

## **Evaluation**

### **of the Ukrainian Parliament Commissioner for Human Rights 2012 activity**

#### **Introduction**

This report presents the results of the monitoring of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights activity in 2012. The aim of the report is to evaluate the work of the Institution of the Commissioner in 2012 and provide relevant recommendations. The report is prepared by an expert group for monitoring of the activity of the Commissioner established by the Advisory Council and covers the period from 27 April to 31 December 2012.

The report consists of five parts which separately cover the following issues: a state of fulfillment of the tasks set by the Ombudsman for 2012; analysis of the priority areas of activity of the Secretariat of the Commissioner; main achievements of the Institution in 2012; strengths and weaknesses of the Secretariat of the Commissioner, a state of implementation of recommendations by the Secretariat made by NGOs and UNDP expert Allar Joks. The report became the basis for the reform of the Institution; conclusions and recommendations for further improvement of the Secretariat of the Commissioner.

#### **1. A state of fulfillment of the tasks set by the Ombudsman for 2012**

##### **1.1. Advisory Council under the Commissioner and other advisory bodies**

At 23 May 2012 during a meeting with NGOs representatives the Ombudsman announced her decision to establish the Advisory Council under the Ukrainian Parliament Commissioner for Human Rights.

On the same day public discussion on the mechanisms of creation, rules of procedure and statute of the Advisory Council began. The discussion took place on the official website of the Commissioner, in Facebook, on human rights Internet forums, and during the meetings with human rights organizations.

The Council began its work at 24 July 2012. It is aimed at providing the Commissioner with the consultative assistance, conducting researches, studying proposals for the improvement of the protection of human rights and fundamental freedoms through the effective cooperation with civil society.

The Advisory Council consists of seven expert groups dealing with:

- rapid legal response to human rights violations;

- monitoring of the activity of the Ukrainian Parliament Commissioner for Human Rights;
- combating racism and xenophobia;
- observance of environmental rights;
- medical reform;
- observance of rights of migrants;
- observance of rights of people with psychiatric diagnoses.

The Advisory Council is helmed by Valeriya Lutkovska and Yevhen Zakharov.

As of December 2012 the following expert councils under the Representatives of the Commissioner including the Advisory Council were created:

- Expert Council on Freedom of Information and Protection of Privacy under the Representative of the Commissioner for access to public information and personal data protection;
- Expert Council on Observance of the Rights of the Child under the Representative of the Commissioner for observance of the rights of the child, nondiscrimination and gender equality;
- Expert Council on Non-discrimination and Gender Equality under the Representative of the Commissioner for observance of the rights of the child, nondiscrimination and gender equality;
- Expert Council on the Implementation of the National Preventive Mechanism under the Representative of the Commissioner for realization of the national preventive mechanism.

In August 2012 the creation of the Public Committee on the Protection of Suffrage was announced. At the same time the Representative of the Commissioner for observance of citizens' voting rights was appointed. However there is no information about the activity of the Public Committee on the Protection of Suffrage.

**Conclusion:** In 2012 not only the Advisory Council under the Commissioner was established but also the advisory bodies under the Representatives.

## **1.2. Institution of the Representatives of the Ukrainian Parliament Commissioner for Human Rights**

### **Thematic Representatives**

In May - August 2012 in accordance with the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" and Regulations of the Representatives of the Commissioner, the Commissioner appointed the following persons as thematic Representatives:

- Natalya Ivanova (observance of social, economic and humanitarian rights);

- Yurii Bielousov (realization of the national preventive mechanism using “Ombudsman +” model);
- Aksana Filipishyna (observance of the rights of the child, non-discrimination, and gender equality);
- Olexandr Pavlichenko (right to access to information and personal data protection);
- Mykhailo Chaplyga (observance of voting rights).

Information about thematic representatives is published on the web site of the Commissioner. At 26 July 2012 the new Regulations of the Representatives of the Ukrainian Parliament Commissioner for Human Rights was approved.

**Conclusion:** during 5 months the Commissioner created the Institution of thematic Representatives. Definition of priorities and creation of the Institution of thematic Representatives became the basis for introduction of the new model of the Commissioner’s Office.

### **Regional Representatives of the Commissioner**

Apart from introduction of the Institution of thematic Representatives the development of the Institution of Regional Representatives was among the priorities for 2012.

The former Ombudsman established regional offices in Crimea, Dnipropetrovsk, Luhansk, Lviv, and Zakarpattya regions but there was no information about their activities.

At the end of 2012 public affairs coordinators of the Commissioner were appointed in Cherkasy, Volyn, and Kherson regions. The coordinators work on a contract and voluntary basis, and practically exercise the functions of the Regional Representatives of the Commissioner.

Such innovation became possible due to the signing of the Memorandum of Cooperation between the Commissioner and the NGO “Association of Ukrainian human rights monitors on law-enforcement” in October 2012.

**Recommendation:** to create more regional offices of the Ukrainian Parliament Commissioner for Human Rights.

**Recommendation:** to pay more visits of the Commissioner and the Representatives to regions of Ukraine.

### **1.3. New structure of the Secretariat of the Commissioner**

New structure of the Secretariat of the Commissioner was approved at *25 May 2012* and became effective at *13 June 2012*. It was developed so as to ensure the effective realization of the 5 priorities of the Ombudsman Office. Five structural units are subordinate to the thematic Representatives of the Commissioner and three structural units are subordinate directly to the Commissioner as well as support unit of the Commissioner. Five structural units are subordinate to the Head of the Secretariat of the Commissioner. In general the Secretariat is composed of 13 structural units.

Maximum number of employees provided for by the personnel list is 235 persons (as it was before). As of 10 December 2012 the Secretariat was staffed by 74,6% of target figure. 168 persons worked at the Secretariat.

### **Comparative study of the actual number of staff of the Secretariat of the Commissioner**

Compared with May 2012 the number of employees of the Secretariat increased by 1,4 times. However correlation between employees dealing with basic functions and those engaged in service changed radically. In previous structure of the Secretariat 52% were service personnel, while only 15% performed basic functions. In the new structure 21,1% of staff perform service functions, and 78,8% - basic functions.

### **Appointments**

During the reorganization staff of the Secretariat of the Commissioner was preserved to the utmost. After the change of leadership 82,5% of staff (99 persons) continued their work at the Office.

In accordance with the Commissioner's declared policy of transparency and openness from June 25 to August 1 an open competition for vacant positions was conducted. By the end of 2012 the number of employees of the Secretariat increased by 69 people.

Staff of the Office of the Commissioner was renewed by 41%. 42% (29 persons) were appointed following the results of the competition and 58% (40 persons) by other procedures prescribed by law.

**Conclusion:** new structure of the Secretariat aimed at the effective realization of top five priorities of the Ombudsman Office. The structure is well balanced. 78,8% of the Secretariat staff perform basic functions, and 21,2% secure the activity of the Commissioner. It is not static but dynamic.

### **1.4. Secretariat of the Commissioner as a united organization**

In the process of creation of new structure of the Secretariat of the Commissioner new leadership of the Office focused on strategic issues of general policy and the functioning of the Institution. The Commissioner does not interfere with the work of structural units permitting their heads to take independent decisions and resolve specific issues. At the same time the activity of structural units is coordinated with the Commissioner in making important or strategic decisions.

Activity of the Ombudsman Office is characterized by close cooperation between structural units. All structural units closely cooperate with NGOs, parliamentary committees, bodies of state power, and international organizations. Close cooperation with NGOs is an integral part of the strategy of the Commissioner.

**Conclusion:** after the reorganization the Secretariat of the Commissioner turned into coherent mechanism with structural units working consistently for achieving a common goal.

### **1.5. Detected systematic human rights violations**

In October 2012 an expert group on monitoring the activity of the Commissioner conducted a survey of heads of structural units of the Secretariat, in particular on detected systematic human rights violations in Ukraine. Analysis of the responses showed that the Ombudsman Office defined a number of serious problems that exist in the country:

- ineffectiveness of the judicial system, widespread torture and ill-treatment in law enforcement, non-compliance with the international standards of detention conditions in places of confinement;
- excessive length of proceedings in courts and non-enforcement of judgments;
- imperfect legislation, red tape, poor qualification of officials, and bad financing of specialized agencies;
- violation of socio-economic, humanitarian, housing, and labor rights as well as violation of right to a safe and healthy environment and others rights;
- outdated social standards (consumer basket content);
- violation of human rights as a result of access to public information and personal data protection due to lack of established judicial practice especially in the area of access to public information, violation of the law on access to public information by bodies of state power and local governments as well as qualifying open information as restricted;
- violation of the rights of the child to the proper maintenance (alimony), housing, health care, protection from all forms of violence and exploitation; violation of right to available and free out-of-school education, recreation and leisure, contact with parents who live separately, express their views and be heard;

- absence of the principle of gender equality, women's occupational segregation, discrimination on a wide range of features;
- observance of rights of migrants, refugees and asylum seekers;
- violation of the rights of Roma.

In 2012 the Office of the Commissioner detected the majority of human rights violations through citizens' appeals. As of 01.11.2012 the Commissioner received 14,794 appeals which contained 25,334 reports of human rights violations. Analysis of citizens' appeals is of course an important but not universal way to detect systematic human rights violations.

At 14 December 2012 the Commissioner presented Strategic action plan of the Ombudsman Office for 2013-2017 developed in association with the UNDP in Ukraine. The Plan includes NGOs recommendations and sets four main goals:

- effective prevention of human rights violations and effective response to detected violations;
- improvement of legislation and administrative practice;
- improvement of legal culture and legal knowledge of everybody;
- capacity building of the Secretariat of the Commissioner.

The development and approval of the Concept of state policy in the field of human rights protection is among the priorities for 2013.

**Conclusion:** detected systematic human rights violations were taken into account in the development of the Strategic action plan of the Ombudsman Office for 2013-2017.

## **1.6. Depoliticization of the Commissioner**

According to the Paris Principles Ombudsman is a respected, independent referee able to remain independent dealing with authorities, political parties, public associations, and lobbyists.

After the appointment on the position of the Ukrainian Parliament Commissioner for Human Rights Valeria Lutkovska publicly announced her intention to depoliticize the position of the Commissioner.

In order to depoliticize the Ombudsman Office Valeria Lutkovska obliged to adhere to the following principles:

- to be unpledged to any political party;
- not to participate in the electoral process;
- not to represent (not to act in the interests of) any political party;
- not to speak in favor of a political party;
- speak in favor of or against a particular legislative initiative only in terms of human rights;

- not to mention and not to take note of the political affiliation of the author / authors of the legislative initiative;
- no to comment on political events;
- not to comment on the non human rights statements of politicians;
- abstain from comments in favor of one of the parties (against one of the parties) on issues that divide society and used by politicians in the political struggle, and are not related to human rights;
- act independently, impartially and in the interests of the person and of the citizen, and not in the interests of any association or political party;
- not to give political comments. (Political (in the broad sense) comment is any public value judgment made by the Commissioner on any non human rights issue);
- not to interfere with the courts and not to comment on specific cases in which the final decision is not taken.

Currently the Office of the Commissioner adheres to the twelve outlined principle thus it gradually gets rid of political grounds laid before.

However it should be noted that following the above-mentioned principles sometimes the Commissioner acts too cautiously. In a highly politicized society unilateral efforts of the Commissioner to get the Office out of the political sphere do not automatically restore trust in the Commissioner as to respected and independent referee. Whereas change in perception of the Ombudsman's office of all parties is an important part of the depoliticization of the Office of the Commissioner.

We believe that the following factors will help to restore trust in the Commissioner:

- adherence to the depoliticization principles of the Ombudsman Office;
- obligatory response to human rights issue which are of great public importance;
- obligatory response within the competence of the Commissioner to politically motivated human rights violations;
- proactive communication policy of the Office of the Commissioner.

**Conclusion:** in terms of inner aspect of depoliticization the Office of the Commissioner is successfully getting rid of political foundation. But in terms of external aspect of depoliticization there are no noticeable changes.

**Recommendation:** the Office of the Commissioner should adhere to the principles of depoliticization.

## **2. Priority activities of the Secretariat of the Commissioner**

In 2012 five priority areas of activity of the Commissioner were defined:

- implementation of the national preventive mechanism using "Ombudsman +" model;
- observance of socio-economic and humanitarian rights;
- observance of the rights of the child, non-discrimination and gender equality;
- access to public information and personal data protection;
- observance of citizens' rights.

The following structural units of the Secretariat of the Commissioner deal with the outlined priority areas:

- Department for Realization of the National Preventive Mechanism;
- Department for Social-economic and Humanitarian Rights;
- Detachment for Observance of Rights in Area of Data Protection Law;
- Department for Observance of the Rights of the Child, Nondiscrimination and Gender Equality;
- Detachment for Observance of Rights in Area of Constitutional and Administrative Law.

### **2.1. National Preventive Mechanism based on the "Ombudsman+" model and activities of the Department for Realization of the National Preventive Mechanism**

In 2006 Ukraine ratified the Optional Protocol to Convention against Torture and thus committed itself to establish the National Preventive Mechanism (NPM) during one year. This obligation remained unfulfilled during the next 5 years.

Establishment of the NPM based on the "Ombudsmen+" model was one of the key tasks of the new Commissioner for Human Rights.

In this regard the 2 October 2012 was a remarkable day because on this day the Parliament of Ukraine amended the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" empowering the Commissioner with functions of the National Preventive Mechanism. According to the Law a separate structural unit for the prevention of torture and other cruel, inhuman or degrading treatment or punishment shall be established in the Secretariat of the Commissioner. The Law also enabled the Commissioner to involve the representatives of civil society organizations, experts, scholars and professionals, including foreign experts to inspect places of confinement.

The Department for Realization of the National Preventive Mechanism was established at the Secretariat of the Commissioner. The Department consists of



three Detachments. Each Detachment consists of two sections focusing on specific issues. The strategic goal of the new Department is to ensure the protection of each person against torture and other cruel, inhuman or degrading treatment at the places of detention by introducing the system of regular inspections.

### **Handling citizens' appeals**

Since its creation the Department received 1120 written appeals (including mistreatments and inappropriate conditions at the places of confinement). 1176 appeals were considered (including the appeals remained from the previous Ombudsman).

Having examined the activities of the structural units of the Secretariat of the Commissioner we can make a conclusion that there is a consistent mechanism for addressing human rights violations. The Secretariat verifies the received appeals and forwards them with the added recommendations of the Commissioner to the state bodies, and requests to report back on the measures taken in a timely manner.

In case of neglecting or partial fulfillment of the recommendations the Commissioner continues the dialog with the leadership of the specific agency. And only in case of complete ignorance the Commissioner recourse to administrative measures or public exposure.

This algorithm has some positive issues. Firstly, the appeal to the state body is accompanied by the Commissioner's recommendations. Secondly, the Commissioner controls and takes additional measures to ensure the fulfillment of the recommendations.

### **Monitoring**

One of the main functions of the Department is to conduct planned and unplanned inspections to the places of confinement in order to prevent improper treatment.

As of December 31, 2012, the staff of the Department visited **168** establishments which are subordinate to the Ministry of Internal Affairs (82 establishments), Security Service of Ukraine (1 establishment), the State Penitentiary Service (31 establishments) and Border Protection Service (4 establishments), Ministry of Defense (2 establishments), Ministry of Health (16 establishments), Ministry of Social Policy (26 establishments) and Ministry of Education and Science (6 establishments). 24 visits were made along with the representatives of local community of Volyn, Cherkassy and Kherson regions in the framework of a project supported by the IMF.

Some of unplanned inspections to the restricted organizations were also made in order to verify the information concerning the use of tortures and cruel treatment of persons in custody.

In November 15 2012 the Department published the first report about its activities. The report focuses mainly on the violation of detention conditions at the places of detention and almost has no information about the treatment of persons in custody by the administration despite the fact that such persons usually complain about cruel treatment.

### **Cooperation with NGO**

Since its creation the Department for Realization of the NPM has been closely cooperating with NGOs. The results of such cooperation with the NGO which specialize on the NPM were the established connections with such NGOs, strategic plan of the NPM development in Ukraine up to the end of 2013 as well as the methodological principles of work of the Department towards the prevention of tortures and cruel treatment, the Expert Council and the algorithm of the NPM function based on the “Ombudsman+” model.

Based on this algorithm the NPM actively involves Regional Representatives of the Commissioner, regional public relations coordinators, and the Expert Council on the NPM.

It is expected that the Department for realization of the NPM will plan inspections to the places of confinement. The Commissioner for Human Rights will provide administrative support of the visits. The Regional Representatives will provide administrative functions at the local level (after creation of the institution). The Association of the Independent Monitors will seek and train monitors for a year (the Agreement was signed for this term). The Expert Council on the NPM will do analytical work and provide recommendations regarding conclusion of contracts of agency. The final decision will be taken by the Office of the Commissioner. The legal ground for monitoring will be the one year Assignment of the Commissioner and the list of the monitors obtained by the appropriate body.

### **Cooperation with the state bodies**

In 2012 the Department carried out an extensive preparation work with the Ministries and agencies which were planned to be regularly visited within the framework of the NPM. A number of meetings were conducted with the representatives of the Ministries and agencies which have places of confinement as subordinate units. These meeting were held both at the Ombudsman Office and at the Ministries and Agencies. In June 2012 it was decided that every Ministry would assign a person responsible for coordination of the NPM realization.

## **Education activity. Training.**

In cooperation with the Kharkiv Institute of the Social Research staff of the Department prepared and organized a number of activities. Training in performance features of the national preventive mechanisms in accordance with the requirements of the Optional Protocol of the UN Convention against Torture was conducted for the staff of the Department for Realization of NPM.

Kharkiv Institute of the Social Research together with the Department for Realization of the NPM conducted three trainings dedicated to the selection and preparation of visitors of places of confinement. 50 people from all regions of Ukraine underwent the trainings.

The monitoring highlighted that the serious obstacle to build up the NPM is a lack of funds. All necessary office equipment for the full scale operation of the structural unit was provided by the UNDP Office as an irrevocable aid. The staff of the Department uses grants and specific NGOs to undergo a professional training.

**Conclusion:** due to approval of the amendments regarding the National Preventive Mechanism a significant step towards the legitimizing the NPM model was made. The systematic preparation work for regular inspections to the places of confinement in Ukraine began. Consultations and meetings were held with the Ministries and agencies aimed at establishing cooperation and improvement of penitentiary system, and elimination of drawbacks.

The recruiting and training of visitors to the places of confinement and staff of the Ombudsman Office were launched. Moreover inspection algorithm which will simplify the monitoring and streamline the reporting is being developed. Inspections of the places of confinement were launched. Conducted inspections allowed detecting a number of systematic problems and human rights violations. The result of these inspections will be reflected in the reports and recommendations to the appropriate Ministries and agencies.

## **2.2. Activities of the Department for Social-economic and Humanitarian Rights**

The Department consists of two Detachments and one Sector for civil control over the military organizations and law enforcement. As of December 10 the staffing level is 70,6%. Only 24 of 34 positions are occupied, which equal to 22 persons since 2 persons took a child care leave. All staff has experience in dealing with the Department's activity.

## **Dealing with citizen's appeals**

In 2012 the Department received 3938 appeals and considered 3598 appeals. The explanation of the legislation without forwarding the appeals to the appropriate state bodies were provided for 33,7% of appeals, and proceedings carried out for 66,3%.

21,2 % of proceedings consisted of restoration of violated human rights, partial satisfaction of applicant's demands by inspecting the activity of state bodies, institutions, organizations, establishments, providing social protection, namely financial aid to applicants in difficult life circumstances; investigation of industrial accidents.

After opening 1881 proceedings and conducting inspections no human rights violations were detected, results of inspections and legal requirements were explained, sometimes proceedings were continued.

## **Monitoring and acts of response**

In 2012 the Department processed over 150 drafts of legal acts put before the Cabinet of Ministers of Ukraine. The Department elaborated amendments to number of laws and drafts of legal acts. Number of legal reasoning on problematic issues regarding the constitutionality of certain laws was elaborated.

The Department elaborated 24 submissions of the Commissioner for Human Rights to the President of Ukraine, the Prosecutor General of Ukraine, the Prime Minister of Ukraine, the Vice Prime Minister of Ukraine, the Minister of Social Policy of Ukraine, the Minister of Defense of Ukraine, and to other senior executives of central and local executive bodies, local authorities and others.

The Department continues the elaboration of the new Program on providing housing for persons retired from the military service and who are on housing list of the local executive authorities.

According to the data provided by the Representative of the Commissioner on issues of socio-economic and humanitarian rights in 2012 the Department conducted more than 40 site inspections, including in the city of Kyiv, and Kyiv, Cherkassy, Vinnytsia, Kharkiv regions. In the result of such inspections the acts of response were submitted to the Prosecutor General of Ukraine, the Minister of Healthcare, the local executive bodies and local authorities. However, site inspections cannot be conducted more often due to the shortage of financing and taking measures for efficient use of funds, in particular, ensuring inspections by the National Preventive Mechanism.

The Department demonstrates systematic approach in resolving problems of the citizens appealing to the Ombudsman Office and dealing with issues which are in its competence

**Conclusion:** the activity of the Department conducted in 2012 was systematic and quite effective.

**Recommendations:** the proactive monitoring as well as other forms of observations should be used for conducting monitoring of human rights observance in the socio-economic and humanitarian area.

### **Cooperation with state establishments and international institutions**

The staff of the Department participated in the meetings of the Committees of the Verkhovna Rada of Ukraine, round tables, conferences where the opinion of the Commissioner on actual issues on ensuring socio-economic and humanitarian rights was expressed and the amendments to draft recommendations and decisions were suggested.

In addition to that the staff of the Department participated in the interagency councils, commissions on the issues of competence of the Department, as well as in the First National Congress on palliative care; in the First International Congress “Security of Patient. Security of Physician. Security of State”; in the ILO seminar on the issues of international standards for private employment agencies; in the meetings of the executive bodies, in particular, conciliation meeting on the issues of ratification by Ukraine of ILO Maritime Labor Convention 2006; in the meetings of public councils at the Ministry of Defense of Ukraine, Ministry of Internal Affairs of Ukraine, the State Service for the Disabled and Veterans of Ukraine and so on.

In July the following issues were discussed with Cleopatra Dumbia-Henry, Director of ILO International Labor Standards Department: the implementation of the international labor standards by Ukraine, the ratification of Convention of International Labor Organization, difficulties in protecting employees’ rights in the event of the insolvency of their employer, and the need to ratify part three of ILO 173 Convention “On protection of employees in the event of the insolvency of their employer”.

### **Cooperation with NGOs**

The Department cooperates in particular with the association of trade unions, employers, the Veterans Organization of Ukraine, the All-Ukrainian public organization of disabled people "Chernobyl Union of Ukraine", the All-Ukrainian Union of homeless officers, other public human rights oriented organizations, the International Labor Organization, Working Groups of the Committee of the

Verkhovna Rada of Ukraine on the issues of Social Policy and Labor, interagency councils, in particular, the Council on the issues of labor migration of citizens of Ukraine of the Cabinet of Ministers of Ukraine, and others.

**Conclusion:** the Department for Socio-Economic and Humanitarian Rights has been doing substantial work however its activity has not been fully publicized by the Secretariat of the Commissioner.

**Recommendations:** the activity of the Department for Socio-Economic and Humanitarian Rights should be regularly highlighted on the web site of the Commissioner.

### **2.3. Activity of the Detachment for Observance of the Rights in Area of Data Protection Law**

Among five departments of the Office of the Commissioner dealing with the priority areas the Detachment for Observance of the Rights in Area of Data Protection Law is the smallest one. It consists of two divisions: Division for Right to Information and Division for Personal Data Protection.

The staff register of the Department provides for 14 positions. As of December 2012 6 positions are taken. The staffing level is the lowest in the Office of the Commissioner. It is only 43%. The extension of functions as well as staff increasing of the Detachment is possible in the future.

At present the scope of the activity of the Detachment is narrow but extremely important since it deals with informing society by access to public information and privacy protection because of personal information processing in the computerized networks.

The Detachment monitors and controls the observance of constitutional rights and freedoms in the area of data protection law. It conducts work aimed at improving legislation in the area of observance of rights in the area of data protection law.

It is engaged in educational activity and responds to written appeals and complaints by addressing to relevant state bodies so as to receive explanations and appropriate responses.

Expert Council on Freedom of Information and Protection of Privacy which operates under the Representative defines problematic issues which need actions of the Commissioner, elaborates expert findings regarding response to laws or draft laws and provide them to the Office of the Commissioner. Thanks to the work of the Expert Council the Office managed to come up with the expert opinion on the need to abolish the bill of criminalization of defamation 11013.

During four months together with the Expert Council the Detachment elaborated and published the following documents:

- recommendations regarding amendments to the draft law On personal data protection referred to the Committee on Science and Education;
- expert opinion on inadmissibility of amending the Criminal Code with the punishment for defamation or insult;
- appeal to veto the passed at 2 October 2012 amendments to the Law "On personal data protection" which do not improve the state of human rights in the area of information;
- appeal to the President of Ukraine to veto amendments to the Law "On the Unified Demographic State Register and Documents that Prove the Citizenship of Ukraine, Identity Person or his/her special status";
- statement to the Ukrainian Parliament on inadmissibility of laws that restrict freedom of speech and introduce discrimination;
- recommendations regarding marking public information as restricted according to the Law "On Access to Public Information"

All these documents are publicly available on the website of the Commissioner for Human Rights.

As of October 33 complaints were considered. After considering these complaints, appeals or inquiries informational inquiry were prepared or responses were sent to the applicants. From September to December 2012 12 messages related the activity of the Detachment were posted on the web site of the Commissioner.

**Conclusion:** in its activity the Detachment for Observance of the Rights in Area of Data Protection Law demonstrates strategic vision, consistency, openness and transparency. The Detachments should pay more attention to information policy.

#### **2.4. Activities of the Department for Observance of Rights of Child, Non-Discrimination and Gender Equality**

Staffing chart of the Department provides for 16 positions. As of December 2012 the number of personnel is 75%.

The Department deals with the consideration of appeals; monitors the state of observance of children's rights, freedom from discrimination, gender equality; monitors of implementation of Ukraine's international obligations in these areas; develops proposals to the Commissioner on taking measures to prevent violations of rights or to promote their renewal.

#### **Work with citizens' appeals**

During 2012 the Commissioner has received about 959 appeals on matters of the competence of the Department for Observance of Rights of Child, Non-Discrimination and Gender Equality. The main number of appeals concerned

violations of rights of a child (77% of the total). The petitions reflected the full range of current problems and current violations of constitutional rights of a child. The greater part of the petitions was related to the following issues:

- violation of housing and property rights of a child - 112;
- violation of the rights of a child to grow up in a family -37;
- violation of the right to an adequate standard of living - 129;
- violation of the right to education -14;
- violation of the right to health care -8;
- violation of the right to state social services -137;
- violation of the right to a name and nationality - 3;
- the right to freedom from domestic violence - 7;
- the right to freedom from violence and sexual exploitation - 9.

Appeals on violation of freedom from discrimination comprise 22.3% of the total number.

### **Monitoring activities and its results**

One of the main activities of the Commissioner for Human rights is to promote the implementation of international and European standards of child protection, gender equality and freedom from discrimination. In this regard the Department, headed by Ms. Aksana Filipishyna, carries out a systematic analysis of observance of the Ukraine's international obligations, bilateral and multilateral agreements, case law, in particular national courts and the European Court of Human Rights in the above mentioned areas.

In the end of the year the Department began to use a proactive form of monitoring in examination of state of observance of the rights of a child. In October 2012 the first visit was conducted to Vinnytsya region in order to check the state of protection of children's rights to health care in the framework of the Law of Ukraine "On the Procedure of health care reform in Vinnytsia, Dnipropetrovsk, Donetsk regions and the city of Kyiv."

In November 2012 the Representative of the Commissioner visited the Bila Tserkva city center for social and psychological rehabilitation of children "Zlagoda". The reports with recommendations on elimination of identified violations of the rights and freedoms of children were submitted to the heads of relevant state bodies.

The Department closely cooperates with the Department for Realization of the NPM.



## **Interaction with the government agencies**

The Representative of the Commissioner - Head of the Department for Observance of Rights of Child, Non-Discrimination and Gender Equality interacts with various government agencies. Ms. Aksana Filipishyna and the officers of the Department regularly participate in meetings of the committees of the Verkhovna Rada of Ukraine, round tables, conferences and interagency councils, various commissions where they bring to attention the position of the Commissioner on the actual issues, make suggestions to the draft decisions and recommendations.

According to the information collected by monitoring group in 2012, the Department staff had participated in 17 joint events with the government and NGO. Some events were initiated by the Department and held at the Secretariat of the Commissioner. The Department actively cooperates with international organizations.

**Conclusion:** in 2012 the Department for Observance of Rights of Child, Non-Discrimination and Gender Equality carried out a large amount of important and time-taking work. However the coverage of the activities of the Department was inappropriate.

**Recommendation:** to develop principles of information policy in order to provide for an adequate coverage of the activities of the Department.

## **2.5. Activities of the Detachment for Observance of Rights in the Area of Constitutional and Administrative Law**

The main task of the Detachment is to ensure the powers of the Commissioner for human rights in exercising the parliamentary control over the observance of human and citizens' rights in the sphere of constitutional and administrative law.

### **Work with citizens' appeals**

According to the Detachment it received 219 appeals (in particular 35 - as the second performer). On the results of considering the appeals on 150 of them there were the acts of submissions. There were 72 positive responses to acts of submissions from which it is possible to make a conclusion on partial or complete renewal of the applicants' rights. It was also received 69 responses with appropriate explanations.

### **Monitoring activities. Monitoring of the parliamentary elections on 28 October 2012**

One of the main activities of the Detachment is to exercise the parliamentary control over the observance of the free expression of the will through elections,

referendums and other forms of direct democracy guaranteed by Article 71 of the Constitution of Ukraine.

In August 2012 the Secretariat of the Commissioner announced a monitoring of the elections. In order to ensure protection of the electoral rights of citizens the Public Committee on the Protection of the Suffrage under the Commissioner for Human Rights was created with the aim of monitoring the preparation and conduct of parliamentary elections of 28 October 2012 and implementing the recommendations of the international organization Freedom House.

The cooperation of the Office of the Commissioner and the NGO "Alliance Maidan" was fruitful in the context of monitoring of the electoral process and was carried out in the framework of the project for monitoring of the electoral process with support of the International Fund "Renaissance."

As part of monitoring of the election process the Detachment observed the implementation by the Central Election Commission (hereinafter - CEC) of the provisions of the Laws of Ukraine "On Elections of People's Deputies of Ukraine" and "On the Central Election Commission." 11 acts of submissions were sent to the CEC. The Detachment developed 13 acts of submissions to state and local self-government bodies.

During the election the officers of the Department for Rights in the Sphere of Constitutional and Administrative Law provided for 36 clarifications to citizens and civil society organizations.

The Commissioner for Human Rights and the Representative of the Commissioner for observance of voting rights took an active part in the specialized roundtables and conferences organized by international election observation missions and NGOs that monitored the election process, and provided for (at the request of representatives of international missions and NGOs) consultations on the issues of observance of the rights of citizens.

The "hot line" was functioning at the Office of the Commissioner on election day. It was possible to apply to the Commissioner by e-mail: [hotline@ombudsman.gov.ua](mailto:hotline@ombudsman.gov.ua), by Skype: Ukraine.ombudsman. It was also possible to contact personally the Representative of the Commissioner for observance of the right to vote of citizens on election Day and later during counting (twenty-four-hour) by mobile number.

According to the acts of submission of the Commissioner a number of offenses in some regions of Ukraine was discontinued.

## **Monitoring of the state of observance of constitutional rights of citizens**

In the framework of monitoring of state of observance of constitutional rights the Detachment monitors the case of Nigerian student Olaolu that received wide resonance because of violation of his right to defense and the right to use in the court process the language which he understands.

As result of a number of citizens' appeals the Detachment developed the act of submission of the Commissioner to the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine on facilitation of medical examination during a special check of persons applying for civil service positions related to execution of functions of state or local self-government.

The competence of the Detachment also includes monitoring of the implementation of the state policy on migration (immigration and emigration) and border control and border crossing of the persons concerned – ensuring the rights of migrants, refugees and asylum seekers. In addition, it includes the issue of citizenship of Ukraine (concerning preventing facts of stateless) and freedom of movement and freedom to choose the residence.

### **3. Information Policy of the Office of the Commissioner**

#### **General information about the appropriate information direction**

Closed nature and opacity of the activity of the Commissioner for a long time has been the subject of severe criticism by human rights organizations. Thus, the only permanent source of information about the activities of the Commissioner was the official website of the Ombudsman and some publications in the media. However, the level of information transparency of the Ombudsman's website was 33.1% and was the lowest among websites of other state agencies and authorities. 76.5% of sections of the Ombudsman's website was not updated for years. The official website rather served as business card and presentation and had a lack of "working" information.

Therefore after the new Commissioner took the office there was a task to implement the recommendations of human rights organizations, namely: to change information policy and to put in it the principles of openness and transparency of the Commissioner. On the official website it was necessary to present detailed information on the structure and organization of the Secretariat of the Commissioner and publish information on the units of the Secretariat, their heads, schedule of work, contact telephone numbers etc.

The activity of the new Commissioner started with a change of the information policy what was clearly demonstrated by holding public hearings, initiated on 15

May 2012 on the priorities of the Ombudsman and the establishment of the posts of Representatives of the Commissioner upon directions.

The detailed information on the structure and organization of the Secretariat of the Commissioner was immediately released at the official website of the Commissioner. The information about the units of the Secretariat, their heads, schedule of work, contact telephone numbers etc was also published. The information about the schedule of public reception, free telephone numbers, mail, email and Skype addresses as well as detailed information on the procedure for appeal to the Commissioner and to the European Court of Human Rights is open.

In the section "Protection of Human Rights" the press-service posts messages about important events in the field of human rights.

### **The main channels of information about the activities of the Commissioner**

**Website:** the Commissioner began her work with a comprehensive reform of the website <http://www.ombudsman.gov.ua/> and filling its sections with 'working' information. From September to December 2012 the Commissioner's website traffic increased by 1.4 times. These measures allowed increasing the information openness of the site more than twice.

The main drawback of the site is the difficulty in finding relevant information. Survey of the Centre of information on human rights conducted by monitoring team shows that civil society actors and journalists have comments on the style of presentation of information on the Commissioner's website. They believe that the press-service develops press releases in too dry official language.

**Social Networks:** in two weeks after the Commissioner took the oath she was represented in social networks. So the start of the page <http://www.facebook.com/ombudsmanUA> launched an open public discussion of the new structure of the Secretariat of the Commissioner with regard to offers of facebook users who participated in relevant discussions.

The results of monitoring of the first months of the Commissioner's activity noted that the Commissioner in order to promptly response to detected violations of human rights started a blog on the internet publication "Ukrainska Pravda".

On 17 May 2012 the Commissioner started her own page on YouTube. At this time there are 28 videos.

**Media:** the Commissioner launched a number of new forms of enhanced cooperation with the media. There were introduced meetings with the journalists in the format of a press lunch, personal contact with members of online communities, conducting on-line conferences.

The journalists may at any time visit the Office of the Ombudsman and look at its work without accreditation. The responses to requests for information provides for personally by the Commissioner or by the press service. Currently there were no complaints about the refusal or undue delay to respond to a request for information.

In 2012 the Representatives of the Commissioner participated in about 10 talk show on national TV, where they were acting as experts.

According to the Department for Information Policy and Analytics in 2012 the press service of the Commissioner prepared and conducted 29 various press events with participation of the Commissioner and her Representatives, in particular in the regions of Ukraine.

### **Coverage of the Commissioner in the media.**

During the period from April to December 2012 in the studied media there were posted 479 information materials on the activities of the Commissioner. Most of the information was distributed by electronic media (403 materials or 84.3% of the total). The smallest amount of information was published in print media - 17 or 3.6%. In 2012 there were 74 TV spots about the activities of the Commissioner on 7 TV channels.

**Conclusion:** despite the significant change in the direction of transparency and openness of the Office of Commissioner the information policy remains ineffective.

**Recommendation:** to develop an effective strategy and technology of the Commissioner's communication with the media.

**Recommendation:** to conduct training for journalists with the support of NGOs.

### **4. The main achievements of the Commissioner for Human Rights in 2012:**

- implementation of policy of open and transparent communication with the public;
- substantial strengthening of international relations and enhancing the reputation of the Institution of the Ukrainian Commissioner in international sphere;
- establishment of contacts with non-governmental organizations;
- establishment of the Advisory Council and other advisory bodies;
- reorganization of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights;
- introduction of the institution of Representatives of the Commissioner upon directions;

- successful launch of the national preventive mechanism with the model "Ombudsman +";
- beginning of the introduction of the institution of regional Representatives;
- development of the Strategy of the Secretariat of the Commissioner for Human Rights for 2013 - 2017 years.

#### **5. Strengths of the Institution of the Commissioner for Human Rights:**

- available strategy of development of the institution;
- systematic approach to problem solving;
- openness, accessibility and transparency of the activities.

#### **6. Weaknesses:**

- low public legitimacy (low level of trust to institution in society);
- absence of the concept of information strategy;
- ineffective communication policy with the media;
- lack of staff training;
- limited funding.

#### **7. Review of the implementation of recommendations of NGOs by the Secretariat of the Commissioner.**

One of the first actions of the new Ukrainian Parliament Commissioner for Human Rights was to conduct a comprehensive analysis of the results of monitoring of the activities of the Ombudsman and the Secretariat by NGO specializing in human and citizens' rights.

As a result there was a compiled list of problems that require immediate response and recommendations to address the significant shortcomings in the work of the Ombudsman and the Secretariat.

The recommendations of human rights defenders can be divided into 2 groups: recommendations that require amendments to legislation and recommendations that can be implemented by the Ombudsman and the Secretariat.

As of 31 December 2012 the Secretariat of the Commissioner for Human Rights took into account 40% of NGOs recommendations. 31.8% of the recommendations are being actively implemented. 27.3% of the recommendations remain unimplemented.

#### **8. Review of the implementation of the UNDP expert Allar Joks recommendations by the Secretariat of the Commissioner for Human Rights**

In July 2012 with the support of the United Nations the expert and legal counsel of the UNDP Mr. Allar Joks carried out the assessment of the capacity of the

Secretariat of the Commissioner for Human Rights and also developed recommendations to improve the functioning of the Office.

As of 31 December 2012 the Secretariat of the Commissioner for Human Rights took into account 33% of recommendations developed by the UNDP expert. 23.8% of the recommendations are actively implementing. 42.9% of the recommendations remain unimplemented.