldiers of Prykarpattya voted // http://www.report.if.ua/portal/novyny/viyskovosluzhbovtsi-prykarpattya-progolosuvaly

scripts, citizens of Ukraine living abroad, as well as those found incompetent by a court, and the citizens of Ukraine sentenced to imprisonment are considered as not belonging to any local community and have no right to vote in local elections. Part 7 of Article 18 of the same Law regulates that the voting stations are not formed in military units (formations). The servicemen eligible to vote in the appropriate local election in accordance with Article 3 of this Law vote at regular voting stations located outside of military units (formations).

There is no doubt that these provisions violate the Constitution of Ukraine, namely Articles 69, 70, 71, 21, 22, and 24.

The members of the Venice Commission of Ukraine, representatives of various political forces, Deputy Chairman of the Central Election Commission, Chairman of the Committee of Voters of Ukraine and others were called to fix their attention on the fact that the Law of Ukraine "On the Election of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local radas and village, town and city mayors" has a number of provisions that have signs of unconstitutionality.

So, it should be noted that under the present electoral law, which the top authority subjugates for their needs, remains very incomplete, including the unguaranteed rights of servicemen.

5. PROBLEM OF CORRUPTION IN THE ARMED FORCES OF UKRAINE

In addition to the above-mentioned problems of armaments and military equipment, inconsistence in the law on the right of citizens to deferment, and breach of electoral rights of the servicemen there is such terrible and pernicious phenomenon as corruption.

Today, corruption is one of the biggest threats to any country that aspires to be democratic, legal and social. We can but agree with V. V. Cherepanov, who rightly noted that "the emergence of corruption as a negative phenomenon is peculiar to a society that is under the influence of power and money"[22]. Such a phenomenon as "corruption" violates rights, freedoms and legitimate interests of citizens, undermines social justice, rule of law, adversely affects the economic development of the country and eventually "kills" its moral, cultural, legal principles. Unfortunately, today the corruption permeates all spheres of public life of a number of states. And Ukraine is no exception.

In recent years, the Ukraine's rating of decency dropped from 99th place in 2006 down to 146 (of 187) in 2009. According to the latest report of the international human rights organization Transparency International on corruption in the world "Barometer of global corruption — 2009" Ukraine occupies the last place among the "newly independent states". In 2010, Ukraine showed a slight tendency to improve the level of corruption in the country. This is evidenced by the corruption perception index, which is monitored by the organization Transparency International: figure 2.4 versus 2.2 in 2009 (out of 10 possible points) is very far from the desired result. The Transparency International considers any result below three points "a disgrace to the nation forced to live in a totally corrupt state." Besides, now

[22] Cherepanov, V. V. Fundamentals of public service and staffing policy: textbook for students / V. Cherepanov. — 2nd ed., Rev. and add. — M.: UNITY-DANA, 2010. — p. 521.

there is no guarantee that fighting corruption will not be used by the ruling team as a tool to settle accounts with political opponents or the reason for narrowing democratic rights and freedoms[23]. In 2011, Ukraine ranked 152 in the corruption perception index compiled by international human rights organization[24]. However, the Prime Minister of Ukraine refutes the above information and disputes the reliability of the data on which the experts of the above organization base their conclusions[25].

This part of the report will dwell on some causes of corruption, its presence in the Armed Forces of Ukraine (military formations, on which according to the Constitution of Ukraine relies defense of Ukraine, protection of its sovereignty, territorial integrity and inviolability), legislative means intended to prevent such phenomena and ways of improving the legal regulation of this issue.

There are plenty of reasons that give rise to corruption in the specified segment of the state apparatus. Given the level of legal culture in society, we consider it necessary in the first place to include here dishonesty, lack of moral principles in certain servicepersons, including commanding officers. Furthermore, in this context we should indicate that in many cases one can trace indifference to the constitutional duty to do military service, to the oath of allegiance to the Ukrainian people, military uniform, military ranks, military discipline, and positive military traditions.

Moreover, the causes of corruption in the Armed Forces of Ukraine include conflicts of interests, which the Law of Ukraine "On Prevention and Combating Corruption" interprets as the contradiction between the personal interests of the individual and his or her authority, which may affect the objectivity and impartiality of the decision-making and action or absence of action in the course of exercising of power.

The corruption in the Armed Forces of Ukraine can also be triggered by the lack of supervision of the first persons (Minister of Defense of Ukraine, military and political leadership of the Armed Forces of Ukraine, top administrators of the Armed Forces of Ukraine, Chief of General Staff, and immediate higher-ups). The point is that their control must be ongoing, at least, a regular character, be as comprehensive (companies, battalions, divisions), it should be objective and loud, and–most importantly–effective (the results-based measures should be undertaken).

And certainly in this case not the last place is occupied by discretion empowerment. For example, in accordance with part 6 of the Disciplinary Regulations of the Armed Forces of Ukraine, "in case of disobedience or resistance of a subordinate the commander must take all necessary enforcement measures specified by laws and military regulations right down to the arrest of the culprit and bringing him to justice." This provision is dispositive and empowers (in this case) the commander to choose any punishment for the guilty person. Needless to say, it can be clearly inadequate and unequal to the infringement (misdemeanor, offense).

Another example of discretionary powers can serve part 45 of this Statute, which provides that "in case of failure (inadequate performance) by soldiers to fulfill their duties,

[23] The world calls Ukrainian corruption "a disgrace to the nation" // Ukrayinska Pravda. — 26.10.2010. // http://www.pravda.com.ua/news/2010/10/26/5515166/

[24] Ukraine among the "losers" in the ranking of corruption perception // http://www.acrc.org.ua/ua/news-and-events/news/all/ukrayina-sered-luzeriv-v-rejtyngu-spryjnyattya-korupcziyi.html

[25] Azarov does not believe in the objectivity of Transparency International on the issue of corruption in Ukraine // http://tyzhden.ua/News/60465

breach of military discipline or social order, the commander shall remind him of duty, and, if needed, put him to discipline." It should be noted that the Commander takes his choice to define this "need".

Clearly discretional powers are expressed in paragraphs 48-52, 62, 68, and 69 of the Disciplinary Statute of the Armed Forces of Ukraine, which include disciplinary admonition applied to ordinary servicepersons (sailors), sergeants (master sergeants), average conscripts (sailors), servicewomen (master sergeant), ensigns (warrant officers), and officers. The choice of such penalties varies from simple admonition to deprivation of appropriate rank. The intermediate penalties include reprimand, severe reprimand, and demotion and so on.

The powers of commanders (chiefs) are discretionary concerning disciplinable exactions imposed on subordinate privates (sailors), conscripts and contract service sergeants (master sergeants), ensigns (warrant officers), and subordinate officers. Powers of section leader, deputy leader of a platoon, platoon leader, company commander (captain 4th class), battalion commander (captain 3rd class) separate battalion commander (captain 2nd class), regiment commander (captain 1st class), and division commander are varied. The commander can do using simple admonition, can warn of unsatisfactory professional competence, and can put on extra duty (paragraphs 53-61, 63-67, 70-74).

The Law of Ukraine "On Prevention and Combating Corruption"[26] of April 7, 2011 defines the basis for preventing and combating corruption in the public and private sectors, indemnity for corruption losses, damages, restoration of rights, freedoms and legitimate interests of individuals and the rights and interests of legal entities, and public interests. In addition, the law imposes restrictions on jobbery, double jobholding, reception of gifts, nepotism etc. As measures to prevent corruption the Law provides for the organization of special checks approved by the President of Ukraine, financial control, implementation of codes of conduct, reconciling conflicts of interests, and anticorruption expertise of draft legal acts.

It should be noted that only the actual implementation of the above measures is a necessary and effective method of corruption control. The appropriate checks are of particular relevance in this context. Here is the dynamics of the results of these checks for 5 years. Thus, in 2007, by results of inspections of the compliance of military officials with the Law of Ukraine "On Combating Corruption" the military procurator's office prepared and submitted to the court 259 protocols about commitment of corruption wrongs by the military officials. Most of these offenses consisted in the misuse by the commanders of their subordinate personnel for their personal benefit. In addition, the military procurator's offices sent to court indictments in 1,000 criminal cases, including more than 300 related to crimes in the economic sphere and swindlery[27].

In 2012 (when the military prosecutor's offices were already liquidated) the personnel of the units for corruption and organized crime control of the Law & Order Service for the first half of 2012: drew up 35 reports on committing administrative corruption offenses making 38% of the total number of reports drawn up by special anticorruption units, including as follows: by results of trials 28 judgments were made, 18 officers were brought to book and fined, in 10 cases the action was dismissed for lack of corpus delicti. The total of 92 re-

[26] On Principles of Prevention and Combating Corruption: The Law of Ukraine , April 7, 2011 // Vidomosti Verkhovnoyi Rady Ukrayiny. — 2011. — No. 40. — Article 404.

[27] Medvedko O. On the eve of the Day of Armed Forces of Ukraine / O. Medvedko // Legislation in the military sphere. — 2007. — No. 12. — p. 3.

ports were drawn up for committing administrative corruption offenses in relation to military and civilian personnel of the Armed Forces of Ukraine in the first half of 2012[28].

However, such statistics do not fully reflect the real situation, since a large number of such crimes and corruption cannot be detected by law enforcement agencies. "Not all offenses are reflected in official statistics (remain latent). And the data that can be obtained for analysis are rather sketchy and often relate to the level of conviction, not to the level of crime"[29].

But according to criminologists, even the level of convictions for committing military crimes remains rather high, and in relative terms it is still on the rise. Committing these crimes significantly undermines combat readiness, and significantly reduces the credibility and trust for military service in the eyes of society and most military, and does not help to fulfill service duties and grant the rights and freedoms of servicemen.

The law pays attention to public participation in the prevention and combating of corruption, accountability for corruption, eliminating the effects of corruption, control and supervision over the implementation of laws in preventing and combating corruption.

In its turn, the Law defines basic concepts such as corruption, corruption offence and so on. Thus, the corruption means the use by a person (the subject of liability for corruption offenses) of her/his office and related opportunities to obtain undue advantage or making promises / offers of such an advantage for herself/himself or others or under promise / proposal or giving undue advantage to the person (entity responsible for corruption) or upon request to other natural or legal persons to persuading that person to misuse her/his office and related opportunities.

In contrast to the Ukrainian legislation, in Russia the Federal Law "On Combating Corruption" gives another definition of corruption. In particular, it specifies that corruption includes malpractice, giving bribes, receiving bribes, abuse of power, commercial bribery or other misuse by an individual of her/his office contrary to the legitimate interests of society and the state in order to receive benefits in the form of money, estate or other property or services of property nature, other property rights for themselves or for a third party or illegal provision of such benefits to the specified person by other individuals.

The absolutely logical is the idea of Ukrainian scientists that the definition of corruption in the relevant Law of Ukraine is extremely unfortunate because actually sends us to such term as "undue advantage". The latter, under the law, refers to "money or other property, advantages, privileges, services…, which are promised or offered without lawful justification." Such extremely dangerous inferencing may lead to the idea that for qualification it is sufficient to establish the fact of provision (acceptance) of such promises (suggestions). From a formal point of view it is so. But it will be impossible to prove it. This design creates danger of conflict, say theorists, of Article 364 of the Criminal Code of Ukraine "abuse of power or office" and Article 368 of the Criminal Code of Ukraine "bribe-taking". Both of these articles provide liability for wrongful unlawful actions that were actually the result of abuse of power or office[30].

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[28] Information on the requirements of anti-corruption legislation in the Ministry of Defence of Ukraine and the Armed Forces of Ukraine in the first half of 2012 // http://www.mil.gov.ua/index.php?part=corruption&lang=ua

[29] Criminology: General and Special Parts: textbook / I. M. Danshyn, V. V. Holina, M. Yu Valuyska et al., under the general editorship of. V. V. Holina. — 2nd ed. revised. and amended. — Kharkiv.: Pravo, 2009. — p. 264.

[30] Garashchuk V. Anticorruption legislation of Ukraine in 2011: prospects of development and implementation / V. Garashchuk // Yearbooks of Ukrainian law: memoirs. / executive editor A. V. Petryshyn. — Kharkiv: Pravo, 2012. — No. 4. — p. 175.

The corruption offense is an intentional act having traits of corruption, which are committed by a person (the subject of liability for corruption offense), for which the law has established criminal, administrative (Article 15 of the Code of Ukraine on Administrative Offences), civil, and disciplinary liability. It should be noted that the Criminal Code of Ukraine does not specify terms of the crime called "corruption". The Civil Code of Ukraine does not use such a concept as well.

The relevant law includes the following virtual corruption offenders: persons authorized to perform the functions of the state or local government (the President of Ukraine, the Verkhovna Rada of Ukraine, Prime Minister of Ukraine, Head of the Security Service of Ukraine, Ukraine's Prosecutor General, military officers of the Armed Forces of Ukraine and other military units and entities established under the laws), persons equated to persons authorized to perform the functions of the state or local government (those who are not civil servants, local government officials, but provide public services (auditors , notaries, experts), and others.).

It should be noted that attributing military officials of the Armed Forces of Ukraine to entities liable for corruption offenses it is necessary to define these persons in the article of the Law, which explains the key terms. It seems not quite clear, who belongs to that category of persons. This assertion comes from the fact that neither the Law of Ukraine "On the Armed Forces of Ukraine" dated December 6, 1991, nor the Law of Ukraine "On Disciplinary Statute of the Armed Forces of Ukraine" of March 24, 1999, or the Law of Ukraine "On Military Duty and Military Service" of March 25, 1992 do not use such category as "military officer of the Armed Forces of Ukraine."

The note 1 of Article 423 of the Criminal Code of Ukraine clarifies that the term *military officers* mean military chiefs and other servicepersons who hold an office permanently or temporarily related to the implementation of organizational and managerial or administrative-economic duties or perform such duties by special order of the authorized commander. But this is a special norm in the criminal field, so the concept of military officer should be fixed in the basic regulation directly regulating the military sphere.

In this regard, we deem it necessary to clarify that the term is applied to the Armed Forces of Ukraine and other military formations.

At the discrepancies of Law of Ukraine "On Prevention and Combating Corruption" and the Criminal Code of Ukraine points V. Ya. Tatsiy. The scholar points out that the law is inconsistent with many current norms of the Criminal Code of Ukraine concerning responsibility for crimes of corruption, and some of its provisions are not only confusing but sometimes outright false both in terms of their meaningful presentation, and by legal and technical wording, formulation and structuring[31].

V. Harashchuk draws attention to the conflict as well. The author notes that the Criminal Code of Ukraine means an officer, the Code of Ukraine on Administrative Offences means an official, the Law of Ukraine "On Prevention and Combating Corruption" mentions both officer and official. The fact is that in 2001 the Criminal Code of Ukraine replaced the term "officer" with the term "official", whereas the administrative law logically uses both terms dif-

[31] Tatsiy V. Ya. Ten years of the Criminal Code of Ukraine: achievements and problems of implementation / V. Ya. Tatsiy // Yearbook of Ukrainian law: memoirs. / executive editor A. V. Petryshyn. — Kharkiv: Pravo, 2012. — No. 4. — p. 495.

ferentiating them. Official may not be a white-collar worker, while the white-collar worker is an officer (department officer) with wider authority than an ordinary employee[32]. In our case it should again be emphasized that the Law of Ukraine "On Prevention and Combating Corruption" includes the concept of "military officer of the Armed Forces of Ukraine", which also requires clarification.

At last it is necessary to draw attention to the fact that the information on the implementation of anti-corruption legislation at the Ministry of Defense of Ukraine and in the Armed Forces of Ukraine in the first six months of 2012 indicates that the most common offenses for which the servicepersons of the Armed Forces of Ukraine were brought to administrative responsibility were as follows: violation of restrictions on the use of official position — 37, offering or giving undue benefit — 2; violation of restrictions on compatibility with other activities — 5; breach of statutory restrictions on receiving gifts (donations)–1; fiscal control violations — 8; illegal use of info that became known to the person in connection with the performance of official duties — 9, failure to take measures against corruption — 2. During this period, 55 soldiers and 9 employees of the Armed Forces of Ukraine were brought to administrative action[33].

During their work aimed at eliminating the causes and conditions that had led to administrative corruption offenses by the servicepersons and personnel of the Armed Forces of Ukraine the special anticorruption units of the Military Law & Order Department of the Armed Forces of Ukraine undertook comprehensive measures to prevent manifestation of corruption, namely: measures for the prevention, detection and suppression of corruption of military officers of the Armed Forces of Ukraine, preventive measures intended to prevent corruption offenses in military units; measures intended to carry out investigation of corruption offenses, considered the appeals of the citizens of Ukraine, prepared proposals and agreed upon regulations; drew up current documents on combating corruption and accounting of corruption cases that came to the Law & Order Service.

6. CONCLUSIONS AND RECOMMENDATIONS:

The problem of human rights of servicepersons in various spheres of social life is rather acute and urgent. It should be noted that in 2012 the military procuracy was liquidated, which isn't a positive step forward. Such liquidation of important structures may have negative impact on the exercise of powers of organs that will obtain some of the powers of liquidated structures by virtue of inconsistency of law and lack of special practice.

The legislation of Ukraine is far from being perfect; it primarily concerns the Laws of Ukraine "On Military Duty and Military Service", "On the Election of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, town and city mayors", Disciplinary Statute of the Armed Forces Ukraine etc.

[32] Harashchuk V. Antykorruptsyonnoe legislation of Ukraine in 2011 year: prospects of development and Application / V. Harashchuk // Yearbook Ukrainian law: memoirs. / executive editor A.V. Petryshyn. — Kharkiv: Pravo, 2012. — No. 4. — p. 177.

[33] Information on the requirements of anti-corruption legislation in the Ministry of Defence of Ukraine and the Armed Forces of Ukraine in the first six months of 2012 // http://www.mil.gov.ua/index.php?part=corruption&lang=ua

Many factors influence the corruption in the Armed Forces of Ukraine, as in any other public structures. In general, the anticorruption legislation of Ukraine represented by the Laws of Ukraine "On Principles of Prevention and Combating Corruption", "On amendments to some legislative acts of Ukraine concerning responsibility for corruption" is a definite step in corruption control. However, the measures taken to reduce such negative phenomena must be implemented together, and not accidentally, and be ongoing rather than fragmented. Moreover, the corruption control must allow for the specifics of the Armed Forces, details of service in its units. In this context, we consider actual liquidation of military prosecutors inappropriate.

In connection with the discussion of the acute problems of the Ukrainian army we suggest the following recommendations:

1. Article 4 of the Disciplinary Regulations of the Armed Forces of Ukraine to supplement with the provisions stating that the military discipline makes each serviceman to respect the rights and freedoms, honor and dignity of other serve icemen, and respect the individuality of each.

2. Part 8 of Article 17 of the Law of Ukraine "On Military Duty and Military Service" to present in the following redaction: "the draft deferment for education for the entire period of study is granted to citizens of draft age who are studying in universities of Ukraine or abroad with full-time instruction, including post-graduate studies."

3. The laws on elections should be brought into compliance by removing the term "leave" when it comes to enabling the servicemen to exercise their civil right to vote, and use instead the term "leave pass" and not allow such a substitution of concepts. To imperatively regulate granting the leave pass to servicepersons on duty to exercise their right to vote.

XXVIII. RIGHTS OF PRISONERS[1]

1. GENERAL OVERVIEW

In this section we will address both the flaws and the positive changes registered in the institutions under the State Penitentiary Service of Ukraine (hereinafter — SPSU) this year with respect to human rights. As of November 1, 2012, 151 137 inmates were held in 181 institutions under the State Penitentiary Service of Ukraine. This number included 33 216 detainees in 32 pretrial detention centers, 3643 of those for pretrial investigation; 16 359 for the term of court investigation; 116 643 inmates held in 141 correctional facilities, including 9 institutions of the minimum security level with 6744 male inmates; 13 female facilities holding 6189 inmates; in 35 institutions of the medium security level for the first-time convicts — 37 066 inmates; in 41 institutions of the medium security level for repeatedly convicted — 43 692 inmates; in 9 institutions of the maximum security level — 4354 inmates; in 5 institutions of the minimum security level with alleviated conditions for male convicts — 963 inmates, in 23 correctional centers — 5397 inmates; in 6 specialized medical facilities — 3137 inmates; in medical institutions under correctional centers and pretrial detention centers — 2 645 inmates; in juvenile correctional centers — 1278 inmates. 13.2 thousand of inmates are convicted for the term over 10 years; 1802 inmates serve life term, 819 detainees are held under arrest.

As compared with the last year, the number of prisoners decreased by 2974 due to the reduced number of SPSU institutions from 184 to 181. Meanwhile the over-population of these institutions and the conditions of stay basically remained unchanged

What positive changes and what possible challenges can be expected with regards to the rights of prisoners kept in SPSU institutions after the CPC is passed?

What is the forecast for the improvements in public control of the SPSU institutions following the implementation of the Ukrainian national mechanism for preventing torture, and what will change in the operation of the observers' commissions?

What are the systemic violations of the human rights which we observe for years within the SPSU system, and what recommendations are disregarded by the commanding officers of this system?

How can the situation be improved?

We shall try to answer these and some other questions in this section.

2. THE LEGISLATIVE AMENDMENTS

The Presidential Decree No. 631/2012 of November 8, 2012 approved the new State Policy Concept for the reforming of the State Penitentiary Service of Ukraine. This norma-

[1] Prepared by V. Chovhan and A. Didenko, KhHRG.

tive document in fact replaces the former Decree of the President of Ukraine "On the State Policy Concept for the reforming of the State Penitentiary Service of Ukraine" No. 401/2008 of April 25, 2008.

The analysis of the document, however, does not show any progress in comparison with the former version. Some provisions just duplicate the earlier ones, while the others do not contain any substantial differences. Certain positive features of the former Decree were not taken into account in the new one.

Thus, the norm requiring the development of the new models for the penitentiary institutions for women and juvenile delinquents was eliminated, despite the fact that it has never been implemented in the penitentiary practices.

The new Concept clearly defines current problems, but lacks the definition of specific tasks for their resolving.

The Concept mentions that although the inconsistency of prisoners' and persons' in custody keeping with the national law and European standards has been stressed many a time in the Reports of the European Committee for prevention of torture and inhuman or degrading treatment or punishment (hereinafter — the Committee), the majority of its recommendations are not taken into account, and the Concept does not even mention the need to comply with them.

The latest report was published by the Committee in late 2011[2]. The majority of recommendations contained in it, were not taken into account by Ukraine, and specifically, by the SPSU. The negative impact of this inaction is enhanced by the fact that the Committee has already provided these recommendations in its earlier reports based on the earlier monitoring. E. g. the issues of short-term and long-term visits, confidentiality of correspondence, conditions and restrictions imposed in the disciplinary cells etc. have not been resolved. And all these problems are within the competence of SPSU, as the majority of the criticized norms are the norms of SPSU sublegal acts.

The same applies to the European Court on Human Rights' Decisions, which establish the violation of the convicts' rights, but are disregarded by the authorities. These decisions are numerous, due to the fact that the Court, in its rulings, refers to the standards, developed by the Committee. E. g. the decision on the case "*Trosin v. Ukraine*", in which the Court condemned Ukrainian practice of jail visits, namely, the norm under which the number of family visits is automatically limited (i. e. only certain number of visits is allowed to a prisoner for a given time period), without any consideration of individual risks.[3]

One of the most negative features of the Concepts is the idea of self-sufficient operation of the penitentiary institutions to reduce the burden on the state budget. The practices of other countries, as well as long-term Ukrainian experience shows that the prioritization of the economic goals as opposed to rehabilitative ones in the prisoners' labor cannot be justified and in the end of the day does not meet neither economical nor rehabilitative goals. Modern scholars point out that the idea of self-sufficiency collapsed in the soviet times and will be surely doomed in the future.[4]

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[2] http://ukrprison.org.ua/international_documents/1326235909

[3] http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109197

[4] Means of correction and re-socialization of the prisoners: monograph / Ed. By Doctor of Law Prof. A. Stepanyuk. — Kharkiv: 2011. — P. 91–94.

Besides, the Concept contains provisions which, even from the point of view of criminal-penal law, are unclear and too general. E. g. modernization of the production facilities within penitentiary institutions and the improvement of vocational training for the prisoners supposedly will be achieved by the improvement of operational principles of the said facilities under penitentiary institutions.

The Concept stipulates compulsory social/pedagogical support and social and psychological aid for the convicts and persons in custody. Keeping in mind that the persons in custody are not considered guilty of a felony prior to the court's verdict, it is unclear, how a *compulsory social/pedagogical support* shall be enforced with regards to these persons.

There are still "blank spots" in the SPSU regulations on the order of delivering and serving the sentence. The experts insist that the administration of the penitentiary institutions should not use technical means of control and supervision unless a special normative-legal act(s) is/are adopted. This conclusion is based on the following reasoning[5]. Fist, under Article 103.3 of the Criminal Procedural Code, the list of technical means of control and supervision should be defined by the SPSU legal acts. The same acts should determine the procedure for their use. As far as we know, no respective normative acts are currently in effect. Therefore, it is not clear, what technical means can be described as those of control and supervision; which can be used in the correctional facilities, and what the procedure for their use is. Hence the use of the said means is to be considered illegal unless respective legal act is adopted.

Nevertheless, the courts justify the illegal SPSU practice. On October 30, the Circuit Court of Kyiv passed a decision refusing to satisfy in the full scope the claim of Yu. Tymoshenko against the SPSU actions. Specifically, the court sustained that the system of video-observation installed by the SPSU in the premises where the convicts are kept, is legal[6]. And, judging from the informational release provided by the SPSU, the agency has no intention of complying with CPC of Ukraine referring to the court decision.

The agency many a time stated that the law in force does not allow phone calls for the prisoners being treated in medical institutions under the Ministry of Health of Ukraine, [7] instead of adopting a respective act.

The Decree of the Ministry of Justice of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Education and Science, Young Adults and Sports of Ukraine, Ministry of Health of Ukraine, Ministry of Interior of Ukraine No. 478/5/180/375/212/258 of 28.03.2012 established the Order for cooperation between the penitentiary institutions and subjects of social care in the preparation of the persons serving their terms, to discharge. The new Decree invalidated three normative documents which earlier regulated specific issues of social adaptation for the persons discharged from the penitentiary institutions.

The new Order looks like a compilation of the certain norms of the three former orders without introducing any substantial changes; it testifies rather to the authorities' mimicry than their real desire to introduce changes. Moreover, many norms which were in force before, are completely ignored by this Decree, and, consequently, have become invalid, debili-

[5] http://khpg.org.ua/index.php?do=print&id=1326711173

[6] http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/655223

[7] http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/656246

tating further an imperfect system of the social adjustment for the ex-convicts. The few novelties, introduced by the Decree, in our opinion, have serious faults.

Thus, Section 2 of the Order addressing collaboration between the centers of social services for families, children and young adults and penitentiary institutions in providing social services for the children and young adults discharged from the penitentiary institutions was eliminated. The Section defined the possible ways of co-operation, specifically, exchange of information on preparing children and young adults to discharge from prison; helping in social rehabilitation of the children and young adults; involvement of non-governmental organizations of children and young adults, companies, institutions, other organizations irrespective of form of property, charity groups, volunteers and other individuals in the social mentoring.

Altogether a lot of positive norms from the earlier Decrees have been canceled. This fact should serve as a warning against precipitated law-making in the future.

On February, 08, 2012 the Ministry of Justice of Ukraine adopted a No. 222/5 "On approving the Instruction on the order of assignment, placement and transfers of the convicts between the penitentiary institutions (hereinafter — the Instruction)", which annulled the former Order of the State Department of Ukraine on penitentiary system No. 261 of 16.12.2003 "On approving the Instruction on the order of assignment, placement and transfers of the convicts between the penitentiary institutions". The new document contains only a few unsubstantial changes in the regulations of convicts' assignment to penitentiary institutions and looks like a mockery of the law-making activity undertaken by the Ministry of Justice of Ukraine, which just changed the title pages of the numerous former SPSU normative documents without changing their contents.

Similarly, the Decree of the State Department of Ukraine on penitentiary system No. 162 of 10.08.2000 "Instruction on the order of providing personal belongings for the convicts serving their sentence in the penitentiary institutions and pretrial detention centers" was replaced by the Decree of the Ministry of Justice of Ukraine No. 280/5 of 20.02.2012 "On approving the Order for providing personal belongings and adherence to norms of ownership for the convicts serving their sentence in the penitentiary institutions and pretrial detention centers". The Ministry of Justice introduced no substantial changes into the norms for personal belongings, but retained the outlandish norms concerning personal belongings of the convicts. Thus, under the Decree, the female convicts are entitled to two pairs of cotton underpants in two years. The same norm applies to male convicts. These latter are entitled to one shirt and 4 pairs of socks in two years.[8] This norm goes hand in hand with another anti-hygienic provision, establishing for convicts the possibility of taking one shower a week. This norm is still in place despite the fact that it has been criticized many times by the Committee.

An attempt to fake the law-making activity can be detected in the Ministry's of Justice new Order for submitting pardon appeals to the Administration of the President of Ukraine and for implementing President's of Ukraine decrees granting pardon (No. 1439/5, of 28.09.2012). According to the Ministry's of Justice press-service, this Order among other things contains more humane provisions with regards to prisoners serving life sentence[9]. This "humanization" became possible allegedly due to the fact that earlier motion for pardon

[8] http://zakon2.rada.gov.ua/laws/show/z0261-12

[9] http://www.kmu.gov.ua/control/ru/publish/article?art_id=245746640&cat_id=244845045

could be submitted only after 20 years of the term, while currently this restriction has been abolished. The Ministry of Justice, however, never mentions that p. 4, part 2 of the Regulations on pardon currently in force (Presidential Decree of 16.09.2010, which has higher legal force than the Ministerial Order), the motion for pardon of the prisoners sentenced for life can be submitted only after at least 20 years of their term.

Habeas corpus still remains a problem for the convicts who need to participate in the hearings on civil jurisdiction. Addressing this issue, the Constitutional Court of Ukraine passed a ruling on 12.04.2012 in the case on constitutional appeal of the citizen A. Troyan concerning official interpretation of Article 24 of the Constitution of Ukraine. (The case re: equality of parties to the trial).[10] Mr. Troyan approached the CCU seeking official interpretation of Article 24 of the Constitution of Ukraine concerning the right of an incarcerated convict to be brought to court to participate in the hearing of civil jurisdiction (the equal rights of parties to the law-suit). The Court responded that "personal participation of a convict serving his/her sentence in a penitentiary institution, as a party to the trial, meets the requirement of complete, comprehensive, objective and un-biased hearing. This participation of a convict, as a party to the cases heard in the courts of all jurisdictions, specializations and instances should be ensured by the respective procedural law. Decision on a convict's participation as a party to the trial should be made by a court in the order and under conditions determined by the respective procedural law." Hence the convict has "the equal right to protection of his rights and freedoms in court and to participation in the hearing of his case in the order defined by the respective procedural law in the courts of all jurisdictions, specializations and instances". So, on the one hand the Court ruled that the convict has the right to participate in the hearing on his case, but only in accordance with the order established by the respective procedural law. But the very core of the problem lies in the fact that neither civil procedural, nor administrative procedural law properly regulates this matter. That is why the CCU Decision, instead of improving the situation, provided formal grounds for depriving the convicts of their right to participate in the hearings on their cases until the respective procedural law is passed.

The quality of law-making activity in the criminal justice area with respect to the international commitments of Ukraine also remains poor. E. g. Ukraine failed to send representatives to the Expert Group Meeting on the Standard Minimum Rules for the Treatment of Prisoners (Vienna, 31.01.2012 — 02.02.2012), attended by 143 persons from 52 countries-UN members. Besides, 28 UN members, Ukraine included, responded to the call for sharing best practices in penitentiary system. However, Ukrainian best practices were not taken into consideration in developing Preliminary note (working document), as opposed to best practices of other countries.[11] And there is no wonder, considering the quality of materials submitted by Ukraine. The recent answer to the call for best practices in penitentiary system sent out by group of experts on revision of Minimum standard rules for the treatment of the prisoners, prior to the Expert group meeting on December 12–13, 2012. In comparison with 35 documents submitted by other countries (including the states with the lowest economic development level), Ukrainian response looks simply ridiculous. Instead of referring to the norms of

[10] http://zakon2.rada.gov.ua/laws/show/v009p710-12

[11] http://ukrprison.org.ua/expert/1334027883

national legislation (like everyone else did), the Ukraine's permanent mission to international organizations in Vienna stated "According to information provided by the Security Service of Ukraine, the norms for the treatment of convicts and persons in custody are determined by the Law of Ukraine "On Security Service of Ukraine", Law of Ukraine "On Counter-intelligence" and Law of Ukraine "On prior incarceration".[12] It is not only a formal response, which does not clarify the meaning of the respective acts, but also a nonsensical manipulation of the national legislation with respect to the prisoners and the convicts.

3. SYSTEMIC VIOLATIONS OF HUMAN RIGHTS

In this section we will focus on systemic violations of human rights, which remain unchanged for many years, while SPSU does not take any steps to improve the situation.

3.1. Right to protection

The Supreme Rada Ombudsman V. Lutkovska was approached by Iryna Lutsenko, the spouse of ex-Minister of Interior Yu. Lutsenko, serving his sentence in Mena correctional facility No. 91. In her open letter Iryna Lutsenko complained that the facility administration categorically refuses to grant the prisoner the opportunity to see his attorney. She stressed that after Yu. Lutsenko's transfer to the facility No. 91 he did not have a single confidential meeting with either his lawyer or his public attorney within the framework of criminal investigation. All the meetings took place in the common area intended for short visits, without any heed of confidentiality right. A whole range of normative documents regulating the SPSU operation guarantees the convict's right to a confidential meeting with his attorney. Lamentably these norms are ignored by the administration of the penitentiary institutions. We tried to draw attention to this fact many a time, but the violation of this right can be classified as systemic.

3.2. Tortures and cruel treatment

a) The "famous" Dnipropetrovsk correctional facility No89 (hereinafter — DCF-89) ranks first among Ukrainian penitentiary institutions as to the number of violations of human rights reported over the last two years. It is in this facility that mass beatings of the inmates by the SPSU special unit occurred, while the state officials remained inert. In March of this year the inmates with the open form of TB announced hunger strike. They published a video with their commentaries demonstrating horrible conditions in which they are kept. The events in DCF-89 are described in detail in the section addressing fight against torture.

b) An outrageous beating of an inmate in the pretrial detention center No. 13 in Kyiv. That's how the UNHCR press-release "Another mandate refugee of UNHCR, protected by the European Court on Human Rights which forbade Ukraine from deporting him to the country of origin, was beaten severely in the pretrial detention center No. 13 in Kyiv. Now he is in

[12] http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/UKRAINE-GOV-31-En.pdf

the hospital, in custody, manacled to his bed. His serious injuries caused a long-term loss of consciousness. UNHCR hopes that the refugee will be treated humanely and not sent back to the prison without a thorough medical examination for possible internal injuries. UNHCR appealed to the SPSU and law-enforcement bodies to instigate immediate transparent proceeding for the investigation of this hideous crime and sue the culprits, who failed to ensure the protection of a person in custody in the state penitentiary institution."

By pure coincidence the Ukrainian Helsinki Union on Human Rights' attorney O. Levitsky, who defended the refugee, almost found himself in the epicenter of the incident. To be more exact, he happened to arrive at the crime scene when his client was already choking in the pool of blood. Apparently his arrival prevented the criminals from accomplishing their intention. "On August 03, 2012 in the pretrial detention center No. 13 in Kyiv my defendant A.U.H. was savagely beaten. As a result he suffered serious body injuries, threatening to his life. It is possible that the perpetrators intended to cause my defendant's death". This is an excerpt from the attorney's Levitsky's statement submitted to the Prosecutor's office of Kyiv with respect to this outrageous and brazen crime, committed in the state institution, i. e. a pretrial detention center. The beating happened not in a cell (where it is impossible to reconstruct the crime, because the victim would negate the fact of beating explaining that he e. g. "fell from the bed"), but in a public place, with other people present. The attorney's statement leads one to a conclusion: the Lukianivka incident is unprecedented, and the attorney might have become an active participant in it, had he not been delayed seeking permission (unnecessary, in his opinion) for a visit. Taking into consideration the nature and severity of body injuries, one could conclude that several persons took part in the premeditated beating. The event occurred in the pretrial detention center under SPSU jurisdiction. It means that only a convict, detained there as preventive punishment measure, staff and operatives from the Ministry of Interior or Security Service, attorneys (family members), defending their clients in the course of investigation, can enter the premises. In other words, the number of people authorized to visit, or detained in the center, is limited. Personal safety in Ukraine is not guaranteed so far. No one can feel safe anywhere. The attorneys need protection as well as their clients.

c) We stressed many a time that the use of armed masked commandos to conduct searches in SPSU institutions is unacceptable, irrespective of their affiliation — a unit, a special subdivision etc. There is no need to employ specialized SPSU units for the searches in the pretrial detention centers and in correctional facilities. They only intimidate the inmates in violation of their human rights. The European Court on Human Rights classifies these practices as violation of Article 3 of the Convention on Protection of Human Rights and Fundamental Freedoms (torture, cruel treatment). The case "*Davydov et al. v. Ukraine*" provides a most vivid example in this context (we dwelt on this case in detail in our previous report). Nevertheless, this practice continues, and in 2012 resonant events in Kopytchyntsy correctional facility No. 112 occurred (see section on fight against torture for more detail).

d) On March17, information about beatings of inmates and killing of Taras Voytsekhovsky in Bucha correctional facility was published in Ukrainian on-line media.

> "*As became known, on March 16, 2012 a man was killed in Bucha correctional facility No. 85 in Kyiv oblast'. A convict was killed in BCF; another inmate is in the hospital. They were beaten by the facility staff.*" –informed the source." *The deceased Taras Voytsekhovsky was born in 1985. Another victim — Serhiy Telima, born in 1987, ended up in the hospital as a result of the beating".*

Another source informed that the facility administration tries to hide the fact of beating. The officials claim that, instead of a quarrel between intoxicated convicts and their guards an ethylene poisoning of the convicts actually occurred. The journalist of Kharkiv human rights' protection group informational bulletin "Human Rights" A. Didenko together with the lawyer O. Sapozhnikova conducted their own investigation and, having talked with a victim and witnesses, found out the following:

> *"The deputy warden of the CF detained Voytsekhovsky and Telima around 6:00 pm. They were put into a cage-like room and the facility guards started beating them. The sergeants known among convicts as "Styopa Voropay, Karate-man and Leonidovich", as well as the first deputy of the warden Lohovitsky participated in the beating. Serhiy was kicked in the stomach (liver area) and collapsed. They resuscitated him pouring water on him. They first beat Taras in the "cage", then dragged him "like a bag", unconscious into the disciplinary cell, located about 60 m from the main building. Serhiy came to his senses in the hospital unit, where he is currently staying, complaining of liver ache, nausea and vomiting, while Taras did not survive tortures and died.*

The evidence of numerous injuries was found on his body." The witnesses under condition of their anonymity testified that they heard the screams and sounds of beating taking place inside the premises. The SPSU, nevertheless, divulged another version of the incident. The prisoners, allegedly, consumed alcoholic beverages of bad quality and suffered injuries as a result of numerous fallings. The administration also put psychological pressure on Taras' mother. As a result the body was cremated immediately. However, while the body was in the morgue, the journalists managed to take pictures of Taras Voytsekhovsky's disfigured face. The photos were made public and attached to the petition to the Prosecutor's office requesting criminal investigation. The Prosecutor's office refused to instigate proceeding due to the lack of corpus delicti in the staff's action. Nota bene — in its Decision on the case "*Kaverzin v. Ukraine*" the European Court pointed out that the lack of efficient investigation of the torture by the Prosecutor's office in Ukraine is a systemic violation of Article 3 of the Convention for Protection of Human Rights and Fundamental Freedoms.

e) The Report of the European Committee under the Council of Europe for prevention of torture and inhuman or degrading treatment or punishment was also made public. It was based on the results of monitoring visits to Kyiv and Kharkiv pretrial detention centers between November 29 and December 6, 2011. The authors of the document stated that numerous violations of the prisoners' rights in pretrial detention centers have been revealed. "They are beaten, sometimes with the clubs, while in custody and during interrogations. Sometimes they are subjected to treatment tantamount to torture — electrical shock, suffocation with the plastic bags or gas masks". The Report reveals that prisoners are threatened with arms, and some of them come from interrogations with injuries. The monitors also criticized the conditions in which the prisoners are kept. As an example, they described a cell in Kharkiv pretrial detention center, where 44 inmates are kept, while there is enough room for 28 only. As a result, the inmates have to take turns to sleep. "Therefore, one can arrive to the conclusion that a person kept in pretrial detention center is subject to the risk of cruel treatment" summed up the monitors. In 2012 all the observations made in this report still applied.

f) Nevertheless, in some cases of human rights' violations the Prosecutor's office responds differently. E. g. on the fact of the use of violence against the prisoners in the CF No. 77, city of Berdyansk, Zaporizhzhya oblast', the criminal proceedings were instigated.

On February 17 several prisoners of the correctional facility No. 77 of the minimum security level refused to take their meals during breakfast. On February 19 press-service of the SPSU for Zaporizhzhya oblast' informed that prisoners protested mainly against low temperature inside the premises, conditions of work and meals, and that, allegedly, after things have been explained to the inmates they agreed to eat by the evening of February 18. The hunger strike of the prisoners ended with criminal proceedings, instigated by Berdyansk regional Prosecutor following the inspection of the CF. According to information offered by the deputy Prosecutor for Zaporizhzhya oblast' A. Kudrayavtsev on February 20, the criminal proceedings were instigated on two accusations — the use of violence against prisoners and serious breach of the labor law. The criminal case was filed under Article 172.1 (gross violation of the labor law) and Article 365.2 (Abuse of power or authority, if accompanied by violence, use of arms and painful and humiliating actions, without evidence of torture).

3.3. Right to privacy

a) Let's remind you that on October 3 the Parliamentary Assembly of the Council of Europe defined the meaning of the term "political prisoners". They are persons deprived of personal freedom, if the incarceration was committed with the violation of one of the fundamental rights guaranteed by the European Convention on Human Rights. However, the recent political persecutions, which have become systemic in Ukraine over the last years, testify to the fact that any incarcerated person, without exception, is subject to the violation of his/her rights, irrespective of the penitentiary institution where this person is imprisoned. E. g. the video showing Yu. Tymoshenko was made public and caused social outburst and outrage with the SPSU's actions. According to Ye. Zakharov, co-chair of Kharkiv Human Rights Group, "Showing a video of a person in jail is violating his/her privacy. The person cannot be filmed on video without his/her consent, especially when that person is a woman staying in the hospital and in such condition. Moreover, the video was widely disseminated. It is a serious violation of the right to privacy. Such gross interference into the private life is prohibited by the Constitution and entails criminal liability. Besides, it is immoral".

b) On May 24, Karina Klevzhits tried once more to visit her husband in the Correctional Facility No. 55. She was determined to meet with her husband, become pregnant and give birth to their child. The facility administration, however, refused the meeting, claiming that Yu.Klevzhits is staying in TB ward. Karina Klevzhits approached the Prosecutor's office and Central office of the SPSU, claiming that her rights are violated; she also intends to appeal to the European Court on Human Rights, as she believes that the government of Ukraine in this case is violating Article 8 of the European Convention — the right to private and family life.

3.4. Right to medical assistance

Providing medical care for the persons in custody, their transfer to civil hospitals for treatment, duration of the process of discharge on health grounds under Article 84 of the Criminal code of Ukraine still remain serious problems.

a) On March 16, the European Court on Human Rights passed a decision in compliance with rule 39 of the Regulations on providing immediate medical care for Yu. Tymoshenko in the

respective medical institution. Some lawyers claimed that it signifies the need for her immediate transfer to a hospital, while the officials, and, specifically, the Minister of Justice Lavrinovich, believed that there was no need for the transfer, as the necessary care could be provided in the CF. The head of the UHUHR Ye. Zakharov commented on the event "This Regulations' provision exists and has been applied many times with respect to Ukraine and its citizens. We used it a lot of times. The European Court on Human Rights sends the same-day fax under the headline "The European Court's Decision on urgent measures". This document is submitted to the Ministry of Justice of Ukraine, department for the support of cases in the European Court on Human Rights". The Decisions of the European Court on Human Rights are compulsory for the countries that ratified the European Convention. On July, 17, 1997 the Supreme Rada of Ukraine ratified the European Convention on Protection of Human Rights and Fundamental Freedoms.

b) However to save a person's life it is not enough to release him/her from custody. Having to deal with health care system this person faces another. In a given case the human life was saved, but generally the state has to pay attention to the needs of terminally ill people, especially those released from custody and needing immediate professional help. On April 24 the European Court on Human Rights passed another recommendation under rule 39 of the Court's Regulations with respect to immediate medical care for V. V. Velichko. The UHUHR attorney O. Sapozhnikova stated in her petition to the Court that "Since October 22, 2010 the petitioner had been kept in custody in Ismail pretrial detention center. I.e. for two years he stayed in this center without medical care. His health condition deteriorated and gives grounds for concern, as the petitioner's disease, if not treated, can lead to lethal outcome. The petitioner has 3rd category of disability, no family or other relatives". After the preventive incarceration was substituted with conditional release with written statement that he would not leave the place, Velichko was admitted to Odessa oblast' hospital, where he undergoes his treatment.

3.5. Right to work

The statements made by penitentiary system officials claiming that the inmates of their institutions can master a new profession and earn money for food and cigarettes, try to conceal hard labor conditions for the convicts and violations of their right, stated the human rights' activists in their interview to Radio Liberty. "The convicts themselves are reluctant to share this information — admits the program coordinator for Kharkiv Human Rights Group A. Didenko. — The conditions of their work in many enterprises fail to meet even most basic safety norms". The expert divulged that sometimes people have to work 12 hours a day. "As of today many enterprises under the penitentiary system operate within "shadow economy". People's salaries are not transferred to their accounts; they are paid in kind — with cigarettes, tea or something else. For me, it signifies that the enterprise evades taxes" — stated human rights activist A. Didenko.

4. PUBLIC CONTROL IN THE PENITENTIARY INSTITUTIONS

4.1. National preventive mechanism against torture in prisons

For many years we underlined in our reports that the lack of public control over the SPSU operation is one of the major factors contributing to the systemic violations of human

rights in this domain. Starting 2006, when Ukraine ratified the provisions of the Facultative Protocol to the UN Convention against torture, the civil society advocates systematically insisted that Ukraine should introduce one or several national prevention mechanisms against torture (hereinafter NPM). We tried to draw the authorities' attention to this issue through public events, street actions, public statements, annual reports. The experts from NGOs took part in developing draft laws on NPM. Notwithstanding, over the course of 6 years Ukraine never managed to introduce the NPM in compliance with the provisions of Facultative Protocol to the UN Convention against torture. Finally a new Ombudsman under Supreme Radar of Ukraine Valeriya Lutkovska was elected to the office. The thing is, V. Lutkovska used to lobby public initiatives and the need to devise NPM draft law as a deputy Minister of Justice, but the actual law was never passed. That's why one of the first initiatives of the new Ombudsman was the introduction of the NPM under "ombudsman+" model. The NPM Department was set up; all-Ukrainian training programs were launched to ensure public participation in the NPM monitoring plan, which would allow for nation-wide public control and monitoring of numerous and diverse penitentiary institutions in Ukraine. We hope that the NPM system will bring the public monitoring of prisons to the new level, ensuring high quality, systematic, pre-planned and surprise visits to the institutions under the SPSU.

The most crucial issue, though, is the attitude of bureaucrats towards members of public and cooperation in the human rights area, specifically the lack of good will among the officials needed for transforming the jails into civilized penitentiary institutions with due adherence to rights and lawful interests of persons in custody. On the one hand, the public representatives currently have the legal guarantees to visit these institutions without preliminary notification; respond to the instances of human rights violations; conduct monitoring on adherence to human rights etc. The members of Observing Commissions do that (we'll describe the details of their activities below), but in practice this structure is inefficient due to several reasons. First, the Observing Commissions are formed predominantly of the former SPSU employees or public servants who have no intention to monitor penitentiary institutions with due efficiency; or of individuals who are ignorant of the human rights and interests of the people in custody. Second, the SPSU wardens have no positive incentives to open their institutions for public; they are unwilling to make their deficiencies known to public or to resolve the issues related to adherence to human rights in joint effort with the members of civil society.

The thing is the country leadership as well as the heads of SPSU system miss simple logic here. If the SPSU problems related to the conditions of the prisoners, medical care, release on parole, disciplinary punishments etc. become known to the public from the direct source of information, i. e. through regular visits of penitentiary institutions by civil society activists, then public at large will be aware of these problems and eager to resolve them. Next, public and authorities could join their efforts in seeking the ways for addressing the said problems. In practice, however, the openness of penitentiary institutions' system is only declared by the SPSU that claims that it is ready for the humanitarian changes and adherence to human rights, while in fact it is not implemented. The broader the opportunities and competences of public activists in visiting the penitentiary institutions, the better is constructive dialogue and cooperation.

Let's remind the reader that actual unchangeable figure representing the number of persons serving their sentence in penitentiary institutions is the product of society, and crimi-

nogenic situation in the country will not improve unless both the country leadership and the public come to understand that this "social product" should be released from jail with a new positive quality, new attitude towards the crime — this is the main goal of punishment. That is why public participation in psychological transformation of the prisoners should not be restricted, while the state should by all means promote fruitful cooperation and encourage public activists to participate in the reforming of the SPSU system. So far this system remains predominantly closed to the public, and we can only hope that eventually the situation will change for the better and the SPSU leaders will change their hostile attitude toward citizens and journalists and will not try to conceal the faults of their operation from public at large.

4.2. Observing commissions

Despite the efforts of the civil society to move forward the Observing Commissions' operation by training future members for these bodies, compiling informational and analytical materials, the activities of the said commissions still remain a mockery of the notion of public control. Nevertheless, under the Criminal Procedural Code of Ukraine the Observing Commissions (OC), inefficient and imperfect as they are, so far remain the only bodies which exercise control over the observance of prisoners' human rights.

In August–December 2012, questionnaires were sent to 9 out of 42 Kharkiv oblast' OC. The addresses of the OC and the names of their heads were obtained from the official site of the SPSU for Kharkiv oblast', which by now ceased to exist and was reopened under the new e-address[13]. The questionnaires contained questions concerning the names and personal data of the rayon OC head, his deputies, members and secretary; its operation plan for six months (a year); scheduled OC meetings, including the meetings in the penitentiary institutions, planned activities with respect to parole release; substitution of sentence with a milder one in the penitentiary institution under commission's supervision (including the meetings of branch commissions).

Not a single commission managed to provide exhaustive answers to all the questions. The letters to the Commissions in Dzerzhynsky and Kharkivsky districts were returned with the stamp "the addressee not found", or "no addressee at this address". It can be explained by the fact that the former head of the commission was dismissed and replaced by a new person, while the letter was still addressed to him. But we also included the names provided at Kharkiv SPSU Department site. Interestingly, only the heads of three commissions out of nine remained the same. Anyway, as opposed to Dzerzhynsky and Kharkivsky districts' commissions, other OC managed to respond, even, though "the addressee was not found at this address".

The OC of Balakliysky district failed to respond, although the letter was received by the addressee. The other responses were delayed. So much for the "accessibility" of the OC for rank-and-file citizens! It becomes clear why the prisoners find it pointless to address the commissions complaining of the human rights violations. Apparently they can hardly expect any response at all, let alone adequate reaction to the complaint.

Now, let's analyze the provided responses.

1. The Observing Commission in Chervonozavodsky district (Kharikiv). Membership: 7 persons. Representatives of the community — 3 members (under p.9 of the OC Regulations

[13] http://ukrprison.org.ua/articles/1351802832

public members should constitute at least half of the total number). It is typical that the action plan for 6 months contains no dates (timeframes) for any events. There is a notion that a given event takes place "on the regular basis"; e. g. the meetings with the convicts to discuss their personal problems should be conducted on the regular basis, and, moreover, with the institution administration participation! It is easy to predict the efficiency of such measure from the point of view of the uncovered violations of the prisoners' rights! "The check-ups of the legality of penalties imposed on the inmates, i. e. placing them into the cells, isolation wards and incarceration" (!). it means that the OC has undertaken the prosecutor's functions as these check-ups are within the terms of reference of the prosecutor's office, while the OC under Article 25.2 of the Criminal Procedural Code of Ukraine, are to exercise control over the adherence to the prisoners' rights. Abiding with the law and adherence to the prisoners' rights are two different concepts, and the breach of legality does not necessarily mean the violation of the prisoners' rights. Besides, the OC obligation to "check up the legality" of incarceration makes one assume that the OC plans have not been revised for at least 8 years, because it was exactly 8 years ago that the Correctional Labor Code of Ukraine, establishing the incarceration as confinement measure. No dates for the commission meetings, including field meetings in the penitentiary institutions are provided.

2. Observing Commission of Zhovtnevy district provided the work plan for the year 2012. The plan is sufficiently detailed. It is noteworthy that it includes an item "reports of criminal justice inspection at OC meetings concerning their work with individuals released on parole". It is common knowledge that criminal justice inspections have not been doing anything in this area. Under the Ministry of Justice requirements and instruction of the SCPSU No. 16/1-1855/Lc of 18.03.2011 on abolishing the instruction of the State Department of Ukraine for Penitentiary System (hereinafter — the Department) on temporary registration of the individuals released on parole and control over their behavior (No. 19/713/Kn of 13.02.2009), the registration of the individuals released on parole stopped. That's why the level of OC members' awareness of the legislation in force, and in particular, the parts that regulate their own operation, is of a special interest! The OC provided a schedule for meetings with the inmates of Kholodnohirsk CF No. 18 (as addendum) for the 1st and 2nd halves of the year 2012. These meetings were to be held between 12:00 and 2:00 pm once in a month. The same members of the commission had to see the inmates of Kharkiv pretrial detention center between 2:00 and 4:00 pm on the same day. No timeframe was provided for the intended visits to Kholodnohirsk CF No. 17, although the plan specified that they had to take place in May and in November. No plan for dealing with the individuals released on parole was provided.

3. Observing Commission of Ordzhonikidzevsky district (Kharkiv) (Kharkiv CF No. 43). Commission has 10members. Oddly enough, the OC, according to the information, has no chairman. 6 persons represent the community; 3 of them, though, are the heads of the street committees which makes one suspicious as to the fairness of their appointment to the commission. The joint meetings of the OC with the CF-43 commission on the issues of parole release were planned. Looks like this OC invented a new organizational form not stipulated by the Regulations (probably, the attendance of the so-called meetings on parole release by the OC members was meant). Moreover, we received the "Schedule for the joint meetings of the CF-43 commission and OC for the 2nd quarter of 2012" , agreed upon by the facility warden and the OC deputy head! So, the OC of the Ordzhonikidzevsky district together with CF-43 administration established an interesting practice of joint meetings on the agenda of parole

release. These meetings were to be held 4 times a month, in August — even 5 times. Apparently, the plan refers to the meetings of the parole release commission, but the submitted schedule testifies to a different understanding of joint events planned by the OC and CF-43 administration.

4. Observing commission of Kominternivsky district. Membership — 10 persons, with only 4 of them representing public organizations. The provided plan was the most voluminous of all. IN fact it is the only commission which clearly planned monthly meetings (in compliance with the legislation) and described the agenda to be addressed each month. However, the dates and time for the meetings were lacking. The schedule for the meetings with the inmates of Kachanivka CF No. 54, check-ups of the inmates' conditions in the facility for 2012 were compiled but never submitted. No information was provided on the dates or time for the visits to CF — 54; neither was it found in the action plan. No plan for work with individuals released on parole was provided.

5. Observing Commission of Kominternivsky district. Membership — 13 persons, with only 3 of them representing public organizations, in violation of the legislation in force. The work plan for 2012 was provided. It is noteworthy that it contained no timeframes for the events mentioned there. Instead the measures are referred to as "conducted on the regular basis", "constant", "carried out in the course of the year" (which is, in fact, all the same) , "over the year 2012" (all the same, again!) and "as need arises". Even the meetings with the inmates of penitentiary institutions are conducted "regularly", and no one specifically is in charge — the whole OC is responsible for them.

This vagueness can hardly contribute to the systematic meetings with the prisoners. The majority of plans were compiled in haste and rather negligently. Only some of them can boast of detailed and viable provisions. Lack of timeframes for specific events, lack of the persons directly responsible for the implementation are among the most typical flaws of the plans. Some commissions planned less than one meeting per month as stipulated by the Regulations on OC. Not all the OC devised the schedule for meetings with the convicts. Personal responsibility for the OC action plan is recommended, as it would enhance not only accuracy and clarity of the commission's operation, but also its efficiency. If each commission member develops his/her action plan with specific terms of responsibility, then all the plans can be compiled and approved alongside with the general OC plan, defining the areas of operation which can be addressed by the OC as a whole. If the OC members wish so, the general OC plan can envisage also measures which can be implemented by several members of the commission.

Under p.16 of the Regulations, the OC meetings are to be held right in the penitentiary institutions at least on a quarterly (semi-annual) basis. The OC either failed to provide any information with this respect, or did not give any specific dates of the planned meetings etc. Interviews conducted with the commission members led us to believe that the majority of them were not even aware of the obligatory nature of the meetings which ought to be held in the penitentiary institutions. That is why specific dates are to be reflected in the commission action plans. Characteristically, only one commission (in Zhovtnevy district) offered specific dates and time for the planned meetings. I believe that dissemination of this practice could be instrumental in making OC operation more focused.

The issue of unequal representation of public and state authorities within the commissions is a problem common for all the OC. The majority of the OC has 1-2 more "official" members than the members of general public. Some of the OC, however, have even less rep-

resentatives of the community, e. g. Pervomaysky district OC, which has only 3 members of public among the total number of members, which is larger than stipulated by the Regulations. This situation can be explained by lack of interest towards OC operation among the NGOs of some districts. Actually, even the organizations represented in the OC, are not the ones that deal with the penitentiary system or work for the reforming of criminal justice. Mainly they unite former public servants, WWII veterans, Afghan veterans, street committees members, people affected by the aftermath of the Chernobyl NPP disaster, clergy. Their membership in the OC shows that specialized organizations are scarce. Not a single OC in Kharkiv oblast' (with the exception of Balakliya rayon), is headed by a member of public, or has a public representative as deputy head or secretary. The reason for this is that under the Regulations both the head and the secretary are elected by the OC founding body. Easy to guess that a state official a priori is not interested in OC active operation (as any members' excessive activity means more of a "headache" for him) becomes the head of the commission. As a result, the whole OC operation can become dependent on the state officials' will and won't be able to realize its human rights protection initiatives, involving the community members into the process. These latter thus become just "petitioners" seeking the OC head's permission every time certain initiative comes into being. Naturally the OC head is an elected official with a lot of other duties apart from the observance of the prisoners' rights or even meetings with other commission members.

The majority of the penitentiary institutions in the oblast' lack available information on the OC members or even on the OC address. As a result the convicts do not know much about the OC. The prevalent number of the convicts responded they have never heard about the OC. E. g. some inmates of Temniv CF No. 100 mentioned that they themselves prepared and displayed the information board with the OC data a year ago, just before the commission visit. This visit, by the way, was just a single occasion, according to the inmates. The verification of the OC meetings with the agenda of observance of the prisoners' rights (in 9 OC) was also conducted on the eve of the parliamentary elections or on the very Election Day.

Among other things we were surprised to find out that the OC are very hard to reach by phone. Sometimes we had to dial 5 different numbers before getting any response at all. Then we were either redirected to another number or asked to call later etc. It is a very vivid example of how difficult it would be to reach an OC from any penitentiary institution, where phone calls are limited. Only one OC (!) was willing to exercise control over adherence to the election rights of the convicts by direct observation of the voting process in Kholodnohirsk CF No. 18. All the rest never gave it a second thought.

E. g. the head of Chenozavodksy district OC O. Bakshiyev bluntly told us that he had other things to do before the elections. The other commission heads either did not understand what we were talking about or claimed that such control was unnecessary or redundant for many reasons (e. g. there are other control bodies present, there are no problems, nothing can happen there etc.). By the way, the phone calls we made were aimed not only at finding out whether any control over observance of the prisoners' election rights was planned, but also at checking the accessibility of the Kharkiv oblast' Observing Commissions for the potential convicts in isolation custody.

The Kharkiv oblast' OC deserves a special mention. One of the authors of this report became a member of this commission and could see with his own eyes the inefficiency of its operation which led him to consider the possible reasons and hindrances accounting for its

faulty activity. The new membership (12 persons) of the OC was approved on April 13, 2012. After the organizational meeting not a single event was organized in 6 months. Finally, one of the authors of this report wrote a letter to the OC head; as a result the OC managed to convene, as it turned out, with the new head. Besides, at the very beginning the request for the passes allowing all the commission members entrance to the penitentiary institutions was made[14]. The Regulations on OC, p. 8, stipulate that "commission members for the term of their office, are issued the passes for the visits to the penitentiary institutions, located in the territory of the respective administrative units". Finally the new OC head expressed his readiness to have the passes issued and distributed among all the commission members.

Later, however, the OC head O. Anpilogov changed his mind and declared at the OC meeting that after discussing the matter with the head of the SPSU head for Kharkiv oblast' they arrived at the conclusion that issuance of such passes is not expedient, and assured the commission members that no problems will arise for their visits to the penitentiary institutions. In fact the official opted for starting his control over observance of prisoners' rights with violation of p. 8 of the OC Regulations. Moreover, when reprimanded by V. Chovhan, who stated that this decision was illegal and the matter would have to be brought to court, O. Anpilogov reacted in a way, most inappropriate for a high official — he screamed, made humiliating utterances and threatened to strike the critic's name from the list of the OC members. The criticism voiced by the aforementioned OC member with respect to O. Anpilogov's requirement to inform him of any planned visits to the penitentiary institutions, so that he could, in his turn inform the SPSU head for Kharkiv oblast', met with similar violent reaction. Obviously the proposed algorithm would make any unplanned visits impossible, so that the facility administration would have plenty of time to get ready for the visit aiming at monitoring the observance of the prisoners' rights. This critique, however, was not even discussed. On the contrary, the proposed algorithm was supported by many OC members.

The statistical data reflection the oblast' OC operation over the year are unsatisfactory as well. E. g. not a single convict has approached 20 out of 42 oblast' OC! 32 out of 42 OC failed to assist the convicts in seeking employment. And the 10 OC which did help, provided assistance to 27 individuals only! The number of violations committed by the commission over the first 6 months of 2012 is another cause for concern.[15].

5. REPORT OF THE EUROPEAN COMMITTEE FOR PREVENTION OF TORTURE AND CRUEL OR DEGRADING TREATMENT OR PUNISHMENT

On November 14, 2012 the report of the European Committee for prevention of torture and inhuman or degrading treatment or punishment, based on the results of the visit to Ukraine between November 29 and December 6, 2011, was published.

[14] http://khpg.org/index.php?id=1351118909

[15] Summarized information on interaction between the SPSU and observing commissions in the first half of 2012. Department of criminal justice inspection and social/psychological work with the prisoners kept in the SPSU institutions.

Report mainly addressed the conditions in which the inmates of the institutions under Ministry of Interior of Ukraine are kept. Some portion of it, however, dwelt upon provisions governing the operation of the SPSU institutions.

Thus the Committee representatives visited the pretrial detention centers in Kyiv and Kharkiv. In the report that followed the Committee appreciated the efforts of the Ukrainian authorities to reduce the number of people kept in the pretrial detention centers, but pointed out certain serious problems. Despite the fact that Kharkiv pretrial detention center recently reduced the number of its inmates by 1000 persons that were transferred to other facilities, the situation still remains complicated. The Committee delegation uncovered a horrifying fact — 44 adult inmates were held in the cell 45 sq m big. It means that one person had about 1 sq m of space for himself. Moreover, the cell had only 28 beds, so that the inmates had to take turns to sleep.

The information that boxes with total size of only 0.8 sq m were used for the inmates of this temporary detention facility is also overwhelming. The penitentiary institutions' administration explained that they were used for temporary stay of the inmates and for their interrogations by the security staff. The Committee pointed out that such premises cannot be used even for short periods of time. (p.44 of the Report).

The delegation also stated that iron grates on the windows are also inadmissible and the administration had to assure the Committee members that the grates would be removed in the nearest future. Later, commenting on the Report, Ukrainian authorities advised that they had been removed. It is noteworthy that during every visit the Committee brings the inadmissibility of the grates to the attention of the administration and every time this latter promises that they would be removed. Nevertheless, the reluctance of Ukrainian officials to comply with the Committee recommendation is evident, as even today, under p. 17of the Internal Regulations for the penitentiary institutions (Order No. 275) the windows in the cells and disciplinary isolation wards of the penitentiary institutions have metal welded bars. By the way, despite of numerous NGOs' protests against this normative act, the Order No. 275 has not been changed since 2007.

As to the Committee's comments on the regulations and actual conditions in which the detainees are kept in custody, the Ukrainian authorities responded that the Ministry of Justice of Ukraine is developing the draft order "On approving the Internal Regulations for penitentiary institutions of preliminary incarceration" (p. 46)[16]. In fact, it is known that after shocking information about the conditions in which the detainees are kept in custody became public, this draft was being devised, even with public involvement in the process. Nevertheless, till now this document has not seen the light of day.

6. RECOMMENDATIONS

1. Completing the process of SPSU transfer under the Ministry of Justice jurisdiction in compliance with the PACE Resolution No. 1466 (2005).

2. Conducting complex analysis of the criminal and penitentiary legislation in force and practices of its application in compliance with international standards.

[16] http://www.cpt.coe.int/documents/ukr/2012-31-inf-eng.htm

3. Revising the Concept for the reform of the penitentiary system in conformity with the Concept for the reform of criminal justice system, involving wide circles of experts into discussions, introducing independent expertise of the Concept and public hearing on it.

4. Banning the provisions of the Departmental current legal and normative acts which violate the human rights.

5. The new Concept for the reform of the penitentiary system should become the basis for the new draft law on amendments to the Criminal and Criminal Procedural Code, which should meet international standards; draft law on amendments to the Law "On State Penitentiary Service", draft law on "Disciplinary bylaws for penitentiary service of Ukraine", the draft resolutions of the Cabinet of Ministers of Ukraine "On serving in the State Penitentiary Service of Ukraine " and "Order for one-time monetary compensation in case of penitentiary serviceman's death or injury and reimbursement of material damage caused while in the line of duty" .

6. Revising the tasks and legal foundations in the operation of the special units; putting an end to their use in searches and other actions within the penitentiary institutions.

7. Developing and introducing mechanisms and procedures for efficient and rapid response to the notifications on potential violations of human rights in the penitentiary institutions together with the leading human rights organizations.

8. Devising procedure for constitutional petition to determine the jurisdiction of the court hearings of the prisoners' complaints against actions (inertia) of the penitentiary institutions' administration.

9. Developing and introducing mechanisms and procedures for the visits to the penitentiary institutions in compliance with the requirements of the Facultative protocol to the UN Convention against torture.

10. Promoting other mechanisms for public control over the penitentiary institutions' operation.

11. Establishing an efficient system for petitioning; putting an end to the practice of penalizing the prisoners for their appeals against the penitentiary institutions' administration.

12. Compiling an exhaustive list of the regime violations entailing disciplinary measures.

13. Checking up all the cases of corruption revealed in the operation of the system officials, public condemnation of corruption, if confirmed.

14. Implementing research programs and projects, including the human rights NGOs' projects addressing the observance of the prisoners' rights and penal system functioning as a whole.

15. Raising public awareness with respect to the operation of the penal system, actual situation and problems in this area; setting up press-service under each Department.

16. Changing the subordination of the medical institutions making them accountable to the Ministry of Health.

17. Ensuring confidential meeting with an attorney for the inmates of the penitentiary institutions.

18. Determining by procedural laws of various judicial branches the order for direct participation of the convicts, held in custody, in the court hearings.

19. The Ministry of Justice of Ukraine should revise the norms for the convicts' personal belongings to bring them into conformity with international standards;

20. The State penitentiary service of Ukraine should provide for the regulation of legal relations which form in the process of imposing/serving the sentences (video-observation, lighting, phone calls).

21. The State penitentiary service of Ukraine should revise the provisions of Internal Regulations for the penitentiary institutions and other normative acts with the goal of harmonizing them with the European Court on Human Rights' decisions and European Committee reports with respect to torture prevention and cruel and humiliating treatment or punishment.

22. Revising the provisions of the State Policy Concept for reforming the State penitentiary service of Ukraine with respect to self-sufficiency requirement in penitentiary institutions as a component of involving the inmates into socially useful work.

23. Revising the conditions in which the prisoners are kept in the disciplinary isolation cells, bringing them into compliance with the European Committee recommendations to Ukrainian government with respect to torture prevention and cruel and humiliating treatment or punishment.

24. Setting up a group consisting of national and international experts, which would do the comprehensive revision of the criminal and penal law, taking into account the European rules for prisons, standards of the European Committee with respect to torture prevention and cruel and humiliating treatment or punishment, the European Court on Human Rights' decisions.

25. Amending current legislation on pardon for the persons serving life terms.

26. Introducing changes forbidding public officials' participation in the OC to the Regulations of Observing Commissions approved by the Resolution of the Cabinet of Ministers of Ukraine No. 429 of April 1, 2004 (the version of the Cabinet of Ministers of Ukraine No. 1042, of November 10, 2010).

27. SPSU territorial bodies and the Observing Commissions should ensure prisoners' access to their information (i. e. addresses, phone numbers, members, functions); this information should be available in the social/psychological services' premises of the penitentiary institutions.

28. All the members of the Observing Commissions in Ukraine should be provided with the passes enabling their visits to the penitentiary institutions in the respective regions.

29. Penitentiary bodies and institutions should broadly use the OC and NGOs' resources in assisting former convicts to adjust after release.

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