



ANNUAL REPORT  
OF UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS  
ON OBSERVANCE AND PROTECTION OF HUMAN RIGHTS  
AND FREEDOMS OF CITIZENS OF UKRAINE

Verkhovna Rada of Ukraine

In accordance with Article 18 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights," hereby I submit to the Verkhovna Rada of Ukraine the annual report for 2020 on the status of observance and protection of human rights and freedoms of citizens of Ukraine by public authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations irrespective of the form of ownership and their officials and employees who violated human rights and freedoms of citizens by their action (or omission), as well as on the identified deficiencies in the law on protection of human rights and freedoms of citizens.

Ukrainian Parliament Commissioner  
for Human Rights  
Liudmyla Denisova

Kyiv, March 2021

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# ABBREVIATIONS AND ACRONYMS



ATO	–	Anti-terrorist Operation
AIDS	–	Acquired Immunodeficiency Syndrome
ATC	–	Amalgamated territorial community
CC of Ukraine	–	Criminal Code of Ukraine
CC	–	correctional colony
CCU	–	Constitutional Court of Ukraine
Chernobyl NPP	–	Chernobyl Nuclear Power Plant
CivPC of Ukraine	–	Civil Procedure Code of Ukraine
Commissioner	–	Ukrainian Parliament Commissioner for Human Rights
Commissioner’s Secretariat, Secretariat of the Commissioner	–	Secretariat of the Ukrainian Parliament Commissioner for Human Rights
COVID-19 disease	–	COVID-19 acute respiratory disease caused by SARS-CoV-2 coronavirus
COVID-19 pandemic	–	pandemic of COVID-19 acute respiratory disease caused by the SARS-CoV-2 coronavirus
CPC of Ukraine	–	Criminal Procedure Code of Ukraine
CSPRC	–	Centre for Social and Psychological Rehabilitation of Children
DBN	–	State Construction Standards of Ukraine
DSA	–	District State Administration
ECtHR	–	European Court of Human Rights
ECU	–	Electoral Code of Ukraine
EECP	–	Entry-exit checkpoint
EIT	–	External Independent Testing
EU	–	European Union
GDP	–	Gross domestic product
HCI	–	Health care institution
HCSCES	–	State Institution “Healthcare Centre of the State Criminal Executive Service”
HIV	–	Human Immunodeficiency Virus
ICRC	–	International Committee of the Red Cross
IDP	–	Internally displaced person
KCSA	–	Kyiv City State Administration
Labor Code	–	Labor Code of Ukraine
LGBTI community	–	lesbian, gay, bisexual, trans and intersex community
LLC	–	Limited liability company
MCIP	–	Ministry of Culture and Information Policy of Ukraine
MCA	–	Military-Civil Administration

MEPNR	–	Ministry of Environmental Protection and Natural Resources of Ukraine
MDNP	–	Main Department of the National Police
Media	–	mass media
MIA	–	Ministry of Internal Affairs of Ukraine
MoF	–	Ministry of Finance of Ukraine
MoH	–	Ministry of Health of Ukraine
MoJ	–	Ministry of Justice of Ukraine
NBU	–	National Bank of Ukraine
NGO	–	Non-governmental organization
NPM	–	National Preventive Mechanism
OSA	–	Oblast State Administration
OSCE	–	Organization for Security and Cooperation in Europe
OUF	–	Operation of United Forces
PCO	–	participant in combat operations
PFU	–	Pension Fund of Ukraine
MDNP	–	Main Department of the National Police
PJSC	–	Public Joint-Stock Company
PNRCF	–	psychoneurological residential care facility
PTDC	–	Pre-trial detention center
SBI	–	State Bureau of Investigation
SJA of Ukraine	–	State Judicial Administration of Ukraine
SLS	–	State Labour Service of Ukraine
SPS	–	State Penitentiary Service of Ukraine
SSS	–	State Statistics Service of Ukraine
State Geocadastre	–	State Service of Ukraine for Geodesy, Cartography and Cadastre
TC	–	Territorial community
TD	–	territorial departments
TDF	–	Temporary detention facility
TDFF	–	temporary detention facilities for foreigners and stateless persons who illegally stay in Ukraine
TPP	–	Thermal Power Plant
UN	–	United Nations
URPTI	–	Unified Register of Pre-Trial Investigations

# **OPENING STATEMENT**

**OF THE UKRAINIAN  
PARLIAMENT  
COMMISSIONER FOR  
HUMAN RIGHTS**





The right to life is a person's right from birth and without ensuring and observance of it, one cannot speak of the exercising of any other rights.

The armed conflict in eastern Ukraine, which led to continued Russian military aggression and the occupation of the large territory of Donbas, the Autonomous Republic of Crimea and the city of Sevastopol is causing massive violations of the rights of Ukrainian citizens. Illegal detentions, deportations, illegal and forced passportization, restrictions of linguistic rights, the right to education, and the unilateral closure of checkpoints continue.

The lives and well-being of civilians remain at risk. The armed conflict has exacerbated the humanitarian crisis with devastating consequences for 4.4 million citizens, approximately 1.5 million of whom were forced to leave their places of residence. 49 military servants of the Armed Forces of Ukraine and 18 civilians were killed, 89 were injured in 2020 as a result of the escalation of hostilities in eastern Ukraine.

In particular, since the announcement of the ceasefire (on 27 July 2020), 4 military servants were killed in the area of repelling the armed aggression of the Russian Federation, and as of March 2021, Ukraine lost another 26 of its defenders.

Hundreds of Ukrainians remain illegally detained. 70 more persons were detained in the temporarily occupied territory of Donbas last year. 280 persons are currently illegally imprisoned. The whereabouts of 258 Ukrainian citizens are still unknown. The Russian Federation is illegally prosecuting 133 Ukrainian citizens for political reasons, 114 of whom are in places of detention on the territory of the Russian Federation and the temporarily occupied Crimean peninsula.

Last year, Ukraine faced a new global challenge, in particular, the pandemic of COVID-19 acute respiratory disease. The pandemic primarily affected the most vulnerable populations, put pressure on the country's economy and tested the strength of reforms undertaken, especially those related to the decentralisation of power and health care. The number of reported violations of human and civil rights and freedoms in 2020 increased by 40% compared to the previous year (from 33,800 in 2019 to 48,400 in 2020).

The right to health care and access to health services is a fundamental human right. Insufficient health care funding, limited access to health care services and the closure or reorganisation of health care facilities had a negative impact on the population's access to health care. To protect the rights of citizens in the sphere of health care, I filed a constitutional petition to the Constitutional Court of Ukraine to recognize certain provisions of some laws of Ukraine as unconstitutional.

Within the implementation of the national preventive mechanism, Ukraine became one of the five European countries that continued to visit places of detention to monitor the observance of human and civil rights and freedoms in the context of the COVID-19 pandemic. The results of these monitoring visits are reflected in a special report called "Status of Observance of Human Rights and Freedoms in Places of Detention in the Context of COVID-19."

The UN Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment highly praised the positive experience of the Commissioner's Office in the context of the global COVID-19 pandemic.

The COVID-19 pandemic and quarantine restrictions had a significant impact on the equality of rights and freedoms of citizens. A significant increase in domestic violence, violations of the rights of internally displaced persons, representatives of the LGBTI community as well as the rights of national minorities were recorded during the monitoring visits conducted in 2020. The Commissioner investigated these issues and based on the results prepared the first special report of the Commissioner in Europe "Impact of the COVID-19 Pandemic on the Roma Community in Ukraine" and a thematic report "Exercise of the Right of Internally Displaced Persons to Housing".

Despite any restrictions, together with my team, I continue my daily work aimed at protecting human and civil rights and freedoms with respect to the rule of law and in accordance with the UN Paris Principles.

Ukrainian Parliament Commissioner for Human Rights  
Liudmyla Denisova

Kyiv, March 2021



**1 081**

monitoring visits



**3 063**

reports of violations  
of rights



remote inspections

# CHAPTER 1

## PERSONAL RIGHTS AND FREEDOMS





## PERSONAL RIGHTS AND FREEDOMS

The rights and freedoms of the individual associated with the possibility for his/her physical existence and spiritual development are qualified as personal rights by the Constitution of Ukraine. Personal rights are inherent to every person residing on the territory of Ukraine regardless of their legal status (citizens of Ukraine, foreigners and stateless persons).

The COVID-19 pandemic and related quarantine restrictions had a significant impact on the ability to exercise and observe these rights and freedoms in Ukraine.

This was evidenced, in particular, by the increase in the number of reports received by the Commissioner on violations of personal rights and freedoms from 2,359 in 2019 to 3,063 in 2020.

The protection of the right to privacy and family life became particularly important in 2020. Digitalization in all spheres of life accelerated. Remote working, receiving public services via the Internet and distance education became widespread. The amount of personal health data collected to prevent the spread of the COVID-19 pandemic and the range of entities that process such data increased.

The Commissioner exercised parliamentary oversight over the observance of the right to privacy in terms of balancing the individual's right to privacy and family life with the need to comply with quarantine restrictions.

The lockdown imposed during March-May 2020, due to the COVID-19 pandemic, contributed to an increase in domestic violence. Thus, according to the National Social Service of Ukraine, the number of victims of domestic violence who sought help in 2020 increased by 62% compared to 2019 (2019 – 130,514, 2020 – 211,362).

During the year, the Commissioner recorded violations of the rights of vulnerable categories of the population, in particular, representatives of the Roma national minority and the LGBTI community, related to the quarantine restrictions. Belonging to such categories became a reason for restricting rights, including the right to medical care.

The exercising of the right to freedom of thought and speech in Ukraine was negatively affected by the pandemic. Almost one-third of all violations of freedom of speech in 2020 (27%) was related to quarantine restrictions due to the COVID-19 pandemic.

### 1.1. Right to respect for dignity, right to non-interference in personal and family life

#### 1.1.1. Right to protection of personal data

In 2020, the Commissioner received 2,031 reports of violation of the human rights to protection of personal data. This is almost twice as much as in 2019 (1,061).

The analysis of the reports received by the Commissioner revealed that most of them (almost 1,500) were related to the violation of the human right to privacy and family life during the collection of outstanding debts of individuals (debt collection activities).

The reports received also concerned the unlawful dissemination of personal data via the Internet, the unlawful request for consent to the processing of personal data in cases where such consent is not required, the unlawful dissemination of personal data in messengers and social networks, the violation of the right to protection of personal data when introducing electronic services.

### **INCREASE IN THE NUMBER OF REPORTS DUE TO THE ECONOMIC CRISIS CAUSED BY THE GLOBAL COVID-19 PANDEMIC**

The increase in the number of reports is related to the economic crisis caused by the global COVID-19 pandemic. A large number of people lost their jobs due to the pandemic, which, among other things, led to difficulties for citizens to meet their financial obligations.

To exercise the parliamentary oversight over the observance of the right to protection of personal data, 67 inspections of enterprises, institutions and organizations, state bodies and local self-government bodies that are the controllers and/or administrators of personal data were conducted; the Commissioner initiated 62 proceedings, 9 protocols on administrative offences under Part 4 of Article 188<sup>39</sup> of the Code of Ukraine on Administrative Offences were drawn up and submitted to the court.

#### *Right to protection against unlawful processing of personal data*

To motivate the debtors and their family members or acquaintances to pay the debts to the financial institutions, the debt collection companies resort to psychological pressure on them, using harsh and often illegal methods and unlawful processing of personal data, violating the human right to privacy and family life provided for by the Constitution of Ukraine.

### **UNLAWFUL PROCESSING OF PERSONAL DATA DURING DEBT COLLECTION ACTIVITIES**

Unlawful processing of personal data is a common phenomenon during debt collection activities, i.e. mobile phone numbers of individuals having nothing to do with money liabilities (family members, neighbours, friends and

employees). The consequence of such processing is the violation of the person's right to protection of personal data.

#### **Example**

In October 2020, the Commissioner received a petition about the calls and text messages sent to the mobile phone number of the petitioner by the representatives of a financial company regarding the repayment of the debt on the loan obligations of another person. The petitioner noted that the financial company processed his personal data without proper legal grounds, as the petitioner had no financial obligations towards the company. During the investigation, the Commissioner revealed that the petitioner had no debts to the finance company and was not a guarantor under the loan agreement. However, the petitioner was listed by the debtor as a contact person in the loan application. Following the Commissioner's intervention, the petitioner's mobile phone contact number was removed from the database of the financial company. The petitioner's right was restored.

The debt collection activities verge on punishable offences along with other violations of the law.

To restore the right to privacy, the Commissioner worked together with the National Police of Ukraine in terms of providing the National Police of Ukraine with information on available data that could be seen as socially dangerous acts and for which criminal liability is provided for (for example, enforcement of civil law obligations, distribution of pornographic collages, etc.).

### **THE DEBT COLLECTION ACTIVITIES VERGE ON PUNISHABLE OFFENCES ALONG WITH OTHER VIOLATIONS OF THE LAW**

#### **Example**

In September 2020, the Commissioner received a report that the collection company had made pornographic collages with the petitioner's picture to force the petitioner to meet her civil obligations. The Commissioner submitted the information and available materials on the above to the National Police of Ukraine for a response. Following consideration of the materials submitted, the Pechersk Police Department of the Main Department of the National Police in the city of Kyiv initiated criminal proceedings under Part one of Article 355 of the Criminal Code of Ukraine (Enforcement to fulfil or not to fulfil civil law obligations). The pre-trial investigation is ongoing.

During the monitoring of compliance with the requirements of legislation on protection of the personal data during the collection of outstanding debts of individuals (debt collection activities), the Commissioner conducted 23 inspections and initiated 23 proceedings for violation of rights and freedoms of persons and citizens. The Commissioner issued 20 orders to financial companies. Such orders must be complied with.

The majority of the violations related to:

- failure to notify the subject of personal data on his/her rights, as well as failure to provide information on the owner, the purpose of processing, the composition and content of the collected personal data and their cross-border transfer (non-compliance with Article 12 of the Law of Ukraine "On the Protection of Personal Data" No. 2297-VI of 01 June 2010 (hereinafter — Law No. 2297-VI);
- failure to determine the legal grounds for the processing of personal data of the subjects and unlawful processing of personal data of third (contact) persons (non-compliance with Part three of Article 6 of Law No. 2297-VI, sub-item 2.1 of the Standard Procedure for Personal Data Processing approved by the Order of the Ukrainian Parliament Commissioner for Human Rights No. 1/02-14 of 08 January 2014).

The current legislation does not define the concept of "debt collection activities" and does not establish clear rules of conduct for entities engaged in the relevant activities, mandatory unified requirements for ethical conduct and rules of interaction of such entities with the debtor in settling overdue debts. Failure to regulate this issue and the lack of legal liability of such companies lead to numerous violations of citizens' rights.

Since July 2020, the National Bank of Ukraine has been regulating and supervising the activities of non-banking financial institutions in accordance with the Law of Ukraine "On the National Bank of Ukraine".

The Memorandum<sup>1</sup> of Cooperation was signed between the Ukrainian Parliament Commissioner for Human Rights and the National Bank of Ukraine on 24.09.2020 to promote the observance of human rights and the implementation of preventive measures aimed at minimizing violations, in particular, during the provision of financial services and debt collection.

The purpose of the Memorandum is to consolidate efforts between the Commissioner and the National Bank of Ukraine to ensure an adequate level of protection of rights of subjects of personal data when providing financial services to them in the settlement of overdue debts.

Within the implementation of the Memorandum's provisions, cooperation is organized for the exchange of information on the debt collection companies in relation to which the Commissioner and the National Bank of Ukraine receive complaints with demands to stop unlawful processing and dissemination of consumers' personal data, prevent offences in the field of protection of personal data and consumer rights and bring to justice those who violate legislation on the protection of personal data.

In cooperation with the Commissioner and the National Bank of Ukraine, positions on the key issues of personal data processing by financial institutions/debt collection companies were developed. These positions were taken into account by the working group of the Verkhovna Rada Committee on Finance, Tax and Customs Policy when developing the draft Law of Ukraine "On Amending Certain Legal Acts of Ukraine on the Protection of Debtors in the Settlement of Overdue Debts" (reg. No. 4241 of 21 October 2020) which was adopted on 27 January 2021 in the first reading.

The draft law shall establish the rules of collectors' work, in particular, the registration procedure for debt collection company, requirements for ethical conduct with debtors, forms and procedure for communication, an exhaustive list of personal data to be processed, supervision over debt collection activities, and sanctions for violations.

#### *Right to protection of personal data against unlawful dissemination*

The rapid growth of the role of information technology made it possible for an unlimited number of users to access the Internet almost anywhere and at any time.

In accordance with Article 14 of Law No. 2297-VI, personal data dissemination requires the consent of the subject of personal data. Performance of such activities without the consent of a subject of personal data or a person authorized by him/her is to be permitted in cases determined by the law and only (where necessary) in the interests of national security, economic welfare, and human rights. In 2020, the Commissioner continued to receive reports of unlawful dissemination of personal data via the Internet. The Commissioner revealed cases of unlawful processing of personal data related to misuse, excessive dissemination of personal data on the Internet and improperly defined grounds for personal data processing.

#### Example

In April 2020, citizen N. reported to the Commissioner that the personal data of about 500 combatants (among those involved in the urgent measures of overcoming the terrorist threat and preserving the territorial integrity of Ukraine) were made publicly available on the Internet in the form of a list of applications for the provision of land plots in the town of Dubno. Following the Commissioner's intervention, public disclosure of personal data was terminated. Based on this fact, the Dubno Police Department of the Main Department of the National Police in the Rivne Oblast initiated criminal proceedings under Part one of Article 182 (Violation of privacy) of the Criminal Code of Ukraine. The pre-trial investigation is ongoing.

<sup>1</sup> URL: <https://ombudsman.gov.ua/ua/page/secretariat/docs/agreement/>.

State bodies and institutions unlawfully disseminated personal data on official web sites.

### **STATE BODIES ALLOWED UNLAWFUL DISSEMINATION OF PERSONAL DATA**

#### Example

In May 2020, the Commissioner received a collective petition in which it was reported that contrary to the requirements of the legislation on protection of personal data, the personal data of petitioners were disclosed on the official website of the National Academy of Public Administration under the President of Ukraine.

The disclosure was made by making public the order of the rector of 30 April 2020 "On Approval of the Plan of Measures on Repayment of Debts in the Hotel-type Dormitories of the National Academy." A list of residents with their personal data was appended to this order.

In connection with the revealed violation, measures were taken to stop the unlawful dissemination of personal data, protocols on administrative offence under Part four of Article 188<sup>39</sup> of the Code of Ukraine on Administrative Offences were drawn up and submitted to the court. The petitioners' right was restored.

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019,<sup>2</sup> the Commissioner stressed the need for an adequate regulatory framework to reduce the uncontrolled circulation of scanned copies of documents containing personal data in the ProZorro electronic procurement system. The Commissioner proposed the automated watermarking of such scanned copies as a temporary and urgent measure.

However, this issue was not legally regulated in 2020. Therefore, in September 2020, the Commissioner submitted to the Minister of Economic Development a petition to bring the functioning of prozorro.sale and prozorro.gov.ua systems in line with the requirements of the legislation on personal data protection in terms of preventing the disclosure of personal data of procurement and bidding participants, in particular, scanned copies of their passports.

Currently, the Ministry for Development of Economy, Trade and Agriculture of Ukraine is developing a mechanism to resolve this issue with the involvement of the Commissioner, representatives of anti-corruption authorities and the public.

While monitoring the Internet on compliance with the requirements of the legislation in the field of protection of personal data, the Commissioner revealed several cases of violation of the right to privacy through the dissemination of personal data in the messengers and social networks.

### **CASES OF VIOLATION OF THE RIGHT TO PRIVACY THROUGH THE DISSEMINATION OF PERSONAL DATA IN MESSENGERS AND SOCIAL NETWORKS WERE REVEALED**

#### Example

In June 2020, the Secretariat of the Commissioner found a chatbot in the Telegram messenger in which personal data was made public, including full names, numbers of military units, registered dates of unauthorized absence. In total, the list contains data on 6,907 military servants.

<sup>2</sup> URL: <http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf>, page 196.

Due to the fact that in the context of the military aggression by the Russian Federation such dissemination of personal data could cause significant damage to the defence capability of the State, the Commissioner sent recommendations to the Security Service of Ukraine and the National Police of Ukraine to take appropriate response measures within their competence. The National Police of Ukraine initiated criminal proceedings under Part one of Article 182 (Violation of privacy) of the Criminal Code of Ukraine. The pre-trial investigation is ongoing.

#### *Right to protection against an unlawful request for consent to the processing of personal data*

The analysis of citizens' petitions received by the Commissioner reveals systematic violations of human rights and unlawful request for consent to the processing of personal data contrary to the provisions of Law No. 2297-VI. The Commissioner constantly emphasizes the prevention of unlawful request for consent to the processing of personal data in cases where such consent is not required by Law No. 2297-VI, because the consent to the processing of personal data must be a voluntary expression of the will of the person to allow the processing of his/her personal data.

#### **CONSENT TO THE PERSONAL DATA PROCESSING MUST BE A VOLUNTARY EXPRESSION OF THE WILL OF THE PERSON**

#### Example

In May 2020, the Commissioner received a report after the consideration of which it was revealed that the State Judicial Administration of Ukraine used EasyCon while exercising its powers, in particular, to ensure the functioning of the videoconferencing system for the remote participation of persons in the court sessions via videoconference.

However, while exercising his/her right to participate in the court session via videoconference, the person is made dependent on providing his/her consent to the processing of personal data during registration in the EasyCon system, whereas such processing is performed on the basis of the permission granted to the controller of personal data in accordance with the law exclusively for the exercise of his/her powers.

As a result of the control measures taken by the Commissioner, the State Judicial Administration of Ukraine in September 2020 terminated obtaining consent to the processing of personal data for participation in the court sessions via videoconference. The participants are notified of the personal data processing in accordance with the requirements of Article 12 of Law No. 2297-VI.

Violation of the principle of voluntary consent enshrined in Article 2 of Law No. 2297-VI resulted in the creation of artificial obstacles for an individual in exercising his/her constitutional rights (to education, labour, health, etc.).

#### **EXERCISE OF THE INDIVIDUAL'S RIGHTS GUARANTEED BY LAW MUST NOT DEPEND ON THE CONSENT TO THE PROCESSING OF PERSONAL DATA**

Exercise of the individual's rights guaranteed by law must not depend on the consent to the processing of personal data.

In the course of the parliamentary oversight over the observance of the human rights to protection of personal data, violations of such rights during the provision of educational services were revealed.

**Example**

The “Unified School” system recommended by the Ministry of Education and Science of Ukraine provides for the processing of personal data on students of educational institutions and their parents. The system supports on-line monitoring of the students’ performance and attendance, maintaining an electronic diary of the students and an electronic performance register.

During the monitoring of the information posted on the website of the “Unified School” system in November 2020, it was revealed that the processing of personal data in the system involves obtaining the consent of parents by the educational institution to process the personal data on their children.

In this regard, in November 2020, the Commissioner submitted to the Minister of Education and Science of Ukraine a petition to take measures to ensure the guaranteed right to education, regardless of the granting/non-granting consent to the processing of the personal data to the educational institutions. To take measures requested in the petition, the Ministry of Education and Science of Ukraine is working on the legal regulation of the functioning of the educational information telecommunication systems.

The provision of Article 11 of Law No. 2297-VII, in addition to the consent, contains an exhaustive list of grounds for the processing of personal data.

However, the state bodies do not always determine the lawful ground for the processing of personal data that would comply with Law No. 2297-VI, preferring to obtain the person’s consent on other grounds. This makes the exercise of the person’s right to certain services dependent on obtaining consent, even when such consent is not provided for by law. The facts when the exercise of rights of minors became dependent on it were revealed in 2020.

**Example**

In January 2020, citizen P. sent a petition to the Commissioner in which he reported that the Department of Culture and Tourism of Zaporizhia City Council (hereinafter — the Department) as a managing body of the Central library system of the city of Zaporizhia (hereinafter— CLS) in 2018 implemented a system of electronic registration of readers in the libraries of the CLS within the E-BOOK program, which provides for the consent to the processing of personal data of persons that use the library services.

In the course of the consideration of the petition, it was found that minors and young people represent a significant part of the users of the library services. These minors and young people due to their age are not always able to assess and understand the consequences of their own actions when giving consent to the processing of personal data.

This violation was committed due to the fact that the current version of the Standard Rules for the Use of Libraries in Ukraine, approved by the Order of the Ministry of Culture and Information Policy of Ukraine No. 275 of 05 May 1999, provides for written consent to the processing of personal data.

Therefore, in June 2020, the Commissioner sent recommendations to the Ministry of Culture and Information Policy of Ukraine on the need to bring the Standard Rules for the Use of Libraries in Ukraine in line with the requirements of legislation on protection of personal data, taking into account the recommendations of the Commissioner.

The Ministry of Culture and Information Policy of Ukraine informed that changes to the system of electronic registration of readers in the libraries of the CLS within the E-BOOK program are being developed. However, as of December 2020, the relevant changes were not introduced. The Commissioner sent a request to the Ministry of Culture and Information Policy of Ukraine in this regard.

The Association Agreement between Ukraine, on the one side, and the European Union, the European Atomic Energy Community and their Member States,

### **UPDATE AND MODERNIZATION OF THE LEGISLATION IN THE FIELD OF PROTECTION OF PERSONAL DATA ARE REQUIRED**

Update and modernization of the legislation in the field of protection of personal data are required

on the other side, provides for the need to update and modernize the legislation in the field of protection of personal data to implement the best European standards, reflected primarily in the General Data Protection

Regulation (EU) 2016/679 (hereinafter Regulation (EU) 2016/679) and the modernized Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data 108+.

To perform this task, the Commissioner revealed an Inter-agency Working Group to develop legislative proposals in the field of protection of personal data with the involvement of the representatives of interested state bodies and international organizations, national and international experts in the field. The Inter-agency Working Group drafted a new version of the Law of Ukraine "On the Protection of Personal Data" (hereinafter – the draft law) that takes into account the requirements to personal data protection reflected in Regulation (EC) 2016/679.

The developed draft law was sent to the Committee of the Verkhovna Rada of Ukraine on Human Rights, Deoccupation and Reintegration of Temporarily Occupied Territories in the Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the City of Sevastopol, National Minorities and Interethnic Relations for submission to the Verkhovna Rada of Ukraine.

### **RECOMMENDATIONS:**

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of the draft Law of Ukraine "On Amending Certain Legal Acts of Ukraine on the Protection of Debtors in the Settlement of Overdue Debts" (reg. No. 4241 of 29 October 2020).

**To the Committee of the Verkhovna Rada of Ukraine on Human Rights, Deoccupation and Reintegration of Temporarily Occupied Territories in the Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the City of Sevastopol, National Minorities and Interethnic Relations** – finalize and submit to the Verkhovna Rada of Ukraine a draft Law on the amendments to the Law of Ukraine "On the Protection of Personal Data" No. 2297-VI of 01 June 2010 regarding the Establishment of a Separate Independent Supervisory Authority for Protection of Personal Data.

**To the Ministry for Development of Economy, Trade and Agriculture of Ukraine** – draft and submit for consideration to the Cabinet of Ministers of Ukraine amendments to regulatory and legal acts regulating the functioning of Prozorro.sale and Prozorro.gov.ua systems to allow processing of personal data of auction participants in accordance with the stated goal by closing (depersonalizing, retouching) personal data or hiding a copy of the passport provided by the auction participant from public view.

**To the Ministry of Education and Science of Ukraine:**

1. Draft and submit for consideration to the Verkhovna Rada of Ukraine a draft resolution on the introduction of uniform requirements for the functioning of the distance education system, in particular, through the introduction of uniform standards for the organization of registration of applicants for education through information and telecommunication systems, stating the clear requirements for local software, educational online platforms and means of communication.
2. Provide clarification to educational institutions on the need to ensure the guaranteed right to education, regardless of the granting/non-granting consent to the processing of the personal data.
3. Conduct an information campaign among educational employees, students and their legal representatives on the procedure of personal data protection and the risks that may result from its non-compliance.

**To the Ministry of Culture and Information Policy of Ukraine** – bring the Standard Rules for the Use of Libraries in Ukraine, approved by the Order of the Ministry of Culture and Art of Ukraine No. 275 of 05 May 1999, in conformity with the Law of Ukraine “On the Protection of Personal Data” No. 2297-VI of 01 June 2010, in particular, in terms of exclusion of consent to the processing of personal data as a basis for the processing of personal data on the users of library services.

**To the Security Service of Ukraine, the National Police of Ukraine** – take measures to stop the disclosure of personal data of the military servants by the chat-bot in the Telegram messenger.

### 1.1.2. Right to non-interference in personal and family life

#### *Right to protection of personal data during the implementation of electronic services*

In 2020, the Ministry of Digital Transformation and other public authorities have actively implemented e-services, the operation of which is based on the automation of processing of large amounts of personal data, in particular, in the provision of administrative services in other areas, involving the electronic interaction between a person and state institutions.

The COVID-19 pandemic accelerated digitalization in Ukraine. According to the Ministry of Digital Transformation, Ukrainians began to use online services five times more.

#### **THE COVID-19 PANDEMIC ACCELERATED DIGITALIZATION IN UKRAINE**

The large-scale digitalization of administrative and management processes predictably increases the risks associated

with leakage or unauthorised access to personal data processed through state information resources. To prevent the violation of the human right to privacy in connection with the processing of personal data, the Commissioner developed draft regulatory legal acts that were related to the implementation of pilot projects for the provision of administrative services through the “Portal Diia (Action)”.

In particular, the draft resolutions of the Cabinet of Ministers of Ukraine “On the Implementation of a Pilot Project on the Use of the Passport of a Citizen of Ukraine in Electronic Form and the Passport of a Citizen of Ukraine for Traveling in Electronic Form,” “On the Implementation of a Pilot Project on the Registration, De-registration of Residence in Electronic Form,” “On the Implementation of a Pilot Project on the Use of Remote Qualified Electronic Signature Smart Diia,” “On the Implementation of a Pilot

Project on the Use of Electronic Insurance Policy on the Contract (Electronic Contract) of Compulsory Insurance of Civil Liability of Owners of Vehicles and Some Issues in the Field of Road Traffic” were considered. These draft resolutions, in particular, introduced the provision of electronic services, such as the use of remote qualified electronic signature Smart-Diia, the use of a passport of a citizen of Ukraine in electronic form and passport of a citizen of Ukraine to travel abroad in electronic form (e-passport), introduction and implementation of electronic residency, registration, de-registration of residence in electronic form.

After the review of the draft resolutions, the developers of these regulations were given proposals to prevent violations of human rights to protection of personal data, which were taken into account in full.

The new challenges posed by the COVID-19 pandemic required the government to make quick decisions to ensure the safety of citizens during this period. The government implemented measures to contain the spread of the COVID-19 pandemic, in particular, by launching the “Act at Home” application, which was developed by the Ministry of Digital Transformation to monitor compliance by individuals with self-isolation and/or observation (isolation) regimes.

Given the fact that the functioning of the “Act at Home” application involves the processing of personal data, including sensitive ones, the Commissioner for preventing human rights violations and for controlling the balance between the right to privacy and family life and the need to implement measures to prevent the spread of COVID-19 pandemic collaborated with the Ministry of Digital Transformation.

After a joint assessment of the features of the “Act at Home” application, the Commissioner noted the need to:

- stipulate at the level of a regulatory legal act, the issues related to the functioning of the electronic service “Act at Home”;
- delimitate personal data processing activities carried out by the entities that take measures to prevent the spread of COVID-19 in accordance with their competence;
- develop procedures for information exchange between the electronic service “Act at Home” and the systems of the Ministry of Internal Affairs, the National Police of Ukraine, the Ministry of Health, the Security Service of Ukraine, etc.

After the introduction of the application, the Commissioner verified the compliance with the requirements of the legislation in the field of personal data protection.

### **THE HUMAN RIGHT TO PRIVACY IS NOT VIOLATED DURING THE FUNCTIONING OF “ACT AT HOME” APPLICATION**

The verification showed that the right to privacy of the person during the operation of the “Act at Home” application is not violated, the recommendations were taken into consideration, and the application complies with the requirements of the legislation.

#### *Right to protection of personal data in the electronic health care system*

To control the observance of the right to privacy during the implementation of the medical reform, in particular, the introduction of the Electronic Health Care System (hereinafter — EHCS), the Commissioner inspected the organization of personal data protection by the medical institutions and compliance with requirements of the legislation on personal data protection during the functioning of EHCS.

**Example**

As a result of the control actions of the EHCS implementation (which lasted from the end of 2019 to July 2020), systematic violations of human rights were revealed, in particular:

- unlawful request for consent to the processing of patients' personal data;
- inappropriate determination of the controller and administrator of the personal data of patients, depriving the individual of the possibility to complain against the subject that collected and disseminated the personal data;
- non-compliance with the principle of non-redundancy of data, etc.

To prevent the violation of the right to privacy during the processing of sensitive personal data by medical institutions in March 2020, the Commissioner submitted a petition to the Minister of Health of Ukraine, which recommended to develop and approve a model contract between the provider of medical services and the electronic health information system operator, as well as to finalize the technical requirements for the electronic health information system. Following the Commissioner's intervention, the relevant provisions were incorporated into the Electronic Health Development Concept approved by the Order of the Cabinet of Ministers of Ukraine No. 1671-r of 28 December 2020.

Given that the medical reform is ongoing and the legislation regulating this field is constantly changing and being updated, the Commissioner, within the parliamentary oversight, joined the working group responsible for the Electronic Health Development Concept to take into account the recommendations provided in the petition and address other issues of organizational, managerial, technical and resource support, accessibility and security of citizens' personal data during the implementation of the Electronic Health Care System.

The recommendations of the Commissioner provided during the joint work were taken into account. The Electronic Health Development Concept was approved by the Order of the Cabinet of Ministers of Ukraine No. 1671-r of 28 December 2020.

Given the relevance of the issues of proper regulatory and institutional arrangements of the functioning of electronic systems, and to prevent violations of the right to privacy, the Commissioner inspected:

- Unified State Web Portal of Electronic Services "Portal Diia" (June 2020);
- Unified State Civil Service Job Portal (July-September 2020);
- operation of video surveillance systems in public places in Ukrainian cities (2020).

During the mentioned inspections, violations of the right to protection of personal data were revealed: a subject of personal data was not informed of his/her rights, the controller, the purpose of processing, the composition and content of the collected personal data; no document (action plan) on the sequence of activities of employees in cases of unauthorized access to personal data, damage to equipment, emergencies, etc.

Therefore, following the Commissioner's inspections, the Commissioner issued an order to the National Agency for Public Service of Ukraine to eliminate violations and gave appropriate recommendations to bring the organization of personal data protection in line with the requirements of the legislation. The Commissioner's recommendations on the mentioned issues were taken into account in full.

**Example**

After the leakage of personal data on citizens who had registered at URL:<https://career.gov.ua> to apply for the civil service, the Commissioner conducted an unscheduled on-site inspection of the National Agency for Public Service of Ukraine. The inspection revealed that the personal data of the citizens (copy of passport and other scanned documents that the person uploaded to the Unified State Civil Service Job Portal) were publicly available. Having revealed the violations, the Commissioner sent a request to the National Agency for Public Service of Ukraine. The request was fulfilled.

In February 2020, the Commissioner sent a letter to the Prime Minister of Ukraine with recommendations on the need to take measures to ensure the security of personal data processed in the information systems before the commissioning of such systems and operating in test mode.

Following the consideration of the Commissioner's recommendations, the Prime Minister of Ukraine instructed the central executive authorities to take comprehensive measures to ensure the protection of personal data.

One of the key elements of preventing violations of human rights to the protection of personal data is to raise awareness of the regulatory framework for processing and protecting personal data.

In this regard, the Commissioner was actively engaged in an information campaign on personal data protection in 2020.

As part of this campaign, in June 2020, the Ministry of Digital Transformation in cooperation with the Commissioner and UNDP successfully launched the educational series "Personal Data"<sup>3</sup>, which explains the concept of personal data, the grounds for their processing, rights in the field of personal data, where to address in case of violation of personal data rights, etc.

Moreover, in 2020, the Commissioner prepared and posted on the official website of the Commissioner 10 explanations on the application of the law and the protection of rights.<sup>4</sup>

**FACTS OF NON-COMPLIANCE WITH THE REQUIREMENTS ON PERSONAL DATA PROTECTION BY THE CONTROLLERS/ ADMINISTRATORS WERE REVEALED**

Within the scope of parliamentary oversight over the observance of the right to privacy and family life, during the inspections and consideration of reports, the Commissioner revealed the facts of non-compliance with the requirements on personal data protection by the controllers/administrators. Such actions may lead to unauthorized access to personal data, including those the processing of which represents a particular risk to the rights and freedoms of the subjects of personal data.

**Example**

In June 2020, the Commissioner received a report about the alleged violations during the processing of personal data by the TrueConf software. Within the scope of parliamentary oversight, the Commissioner inspected the system, which ensures recording, storage, copying (duplication) and use of information processed during the videoconferences.

<sup>3</sup> URL: <https://osvita.diiia.gov.ua/courses/personaldata>.

<sup>4</sup> URL: <http://www.ombudsman.gov.ua/ua/page/zpd/obrobka/rozasnia-ta-recomendation/>.

It was revealed that this software was developed by TrueconfSoft LLC, whose registered office is in the Russian Federation. The Commissioner reported this fact to the State Service of Special Communications and Information Protection of Ukraine.

Following the Commissioner's intervention, the Security Service of Ukraine is working on the issue of including TrueconfSoft LLC to the list of persons subject to personal special economic and other restrictive measures (sanctions). After that, the state bodies, local self-government bodies must be notified about the inadmissibility of using the software products developed by the above company.

Given the above, the personal data protection issues must be taken into consideration at the stages of software planning, development and implementation, by anticipating the technical and organizational measures to prevent unlawful processing, including the unlawful destruction of personal data or unlawful access to them.

#### *Right to access own personal data*

The Constitution and laws of Ukraine guarantee the right of persons to familiarize themselves with their own personal information unless any of this information constitutes a state secret or other secret protected by law. In particular, Article 8 of Law No. 2297-VI provides for the right of the subject to access his/her personal data. Such access shall be subject to the requirements of the said Law.

In 2020, the Commissioner received 140 reports on the exercise of the right to access information about oneself. In relation to all petitions, the Commissioner took measures to restore the violated rights.

#### Example

In September 2020, the Commissioner received reports from citizens that the officials of the Department of the Executive Directorate of the Social Insurance Fund of Ukraine in the city of Kyiv violated their rights to receive requested information about them (certificates of their payroll, copies of administrative documents on their reinstatement, dismissal and leave).

Following the Commissioner's intervention, the Department provided the applicants with the requested information about them and restored the right of citizens to access their personal data.

Cases of non-provision of documents created during disciplinary proceedings containing the personal data of the requester are common. Such refusals are aimed primarily at preventing the person to appeal the decision of the administrators of information to the court.

#### Example

In June 2020, a person submitted a petition to the Commissioner about the violation by the National Police of Ukraine of his/her right to receive information about himself/herself, namely the information and a copy of the order to initiate an official investigation, which was initiated/conducted upon complaint of the person.

Within the proceedings, following the Commissioner's intervention, the employees of the National Police of Ukraine satisfied the right of the person to receive the requested information about himself/herself. The right of a person to access own personal data was restored.

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine, ministries and other central executive bodies** – approve the internal administrative documents on processing and protection of personal data in accordance with the requirements of the Order of the Ukrainian Parliament Commissioner for Human Rights No. 1/02-14 of 08 January 2014 “On Approval of Documents in the Field of Protection of Personal Data”.

**To the ministries and other central executive bodies** – draft and submit to the subordinate territorial subdivisions, enterprises, institutions, organizations in the field of administration the explanations on strict observance of the requirements of the Law of Ukraine “On the Protection of Personal Data” No. 2297-VI of 01 June 2010 in terms of provision of persons with access to information about themselves.

### 1.2. Adherence the principle of non-discrimination

One of the basic principles of the Universal Declaration of Human Rights, adopted on 10 December 1948, is the principle of equality. In accordance with Article 2 of this international act, everyone is entitled to all the rights and freedoms outlined in the Universal Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

All persons are entitled to equal protection against any discrimination or against any incitement to such discrimination.

Notwithstanding these international provisions, to which Ukraine is committed, and the existing national legal framework, discrimination remains a serious problem in Ukraine. Discrimination takes various forms and the citizens of Ukraine continue to suffer from it, namely, discrimination: by age (issues of employment), health status, place of residence (issues of verification of payment of pensions to citizens who live in the territory of ATO), sexual orientation, gender orientation.

Issues relating to labour, education, health care and access to goods and services remain problematic. This is confirmed by 445 reports of cases of discrimination received by the Commissioner in 2020 from the citizens.

The number of reported discrimination cases increased by 13% compared to 2019 (387). The largest number of petitions concerned violations of equality of rights and freedoms of citizens on the grounds of religious beliefs (127), disability and health status (44), race, colour and ethnic (national) origin (32).

Moreover, the monitoring of media, social networks, and other sources revealed 99 cases of discrimination, which is 38.4% more than in 2019 (59).

### 1.2.1. Adherence to the principle of non-discrimination on the grounds of disability

#### *Right of persons with disabilities to access to the physical environment*

The implementation of Article 9 of the Convention on the Rights of Persons with Disabilities is to ensure that persons with disabilities have barrier-free travel and free access, on an equal basis with others, to the physical environment: residential buildings, health care, education, culture, transport facilities, as well as other facilities necessary for the population.

However, the issues of accessibility of the physical environment for persons with disabilities remain unresolved, resulting in violations of the rights of this category of citizens to access to social, medical, educational services, employment, participation in the political and cultural life of society, etc.

In 2020, the Commissioner received 44 reports of violations of equality of rights and freedoms of citizens on the grounds of disability. Besides, 25 cases of such violations were identified in the course of monitoring various information sources.

#### Example

During the monitoring of social media in August 2020, the staff of the Secretariat of the Commissioner found a post on the “Tsar-pandus” Facebook page that the entrance to one of the “EVA” shops retail chain, located in the city of Kyiv is not equipped with the elements of accessibility for people living with disabilities and other people with limited mobility.

Following the Commissioner’s intervention, the management of this institution ensured the accessibility of this facility for people living with disabilities and other people with limited mobility.

#### Example

In October 2020, the Commissioner received a petition from the NGO “Association for the Protection of Persons with Disabilities “Accessible Environment” concerning the limitation of the rights of persons with visual impairment to access public transport on one of the bus routes in the city of Kyiv, namely at the stop near the Darnytsia underground station.

Following the Commissioner’s intervention, the Kyiv City State Administration equipped the public transport stop with the elements of accessibility, such as tactile strips and relief tiles.

In the context of the spread of the COVID-19 pandemic, the employees of the Secretariat of the Commissioner conducted 152 remote inspections of public reception offices of central and local executive bodies in all oblasts, including in Kyiv City and Oblast State Administrations for architectural accessibility for people living with disabilities and other people with limited mobility. These inspections revealed that 90% of them are not equipped with elements of accessibility for the mentioned category of persons.

Following these inspections, the Commissioner issued recommendations to the above-mentioned bodies to address the revealed violations of the rights of persons with disabilities. The recommendations were partially implemented.

**THE RIGHTS OF CITIZENS  
TO PETITION TO THE CENTRAL  
AND LOCAL BODIES ARE VIOLATED**

**Example**

The remote inspection of the Division for Work with Citizens and Access to Public Information of the Department of Information-Organizational Work and Control of the Ministry of Defence in July 2020 revealed that the access of persons with disabilities to the premises where the personal reception of citizens takes place was complicated due to the lack of ramps and elevators.

As a result of the inspection, the Commissioner issued recommendations to the Ministry of Defence to eliminate the revealed violations of citizens' rights. Following the recommendations, the Ministry of Defence equipped the premises for holding personal receptions by the Ministry's senior staff in the Central House of Officers of the Armed Forces of Ukraine with a ramp.

**Example**

The remote inspection in October 2020 of Ivano-Frankivsk Oblast State Administration revealed that the premises of the public reception office were not equipped with the elements of accessibility for people living with disabilities and other people with limited mobility.

In response to these facts, the Commissioner sent recommendations to the Head of the Oblast State Administration to eliminate the revealed deficiencies. Following the implementation of the Commissioner's recommendations, Ivano-Frankivsk Oblast State Administration in December 2020 adapted the premises of the public reception office for persons with impaired vision: external and internal tactile signs for orientation in space and services, external staff call button, tactile strips for marking the stairs and railings were installed.

The Commissioner monitored the accessibility of 16 official websites of public authorities for users with impaired vision (Ministry of Youth and Sports, Ministry of Infrastructure, Ministry of Defence, Ministry for Communities and Territories Development of Ukraine, Ministry of Energy and Coal Industry, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Culture and Information Policy of Ukraine, Ministry of Internal Affairs, State Labour Service, State Committee for Television and Radio Broadcasting, State Tax Service, State Emergency Service, State Migration Service, Pension Fund of Ukraine and Kyiv City State Administration).

The monitoring revealed that only the official websites of the Pension Fund of Ukraine and the Ministry of Finance were adapted to the needs of this category of persons. The Commissioner sent recommendations to the relevant authorities on the revealed violations and monitors the status of their implementation.

The central executive bodies and the Kyiv City State Administration whose websites do not provide accessibility for users with impaired vision responded that the work to adapt the sites to the needs of such persons would be carried out in 2021 within the envisaged funding.

*Right of persons with disabilities to rehabilitation in the context of the COVID-19 pandemic*

**THE RIGHTS OF PERSONS  
WITH DISABILITIES TO ACCESS  
REHABILITATION SERVICES WERE  
VIOLATED**

In accordance with Resolution of the Cabinet of Ministers of Ukraine No. 211 of 11 March 2020 "On Prevention of the Spread of COVID-19 Acute Respiratory Disease Caused by SARS-CoV-2 Coronavirus in Ukraine" (as amended) and No. 392 of 20 May 2020 "On Introduction of Quarantine to Prevent Spread of COVID-19 Acute Respiratory Disease Caused by SARS-CoV-2 Coronavirus in Ukraine and Stages

of Mitigation of Anti-epidemic Measures”, the work of rehabilitation institutions was suspended during the quarantine period, which violates provisions of Article 49 of the Constitution of Ukraine. This led to violations of the rights of persons with psychosocial and intellectual disabilities to access rehabilitation services, in particular, care and support.

#### Example

In early July 2020, the Commissioner received a report from the NGO “Coalition for the Protection of the Rights of Persons with Intellectual Disabilities” regarding the impossibility for persons with psychosocial and intellectual disabilities to receive rehabilitation services.

The Commissioner immediately sent a letter to the Prime Minister with a recommendation to consider the need to remove the quarantine restrictions on day rehabilitation institutions for people with disabilities.

Following the Commissioner’s intervention, the Cabinet of Ministers of Ukraine adopted Resolution No. 641 of 22.07.2020 “On Introduction of Quarantine and Stepping up Anti-epidemic Measures in the Area with a Significant Spread of COVID-19 Acute Respiratory Disease Caused by SARS-CoV-2 Coronavirus”. The resolution stipulates that in the area with “green” and “yellow” levels of epidemic hazards, rehabilitation institutions are allowed to operate and provide rehabilitation services.

#### *Right of persons with disabilities to access banking services*

The analysis of the reports received by the Commissioner shows violations of the rights of persons with disabilities to access banking services. In particular, the banking institutions refuse to provide a loan to persons with impaired vision or offered to provide it only with a proxy and a power of attorney certified in accordance with the requirements of the legislation.

**WEB-BANKING IS NOT ADAPTED FOR PERSONS WITH IMPAIRED VISION**

Moreover, WEB-banking is not adapted for persons with impaired vision, which makes it impossible for them to get information about the status of their bank account. To receive the relevant information, this category of people has to contact the hotline of the banking institution by phone and they are charged accordingly for such services.

#### Example

In January 2020, citizen M. submitted a petition to the Commissioner regarding discrimination in accessing banking services.

Within the proceedings, the Commissioner advised the National Bank of Ukraine to take immediate measures to ensure equal access to banking services for persons with impaired vision.

Following the implementation of the Commissioner’s recommendations, the National Bank of Ukraine in September 2020 decided to develop Guidelines for the Protection of People with Limited Mobility. The Guidelines will address the issues of access to the premises, accessibility of websites, services and customer service rules of a financial institution. Approval of the guidelines is scheduled for Q1 2021.

In December 2020, the State Target Programme “National Action Plan on Implementation of the Convention on the Rights of Persons with Disabilities for the period until 2020”, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 706 of 01 August 2012, expired. The goal of the Programme was to create conditions for the implementation of the rights and needs of persons with disabilities.

The Ministry of Social Policy drafted a relevant National Action Plan until 2025, but it was not submitted to the Cabinet of Ministers of Ukraine in the prescribed manner, which may have a negative impact on the rights of persons with disabilities. The Commissioners submitted proposals for this draft act

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – develop and approve a National Action Plan to Implement the Convention on the Rights of Persons with Disabilities for the Period until 2025.

**To the National Bank of Ukraine** – approve the Guidelines for the Protection of Limited Mobility Groups that will address issues of access to the premises, accessibility of websites, services and customer service rules of a financial institution.

**To executive bodies and local self-government bodies** – ensure accessibility of buildings in state and communal property for persons with disabilities in accordance with the State Construction Norms of Ukraine V.2.2-40: 2018 “Inclusiveness of Buildings and Structures”, approved by the Order of the Ministry for Communities and Territories Development of Ukraine, Construction and Housing and Communal Services of Ukraine No. 327 of 30 November 2018, providing for the necessary financial allocations for it.

### 1.2.2. Countering discrimination on the grounds of national and ethnic origin

The Commissioner received 33 reports of discrimination and violations of equality of rights and freedoms of persons and citizens on the grounds of race, colour, ethnic (national) origin.

#### **RACISM, XENOPHOBIA AND ETHNIC PROFILING CONTINUE TO OCCUR IN THE ACTIVITIES OF LAW ENFORCEMENT AGENCIES**

Consideration of the reports, as well as monitoring of the media and social networks, revealed violation of the constitutional human right to equality regardless of race, ethnic and national origin and violation of the principle of non-discrimination in various fields of social relations. This right and principles are provided for by the International Convention on the Elimination of All Forms of Racial

Discrimination, the Law of Ukraine “On the Principles of Prevention and Countering Discrimination in Ukraine” No. 5207-VI of 06 September 2012 (hereinafter– Law No. 5207-VI).

Cases of racism, xenophobia and ethnic profiling, in particular, by law enforcement agencies, are not uncommon.

Ethnic profiling, i.e. the assumption of a link between the propensity for committing offences and ethnicity, is an example of prejudice and negative stereotyping of certain ethnic groups. The European Commission against Racism and Intolerance in its General Policy Recommendation No. 11 noted the discriminatory nature of the use of ethnic profiling in the work of law enforcement agencies<sup>5</sup>.

<sup>5</sup> URL: <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5ae4>.

**Example**

In February 2020, the Commissioner received a petition from the Spiritual Directorate of Muslims of Ukraine “UMMA” stating that the representatives of the National Police of Ukraine and the State Migration Service of Ukraine conducted checks near the Islamic Cultural Center “Alraid” in the city of Kyiv after the worship service. The purpose of the checks was to identify foreigners and stateless persons who illegally stayed in Ukraine.

The Commissioner made a specific request to the Minister of Internal Affairs of Ukraine to check the legality of the actions of the employees of the National Police of Ukraine and the State Migration Service of Ukraine, taking into account the recommendations of the European Commission against Racism and Intolerance, in particular, countering the ethnic profiling.

Following these checks, the Ministry of Internal Affairs informed about the use of criminal profiling in further work, taking into account the recommendations of the European Commission.

Within the parliamentary oversight over the observance of human rights regardless of national and ethnic origin, the Commissioner monitored the media and social networks, during which 26 messages containing information with the signs of racial discrimination or aiming at inciting ethnic hatred and intolerance were found.

**26 MEDIA REPORTS CONTAINING INFORMATION WITH THE SIGNS OF RACIAL DISCRIMINATION OR AIMING AT INCITING ETHNIC HATRED AND INTOLERANCE WERE FOUND**

**Example**

Monitoring of media in February 2020 revealed that at the reception desk of one of the hotels in the city of Odessa an announcement was posted that citizens of the People’s Republic of China were not allowed to stay in the hotel<sup>6</sup>.

The Commissioner sent a letter to the Main Department of the State Service of Ukraine for Food Safety and Consumer Protection in the Odesa Oblast requiring to take immediate measures to eliminate violations of consumer rights resulting from discrimination on the grounds of nationality.

Pursuant to the Commissioner’s recommendations, the discriminatory announcement was removed. The Main Department of the State Service of Ukraine for Food Safety and Consumer Protection in the Odesa Oblast included the above-mentioned economic entity in the plan of inspections for 2021.

The Commissioner found many cases of criminal offences motivated by hatred – a manifestation of ethnic intolerance and the most dangerous type of discrimination.

**Example**

Monitoring of media in July 2020 revealed that in the city of Kyiv, a company of 5 persons attacked three foreign students from the Democratic Republic of Congo using discriminatory language against them.

In response to this fact, the Commissioner sent a letter to the National Police of Ukraine requiring in the pre-trial investigation to take into account a possible motive of intolerance on the grounds of race and skin colour.

<sup>6</sup> URL: <https://nv.ua/ukraine/events/koronavirus-v-odesse-otel-zapretil-kitaycam-poselyatsya-novosti-odessa-50067766.html>.

The investigative unit of the Podilskyi Department of the National Police of Ukraine in the city of Kyiv entered the information on this fact into the Unified Register of Pre-Trial Investigations under Part two of Article 161 (Violation of equality of citizens on the grounds of their race, ethnicity, religious beliefs or disability or other grounds) of the Criminal Code of Ukraine. The case was submitted to the court and judicial proceedings are ongoing.

### **EXISTENCE OF XENOPHOBIC ATTITUDES IN UKRAINIAN SOCIETY**

Acts of anti-Semitic vandalism are the negative phenomenon confirming the existence of xenophobic attitudes in Ukrainian society. Such offences, in accordance with the UN Convention on the Elimination of All Forms of Racial Discrimination, may be qualified as an act of violence directed against any race or group of persons of a different colour or ethnic origin.

#### **Example**

In July 2020, the Commissioner received a petition from the United Jewish Community concerning the attack on a synagogue in the city of Mariupol, the Donetsk Oblast, as a result of which a security guard was seriously injured.

The Commissioner sent a request to the National Police of Ukraine to investigate whether there were any signs of a possible motive of national and religious intolerance towards representatives of the Jewish community.

Following the consideration of the Commissioner's letter, the Central Police Department of the Main Department of the National Police of Ukraine in the Donetsk Oblast entered the information on this fact into the Unified Register of Pre-Trial Investigations under Article 15 (Attempted crime), paragraph 14 of Article 115 (Intentional murder) of the Criminal Code of Ukraine with the qualifying attribute "intentional murder committed on the grounds of racial, national or religious intolerance."

### **VIOLATION OF EQUALITY OF REPRESENTATIVES OF THE ROMA NATIONAL MINORITY IN EXERCISING THE RIGHTS TO INVIOABILITY OF HOUSING AND FREE CHOICE OF RESIDENCE**

The Commissioner continues to reveal the cases of violations of equality of representatives of the Roma national minority in exercising the rights to inviolability of housing and free choice of residence guaranteed by Articles 30 and 33 of the Constitution of Ukraine.

#### **Example**

During the monitoring of the mass media in August 2020, the Commissioner found information<sup>7</sup>, that the residents of the settlement of Andriivka of Balakliia Raion held a protest demonstration demanding the eviction of the Roma from the settlement. The protesters headed to the house where the Roma lived, tried to break into the yard, and broke the windows of the house.

The Commissioner sent a request to the Main Department of the National Police of Ukraine in the Kharkiv Oblast regarding the need to take into account the motive of intolerance for a proper investigation of the committed offence.

<sup>7</sup> URL: <https://www.unian.ua/society/zhiteli-selishcha-na-harkivshchini-vimagayut-viseliti-rodini-romiv-foto-novini-harkova-11128616.html>.

Following the request of the Commissioner, the Investigative Unit of Balakliia Police Department of the Main Department of the National Police of Ukraine in the Kharkiv Oblast informed in September 2020 that a pre-trial investigation under Article 161 (Violation of equality of citizens on the grounds of their race, ethnicity, religious beliefs or disability or other grounds) of the Criminal Code of Ukraine was ongoing.

Given the vulnerability and social exclusion of the Roma national minority, the Commissioner monitored compliance with the rights and freedoms and the principle of non-discrimination of the Roma population in Ukraine in the context of the quarantine related to the COVID-19 pandemic.

Following the monitoring performed in cooperation with the Council of Europe Office in Ukraine, International Charitable Organization "Roma Women's Fund "Chirikli" and Roma rights activists, the first in Europe special report "The Impact of the COVID-19 Pandemic on the Roma Community in Ukraine" was prepared<sup>8</sup>. The report contains an analysis of problematic issues faced by the Roma in the context of the spread of COVID-19 and conclusions and recommendations for the authorities to take necessary measures to integrate the Roma community into Ukrainian society.

Given that the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the Period until 2020, approved by the Decree of the President of Ukraine No. 201/2013 of 8 April 2013, expired in December 2020, the approval by the Cabinet of Ministers of Ukraine of the Strategy for the Prevention of All Forms of Discrimination against the Roma National Minority and Inclusion into Ukrainian Society those of its Representatives who Find Themselves in Difficult Life Circumstances for the Period until 2020 and the Action Plan for 2021 for Its Implementation should be a crucial step.

The right of members of the Roma national minority to receive identity documents is violated. Due to the absence of a legislative mechanism for exempting Roma from paying a court fee in case of the need to establish their identity through a court procedure, members of a national minority who are in a difficult material situation are deprived of the right to establish their legal personality. This subsequently leads to the violation of rights to official employment, access to educational, health, social services, etc.

The need to exempt Roma from paying fees for court procedures related to establishing the fact of birth or issuing a birth certificate was noted in the Commissioner's recommendations provided in the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019<sup>9</sup>.

The solution to this problem will be facilitated by the adoption by the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On Court Fees" (on facilitation of application to the court to establish the fact of birth)" (reg. No. 3635 of 11.06.2020), which provides for the exemption from paying court fees when applying to the court to establish the fact of birth. The Commissioner supported the draft law.

One of the powers of the Commissioner under article 10 of Law No. 5207-VI is to provide opinions on discrimination when requested by a court. In accordance with the clarification of the High Specialized Court of Ukraine for Civil and Criminal Cases "On the Need for Courts to Receive the Opinions of the Ukrainian Parliament Commissioner for Human Rights in Cases of Discrimination" (No. 9-199/0/4-15

<sup>8</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=5>.

<sup>9</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 212.

## ONE OF THE MEASURES TO COUNTER DISCRIMINATION IS TO PROVIDE OPINIONS ON DISCRIMINATION CASES

of 16.02.2015 ), judges should take into account that the provision of opinions of the Commissioner in discrimination cases at the request of the court is one of the measures to counteract discrimination.

However, the courts that deal with cases of discrimination do not rely on the Commissioner's opinion as an expert institution in preventing and counteracting discrimination. This does not contribute to the proper combating of discrimination and the provision of effective assistance to persons whose rights and freedoms were violated.

Given the above, in June 2020, the Commissioner sent a petition to the Chairman of the Supreme Court of Ukraine and noted the need for judges to exercise powers in this area in accordance with the Law.

In the second half of 2020, the Commissioner received only 1 request of the court to provide the Commissioner's opinion in cases of discrimination (since the beginning of 2020 — 3 requests). This demonstrates the need to strengthen awareness-raising work among the judiciary on this issue.

### RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of the draft Law of Ukraine “On Amendments to the Law of Ukraine “On Court Fees” (on facilitation of application to the court to establish the fact of birth)” (reg. No. 3635 of 11.06.2020).

**To the Cabinet of Ministers of Ukraine** – approve the Strategy for the Prevention of All Forms of Discrimination against the Roma National Minority and Inclusion into Ukrainian Society those of its Representatives who Find Themselves in Difficult Life Circumstances for the Period until 2020 and the Action Plan for 2021 for Its Implementation.

**To the Supreme Court of Ukraine** – provide the courts of lower jurisdiction with explanations on the procedure and grounds for requesting the opinion of the Ukrainian Parliament Commissioner for Human Rights in cases of discrimination in accordance with the provisions of Article 10 of the Law of Ukraine “On the Principles of Prevention and Countering Discrimination in Ukraine” No. 5207-VI of 06 September 2012.

**To the Ministry of Internal Affairs of Ukraine, National Police of Ukraine** – in accordance with the established procedure submit to the Verkhovna Rada of Ukraine the Draft Law of Ukraine “On Amending Certain Legal Acts of Ukraine on Combating Discrimination”.

**To the National Police of Ukraine** – develop a training course for the staff of the National Police of Ukraine on the inadmissibility of the practice of ethnic profiling.

### 1.2.3. Countering discrimination on the grounds of religious beliefs and the status of observance of the right to freedom of worldview and religion

The Commissioner received 127 reports, which is 7% more than in 2019 (118), of discrimination on the grounds of religious beliefs and reports of violations of the right to freedom of worldview and religion. In particular, 48 reports concerned the right to renew the registration of the religious organization of the Ukrainian Orthodox Church (Kyiv Patriarchate), 25 — the right to change the canonical subordination with the transfer of religious communities of the Ukrainian Orthodox Church (Moscow Patriarchate) to Orthodox Church of Ukraine, 20 — the rights of Muslim communities in the temporarily occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol, 10 — religious intolerance and vandalism.

Article 17 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” No. 987-XII of 23 April 1991 (hereinafter – Law No. 987-XII) states that religious organizations have the right to use for their needs buildings and property provided to them on a contractual basis by state or public organizations or citizens. Religious buildings and state-owned property may be transferred to two or more religious communities for alternate use by mutual consent. In the absence of such consent, the state body shall determine the procedure for use of the religious building and property by concluding a separate agreement with each community.

**THE STATE BODY SHALL DETERMINE THE PROCEDURE FOR USE OF THE RELIGIOUS BUILDING AND PROPERTY BY CONCLUDING A SEPARATE AGREEMENT WITH EACH COMMUNITY**

#### Example

In January 2020, the Commissioner received a report from the Religious Community of the Ukrainian Orthodox Church in the village of Riasnyky, Goshchany Raion, Rivne Oblast about a violation of the right to access the Church of the Intercession, which is state-owned and is an architectural monument of local significance. In this village, a single religious community divided into two separate ones (“The Religious Community of the Ukrainian Orthodox Church (Moscow Patriarchate) of the village of Riasnyky, Goshchany Raion” and “Religious Community of the Holy Intercession Parish of the Rivne Diocese of the Ukrainian Orthodox Church”).

At the time the complaint was submitted to the Commissioner, none of these religious communities had any valid agreements for the use of the religious building. However, for more than six months, there had been a conflict between the religious communities over the use of the church building.

Following the Commissioner’s intervention, the situation was brought to the legal framework. The religious communities are protecting their rights in court, and after the Commissioner’s request, the National Police of Ukraine in the Rivne Oblast ensured security and order in the village of Riasnyky, Goshchany Raion and investigated criminal offences.

Given that under Article 35 of the Constitution of Ukraine, the church and religious organizations in Ukraine are separated from the state, the judicial procedure for resolving disputes between religious organizations or communities remains the only effective means of settling them.

**Example**

In February 2020, the Honorary Patriarch of Kyiv and All Russia-Ukraine Filaret contacted the Commissioner regarding the renewal of the registration of the Ukrainian Orthodox Church (Kyiv Patriarchate) and observance of the right to freedom of worldview and religion of believers and clergy of the Ukrainian Orthodox Church (Kyiv Patriarchate).

Therefore, the Commissioner made a specific request to the Ministry of Culture and Information Policy of Ukraine to verify the facts of violation of the rights of the religious organization “Kyiv Patriarchate of the Ukrainian Orthodox Church (Kyiv Patriarchate)” and to ensure observance of the right to freedom of worldview and religion.

Following the Commissioner’s inspections and consideration of documents submitted by the Ministry of Culture and Information Policy of Ukraine, the Commissioner informed the Honorary Patriarch of Kyiv and All Russia-Ukraine Filaret of the mechanisms to protect the rights of the Ukrainian Orthodox Church (Kyiv Patriarchate), including in courts.

*Right to freedom of worldview and religion in the occupied territories of Ukraine*

Following the Commissioner’s monitoring of the mass media and analysis of the observance of the right to freedom of worldview and religion in the territories temporarily occupied by the Russian Federation in the Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol,

**DOZENS OF CHURCHES, HOUSES OF WORSHIP AND PLACES OF WORSHIP WERE SEIZED AND ARE UNDER THE CONTROL OF THE OCCUPATION ADMINISTRATION OF THE RUSSIAN FEDERATION**

it was revealed that the Russian Federation continues to ignore UN General Assembly resolution 74/168, in which the international community calls on the occupier to ensure freedom of religion or belief without discrimination or introduction of artificial regulatory barriers.

Before the temporary occupation, 49 Ukrainian Orthodox religious organizations operated on the Crimean peninsula, but due to the repression of the Russian Federation, only 6

remained. Dozens of churches, houses of worship and places of worship were seized and are under the control of the occupation administration of the Russian Federation.

For most religious denominations, except for the Ukrainian Orthodox Church (Moscow Patriarchate), it became impossible to hold worship services in their own churches or houses of worship due to the seizure of church buildings by the occupation authorities and the real threat of identification of parishioners and their further persecution.

**Example**

During the monitoring of the mass media, the Commissioner found that in August 2020, the Supreme Court of the Russian Federation decided not to review the decisions of the courts of the so-called occupation authorities in Crimea regarding the eviction of the Ukrainian Orthodox Church from the Cathedral of St. Vladimir and Olga Equal to the Apostles in the city of Simferopol, justifying it by the fact of the expiration of the agreement with the diocese of the Ukrainian Orthodox Church of the Kyiv Patriarchate, which has transferred to the revealed Ukrainian Orthodox Church.

Such actions of the Russian Federation are aimed at destroying the Ukrainian Orthodox Church on the territory of the Crimean peninsula.

Moreover, the representatives of the occupation administration in the Crimea submitted to the Metropolitan of Simferopol and Crimea Kliment the so-called “court decision” demanding to dismantle

the Church of the Ukrainian Orthodox Church “The Unburnt Bush” in the city of Yevpatoria and pay a fine of RUB 50,000.00.

Such actions of the aggressor violate Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

In November 2020, the Commissioner made public statements in support of Kliment, Metropolitan of Simferopol and Crimea of the Orthodox Church of Ukraine, condemning the actions of the occupant, the Russian Federation, as these actions are aimed at the destruction of the Orthodox Church of Ukraine and persecution of its believers.

The right to freedom of religion is guaranteed by Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Citizens of Ukraine are being persecuted for belonging to the international organizations, i.e. Hizb ut-Tahrir and Jehovah’s Witnesses, which have been declared in the Russian Federation the “terrorist and extremist organisations”, respectively.

Searches and installation of video surveillance in madrassas and mosques, numerous punishments for “reading the Koran and prayers”, “distribution of leaflets inviting to the house of prayer”, “religious songs” — this is not a complete list of violations of the right to freedom of religion in the occupied Autonomous Republic of Crimea that fall under the jurisdiction of the International Criminal Court — violation of paragraph h, Article 7, Part 1 of the Rome Statute.

**STRICT CONTROL OVER THE PERFORMANCE OF RELIGIOUS RITES: INSTALLATION OF VIDEO SURVEILLANCE IN MADRASSAS AND MOSQUES**

#### Example

In March 2020, a resident of Dzhankoi, who is a Jehovah’s Witnesses believer, was convicted of extremism for exercising his religion, in particular, for participating in Bible studies, religious chanting and praying at home. In October, searches were conducted at the premises of the members of this religious organisation in the city of Sevastopol. Four citizens were arrested.

Eldar Kantimirov, a citizen of Ukraine, who has been illegally detained in pre-trial detention centre No. 1 in the city of Rostov-on-Don for more than a year for participation in Hizb ut-Tahrir, was sent to a punishment cell for 7 days for performing namaz (prayer) on 17 September 2020.

The occupation administration of the Russian Federation in Crimea initiated 24 court proceedings against religious organisations or individuals for proselytism (converting) offences, including 9 Protestant, and 5 Muslim organisations<sup>10</sup>.

The monitoring of the mass media revealed that the occupying authorities of the Russian Federation continue the practice of making illegal charges and bringing to administrative responsibility the representatives of Muslim communities that do not belong to the pro-Russian Spiritual Administration of Muslims of Crimea. Before the occupation, the local authorities issued permits for the permanent use of mosques or leased them on a long-term basis, but now the occupation authorities revoked all such decisions.

**BEFORE THE OCCUPATION, THE LOCAL AUTHORITIES ISSUED PERMITS FOR THE PERMANENT USE OF MOSQUES OR LEASED THEM ON A LONG-TERM BASIS. THE OCCUPATION AUTHORITIES REVOKED ALL SUCH DECISIONS**

<sup>10</sup> URL: <https://crimeahrg.org/wp-content/uploads/2020/10/tretij-doklad-oon.pdf>.

**Example**

The monitoring of the mass media revealed that in June, Yusuf Ashirov, Imam of the Muslim community of the city of Alushta, was convicted for “illegal missionary activity” to pay a fine for his regular Friday sermon in the mosque, which this community had been using since 1994. The recognition of the illegality of this sermon was a consequence of the refusal of occupation authorities to recognise the community’s right to use the mosque, which was granted to the community for an indefinite period before the occupation.

**DOZENS OF CHURCHES, HOUSES OF WORSHIP AND PLACES OF WORSHIP WERE SEIZED AND ARE UNDER THE CONTROL OF ILLEGAL ARMED GROUPS SUPPORTED BY THE RUSSIAN FEDERATION**

The situation with the observance of religious rights in the occupied territories of the Donetsk and Luhansk Oblasts is steadily worsening. Most religious communities have ceased to exist and believers are forced to gather in secret to be able to pray together and learn the basics of their religious doctrine and perform religious rituals.

Dozens of churches, houses of worship and places of worship were seized and are under the control of illegal armed groups supported by the Russian Federation and were handed over to the representatives of the Ukrainian Orthodox Church (Moscow Patriarchate).

**Example**

In November 2020, in the city of Donetsk, the Ukrainian “Holy Spirit” Church of the Donetsk-Mariupol diocese was seized. After the seizure, the religious building was renamed the “St. Kazan Church” and now the Ukrainian Orthodox Church (Moscow Patriarchate) holds worship services there.

The Commissioner sent petitions of the citizens to the International Committee of the Red Cross concerning violations of human rights in the occupied territories. During 2020, meetings were held with the representatives of the UN Monitoring Mission in Ukraine and other international human rights organizations to protect the rights of the representatives of Christian and Islamic religions experiencing harassment and violations of rights in the territories temporarily occupied by the Russian Federation in the Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol. During these meetings, the Commissioner reiterated the need for international human rights monitoring in the occupied territories and access to these territories by national and international human rights institutions.

## RECOMMENDATIONS:

### **To the Ministry of Culture and Information Policy of Ukraine –**

1. Ensure that information and awareness-raising activities are carried out among the representatives of different religious communities on the legal framework for the use of buildings and property, legal means for the protection of freedoms and interests.
2. Work out the issue of introducing an arbitration procedure for resolving disputes between the representatives of religious communities with the involvement of the representatives of the All-Ukrainian Council of Churches and Religious Organizations.

#### 1.2.4. Countering discrimination on the grounds of sexual orientation and gender identity

In 2020, the Commissioner received 11 reports of violations of equality of rights and freedoms of the representatives of the LGBTI community. Moreover, 14 cases of discrimination on grounds of sexual orientation and gender identity were revealed in the course of media and social networks monitoring. An analysis of citizens' reports and information posted in the media shows that the rights and freedoms of the representatives of the LGBTI community continue to be violated, in particular, the right to protection against discriminatory actions, proper investigation of crimes based on intolerance on grounds of sexual orientation and gender identity, protection of property and non-property rights due to inability to enter into a civil partnership.

**THE RIGHTS AND FREEDOMS OF THE REPRESENTATIVES OF THE LGBTI COMMUNITY ARE VIOLATED**

##### Example

During the media monitoring in June 2020, the Commissioner revealed a case of hate speech and incitement to discrimination on grounds of sexual orientation and gender identity by the television channel "KRT"<sup>11</sup>.

The Commissioner sent a letter to the National Television and Radio Broadcasting Council with a proposal to take measures to prevent the dissemination in the media of materials aimed at inciting hatred and promoting stigma and discrimination on any grounds.

Following the consideration of the Commissioner's letter, the National Television and Radio Broadcasting Council inspected the television channel and on 20.08.2020 decided to refuse the television channel "KRT" the renewal of the broadcasting license.

During the media monitoring, the Commissioner recorded cases of hate speech against the LGBTI community by officials and politicians.

##### Example

In May 2020, a social media post by the Presidential Commissioner for Children's Rights was found in which he equates same-sex families with rapists<sup>12</sup>.

The Commissioner submitted a petition to the Presidential Commissioner for Children's Rights demanding a public apology and a strict adherence to anti-discrimination laws in the future. In response to the petition, the Presidential Commissioner for Children's Rights informed that he had laid down a little bit different meaning in his post. The Commissioner also forwarded to the President of Ukraine a report on discriminatory statements that were made by this public person.

##### Example

In June 2020, the Commissioner found a<sup>13</sup> post of K., a People's Deputy of Ukraine, that was disseminated in the media. This post contained discriminatory statements against the representatives of the LGBTI community, namely calls for violence.

<sup>11</sup> URL: <https://detector.media/infospace/article/178056/2020-06-17-na-telekanal-krt-poskarzhylysysya-cherez-gomofobiyu-v-efiri/>.

<sup>12</sup> URL: <https://www.bbc.com/ukrainian/news-52840562>.

<sup>13</sup> URL: <https://nv.ua/ukr/ukraine/politics/kiva-virishiv-visloviti-svoje-stavlennja-do-gejiv-tsitatoju-z-bibliji-shcho-zaklikaje-vbivati-zamuzholoztvo-104612.html>.

The Commissioner addressed the Chairman of the Committee on Rules of Procedure, Parliamentary Ethics and Administration of Verkhovna Rada's Work with a recommendation to consider this case at a meeting of the Committee and take measures to prevent similar situations in the future. However, the Commissioner was not informed about the results of the consideration of this petition.

The introduction of liability for such actions, in particular, in the form of administrative penalties, will help reduce the number of cases of hate speech and acts of discrimination against the representatives of the LGBTI community.

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019,<sup>14</sup> the Commissioner recommended the Verkhovna Rada of Ukraine to speed up consideration and adoption of the draft Law of Ukraine "On Amending Certain Legal Acts of Ukraine (on Harmonization of Legislation in the Field of Prevention and Countering Discrimination with European Legislation)" (reg. No. 0931 of 29.08.2019), the task of which is to introduce administrative liability to persons who disseminate hate speech. However, the Verkhovna Rada of Ukraine never adopted the draft Law in 2020 in the second reading and as a whole.

### **DISCRIMINATION AGAINST THE REPRESENTATIVES OF THE LGBTI COMMUNITY HAS DEEPENED IN THE CONTEXT OF THE COVID-19**

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019,<sup>15</sup> the Commissioner recommended for the Cabinet of Ministers to develop a draft law on the legalization of registered civil partnership in Ukraine for heterosexual and same-sex couples.

This recommendation was not implemented in the context of the COVID-19 pandemic and discrimination against same-sex couples deepened. Such persons were deprived of the right to visit their partner in medical institutions, to access information about his/her health status, etc.

During the monitoring of the legislation, the Commissioner found discriminatory provisions against LGBTI persons in the medical sphere by restricting their ability to become blood donors. In particular, Ministry of Health Order No. 385 of 01 August 2005 "On the Infectious Safety of Donated Blood and its Components" establishes that persons who have homosexual relations cannot become donors<sup>16</sup>, although this characteristic does not characterize the donor's state of health as dangerous.

## **RECOMMENDATIONS:**

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of the draft Law of Ukraine "On Amending Certain Legal Acts of Ukraine (on Harmonization of Legislation in the Field of Prevention and Countering Discrimination with European Legislation)" (reg. No. 0931 of 29 August 2019).

<sup>14</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 215.

<sup>15</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 215.

<sup>16</sup> URL: <https://zakon.rada.gov.ua/laws/show/z0896-05#Text>.

**To the Cabinet of Ministers of Ukraine** – draft and submit for consideration to the Verkhovna Rada of Ukraine:

Draft law on the legalization of registered civil partnership in Ukraine for heterosexual and same-sex couples, taking into account property rights and non-property rights, in particular, ownership and inheritance of property, mutual support/maintenance of partners in case of disability, constitutional right not to give testimony against your partner;

Draft law on amendments to the Law of Ukraine “On the Principles of Prevention and Countering Discrimination in Ukraine”, in particular, on amendment of the definition of the term “discrimination” to include discrimination on the grounds of sexual orientation and gender identity.

**To the Ministry of Health of Ukraine** – amend Annex 3 to the Procedure of Medical Examination of Blood Donors and (or) its Components approved by the Order of the Ministry of Health of Ukraine No. 385 of 01 August 2005 “On the Infectious Safety of Donated Blood and its Components” in terms of exclusion of the rule limiting the right of persons who have homosexual relations to be donors.

**To the National Police of Ukraine** – ensure proper implementation of the provisions of the Law of Ukraine “On National Police”, in particular, investigate comprehensively, fully and objectively the motive of intolerance on the grounds of sexual orientation and gender identity when investigating offences and, in case of such motive, qualify offences under Article 161 of the Criminal Code of Ukraine..

#### *1.2.5. Observance of the rights of citizens to non-discrimination on the grounds of language*

In accordance with the European Charter for Regional or Minority Languages, ratified by the Law of Ukraine No. 802-IV of 15 May 2003, Ukraine has undertaken to take all possible measures to facilitate the development and free use of national minority languages.

Articles 10, 11 and 53 of the Constitution of Ukraine and the Laws of Ukraine “On National Minorities in Ukraine” No. 2494-XII of 25 June 1992, “On Education” No. 2145-VIII of 5 September 2017, “On Ensuring the Functioning of the Ukrainian Language as the State Language” No. 2704-VIII of 25 April 2019 established guarantees and protection of linguistic rights. Everyone is guaranteed the right to freely determine the language he/she considers native and choose the language of communication.

The Ukrainian language as the only State language functions as the language of interethnic communication, is a guarantee of human rights protection for every Ukrainian citizen, regardless of his or her ethnic origin, and is also a factor of unity and national security of Ukraine.

But, due to the armed conflict in Eastern Ukraine, caused by the Russian military aggression and occupation of the territories of the Autonomous Republic of Crimea, the city of Sevastopol and some Areas of the Donetsk and Luhansk Oblasts, it is not possible to fully ensure the protection of the state and minority languages.

In 2020, the Commissioner received 45 reports on the protection of citizens’ right to the free use of their native language in all spheres of life. The reports concerned violations of the right of citizens to access information and educational services in the state language and languages of national minorities and to use such languages in the temporarily occupied territory of Ukraine. Some reports concerned violations of the right to receive information or services in the Ukrainian language.

*Right to communicate in the state language as a language of interethnic communication*

Following the entry into force of the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as the State Language” No. 2704-VIII of 25 April 2019 (hereinafter – Law No. 2704-VIII), the use of the state language became mandatory not only for all civil servants and employees of the legislative, executive and judicial branches of government, local self-government but also for many spheres of social life.

Requirements for proficiency in the state language were established. The status of the Ukrainian sign language was defined. The National Commission on the Standards of the State Language was set up and the post of Commissioner for the Protection of the State Language was introduced. The legislation guarantees that everyone in Ukraine has the right to receive information and services in the Ukrainian language.

At the same time, taking into account the norms of the European Charter for Regional or Minority Languages, Law No. 2704-VIII establishes the right to use other languages in private communication. During 2019-2020, some provisions of Law No. 2704-VIII on the use of the state language in the activities of state bodies, local self-government bodies, state and municipal institutions, maintaining documents, including medical, advocacy, advertising and other activities entered into force gradually. In particular, in September 2020, the provisions of Article 21 of Law No. 2704-VIII concerning the compulsory use of the state language in the educational process entered into force.

The Commissioner began to receive reports of violations of the right to education in the State language.

**Example**

In October 2020, the Commissioner received a report from citizen K. about the violation of her son’s right to be taught in the state language in Glukhiv Secondary School of I-III Degrees No. 3 of the Glukhiv City Council of the Sumy Oblast. The petitioner complained that teachers used the Russian language during the educational process.

The Commissioner sent a letter to the management of the educational institution with a demand to restore the right of students to study in the state language. Following the consideration of the Commissioner’s letter, the administration of Glukhiv Secondary School of I-III Degrees No. 3 ensured the implementation of the educational process in accordance with the requirements of Article 21 of Law № 2704-VIII.

In this regard, the Commissioner, together with the Commissioner for the Protection of the State Language, conducted monitoring of children’s right to education in the Ukrainian language. The results of the monitoring showed 18 violations of children’s rights under Article 21 of Law No. 2704-VIII<sup>17</sup>, The violations concerned the use of the Russian language by teachers in the educational process, including study materials.

To develop further cooperation and in view of the fact that in 2021 and subsequent years, the provisions of Law No. 2704-VIII on the use of the state language in services, media, etc. will enter into force, the Commissioner and the Commissioner for the Protection of the State Language concluded a Memorandum in December 2020<sup>18</sup>.

<sup>17</sup> URL: <https://www.facebook.com/govvamova/photos/a.105652177897486/254239173038785/>.

<sup>18</sup> URL: <https://ombudsman.gov.ua/ua/page/secretariat/docs/agreement/>.

Within the implementation of this Memorandum, methods will be developed in 2021 to prevent violations of the linguistic rights of the citizens of Ukraine, national minorities and indigenous peoples of Ukraine and to ensure their right to use, receive information as well as services in the state language. Joint awareness-raising activities, as well as a pilot project to monitor the implementation of Law No. 2704-VIII in the regions, will be carried out.

Article 9 of Law No. 2704-VIII establishes the obligation to speak the State language and to use it in the performance of official duties by deputies of local councils and officials of local self-government bodies. Also, Articles 12 and 29 of Law No. 2704-VIII stipulate that the State language is the working language of the local self-government bodies and the language of public events. These provisions guarantee the observance of the rights of the citizens of Ukraine to receive information, services or assistance from the local self-government bodies in the state language.

However, many cases of violations of these guarantees were reported to the Commissioner.

#### Example

In October 2020, the Deputy of one of the village councils in Vinnytsia Oblast addressed the Commissioner concerning the neglect by the head of the council of the requirements for the mandatory use of the state language during the public hearings on the construction issues that contradicts the requirements of Articles 6, 9 and 29 of Law No. 2704-VIII on the obligation of officials to use the state language during public events.

Following the consideration of the petition, the Commissioner sent recommendations to the Raion State Administration and the Village Council. These bodies reported that they had taken into account the Commissioner's recommendations and eliminated violations of the requirements of the Law.

The Commissioner received reports from citizens concerning violations of their right to communicate in the state language as a language of interethnic communication in various areas of public life.

#### Example

In September 2020, citizen V. residing in the city of Zaporizhia submitted a petition to the Commissioner with a complaint against the employees of the branch of JSC CB "Privatbank" who during the banking services refused to serve him in state language thus violating the requirements of Articles 6 and 9 of Law No. 2704-VIII on the obligation to speak the state language and its use by officials.

The Commissioner sent recommendations to the management of the "Privatbank" Branch to eliminate these violations. Following the Commissioner's intervention, based on the decision of the management of the "Privatbank" Branch, the awareness-raising activities were conducted for its employees aimed at preventing violation of rights of bank's customers to service in the state language.

In January 2021, the provisions of Law No. 2704-VIII concerning compulsory use of the state language in servicing, information on goods and services entered into force. During January-February 2021, the Commissioner received 46 reports of citizens on violation of the right to service (as many as in 2020 in total).

In this regard, during 2021, one of the strategic directions of the Commissioner's activities<sup>19</sup> will remain comprehensive monitoring of the observance of the right of citizens to receive information and services in the state language as the language of interethnic communication in various spheres of public life. This right is guaranteed by Law No. 2704-VIII.

*Right to the free use of the Ukrainian language in the temporarily occupied territories of the Autonomous Republic of Crimea, the city of Sevastopol, in the Donetsk and Luhansk Oblasts*

The occupation administration of the Russian Federation acting in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol continues to take measures aimed at levelling the legal status of the Ukrainian language.

Media and social media monitoring shows that as of the end of December 2020, only one school left in the Autonomous Republic of Crimea that provides education in the Ukrainian language, i.e. No. 20 in the city of Feodosia. In this institution, children are supposed to study in the Ukrainian language, but in fact, they do not have such an opportunity due to the absence of teachers of Ukrainian language and literature.

After the start of the temporary occupation of certain areas in Donetsk and Luhansk Oblasts by the occupation administrations, the Ukrainian language has been designated as one of the state languages. However, monitoring of the websites of the occupation administration and media shows that 100% of pre-school, school and higher education institutions in the Donetsk Oblast use Russian as the only language of education<sup>20</sup>.

**THE OCCUPATION ADMINISTRATION HAS EXCLUDED THE UKRAINIAN LANGUAGE FROM THE CURRICULA OF GENERAL EDUCATION INSTITUTIONS**

In March 2020, the occupation administration in the temporarily occupied Areas of the Donetsk Oblast excluded the Ukrainian language and literature from the curricula of general education institutions<sup>21</sup>. In June 2020, the occupation administration of the temporarily occupied Areas of the Luhansk Oblast took similar actions<sup>22</sup>.

According to the Donetsk Oblast State Administration, as of early 2020, 3,800 children from the temporarily occupied territories are receiving general secondary education through distance learning in the school of external studies located in the territory of the Donetsk Oblast controlled by the Government of Ukraine<sup>23</sup>.

Teaching in higher education institutions in the temporarily occupied Areas in the Donetsk and Luhansk Oblasts is also performed in the Russian language.

**Example**

In July 2020, the Commissioner monitored the activities of higher education institutions operating in the temporarily occupied territories of the Donetsk and Luhansk Oblasts.

The results of the monitoring revealed that the Donetsk National University of the Donetsk People's Republic informs about the possibility of training specialists in the specialty "Ukrainian language".

<sup>19</sup> URL: <https://ombudsman.gov.ua/ua/page/secretariat/docs/strategichnij-plan-diyalnosti.html>.

<sup>20</sup> URL: <https://dan-news.info/politics/zaxarchenko-zayavil-o-zavershenii-perexoda-obrazovatelnyx-uchrezhdenij-dnr-na-russkij-yazyk-obucheniya.html>.

<sup>21</sup> URL: <https://sovminlnr.ru/novosti/21644-v-shkolah-respubliki-ukrainskij-yazyk-budet-fakultativom.html>.

<sup>22</sup> URL: <https://gtrklnr.com/2020/06/03/minobrazovaniya-lnr-isklyuchilo-ukrainskij-yazyk-iz-bazovoj-chasti-uchebnyx-planov-shkol/>.

<sup>23</sup> URL: <https://dn.gov.ua/ua/news/na-donechchini-z-2017-roku-advichi-zrosla-kilkist-osvitnih-centriv-donbas-ukrayina>.

However, the institution does not have a Department of the Ukrainian Language, and the Department of Ukrainian Philology and Applied Linguistics was renamed the Department of Slavic Philology and Applied Linguistics in 2017. Therefore, the information published by the institution does not correspond to reality.

The occupation administration operating in the temporarily occupied territories in the Luhansk Oblast by its order renamed the Taras Shevchenko Luhansk National University to Luhansk National Pedagogical University and eliminated the Department of Ukrainian Language, which had been established in 1921 – since the founding of the institution.

The occupation administrations operating in the temporarily occupied territory in certain Areas in the Donetsk and Luhansk Oblasts in March and June 2020 decided to abolish the status of the Ukrainian language as the state language. The need for such actions was justified by “integration processes with the Russian Federation.”

#### *Right to use and develop the languages of national minorities and indigenous peoples*

The Constitution of Ukraine guarantees the linguistic rights of national minorities, in particular, use, development, non-discrimination and education in the native language or the study of the native language (Articles 9, 10 and 53 of the Constitution of Ukraine).

However, this right is not detailed at the level of the laws of Ukraine.

A significant gap in the Ukrainian legislation in the issue of ensuring the rights of national minorities is the absence of a special law to regulate the use of national minority languages in various spheres, including education.

#### **ABSENCE OF A SPECIAL LAW REGULATING THE USE OF NATIONAL MINORITY LANGUAGES**

In accordance with Law No. 2704-VIII, the Cabinet of Ministers of Ukraine is required to draft, within six months, and submit for consideration to the Verkhovna Rada of Ukraine the draft law on national minorities of Ukraine, which would create adequate conditions to ensure and protect the rights of all persons belonging to national minorities, to preserve and develop their linguistic, cultural and ethnic-religious identity.

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019, the Commissioner recommended the Cabinet of Ministers<sup>24</sup> to develop this draft law. However, this recommendation remained unimplemented.

Legislative regulation of the status of national minorities, in particular, the protection and dissemination of their language, will contribute to the sustainable development of such languages, without hindering the development of the Ukrainian language.

This was also noted in the opinion of the European Commission for Democracy through Law (Venice Commission) No. 960/2019 of 9 December 2019, which states that Ukraine, in accordance with the international obligations it has undertaken, must, without discrimination, provide guarantees for the protection and development of languages of national minorities and indigenous peoples.

The issue of discrimination against languages of national minorities and indigenous peoples, in particular, the Russian language, is being considered by the Constitutional Court of Ukraine upon the submission of 51 people’s deputies of Ukraine regarding the compliance of Law No 2704-VIII with the provisions of the Constitution of Ukraine.

<sup>24</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>.

In January 2020, the Commissioner submitted an opinion to the Constitutional Court stating that the Law does not contain discriminatory provisions on the grounds of language in relation to representatives of all national minorities (including Russian-speaking citizens). This Law is aimed exclusively at regulating the development and functioning of the Ukrainian language as the state language.

### **ADMINISTRATIONS OF EDUCATIONAL ESTABLISHMENTS CREATE OBSTACLES FOR THE IMPLEMENTATION OF THE RIGHT TO EDUCATION IN THE NATIVE LANGUAGE**

Currently, the Constitutional Court has not made a final decision. In accordance with the information received by the Commissioner from the residents of the Autonomous Republic of Crimea, education in the Crimean Tatar language is allowed only until the 9th grade and on the basis of the parents' application. However, the administrations of educational institutions create obstacles for the implementation of the right to education in the native language under various excuses: do not provide classrooms for study, do not form the teaching staff. There are no textbooks in the institutions. The number of hours for studying the Crimean Tatar language and literature is also constantly reduced. Such actions of the representatives of the occupation administration resulted in the fact that only 3% (6,400 students) of the total number of schoolchildren in the Autonomous Republic of Crimea study in the Crimean Tatar language.

### **RESTRICTION OF THE RIGHT TO ACCESS INFORMATION IN THE LANGUAGE OF NATIONAL MINORITIES**

The information stated above demonstrates the systemic violations by the Russian Federation of Article 8 of the European Charter for Regional or Minority Languages. There are no Crimean Tatar versions of the occupation administration's web pages, and court proceedings are conducted exclusively in Russian. The use of their native language in courts is prohibited for the citizens. Contrary to Articles 2, 8, 15 and 17 of the UN Declaration on the Rights of Indigenous Peoples, employees of enterprises, institutions and organizations are prohibited from using their native language in everyday life on the peninsula.

#### *Right to access information in the language of national minorities*

Within the parliamentary oversight over the observance of the right to access information in the language of national minorities, the Commissioner monitored the media during 2020 and found restrictions of this right due to insufficient budgetary funding for TV channels that cover information on the languages of national minorities. The Commissioner received reports on such restrictions from NGOs concerned with the observance of the rights of national minorities.

#### **Example**

In March 2020, the National Council of Romanians of Ukraine addressed the Commissioner. The Council informed the Commissioner of cuts in funding for regional TV and radio content in the language of the Romanian national minority in the western regions of the country. The cuts in funding may lead to a reduction in such broadcasting for the members of the Romanian national minority.

The Commissioner sent recommendations to the Ministry of Culture and Information Policy of Ukraine and the Public Joint-Stock Company "National Public Television and Radio Company of Ukraine" to increase the funding for broadcasting TV and radio content in the Romanian language.

Following the Commissioner's intervention, the Cabinet of Ministers of Ukraine adopted Resolution No. 304 of 24 April 2020 "On Amending Paragraph 3 of the Procedure for the Use of Funds Provided for in the State Budget for Financing the Support of the Public Joint-Stock Company "National Public Television and Radio Company of Ukraine." The right of national minorities to access information in their native language was restored.

Lack of or inadequate budget funding may lead to a violation of the right to receive information in the languages of national minorities in the temporarily occupied territories of Ukraine, where there are no alternatives for accessing such information at all.

### **VIOLATION OF THE RIGHT TO RECEIVE INFORMATION IN LANGUAGES OF NATIONAL MINORITIES DUE TO INADEQUATE BUDGET FUNDING**

#### **Example**

Monitoring of media in April 2020 revealed reports of a threat that broadcasting of the ATR TV channel (which broadcasts 35% of its airtime in Crimean Tatar, 30% — in Ukrainian, 20% — in Russian and 15% — in Turkish with Ukrainian subtitles) may be stopped in the temporarily occupied territory of the Autonomous Republic of Crimea due to insufficient funding.

The Commissioner issued recommendations to the State Committee for Television and Radio Broadcasting to ensure financial support to the ATR TV channel.

Following the Commissioner's intervention, the Cabinet of Ministers of Ukraine adopted Resolution No. 346 of 06 May 2020 "On Amendments to the Procedure for the Use of Funds Provided for by the State Budget for Production and Broadcast of TV and Radio Programs for State Needs, Collection, Processing and Distribution of Official Information Products, Financial Support of the Public Foreign Broadcasting System of Ukraine", pursuant to which funds were allocated from the state budget for additional funding of the ATR TV channel.

## **RECOMMENDATIONS:**

### **To the Cabinet of Ministers of Ukraine –**

1. In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on National Minorities of Ukraine.
2. Include in the draft Law of Ukraine "On the State Budget of Ukraine for 2022" the costs of ensuring the proper functioning of TV channels that broadcast in the languages of national minorities.

**To the Ministry of Reintegration of Temporary Occupied Territories of Ukraine, Ministry of Culture and Information Policy of Ukraine, Ministry of Education of Ukraine –** explore the possibility of introducing online courses of studying the Ukrainian language and literature for the residents of the temporarily occupied territories of Ukraine.

### 1.3. Right to protection against domestic and gender-based violence

An increase in domestic violence is observed in the context of the COVID-19 respiratory disease pandemic in Ukraine, as elsewhere in the world. According to the National Social Service of Ukraine, the number of complaints of the citizens about domestic violence to the police and social protection authorities rose to 211,362 in 2020, which is 62% more than in 2019 (130,514).

The Commissioner received 126 reports of violations of rights to protection against domestic and gender-based violence during 2020. The same number of reports was recorded in 2019 (127).

The analysis of the reports received by the Commissioner shows that the most common violations are violations of the right to safety and protection of victims by the police and social protection bodies, the right to social services and legal aid.

#### **THE MOST COMMON VIOLATIONS ARE VIOLATIONS OF THE RIGHT TO SAFETY AND PROTECTION OF VICTIMS BY THE POLICE AND SOCIAL PROTECTION BODIES**

These violations are also confirmed by the results of monitoring visits to 8 centres for social and psychological assistance to victims of domestic violence and 25 remote inspections of all Oblast State Administrations and Kyiv City State Administration.

The launch in February 2020 of the Government Hotline 1547 on combating human trafficking, prevention and response to domestic violence, gender-based violence and violence against children is a marked improvement in this area<sup>25</sup>.

#### *Right to protection of victims of domestic and gender-based violence*

In accordance with Article 10 of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017 (hereinafter – Law No. 2229-VIII), identification of and timely response to domestic violence, receipt and consideration of petitions and reports of domestic violence, as well as assisting to victims are assigned to the National Police of Ukraine.

However, the analysis of the reports received by the Commissioner shows that this provision of the law is not implemented in practice.

Out of 126 reports of violations of the rights of victims of domestic violence and gender-based violence, 90 reports concerned non-execution or improper execution of the above-mentioned powers by the police.

#### **Example**

In January 2020, the Commissioner received a report from citizen M. on systematic domestic violence against her and her 12 children by her ex-husband. The petitioner complained that the police had not responded to her petitions.

Following the Commissioner’s intervention, the Main Department of the National Police in the Donetsk Oblast conducted an official investigation and took disciplinary measures against the heads of the

<sup>25</sup> In accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 1145 of 27 December 2019 “On the Extension of the Pilot Project Aimed at Creating a “single input” for Processing of Citizens’ Petitions and Requests for Public Information to Processing of Petitions and Requests on/ or from Victims of Human Trafficking, Domestic Violence, Gender-based Violence, Violence against Children, or on the Threat of such Violence.”

structural units and investigators of the Kramatorsk Police Department of the Main Department of the National Police of Ukraine in the Donetsk Oblast who were found liable for the inadequate response to the petitions of the victim. A restraining order was imposed on the ex-husband of the petitioner.

The legal requirements on informing the Service Units for Children by the Police when a child is a victim of domestic violence or a victim requested assistance together with a child are violated. Thus, in accordance with Article 1 of Law No. 2229-VIII, a child is recognised as a victim of domestic violence not only when such violence is used against him/her, but also when he/she has witnessed the violence.

In accordance with paragraph 36 of the Procedure for Interaction of Entities Implementing Measures to Prevent and Combat Domestic Violence and Gender-Based Violence, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 658 of 22 August 2018, if a child is a victim of violence or a victim requested assistance together with a child, the police shall inform the relevant Service Unit for Children within 24 hours.

But the police authorities do not ensure the proper performance of these duties.

#### Example

In September 2020, citizen N. submitted a petition to the Commissioner regarding domestic violence committed by her cohabiter against her and her underage child and no response from the police in Vyshnivskiy District of the Kyiv-Sviatoshynskiy Police Department of the Main Department of the National Police in the Kyiv Oblast on this fact.

Following the Commissioner's intervention after examining the child's living conditions in the family, the Service Units for Children decided to place the child in temporary accommodation with another family.

There were many cases when only after the relevant intervention of the Commissioner, the Service Units for Children were involved in responding to a case of domestic violence. In accordance with the provisions of Article 52 of the Constitution of Ukraine, any violence against a child and his or her exploitation is punishable by law.

#### Example

In November 2020, the Commissioner received a petition from the under-aged citizen T. about domestic violence committed by her mother.

Following the Commissioner's petition to the wardship and guardianship authority of the Saksahanska District Council in the city of Kryvyi Rih with a request to take immediate measures to protect the child, the wardship and guardianship authority together with the police authority issued an urgent banning order against the mother and prepared an appeal to the court to issue a restraining order and deprive the parents of parental rights. The court proceedings involving a representative of the Commissioner's Secretariat are ongoing.

To ensure comprehensive and timely assistance to victims by entities implementing measures to prevent and combat domestic violence and to coordinate the activities of such entities, Article 16 of Law No. 2229-VIII provides for the creation of a Unified State Register of Domestic and Gender-

Based Violence as an automated information and telecommunications system, which should ensure automatic reporting of cases of violence to all interested entities. However, the Ministry of Social Policy did not implement this provision of the law and the register was not created.

Lack of response to cases of domestic violence by

**IMPROPER QUALIFICATION OF CRIMINAL OFFENCES UNDER ARTICLE 126-1 OF THE CRIMINAL CODE OF UKRAINE**

Police is also caused by the improper qualification of criminal offences, i.e. not under Article 126-1 (Domestic violence) of the Criminal Code of Ukraine, but as the infliction of bodily injures of different severity or as a result of property disputes. As a result, the pre-trial investigations that were

initiated upon the victims' applications ended with the closure of criminal proceedings because of the trifling nature of the offence.

**Example**

In June 2020, citizen of L. submitted a petition to the Commissioner regarding domestic violence committed by her husband against her and her underage child. After several appeals submitted by citizen L., the police launched a pre-trial investigation, but the criminal proceedings were closed.

Following the consideration of the Commissioner's recommendations, the Kyiv City Prosecutor's Office reopened a pre-trial investigation under article 126-1 (Domestic violence) of the Criminal Code and is conducting the procedural management of the pre-trial investigation performed by the Shevchenkivskyi Police Department of the Main Department of the National Police in the city of Kyiv.

To immediately end the domestic violence, eliminate the risk to the life and health of the victims and prevent the continuation or reoccurrence of such violence, the Police apply a special measure – an urgent banning order against the abuser (Article 1 of Law No. 2229-VIII).

**NON-APPLICATION OF AN URGENT BANNING ORDER AGAINST THE ABUSER MAY ENDANGER THE LIFE OF THE VICTIM**

To protect the victim, the said order may impose an obligation on the abuser to leave the place of residence (stay) of the victim, a ban on entering such place and staying there and a ban on contact the victim in any way.

Non-application of such measure by the police in the cases prescribed by law may endanger the life and health of the victim.

**Example**

In January 2020, citizen H. submitted a petition to the Commissioner regarding no response of the Police to the systematic beatings and psychological violence by her son (preventive discussions were held with the abuser). At the end of January 2020, the son of citizen H. kicked her out of her home without any means of support.

Following the Commissioner's intervention, the Kyiv-Sviatoshynskyi Police Department of the Main Department of the National Police in the Kyiv Oblast entered the information on this fact into the Unified Register of Pre-Trial Investigations under Article 126-1 (Domestic Violence) of the Criminal Code of Ukraine. An urgent banning order was issued for the abuser(son) and a restraining order for six months was issued by court decision.

The ECtHR in its judgment in the “Levchuk v. Ukraine” case (Application No. 17496/19)<sup>26</sup> in September 2020 (the first judgment against Ukraine on domestic violence) noted that inadequate responses to cases of domestic violence do not comply with Ukraine’s positive obligation to ensure effective protection of the victims of domestic violence.

The ECtHR also pointed out that the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) had not yet been ratified by Ukraine, which affects the level of protection of victims.

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019, the Commissioner recommended the Cabinet of Ministers of Ukraine to develop and submit for consideration to the Verkhovna Rada of Ukraine the draft law on the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Pursuant to the Commissioner’s recommendation, the Ministry of Social Policy developed a draft law of Ukraine “On the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,” but it was not duly submitted to the Verkhovna Rada of Ukraine for consideration.

The Commissioner found a lack of legislative regulation for prosecuting military servants, police officers and persons of equivalent status for committing domestic violence. Such persons are prosecuted only under disciplinary regulations, which do not provide for punishment for domestic violence.

### **THE FIRST JUDGMENT OF THE ECTHR AGAINST UKRAINE ON DOMESTIC VIOLENCE**

### **LACK OF LEGISLATIVE REGULATION FOR PROSECUTING ABUSERS — MILITARY SERVANTS, POLICE OFFICERS**

#### Example

In May 2020, citizen Ch. submitted a petition to the Commissioner with a request to protect her son against domestic violence perpetrated by his father, a military servant (beatings, harassment, blackmail). The citizen Ch. had been submitting relevant applications to the law enforcement bodies for 4 years and called the police, but the response was limited to preventive conversations.

Following the Commissioner’s intervention, the Service Unit for Children and a local centre for free secondary legal assistance filed a lawsuit seeking a restraining order against the abuser. The court proceedings are ongoing.

#### Example

In August 2020, citizen Sh. submitted a petition to the Commissioner stating that the police does not take any response measures to protect her against domestic violence committed by her husband, a police officer.

Following the Commissioner’s intervention, the Territorial Department of the State Bureau of Investigations entered the information into the Unified Register of Pre-Trial Investigations under Article 126-1 (Domestic violence) of the Criminal Code of Ukraine regarding the husband of citizen Sh. The pre-trial investigation is ongoing.

<sup>26</sup> URL <https://www.echr.com.ua/translation/sprava-levchuk-proti-ukra%D1%97ni/>.

The draft Law of Ukraine “On Amendments to the Code of Ukraine on Administrative offences to Strengthen Liability for Committing Domestic Violence and Gender-Related Violence” (reg. No. 3908-1 of 03.08.2020) was developed to address gaps in legislation to prosecute military servants, police officers and other abusers. The Commissioner supported the draft law. The draft law was adopted by the Verkhovna Rada of Ukraine in the first reading on 03.02.2021.

#### *Right to legal aid for victims of domestic and gender-based violence*

In accordance with Article 13 of Law No. 2229-VIII, victims of domestic violence have the right to receive free legal aid for the victims in the manner prescribed by the Law of Ukraine “On Free Legal Aid” No. 3460-VI of 02 June 2011.

The police, social protection bodies and special support services for victims are obliged to inform the victims of the possibility to exercise the right to such legal aid.

The analysis of the reports received by the Commissioner revealed an inadequate provision of the population by the police and social protection bodies with the information about the possibility to obtain legal aid for the victims of domestic violence. Such inadequate provision of information leads to the violation of their rights to legal protection, guaranteed by Article 59 of the Constitution of Ukraine.

#### Example

In March 2020, citizen S. submitted a petition to the Commissioner stating that her ex-husband kicked her together with her child out of the flat belonging to them on the basis of common ownership. Following her complaint, the police had only preventive discussions with her ex-husband. Following the Commissioner’s intervention, the victim was provided with free legal aid by a lawyer – a sharing claim was submitted to the court. The court proceedings are ongoing.

#### *Right to social protection of victims of domestic and gender-based violence*

The Commissioner received 18 reports of violations of the rights of victims of domestic violence by wardship and guardianship authorities and Service Units for Children, which concerned many cases of inadequate exercising of powers by the above-stated bodies and violations of the rights of children to social protection.

#### **VIOLATIONS BY THE SERVICE UNITS FOR CHILDREN OF CHILDREN’S RIGHTS TO SOCIAL PROTECTION**

In accordance with Article 9 of Law No. 2229-VIII, the powers of wardship and guardianship authorities and Service Units for Children include protection of the rights and interests of a child victim, development and implementation of measures to protect the rights and legitimate interests of a child victim, consideration in accordance with the procedure established in the Family Code of Ukraine of a question of

the appropriateness of the removal of a child or depriving the patents of parental rights in relation to a child if the parents (adoptive parents) or one of them are (is) abusers (abuser) of a child.

**Example**

In November 2020, the Commissioner received a petition from the under-aged citizen T. regarding the violation of her rights by the Service Units for Children. In September 2020, the under-aged citizen T. addressed the Service Unit for Children of the Saksahanska District Council in the city of Kryvyi Rih for help as her mother used domestic violence against her (beatings, psychological violence, unsanitary living conditions). However, the Service Unit for Children refused to help her as she was not accompanied by an adult. T. together with her adult older sister (who lived in another city) addressed the Service Unit for Children again with a request to resolve the issue of her living with her sister. However, her request was left without proper consideration.

Following the Commissioner's intervention, the Dnipropetrovsk Oblast Service Unit for Children conducted an inspection, following which in early February 2021, information about the underage T. was entered onto the Register of Children in Difficult Life Circumstances and placed with her sister's family.

The monitoring visits to 8 centres for social and psychological assistance to victims of domestic violence in the Volyn, Kirovohrad, Dnipropetrovsk, Rivne, Zhytomyr, Ivano-Frankivsk, Ternopil and Khmelnytsk Oblasts showed these centres for victims of domestic violence did not have enough places for victims. These centres are designed to accommodate only 15 to 30 persons at a time.

**Example**

In June 2020, citizen V. residing in the Zhytomyr Oblast submitted a petition to the Commissioner regarding domestic violence committed by her cohabiter. Consideration of the petition showed that the victim needed shelter as her abuser was denying her access to the premises where his parents and other relatives also resided. As the victim was in the Kyiv Oblast at the time of the petition, with the assistance of the Commissioner, she was placed in a specialised institution in the Kyiv Oblast in July 2020, where the petitioner received comprehensive assistance.

Because of the introduction of quarantine restrictions related to the COVID-19 pandemic, the Commissioner, within the parliamentary oversight over the observance of the rights of victims of domestic and gender-based violence, conducted remote inspections of all Oblast State Administrations and Kyiv City State Administration.

The results of these inspections revealed that in Sumy, Cherkasy and Chernihiv Oblast State Administrations contrary to the requirements of Articles 8 and 14 of Law No. 2229-VIII no shelters for victims of domestic violence were created, which violates their rights to receive state-guaranteed assistance for safe accommodation in case of threat to life and health.

The implementation of awareness-raising activities regarding the rights and guarantees of protection of victims of domestic and gender-based violence was also investigated during the remote inspections. It was caused by the fact that the results of the survey supported by the UN Population Fund showed that the awareness of citizens on these issues increased by only 1%<sup>27</sup>.

<sup>27</sup> "Citizens' Attitudes towards Gender-Based and Domestic Violence" Survey conducted in March 2019 and February 2020 (UN Population Fund and Ministry of Social Policy).

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019, the Commissioner recommended that the local state administrations, local self-government bodies organize and conduct an awareness-raising campaign in 2020 to raise awareness among Ukrainian citizens about the guarantees and possibilities of protection against domestic violence<sup>28</sup>.

The results of these inspections revealed that all Oblast State Administrations and Kyiv City State Administration conducted legal education activities. However, it is necessary to continue conducting them in 2021 to increase public awareness of the possibilities and guarantees of protection.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of the draft Law of Ukraine “On Amendments to the Code of Ukraine on Administrative offences to Strengthen Liability for Committing Domestic Violence and Gender-Related Violence” (reg. No. 3908-1 of 03.08.2020).

### **To the Cabinet of Ministers of Ukraine** –

1. In accordance with the established procedure submit to the Verkhovna Rada of Ukraine the Draft Law of Ukraine “On the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.”
2. Develop and approve the State Social Program for Preventing and Combating Domestic and Gender-based Violence for the Period until 2022.
3. Ensure the establishment and functioning of the Unified State Register of Domestic and Gender-Based Violence in accordance with Article 16 of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017.

**To the Ministry of Internal Affairs of Ukraine, National Police of Ukraine** – conduct awareness-raising activities for police officials and introduce educational components in police training programmes. These components have to include the proper performance of their functions in preventing and combating domestic violence in accordance with the requirements of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017.

### **To the Ministry of Social Policy of Ukraine** –

1. Develop and approve reporting forms on domestic violence pursuant to paragraph 6 of Part two of Article 7 and the procedure for informing (inter-agency cooperation) pursuant to Article 217 of the Law of Ukraine “On Preventing and Combating Domestic Violence.”
2. Ensure awareness-raising activities among the population on the rights and possibilities of protection of victims of domestic and gender-based violence, as well as among the staff of Service Units for Children, wardship and guardianship authorities and other general and special victim support services on proper response and assistance to victims of violence.

<sup>28</sup> URL: <https://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 220.

**To the Oblast, Kyiv City State Administrations, local self-government bodies –**

1. Ensure coordination of the activities of entities implementing measures to prevent and combat domestic violence, and their interaction at the local level in accordance with Article 8 of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017.
2. Ensure the establishment and operation of specialized victim support services (in particular, shelters) and provision of assistance and protection to victims of domestic violence and/or gender-based violence, in accordance with Part one of Article 8 of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017.
3. Ensure effective informing of the population about the rights of victims of domestic violence, gender-based violence and mechanisms for their implementation, about the services provided by general and specialized victim support services, methods of obtaining them, the responsibility of perpetrators of domestic violence, gender-based violence.
4. Develop, approve and ensure implementation of regional programmes in the sphere of preventing and combating domestic violence and gender-based violence in accordance with Part one of Article 8 of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017.
5. Ensure resolution of the issue regarding adequate staffing of entities implementing measures to prevent and combat domestic violence, enhancement of their professionalism and effective interaction of genders in accordance with Article 8 of the Law of Ukraine “On Preventing and Combating Domestic Violence” No. 2229-VIII of 07 December 2017.

**1.4. Freedom of thought and speech**

The exercising of the right to freedom of thought and speech in Ukraine in 2020 was conditioned both by new threats caused by the COVID-19 respiratory disease pandemic and by the ongoing armed aggression of the Russian Federation in eastern Ukraine and the temporary occupation of the territories of the Autonomous Republic of Crimea, the Donetsk and Luhansk Oblasts.

During 2020, the Commissioner received 14 reports of violations of citizens’ rights to freedom of thought and speech.

Within the parliamentary oversight over the observance of the constitutional right to freedom of thought and speech, the Commissioner monitored reports in the media and social networks on violations of human rights in this area and the rights of journalists during the performance of their professional duties.

The analysis of the reports received by the Commissioner and monitoring of media showed some human rights violations involving restrictions on freedom of speech, freedom of thought and opinion, persecutions of journalists, obstruction of their activities, physical aggression, threats and pressure.

The relevant human rights violations were also confirmed by the conclusions drawn by independent expert studies in the field of the exercising of the right to freedom of thought and speech.

In particular, according to a study by the international organization Reporters Without Borders, Ukraine ranked 96th (out of 180 countries) in the 2020 World Press Freedom Index<sup>29</sup>. In 2019, Ukraine ranked 102nd.

### **THE LEVEL OF PHYSICAL AGGRESSION AGAINST WOMEN JOURNALISTS REMAINS STEADILY HIGH**

Experts of the Institute of Mass Information recorded 229 cases of violations of freedom of speech<sup>30</sup> (243 in 2019), of which 171 cases involved physical aggression against journalists. In particular, the level of physical aggression against women journalists remains consistently high.

The number of obstacles to the legitimate professional activities of journalists in 2020 increased by 26% compared to 2019.

Almost one-third of all violations of freedom of speech in Ukraine (27%) was related to quarantine restrictions due to the COVID-19 pandemic. This included 62 cases of journalists being prevented from attending local government sessions, as well as attacks on journalists in public places and institutions during inspections of compliance with quarantine condition.

### **JOURNALISTS WERE ATTACKED DURING INSPECTIONS OF COMPLIANCE WITH QUARANTINE CONDITIONS**

*Right of journalists to exercise their professional activities*

Freedom of the media, and in particular, the journalists who work for them is an essential component of freedom of expression and freedom of information.

According to the Resolution of the Parliamentary Assembly of the Council of Europe "Freedom of The Press and the Working Conditions of Journalists in Conflict Zones," No. 1438 (2005) of 28 April 2005, freedom of expression and information in the media for democratic societies and each individual is a core value guaranteed by the European Convention on Human Rights.

However, Ukrainian journalists had to face facts of a hindrance to their professional activities, including physical force and material damage.

#### **Example**

The monitoring of media in March 2020 revealed that journalist Tetiana Sivokon was attacked and injured (the journalist was diagnosed with multiple injuries of her hands and fingers, and a cast was applied) by the seller of the masks while preparing a news story on the illegal sale of masks as part of an investigation in Khmelnytsk Oblast.

Residents of the town of Krasyliv addressed the editorial office of the TV channel in connection with the fact of unauthorized trade in protective equipment — medical masks of unknown origin. When a journalist group arrived to clarify the situation, the seller of the masks attacked the reporter, snatched the microphone from her hands, hid the masks and inflicted bodily harm.

<sup>29</sup> URL: <https://rsf.org/en/ranking>.

<sup>30</sup> URL: <https://imi.org.ua/monitorings/229-vypadkiv-porushen-svobody-slova-imi-zafiksuvav-v-ukrayini-u-2020-rotsi-i36905>.

The police of the Khmelnytsk Oblast initiated criminal proceedings under Article 345<sup>1</sup> (Threat or violence against a journalist) of the Criminal Code of Ukraine.

In March 2020, the Commissioner sent a request to the Prosecutor General's Office to instruct the working group in charge of monitoring the investigation of crimes against journalists to analyse compliance with laws in the said criminal proceedings and to further inform the Commissioner about the progress and results of the pre-trial investigation in the criminal proceedings.

The Commissioner also sent a letter to the National Union of Journalists of Ukraine with a recommendation to inform journalists about the need to contact the Commissioner if they encounter violence or other violations of their right to exercise their professional activities in the course of their work.

During the monitoring of media, the Commissioner continues to document facts of obstruction of the professional activity of journalists by public authorities, including law enforcement bodies.

### **OBSTRUCTION OF JOURNALISTS' WORK BY LAW-ENFORCEMENT BODIES**

#### Example

The monitoring of media in April 2020 revealed that journalist of the Public Television (Hromadske Telebachennia) Bohdan Kutepov, who was broadcasting live coverage of the protest of entrepreneurs against the restrictions imposed for the quarantine period, was beaten and his equipment was broken by policemen near the Cabinet of Ministers of Ukraine.

Several TOR (Public Order Patrol Police Unit) police officers approached the journalist and demanded to leave the hill in front of the Government building.

After the journalist's refusal to leave the convenient location for broadcasting, the law enforcement officers used force to push the camera crew down the hill and broke the stabilizer. All this happened live.

Following the request of the Commissioner, the National Police of Ukraine entered the information on this fact into the Unified Register of Pre-Trial Investigations under Part three of Article 171 (Impeding the legitimate professional activities of journalists) of the Criminal Code of Ukraine. The pre-trial investigation of the case is ongoing.

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019, the Commissioner recommended that the Cabinet of Ministers of Ukraine draft and submit for consideration to the Verkhovna Rada of Ukraine the draft law on enhancing criminal liability for obstructing journalistic activity and for crimes against journalists<sup>31</sup>, which has not been implemented.

The People's Deputy of Ukraine A.A. Kozhemiakin submitted to the Verkhovna Rada of Ukraine the Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Enhancing Liability for Criminal Offences against Journalists" (reg. No. 3633 of 11.06.2020). The Commissioner supported

<sup>31</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 227.

## **ENHANCING CRIMINAL LIABILITY FOR OBSTRUCTING THE WORK OF THE MEDIA**

the draft law. The draft law was adopted by the Verkhovna Rada of Ukraine in the first reading on 04 November 2020. The document was prepared for the second reading and included on the agenda of the fifth session of the Verkhovna Rada of Ukraine.

Taking into account the recommendations of the Commissioner<sup>32</sup> and to increase the effectiveness of supervision over the observance of the law during the pre-trial investigation, as well as to support

## **TAKING INTO ACCOUNT THE RECOMMENDATIONS OF THE COMMISSIONER, THE OFFICE OF THE PROSECUTOR GENERAL ESTABLISHED AN INTER-AGENCY WORKING GROUP**

public prosecution in criminal proceedings for criminal offences committed against journalists, the Prosecutor General's Office issued Order No.467 of 29.09.2020 on the formation of an inter-agency working group to analyse the state of supervision over law observance in criminal proceedings on criminal offences committed against journalists. The representatives of the State Bureau of Investigations, Security Service of Ukraine, National Police

of Ukraine were included in this group. This composition of the working group allows for sufficiently effective cooperation between law enforcement agencies during the investigation of criminal offences against journalists.

### *Right to diverse, reliable and timely information*

The issues in the field of the exercising of the right to receive mass information, including about the activities of the state bodies and local self-government bodies through the media, are regulated by

## **THE LEGISLATION IN THE AREA OF MEDIA OPERATION IS OUTDATED**

the Laws of Ukraine "On Television and Radio Broadcasting" No. 3759-XII of 21 December 1993, "On Print Media (Press) in Ukraine" No. 2782-XII of 16 November 1992, "On the Procedure for Coverage of the Activities of State Bodies and Local Self-Government Bodies in Ukraine by the Mass

Media" No. 539/97-VR of 23 September 1997.

The analysis of these Laws shows that their provisions do not fully take into account the challenges posed by the development of digital technologies and need to be brought in line with European standards for the operation of media resources (the European Convention on Transfrontier Television, European Parliament and Council Directive 2010/13/EU on Audiovisual Media Services of 10 March 2010 as amended by Directive (EC) 2018/1808 of 14 November 2018, etc.).

The lack of proper legal regulation of the issue in the field of the exercising of the human right to receive diverse, reliable and timely information within the framework of digitalisation of information and communication space may lead both to the restriction of opportunities to receive information and to the violation of this right by those responsible for its dissemination.

The draft Law of Ukraine "On Media" (reg. No. 2693 of 27.12.2019) was registered in the Verkhovna Rada of Ukraine. The draft law aims to regulate the functioning of the media taking into account European standards for media resources and the development of digital technologies.

<sup>32</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 227-228.

The draft law requires further elaboration and harmonisation with existing legislation, as well as the removal of conflicting norms from it. In August 2020, the Commissioner sent the respective proposals to the Committee of the Verkhovna Rada of Ukraine on Social Policy and Protection of Veterans' Rights.

The adoption of the draft law by the Verkhovna Rada of Ukraine would contribute to the exercising of human rights to freedom of expression and receive mass information.

*Right to freedom of speech in the temporarily occupied territory of the Autonomous Republic of Crimea*

The freedom of speech, guaranteed by Article 19 of the International Covenant on Civil and Political Rights, was effectively banned in the temporarily occupied territory of the Autonomous Republic of Crimea for the last seven years.

The Russian Federation continues to block and expropriate Ukrainian websites, television channels and frequencies of broadcasting in the Ukrainian language in the temporarily occupied territory of the Crimean Peninsula.

In 2020, the reports of citizens obtained by the Commissioner and results of monitoring of media revealed the cases of pressure on journalists, attacks, tortures, detentions, seizures of property, searches, threats, psychological pressure, prohibition of filming and denial of access to information.

**MEDIA WORKERS AND PUBLIC JOURNALISTS FACE REPRISALS IN THE AUTONOMOUS REPUBLIC OF CRIMEA**

Media workers and public journalists continue to face repression and unjustified interference in their work of covering the events in the Autonomous Republic of Crimea.

**Example**

Eight public journalists and members of the NGO "Crimean Solidarity", who publicly expressed their pro-Ukrainian position and covered the situation of human rights violations in Crimea, were illegally arrested and convicted. In particular, on 16 September 2020, the Southern District Military Court in Rostov-on-Don sentenced Server Mustafaiev, Tymur Ibrahimov, Marlen Asanov and Seiran Saliiev to 14, 17, 19 and 16 years of imprisonment, respectively, in a maximum-security prison for alleged participation in Hizb ut-Tahrir, which is recognized as a terrorist organization in Russia.

Remzi Bekirov, Ruslan Suleimanov, Osman Arifmemetov, Rustem Sheikhaliiev were illegally arrested in March 2019 for similar activities and charges. The preliminary investigation and court proceedings on the fabricated criminal case are ongoing now, and the Crimean Tatars are being held in inhumane conditions in the Simferopol pre-trial detention centre.

The Commissioner systematically monitors the observance of the rights of the Crimean Tatar people to adequate detention conditions, necessary medical assistance, a fair trial and effective legal defence. The results of the monitoring show gross violations by the occupying country of the norms of international law – the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Articles 6, 10, 13 of the European Convention on Human Rights, the norms of the Standard Minimum Rules for the Treatment of Prisoners approved by the UN Economic and Social Council.

After the joint work of the Commissioner and the Ministry of Foreign Affairs to draw the attention of the international community to the human rights situation in the Autonomous Republic of Crimea, numerous violations of freedom of the press and other media were recorded in the enhanced UN General Assembly resolution “Situation of Human Rights in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine” which was adopted on 16 December 2020.

**64 UN MEMBER STATES  
HAVE RESOLVED THAT  
THE RUSSIAN FEDERATION  
MUST CREATE SAFE CONDITIONS  
FOR JOURNALISTS**

By the adoption of the above-stated resolution, 64 member states of the United Nations have resolved that the Russian Federation must create and maintain safe and favourable conditions for journalists, media workers, civil journalists, human rights defenders and lawyers so they can perform their work in the Autonomous Republic of Crimea independently and without undue interference; the

Russian Federation must, in particular, refrain from travel bans, deportations, arrests, detention and prosecutions and other restrictions of their rights.

*Right to freedom of speech in temporarily occupied territories in the Donetsk and Luhansk Oblasts*

In accordance with Article 79 of the Additional Protocol to the Geneva Conventions of 08 June 1977, and the UN Security Council Resolution No. 1738 (2006), adopted at the 5613th meeting on 23

**THE WORK OF INDEPENDENT  
JOURNALISTS IS ALMOST  
IMPOSSIBLE; THEY PUT THEIR  
LIVES AND HEALTH AT RISK**

December 2006, all parties to an armed conflict comply fully with the obligations applicable to them under international law related to the protection of civilians in armed conflict, including journalists, media professionals and associated personnel. The deliberate targeting of such persons is a threat to international peace and security.

However, the armed aggression of the Russian Federation in the temporarily occupied territories of eastern Ukraine made the work of independent journalists almost impossible. In most cases, journalists put their lives and health at risk.

**Example**

Monitoring of media in April 2020 revealed that as a result of the shelling by illegal armed groups of Ukrainian military positions near the town of Krasnogorivka, the Donetsk Oblast, a vehicle belonging to the television crew of the “Ukraina” TV channel was damaged (a grenade exploded several metres from the vehicle). Media representatives and a press officer from one of the Operation of United Forces units were in the vehicle at the time. Fortunately, no journalists or military servants were injured.

The shelling took place at the moment when the car with the logos of the TV channel stopped in a specially designated place near the position, i.e. in compliance with international norms and standards of media work during armed conflicts.

In April 2020, the Commissioner sent a petition concerning this fact to the Chief Monitor of the OSCE Special Monitoring Mission to Ukraine Yaşar Halit Çevik, the Special Representative of the Secretary-General of the Council of Europe in Ukraine Régis Brillat, and the Head of UN Human Rights Monitoring Mission in Ukraine Matilda Bogner.

The Commissioner monitors the observance of the right to freedom of speech and freedom of peaceful assembly, including compliance with UN and Council of Europe standards. In June 2020, the Commissioner informed the international community about this and other similar cases during a presentation at Session I “Freedom of Expression and Its Relation to Other Fundamental Freedoms” of the OSCE Second Supplementary Human Dimension Meeting on Freedom of Expression, Independent Media and Access to Information.

Most media operating in the occupied territories of the Luhansk and Donetsk Oblasts are controlled by the Russian Federation. This is evidenced by numerous reports from partner human rights organizations that can monitor freedom of speech in the temporarily occupied territories.

The occupation administration of the Russian Federation, using all available tools, are intensifying the promotion of the concept of “Russkiy Mir” (Russian World), the dissemination of fakes about the activities of the state authorities in Ukraine, eradication of Ukrainian information products. Therefore, on 30 December 2020, the occupation administrations announced the creation of an information media holding company by uniting regional newspapers, radio stations and TV channels, as well as Internet publications.

**MOST MEDIA OPERATING  
IN THE OCCUPIED  
TERRITORIES OF EASTERN  
UKRAINE ARE CONTROLLED  
BY THE RUSSIAN FEDERATION**

Under such conditions, the citizens of Ukraine who live in certain areas in the Donetsk and Luhansk Oblasts are effectively deprived of the right to receive mass information about events taking place in Ukraine or in the Ukrainian language.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of the draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine on Enhancing Liability for Criminal Offences against Journalists” (reg. No. 3633 of 11.06.2020).

**To the Committee of the Verkhovna Rada of Ukraine on Humanitarian and Information Policy** – speed up submission to the Verkhovna Rada of Ukraine the draft Law of Ukraine “On Media” (reg. No. 2693 of 27.12.2019).

**To the Ministry of Reintegration of Temporary Occupied Territories of Ukraine, Ministry of Culture and Information Policy of Ukraine** – in accordance with the established procedure develop and submit to the Cabinet of Ministers of Ukraine a draft regulation of the Cabinet of Ministers of Ukraine “On Approval of the Action Plan to Increase the Capacity of TV and Radio Broadcasting in the Temporarily Occupied Territories of Ukraine and Ensuring Activities of Ukrainian Journalists”.



**1257**

monitoring visits and  
remote inspections



**24 347**

reports of violations  
of rights



**201**

protocols on  
administrative offences

# CHAPTER 2

## CIVIL AND POLITICAL RIGHTS





## CIVIL AND POLITICAL RIGHTS

The Constitution of Ukraine and the International Covenant on Civil and Political Rights guarantee all citizens the right to participate in civil and political life and to enjoy effective remedies. These rights may be restricted only in a time of public emergency.

For the third year in a row, violations of civil and political rights were the most reported violations to the Commissioner: In 2018 – 58% of the total number of reports (22,115), in 2019 and 2020 – 62% (21,160 and 24,347, respectively).

Out of the total number of reports of violations of civil and political rights in 2020, 69% (16,742) are reports of violations of the right to information and to submit petitions to authorities, while 35% (7,272) are reports of violations of procedural rights.

This situation is explained by the systemic reforms of the state bodies in Ukraine, which, on the one hand, lead to an increase in the public need to obtain information about the processes that take place in the State and the need to request protection of rights from the judicial and law enforcement authorities. On the other hand, the reforms lead to violations of human rights by state bodies and local self-government bodies.

In the context of the COVID-19 global pandemic, the situation with non-compliance with civil rights has become even more acute. During the quarantine period, the possibility to freely receive information about the quarantine restrictions and the possibility to receive assistance, including medical assistance, became particularly important.

The Commissioner's monitoring of the observance of the right to information confirmed that the State had not adequately ensured the exercise of this right. This is confirmed by a 1.5 times increase in the number of reports of violation of the right to information and the right to petition and timely receipt of a response to the petition.

The effectiveness of judicial protection is also under threat. In accordance with Article 64 of the Constitution of Ukraine, the right to go to court cannot be restricted. That is why the courts did not stop operating even during the severe quarantine restrictions. However, judicial reform has not been completed, there is a significant number of vacant judicial posts, and the financial support of the judiciary system, in particular, the cost of administration of justice, is not at an adequate level.

However, positive improvements in the implementation of civil and political rights cannot be overlooked. For example, in 2020, for the first time in the seven years since the beginning of the armed aggression of the Russian Federation, 1.5 mln. IDPs had the opportunity to take part in the elections at their actual place of residence, as well as more than 1 mln. voters with no registered place of residence and about 3.3 mln. internal labour migrants.

### 2.1. Right to information

During 2020, the Commissioner received 3,613 reports of violations of citizens' rights to access information.

Within the parliamentary oversight over the observance of this right, given the analysis of citizens' petitions, conducted inspections and monitoring visits, the Commissioner revealed that civil servants and officials of state bodies, local self-government bodies, enterprises, institutions, organizations continued to violate legal requirements regarding disclosure of information, timely and complete provision of information in response to the request. Such violation is an administrative offence in accordance with the provisions of Article 212-3 of the Code of Ukraine on Administrative Offences.

In connection with the violation of the human right to information in 2020, the staff of the Secretariat of the Commissioner drew up 185 protocols on administrative offences under Parts one and two of Article 212-3 of the Code of Ukraine on Administrative Offences, including based on the results of 207 monitoring visits and remote inspections of the administrators of public information.

In the context of the COVID-19 pandemic and the introduction of quarantine measures throughout the country, the issue of access to public information related to health care and medical assistance gained paramount importance.

#### *Right to receive information related to health care and medical assistance*

In accordance with the provisions of Part four of Article 15 of the Law of Ukraine "On Access to Public Information" No. 2939-VI of 13 January 2011 (hereinafter — Law No. 2939-VI) any information on the facts threatening the life, the health of people and measures taken in this respect, is subject to immediate public disclosure.

#### **INFORMATION CONCERNING A THREAT TO THE LIFE OR HEALTH OF PERSONS IS SUBJECT TO IMMEDIATE DISCLOSURE**

The petitions of citizens sent to the Commissioner in 2020 show a violation of their rights to medical information, including the right to obtain medical assistance.

#### Example

In July 2020, the Commissioner received a complaint from citizen M. concerning violations by the State Institution "V.Ia. Danilevsky Institute for Endocrine Pathology Problems of the National Academy of Medical Sciences of Ukraine" of the right to information, in particular, unjustified restriction of access to information about the list of tests and examinations that the structural units and consultative clinic of the Institute conduct free of charge for certain categories of patients.

Within the proceedings of the Commissioner, a representative of the Secretariat of the Commissioner drew up a protocol on administrative offence against the official of the Institute and submitted it to the court. The Kyiv District Court of the city of Kharkiv convicted the deputy director of the Institute of an administrative offence under Part two of Article 212-3 of the Code of Ukraine on Administrative Offences and imposed an administrative penalty in the form of a fine<sup>1</sup>.

Verification of the facts stated in citizens' reports submitted to the Commissioner, revealed cases of unjustified restriction of access to public information related to medical care by its administrators. This information was classified as official or confidential without proper justification of such restriction, which contradicts the requirements of Law No. 2939-VI.

<sup>1</sup> URL: <https://reyestr.court.gov.ua/Review/91509417>.

**Example**

In March 2020, the Commissioner received a complaint from citizen H. about the violation by MoH of her right to information concerning unreasonable restriction of access to information on the procedure for preparing proposals on the nomenclature of medications, medical devices, other goods and services to be procured for medical measures of individual state programs and for complex program measures at the expense of budgetary funds in the respective budget year and information on providing access to treatment for patients who need such drugs as Ombitasvir/Paritaprevir/Ritonavir and Dasabuvir. The staff of the Secretariat of the Commissioner drew up a protocol against the official of the MoH on administrative offences under Article 188-40 of the Code of Ukraine on Administrative Offences due to unjustified classification of the requested information as the official one and refusal to restore the right to information of the applicant. This protocol was submitted to the court (hearing of case No. 757/47515/20-p with the court is ongoing).

Within the parliamentary oversight over the observance of the human rights to information, the Commissioner monitored 74 administrators of public information, namely City and Oblast Councils and Oblast State Administrations in all regions of Ukraine, to determine the speed, quality of provision and disclosure of public information on counteraction to the COVID-19 pandemic. The results of this monitoring showed that only 75% of administrators of information provide the requested information completely and on time<sup>2</sup>.

To restore the violated rights and prevent future violations, the administrators of information were provided with explanations of legislation and recommendations for ensuring that citizens promptly receive (within 48 hours) information of public importance, especially concerning life, health, freedom and safety.

**ONLY 75% OF ADMINISTRATORS OF INFORMATION PROVIDE THE REQUESTED INFORMATION COMPLETELY AND ON TIME**

*Right to receive information on the disposal of budgetary funds, state or municipal property*

In accordance with Article 13 of Law No. 2939–VI, access to information about elaboration, consideration and approval of budgets, estimates of budget institutions and plans of spending budgetary funds by recipients of such funds, procurement of goods, works and services at the expense of budgetary funds, possession, use or disposal of state or municipal property can not be limited.

Based on the results of consideration of citizens' petitions to the Commissioner in 2020, the Commissioner registered the cases of violation of the right to receive information from the state and municipal enterprises, joint-stock companies on the disposal of budgetary funds, state and municipal property.

<sup>2</sup> The report of the monitoring is available at the following link: <http://www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringu-stanu-nadannya-ta-oprilyudnennya-publ%D1%96chno%D1%97-%D1%96nformacz%D1%96%D1%97-shhodo-protid%D1%96%D1%97-poshirennyu-koronav%D1%96rusno%D1%97-xvorobi-covid-19/>

### Example

In May 2020, the Commissioner received a complaint from citizen V. about violation of the right to information by the Central Polyclinic of the Ministry of Internal Affairs of Ukraine with regard to providing copies of the staff schedule, copies of bonus orders and information on wages to the staff of the polyclinic.

During the investigation by the Commissioner of the actions of the official of the polyclinic who was responsible for reviewing the request, a protocol on administrative offence under Part two of Article 212-3 of the Code of Ukraine on Administrative Offences was drawn up and submitted to the Pechersk District Court of the City of Kyiv (hearing of case No. 757/35314/20-p with the court is ongoing).

Following the Commissioner's intervention, the polyclinic re-considered the applicant's request and provided the requested information in response. Thus, the violated right to information was restored.

Violation of the right to information was also registered in cases when administrators of information unreasonably restrict access to public information referencing the fact that the requested information is official or confidential.

### Example

In January 2020, the Commissioner received a complaint from citizen M. about violation of the right to information by the State Enterprise "Ukrspirt" due to unjustified restriction of access by this enterprise to the copy of CV of its former employee who held the position of Deputy Director of the enterprise in 2017.

During the investigation by the Commissioner of the actions of the officials of the State Enterprise «Ukrspirt», a protocol on administrative offence was drawn up. As a result of consideration of case No. 361/2735/20, the court found an official of the State Enterprise «Ukrspirt» guilty of committing an administrative offence (decision of Brovary City-Raion Court of the Kyiv Oblast of 02.10.2020<sup>3</sup>).

### *Right to receive information of public interest*

Within the parliamentary oversight, the Commissioner also revealed violations of the right of citizens to receive information of public interest.

In accordance with the provisions of Law No. 2939-VI, information that indicates a threat to state sovereignty or the territorial integrity of Ukraine; ensures the implementation of constitutional rights, freedoms and duties; indicates the possibility of violations of human rights, indicates that the public has been misled with regard to the occurrence of environmental damage or the negative consequences of activity (or inactivity) of individuals or legal entities, etc. is considered to be of public interest.

### Example

In September 2020, the Commissioner received a complaint from NGO "Ts" about the Ministry of Justice's violation of the requirements of Law No. 2939-VI, in particular, about the unjustified restriction of access to information related to the protection of the legitimate interests of certain tobacco companies as foreign investors through arbitration.

<sup>3</sup> URL:<https://reyestr.court.gov.ua/Review/92229367>.

Given the significant public interest in the activities of tobacco companies and justified existence of public inquiry about the legality of tax benefits in previous years, the staff of the Secretariat of the Commissioner drew up a protocol on administrative offence against the official of the Ministry of Justice and submitted it to the court (hearing of case No. 757/49161/20-п is ongoing).

### *Right to access information in the form of open data*

In the context of the COVID-19 pandemic, the need for access primarily to digital information and electronic means of its search has increased significantly.

Making public information available in the form of open data, i.e. in a format that enables automated processing of such data for reuse, helps to ensure the information rights of citizens, increases transparency and openness and allows citizens to obtain the information they need, in particular, information of public interest.

**IN THE CONTEXT  
OF THE PANDEMIC, THE NEED  
FOR DIGITAL INFORMATION  
INCREASED**

In July-September 2020, the Commissioner together with the Ministry of Digital Transformation in the form of remote inspections monitored the status of publication on the Unified State Open Data Web Portal (URL:<https://data.gov.ua/>) of public information in the form of open data by all ministries. During the monitoring, it was checked whether the ministries ensure the right of persons to receive information in the form of open data (in accordance with Article 101 of Law No. 2939-VI and the Regulation on Datasets to be Published in the Form of Open Data, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 835 of 21 October 2015).

During the monitoring, some violations were identified. The Commissioner sent the relevant response letters to the ministries with recommendations for their elimination.

The vast majority of the ministries complied with the recommendations of the Commissioner. The highest level of completeness of information disclosure in the form of open data was ensured by: Ministry for Development of Economy, Trade and Agriculture of Ukraine – 58 sets, Ministry of Infrastructure – 44, Ministry of Internal Affairs – 40. The following ministries did not comply with the recommendations of the Commissioner and showed a low level of information disclosure: Ministry for Communities and Territories Development of Ukraine – 2, Ministry of Finance – 1, Ministry of Reintegration of Temporary Occupied Territories of Ukraine does not disclose information in the form of open data at all.

During June-October 2020, the Commissioner, with the assistance of UNDP, monitored the disclosure of information in the form of open data at the local level and checked 24 Oblast and 48 City Councils. The results of the monitoring showed that the largest volume of information in the form of open data was disclosed by Kherson Oblast Council, Dnipro, Zhytomyr, Mariupol and Ternopil City Councils — about 90% of general and special data sets (information mainly concerns the organizational structure of the administrator, list of communal property, reports on the use of budget funds, city planning restrictions, list of carriers that provide services of passenger road transport, information of transportation routes and public transport schedules, information about fairs, etc.). At the same time, a critically low percentage of data sets was disclosed in the Ivano-Frankivsk, Kharkiv Oblast Councils, Brody, Valky, Kalush Town Councils — about 10%.

Thus, to observe human rights to information, the administrators of information need to pay special attention to updating of open data sets as well as the unification of approaches to information disclosure by separate structural units of administrators, because not in all audited local self-government bodies the information is made public in a way that allows finding it quickly and up-to-date<sup>4</sup>.

**INFORMATION IN THE FORM OF OPEN DATA MUST BE UP-TO-DATE AND EASILY ACCESSIBLE**

Following the monitoring, the administrators of information received recommendations to eliminate the violation of the right to access information in the form of open data. The administrators of information continue to implement the recommendations.

*Right to public information through the abuse of this right by other information requesters*

Within the parliamentary oversight over the observance of the right to information, it was revealed that the receipt by the citizens of the information requested completely and on time depends directly on the human resources available and technical capacity of the administrator of information.

The processing by the administrators of information of a large number of requests from the same requester due to “excessive load” in some cases restricts the rights of other requesters to a timely and proper consideration of their requests.

In accordance with Law No. 2939-VI, a request for information may be made without an express purpose to use information; moreover, the possibility to duplicate requests for the same or related public information is not limited. In fact, a legal mechanism for obtaining information and sending a large number of requests may cause significant disruption or even paralysis of the work of the administrator of information, which is inconsistent with such elements of the constitutional principle of the rule of law as proportionality, reasonableness, fairness and prudence.

In 2020, the Commissioner received several letters from the administrators of information informing her of similar cases of abuse through public information requests. In particular, it was revealed that in January-May 2020, the Executive Committee of the Odesa City Council received 1,421 requests from the same requester, the City Information and Analytical Centre of the Odesa City Council received 1,209, the State Judicial Administration of Ukraine – 1,668, and the Prosecutor General’s Office – 4,500 requests.

**ABUSE OF THE RIGHT TO INFORMATION MAY PARALYSE THE WORK OF THE ADMINISTRATORS OF INFORMATION**

The Supreme Court in its letter to the Commissioner reported that often the provisions of Law No. 2939-VI are not used for a legitimate purpose and the information received by requesters is used to harm the authority of the judiciary by disseminating information in a manipulative, one-sided, selective or distorted way. The Supreme Court notes that the admissibility criteria and the existence of appropriate justification in requests for information are to be taken

into consideration, referring to the legal positions set out in the judgment of the Grand Chamber of the Supreme Court of 10 December 2020 (case No. 9901/105/20).

<sup>4</sup>The report of the monitoring is available at the following link:  
[http://ua.undp.org/content/dam/ukraine/docs/DG/HR4U/2020\\_Omb\\_Report\\_Local\\_authorities.pdf](http://ua.undp.org/content/dam/ukraine/docs/DG/HR4U/2020_Omb_Report_Local_authorities.pdf).

Considering the stated above, to prevent the violation of the rights of the requester to timely and full receipt of information due to the abuse of such right by unscrupulous requesters, it is necessary to define in Law No. 2939-VI the mechanisms of the response of the administrators of information to cases of mass receipt of similar requests from the same requester.

The results of the Commissioner's intervention in respect of the reported violation of the right to information also allow stating that there is a need to amend Articles 38, 212-3, 254 of the Code of Ukraine on Administrative Offences accordingly.

In accordance with the provisions of paragraph 8-1 of Part one of Article 255 of the Code of Ukraine on Administrative Offences, in cases of administrative offences under Articles 188-39, 188-40, 212-3, protocols may be drawn up by the authorized persons of the Secretariat or by the Commissioner's representatives.

**THERE IS A NEED TO AMEND ARTICLES 38, 212-3, 254 OF THE CODE OF UKRAINE ON ADMINISTRATIVE OFFENCES**

Thus, the results of consideration of protocols on administrative offences show that in a significant number of cases of this category that are considered by courts, the persons who violated the right to information are adjudged guilty. However, such persons are not held administratively liable as the term for administrative liability under Article 38 of the Code of Ukraine on Administrative Offences has expired. At the same time, the sense of impunity of the violators generates a recurrence of violations of citizens' rights by officials and officers.

In view of this fact, there is a need for respective amendments to Article 38 of the Code of Ukraine on Administrative Offences regarding extension of the term for bringing to administrative liability for offences provided for, in particular, by Article 212-3 of the Code of Ukraine on Administrative Offences, as well as amendments to Article 254 of the Code of Ukraine on Administrative Offences regarding the term for drawing up a protocol on administrative offence. The Commissioner stated this need in the Commissioner's Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019<sup>5</sup> and sent the relevant recommendation to the Ministry of Justice. The recommendation was not implemented.

Meanwhile, similar legislative proposals are contained in certain draft laws submitted to the Verkhovna Rada of Ukraine by the people's deputies of Ukraine. For example, the draft Law of Ukraine "On Amending the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine regarding the Ensuring the Right to Information and Protection of Activities of Journalists" (reg. No. 5040 of 08.02.2021) contains a similar proposal.

**THE COUNCIL OF EUROPE CONVENTION ON ACCESS TO OFFICIAL DOCUMENTS WAS RATIFIED**

But in 2020, the recommendation of the Commissioner stated in the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019<sup>6</sup>, was implemented and the Council of Europe Convention on Access to Official Documents (the Tromsø Convention) was ratified by the Verkhovna Rada of Ukraine.)<sup>7</sup>.

<sup>5</sup> URL: <http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf>, page 185.

<sup>6</sup> URL: <http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf>, page 185.

<sup>7</sup> The Convention was ratified by the Law of Ukraine "On the Ratification of the Council of Europe Convention on Access to Official Documents" No. 631-IX of 20.05.2020

The Convention is the first binding international legal instrument recognizing the general right of access to official documents prepared by public authorities. The implementation of the Convention in Ukraine will contribute to the enhancement of people's ability to access public information and to the strengthening of the guarantees of its provision.

To prevent violations of citizens' rights to obtain information and in view of some existing ambiguous and contradictory provisions of the Laws of Ukraine "On Information" of 02 October 1992 No. 2657-XII and No. 2939-VI, gaps that lead to unequal application of those provisions by both the requesters and administrators of information, the Commissioner prepared for informational and educational purposes the "Recommendations of the Ukrainian Parliament Commissioner for Human Rights on the

### THE COMMISSIONER'S RECOMMENDATIONS ON ACCESS TO INFORMATION WERE PREPARED

Observance of the Constitutional Human and Citizens' Right to Access Information"<sup>8</sup>. The Recommendations provide answers to questions on the exercise and observance of the right to access information by requesters and administrators of public information.

To reduce the number of cases of violations of information rights committed by officials and civil servants in the state bodies and local self-government bodies, the Commissioner in cooperation with the Ministry of Digital Transformation, National Agency for Public Service of Ukraine and experts in the field of access to information, also developed an educational series entitled "Current Issues of Access

### EDUCATIONAL SERIES AT [HTTPS://OSVITA.DIIA.GOV.UA/](https://osvita.diiia.gov.ua/) COURSES

to Public Information. Course for Civil Servants and Employees of Local Self-government Bodies," which is posted on the platform "Diia (Action). Digital Education."<sup>9</sup> The series aims to raise the level of knowledge of legislation on access to public information, prevent violations of citizens' rights

to information due to unjustified restriction of access; use Internet technologies during disclosure of information and interaction with citizens.

The next step in the direction of minimizing violations of the right to information by administrators of such information must be the development and implementation by National Agency for Public Service of Ukraine of a unified programme for advanced training of civil servants in the field of access to public information.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of a draft Law of Ukraine "On Amending the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine regarding the Ensuring the Right to Information and Protection of Activities of Journalists" (reg. No. 5040 of 08.02.2021).

<sup>8</sup> Recommendations of the Commissioner on the observance of the constitutional human and citizens' right to access information at: <https://bit.ly/3prDLCZ>

<sup>9</sup> URL: <https://osvita.diiia.gov.ua/courses>.

**To the Ministry of Justice of Ukraine** – in accordance with the revealed procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on the amendments to the Law of Ukraine “On Access to Public Information” No. 2939-VI of 13 January 2011, regarding the introduction of specific legal mechanisms to avoid abuse of the right to information by the requesters.

**To the Ministry of Justice of Ukraine, Ministry of Culture and Information Policy of Ukraine** – in accordance with the revealed procedure jointly draft and submit for consideration to the Verkhovna Rada of Ukraine the draft law on amendments to the laws regulating the issues of access to information in terms of implementation of provisions of the Council of Europe Convention on Access to Official Documents, in particular, on allowing the administrators of information in some cases to provide the requester with a link to a publicly available source, which contains the requested information.

**To the Ministry of Reintegration of Temporary Occupied Territories of Ukraine, Ministry of Finance of Ukraine, Ministry for Communities and Territories Development of Ukraine** – ensure the disclosure of the data sets to be disclosed in the form of open data, on the Unified State Open Data Web Portal (<https://data.gov.ua/>).

**To the National Agency for Public Service of Ukraine** – develop and implement a unified programme for advanced training of state officers on access to public information, for administrators in charge of releasing information.

## **2.2. Right of citizens to petition to public authorities, local self-government bodies, their officials and employees**

In 2020, the Commissioner exercised parliamentary oversight over the observance of the right of citizens guaranteed by Article 40 of the Constitution of Ukraine to submit individual or collective petitions or to apply personally to state bodies, local self-government bodies, civil servants and officials of these bodies, who must consider the petition and give a substantiated response within the period revealed by law.

In the context of the imposed quarantine restrictions related to the COVID-19 pandemic, the observance of the right to petition has become a test for the state bodies, local self-government bodies, as this right can not be restricted under any circumstances in accordance with the provisions of paragraph two of Article 64 of the Constitution of Ukraine.

The improper consideration of citizens’ petitions in the context of the COVID-19 pandemic is confirmed by 13,129 reports of violation of the right to petition received by the Commissioner in 2020.

The analysis of citizens’ petitions and the results of monitoring visits within the parliamentary oversight revealed the following systemic violations of citizens’ right to petition to authorities: violation of the right to receive a timely response on the results of consideration of petition; failure to take measures, within the limits of competence, required to resolve issues raised in petitions; violation of the right of citizens to personal reception, as well as failure to ensure the rights specified in Article 18 of the Law of Ukraine “On Petitions of Citizens” No. 393/96-VR of 2 October 1996 (hereinafter — Law No. 393/96-VR), in particular, violation of the right to personal statement of arguments to the person who reviewed the application or complaint; violation of the right to participate in the verification of the submitted complaint or application and to get acquainted with the materials of the verification, to submit additional materials.

*Citizens' right to receipt of a response to the petition*

In accordance with the provisions of Articles 15, 16 of Law No. 393/96-VR, state bodies, local self-government bodies, and their officials, heads and officials of enterprises, institutions, organizations irrespective of the forms of ownership, citizens' associations, whose responsibilities include the consideration of petitions, are obliged to consider them objectively and timely, verify the facts stated in them, make decisions in accordance with the current legislation and ensure their implementation, inform citizens about the results of consideration of their petitions.

**THE IMPOSITION  
OF QUARANTINE  
RESTRICTIONS DOES NOT  
STOP CONSIDERATION OF  
CITIZENS' PETITIONS**

The imposition of quarantine restrictions in the context of the COVID-19 pandemic does not stop the process of acceptance and consideration by the officials and officers of the petitions of citizens received both by e-mail and through the hotlines.

2,906 reports of violation of the right to a written response that were received by the Commissioner in 2020 are proof of non-compliance with the mentioned requirements of Law No. 393/96-VR.

*Example*

In July 2020, within the remote monitoring of violation of rights in the context of the COVID-19 pandemic, violations of citizens' rights by the National Bank of Ukraine during the receiving and registering of petitions were revealed. Thus, after the registration of petitions, the National Bank of Ukraine sent a text message to the petitioners stating that the response would be provided after the end of the quarantine.

In this regard, a monitoring visit was made to the National Bank of Ukraine, during which the relevant explanations of the law were given to the NBU officials with a demand to stop the violations. Following the Commissioner's intervention, the right of citizens to receive responses to petitions from the National Bank of Ukraine was restored.

*Right of citizens to timely receipt of a response to the petition*

In 2020, the Commissioner received 1,115 reports of violation of the right to a timely consideration of a petition.

The analysis of the reports received by the Commissioner shows that the civil servants and officials of state bodies, local self-government bodies do not always adhere to the terms of consideration of the petitions of citizens defined by Article 20 of Law No. 393/96-VR. Thus, the citizens are encouraged to send their complaints to the Commissioner.

*Example*

In November 2020, the Commissioner received a complaint from citizen V. about the violation by the State Tax Service officials of the right to receive a timely response to his complaint. The violation consists of providing a response in violation of the deadlines defined by Article 20 of Law No. 393/96-VR.

Within the parliamentary oversight over the observance of the right of citizens to timely receipt of a response to the petition, the staff of the Secretariat of the Commissioner drew up a protocol on administrative offence under Part seven of Article 2123 of the Code of Ukraine on Administrative Offences against the official responsible for meeting the deadlines for consideration of the petitions. The protocol was submitted to the Shevchenkivskiy District Court of the city of Kyiv for consideration. Hearing of the case is ongoing.

*Right of citizens to a personal reception and right to be present during consideration of a petition, and right of the associations of citizens to be present during consideration of petitions*

The Commissioner received 302 reports of violations of the right of citizens to personal receptions by the heads and other officials of state bodies, local self-government bodies, enterprises, institutions and organizations, irrespective of the forms of ownership.

Within the scope of parliamentary oversight, the Commissioner took response measures to restore the violated right, as the provisions of Article 22 of Law No. 393/96-VR obliged the above-stated heads and officials to conduct personal reception of citizens with the mandatory registration of all petitions of citizens submitted at a personal reception. If it is impossible to solve the issues raised in the oral petition at a personal reception, it is considered in the same manner as a written petition with appropriate notification of the citizen of the results of such consideration.

However, having verified the facts stated in the petitions, the Commissioner revealed violations that included non-response to a citizen after a personal reception.

**THE RIGHT TO  
A PERSONAL RECEPTION  
IS DERIVED FROM  
THE CONSTITUTIONAL  
RIGHT TO PETITION**

**Example**

During the monitoring visit to the Ministry of Defence which took place in June 2020, the Commissioner revealed violations of citizens' rights that included in some cases non-provision of written responses to the petitions of citizens received during the personal reception by the Ministry's officials. Following the Commissioner's intervention, the Ministry of Defence implemented the recommendations made by the Commissioner and responded in writing, thereby restoring the rights of the petitioners.

Having considered the citizens' petitions, the Commissioner also revealed the facts of non-observance by the state bodies, local self-government bodies and their officials and officers of the rights of citizens to be present during consideration of a petition, to personal statement of arguments concerning the petition, to submit additional materials, etc. that are guaranteed by Article 18 of Law No. 393/96-VR.

**Example**

In September 2020, the Commissioner received petitions from persons with war-related disabilities about violations by the State Property Fund of Ukraine of their rights under Article 18 of Law No. 393/96-VR. The petitions referred, in particular, to the rights to participate in the verification of the submitted complaint or petition; to get acquainted with the materials of the verification; to submit additional materials and to be present during consideration of a petition or complaint.

During the investigation, the Commissioner revealed that the rights of the petitioners were not secured due to the imposition of quarantine restrictions and the termination of the reception of citizens for the duration of the quarantine. In this regard and in view of the refusal to restore the violated rights of the citizens in response to a legal request of the Commissioner, the staff of the Secretariat of the Commissioner drew up a protocol on administrative offence under Part seven of Article 212<sup>3</sup> of the Code of Ukraine on Administrative Offences against the official responsible for consideration of citizens' petitions and submitted it to the court. Hearing of case No. 757/57174/20-п<sup>10</sup> with the court is ongoing.

<sup>10</sup> URL: [https://court.gov.ua/log\\_documents/56403894/2606/](https://court.gov.ua/log_documents/56403894/2606/)

Given the numerous reports from citizens about cases of violation of Articles 18, 22 of Law No. 393/96-VR during the quarantine period associated with the COVID-19 pandemic, the Commissioner prepared and posted on the official website of the Commissioner<sup>11</sup> an explanation regarding the inadmissibility of restricting the right to petition, guaranteed by Article 40 of the Constitution of Ukraine, and its derivative rights to a personal reception and participation in consideration of the petition.

*Right of citizens to take appropriate measures to resolve issues raised in the petitions*

In the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019, the Commissioner provided recommendations<sup>12</sup> to the state bodies, local self-government bodies, as well as enterprises, institutions and organizations, irrespective of the forms of ownership, to strictly observe the requirements of Law No. 393/96-VR within their powers, including in the consideration of electronic petitions submitted by citizens.

**INADEQUATE  
CONSIDERATION OF  
CITIZENS' PETITIONS  
LEADS TO THEIR REPEATED  
CONSIDERATION**

However, the citizens continue to complain to the Commissioner that the government bodies and their officials do not take measures to address the issues raised in the petitions, as well as to complain about the negligence and formalism in the consideration of petitions, which lead to their repeated consideration.

Analysis of 3,505 reports of violations of the right to a proper consideration of petitions that were received by the Commissioner shows that state bodies, local self-government bodies, enterprises, institutions, and organizations consider that ensuring the human right to petition mainly means providing formal written responses to the petitioner without resolving the issues raised in the petition.

**Example**

In November 2020, the Commissioner received a petition from citizen K. regarding the fact that the Ministry of Defence took no response measures to his request for payment of a lump-sum benefit imposed by the court decision. The petitioner received only formal replies about the consideration of the issue.

Following the Commissioner's intervention, the Commission of the Ministry of Defence Responsible for the Consideration of Issues Related to the Award and Payment of a Lump-sum Benefit and Compensation Amounts transferred over UAH 528,000.00 to the petitioner.

*Right to receive explanations of the procedure for appealing against responses to citizens' petitions*

Monitoring of the observance of the right of citizens to petitions showed the existence of violations of the right to know the procedure for appealing against the decision (taken after the consideration of the petition) to refuse to satisfy the requirements of the complaint.

Such right is guaranteed by the provisions of Part four of Article 15 of Law No. 393/96-VR. In accordance with this provision, the decision to refuse to satisfy the requirements stated in the application (petition) is brought to the attention of a citizen in writing with the indication of grounds for refusal, as well as an explanation of the procedure to appeal against the decision taken.

<sup>11</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/pravo-na-zvernennya-do-organ%D1%96v-vladi-ta-pravo-na-sudovij-ta-%D1%96nsh%D1%96-formi-zaxistu-ne-mozhut-buti-obmezhen%D1%96-nav%D1%96t-v-umovax-nadzvichajnogo-stanu/>.

<sup>12</sup> URL: <http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf>, page 190.

**Example**

During the monitoring visit to the Ministry of Digital Transformation in February 2020 and based on the results of the analysis of the materials of the citizens' petitions submitted to the mentioned ministry, the violation of the rights of the petitioners was revealed, in particular, non-compliance of the officials of the Ministry with the requirements of Part four of Article 15 of Law No. 393/96-VR (explanations of the procedure for appealing).

Following the Commissioner's intervention, the Ministry of Digital Transformation reported the elimination of the violations and observance of the rights of the petitioners during the consideration of their petitions.

Non-provision of the petitioner with an explanation of the procedure for appealing against the decision taken after the consideration of the petition by the state bodies, local self-government bodies, and their officials and officers effectively deprives the citizens of the opportunity to file a complaint with a higher-level body or official.

147 monitoring visits were carried out in 2020 within the parliamentary oversight over the observance of the right of citizens to submit written petitions to the state bodies, local self-government bodies, and their officials and officers, and to receive justified responses within the period revealed by law.

The Commissioner inspected the Ministry of Communities and Territories Development of Ukraine, Ministry of Digital Transformation of Ukraine, Ministry of Reintegration of Temporary Occupied Territories of Ukraine, Ministry of Defence, Ministry of Culture and Information Policy of Ukraine, National Bank of Ukraine, State Service of Ukraine for Geodesy, Cartography and Cadastre, Antimonopoly Committee of Ukraine and several local councils, in particular, Bucha, Vyshhorod, Vyshniv, Obuhiv, Tarashcha, Ukrainsk City Councils, as well as Kriukivshchyna and Novopetrivske Village Councils.

The monitoring conducted by the Commissioner revealed several violations. To restore the rights of petitioners to a proper consideration of their petition and to receive a justified response, the staff of the Secretariat of the Commissioner drew up 42 protocols on administrative offences under Part seven of Article 212<sup>3</sup> and Article 188<sup>40</sup> of the Code of Ukraine on Administrative Offences against the official (officers) responsible for consideration of citizens' petitions.

The results of the monitoring and the revealed violations of the right to petition showed that appropriate amendments to Law No. 393/96-VR are needed to minimise the violations.

The Commissioner has already made recommendations in the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019 concerning it<sup>13</sup>. These recommendations were partially implemented. In particular, on 02 September 2020, the Verkhovna Rada of Ukraine adopted in the first reading the Draft Law of Ukraine "On Administrative Procedure" (reg. No. 3475 of 14.05.2020). The adoption of this draft law will allow regulating at the legislative level the relationship between the authorities and individuals and legal entities.

The recommendation of the Commissioner submitted to the Ministry of Justice concerning the development of legal mechanisms (procedures) for the consideration of citizens' petitions which are contentious, are only intended to have a disruptive impact on state bodies and local self-government bodies, and are motivated by a desire to cause inconvenience by involving as many human and material resources as possible, thus restricting the rights of other petitioners to a proper and timely consideration of their petitions, remains unimplemented<sup>14</sup>.

<sup>13</sup> URL: <http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf>, page 190.

<sup>14</sup> URL: <http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf>, page 190.

### **ABUSE OF THE RIGHT OF SOME CITIZENS THROUGH SENDING MASS SIMILAR PETITIONS LEADS TO A VIOLATION OF THE RIGHTS OF OTHER PETITIONERS**

This problematic issue, which is not regulated at the legislative level, leads to a violation of such elements of the constitutional principle of the rule of law as proportionality and fairness, as abuse of the right of some citizens through sending mass similar petitions leads to a violation of the rights of other petitioners, which may affect the receipt of a justified response within the time limits established by Law No. 393/96-VR.

### **RECOMMENDATIONS:**

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of the Law of Ukraine “On Administrative Procedure” (reg. No. 3475 of 14.05.2020).

**To the Ministry of Justice of Ukraine** – in accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law of Ukraine “On Amending the Law of Ukraine “On Petitions of Citizens” No. 393/96-VR of 2 October 1996 concerning the consideration of petitions constituting an abuse of the right to petition.”

### **2.3. Right to elect and be elected**

In 2020, the Commissioner received 288 reports on the issues of implementation of the constitutional right to freely elect and be elected to the state bodies, local self-government bodies, guaranteed by Article 71 of the Constitution of Ukraine. In particular, the citizens reported to the Commissioner of the violations of the right to vote at the actual place of residence, the right to elect and to be elected in the territorial communities located at the contact line in the Donetsk and Luhansk Oblasts, the right to the accessibility of polling stations for people living with disabilities and other people with limited mobility, as well as the right to safe conditions for voting in the context of COVID-19 pandemic.

Besides, to exercise the parliamentary oversight over the observance of electoral rights, during the organization and conduct of local elections in autumn 2020, the Commissioner monitored the observance of the right of citizens of Ukraine to elect, anti-epidemic measures, accessibility for people with limited mobility.

*Right to the accessibility of polling stations for people living with disabilities and other people with limited mobility*

### **MONITORING VISITS WERE CONDUCTED WITH THE INVOLVEMENT OF PUBLIC MONITORS, INCLUDING PEOPLE LIVING WITH DISABILITIES**

Within the parliamentary oversight over the observance of the right to the accessibility of polling stations during local elections in October 2020, the Commissioner conducted 1,110 monitoring visits with the involvement of public monitors, including people living with disabilities. In particular, 426 polling stations were inspected with the participation of the Kyiv City Committee on Accessibility

of People Living with Disabilities and Other People with Limited Mobility to Social and Engineering and Transport Infrastructure Facilities.

During the monitoring, the main attention was paid to the accessibility of the territories adjacent to the polling stations, entrance to the buildings and premises of the polling stations.

It was revealed that only 1% of the polling stations inspected met the accessibility criteria, 14% were partially accessible, and 85% of the polling stations remained completely inaccessible.

Out of the total number of revealed violations, 32% were related to inaccessibility of the floor of the polling station (placement on the second or higher floor without reasonable accommodation devices), 21% — absence of staff call button placed outside the polling stations, when polling stations are not equipped with elements of accessibility, 15% — absence of handrails in the ramp on both sides, 13% — slope of the ramp greater than 8%; 8% — lack of a table or a shelf in the voting booth to accommodate a wheelchair; 6% — non-compliance with the requirements to the size of the booth for the secret ballot (entrance width is less than 110 cm, depth is less than 110 – 120 cm), 4% — doorway width is less than 90 cm.

#### Example

Within the parliamentary oversight over the observance of the right to the accessibility to the polling stations, in the city of Ternopil in October 2020, it was revealed that the premises for voting of polling station No. 611111, located in the Ternopil Specialized School of I-III levels No. 3 at Hrushevskoho street, 3 were placed on the second floor, the stairs were not equipped with a ramp or other lifting mechanism for people living with disabilities.

In the city of Khmelnytskyi, at polling station No. 681497 located at Proskurivska street, 57, the entrance to the building did not have a zero-level entrance and ramp, the voting premises were in the assembly hall on the second floor of the building.

Similar violations were recorded at the polling stations in the cities of Kyiv, Vinnytsia, Lviv, Cherkasy, and Chernivtsi.

The Commissioner submitted petitions to the Kyiv, Vinnytsia, Lviv, Chernivtsi, Cherkasy, Ternopil, Khmelnytsky mayors and sent letters with recommendations to the heads of Vinnytsia, Lviv, Cherkasy, Chernivtsi and Khmelnytsky Oblast State Administrations about the need to take measures to eliminate the revealed violations and bring the polling premises in line with the requirements of the Resolution of the Cabinet of Ministers of Ukraine No. 962 of 20 October 2020 “On Approval of the Accessibility Criteria for of People Living with Disabilities and Other People with Limited Mobility of the Premises Provided to Precinct Election Commissions of Ordinary Polling Stations for Organizing their Work and Voting.”

Following the recommendations of the Commissioner, the state bodies and local self-government bodies informed the Commissioner of the approval of plans for the implementation of measures to ensure the accessibility of polling stations<sup>15</sup>. The implementation of measures is ongoing.

<sup>15</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/v-ramkax-mon%D1%96toringu-doderzhannya-viborchix-prav-gromadyan-p%D1%96d-chas-organ%D1%96zacz%D1%96%D1%97-ta-provedennya-m%D1%96sczevix-vibor%D1%96v-u-zhovtn%D1%96-2020-roku-bulo-zd%D1%96jseno-1110-mon%D1%96toringovix-v%D1%96zit%D1%96v-do-viborchix-d%D1%96lnicz/>.

Following the recommendations of the Commissioner provided in the Annual Report on the Status of Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine for 2019<sup>16</sup>, the Central Election Commission issued Resolution No. 164 of 08 August 2020<sup>17</sup>. This Regulation approved the requirements for the premises of precinct election commissions and premises for voting and the norms for their arrangement, taking into account the requirements of the Electoral Code of Ukraine, as well as the state construction norms regarding barrier-free access for persons with disabilities (due to disability, temporary health impairment, age), including people in wheelchairs and other people with limited mobility.

Moreover, in September 2020, the Commissioner held a working meeting with the management of the Central Election Commission, the Ministry for Communities and Territories Development, the Presidential Commissioner for the Rights of People with Disabilities and the Government Commissioner for the Rights of People with Disabilities on the need for the legal regulation of the accessibility of election commission premises for people living with disabilities and other people with limited mobility. Following this meeting, the Ministry for Communities and Territories Development of Ukraine developed and the Cabinet of Ministers of Ukraine adopted Resolution No. 962 of 09 October 2020 "On Approval of the Accessibility Criteria for of People Living with Disabilities and Other People with Limited Mobility of the Premises Provided to Precinct Election Commissions of Ordinary Polling Stations for Organizing their Work and Voting."

*Right of citizens to protection against infectious diseases during participation in elections in the context of the spread of COVID-19 acute respiratory disease*

In accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 641 of 22 July 2020 "On Introduction of Quarantine and Stepping up Anti-epidemic Measures in the Area with a Significant Spread of COVID-19 Acute Respiratory Disease Caused by SARS-CoV-2 Coronavirus", as amended (hereinafter — Resolution No. 641) and Resolutions of the Central Election Commission No. 409 of 22 October 2020 "On Certain Issues of Election Procedures for Organizing and Conducting Elections on 25 October 2020 in the Context of the Spread of COVID-19 Acute Respiratory Disease Caused by SARS-CoV-2 Coronavirus in Ukraine", the procedure of work of polling stations in the context of quarantine was established.

**VIOLATIONS OF CITIZENS' RIGHT TO PROTECTION AGAINST INFECTIOUS DISEASES WERE REPORTED AT POLLING STATIONS**

During monitoring visits to polling stations in October 2020 conducted by the Commissioner to inspect the observance of anti-epidemic measures in accordance with the above-mentioned regulations, violations of citizens' right to protection against infectious diseases during elections were registered. In particular, 503 cases (79%) – of non-observance of anti-epidemic measures during the arrangement of the polling stations; 48 cases (8%) – lack of containers/boxes for used personal protection means; 34 cases (5%) – lack of information about the anti-epidemic measures; 29 cases (5%) – lack of personal protection means and disinfectants.

<sup>16</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 209.

<sup>17</sup> URL: <https://zakon.rada.gov.ua/laws/show/v0164359-20#Text>.

**Example**

During the monitoring visit to polling station No. 260893 in the city of Ivano-Frankivsk in October 2020, it was revealed that the voting booth for persons with disabilities was simultaneously used for voters with a body temperature higher than 37.2 °C and/or symptoms of respiratory disease. A similar case was recorded at polling station No. 121548 in the city of Kryvyi Rih, the Dnipropetrovsk Oblast. Given the violations revealed, the Commissioner issued recommendations to the members of the polling station commissions to provide separate booths for such people. The violation was eliminated.

The violation of the right to protection against infectious diseases during the elections was caused by the lack of clear algorithms of actions for the participants of the electoral process, as some provisions of Resolution No. 641 were of an advisory nature. In particular, voters with symptoms of respiratory diseases were advised to vote at the place where they were staying.

As such norms were non-binding, they were not complied with or improperly complied with.

The draft Law of Ukraine “On Amendments to the Electoral Code of Ukraine and Some Legislative Acts of Ukraine Regarding the Peculiarities of Organizing and Conducting Elections during Quarantine Period Established to Prevent the Spread of Especially Dangerous and Dangerous Infectious Diseases on the Territory of Ukraine, and Improvement of Certain Provisions of the Election Legislation” (reg. No. 4117 of 18.09.2020) was supposed to regulate the introduction of binding rules for Ukrainian citizens for the organisation and conduct of elections in the context of quarantine. The draft Law was supported by the Commissioner. However, the draft act was not adopted before the local elections that took place on 25 October 2020.

*Electoral rights of citizens living in certain territories of the Donetsk and Luhansk Oblasts*

The monitoring of media revealed that in accordance with the Resolution of the Central Election Commission of No. 161 of 08 August 2020 “On Impossibility to Hold the First Elections of Deputies of Certain Village, Settlement and City Councils of the Donetsk and Luhansk Oblasts and Relevant Village, Settlement and City Mayors on 25 October 2020” (hereinafter — Resolution No. 161) in 18 territorial communities on the territory of the Donetsk and Luhansk Oblasts, located at the contact line, the local elections would not be held.<sup>18</sup>

The decision on the impossibility to hold local elections concerned 475,855 voters<sup>19</sup>.

Therefore, the Commissioner contacted the Central Election Commission requesting the opinions of the Donetsk and Luhansk Oblast Military-Civil Administrations, which were the basis for approval of Resolution No. 161 by the Central Election Commission.

The opinions of the Donetsk and Luhansk Oblast Military-Civil Administrations provided to the Commissioner state that due to the armed aggression of the Russian Federation against Ukraine and due to the highly charged socio-political situation in certain territories of the Donetsk and Luhansk Oblasts, it is impossible to ensure proper security for the citizens during the organisation and conduct of local elections.

The provisions of the Electoral Code of Ukraine do not contain clear legal certainty and criteria for making decisions on the impossibility to hold local elections in certain territories, that is why it is

<sup>18</sup> URL: <https://zakon.rada.gov.ua/laws/show/v0161359-20?find=1&text=%D0%B7%D1%96%D1%82%D0%BA%D0%BD%D0%B5%D0%BD#Text>.

<sup>19</sup> URL: [https://www.oporaua.org/report/vybory/mistsevi-vybory/mistsevi\\_2020/20577-pershii-zvit-za-rezultatami-sposterezhennia-opori-za-protsevom-pidgotovki-do-mistsevikh-vivoriv-2020](https://www.oporaua.org/report/vybory/mistsevi-vybory/mistsevi_2020/20577-pershii-zvit-za-rezultatami-sposterezhennia-opori-za-protsevom-pidgotovki-do-mistsevikh-vivoriv-2020).

impossible to assess the legitimacy of restricting the electoral rights of the territorial communities on the territory of the Donetsk and Luhansk Oblasts located on the contact line.

*Electoral rights of IDPs, citizens with no registered place of residence, and internal labour migrants*

In accordance with the proposals of the Commissioner provided during the drafting of the Electoral Code of Ukraine on the need to define the grounds and procedure for voters to change their voting

**IDPS WERE GRANTED THE RIGHT TO VOTE IN LOCAL ELECTIONS**

address to exercise their electoral right during national and local elections, the Electoral Code of Ukraine that was adopted by the Verkhovna Rada of Ukraine provided for a relevant provision. In this regard, for the first time during the

years of temporary occupation of the Autonomous Republic of Crimea, the city of Sevastopol and certain areas of the Donetsk and Luhansk Oblasts, 1.5 mln. IDPs were granted the right to vote in local elections. Other categories of citizens were also able to exercise the right to vote at their place of residence, including app. 3.3 mln. internal labour migrants and over 1 mln. people with no registered place of residence<sup>20</sup>.

To determine the procedure for exercising this right, the Central Election Commission adopted Resolutions No. 88 of 18 May 2020 "On the Procedure for Considering a Voter's Application to Change an Electoral Address in Accordance with Part Three of Article 8 of the Law of Ukraine "On the State Register of Voters " and No. 103 of 11 June 2020 "On the Procedure for Determining the Electoral Address of a Voter Who Does Not Have a Registered Place of Residence."

These changes became an important step in further integration of these categories of voters into the communities where they actually reside and ensuring their right to participate in community life.

However, only 101,687 voters exercised the right to change their voting address during the elections<sup>21</sup>, which indicates that the Central Election Commission did not sufficiently inform the citizens about the procedure for exercising their electoral right.

In September-October 2020, the Commissioner carried out information and awareness-raising activities related to the observance of the rights of IDPs during the preparation and conduct of local elections on 25 October 2020<sup>22</sup>. The information materials on the possibility of voting not at the place of registered residence were also distributed by the Commissioner in places of temporary residence of IDPs in all regions of Ukraine.

**RECOMMENDATIONS:**

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of a draft Law of Ukraine "On Amendments to the Electoral Code of Ukraine and Some Legislative Acts of Ukraine Regarding the Peculiarities of Organizing and Conducting Elections during Quarantine Period Established to Prevent the Spread of Especially Dangerous and Dangerous Infectious Diseases on the Territory of Ukraine, and Improvement of Certain Provisions of the Election Legislation" (reg. No. 4117 of 18.09.2020).

<sup>20</sup> URL: <https://www.vplyv.org.ua/archives/tag/%D0%B2%D0%B8%D0%B1%D0%BE%D1%80%D0%B8-2020/page/3>.

<sup>21</sup> URL: <https://www.osce.org/files/f/documents/2/c/468252.pdf>.

<sup>22</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/golosuvati-na-m%D1%96scevix-viborax-2020-roku-za-m%D1%96sczem-%D1%97x-faktichnogo-prozhivannya/>.

**To the Central Election Commission –**

1. In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on the improvement of the Electoral Code of Ukraine as regards defining criteria for making decisions on the impossibility to hold local elections on certain territories and ensuring in this respect sufficient guarantees for exercising electoral rights of the citizens.
2. During the organisation and conduct of regular elections, ensure that information and awareness-raising activities are carried on the procedure for exercising the electoral right of IDPs, voters with no registered place of residence, and internal labour migrants.

**To the local state administrations, local self-government bodies** – when providing premises to precinct election commissions, observe the requirements of Article 62 of the Electoral Code of Ukraine and the Resolution of the Cabinet of Ministers of Ukraine No. 962 of 09 October 2020 “On Approval of the Accessibility Criteria for of People Living with Disabilities and Other People with Limited Mobility of the Premises Provided to Precinct Election Commissions of Ordinary Polling Stations for Organizing their Work and Voting.”

**2.4. Right to judicial protection**

The right of everyone to be protected by a court is a fundamental human right guaranteed by the Constitution of Ukraine. The principle of accessibility is the basis of procedural safeguards.

The COVID-19 global pandemic proved to be a true challenge for the judicial system as Article 64 of the Ukrainian Constitution does not allow restrictions to the right to apply to a court for the protection of peoples rights. The courts continued to administer justice during the period of government-imposed restrictive anti-epidemic measures and even when COVID-19 was detected among judges and court staff.

The judicial system is currently unstable, which is caused, in particular, by the high number of vacant judicial posts, inadequate funding of the judiciary system, lack of appropriate technical equipment and high information technology costs.

The existence of deficiencies in the judicial protection system is confirmed by the 10,426 reports of violations of procedural rights received by the Commissioner in 2020, in particular, 5,744 – reports of violations at all stages of criminal proceedings and during court proceedings, 807 – reports of violations in civil and administrative proceedings, 3,154 – reports of violations of procedural rights in places of detention in Ukraine and 721 – reports of violations abroad and in the temporarily occupied territories. Appropriate response measures were taken to restore the violated rights after consideration of the reports.

Moreover, 310 court hearings were monitored.

*2.4.1. Procedural rights in criminal proceedings*

In 2020, the Commissioner received 5,744 reports of violations of procedural rights in criminal proceedings, in particular, violation of rights to access to justice, fair trial within a reasonable time – 2,208; violation of rights by law enforcement officials – 1,814; effective pre-trial investigation, compliance with reasonable time limits for procedural actions and adoption of procedural decisions – 1,170.

The authorized persons (persons conducting an initial inquiry, investigators and prosecutors) continue to ignore the requirements of Ukrainian legislation and selectively enter information into the Unified Register of Pre-Trial Investigations on applications and reports of criminal offences. But the refusal to accept and register an application or report of a criminal offence, for whatever reason, is not allowed under Part four of Article 214 of the Criminal Procedure Code of Ukraine. As a result, citizens are forced to apply to the Commissioner for protection of their rights.

#### Example

In July 2020, the Commissioner received a petition from a citizen of the Republic of Turkey, M., regarding his unlawful detention, ill-treatment and excessive use of physical force by police officers. At the request of the Commissioner, the Main Departments of the National Police in the Dnipropetrovsk and Poltava Oblasts, the employees of subordinate subdivisions of which, in the petitioner's opinion, were involved in the use of physical force against him, conducted official investigations that found no violations in the actions of their subordinates.

Following the request of the Commissioner, the Territorial Department of the State Bureau of Investigations also did not establish grounds for entering information on M's petition into the Unified Register of Pre-Trial Investigations.

Following the Commissioner's request to the Prosecutor General's Office in October 2020, information on criminal offence under Part two of Article 365 of the Criminal Code of Ukraine was entered into the Unified Register of Pre-Trial Investigations. The pre-trial investigation is ongoing.

In 2020, the Commissioner received 140 reports of violations of the right to launch a pre-trial investigation. Following the response measures, the pre-trial investigation bodies of the State Bureau of Investigations and the Prosecutor's Office entered information on 67 applications and reports of criminal offences into the Unified Register of Pre-Trial Investigations.

#### Example

In October 2020, lawyer K. reported that on 16.10.2020 at about 11:30 a.m. at one of the petrol stations near the city of Kyiv, the brothers S were handcuffed, sacks were put on their heads by unidentified armed men in sportswear, who, calling themselves the officers of the Security Service of Ukraine, put the brothers in a minibus where held them for several hours and inflicted bodily injuries to them.

According to the statement of the lawyer of brothers K., the employees of the Chabanivskiyi Police Department of the Kyiv-Sviatoshynskiyi Police Department of the Main Department of the National Police in the Kyiv Oblast did not enter the information into the Unified Register of Pre-Trial Investigations. They sent the application to the Territorial Department of the State Bureau of Investigations, located in the city of Kyiv. In December 2020, this Unit of the State Bureau of Investigations reported that there were no grounds for entering information into the Unified Register of Pre-Trial Investigations, referring to the fact that the application did not contain all the circumstances that might indicate the commission of a criminal offence.

This practice primarily demonstrates a lack of departmental control and systemic prosecutorial oversight over the enforcement of the laws when considering applications and reports of criminal offences.

Article 131-1 of the Constitution of Ukraine defined the constitutional duty of the Prosecutor's Office as the organization and procedural guidance of pre-trial investigation and dealing with other issues during criminal proceedings in accordance with the law, supervision of covert and other investigative and search activities of law enforcement bodies.

The Prosecutor's Office performs these functions intending to protect human rights and freedoms and the interests of society and the State.

The Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 4 October 2014 (as amended) entrusts the Prosecutor's Office with the function of supervision of compliance with laws by the bodies which are carrying out operational search activities, inquiry, pre-trial investigation (Article 2). However, in accordance with the Criminal Procedure Code of Ukraine, the prosecutors supervise compliance with the law in the form of providing procedural guidance in a pre-trial investigation (Article 36).

Since, in accordance with Parts two and three of Article 214 of the Criminal Procedure Code of Ukraine, the pre-trial investigation starts from the entering information into the Unified Register of Pre-Trial Investigations (except when the criminal offence was committed on a sea or river vessel located outside Ukraine), this means that the Criminal Procedure Code of Ukraine does not provide for prosecutorial supervision over the investigator or person conducting an initial inquiry during the examination of the applications and reports of criminal offences and the provision by such officials of an assessment of the information contained in such applications and reports on the existence of circumstances of a criminal offence.

In 2020, investigators satisfied 22,853 complaints and obliged the authorized persons to enter information into the Unified Register of Pre-Trial Investigations and initiate a pre-trial investigation. 5,850 complaints were rejected.

### **UNTIMELY START OF A PRE-TRIAL INVESTIGATION HINDERS FURTHER CRIMINAL PROCEEDINGS**

Thus, the violation of the right to launch a pre-trial investigation is to some extent facilitated by the imperfection of the current Criminal Procedure Code of Ukraine, and the untimely start of a pre-trial investigation subsequently hinders the achievement of the objectives of the criminal proceedings. Moreover, the Criminal Procedure Code of Ukraine does not contain a definition of "motives and grounds" before the commencement of criminal proceedings, does not provide for the form, content or other requirements for an application, report of a criminal offence or other conditions for the entering information into the Unified Register of Pre-Trial Investigations.

As a result, different criteria are applied in assessing whether there are grounds to enter information into the Unified Register of Pre-Trial Investigations and there are cases of apparent inconsistency in the position of the authorised persons when dealing with criminal offence complaints.

A good example of this is the different treatment of the same criminal offence complaints by different authorities.

#### **Example**

Following a complaint filed by citizen Z. about a beating of her son in February 2020 by the police officers of the Sobornyi Police Department of the Dniprovskyi Police Department of the Main Department of the National Police in the Dnipropetrovsk Oblast, the Unit of the State Bureau of Investigations located in the city of Poltava, in May 2020 after the Commissioner's letter, reported that there were no grounds for entering information into the Unified Register of Pre-Trial Investigations, referring to the

fact that the application did not contain all the circumstances that might indicate the commission of a criminal offence. However, following the Commissioner's request, on 10.06.2020 the Dnipropetrovsk Prosecutor's Office No. 2, based on the facts stated in the application of S., entered the information into the Unified Register of Pre-Trial Investigations about the commission of a criminal offence by the police officers under Part 2 of Article 365 of the Criminal Code of Ukraine.

Of course, the information had to be entered into the Unified Register of Pre-Trial Investigations not only because the Commissioner's request was called a criminal offence complaint. However, the mechanism of distinguishing the criminal procedural relations from others, which are regulated by the Law of Ukraine "On Petitions of Citizens", the Code of Ukraine on Administrative Offences, the Criminal Procedure Code of Ukraine, etc. is partially provided for only by the departmental regulatory legal acts. There is no such mechanism at the legislative level.

A significant share of reports on violations of procedural rights of participants in criminal proceedings are reports of non-compliance with reasonable time limits for procedural actions and adoption of procedural decisions, as well as ineffective pre-trial investigations. In 2020, the Commissioner received 1,170 reports of such nature.

During the consideration of such reports, to restore the violated rights, the Commissioner sent letters to the prosecutors' offices responsible for the procedural management of pre-trial investigations in criminal proceedings.

Following the examination of the records of the criminal proceedings, the prosecutors confirmed the validity of most of the complaints. To eliminate the revealed violations and restore the procedural rights of the complainants, the prosecutors issued written instructions to the investigators to carry out specific investigative (search) activities; in some cases, they initiated the replacement of the investigator and also sent letters to the heads of pre-trial investigation agencies or departments with a proposal to conduct official investigations.

#### Example

In January 2020, the Commissioner received a complaint from citizen Z. about the delay by the investigator of the Zmiiv Police Department of the Main Department of the National Police in the Kharkiv Oblast in investigating the criminal proceedings of 25.11.2014 on the grounds of the criminal offence under Part three of Article 185 of the Criminal Code of Ukraine. Following the request of the Commissioner, the local prosecutor's office initiated an official investigation which confirmed the inaction of investigators and revealed that the long-term pre-trial investigation was due to the loss of material evidence (items of stolen property) which had been seized by the investigator during the inspection of the scene of the incident in 2014. In this regard, measures were taken to conduct additional investigative actions aimed at obtaining sufficient evidence to prove the guilt of a criminal suspect, as well as to prosecute the person who committed negligence.

#### **INVESTIGATORS ALLOW FOR NON-COMPLIANCE WITH WRITTEN INSTRUCTIONS OF THE PROCEDURAL SUPERVISORS**

The information received from the prosecutors' offices and from the petitions of the participants of criminal proceedings gives grounds to assert that on numerous occasions investigators allow non-compliance with the written instructions of the procedural supervisors. Given the exemption under Law of Ukraine No. 1697-VII of 14 October 2014 from the Criminal Code of Ukraine of

Article 381-1, the provision of which provided for liability for non-compliance by an investigator with the prosecutor's instructions, the prosecutors have no leverage over investigators for non-compliance with their instructions, and the heads of departments do not take appropriate actions required in the prosecutors' letters, as such letters are not documents of prosecutorial response. As a result, investigators avoid any personal responsibility for blatant violations of human rights and freedoms. Thus, it is necessary to make appropriate amendments to the current legislation to establish the liability of a person conducting an initial inquiry and investigator for non-compliance with the written instructions of the procedural supervisor in criminal proceedings.

Violation of procedural deadlines reduces the effectiveness of pre-trial investigation bodies, since the perpetrators of criminal offences are not identified, and the investigation of criminal proceedings in which persons are notified of suspicion is unreasonably delayed, suspects are held in pre-trial detention centres for a long time, which in turn leads to systemic violations of the rights and freedoms of citizens guaranteed by the Constitution and laws of Ukraine.

#### Example

During consideration of repeated complaints of Sh. regarding inactivity since April 2019 of the investigators of the Left Bank Police Department of Vinnytsia Police Department of the Main Department of the National Police in the Vinnytsia Oblast during the pre-trial investigation in criminal proceedings on the fact of the death of her daughter, the facts of non-execution by investigators of the rulings of the investigating judges and instructions given in accordance with the norms of the Criminal Procedure Code of Ukraine were revealed.

The Vinnytsia local prosecutor's office raised an issue to the head of the Investigation Department of the above-mentioned Police Department about the removal of the investigator from the pre-trial investigation in the said proceedings due to ineffective investigation and instructed to take appropriate measures to intensify the investigation and fully implement the written instructions of the prosecutor. Following the request of the Commissioner, the management of the Main Department of the National Police in the Vinnytsia Oblast also found no reasons to respond within their competence to the inaction of their subordinates.

In 2020, the Commissioner also received complaints of violation of rights to timely execution of the rulings of the investigating judges by pre-trial investigators and prosecutors.

In particular, prosecutors and investigators quite often resort to various actions aimed at delaying the execution of the rulings of the investigating judges.

#### Example

In November 2020, the Commissioner received a petition from the lawyer V. who represented the interests of H. Consideration of the petition showed that the rulings of the investigating judges of the Pechersk District Court of the city of Kyiv of 16.03.2017 and 20.10.2019 recognized that H's property had the status of temporarily seized and was subject to return, and also obliged the investigator of the Main Investigative Department of the National Police of Ukraine to return the seized property. The court decisions were received by the Main Investigation Department on 06.03.2020, however, they were not executed, though the investigator had enough opportunities to return the property of H., taking into account that return of the property with the status of temporarily seized does not require a separate court decision, because such property, in accordance with the requirements of Part five of

Article 170 of the Criminal Procedure Code of Ukraine must be immediately returned to the person from whom it was seized.

To eliminate the identified violations of the human rights and freedoms of citizens, caused by illegal actions and omissions of the officials of the National Police of Ukraine during the pre-trial investigation in criminal proceedings, as well as to prevent a system violation in the future, on 29.12.2020, the Commissioner submitted petitions to the Ministry of Internal Affairs raising the issue of restoration of the violated rights and taking measures to bring those who allowed the violations to justice.

The delay in the enforcement of court decisions during the pre-trial investigation infringes on the right to judicial protection during the investigation stage and undermines the credibility of justice.

In 2020, the State Bureau of Investigations initiated 714 criminal proceedings on the grounds of a criminal offence under Article 382 of the Criminal Code of Ukraine on the basis of the petitions and reports of deliberate non-compliance with a court decision.

### **IMPUNITY FOR INTENTIONAL NON-COMPLIANCE WITH RULINGS OF AN INVESTIGATING JUDGE**

At the same time, the wording of the disposition of Article 382 of the Criminal Code of Ukraine, according to which only intentional failure to execute a judgment, decision, ruling or court resolution which have entered into legal force or obstruction of their execution is a criminal offence, partly contributes to the negligent attitude of pre-trial investigation bodies towards execution of the rulings of the investigating judges.

The rulings of the investigating judges are not included in this list. Thus, a ruling of an investigating judge is a separate procedural document, which is not covered by the notion of a “court ruling” and in accordance with the literal meaning of the provisions of the Criminal Procedure Code of Ukraine does not refer to judicial decisions. Therefore rulings made by an investigating judge and those that relate to restrictions of constitutional rights and freedoms of citizens are, in fact, not subject to the principle of binding court decisions provided for by Article 21 of the Criminal Procedure Code of Ukraine, and, as a consequence, an intentional failure to comply with the rulings of an investigating judge does not entail criminal liability under Article 382 of the Criminal Code of Ukraine.

Amendments to the current Ukrainian legislation are obviously needed to remedy this situation.

At the same time, the failure of the courts to send such rulings on time is among the reasons for the delayed implementation of the rulings of the investigating judges.

In particular, Parts six and seven of Article 376 of the Criminal Procedure Code of Ukraine state that the parties to the court proceedings have the right to obtain a copy of the judgment or ruling from the court. A copy of the judgment shall be sent to a party to the court proceedings who was not present at the hearing no later than the day following its making.

However, the information received during the consideration of citizens’ complaints indicates that copies of rulings of the investigating judges are mostly not sent to the parties to the court proceedings and in some cases, it is necessary to make considerable efforts to receive them.

#### **Example**

In December 2020, the Commissioner received a petition from citizen B. requiring assistance in obtaining a copy of the ruling of the court of appeal, which he had not received even though he had taken part in the appeal proceedings. During consideration of the petition, it turned out that the Kyiv Court of Appeal refused to provide a copy of the court ruling of 03.12.2020 due to the fact that the materials of the court proceedings were returned to the court of the first instance after the appeal hearing.

It should be noted that in accordance with the provisions of paragraphs 1, 5 of Section XI of the Instruction on Proceedings in Local Courts and Courts of Appeal of Ukraine approved by the Order of the State Judicial Administration of Ukraine No. 814 of 20 August 2019, the parties to the case who attended the court hearing must be given copies of the court decision immediately after the pronouncement of such decision against signed acknowledgment directly in court. Besides, copies of court decisions may be reissued at the request of a person in accordance with the procedure established by law.

Thus, the court of appeal should have provided B. with a copy of the court decision.

The provisions of the articles of the Criminal Procedure Code of Ukraine stipulate that a court decision that has come into legal force, unless otherwise provided for by the Criminal Procedure Code of Ukraine, shall be enforced no later than three days after it has come into legal force or return of the materials of the criminal proceedings to the court of the first instance from the courts of appeal and cassation. The rulings of the investigating judge that cannot be appealed against become enforceable from their pronouncement. The court, together with its order for enforcement of the court decision, sends the copy of the decision to the appropriate body or agency responsible for enforcing the court decision (Articles 532 and 535).

A separate problematic issue is the lack of a mechanism for monitoring compliance with the rulings issued by investigating judges, which also leads to delays in their implementation by investigators and prosecutors. Only a few investigating judges note in their rulings that investigators and prosecutors must inform the court and the persons concerned about the implementation of these decisions.

#### Example

During the proceedings initiated by the Commissioner in August 2020 upon the complaint of citizen Ya., it was revealed that the ruling of the investigating judge of the Prydniprovskiy District Court of the city of Cherkasy of 24.07.2020, according to which the responsible person of the local prosecutor's office was obliged to enter information into the Unified Register of Pre-Trial Investigations, was not executed, as the copy of the court ruling was not received by the responsible person.

Only after the intervention of the Commissioner, a copy of the court order of 27.07.2020 was sent by the court to the prosecutor's office on 23.09.2020.

The Commissioner also received complaints about violation of the right to presumption of innocence by public statements of law enforcement and other state officials which were also disseminated in the mass media.

#### Example

In March 2020, the Commissioner received a petition from the lawyer O. with the information that a representative of a government agency provided a legal assessment of the act committed by his client in a non-procedural document and indicated the type of procedural decision which should be taken as a result of the investigation.

In July 2020, citizen S. complained in his petition about the publicly expressed suggestion of the prosecutor to the suspect to prove his innocence in court. Moreover, the petitions of two lawyers received in August 2020 referred to the violation of the presumption of innocence in connection with the dissemination of media comments by law enforcement officials that their client had been proven guilty of committing a criminal offence.

The content of petitions indicating that perpetrators of criminal offences were found, statements which give reason to believe that an official believes a detainee, suspect or accused person to be guilty cannot be considered cautious and aimed at informing the public about law enforcement activities, and therefore complaints concerning such cases were sent to law enforcement officials for the response.

It should be noted that the right to the presumption of innocence, which is enshrined in Article 11 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights and Article 6, paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, is an element of a fair trial in criminal proceedings. In accordance with Part one of Article 62 of the Constitution of Ukraine, a person is presumed innocent of committing a crime until his or her guilt is proved through legal procedure and established by a court verdict of guilty.

The right to the presumption of innocence prohibits the premature expression of an opinion that a person who is suspected or accused of a criminal offence, even if he/she was given an exceptional preventive measure in the form of detention, is guilty before it is proved in accordance with the law by the court.

**THE TREATMENT OF A PERSON WHOSE GUILT IN COMMITTING A CRIMINAL OFFENCE WAS NOT ESTABLISHED MUST CORRESPOND TO THE TREATMENT OF AN INNOCENT PERSON**

The treatment of a person whose guilt was not established by a judgment of conviction that entered into force must correspond to the treatment of an innocent person.

Therefore, it is not allowed to state publicly in the media that a person is a criminal before a verdict of guilty has entered into legal force.

During the processing of complaints about violation of the rights of suspects (accused) to respect for their family life

due to the refusal of the investigator or the judge to permit a person under the preventive measure of detention to meet with his/her relatives, some problematic issues requiring resolution at the legislative level were identified.

**Example**

In September 2020, the Commissioner received a petition from the lawyer H.

Representing the interests of suspect K., who was detained in the pre-trial detention centre. The petition concerned the unjustified refusal of the investigators to grant permission for K. to see his wife. The pre-trial investigation bodies responded to the Commissioner's request that there were no grounds for granting a permit to visit.

Similar responses on the same issues were received from other pre-trial investigation bodies and prosecutors to complaints from detainees, their defence lawyers and relatives.

Therefore, in accordance with Part one of Article 12 of the Law of Ukraine "On Pre-Trial Detention" No. 3352-XII of 30 June 1993 (as amended), the administration of the pre-trial detention facility may grant meetings with relatives or other persons only with the written permission of the investigator or the court conducting the criminal proceedings.

**THE PROCEDURE FOR CONSIDERING APPLICATIONS FOR VISITS FOR DETAINEES IS NOT REGULATED IN THE CRIMINAL PROCEDURE CODE OF UKRAINE**

The procedure for considering applications for visits with relatives for detainees during pre-trial investigation and court proceedings is not regulated by the Criminal Procedure Code of Ukraine, and therefore there is no mechanism of appealing against decisions on such applications.

The issue of the provision of visits to detainees subject the Ukrainian legislation was repeatedly studied by the ECtHR. The ECtHR in its numerous judgments against Ukraine pointed out that the provisions of the national law did not define with sufficient clarity the boundaries and ways of exercising the discretionary powers of the investigation bodies to grant permission for a detainee to meet with his/her relatives. The ECtHR found a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms because, in the applicant's case, the investigator had simply stated that the meetings requested could interfere with the establishment of the truth in the case. In these circumstances, according to the ECtHR, it cannot be said that the interference with the applicant's right to respect for his family life was "in accordance with the law", as required by paragraph 2 of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

On the other hand, the Ukrainian legislation only states that permission to visit is granted by an investigator or a court, without specifying any grounds for refusing to grant such a visit. Moreover, there is no possibility of verifying the validity of the investigator's or court's decision to refuse a family visit to a suspect or an accused person who is being held in custody.

Therefore, the issue of refusal of a family visit to a detainee, as well as appealing against such a refusal in court, needs to be regulated at the legislative level.

The requirement regarding the determination of criminal charges within a reasonable time is a key element of the right to a fair trial as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Ensuring this right, which includes avoiding unreasonable delay, is relevant to many aspects of the organisation of the criminal justice system, in particular, the procedures to be followed, the powers available, the institutional arrangements in place, the technology used and the resources made available.

Monitoring of the observance of procedural rights during court proceedings gives grounds to assert that problems of past years that are related to delays in the administration of justice remain unresolved. In 2020, the Commissioner received 188 reports of delays in the trial of criminal proceedings.

**PROBLEMS OF THE PAST THAT ARE RELATED TO DELAYS IN THE ADMINISTRATION OF JUSTICE REMAIN UNRESOLVED**

Due to the incomplete reform of the legislation in the field of judicial organization, performance of the qualification assessment of judges and competitions to fill judicial vacancies, entrusted to the High Qualification Commission of Judges of Ukraine, was, in fact, ceased.

The high number of judicial vacancies (1,387 as of 01.01.2021) leads to the fact that cases in courts are appointed at long intervals, and due to the excessive workload of judges, cases are considered for a very long time. Consequently, without solving the issue of filling the courts with judicial personnel, the negative practice of violating the right to trial within a reasonable time cannot be overcome.

**Example**

In November 2020, the Commissioner received a complaint from accused person L. on violation of his right to trial within a reasonable time. The Commissioner revealed that since June 2020, the territorial jurisdiction of the criminal proceedings against him had been changed five times due to the fact that it was impossible to set up a court for trial in the local courts of the Poltava Oblast, where the case was submitted for consideration, for various objective circumstances.

A similar situation occurred in the trial of L.'s appeals against the rulings of the courts of the first instance that imposed a preventive measure of detention against him. The Cassation Criminal Court of the Supreme Court, in accordance with the procedure set out in Article 34 of the Criminal Procedure Code of Ukraine, sent these proceedings to the Kharkiv Court of Appeal because it was impossible to set up a court for the appeal proceedings in the Poltava Court of Appeal.

Within the authority of the Commissioner in 2020, measures were taken to restore the violated rights of the participants of the court proceedings by eliminating certain problems with the functioning of the court's document management system.

#### Example

In the course of proceedings initiated by the Commissioner on the petition of citizen K., it was found that after the dismissal in February 2016 from Babushkynskyi District Court of the city of Dnipro, the former judge did not return to the court office the pending cases that were considered by him. However, these cases have not been re-distributed automatically for three years.

Following the request of the Commissioner, the Council of Judges of Ukraine inspected the organization of work of the mentioned court and on 28.02.2020, a decision was made according to which 859 pending cases, including 95 criminal cases, were subject to automated redistribution among the judges of the local court by the order of the Head of the Court Administration.

Subsequently, an interim committee was revealed at the court for inspection of the mentioned cases to solve the issues related to technical feasibility and mechanism of their automated redistribution among the judges.

On 02.06.2020, a meeting of judges was held in the court, where the results of the activities of the interim commissions of this court were approved and the issue of referral of pending cases for consideration was resolved.

Thus, due to the direct intervention of the Commissioner, the right of the participants of the proceedings to trial within a reasonable time was restored.

Moreover, it turned out that the above violations of rights were committed due to significant gaps in the court's case management, as a result, disciplinary proceedings were initiated against the head of the court administration.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – speed up consideration and adoption of draft laws on judicial reform.

**To the Cabinet of Ministers of Ukraine** – draft and submit for consideration to the Verkhovna Rada of Ukraine the draft laws:

1. On additions to Article 214 of the Criminal Procedure Code of Ukraine regarding the determination of the admissibility criteria for claims and reports of criminal offences.

2. On amendments and additions to Article 36 of the Criminal Procedure Code of Ukraine to harmonize it with the provisions of Article 131-1 of the Constitution of Ukraine and Article 2 of the Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (as amended) as regards the powers of the prosecutor to supervise compliance with the requirements of the Criminal Procedure Code of Ukraine by investigators, persons conducting an initial inquiry when considering applications and reports of criminal offences.
3. On additions to the Code of Ukraine on Administrative Offences to introduce liability for a person conducting an initial inquiry or investigator for failure to comply with the written instructions of the procedural supervisor in criminal proceedings.
4. On additions to Article 12 of the Disciplinary Statute of the National Police of Ukraine, approved by the Law of Ukraine No. 2337-VIII of 15 March 2018, which applies to police officers, rank and file personnel and senior officers of the State Bureau of Investigation, on recognition of violation of human rights and fundamental freedoms, whether intentional or due to gross negligence, as a disciplinary offence.
5. On additions to Article 382 of the Criminal Code of Ukraine concerning the expansion of the list of court decisions, for non-compliance with which criminal liability is provided for, by a ruling of the investigating judge.
6. On amendments and additions to the Criminal Procedure Code of Ukraine and the Law of Ukraine "On Pre-Trial Detention" No. 3352-XII of 30 June 1993, establishing an exhaustive list of grounds for refusing a person taken into custody a visit of his/her relatives, as well as the procedural possibility of appealing against such refusal in court.

**To the Prosecutor General's Office, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation, the Security Service of Ukraine, the National Police of Ukraine, the authorities monitoring compliance with the tax legislation** – ensure departmental control over the compliance with Article 214 of the Criminal Procedure Code of Ukraine when considering applications and reports of criminal offences.

#### **To the State Judicial Administration of Ukraine –**

1. Introduce additions to the Instruction on Proceedings in Local Courts and Courts of Appeal of Ukraine approved by the Order of the State Judicial Administration of Ukraine No. 814 of 20 August 2019, to regulate issues related to the procedure for enforcement and control over the execution of rulings of investigating judges.
  2. Ensure control over timely sending of copies of rulings of the investigating judges to participants in court proceedings who were not present in the court session and receipt of reports on the confirmation of receipt of copies of these court decisions by the participants in court proceedings.
- To the heads of state bodies – take measures to prevent violations of the right to the presumption of innocence during statements and publications in the media.

#### *2.4.2. Procedural rights in civil and administrative proceedings*

In 2020, the Commissioner received 753 reports of violations of procedural rights in civil proceedings and 54 reports of violations of procedural rights in administrative proceedings.

One of the urgent problems is still the problem of the non-execution of judgments in Ukraine. This problem is evidenced by the fact that the Commissioner received 705 reports on violations of procedural rights in civil proceedings out of 753 reports received in total.

In accordance with the legislation of Ukraine and international treaties, the execution of a judgment is an integral part of everyone's right to judicial protection.

The ECtHR considers the stage of execution of a judgment as part of the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and applies the reasonable time limits set out in paragraph 1 of this Article also in those cases that related to the prolonged non-execution of judgments of national courts.

### **IMPROPER PERFORMANCE OF OFFICIAL DUTIES BY THE STATE ENFORCEMENT OFFICERS**

The main reasons for the improper and untimely execution of court decisions are the improper performance of official duties by the state enforcement officers, their workload, inadequate logistical and technical support of the state enforcement service, imperfect legislative framework, etc.

#### **Example**

In February 2020, the Commissioner received a complaint from citizen Yu. regarding inactivity of officials of Dniprovskiy Raion Department of the State Enforcement Service in the city of Kyiv during carrying out enforcement proceedings on recovery of alimony payments for her underage child.

At the request of the Commissioner, the official inspection was conducted. The inspection revealed violations of requirements of Article 47 of the Law of Ukraine "On Enforcement Proceedings" No. 1404-VIII of 02 June 2016, Section VII of the Instruction on Enforcement of Decisions, in particular, the term of transfer of funds was violated. Currently, the funds deducted at the debtor's place of work are credited to the recoverer's account.

In accordance with Article 5 of the Law of Ukraine "On Enforcement Proceedings" No. 1404-VIII of 02 June 2016 (hereinafter — Law No. 1404-VIII), the enforcement of decisions shall be vested in state enforcement service bodies (state enforcement officers) and in cases stipulated by this Law — on private enforcement officers, the legal status and organization of which is established by the Law of Ukraine "On the Bodies and Persons Performing Enforcement of Court Decisions and Decisions of Other Bodies" No. 403-VIII of 02 June 2016.

Recovery of wages, pension, scholarship and other income of the debtor is imposed if the debtor has no funds on accounts in banks or other financial institutions if the debtor's property is not available or insufficient to cover the amounts to be recovered in full, as well as in the case of enforcement of decisions to collect periodic payments.

In accordance with other enforcement documents, the executor has the right to recover the salary, pension, scholarship and other income of the debtor without any measures of enforcing recovery against the debtor's property – upon a written request of the recoverer, or on the basis of the enforcement documents; however, the amount of recovery must not exceed five minimum wages (Parts one and two of Article 68 of Law No. 1404-VIII).

Article 10 of the Protection of Wages Convention, ratified by Ukraine, stipulates that wages may be attached or assigned only in a manner and within limits prescribed by national legislation. Wages shall be protected against seizure or assignment to the extent deemed necessary for the maintenance of the worker and his family.

However, the problem seizure of debtor's funds by the state enforcement officers is quite common in Ukraine. In particular, seizure of wages, bank accounts and other target and special-purpose accounts.

### UNLAWFUL SEIZURE OF DEBTOR'S FUNDS — A COMMON PROBLEM

#### Example

In May 2020, the Commissioner received a collective complaint of employees of the Municipal Company "Heykivka Multidisciplinary Hospital for Psychiatric Care" of Dnipropetrovsk Oblast Council about the blocking by the Department of the State Treasury Service of Ukraine in Krivyi Rih Raion of the Dnipropetrovsk Oblast of funds of the Municipal Company on the accounts opened on the basis of the decisions of the Krivyi Rih Raion Department of the State Enforcement Service of South-East Interregional Division of the Ministry of Justice (city of Dnipro).

At the request of the Commissioner, the inspection was conducted. Following the inspection on 15.06.2020, the bodies of the Treasury released the funds of this company from the attachment.

The problem of execution of court decisions was always acute in Ukraine but Law No. 1404-VIII clearly states that the total amount of all deductions from wages and pensions must not exceed 50% of their amount. At the same time, the attachment of the entire account of a citizen intended for his or her wages, pension or social benefits deprives him/her of his/her source of livelihood and ensuring a sufficient and decent standard of living.

The Constitutional Court of Ukraine in its Decision No. 25-rp/2009 of 07 October 2009 noted that "the right to social protection is referred to the fundamental rights and freedoms. This right is guaranteed by compulsory state social insurance from the insurance premiums of citizens, enterprises, institutions and organizations, as well as from budgetary and other sources (Part two of Article 46 of the Fundamental Law of Ukraine) and is secured by Part two of Article 22 of the Constitution of Ukraine, in accordance to which Constitutional rights and freedoms are guaranteed and shall not be abolished." Therefore, every citizen has the right to social protection, including the right to pension provision and all insured persons are equal to receive pension payments.

In accordance with the legal position of the ECtHR, formulated in the decision on the "Khoniakin v. Georgia" case No. 17767/08 of 19.06.2012, the right to social payments is a property right under Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, and the reduction or termination of payment of social benefits may constitute an interference with property rights.

Meanwhile, the inspections conducted by the Commissioner confirmed the facts of violation by public and private enforcement officers of the requirements of Law No. 1404-VIII on recovery of wages, pensions and social benefits.

The problem of improper execution of court decisions and exceeding the limits of authority by both public and private enforcement officers in terms of attachment of all wages, as well as other target and special-purpose accounts that are not subject to attachment, is quite relevant. The Commissioner received 184 petitions on such issues in 2020.

The Commissioner, in response to a large number of petitions from citizens concerning the unjustified attachment of citizens' accounts intended for their wages, pensions or social benefits, submitted petitions to the Minister of Justice of Ukraine to take measures to eliminate human rights violations and bring enforcement proceedings in line with requirements of Article 70 of Law No. 1404-VIII.

Following the Commissioner's petition, the Ministry of Justice initiated a study of the problem, a study of the state of the legal and regulatory framework in the area of the legal regulation in question.

### **NON-NOTIFICATION OF THE PARTIES TO THE PROCEEDINGS BY THE COURTS OF THE RESULTS OF THE PROCEEDINGS**

There are many cases of non-notification by the courts of the results of the proceedings, while in accordance with Part one of Article 272 of the Civil Procedural Code of Ukraine, copies of the complete court decision are served to the parties to the case who were present at the hearing immediately after the pronouncement of the decision.

#### **Example**

In July 2020, citizen B. sent a petition to the Commissioner in which he reported that the Shevchenkivskyi District Court of the city of Kyiv did not notify him of the results of his case. In particular, the court did not send him a copy of the decision in the case.

The inspection initiated by the Commissioner showed that the court decision of 30.06.2020 dismissed the claims of B. and on 01.07.2020, a cover letter was formed in the automated document management system that a copy of the court decision was sent to the plaintiff.

However, due to the actual cessation of funding of the Territorial Unit of the State Judicial Administration of Ukraine in the city of Kyiv, a copy of the court decision was not sent to the plaintiff address.

Given the current situation with the financing of courts in terms of ensuring the cost of payment for the purchase of postage stamps and services of Internet providers in December 2020, the Commissioner sent a letter to the State Judicial Administration of Ukraine about the need to check the distribution and use of funds for the purchase of postage stamps and services of Internet providers in 2020 by the Territorial Units of the State Judicial Administration of Ukraine.

#### **Example**

The Commissioner received information that on 23.10.2020, the Supreme Court consisting of the panel of judges of the Commercial Court of Cassation adopted a decision, but information on such decision was sent to the Unified Register of Judgments on 31.10.2020 and made public on 01.11.2020, whereas Part two of Article 2 of the Law of Ukraine "On Access to Court Decisions" No. 3262-IV of 22 December 2005 establishes that all court decisions are open and must be published in electronic form no later than the day following their preparation and signing.

The Commissioner submitted a petition to the High Council of Justice on this issue. As a result of the inspection conducted following the Commissioner petition, the High Council of Justice found that this fact, although it occurred, was not long-lasting and therefore (given the heavy workload of the judge), it cannot be concluded that the violation had serious consequences and was substantial. Thus, there are no grounds for concluding that the judge committed conduct not worthy of the rank of judge and that its consequences are so serious and terrible that they indicate the presence of signs of disciplinary misconduct in the actions of the judge and require the imposition of a disciplinary sanction.

In 2020, the Commissioner also received complaints about the violation of reasonable time limits for processing a cassation appeal.

**Example**

In January 2020, citizen K. sent a petition to the Commissioner in which she reported about the violation by the Supreme Court of reasonable time limits for court proceedings, in particular, from December 2018, no court hearings of the cassation appeal were scheduled in civil proceedings. Following the Commissioner's intervention, the Civil Court of Cassation of the Supreme Court scheduled the case for trial and subsequently issued a final decision.

The mentioned above shows the violation by the national courts of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in terms of ensuring to everyone the right to a fair trial within a reasonable time, which created the negative practice of the ECtHR towards Ukraine. In particular, the ECtHR stated in its judgments that the reasonableness of the duration of the proceedings should be determined in view of the relevant circumstances of the case and taking into account the following criteria: the complexity of the case, the applicant's conduct and the conduct of the relevant state bodies, as well as the importance of the subject matter of the dispute for the applicant (decisions in cases of *Dyachenko and Others v. Ukraine* of 06.07.2017, *Balandin and Andreiko v. Ukraine* of 20.07.2017).

At the same time, the Administrative Court of Cassation of the Supreme Court explains the prolonged consideration of cases by the heavy workload of judges, as over 130,000 procedural documents were submitted to it since 15 December 2017, and over 22,000 of which are currently pending before the Court of Cassation.

Given that Law No. 540-IX introduced restrictions on the direct participation of a person in court proceedings, the Commissioner submitted a relevant petition to the State Judicial Administration of Ukraine in April 2020 to establish systematic work of the courts of Ukraine to ensure video broadcasting of court hearings, organization of videoconferencing during the court proceedings, as well as to hold educational events for the general public of participants on the peculiarities of holding court hearings via videoconference. The State Judicial Administration of Ukraine took into account the recommendations of the Commissioner.

However, violations of the right to adequate judicial protection were revealed in the courts during quarantine measures to prevent COVID-19 disease in 2020.

**VIOLATION OF THE RIGHT TO  
ADEQUATE JUDICIAL PROTECTION  
DURING QUARANTINE  
RESTRICTIONS**

**Example**

In the Solomenskyi District Court of the city of Kyiv, by an order of the acting president of this court of 16 October 2020, a ban was imposed on issuing cases for familiarization, which violates the right to judicial protection that is provided for both by national legislation and by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. At the request of citizen Ch. to familiarize himself remotely with the case file, the applicant was informed that the court "does not practice familiarization with the case file remotely".

At the request of the Commissioner, this order was annulled and the reception of citizens by the court's registry and archive was resumed, including the issuance of cases for review by the participants of the trial.

## RECOMMENDATIONS:

**To the Ministry of Justice of Ukraine** – take measures to eliminate the identified violations of human rights and legislation and bring enforcement proceedings in line with the requirements of Article 70 of the Law of Ukraine “On Enforcement Proceedings” No. 1404-VIII of 02 June 2016, in particular, regarding compliance with the rule that the total amount of all deductions from wages and pensions must not exceed 50 per cent of its amount..

### 2.4.3. Procedural rights in places of custody

The observance of human rights in places of detention requires active measures from the central executive bodies. In 2020, the Commissioner received petitions about violations of human rights in places of detention, in particular, violations of criminal procedural legislation of Ukraine and norms of international law in the field of protection of human rights and freedoms, as reflected, inter alia, in ECtHR judgments, namely:

- unlawful detention of persons without an appropriate ruling of an investigating judge or court long after the crime was actually committed;
- violation of the requirements of the Criminal Procedure Code of Ukraine in the course of drawing up detention protocols;
- violation of the right to protection;
- inadequate organization of medical care (disregard of doctors’ requests for additional examinations of detainees in temporary detention facilities);
- inadequate ensuring the sustainability of treatment with substitution therapy).

Compared to last year, the number of reports almost doubled – 3,154 reports compared to 1,775 in 2019, of which on observance of human rights in penitentiary institutions – 1,884 (of which on medical care and health care – 439), in pre-trial detention centres – 504 (of which on medical care and health care – 203); in temporary detention facilities – 103 (of which on medical care and health care – 53); in other places of detention – 663.

### ILLEGAL DETENTIONS AND OBTAINING CONFESSIONS OF CRIMINAL OFFENCES UNDER PRESSURE BY POLICE OFFICERS

The number of reports of human rights violations by police officers did not decrease in 2020 and amounts to 1,814 (1,652 in 2019). A significant part of these reports concerned violations of the right to freedom and personal inviolability, as illegal detentions and obtaining confessions of criminal offences under pressure by police officers continued to occur.

#### Example

In January 2020, citizen H. sent a petition to the Commissioner, in which he reported that an employee of the Shevchenkivskyi Police Department of the Main Department of the National Police in the Lviv Oblast used excessive physical force which resulted in bodily injuries of the petitioner. Following the Commissioner’s intervention, the Territorial Department of the State Bureau of Investigations, located in the city of Lviv entered the information into the Unified Register of Pre-Trial Investigations under Part two of Article 365 of the Criminal Code of Ukraine on the fact of abuse of power or official authority. The pre-trial investigation is ongoing.

Another negative example is the situation that took place on 22.06.2020 in the city of Kharkiv during a peaceful protest action of disabled liquidators of the consequences of the Chernobyl disaster. It was during the said action that the police officers committed unlawful acts against the participants. Following the Commissioner's intervention, the Kharkiv Oblast Prosecutor's Office entered the information into the Unified Register of Pre-Trial Investigations under Part two of Article 365 of the Criminal Code of Ukraine on the fact of exceeding official powers by certain police officers.

These violations were possible due to the insufficient professional level of law enforcement officers, their non-compliance with the requirements of legislation and departmental regulations, and the desire of some officers to solve a criminal offence at any cost, even at the cost of a person's health.

#### Example

In October 2020, citizen P. sent a petition to the Commissioner, in which he reported about illegal actions of the officers of the Security Service of Ukraine, i.e. coercion to testify and incriminate himself in committing a crime. Following the Commissioner's intervention, the Prosecutor General's Office, based on the facts stated in the petition of P., entered the information into the Unified Register of Pre-Trial Investigations under Part two of Article 365 of the Criminal Code of Ukraine on the fact of abuse of power or official authority. The pre-trial investigation is ongoing.

Human rights violations committed by staff members of correctional system facilities were not left unnoticed either.

The most frequent complaints from these places of detention concerned inadequate conditions of detention or non-provision with medical care, which, under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, constitute humiliation of human dignity or inhuman treatment. The Commissioner received 511 petitions of such kind. Inspections were conducted to check all facts. In most cases, the facts of the violations of human rights were confirmed. However, in facilities of the Criminal Executive Service, the employees of this Service continue to use punitive practices involving physical and psychological violence.

#### **EMPLOYEES OF THE STATE PENITENTIARY SERVICE OF UKRAINE CONTINUE THEIR PUNITIVE PRACTICES WITH THE USE OF PHYSICAL AND PSYCHOLOGICAL VIOLENCE**

#### Example

In February 2020, citizen D. sent a petition to the Commissioner, in which he reported about the abuse of power and official authority by the staff of the "Kropyvnytsk pre-trial detention centre" who caused bodily injuries to the petitioner. As a result of a response from the Commissioner, the Territorial Department of the State Bureau of Investigations, located in the city of Mykolaiv, based on the facts stated in the petition of D., entered the information into the Unified Register of Pre-Trial Investigations under Part two of Article 365 of the Criminal Code of Ukraine on the fact of abuse of power.

The systemic nature of the problem of human rights violations by employees of the State Penitentiary Service of Ukraine is also evidenced by other situations that took place in penitentiary institutions and pre-trial detention centres, in particular, in *State Institution "Romenska Correctional Colony (No. 56)"*, whose employees systematically beat and tortured citizen V. and other convicts. Citizen V. informed the Commissioner of it in May 2020 in his petition. Following the Commissioner's intervention, the Prosecutor's

Office of the Sumy Oblast entered the information into the Unified Register of Pre-Trial Investigations under part two of Article 365 of the Criminal Code of Ukraine on the fact of abuse of power.

Following the consideration of the Commissioner's letter, the Prosecutor's Office in the Donetsk Oblast, entered the information into the Unified Register of Pre-Trial Investigations under Part one of Article 120 of the Criminal Code of Ukraine on the facts set out in a petition of citizen N. representing the interests of citizen Sh., in which the petitioner informed the Commissioner that the employees of the State Institution "Bakhmut Penitentiary Institution (No. 6) drove citizen Sh. to suicide. The employees of the institution are suspected of incitement the prisoner to suicide. The pre-trial investigation is ongoing.

**EMPLOYEES OF THE KYIV  
PRE-TRIAL DETENTION CENTRE  
USE PHYSICAL VIOLENCE  
AGAINST DETAINEES**

Even in the capital of Ukraine, where at a short distance from the State Institution "Kyiv Pre-trial Detention Centre" not only the Department for Execution of Criminal Sanctions, the State Institution "Healthcare Centre of the State Criminal Executive

Service", the Department of Penitentiary Inspection, but also the Ministry of Justice are located, the discriminatory practice of implementing a pilot project to place persons in better pay cells continue to be spread. Employees of the Kyiv pre-trial detention centre continue to use physical violence against detainees and not provide appropriate medical assistance.

**Example**

In July 2020, citizen H. sent a petition to the Commissioner stating that he was beaten by the employees of the State Institution "Kyiv Pre-trial Detention Centre" and that he was not provided with the appropriate medical care. Following the Commissioner's intervention, the Prosecutor General's Office entered the information into the Unified Register of Pre-Trial Investigations under Part two of Article 365 of the Criminal Code of Ukraine on the fact of abuse of power.

Thus, in the revealed facts of human rights violations, there is no reasonable explanation of the reasons why a person in places of detention can be beaten, tortured, humiliated by the employees of penitentiary institutions – employees who are entrusted with the duty to save human life, correct it, return to the society.

After the introduction by the Government of restrictive anti-epidemic measures to prevent the spread of COVID-19 disease on the territory of Ukraine, the Commissioner received numerous petitions from citizens sentenced to imprisonment and convicted prisoners, their relatives and friends about violation of their right to receive visits and violations of the restrictive anti-epidemic measures by employees of penitentiary institutions.

**Example**

In September-October 2020, the Commissioner received petitions from several wives of convicted citizens who complained about the denial of the opportunity to see their relatives in penitentiary institutions due to the introduction of restrictive anti-epidemic measures.

These facts are possible due to the lack of preparedness of administrations of certain penitentiary institutions and pre-trial detention centres for the introduction of anti-epidemic measures. The employees of the institutions acted on the principle — it is better to prohibit than to permit. Whereas Article 110 of the Criminal Enforcement Code of Ukraine guarantees to convicts and prisoners the

right to receive visits, and deprivation of this right is equal to inhuman treatment humiliating their dignity.

To restore the violated rights of convicts and detainees, the Commissioner sent a letter to the Minister of Justice of Ukraine demanding to take measures to prevent violation of rights of convicts and detainees to receive visits. Following consideration of the letter, the Ministry of Justice stopped the violation of rights of convicts and detainees to receive visits and resumed the visits.

## RECOMMENDATIONS:

**To the Ministry of Justice of Ukraine** – in accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine:

1. A draft law on prevention of the facts of torture, as well as the commission of criminal offences involving cruel and inhuman treatment in places of detention and administrative buildings of law enforcement bodies, and immediate response to such facts.
2. A draft law on amendments to the Criminal Procedure Code of Ukraine, in particular, on the introduction of full and continuous video-recording of the period of detainees' stay under the jurisdiction of the state – from the moment of actual detention of a person, throughout the entire period of his/her stay in the territorial unit of the law enforcement body.
3. A draft law on amendments to Article 365 of the Criminal Code of Ukraine on enhancing criminal liability for abuse of power or official authority by a law enforcement officer.

### *2.4.4. Procedural rights of Ukrainian citizens in places of custody abroad and in the temporarily occupied territories*

The protection of rights and interests of Ukrainian citizens that are held in places of detention abroad and in the temporarily occupied territories, as well as the restoration of their violated rights in 2020, was one of the strategic directions of the Commissioner's activities.

In 2020, the Commissioner received 419 reports of violations of procedural rights of Ukrainian citizens who are held in places of detention abroad and 302 – in the temporarily occupied territories.

At the end of 2020, 129 citizens of Ukraine were being prosecuted on politically motivated charges, 109 of whom are in detention, including: 33 – in the Autonomous Republic of Crimea and 76 – in the Russian Federation. The majority of the prisoners, namely 75, are Ukrainian citizens of Crimean Tatar nationality. 186 underage children were left without parental care and attention in their families.

In 2020, numerous cases of human rights violations on the temporarily occupied by the Russian Federation territory of the Autonomous Republic of Crimea were registered. Such rights included almost all rights, both civil and political and socio-economic, such as freedom of assembly, freedom of speech, religious rights, right to life, freedom from torture and inhumane treatment, right to personal freedom and security, right to fair justice.

The occupation authorities continue to persecute citizens of Ukraine with pro-Ukrainian views in the territory of the

**THE OCCUPATION AUTHORITIES IN THE TERRITORY OF THE AUTONOMOUS REPUBLIC OF CRIMEA CONTINUE TO PERSECUTE CITIZENS OF UKRAINE WITH PRO-UKRAINIAN VIEWS**

Autonomous Republic of Crimea, resorting to unreasonable searches and arrests, politically motivated trumped-up criminal and administrative charges and led the repression against independent media and journalists.

Crimean Tatars, who are the majority of Ukrainian citizens, that are politically persecuted in the Autonomous Republic of Crimea, constantly experiencing pressure that manifests itself in ill-treatment, restrictions on the rights to freedom of religion, freedom of peaceful assembly and others. Their rights to proper detention, inviolability, security, a fair trial, legal protection and adequate medical care are violated during their stay in the detention institutions. The so-called Russian Crimean courts convict them to long terms of imprisonment on trumped-up charges without providing adequate protection, in violation of their human rights and in the absence of public trials.

Three main trends in the criminal actions of the occupation authorities in the Autonomous Republic of Crimea can be identified in 2020:

- increasing the number of persecutions against Crimean Tatars and Ukrainian activists;
- increased penalties, in particular, increase in the length of prison sentences;
- use of detention conditions as a pressure factor.

The only pre-trial detention centre in the Autonomous Republic of Crimea, which is located in the city of Simferopol, is overcrowded. A cell of 35 square meters holds 20 persons (the norm is 14 persons). Prisoners have to sleep in shifts.

#### Example

Ukrainian citizen Eskander Suleimanov for two months was held in the pre-trial detention centre of the city of Simferopol in the same cell with a person with an active form of tuberculosis. Dzhemil Gaffarov, a citizen of Ukraine, a disabled person of group II, is illegally detained in the same pre-trial detention centre for more than six months without receiving qualified medical care. Moreover, his chronic diseases are on the list established by the federal law of the Russian Federation. With such diseases, Dzhemil Gaffarov cannot be held in the conditions of the pre-trial detention centre.

### **THE RUSSIAN FEDERATION HOLDS ILLEGALLY IMPRISONED CRIMEAN TATARS IN INHUMANE CONDITIONS**

In violation of the Standard Minimum Rules for the Treatment of Prisoners approved by the UN Economic and Social Council, illegally imprisoned Crimean Tatars are held in pre-trial detention centres and penitentiary institutions located in the Autonomous Republic of Crimea and the

Russian Federation in inhumane conditions, without medical care, and, during the COVID-19 pandemic – without personal protective equipment and disinfectants, which constitutes a serious threat to their life and health and relates to the level of torture in terms of cruelty.

#### Example

In punishment cells of colony No. 2 and No. 16 of the city of Salavat of the Republic of Bashkortostan, the citizen of Ukraine Teimur Abdullaiev was detained for 254 days and our compatriot Emil Dzhemadenov – for 116 days.

During the interrogation, on 31 August 2020, officers of the Federal Security Service of the Russian Federation for more than 14 hours denied food to Aider Kadyrov, a citizen of Ukraine, who suffers from first-degree diabetes.

In pre-trial detention centre No. 1 of the city of Rostov-on-Don, the Crimean Tatars are kept in a 3-square-meter cell without ventilation for several hours before being taken to court hearings.

Muslim Aliyev, a citizen of Ukraine, in pre-trial detention centre No. 2 in the city of Taganrog was placed in a basement without ventilation and light after his refusal to vote for changes to the Constitution of the Russian Federation.

These cases can be regarded as a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Torture and inhuman treatment are the widespread and systematic practice of the occupation authorities. This practice is used by law enforcement officers during arrests against defendants in criminal cases and those arrested for administrative offences, as well as to put pressure on civilians to cooperate, to testify in politically motivated criminal cases.

The prosecution also extends to the Mejlis of the Crimean Tatar People, a representative body of the Crimean Tatars. In violation of Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, their rights to a fair trial, access to justice and legal protection are not ensured.

#### Example

The leader of the Crimean Tatar people Mustafa Dzhemilev, the chairman of the Mejlis Refat Chubarov are under criminal prosecution. The vice-president of the World Congress of Crimean Tatars Lenur Isliamov is sentenced in absentia to 19 years of imprisonment in a maximum-security prison for “organization of sabotage, creation of an illegal armed formation and calls for the violation of the integrity of the Russian Federation.”

In accordance with the Fourth Geneva Convention, accused persons must be held in places of detention in an occupied country and, if convicted, must serve their sentences there as well.

At the same time, Crimean Tatars are illegally convoyed from the Autonomous Republic of Crimea to the Russian Federation. Convicts are transported in inhumane conditions, are not fed for several days. They are judged by the military courts, with the violation of their right to defence and a fair trial, forbidding them to speak their native language during the trial.

**CRIMEAN TATARS ARE ILLEGALLY CONVOYED FROM THE AUTONOMOUS REPUBLIC OF CRIMEA TO THE RUSSIAN FEDERATION**

#### Example

On 11 August 2020, the Southern District Military Court in the city of Rostov-on-Don refused to question 14 defence witnesses during the regular court session. After the statement of the suspect Server Mustafaiev, the founder and coordinator of “Crimean Solidarity”, that such actions are a direct violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, the court simply removed him from the hall.

The Third Court of Appeal of the city of Sochi on 2 October 2020, while deciding on the extension of detention, denied Izzet Abdullaiev to provide a translator into the Crimean Tatar language arguing that he was born in the Soviet Union and received his education there.

For more than a month, 29 Crimean Tatars, who are unjustifiably persecuted and illegally deported from Crimea to Russia, were forced to stay for 14-16 hours during the investigative actions in the premises of the Federal Security Service of the Russian Federation, not adapted for a simultaneous stay of a large number of people, without adequate food. Dry rations contain foodstuffs that Crimean Tatars cannot consume due to their religious beliefs.

**INTERROGATIONS IN THE PREMISES OF THE FEDERAL SECURITY SERVICE OF THE RUSSIAN FEDERATION LAST CONTINUOUSLY FOR 14-16 HOURS**

The situation is complicated by the lack of independent observers and monitoring mechanisms on the territory of the Crimean peninsula. The authorities of the Russian Federation deny access to the Autonomous Republic of Crimea to independent international monitoring missions. Independent lawyers, human rights defenders and journalists working in the Autonomous Republic of Crimea are

**INDEPENDENT HUMAN RIGHTS DEFENDERS AND JOURNALISTS ARE INTIMIDATED AND PERSECUTED**

subjected to intimidation, threats and persecution.

The occupation authorities refuse to grant the Commissioner access to Ukrainian citizens who are detained in places of detention in the Autonomous Republic of Crimea, indicating the existence of human rights violations.

In particular, the petition, sent on 23.10.2020 to the address of the Commissioner on Human Rights in the Russian Federation, Tetiana Moskalkova requiring to allow the Commissioner to visit 30 Ukrainian citizens held in the temporarily occupied Crimea in a pre-trial detention centre of the city of Simferopol and two Ukrainian citizens serving their sentences in the Correctional Colony in Simferopol, was left without consideration.

It should be noted that none of the official complaints of the victims resulted in punishment for the perpetrators. Moreover, systematic petitions of the Commissioner to the Federal Penitentiary Service of the Russian Federation and 60 personal petitions to the Commissioner for Human Rights in the Russian Federation were left without an appropriate response.

The existence of human rights violations in the Autonomous Republic of Crimea was confirmed in the third report of the UN Secretary-General Antonio Guterres of 01.09.2020 on the Situation of human

**TORTURE AND ILL-TREATMENT OF UKRAINIAN CITIZENS BY OFFICERS OF THE FEDERAL SECURITY SERVICE OF THE RUSSIAN FEDERATION**

rights in the Autonomous Republic of Crimea and the city of Sevastopol. The report confirms torture and ill-treatment by officers of the Federation

Security Service of the Russian Federal, impunity for enforced disappearances, interference in the

professional activities of journalists, forced displacement and deportation from Crimea, and reaffirms that the Autonomous Republic of Crimea and the city of Sevastopol are the territory of Ukraine.

In 2020, work continued on the release of our citizens from the temporarily occupied territories of the Donetsk and Luhansk Oblasts.

As a result of the joint measures taken, 20 illegally detained Ukrainian citizens were returned to the territory controlled by Ukraine.

During personal meetings with the Commissioner, those released from captivity reported tortures and ill-treatment during their detention and imprisonment.

#### Example

Former prisoner S. told the Commissioner at the end of 2020 that there is a secret prison in the city of Donetsk called "Izoliatsiia" (Isolation). This prison was established in June 2014 after the seizure by the representatives of illegal armed groups of a former factory that produced insulating materials. This factory belonged to the Izolyatsiia Art Foundation. The seized base is now used for military training, storage of military equipment and weapons, and detention of illegally imprisoned people. This prison can hold up to 80 persons at a time. It comprises eight cells, two punishment cells and two basements. It holds mostly civilian hostages suspected of disloyalty by the so-called "DPR Ministry of State Security." About 30 % of the prisoners are women. People in this prison have been out of touch with their families and the outside world for years, and the ICRC has no access to them either.

"Izoliatsiia" is known for torture and ill-treatment of prisoners regardless of their gender, age or state of health. Evidence of beatings, electric shocks, suffocation ("wet" and "dry" methods), sexual violence, positional torture, removal of body parts (nails and teeth), deprivation of water, food, sleep or access to a toilet, mock executions, threats of violence or death, family harm, etc. were stated in the OHCHR report. In particular, the report mentions a medical worker whose function was to bring to consciousness people who had lost consciousness during torture. At the same time, no medical assistance was provided. Deaths of prisoners were recorded.

The number of deaths in "Izoliatsiia" is unknown. At least several hundred people have passed through the prison over the years.

Despite the lack of any communication with the representatives of the occupation authorities, the Commissioner has repeatedly appealed to international organizations, in particular, representatives of the UN Human Rights Monitoring Mission in Ukraine and the ICRC, to use all opportunities to establish the location of those illegally deprived of personal liberty, to check the conditions of their detention, including in secret prisons.

At the same time, the issue of releasing all 267 citizens (as of 25.01.2021) who are illegally detained in the temporarily occupied territories of the Donetsk and Luhansk Oblasts, is still relevant.

The situation is critical in terms of ensuring the rights of persons with the procedural status of convicted, suspected, accused or victims in criminal cases and proceedings, which materials are now inaccessible due to the temporary occupation of certain territories of the Donetsk and Luhansk Oblasts, as well as the occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.

Currently, the Commissioner is considering petitions from 230 citizens, their lawyers and legal representatives regarding the transfer of 219 criminal cases and proceedings, which remained in the courts and law enforcement bodies in the temporarily occupied territories of the Donetsk and Luhansk Oblasts, as well as the Autonomous Republic of Crimea.

**267 UKRAINIAN CITIZENS  
ARE ILLEGALLY DETAINED IN  
THE TEMPORARILY OCCUPIED  
TERRITORIES OF THE DONETSK  
AND LUHANSK OBLASTS**

Moreover, the Commissioner is considering petitions from 300 convicts and their relatives for transfer from the temporarily occupied territory of the Donetsk Oblast to continue serving their sentences. 150 convicts from the temporarily occupied territory of the Luhansk Oblast are waiting for their transfer.

It should be noted that in 2020 the issue of the transfer of convicts, criminal cases and proceedings was repeatedly the subject of negotiations with the direct participation of the Commissioner.

In particular, before each meeting of the working subgroup on humanitarian issues of the Trilateral Contact Group on a peaceful settlement of the situation in the Donetsk and Luhansk Oblasts, the Commissioner drew the attention of both the representatives of Ukraine in this working subgroup and the OSCE Co-ordinator in Tony Frisch's subgroup on the need to address the issue of the transfer of convicts as well as criminal cases and proceedings.

The heads of the UN Human Rights Monitoring Mission in Ukraine and the delegation of the International Committee of the Red Cross in Ukraine were also involved in this process.

As a result of negotiations that lasted for more than 2 years, on 03.12.2020, the Commissioner received from the representatives of the self-proclaimed authorities of certain temporarily occupied territories of the Donetsk Oblast 40 volumes of proceedings against citizen P. at the checkpoint "Novotroitske". The materials were submitted to the Donetsk Court of Appeal.

The materials of criminal cases and proceedings were not transferred from the temporarily occupied territories of the Luhansk Oblast due to the refusal of the self-proclaimed authorities to do so.

In 2020, the convicted persons were not transferred due to the lack of final consent to do so by the self-proclaimed bodies under the control of the Russian Federation, which usurped the exercise of power in the temporarily occupied territories of the Donetsk and Luhansk Oblasts.

The COVID-19 global pandemic had a significant impact on the ability of the Commissioner to monitor the procedural rights of Ukrainian citizens who are held in places of detention abroad. However, the Commissioner took all possible measures to ensure that the rights of such persons are respected.

In particular, several working meetings were held online with the representatives of foreign diplomatic institutions, international organizations and authorized state bodies of Ukraine, during which current issues were discussed and the prospects for improving the available tools for the protection of the rights and freedoms of this category of Ukrainian citizens were discussed.

#### **THE COVID-19 GLOBAL PANDEMIC AFFECTED THE MONITORING OF THE PROCEDURAL RIGHTS OF UKRAINIAN CITIZENS WHO ARE HELD IN PLACES OF DETENTION ABROAD**

Following direct intervention by the Commissioner and the Ministry of Foreign Affairs on 22 January 2020, citizen Z., who was illegally sentenced to death and whose sentence was later overturned, was returned to Ukraine from Malaysia.

Thanks to repeated appeals of the Commissioner to the King of Thailand and the Ombudsman of Thailand and with the assistance of the Embassy of Ukraine in the Kingdom of Thailand in October 2020, all Ukrainian citizens (16 persons) who were imprisoned in Thailand received the pardon of the King of Thailand without exception.

In October-November 2020, three Ukrainian citizens were returned to Ukraine from the Lao People's Democratic Republic, whose release was possible thanks to the established cooperation with the UN High Commissioner for Human Rights Michelle Bachelet and with the support of the Ministry of Foreign Affairs.

With the assistance of the Ministry of Foreign Affairs, Ukrainian citizen M. who was detained by Krakow County Police in 2019 and subsequently illegally accused of hooliganism, arrested and then illegally placed in a psychiatric hospital, was returned from the Republic of Poland in November 2020.

The fate of the Ukrainian citizens, i.e. crew members of the Ruta and CAPTAIN KHAYYAM tankers, who were detained in Libya in 2016 and subsequently sentenced to imprisonment, has not gone unnoticed by the Commissioner. Through the efforts of the Commissioner and the Ministry of Foreign Affairs, in June 2020 14 Ukrainian seafarers of Ruta tanker and in January 2021 four crew members of the CAPTAIN KHAYYAM tanker were returned from Libya to Ukraine.

In 2020, the Commissioner monitored the rights of the Ukrainian citizen Vitaliy Markiv, who was illegally detained on 30 June 2017 and subsequently sentenced to 24 years' imprisonment in Italy.

The monitoring found major violations of Vitaliy Markiv's rights, in particular, to: unbiased investigation, protection, a fair trial (violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms), violation of the presumption of innocence (violation of Article 11 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights).

As a result of joint efforts of the President of Ukraine, the Ministry of Internal Affairs, the Ministry of Foreign Affairs and the Commissioner, the Milan Court of Appeal on 03.11.2020 ruled an acquittal verdict in the case of Vitaliy Markiv. Today, the Ukrainian citizen not only returned to his homeland but also to military service.

On 27-29 January 2020, the Commissioner conducted monitoring visits to three penitentiary institutions of the Republic of Georgia, in particular, No. 5 and No. 6 in the city of Rustavi and No. 2 in the city of Kutaisi, during which confidential interviews were conducted with eight citizens of Ukraine. During these meetings, violation of detention conditions, cases of non-provision with proper medical care, deprivation of the right to serve a criminal sentence in the home country were recorded, although in accordance with the established procedure they had submitted the relevant applications to the competent institutions of Georgia.

To resolve this issue, the Commissioner sent relevant appeals to the Ministry of Justice of Georgia, the Public Defender of Georgia, as well as letters to the Ministry of Justice and the Ministry of Foreign Affairs to accelerate the resolution of the issue of the transfer to their home country of the citizens of Ukraine sentenced in Georgia. Since the issue was not resolved positively in 2020 (due to the delayed decision-making by the Georgian side), the Commissioner continues to address both the Ministry of Justice and the Ministry of Foreign Affairs and Georgian officials to return our citizens to Ukraine.

Monitoring of the rights of Ukrainian citizens who are in places of detention abroad will continue and will remain one of the priorities in 2021.

**VIOLATION OF DETENTION  
CONDITIONS AND CASES  
OF NON-PROVISION WITH PROPER  
MEDICAL CARE WERE RECORDED**

## RECOMMENDATIONS:

### **To the Ministry of Foreign Affairs of Ukraine –**

1. While ensuring representation of Ukraine in international organizations and special missions, cooperation with foreign states, continue informing on the status of observing the rights of Ukrainian citizens who are prosecuted by the Russian Federation on false and politically motivated charges, to increase the pressure of the international community to release prisoners.
2. Continue activities to provide consular assistance to Ukrainian citizens who are detained or serving sentences abroad to respect their rights and freedoms.
3. Expedite the signing of the Agreement between Ukraine and the Hellenic Republic on the Supervision over Probationers or Parolees.
4. Expedite the signing of the Treaty between Ukraine and the Kingdom of Thailand and other countries, in particular, the People's Republic of Bangladesh, the Arab Republic of Egypt and the Federal Republic of Nigeria on the transfer of convicted persons.

**To the Ministry of Justice of Ukraine –** expedite the resolution of the issue of the transfer to Ukraine for a further serving of sentence of Ukrainian citizens convicted in the Republic of Georgia.



**248**

monitoring visits and  
remote inspections

**2 292**

requests to the state  
bodies and local  
self-government bodies



**1677**

reports of violations  
of rights

# CHAPTER 3

## RIGHTS OF THE CHILD





## RIGHTS OF THE CHILD

In 2020, the number of reports of children's rights violations increased significantly. The Commissioner received 1,677 reports that raised issues of protection of children's rights, which is 67% more than in 2019 (1006).

The largest number of reports concerned violations of the child's right to parental care and support (319), the right to education (265), the right to family education (230), the right to maintenance by parents (145), the right to housing (94). As a result of their consideration, 2,292 requests of the Commissioner were sent to public authorities, local governments, institutions and organizations.

In connection with the COVID-19 pandemic, the peculiarity of monitoring the observance of children's rights was the introduction of off-site inspections, which were primarily aimed at obtaining operational data on the state of children's rights and timely response to violations.

For the purpose of parliamentary control over the observance of children's rights in the conditions of alternative guardianship in the juvenile justice system, as well as the observance of the rights of children affected by armed conflict, 155 monitoring visits and 93 off-site inspections were carried out. As a result 6 petitions and 285 requests were sent to the objects of inspections, as well as executive authorities or local governments in order to take appropriate response measures and implement the recommendations.

### 3.1. Right of the children to social protection and upbringing in the family

#### **Right to healthcare**

##### *Rights of children suffering from rare/orphan diseases*

During the year, the Commissioner received notifications from parents with a request to assist in providing children suffering from rare/orphan diseases with medicines and foods.

Analysis of the reports revealed a lack of budget funding for the provision of expensive drugs for children suffering from orphan diseases, in particular those suffering from spinal muscular atrophy (SMA).

These facts indicate a violation of the rights of children to health care and medical assistance established by Article 49 of the Constitution of Ukraine.

**AS A RESULT OF THE MEASURES TAKEN BY THE COMMISSIONER, THE STATE BUDGET FOR 2021 PROVIDES FOR EXPENDITURES FOR TREATMENT OF PATIENTS WITH ORPHAN DISEASES**

#### Example

In April 2020, K., the father of a child, who had been suffering from a rare (orphan) disease – spinal muscular atrophy – for two years, addressed the Commissioner regarding the failure to provide his child with expensive medicines.

One bottle of medicine for the treatment of a child costs about 1.8 million UAH. 3 bottles are needed for a year. Accordingly, the amount for the purchase of these drugs is not affordable for the parents of a sick child.

In November 2020, the Head of Charitable Foundation “Children with Spinal Muscular Atrophy” addressed the Commissioner with a similar matter.

In order to protect the right of children to affordable treatment, the Commissioner repeatedly appealed to the Ministry of Health during April-June, but the issue was not resolved. In July 2020, the Commissioner sent a request to the Cabinet of Ministers of Ukraine, but this issue was not resolved. In December 2020, the Commissioner sent requests to the Verkhovna Rada Committee on Public Health, Medical Assistance and Medical Insurance, the Verkhovna Rada Committee for Budget Affairs and the Ministry of Health to increase funding for the treatment of children with SMA.

As a result of the measures taken, in the State Budget of Ukraine for 2021, the Ministry of Health under the budget program (KPKVK 2301400) for the treatment and medical needs of patients with orphan diseases increased expenditures and provided funds in the amount of 10,303.779 million UAH. At the same time, the funds foreseen in the budget, provide only 59.9% of the need.

Taking into account the Commissioner’s recommendations aimed at restoring the right of children to health care, the Ministry of Health has developed a draft order of the Cabinet of Ministers of Ukraine “On Approval of the Concept for the Development of Care for People Suffering from Rare (orphan) Diseases for 2020-2025”, which is currently being agreed with the central executive bodies concerned. The Cabinet of Ministers of Ukraine approved a resolution dated January 27, 2021 #61 “Some issues concerning controlled access agreements and suspension of the first paragraph of item 1-2 of the resolution of the Cabinet of Ministers of Ukraine of March 25, 2009 No. 333”. In addition, the Ministry of Health is developing amendments to the Law of Ukraine “On Public Procurement” dated December 25, 2015 #922-VIII, the Budget Code of Ukraine dated July 8, 2010 No. 2456-VI and a number of bylaws of the Ministry of Health.

Thanks to the response of the Commissioner of the Ministry of Health, an order was issued dated February 28, 2020 #587 “Some issues of maintaining the Register of medical records, referral records and prescriptions in the electronic healthcare system.” This Register provides an opportunity to systematize patient data and determine the number of patients with orphan diseases according to the 10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10).

The Commissioner recommended that the Ministry of Health take measures to assist in resolving the issue of the accession of patients with cystic fibrosis to the European Register (ECFS Patient Registry), which has not been implemented.

#### *Rights of children with disabilities*

During the year, the Commissioner received reports from citizens about the inadequate provision of children with disabilities with hygiene products (diapers) at the expense of the state budget.

#### **Example**

In March 2020, the Commissioner received a report from citizens A. and T. regarding the inadequate state of providing their children with disabilities with diapers due to the unresolved issue of funding from the state budget for the purchase of these hygiene products.

The Commissioner appealed to the Ministry of Finance and the Ministry of Health to restore the violated right of children to medical care.

Thanks to the response of the Commissioner, the Ministry of Health has developed a draft resolution of the Cabinet of Ministers of Ukraine on amendments to the Procedure for providing persons with

disabilities and children with disabilities with technical and other means, approved by the Cabinet of Ministers of Ukraine on December 3, 2009 #1301, aimed at providing children with disabilities with hygiene products at the expense of the state budget. The project is currently being agreed with the relevant authorities.

To clarify the state of observance of the right of children to medical care, in January 2020 the Commissioner conducted an off-site inspection of orphanages where children are on full state support and regional children's hospitals. The findings of the monitoring showed that after additional examination and consultation by matter experts, children are prescribed drugs that are not included in the National List of Essential Medicines. This forced the administration of institutions and parents to purchase medicines on their own or to seek sponsorship.

The Commissioner addressed the Cabinet of Ministers of Ukraine with a proposal to revise the said National List and resolve problematic issues in the field of procurement of medicines for budget funds. Due to the intervention of the Commissioner, the issue was settled: the resolution of the Cabinet of Ministers of Ukraine of December 23, 2020 #1300 "On approval of the Procedure for state assessment of medical technologies" was approved, which, in particular, provides for state assessment of medical technologies for nomenclatures (lists) of medicines which are procured at the expense of the state budget for the implementation of programs and centralized healthcare measures and which are not included in the National List in order to decide on the feasibility of their further purchase; conducting a state assessment of medical technologies (including an simplified procedure) for drugs included in the National List, which are not in the Basic List of Essential Medicines recommended by the World Health Organization.

#### *Rights of the children in orphanages and CSPRC*

The Commissioner received reports of violations of the right to health care of children who are temporarily in orphanages, CSPRC, support centers for families and children, who do not have the opportunity to undergo a medical examination in health care facilities at the location of institution due to the refusal of the administration with reference to the consequences of medical reform and the need to sign a declaration with a family doctor.

#### **Example**

In January 2020, the Commissioner was addressed by the Director of the Cherkasy oblast CSPRC to help resolve the issue of medical support of the right of children to medical care. The Commissioner sent a request to the Ministry of Health.

As a result of the Commissioner's actions, the right of children to medical care has been renewed, and the National Health Service of Ukraine has provided clarifications regarding the provision of medical care to children directly at the location of the institution without signing a declaration with a doctor.

#### *Children's right to adequate nutrition in education institutions*

During 2020, the Commissioner continued to monitor the observance of the right to adequate nutrition in educational institutions for children with special dietary needs, including food intolerances and/or allergies.

### **NORMS ON THE ORGANIZATION OF NUTRITION OF CHILDREN WITH SPECIAL DIETARY NEEDS HAVE BEEN APPROVED**

As a result of the Commissioner's measures, rules on the organization of nutrition of children with special dietary needs were included in the order of the Ministry of Health dated September 25, 2020 #2205 "On Approval of the Sanitary Regulations for General Secondary Schools"<sup>1</sup>.

Taking into account the Commissioner's proposal on the need to regulate the issue of nutrition of children of this category, the Cabinet of Ministers of Ukraine issued an order on December 23, 2020 #668-r "On approval of the action plan to implement the National Strategy for Safe and Healthy Educational Environment in the New Ukrainian School for 2021".

On this issue, the Ministry of Health has also drafted a Resolution of the Cabinet of Ministers of Ukraine "On approval of the Norms and Procedures for Nutrition in Educational Institutions and Children's Health and Recreation Facilities", which is currently being agreed with the relevant authorities.

#### *Right of children to vaccination*

In the Annual report of the Commissioner on observance and protection of human rights and freedoms of citizens of Ukraine for 2019,<sup>2</sup> Commissioner recommended the Ministry of Health to strengthen informational and explanatory work on the need to vaccinate children. At the same time,

### **REDUCTION OF THE NUMBER OF VACCINATED CHILDREN**

the information of the Public Health Center of the Ministry of Health shows a decrease in the number of children vaccinated against certain diseases (Annex 3.1).

In particular, in 2018 the BCG-1 vaccination (against tuberculosis) covered 302.5 thousand children, in 2019 281.6 thousand children, during the 11 months of 2020 the vaccination covered 249.2 thousand children, which is 90.1%, 88.6% and 81.1% of the planned amount, respectively.

Vaccination of children under one year and 18 months against diphtheria, tetanus and pertussis is carried out at a stable level. However, the number of children aged 6 and 16 getting diphtheria and tetanus vaccinations is declining. The same situation is with vaccination of children against measles, mumps and rubella. In all areas of vaccination of children in 2018, 2019 and during the 11 months of 2020, there are no indications of 100% vaccination of children.

Government agencies and NGOs need to strengthen informational and explanatory work on the need to vaccinate children.

## **RECOMMENDATIONS:**

### **To the Ministry of Health of Ukraine –**

1. Take measures for the provision of children suffering from rare/orphan diseases with medicines and foods at their place of residence or treatment.

<sup>1</sup> URL: <https://zakon.rada.gov.ua/laws/show/z1111-20#Text>

<sup>2</sup> URL: <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, p. 82.

2. To facilitate the regulation of the accession of patients with cystic fibrosis to the European Register (ECFC Patient Registry).
3. To take measures to strengthen awareness raising activities on the need to vaccinate children.

### *Right to education*

In connection with the introduction of national quarantine related to the COVID-19 pandemic, by the decision of the Cabinet of Ministers of Ukraine, from March 11 until the end of the 2019/2020 academic year, educational services were provided by educational institutions remotely, via online platforms.

Reports of legal representatives of students to the Commissioner and media monitoring showed a violation of the right to education guaranteed by Article 53 of the Constitution of Ukraine due to the unpreparedness of the education system for quality functioning in the conditions of distance learning.

#### Example

In November 2020, L.'s parents complained to the Commissioner about the improper organization of distance learning for their children, including poor communication between teachers, children and parents, incorrect wording of homework by teachers, unclear deadlines, biased assessment of children's knowledge, etc.

In order to protect the right of children to education, in November 2020 the Commissioner sent inquiries to the Department of Education of the Kharkiv City Council.

According to the results of the Commissioner's response measures, distance learning in the educational institution is organized in accordance with the regulations, teaching materials and homework by subject are published by teachers on the Google Classroom portal. During the educational process, teachers organized individual consultations for students by phone and Viber. Communication between teachers and children has been revealed: students send assignments to teachers' personal e-mails, Viber and the Classroom portal.

The analysis of appeals and the results of media monitoring have shown that the reasons for the violation of the right to education are as follows: lack of appropriate conditions for distance learning in families in difficult life circumstances (for example, availability of means of communication); difficulties with students' simultaneous access to technical means when there are several school-age children in the family; different approach of teachers to providing instructional materials and the lack of quality control by management for objective reasons; low quality of Internet connection and its complete absence in some regions; insufficient control over the level of digestion of educational materials by students; lack of proper parental control over children's education, etc. Distance learning is ineffective for primary school-aged children, especially for first-graders, who need an individual approach to master the material. In addition, unattended young children (when parents are working and thus absent) are at risk.

#### **DISTANCE LEARNING FOR PRIMARY SCHOOL-AGED CHILDREN IS INEFFECTIVE**

### Example

In August 2020, the Commissioner received a message from V. (Kyiv), a father of five children, regarding the objection to the application of the educational process in the form of distance learning to three of his children. The applicant argued that he and his wife worked and did not have the opportunity to properly organize their children's education in this form, and that a large family did not have sufficient technical means to teach all the children at the same time.

At the request of the Commissioner, the Department of Education informed that the applicant's children were studying in-person.

In order to facilitate the beginning of the school year in person, the Commissioner sent a letter to the Ministry of Education and Science.

Thus, including due to the intervention of the Commissioner, on September 1, 2020 children went to educational institutions.

Distance learning restricts the right to education of children with special needs, who study in special schools, due to the need to use appropriate teaching materials, software and hardware.

### Example

In April 2020, G., the mother of a child with special educational needs, addressed the Commissioner with complaints that the child had not learned to work independently, while teachers did not explain to the parents how to work with such a child remotely. There is no communication between teachers and parents and children, communication is only in the form of providing homework via email.

As a result of the verification of the stated facts, it was revealed that during the quarantine restrictions distance learning for the applicant's child was organized in accordance with the material and technical capabilities of the educational institution, the implementation of educational programs was constantly monitored by the educational institution administration. Communication with parents has been revealed. It was also found that at the beginning of the school year the child began attending an educational institution. The child's right to education has been restored.

Also in June 2020 the Commissioner issued a recommendation to the Ministry of Education and Science on the development in cooperation with the Ministry of Social Policy of the procedure of distance learning in the 2020/2021 school year in order to address the issue of ensuring the right to education of primary school students and children from families in difficult life circumstances.

### Example

In September 2020, a monitoring visit was made to the municipal institution "Regional Center for Social and Psychological Rehabilitation of Children "Sunny House" of the Zhytomyr Oblast Council, where 31 children were staying. The facility has 4 computers and a slow Internet connection, which makes online learning impossible. Children and educators told that teachers pass tasks to children via Viber. However, the explanation of the study material and homework check is carried out by the educators of the Center, who are not subject specialists.

In order to eliminate the violations, the Commissioner's recommendations were sent to the head of the institution, the children's service and the deputy head of the Zhytomyr Oblast State Administration.

As a result of the measures taken, children's access to educational material was provided, the speed of the Internet was increased, and homework is assessed in accordance with methodological norms.

Violations of children's rights identified by the Commissioner were confirmed in a survey conducted by the State Service of Education Quality.

For most schools (55.53%) the introduction of distance learning has become a problem, because they had no previous experience of this form of education and were not ready for the educational process under the quarantine conditions. 47.5% of teachers (20,590 people) said that they had not previously used distance learning technologies in their teaching activities<sup>3</sup>.

**FOR MOST SCHOOLS,  
THE INTRODUCTION  
OF DISTANCE LEARNING HAS  
BECOME A PROBLEM**

In order to ensure the right of children to quality education and safe learning environment, in particular, the opportunity to organize the educational process in the 2020/2021 school year in person, the Commissioner in June and July 2020 sent letters to the Prime Minister of Ukraine and MES. A request has been made to allocate funds from the stabilization fund to finance measures to combat the COVID-19 pandemic in Ukraine in order to provide means of protection for participants of the educational process.

In order to create conditions for online education for persons with special educational needs, the Commissioner provided recommendations, which are taken into account in the resolution adopted by the Cabinet of Ministers of Ukraine on December 9, 2020 #1289 "On approval of the Procedure for providing teaching aids for people with special educational needs in educational institutions". After the Commissioner's response measures in October 2020, the Cabinet of Ministers of Ukraine directed funds to provide protection for participants of the educational process in general secondary education institutions according to the resolution of the Cabinet of Ministers dated October 21, 2020 #984.

Besides that, after the beginning of the school year, the Law of Ukraine dated September 17, 2020 #909-IX in the Final Provisions of the Law of Ukraine "On the State Budget of Ukraine for 2020" amended the State Budget of Ukraine, which allowed to direct the remaining funds of the education subvention.

Thus, at the beginning of the school year, the responsibility for providing educational institutions with personal protective equipment, disinfectants and detergents was placed on the founders and heads of educational institutions without providing appropriate financial support.

**DUE TO THE SIMULTANEOUS  
PRESENCE OF A LARGE  
NUMBER OF PEOPLE IN  
EDUCATIONAL INSTITUTIONS,  
THE RISKS OF SPREADING  
COVID-19 INCREASED**

Taking into account the quarantine restrictions, the 2020/2021 school year in Ukraine started in person (except for the areas in the red zone). However, due to the simultaneous presence of a large number of people in educational institutions and as a consequence due to the reduction of social distancing, the risks of COVID-19

<sup>3</sup> URL: <https://www.sqe.gov.ua/index.php/uk-ua/hovyny/1217-rezultaty-opytuvannia-shchodo-dystantsiinoho-navchannia-v-zakladakh-zahalnoi-serednoi-osvity>

spreading among educational process participants increased, which became a potential factor in violating children's right to life and health.

In order to verify that the right of educational process participants to safe educational conditions and epidemic safety measures in the face of the COVID-19 pandemic are ensured, during October-November 2020 the Commissioner conducted a selective monitoring of 30 educational institutions in 18 regions of Ukraine (*Vinnytsia, Volyn, Dnipropetrovsk, Ivano-Frankivsk, Zhytomyr, Zaporizhia, Kirovohrad, Kyiv, Lviv, Luhansk, Mykolaiv, Odesa, Sumy, Ternopil, Kharkiv, Cherkasy, Chernivtsi oblasts and Kyiv*).

During the monitoring visits violations were observed that affect the right of children to receive education in safe conditions: insufficient provision of students and employees of educational institutions with personal protective equipment and disinfectants (antiseptics) (recorded in 14 monitored facilities, i.e. 46%), violation of the mask regime (recorded in 13 objects, i.e. 43%). Violations in the organization of nutrition of students for the period of quarantine were observed in 23% of educational institutions, 27% of institutions did not provide daily thermometry of educational process participants, utilization of personal protective equipment in the manner prescribed by law was not carried out in 33% of inspected institutions.

As a result of the monitoring, the Commissioner sent recommendations to the Ministry of Education and Science and the heads of OSAs<sup>4</sup>.

Due to the lack of opportunities to influence the enforcement of the right of children to education in safe conditions in the parts of Donetsk and Luhansk oblasts not controlled by the Government of Ukraine, the Commissioner addressed the Head of the United Nations Children's Fund (UNICEF) in Ukraine with a request to provide humanitarian support, in particular, to provide personal protective equipment for children from families living on the non-government controlled territories, which found themselves in difficult life circumstances.

During 2020, the Commissioner took measures based on reports of citizens to respond to the violation of children's right to education due to their religious beliefs, including due to the refusal of children to obtain a passport in the form of a card. It has been revealed that presentation of passport document was required for admission to higher education institutions of Ukraine in 2020. At the same time, these conditions did not take into account the interests of children who did not get a passport document containing contactless electronic media after becoming 14 and go through court proceedings to obtain a document in the form of a booklet, but at the time of admission did not reach 16 years of age.

#### Example

In April 2020, citizen M., the father of a minor O., who planned to enter the college of the National University of Food Technologies after receiving basic secondary education, applied to the Commissioner. The child was denied admission to the educational institution due to the lack of a passport document containing a contactless electronic medium.

As a result of the work carried out by the Commissioner, agreements were reached between the State Migration Service and the Ministry of Education and Science, according to which the confirmation of belonging to the citizenship of Ukraine of such persons was certified by letters of the State Migration

<sup>4</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/nep%D1%96dkontroln%D1%96j-ukra%D1%97nsk%D1%96j-vlad%D1%96-teritor%D1%96%D1%97-ta-opinilis-v-skladnix-zhitt%D1%94vix-obstavinax/>.

Service units. In turn, the Ministry of Education and Science approved a decision allowing applicants to submit for admission in 2020 a birth certificate and a letter from the territorial unit of the SMS. The violated right to education was restored.

In June 2020, at the request of the parents of future first-graders, the Commissioner found a violation of the right to education of children when enrolling in the first grade, as well as when enrolling in the 5th and 10th grades of students entering another educational institution due to illegal requirement of educational institutions for a repeated medical examination of the child.

### **VIOLATION OF CHILDREN'S RIGHT TO EDUCATION DUE TO ILLEGAL REQUIREMENT FOR REPEATED MEDICAL EXAMINATION**

Upon the Commissioner's request for clarifications to the Ministry of Education and Science regarding the legality of the actions of educational institutions, the answer was that repeated medical examinations were not planned. The link to the clarifications was posted on the Commissioner's website<sup>5</sup>.

With the assistance of the Commissioner, a gap in the regulatory framework was eliminated, which led to violations of the rights of students who study in a family (home) form and their legal representatives. As such, the Regulation on the individual form of general secondary education, approved by the order of the Ministry of Education and Science of January 12, 2016 #8 (as amended by the order of the Ministry of Education and Science of 10.07.2019 #955), provides for informing by the educational institution of a relevant office of children's services about the enrollment (transfer) of children to the family (home) form of education. At the same time, because of the uncertainty of the algorithm of offices of children's services after receiving such a notice, local offices acted at their own discretion, in particular, called the parents of children enrolled (transferred) to family (home) form of education to provide written explanations.

After the Commissioner's appeal to the Ministry of Social Policy, the relevant clarifications were sent to the offices of children's services of OSA and the Kyiv City State Administration.

## **RECOMMENDATIONS:**

### **To the Cabinet of Ministers of Ukraine –**

1. Provide for the allocation in 2021 of funds for the provision of disinfectants to protect participants in the educational process in general secondary education institutions in order to prevent violations of their right to appropriate and safe learning environment during the quarantine.
2. Take action to ensure the availability of good quality Internet connection throughout the country for online learning.

### **To the Ministry of Education and Science of Ukraine –**

1. To improve guidelines for distance learning or learning with online educational tools.
2. To introduce a monitoring system to ensure the right of children to safe learning environment during the COVID-19 pandemic.

<sup>5</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/rozyasnennya-shhodo-provedennya-medichnix-oglyad%D1%96v-uchn%D1%96v-zaklad%D1%96v-zagalno%D1%97-seredno%D1%97-osv%D1%96ti/>.

**Right to social protection***Right of the children to social protection during the COVID-19 pandemic*

During the media monitoring, the Commissioner found that more than 42,000 children from boarding schools returned to their parents' families, most of whom were in difficult life circumstances and needed quality social support and material support.

The Commissioner promptly found out that the guardianship authorities and children's services were not informed about the return of such children to the place of residence of their parents. The situation was complicated by the fact that according to the Ministry of Social Policy, in the context

**MORE THAN 42,000 CHILDREN FROM BOARDING SCHOOLS RETURNED TO THEIR PARENTS, MOST OF WHOM WERE IN DIFFICULT LIFE CIRCUMSTANCES**

of decentralization of power at the local level, social and children's services were not formed or were understaffed, leaving children without adequate protection and support. (at the beginning of 2020, there were 207 children's services in 834 TCs).

In order to resolve the situation, the Commissioner held a meeting with the heads of the Ministry of Social Policy and the Ministry of Education and Science, with the participation of the UNICEF Office in Ukraine. It was revealed that these reasons led to inability to ensure the quality and effectiveness of social support for families and control over the observance of children's rights in families.

In April 2020 the Commissioner addressed the Prime Minister of Ukraine with a request to introduce a state subvention for the introduction of positions of social work specialists at the level of districts, territorial communities and cities of regional significance; to hold a meeting with the heads of the Ministry of Social Policy, the Ministry of Education and Science and OSAs in order to ensure coordination of actions to inspect each family to which a child has returned from a boarding school.

As a result, on April 23, 2020, a conference call chaired by the Deputy Prime Minister and the heads of oblast state administrations was held. The Ministry of Social Policy has introduced weekly monitoring of children's rights and summarizes operational information from the regions, which is also provided to the Commissioner. However, the corresponding subvention for the introduction of positions of social work specialists was not provided in the budget for 2021.

In the period from March 12 to December 30, 2020, 169,990 families in difficult life circumstances were visited by representatives of children's services and social services, and 30,478 families in difficult life circumstances were newly discovered. 847 children were taken from their parents and other people due to the threat to their lives and health, and 1,593 children were found who were left without parental care during the quarantine period. Of the surveyed families in difficult life circumstances, 26,865 children developed the COVID-19 acute respiratory distress.

**Example**

In August 2020, the Commissioner was asked by the media to help T.'s large family, which found itself in difficult life circumstances: parents did not work, children lived in unsanitary conditions and did not study, ate poorly and were physically abused.

*The Commissioner applied to the district office of children's service, as a result of which the family was taken under social support, and the children were registered by the children's service of Zachepylivka DSA of Kharkiv oblast as those who found themselves in difficult life circumstances. At the end of 2020, the family*

*was deprived of social support due to the minimization of difficult life circumstances, namely, parents achieved the skills of responsible parenting, housekeeping, and school-aged children from this family began to attend appropriate educational institutions.*

It is important to respect the right to safe working conditions for child service specialists during the COVID-19 pandemic, as they are in constant contact with families, who are in difficult life circumstances and do not always have personal protective equipment.

In this regard, in December 2020, the Commissioner addressed the Minister of Social Policy of Ukraine with a recommendation to consider extending the Resolution of the Cabinet of Ministers of Ukraine of April 29, 2020 #375 “Some issues of remuneration (cash security) of certain categories of employees, servicemen of the National Guard and the State Border Guard Service, officials of the State Customs Service, privates and officers of civil defense bodies and units, police officers ensuring the country’s activity for the period of quarantine established by the Cabinet of Ministers of Ukraine in order to prevent the spread of the COVID-19 acute respiratory disease caused by the SARS-CoV-2 coronavirus in Ukraine, and within 30 days from the date of its cancellation” on employees of children’s services and introducing amendments to the order of the Ministry of Social Policy of May 22, 2020 #321 “On approval of the list of positions of employees of social services of public/communal sectors that directly provide social services at the place of residence/stay of their recipients (at home)”. After all, employees of children’s services, are at risk of contracting COVID-19 in the line of duty, just like social workers. The raised issue is being worked out by the Ministry of Social Policy.

#### *Rights of children during the implementation of decentralization reform*

Due to inadequate provision of the activities of children’s services, which in accordance with the law are directly responsible for the protection of children’s rights, the right of children to social protection is violated.

Currently, 1,438 territorial communities have been revealed in Ukraine. According to the Ministry of Social Policy, as of December 31, 2020, only 525 of them had offices of children’s services (318 more than in 2019). This situation does not allow for statutory control over the living conditions of children in families, prompt response to child neglect, filing lawsuits for deprivation of parental rights, placement of orphans in family care and deciding on the placement of such children in the CSPR, etc., which leads to a violation of rights of children to protection from violence, sufficient standard of living, proper development, education.

**INADEQUATE PROVISION OF THE ACTIVITIES OF CHILDREN’S SERVICES VIOLATES CHILDREN’S RIGHT TO SOCIAL PROTECTION**

#### Example

In December 2020, residents of the community asked the Commissioner for help in resolving the difficult life situation in which a family with a two-year-old child from the Ternopil oblast found itself. It was revealed that due to the lack of permanent housing and improper performance of parental responsibilities by the mother of N., the child’s healthy development and socialization were at threatened.

The mother has repeatedly changed her place of residence within the oblast and does not have the skills to care for the child. At the same time, due to the administrative reform in the structure of the TC, where the family now lives, the children's service is absent, and the children's service of Zbarazh district was liquidated, the statutory direct conduct of cases on control over the living conditions of the child in the family, performance of the mother's duties, registration of the child in difficult life circumstances was not carried out.

Thanks to the Commissioner's prompt intervention, N's family was taken under the social support of the Zbarazh District Center for Social Services for Families, Children and Youth, and the minor's case will be transferred to the Children's Service of the Vyshnivets Village Council of Kremenets District, which was created as a result of the response of the Commissioner.

In order to address the issue of ensuring that the new territorial representations of state authorities and newly formed local governments perform functions to protect the rights and interests of children, in September 2020 a meeting was held in the Secretariat of the Commissioner with representatives of the Ministry of Social Policy and the Ministry for Communities and Territories Development of Ukraine. Following the meeting in September 2020, the Ministry of Social Policy addressed letters to the Ministry of Finance and the Ministry for Communities and Territories Development of Ukraine on the need to ensure the continuity of local policy on child protection and social protection in the context of decentralization of power and preservation of DSA and OSA children's services until the relevant territorial bodies of the National Social Service are formed.

Due to the lack of children's services at the level of the territorial community and the delay in the acquisition of powers by the National Social Service, there is a risk of losing functions in the field of children's rights protection.

As a result of the recommendations of the Commissioner, the Cabinet of Ministers of Ukraine in the recommendation list of structural subdivisions of district state administrations and district state administrations in the cities of Kyiv and Sevastopol provided for the children's service (Resolution of the Cabinet of Ministers of Ukraine of April 18, 2012 #606 (as amended on December 28, 2020)).

#### *Right of children to benefits*

In 2020, the Commissioner received reports of violations of the right to housing for orphans and children deprived of parental care. The monitoring showed that the practice of removing orphans and children deprived of parental care from the housing register after reaching the age of 23 continued. The Commissioner has repeatedly drawn the attention of the Cabinet of Ministers of Ukraine to this problem. In order to resolve this situation, during 2020 the Commissioner accompanied the drafting of the relevant law at all stages of approval and expressed support for such an initiative. As a result, the Verkhovna Rada of

#### **PERSONS FROM AMONG ORPHANS AND CHILDREN DEPRIVED OF PARENTAL CARE, AFTER REACHING THE AGE OF 23, ARE REMOVED FROM THE HOUSING REGISTER**

Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts Concerning the Protection of Housing Rights of Orphans and Children Deprived of Parental Care, Persons Among Them" dated December 16, 2020 #1095-IX, which provides the right of persons from among them, after reaching the age of 23, to receive housing from the social housing stock or, at their request, to receive monetary compensation for their living space.

*Right of children to protection in the event of detention of parents*

According to the results of the review of reports, as well as during the analysis of the legislation on the observance of the children's rights the Commissioner found that the issue of protection of the rights of the child is not settled if such measures of securing criminal proceedings as detention or safe custody are applied to his/her parents.

**THE ISSUE OF PROTECTION OF THE RIGHTS OF THE CHILD IN CASE HIS/HER PARENTS ARE DETAINED OR TAKEN INTO CUSTODY IS NOT SETTLED**

**Example**

At the end of December 2019, the People's Deputies of Ukraine asked the Commissioner to take measures to ensure and protect the rights of children of G., who was detained by prosecutors. At the time of G.'s detention, his young son was with him and witnessed his father's forcible detention. It was revealed that the child was left alone in the entrance hall near the concierge, who then took him home, where the second minor child of G. was. The mother of the children was abroad. Such actions by prosecutors and police officials put children at risk because they were left without adult care. In response, the Commissioner requested the Prosecutor General's Office and the National Police to investigate the facts, conduct official investigations and take disciplinary action against the perpetrators. In response, it was reported that prosecutors and police officials were not required to notify guardianship authorities of cases of children being left without parental care if their parents were detained.

In April 2020, the Commissioner addressed the members of the Verkhovna Rada Committee on Law Enforcement with a request to come up with a legislative initiative to amend the CPC of Ukraine and to oblige officials, investigators and prosecutors in case of detention or custody of a person to immediately notify guardianship authorities of the presence of a dependent child.

As a result of the Commissioner's initiative, a draft law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Protection of the Rights and Interests of a Child in Case of Detention or Custody of His/Her Parents" was registered in the Verkhovna Rada of Ukraine (Reg. No. 3603 of 05.06.2020). On September 3, 2020, this draft law was adopted in the first reading. It is currently being prepared for a second reading.

*The right to protection of children left without care*

In the processed reports the Commissioner revealed the facts of violation of the right to adequate social protection of children left without parental care.

This applies to children who reach the age of majority at the time of the proceedings in the courts on the deprivation of parental rights or taking away from parents without deprivation of parental rights. As a result, such children are deprived of state benefits and guarantees provided by law for orphans and children deprived of parental care and persons from among them.

**Example**

In September 2020, M. applied to the Commissioner. She reached the age of majority on April 19, 2020 and the court decision in absentia in the case of depriving her mother of parental rights came into force on May 11, 2020.

However, the legislation of Ukraine does not provide for the procedure for granting the guardianship authority the status of a child deprived of parental care who has reached the age of majority during court proceedings to deprive his/her parents of parental rights or take away from parents without deprivation of parental rights.

Given the above, in November 2020, the Commissioner addressed the Ministry of Social Policy with a recommendation to take measures to resolve this issue. Currently, the Ministry of Social Policy has informed about the development of a relevant normative act.

*Right of children to an adequate standard of living*

During 2020, the Commissioner received numerous reports of violations of children's right to an adequate standard of living. In particular, the applicants reported arrests by the State Enforcement Service of the accounts of citizens used to receive social benefits for children.

**Example**

In April 2020, S. appealed to the Commissioner in connection with the fact that in pursuance of the decision of the Korolyov Department of the State Executive Service in Zhytomyr of the Central-Western Interregional Department of the Ministry of Justice, a card account in Oschadbank JSC was seized. On this account the applicant received social assistance for the loss of a breadwinner for a child. As a result of the Commissioner's prompt response, cases of violation of children's rights to an adequate standard of living were stopped and the accounts of the applicants, arrest of which is prohibited, were unblocked.

An important factor in the formation and implementation of state policy on the protection of the rights and interests of children is the activities of the Interdepartmental Commission on Child Protection, which was revealed in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated August 3, 2000 #1200.

However, during 2020, the commission did not hold meetings. In addition, in accordance with the Regulations on the Interdepartmental Commission on Child Protection #1200, approved by the Cabinet of Ministers of Ukraine on August 3, 2000, the President of Ukraine submits an annual state report on the situation of children in Ukraine and the implementation of state policy in child protection. However, as of January 2021, on the official website of the Ministry of Social Policy only an annual state report on the situation of children in Ukraine for 2018 is published.

In January 2021 the Commissioner sent a petition to the Minister of Social Policy of Ukraine requesting to take measures aimed at ensuring the holding of meetings of the Interdepartmental Commission on Child Protection and preparation of the annual state report on the situation of children in Ukraine.

## RECOMMENDATIONS:

### **To the Ministry of Social Policy of Ukraine:**

1. To develop and submit to the Cabinet of Ministers of Ukraine a draft law of Ukraine “On Amendments to the Law of Ukraine On the State Budget of Ukraine for 2021” dated December 15, 2020 #1082-IX” in order to redistribute expenditures and introduce a subvention for the introduction of social work specialists at the level of districts, territorial communities and cities of regional significance.
2. To develop and submit to the Cabinet of Ministers of Ukraine a draft resolution on the settlement of the issue of legal and social protection of children who reach the age of majority during the court proceedings on deprivation of parental rights.
3. To take measures to resume the work of the Interdepartmental Commission on Child Protection.
4. To ensure preparation and dissemination of the annual state report on the situation of children in Ukraine in accordance with the Procedure for preparation and dissemination of the annual state report on the situation of children in Ukraine #200 approved by the Cabinet of Ministers of Ukraine on August 3, 2000.

**To the Ministry of Justice of Ukraine:** to strengthen control over activities of state executors when seizing debtors’ bank accounts in order to prevent the blocking of those accounts, which citizens use to receive social benefits.

**To the National Bank of Ukraine:** to provide appropriate explanations to banks on the inadmissibility of blocking all accounts of debtors, if among these accounts there are those on which seizure is prohibited.

### ***The right to parental care***

#### *Right of the child to parental care*

Similarly to previous years, the Commissioner identified cases of violation of the right of the child to parental care, maintenance of personal relations and contacts with both parents, which is enshrined in Article 9 of the UN Convention on the Rights of the Child.

In 2020, almost 30% (319 out of 1677) of reports to the Commissioner concerned the matters of resolution of disputes between parents regarding their children, as well as the right of the child to parental care.

Citizens filed their complaints to the Commissioner against actions of guardianship authorities in the course of consideration of disputes between parents regarding one of the parents’ participation in the upbringing of the child, establishment of the child’s place of residence, eviction of the child, deregistration of their place of residence, deprivation of parental rights, abstraction of the child from a person who maintains them without legal grounds, and collection of child support.

**Example**

In July 2020, citizen K. addressed the Commissioner about the Reshetylivka District State Administration in Poltava Oblast refusal to establish her participation in the child's upbringing, since at the time of her appeal, a lawsuit was opened to establish the child's place of residence.

Following the measures taken by the Commissioner, in August 2020 the guardianship authority issued an order that determined the procedure for the mother's participation in the child's upbringing and restored the right to unimpeded interaction with her son.

Despite the amendments made in the Law of Ukraine "On Enforcement Proceedings", dated June 2, 2016, № 1404-VIII, regarding the enforcement of court decisions of non-property nature, on establishment of opportunities to meet the child, to eliminate obstacles to meeting the child, as well as in the Code of Administrative Procedure that grant the guardianship authority the powers to prepare administrative reports on non-compliance with its decisions, the situation has not significantly improved.

The difficulties in enforcement of decisions pertaining to family disputes are connected with the fact that decisions by either the guardianship authority or the courts do not take into account the child's opinion, or do so in a formalistic manner.

At the initiative of the Commissioner, jointly with the OSCE Project Coordinator in Ukraine, monitoring of the observance of standards of child-friendly justice in non-criminal cases by courts and guardianship authorities was carried out and presented on June 1, 2020, at the online conference<sup>6</sup>.

The results of citizens' reports processing and monitoring visits made it possible to reveal a systemic problem, the essence of which is the fact that the legislation currently in effect does not stipulate a clear definition of the territorial competence of bodies of guardianship in preparation of administrative offense reports: either at the place of issuance of the decision on definition of participation in the upbringing of the child and interaction with them, or at the place of residence of that child, and in case when a violation was registered on a day off or during non-business hours.

**Example**

In November 2020, citizen M., a resident of Kyiv, addressed the Commissioner with an appeal against the decision of the Darnytsia DSA regarding the manner of his participation in the upbringing of his child and interaction with them, since the mother and the child changed their place of residence and relocated to Holosiyivsky District in Kyiv.

The Commissioner's proceedings in that case revealed that the legislation in effect at that time did not stipulate a clear definition of the territorial competence of bodies of guardianship in preparation of administrative offense reports: either at the place of issuance of the decision on definition of the manner of participation in the upbringing of the child and interaction with them, or at the place of residence of that child.

In order to resolve the problem, in December 2020 the Commissioner addressed the MSP regarding the need to make amendments in the regulations that govern the preparation of administrative report by guardianship authorities. At present, the MSP has been informed about the preparation of a draft law on amendments to Article 255 of the Code of Administrative Offenses of Ukraine.

<sup>6</sup>URL: <https://cutt.ly/lk0QHbs>.

Another issue that is high on the agenda is the reduction of the time period for consideration of disputes between parents regarding the child, because, according to experts, the “parental alienation syndrome” occurs within three months after one of the parents has been restricted in access to their child.

In the conditions of restrictions imposed due to the COVID-19 pandemic, the Commissioner received complaints about both or either parents’ right pertaining to their child being violated due to the refusal of the offices of children’s services and local bodies of executive power and local self-government to hold meetings of the commissions for the protection of the rights of the child.

#### Example

In April to August 2020, citizen B. and citizen G. addressed the Commissioner complaining against the inaction of the Kyievo-Sviatoshynska DSA in Kyiv Oblast, since their appeals to establish participation in the upbringing of their children had not been considered for more than three months, in connection with the due to quarantine restrictions.

Also, in March 2020 citizen N. complained to the Commissioner against the inaction of the Koziv DSA in Ternopil Oblast connected with delays in the consideration of his request to establish the ways to participate in his child’s upbringing.

Following the Commissioner’s intervention, the commission for the protection of the right of the child resumed its work. The issues raised by the complainants were considered.

#### *The right of the child to parental support*

In 2020, the Commissioner received 145 reports of violations of the right of the child to parental support, caused by inaction of the state enforcement officers in the execution of maintenance orders on the collection of alimony under a court order, which is 61% more than in 2019 (90).

**61% MORE REPORTS OF  
THE RIGHTS OF THE CHILD  
BEING VIOLATED THROUGH  
INACTION OF THE STATE  
ENFORCEMENT OFFICERS**

#### Example

In December 2020, citizen L. addressed the Commissioner regarding the improper performance of duties by employees of the Pechersk District Department of the State Enforcement Service in Kyiv under the Central Interregional Department of the MoJ (in the city of Kyiv), which entailed arrears in excess of UAH 200,000.

Following the Commissioner’s inquiry to the MoJ, the state enforcement agent issued an order on the sequestration of the debtor’s funds and a resolution on the seizure of his property and restraint on its alienation. Also, the state enforcement officer issued an order to impose a fine on the debtor in the amount of 50% of the amount of debt, equalling UAH 86,763.93, and filed a notice of the debtor having committed a criminal offense under Article 382 of the Criminal Code of Ukraine.

The MoJ initiated bringing the state enforcement officer to responsibility for violation of the legal requirements.

In order to protect the right of children to proper maintenance by their parents, the Commissioner appealed to the MoJ on the status of enforcement of court decisions on child support recovery. According to the MoJ, as of December 31, 2020, 513.3 thousand enforcement documents on child support collection were in enforcement action by the state enforcement authorities. The number of documents for which the total amount of arrears exceeds 3 months' worth of payments is 171.1 thousand documents; 4 months – 130.8 thousand; 6 months – 87.6 thousand, which is more than 75.9% of the total enforcement documents connected with the payment of child support. This situation testifies to the systemic nature of the problem and to the need for strengthening the MoJ control over the activities of the state enforcement officers.

*The right of the child to a name, citizenship and the right to know their parents*

In connection with the quarantine restrictions caused by the COVID-19 pandemic in Ukraine and the closure of the state border, violations of the right of the child to a name and citizenship, as well as the right to know their parents and the right to care for them, were revealed.

Despite the fact that Article 33 of the Constitution of Ukraine guarantees freedom of movement and the right to leave the territory of Ukraine without restrictions, foreign parents were unable to enter Ukraine in order to reunite with their children born through the use of assisted reproductive technologies, and return to their countries.

Example

Monitoring of social networks on May 13, 2020, revealed that 51 children, born in surrogate motherhood by foreign citizens, were staying at the Venice Hotel (Kyiv).

The monitoring visit to the Venice Hotel revealed that 15 children were with their parents, and 36 – without their parents, under the supervision of the hotel staff. All children were born by surrogacy on the basis of agreements between foreign couples and the Biotexcom LLC. Also, statements were presented, made by foreign citizens who had been specified in the birth certificates as their parents, addressed to the management of the clinic, regarding instructions to take care of the child for the duration of the lockdown and until the possibility of entry into Ukraine has been restored.

In order to resolve the humanitarian situation and assist in resolving the issue with both the border crossing and with the obtaining travel documents for children, on May 14, 2020 the Commissioner held a working meeting with representatives of the Ministry of Foreign Affairs and the State Migration Service and prepared a respective mechanism, in particular, by way of the foreign parents addressing the Commissioner.

Over the duration of the quarantine period, 176 appeals from foreign citizens of 24 countries were received. Due to the intervention of the Commissioner, all children reunited with their parents and received the respective documents.

In the course of implementation of measures aimed at restoring foreign citizens' right to reunite with their children, the need was revealed for legislative regulation of the use of assisted reproductive technologies, including surrogate motherhood, a list of rights and responsibilities of the parties in surrogacy, the establishment of responsibility for violations in the area of assisted reproductive technologies, etc.

In connection with the above, on May 14, 2020, the Commissioner addressed the Prime Minister of Ukraine regarding the need to conduct an in-depth analysis of the situation connected with the birth of children through assisted reproductive technologies and improve the legislation that governs that area.

At present, working groups have been established within the Committee of the Verkhovna Rada of Ukraine on Public Health, Medical Assistance and Medical Insurance and the Ministry of Health, of which the Commissioner is a member, to develop the legislative changes.

The Commissioner also supported the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Use of Assisted Reproductive Technologies” (Reg. № 3488, dated 15.05.2020), which envisages strengthening liability for violations of legislation in the area of reproductive technologies, and strengthening the requirements to economic activity in the area of health care.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite consideration and adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Use of Assisted Reproductive Technologies” (Reg. № 3488, dated 15.05.2020)).

**To the Cabinet of Ministers of Ukraine** – develop and submit to the Verkhovna Rada of Ukraine a draft law on the use of assisted reproductive technologies.

### **To the Ministry of Social Policy of Ukraine:**

1. Resolve the issue of ensuring the observance of the legislation by the officials of the guardianship authorities in the course of preparation of materials on administrative offenses.
2. Take measures to upgrade the qualifications of employees at offices of children’s services and representatives of guardianship authorities.
3. Provide methodology support for the activities of local bodies of executive power and bodies of local self-government to implement the principle of equal rights of parents in cases involving the interests of the child, as well as to establish the opinion of the child in the course of resolution of matters related to their life.

**To the MoJ of Ukraine** – strengthen control over the activities of state enforcement officers in order to properly implement decisions on child maintenance obligations.

### **3.2. Rights of the child in alternative care system**

In 2020, the Commissioner exercised parliamentary control over the observance of the right of the child in the alternative care system.

According to the intelligence data of the MSP, as of December 31, 2020, Ukraine had 68,597 orphans and children deprived of parental care, which amounts to 0.9% of the total number of children in Ukraine (7,533,930 persons). Of those, 64,019 children were brought up in family-type forms of rearing (guardianship, care – 49,011, family-type children’s home, foster family – 14,510) (Annex 3.2). The share

of coverage of orphans and children deprived of parental care in family-type forms of rearing has remained stable: in 2020 – 92.6%, in 2019 – 92.0%

In order to respect the rights of children in difficult life circumstances, and orphans and children deprived of parental care living in institutions, the Commissioner developed “Guidelines for monitoring the observance of the rights of children in the alternative care system”<sup>7</sup>, which have been communicated to all regional representative offices of the Commissioner as guidance in work.

In 2020, the monitoring of the Commissioner covered 19 regions (*Vinnitsia, Volyn, Dnipropetrovsk, Zakarpattia Oblast, Ivano-Frankivsk, Zhytomyr, Zaporizhyya, Kirovohrad, Kyiv, Luhansk, Lviv, Mykolayiv, Odesa, Poltava, Khmelnytsky, Ternopil, Chernivtsi, Chernihiv Oblasts and the city of Kyiv*), in the course of which, the activities of 52 facilities were inspected: offices for children’s services, centers of social services for families, children and youth, and institutions where children stay.

Also, in 2020, in the course of the monitoring visits the Commissioner paid special attention to the observance of the rights of children placed in privately owned social protection institutions. The monitoring covered 16 such institutions.

#### *The rights of children placed in social protection institutions*

The monitoring results recorded cases of violations of the right of the child to family upbringing, to social protection, and to medical care. When children are referred to privately owned institutions,

#### **WHEN CHILDREN ARE REFERRED TO PRIVATELY OWNED INSTITUTIONS, OFFICES OF CHILDREN’S SERVICES EXERCISE ALMOST NO CONTROL OVER THE CONDITIONS OF THEIR UPBRINGING AND DEVELOPMENT**

offices of children’s services exercise almost no control over the conditions of their upbringing and development for the duration of children’s stay in those institutions; orphans and children deprived of parental care are under the guardianship/care of heads of institutions, which is not consistent with the law; the work of the institution is not coordinated with the centers of social services at the place of residence of the

parents of the children staying in the institution. In the overwhelming majority of cases, the Charters of the institutions have no approval by the offices of children’s services, as stipulated by the Law of Ukraine “On Bodies and Services for Children and Special Institutions for Children”, dated January 21, 1995 № 20/95-VR. Based on the monitoring results visits, letters were sent to the monitored facilities and the bodies of executive power involved, as well as 3 requests of the Commissioner (*to Darnytska and Sviatoshyńska District State Administrations in the city of Kyiv, and to the Executive Committee of Ivano-Frankivsk City Council*) regarding elimination of the violations revealed.

#### Example

In March 2020, a monitoring visit to the “Nova Nadiya” Center for Social Support for Children and Families (village of Kolentsi in Kyiv Oblast) found that their constituent documents had not been approved by the Office of Children’s Service, which is inconsistent with the requirements of the Standard Regulations on a center of social and psychological rehabilitation of children, as approved by the Resolution of the Cabinet of Ministers of Ukraine, dated January 28, 2004, № 87.

<sup>7</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/metodichn%D1%96-rekomendacz%D1%96%D1%97-shhodo-provedennya-mon%D1%96toringu-dotrimannya-prav-d%D1%96tej-u-sistem%D1%96/>

In order to ensure the proper functioning of the Center, a letter was sent to the Office of Children's Service in Ivankiv District of Kyiv oblast demanding that the constituent documents be properly prepared, and control over its activities ensured.

As a result of the response measures taken by the Commissioner, the Charter of the institution was brought to compliance with the requirements of the legislation.

In the conditions of the quarantine restrictions imposed by the Cabinet of Ministers of Ukraine in connection with the COVID-19 pandemic, remote inspections of 80 institutions of social protection of children in 24 Oblasts of Ukraine and the city of Kyiv (*4 shelters for children and 76 centers of social and psychological rehabilitation of children*) were carried out to examine the observance of the right of the child to family upbringing. In that connection, observance of the time limits to grant the status of children left without parental care was considered as well.

#### Example

A remote inspection visit, carried out in April and May 2020, revealed that in the Donetsk Oblast, 18 children stayed in the centers of social and psychological rehabilitation of children beyond the stipulated period. Those children had not been granted the status of being deprived of parental care and they were outside the family environment.

After the information on violations of the rights of children placed in the CSPRC was communicated to the Head of the Donetsk MCA, the Commissioner was informed that the guardianship authorities granted 11 children the status of a child deprived of parental care, and measures were taken to place those children in family-type establishment. Besides, regarding 5 children, offices of children's services were preparing requests to grant those children the respective status. Two children were returned to their mothers, and the petition for deprivation of their parental rights were withdrawn.

The inspection gathered information on violations of the rights of children in such institutions and in respect of whom the courts consider depriving their parents of parental rights, or their abstraction from their parents, without deprivation of parental rights<sup>8</sup>.

Based on the information on 902 children processed, it was revealed that the guardianship authorities filed lawsuits for the abstraction of children from their parents in relation of 122 children (13.5%); for deprivation of parents of parental rights – in relation of 780 children (86,5%).

Courts fail to comply with the requirements regarding the time limits for lawsuit consideration, as stipulated in Article 210 of the CPC of Ukraine, in cases of protection and restoration of violated rights of 674 children, that is, almost 75% of children staying in social protection institutions (Annex 3.3).

Social protection institutions had 354 children, staying there for more than 9 months, with the guardianship authorities failing to take measures to grant the status of a child deprived of parental care for two months. Out of the 122 children in whose interests lawsuits were filed for abstraction from their parents, lawsuits regarding 21 children (i.e. 17%) were filed without compliance with the requirements of Part two in Article 170 of the FC of Ukraine.

<sup>8</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-v%D1%96dreaguvala-zatyaguvannyam-sudami-ta-organami-op%D1%96ki-sprav-shhodo-zaxistu-prav-d%D1%96tej/>.

The summary of the monitoring carried out was sent to the MSP, the MoJ, the Supreme Court and the Heads of Oblast State Administrations to take response measures within the scope of their competence.

According to the results of the Commissioner's interventions, as of the end of 2020 the situation in children's shelters and CSPRC changed. At the same time, out of the 902 children, 183 children stay there in excess of the revealed time limit: regarding 171 children, courts consider lawsuits for deprivation of their parents' parental rights, and regarding 12 children, forms of their placement are considered.

At the same time, according to the information provided by the Supreme Court, the main reason for the lengthy consideration of lawsuits is the problem of unfilled positions of judges in courts of the first and appellate instance.

#### Example

A remote inspection in April and May 2020 revealed that, way back in 28.08.2018, the guardianship authority of the Novohrodivka City Council in Donetsk Oblast filed a lawsuit with the Novohrodivka City Court of Donetsk Oblast for deprivation of the mother of children of her parental rights and collect child maintenance from her. However, as of 2020, the Novohrodivka City Court of Donetsk Region did not consider the case, since the court was inactive since September 2018 (no judge was appointed).

Based on the results of the response to that and other similar facts, when the rights of the child to fair trial within reasonable time frames were violated, the Commissioner sent a letter to the SCoJ requesting that measures be taken to ensure proper staffing of the courts of first and appellate instance.

In response, the SCoJ informed that in 2020 a decision was made to submit 530 nominees to the President of Ukraine to be appointed to the positions of judges; 42 reports of the SJA of Ukraine on the need to second judges to other courts were considered, and 34 decisions were made to second judges to other courts of the same level and specialization (as a temporary assignment).

Another reason for violation of the right of children to family upbringing is the extended stay of children in institutions of social protection of children, which is caused by the slow development of the service of upbringing and rehabilitation of children in the family of foster carers.

#### **EXTENDED STAY OF CHILDREN IN INSTITUTIONS OF SOCIAL PROTECTION OF CHILDREN, CAUSED BY THE SLOW DEVELOPMENT OF THE SERVICE OF UPBRINGING IN THE FAMILY OF FOSTER CARERS**

In 2020, 54 foster families were created. In total, as of the end of 2020, 21 regions of Ukraine (*except Volyn, Zakarpattia, and Khmelnytsky Oblasts*) had 168 foster families with 936 children in those, while in 2019 their number was 510 persons.

In that connection, the issue of insufficient awareness raising campaign on the development of such a service, search for foster carer candidates, foster carers unwilling to provide foster care for a child with a disability, etc., remains high on the agenda.

## RECOMMENDATIONS:

### To the Ministry of Social Justice of Ukraine:

1. Provide regular qualification upgrading of employees of services for children, social work professionals, and other employees who provide social support to children.
2. Take measures to ensure regular supervision over the conditions of maintenance and upbringing of children in facilities for institutional care and education, quality of services to children and families raising orphans and children deprived of parental care, and persons in those cohorts.
3. Ensure control over the conditions of maintenance and upbringing of children who are placed in social protection institutions of private ownership.

### 3.3. Rights of the child in the context of an armed conflict

The ongoing armed conflict on the territory of Ukraine makes children suffer violations of their guaranteed and enshrined rights.

Within the scope of the Commissioner's parliamentary control regarding the situation with ensuring the right of children who are internally displaced persons to be granted the status of a child affected by hostilities and armed conflicts, as well as the right to free meals, health rehabilitation and social protection, in 2020, monitoring visits were carried out to 25 offices of children's services and centers of social services for families, children and youth in 14 regions of Ukraine (*Vinnytsia, Zhytomyr, Luhansk, Mykolayiv, Ternopil, Kharkiv, Cherkasy, Chernihiv, Chernivtsi Oblasts – 1 to each; Donetsk and Kherson Oblasts – 2 to each; Kyiv, Dnipropetrovsk Oblasts and the city of Kyiv – 4 to each*).

Also, 5 monitoring visits were carried out to entry-exit checkpoints: to the Novotroitske EECP, Stanytsia Luhanska EECP, Chonhar EECP, and two times – to Kalanchak EECP.

#### *Right of children to be granted the status of a child affected by hostilities and armed conflict*

The monitoring revealed violations of the right of children to be granted the respective status due to guardianship authorities' unequal application of the provisions of the Procedure for granting the status of a child affected by hostilities and armed conflicts, approved by Resolution of the Cabinet of Ministers of Ukraine, dated April 5, 2017 № 268 (hereinafter referred to as "the Procedure № 268"). In particular, in respect to granting that status to children born in the government-controlled areas of Ukraine.

#### Example

The September 2020 monitoring visits revealed that the Sviatoshynsky District State Administration in the city of Kyiv had passed 4 decisions to deny granting that status since the children were born in the city of Kyiv, and the Druzhkivka City Council denied that status to 14 children since they were born after October 2014. At the same time, guardianship authorities in other regions granted the status of a child affected by the armed conflict to children born in the government-controlled areas of Ukraine after the ATO had been launched.

At the same time, the Kyevo-Sviatoshynska DSA (Kyiv Oblast) granted the status of a child affected by hostilities and armed conflicts to an internally displaced person from the Autonomous Republic of Crimea, which is not envisaged in the Procedure № 268.

The Commissioner addressed the MSP requesting that measures be taken to unambiguously apply the legislative requirements in respect to granting the status of a child affected by hostilities and armed conflicts. The MSP is currently working on amendments to the Procedure № 268.

Failure to observe the time limits for consideration of applications for granting the status of a child affected by hostilities and armed conflicts, as defined by the Procedure № 268, was revealed (*Holosiivsky, Dniprovsky and Sviatoshytsky Districts in Kyiv, Boryspil District in Kyiv Oblast*).

#### Example

In September 2020, a monitoring visit to the Service for Children and Families of the Holosiivsky District State Administration in the city of Kyiv revealed that on March 2, 2020, a child's legal representative O. submitted an application and documents to grant the child the status of a victim of hostilities and armed conflicts. The respective decision, however, was made by the guardianship authority only on April 24, 2020, in violation of the thirty-day period stipulated by law.

Responding to the situation, the Commissioner requested that the Holosiivsky District State Administration in Kyiv ensure compliance with the Procedure № 268 and take timely decisions on granting the status of a child affected by hostilities and armed conflicts.

In the course of consideration of the matter of granting the status of a child affected by hostilities and armed conflicts, documents not required by law were demanded to be produced, such as certificates from educational institutions, character references for children (*Kozelets District in Chernihiv Oblast, Dniprovsky District in Dnipropetrovsk Oblast, Sviatoshytsky District in the city of Kyiv*).

Also, cases were revealed when the right of children to social protection was not observed in connection with shortcomings in the activities of offices of children's services regarding the registration of that category of children as persons in difficult life circumstances, in accordance with the requirements of the Procedure for social protection of children in difficult life circumstances, including children who became victims of abuse, as approved by the Resolution of the Cabinet of Ministers of Ukraine, dated June 1, 2020, № 585 (*Kozelets District of Chernihiv Oblast, Dniprovsky District in the city of Kyiv*).

#### Example

In October 2020, a monitoring visit to the Office of Children's Service under the Kozelets DSA in Chernihiv Oblast revealed that eight children, for whom the guardianship authority had granted the status of a child affected by hostilities and armed conflicts, were not registered as children in difficult life circumstances.

As a result of the measures taken by the Commissioner in November 2020, all children were registered and received social services. The right of children to social protection was reinstated.

A significant number of children living in non-government-controlled areas are also entitled to the status of a child affected by hostilities and armed conflict, but are unable to apply for such status. According to the results of the data analysis of the Unified Information Database on Internally Displaced Persons, as of December 30, 2020, 1,459,131 persons were registered as having relocated from the temporarily occupied territories in Donetsk and Luhansk Oblasts and the Autonomous

Republic of Crimea, of whom 186,739 children have grounds to be granted the status of a child affected by hostilities and armed conflicts. At the same time, only 56,653 children, or 30.3%, received that status (Annex 3.4).

According to the MSP, out of all children who were granted the status of victims of hostilities and armed conflicts, 93 were injured, contused or maimed; 1 child – due to physical and sexual violence, and 56,559 suffered psychological violence.

At the same time, only 21% of children who were granted the status are covered by social services, which testifies to insufficient work in relation to support of families with children affected by hostilities and armed conflicts.

Monitoring visits to Novotroitske, Stanytsia Luhanska, Chonhar and Kalanchak EECs revealed that none of those had conditions for stay of parents with young children. Besides, problems with the provision of certified drinking water, etc. were revealed. Following the results of those visits, the Commissioner addressed, in particular, to the MoR (Chonhar, Kalanchak EECs) and to the Heads of Luhansk and Donetsk OSAs (Stanytsia Luhanska, Novotroitske EECs) with recommendations on measures to establish mother and child rooms at the EECs.

The results of the Commissioner's monitoring of the rights of children in armed conflict were summarized on November 20, 2020, in an online meeting of the Coordination Council for the Rights of the Child and the Family, attended by representatives of central bodies of executive power and heads offices for children's services<sup>9</sup>.

The summarized information on the monitoring results was sent to the MSP to take measures and provide offices for children's services with methodology recommendations regarding activities in relation to children affected by hostilities and armed conflicts.

### *Right to education*

Regarding the right to education of children staying in the armed conflict area, it is necessary to note that in the academic year 2019/2020, the school facilities located in shelling risk areas along the contact line next to the occupied territories, were still inadequately equipped or had no shelter against shelling or other large-scale assaults.

#### Example

In March 2020, media monitoring revealed information about warfare being waged in the vicinity of an educational institution in the city of Maryinka, Donetsk Oblast, which caused the evacuation of children.

Responding to the situation, the Commissioner addressed the Head of Donetsk OSA, Head of the Oblast MCA, requesting to create safe conditions for children and staff in schools in the city of Maryinka. It was informed that the OSA monitored the activities of institutions located near the contact line and that security measures are being taken in respect to students and staff; the institutions developed warning and alert plans, and evacuation plans in case of emergency situations.

<sup>9</sup> URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/sogodn%D1%96-v%D1%96dbulosya-zas%D1%96dannya-koordinacz%D1%96jno%D1%97-radi-z-pitan-dotrimannya-prav-ditini-ta-s%D1%96m%D1%97/>.

Despite the fact that on November 20, 2019, Ukraine acceded to the Safe Schools Declaration, its provisions have not yet been implemented in the national legislation.

In pursuance of the recommendations provided by the Commissioner to ensure the implementation of the provisions of the Safe Schools Declaration, the MoES drafted an Order of the Cabinet of

**PROVISIONS OF THE SAFE SCHOOLS DECLARATION HAVE NOT BEEN IMPLEMENTED IN THE NATIONAL LEGISLATION**

Ministers of Ukraine “On approval of the Action Plan for the implementation of the Safe Schools Declaration”. At present, the draft is at the stage of coordination with the stakeholders.

The introduction of measures in connection with the COVID-19 pandemic limited the possibilities for unrestricted crossing of the contact line and entry into the Ukrainian territory for persons from non-government-controlled areas. In its turn, that entailed risks of the right of children to education being violated, since it made their admission to higher education institutions in Ukraine impossible.

In March 2020, the Commissioner addressed the MoES with the aim of preventing violations of the right to education of children who live in the temporarily occupied territories of the Autonomous Republic of Crimea and Sevastopol, as well as in Donetsk and Luhansk Oblasts, and to ensure conditions for those children to take the final state certification and obtain documents on the completion of general secondary education.

At the initiative of the President of Ukraine, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine “On Higher Education” regarding specific features of admission to higher education institutions for persons from the temporarily occupied territories in the Autonomous Republic of Crimea and Sevastopol, and Donetsk and Luhansk Oblasts”, dated July 3, 2020, № 744-IX, which stipulated that possibilities for admission to higher educational institutions on preferential terms are to be granted to both persons from the temporarily occupied Crimea and to those residing in the occupied territories of Donbass and residential areas along the contact line. Children from the temporarily occupied territories were granted the opportunity to enter any higher education institution without passing the EIE.

Those changes produced a positive effect on the dynamics of admission of those cohorts of children to universities. Compared to 2016, two times as many people entered higher education institutions through the “Crimea-Ukraine” and “Donbass-Ukraine” educational centers; specifically, 381 people were enrolled through the “Crimea-Ukraine” center, and 1,572 people – through the “Donbass-Ukraine” center.

The state provides such entrants with social scholarships, free textbooks and free access to Internet and database systems in the state and municipal educational institutions.

Also, IDPs who enter a higher education institution on a contract basis may apply for a long-term preferential loan.

*The right of children to free meals*

Proceeding from consideration of citizens’ complaints and the exercise of parliamentary control, the Commissioner revealed violations of the right to free meals for IDP children and those having the status of a child affected by hostilities and armed conflicts.

In May 2020, amendments to the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”, dated October 20, 2014, № 1706-VII, came into force, which confirmed the right to free meals for IDP children and those having the status of a child affected by hostilities and armed conflicts studying at preschool, secondary education and vocational schools, regardless of their line of subordination, type and form of ownership.

At the same time, the Procedure governing the organization of catering in educational institutions, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated February 2, 2011 № 116, does not envisage provision of free meals to those for such children, instead delegating decision on those matters to bodies of local self-government.

However, not all bodies of local self-government envisage expenditures from their own budgets for those purposes, so the right of children to free meals, guaranteed by law, remains unrealized. Appeals in connection with that issue were received by the Commissioner from Kyiv Oblast (city of Irpin), and Luhansk Oblast (cities of Severodonetsk, Lysychansk, Svatove).

#### Example

In December 2020, citizen Yu. appealed to the Commissioner regarding the violation of the law-guaranteed right to free meals for his child, who studied at a preschool educational institution in the city of Irpin. The applicant questioned the legitimacy of charges collected for the meals of his child who is registered as an IDP. Requested by the Commissioner, the issue of meals for IDP children will be considered at the next regular session of the Irpin City Council.

In September 2020, the Commissioner addressed the MoES requesting that the issue of ensuring the right to free meals for IDP children and children who have the status of victims of hostilities and armed conflicts be regulated.

At present, the Cabinet of Ministers of Ukraine has developed a draft Resolution “On approval of standard procedures for meals in educational institutions and in children’s health and recreation facilities”, which lists categories of students who, in accordance with the legislation, have the right free meals, including IDP children and children who have the status of a child affected by hostilities and armed conflicts, and is currently considered by the authorities concerned.

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – expedite the adoption of the Resolution of the Cabinet of Ministers of Ukraine “On approval of standard procedures for meals in educational institutions and in children’s health and recreation facilities”, in order to regulate the right to free meals for children in the category of internally displaced persons or children who have the status of a child affected by hostilities and armed conflicts.

#### **To the Ministry of Social Justice of Ukraine:**

1. Develop and, following the revealed procedure, submit to the Cabinet of Ministers of Ukraine its amendments to the Procedure to grant the status of a child affected by hostilities and armed conflicts, approved by the Cabinet of Ministers of Ukraine dated April 5, 2017 № 268, in order to prevent

guardianship authorities from ambiguous application of its provisions in relation to the granting the status to children born in the government-controlled areas and registered as internally displaced persons.

2. Develop and communicate to the guardianship authorities and offices for children's services methodology recommendations on the observance of the rights of children who have grounds to be granted the status of a child affected by hostilities and armed conflicts, and children whose status was revealed.

**To the Ministry of Education and Science of Ukraine** – develop and submit for consideration to the Cabinet of Ministers of Ukraine an Action Plan for the implementation of the Declaration on School Safety.

### 3.4. Rights of children in the juvenile justice system

Within the scope of parliamentary supervision over the observance of the rights of children in custody, remote inspections were carried out to 13 pre-trial detention centers in 2020: *in Zhytomyr, Zaporizhyya, Volyn, Lviv, Donetsk, Mykolayiv, Rivne, Luhansk, Sumy, Kherson, Khmelnytsky, Cherkasy, and Chernihiv Oblasts.*

The subject matter of the inspections was the observance of children's right to education; the right to pre-trial investigation in criminal proceedings within reasonable time limits; the right to access to legal aid; the right to citizenship; the right to communicate with legal representatives; the right to humane treatment and respect for their dignity.

#### *The right of children to pre-trial investigation within reasonable time limits*

The remote inspections and monitoring visits revealed violations of minors' rights to pre-trial investigation in criminal proceedings within reasonable time limits, and prompt decision-making by the competent authorities; as well as to access to legal aid.

In particular, a lawyer only once visited 9 minors held in pre-trial detention centers for more than six months (*the Zaporizhyya SIZO State Institution; the Chernihiv SIZO SI – 1 child in each; the Lutsk SIZO SI; the Lviv SIZO SI – 2 children in each; the Mariupol SIZO SI – 3 children*). Also, a lawyer never visited 11 juveniles held in pre-trial detention centers for over six months (*the Zaporizhyya SIZO SI; the Lutsk SIZO SI – 1 child in each; the Lviv SIZO SI; the Mykolayiv SIZO SI; the Sumy SIZO SI – 2 children in each; the Starobilsky SIZO SI – 3 children*).

It was revealed that the number of minors held in pre-trial detention centers for more than a year was visited by lawyers only once was 5 persons (*in the Zaporizhyya SIZO State Institution, the Lutsk SIZO SI; the Mariupol SIZO SI – 1 child in each; the Lviv SI – 2 children*). In the Lviv SIZO SI, a minor was held for more than two years, and his lawyer had never visited him.

#### Example

The remote inspections conducted in October 2020 revealed that the minor person K. was placed in the Lviv SIZO SI in September 2018. However, for the two years that the child was held behind bars, he was never visited by a lawyer. Minors Yu. and K. were placed in a pre-trial detention center in February and April 2019, respectively. The children have now been in custody for over a year, and lawyers only had one meeting with the minors.

In order to ensure the right of minors to pre-trial investigations in criminal proceedings within reasonable time limits, as well as to restore the right of children to access to legal aid, the Commissioner addressed the MoJ and the Prosecutor General.

In its response, the MoJ informed that an investigation into the improper provision of free legal aid to minors will be conducted in the nearest future. The Prosecutor General's Office reported the situation to the Supreme Court and the High Council of Justice.

In her turn, the Commissioner also addressed the SCoJ stating the need to staff courts with judges, which is a factor that causes delays in the consideration of cases.

#### *The right of children to be issued a passport of a citizen of Ukraine*

The remote inspections also revealed facts of violations of the right of minors to citizenship, in relation to passportization of minors held in pre-trial detention centers.

Ensuring the right of children to citizenship directly affects the realization of another right of the child – the right to education. The absence of a passport of a citizen of Ukraine is an obstacle for the minor to obtain a certificate of complete general secondary education, as well as makes it impossible to enter institutions of vocational and higher education, etc.

Violation of the right of minors held in pre-trial detention centers to be issued a passport of a Ukrainian citizen is caused by the SIZO administrations lacking authority to assist minors, receiving a passport for the first time, in the issuance of the said document.

#### Example

Remote inspections conducted in October 2020 revealed that out of 38 minors, 10 did not have passports. In particular, 5 children in the Lviv SIZO SI did not have a passport; in the Lutsk SIZO SI – 2 children; in the Mariupol SIZO SI – 3 children. In order to ensure the right of children to be issued a passport of a citizen of Ukraine, in December 2020, the Commissioner developed proposals regarding amendments in the Law of Ukraine "On Pre-Trial Detention", dated June 30, 1993, № 3352-XII (pertaining to protection of the rights and interests of minors to whom a restrictive measure in the form of detention was applied), which were communicated to the Committee of the Verkhovna Rada of Ukraine on Law Enforcement for the purpose of initiating their submission by the People's Deputies of Ukraine to the Verkhovna Rada of Ukraine for consideration.

#### *The right of children to communicate with legal representatives*

In the course of the monitoring visits, the staff of the Secretariat of the Commissioner also revealed violations of the right of the child to communicate with their legal representatives, which was caused by introduction of quarantine restrictions.

#### Example

During a monitoring visit to the Lviv SIZO in July 2020, the minors held in custody complained about the administration having banned short-term visits in connection with the prevention of the spread of the coronavirus disease. Those actions deprived children of the opportunity to communicate with their relatives and friends. Following the Commissioner's intervention, the Order of the Ministry of Justice, dated July 24, 2020, №2541/5 made amendments in the Order, dated April 2, 2020 № 1308/5, which permitted convicted persons and those in custody in penal institutions and pre-trial detention centers to have short-term meetings with their relatives in closed conditions (through a solid glass partition and with the use of an intercom device).

*The right of children to proper conditions in detention*

Remote inspections and monitoring visits revealed violations of the requirements, stated in the second paragraph of part two in Article 8 of the Law of Ukraine “On Pre-trial Detention”, dated June 30, 1993, № 3352-XII, in relation to ensuring conditions of holding children in custody separately from adults, which was a persistent occurrence in the Kyiv SIZO SI.

**Example**

In October 2020, a monitoring visit to the Kyiv SIZO SI revealed a minor I., born in 2004, who had a child younger than three years old, was held together with an adult U., born in 1992.

In order to eliminate that violation, the Commissioner addressed the MoJ, which responded that the situation was caused by the conflict between part one and the second paragraph in part two of Article 8 of the Law №3352, which prohibits keeping minors in solitary confinement, and at the same time – holding minors together with adults. Therefore, in cases where a minor is placed in a pre-trial detention center alone, it is impossible to ensure their rights at the same time taking into account the requirements of part one and the second paragraph in part two of Article 8 of the Law № 3352.

The need to eliminate that legal conflict was emphasized in the 2019 Annual Report on the state of observance and protection of human and civil rights and freedoms in Ukraine<sup>10</sup> recommendation were issued to the MoJ to develop and, following the revealed procedure, submit to the Verkhovna Rada of Ukraine, a draft law amending Article 8 of the Law of Ukraine “On Pre-trial Detention” in order to resolve the issue of clarifying the conditions of detention of minors in pre-trial detention. This issue, however, is yet to be resolved.

The Commissioner has repeatedly received information from parents and other legal representatives of children in contact with the law, in particular, regarding the violation of their procedural rights as suspects, accused, victims or witnesses of criminal offenses.

**Example**

In March 2020, mother of Z. complained to the Commissioner against actions of pre-trial investigation officers regarding the violation of the right of her child, detained on suspicion of committing a crime, to protection from torture and cruel, inhuman or degrading treatment or punishment, as guaranteed by Article 28 of the Constitution of Ukraine.

Proceeding from the Commissioner’s intervention, the Prosecutor General’s Office and the SBI TA, located in the city of Poltava, informed in May 2020 that a decision was passed to enter the information into the URPTI under part two of Article 365 of the Criminal Code of Ukraine (Excess of authority or official powers by a law enforcement officer). The pre-trial investigation is underway.

**THE COMMISSIONER INITIATED A STUDY ON THE OBSERVANCE OF THE RIGHT OF THE CHILD IN CRIMINAL PROCEEDINGS**

In order to establish the systemic nature of the problems in observance of procedural rights of children, the Commissioner initiated a study on the observance of the right of the child in criminal proceedings and

<sup>10</sup> URL: <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>.

cases of administrative offenses, including procedural rights of a child as a witness, victim, suspect or accused.

The said initiative was implemented jointly with the OSCE Project Coordinator in Ukraine within the framework of the “Supporting Civil Society Trial Monitoring” project. The subject-matter of the study was procedural matters of interrogation of a child as a party in criminal proceedings, ensuring the right to a lawyer for children in contact with the law, consideration of the opinion of the child as a party in criminal proceedings, when making a decision, etc.

In September to December 2020, the monitoring covered 7 regions (Khmelnitsky, Luhansk, Lviv, Kyiv, Ternopil, Chernihiv, and Dnipropetrovsk Oblasts, and the city of Kyiv). Due to the quarantine restrictions imposed in connection with the COVID-19 pandemic, monitors were able to attend 13 court hearings, while 29 court sessions, planned to be attended, were not held. Interviews were conducted with 70 individuals, including local court and Supreme Court judges, lawyers, including free legal aid lawyers; prosecutors, police officers, guardianship officers, psychologists, and human rights defenders. More than 50 court decisions in criminal cases and cases of administrative offenses were analyzed.

The study has demonstrated that over the past ten years, positive developments have occurred in ensuring the rights of the child within the criminal justice system; in particular, juvenile prevention units have been revealed at the police, children’s (juvenile) investigators, prosecutors and judges have been introduced. At the legislative level, there exist special procedures to consider cases involving children, and legislation on protecting children from domestic violence, bullying, sexual exploitation, and sexual violence has been improved.

Using the green room methodology to interrogate children becomes a widespread practice; the possibility of remote interrogation by video conference was introduced; free secondary legal aid centers have been revealed; mediation in criminal cases of children to remove them from the criminal justice system has been proven to be a successful practice; training on matters of child-friendly justice has become more common.

At the same time, the monitoring revealed the following violations of the rights of the child in criminal proceedings and cases of administrative offenses: delays in the consideration of cases involving children, contrary to the requirements of part four in Article 28 of the CivPC of Ukraine; the interrogation of children may be carried out by a person who does not have sufficient special training for those purposes; lack of specialization of judges in courts; low level of training of investigators, interrogating officers, prosecutors, lawyers; failure to engage psychologists in working with children.

In proceedings initiated under Article 1261 of the Criminal Code of Ukraine (Domestic Violence), children are not granted victim status and no representative is appointed; and most court cases involving children are heard in open sessions, which may jeopardize their right to privacy. In most cases, the right of the child to be heard is ensured in criminal proceedings but ignored in administrative proceedings.

It is necessary to note that the Resolution of the Cabinet of Ministers of Ukraine, dated May 24, 2017, № 357, revealed the Interdepartmental Coordination Council for Juvenile Justice, aimed at introducing an inter-institutional platform for regular discussion and resolution of juvenile justice issues and passing agreed decisions that meet the interests of the child.

Over the three years that the Interdepartmental Coordination Council has been in existence, however, no significant legislative, institutional and practical developments have occurred aimed at improving the justice system for children, and legal relations in juvenile justice require regulation at the legislative level.

## RECOMMENDATIONS:

**To the Committee of the Verkhovna Rada of Ukraine on Legal Policy** – initiate the development and adoption of the Law of Ukraine on Amendments to the Law of Ukraine “On Pre-trial Detention”, dated June 30, 1993, № 3352-XII, in respect of ensuring the right to citizenship and issuance of passports of a citizen of Ukraine to minors to whom a restrictive measure in the form of custody has been applied.

**To the Cabinet of Ministers of Ukraine** – develop and submit for consideration to the Verkhovna Rada of Ukraine:

draft law of Ukraine on child-friendly justice;

draft law of Ukraine on amendments to legislative acts aimed at introducing specialization of investigators, interrogation officers, prosecutors, judges, lawyers, in the area of juvenile justice, as well as to establish requirements for the qualification of those participants in criminal proceedings and proceedings on administrative offenses.

**To the National School of Judges of Ukraine, Office of the Prosecutor General, Ministry of Internal Affairs of Ukraine, National Police of Ukraine, Ministry of Justice of Ukraine, Ukrainian National Bar Association** – ensure qualification upgrading on matters of the rights of children for judges, prosecutors, investigators, coroners, probation officers, lawyers.

**To the Ministry of Justice of Ukraine:**

1. Develop and submit, following the revealed procedure, for consideration by the Cabinet of Ministers of Ukraine a draft law amending Article 8 of the Law of Ukraine “On Pre-trial Detention”, dated June 30, 1993, № 3352-XII, with the purpose of resolving the issue of clarifying the conditions of detention of minors held in custody in pre-trial detention centers.

2. Take measures to ensure the right of minors who are suspects, accused, convicted, to timely access to legal and other necessary assistance.

**To the Supreme Court** – take measures to conduct criminal proceedings against juveniles within reasonable time limits.



**156**

monitoring visits and  
remote inspections

**3 000**

requests to bodies  
of state power and  
of local self-government



**10 717**

reports of violation  
of rights

# CHAPTER 4

ECONOMIC,  
SOCIAL AND  
CULTURAL RIGHTS





## ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In 2020, the COVID-19 pandemic and related quarantine restrictions aggravated the systemic problems of respect for economic, social and cultural human and civil rights in Ukraine.

The Commissioner received 3,579 reports of violations of economic rights, and 7,138 reports of violations of social and cultural rights; conducted 156 monitoring studies; sent approximately 3,000 inquiries and recommendations to bodies of the state power and local self-government.

In the conditions of the pandemic, the problems of health care provision to citizens, and observance of the right to labor protection of health professionals became systemic. At the same time, the needs of health care facilities in funding significantly exceeded the amount of healthcare subventions from the state budget.

Monitoring of the Commissioner showed that within the framework of the implementation of a number of anti-epidemic measures introduced by the Government, there was a suspension (cancellation) or restriction of use of public transport by citizens on preferential terms.

Issues of realization of the right of citizens to cultural services remain to be a problem due to the low level of financial investments by local bodies of self-government in the development of culture. Proper functioning of the system of vocational education requires legislative regulation in order to ensure the realization of the rights of students.

In 2020, wage arrears increased; the problems of employment of people with disabilities, informal employment and wages “under the table”, which deprive employees of access to social security, decent retirement prospects, guaranteed income and the right to safe and healthy work conditions, remained unresolved. The rights of insured persons in the area of social protection, as well as of workers in coal mining enterprises, to proper and safe work conditions, were violated in many cases.

The most common violations of economic rights in 2020 concerned the right of citizens to social housing, the absence of an effective mechanisms for compensation for property lost as a result of an emergency, the right to entrepreneurial activity, environmental and land rights.

The monitoring results carried out by the Commissioner testify to the inability of bodies of local self-government to meet the needs of the community in social housing.

In connection with the challenges related to the impact of entrepreneurship on human rights, the issue of Ukraine implementing the UN Guiding Principles on Business and Human Rights as a framework document defining the obligations of the state to protect and respect human rights, remains relevant. In 2020, another important issue was the implementation of the “green course of Ukraine”. The level of ensuring the environmental rights of citizens is extremely low, which is explained by insufficient control by the authorities in that area.

#### 4.1. Right to housing

In 2020, the Commissioner received reports of 769 cases of violation of citizens' right to housing and monitored the observance of the constitutional right of citizens to housing by 25 bodies of local self-government.

According to the National Institute for Strategic Studies, as of 01.01.2015, 657.2 thousand families and single persons were registered in the housing register, including 189 thousand citizens who enjoy the priority right to housing (as representatives of benefit-entitled citizens) and 77 thousand citizens who had the right to preferential provision of housing.<sup>1</sup>

The occupation of territories in Donetsk and Luhansk Oblasts and the Autonomous Republic of Crimea has significantly increased the need to provide citizens with housing, in particular, in the social housing stock.

#### **SINCE 2015, THE STATE DOES NOT HAVE DATA ON THE NUMBER OF CITIZENS IN NEED OF HOUSING AND ON THE SOCIAL HOUSING STOCK AVAILABLE**

At the same time, the state statistical monitoring of the movement of persons in need of housing was discontinued by the Order of the State Statistics Service of Ukraine, dated August 11, 2015, № 185; in connection with that fact, the state does not have any data on the number of citizens in need of housing and on the social housing stock available.

#### *The right to be provided with social housing*

The right to receive social housing is stipulated by Article 47 of the Constitution of Ukraine, which states that citizens in need of social protection are provided with housing by the state and bodies of local self-government free of charge or for an affordable fee, in accordance with the law. Provisions in articles of the Law of Ukraine "On the Social Housing Fund", dated January 12, 2006, № 3334-IV, establish the responsibilities of local bodies of self-government in respect to the procedure for exercising that constitutional right.

The monitoring of observance of citizens' rights to social housing, carried out by the Commissioner, testified to bodies of local self-government regularly violating the requirements of the housing legislation in that area, specifically:

- social housing funds are not formed;
- there are numerous cases of failure to register citizens entitled to an apartment or a residential unit (one-apartment house) from the social-purpose housing stock (social housing registration).

#### Example

In 2020, the Kharkiv City Council approved the Program for the development of social and affordable housing for 2020-2025, but as of 31.12.2020, no procedure existed to accept citizens to social housing registration and their removal from it. The social housing fund was not formed.

The Mukacheve and Berehove City Councils in Zakarpattia Oblast did not form a social housing fund and did not maintain records of citizens entitled to housing from the social housing stock (social housing registration).

<sup>1</sup> URL: <http://old2.niss.gov.ua/content/articles/files/111ZHitlo-sotspriznachennya-a805d.pdf>.

The Commissioners issued respective recommendations to the Kharkiv City Council, and the Mukacheve and Berehove City Councils of Zakarpattia Oblast regarding the need to form a social housing stock and ensure maintenance of social housing records.

The City Councils informed the Commissioner about initiating registration of citizens entitled to social housing.

The monitoring revealed that bodies of local self-government are unable to build or purchase social housing within their own budgets.

### **BODIES OF LOCAL SELF-GOVERNMENT ARE UNABLE TO BUILD OR PURCHASE SOCIAL HOUSING WITHIN THEIR OWN BUDGETS**

#### Example

Citizen V. from the city of Marhanets addressed the Commissioner regarding the protection of her housing rights. For several years, the applicant had been on the register of citizens entitled to receiving housing on preferential terms and on the social housing register maintained by the Marhanets City Council in Dnipropetrovsk Oblast. Her right to housing, guaranteed by the Constitution and laws of Ukraine, however, is yet to be exercised.

The problem of providing citizens with social housing requires immediate resolution.

#### *Securing property rights by compensating for losses caused by loss of, or damage to property*

In 2020, the Commissioner monitored the provision of housing to citizens and compensation for losses caused by the loss of property due to emergency situations.

According to the provisions in Article 86 of the Civil Code of Ukraine, local state administrations, local bodies of self-government and economic entities are obligated to provide housing to victims whose housing was rendered unsuitable for living as a result of an emergency situation.

#### Example

Natural disaster in June 2020 affected Ivano-Frankivsk Oblast the most, where 263 towns and villages were flooded, with 13,117 houses, 15 first aid stations, 2 hospitals, 18,101 household plots, 6,193 basements, 7,411 agricultural land plots. Also, 21 houses were destroyed. A total of 1,916 communal property assets were damaged or destroyed in the Oblast<sup>2</sup>.

Based on the results of monitoring the observance of the rights of the affected residents of Ivano-Frankivsk Oblast, the Commissioner revealed absence of specific criteria to classify the damaged residential units in a certain category and establish the degree of property damage; limited access of the general public to information on the mechanism to determine the amount of monetary assistance and the procedures for payment thereof.

In order to prevent violations of citizens' rights in determining the amount of monetary assistance/compensation for natural disasters, the Commissioner addressed the Ministry for Communities and Territories Development of Ukraine with the request to define the algorithm for determining the degree of property damage for the purpose of calculating compensation of damages caused by an emergency.

<sup>2</sup> URL: <https://www.kmu.gov.ua/news/uryad-nadav-finansovu-dopomogu-ivano-frankivskij-oblderzhadministraciyi-z-metoyu-likvidaciyi-nadzvichajnoyi-situaciyi-vnaslidok-chernevoyi-poveni-2020-roku>.

In order to overcome the consequences of the natural disaster in Ivano-Frankivsk Oblast, in July, the Cabinet of Ministers of Ukraine allocated<sup>3</sup> UAH 480 million from the State Budget Reserve Fund, and in November – another UAH 262.8 million.

#### Example

In July and September 2020, large-scale fires occurred in Luhansk Oblast. The conflagration fire that broke out on July 6, 2020, in the village of Smolyaninove, Luhansk Oblast, destroyed 24 houses and damaged another 59. In the “Vovche Ozero” cottage building cooperative, 56 houses were destroyed<sup>4</sup>. Also, a fire broke out in Luhansk Oblast on September 30 and October 1, 2020, which took a week to extinguish. The approximate area covered by the fire exceeded 20 thousand hectares. In Novoaydarsky, Stanychno-Luhansky and Severodonetsky districts, the affected area encompassed 32 towns and villages<sup>5</sup>. The fire destroyed more than 250 buildings<sup>6</sup>.

The Cabinet of Ministers of Ukraine allocated funds from the State Budget Reserve Fund to provide monetary assistance to the affected populations totalling UAH 54.7 million and UAH 185.04 million, respectively<sup>7</sup>.

#### **AMENDMENTS IN THE ADMINISTRATIVE DOCUMENTS WERE MADE IN THE LAST DAYS OF 2020, THE AFFECTED CITIZENS WERE UNABLE TO RECEIVE FUNDS IN TIME TO COMPENSATE FOR THE DAMAGE CAUSED BY THE FIRES TO THEIR PROPERTY**

At the same time, those Orders did not take into account the category of the monetary assistance beneficiaries, who at the time of the emergency did not have documents confirming ownership of residential buildings or had not properly registered their inheritance assets.

In order to resolve this situation, the Cabinet of Ministers of Ukraine passed a respective order<sup>8</sup>,

stipulating that financial assistance also be provided to heirs who lived in the respective houses at the time of the emergency situation, as confirmed by a notary certificate of the inheritance case and the establishment of the circle of heirs who accepted the inheritance, as well as documents on the heirs' place of residence.

<sup>3</sup> Order of the Cabinet of Ministers of Ukraine, dated July 2, 2020 № 811-r «On the allocation of funds from the State Budget reserve fund for emergency measures to eliminate the consequences of the emergency situation that emerged in June 2020», dated November 4, 2020 № 1386 -r «On the allocation of funds from the State Budget reserve fund for the implementation of measures to eliminate the consequences of the emergency situation that emerged in June 2020 in Ivano-Frankivsk Oblast».

<sup>4</sup> URL: <https://www.kmu.gov.ua/news/derzhavna-komisiya-teb-i-ns-pid-golovuvannyam-denisa-shmigalya-uhvalila-kompleks-zahodiv-z-likvidaciyi-naslidkiv-pozhezh-na-luganshchini>.

<sup>5</sup> URL: <https://www.kmu.gov.ua/news/pozhezhi-v-prirodnih-ekosistemah-na-teritoriyi-luganskoyi-oblasti-yaki-vinikli-30-veresnya-ta-1-zhovtnya-likvidovani>.

<sup>6</sup> URL: <https://mtot.gov.ua/urjad-vidiliv-185-mln-grn-dlja-dopomogi-postrajdalim-vnaslidok-pojev-v-luganski-oblasti>.

<sup>7</sup> Order of the Cabinet of Ministers of Ukraine, dated July 22, 2020, № 918-r «On the allocation of funds from the State Budget reserve fund for urgent (priority) measures to eliminate the consequences of the emergency situation that emerged in July 2020 in Luhansk Oblast», and of October 13, 2020, № 1269-r «On the allocation of funds from the State Budget reserve fund».

<sup>8</sup> Order of the Cabinet of Ministers of Ukraine, dated December 28, 2020, № 1638-r, «On Amendments to Clause 1 of the Order of the Cabinet of Ministers of Ukraine, dated October 13, 2020 № 1269».

In view of the fact, however, that the administrative documents were amended in the last days of 2020, the affected citizens were unable to receive funds in time to compensate for the damage caused by the fires to their property, which resulted in their property rights being violated.

#### Example

On June 21, 2020, a gas-air mixture exploded in a nine-story residential building in Kyiv. As a result of the tragedy, 5 people died, 16 apartments were completely destroyed, and another 40 damaged<sup>9</sup>. Three affected families (7 persons, including a minor child), who lived in a 3-room apartment in the destroyed house, received housing that they considered unequal and inadequate in terms of living conditions.

The information on the developer's website and confirmed during the site visit, made it possible to revealed that the new apartment had 2 rooms (17.62 sq.m and 22.19 sq.m, and a kitchen of 17.4 sq.m). In order to provide adequate housing to the affected families, the Commissioner addressed the Kyiv City State Administration, which resulted in a three-room apartment granted for ownership to those families and their housing rights being restored.

As of December 31, 2020, all families affected by the explosion in the house were granted new housing<sup>10</sup>.

## RECOMMENDATIONS:

### **To the Cabinet of Ministers of Ukraine:**

1. Develop and approve a comprehensive program to provide social housing to citizens in need of social protection.
2. Develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law to envisage funding for a comprehensive program to provide citizens with social housing.

**To the Ministry for Communities and Territories Development of Ukraine** – develop and approve the procedure to establish the degree of damage to property for calculation of damages caused by an emergency situation.

**To the State Statistics Service of Ukraine** – develop and approve a standard format of state statistical monitoring of the available housing stock for social purposes and the number of citizens on the housing and social housing register, as well as the dynamics of providing them with appropriate housing.

<sup>9</sup> URL: <https://president.gov.ua/news/volodimir-zelenskij-obicyali-i-zrobili-vsi-simy-postrazhdal-62717>.

<sup>10</sup> URL: <https://www.president.gov.ua/news/volodimir-zelenskij-obicyali-i-zrobili-vsi-simy-postrazhdal-62717>.

## 4.2. Right to a safe environment for life and health

In 2020, the Commissioner received 292 reports of violations of the right to a safe environment for life and health; 29 monitoring instances were carried out, in particular, on the human right to surface waters and air that are safe for life and health.

A significant part of the reports to the Commissioner noted that state authorities and local bodies of self-government were ineffective in the exercise of their powers. In particular, such reports concerned the activities of the State Environmental Inspectorate.

### Example

Citizen K. appealed to the Commissioner regarding the failure of the controlling bodies to respond to the reports of the residents of the village of R. in Kyiv Oblast about violation of their environmental rights caused by enterprises emitting pollutants into the atmosphere without a respective permit<sup>10</sup>. At the request of the Commissioner, the State Environmental Inspectorate carried out unscheduled measures of state supervision (control) over the enterprises that citizen K. complained against, and applied respective response interventions.

Citizens' appeals, combined with monitoring results and analysis of information posted on the Inspection Portal<sup>11</sup>, make it possible to identify the following systemic problems in the exercise of its powers by the State Environmental Inspectorate:

- violation of scheduled inspections frequency stipulated by law, depending on the gravity of business activity risks;
- lack of control over the implementation of writs issued based on the violations identified;
- non-admission of inspectors by economic entities for measures of state supervision (control).

The Commissioner sent relevant recommendations to the State Environmental Inspectorate aimed at restoring citizens' rights to a safe environment.

### *The human right to surface waters that are safe for life and health*

According to the State Water Agency, in 2019, 48.5 thousand tons of harmful pollutants were discharged into surface waters. The worst water polluters are companies that provide centralized wastewater disposal services, discharging over 60% of the total amount of polluted wastewater<sup>12</sup>.

**60% OF ALL POLLUTED WASTEWATER DISCHARGES ARE DONE BY WATER UTILITY COMPANIES**

In 2020, the Commissioner conducted 17 monitoring instances, aimed at activities of economic entities that provide centralized wastewater disposal services.

The monitoring results revealed regular violations of the requirements of Article 44 of the Water Code of Ukraine and the Wastewater Admission Rules<sup>13</sup>:

- insufficient quality control of polluted wastewater discharged into surface water bodies after water treatment plants;

<sup>11</sup> URL: <https://inspections.gov.ua/>

<sup>12</sup> URL: <https://www.davr.gov.ua/fls18/voda-2-zvit-2019.pdf>

<sup>13</sup> Rules for admission of discharge water into centralized drainage systems, approved by the order of the Ministry of Regional Development, Construction and Housing and Utilities of Ukraine, dated December 1, 2017 № 316: URL: <https://zakon.rada.gov.ua/laws/show/z0056-18#Text>

ineffective control over the content of wastewater discharges by commercial consumers; absence of local treatment facilities at commercial consumers, which, along with the worn-out drainage system components, causes discharge of untreated wastewater into surface water bodies.

#### Example

According to the results of the inspection of compliance with the requirements of the environmental legislation by the ME«Vodokanal Chop», conducted in 2018, the authorized persons of the State Environmental Inspectorate in Zakarpattia Oblast issued an order to eliminate the violations revealed. According to the Inspection Portal, control over the implementation of this regulation in 2019-2020 was not carried out, which led to continued violation of human rights to safe environment. Due to the response of the Commissioner, the State Environmental Inspectorate in Zakarpattia Oblast carried out an unscheduled inspection of the ME«Vodokanal Chop», which resulted in issuance of an order to eliminate the violations, and a claim for damages in the amount of UAH 41.5 thousand, caused to the state by violation of legislation on protection and rational use of water resources.

Following the Commissioner's request, respective territorial bodies of the State Environmental Inspectorate carried out unscheduled inspections and issued orders on elimination of violations by the ME«Vodokanal Chop», the ME«Ternopilvodokanal»; the ME«Production Administration of the Uzhgorod City Water Supply and Sewerage» was included in the inspection plan for 2021<sup>14</sup>.

#### *Human right to air that is safe for life and health*

The main air pollutant in Ukraine is industry, in particular, metallurgical enterprises and thermal power plants.

This year, the Commissioner conducted 5 monitoring instances of compliance with the right to safe air, including by enterprises that are major air pollutants in Ukraine, according to the rating of the Ministry of the Environment<sup>15</sup>.

In 2020, the sites for monitoring were the following separate divisions of the of the «DTEK Zakhidenergo» Joint Stock Company: «Dobrotvirska TPP», «Burshtynska TPP», «Ladyzhynska TPP», as well as the «Syntez» Cherkassy Chemical Plant» LLC.

At the request of the Commissioner, the respective territorial bodies of the State Environmental Inspectorate conducted an unscheduled inspection of compliance with the environmental legislation by the «Syntez» Cherkassy Chemical Plant» LLC, and the TPPs were included in the inspection plan of the State Environmental Inspectorate for 2021<sup>16</sup>.

In view of the importance of safe air for human health and life, in 2020 the Commissioner paid special attention to the situation with the state monitoring in the area of air protection<sup>17</sup>.

The situation with the state monitoring in the area of air protection was conducted in 24 OSAs. It revealed the inability of the OSAs to develop respective programs for state monitoring of air quality,

<sup>14</sup> URL: [https://inspections.gov.ua/plan-change/index?plan\\_project\\_id=710](https://inspections.gov.ua/plan-change/index?plan_project_id=710)

<sup>15</sup> URL: <https://mepr.gov.ua/news/34101.html>.

<sup>16</sup> URL: [https://inspections.gov.ua/plan-change/index?plan\\_project\\_id=710](https://inspections.gov.ua/plan-change/index?plan_project_id=710).

<sup>17</sup> Resolution of the Cabinet of Ministers of Ukraine, dated August 14, 2019 № 827 «Certain matters of the state monitoring in the area of air protection»: URL: <https://zakon.rada.gov.ua/laws/show/827-2019-%D0%BF#Text>

due to the lack of a program format, revealed by the MEPNR, and the MIA procedure to regulate the location and number of air quality monitoring stations.

Proceeding from the monitoring results, the Commissioner issued relevant recommendations to the MEPNR and the MIA regarding the need for timely preparation and approval of respective regulations in that area.

### **DELAYS IN THE IMPLEMENTATION OF THE NERP MAY ENTAIL DETERIORATION OF THE ENVIRONMENTAL SITUATION, AND VIOLATION OF HUMAN RIGHTS TO A SAFE ENVIRONMENT**

In order to effectively ensure the human right to an environment that is safe for life and health, it is necessary to ensure improvement of the environmental situation at the country's largest industrial pollutants – thermal energy engineering and metallurgical industry – within the framework of implementation of NERP<sup>18</sup>.

The NERP is designed to meet Ukraine's commitments to the Energy Community and aims at gradual and significant reduction of emissions from large combustion plants. According to the NERP, by 31.12.2033 domestic operators must reduce emissions of sulfur dioxide by 95%, and nitrogen oxides by 72%.

In 2019, the Government passed the decision to postpone the implementation of measures to implement the NERP; this year, the extension of the overall implementation of NERP is considered, partly due to the lack of a mechanism to finance measures for environmental upgrading.

Delays in the implementation of NERP may lead to a deterioration of the environmental situation, creating additional risks of respect for the human right to a safe environment.

#### *The right to unrestricted access to information about the environmental situation*

A component in the constitutional right to an environment that is safe for life and health is the right to access environmental information, which is enshrined in Article 50 of the Constitution of Ukraine, Article 9 of the Law of Ukraine «On Environmental Protection», dated June 25, 1991, № 1264-XII, and stipulated in the Aarhus Convention<sup>19</sup>.

In order to ensure proper implementation of the right to access environmental information, the Commissioner monitored 24 OSAs publications of annual regional reports on the environmental situation.

The monitoring revealed that the websites of Mykolayiv and Chernivtsi OSAs had no regional reports on the environmental situation for 2019; another 9 OSAs (Volyn, Zaporizhzhya, Luhansk, Lviv, Mykolayiv, Sumy, Ternopil, Cherkasy, Chernivtsi) did not publish those reports for previous periods (2012 to 2018). At the same time, the official website of the MEPNR published the annual National Reports on the Environmental Situation in Ukraine for 2017 and 2018 as late as in September 2020, and as of 31.12.2020, the 2019 report was not published at all.

The Commissioner communicated the respective recommendations to the MEPNR, after consideration of which the Ministry was responded that respective measures are being taken to eliminate violations.

<sup>18</sup> Order of the Cabinet of Ministers of Ukraine, dated November 8, 2017, № 796-r «On the National Plan for Emission Reduction from Large Combustion Plants» (as amended) URL: <https://zakon.rada.gov.ua/laws/show/796-2017-%D1%80#Text>

<sup>19</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: URL: [https://zakon.rada.gov.ua/laws/show/994\\_015#Text](https://zakon.rada.gov.ua/laws/show/994_015#Text).

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite the consideration and adoption of the draft Law of Ukraine “On State Environmental Control” (Reg. № 3091, dated February 19, 2020).

**To the Cabinet of Ministers of Ukraine** – amend the Regulations on the Ministry of Environmental Protection and Natural Resources of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated June 25, 2020, № 614 «Certain matters of the Ministry of Environmental Protection and Natural Resources», and the Procedure for conducting and payment for works connected with the issuance of permits for emission of pollutant into the atmosphere by permanent sources, accounting of enterprises, institutions, organizations and individual entrepreneurs that have been granted such permits, as approved by the Resolution of the Cabinet of Ministers of Ukraine, dated March 13, 2002, № 302, pertaining to the authorization of the Ministry of Environment and Natural Resources of Ukraine to review, towards reduction of the maximum permissible emissions in the course of issuance of permits for emissions of pollutants into the atmosphere.

**To the Ministry of Environmental Protection and Natural Resources of Ukraine:**

1. Ensure coordination of, and control over the OSA activities in the process of implementation of the state monitoring in the area of air protection.
2. Publish the National Report on the Environmental Situation in Ukraine for 2019.
3. Ensure timely publication of national reports on the environmental situation and exercise control over the publication of reports on the environmental situation in the Oblasts.

**To the Ministry for Communities and Territories Development of Ukraine** – make amendments to the Rules for admission of wastewater into centralized drainage systems, approved by the order of the Ministry of Regional Development, Construction and Housing of Ukraine, dated December 1, 2017, № 316, in respect to establishing the frequency of control over consumer wastewater discharges and installation of their local treatment facilities.

**To the Ministry of Energy of Ukraine:**

1. Ensure timely implementation of the National Emission Reduction Plan for Large Combustion Plants.
2. Make amendments to the National Emission Reduction Plan for Large Combustion Plants, approved by the order of the Cabinet of Ministers of Ukraine, dated November 8, 2017, № 796-r, in respect to establishing sources of funding for the implementation of that document of state planning.

**To the State Environmental Inspectorate of Ukraine** – ensure control over the timely response of its territorial units to cases of failure to report compliance with an order, failure to comply with enforcement orders by business entities, as well as conducting unscheduled measures of state supervision (control).

### 4.3. Right to entrepreneurship

Every person's right to entrepreneurial activity, which is not prohibited by law, occupies an important place in the system of human rights and freedoms and is expressed in a realistic possibility for all persons to conduct for-profit economic activities, at their own discretion and risk.

#### **IN 2020, FOLLOWING THE COMMISSIONER'S CONSTITUTIONAL PETITION, A CONSTITUTIONAL PROCEEDING WAS OPENED REGARDING CANCELLATION OF SOLE PROPRIETORS' OBLIGATION TO PAY THE SSC MINIMAL AMOUNT FOR PERIODS WHEN THEY GAINED NO INCOMES (PROFITS)**

The exercise of the constitutional right to entrepreneurship is impossible without the effective participation of the state, which does not only have to create proper conditions for the development of entrepreneurship, but also to ensure proper defense of that right. At the same time, the imperfect legal protection of entrepreneurship, the lack of regulation of many aspects and the inconsistent

statutory instruments produce a negative impact on the observance of the right to entrepreneurship. In 2020, the Commissioner received 134 reports from citizens regarding violations of the right to entrepreneurship and freedom from violations of tax legislation.

In particular, for citizens engaged in economic activities, a burning issue was the write-off of SSC payment arrears for self-employed persons (except those who selected the simplified taxation system) and self-employed persons, as well as fines and penalties for periods when they gained no incomes (profits).

#### Example

In January 2020, the Commissioner received an appeal from citizen R., who, after three years in captivity in the temporarily occupied areas in Donetsk and Luhansk Oblasts, found out of the seizure of his bank accounts imposed by the state enforcement officer, acting on the basis of an STS claim of non-payment of the SSC.

Through the Commissioner's intervention, the controlling body withdrew the groundless claim regarding the SSC accrual and collection, and restored citizen R.'s right to use his bank savings.

The Commissioner also communicated recommendations to the STS, upon consideration of which the supervisory authorities explained citizens the procedure for the write-off of the SSC arrears for periods when they received no income.

Restoring social justice and protecting economic and social rights of small businesses in respect to abolishing individual entrepreneurs' obligation to pay the SSC minimum amount was in the special focus of the Commissioner. To resolve that issue, the Commissioner submitted a relevant constitutional request to the CCU, upon which constitutional proceedings were opened in 2020 and the case is currently being considered by the Grand Chamber of the Court.

The Commissioner expressed her stance on the need for immediate adoption by the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Collection and Accounting of Single Contribution to Compulsory State Social Insurance" in Respect of Eliminating Discrimination by the Type of Payers» (Reg. № 2166, dated 20.09. 2019) as restoring justice in the

SSC collection and removes the obligation to pay it in case when individual entrepreneurs and self-employed persons generate no incomes. This Law of Ukraine was adopted by the Verkhovna Rada of Ukraine on May 13, 2020, under № 592-IX.

In 2020, a significant challenge for Ukraine was the COVID-19 pandemic and its consequences in the form of threats to human life and health, and negative impacts on business and the economy. Unpopular, but essential for the protection of life and health decisions of the Government to impose quarantine restrictions for certain economic and other activities (in particular, restrictions on the operation of consumer services and catering, entertainment, etc.) were perceived by entrepreneurs controversially. The number and volatility of legislative and statutory instruments, adopted by the state, entailed their misunderstanding and improper implementation by business entities.

Citizens appealed to the Commissioner regarding the legality of quarantine restrictions on business entities imposed by the Government in order to prevent the spread of the COVID-19 infectious disease in Ukraine.

In particular, owners of coffee shops questioned the legality of the restrictions, imposed within the March quarantine, and the law-stipulated sanctions applied to them for non-compliance with the quarantine restrictions. The Commissioner provided respective explanations to the entrepreneurs.

At the same time, the human right to entrepreneurship must be viewed through the lens of the responsibilities that correspond to it, including responsibility for observance of human rights in the course of economic activity, and compliance of business entities with international standards in the said area, including the UN Guiding Principles.

**IMPLEMENTATION OF THE UN  
GUIDING PRINCIPLES ON MATTERS  
OF BUSINESS AND HUMAN RIGHTS  
WILL PROMOTE HUMAN RIGHTS  
OBSERVANCE**

The UN Guiding Principles are a global framework and are intended to define the parameters of actions and measures that states and businesses need to take to ensure respect for human rights and minimize the negative impact of companies on them.

The UN Guiding Principles are based on the recognition of the following key aspects:

- the duty of the state to protect and ensure human rights;
- the obligation of businesses to observe and respect human rights;
- ensuring, by the state and businesses, the availability and effectiveness of legal remedies for victims of human rights violations.

In 2020, at the initiative of the Commissioner, an Intersectoral Platform on Business and Human Rights was established, bringing together representatives of bodies of state power, civil society, business associations and academia in order to implement the provisions of the UN Guiding Principles and other relevant international regulations and standards in the domestic policy in Ukraine.

At the initiative of the Commissioner, the draft National Strategy for Human Rights now includes a separate section on ensuring human rights in the course of economic activity.

The Secretariat of the Commissioner, in cooperation with the Danish Institute for Human Rights and the International Laboratory on Business and Human Rights of the Yaroslav Mudryi National Law University, conducted a study entitled “Business and Human Rights in the Age of COVID-19”. The joint work, the risks identified possible negative impact of business entities on human rights in the context of the COVID-19 respiratory infection pandemic, and made recommendations to prevent such threats. The study findings were presented at the 9th Annual UN Forum on Business and Human Rights<sup>20</sup> and posted on the Commissioner’s official website<sup>21</sup>.

## RECOMMENDATIONS:

**To the Ministry of Justice of Ukraine** – ensure organization and methodology support for the development of the National Action Plan in the area of business and human rights, with a special focus on areas of legal regulation that are traditionally considered neutral to human rights issues – public procurement, investment, taxation, corporate governance, etc.

### 4.4. Right to healthcare

In the context of the anti-epidemic measures introduced in 2020 in connection with the spread of the COVID-19 infectious disease in Ukraine, the Commissioner monitored a number of problem issues in the area of health care, specifically, the situation with healthcare financing, observance of the healthcare professionals’ right to labor protection, treatment for patients with (orphan) diseases at the expense of budget funds. 602 reports were considered, following which response interventions were taken to restore the applicants’ rights; 455 inquiries were sent to CBEPs and local bodies of self-government regarding the observance of human and civil rights to healthcare, and 17 monitoring instances of observance of the right to healthcare were carried out.

#### *Ensuring the right of citizens to free healthcare in state and municipal healthcare facilities*

Citizens from different regions of Ukraine applied to the Commissioner regarding access to free treatment at the expense of the state and municipal HCFs for treatment of cancer (Rivne, Kharkiv, Chernivtsi and other Oblasts), neurological diseases (Zhytomyr, Zakarpattia, Kharkiv Oblasts), and surgery (Rivne Oblast).

The monitoring demonstrated that insufficient healthcare funding entailed violations of citizens’ rights to access to free healthcare in state and municipal HCFs.

<sup>20</sup> URL: <https://2020unforumbhr.sched.com/event/fD4b/business-and-human-rights-in-central-and-eastern-europe-rebuilding-trust-for-new-social-contract?linkback=grid>

<sup>21</sup> URL: <http://www.ombudsman.gov.ua/ua/page/sehl/profile-law/ker%D1%96vn%D1%96-princzipi-oon-z-pitan-b%D1%96znesu-%D1%96-prav-lyudini.html>

In 2020, the State Budget of Ukraine provides funding for the healthcare sector, including for the program of state financial guarantees of health care for the population, to the amount of UAH 133.2 billion, or 2.9% of GDP (UAH 4,510.8 billion).

At the same time, according to the Accounting Chamber of Ukraine, the Ministry of Health did not use funds in the total amount of UAH 10.5 billion (7.7%) in accordance with the budget expenditure plan for 2020)<sup>22</sup>.

**IN 2020, THE MOH DID NOT  
THE TOTAL OF UAH 10.5 BN**

In 2020, UAH 88.9 billion (1.97% of GDP) was envisaged for the implementation of the program of state financial guarantees for health care, which does not correspond to the amount of expenditures for the implementation of the program of the state financial guarantees, stipulated by law to be in the amount of of 5% of GDP (225.5 billion)<sup>23</sup>.

**THE PROGRAM OF STATE  
FINANCIAL GUARANTEES  
FOR HEALTH CARE WAS  
FUNDED FOR ONLY 1.97%  
OF GDP (UAH 88.9 BN)**

Tariffs for healthcare services<sup>24</sup> did not correspond to the cost of their provision and did not make it possible to adequately increase the remuneration levels for healthcare professionals, ensure quality healthcare service provision, which made it necessary to raise those.

In order to ensure the proper functioning of the HCFs, in June 2020 the Cabinet of Ministers of Ukraine raised tariffs for healthcare services in emergency and inpatient care, inpatient surgery, and medical assistance for some cardiovascular diseases<sup>25</sup>.

#### Example

The Commissioner received a collective appeal from the residents of Stanychno-Luhansky District in Luhansk Oblast regarding the inadequate financial status of the municipal non-profit enterprise «Stanychno-Luhansk District Territorial Healthcare Association», which made it impossible to provide quality healthcare services envisaged by the healthcare guarantee program.

The Commissioners issued recommendations to the National Health Service of Ukraine (hereinafter referred to as “NHSU”) and Luhansk Oblast MCA. The rights of citizens in that District were reinstated, an additional agreement was signed on the transitional financial support of comprehensive provision of healthcare services between the NHSU and the specified HCF, which allocated additional funds to finance the current expenses of the facility until the end of 2020.

A critically important issue in ensuring the employment of healthcare system professionals was the large-scale communication of written warnings to healthcare professionals regarding material changes in their work conditions and (or) about future redundancies.

<sup>22</sup> Official website of the Accounting Chamber of Ukraine: URL: <https://rp.gov.ua/PressCenter/News/?id=1031>.

<sup>23</sup> Law of Ukraine “On State Financial Guarantees of Medical Care of the Population”, dated October 19, 2017, № 2168-VIII.

<sup>24</sup> Resolution of the Cabinet of Ministers of Ukraine, dated February 5, 2020, № 65 «Certain matters of implementation of the program for the state guarantees of medical care in 2020».

<sup>25</sup> Resolution of the Cabinet of Ministers of Ukraine, dated June 19, 2020, № 513 «On Amendments to the Procedure for the Implementation of the Program of State Guarantees of Medical Care in 2020».

### **IN 2020, 73,025 HEALTHCARE EMPLOYEES WERE WARNED ABOUT THE PLANNED LARGE-SCALE DISMISSALS**

According to the State Employment Center, the number of people who were warned about the planned large-scale dismissals in the healthcare sector in 2020 was 73,025, or 25,116 more than in 2019.

Among the total number of people warned about large-scale dismissals by the type of economic activity, the healthcare sector places second, following state administration and defense<sup>26</sup>.

As of January 1, 2021, for the total number of registered unemployed persons in the healthcare sector – 21.1 thousand – the number of vacancies was 3.9 thousand, or 5 persons per vacancy, which indicated a reduction in the number of healthcare facilities<sup>27</sup>.

#### *Observance of healthcare professionals' right to health care and compulsory state social insurance in the context of the spread of COVID-19 in Ukraine*

The Commissioner monitored the observance of healthcare professionals' right to health care and compulsory state social insurance in the context of the spread of COVID-19 disease (Annex 1).

According to the monitoring data, as of October 1, 2020, the incidence of COVID-19 among healthcare professionals in the regions greatly varies. The percentage of healthcare professionals who contracted the COVID-19 infectious disease in Luhansk Oblast is 0.3% (29 cases) out of the total number of healthcare professionals in the Oblast, while in Chernivtsi Oblast it reached 8.1% (904 cases), respectively.

The largest number of cases recognized as an occupational disease among the HCI staff who contracted COVID-19 was revealed in Khmelnytsky Oblast – 76, or 30.1% of the total number of HCI staff, and among healthcare professionals – 75, or 32.7% in that region. The lowest number was in Zakarpattia Oblast – 15, or 1.8% of cases among all HCI staff, and 7 cases or 0.9% among healthcare professionals of the Oblast. In that respect, at the time when monitoring was conducted in Luhansk Oblast, no case of the disease among HCI staff was connected with their performance of professional duties.

According to the OSA and the KCSA, as of October 1, 2020, no cases of acute COVID-19 occupational disease among other (non-medical) HCI staff was registered in Vinnytsia, Volyn, Donetsk, Ivano-Frankivsk, Kirovohrad, Luhansk, Lviv, Mykolayiv, Odesa, Poltava, Rivne, Sumy, Kharkiv, Kherson, Chernivtsi Oblasts and in the city of Kyiv. In Dnipropetrovsk, Zhytomyr, Ternopil, Khmelnytsky, Cherkasy and Chernihiv Oblasts, one case of occupational disease was revealed in that category of employees (Annex 2).

According to the MoH and the SLS, as of December 31, 2020, the number of HCI employees who contracted COVID-19 was 46,762, of whom 459 died. The State Labor Service received 35,040 reports of COVID-19 acute occupational disease, including 411 lethal cases.

<sup>26</sup> Data of the State Employment Center on the number of persons warned about the planned redundancies by the type of economic activity in 2020.

<sup>27</sup> Data of the State Employment Center on the number of registered unemployed persons, the number of vacancies and the number of applicants per 1 vacancy, as of January 1, 2020.

Of the total number of patients, investigation of the COVID-19 acute occupational disease was completed in respect of 9,159 people, including 200 deaths. 2,558 cases, including 62 deaths, were found to be related to the performance of professional duties, and 6,601 cases, including 138 deaths, not related. Investigation in respect of 25,881 persons is underway<sup>28</sup>. The money in the COVID-19 Response Fund, earmarked by the FSIU for payments to healthcare professionals and members of their families, were unused in the amount of almost UAH 171 million (73%)<sup>29</sup> which was caused by delays in the occupational disease investigation procedure.

**FSIU FAILED TO USE 73%  
(UAH 171 MN) OF  
THE COVID-19 RESPONSE  
FUND**

**Example**

The Commissioner received a complaint from a citizen G. (Kherson Oblast) regarding violation of the complainant's rights to investigation of the COVID-19 occupational disease and his family members' right to respective benefits in connected to temporary work incapacity.

In order to restore the rights of G. and his family members, the Commissioner issued recommendations to the Kherson OSA and the FSIU. Following the intervention, the complainant's rights were restored, the COVID-19 case was found to be related to the performance of professional duties, and the family members were issued duly prepared certificates of sickness.

*Ensuring citizens' right to receive health care in the context of the spread of COVID-19 disease in Ukraine*

The Commissioner carried out remote monitoring of the observance by OSAs and the KCSA of citizens' rights to health care and medical assistance in the conditions of the COVID-19 disease spreading in Ukraine.

The monitoring showed that funding for main HCFs, appointed for hospitalization of patients with COVID-19, was insufficient. Those facilities did not have the necessary list of medicines and medical devices for treatment of patients with COVID-19, and the staff there were not ensured safe work conditions.

The priority in the provision of medicines to treat the COVID-19 disease, including oxygen, polymerase chain reaction tests (PCR tests) to detect the causative agent of the COVID-19 respiratory disease, and consumables for those tests, was given to the first-wave HCFs, while the second-wave HCFs do not have enough medicines and medical devices to treat patients with the COVID-19 disease.

Interviews with citizens who recovered from the COVID-19 respiratory disease made it possible to find out that, in violation of the MoH Order<sup>30</sup> no patients with the COVID-19 disease were hospitalized even in the presence of clinical indications. Such patients received inpatient treatment at home, under the supervision of primary care physicians; they such patients were examined and treated at their own expense.

<sup>28</sup> Letter of the State Labor Service, dated 29.01.2021 № 548/3.1/4.5-21.

<sup>29</sup> Official website of the Accounting Chamber of Ukraine: URL: <https://rp.gov.ua/PressCenter/News/?id=1031>.

<sup>30</sup> Order of the Ministry of Health, dated October 27, 2020, № 2438 «On Amendments to the Standards of Medical Care «Coronavirus Disease (COVID-19)».

The situation with the COVID-19 spread in Ukraine required significant additional expenditures from the State and local budgets for epidemic response measures. In order to counter the COVID-19 pandemic, the “COVID-19 Acute Respiratory Disease Response Fund to fight the SARS-CoV-2 coronavirus infection and its consequences” (hereinafter referred to as “the Fund”) was revealed, to which the total of UAH 80.91 billion was allocated<sup>31</sup>.

The analysis of the Fund distribution shows that it was only partially spent on the needs of responding to the COVID-19 respiratory disease. Out of the total amount of the Fund’s budget, UAH 22.45 billion was allocated for health care needs, which is 27.7% of the total, and UAH 19.45 billion was used for health care purposes, or 86.6% of the allocated amount<sup>32</sup>.

In the conditions of a significant increase in the number of positive cases of COVID-19 respiratory disease in August to December 2020 (Annex 2), it is as late as in the Q4 2020 that the Cabinet of Ministers of Ukraine stipulated allocation of funds to local budgets to provide oxygen to the hospital stock for patients with the COVID-19 disease, to the total of UAH 1,466.6 million, in particular, in October – UAH 571 million<sup>33</sup> and another UAH 895.6 million<sup>34</sup>, in November, which impeded their effective use by HCFs at the year end.

#### Example

Citizen K. (Chernihiv Oblast) appealed to Commissioner about the improper provision of health care services to a member of his family who had the COVID-19 respiratory disease, specifically, delayed admission to an HCl and incomplete treatment. Based on the results of the appeal consideration of the Commissioner’s request regarding the violation of the applicant’s rights, local prosecutor’s office conducts a respective investigation.

#### *Violation of the rights of citizens affected by the Chernobyl accident to receive highly specialized health care*

The Commissioner, upon her own initiative within the proceedings on appeals of citizens affected by the Chernobyl disaster, regarding violation of their rights to social protection, retirement benefits and health care, monitored the “Ukrainian Center of Information Technologies and the National Register of the Ministry of Health of Ukraine” State Institution (hereinafter referred to as the “UCIT and NR” SI of the MoH of Ukraine) and the “National Research Center for Radiation Medicine of the National Academy of Medical Sciences of Ukraine” State Institution (hereinafter referred to as “NRCRM”) regarding the situation in highly specialized medical care.

<sup>31</sup> Law of Ukraine “On Amendments to the Law of Ukraine” On the State Budget of Ukraine for 2020”, dated April 13, 2020, № 553-IX.

<sup>32</sup> Official information of the Ministry of Finance of Ukraine as of 31.12.2020, at the following link [https://www.mof.gov.ua/uk/data\\_and\\_analytics-433](https://www.mof.gov.ua/uk/data_and_analytics-433)

<sup>33</sup> Resolution of the Cabinet of Ministers, dated October 9, 2020 «On allocation of funds to provide oxygen to the bed stock of health care facilities that provide inpatient care to patients with the COVID-19 acute respiratory disease caused by coronavirus SARS-CoV-2».

<sup>34</sup> Resolution of the Cabinet of Ministers, dated November 11, 2020, № 1099 “On allocation of funds to ensure the implementation of certain measures aimed at preventing the occurrence and spread, and localization and elimination of outbreaks, epidemics and pandemics of the COVID-19 acute respiratory disease caused by Coronavirus SARS 2”.

According to the NRCRM<sup>35</sup>, the incidence of all forms of cancer among the participants in the elimination of the consequences of the Chernobyl accident exceeds the average level among the population by almost 7%.

**CANCER INCIDENCE AMONG THE CHNPP DISASTER LIQUIDATORS EXCEEDS THE AVERAGE NATIONAL LEVEL BY ALMOST 7%**

Over the past 5 years, the number of people with disabilities whose illnesses are related to the consequences of the Chernobyl disaster has increased by 7,600, and their share in the structure of those affected has increased from 4.77% in 2015 to 5.67% in 2019. Over

the past 12 years, the number of adult persons affected by the Chernobyl accident has decreased by 300,000, or by 20.38%.

At the same time, since 2011 the Cabinet of Ministers of Ukraine has not approved a national program to overcome the consequences of the Chernobyl accident.

**NO NATIONAL PROGRAM TO OVERCOME THE CHORNOBYL ACCIDENT CONSEQUENCES**

The monitoring also revealed that the legal regulation definition of the mechanism of transfer/exchange of medicines, purchased at the expense of the state budget, between the NRCRM and Oblast-level specialized medical institutions that provide treatment to persons

affected by the Chernobyl disaster. In its turn, it will make it possible to use the medicines procured at the budget expense in the efficient and rational manner.

The monitoring of the “UCIT and NR” SI of the MoH of Ukraine regarding on the completeness and quality of filling the State Register of Ukraine, the main purpose of which is to monitor health status and study short- and long-term health consequences in people affected by the Chernobyl accident, revealed a range of issues that need to be regulated. In particular, the Regulations on the Organization and Functioning of the State Register of Ukraine<sup>36</sup>, do not specify the time limits for submitting information to the State Register of Ukraine by respective administration authorities.

According to the “UCIT and NR” SI of the MoH of Ukraine, in 2018 to 2020, the number of victims in the State Register of Ukraine who took annual medical examination was on the decrease.

The reasons for this situation are as follows:

- failure to take a medical examination by citizens affected by the Chernobyl disaster, on their own initiative;
- failure to submit declarations on the choice of a physician to provide primary health care (information about such citizens is not entered into the State Register and is not updated);
- a decrease in the number of positions at HCFs for employees to be in charge of filling the State Register of Ukraine (after the primary HCF reform, only those persons are registered who submitted a declaration on their choice of a physician providing primary health care).

<sup>35</sup> NRCRM website: URL: <https://nrcrm.gov.ua/science/advances/> « Significant scientific achievements of NSCRM in 2019».

<sup>36</sup> Resolution of the Cabinet of Ministers of Ukraine, dated June 9, 1997 № 571 “On Approval of the Regulations on the Organization and Functioning of the State Register of Ukraine”.

*The situation with the observance of citizens' right to free provision of donated blood and its components (plasma, erythrocytes, leukocytes, etc.) in state and municipal HCFs*

The Commissioner monitored how the MoH, OSAs and KCSA implemented the Action Plan for the implementation of the Strategy for the development of the national blood system until 2022 (hereinafter referred to as "the Action Plan")<sup>37</sup>.

According to the reporting information, facts of non-fulfillment of the Action Plan by the MoH were established in relation to:

- development of statutory instruments that are necessary for the functioning of the updated structure of the national blood system and the procedures for its financing;
- introduction of a single method to form blood components value at all economic entities;
- development and implementation of training programs for employees at institutions and facilities within the national blood system.

Failure to perform those entailed the following violations:

- the rights of donors and patients to receive timely, high-quality and safe transfusion services and proper health care that they required;
- patients' rights to free and equal access to quality and safe components of donated blood in sufficient quantities;
- the rights of healthcare professionals, engaged in the blood system, to professional development and training.

The monitoring revealed non-fulfillment of the Action Plan by structural units on healthcare matters at the OSAs and KCSA. A number of problem issues related to the financing of blood service institutions were identified, which produce a negative impact on equipping and upgrading, and procuring necessary consumables. Blood service institutions do not receive adequate compensation for the services provided.

**Example**

The Commissioner received numerous appeals from representatives of the CSOs and companies operating in the area of blood service, and employees at blood service institutions in different Oblasts of Ukraine, which raised the issue of the need for legislative regulation of the introduction of licensing for business activities in the area of collection, processing, storage and sale of donated blood and its components, as well as matters connected with their supply and procurement.

Respective recommendations and proposals of the Commissioner were taken into account in the Law of Ukraine «On Amendments to Certain Laws of Ukraine on Elimination of Artificial Bureaucratic Barriers and Corruptive Factors in Health Care», dated June 2, 2020, № 644-IX.

*Violation of the right of patients with rare (orphan) diseases to treatment at the expense of budget funds in state and municipal health care institutions*

The Commissioner exercise constant supervision over matters of observance of the rights of citizens with rare (orphan) diseases to proper health care.

<sup>37</sup> Order of the Cabinet of Ministers of Ukraine, dated February 20, 2019 № 120-r «On approval of the Action Plan for the implementation of the Strategy for the development of the national blood system until 2022».

**Example**

The Commissioner received appeals from citizens from different regions of Ukraine, e.g. M. (Donetsk Oblast), S. (Chernihiv Oblast), P. (city of Vinnytsia), P. (city of Rivne) and from the NGOs (e.g. «Orphan Diseases of Ukraine» Public Association, International Gaucher Alliance, the «Association of persons with disabilities who have Gaucher disease» All-Ukrainian NGO, «Sanofi-Aventis Ukraine» LLC) in relation to the MoH having narrowed the range of medicines to be procured for the budget funds in 2020, under the section of «Medicines for patients with orphan metabolic diseases», from three to one expensive medicine for the treatment of people with Gaucher disease.

In order to prevent violations of patients' rights, the Commissioner provided relevant recommendations to the Ministry of Health, which were taken into account, and the Government expanded the range of medicines for the treatment of citizens suffering from rare (orphan) metabolic diseases<sup>38</sup>.

The Commissioner also received reports of the rights of patients with cystic fibrosis being violated due to the failure to provide that category of citizens with medicines. The Commissioner's monitoring revealed that in 2020, in connection with lengthy procurement procedures<sup>39</sup>, the MoH failed to use UAH 1 billion under the budget program for the purchase of medicines and medical devices.

**Example**

The Commissioner received an appeal from the Khmelnytsky Oblast Branch of the All-Ukrainian Association for the Care of Cystic Fibrosis Patients (hereinafter referred to as «the Cystic Fibrosis Association») regarding the situation with the procurement of medicines for residents of the Khmelnytsky Oblast who have cystic fibrosis. The NGO informed the Commissioner that procurement of 3 medicines for children and 2 medicines for adults was funded from the 2018–2019 state budget, in the amounts of only under 15% of what it required, and also that orphan disease patients were unable to receive expensive treatment at the expense of local budgets. Within the proceedings initiated, the Commissioner revealed that centralized procurement under the 2020 programs began as late as in November 2020<sup>40</sup>. In order to protect the rights of patients with cystic fibrosis, the Commissioner issued recommendations to the MoH and the Khmelnytsky OSA.

According to the Khmelnytsky OSA<sup>41</sup>, medicines purchased at the expense of the 2020 State Budget of Ukraine were not received in the Oblast in 2020.

The medicines procured at the expense of the 2019 State Budget were distributed by the MoH to the healthcare structural units within OSAs and the KCSA throughout 2020. The share of coverage of children with cystic fibrosis at the expense of the 2019 State Budget of Ukraine was 61.5% of the total need, and of adults – 17,9%.

<sup>38</sup> Resolution of the Cabinet of Ministers of Ukraine, dated October 9, 2020, № 928 «On amendments to the list of medicines and medical devices procured through procurement agreements with specialized procurement organizations, by the areas of use of budget funds in 2020».

<sup>39</sup> Official website of the Accounting Chamber of Ukraine: URL: <https://rp.gov.ua/PressCenter/News/?id=1031>.

<sup>40</sup> MoH letter, dated December 28, 2020, № 10.3-13/39630/2-20.

<sup>41</sup> Letter of the Khmelnytsky OSA, dated November 16, 2020, № K/12370-16/09.

The DoH of Khmelnytsky OSA evenly distributed medicines among all patients and for equal time periods, and purchased additional medicines at the expense of the Oblast budget, which partially solved the issue of treatment of cystic fibrosis patients.

In order to restore the rights of cystic fibrosis patients, on 24.12.2020 the Khmelnytsky Oblast Council approved the Program of centralized provision of medical institutions with expensive equipment, medicines and medical devices for 2021-2023, which envisages 100% funding for the needs of cystic fibrosis patients.

*The progress in the implementation of the provisions of the Law of Ukraine «Fundamentals of the Legislation of Ukraine on Health Care», dated November 19, 1992, № 2801-XII, regarding maintenance of the state register of citizens with rare (orphan) diseases*

The Commissioner monitored the provision of health care to citizens with rare (orphan) diseases, provided by the Kharkiv Oblast Council «Interregional Specialized Medical Genetics Center – Center for Rare (Orphan) Diseases» Municipal Non-Profit Enterprise (hereinafter referred to as “the Center”), which serves close to 30,000 patients across Ukraine.

The monitoring findings confirmed the need to create a state register of citizens with rare (orphan) diseases (hereinafter referred to as “the Register”), which will ensure up-to-date data on the number of patients and prevalence of rare (orphan) diseases, efficient resource planning for proper provision of health care to patients, equal and timely access of the said cohort of patients to very specialized and high-cost therapy.

In the annual report for 2019, the Commissioner emphasized the need to create such a Register, envisaged in Article 53<sup>1</sup> the Law of Ukraine «Fundamentals of Legislation of Ukraine on Health Care», dated November 19, 1992, № 2801-XII.

The Commissioner issued respective recommendations to the MoH, which were taken in consideration in the draft Order of the Cabinet of Ministers of Ukraine, developed by the MoH<sup>42</sup> «On Approval of the Concept of the system to provide care to citizens with rare (orphan) diseases for 2020 to 2025», which stipulates the establishment of a unified information system of accounting, reporting, document management, introduction of electronic registers/ databases, patient register and their medical data.

## RECOMMENDATIONS:

### To the Cabinet of Ministers of Ukraine:

1. Develop and submit to the Verkhovna Rada of Ukraine a draft Law of Ukraine «On Amendments to the Law of Ukraine «On the State Budget of Ukraine for 2021», envisaging expenditures for the implementation of the program of state guarantees for health care at 5% of GDP, in accordance with Article 4 of the Law of Ukraine «On the State Financial Guarantees of Medical Care», dated October 19, 2017, № 2168-VIII.

<sup>42</sup> Letters of the MoH, dated January 3, 2020, № 25-04/120/2/20, February 6, 2020, № 25-04/3598/2/20.

## 2. Develop and approve:

the concept of development of the system of assistance to citizens with rare (orphan) diseases; tariffs for payment for HCF health services at the secondary (specialized) level of medical care, with account to the share of expenditures on salaries of healthcare professionals.

3. Make amendments in the Resolution of the Cabinet of Ministers of Ukraine, dated March 17, 2017, № 152 «On ensuring the availability of medicines» in order to expand the List of International Non-Proprietary Names of Medicines with names of medicines for the treatment of COVID-19 respiratory disease for the period of anti-epidemic measures being in effect.

**To the Ministry of Health of Ukraine** – develop and approve regulations necessary for the functioning of the updated structure of the National Blood System and the procedure for financing its activities, as envisaged in the Strategy for the Development of the National Blood System until 2022.

## **To Oblast State Administrations, the executive body of the Kyiv City Council (Kyiv City State Administration), bodies of local self-government:**

control timeliness and objective nature of investigations of acute occupational diseases for COVID-19 respiratory disease among HCF employees;

ensure preparedness of health care facilities for the provision of timely and quality health care to patients in case of growing infectious disease incidence.

## **4.5. Right to work**

In 2020, the Commissioner received 1,964 reports from citizens about violations of their labor rights, following consideration of which 337 inquiries were sent to bodies of state power and of local self-government, and a monitoring visit was conducted to the executive directorate of the FSIU.

The Commissioner's monitoring revealed issues that needed to legislative regulation, in particular, in respect to the following:

resumption of financing of the FSIU payments suspended for the period of the quarantine restrictions<sup>43</sup>;

clarification of the wording of part three in Article 471 of the Law of Ukraine "On Employment", dated July 5, 2012, № 5067-VI (in the version effective until 20.12.2020) pertaining to the right to receive partial unemployment benefits for persons receiving retirement benefits;

expedited adoption of the Resolution of the Cabinet of Ministers of Ukraine on the establishment of the Interdepartmental Working Group on the repayment of arrears of wages (cash compensation)<sup>44</sup>;

inclusion in the insurance record of employees called up for military service during mobilization, for a special period from July 1, 2000, to December 31, 2016 (due to the absence in the State Register of compulsory state social insurance of personal information about cash compensation and payment of insurance contributions for the said period).

<sup>43</sup> Law of Ukraine «On Amendments to the Law of Ukraine «On the State Budget of Ukraine for 2020», dated April 13, 2020, № 553-IX.

<sup>44</sup> Resolution of the Cabinet of Ministers of Ukraine on the establishment of the Interdepartmental Working Group on the repayment of arrears of wages (cash compensation)»

*Observance of the right of persons with disabilities to work*

According to the Report based on the assessment of the need for revision of the policy and regulatory framework in the area of ensuring the rights of people with disabilities, in line with part two of Article 15 of the European Social Charter<sup>45</sup>, persons with disabilities in Ukraine are unable to compete on equal terms in the labor market and face difficulties finding a job.

There exist problems with the creation of special jobs for persons with disabilities; the amount of labor compensation for such persons generally does not exceed the minimum wage and differs from the average wage of persons employed in the respective area.

The program of activities of the Cabinet of Ministers of Ukraine<sup>46</sup> defines the tasks of promoting employment of persons with disabilities and ensuring their competitiveness in the open labor market, improving the definition of job quotas to ensure employment of persons with disabilities, introducing alternatives for its implementation, in part, in the civil service and bodies of local self-government.

At the same time, the Commissioner's monitoring showed that the MSP, vested with the responsibility for implementation of the program of activities of the Cabinet of Ministers of Ukraine regarding employment of persons with disabilities, did not take effective measures to promote hiring and employment of persons with disabilities; neither was reached the target indicator for the implementation of the said measures – increasing the number of persons with disabilities, employed through the assistance of the State Employment Service, by 10 percent.

**IN 2020, THE NUMBER OF PERSONS WITH DISABILITIES WHO FOUND EMPLOYMENT DECREASED BY 6.9%**

As can be seen from the data of the State Employment Center<sup>47</sup>, in 2020, the increase in the number of people with disabilities employed through the assistance of this body did not only fail to grow by 10%, but on the contrary, it dropped by 6.9%, compared to 2019, despite the fact that the number of people with disabilities who used the State Employment

Service in 2020 increased by 8,084, or 15.2%, compared to 2019 (Annex 3).

The number of people with disabilities employed through that body did not increase by 10% in any of Ukraine's Oblasts. In some, in particular Dnipropetrovsk, Kharkiv, and Kyiv Oblasts, the employment rate of persons with disabilities dropped by more than 12%, compared to 2019 (Annex 4).

In view of the above, the state policy in the area of ensuring the right of persons with disabilities to work is insufficiently effective and needs to be improved.

*Violation of the right of insured persons to receive material support*

At the beginning of the year, the Commissioner began to receive citizens' reports of the FSIU working bodies failing to make payments of material support. In order to respect citizens' rights, the Commissioner initiated proceedings, within which monitoring was carried out over the observance by

<sup>45</sup> Website of the Council of Europe Office in Ukraine <https://www.coe.int/uk/web/kyiv/-/presentation-of-the-needs-assessment-report-with-respect-to-policy-and-legal-framework-revision-in-the-area-of-rights-of-people-with-disabilities-in-u>

<sup>46</sup> Resolution of the Cabinet of Ministers of Ukraine, dated June 12, 2020, № 471 "On Approval of the Program of Activities of the Cabinet of Ministers of Ukraine".

<sup>47</sup> Letter of the State Employment Center, dated December 29, 2020, № 33/162/6619-20.

the FSIU of the rights of insured persons to receive material support in a timely manner. The monitoring confirmed delays in the payment of material support by the FSIU working bodies and the reasons for their non-payment.

The reason for the material support arrears in early 2020 was the failure to reach the planned income indicators for November and December, 2019, in the amount of UAH 901.7 million. Because of that, as of January 1, 2020, arrears emerged on payments of material support to insured persons based on application calculations submitted by insurance policy holders for the period of December 9 to 28, 2019, which amounted to UAH 951.2 million.

Violations of the rights of the following persons were found:

of individual entrepreneurs, including those who opted for the simplified system of taxation, engaged in independent professional activities, namely research, literary, creative, artistic, educational or teaching, as well as medical or legal practice, including advocacy and notary activities, or persons engaged in religious (missionary) activities or other similar activities, and receive income from those activities for material compensation, in connection with the fact that the procedure to calculate the average salary (income, cash remuneration) to calculate payments for compulsory state social insurance<sup>48</sup> lacks a mechanism to calculate the average wage for those categories of insured persons; of insured persons – to material support in full amount, in case the insured has more than six months of arrears on the SSC payment.

Respective recommendations on the restoration of insured persons' rights were issued by the Commissioner to the Minister of Social Policy of Ukraine and the FSIU Board.

Following those interventions, the MSP allocated UAH 1,807.7 million FSIU, on a repayable basis, for the provision of financial assistance<sup>49</sup>.

According to the FSIU, from 15.12.2020 to 31.12.2020, the material support arrears was UAH 1,642.5 million<sup>50</sup> (Annex 5).

**BY THE END OF 2020,  
THE FSIU OWED UAH 1,642.5  
MN TO INSURED PERSONS**

*Violation of the right of insured persons and victims of an accident at work, to receive insurance benefits for medical and social assistance during the quarantine period*

The Commissioner received appeals from citizens who were affected by an industrial accident, including persons with disabilities, regarding violation of their rights to insurance benefits.

Monitoring revealed that for the duration of the quarantine restrictions the FSIU stopped financing treatment, medical and social care services, including additional food, purchase of medicines, special medical and permanent third-party care, household services, prosthetics, health rehabilitation, sanatorium therapy, purchase of special mobility means<sup>51</sup>.

<sup>48</sup> Resolution of the Cabinet of Ministers of Ukraine, dated September 26, 2001, № 1266 "On approval of the procedure to calculate the average wage (income, cash compensation) for the calculation of payments for compulsory state social insurance".

<sup>49</sup> Resolution of the Cabinet of Ministers of Ukraine, dated May 20, 2020, № 385 "On allocation of funds for the provision of financial assistance to the Social Insurance Fund of Ukraine".

<sup>50</sup> Letter of the Social Insurance Fund of Ukraine, dated January 11, 2021, № 36-03-3.

<sup>51</sup> Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020", dated April 13, 2020 № 553-IX.

In order to restore the rights of insured persons, in June 2020, within open proceedings, the Commissioner addressed the MSP and the Verkhovna Rada Committee on Social Policy and Protection of Veterans' Rights regarding the need of legislative regulation for the restoration of insured persons' rights to respective benefits.

The Commissioner's recommendations and proposals have been taken into account in the Law of Ukraine «On Amendments to Sub-clause 2 of Clause 5 in Section II «Final Provisions» of the Law of Ukraine «On Amendments to the Law of Ukraine «On the State Budget of Ukraine for 2020», dated November 3, 2020, № 941-XI (hereinafter referred to as "the Law № 941"), which resumed the financing of the above insurance payments by the FSIU.

#### Example

Citizen O. appealed to the Commissioner regarding non-payment of a one-time benefit due to her in connection with the death of her husband, who died in industrial accident in February 2020. In July 2020, the complainant addressed the Kalush Division of the FSIU Executive Directorate in Ivano-Frankivsk Oblast requesting a one-time assistance to reimburse costs of her husband's funeral, but was denied that for quarantine restrictions imposed by law. The Commissioner's intervention resulted in the respective assistance being paid to the complainant in December 2020, after respective amendments to the effective legislation were made.

### **INSURED PERSONS' ENTITLEMENT TO INSURANCE BENEFITS TOTALING UAH 177.1 MN WAS REINSTATED**

Generally, in pursuance of provisions in the Law №941, the FSIU financed insurance payments, accrued in April to November, to 14,456 citizens and 242 families, as well as healthcare and social services for victims of industrial accidents and persons with disabilities, to the total amount of UAH 177.1 million<sup>52</sup>.

#### *Violation of the right of insured persons to receive partial unemployment benefits for the duration of the quarantine*

The Commissioner monitored the observance of the rights of insured persons to receive partial unemployment benefits for the duration of the quarantine, as envisaged in Article 471 of the Law of Ukraine «On Employment», dated July 5, 2012, № 5067-VI (in the version of 02.04.2020 as amended).

#### Example

Citizen N. appealed to the Commissioner regarding her employer, with which the employment relationship was duly revealed, violating her right to receive partial unemployment benefits for the duration of the quarantine, in connection with the fact that she received a survivor's pension for a minor child.

The proceedings revealed that the employer did not submit to the Zastavna District Division of the Chernivtsi Oblast Employment Center its application and documents that are grounds for the decision to grant partial unemployment benefits, explaining it by the fact that, in accordance with part three of Article 471 of the Law of Ukraine "On Employment of the Population", dated July 5, 2012, № 5067-VI

<sup>52</sup> Social Insurance Fund of Ukraine: URL :<http://www.fssu.gov.ua/fse/control/main/uk/publish/article/972136>.

(in the version that was in effect before December 20, 2020), such assistance is not granted to persons who receive a pension.

The proceedings initiated by the Commissioner revealed that citizen N. was entitled to partial unemployment benefits because she was the recipient of a survivor's pension for her minor child, but not the person to whom the pension benefit was granted.

Following the measures taken by the Commissioner, the right of citizen N. to partial unemployment benefits was renewed as a result of amendments made to part three of Article 471 of the Law of Ukraine «On Employment of the Population», dated July 5, 2012, № 5067-VI, and removal of the provision on non-granting partial unemployment benefits to persons who receive a pension benefit<sup>53</sup>.

*Observance of the rights of insured persons who performed duties stipulated by the laws of Ukraine «On military duty and military service», «On mobilization training and mobilization», to the inclusion of the service duration in the insurance period*

According to the register of insured persons in the State Register of Compulsory State Social Insurance<sup>54</sup>, in 2014 to 2020, no SSC payment was registered for 57,923 persons, who, accordingly, were not credited with insurance record of the period of their conscription military service during mobilization, for the duration of a special period. That situation emerged because employers were exempt from accrual and payment of SSC on payments that are reimbursed from the budget within the average earnings of employees called up for the military service in the course of mobilization for the duration of a special period<sup>55</sup>.

**57,923 PERSONS WERE NOT CREDITED WITH INSURANCE RECORD OF THE PERIOD OF THEIR CONSCRIPTION MILITARY SERVICE DURING MOBILIZATION**

#### Example

Citizen P. appealed to the Commissioner regarding violation of his right to compulsory state social and pension insurance due to the military unit failing to pay the SSC in January to August, 2015, for the period of his military service on conscription in the course of mobilization for the duration of a special period, which entailed non-accounting of that period in the insurance record.

In order to restore the right of citizens to compulsory state social and pension insurance, proceedings were initiated by the Commissioner and relevant recommendations were issued to the MSP, the MoF, the STS and the PFU.

Based on the results of the measures applied, the PFU drafted a respective Procedure, which envisages exchange of information between competent authorities in order to include the period from July 1, 2000 to December 31, 2016 in the insurance period required for pensions to be granted to military personnel (except for compulsory duty personnel), officer and private corps, and police officers.

<sup>53</sup> Law of Ukraine "On amendments to certain laws of Ukraine on social protection of the population for the duration of the quarantine established by the Cabinet of Ministers of Ukraine to prevent the spread of the coronavirus disease (COVID-19)", dated December 2, 2020, № 1030-IX

<sup>54</sup> Letter of the Pension Fund of Ukraine, dated January 12, 2021, № 2800-050101-1/817

<sup>55</sup> Law of Ukraine "On amendments to certain legislative acts of Ukraine regarding Improvement of defense and mobilization matters in the course of mobilization", dated May 20, 2014, № 1275-VII.

*Observance of the rights of the insured persons in case of recognition of the insured person bankrupt*

According to the official information of the SSC,<sup>56</sup> as of December 1, 2020, wage arrears at economically idle enterprises reached UAH 74,586 thousand, or 2.4% of the total wage arrears.

Existence of wage arrears is accompanied by the employers failing to pay the SSC for their hired employees. The timeliness and completeness of the SSC payment by the employer produces a direct impact on the size of the pension benefits of future and current pensioners. Also, non-payment of that contribution deprives the insured person of the right to social protection in the area of compulsory state social insurance, in particular, in case of job loss – to social insurance in case of unemployment.

**Example**

The Commissioner received a collective appeal from citizens regarding the violation of their right to inclusion in the insurance period for 2005 to 2010 in granting (recalculating) a pension caused by the company «T» failing to pay the SSC to the PFU. The Commissioner found that the court declared the company «T» bankrupt. The proceeds generated by the sale of the debtor's property only covered repayment of the entire amount of back wages to employees. Accounts payable for repayment of the SSC arrears were left outstanding.

The need to resolve that issue was emphasized by the Commissioner in the 2019 Annual Report on Observance and Protection of Rights and Freedoms of Citizens in Ukraine, in particular, through ratification of Part III of ILO Convention 173 (1992) Protection of Workers' Claims (Employer's Insolvency).

*Violation of employees' right to formal employment and timely remuneration for work*

According to the information published by the MSP in the media, every fifth person in Ukraine works informally; 20.6% are employed without formal declaration and as a result, do not pay contributions to

**20.6% EMPLOYEES  
WORK WITHOUT  
FORMAL  
DECLARATION AND  
DO NOT PAY THE SSC**

the PFU. In 2027, in order to start receiving pension benefits, it is necessary to have at least 35 years of pensionable record. All those who work informally will not be able to meet those requirements. The MSP estimates that approximately 45% of Ukrainians over the age of 60 will not be able to retire on time. The total number of people working in Ukraine is 16 million. The number of unemployed in the economically active age (15 to 70 years) is 1,7 million<sup>57</sup>.

**Example**

Citizen Sh. appealed to the Commissioner regarding his employer having violated his right to timely remuneration for work. In his appeal, the complainant stated that he had worked for "K" LLC at a construction site in Kyiv. According to the complainant, he had been admitted to work without an employment contract. In order to restore the right of citizen Sh. to timely remuneration for work, the Commissioner requested that the State Labor Inspectorate conduct an inspection visit to "K" LLC at the

<sup>56</sup> Website of the State Statistics Service <http://www.ukrstat.gov.ua/>

<sup>57</sup> Glavcom online publication: URL: <https://glavcom.ua/economics/finances/doplati-do-pensiy-vvedut-uzhe-v-comu-roci-komu-i-skilki-budut-platiti-728408.html>.

place of its legal registration (city of Netishyn, Khmelnytsky Oblast) and the site of actual construction works carried out by the “K” LLC in Kyiv).

According to the State Labor Inspectorate, no signs of undeclared work regarding the “K” LLC and citizen Sh. were found; according to the complainant, however, as of December 2020, the “K” LLC continued to provide construction services at its actual location in Kyiv.

*In view of the above, the Commissioner reiterated her recommendation to the management of the State Labor Office to take respective supervisory measures*

Observance of the right of employees of coal mining enterprises to proper work conditions.

The Commissioner received appeals from citizens and trade unions on issues connected with employers failing to ensure safe work conditions

#### Example

The Commissioner received an appeal from the People’s Deputy of Ukraine and a collective appeal from citizens regarding the violation of the rights of miners at the «Kryvy Rih Iron Ore Plant» PJSC to safe work conditions. Aiming at defending their rights to safe work conditions, the miners at the enterprise refused to return to the surface, having started an underground protest that lasted from early September through October 15, 2020.

In order to restore the miners’ right to safe work conditions, the proceedings of the Commissioner were initiated. In the framework of the open proceedings, recommendations to take effective response measures were issued to the Prime Minister of Ukraine, the Minister of Economy, the Head of the State Labor Service and the National Mediation and Conciliation Service.

An inspection visit of the State Labor Service to the «Kryvy Rih Iron Ore Plant» PJSC revealed 190 violations of the law, in particular, on health safety at work, safe condition of technological equipment, special requirements of mining supervision, maintenance of mine workings in safe condition, safe handling of explosives, safe operation of lifting equipment, electrical safety.

Based on the results of measures of the state supervision (control), the head of the enterprise was issued an enforcement order to eliminate the violations revealed, and a report on an administrative offense was prepared.

The conflict was resolved through a Conciliation Agreement made by the administration and employees of the Kryvbaszalizrudkom PJSC, aimed at eliminating the causes and consequences of stay in the underground work conditions after the end of the work shift.

#### *Observance of the right of employees to receive timely remuneration for work*

According to the SSS<sup>58</sup>, as of December 1, 2020, wage arrears exceeded UAH 4 billion and, compared to the beginning of the year, grew by 32% (UAH 3.03 billion as of January 1, 2020); in 2019, it grew by 15% (UAH 2.64 billion as of January 1, 2019); in 2018, it grew by 11% (UAH 2.37 billion as of January 1, 2018) (Annex 6).

**AS OF 01.01.2021,  
WAGE ARREARS WERE  
UAH 3.13 BN**

<sup>58</sup> Website of the State Statistics Service : URL: <http://www.ukrstat.gov.ua/>.

In December 2020, back wages in the amount of UAH 873.8 million were repaid and as of January 1, 2021, the amount of arrears was to UAH 3.13 billion.

In 2020, in the structure of back wages, the larger part of the debt (UAH 2.7 billion) was at economically active enterprises (institutions and organizations) (Annex 7).

The Commissioner's monitoring revealed that the Commission on Repayment of Arrears in Wages, Pensions, Scholarships and Other Social Benefits<sup>59</sup>, which was active until October 31, 2020, did not hold a single meeting in 2020.

On October 31, 2020, the activity of the Commission on Repayment of Arrears in Wages, Pensions, Scholarships and Other Social Benefits was discontinued<sup>60</sup>, and the newly formed temporary advisory body of the Cabinet of Ministers of Ukraine – the Interdepartmental Working Group on Repayment of Arrears in Wage (Cash Remuneration), conducted an online meeting on December 17, 2020, which passed a number of decisions on the ways to decrease the arrears in wages.

#### Example

The Commissioner carried out proceedings at the request of employees of the Luhansk branch of the «Regional Electric Networks» State Enterprise (hereinafter referred to as "REN" SE) regarding protection of their right to adequate material support and social services under social insurance. According to the information posted on the official website of the State Labor Service of Ukraine, as of December 28, 2020, the back wages to employees/ former employees of the "REN" SE amounted to UAH 7,730.8 thousand.

According to the information of the Pension Fund of Ukraine, received in the course of the proceedings, as of 28.07.2020, the "REN" SE as the insurance carrier had SSC arrears (including fines and penalties) in excess of UAH 15 million. In the course of the proceedings, respective recommendations were issued to the MoEU, the STS, the MoE, the SLS, and the MSP. In order to restore the rights of employees/ former employees of the Luhansk branch of the "REN" SE, the Commissioner recommended that the newly established Interdepartmental Working Group on Repayment of Arrears in Wages (Cash Remuneration) include that issue in the agenda of the group meeting.

Following the intervention, that response was that the decision to consider the status of payment of debts of the "REN" SE will be made at the formation of the agenda for the next meeting of the Interdepartmental Working Group on Repayment of Arrears in Wages (Cash Remuneration).

#### Example

At the request of the People's Deputy of Ukraine the Commissioner conducts proceedings in the interests of employees of the Kharkiv State Aviation Production Enterprise regarding violation of their right to timely remuneration for work.

According to the information posted on the official website of the SLI, as of December 28, 2020, the arrears of wages to employees/ former employees of the Kharkiv State Aviation Production Enterprise

<sup>59</sup> Resolution of the Cabinet of Ministers of Ukraine, dated September 8, 2005, № 875 "On establishment of the commission for repayment of arrears in wages (cash compensation), pensions, scholarships and other social benefits".

<sup>60</sup> Resolution of the Cabinet of Ministers of Ukraine, dated October 28, 2020 p. № 1007 "On the establishment of an Interdepartmental Working Group on the repayment of arrears in wages (cash compensation)".

amounted to UAH 225,557.4 thousand. In the course of the proceedings, respective recommendations were issued to the MoE, the MoSIU, the MoJ and the Ukroboronprom SC.

In order to restore the rights of employees / former employees of the Kharkiv State Aviation Production Enterprise, the Commissioner recommended that the newly established Interdepartmental Working Group on Repayment of Arrears in Wages (Cash Remuneration) include that issue in the agenda of the group meeting.

The Commissioner also carries out constant supervision over the issue of back wages repayment at coal mining enterprises. Systematic violations of the rights of employees of coal mining enterprises increase social tensions in the labor collectives of mines and trigger protests.

#### Example

At the request of the Chair of the temporary control commission under the Ukrainian City Council of Donetsk Oblast regarding repayment of back wages due for the period from November 2019 to January 2020 to employees of a detached unit «Shakhta Ukrayina» of the «Selydivvuhilya» SE, the Commissioner opened proceedings. Within the proceedings, recommendations were issued to the Ministry of Energy and Environmental Protection of Ukraine.

Following the interventions, in January to March 2020, funds were allocated to the «Selydivvuhilya» SE to repay wage arrears under the «Coal Industry Restructuring» budget program for the total of UAH 112.1 million.

A positive solution on monitoring the status of payment of wages and obtaining complete and objective statistical information is submitting monthly reports on wage arrears by legal entities, introduced by the State Statistics Service to start in 2021<sup>61</sup>.

**STARTING IN 2021,  
MANDATORY REPORTING  
ON WAGE ARREARS WAS  
INTRODUCED**

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite the consideration and adoption of the draft Law of Ukraine «On Amendments to the Law of Ukraine «On Ratification of the International Labor Organization 1992 Convention “Protection of Workers’ Claims (Employer’s Insolvency) (No. 173)» (Reg. № 3332, dated April 13, 2020).

**To the Cabinet of Ministers of Ukraine** – make amendments in:

Law of Ukraine “On Collection and Accounting of Single Contribution to Compulsory State Social Insurance” pertaining to the provision of insured persons with payment of material support in full scope, regardless of whether or not the insurance carrier has arrears in payment of a single contribution to the compulsory state social insurance;

<sup>61</sup> Order of the State Statistics Committee, dated July 21, 2020, № 222 «On approval of the format for the state statistical survey № 3-debt (monthly) «Report on arrears in labor compensation».

The procedure to calculate the average salary (income, cash remuneration) for the calculation of payments for compulsory state social insurance, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated September 26, 2001, № 1266 (as amended by the Resolution of the Cabinet of Ministers of Ukraine, dated June 26, 2015, № 439) on establishing the mechanism to calculate payments under the compulsory state social insurance for individual entrepreneurs and persons engaged in independent professional activity, in order to ensure their right to material support;

ensure the regular work of the Interdepartmental Working Group on Repayment of Arrears in Wages (Cash Remuneration).

**To the Ministry of Social Policy of Ukraine** – ensure the implementation of measures to support persons with disabilities, as defined in the Program of Activities of the Cabinet of Ministers of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine, dated June 12, 2020, № 471.

**To the Ministry of Economic Development, Trade and Agriculture of Ukraine** – develop legislative mechanisms to encourage employers and citizens to provide/ prefer work in the formal sector of the economy.

**To the State Labor Service of Ukraine** – carry out regular work to decrease the level of informal employment.

**To the Pension Fund of Ukraine** – approve the Procedure for the State Tax Service of Ukraine to provide the Pension Fund of Ukraine with information from the State Register of Individual Taxpayers on the amount of paid income required to grant pensions to military personnel (except for compulsory duty personnel), officer and private corps, and police officers, and submit it to the MoJ of Ukraine for the state registration.

#### 4.6. Right to social protection

In 2020, the Commissioner received 4,420 reports of human rights violations in the area of social protection; 24 monitoring instances were carried out at bodies of local power, bodies of local self-government and their subordinate institutions. Approximately 700 appeals were sent to state authorities and local bodies of self-government.

In their appeals, citizens raised issues of retirement benefits provision, including non-compliance with court decisions on the appointment (recalculation) of pensions; receiving state social benefits, establishing the status of persons in benefit-entitled citizens (persons affected by the Chornobyl disaster; rehabilitated persons; persons with disabilities) and social guarantees connected with that; realization of the right to a housing subsidy.

The COVID-19 respiratory disease pandemic caused new challenges in ensuring human and civil rights in the area of social protection, therefore, the Commissioners paid considerable attention to monitoring the observance of respective rights in these conditions.

Within the implementation of a range of anti-epidemic measures introduced by the Government, bodies of local self-government or commissions on technogenic and environmental safety and emergencies, formed by them, made illegal decisions on suspending (cancelling) or limiting benefits stipulated by law.

*The right of citizens to adequate living standards and proper social protection*

Citizens' appeals to the Commissioner testified that, despite a certain increase in the subsistence level as a basic state social standard, the sizes of pensions and state social benefits do not ensure adequate standards of living for them.

The subsistence minimum, which serves as the basis for most benefits, does not take into account the actual needs of a human being, and is formed solely on the basis of financial capacities of the state. It is almost twice smaller than the actual one, as determined by the MSP.<sup>62</sup> For example, starting on January 1, 2020, the statutory monthly subsistence level per person was UAH 2,027<sup>63</sup>, while the actual amount of the corresponding subsistence minimum in January 2020 prices was UAH 3,780 (or UAH 4,335, if mandatory payments are included).

The level of poverty among people of retirement age remains high. As of January 1, 2021, 8,606,376 (almost 77%) of Ukrainian retirees had a pension under UAH 4,000 (approximately USD 140), which is below the monetary poverty line (USD 150). The average size of the assigned pension with targeted cash aid is UAH 3507.51 (approximately USD 123)<sup>64</sup>.

The high level of poverty, especially in families with children or persons with disabilities, indicates the lack of effective mechanisms of social support by the state for those categories.

The problem of poverty has aggravated even more in the context of the COVID-19 pandemic.

**THE APPROVED  
SUBSISTENCE LEVEL IS  
TWICE SMALLER THAN  
THE ACTUAL ONE**

**77% OF PENSIONERS  
RECEIVE PENSIONS  
THAT ARE BELOW  
THE MONETARY POVERTY  
LINE**

*Observance of the right to annual indexation of pension benefits*

The Commissioner monitored the provision of citizens' rights to the annual indexation of pension benefits. In 2020, pensions were indexed starting from May 1, since part two in Article 42 of the Law of Ukraine «On Compulsory State Pension Insurance», dated July 9, 2003, № 1058-IV, does not specify a date for indexation of pensions, and the respective date was determined by the Cabinet Ministers of Ukraine.

In order to ensure the legal clarity of this legislative provision, the Commissioner issued recommendations to the MSP on determining the date of annual indexation of pensions at the legislative level.

The said recommendations were taken into account in the Resolution of the Cabinet of Ministers of Ukraine, dated September 16, 2020, № 849, «Certain matters of raising pension benefits for certain categories of persons in 2021 and afterwards», which stipulates annual indexation starting on March 1.

**ANNUAL INDEXATION  
OF PENSION BENEFITS  
MUST BEGIN ON  
MARCH 1**

<sup>62</sup> URL: <https://www.msp.gov.ua/news/18287.html>.

<sup>63</sup> Law of Ukraine "On the State Budget of Ukraine for 2020", dated November 14, 2019, № 294-IX.

<sup>64</sup> URL: <https://www.pfu.gov.ua/2128328-dani-pro-serednij-rozmir-pensiyi-stanom-na-01-01-2021/>

At the same time, to approve the specified date of pension benefits indexation at the level of the law, the MSP drafted a Law “On Amendments to Certain Legislative Acts of Ukraine Pertaining to Improvement of Pension Legislation” and submitted it to the Verkhovna Rada of Ukraine (Reg. № 4668, dated 28.01.2021).

*Violation of the right of citizens to timely award of pensions in accordance with the international agreements concluded by Ukraine in the area of pension benefits provision*

The Commissioner received appeals from citizens who gained their qualifying period outside Ukraine regarding the violation of their rights to adequate pension provision in Ukraine.

**Example**

In January 2020, citizen R., a resident of Lviv Oblast, complained to the Commissioner against violation of his right to a timely pension in Ukraine due to delays in confirmation of his pension insurance record in the Portuguese Republic by the competent authorities of that country. During the proceedings opened on the complaint, the violation of his right and another 699 citizens of Ukraine, who gained their pension insurance records in the territory of the Portuguese Republic, to receive a timely pension in Ukraine<sup>65</sup> was confirmed.

In order to restore the rights of that category of citizens, the Commissioner issued recommendations to the MSP and the PFU, which resulted in the right to pension benefits renewed for 316 citizens of Ukraine who gained their pension insurance records in the Portuguese Republic.

**PENSION ENTITLEMENT WAS RENEWED FOR 316 CITIZENS OF UKRAINE WHO GAINED PENSIONABLE RECORD IN THE REPUBLIC OF PORTUGAL**

Delays in the submission of documents by the competent authorities in the Portuguese Republic where caused by the absence of an agreement between Ukraine and the Portuguese Republic regarding social security<sup>66</sup> and frequency of consideration of documents by the parties thereto.

The legislation of Ukraine stipulates that in case of receipt of documents after the statutory three-month period, persons applying for pension benefits lose the right to receive it from the moment of application.

The Commissioner received appeals from citizens of Ukraine residing abroad who were granted a pension for the qualification period acquired on the territory of Ukraine, concerning violation of their rights to adequate pension provision in accordance with international agreements concluded by Ukraine in the area of pension provision.

**Example**

D., a citizen of Ukraine residing in the Republic of Bulgaria, addressed the Commissioner about the violation of her right to renew her disability pension, suspended by the PFU starting in October 2017, on grounds of expiry of the time period for disability confirmation.

<sup>65</sup> Letter of the Pension Fund of Ukraine, dated March 20, 2020, № 7341-5514/P-03/1-2800/20.

<sup>66</sup> Law of Ukraine “On ratification of the agreement between Ukraine and the Portuguese Republic on social security”, dated December 21, 2011, № 4209-VI.

The proceedings instituted on that appeal revealed that D's pension had not been renewed, since the MoH had not confirmed the applicant's degree of disability in accordance with the medical form BG/UKR 6 «Medical Examination» received from the territorial branch of the National Insurance Institute of Bulgaria.

Similar violations of the law were also revealed against 17 other citizens<sup>67</sup>.

In order to restore the citizens' rights, the relevant recommendations of the Ministry of Health and the PFU were sent. As a result, the Ministry of Health confirmed that the PFU established disability categories for the citizens, following which, in March 2020, payment of pensions was resumed, as well as transfers were made for the period from the time of suspension.

The following issues also require resolution at the legislative level:

- payment of pensions to pensioners for the period of their permanent residence abroad if Ukraine has not made an international agreement on pension provision with the respective state;
- ratification of the Agreement between Ukraine and the State of Israel on social security and the Agreement between Ukraine and the Federal Republic of Germany on social security.

**CITIZENS DID NOT RECEIVE THEIR PENSIONS ON TIME BECAUSE OF THE MOH BEING SLOW IN ESTABLISHING THEIR DISABILITY CATEGORY**

#### *The right to recalculation of pensions for officers of prosecution authorities*

The Commissioner received numerous appeals from this category of pensioners about violations by the PFU of their right to recalculation of pensions in accordance with the decisions of the CCU, dated December 13, 2019 and March 26, 2020, adopted in relation to that category of persons.

The proceedings initiated by the Commissioner on those appeals found that the PFU recalculated pensions for prosecutors at the Office of the General Prosecutor starting from March 26, 2020 (the decision of the Constitutional Court of March 26, 2020), the Oblast Prosecutor's Offices – starting from September 11, 2020 (since the moment of the start of their work after the prosecution system has been reformed). Recalculations for officers at district prosecutor's offices will be carried out from the date when their work begins.

This is the position of the MSP, the PFU and the Prosecutor General's Office for Prosecutor General's Office, which is inconsistent with the existing case law on that matter. Proceeding from the results of consideration of a model case, in its decision, dated September 14, 2020, the Supreme Court made a legal conclusion that, starting from December 13, 2019, all persons, to whom pensions have been granted in accordance with the laws of Ukraine «On the Prosecutor's Office are entitled to recalculation of pension benefits in connection with salary raise to prosecution officers, which occurred in accordance with Resolutions of the Cabinet of Ministers of Ukraine<sup>68</sup>.

In order to restore the rights of this category of citizens, the Commissioner provided recommendations to the MSP, the PFU and the Prosecutor General's Office.

<sup>67</sup> Letter of the Pension Fund of Ukraine, dated February 20, 2020, № 2800-030103-1/5658.

<sup>68</sup> Resolution of the Cabinet of Ministers of Ukraine, dated September 30, 2017, № 657 « On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine on labor compensation for prosecution officers».

### **FOLLOWING THE COMMISSIONER'S CONSTITUTIONAL PETITION REGARDING AWARD AND RECALCULATION OF PENSION BENEFITS FOR CIVIL SERVANTS AND EMPLOYEES OF LOCAL BODIES OF SELF-GOVERNMENT, THE CCU OPENED CONSTITUTIONAL PROCEEDINGS IN FEBRUARY 2020**

self-government, the CCU opened constitutional proceedings in February 2020, and the case is currently considered by the Grand Chamber of the Court.

#### *The right to a pension in accordance with court decisions*

In 2020, the Commissioner received numerous appeals from citizens regarding non-compliance with the decisions of administrative courts on the renewal of their pension rights.

The majority of those concerned the existence of arrears in pension payments by court decisions, which are repaid at the expense of the state budget funds.

### **PFU REPAID THE ARREARS BY COURT DECISIONS RECEIVED IN 2016 TO 2018**

Throughout the year, the Commissioner monitored that systemic problem.

It established that the PFU repaid the arrears by court decisions at the expense of funds allocated in 2020 from the State Budget of Ukraine in the amount of UAH 200 million, received by the PFU bodies from January 2016 to December 2018.

The issue of the procedure for repayment of the respective arrears next year needs resolution, since the decision of the Sixth Administrative Court of Appeal, dated July 22, 2020, declared the provisions in the Resolution of the Cabinet of Ministers of Ukraine<sup>69</sup>, which determined the procedure, to be illegal and invalid.

A significant number of appeals concerned the PFU bodies failing to take into account, in the course of awarding / recalculating pension benefits to citizens, the conclusions and legal assessment of courts contained in the analysis of such decisions and, as a consequence, reducing pension benefits as a result of complying with court decisions.

#### **Example**

Citizen B. from Cherkasy Oblast appealed to the Commissioner regarding reduction of his pension after the court decision on recalculation of pension benefits in accordance with part two in Article 56 of the Law of Ukraine "On the Status and Social Protection of Citizens Affected by the Chornobyl Accident"<sup>70</sup>.

The proceedings initiated upon that appeal revealed that, in the course of enforcement of the court decision, the PFU CD in Cherkasy Oblast did not take into account the legal conclusions of the court on the procedure for application of those law provisions, and following recalculation of pensions in a way

<sup>69</sup> Resolution of the Cabinet of Ministers of Ukraine, dated August 22, 2018 № 649 «The issue of repayment of arrears in pension benefits by court decisions».

<sup>70</sup> Law of Ukraine "On the status and social protection of citizens affected by the Chornobyl accident", dated February 28, 1991, № 796-XII.

differing from the one defined by the court, the pension benefit size decreased from UAH 2,698.28 to UAH 1,638.00. At present, the complainant is paid a lower pension. The PFU CD in Cherkasy Oblast argues such actions by the court decision being binding.

According to the Commissioner, that situation merits violation of human rights. In order to restore the citizen's right to have his pension recalculated in accordance with the court decision, the Commissioner provided issued to the MSP and the PFU.

In view of the systemic nature of the problems related to the enforcement of court decisions, a working group was revealed at the Secretariat of the Commissioner to develop proposals for their settlement (it included representatives of the MSP, the MoJ, the Prosecutor General's Office, the PFU, the Federation of Trade Unions of Ukraine and Supreme Court), which will continue its activities in 2021.

#### *Violation of citizens' rights to proper pension provision as a result of illegal law enforcement practices*

The Commissioner received appeals from citizens regarding the inadequate level of their pension provision, namely incorrect application of the provisions in the effective legislation in the course of awarding (recalculating) a pension and determining its size.

#### Example

Citizen Sh. from the city of Chernivtsi, who receives a survivor's pension (in connection with death of both parents), appealed to the Commissioner regarding violation of his right to receive a supplement to the pension, starting on July 1, 2019, to UAH 2,000, as guaranteed by law<sup>71</sup> if the wage earner has 35 years of pension insurance record for men, and 30 years for women.

The consideration of the appeal revealed that the PFU CD in Chernivtsi Oblast denied the complainant a pension supplement to UAH 2,000, since one of the wage earners lacked the pension insurance record specified by the Government resolution.

Following the Commissioner's recommendation, the MSP provided an explanation to the PFU regarding the complainant's right to the supplement in question if at least one of the wage earners had the required insurance record. As a result, complainant's right to the supplement was renewed, and the funds paid starting from July 1, 2019.

#### *Observance of the rights of citizens affected by the Chornobyl disaster*

In 2020, the Commissioner carried out proceedings on numerous appeals of citizens affected by the Chornobyl disaster, as well as PAs active in the area of protecting the rights of that category of citizens, regarding the violation of their rights to social protection and pension support.

The complainants' appeals, in particular, mentioned the need to regulate the pension support for persons affected by the Chornobyl disaster and to eliminate any disparities in the amount of pensions between the various categories.

In order to review the pension support and social security for that category of citizens, the Commissioner issued respective recommendations to the MSP. Their larger part, however, they were not supported due to the limited financial capacity of the state budget and the PFU budget.

<sup>71</sup> Resolution of the Cabinet of Ministers of Ukraine, dated June 26, 2019, № 543 "On amendments to certain Resolutions of the Cabinet of Ministers of Ukraine".

Specific recommendations by the Commissioner were included in draft laws developed by the MSP<sup>72</sup>.

Those draft laws envisaged establishing equal conditions for pension benefits calculation of all liquidators of the Chernobyl accident (other nuclear accidents), regarding whom a causal connection was confirmed between their disability and the Chernobyl accident (other nuclear accidents), and resolving problem issues to provide persons who accompany a person with the 1st degree disability (for the duration of sanatorium therapy) with a voucher (without the entitlement to health care).

**THE CCU DECISION OF JULY 17, 2018  
№ 6-R/2018 REGARDING THE RENEWAL  
OF BENEFITS TO CITIZENS AFFECTED BY  
THE CHORNOBYL DISASTER HAS NOT  
BEEN IMPLEMENTED**

Those drafts require immediate consideration by the Verkhovna Rada of Ukraine and adoption.

Another issue that is yet to be resolved is the renewal of privileges to citizens affected by the Chernobyl disaster, in pursuance of the CCU decision, dated July 17, 2018, № 6-r/2018.

*Violation of the right of war veterans to the annual one-time financial assistance in the proper amount, by May 5*

The Commissioner monitored the observance of the right of war veterans to the annual one-time financial assistance in the proper amount, envisaged in the Law of Ukraine «On the Status of War Veterans, Guarantees of Their Social Protection», in the proper amount, with account to the CCU decision.

**Example**

Citizen R., who has a 1st degree disability as a result of the war, appealed to the Commissioner regarding the Department of Labor and Social Protection of the Podilsky District State Administration in Kyiv failing to pay the annual one-time financial assistance in the proper amount, by May 5.

The consideration of the appeal revealed that the complainant was paid the said aid in the amount of UAH 4,120, as determined by the Resolution of the Cabinet of Ministers of Ukraine, dated February 19, 2020, № 112 «Certain matters issues of payment in 2020 of one-time cash assistance envisaged in the Laws of Ukraine «On the Status of War Veterans, Guarantees of Their Social Protection» and «On Victims of Nazi Persecution», as stipulated by the provisions in Clause 26 of Section VI «Final and Transitional Provisions» of the Budget Code of Ukraine.

The CCU decision, dated February 27, 2020, № 3-r / 2020, declared this provision of the Budget Code of Ukraine, pertaining to the application of the legislation on the protection of war veterans, to be unconstitutional and expired on the date when the CCU decision was passed.

With account to the systematic nature of the issue raised by the complainant, the Commissioner issued recommendations to the MSP, which, in turn, requested that the Cabinet of Ministers of Ukraine instruct the Ministry of Veterans to take measures for amendments in the legislation on defining the state assistance to war veterans.

<sup>72</sup> Draft Laws of Ukraine «On amendments to the Law of Ukraine «On the status and social protection of citizens affected by the Chernobyl accident» pertaining to an increase in the level of pension provision for certain categories of persons» (submitted to the Verkhovna Rada of Ukraine, Reg. № 4555, dated 29.12.2020) and «On amendments to the Law of Ukraine «On the status and social protection of citizens affected by the Chernobyl accident» pertaining to strengthening social guarantees» (currently in conciliation procedure).

The CCU decision on war veterans, dated December 18, 2018, № 12-r/2018, is yet to be implemented.

**THE CCU DECISION OF DECEMBER 18, 2018 № 12-R/2018 REGARDING BENEFITS TO WAR VETERANS HAS NOT BEEN IMPLEMENTED**

*Violation of the right of persons with disabilities (family members and heirs of persons with disabilities after their death) to free transfer of ownership of an automobile recognized as humanitarian aid*

The Commissioner monitored the observance of the rights of persons with disabilities (family members and heirs of persons with disabilities after their death) to free transfer of ownership of an automobile recognized as humanitarian aid<sup>73</sup>.

**Example**

In June 2020, a citizen B. from Kyiv Oblast, who is a person with a disability caused by the war, appealed to the Commissioner complaining against violation by the Kyiv OSA of his right to free transfer of ownership of a car recognized by humanitarian aid, in confirmation of which he submitted respective documents way back in November, 2019. The violation was caused by the failure to ensure the functioning of the working group on humanitarian aid. The Commissioner submitted a request to the Head of the Kyiv OSA. As a result of the order issued, the applicant's right to receive a car was restored.

Consideration of the above-mentioned appeal revealed violations of the respective rights of more than 70 persons with disabilities and members of their families and heirs<sup>74</sup>, whose rights were also restored following the Commissioner's intervention.

**THE ENTITLEMENT OF MORE THAN 70 PERSONS TO RECEIVE A CAR WAS REINSTATED**

The Commissioner's monitoring of such problems in other areas did not reveal any similar violations.

*Violation of the right of certain categories of persons with disabilities to receive a voucher for sanatorium therapy*

The Commissioner exercises supervision over the issue of ensuring the rights of persons with disabilities to sanatorium therapy.

**Example**

The Commissioner received an appeal from a citizen of B. from Cherkasy, who is a person with a 1st degree disability, associated with an illness developed in the course of his military service, regarding violation of his right to sanatorium therapy.

Consideration of the citizen's appeal revealed that the Cabinet of Ministers of Ukraine did not determine the procedure to provide sanatorium-and-spa vouchers to persons with disabilities whose disability was caused by an illness developed in the course of compulsory military service, and who receive a pension in accordance with the Law of Ukraine «On pensions for persons discharged from military service and certain other persons», dated April 9, 1992, № 2262-XII.

<sup>73</sup> Resolution of the Cabinet of Ministers of Ukraine, dated July 19, 2006, № 999 « On approval of the procedure to provide automobiles to persons with disabilities».

<sup>74</sup> Letter of the Kyiv OSA, dated November 12, 2020, № 11-11/5943/05/36-2020.

*Violation of the rights of rehabilitees or victims of repression*

The Commissioner received 11 complaints from citizens about the violation of their right to receive the status of a rehabilitated person or a victim of repression, as well as the violation of the right to receive benefits and guarantees in existence of those statuses due to lack of certificate blank forms. In 4 appeals, violations were confirmed and 4 citizens' rights were renewed, following implementation of the recommendations issued by the Commissioner.

**Example**

In August 2020, the Commissioner received a request from a citizen Ch. from Kyiv Oblast to assist in obtaining a rehabilitee certificate, since she had already been recognized as a rehabilitated person and in 1992, received a respective certificate.

In her application, the applicant stated that, for a long time, the Chervona Sloboda Village Council of Makariv District in Kyiv Oblast failed to resolve that issue, referring to the fact that the Council had not developed an administrative service for issuing certificates and the absence of the blank forms for the latter. Due to the delays in issuance of the certificate, the complainant could not enjoy the benefits and guarantees due to her.

The Commissioners issued recommendations to the Head of the Chervona Sloboda Village Council, and as a result, in November 2020, the complainant was issued a rehabilitee certificate.

The Commissioner also received appeals from citizens who are heirs of rehabilitated citizens requesting assistance in obtaining reimbursement of the value of confiscated property.

Consideration of those appeals revealed that the provisions in the Regulations on the procedure for payment of monetary compensation, return of property or reimbursement of its value to rehabilitated citizens or their heirs<sup>75</sup>, developed pursuant to the Law of Ukraine «On Rehabilitation of Victims of Political Repression in Ukraine»<sup>76</sup>, are inconsistent with the Law of Ukraine «On the Rehabilitation of Victims of Political Repressions of the Communist Totalitarian Regime of 1917-1991»<sup>77</sup>.

In order to resolve this issue, the Commissioner sent recommendations to the MCIP. According to the latter (as of April 2020), the MSP developed a draft resolution of the Cabinet of Ministers of Ukraine<sup>78</sup>, which envisages approval of a new Regulation on the procedure for payment of monetary compensation, return of property or reimbursement of its value to rehabilitated citizens. The draft, however, has not yet been submitted to the Cabinet of Ministers of Ukraine.

*Observance of citizens' rights to housing subsidies*

In 2020, the Commissioner received 199 appeals from citizens regarding violations of their right to housing subsidies.

Their consideration confirmed violation of the respective right only in some cases.

<sup>75</sup> Resolution of the Cabinet of Ministers of Ukraine, dated June 24, 1991, № 48 «On measures to implement the Law of the Ukrainian SSR «On Rehabilitation of Victims of Political Repression in Ukraine».

<sup>76</sup> Law of Ukraine «On Rehabilitation of Victims of Political Repression in Ukraine», dated April 17, 1991, № 962-XII.

<sup>77</sup> Law of Ukraine «On Rehabilitation of Victims of Repressions of the Communist Totalitarian Regime of 1917-1991» (as amended by the Law of Ukraine, dated March 13, 2018, № 2325-VIII).

<sup>78</sup> Draft Resolution of the Cabinet of Ministers of Ukraine «Certain matters of implementation of the Law of Ukraine» On Rehabilitation of Victims of Repressions of the Communist Totalitarian Regime of 1917-1991».

**Example**

P., a citizen of Dnipro, appealed to the Commissioner complaining that she had been wrongfully denied a housing subsidy in cash, due for the 2020–2021 heating season.

Consideration of the appeal revealed that her household had been granted a housing subsidy in a non-cash form, since the housing and utility services provider informed of existence of the household's debt in payment of those, and in existence thereof, a cash subsidy may not be granted.

The complainant submitted documents to the social security authority refuting the existence of the debt, but the decision was not reconsidered. The Commissioners issued recommendations to the Department of Social Policy of the Dnipro City Council, following which the applicant's right to a housing subsidy in the cash form was renewed.

In order to clarify the situation with observance of citizens' rights to housing subsidies, in 2020 the Commissioner monitored the activities of the Department of Labor and Social Protection of the Executive Committee of the Lubny City Council, and departments of labor and social protection of the administrations of Osnovyansky and Kholodnohirsky Districts of Kharkiv City Council.

Their results revealed shortcomings in the implementation of the provisions of the legislation on subsidies. In particular, they revealed:

- lack of cooperation between social protection bodies, organizations that are providers of housing and utility services, and Oschadbank JSC in the process of provision of housing subsidies and benefits;

- absence of information exchange between the social protection authorities and the State Border Guard Service and the MoJ, respectively, in relation to crossing the state border and obtaining information from the Unified Register of Debtors on the existence of debts on enforcement proceedings for the recovery of child support; non-conclusion of agreements between associations of co-owners of apartment buildings and the Oschadbank JSC, and failure of the social protection authority to receive information on the persons registered as residents of residential premises from the register of the territorial community.

As a result, human right to a housing subsidy have been violated. In particular, it is not uncommon when, after obtaining reliable information on the circumstances that affect the determination of the right to a housing subsidy or its amount (such as crossing the state border, the existence of debt on housing and utility services or arrears in enforcement proceedings on the recovery of child support), amounts of subsidies paid in excess are deducted from citizens.

**Example**

Examination of the personal file of citizen K. by the Labor and Social Protection Department of the Lubny City Council Executive Committee revealed that the request to return the overpaid amount of the subsidy was made only a year after it had been granted, which was caused by a lengthy clarification of reliable information on the registered persons. That could have been avoided if the required information were requested in a timely manner.

In order to eliminate the violations identified, the Commissioner sent respective recommendations to the heads of monitored units, as well as the MSP, the MoJ, the MoRD, and the State Border Guard Service.

### *Ensuring the rights of citizens in the area of social protection in the context of the COVID-19 respiratory disease pandemic*

The Commissioner's monitoring the observance of the relevant rights of citizens in the pandemic conditions revealed that the Government of Ukraine has taken measures to mitigate the impact of the pandemic and anti-epidemic measures on the most vulnerable groups, including:

- continuity of all social payments and pensions is has been ensured, and the procedures for their award and payment has been adjusted with account to the requirements connected with the quarantine restrictions;

- pensions and social benefits have been increased;

- a number of amendments have been made to the legislation on the allocation of housing subsidies<sup>79</sup>, which made it possible to ensure the observance of the citizens' right to housing subsidies in the quarantine conditions;

- in April 2020, certain categories of citizens were provided with a one-time financial assistance in the amount of UAH 1,000<sup>80</sup>.

According to the MSP, 10.6 million pensioners and beneficiaries of the state social assistance received those<sup>81</sup>.

### *Violation of the rights of persons on full state maintenance to receive one-time financial assistance in full*

#### **10.6 MN CITIZENS RECEIVED A ONE-TIME FINANCIAL ASSISTANCE IN THE AMOUNT OF UAH 1,000**

The Commissioner's regional representative offices in the central Oblasts received reports from boards in nursing homes in Vinnytsia Oblast regarding violation of their right to receive the full amount of one-time financial assistance in April, 2020.

#### **Example**

During visits to the Oblast Nursing Home for Persons with Disabilities and Senior Citizens of Vinnytsia OSA and to the Tyvriv Oblast Nursing Home for Persons with Disabilities and Senior Citizens of Vinnytsia OSA, it was revealed that the boarders who were awarded retirement benefits received UAH 250, instead of the guaranteed UAH 1,000.

Such a violation was committed against all pensioners who were on full state maintenance, and required to be eliminated by amending the statutory instrument.

In order to restore the rights of that category of citizens, the Commissioner issued recommendations to the MSP. Following that, the Cabinet of Ministers of Ukraine adopted a Resolution<sup>82</sup>, according to which, in July, 2020, the assistance to persons on full state maintenance was paid in full.

<sup>79</sup> Resolutions of the Cabinet of Ministers of Ukraine, dated March 25, 2020, № 247 «On the specifics in the provision of housing subsidies», and dated April 22, 2020 № 329 «Certain matters of social support for families with children».

<sup>80</sup> Resolution of the Cabinet of Ministers of Ukraine, dated April 1, 2020, № 251 «Certain matters of increasing pension benefits and providing social support to certain categories of the population in 2020».

<sup>81</sup> URL: <https://www.kmu.gov.ua/news/minsocpolitiki-hto-otrimaye-odnorazovu-groshovu-dopomogu-u-sumi-1000-griven>

<sup>82</sup> Resolution of the Cabinet of Ministers of Ukraine of June 3, 2020 № 440 «On amendments to clause 6 in the Procedure for payment of one-time cash benefits in connection with the negative consequences of the spread of the COVID-19 acute respiratory disease caused by SARS-CoV-2 Coronavirus, in the amount of UAH 1,000, to certain categories of the population».

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite consideration and adoption of the draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Improving Pension Legislation» in relation to increasing the level of pension provision for certain categories of persons» (Reg. 4668, dated January 28, 2021).

### **To the Cabinet of Ministers of Ukraine:**

1. Develop and submit for consideration to the Verkhovna Rada of Ukraine draft laws on the following: observance of the rights of persons affected by the Chernobyl disaster and war veterans in accordance with the decisions of the CCU, dated July 17, 2018 № 6-r/2018; dated December 18, 2018, № 12-p/2018; dated February 27, 2020, №3-r/2020;

determination of the main state standard of the «subsistence level» in accordance with the requirements of the legislation, as well as the removal of the indicator «the level of provision of the subsistence minimum»;

resolution of issues of retirement benefits provision to pensioners for the period of their permanent residence abroad, in case Ukraine has not concluded an international agreement on retirement benefits provision with the respective state;

making amendments aimed at preventing a decrease in the size of retirement benefits after their recalculation in pursuance of a court decision.

2. To submit the following draft laws developed by the MSP to the Verkhovna Rada of Ukraine for consideration:

on the ratification of the Agreements on social security between Ukraine and the State of Israel, and between Ukraine and the Federal Republic of Germany.

3. Develop and approve:

action plan for the implementation of the National Strategy to resolve the problem of non-compliance with court decisions where the debtor is a state body or a state-owned enterprise, institution, organization, for the period until 2022;

the procedure for providing sanatorium vouchers to persons with disabilities whose disability was caused by an illness developed in the course of their compulsory military service and who receive a pension in accordance with the Law of Ukraine «On Pensions for Persons Released from Military Service and Certain Other Persons»;

the procedure for payment of compensation, return of property or reimbursement of its value to rehabilitated persons or their heirs.

4. Take measures to determine the requirement for funds to repay debts following court decisions and to implement programs related to social protection, and to envisage those in the 2022 State Budget of Ukraine.

**To the Ministry of Social Policy of Ukraine** – take measures to ensure the implementation of international agreements of Ukraine in the area of retirement benefits provision in respect to the timely

consideration of documents by the parties thereto, and awarding pensions to citizens in Ukraine from the moment of request.

Resolve the issue of recalculation of retirement benefits for prosecutors.

Resolve problem issues in practical application of the legislative provisions on subsidies.

**To the Ministry of Health of Ukraine** – ensure timely assessment of the degree and reasons for establishing the disability of citizens of Ukraine under international agreements of Ukraine on retirement benefits.

**To the Pension Fund of Ukraine** – exercise supervision over their territorial units in respect to observance of citizens' rights in awarding (recalculating) pensions in accordance with court decisions passed in their favor.

#### 4.7. Right to education and culture

Parliamentary control over the observance of the rights of students in the area of professional (vocational) education, vocational pre-higher education and higher education testifies to systemic problems existing in it.

During 2020, the Commissioner received 152 reports from citizens regarding the observance of their rights in the area of education, and carried out 7 instances of monitoring of status of observance of the effective legislation by the OSA local education authorities and institutions of professional (vocational) education, vocational pre-higher education and higher education; sent 110 letters containing respective recommendations, and exercised control over their implementation.

##### *Ensuring the right to access quality services in the area of vocational (professional) education*

The Commissioner monitored the observance of the rights of students (trainees) in the area of vocational education by local bodies of executive power, in particular, by the education administration bodies under Vinnytsia, Kyiv and Chernihiv OSAs.

The monitoring revealed that, in pursuance of the Action Plan to the Concept of implementation of the state policy in the area of vocational (professional) education «Modern vocational (professional) education» until 2027<sup>83</sup> a regional program for vocational (professional) education for 2020 to 2023 was approved in Kyiv Oblast; Vinnytsia and Chernihiv Oblasts did not develop any programs like that. In Vinnytsia Oblast, 18 modern educational and practice centers were revealed on the basis of existing vocational education institutions; in Chernihiv Oblast – 12, and in Kyiv Oblast – 11.

The monitoring revealed a range of problem issues related to the realization of the rights of students (trainees) to access quality services in the area of vocational (professional) education.

The material and technical base of vocational (professional) education institutions remains to be inadequate.

<sup>83</sup> Order of the Cabinet of Ministers of Ukraine, dated April 29, 2020 № 508-r «On approval of the Action Plan to the Concept of implementation of the state policy in the area of vocational (professional) education «Modern vocational (professional) education» until 2027».

According to the MoES, the share of expenditures on the system of vocational (professional) education in the 2020 consolidated budget for education was 4.55% (4.78% in 2016). Since the level of investment in infrastructure and the educational process is insufficient, equipment in some institutions is very much depreciated, sometimes reaching 60%<sup>84</sup>.

In 2020, compared to 2019, the number of vocational (technical) education institutions decreased by 17 units. Those negative developments have not only been caused by the decreasing share of young people aged 15-24 in the total permanent population (from 11.3% in 2014 to 9.6% in 2020), but also by the reduction of the prestige of professional (vocational and technical) education in Ukraine, which is why the majority of school graduates opt to pursue higher education<sup>85</sup>. At the same time, a third of those who are currently unemployed are young persons under 35. This imbalance in the labor market causes a decrease in the efficiency of vocational (professional) education.

**IN 2020, THE NUMBER OF VOCATIONAL (TECHNICAL) EDUCATION INSTITUTIONS DECREASED BY 17 UNITS**

A decrease in the number of students causes institutions of vocational (professional) education to be underfilled, increasing the cost of their maintenance and aggravating problems with quality staffing. Over the past three years Chernihiv Oblast experienced a reduction in the cohort by almost 800 persons. Four vocational (professional) educational institutions in the Oblast (28%) work with students numbering 96 to 149. Attrition rates are high among teachers of special subjects and masters of industrial training in the system of professional (vocational) education.

The transfer of asset packages of vocational (professional and technical) educational institutions from state to municipal ownership, which began in 2016, has been slow. According to the MoES, in late 2020 the Cabinet of Ministers of Ukraine passed a decision to transfer 96 (15%) institutions to municipal ownership<sup>86</sup>, with 4 of those being in Chernihiv Oblast, 3 – in Kyiv Oblast, and none in Vinnytsia Oblast. The absence of a clear division of powers in management of the vocational (professional) education system does not contribute to increasing its effectiveness or ensuring proper access to quality education for citizens of Ukraine, regardless of their region of residence.

#### Example

In November 2020, the Commissioner was approached by parents of first-year students of the Lviv Higher Vocational School of Transport Technologies and Service under the National Transport University, who reported that their children were enrolled in the educational institution in September 2020, but the school did not receive the regional order from the Lviv Oblast Council for training of skilled workers.

In the framework of the proceedings initiated by the Commissioner to protect the rights of 51 students, recommendations were issued to the Department of Education and Science of the Lviv OSA and the

<sup>84</sup> Official website of the MoES: [proyekt-stratehiyi-rozvytku-profesijnoyi-profesijno-tekhnichnoyi-osvity-na-period-do-2023](https://www.moes.gov.ua/proyekt-stratehiyi-rozvytku-profesijnoyi-profesijno-tekhnichnoyi-osvity-na-period-do-2023): Strategy for the development of vocational (professional) education until 2023 (draft).

<sup>85</sup> National Institute for Strategic Studies: analytical note: [https://niss.gov.ua/sites/default/files/2020-02/analit-lisogor-social-policy-15-2020\\_1.pdf](https://niss.gov.ua/sites/default/files/2020-02/analit-lisogor-social-policy-15-2020_1.pdf)

<sup>86</sup> MoES letter, dated December 30, 2020, № 1/10-4769.

MoES regarding resolution of the situation in the educational institution. The intervention applied after the first semester had resulted in the first-year students being transferred to other vocational (professional) educational institutions in Lviv to vacant places within the regional order. The director of the Lviv Higher Vocational School of Transport Technologies and Service under the National Transport University was removed from the office.

Measures were also taken to ensure the realization of the right of citizens to gaining a profession.

#### Example

The Commissioner opened proceedings following an appeal of citizen G., who has a 3rd degree disability, about being denied entry to a higher vocational school to learn the profession of a cook in connection with his age of over 30. Within the proceedings, the Commissioner issued recommendations to the Department of Education and Science of the Vinnytsia OSA, following which the groundless and discriminatory provisions on age restrictions were removed from the Rules of Admission to the Higher Vocational School.

#### *Observance of students' right to higher education*

Over the reporting period, the Commissioner considered the most frequent reports by school and university students, as well as their parents or persons in loco parentis, requesting restoration of their right to higher education, adequate scholarships, or appealing against their educational institutions being reorganized.

Following the monitoring visits and consideration of citizens' appeals, the Commissioner revealed systemic problem issues related to the implementation of human and civil rights in the area of higher education; weakening the MoES control over higher education institutions' compliance with their licensing terms and conditions; shortcomings in the Unified State Electronic Database on Educational Matters in terms of displaying complete information on the actual validity of licenses, certification of educational entities, the status of institutional accreditation of higher education institutions, institutional audit of educational institutions. The recommendations provided by the Commissioner on the work of the MoES Unified State Electronic Database on Educational Matters have been taken into account.

#### Example

In August 2020, the Commissioner was approached by parents of students of the "St. Luke's International College" Private Higher Educational Institution regarding violation of their children's right to timely issuance of documents on higher education. Within the proceedings initiated by the Commissioner, monitoring visits were carried out to the MoES and the educational institution, which revealed violation of the right to higher education of 135 students of the said educational institution, since the College did not have a license for educational activities in professional areas 5.12010106 «Orthopedic Dentistry» and 5.12010102 «Nursing».

The MoES did not exercise proper control over the educational activities in that educational institution. The Commissioner issued respective recommendations to the MoES and the MoH on measures to be taken in order to organize certification of the college graduates in other professional pre-higher

education institutions that possess a license for educational activity and certificates of accreditation for the respective professional areas.

In late December 2020, all 69 students of the 3rd and 4th year of study were transferred to those educational institutions to continue their studies. Out of the 66 graduates in 2020, 27 persons were transferred (renewed as students of) to other educational institutions, with 15 of those issued documents on gaining higher education to the educational and qualification level of a junior specialist; another 15 were expelled for having failed the KROK-M licensing examination, with the right to renew their studies after taking the examination again in the next academic year; regarding 24 persons, the issue was not resolved, since they had not decided on further studies. The proceedings of the Commissioner in that case continue.

The Commissioner exercises control over observance of the educational process participants' rights in the course of reorganization of educational institutions.

#### Example

Proceeding from an appeal of employees of the Kosiv Institute of Applied and Decorative Arts of Lviv National Academy of Arts, the Commissioner carried out proceedings on non-payment of scholarships to students and salaries to employees, starting from early 2020.

The proceedings found that the reason for violations of the rights of the educational process participants was the persistent inconsistency between the decisions of the MoES and MCIP, caused by the decision of the Cabinet of Ministers of Ukraine to transfer the educational institution under the MCIP. The rights of the students and employees were reinstated. In April 2020, the scholarships and salaries were paid.

## RECOMMENDATIONS:

### **To the Cabinet of Ministers of Ukraine:**

Develop, and submit for consideration to the Verkhovna Rada of Ukraine, amendments to the Budget Code of Ukraine regarding the transfer of funding for vocational (professional) education institutions from the budgets of cities of regional significance – Oblast centers, to the Oblast level.

Develop and approve statutory instruments on the following:

- clear division of powers between the central and local bodies of executive power in the administration and financing of vocational (professional) education institutions, and determine the scope of their responsibilities;
- raising salaries of teaching staff at vocational (professional) education institutions in accordance with the Law of Ukraine «On Education».

### **To the Ministry of Education and Science of Ukraine:**

Ensure the implementation of the Action Plan for 2020 to 2027 on the implementation of the Concept of implementation of the state policy in the area of vocational (professional) education «Modern

vocational (professional) education until 2027», approved by the Order of the Cabinet of Ministers of Ukraine, dated April 29, 2020, № 508-r.

Develop and adopt statutory instruments for the formation of an inclusive educational environment in schools of professional (vocational), professional pre-higher and higher education.

Make amendments to the Provisions on the Unified State Electronic Database on Education, approved by the Order of the Ministry of Education and Science of Ukraine, dated June 8, 2018, № 620 «On approval of the Provisions on the Unified State Electronic Database on Education», registered with the MoJ of Ukraine on October 05, 2018, № 1132/32584, to reflect therein the real validity of licenses, certificates of attestation of educational activity entities, the status of institutional accreditation of higher education institutions, and institutional audit of educational institutions.

Take measures to ensure proper control over the activities of higher education institutions classified as high risk.

Promote the practice of professional (vocational) education by a dual form.

### ***Ensuring cultural rights***

Within the framework of the Commissioner's parliamentary control over the observance of the constitutional rights of citizens in the area of culture, systemic problems have been identified that need to be addressed.

In order to ensure the observance of citizens' rights in the area of culture, 7 instances of monitoring over the compliance with the effective legislation by local authorities in the area of culture under the OSAs and culture institutions were carried out, and 66 letters with respective recommendations were issued, and control over their fulfillment was established.

The issue of observance of human and civil rights in the area of culture was investigated by the Commissioner in the course of preparation of the Alternative Report on Ukraine's Implementation of the International Covenant on Economic, Social and Cultural Rights based on the analysis of Ukraine's Seventh Periodic Report on the implementation of the said Covenant<sup>87</sup>.

The UN Committee on Economic, Social and Cultural Rights, following the review of the Seventh Periodic Report of Ukraine on the Implementation of the International Covenant on Economic, Social and Cultural Rights in April 2020, in its Concluding Opinions and Recommendations recommended that Ukraine take steps to develop and apply proper indicators of observance of economic, social and cultural rights to facilitate the evaluation of the progress, achieved by the State Party in the fulfillment of its commitments under the International Covenant with in relation to various sections and categories of the population<sup>88</sup>.

The Commissioner monitored the implementation by local authorities in the area of culture under the OSA of the Action Plan to implement the Concept of reforming the system of provision of the population with cultural services<sup>89</sup>.

The monitoring revealed that, in order to modernize the current infrastructure for the provision of cultural services, Oblasts carried out inventory taking and assessment of the condition of the basic

<sup>87</sup> Website of the Commissioner: URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>

<sup>88</sup> UN Committee on Economic, Social and Cultural Rights: URL: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UKR&Lang=RU](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=UKR&Lang=RU)

<sup>89</sup> Order of the Cabinet of Ministers of Ukraine, dated May 22, 2019, № 355.

network of culture institutions. Kyiv, Luhansk and Lviv OSAs carried out mapping of culture institutions, determined the degree of adequacy of the existing network of culture institutions to meet the population's demands for cultural services, and modeled the networks for the provision of public services in the area of culture. Odesa and Kharkiv Oblasts possess a positive experience in optimization of the network of culture institutions, where modern media spaces, hubs and youth centers are being created on the basis of clubs and libraries.

At the same time, it was revealed that no minimum standards have been approved in the provision of cultural services to citizens.

Weak financial capacity of most ATCs, lack of qualified professionals in the area of culture, merging matters of education, youth and sports, and culture into one structural subdivision of executive committees – all this does not contribute to the proper provision of cultural services at the local level.

Local bodies of executive power and self-government, and the administrations of culture institutions failed to create proper conditions to ensure the cultural rights of citizens in the conditions of quarantine restrictions.

Monitoring of the MCIP official website and 36 websites of local bodies of executive power and local self-government in the area of culture, regarding organization of work on the provision of cultural services online, revealed that the majority of official websites did not regularly update information about cultural services, with account to the quarantine restrictions – in the form of program viewing, announcements, photo galleries, etc. At the same time, online platforms of cultural services are usually operated by the bodies and subordinate institutions that provide a wide range of services in the area of tourism and artistic tours.

In order to form an effective system to provide cultural services to the population, the Commissioner supported the draft Law of Ukraine «On Amendments to the Law of Ukraine «On Culture» pertaining to the definition of the general principles of cultural services provision to the population» (Reg. № 4318, dated November 4, 2020), which sets out general principles of operation of the basic network of culture institutions in the conditions of decentralization of power, financial and economic basic activity of culture institutions, etc.

Having examined the draft Law of Ukraine «On Libraries and Librarianship», developed by MCIP, the Commissioner provided comments to prevent narrowing of the content and scope of citizens' rights and freedoms of in the area of culture that currently exist; and to include provisions pertaining to types of specialized libraries, in particular for children, youth, or persons with disabilities.

In order to ensure the observance of cultural rights, the Commissioner suggested including a separate section on civil and human cultural rights into the National Human Rights Strategy, approved by the Decree of the President of Ukraine, dated August 25, 2015, № 501/2015.

**NO MINIMUM STANDARDS  
HAVE BEEN APPROVED IN  
THE PROVISION OF CULTURAL  
SERVICES TO CITIZENS**

**NATIONAL HUMAN RIGHTS  
STRATEGY MUST INCLUDE  
A SEPARATE SECTION ON  
ENSURING OBSERVANCE OF CIVIL  
AND HUMAN CULTURAL RIGHTS**

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – develop and approve the procedure to provide subventions and subsidies from the state budget be aimed at providing the state-guaranteed amount of cultural and artistic services for every citizen of Ukraine; developing culture and arts at individual amalgamated territorial communities; bringing the level of cultural workers' labor compensations closer to the average salary level in the country.

**To the Ministry of Culture and Information Policy of Ukraine** – ensure permanent control over the implementation of the Action Plan for the implementation of the Concept of reforming the system of provision of cultural services to the population, approved by the order of the Cabinet of Ministers of Ukraine, dated May 22, 2019, № 355-r.

Develop and approve:

- the standard of accessibility of culture institutions to the basic local-level network and the standard (criteria and indicators) of the services quality that must be provided by local-level culture institutions on the mandatory grounds;

- the procedure to form a basic network of local-level culture institutions in terms of defining clear requirements for the reorganization (liquidation) of culture institutions;

- recommendations on the organization of management of culture institutions at the level of bodies of executive power and local self-government;

- educational programs for qualification upgrading of employees at culture institutions on matters of functioning of the institutions in the context of decentralization.

Initiate appending the Decree of the President of Ukraine, dated August 25, 2015, № 501 «On approval of the National Strategy in the area of human rights», by a strategic area «Ensuring cultural rights».

### 4.8. Observance of economic, social and cultural rights by local bodies of self-government in the conditions of decentralization of power

*The right to receive land plots for ownership and use*

In the course of implementation of the Action Plan for the implementation of the Strategic Areas of Activity of the Ukrainian Parliament Commissioner for Human Rights for 2020, monitoring was carried out over the observance of the rights of citizens in receiving land plots for ownership and use.

Having processed 590 reports that the Commissioner received in 2020, and as a result of the monitoring carried out, systemic problems were identified that cause violations of citizens' rights to land.

In particular, it concerned the following:

- registration of land plots occurring at slow rates due to the insufficient number or absence of state registrars of rights at the district level;

- inconsistency of the information contained in the State Register of Rights with the information specified by the territorial office of the State Geocadastre in the appendix to the Order under which land was transferred to municipal ownership;
- state registrars of rights denying state registration of land rights due to errors in the entry of data on land plots in the State Land Cadastre, which emerged through overlaps of plots belonging to different councils;
- local councils demanding to provide information on existence of any real estate or land plots owned by a citizen, a proof of family status and other documents that are not required by effective legislation;
- provision of land plots only in the presence of a place of residence, employment within a certain administrative unit where the citizen intends to receive a land plot;
- dependence of the observance of the guaranteed right to receive land from draw procedures.

In 2020, 216 ATCs were monitored on the status of registration of property rights in the State Register of Rights as a municipal form of ownership of agricultural land plots, which were transferred from the territorial bodies of the State Geocadastre. According to the monitoring data, the ownership right has been registered for only a half of the land plots.

**BODIES OF LOCAL  
SELF-GOVERNMENT  
VIOLATE CITIZENS' RIGHT  
TO RECEIVE LAND PLOTS  
FREE OF CHARGE**

The monitoring of the observance of citizens' right to receive land plots free of charge revealed numerous violations of the requirements in Article 118 of the Civil Code of Ukraine. In particular, bodies of local self-government denied citizens permission to develop a land management project due to the fact that, at the time of a citizen's application, agricultural land was not registered with the State Register of Rights as a municipal form of ownership of the respective ATC.

#### Example

Local councils of Volyn and Dnipropetrovsk oblasts are slow in registering municipal property rights in the State Register of Rights. The Councils explained that is was caused by the respective executive committees lacking the position of the state registrar.

Besides, in 2020, monitoring covered the decisions taken by local bodies of self-government (27 local councils), which establish their own procedure for land plot allocation to citizens and are inconsistent with the land legislation requirements and violates the right of citizens to receive land plots free of charge.

Recommendations were sent to the entities under the monitoring to bring the provisions governing the transfer of land plots to citizens at the local level in line with the requirements of the Land Code of Ukraine.

## RECOMMENDATIONS:

**To local bodies of self-government and District State Administrations** – ensure filling the vacant positions of state registrars of real estate entitlements.

Observe the provisions in the procedure for gratuitous allocation of land plots to the ownership of citizens, established by the Land Code of Ukraine, and to bring the decisions in compliance with the Code.

### *The right to social services*

The Commissioner monitored the implementation of the Law of Ukraine “On Social Services”, dated January 17, 2019, № 2671-VIII, in bylaws, since their absence, beginning on January 1, 2020, the majority of the provisions in the Law could not be practically implemented and violated citizens’ rights to social services.

The monitoring revealed that, out of 29 draft regulations developed by the MSP in 2020, only 20 (69%) were adopted.

### **IN 2020, DELAYS IN THE ADOPTION OF BYLAWS TO THE LAW OF UKRAINE «ON SOCIAL SERVICES» VIOLATED CITIZENS’ RIGHTS TO SOCIAL SERVICES**

In particular, the Procedure to monitor compliance with the Law of Ukraine “On Social Services”, dated January 17, 2019, № 2671-VIII, was adopted by the Cabinet of Ministers of Ukraine as late as in June 2020<sup>90</sup>.

The Commissioner also monitored the observance by bodies of local self-government of the rights of citizens to social services in accordance with the provisions of the Law of Ukraine «On Social Services», dated January 17, 2019, № 2671-VIII.

According to the monitoring results the activities of the Voznesensk TC in Mykolayiv Oblast, the city of Drohobych in Lviv Oblast, Pisky village and Tetiyiv city ATCs in Kyiv Oblast, Horodok city ATC in Khmelnytsky Oblast, and Halytsynove village TC in Mykolayiv Oblast, the following violations were revealed:

- residents of communities continue to receive social services in accordance with the provisions of the 2003 Law of Ukraine “On Social Services”, which is currently invalid<sup>91</sup>;
- assessment of the needs in social services for the population is not carried out;
- information and explanatory work among citizens on the provision of social services is improperly organized and implemented;
- the quality and scope of social services are mainly focused on financial possibilities, rather than on individuals’ needs;
- proper assessment and forecasting of the needs for social services are not carried out, and the quality of their provision is not assessed.

The Commissioner directed recommendations to the heads of the monitored entities and to the MSP to take response measures.

<sup>90</sup> Resolution of the Cabinet of Ministers of Ukraine, dated June 1, 2020 № 427 “Certain matters of control over compliance with the requirements of the Law of Ukraine “On Social Services”.

<sup>91</sup> Law of Ukraine “On Social Services”, dated June 19, 2003, № 966-IV.

The Commissioner's monitoring revealed that the delay in adoption by the Government of a statutory instrument to determine the procedure to award and pay compensations to individuals who provide social care services on a non-professional basis, in accordance with the Law of Ukraine «On Social Services», caused violation of citizens' rights to such compensation in 2020.

#### Example

Monitoring of the activities of the Voznesensk TC revealed that, starting on January 1, 2020, 8 residents of the community did not receive compensation for provision of social services to persons with disabilities on a non-professional basis.

On September 23, 2020, the Cabinet of Ministers of Ukraine approved the Procedure for submission and registration of documents, award and payment of compensation to individuals who provide social care services on a non-professional basis<sup>92</sup>. The MSP neither developed the respective software nor approved application forms to implement that instrument.

In order to ensure the citizens' rights to compensation, the Commissioner directed recommendations to the MSP.

## RECOMMENDATIONS:

### **To the Ministry of Social Justice of Ukraine:**

Develop and approve regulations to ensure the implementation of the Law of Ukraine «On Social Services», dated January 17, 2019, № 2671-VIII, and ensure control over compliance with the requirements of that Law.

### **To the National Social Service:**

Ensure monitoring of award and payment of compensation by bodies of local self-government to individuals who provide social care services on a non-professional basis in accordance with the Law of Ukraine «On Social Services» for the period since January 1, 2020.

**To bodies of local self-government** – ensure the right of citizens to receive social services according to their needs.

### *Violation of the right of benefit-entitled citizens to free travel in public transport*

The monitoring revealed that the budgets of local bodies of self-government<sup>93</sup> do not envisage expenditures on compensation payments to carriers for free or cut-rate travel of certain categories of citizens, and without payment of such compensations, carriers deny free travel to those citizens.

<sup>92</sup> Resolution of the Cabinet of Ministers of Ukraine, dated September 23, 2020, № 859 « Certain matters of award and payment of compensation to individuals who provide social care services on a non-professional basis».

<sup>93</sup> Article 91 of the Budget Code of Ukraine stipulates that compensation payments for preferential travel of certain categories of citizens belong to the expenditures of local budgets, which may be allocated from all local budgets.

Some TCs allocate funds to compensate for transportation of benefit-entitled citizens, but in insufficient amounts. Citizens may use their entitlement to free travel mainly within the community where they reside, and even those are subject to limitations (on the number of trips or days of transportation). The issue of preferential transportation of such persons on the territory of other territorial communities has not been resolved at all (citizens cannot exercise their respective right on suburban public bus routes within an Oblast), although the right to free or cut-rate travel is guaranteed by Ukrainian laws without any restrictions.

There exists an obvious need for legislative definition of a clear mechanism to ensure citizens' right to free or cut-rate travel, in particular, definition of the entity responsible for its organization, financing and responsibility.

During the period of strict quarantine measures in connection with the COVID-19 respiratory disease, the Commissioner monitored decisions taken by bodies of local self-government, as well as the commissions, on matters of technogenic and environmental safety and emergency situations, revealed under those, regarding suspension (cancellation) or restriction of free travel in public transport.

The monitoring covered more than 200 official websites of local bodies of executive power and local bodies of self-government in 22 Oblasts, and 260 decisions by local bodies of self-government and local commissions on technogenic and environmental safety and emergency situations, taken in the conditions of the quarantine and the emergency situation.

In those decisions, violations of citizens' rights to free or cut-rate travel (due to its suspension or being limited in time) were revealed in 12 decisions by the said bodies<sup>94</sup>.

The Commissioners directed proposals to Heads of City Councils demanding that those decisions be withdrawn as violating the rights and freedoms of citizens of Ukraine, the provisions of the Constitution of Ukraine, and social and anti-discrimination legislation. Following the intervention, 8 decisions were revoked.

### **QUARANTINE RESTRICTIONS VIOLATE CITIZENS' RIGHTS TO FREE OR CUT-RATE TRAVEL**

#### **Example**

The Executive Committee of the Khmelnytsky City Council, by its decision, dated March 20, 2020, № 229, suspended preferential transportation of citizens in the city. In pursuance of the Commissioner's proposal, the previous decision was revoked by the decision of the Khmelnytsky City Council Executive Committee, dated June 11, 2020, № 469.

Cases of cancellation (restriction) of the citizens' entitlement to free travel occurred after the easing of quarantine restrictions were eased (in particular, in the city of Kramatorsk in Donetsk Oblast, in Mohyliv-Podilsky, Vinnytsia Oblast; in Berdyansk, Zaporizhya Oblast).

#### **Example**

In September 2020, the «Parental Control Berdyansk» PA reported to the Commissioner that in May 2020, the Executive Committee of the Berdyansk City Council in Zaporizhya Oblast passed a decision to restrict free travel on public transport for benefit-entitled citizens, including persons with disabilities.

<sup>94</sup> Cities of Vinnytsia, Voznesensk (Mykolaiv Oblast), Dubno (Rivne Oblast), Zaporizhya, Lyman (Donetsk Oblast), Lviv, Mariupol (Donetsk Oblast), Zhytomyr, Mykolayiv, Okhtyrka (Sumy Oblast), Kherson, Khmelnytsky.

The Commissioner directed a request to the Berdyansk Mayor demanding that the decision be cancelled. Following the Commissioner's intervention, in November 2020 the Executive Committee of the Berdyansk City Council revoked the said decision and reinstated the citizens' right to free or cut-rate travel in public transport.

The cancellation or limitation of the right to free travel violates the rights of benefit-entitled citizens to social protection and constitutes direct discrimination on the grounds of residence in the area of access to public transport services.

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – develop and approve the procedure for ensuring the realization of the right of citizens to free or cut-rate travel.

**To bodies of local self-government** – ensure the rights of citizens to free or cut-rate travel.

### *Observance of the right to health care*

The Commissioner's monitoring of the human and civil right to health care in the context of decentralization of power in 2020 was conducted in ATCs in different regions of Ukraine, in particular, in Vinnytsia, Dnipropetrovsk, Zhytomyr, Ivano-Frankivsk, Kyiv, Poltava and Kharkiv Oblasts.

The monitoring revealed that the process of formation of hospital districts<sup>95</sup> does not take a full account of the specifics of each region or the proposals by relevant hospital boards.

No detailed plans exist for the development of hospital districts, which are intended to ensure the best distribution of healthcare provision functions among the hospital district participants and determine the types and scope of health care to be provided by HCFs in its territory, according to patient routes in the process of receiving primary and secondary health care.

Uncertainty exists regarding the continued operation of most hospitals that are not included in the list of health care facilities in hospital districts, as approved by the Cabinet of Ministers<sup>96</sup> until 2023.

The health care system reform is carried out without proper information and explanatory work by local bodies of self-government regarding the goals, content, expected results and respective measures taken by CBEPs and local bodies of self-government to implement the reform.

Measures taken by owners and managers of public health facilities aimed at optimizing the network of health care facilities (closure of departments and consolidation of health care facilities), reducing the staffs, changes in material work conditions, all make it difficult for citizens to receive qualified health care services, which is aggravated by inadequate organization of health care provision, HCFs lacking doctors in relevant professional areas, low-quality interaction between medical institutions in Oblasts providing specialized, highly specialized and emergency healthcare services.

<sup>95</sup> Resolution of the Cabinet of Ministers of Ukraine, dated November 30, 2016, № 932 "On approval of the Procedure to form hospital districts".

<sup>96</sup> Order of the Cabinet of Ministers of Ukraine, dated January 15, 2020, № 23-r «On approval of the list of basic healthcare facilities in hospital districts until 2023».

In 2020, psychiatric care facilities, anti-tuberculosis, dermatovenereology and dental facilities were on the verge of closure and large-scale layoffs.

Bodies of local self-government do not pay sufficient attention to the implementation of effective human resources policy in the health care system; in particular, no measures are envisaged for social and economic protection of healthcare professionals in the context of reform, such as offering requalification or retraining for redundant healthcare professionals.

In order to verify the implementation of the Commissioner's recommendations based on the results of previous monitoring visits in 2019, new monitoring of observance of citizens' rights to health care in the context of decentralization of power was carried out in Velyka Dymarka ATC in Brovary District, and in Fursivka village and Uzyn City ATCs in Bila Tserkva District of Kyiv Oblast.

The monitoring revealed positive changes in the activities of these ATCs in the area of ensuring citizens' rights to health care. In 2020, compared to 2019, Velyka Dymarka ATC increased expenditures for implementation of programs to provide benefit-entitled community residents with medicines and medical devices by UAH 139 thousand. Co-financing is provided for HCFs of the District and Oblast subordination; material and technical base of outpatient clinics is improved; repair works are carried out in Rudnya outpatient clinic of general practice and family medicine; a new outpatient clinic and housing for a doctor in the village of Bobryk are planned to be built. At the same time, the issue of staffing the outpatient clinics in Velyka Dymarka ATC with doctors remains unresolved. The staffing schedule has 14 positions but only 10 are actually filled, which makes it difficult to provide timely healthcare services, especially in the context of the spread of the COVID-19 respiratory disease.

Fursivka village ATC increased local budget expenditures by UAH 210,000 for free and cut-rate provision of medicines and medical devices to the community population.

The Uzyn City ATC approved the Program of social, economic and cultural development for 2020-2021, which envisages improvement of the material and technical base of the HCFs, current repairs of the HCFs premises and construction of primary health care outpatient clinics. The work of the Uzyn outpatient clinic was ensured by regulating the number of patients to be seen by doctors during the day, because in 2019 patients could come to the HCF only in the first half of the day.

## RECOMMENDATIONS:

**To Oblast State Administrations, the Executive Body of the Kyiv City Council (Kyiv City State Administration), bodies of local self-government** – ensure staffing health care facilities in rural areas with healthcare professionals.

### *The right to culture*

In the context of decentralization of power, the issue of providing quality and affordable cultural services, improving legislation in the area of culture has become particularly acute.

In 2020, observance of cultural rights was monitored in 11 ATCs in Vinnytsia, Donetsk, Zhytomyr, Zakarpattia, Kirovohrad, Luhansk, Mykolayiv, Odesa, Kherson, and Chernihiv Oblasts. The monitoring results indicated an increase in the regional disproportion in the access of the population to cultural and artistic infrastructure assets.

Depending on the place of residence, citizens enjoy various degree of access to national cultural assets. A large part of the population of communities is completely deprived of access to cultural services.

Quite common are facts of closure and suspension of the activities of ATC culture institutions within the basic network of culture institutions.

The main method for optimization of the network of public libraries and club establishments in Ukraine is their closure in rural areas. In particular, in 2019, 15 libraries were closed in Odesa Oblast; In Zakarpattia Oblast – 6 libraries and club establishments; 14 rural libraries and 30 club establishments in Mykolayiv Oblast receive no financing; 4 village clubs and 2 libraries in the Mizhhirya District of Zakarpattia Oblast have been suspended indefinitely.

In the process of decentralization reform, no measures are taken to create new opportunities for cultural development in the regions, to develop a mechanism to improve financing of the system of cultural service provision to the population. This is confirmed both by monitoring and also by the results of the proceedings carried out.

**THE NETWORK OF PUBLIC LIBRARIES AND CLUB ESTABLISHMENTS IN UKRAINE IS OPTIMIZED PRIMARILY BY THEIR CLOSURE IN RURAL AREAS**

#### Example

In April 2020, the Commissioner received a collective appeal from the community of the city of Kherson regarding the decision made by the Kherson City Council to privatize 35 branch libraries of the Kherson centralized library system and decrease the city budget expenditures for librarians' salaries in 2020. In the framework of open proceedings, the Commissioner issues recommendations to the MCIP. The rights of the library staff were reinstated and their salaries paid. Lease agreements for branch libraries were extended.

The monitoring revealed that the material and technical base of the inspected culture institutions remained at the same level by more than 80%; upgraded – by 3%; deteriorated – by 5%; opportunities for institutions and establishments were partially realized through participation in grant projects. Besides, 80% of culture facilities in ATCs require major repairs. A significant part of libraries do not have computer and copying equipment, library stocks need to be supplied with Ukrainian-language literature.

The larger part of local programs for the development of culture, arts, and protection of cultural heritage do not enjoy financial support; local bodies of self-government do not assess the effectiveness of their implementation in terms of ensuring the cultural rights of community residents.

Resolution is required for the issue of creating conditions for the formation of high-quality (highly qualified) staffing of the system of culture services.

In rural culture facilities, a shortage of qualified human resources and their «aging» are observed. In particular, in Zakarpattia Oblast the number of qualified professional in culture institutions decreased by 1.7%; of employees under 35 – by 28%; the number of people of retirement age grew by 5%. In Odesa Oblast, almost one third (28.4%) of those employed in art schools are of retirement age, and young specialists with pedagogical experience under 2 years make up 7%.

**RURAL CULTURE FACILITIES LACK QUALIFIED EMPLOYEES**

Providing access to cultural facilities and reasonable adjustment of cultural services for people with limited physical abilities is also insufficient.

Analysis of the degree of supply of the TC library stock testifies to the lack of literature adapted for people with visual impairments (enlarged font, Braille type) and informing the public about certain kinds of services.

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – develop and submit to the Verkhovna Rada of Ukraine a draft Law of Ukraine «On Ratification of the Marrakesh Treaty».

Develop and approve minimum standards for provision of cultural services to citizens.

**To local bodies of executive power and self-government** – ensure the creation of conditions in culture institutions for people with disabilities and low mobility groups, ensuring architectural accessibility, reasonable adjustment, universal design of premises, replenishment of library stock with relevant literature.

Facilitate implementation of proper measures to retain human resources in culture institutions, improve the organization of work to upgrade cultural workers' skills; improve the system of incentives in the area of cultural and artistic activities.

Take measures to strengthen and update the material and technical base, and educational and methodology foundations of culture institutions and facilities, ensuring their uninterrupted functioning.



**26**

monitoring visits and  
remote inspections



**3 765**

reports of rights  
violations



special report  
of the Commissioner

# CHAPTER 5

## RIGHTS OF CIVILIANS AFFECTED BY THE ARMED CONFLICT





## RIGHTS OF CIVILIANS AFFECTED BY THE ARMED CONFLICT

Over the seven years of Russian aggression in eastern Ukraine, 3,069 civilians were killed, among them – 148 children. The number of wounded civilians exceeds 7,000. In particular, Donetsk and Luhansk OSAs have registered 1,066 civilians killed and 1,652 wounded, including 67 children, in the government-controlled areas of Ukraine.

At present, the exact number of people who are regarded as missing in special circumstances cannot be definitely established.

As of December 2020, the OSCE Special Monitoring Mission in Ukraine recorded more than 2,000 violations of the ceasefire, despite the agreements reached at the meeting of the Trilateral Contact Group on July 27, 2020 on the establishment of a full and comprehensive ceasefire on the contact line. The number of civilian casualties is 128: 23 dead and 105 wounded<sup>1</sup>.

### **MOST IDP REPORTS CONCERN ABOUT VIOLATIONS OF PENSION ENTITLEMENTS**

In 2020, the Commissioner received 3,765 reports from citizens whose rights were violated by the armed conflict. The majority of the reports referred to violations of IDPs' pension rights, half of which related to non-enforcement of court decisions on the payment of pensions for previous time periods, others related to ensuring the right to freedom of movement, including departure to, and entry from the temporarily occupied territories in the condition of restrictions imposed to prevent the spread of the COVID-19 acute respiratory disease; obtaining housing; social protection; property rights; etc.

The results of the Commissioner's monitoring upon citizens' reports, and 26 monitoring visits and remote inspections of bodies of the state power and local self-government, as well as analysis of the legislation, established that the recommendations, provided in the 2019 Annual Report of the Parliamentary Human Rights Commissioner regarding observance and protection of human and civil rights and freedoms in Ukraine remained unfulfilled<sup>2</sup>, which entailed aggravation of the existing problems and, consequently, violation of the rights of citizens affected by the armed conflict.

The most notable of those are as follows:

- non-payment of pension arrears to citizens of Ukraine residing in the temporarily occupied areas and IDPs;

- lack of legal protection for the affected civilians, and of a system of state registration of persons were killed, injured or suffered other bodily harm as a result of the armed conflict;

- the issue of social protection of persons, illegally deprived of personal liberty as a result of the armed aggression, at the stage of their transition to a peaceful life has not been regulated at the legislative level.

- maintenance of records and establishing the fate and location of persons missing in special circumstances has not been ensured.

<sup>1</sup> URL: <https://www.osce.org/files/f/documents/8/b/475904.pdf> .

<sup>2</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 110.

no administrative procedure has been introduced to establish legally significant facts that occurred in the temporarily occupied territories.

## 5.1. Right to social and legal protection of civilians affected by armed conflict

### *The right to social protection and compensation*

The absence of a special law regulating the legal status of civilians affected by the armed conflict contradicts those persons' entitlement to social protection and compensation for damages suffered, including bodily harm.

#### **THE STATUS OF A PERSON WITH A DISABILITY CAUSED BY A WAR IS ONLY ESTABLISHED IN CASES OF DISABILITY BY INJURIES OR OTHER DAMAGE TO HEALTH CAUSED BY EXPLOSIVE SUBSTANCES, AMMUNITION AND MILITARY WEAPONS IN THE AREA OF THE ATO/UFO**

According to part two in Article 7 of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection", dated October 22, 1993, № 3551-XII (hereinafter referred to as "Law № 3551-XII") the status of a person with a disability caused by a war is only established in cases of disability by injuries or other damage to health caused by explosive substances, ammunition and military weapons in the area of the ATO/JFO.

As of December 2020, the Interdepartmental Commission for Establishing the Injury or Other Damage to Health Received from Explosives, Ammunition and Military Weapons on the Territory of the Anti-Terrorist Operation<sup>3</sup>, identified the fact of

damage to health on the territory of the ATO/UFO for 122 persons, out of 139 applications considered over the entire period of its functioning; in 10 cases, confirming that fact was denied; 1 application was returned for revision; 6 applications are currently under consideration.

The affected persons who were granted the status of a person with a disability as a result of the war are entitled to state guarantees of social protection in accordance with Article 13 of Law № 3551-XII.

At the same time, citizens whose disability status was granted on a general basis enjoy the benefits envisaged by legislation for persons with disabilities<sup>4</sup>, the list of which is shorter than the one in Law № 3551-XII.

That situation was caused by the fact that, during the most active phase of the armed conflict (in 2014 to 2016), medical reports of people who sought help in health care facilities due to injuries received in the course of the ATO indicated various information about the circumstances when those appeared (suffered during hostilities or in other circumstances), which was further used as grounds to award a disability status.

In order to resolve those problems, the Commissioner proposed that her representatives be included in the working group for preparation of a respective draft law, established under the Verkhovna Rada Committee on Social Policy and Protection of Veterans' Rights.

<sup>3</sup> Resolution of the Cabinet of Ministers of Ukraine, dated April 25, 2018 № 306 «Certain matters of establishing a connection between disability and injuries or other damage to health" (as amended).

<sup>4</sup> Law of Ukraine "On the Fundamentals of social protection of persons with disabilities in Ukraine", dated March 21, 1991 № 875-XII. In particular, persons with disabilities who are registered with the social protection authorities are provided with technical and other means of rehabilitation, receive rehabilitation services at the place of residence in accordance with the legislation and medical indications of individual rehabilitation programs.

At present, work is underway to prepare a financial substantiation for the draft law, since ensuring the implementation of the legislative initiative will require expenditures from the state budget.

*The right to determine the legal status of persons affected by the armed conflict*

In the 2019 Annual Report of the Ukrainian Parliament Human Rights Commissioner on the situation with observance and protection of human and civil rights and freedoms in Ukraine,<sup>5</sup>, the Commissioners drew the attention of bodies of state power to the lack of a clear legal definition of, and maintenance of registration records on civilians affected by the armed conflict, as well as provided recommendations.

However, a unified state system of registration of persons who suffered injuries and other bodily harm from the armed conflict has not yet been introduced; their legal status has not been defined on the legislative level, which deprives them of possibilities to ensure proper documentation of their injuries and the state social protection guarantees.

The analysis of data on the affected persons showed that, due to the lack of a unified system of registration of persons killed or wounded in the armed hostilities, the bodies of state power and local self-government in Luhansk and Donetsk Oblasts apply different approaches to recording the number of victims.

In that connection, information on the number of people killed and wounded is significantly different across the various sources.

For example, since the beginning of the ATO/UFO, bodies of the state power and local self-government in Donetsk Oblast have registered 799 civilians who were killed, and 1142 injured persons, including 48 children; in Luhansk Oblast, 267 people were killed, and another 510 wounded, including 19 children. At the same time, bodies of state power do not keep records of the affected civilian population residing in the temporarily occupied territories.

From April 14, 2014 to July 31, 2020, the UN Monitoring Mission in Ukraine registered the total of 3,069 casualties among the civilian population (1,821 men, 1,064 women, 99 boys, 49 girls and 37 adults whose gender is unknown). The number of wounded civilians exceeds 7,000.

*Right to social protection of persons illegally deprived of personal liberty as a result of the armed aggression against Ukraine, after their rescue from captivity*

In 2020, the Commissioner monitored the provision of social protection and rehabilitation services to persons deprived of personal liberty as a result of the armed aggression against Ukraine, after their rescue from captivity in accordance with the Resolution of the Cabinet of Ministers of Ukraine, dated December 11, 2019, № 1122 "Certain matters issues of social and legal protection persons deprived of their liberty as a result of the armed aggression against Ukraine, after their rescue from captivity" (hereinafter referred to as "Resolution № 1122").

For example, after the largest-scale release on December 29, 2019, within the framework of the Trilateral Contact Group for the Peaceful Settlement of the Situation in Eastern Ukraine, the Commissioner was engaged in ensuring the adaptation of 64 civilians.

**STATE AUTHORITIES  
DO NOT KEEP ACCOUNT  
OF THE CIVILIAN  
POPULATION RESIDING IN  
THE TEMPORARILY OCCUPIED  
TERRITORIES**

<sup>5</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 110.

In particular, following a survey conducted by the Secretariat of the Commissioner and summarizing their needs, 24 persons were assisted in obtaining passport documents; requests were sent to the competent authorities for the renewal of 12 drivers' licenses; employees of the Obolon and Pechersk District Employment Centers in Kyiv, and the Kyiv Oblast Employment Service organized consultations and found vacancies for the released persons for their further employment and provision of housing; mediation was provided between the released persons and the management of the dormitories where the released persons were temporarily accommodated to extend their residence until the end of the quarantine; a representative of the Commissioner attended the meeting of the Interdepartmental Commission on recognition of the persons as having been deprived of liberty as a result of the armed aggression against Ukraine, and the implementation of measures aimed at their social protection (hereinafter referred to as "the Interdepartmental Commission")<sup>6</sup>.

At the same time, throughout 2020, the Commissioner received appeals (7) from citizens, illegally deprived of personal liberty, reporting problems in exercising their rights, in particular, to healthcare (rehabilitation) services.

#### Example

In July 2020, citizen R. (illegally deprived of liberty in the temporarily occupied territory of the Autonomous Republic of Crimea and released in July 2018) appealed to the Commissioner requesting assistance in access to healthcare and psychological rehabilitation. Consideration of the appeal revealed that, in accordance with the requirements of the Procedure for psychological rehabilitation of Ukrainian citizens taken hostage as a result of the armed aggression against Ukraine, deprived of liberty for political reasons or taken prisoner of war in defense of independence, sovereignty and territorial integrity of Ukraine, after their release, as approved by Resolution № 1122, healthcare and rehabilitation assistance to the released civilians must be provided in a healthcare facility recommended by the Interdepartmental Commission.

At present, the list of such facilities has not been formed due to the lack of legislative regulation of the scope of the services to be provided at the expense of the state budget.

In September 2020, the Commissioner addressed the Deputy Prime Minister – Minister for Reintegration of the Temporarily Occupied Territories of Ukraine regarding the need to resolve this issue. The issue is yet to be resolved, however.

Over the recent years, the Verkhovna Rada of Ukraine has registered a number of draft laws of Ukraine ("On recognition of persons, deprived of their liberty for political reasons by the decision of the authorities of the Russian Federation, as political prisoners, and on the conditions and procedure for providing state social assistance and benefits to them") № 6700, dated July 13, 2017) – revoked on September 28, 2019; "On the legal status and social guarantees for persons who were illegally deprived of liberty, held hostage, or convicted in the temporarily occupied territories of Ukraine and beyond its borders" (reg. № 8205, dated March 27, 2018); "On amendments in the Law of Ukraine "On combating terrorism" (regarding social protection of hostages" (reg. № 8337, dated April 5, 2018) –

<sup>6</sup> Order of the Ministry of Reintegration of 17.07.2020 № 57 «On the establishment of an interdepartmental commission to consider matters connected with the recognition of persons deprived of liberty as a result of armed aggression against Ukraine and the implementation of measures aimed at their social protection» (registered with the MoJ on 13/08/2020, № 779/35062)

revoked on August 29, 2019), which used different approaches to the legal status of, and provision of social guarantees for persons illegally deprived of their liberty in the temporarily occupied territories of Ukraine and beyond its borders. None of those, however, ensured the exercise of rights for the above-mentioned category of persons in full scope, which fact was noted in the Commissioner's positions regarding those draft laws.

Due to the absence of legislation on social and legal protection of persons deprived of their liberty as a result of the armed aggression against Ukraine, in May 2020 the Commissioner directed an appeal to the Prime Minister of Ukraine. Following its consideration, the Commissioner was invited to the working group, revealed with the support of the Office of the President of Ukraine, particularly, to develop a draft Law of Ukraine "On social and legal protection of persons deprived of their liberty by the armed aggression against Ukraine". The draft law is currently being reviewed in the Office of the President of Ukraine.

*The right of family members of persons missing in special circumstances to find out the fate and location of their relatives*

Monitoring of the observance of the rights of family members of missing persons in special circumstances, formalized in the Law of Ukraine "On Legal Status of Missing Persons", dated July 12, 2018, № 2505-VIII, showed that since the time when that Law was adopted, the rights of that category of persons are not observed, including the right to investigation into the circumstances of the disappearance of persons and their search, to the social protection of members of such families, as stipulated by law.

In their appeals, as well as in the course of personal meetings with the Commissioner and her representatives, relatives of persons who disappeared in special circumstances, complained about the inaction of the Commission on Persons Gone Missing under Special Circumstances", established by Order of the Cabinet of Ministers of Ukraine, dated July 22, 2020, № 915-r (hereinafter referred to as "the Commission"), which must ensure maintenance of the Register of Missing Persons<sup>7</sup> and the creation of search teams. Failure to carry out those measures causes violation of the families' right to find out the fate and location of their relatives.

In view of the situation, the Commissioner initiated inclusion of two representatives of the Commissioner in the Commission.

Also, in July 2020, the Commissioner addressed the Prime Minister of Ukraine, and in September 2020 – the Vice Prime Minister of Ukraine – Minister for Reintegration of the Temporarily Occupied Territories of Ukraine, regarding the need to take measures to ensure the work of the Commission.

Based on the results of response to the Commissioner's request, a constituent meeting of the Commission was held in October 2020, and a separate meeting was held in November 2020 to discuss measures to establish its Secretariat and address other organizational and legal matters pertaining to the activities of the Commission. The Chair of the Commission was elected as late as in December 2020.

**THE RIGHT OF FAMILIES TO FIND OUT THE FATE AND LOCATION OF THEIR RELATIVE IS NOT OBSERVED**

<sup>7</sup> Resolution of the Cabinet of Ministers of Ukraine, dated August 14, 2019, № 726 "On approval of the Procedure to maintain the Unified register of persons gone missing under special circumstances".

Pursuant to the Decree of the President of Ukraine, dated November 11, 2020, № 495/2020 “On measures to protect the rights and interests of persons who gone missing under special circumstances, victims of forceful disappearances, and members of their families”, the Cabinet of Ministers of Ukraine will develop and approve a comprehensive plan to ensure protection of the rights and interests of persons who gone missing under special circumstances, victims of forceful disappearances, and members of their families.

#### *Right of IDPs to pension benefits*

Over the year, the Commissioner received 315 reports of violations of the right to receive pension benefits, which is almost 2 times fewer than in 2019.

#### **VERIFICATION METHODS VIOLATE RETIREMENT-AGE IDPS’ ENTITLEMENT TO A PENSION**

That situation is connected with the spread of the COVID-19 pandemic and a number of restrictions imposed by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of the Coronavirus Disease (COVID-19)”, dated March 17, 2020 № 530 -IX, where Clause 3 in the Final Provisions stipulates that for the duration of the quarantine or restrictive measures connected with the spread of the coronavirus disease (COVID-19), and for 30 days after those have been lifted, a number of verification measures regarding IDPs are not permitted<sup>8</sup>.

#### Example

In February 2020, citizen A. appealed to the Commissioner seeking restoration of his right to pension benefits. The complainant asserted that the PFU owed him pension payments for the period from February to July, and for September, 2018.

In response to the Commissioner’s request, the PFU informed that in accordance with the decision of the commission on the award (renewal) of social benefits for IDPs, the pension benefits for citizen A. were renewed in October 2018. Also, in pursuance of a court decision, the PFU paid a pension within one month and awarded a pension benefit payment for the period from February to July, and for September, 2018.

At the same time, the amounts of pension benefits that were not been paid for the period until the month when they were renewed, will be paid on separate grounds that the Cabinet of Ministers of Ukraine must approve.

It is the use of verification tools defined by the Resolution of the Cabinet of Ministers of Ukraine, dated November 5, 2014, № 637 “On social benefits for internally displaced persons” (hereinafter referred to as “Resolution № 637”), the implementation mechanisms of which still have a number of shortcomings, that caused large-scale complaints on part of retirement-age IDPs about the PFU being in debt to them, which entails violation of their right to pension benefits.

In March 2020, the Commissioner submitted a proposal to the Prime Minister of Ukraine regarding the need to make improvements in Resolution № 637, specifically – to settle the matter of payment of pension benefit amounts outstanding for the period until the month when those were renewed, and which are registered with the authority making pension payments.

<sup>8</sup>Resolution of the Cabinet of Ministers of Ukraine, dated August 14, 2019, № 726 “On approval of the Procedure to maintain the Unified register of persons gone missing under special circumstances”.

In pursuance of the recommendations set out in the Commissioner's proposal, during the year the MSP and the PFU jointly conducted financial and economic calculations of costs that are needed for repayment of debts to the pensioners – IDPs and pensioners who reside in the temporarily occupied territories in Donetsk and Luhansk Oblasts in 2014 and who at least one addressed the PFU for a pension to be awarded, as well as pensioners who were registered with the PFU as of August 2014 and after the beginning of the temporary occupation never applied for pension benefits in the government-controlled areas of Ukraine.

At the Commissioner's request, the PFU informed that the debt for more than 282,000 IDP pensioners amounts to UAH 10.9 billion; for over 600,000 pensioners who resided in the temporarily occupied territories of Donetsk and Luhansk Oblasts and at least once applied for renewal or award of a pension, the amount exceeds UAH 77 billion. The PFU had no information regarding more than 119,000 pensioners who resided in the temporarily occupied territories of Donetsk and Luhansk Oblasts but never requested renewal of their pension benefits<sup>9</sup>.

This state of affairs, as well as the monitoring of pension legislation carried out by the Commissioner, testifies to the need for developing approaches (concepts) for the gradual payment of pension arrears to the above categories of pensioners.

Besides, the issue of payment of pension benefits to persons residing in the temporarily occupied territories requires special legislative regulation.

Article 46 of the Law of Ukraine "On Compulsory State Pension Insurance", dated July 9, 2003, № 1058-IV, stipulates that the accrued amounts of pension, which a pensioner was entitled to but which they did not receive in time, are to be paid for the past time, but for no more than three years before the date of application for a pension.

At the same time, the period of payment suspension, in particular, for IDP pensioners, in certain cases exceeds 3 years. Therefore, there is a risk that such persons will not be able to receive the full amounts of pensions owed to them.

Since February 2020, the Committee of the Verkhovna Rada of Ukraine on Social Policy and Protection has been working to finalize the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Exercise of the Right to a Pension" (Reg. № 2083-d, dated November 26, 2019). In her 2019 Annual Report on the situation with observance and protection of human and civil rights and freedoms in Ukraine, the Commissioner recommended expediting its consideration and adoption<sup>10</sup>.

The recommendation, however, was never fulfilled.

Another recommendation that is yet to be fulfilled is the one made by the Commissioner to the MSP regarding the development of, and providing clarifications to the OSAs on, the procedure to establish reasonable facts of a person being absent at their place of residence for a certain period, in accordance with the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons", dated October 20, 2014, № 1706-VII, which entails violation of IDPs' right to pensions and other social benefits. According to the MSP, the recommendations were not implemented because of the ban on inspections of IDP pensioners until the end of the quarantine and for 30 days after it has been lifted in accordance with the Law of Ukraine "On Amendments to certain legislative acts of Ukraine aimed at prevention of the breakout and spread of the coronavirus disease (COVID-19)", dated March 17, 2020, № 530-IX.

<sup>9</sup> Letter of 08.02.2021 2800-03-1/5542.

<sup>10</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 110.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite consideration and adoption of the draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning the Exercise of the Right to a Pension” (Reg. № 2083-d, dated November 26, 2019).

### **To the Cabinet of Ministers of Ukraine:**

1. Develop the following draft laws of Ukraine and submit those to the Verkhovna Rada of Ukraine for consideration:

- on the status and social protection of civilians affected by the armed conflict, and the provision of compensation for harm done to them;

- on social and legal protection of persons illegally deprived of liberty as a result of armed aggression against Ukraine, as well as of their family members;

2. Develop and approve:

- a list of social services to be provided to persons who were deprived of their personal liberty as a result of the armed aggression against Ukraine, as well as to their family members;

- a comprehensive plan to ensure the protection of the rights and interests of persons gone missing under special circumstances and their family members;

- the concept of gradual repayment of arrears in pension benefits to IDPs and citizens of Ukraine residing in the temporarily occupied territories;

- methods of accounting for dead and wounded civilians, including the civilian population residing in the temporarily occupied territories;

3. Ensure maintenance of the Unified register of persons gone missing under special circumstances.

**To the Ministry of Reintegration of the Temporarily Occupied Territories** – ensure the establishment of a state register of civilians affected by the armed conflict, including persons residing in the temporarily occupied territories.

**To the Ministry of Social Policy of Ukraine** – develop, and provide clarifications to the OSAs on, the procedure to establish reasonable facts of a person being absent at their place of residence for a certain period, in accordance with the Law of Ukraine “On Ensuring Rights and Freedoms of Internally Displaced Persons”, dated October 20, 2014, № 1706- VII.

**To Oblast State Administrations** – in the Oblast program, envisage measures to provide assistance and support to persons who suffered injuries and other bodily harm in connection with the hostilities in the ATO/UFO area.

## **5.2. Rights of citizens residing in the temporarily occupied territories**

### *The right of citizens to freedom of movement*

In 2020, 3,518,000 people crossed 8 EECs, of which 2,952,000 crossed the contact line, and 566,000 – traveling to/from the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol<sup>11</sup>.

<sup>11</sup> URL: <https://app.powerbi.com/view?r=eyJrjoiOTU4ODVjYTkjNjk3ZC00N2E5LTikNTQtYzk3ZTYzNzliYjk4IiwidCI6IjdhNTE3MDMzLTE1ZGYtNDQ1MC04ZjMyLWE5ODJmZTBhYTEyNSIsImMiOj9>.

The almost five-fold decrease in the number of times when the EECPs were crossed, compared to the previous year, was caused by the COVID-19 pandemic<sup>12</sup>. According to the decision of the UFO Commander, on March 22, all checkpoints at the contact line were closed. Representatives of the occupation administration of the Russian Federation on the side of the temporarily occupied territories in the Donetsk Oblast decided to close the EECPs on March 21, and in Luhansk Oblast, on March 23. Information about the closure of the EECPs was announced just several hours before the closure. For that reason, many people were unable to cross the contact line in time. For those reasons, the Commissioner received about 1,700 reports from citizens who were separated from their families or could not go for treatment in the territory controlled by Ukraine.

**PERMISSION TO CROSS  
THE CONTACT LINE WAS  
GRANTED TO INDIVIDUALS BY  
SEPARATE DECISIONS OF THE UFO  
COMMANDER IN PRESENCE  
OF HUMANITARIAN GROUNDS**

**Example**

In April 2020, citizen K. appealed to the Commissioner regarding protection of her right to leave, with her two-year-old child, the city of Torez in the temporarily occupied area of Donetsk Oblast, to the city of Bila Tserkva in Kyiv Oblast, in order to reunite with her family and continue her studies at the university.

Following the Commissioner's address to the UFO Commander, two days later the citizen and her child were able to come to Bila Tserkva, which restored her right to freedom of movement and to education.

In exceptional cases, by a separate decision of the UFO Commander, and in the presence of critical life circumstances (humanitarian grounds) and relevant documents confirming that, persons were granted permission to cross the contact line.

In view of the existing issues with the contact line crossing, in May 2020, prior to the start of the EIT, the Commissioner requested the Head of the Delegation of Ukraine regarding her participation in a meeting of the Trilateral Contact Group for the Peaceful Settlement of the Situation in Eastern Ukraine and inclusion in the agenda of the Trilateral Contact Group of matters of the EECPs crossing by children who wish to gain education in Ukraine. In late May 2020, that matter was agreed upon within the humanitarian subgroup.

Also, the Commissioner addressed the Prime Minister of Ukraine with a proposal regarding a simplified procedure for the EECPs crossing by children traveling to the government-controlled areas in Ukraine to take the EIT in the conditions of the quarantine restrictions. Following consideration of the Commissioner's recommendations, the Cabinet of Ministers of Ukraine adopted a Resolution, dated May 29, 2020, № 424, "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine, dated May 20, 2020, № 392", to regulate that issue.

Those measures ensured that the right to education was observed for more than 2,000 children from the temporarily occupied territories, including more than 300 who are from the temporarily occupied territory of the Autonomous Republic of Crimea.

At the same time, another problem was identified – the introduction by the Russian Federation of the rule for one-time departure from the temporarily occupied territory of the Autonomous Republic of

<sup>12</sup> According to the State Border Guard Service, over the 12 months of 2019, the number of entries/ exits through the EECPs was 16.515 million. URL: <https://app.powerbi.com/view?r=eyJrIjojOTU4ODVjYTk0NjM3ZC00N2E5LTkNTQyZk3ZTYzNzliYjk4IiwidCI6IjdhNTE3MDMzLTE1ZGYtNDQ1MC04ZjMyLWESODJmZTBhYTEyNSIsImMiOjIj>.

Crimea, which violated Articles 13 and 26 of the Universal Declaration of Human Rights. Because of that, some students were unable to start their studies because they had already used the opportunity to leave the Crimea during the admission campaign. In that way the Russian Federation violated the rights of children to freedom of movement and to education.

According to the UN Monitoring Mission in Ukraine, about 20 children could not cross the EECP the administrative border with the temporarily occupied territory of the Autonomous Republic of Crimea another time to start their studies.<sup>13</sup>

Since the actions of the Russian Federation violate the rights of residents of the temporarily occupied peninsula to freedom of movement and to education, in October 2020 the Commissioner appealed to the Equality and Non-Discrimination Committee of the Parliamentary Assembly of the Council of Europe asking for continued support to Ukraine in ensuring human rights, because only the complete deoccupation of the territories will stop human rights violations.

In pursuance of the Commissioner's recommendations provided in the 2019 Annual Report of the Ukrainian Parliament Human Rights Commissioner on the situation with observance and protection of human and civil rights and freedoms in Ukraine<sup>14</sup>, the Cabinet of Ministers of Ukraine adopted a Resolution, dated December 28, 2020, № 1368, "On approval of the Provisions for the arrangement of checkpoints of entry to the temporarily occupied territories in Donetsk and Luhansk Oblasts, the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, and departure from those", aimed at improving the conditions of stay at the EECP and their crossing, which, in turn, ensures observance of the right to movement for citizens, residing in the temporarily occupied territories.

### **RECOGNITION, IN EXCEPTIONAL CASES, OF DOCUMENTS ISSUED BY THE OCCUPATION AUTHORITIES DOES NOT LEGITIMIZE THOSE AUTHORITIES**

#### *The right of citizens to receive documents of legal significance*

After the armed conflict began and Ukraine lost control over part of its territory, citizens who stayed in those territories have not had access to Ukrainian documents, in particular those confirming the fact of birth or death. This violates those citizens' right to determine their legal capacity and competence, and also prevents the state to record the real demographic situation in those areas.

The Commissioner monitored the application of international standards and provisions in the Ukrainian legislation, and international and domestic judicial practice regarding the receipt of legally significant documents by citizens.

Article 16 of the International Covenant on Civil and Political Rights stipulates that everyone has the right to recognition everywhere as a person before the law. This primarily means being registered at birth and obtaining the respective certificate, without which a number of basic public services, such as access to health care, education or social services, are not available.

The experience of countries affected by armed conflict demonstrates that, along with the non-recognition of any actions by occupation administrations, in order to protect inalienable human rights, the state affected by the armed conflict is obligated to recognize certain documents issued by such authorities<sup>15</sup>.

<sup>13</sup> URL: <https://www.radiosvoboda.org/a/news-krym-peresuvannia-oon/31097064.html>.

<sup>14</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 120.

<sup>15</sup> URL: <https://rm.coe.int/16806b5964> – ECtHR judgment in Cyprus v. Turkey

In national case law, the possibility to verify certain documents issued by the occupying power is reflected in the decision of the panel of judges of the Administrative Court of Cassation as part of the Supreme Court, during the consideration of case № 235/2357/17. The Court noted that documents issued by the occupation authorities are to be recognized in exceptional cases, if their non-recognition entails serious violations or restrictions on the rights of citizens. The recognition of those instruments, however, does not in any way legitimize such authorities.

According to the Law of Ukraine “On Amendments to the Civil Procedure Code of Ukraine to establish the fact of birth or death of a person in the temporarily occupied territory of Ukraine”, dated February 4, 2016, № 990-VIII, in order to obtain a birth certificate of the national standard, citizens of Ukraine residing in the temporarily occupied territories must follow a court procedure.

According to the MoJ information, provided in response to the Commissioner’s request, on the basis of a simplified court procedure for the period 2016-2020, 35,117 citizens from the temporarily occupied territories of Donetsk and Luhansk Oblasts were issued Ukrainian birth certificates, and more than 48,000 – for citizens from the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. At the same time, according to international NGOs and domestic PAs, since 2014, nearly 97,000 children were born in the non-government-controlled areas of Donetsk and Luhansk Oblasts, and about 128,000 children – in the temporarily occupied peninsula.

These data testify to the need for the legal definition of an administrative procedure to establish facts of legal significance that occurred in the temporarily occupied territories, in order to eliminate violations of the right of persons to receive Ukrainian-standard birth certificates through a simplified (administrative) procedure.

#### Example

In October 2020, Citizen E. appealed to the Commissioner regarding the right of her minor child to receive a birth certificate of the national standard. The citizen informed that the birth certificate was issued in the temporarily occupied territory of the Autonomous Republic of Crimea, but she wanted to have a national certificate.

The Commissioner issued detailed explanations on the procedure to obtain Ukrainian documents for the child and monitored the exercise of her right. As a result, the right to receive a birth certificate was observed.

Within the framework of parliamentary control over the observance of the rights and freedoms of citizens, the Commissioner issued a recommendation to the Prime Minister of Ukraine regarding the legislative resolution of the issues with documenting the facts of birth. The recommendation, however, is yet to be fulfilled.

Besides, in February 2020, the Committee of the Verkhovna Rada of Ukraine on Human Rights, Deoccupation and Reintegration of the Temporarily Occupied Territories in Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the city of Sevastopol, National Minorities and International Relations, held a field meeting in Kherson Oblast, where the Commissioner drew the People’s Deputies’ attention to the need to resolve that problem.

Following the meeting, the Committee adopted a number of recommendations, including the introduction of an administrative procedure to establish facts of legal significance. Subsequently, the Verkhovna Rada of Ukraine registered a draft Law of Ukraine “On Amendments to Certain Legislative

Acts of Ukraine Concerning the Introduction of Administrative Procedure for State Registration of Births and Deaths Occurring in the Temporarily Occupied Territory of Ukraine in the Autonomous Republic of Crimea and the city of Sevastopol” (Reg. № 3713, dated June 22, 2020). The draft law, however, was not considered by the Verkhovna Rada of Ukraine.

*The right of citizens of Ukraine residing in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol to domicile registration*

**SINCE THE BEGINNING OF THE TEMPORARY OCCUPATION, THE RESIDENTS OF THOSE TERRITORIES HAVE BEEN DEPRIVED OF THE LEGAL OPPORTUNITY TO REGISTER THEIR PLACE OF RESIDENCE**

In 2020, the Commissioner received 556 reports from citizens from the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol about violations of their right to be registered in the Autonomous Republic of Crimea and the city of Sevastopol, receive administrative services, exercise the right to free movement in Ukraine, in particular, entry to/ exit from the temporarily occupied territory; obtain IDP registration

certificates and renew those; to be issued identity documents, etc.

Consideration of the reports and monitoring of the legislation revealed that one of the problems to be resolved is the lack of a mechanism for domicile registration of residents of the temporarily occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol.

**Example**

In September 2020, citizen K. appealed to the Commissioner regarding the impossibility of entering information on her domicile registration in the temporarily occupied territory of the Autonomous Republic of Crimea in her passport document in the form of an ID card.

The applicant stated that in 2020 she had become a student at Kherson State University. The administration of the institution informed that, according to the rules, she needs to register the student hostel as her place of residence. To do that, citizen K. addressed the Department of Registration of Individuals of the Kherson City Council, where she was told that she was in violation of law due to the absence of domicile registration and informed that an administrative report would be prepared against her.

In the course of consideration of the appeal, the Commissioner found that the situation emerged in connection with changes in the legislation, which made it impossible for residents of the temporarily occupied territories to comply with the revealed requirements for residence registration in the temporarily occupied territories.

In December 2020, the Commissioners prepared a legislative proposal for non-application of administrative penalties to IDPs and persons residing in the temporarily occupied territories for reason of absence of a stamp confirming their residence registration, which was submitted to the Chair of the Verkhovna Rada Committee on human rights, deoccupation and reintegration of temporarily occupied territories in Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the city of Sevastopol, national minorities and interethnic relations.

The Law of Ukraine “On amendments to certain legislative acts of Ukraine on expanding the scope of authority of local bodies of self-government and optimizing the provision of administrative services”, dated December 10, 2015, № 888-VIII, establishes the obligation of parents or other legal

representatives to register the place of residence or a newborn child within three months from the date of state registration of their birth.

Since the beginning of the temporary occupation, residents of the temporarily occupied territories have been deprived of the legal opportunity to register their place of residence, since a situation has developed when, in the course of preparation of identity documents, the Unified State Demographic Register does not indicate domicile registration of the residents of the temporarily occupied territories. To resolve that human rights violation, the Verkhovna Rada of Ukraine registered a draft Law of Ukraine “On amendments to certain laws of Ukraine concerning information on registered residence of Ukrainian citizens in the temporarily occupied territories in Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol, and registration of identity documents and confirming the citizenship of Ukraine” (Reg. № 4564, dated, 31.12.2020), which the Commissioner supported.

In pursuance of the Commissioner’s recommendations provided in the 2019 Annual Report of the Ukrainian Parliament Human Rights Commissioner on the situation with observance and protection of human and civil rights and freedoms in Ukraine<sup>16</sup>, in March 2020 the NBU adopted a resolution, dated March 17, 2020, № 31, approving amendments in the NBU Board Resolution, dated November 3, 2014, № 699 “On the application of certain provisions in the currency legislation for the duration of the temporary occupation regime on the territory of the “Crimea” free economic zone”, which revoked the non-resident status for individuals registered in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, in terms of their access to banking services.

Therefore, the issue of discriminatory non-resident status in relation to Crimeans was partially resolved. At the same time, through the Law of Ukraine “On the establishment of the “Crimea” free economic zone and on the specifics of economic activities in the temporarily occupied territory of Ukraine”, dated August 12, 2014, № 1636-VII, Ukrainian citizens with the Crimean registration, still remain non-residents in matters of access to other financial services.

The Ministry of Reintegration has developed a draft Law of Ukraine “On the State Policy for the Transition Period” that, inter alia, proposes to repeal the above-mentioned discriminatory Law, to which the Commissioner provided comments and proposals.

#### *Rights of citizens of Ukraine residing in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol*

The Commissioner’s monitoring of the media regarding the observance of the rights, freedoms and legitimate interests of Ukrainian citizens residing in the temporarily occupied territory of the Autonomous Republic of Crimea and Sevastopol, revealed numerous violations of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

The aggressor state carries out forcible passportization and deportation, discriminates against the indigenous population and does not recognize their property rights; violates the right to education in the native language and the right to freedom of movement, the right to freedom of thought, conscience, belief and religion, the right to a fair trial, access to justice and legal aid, and blocks access to international missions and humanitarian organizations, including the ICRC.

**SINCE 2014, 172,404 PEOPLE  
HAVE BEEN RELOCATED  
FROM THE TERRITORY OF  
THE RUSSIAN FEDERATION  
TO THE PENINSULA**

<sup>16</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 119.

International humanitarian law prohibits the occupying power from changing the demographic composition of the occupied territory by relocating its own population to those territories. Contrary to that, since 2014, 172,404 people have been relocated from the territory of the Russian Federation to the Peninsula<sup>17</sup>.

It is prohibited, regardless of the motives, to carry out forcible individual or mass deportations of persons from the occupied territory.

#### Example

Over 6 months of 2020, the courts of the occupation administration functioning in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol passed 189 decisions on the deportation of persons who are considered foreigners under the Russian law. That group includes 73 Ukrainian citizens who had their residence registration in different regions of Ukraine and, according to the immigration laws of the Russian Federation, had no grounds to live on the Peninsula (absence of any family or social ties).

The situation with the violation of property rights in the temporarily occupied Peninsula aggravates. Proceeding from the monitoring results the observance of the rights and freedoms of citizens residing in the temporarily occupied territory of the Autonomous Republic of Crimea and Sevastopol, the Commissioner found that the right of some persons and entities to register land ownership was restricted to Russian citizens and businesses. The restriction is connected with the issuance of a decree by the President of the Russian Federation<sup>18</sup>, according to which 19 territories in the Crimea and 8 – in the city of Sevastopol – were granted the status of “border areas” of the Russian Federation.

According to the occupation administration functioning in the temporarily occupied territory of the Autonomous Republic of Crimea, 11,572 land plots in the “border areas” of Crimea belong to “foreigners”, including 9,747 (over 82%) – to citizens of Ukraine<sup>19</sup>. If those individuals do not acquire Russian citizenship by March 2021, they will lose their property through compulsory sale or nationalization. The Russian Federation also violates property rights of the indigenous Crimean Tatar people.

#### Example

In the Streletsky residential district of the city of Simferopol, 334 Crimean Tatars’ houses were demolished, and land plots were granted for the construction of an apartment complex<sup>20</sup>.

In October 2020, the Commissioner notified the Committee of the Parliamentary Assembly of the Council of Europe on Equality and Non-Discrimination about all violations of the rights of the Crimean Tatar people, and called on the international community to tighten sanctions against the Russian Federation.

<sup>17</sup> URL: <https://crimeahrg.org/wp-content/uploads/2020/10/tretij-doklad-oon.pdf> – Third report of the UN Secretary-General on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)

<sup>18</sup> Decree of the President of the Russian Federation, dated March 20, 2020 № 201 «On amendments in the list of border territories where foreign citizens, stateless persons and foreign legal entities may not own land plots”, approved by the Decree of the President of the Russian Federation, dated January 9, 2011, N 26

<sup>19</sup> State Committee for the State Registration and Cadastre of Crimea, April 13, 2020.

<sup>20</sup> URL: <https://crimeahrg.org/wp-content/uploads/2020/10/tretij-doklad-oon.pdf> – Third report of the UN Secretary-General on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite consideration and adoption of the draft Law of Ukraine “On amendments to certain laws of Ukraine concerning the introduction of information on the registered place of residence of Ukrainian citizens in the temporarily occupied territories in Donetsk and Luhansk Oblasts, and the Autonomous Republic of Crimea and the city of Sevastopol, which identify their person and attest to the citizenship of Ukraine” (Reg. № 4564, dated 31.12.2020).

**To the Cabinet of Ministers of Ukraine** – develop, and submit to the Verkhovna Rada of Ukraine, draft laws of Ukraine on the following:

- introduction of an administrative procedure to establish facts of legal significance that occurred in the temporarily occupied territories;
- on the state policy for the transition period.

### 5.3. The right to compensation for property (material) damage to civilians affected by military conflict

Since the beginning of the armed conflict, the state has not created a legal framework to regulate the protection of the rights people affected by the conflict, in relation to guarantees of protection of property rights, and restitution and compensation for lost (destroyed, damaged) property and housing. The Unified State Register of assets damaged by the armed conflict has not been created.

Section 5.2 of the 2019 Annual Report of the Ukrainian Parliament Human Rights Commissioner on the situation with observance and protection of human and civil rights and freedoms in Ukraine<sup>21</sup>, as well as the Commissioner’s Special Report “Implementation of the Right to Internally Displaced Persons to Housing”<sup>22</sup> contain a detailed analysis of the legislation and judicial practice of decisions passed to ensure observance of the rights of citizens of Ukraine affected by the military conflict, as well as the obligations of the state. Restoration of damaged and destroyed housing stock or provision of compensation or material assistance to victims is neither systemic nor structured.

The overwhelming majority of legal provisions concerning persons whose rights and freedoms have been violated in connection with the emergency situation are scattered across a number of general pieces of legislation (the Law of Ukraine on Combating Terrorism, the Civil Code of Ukraine and the Civil Protection Code of Ukraine).

Besides, in national law, the concept of an emergency situation also includes armed hostilities. This means that the rules governing the provision of compensation and restitution for damage caused by

**COMPENSATION FOR DAMAGES CAUSED BY NON-MILITARY EMERGENCES IS PROVIDED MORE SUCCESSFULLY, WHICH ESSENTIALLY DISCRIMINATES AGAINST CITIZENS WHOSE PROPERTY WAS DESTROYED BY WARFARE**

<sup>21</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 114.

<sup>22</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>.

natural calamities or man-caused phenomena must also be applicable to similar situations, connected with warfare.

Practice shows that compensation for damage caused by a non-military emergency situation is carried out with a greater degree of success, which essentially discriminates against citizens whose property was destroyed by hostilities. This violates Resolution 1708 of the Parliamentary Assembly of the Council of Europe “Solving property issues of refugees and internally displaced persons”, which states that the state must guarantee timely and effective redress for the loss of access and rights to housing, land and property abandoned by refugees and IDPs without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory.

In response to the emergency situation that occurred in April 2020 – large-scale fires in Zhytomyr Oblast, which affected, in particular, assets of the private housing stock – the order of the Cabinet of Ministers of Ukraine, dated May 6, 2020, № 511-r, promptly allocated close to UAH 11.2 million from the State Budget reserve fund for the purchase of housing for residents requiring resettlement from residential buildings destroyed by the emergency situation. In order to eliminate the consequences of the natural calamity that occurred in June 2020 in Zakarpattia Oblast, Ivano-Frankivsk, Lviv and Chernivtsi Oblasts, the order of the Cabinet of Ministers of Ukraine, dated July 2, 2020 № 811-r, allocated UAH 754 million State Budget reserve fund, aimed at the implementation of priority (urgent) measures. In particular, measures are envisaged to ensure the payment of material monetary aid to the families of the persons who died and material monetary aid to the affected population, to ensure proper living conditions.

Despite the lack of separate special legislation, in order to implement the recommendations of the Commissioner in the 2019 Annual Report of the Ukrainian Parliament Commissioner for Human Rights on the situation with observance and protection of human and civil rights and freedoms in Ukraine<sup>23</sup>, the Cabinet of Ministers of Ukraine adopted a Resolution, dated September 2, 2020, № 767 “Matters of payment of monetary compensation to victims whose houses (apartments) were destroyed by an emergency situation of a military nature caused by the armed aggression of the Russian Federation”, which took into account the Commissioner’s proposals and comments.

Despite the redistribution of expenditures under various budget programs in favor of the COVID-19 pandemic response, the state budget allocated UAH 20 million in 2020 to pay monetary compensation to people whose houses (apartments) were destroyed due to the military emergency situation.

Local authorities have taken steps to pay the compensation.

#### Example

The Commissioner’s monitoring of the provision of compensation to victims by the authorities in December 2020 revealed that 5 meetings of the Commission were held in Donetsk Oblast in November and December<sup>24</sup>, which resulted in a decision to provide monetary compensation to 41 owners of destroyed housing.

<sup>23</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 114.

<sup>24</sup> Order of the Head of the Donetsk OSA, dated 02.10.2020, № 1095/5-20 “On the establishment of a commission to consider matters connected with the provision of monetary compensation to victims, whose houses (apartments) were destroyed due to the military emergency situation caused by the armed aggression of the Russian Federation».

In Luhansk Oblast, based on the results of 3 meetings of the Commission, a decision was made to provide monetary compensation to 33 victims. As a result, monetary compensation in the amount of UAH 19.929 million was paid to 74 victims.

However, the issue of recording and documenting the damage is not regulated in any way, there are no common approaches to documenting, evaluating, storing and accumulating respective information, as well as the authorized body responsible for those processes.

This highlights the issue of development of respective mechanisms to document, account and evaluate losses, as well as the development of a system of information consolidation.

## RECOMMENDATIONS:

### **To the Cabinet of Ministers of Ukraine:**

1. Develop and submit to the Verkhovna Rada of Ukraine a draft Law of Ukraine on restitution and/or compensation for damage to housing (property) caused by warfare in Eastern Ukraine (providing key guarantees and proper financial support).
2. Develop and approve statutory instruments necessary for the implementation of the mechanism of restitution and/or compensation for damage to housing (property) caused by warfare in Eastern Ukraine, providing monetary compensation to the affected persons for their housing destroyed or damaged by warfare in Eastern Ukraine.
3. In the course of drafting the State Budget of Ukraine for 2022, envisage payment of monetary compensation to affected persons whose houses (apartments) were destroyed by an emergency situation of a military nature, in the amount not less than in 2021.





**109**

monitoring visits



**1272**

reports of rights  
violations



off-site inspections

# CHAPTER 6

RIGHTS OF MILITARY  
SERVANTS, POLICE  
OFFICERS, RETIREES  
OF MILITARY  
SERVICE, VETERANS  
AND THEIR FAMILY  
MEMBERS





## RIGHTS OF MILITARY SERVANTS, POLICE OFFICERS, RETIREES OF MILITARY SERVICE, VETERANS AND THEIR FAMILY MEMBERS

Military servants are under the protection of the state and have all the full rights and freedoms, taking into account the features determined by the Constitution of Ukraine, laws of Ukraine on military issues, statutes of the Armed Forces of Ukraine and other regulations.

During the quarantine restrictions introduced in the country because of the COVID-19 pandemic, military servants, police officers, privates and commanders serving in the security and defense sector continued to carry out combat, law enforcement and national security missions, risking life and health. In 2020, the combat losses of the Armed Forces in the OUF area amounted to 49 killed and 338 wounded.

On July 27, 2020, as a result of the meeting of the Trilateral Contact Group for the peaceful settlement of the situation in eastern Ukraine, agreements were reached on compliance with the regime of full and comprehensive ceasefire. However, the Ukrainian army continues to suffer losses. During the ceasefire, 17 military servants were killed (4 in 2020, another 26 in early 2021).

### **17 MILITARY PERSONS WERE KILLED DURING THE CEASEFIRE**

During 2020, the Commissioner received 1,272 reports of violations of rights and freedoms of military servants, law enforcement officers, including PCO, service veterans and retirees, as well as members of their families, which is 28% more than

in 2019 (998 reports). The increase in the number of reports is associated with systematic violations of the rights of military servants, PCO, police officers

and members of their families to pensions, as well as for service and payment of adequate cash allowance.

In order to exercise parliamentary control over the observance of the rights and freedoms of this category of persons guaranteed by the Constitution of Ukraine and

taking into account the information on the violation of rights from the reports,

in 2020, the Commissioner carried out 109 monitoring visits and 13 off-site inspections of military administration bodies, structural units of the PFU and social security bodies, as well as specialized units of the security and defense sector, which resulted in 255 submissions, letters of recommendation to facility managers and management bodies.

Also during the year, the media, Internet sites and social networks were monitored for violations of the rights of military servants, law enforcement officers, PCO, as a result of which 200 letters were sent to the military administration, public authorities and local governments with request to eliminate the violations.

## 6.1. Rights of military servants and conscripts

### *The right to timely receive adequate cash allowance and other types of security*

During 2020, the Commissioner received 67 reports of violations of the right to timely receive adequate cash allowance and other types of security. There were also cases of non-observance of these rights of military servants during 81 (out of 109) monitoring visits to military administration bodies and military units.

In particular, there were cases of late payment to staff of additional types of cash allowance: financial assistance for rehabilitation to address social and domestic issues, one-time cash assistance when concluding the first contract, appointment allowance. There is also a failure to carry out indexation of cash allowance, untimely calculation of the appropriate types of security at the time of dismissal, in particular monetary compensation for property not received during the service.

#### Example

In September 2020, S. addressed the Commissioner with a statement with a statement of non-payment of the statutory surcharge to the cash allowance for the performance of duties in the OUF area. After the intervention of the Commissioner, the payment was made.

### **THE NEGATIVE PRACTICE OF VIOLATING THE RIGHT TO PAYMENT OF ADEQUATE FINANCIAL SUPPORT TO THE FAMILIES OF FALLEN MILITARY SERVANTS PERSISTS**

The negative practice of violating the right to payment of adequate financial support to the families of fallen military servants persists. Such payments are made in violation of the terms after repeated complaints of relatives of the fallen military servants.

#### Example

In June 2020, the wife of reserve officer P., who died during a military training, appealed to the Commissioner regarding the non-payment of a one-time financial support in connection with the death of her husband.

Following the intervention of the Commissioner, the Ministry of Defense paid the applicant a financial support of UAH 960,500.

During off-site inspections of military administration bodies and military units of the Armed Forces of Ukraine, the State Border Guard Service and the National Guard of Ukraine, systemic violations of the rights of military servants to receive adequate financial support were revealed.

#### Example

In November 2020, during an off-site inspection of the state of observance of the rights of military servants of the State Border Guard Service to adequate financial support, arrears of additional types of financial security to personnel of one of the state border guards in the amount of more than UAH 8 million were revealed. As a result of the Commissioner's intervention, the arrears were paid.

The results of the monitoring visits showed an unsatisfactory level of provision of police officers with uniforms in accordance with the established norms, including the appropriate size.

#### Example

During a monitoring visit to the Zhytomyr Police Department in the Zhytomyr oblast in September 2020, it was found that the personnel of this unit was not fully provided with uniforms in accordance with the rules approved by the order of the Ministry of Internal Affairs #434 of June 4, 2020. At the same time, in some cases, the leadership of the Main Department of the National Police in the Zhytomyr oblast, depriving police officers of bonuses (or reducing the amount of bonuses) for the lack of uniforms, forces the latter to purchase uniforms at their own expense. As a result of the Commissioner's intervention, the violation of rights was eliminated.

#### *Rights related to service*

As a result of consideration of appeals received by the Commissioner and monitoring visits, cases of violation of rights related to the service, in particular, of labor rights related to illegal dismissal and transfer to positions that do not correspond to their preparation for specialty. There is a failure of state bodies to comply with court decisions aimed at restoring the rights of military servants, law enforcement officers, PCO and members of their families.

A significant part of these violations of rights was eliminated after the intervention of the Commissioner, 4 cases are at the stage of trial.

**THERE IS A FAILURE OF STATE BODIES TO COMPLY WITH COURT DECISIONS AIMED AT RESTORING THE RIGHTS OF MILITARY SERVANTS**

#### Example

In November 2020, the Commissioner received a complaint from Police Officers B. and K. about the actions of the leadership of the National Police of Ukraine related to the long-term non-execution of a court decision, which declared illegal actions for their dismissal in connection with organizational measures and obliged the department to renew citizens in the service. After the intervention of the Commissioner, the persons were reinstated.

#### *The right of military servants to be released from fines and penalties for unpaid obligations*

According to Article 14 of the Law of Ukraine 2011-XII "On the Social and Legal Protection of Military Personnel and Members of Their Families" of 20 December 1991

(hereafter – Law № 2011-XII), military servants from the beginning to the end of the special period are not charged interest on the loan.

At the same time, there are many cases of violation by banking institutions of the rights of military servants to get privileged credits during a special period. In particular, banking institutions deny military servants

in granting such loans or set requirements for the mandatory payment of interest on the loan.

#### Example

In January 2020, the Commissioner received a request from serviceman F. about the illegal accrual of interest and fines by PJSC CB PrivatBank under the loan agreement concluded with him. After the Commissioner's intervention, the bank reimbursed the accrued interest, penalties and fines.

*Right of military servants to work*

The Commissioner also received reports of violations of the rights of military servants called up or accepted for military service during a special period to retain their previous jobs and average earnings, which is guaranteed by Article 119 of the Labor Code of Ukraine and Article 18 of Law #2011-XII.

**Example**

In October 2020, the Commissioner was approached by the mother of citizen M., who had been called up for military service, and in violation of the law by the management of the State Department of Internal Affairs, where her son worked before conscription, he was fired, which violated his right to retain a job and average earnings for a special period. Following the Commissioner's intervention, the dismissal order was revoked and monthly payments began.

*Right of military servants to housing*

Analysis of the reports received by the Commissioner during 2020 from military servants and law enforcement officers showed that violations of right to housing are systemic. The appropriations provided in the state and local budgets are insufficient to address the issue of providing housing for military and law enforcement officers.

Due to the reorganization of housing maintenance bodies in the Armed Forces in 2020, the implementation of a number of housing construction projects for military servants was suspended.

As of the end of 2020, 50,000 servicemen of the Armed Forces were in line for the provision of housing. Construction of dormitories for police officers is not carried out at all, which significantly complicates the solution of housing issues of this category of citizens.

**VIOLATIONS OF RIGHTS TO HOUSING OF MILITARY SERVANTS ARE SYSTEMIC**

Determined by the Resolution of the Cabinet of Ministers of Ukraine of June 26,

2013 #450 "On the amount and procedure for payment of monetary compensation to servicemen of the Armed

Forces, the National Guard, the Security Service, the Foreign Intelligence Service, the State Border Guard Service, the State Special Communications and Information Protection Service, the State Special Transport Service, the State Security Department and servicemen sent to the Ministry of Education and Science, the State Space Agency, for sublease (rent) of residential premises", the amount of compensation for renting housing to the military (law enforcement officers) is lower than the actual cost of such housing.

In particular, in accordance with the above resolution of the Cabinet of Ministers of Ukraine the amount of monetary compensation for renting a home in Lviv for a family of three persons in 2020 amounted to UAH 3,153, while in fact, according to the prices for renting apartments in Lviv, it was necessary to pay about UAH 9,000 for a two-room apartment (UAH 5,000–6,000 in a suburban area); in Kyiv the amount of compensation is UAH 3,600, in fact prices start at UAH 8,000. Moreover, 19.5% of the tax is deducted from the specified amount of monetary compensation.

In order to eliminate this violation, it is necessary to review and increase the amount of monetary compensation to military servants for sublease (rent) of housing, taking into account the real prices for housing in the cities of Ukraine.

#### *Right to healthcare and medical assistance*

During the introduction of quarantine measures related to the pandemic of acute respiratory disease COVID-19, the Commissioner conducted 29 monitoring visits to military units and 24 to units of the National Police of Ukraine and the State Emergency Service of Ukraine.

The state of morbidity in military formations and law enforcement agencies was monitored daily (in 2020, 38 servicemen of the Armed Forces died from COVID-19).

During the visits, the facts of failure to provide military (law enforcement) units with the necessary personal protective equipment, diagnostics, medicines and medical equipment were revealed. As a result of the Commissioner's intervention, the violation of the rights of military servants was eliminated. A check of information posted on online publications and social media revealed violations related to the placement of military servants with COVID-19 in training grounds, field camps, training centers, barracks and dormitories.

#### Example

On June 21, 2020, on the pages of the Facebook social network information was revealed about the lack of proper treatment and examination of sick military servants of one of the battalions of the Mariupol 56th Motorized Infantry Brigade of the OC South, which was located in the International Peacekeeping and Security Center (Yavoriv military polygon). With high temperature, without testing for COVID-19 they were placed in a flooded tent of the hospital. After the Commissioner's intervention, the command provided proper examination and medical assistance to these military servants and referred them to specialized medical institutions.

6 separate monitoring visits were made to specialized HCIs of military formations and law enforcement agencies regarding the provision of qualified medical care and necessary medicines to patients, as well as the readiness to deploy in case of worsening of the epidemiological situation in the region. During the visits, violations regarding the insufficiency of medical equipment for the proper treatment of sick military servants were revealed.

In this regard, the Ministry of Defense conducted an off-site inspection of the organization of medical care for patients with COVID-19, which revealed the purchase of medical equipment of inadequate quality, the use of which could lead to deterioration of sick military servants and deaths.

#### **VIOLATIONS REGARDING THE INSUFFICIENCY OF MEDICAL EQUIPMENT FOR PROPER TREATMENT OF SICK MILITARY SERVANTS WERE REVEALED**

#### Example

During the off-site inspection of the Ministry of Defense in November 2020, the fact of purchasing ventilators for a total amount of UAH 11 million, which do not meet the stated requirements, was revealed. After the intervention of the Commissioner, the Ministry of Defense organized claim activities

on the fact of delivery of devices of inadequate quality to the medical institutions of the Armed Forces of Ukraine, which has not been completed yet. In February 2021, the SBI's Main Investigation Department launched a pre-trial investigation into the purchase of unusable devices.

#### *Right of military servants to leave*

In the appeals received during 2020 by the Commissioner from military servants and persons discharged from military service during the special period, as well as during monitoring visits to military units and units of the Armed Forces, bodies and units of the National Guard of Ukraine and the State Border Guard Service, a violation of the right of military servants to additional paid leave for PCO and additional paid leave in connection with training during the special period has been established. In particular, according to the provisions of Law 2011-XII, such leave is not granted during the special period (from 2014).

In order to restore the rights of servicemen to such leave in the Annual Report on Observance and Protection of Human Rights and Freedoms of Citizens of Ukraine in 2019<sup>1</sup> it was recommended to the Verkhovna Rada of Ukraine to expedite consideration and adoption of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Social and Legal Protection of Military Servants and Their Family Members" (reg. no. 2343 of 29.10.2019) on restoration, in particular, of social guarantees.

On January 14, 2020, the Verkhovna Rada of Ukraine adopted this Law

in the first reading as a basis for reducing the term of preparation. However, in 2020 it was not adopted as a law, and as a result, the right of military servants to leave is currently violated.

#### *Right to access public information*

In 2020, the Commissioner received 64 reports of violations of the right of access to public information, which is almost twice as many as in 2019 (37). Those reports stated that command of military units did not provide answers to inquiries regarding the receipt of certificates on the amount and components of cash and other types of security, copies of various administrative documents that concerned military servants personally.

#### **THE FACTS OF RESTRICTION BY THE COMMAND OF SUBORDINATE PERSONNEL OF MILITARY UNITS IN ACCESS TO SOCIAL NETWORKS WERE REVEALED**

Such actions contradict the requirements of the Law of Ukraine 2939-VI "On Access to Public Information" of January 13, 2011 and are an obstacle to the exercise by military servants of the right to go to court to protect their rights.

#### **Example**

In April 2020, 12 servicemen from five military units located in Odesa and Mykolayiv oblasts appealed to the Commissioner regarding the failure of the command of these military units to provide the requested information on payment of indexation of cash allowance and the amount of other components. Following the Commissioner's intervention, the applicants were immediately provided with the requested documents.

<sup>1</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 95.

According to the results of the analysis of reports about violations of the rights of military servants and monitoring of the media, Internet sites and social networks, in April 2020 facts of restriction by the command of subordinate personnel of military units in access to social networks, Facebook pages, Instagram were revealed. Such actions violate Article 34 of the Constitution of Ukraine, which guarantees the right of every citizen of Ukraine to freely use and disseminate information. As a result of the Commissioner's intervention, on May 4, 2020, the relevant order of the Logistics Command of the Armed Forces of Ukraine was revoked.

#### *Rights of conscripts and reservists*

During 2020, the Commissioner received reports of violations of the rights of conscripts to receive a deferment or exemption from conscription for military service due to ill health.

#### Example

In January 2020, the Commissioner received an appeal from a conscript T., who was found fit by the Darnytsya District Conscription Commission of Kyiv due to his health condition for military service, despite complaints and medical documents submitted during the medical examination. Following the Commissioner's intervention, an additional separate examination of the applicant's state of health was carried out by a military medical commission, during which the person was found to have a closed form of tuberculosis. The serviceman was discharged from military service due to his health condition.

Such violations continue to occur due to the fact that contrary to the requirements of Article 70 of the Law of Ukraine 2801-XII "Fundamentals of the Legislation of Ukraine on Health Care" of November 19, 1992 relevant examinations are carried out by a doctor, who is a member of the conscription board, alone, and not by a military-medical commission.

The Ministry of Defense still has not implemented the recommendation of the Commissioner provided in the Annual Report on Observance and Protection of Human Rights and Freedoms of citizens of Ukraine for 2019, of Chapter 2 of the Regulations on Military Medical Examination in the Armed Forces of Ukraine, approved by Ministry of Defence of Ukraine Order 402 of 14 August 2008, into alignment with Article 70 of Law of Ukraine 2801-XII<sup>2</sup> "Fundamentals of the Legislation of Ukraine on Health Care" of 19 November 1992.

In addition, still unresolved are the issues of bringing the provisions of the Law of Ukraine "On Alternative (Non-Military) Service" of 12 December, 1991 #1975-XII into which contain a number of restrictions on the exercise of this right by citizens if the performance of military duty contradicts their religious beliefs, in particular in the case of mobilization, as well as conscription of officers, to compliance with the requirements of the Constitution of Ukraine.

<sup>2</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 95.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine:** to expedite consideration and adoption of draft Law of Ukraine “On Amendments to the Law of Ukraine “On Protection of Military Servants and Their Family Members” (reg. no. 2343 of 29 October 2019) on granting military personnel the paid additional leave provided by law for combatants; study leave.

**To the Cabinet of Ministers of Ukraine:**

1. Develop and submit to the Verkhovna Rada of Ukraine a draft law amending the Law of Ukraine “On Alternative (Non-Military) Service” of December 12, 1991 #1975-XII in part to bring it into line with the requirements of the Constitution of Ukraine to ensure the constitutional right of citizens to alternative service if the performance of military duty contradicts their religious beliefs, in particular in the case of mobilization, as well as conscription of officers.

2. To amend the Resolution of the Cabinet of Ministers of Ukraine of June 26, 2013 #450 “On the amount and procedure for payment of monetary compensation to servicemen of the Armed Forces, the National Guard, the Security Service, the Foreign Intelligence Service, the State Border Guard Service, the State Special Communications and Information Protection Service, the State Special Transport Service, the State Security Department and servicemen sent to the Ministry of Education and Science, the State Space Agency, for sublease (rent) of residential premises” to bring the amount of compensation for sublease of housing to the military servants (law enforcement officers) in line with the actual cost of such housing.

**To the Ministry of Defence of Ukraine:** to amend Chapter 2 of Regulations on Military Medical Examination in the Armed Forces of Ukraine, approved by Ministry of Defence of Ukraine Order 402 of 14 August 2008, to bring it into alignment with Article 70 of Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” of 19 November 1992.

#2801-XII in terms of mandating the military medical commissions of military commissariats to determine the fitness of conscripts for military service, and ensuring adequate medical examination of citizens called up for military service.

### 6.2. Gender issues in the Armed Forces of Ukraine and other military formations

As a result of consideration of the reports received by the Commissioner during 2020, there were frequent cases of violations of the rights of women who served in the rank and file and as commanding officers of police and at the time of reforming the agency in 2015 were on maternity leave or parental leave until the child reaches the age of three.

The applicants complained that they had been dismissed after completing the above leave, although police units with similar functions and vacancies for police officers had been set up on the basis of the former police units where they had served.

#### Example

In June 2020, citizen M. appealed to the Commissioner with a complaint that the management of the National Academy of Internal Affairs of Ukraine had denied her in the appointment to the post of police officer after the end of childcare leave and dismissed from service.

After the intervention of the Commissioner the management of the educational institution (place of service) employed the applicant in the relevant position.

There are also facts when the management of the military units of the Armed Forces violated the right of servicewomen with children to early termination of contract and discharge from military service during a special period on their initiative.

#### Example

In July 2020, the Commissioner was approached by a soldier L., who is serving under a contract in a military unit located in the Kyiv region and has a three-year-old child. After returning from the OUF area, the applicant applied to the unit's command with a report on dismissal from military service due to the lack of opportunity to provide full care for a minor child. A female serviceman was denied discharge from military service. After the Commissioner's intervention, the report of soldier L. was satisfied, the contract was terminated, and the right was renewed.

During monitoring visits complaints about sexual harassment and criminal offenses against sexual freedom and inviolability have also been repeatedly noted in the results of surveys of military units and units of armed groups.

Checks carried out in some military units showed that appeals of servicemen and servicewomen to the hotline of the Ministry of Defense and other security and defense bodies with reports of sexual harassment or gender-based violence are not accounted separately, therefore it is impossible to analyze their number, reasons, response measures, etc. This also leads to ignoring or hiding cases of sexual harassment and gender-based violence.

## RECOMMENDATIONS:

**To the Ministry of Defence of Ukraine** – to speed up the agreement with the relevant central executive bodies and submit to the Cabinet of Ministers of Ukraine a draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Issue of Responding, Preventing and Combating Discrimination and Sexual Harassment among Servicemen”.

**To the Ministry of Defence of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the General Staff of the Armed Forces of Ukraine, the National Police of Ukraine, the National Guard of Ukraine, the State Border Guard Service of Ukraine, the State Emergency Service of Ukraine:**

1. Develop and conduct specialized surveys to identify the preconditions for the gender-based violence by personnel of units.

2. Develop and approve an algorithm for reviewing and responding to reports of sexual harassment/ gender-based violence and a mechanism for prosecuting perpetrators.
3. Develop and make changes to departmental regulations governing investigations/inspections, changes in the procedure of conducting such investigations/inspections to take into account gender specifics.

### **6.3. Rights of persons receiving pensions in accordance with the Law of Ukraine “On Pensions to Persons Released from Military Service and Certain Other Persons,” as well as of military service veterans**

#### *Right to adequate retirement benefits*

Analysis of 170 notifications received by the Commissioner on violations of the rights of persons receiving pensions in accordance with the Law of Ukraine “On Pensions to Persons Released from Military Service and Certain Other Persons,” approved on April 09, 1992 #2262-XII, indicates the existence of systemic violations of the right to adequate pension provision as a result of the application of Resolution of the Cabinet of Ministers of Ukraine of February 21, 2018 #103 “On recalculation of pensions for persons discharged from military service and certain other categories of persons.” According to this resolution, the recalculation of pensions does not include additional types of cash benefits received by a person, which significantly affects the amount of pension.

Despite a number of court decisions on this issue, including the Supreme Court’s decision in Case 160/8324/19, according to which the recalculation of pensions for military servants should be carried out taking into account additional types of cash benefits, PFU bodies continue not to accept updated certificates of cash benefits for recalculation of pensions. Such facts are evidenced by monitoring visits and off-site inspections carried out by the staff of the Secretariat of the Commissioner.

In order to restore the violated rights it is necessary to regulate them by law, in particular by adoption of the draft Law of Ukraine “On Amendments to the Law of Ukraine “On Pensions to Persons Released from Military Service and Certain Other Persons” on Restoring Previous Provisions of this Law” (reg. no. 2141 of 13 September 2019). This was emphasized in the Annual report of the Commissioner on observance and protection of human rights and freedoms in Ukraine in 2019<sup>3</sup>. On December 3, 2020, the draft law was adopted by the Verkhovna Rada of Ukraine in the first reading.

#### *The right to appoint and receive one-time cash benefits in case of disability*

According to the resolution of the Cabinet of Ministers of Ukraine of October 21 2015 #850 “On approval of the Procedure of appointment and payment of one-time cash benefits in case of death, disability or partial disability of a police officer”, former police officers who are persons with disability have the right to appointment and payment of appropriate financial assistance. During 2020, the Commissioner received reports of violations of the right to receive such assistance, in particular regarding the timeliness of its appointment and payment.

<sup>3</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 102.

#### Example

The Commissioner received reports from former police officers from among persons with disabilities K., K. (April 2020) and B. (August 2020) regarding the non-payment of due one-time cash benefits in case of disability.

As a result of the response to the Commissioner's submission to the Minister of Internal Affairs of Ukraine in connection with the above facts, one-time cash benefits were paid to citizen K. in the amount of UAH 336,800 and to the citizen K. in the amount of UAH 217,500, the conclusion of the Ministry of Internal Affairs on the appointment of the specified one-time financial assistance to the former employee of the Ministry of Internal Affairs B. in the amount of UAH 420,400 was approved.

#### *Right to sanatorium treatment*

During 2020, the Commissioner received reports of violations of rights of war veterans, military service veterans and law enforcement agencies to sanatorium treatment.

This violation is related to a gap in the current Procedure #446 for providing sanatorium and resort vouchers to military servants, war veterans, military service veterans, police veterans and some other categories of persons and members of their families, approved by the Cabinet of Ministers on September 27, 2011 (hereinafter – the Procedure #446). In particular, this Procedure stipulates that vouchers to sanatoriums are provided only to persons covered by the Law of Ukraine "On Status of Veterans of Military Service, Veterans of Internal Affairs, Veterans of the Nation Police of Ukraine and Certain Other Persons and Their Social Protection" of 24 March 1998 #203/98-BP, and who receive pension in accordance with Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons" of 09 April, 1992 #2262-XII.

The Procedure does not regulate the provision of vouchers to military service veterans who receive a pension under other laws. It should be noted that similar violations took place in 2019.

Based on the results of the implementation of the Commissioner's recommendations provided in the Annual report on observance and protection of human rights and freedoms of citizens of Ukraine in 2019<sup>4</sup>, the Ministry of Defense has developed a draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine #446 of April 27, 2011", which provides for the elimination of this gap. However, this legal act has not been approved in 2020.

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite consideration and adoption of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons" on Restoring Previous Provisions of this Law" (reg. no. 2141 of 13 September 2019).

<sup>4</sup>URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 102.

**To the Cabinet of Ministers of Ukraine** – to amend Cabinet of Ministers of Ukraine Resolution 446 “On Approval of the Procedure providing sanatorium and resort vouchers to military servants, war veterans, military service veterans, police veterans and some other categories of persons and members of their families” of 27 April 2011 in terms of providing vouchers to sanatoriums to military service veterans who receive a pension under other laws.



**815**

monitoring visits



**3 154**

reports of rights  
violations



special reports  
of the Commissioner

# CHAPTER 7

RIGHT OF A  
PERSON NOT  
TO BE SUBJECTED  
TO TORTURE OR  
TO CRUEL,  
INHUMAN OR  
DEGRADING  
TREATMENT OR  
PUNISHMENT





## RIGHT OF A PERSON NOT TO BE SUBJECTED TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

During 2020, despite the challenges facing NPM representatives of all countries regarding visits to places of detention in the context of the COVID-19 pandemic, the activities of the Commissioner for the implementation of the NPM in Ukraine not only did not stop, but intensified.

Ukraine is one of the five European countries that have continued regular visits to places of detention to monitor the observance of human and civil rights and freedoms during the pandemic.

Compared to last year, the number of reports received by the Commissioner on violations of the rights of persons in places of detention has almost doubled – 3154 reports against 1775 in 2019, of which 2388 (75%) on human rights in the institutions of the SPS. The number of reports of torture from citizens or their relatives in places of detention has increased from 43 in 2019 to 165 in 2020.

**THE NUMBER OF REPORTS OF TORTURE INCREASED FROM 43 IN 2019 TO 165 IN 2020**

This indicates the proper informing of the public about the activities of the institution of the Commissioner, as well as the growth of trust in the institution. After all each fact is checked and the Commissioner's intervention acts are sent to the authorities in order to restore the rights of individuals. As part of the implementation of the NPM in 2020, the staff of the Secretariat of the Commissioner conducted 815 monitoring visits to all types of places of detention, of which 677 – to study the state of measures to prevent the spread of COVID-19. In particular, 135 visits were made to the administrative institutions of the Ministry of Justice, 179 to the Ministry of Internal Affairs, 23 to the Ministry of Defense, 271 to the Ministry of Social Policy, 33 to the Ministry of Education and Science, 52 to the Ministry of Health, 8 to the State Migration Service, 17 to the State Border Guard Service, 1 to the Security Service, 96 to courts.

There were also 92 monitoring visits to private institutions providing social services, of which 52 to boarding houses for the elderly and 40 to rehabilitation centers for people with alcohol, drug and other forms of addiction.

In 2020, 118 public monitors were involved in the monitoring visits of NPM carried out in the "Ombudsman+" format.

Monitoring visits and reviews of reports of citizens have revealed numerous violations of rights of detained persons, including torture or to cruel, inhuman or degrading treatment or punishment, violations of right to freedom and personal safety, health and medical care, and appropriate conditions of detention.

18 submissions of the Commissioner on restoration of violated rights of detained persons were submitted to the central executive bodies. At the request of the Commissioner, law enforcement agencies launched a pre-trial investigation into 24 criminal proceedings.

The Commissioner's active role in preventing the spread of the COVID-19 pandemic and Ukraine's positive experience in the implementation of the NPM during the quarantine were noted by the

UN Subcommittee on Prevention of Torture, the Head of the UN Human Rights Monitoring Mission in Ukraine and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Also, in April 2020, the expert of the Council of Europe George Tugushi, assessing the operational capacity of the NPM in Ukraine, recognized it as an example of positive practice for other countries in Europe to follow.

The state of observance of human rights in places of detention during the quarantine and counteraction to the spread of coronavirus infection in such institutions is covered in the Special Report of the Commissioner<sup>1</sup>.

### **7.1. Right to protection from torture, cruel, inhuman or degrading treatment or punishment**

Part 2 of the Chapter 28 Constitution of Ukraine guarantees the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. However, the number of citizens' appeals to the Commissioner in 2020 regarding torture and ill-treatment and the results of monitoring visits indicate that this right is violated in all places of detention.

For the majority of citizens, appealing to the Commissioner is the only opportunity to restore their rights. Formal conduct of official and pre-trial investigations into the facts of torture and failure to prosecute the perpetrators, leads to an increase in the number of such cases.

The inconsistency of the definition of the term «torture» in Article 127 of the Criminal Code of Ukraine with the requirements of Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment leads to impunity for officials, as repeatedly emphasized by the Commissioner. Lack of internal control over the activities of places of detention by central executive authorities and improper implementation by regional state administrations and regional councils leads to neglect by staff of places of detention of international and domestic standards of proper treatment of detainees.

During the monitoring visits the NPM revealed facts of bodily injuries of all kinds, excessive use of restraints and special means to restrain persons in places of detention, prolonged isolation in unsuitable premises, failure to provide painkillers to patients with severe diseases, including cancer. However, in many cases, injuries are not recorded and victims are not provided with medical care, as required by the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and current regulations.

#### **CASES OF EXCESSIVE USE OF FORCE BY POLICE OFFICERS DURING THE DETENTION OF CITIZENS CONTINUE TO OCCUR**

Monitoring visits continue to reveal cases of excessive use of force by police officers during the detention of citizens.

This is also confirmed by the presence in 2020 of 852 appeals to the HCI, where in the explanations of the causes and circumstances of injuries citizens noted that they those injuries were inflicted by police officers during detention. Based on

<sup>1</sup> Special report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights «The state of observance of human rights and freedoms in places of detention during the emergency situation related to the spread of acute respiratory disease COVID-19 caused by the Coronavirus SARS-CoV-2». URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=5>.

these facts, information was entered into the URPTI, according to which in 203 criminal proceedings a pre-trial investigation was launched.

#### Example

During the monitoring visits on February 4, 2020 to the Bila Tserkva Police Department of the Main Department of the National Police in the Kyiv oblast and on February 5, 2020 to the Irpin branch of the MDNP in Police Department of the Main Department of the National Police in the Kyiv oblast, cases of bodily injuries to citizens during detention were revealed.

At the request of the Commissioner, the territorial department of the State Bureau of Investigations in Kyiv entered information into the URPTI, according to which a pre-trial investigation was initiated in the criminal proceedings under Article 367 (Official Negligence) of the CC of Ukraine. A pre-trial investigation is underway.

In social protection institutions, the most common are cases of ill-treatment by staff of institutions related to excessive isolation of residents. Some boarding schools do not record the fact of injuries received by residents, do not establish their causes and take further measures, in particular, do not conduct official investigations of injuries, do not draw up acts of inspections of accidents.

#### Example

During the monitoring visit to the Radomyshl Psychoneurological Boarding School of the Zhytomyr Oblast Council in February 2020, during communication with residents, information about the use of violence (beating) by the staff was obtained. Residents proved this with the injuries they had.

During the inspection it was found that these cases were not recorded in the medical records, and appropriate response and treatment measures were not carried out.

At the request of the Commissioner to the by police authorities, information was entered into the URPTI, which initiated a pre-trial investigation in the criminal proceedings under Article 140 (Improper performance of professional duties by a medical or pharmaceutical worker) of the Criminal Code of Ukraine.

During the majority of monitoring visits to psychoneurological institutions conducted in 2020, the facts of non-compliance with the requirements of the Order of the Ministry of Internal Affairs and the Ministry of Health #612/679 of July 6, 2016 «On the order of the account of the facts of the address and delivery to health care institutions of persons in connection with bodily injuries of criminal character and informing on such cases of bodies and units of police» were revealed. In this connection, patients are exposed to the risk of torture by the staff of the institutions.

There are no normative acts that provide for keeping a log of existing injuries during hospitalization and during the stay of patients in inpatient treatment in these institutions. The National Police of Ukraine is not informed about any injuries of a criminal nature to patients.

When a person staying in a medical institution receives bodily injuries and no measures are taken to establish all the circumstances of these injuries, case law from the ECtHR indicates that this is a direct violation of Article 3 of the UN Convention for the Protection of Human Rights and Fundamental Freedoms.

**Example**

During a monitoring visit in February 2020 to the Berdyansk Psychoneurological Dispensary of the Zaporizhia Oblast Council, one of the patients of the narcology department was found to have hematomas on his face, but information about them was not present in his medical records.

At the request of the Commissioner, an official investigation was conducted, the perpetrators were brought to justice, and the victim was provided with the necessary treatment.

During 2019-2020, the Commissioner repeatedly provided recommendations to the Ministry of Health on the need to develop a procedure for physical examination during hospitalization and stay in psychiatric institutions, for interviews following injuries and documentation of injuries, as well as notification of the relevant law enforcement agencies in accordance with the United Nations Guidelines on the Effective Investigation and Documentation of Torture, and Other Cruel and Degrading Treatment or Punishment. However, this recommendation remains unfulfilled<sup>2</sup>.

During the monitoring visits to private geriatric institutions, the facts of ill-treatment of detainees by the staff of these institutions and infliction of bodily injuries of varying severity were revealed.

**Example**

During a monitoring visit to the private nursing home for the elderly «Teplo Lyubykh» (Rivne) in July 2020, one of the residents reported injuries when he fell from a wheelchair due to intentional actions of a attendant.

At the request of the Commissioner, Rivne police department of the MDNP in Rivne oblast entered information into the URPTI and a pre-trial investigation was initiated in the criminal proceedings under Article 125 (Intentional minor bodily injury) of the Criminal Code of Ukraine.

In 80% (more than 30 of the 40 psychiatric institutions visited in 2020) violations of patients' rights are still recorded connected with applying physical restraint without documenting this fact, which is not in line with the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT/Inf(17)].

**Example**

During a monitoring visit to the Regional Clinical Narcological Hospital of the Kharkiv Oblast Council in August 2020, it was revealed that non-adapted means (towels, ropes) were used when applying physical restraint to patients. At the same time, contrary to the requirements of the Order of the Ministry of Health 240 of 24.03.2016 «On approval of the Rules of application of physical restraint and (or) isolation in providing psychiatric care to persons suffering from mental disorders, and forms of primary accounting documentation», patients are tied to beds in the presence of other patients, and the facts of physical limitations are not reflected in the medical records.

<sup>2</sup> Develop and approve a draft Ministry of Health of Ukraine order to regulate the procedure for physical examination during hospitalization and stay in psychiatric care facilities, for interviews following injuries and documentation of injuries, as well as notification of the relevant law enforcement agencies (Annual Report of the Commissioner for 2019)

Similar facts were revealed during monitoring visits to Dnipropetrovsk Multidisciplinary Clinical Hospital for Psychiatric Care of Dnipropetrovsk Oblast Council, non-profit municipal enterprise of Sumy Oblast Council «Romny Regional Clinical Specialized Hospital», non-profit medical enterprise of the Kyiv Oblast Council «Regional Psychiatric and Narcological Medical Association», non-profit municipal enterprise of Ivano-Frankivsk Oblast Council «Prykarpattya Narcological Center» and others. Based on these facts, the Commissioner provided recommendations to local governments, which founded such institutions, on the immediate restoration of violated rights of patients.

Cases of torture, cruel or degrading treatment or punishment by employees continue to be recorded during monitoring visits to SPS facilities. In 2020, 70% of reports of torture were received by the Commissioner for institutions of the SPS.

#### Example

During the monitoring visit to the Kropyvnytskyi PTDC on May 5, 2020, the facts of torture of two detainees (infliction of bodily harm, intimidation to infect with AIDS and tuberculosis with demonstration of a syringe with white liquid) by the acting head of the institution and employees of the institution were revealed. These actions were committed in order to obtain from them a confession to the crime, as well as funds allegedly obtained by criminal means.

At the request of the Commissioner, the territorial department of the State Bureau of Investigations in Mykolayiv entered information into the URPTI, according to which a pre-trial investigation was initiated in the criminal proceedings under Article 365 (Abuse of power or official authority by a law enforcement officer) of the Criminal Code of Ukraine. A pre-trial investigation is underway.

Violations of the rights of convicts during the introduction of a special regime in penitentiary institutions, including the unjustified use of force and special remedies, continue to occur.

#### Example

Commissioner received a report on torture in state institution «Oleksiiv Correctional Colony (#25)» on January 8, 2020 and immediately carried out a monitoring visit to the institution.

During the monitoring visit and based on the results of the survey of convicts and their human rights defenders, it was revealed that from January 6, 2020 a special regime was introduced in the institution with general searches and involvement of special forces, access to the institution of assistants of People's Deputies of Ukraine, human rights activists and media was restricted.

The staff of the institution and special forces used special remedies and inflicted bodily injuries on up to 22 convicts. Convicts complained to members of the monitoring group about torture, ill-treatment and bullying. These complaints were confirmed by numerous bruises and burns from stun guns on injured convicts. At the insistence of the members of the monitoring group, the victims were provided with appropriate medical care, the facts of injuries were recorded in the medical documentation.

As a result of the Commissioner's intervention, the Prosecutor General's Office entered information into the URPTI under Articles 127 (Repeated torture by a group of persons upon prior conspiracy), 172 (Gross violation of labor legislation), Article 365 (Abuse of power or official authority by a law enforcement officer), 374 (Violation of the right to protection) of the Criminal Code of Ukraine. The head of this institution has been fired.

SPS institutions do not guarantee the right to personal security, which means that convicts and prisoners who have been subjected to torture or ill-treatment by SPS staff or other detainees mostly do not apply to law enforcement agencies with such statements, or, if they apply, later they ask not to consider them.

#### Example

During the monitoring visit in December 2020 to the State Institution “Northern Correctional Colony #90”, information was received about the fact of excessive use of physical force and special means by the employees of the institution to the newly arrived convicts. At the same time, received injuries were not recorded in the medical records of the convicts.

During the confidential conversation, the convicts refused to write official statements to law enforcement agencies due to fears for their lives, honor and dignity, because, according to them, after these events they are constantly subjected to psychological pressure and intimidation by the workers of the institution.

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – develop a draft law aimed at bringing the content of Article 127 of the Criminal Code of Ukraine into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and submit this to the Verkhovna Rada of Ukraine.

**To central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, Kyiv State City Administration and oblast councils** – develop and approve departmental regulations to implement the provisions of the United Nations Guidelines on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) to ensure proper registration of facts of torture and other cruel degrading treatment and punishment.

#### **To the Ministry of Health of Ukraine:**

1. Bring the Rules for use of physical restraint and/or isolation in the provision of psychiatric care to persons with learning disabilities, and the systems in place for documenting incidents (approved by Ministry of Health of Ukraine Order 240 of 24 March 2016) in line with the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment “Means of restraint in psychiatric establishments for adults” (CPT/Inf (2017)), in particular, in regard to the

prohibition of physical restraint in the presence of other patients; without certified fixation belts; with the use of beds with armoured nets; as well as in relation to the definition of chemical fixation procedures.

2. Develop and approve an order to regulate the procedure for physical examination during hospitalization and stay in psychiatric care facilities, for interviews following injuries and documentation of injuries, as well as notification of the relevant law enforcement agencies.

## 7.2 Right to liberty and security of person

Monitoring visits to places of detention suggest that the current level of control by state and non-state institutions does not ensure the right of detainees to liberty and security of person.

Pursuant to parts two and three of Article 29 of the Constitution of Ukraine, no one may be arrested or detained except by a reasoned court decision and only on the grounds and in the manner prescribed by law. In case of urgent need to prevent a crime, authorized bodies may use detention as a temporary measure, the validity of which must be verified by a court within seventy-two hours. A detainee shall be released immediately if he or she has not been served with a reasoned detention order within seventy-two hours of detention.

However, during monitoring visits, cases of illegal detention in police bodies and units continue to be recorded. Thus, during 2020, in 60% of the police bodies visited cases of illegal detention were recorded.

**DURING 2020, IN 60% OF THE POLICE BODIES VISITED CASES OF ILLEGAL DETENTION WERE RECORDED**

### Example

During a monitoring visit to the Dnipro police department of the MDNP in Kyiv in December 2020, citizens Sh. and B. were found in their offices, detention reports for whom were drawn up 12 and 15 hours after their actual detention.

At the request of the Commissioner, the territorial department of the State Bureau of Investigations in Kyiv entered information into the URPTI, according to which a pre-trial investigation was initiated in the criminal proceedings under Part 1 of Article 371 (Known illegal detentions, booking, house arrest or detention in custody) of the Criminal Code of Ukraine.

Cases of illegal detention were also recorded during monitoring visits to the State Border Guard Service.

### Example

During a monitoring visit to the Volyn TDFF of the State Migration Service in March 2020, based on the results of acquaintance with the personal files of detained foreigners, violations of the right of detainees to freedom and security of person were revealed by officials of the Lviv border guard detachment, in violation of Article 3 of the Law of Ukraine 3733-VI «On the legal status of foreigners and stateless persons» of September 22, 2011.

Thus, a citizen of Afghanistan S.Sh., was illegally detained for more than 9 hours by employees of the Lviv border detachment after the expiration of the term of administrative detention pending trial. At the request of the Commissioner, the territorial department of the State Bureau of Investigations in Lviv entered information into the URPTI, according to which a pre-trial investigation was initiated in the criminal proceedings under Articles 366 (Forgery) and 371 (Known illegal detentions, booking, house arrest or detention in custody) of the Criminal Code of Ukraine. A pre-trial investigation is underway.

According to Article 13 of the Law of Ukraine “On Psychiatric Care”, hospitalization in a psychiatric institution is carried out at the request of a person or with his/her informed written consent, as well as compulsorily. However, during monitoring visits to some psychiatric care facilities, it was found that psychiatric examinations and treatment were carried out without the voluntary consent of patients who had not been hospitalized involuntarily.

#### Example

During the monitoring visit in February 2020 to the Prykarpattya Narcological Center of the Ivano-Frankivsk Oblast Council, almost all examined medical records of patients did not have completed forms of primary registration documentation No. 003-6/o for providing informed consent to conduct psychiatric examination, hospitalization and treatment.

As a result of the Commissioner’s intervention, patients were explained their rights and responsibilities to consent to a psychiatric examination and treatment. Medical documentation is brought in line with the requirements of the legislation of Ukraine.

According to item 11 of the Rules for the application of coercive measures of a medical nature in a special institution for psychiatric care, approved by the Order of the Ministry of Health 992 of 31 August, 2017, hospitalization of patients in special institutions for psychiatric care is based on a court decision on coercive measures in the presence of documents proving the identity of the hospitalized person.

Monitoring visits to some HCIs and social protection institutions revealed the illegal placement and detention of patients who did not have any identity documents.

#### Example

During a monitoring visit to the Vinnytsia Regional Psychiatric Hospital No. 2 of the Vinnytsia Oblast Council in May 2020, patient M. was found to have been subjected to coercive medical measures and placed in an institution without identity documents.

After the Commissioner’s intervention M’s passport data were entered in the relevant journals and her rights and responsibilities were explained.

According to the results of monitoring visits to rehabilitation centers for alcohol and drug addicts, it was established that in some institutions clients are held against their will. Contracts for stay and receipt of services in such cases are concluded between the institution and relatives of clients without the knowledge and consent of the latter. *Such cases were detected at the «New Way» Rehabilitation Center of the «Rukh Zmin» public organization (Kyiv oblast) and the «Vybir» Narcological Center (Kyiv oblast).*

In addition, due to the lack of state programs for comprehensive rehabilitation of addicts, rehabilitation centers use adapted foreign technologies of social and social rehabilitation support. In working with clients, there are no criteria for evaluating the effectiveness of psychological and psychiatric care in such institutions, and rehabilitants are subject to types of punishment that degrade human dignity and subject a person to psychological pressure.

On June 3, 2020, the staff of the Secretariat of the Commissioner held a working meeting with the founders of private centers, representatives of public organizations, law enforcement agencies and the Ministry of Social Policy to discuss their registration under current legislation, observance of human rights in such institutions, including the right to liberty and security of person.

As a result of the meeting, agreements were reached on the need to amend the current legislation regarding the mandatory registration of such centers, as well as conducting trainings on the observance of human rights for the staff of such institutions by the Secretariat of the Commissioner.

During monitoring visits to pre-trial detention facilities in April–June 2020, it was revealed that 551 persons, whose sentences had entered into force due to the suspension of transfer in connection with quarantine measures, were not sent to serve their sentences, which is a violation of Article 87 of the Criminal Executive Code of Ukraine. It led to overcrowding in institutions and non-compliance with the requirements of Article 8 of the Law of Ukraine 3352-XII «On Pre-trial Detention» of June 30, 1993 on the separate detention of convicts and detainees.

This led to conflicts between prisoners, which were accompanied by injuries, physical violence, violence and other illegal acts.

#### Example

During a monitoring visit to the Kyiv PTDC in June 2020, the fact of the death of the convicted D. in the Kyiv City Clinical Emergency Hospital as a result of bodily injuries received during the conflict with his cellmate D. was revealed.

According to this fact, the Prosecutor-General's Office entered information into the URPTI and initiated a pre-trial investigation in the criminal proceedings under Article 121 (Intentional grievous bodily harm) of the Criminal Code of Ukraine.

## RECOMMENDATIONS:

**To the Cabinet of Ministers of Ukraine** – to develop and submit to the Verkhovna Rada of Ukraine a draft Law of Ukraine on Amendments to the Law of Ukraine 2671-VIII “On Social Services” of January 17, 2019 on mandatory entry in the Register of providers and recipients of social services of information on social service providers, in particular on the actual place of provision of such services.

**To central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal**

**Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, oblast state administrations and oblast councils** – to ensure effective internal control over the observance of human rights in places under the jurisdiction and control of the central executive bodies where persons deprived of their liberty are or may be detained, by order of a state body or on its instructions, or with its knowledge or tacit consent.

**To oblast administrations and Kyiv State City Administration** – to inspect the activities of private institutions providing social services in accordance with the Law of Ukraine 2671-VIII «On Social Services» of January 17, 2019, the Order of the Cabinet of Ministers of Ukraine 427 of 01.06.2020 «Some issues of control over compliance with the Law of Ukraine «On social services».

### 7.3. Right to an adequate standard of living, including adequate food, clothing and housing

#### **SYSTEMIC VIOLATIONS OF HUMAN RIGHTS TO ADEQUATE CONDITIONS OF DETENTION AND AN ADEQUATE STANDARD OF LIVING WERE RECORDED IN 90% OF PLACES VISITED**

As a result of monitoring visits to places of detention, a systematic violation of human rights to adequate conditions of detention and an adequate standard of living, including adequate food, clothing and housing, has been recorded. Such violations were recorded in 90% of the places of detention visited.

Inadequate conditions of detention are found by both the Secretariat's staff and international human rights institutions, including experts from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during monitoring visits to Ukraine.

After each visit, the Committee made recommendations to Ukraine on the need to ensure appropriate conditions of detention in pre-trial detention facilities, namely: the provision of at least 4 square meters of personal space per prisoner in shared cells and not to place more than one prisoner in cells of 6 square meters, which is currently not provided by national law.

In turn, the Commissioner provided recommendations to the Verkhovna Rada of Ukraine on the need to bring the current legislation in line with international standards in order to ensure the right of persons to adequate conditions in pre-trial detention, namely to expedite consideration and adoption of the draft law of Ukraine "On Amendments to the Law of Ukraine 'On Pre-trial Detention' (concerning the implementation of certain standards of the Council of Europe)" (reg. no. 0882 of 29 August 2019)<sup>3</sup>. At the present time this recommendation remains unfulfilled.

It should be noted that according to the decision of the ECtHR in the case of *Petukhov vs. Ukraine* (dated 12 March 2019, application no. 41216/13), despite the positive measures taken by Ukraine in the current penitentiary reform, the urgency of the detention problem detention has not decreased in recent years, in connection with which systemic violations of the rights of detainees to adequate conditions of detention in SPS institutions continue to be recorded.

<sup>3</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>, page 142.

According to the information provided by the authorities, violations of the rights of detainees in places of detention can be remedied only with adequate funding.

Thus, during the monitoring visits the facts of overcrowding were revealed, namely the number of detainees significantly exceeds the planned capacity, which during a pandemic is extremely dangerous and can lead to the spread of COVID-19 among detainees.

According to the Recommendations of the UN Subcommittee on Prevention of Torture, states should pay particular attention to places of detention where the number of detainees exceeds the official number of places and to those where detention capacity is based on a “square meters/window” approach per person which does not allow social distancing in accordance with the standard recommendations provided for the general population and is extremely dangerous during a pandemic.<sup>4</sup>

#### Example

During the monitoring visit in April 2020, 293 people were detained in the Lutsk PTDC with a planned capacity of the institution of 260 people, which did not allow to provide social distance and could lead to the spread of COVID-19.

Similar cases were reported in Kyiv, Chernihiv, Odesa, Kherson PTDCs and other pre-trial detention facilities.

Based on the above facts, on July 14, 2020, the Commissioner sent a petition to the Minister of Justice of Ukraine regarding the need to unload such institutions and ensure the right of detainees to adequate conditions of detention and social distancing. According to the Ministry of Justice, four working meetings were held with the authorities concerned, and the state of human rights is under the personal control of the ministry’s management.

Due to overcrowding in some pre-trial detention centers, detainees did not have a private place and slept in turns.

#### Example

During a monitoring visit to the Odessa PTDC in February 2020, four convicts were detained in a cell with three beds, which made it impossible to rest normally at night, created grounds for conflict and could be regarded as ill-treatment of prisoners.

As a result of the Commissioner’s intervention, the prisoners were transferred to appropriate premises.

The situation in the penitentiary institutions is not much better. The norms of the area per person are often not observed in living quarters. Beds are located close to each other, the bed linen is worn out, the disciplinary premises are excessively barred, there is no proper ventilation.

There are many cases when convicts stay in premises completely unsuitable for living.

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<sup>4</sup> Violation of the right to safe accommodation and social distancing in SPS institutions. Special report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights «The state of observance of human rights and freedoms in places of detention during the emergency situation related to the spread of acute respiratory disease COVID-19 caused by the Coronavirus SARS-CoV-2». URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=5>.

### Example

During the monitoring visit in May 2020 to the State Institution “Horodyshche Correctional Colony No. 96” it was revealed that in the maximum security sector the convict was kept in a cell of 2.5 square meters, contrary to the requirements of the Criminal Executive Code of Ukraine and international standards. His bed was located very close near the front door of the cell and bathroom. Due to the excessive barring of the windows the cell was in almost complete darkness.

The Commissioner provided recommendations to the Ministry of Justice on the immediate elimination of violations of the rights of detainees, but they remained unfulfilled.

In accordance with the requirements of the first subitem of item 1 of the Section VII of the Instruction on the organization of the regular service of bodies (units) of the National Police of Ukraine, approved by the Order of the Ministry of Internal Affairs 440 of May 23, 2017, it is provided that territorial police units must be equipped with rooms for temporary detention of detainees.

However, monitoring visits revealed that in most of the territorial police units visited, detention facilities were either non-existent or not used due to inadequate detention conditions. Due to this, detainees are kept in offices or other premises of the police for three hours to one day before they are sent to the TDF, and they are not provided with food and drinking water.

Based on these facts, the Commissioner sent recommendations to the Ministry of Internal Affairs and the National Police of Ukraine on the need to conduct inspections of existing rooms for detainees in police departments, units and stations and ensure their proper functioning.

In most of the TDFs visited international and national standards of detention was violated, including inadequate detention conditions, sanitation and nutrition. *Relevant facts were revealed during monitoring visits to TDF No. 9 of the MDNP in Odesa oblast, TDF No. 4 (Mena) of the MDNP in Chernihiv oblast, TDF No. 4 Novovorontsovka) and TDF No. 5 (Nyzhni Sirohozy) of the MDNP in Kherson oblast and a number of other institutions.*

During the monitoring visits, violations of the right of a person to proper conditions of detention of defendants (convicts) in court premises continue to be recorded. In many courts the requirements of DBN B.2.2-26 «Buildings and structures. Courts» are violated, because there are no premises for temporary detention of defendants (convicts) and premises for accommodation of guards. As a result, the defendants (convicts) who arrived to participate in the court hearings are forced to wait for hours in convoy cars, or in rooms completely unsuitable for this purpose.

### Example

During monitoring visits to the Zhovkva District Court of the Lviv oblast, the Boryspil City District Court of the Kyiv oblast, and the Chortkiv District Court of the Ternopil oblast, due to the lack of specially designated detention facilities for defendants (convicts) who arrived to participate in court hearings, they were escorted from special vehicles straight to the courtroom.

According to these facts, the Commissioner sent recommendations to the SJA on the issue of ensuring adequate financing of judicial institutions in order to ensure proper conditions for keeping defendants (convicts) in convoy premises. The implementation of recommendations is in progress.

In the vast majority of places of detention visited in 2020, adequate conditions have not been ensured for unimpeded access of persons with disabilities to buildings and premises in accordance with DBN B.2.2-40:2018 «Inclusiveness of buildings and structures».

In this regard, persons in educational institutions, social protection, health care and penitentiary institutions cannot move freely, are deprived of the opportunity to take a walk. Access to facilities, including sanitary facilities for such persons, is difficult and often accompanied by degrading procedures when other detainees help persons with disabilities to visit sanitary facilities. *Such facts were found in the Kharkiv Regional Psychiatric Hospital No. 3, the Baltic PNRCF of the Odessa oblast, the Monastyrotsky PNRCF of the Lviv oblast and other institutions.*

Almost all IPDTCSSs do not have enough technical and other means of rehabilitation, special handrails and devices for low-mobility residents. Monitoring visits showed that 99% of low-mobility and bedridden patients do not have access to walks in the fresh air.

In places of detention of various types, the issue of providing detainees with drinking water is acute. In most of the pre-trial detention centers visited prisoners use water from the centralized water supply network, while in some institutions the water supply is generally limited.

#### Example

During a visit to the Kropyvnytskyi PTDC in July 2020, it was revealed that water from the centralized water supply network is supplied to the chamber by a hourly schedule and not systematically. There are no drinking water tanks in the cells. In this regard, prisoners are forced to stockpile tap water. During the survey, they reported that there were cases when there was no water supply in the cell for more than 2 days.

As a result of the Commissioner's intervention, the institution is provided with drinking water tanks.

A similar situation regarding the lack of free access to drinking water was observed in psychiatric hospitals and psychoneurological residential care facilities.

During monitoring visits to private geriatric facilities and rehabilitation centers for alcohol and drug addicts, violations of sanitary and fire safety requirements were found in 90% of such facilities.

In most of the institutions visited, in violation of the Rules of Ukraine on Fire Safety, approved by the Order 1417 of the Ministry of Internal Affairs on December 30, 2014, the windows have fixed bars, all doors are locked, staff has the keys, the windows have no handles to open, maintenance of fire extinguishers is not carried out. *Such violations were found in the RC «Skhody» (Kyiv), RC «New Way» (Kyiv), RC «NarcologicalCenter «Vybir», (Hora in the Kyiv oblast), PO «Altera +» (Mykolayiv), RC Bereh Zhyttya» (Vasylkiv), RC «Agape Ukraine» (Lutsk), LLC «Renesans» (Chernivtsi).*

## RECOMMENDATIONS:

**To the Verkhovna Rada of Ukraine** – expedite consideration and adoption of the draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Pre-trial Detention’ (concerning the implementation of certain standards of the Council of Europe)” (reg. no. 0882 of 29 August 2019).

**To central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, Kyiv State City Administration and oblast councils:**

1. Provide full financing, maintenance and activities of detention bodies, institutions and facilities in order to bring the living conditions in them into line with sanitary and hygienic requirements established by the legislation of Ukraine and in accordance with European standards.
2. Take comprehensive measures to organize barrier-free space in places of detention in accordance with the provisions of DBN of Ukraine V.2.2-40:2018 “Inclusiveness of Buildings and Structures.”
3. Ensure unconditional compliance with the requirements of the Fire Safety Rules in Ukraine approved by Ministry of Internal Affairs of Ukraine Order 1417 of 30 December 2014, and with sectoral regulations on fire safety in all types of places of detention.

**To the Ministry of Internal Affairs of Ukraine** – ensure the audit of rooms for detained of police departments, units and stations and to ensure their functioning in accordance with current legislation.

**To the Ministry of Justice of Ukraine** – bring the conditions of detention in pre-trial detention and penitentiary institutions of the SPS, medical institutions of the HCSCES in accordance with sanitary and hygienic requirements established by the European Penitentiary Rules, the Criminal Executive Code of Ukraine and the Law of Ukraine 3352-XII of June 30, 1993 «On Pre-trial Detention».

### 7.4. Right to healthcare and medical assistance

The situation with ensuring the right of detainees to healthcare and medical assistance remains unsatisfactory in the vast majority of places of detention.

This issue is given considerable attention in the annual reports of the Ukrainian Parliament Commissioner for Human Rights for 2018–2019. The central executive bodies, law enforcement agencies, state institutions, oblast state administrations and oblast councils, which have places of detention in their sphere, have been provided with a number of recommendations on eliminating human rights violations and providing adequate medical assistance to detainees.

However, in 2020, the situation with the provision of adequate medical assistance to detainees did not improve, and even became significantly more complicated, including due to the spread of COVID-19.

The Commissioner received 800 complaints about violations of the right to healthcare in places of detention (twice as many as in 2019).

The quarantine restrictions associated with the COVID-19 pandemic have exacerbated the provision of medical assistance in all places of detention.

In this regard, the Commissioner, taking into account the Recommendations of the UN Subcommittee on Prevention of Torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provided on 20 March, 2020 to state parties and NPM taking regarding measures necessary to ensure human rights in places of detention, decided to continue the implementation of the functions of the NPM in quarantine by conducting:

- monitoring visits to places of detention to study the state of measures to prevent the spread of COVID-19.

- online monitoring of places of detention and sending information requests to the oblast state administrations and other entities responsible for places of detention;

- monitoring of COVID-19 trends (daily submission of information on suspected and confirmed cases of this disease among detainees and staff in places of detention to the Commissioner from the Ministry of Social Policy, the Ministry of Internal Affairs, the Central Election Commission, the State Emergency Service has been introduced).

In early April 2020, the Commissioner held working meetings with deputy heads of nine central executive bodies in charge of places of detention to discuss the measures taken by these bodies to prevent the spread of COVID-19 in places of detention.

As a result of these meetings, the Commissioner provided recommendations on strengthening the protection of detainees, taking into account the provisions set out in the recommendations of the UN Subcommittee on Prevention of Torture.

In order to study the status of ensuring measures to prevent the spread of the COVID-19 disease, the Commissioner's Secretariat in March 2020 developed recommendations on the organization and conduct of targeted monitoring visits to places of detention of various types. Online training on their application was conducted for the staff of the Secretariat of the Commissioner and public monitors.

Three weeks after the introduction of lockdown in the country, the Commissioner began conducting targeted monitoring visits to places of detention to study the state of measures to prevent the spread of the COVID-19 acute respiratory disease. Visits were carried out in compliance with quarantine requirements in special protective suits using the necessary personal protective equipment.

Despite the regulations adopted by public authorities to take the necessary anti-epidemic measures in places of detention, the results of monitoring visits showed a lack of control over their compliance by management, namely:

- a sufficient number of personal protective equipment for employees of institutions and detainees was not provided;

- the mask regime was not observed by employees of institutions;

- daily temperature screening for employees of institutions and detainees were not conducted;

- disinfection of premises was not controlled properly;

- pre-trial detention facilities were overcrowded, there was a lack of facilities for isolation of persons with suspected and confirmed cases of COVID-19 in SPS institutions;

- adequate medical care was not provided to detainees.

### **CRITICAL INSUFFICIENCY OF BEDS FOR PEOPLE WITH SUSPECTED COVID-19 DISEASE WAS REVEALED IN SPS INSTITUTIONS**

During the monitoring visits in the conditions of quarantine in SPS institutions, a critical insufficiency of beds for persons with suspected COVID-19 disease was revealed.

#### **Example**

During the monitoring visits it was revealed that in the Odessa PTDC for 1,246 detainees, only 17 beds for persons with suspected or confirmed COVID-19 were provided; in Kharkiv PTDC for 1,871 people – 2 beds; in Khmelnytsky PTDC for 467 people – 4 beds, in Zaporizhzhya PTDC – no beds at all.

Due to the fact that PCR testing was not performed among arrested/imprisoned persons with signs of acute respiratory infection, it is currently impossible to determine the actual number of people infected with COVID-19 in the SPS institutions.

Only in certain cases, given the severity of the patient's condition and the need for such testing before placement in the Ministry of Health institutions, PCR tests were performed on detainees/prisoners to confirm coronavirus infection.

According to the analysis of statistical data provided by the Ministry of Justice to the Secretariat of the Commissioner on the number of COVID-19 cases among staff and detainees, it should be noted that the number of sick employees in SPS institutions significantly exceeds the number of detected patients among detainees. The only explanation for such a small number of cases among detainees is the failure to perform the required number of PCR tests. Thus, as of December 31, 2020, the number of patients with COVID-19 in SPS institutions was 906 SPS employees, 130 HCSCES employees, 31 prisoners and 37 convicts.

### **CONVICTS SUFFERING FROM ACTIVE (OPEN) FORM OF TUBERCULOSIS DID NOT RECEIVE THE NECESSARY TREATMENT**

During the monitoring visits to the SPS institutions, it was revealed that convicts suffering from active (open) tuberculosis did not receive the necessary specialized treatment and were not transferred to a specialized tuberculosis hospital due to the cancellation of scheduled

railway guards and special guards in special train cars for the period of quarantine in all types of internal transport communication (suburban, urban, regional and long-distance)<sup>5</sup>.

<sup>5</sup> Violation of the right to healthcare and medical assistance in SPS institutions. Special report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights «The state of observance of human rights and freedoms in places of detention during the emergency situation related to the spread of acute respiratory disease COVID-19 caused by the Coronavirus SARS-CoV-2». URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=5>.

#### Example

On April 28, 2020, the monitoring group identified the first patient with a contagious form of tuberculosis in the Bucha Multidisciplinary Hospital No. 85 of the HCSCES in the Kyiv oblast. During subsequent monitoring visits in May–June 2020, the number of such patients increased, and as of June 6, there were four such patients in the facility, one of whom was in critical condition and required immediate special tuberculosis treatment as the disease quickly progressed.

A similar situation has developed in the State Institution “Raikivetska Correctional Colony (No. 78)” and the State Institution “Korostenska Correctional Colony (No. 71)”.

Only after the intervention of the Commissioner and thanks to the proper response of the Ministry of Internal Affairs and the National Guard of Ukraine was it possible to begin the process of transferring such patients to specialized medical institutions of the SPS and restore their right to appropriate medical care.

As a result of health care reform, the issue of providing adequate medical care to residents of social care institutions during the COVID-19 pandemic has become acute. According to the Ministry of Social Policy, as of December 31, 2020, the number of COVID-19 patients in social care institutions was 1,738 residents and 1,415 employees.

Monitoring visits to social care institutions during the implementation of quarantine measures revealed cases of improper performance of professional duties by family doctors who provide medical care to wards in such institutions, which leads to severe COVID-19 disease and in some cases to the death of wards.

#### Example

During a monitoring visit to the Radomyshl Psychoneurological Residential Care Facility in November 2020, the monitoring team identified two residents with a fever (about 39.0°C) that lasted for five days. One of the residents had a 89% concentration of oxygen in the blood (pulse oximetry), which, taking into account the general condition of the patient was a direct threat to her life. At the same time, these residents lived in general rooms.

Only at the request of the monitoring group residents with signs of SARS were transferred to a separate room and an emergency medical care team was called. One of the residents was hospitalized in critical condition in the intensive care unit of Korostyshiv Central District Hospital. She died three days later due to complications of COVID-19 disease confirmed by PCR test.

At the request of the Commissioner, the Prosecutor-General’s Office entered information into the URPTI and initiated a pre-trial investigation in the criminal proceedings under Article 140 (Improper performance of professional duties by a medical or pharmaceutical worker) of the Criminal Code of Ukraine. A pre-trial investigation is currently underway.

Insufficient funding of courts for the purchase of personal protective equipment and disinfectants, lack of non-contact thermometers and lack of temperature screening for judges, court staff and visitors have led to a significant number of coronavirus diseases among judges and court staff, directly exposing defendants to infection. According to the SJA, as of 31.12.2020, the number of COVID-19 patients in courts was 3,723 employees.

In accordance with the Concept of Ukrainian Penitentiary System Reform, approved by the Order of the Cabinet of Ministers of Ukraine of 13.09.2017 no. 654-r, the implementation of the reform of the medical service of penitentiary institutions is envisaged in order to provide appropriate medical assistance to detainees. However, despite the reform of the healthcare system of the State Penitentiary Service of Ukraine, violations of the right of prisoners to healthcare and medical assistance in penitentiary institutions and places of pre-trial detention remain systemic, namely:

- inadequate level of examination of prisoners for HIV infection and provision of medical care to HIV/AIDS patients;
- inadequate provision of medical units with the necessary equipment and medicines;
- incomplete positions of doctors in medical units and medical institutions;
- failure to conduct or formal conduct of medical examinations of prisoners upon release from penitentiary facilities or the use of riot control weapons;
- lack of medical assistance for prisoners during their transfer.

#### Example

During the monitoring visit in February 2020 to the State Institution “Boryspil Correctional Colony (No. 119)”, it was revealed that due to the absence of a radiologist, a phthisiologist, an X-ray technician and a laboratory assistant, as well as working conditions for these medical workers, namely X-ray fluorographic equipment and a clinical diagnostic laboratory, convict Ch. did not receive timely diagnosis of the open form of tuberculosis. As a result, he did not receive specific treatment for almost 2 months, exposing other convicts to the risk of infection.

During a monitoring visit in July 2020 to Stryzhavka Multidisciplinary Hospital No. 81 of the Central Department of Internal Affairs in Vinnytsia oblast, after studying the case histories, it was found that 6 endocrinology patients did not receive proper treatment due to lack of laboratory tests of thyroid hormones (TSH, T3, T4) and consultations with specialists, in particular an endocrinologist, for the appointment of appropriate treatment.

During the monitoring visits to the medical units of the HCSCES, it was revealed that the dental offices were not provided with the necessary medicines, including fillings and other consumables, and therefore the prisoners did not receive the necessary dental care.

As a result of the monitoring visit, letters were sent to the Ministry of Justice with recommendations for taking the necessary response measures to restore the rights of convicts to adequate medical care. The implementation of recommendations is in progress.

Due to the above, detainees and convicts are not able to receive qualified medical care, which leads to an increase in the incidence and mortality from serious and chronic diseases. These issues need broad discussion on the results of the reform, in particular with the involvement of People’s Deputies of Ukraine and interested authorities, general public and human rights organizations.

During the monitoring visits it was revealed that almost all visited TDFs do not have the necessary first aid kits, or their composition does not meet the minimum need, and some contain overdue medications.

Currently, there are no regulations on providing police units and institutions with medical equipment and consumables, because Ministry of Internal Affairs of Ukraine Order 946 “On Approving the Norms for Providing Necessary Equipment for Detention Rooms in Duty Units, Temporary Detention Centres, Reception Centres for Persons Detained for Vagrancy, Special Reception Centres for Persons Subjected to Administrative Arrest, and Temporary Detention Facilities for Foreigners and Stateless Persons Who Illegally Stay in Ukraine” of 25 September 2006 is no longer valid (Ministry of Internal Affairs of Ukraine Order 592 “On Recognizing Orders of the Ministry of Internal Affairs of Ukraine Invalid” of 10 July 2018).

**ALMOST ALL TDFS VISITED DO NOT HAVE THE NECESSARY FIRST AID KITS**

In the Annual report of the Commissioner on observance and protection of human rights and freedoms in Ukraine in 2019 the Ministry of Internal Affairs got a recommendation to approve a relevant legal act concerning this issue<sup>6</sup>. At present, this recommendation remains unfulfilled.

In addition, during monitoring visits to social institutions in 2020, systematic violations of the rights of detainees to adequate medical assistance continued to be recorded due to lack of necessary licenses for medical practice, understaffing of doctors, insufficient number of drugs, negligent medical examinations, improper medical record keeping, lack of informed consent of detainees for treatment, etc.

According to the results of the visits, there were many cases of failure to provide the necessary somatic treatment to patients who have been receiving treatment in psychiatric institutions for a long time.

**Example**

During a monitoring visit in May 2020 to the Ostroh Regional Psychiatric Hospital of the Rivne Oblast Council, a member of the monitoring group was approached by a patient who complained about the lack of medical care due to her diagnosis of cancer. During the examination of the medical records, it was revealed that the patient had been scheduled for surgery, but the institution did not provide her with access to treatment.

As a result of the Commissioner’s intervention, the patient was referred to the appropriate healthcare facility for surgery and necessary treatment.

The systemic problem in most PNRCFs is inadequate hemolytic control of residents taking the psychotropic antipsychotic medication Clozapine. According to the Order of the Ministry of Health of Ukraine 147 of 08.08.1995 «On hematological control during treatment with Leponex (Clozapine)» for patients who was prescribed the Clozapine.

It should be noted that the results of the visit of the members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the period from 02.04.2019 to 11.04.2019 contain recommendations to the Ukrainian authorities to take urgent measures for implementation in all psychoneurological residential care facilities of mandatory blood tests with Clozapine and training of staff to recognize early signs of potentially lethal side effects of this medication.

<sup>6</sup> URL: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4> , page 153.

However, in most of the residential health care facilities visited, proper hemolytic control is not performed.

#### Example

During the monitoring visits and acquaintance with the medical records of the residents of Plyskiv PNRCF of Vinnytsia oblast, Bohodukhiv PNRCF of Kharkiv oblast, Radomyshl PNRCF of Zhytomyr oblast and others it was revealed that hemolytic control of residents receiving treatment with medications containing the active substance Clozapine (Azaleptol, Azapine, etc.) is not performed.

During monitoring visits to rehabilitation centers of private ownership, it was found that medical manipulations (injections, drips, tube feeding) are performed by the staff of institutions without licenses to medical practice in violation of Article 7 of the Law of Ukraine 222-VIII «On Licensing of Economic Activities» of March 2, 2015.

#### Example

Such cases were revealed during monitoring visits to the institutions «Home for the Elderly» (Sumy), «Mylyi Dim», Vyshgorod of the Kyiv oblast, «Mylyi Dim» (Mykolaiv).

In some private rehabilitation institutions, clients were provided with medication without informed written consent, contrary to the Law of Ukraine 1489-III “On Psychiatric Care” of February 22, 2000. In addition, clients were not provided with information about the nature of the mental disorder and the prognosis of its possible development, purpose, procedure and duration of psychiatric care, diagnostic methods, treatment and drugs that can be used in psychiatric care, their side effects and alternative treatments.

#### Example

In the RC «Rehab Center» in Novosilky of the Kyiv oblast rehabilitants took sedative medications, but could not remember the name, frequency of reception and the person who prescribed treatment.

## RECOMMENDATIONS:

**To the Committee of the Verkhovna Rada of Ukraine on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories in Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the city of Sevastopol, National Minorities and International Relations** – initiate parliamentary hearings on the observance of the rights of detainees and convicts for medical assistance as a result of the reform of the healthcare system of the State Penitentiary Service of Ukraine.

### **To the Ministry of Health of Ukraine:**

1. Provide the control over the provision of necessary somatic treatment to patients who have been receiving treatment in psychiatric institutions for a long time..
2. Take urgent measures to implement in all psychiatric institutions and social care facilities for persons suffering from mental disorders, to conduct mandatory regular blood tests when prescribing to patients medications with the Clozapine active substance and to provide training to medical staff on side effects in the treatment with such medications.

### **To the Ministry of Justice of Ukraine:**

1. Ensure that vacancies in the medical units of the Health Centre of the State Penitentiary Service of Ukraine are filled.
2. Provide mandatory tuberculosis screening for newly arrived prisoners and convicts in accordance with the Unified Clinical Protocol of Primary, Secondary (Specialized) and Tertiary (Highly Specialized) Healthcare “Tuberculosis,” approved by Ministry of Health of Ukraine Order 620 of 04 September 2014.

## **7.5 Right to professional legal aid**

In accordance with the provisions of Article 59 of the Constitution of Ukraine, everyone has the right to professional legal assistance. In cases provided by law, this assistance is provided free of charge.

The vast majority of persons in places of detention belong to the list of subjects of the right to free secondary legal aid.

However, the results of the monitoring visits showed that in most of the places of detention visited, legal assistance to detainees was not provided at the appropriate level, in particular, due to detainees’ ignorance and lack of visual information on the activities of human rights institutions.

The management of social protection institutions has not revealed contacts with the relevant centers of free secondary legal aid, which makes it impossible for residents to file complaints to the authorities in cases of violation of their rights.

The residents are not aware of the possibility of unaided appeal to the court on the restoration of legal capacity, the information stands do not contain information in an accessible form about the

rights of persons with disabilities, hotline, phone numbers of officials, including the Commissioner, and free legal aid centers to which a person with mental disorders can turn. In general, 90% of residents of social care institutions do not receive adequate legal assistance.

**90% OF RESIDENTS OF SOCIAL CARE INSTITUTIONS DO NOT RECEIVE ADEQUATE LEGAL ASSISTANCE**

### **Example**

During a monitoring visit to the Novostrakhan Oblast PNRCF of Luhansk oblast in February 2020, it was found that the institution did not cooperate with the free aid center, as a result of which the residents were unable to seek legal assistance, were unaware of their rights and protection mechanisms.

Based on the results of the Commissioner’s response, the Severodonetsk Local Center for Free Secondary Legal Aid concluded a memorandum with the PNRCF and created a remote access point to free legal aid.

According to the results of the analysis of patients' personal files, in particular copies of court decisions made during monitoring visits to most psychiatric hospitals, it was revealed that persons presiding over by court do not summon to court hearings persons affected by decisions. Doctors take applications for refusal to participate in court hearings from the patients. At the same time, these patients do not know that they have the right to appear in court.

Lawyers appointed by the court and acting on behalf of the regional center for free legal aid do not perform their duties in accordance with the order of the Ministry of Justice No. 368/5 «On approval of quality standards for free secondary legal aid in criminal proceedings» of February 25, 2014. In particular, they do not conduct confidential meetings with residents/patients, do not explain their rights, responsibilities and do not agree on a legal position.

#### Example

During a visit to the Kyiv City Psychoneurological Hospital No. 3 of the executive body of the Kyiv City Council in December 2020, it was revealed that in accordance with copies of court decisions and other materials of patients' personal files lawyers who are involved in the provision of free secondary legal aid in accordance with applicable law participated in court hearings on the continuation, change or cancellation of medical coercive measures. However, the patients and staff interviewed claimed that lawyers did not visit their clients, and 52 patients did not know their lawyers.

In order to ensure the observance of the residents' right to protection, the staff of the Secretariat of the Commissioner conducted a working meeting with representatives of the Ministry of Justice and the Coordination Center for Legal Aid on the need to ensure effective control over the protection of residents' rights.

According to the results of monitoring visits in 2020, the facts of violation of the right to professional legal assistance of persons detained in penitentiaries and pre-trial detention centers were revealed. Thus, contrary to the requirements of Article 135 of the Criminal Executive Code of Ukraine, which provides in particular for notifying convicts no later than one day before the meeting of the disciplinary commission, in most correctional colonies, in accordance with the materials of the convicts' placement in the disciplinary cell, it was revealed that prisoners were notified of the place and time of such a commission on the day of its meeting, which effectively deprived convicts of their right to professional legal assistance and appeal against disciplinary decisions.

#### Example

During a visit to the Kyiv PTDC in January 2020, it was revealed that prisoner Z. had been informed of the time and place of the meeting of the disciplinary commission with the violation of deadlines, namely 9 hours before it, which deprived the prisoner of the right to defense.

As a result of the Commissioner's intervention, the prisoner's right to defense was restored.

According to the results of monitoring visits, it was revealed that police officers violate the requirements of Articles 208 and 213 of the CPC of Ukraine regarding the immediate notification of free legal aid centers about the detention of a person.

#### Example

During a visit to the Holiiv Police Department of the MDNP in Kyiv on October 7, 2020, it was revealed that the free legal aid center had been notified of S's detention 11 hours after the actual detention.

During a monitoring visit to the Obolon Police Department of the MDNP in Kyiv on October 15, 2020, it was found out that the detainee met his lawyer for the first time almost 15 hours after his actual detention.

Similar violations were found during a visit to the Dnieper Police Department of the MDNP in Kyiv on December 8, 2020. The free legal aid center was informed about the detention of three people 8–14 hours after the detention.

At the request of the Commissioner, the territorial department of the State Bureau of Investigations in Kyiv entered information into the URPTI, according to which a pre-trial investigation was initiated in the criminal proceedings under Article 374 (Violation of the right to protection) of the CC of Ukraine.

Similar cases took place in other police bodies, whose staff informed the legal aid centers about the detention of citizens in 5–17 hours.

#### RECOMMENDATIONS:

##### **To the Ministry of Justice of Ukraine:**

1. Develop and approve a plan for conducting legal education activities for persons in various types of places of detention concerning the observance their rights in accordance with the legislation of Ukraine.
2. Ensure control over the activities of the Coordination Centre for Legal Aid Provision for the proper provision of legal services to persons in places of detention.

**To the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine** – ensure observance of the right to protection of detainees in accordance with current legislation of Ukraine.

**To the Ministry of Social Policy, the Ministry of Health, oblast and Kyiv city state administrations** – ensure the placement of information in an accessible form about the rights of persons with disabilities, hotline, phone numbers of officials, including the Commissioner, and free legal aid centers to which a person with mental disorders can turn.

**Oblast and Kyiv city state administrations** – ensure control over the establishment of cooperation between social institutions and regional centers for the provision of free legal aid.

##### **Coordination Centre for Legal Aid:**

Ensure control for the proper provision of free primary and secondary care to detainees and persons in places of detention.





**76**

reports of rights  
violations

**4**

memorandums  
of cooperation with  
international and foreign  
organizations



alternative reports of  
the Commissioner were  
submitted to the UN  
Committees

# CHAPTER 8

PROTECTION  
OF RIGHTS  
AND FREEDOMS  
OF UKRAINIAN  
CITIZENS AT THE  
INTERNATIONAL  
LEVEL





## PROTECTION OF RIGHTS AND FREEDOMS OF UKRAINIAN CITIZENS AT THE INTERNATIONAL LEVEL

In 2020, the development of international cooperation between the Commissioner in the field of protection of human and civil rights and freedoms was carried out taking into account the challenges and restrictions associated with the spread of the COVID-19 pandemic.

The Commissioner took part in a number of regular events carried out by international organizations and associations of national human rights institutions during the year in online format, held online and offline meetings with representatives of foreign organizations concerned with the protection of human rights and freedoms.

During such events, the Commissioner drew the attention of the international community to the need to unite efforts to restore the territorial integrity of Ukraine, protect the rights and freedoms of citizens in the temporarily occupied territories of the Autonomous Republic of Crimea and eastern Ukraine, including taking into account the restrictions related to the COVID-19 pandemic.

During the year, the Commissioner received 76 notifications from citizens of Ukraine regarding the protection of their rights abroad related to various violations of rights and freedoms. In particular, due to the impossibility to return to Ukraine of some citizens, including Ukrainian sailors, as the countries of temporary stay introduced quarantine measures in connection with the spread of the COVID-19 pandemic.

Thanks to the assistance of the Commissioner and cooperation with the Ministry of Foreign Affairs and Ukrainian consulates abroad in March 2020, more than 140 citizens (including children) who could not leave their countries of temporary stay due to quarantine restrictions, were able to return to Ukraine.

**MORE THAN 140  
CITIZENS, INCLUDING  
CHILDREN, WERE ABLE  
TO RETURN TO UKRAINE**

Besides that, in 2020 the issue of exercising the right of foreign parents to reunite with children born to surrogate mothers in Ukraine gained great resonance. The Commissioner received 176 appeals from families from 24 countries, including the People's Republic of China, the Kingdom of Spain, the Italian Republic, France, Germany and Argentina.

With the assistance of the Commissioner and the joint work of the Ministry of Foreign Affairs, the Ministry of Justice and the State Migration Service, these parents received the necessary documents to pick up their children and return home with them.

### 8.1. Cooperation with international organizations

#### *United Nations*

During 2020, the Commissioner took part in all sessions of the UN Human Rights Council. Video appeals and written statements were submitted, in which the attention of the participating countries was

drawn to the systemic violations of the rights of the civilian population in the temporarily occupied territories of the Autonomous Republic of Crimea, the city of Sevastopol, Donetsk and Luhansk oblasts. A significant part of these violations is not properly covered and documented due to the difficulty of access to the occupied territories by human rights defenders and the media, especially during the quarantine restrictions associated with the COVID-19 acute respiratory pandemic.

**THE COMMISSIONER STRESSED THE CRITICAL SITUATION WITH OBSERVANCE OF HUMAN RIGHTS IN THE TEMPORARILY OCCUPIED TERRITORIES OF UKRAINE**

In a video address at the 43rd session of the UN Human Rights Council in June 2020, the Commissioner stressed on the numerous violations by the Russian Federation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. During the seven years of occupation and hostilities, 3,069 civilians were killed,

including 148 children. The number of wounded among the civilian population exceeded 7,000.

The Commissioner called on the international community to continue to support Ukraine in ensuring the protection of human rights, as only a complete deoccupation of territories will make it possible to end human rights violations.

In a statement at the 44th session of the UN Human Rights Council in July 2020, the Commissioner informed the international community that one of the main violations of rights and freedoms on the Crimean peninsula is the violation of the right to a fair trial and the right to peaceful assembly. There are still tendencies to prosecute for political reasons, mostly against Crimean Tatars. The rights of Ukrainians to appropriate conditions in places of detention in the occupied territories, medical care, and legal protection are systematically violated.

During the event, the Commissioner expressed gratitude to UN Secretary General Antonio Guterres, who in his report on the implementation of UN General Assembly Resolution 74/168 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine" clearly stated that the Autonomous Republic of Crimea and Sevastopol is the territory of Ukraine.

Also during the 44th session of the UN Human Rights Council, the Commissioner informed the participants of the event about the results of monitoring the state of ensuring the rights and freedoms of the LGBTI community, who testified that in recent years the situation in preventing discrimination on the grounds of sexual orientation and gender identity has undergone some positive changes.

At the same time, the Commissioner expressed concern over the spread of hate speech against LGBT communities in the media, social networks, violation of the right to personal integrity and respect for human dignity.

During a video address at the 45th session of the UN Human Rights Council in October 2020, the Commissioner stressed that since March 2014, the Russian Federation has automatically extended its citizenship to all citizens of Ukraine and stateless persons permanently residing on the peninsula.

Residents of the Crimea who have refused to obtain citizenship of the Russian Federation are considered by the occupying authorities as persons who have received the status of foreigners and, accordingly, they are threatened with deportation. The terror of the Crimean Tatars does not stop. Illegal searches and arrests continue.

The result of the joint actions of the Commissioner and the Ministry of Foreign Affairs to draw the attention of the international community to the need to promote and protect human rights in the temporarily occupied territory of the Autonomous Republic of Crimea was the adoption at the 75th session of the UN General Assembly on 16 December 2020 of Resolution A/RES/75/192 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine". In this Resolution, the General Assembly urges the Russian Federation to provide Ukrainian consular officers with information on Ukrainian citizens detained in the Russian Federation, to provide consular officers with freedom of contact and communication with detained Ukrainian citizens in accordance with the Vienna Convention on Consular Relations, to which the Russian Federation is a party. Ukrainian officials, including the Ukrainian Parliament's Commissioner for Human Rights, have the opportunity to visit all Ukrainian citizens, including political prisoners in Crimea and the Russian Federation.

### **AT THE UN GENERAL ASSEMBLY IT WAS STRESSED THAT CRIMEA IS UKRAINE**

In cooperation with the UN Human Rights Monitoring Mission during the presentation of the 29th report of the Office of the UN High Commissioner for Human Rights on the human rights situation in Ukraine in February 2020, the Commissioner and the Mission called on the occupying authorities of eastern Ukraine to provide independent international observers confidential access to places of detention and illegally detained persons on the territory of the so-called "republics"<sup>1</sup>.

In April 2020, Matilda Bogner, Head of the UN Human Rights Monitoring Mission in Ukraine,<sup>2</sup> noted the active role of the Commissioner in preventing the spread of COVID-19 in the penitentiary system, and called for continued attention to be paid to the rights of detainees.

The issue of increase of the militarization of children by the occupation authorities in eastern Ukraine, the ban of Ukrainian language in schools, the policy of eradicating all forms of religion, except the Orthodox, which is subordinate to the Moscow Patriarchate, was drawn by the Commissioner during the presentation of the 30th report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine in September 2020.

### **INCREASE OF THE MILITARIZATION OF CHILDREN BY THE OCCUPATION AUTHORITIES IN EASTERN UKRAINE**

The issue of human rights in places of detention in the context of quarantine restrictions related to the COVID-19 pandemic was raised by the Commissioner during an international online event in June 2020, organized by the Office of the UN High Commissioner, the Global Network of National Institutions for Human Rights and the United Nations Development Program on human rights protection during the COVID-19 outbreak and role and experiences of national human rights institutions.

<sup>1</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-zasluxala-29-u-dopov%D1%96d-mon%D1%96toringovo%D1%97-m%D1%96s%D1%96%D1%97-oon-z-prav-lyudini-shhodo-situacz%D1%96%D1%97-z-pravami-lyudini-v-ukra%D1%97n%D1%96/>.

<sup>2</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/golova-mon%D1%96toringovo%D1%97-m%D1%96s%D1%96%D1%97-oon-z-prav-lyudini-v-ukra%D1%97n%D1%96-v%D1%96dznachila-aktivnu-rol-upovnovazhenogo-u-zapob%D1%96gann%D1%96-poshirennyu-covid-19-v-m%D1%96saczyax-nesvobodi/>.

The Commissioner, as one of the human rights institutions that continued carrying out monitoring visits to places of detention during quarantine restrictions, informed the participants about a number of identified violations of human rights to adequate medical care, anti-epidemic protection, communication with the outside world and safe detention.

The Commissioner called on international partners to join in providing international technical assistance for the implementation of best practices in the protection of human rights in the context of COVID-19.

In an online speech at the UN Human Rights Council Social Forum in October 2020<sup>3</sup>, the Commissioner drew participants' attention to the significant increase in the problem of poverty during the COVID-19 pandemic due to unemployment and lack of adequate social security. Emphasis was placed on the need to create public policy during the COVID-19 pandemic, aimed primarily at protecting vulnerable groups, strengthening social protection measures and access to health care for all sections of the population.

In 2020, the Commissioner submitted alternative reports on Ukraine's implementation of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities to the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of Persons with Disabilities.

In order to intensify cooperation with international UN institutions represented in Ukraine, the Commissioner signed a Agreement of Cooperation between the Ukrainian Parliament Commissioner for Human Rights and the International Organization for Migration (IOM) in July 2020<sup>4</sup>, as well as a Memorandum of Understanding between the Ukrainian Parliament Commissioner on Human Rights and the International Labor Organization in December 2020<sup>5</sup>.

Agreements have been made on cooperation with the UN Women (Ukraine) in the field of gender equality and the empowerment of women and men.

Before the global pandemic of acute respiratory disease COVID-19, the Commissioner met with representatives of international organizations to establish cooperation in strengthening the protection of the rights of citizens of Ukraine. In particular, in February 2020, during a visit to the Secretariat of the Plenipotentiary Chairman of the UN Committee against Torture Jens Modvig, further cooperation was agreed to familiarize with the models of rehabilitation centers for torture victims in Europe for implementation in Ukraine in the future. Appropriate measures will be taken after the end of quarantine restrictions in Europe.

<sup>3</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/lyudmila-den%D1%96sova-ponad-chvert-naselennya-ukra%D1%97ni-perebuva%D1%94-za-mezhevy-b%D1%96dnost%D1%96/>.

<sup>4</sup> URL: <https://www.ombudsman.gov.ua/ua/publication/agreement/memorandum-pro-sp%D1%96vrob%D1%96tnicztvo-m%D1%96zh-upovnovazhenim-verxovno%D1%97radi-ukra%D1%97ni-z-prav-lyudini-ta-m%D1%96zhnarodnoyu-organ%D1%96zacz%D1%96%D1%94yu-z-m%D1%96gracz%D1%96%D1%97/>.

<sup>5</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-p%D1%96dpisala-memorandum-pro-vza%D1%94morozum%D1%96nnya-z-m%D1%96zhnarodnoyu-organ%D1%96zacz%D1%96%D1%94yu-pracz%D1%96/>.

Following the meeting of the Commissioner with Dr. Ana Carina Ferreira-Borges, Programme Manager for Alcohol, Illicit Drugs and Prison Health of the WHO European Office in December 2020, an agreement was reached that the WHO Global Office will consider providing Ukraine with tests for random testing of prisoners for COVID-19 disease in the penitentiary institutions, which will be carried out under the personal control of the Commissioner.

The Commissioner also received a preliminary invitation to participate in the WHO World Conference in 2021, during which the Commissioner was invited to share her successful experience of monitoring visits to places of detention in the context of the COVID-19 pandemic.

### **THE COMMISSIONER INITIATED THE PROVISION OF TESTS FOR COVID-19 FOR UKRAINIAN PRISONS BY WHO**

#### *Council of Europe*

The issues of discrimination and persecution of the indigenous population of the Autonomous Republic of Crimea, non-observance of its fundamental rights and freedoms were raised by the Commissioner during a speech at the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe named "Situation of Crimean Tatars" in October 2020<sup>6</sup>.

It was stressed that 140,000 Russian citizens had been relocated to Crimea, but replacing indigenous peoples was a war crime. Monitoring of the observance of the rights of the inhabitants of the Crimean peninsula shows a violation of the right to education in the native language – only about 3 percent of students from the families of the Crimean Tatars can study their native language in optional classes.

The Commissioner informed that the occupying authorities of the peninsula are constantly persecuting the residents of the Autonomous Republic of Crimea for political reasons. The Russian Federation is politically persecuting 129 Ukrainian citizens for political reasons, among them 109 are in prisons in the Russian Federation and the temporarily occupied Crimean Peninsula, including 93 Crimean Tatars. The Commissioner called on the participants not to reduce sanctions, not to ease international pressure on the Russian Federation to force the unconditional release of all illegally detained Ukrainian citizens, and stressed that Ukraine counts on the support of the Parliamentary Assembly of the Council of Europe.

In April 2020, the Commissioner's performance of the NPM functions was recognized as an example of good practice for other countries in Europe to follow in the report "Reassessment of the operational capacity and needs of the National Preventive Mechanism (NPM) of Ukraine". The assessment was carried out as part of the implementation of the joint EU and Council of Europe project "European Union and Council of Europe working together to strengthen the Ombudsperson's capacity to protect human rights."

Important internal reforms, systematic visits to places of detention with their wide coverage and involvement of public monitors were noted.

<sup>6</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/vistupu-na-kom%D1%96tet%D1%96-par%D1%94-z-pitan-r%D1%96vnost%D1%96-ta-nediskrim%D1%96nac%D1%96%D1%97-zaklikala-ne-zmenschuvati-sankcz%D1%96%D1%97/>.

### **ONLY IN UKRAINE, ITALY AND FRANCE THE MONITORING OF PLACES OF DETENTION WAS CONTINUED DURING THE COVID-19 PANDEMIC**

In addition, the President of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, Mykola Hnatovsky, in April 2020 stressed that only in Ukraine, Italy and France the monitoring of places of detention was continued during the global COVID-19 pandemic<sup>7</sup>.

#### *Organization for Security and Cooperation in Europe*

The issue of the importance of intensifying joint efforts on the transfer of Ukrainian citizens illegally detained in places of temporary occupation of Donetsk and Luhansk oblasts was raised by the Commissioner to the OSCE delegation during a joint visit to Stanytsia Luhanska checkpoint in Luhansk oblast (January 21, 2020).

In particular, it was emphasized that in such places of detention Ukrainian citizens are systematically subjected to torture and ill-treatment, and are not provided with adequate medical care and legal protection.

In June 2020, the Commissioner presented the results of a pilot monitoring of the observance by courts and child protection services of child-friendly standards of justice in non-criminal cases, conducted with the assistance of the OSCE Project Coordinator in Ukraine.

In order to further develop cooperation, a Memorandum of Cooperation was signed in July 2020 between the Commissioner and the OSCE Project Coordinator in Ukraine, Ambassador Henrik Willadsen<sup>8</sup>.

In order to draw attention to the violations of the right to freedom of speech in the temporarily occupied territories of the Autonomous Republic of Crimea and eastern Ukraine, the Commissioner informed the participants of the event during his speech at the OSCE Human Dimension Implementation Meeting on freedom of expression, independent media and access to information in June 2020, about the numerous cases of pressure on journalists identified during the monitoring, including attacks, torture, detention, seizure of property, searches, threats, psychological pressure, filming bans and denials of access to information.

### **THE NEED TO PROTECT UKRAINIANS WHO ARE VICTIMS OF HUMAN TRAFFICKING WAS EMPHASIZED BY THE COMMISSIONER AT THE OSCE CONFERENCE**

During the 20th OSCE High-level Alliance against Trafficking in Persons conference “Ending Impunity: Delivering Justice through Prosecuting Trafficking in Human Beings” in July 2020, the Commissioner informed that approximately 7,000 Ukrainian citizens were serving sentences abroad. Many of them are victims of human trafficking convicted of drug trafficking or smuggling of migrants.

<sup>7</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-ukra%D1%97nskij-npm-stav-prikladom-dlya-nasl%D1%96duvannya-%D1%96nshim-kra%D1%97nam-%D1%94vropi/>.

<sup>8</sup> URL: <https://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-p%D1%96dpisala-memorandum-pro-sp%D1%96vpraczyu-z-koordinatorom-proekt%D1%96v-obs%D1%94v-ukra%D1%97n%D1%96-poslom-genr%D1%96kom-v%D1%96lladsenom/>.

The Commissioner drew the attention of the OSCE participating States to the fact that many Ukrainians in places of detention do not have proper contact with the outside world, the opportunity to meet with the consul, report crimes and be recognized as victims of trafficking, and courts usually ignore documents provided by citizens of Ukraine confirming their status as victims of human trafficking. The Commissioner called on the participants to cooperate in order to protect the rights of victims of trafficking, to ensure effective and objective trials, to facilitate the return of victims to Ukraine, to take into account documents confirming the status of victims of trafficking in sentencing.

#### *Organization for Democracy and Economic Development*

During the participation in the 52nd meeting of the Council of National Coordinators of the Secretariat of the Organization for Democracy and Economic Development (GUAM) on February 27, 2020, the Commissioner presented an initiative to expand cooperation in human rights by establishing an Alliance of National Institutions within GUAM.

At the same time, due to quarantine restrictions related to the COVID-19 pandemic, personal stakeholder consultations have been suspended. Further elaboration of this issue will be carried out after the lifting of quarantine measures in the world.

### **8.2. Cooperation with the Ombudsmen and institutions of foreign states**

In 2020, the Commissioner continued to establish bilateral cooperation with Ombudsmen of other countries on the promotion and protection of human and civil rights. Taking into account the global COVID-19 pandemic, such cooperation took place mostly ad hoc at the request of one of the parties.

The start of cooperation was agreed upon during the meeting of the Commissioner with the State Inspector of Georgia Londa Toloraia on January 26-29, 2020, where the parties exchanged experience on personal data protection mechanisms and signed a Memorandum of Understanding between the Commissioner and the State Inspector of Georgia.

The purpose of such cooperation is to facilitate the process of implementation of international standards in Ukraine,

taking into account the positive experience of institutional reform in the Republic of Georgia, which created a new independent body that meets modern European requirements for personal data protection authorities.

**INTERNATIONAL EXPERIENCE IN PERSONAL DATA PROTECTION WILL BE IMPLEMENTED IN UKRAINE WITHIN THE FRAMEWORK OF A MEMORANDUM BETWEEN THE COMMISSIONER AND THE STATE INSPECTOR OF GEORGIA**

In November 2020, the Commissioner presented a special report "Realization of the right for housing for internally displaced persons", during which the Ombudsmen of the Republic of Turkey, Bosnia and Herzegovina, the Republic of Croatia and the Deputy Ombudsman of Georgia exchanged experience in implementation of housing programs for IDPs and compensation for destroyed housing.

At the end of 2020, the Commissioner met with the Ambassador Extraordinary and Plenipotentiary of Canada to Ukraine and the Ambassador Extraordinary and Plenipotentiary of the United Kingdom of Great Britain and Northern Ireland. The Commissioner stressed the need to support the implementation

of awareness-raising activities for residents of the Autonomous Republic of Crimea and Sevastopol regarding the possibility of applying to the Commissioner, as well as admission to higher education institutions, registration of births, documentation of Ukrainian passports, assignment of state aid. In addition, during the meeting, the Commissioner raised the issue of equipping entry/exit checkpoints at the administrative border with the Autonomous Republic of Crimea with rooms of mother and child to ensure proper conditions for parents with children.

## RECOMMENDATIONS:

**To the Ministry of Foreign Affairs of Ukraine** – facilitate the interaction of the Commissioner with the UN Monitoring Mission for Human Rights and the International Committee of the Red Cross during visits of Ukrainian citizens, including political prisoners in the Autonomous Republic of Crimea and Sevastopol (Ukraine), in the temporarily occupied territories of Donetsk and Luhansk oblasts, and with the OSCE Special Monitoring Mission.

**To the Ministry of Foreign Affairs of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Reintegration of Temporary Occupied Territories of Ukraine should apply to international organizations regarding:**

- providing international technical assistance for the implementation of best practices in the protection of human rights in the context of COVID-19;
- providing Ukraine with tests for random testing of prisoners at COVID-19 in the institutions of the State Penitentiary Service of Ukraine;
- implementation of awareness-raising activities for residents of the Autonomous Republic of Crimea and the city of Sevastopol on admission to higher educational institutions, registration of births;
- arrangement of entry/exit checkpoints at the administrative border with the Autonomous Republic of Crimea with rooms of mother and child.

**INFORMATION ON THE STATE OF IMPLEMENTATION****of recommendations set forth in the Annual report of the Ukrainian Parliament Commissioner for human rights on the state of observance and protection of human rights and freedoms of citizens of Ukraine in 2019**

No.	Commissioner's recommendation	State of implementation
<b>To the Verkhovna Rada of Ukraine</b>		
1	To expedite the consideration and adoption of the draft law of Ukraine "On Protection of Debtors' Rights and Legal Interests in Collecting Activities" #2133 of 12.09.2019 ( <i>item 2.2 "Consumer rights" of the Chapter 2 "Observing economic rights"</i> )	<b>Not implemented</b> the draft law was not adopted in the second reading and in its entirety 
2	To accelerate the consideration and adoption of the draft law of Ukraine "On Amendments to the Law of Ukraine "On Collection and Accounting of the Single Contribution to Compulsory State Social Insurance" on Resuming the Payment of Single Social Contribution Depending on the Income of Small and Medium-Sized Entities and Prevention of their Mass Termination" ( <i>reg. #1142 of 29.08.2019</i> ) ( <i>item 2.5 «Right to entrepreneurship» of the Chapter 2 «Observing economic rights»</i> )	<b>Implemented</b> Law of Ukraine #592-IX of 13.05.2020 
3	To expedite consideration and adoption of draft Law of Ukraine 2343 "On Amendments to the Law of Ukraine "On Protection of Military Servants and Their Family Members" of 29 October 2019 on granting military personnel the following: paid additional leave provided by law for combatants; study leave; leave to meet with their spouses; and leave for personnel who have two or more children or a child with a disability at special times ( <i>item 4.1 «Rights of military servants» of the Chapter 4 «Observing the rights of military servants»</i> )	<b>In the process of implementation</b> draft law was adopted as a basis in the first reading on 14.01.2020 
4	To expedite consideration and adoption of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons" on Restoring Previous Provisions of this Law" ( <i>reg. no. 2141 of 13 September 2019</i> ) ( <i>item 4.4 "Rights of persons receiving a pension in accordance with the Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons," as well as of war and service veterans" of the Chapter 4 "Observing the rights of military servants"</i> )	<b>In the process of implementation</b> draft law was adopted in the first reading on 03.12.2020 

No.	Commissioner's recommendation	State of implementation
5	To expedite consideration and adoption of draft Law of Ukraine 2083-d "On Amendments to Certain Laws of Ukraine Concerning the Exercise of the Right to Pension" of 26 November 2019 ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> ).	<b>Not implemented</b>  draft law was not considered in the first reading
6	To expedite consideration and adoption of the draft law of Ukraine "On Amendments to the Law of Ukraine 'On Pre-trial Detention' (concerning the implementation of certain standards of the Council of Europe)" (no. 0882 of 29 August 2019) ( <i>item 7.1 "Right to protection from torture, cruel, inhuman or degrading treatment or punishment" of the Chapter 7 "Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment"</i> )	<b>Not implemented</b>  the draft law was not adopted in the second reading and in its entirety
7	To speed up consideration and adoption of draft Law of Ukraine No. 0032 "On the Ratification of the Council of Europe Convention on Access to Official Documents" of 31 January 2020 ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>Implemented</b>  by the Law of Ukraine dated 20.05.2020 #631-IX the Council of Europe Convention on Access to Official Documents (Tromsø Convention) was ratified
8	To speed up consideration and adoption of draft Law of Ukraine No. 2340 "On Ukrainian Sign Language" of 29 October 2019 ( <i>item 11.1 "Combating discrimination on the grounds of disability and health conditions" of the Chapter 11 "Compliance with the principle of non-discrimination"</i> )	<b>Not implemented</b>  draft law was not considered in the first reading
9	To speed up consideration and adoption of the draft Law of Ukraine "On Amending Certain Legal Acts of Ukraine ( <i>on Harmonization of Legislation in the Field of Prevention and Countering Discrimination with European Legislation</i> )" No. 0931 of 29 August 2019 ( <i>item 11.3 "Countering discrimination on the grounds of sexual orientation and gender identity" of the Chapter 11 "Compliance with the principle of non-discrimination"</i> )	<b>Not implemented</b>  the draft law was not adopted in the second reading and in its entirety

No.	Commissioner's recommendation	State of implementation
10	When adopting the legislative acts of Ukraine on economic reform, take into account international and European standards provided for in the documents of the United Nations, the International Labour Organization and the Council of Europe, to which Ukraine is a party, as well as European directives provided for in the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States, in order to prevent violations of the economic, social and cultural rights of human beings and citizens ( <i>item 13.1 «Adoption of Guidelines on Strengthening the Human Rights Protection System with associations of National Human Rights Institutions and international organizations» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	 <p><b>In the process of implementation</b> relevant standards are taken into account in the law-drafting activities</p>
11	To recommend that the Permanent Delegation of the Verkhovna Rada of Ukraine to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization takes measures to hold consultations with the members of parliamentary delegations to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization on the establishment of an Alliance of National Human Rights Institutions within the Black Sea Economic Cooperation Organization for the promotion and protection of human rights in the region ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	 <p><b>In the process of implementation</b> due to the COVID-19 pandemic, appropriate measures have been suspended</p>
<p><b>To the Committee of the Verkhovna Rada of Ukraine on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories in Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the city of Sevastopol, National Minorities and International Relations</b></p>		
12	To initiate parliamentary hearings on health care in penitentiary institutions and pre-trial detention centres in accordance with the Concept on reforming/development of the penitentiary system of Ukraine, approved by Cabinet of Ministers of Ukraine Ordinance 654-p of 13 September 2017 ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	 <p><b>Not implemented</b> parliamentary hearings did not take place</p>

No.	Commissioner's recommendation	State of implementation
<b>To the Committee of the Verkhovna Rada of Ukraine on Social Policy and Protection of Veterans' Rights</b>		
<b>13</b>	To initiate parliamentary hearings on arranging access for persons with disabilities to the physical, social, economic, and cultural environment, enhancing liability for refusal to provide reasonable adaptations to enable participation ( <i>item 11.1 «Combating discrimination on the grounds of disability and health conditions» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> parliamentary hearings did not take place 
<b>To the Cabinet of Ministers of Ukraine</b>		
<b>14</b>	To draft and submit to the Verkhovna Rada of Ukraine the draft laws on ratification of the Agreement between Ukraine and the State of Israel on social security and the Agreement between Ukraine and the Federal Republic of Germany on social security ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine (Annual Report, chapter 3, item 3.6, p.) 
<b>15</b>	To draft and submit for consideration of the Verkhovna Rada of Ukraine the draft law on guardianship and custody of incapacitated adults and persons with limited civil capacity ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
<b>16</b>	To develop and approve the procedure for calculating compensation for late enforcement of court decisions ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
<b>17</b>	To ensure an unbiased definition of the basic state standard of living wage setting it at the level not lower than the actual one, and remove the indicator "level of subsistence minimum" used in the provision of state social benefits ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> relevant legal act has not been approved (Annual Report, chapter 3, item 3.6, p.) 

No.	Commissioner's recommendation	State of implementation
18	To improve the PAYG pension system by: adequate differentiation of the amount of the pension depending on the length of service and salary; reviewing the mechanism for calculating pensions for employed pensioners; addressing issue of including the period of work for which the insurance/single social contribution has not been paid due to a fault of the employer in the length of service insurance; regulation of the issue of pension provision for persons who were employed at special positions. <i>(item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»)</i>	 <p><b>Not implemented</b> relevant legal act has not been approved (Annual Report, chapter 3, item 3.6, p.)</p>
19	To address the issue of payment of pensions to pensioners during their permanent residence abroad, if Ukraine has not concluded an international pension agreement with the respective state <i>(item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»)</i>	 <p><b>Not implemented</b> relevant legal acts have not been approved</p>
20	To take appropriate measures to comply with the ECtHR judgment of 12.10.2017 in case #46852/13 Burmych et al. v. Ukraine <i>(item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»)</i>	 <p><b>Implemented partially</b> resolution of Cabinet of Ministers of Ukraine of 01.04.2020 #258 «On the establishment of the Commission on issues of execution of the ECtHR judgments»; Cabinet of Ministers of Ukraine Ordinance of 30.09.2020 No. 1218-r «On Approval of the National Strategy for Resolving the Problem of Non-Enforcement of Court Decisions, Debtors for Which is a State Body or State Enterprise, Institution, Organization, for the Period Until 2022». Strategy Implementation Plan is under development</p>

No.	Commissioner's recommendation	State of implementation
21	When developing the State Budget for the respective year, provide for a sufficient amount of expenditures for the execution of programmes of debt settlements by court decisions ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> The State Budget of Ukraine for 2020 provides funds for the implementation of court decisions guaranteed by the state in the amount of UAH 600 million (at the level of 2019), for 2021 – UAH 100 million; in the Pension Fund budget to repay arrears of pension benefits by court decisions – UAH 200 million (UAH 100 million in 2019). Pension Fund budget for 2021 has not been approved yet</p>
22	To review the mechanism for repayment of court pension arrears determined by the Resolution of the Cabinet of Ministers of #649 of 22 August 2018 “Issue of Repayment of Pension Arrears upon Court Decisions” and to settle the issue of repayment of arrears to heirs in case of death of direct recipients ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
23	To ensure the enforcement of judgments of the Constitutional Court of Ukraine #6-r/2018 of 17 July 2018 and # 12-r/2018 of 18 December 2018 ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> CCU judgments have not been implemented</p>
24	To provide in the State Budget the amount of expenditures for the implementation of programmes related to social protection of citizens at the level necessary for timely payments and provision of statutory guarantees ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> the State Budget of Ukraine for 2020 and 2021 provides for expenses to provide certain categories of the population with technical and other means of rehabilitation, which meets needs. There are no expenditures for the implementation of programmes related to social protection of citizens affected by the Chernobyl disaster, providing people with disabilities with cars and other</p>

No.	Commissioner's recommendation	State of implementation
25	To address systemic issues around housing subsidies by reviewing the provisions containing adverse consequences for citizens in exercising their right to receive a housing subsidy ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> Resolutions of the Cabinet of Ministers of Ukraine dated 22.04.2020 #329, 01.06.2020 #432, 22.07.2020 #632, 28.10.2020 #1035, 11.11.2020 #1098, 16.12.2020 #1282, 23.12.2020 #1324</p>
26	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amending the State Budget of Ukraine for 2020 in order to bring the level of healthcare expenditures to the requirements set out in Article 4, item 5 of the Law of Ukraine "On State Financial Guarantees of Public HealthCare" #2168-VIII of 19 October 2017. ( <i>item 1.2 «Right to healthcare» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
27	To develop and submit to the Verkhovna Rada of Ukraine a draft law on ratification of Part III of ILO Convention 173 on the Protection of Workers' Claims (Employer's Insolvency) (1992) ( <i>item 1.3 «Right to work» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented</b> draft Law of Ukraine (reg. no. 3332 of 13.04.2020)</p>
28	To develop and submit to the Verkhovna Rada of Ukraine a draft law on ratification of Article 25 of the European Social Charter (revised) ( <i>item 1.3 «Right to work» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
29	To develop and submit to the Verkhovna Rada of Ukraine a draft law on observing the requirements of employees in case of insolvency of the employer ( <i>item 1.3 «Right to work» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented</b> draft Law of Ukraine (reg. no. 3332 of 13.04.2020)</p>
30	To ensure the resumption of the activities of the Commission on payment of wage arrears, pensions, scholarships and other social payments, as well as its regular meetings ( <i>item 1.3 «Right to work» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented</b> Resolution of the Cabinet of Ministers Ukraine of 28.10.2020 #107</p>

No.	Commissioner's recommendation	State of implementation
31	To strengthen control over the implementation of the Emergency Action Plan on Repayment of Wage Arrears, approved by the Ordinance of the Cabinet of Ministers of Ukraine #571-r of 22 July 2016 "On Approval of the Emergency Action Plan on Repayment of Wage Arrears" (item 1.3 «Right to work» of the Chapter 1 «Observing social rights»)	<b>Not implemented</b>  the amount of debt as of 01.01.2021 is UAH 3.13 billion
32	To bring the provisions of national labour legislation in line with international and European labour norms and standards (item 1.3 «Right to work» of the Chapter 1 «Observing social rights»)	<b>Implemented partially</b>  draft Laws of Ukraine: reg. no. 2438 of 14.11.2019; reg. no. 3332 of 13.04.2020, reg. no. 4306 of 02.11.2020; reg. no. 4174 of 30.09.2020.
33	To ensure control over the implementation by the Ministry of Social Policy of Ukraine of measures to increase the number of employed able-bodied persons with disabilities that were identified as a priority by the Programme of Activities of the Cabinet of Ministers of Ukraine approved by the Resolution of the Verkhovna Rada of Ukraine #188 of 4 October 2019 "On the Programme of Activities of the Cabinet of Ministers of Ukraine" (item 1.3 «Right to work» of the Chapter 1 «Observing social rights»)	<b>Not implemented</b>  (Annual Report, chapter 4, item 4.5, p.172)
34	To develop and submit to the Verkhovna Rada of Ukraine draft law on professional/vocational-technical education (item 1.4 «Right to education» of the Chapter 1 «Observing social rights»)	<b>Implemented</b>  draft Law of Ukraine (reg. no. 4207 of 12.10.2020)
35	During the formation of the State Budget of Ukraine for 2021, to provide adequate funds for the modernization of the material resources of vocational-technical institutions (item 1.4 «Right to education» of the Chapter 1 «Observing social rights»)	<b>Implemented</b>  expenditures are provided for in the Law of Ukraine « On the State Budget of Ukraine for 2021» (budget program)
36	To take measures to increase the salaries of the teachers of n the institutions of vocational-technical institutions by amending the Resolution of the Cabinet of Ministers of Ukraine #1298 of 30 August 2002 "On Remuneration of Employees Based on the Unified Tariff Grid Grades and Coefficients of Remuneration of Employees of State-Financed Institutions and Organizations of Certain Areas of Public Sector" (item 1.4 «Right to education» of the Chapter 1 «Observing social rights»)	<b>Implemented</b>  Resolution of the Cabinet of Ministers Ukraine of 26.08.2020 #750

No.	Commissioner's recommendation	State of implementation
37	To improve the system of funding and management of vocational-technical education by approving the respective legal framework, providing for a clear division of powers and responsibilities between central and regional levels of government ( <i>item 1.4 «Right to education» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> Cabinet of Ministers of Ukraine Ordinance of 05.02.2020 #94 on the implementation of relevant pilot project</p>
38	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On Culture" #2778-VI of 14 December 2010 that will define the general framework of providing cultural services to the population, functioning of the basic network of cultural institutions in new conditions (allow local governments to modify the basic network for the needs of the community, etc.), key provisions on formation and functioning of the cultural district, the system of government bodies in the field of culture and monitoring the implementation of national culture policy ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
39	To develop and submit to the Verkhovna Rada of Ukraine a draft law on ratification of the Marrakesh Treaty in order to ensure access of the blind and visually impaired people or other persons with disabilities to the printed information ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
40	To develop and approve the standards for the provision of cultural services to residents of territorial communities in due course ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> relevant standards have not been approved</p>
41	To ensure, in due course, the introduction of a system of subsidies and subventions from the State Budget, aimed at providing the state-guaranteed amount of cultural and artistic services for every citizen of Ukraine, the development of culture and arts in individual amalgamated territorial communities; approximation of the level of salaries of cultural workers to the level of average salaries in the country ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> relevant legal acts have not been approved</p>

No.	Commissioner's recommendation	State of implementation
42	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" #294-IX of 14 November 2019 with regard to determining the expenditures necessary for the audit of an outdated housing stock and bringing it in accordance with the standards of proper and safe living conditions ( <i>item 2.1 «Right to housing» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
43	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" #294-IX of 14 November 2019 regarding the definition of expenditures necessary to compensate for the damage caused to citizens as a result of a natural disaster ( <i>item 2.1 «Right to housing» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Implemented</b> Laws of Ukraine dated 13.04.2020 #553- IX and 03.07.2020 #746- IX</p>
44	To develop and approve a State Programme for auditing obsolete housing stock and determining ways to bring it in compliance with standards of adequate and safe living conditions ( <i>item 2.1 «Right to housing» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
45	Annually, during the formation of the State Budget for the next year, provide for targeted expenditures necessary to compensate for the damage caused to citizens as a result of emergencies and natural disasters ( <i>item 2.1 «Right to housing» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> the relevant expenses are not provided for in the State Budget for 2021</p>
46	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Code of Administrative Offenses in the part of increasing responsibility for violations of legal requirements on passenger transportation ( <i>item 2.2 «Consumer rights» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
47	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Land Code of Ukraine with regard to ensuring the balance between the right of citizens to receive land plots for free ownership and interests of the territorial community in the context of decentralization ( <i>item 2.3 «Right to land» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>

No.	Commissioner's recommendation	State of implementation
<b>48</b>	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Code of Administrative Offenses in terms of establishing responsibility for violations by executive bodies or local self-government bodies of the term of consideration of an application for the development of a land management plan for acquiring a land plot into property ( <i>item 2.3 «Right to land» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
<b>49</b>	To develop and approve the procedure for granting permits for operations in the field of waste management in accordance with the Laws of Ukraine "On Environmental Protection" #1264-XII of 25 June 1991 and "On Waste" #187/98-BP of 5 March 1998 ( <i>item 2.4 «Right to a safe environment» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Implemented partially</b> draft Law of Ukraine (#4167 of 29.09.2020) proposes to implement integrated permits</p>
<b>50</b>	To include measures to strengthen state control over the quality of sewage in the chapter "Improving water quality and water management, including the marine environment. Complete phasing out of the discharge of untreated and insufficiently treated sewage into water bodies and ensuring compliance of sewage treatment quality with the established standards, as well as prevention of groundwater pollution" of the National Environmental Action Plan for 2020-2025, developed in implementation of item 3 of the Law of Ukraine "On the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine until 2030" #2697-VIII of 28 February 2019. ( <i>item 2.4 «Right to a safe environment» of the Chapter 2 «Observing economic rights»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
<b>51</b>	To accelerate the adoption of regulations to shape appropriate conditions for the implementation of the Law of Ukraine "On Social Services" #2671-VIII of 17 January 2019 ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	 <p><b>Implemented</b> the Cabinet of Ministers of Ukraine adopted Resolutions #177 and #200 of 03.03.2020, #427, 428, 429, 430, 449, 450, 479 and 587 of 01.06.2020, #859 of 23.09.2020</p>

No.	Commissioner's recommendation	State of implementation
52	To develop and submit to the Verkhovna Rada of Ukraine a draft law amending the Law of Ukraine 2505-VIII "On Legal Status of Missing Persons" of 12 July 2018 on the functioning of the Commission on Persons Missing in Special Circumstances, and creation and maintenance of the Unified Register of Persons Missing in Special Circumstances ( <i>item 4.2 «Rights of Ukrainian military personnel in captivity» of the Chapter 4 «Observing the rights of military personnel»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
53	To amend Cabinet of Ministers of Ukraine Resolution 446 "On Approval of the Procedure providing sanatorium and resort vouchers to military servants, war veterans, military service veterans, police veterans and some other categories of persons and members of their families) of 27 April 2011 to request public authorities to provide vouchers to sanatoriums not only to persons covered by Law of Ukraine 203/98-BP "On the Status of Veterans of Military Service, Veterans of Internal Affairs, Veterans of the National Police of Ukraine and Certain Other Persons and Their Social Protection" who receive pensions in accordance with Law of Ukraine 2262-XII "On Pensions to Persons Released from Military Service and Certain Other Persons", but also to veterans of military service who receive pensions under other laws ( <i>item 4.4 «Rights of persons receiving pensions in accordance with the Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons," as well as of war and service veterans» of the Chapter 4 «Observing the rights of military personnel»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
54	To expedite consideration and adoption of draft Law of Ukraine 2083-d "On Amendments to Certain Laws of Ukraine Concerning the Exercise of the Right to Pension" of 26 November 2019 ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law was not considered in the first reading</p>
55	To develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on social protection of civilians affected by armed conflict ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>

No.	Commissioner's recommendation	State of implementation
56	To develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on the regulation of legal status and social protection of persons illegally detained as a result of the armed aggression against Ukraine, as well as members of their families ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
57	To develop and submit to the Verkhovna Rada of Ukraine a draft law on regulations for obtaining legal status of persons who have gone missing in special circumstances and persons who have disappeared in the temporarily occupied territories ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
58	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the State Budget of Ukraine for 2020, providing for expenditures to ensure observance of the rights and interests of persons missing in special circumstances and social protection for their families, and include the respective expenses in the budgets for the following years ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
59	To develop and approve lists of social services to be provided to persons deprived of their liberty as a result of the armed aggression against Ukraine, as well as to members of their families. ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
60	To develop and approve Regulations on the Commission on Persons Mission in Special Circumstances and ensure its operation ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>In the process of implementation</b> (Annual Report, chapter 5, item 5.1, p.213)</p>

No.	Commissioner's recommendation	State of implementation
61	Develop and approve a procedure for making social payments to internally displaced persons for earlier periods, providing a mechanism for making such payments in accordance with court decisions ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
62	Develop and approve a procedure for payment of pensions and other social benefits to citizens of Ukraine living in the temporarily occupied territories or in settlements on the 'contact line' ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
63	Take measures to shape appropriate conditions for the provision of necessary health care and psychological rehabilitation to civilians affected by armed conflict ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>In the process of implementation</b> (Annual Report, chapter 5, item 5.1, p.210) 
64	To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Housing Code of the Ukrainian SSR to ensure observance of the constitutional right to housing for internally displaced citizens of Ukraine ( <i>item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
65	To develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on restitution and/ or compensation for damage to housing/property as a result of hostilities in Eastern Ukraine ( <i>item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 

No.	Commissioner's recommendation	State of implementation
66	To develop and approve a procedure for compensation for property destroyed on the territory of the anti-terrorist operation, in particular that provided by the Law of Ukraine 638 "On Combating Terrorism" of 20 March 2003 ( <i>item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Implemented</b> Resolution of the Cabinet of Ministers Ukraine of 02.09.2020 #767</p>
67	To take measures to develop and approve the regulations needed for implementation of a mechanism to provide monetary compensation to persons whose housing was destroyed or damaged as a result of hostilities in Eastern Ukraine ( <i>item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
68	In accordance with the recommendations provided by the Parliamentary Assembly of the Council of Europe (PACE) in Resolution 2198 (2018), assess opportunities for joining the European Bank of Reconstruction and Development to implement projects to satisfy the housing needs of internally displaced persons in Ukraine ( <i>item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> no appropriate measures taken</p>
69	To develop and submit to the Verkhovna Rada of Ukraine a draft law to invalidate the Law of Ukraine "On the Creation of a Free Economic Zone Crimea and on Peculiarities of Carrying Out Economic Activities in the Temporarily Occupied Territory of Ukraine" #1636-VII of 12 August 2014 ( <i>item 5.3 «Rights of citizens of Ukraine living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
70	To develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on amendments to certain legal acts of Ukraine on introducing administrative procedures for state registration of births and deaths that take place in the temporarily occupied territories of Ukraine ( <i>item 5.3 «Rights of citizens of Ukraine living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>

No.	Commissioner's recommendation	State of implementation
71	To compile materials for submission to the International Court of Justice of a consolidated claim against the Russian Federation regarding the implementation of its international legal responsibility for the armed aggression against Ukraine ( <i>item 5.3 «Rights of citizens of Ukraine living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Not implemented</b> no appropriate measures taken</p>
72	Make a decision on determining the status of the checkpoints, their subordination and the balance holder, in order to ensure the maintenance of the checkpoint infrastructure and to enable appropriate conditions for citizens when they cross the 'contact line' ( <i>item 5.4 «Right of citizens of Ukraine living in the temporarily occupied territories to freedom of movement» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>Implemented</b> Resolution of the Cabinet of Ministers Ukraine of 28.12.2020 #1368</p>
73	Ensure that ambulances and other emergency healthcare services are always available at the checkpoints in Luhansk, Donetsk and Kherson oblasts, and also take measures to equip them with necessary resources ( <i>item 5.4 «Right of citizens of Ukraine living in the temporarily occupied territories to freedom of movement» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	 <p><b>In the process of implementation</b> Luhansk and Donetsk OSAs have ensured implementation</p>
74	Ensure the preparation of draft amendments to the regulations of ministries and other central executive bodies, to bring them in line with Law of Ukraine 2617-VIII "On Amendments to Certain Legislative Acts of Ukraine to Simplify Pre-trial Investigation of Certain Categories of Criminal Offences" of 22 November 2018 (that enters into force on 1 July 2020) ( <i>item 6.1 «Rights of participants in criminal proceedings during detention, arrest and investigation» of the Chapter 6 «Compliance with the rule of law in the exercise of justice»</i> )	 <p><b>Implemented</b> approved by the orders of the Ministry of Internal Affairs of Ukraine #393 of 18.05.2020, #403 of 20.05.2020, #420 of 28.05.2020, 27.04.2020 of #357 and the Ministry of Justice #3343/5 of 25.09.2020 and #2650/5 of 05.08.2020</p>
75	Develop and approve the National Strategy for implementation of general measures to enforce the decisions of the European Court of Human Rights in cases of Yurii Ivanov v. Ukraine and Burmych and others v. Ukraine ( <i>item 6.3 «Right to timely enforcement of a court decision» of the Chapter 6 «Compliance with the rule of law in the exercise of justice»</i> )	 <p><b>In the process of implementation</b> draft regulatory legal act is being finalized</p>

No.	Commissioner's recommendation	State of implementation
76	Develop and submit to the Verkhovna Rada of Ukraine a draft law on determining the legal status of persons who have been prosecuted on baseless and politically motivated charges and providing social guarantees to them ( <i>item 8.1 «Rights of citizens of Ukraine prosecuted by the Russian Federation on baseless and politically motivated charges» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
77	Take measures to involve the international community in the protection of the rights of persons in places of detention in the temporarily occupied territories of Ukraine ( <i>item 8.3 «Rights of citizens of Ukraine held in places of detention in the temporarily occupied territories» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>In the process of implementation</b> appropriate measures were implemented. On 01.07.2020 the Platform of International Action for the Release of Ukrainian Political Prisoners by the Russia was launched</p>
78	Ensure that its own regulatory legal acts, as well as the regulatory legal acts of the executive bodies that determine the procedures for personal data processing, are brought into line with the provisions of Law of Ukraine 2297-VI "On the Protection of Personal Data" of 1 June 2010, in particular: development of a clear statement on the purpose of personal data processing; providing an exhaustive list of personal data that can be processed under the regulatory legal act; providing guidance on compliance with the principles of personal data processing, such as: relevance, adequacy, and the requirement not to collect excessive personal data in relation to the purposes for which they are processed; removal from the regulatory legal acts of provisions on the obligation to obtain consent for the processing of personal data by state bodies ( <i>item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	 <p><b>Implemented partially</b> appropriate measures were implemented</p>
79	Take into account the requirements of legislation in the field of personal data protection at the stages of design, development, and introduction of the state electronic resources (information systems, portals and registers), and address the Commissioner for appropriate expert assistance ( <i>item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	 <p><b>Implemented partially</b> appropriate measures were implemented</p>

No.	Commissioner's recommendation	State of implementation
80	Approve the provisions on public registers, databases of personal data, as well as the procedures for personal data processing in such public registers and databases of personal data, in cases when such regulatory legal acts are absent ( <i>item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	 <p><b>Implemented partially</b> Law of the MoDT dated 20.05.2020 #72</p>
81	Draft and submit for consideration to the Verkhovna Rada of Ukraine a draft law on Amendments to Law of Ukraine 3674-VI "On Court Fees" of 8 July 2011, to provide exemptions for Roma from paying fees for court procedures related to establishing the fact of birth or issuance of birth certificates ( <i>item 11.2 «Equal observance of rights and freedoms of national minorities» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
82	Intensify the work of the Inter-agency Working Group responsible for implementation of the Action Plan for the implementation of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the Period until 2020 ( <i>item 11.2 «Equal observance of rights and freedoms of national minorities» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>Not implemented</b> no appropriate measures taken</p>
83	Draft a law on the legalization of registered civil partnership in Ukraine for heterosexual and same- sex couples, taking into account property rights and non-property rights (in particular, ownership and inheritance of property, mutual support/ maintenance of partners in case of disability or loss of a breadwinner, constitutional right not to give testimony against your partner) and submit this for consideration to the Verkhovna Rada of Ukraine ( <i>item 11.3 «Countering discrimination on the grounds of sexual orientation and gender identity» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
84	Draft a law on amendments to Law of Ukraine 5207-VI "On the Principles of Prevention and Countering Discrimination in Ukraine" of 6 September 2012 and submit this for consideration to the Verkhovna Rada of Ukraine. This should include an amendment of the definition of "discrimination" to include discrimination on the grounds of sexual orientation and gender identity, expansion of the full list of categories of persons who are considered to be discriminated against to include LGBTI people, as well as guidance on which actions or inactions may be considered discriminatory towards LGBTI people ( <i>item 11.3 «Countering discrimination on the grounds of sexual orientation and gender identity» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>

No.	Commissioner's recommendation	State of implementation
85	Draft a law on the protection of the linguistic rights of national minorities and submit this for consideration to the Verkhovna Rada of Ukraine ( <i>item 11.4 «Observance of the rights of citizens to non-discrimination on the grounds of language» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
86	Draft a law on amendments to the Law of Ukraine 270/96-VR "On Advertising" dated 3 July 1996 to counteract discrimination and submit this for consideration to the Verkhovna Rada of Ukraine. These amendments should help to counteract discrimination and encourage citizens to go to the courts and combat discriminatory advertising ( <i>item 11.5 «Respect for the equal rights and opportunities of women and men» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
87	When developing the Programme of Activities of the Cabinet of Ministers of Ukraine, take into account the principle of equal rights and opportunities for women and men in all spheres of society ( <i>item 11.5 «Respect for the equal rights and opportunities of women and men» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Implemented</b> Resolution of the Cabinet of Ministers Ukraine of 12.06.2020 #471 
88	During the preparation and submission of expert opinions to draft laws registered with the Verkhovna Rada of Ukraine, ensure that the legal opinions of gender experts are also sought ( <i>item 11.5 «Respect for the equal rights and opportunities of women and men» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
89	Draft a law on ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and submit this for consideration to the Verkhovna Rada of Ukraine ( <i>item 11.6 «Right to protection against domestic violence» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
90	Adopt the State Social Programme for Preventing and Combating Domestic Gender-based Violence for the Period to 2022 ( <i>item 11.6 «Right to protection against domestic violence» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> relevant legal act has not been approved 

No.	Commissioner's recommendation	State of implementation
91	Improve the system for providing assistance to victims of domestic and gender-based violence by: introducing state statistical reporting on preventing and combating domestic and gender-based violence; developing a list of indicators for central executive authorities to record cases of domestic and gender-based violence; and introducing continuous monitoring of the quality of services provided to victims of domestic gender-based violence ( <i>item 11.6 «Right to protection against domestic violence» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> relevant legal acts have not been approved 
92	Draft a law on amendments to Article 1851 of the Code of Ukraine on Administrative Offences, in particular, to abolish liability for violations of the procedure for holding peaceful assemblies due to the absence of such a procedure, and submit this for consideration to the Verkhovna Rada of Ukraine ( <i>Chapter 12 «Freedom of speech in Ukraine»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
93	Draft a law on enhancing criminal liability for obstructing journalistic activity and for crimes against journalists and submit this for consideration to the Verkhovna Rada of Ukraine ( <i>Chapter 12 «Freedom of speech in Ukraine»</i> )	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
94	Ensure the development of effective equality and inclusion mechanisms aimed at overcoming discrimination and improving national legislation to combat racism and intolerance, in accordance with the recommendations of the European Commission against Racism and Intolerance of the Council of Europe ( <i>item 13.1 «Adoption of Guidelines on Strengthening the Human Rights Protection System with associations of National Human Rights Institutions and international organizations» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	<b>Not implemented</b> relevant legal acts have not been approved 
95	Instruct the Ministry of Foreign Affairs of Ukraine to assist in organizing and conducting, through the Secretariat of the Black Sea Economic Cooperation Organization, further consultations with the members of parliamentary delegations to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization and the Ombudsmen of the Black Sea Economic Cooperation Organization Member States on the establishment of an Alliance of National Human Rights Institutions within that organization ( <i>item 13.1 «Adoption of Guidelines on Strengthening the Human Rights Protection System with associations of National Human Rights Institutions and international organizations» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	<b>In the process of implementation</b> due to the COVID-19 pandemic, appropriate measures have been suspended 

No.	Commissioner's recommendation	State of implementation
96	Draft a law on the ratification of the Agreement between Ukraine and the State of Israel on social security and submit for consideration to the Verkhovna Rada of Ukraine ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
<b>To the Ministry of Social Policy of Ukraine</b>		
97	To develop and adopt in accordance with the established procedure the legal acts for ensuring implementation of the Law of Ukraine "On Social Services" #2671-VIII of 17 January 2019 and to ensure control over the observance of the requirements of this Law in the manner determined by the Cabinet of Ministers of Ukraine ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> (Annual Report, chapter 4, item 4.8, p.200)</p>
98	To improve legal regulation, technical support and coordination of the activities of central and local executive authorities, local self-government bodies on guardianship and custody of incapacitated adults and persons whose civil capacity is limited, and their social protection ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Not implemented</b> relevant legal acts have not been approved</p>
99	To improve organization of work on the provision of subsidies to cover the costs of housing and utility services, liquefied gas, solid and liquid household fuel, compensation for additional costs for utilities given the increased prices and rates for services ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> (Annual Report, chapter 4, item 4.6, p.189)</p>
100	To develop and submit in the established manner for consideration by the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On State Assistance to Families with Children" #2811- XII of 21 November 1992 in terms of continuing payment of state assistance to children who are subject to guardianship, custody, in the case of continuing education in a secondary school after they reach 18 ( <i>item 3.1 «Rights of the child in alternative care system» of the Chapter 3 «Observing the rights of the child»</i> )	 <p><b>Implemented partially</b> Draft Law #3106 of 21.02.2020</p>
101	To introduce periodic training (every two or three years) in order to improve education capacity of guardians and carers regardless of whether they are in a family relationship with children ( <i>item 3.1 «Rights of the child in alternative care system» of the Chapter 3 «Observing the rights of the child»</i> )	 <p><b>Implemented</b> appropriate measures were implemented</p>

No.	Commissioner's recommendation	State of implementation
102	To take measures to strictly comply with the requirements of the law in terms of timely training of foster parents (every 2 years), taking into account the individual features of foster children ( <i>item 3.1 «Rights of the child in alternative care system» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> appropriate measures were implemented 
103	To initiate amendments to the General Regulations on the Centre for Social Services for Families, Children and Youth, approved by the Resolution of the Cabinet of Ministers of Ukraine #573 of 01 August 2013 with regards to authorizing regional centres of social services for families, children and youth to control the activities of local centres of social services in order to ensure the right of individuals, families and children to receive quality social services ( <i>item 3.1 «Rights of the child in alternative care system» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Resolution of the Cabinet of Ministers of Ukraine of 01.06.2020 #427 
104	To take measures to systematically improve the skills of employees who provide social and psychological support to children ( <i>item 3.1 «Rights of the child in alternative care system» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> appropriate measures were implemented 
105	To ensure control over the ATCs in terms of establishing service units for children in accordance with part seven of Article 4 of the Law of Ukraine "On Bodies and Services for Children and Special Institutions for Children" #20/95-BP of 24 January 1995 ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> appropriate measures were implemented 
106	To strengthen technical support for the activities of guardianship and custody bodies, service units for children, social services centres for families, children and youth ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> appropriate measures were implemented 
107	To provide systematic training to employees of service units for children and centres of social services for families, children and youth ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> appropriate measures were implemented 
108	To develop and submit in the established procedure for consideration by the Verkhovna Rada of Ukraine a draft law on the establishment of social guarantees and benefits for children who have received the status of a child affected by hostilities and armed conflict ( <i>item 3.3 «Right of the child in the context of an armed conflict» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> Law of Ukraine of 16.01.2020 #474-IX; draft Law of Ukraine (reg. no. 3627 of 10.06.2020) 

No.	Commissioner's recommendation	State of implementation
109	To take measures to implement the recommendations of the International Conference on Ensuring the Rights of the Child in Armed Conflict in the national policy of Ukraine ( <i>item 3.3 «Right of the child in the context of an armed conflict» of the Chapter 3 «Observing the rights of the child»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
110	To develop and submit to the Cabinet of Ministers of Ukraine the procedure for granting children affected by mines and/or explosives as a result of an armed conflict the status of a child affected by hostilities and armed conflict through a simplified procedure ( <i>item 3.3 «Right of the child in the context of an armed conflict» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Resolution of the Cabinet of Ministers Ukraine of 11.12.2019 #1023 
111	To intensify awareness raising and explanatory activities on the procedure for obtaining the status of a child affected by hostilities and armed conflict ( <i>item 3.3 «Right of the child in the context of an armed conflict» of the Chapter 3 «Observing the rights of the child»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
112	Strengthen regulatory control over the compliance of the Pension Fund of Ukraine with legislation on the setting, calculation/ recalculation and payment of the above-mentioned pensions ( <i>item 4.4 «Rights of persons receiving pensions in accordance with the Law of Ukraine “On Pensions to Persons Released from Military Service and Certain Other Persons,” as well as of war and service veterans» of the Chapter 4 «Observing the rights of military personnel»</i> )	<b>Not implemented</b> no appropriate measures were implemented 
113	Develop and provide explanations to state oblast administrations on the procedure for establishing reasonable facts of absence of a person for a certain period of time at the place of residence, in accordance with Law of Ukraine 1706-VII “On Ensuring the Rights and Freedoms of Internally Displaced Persons” of 20 October 2014 ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> relevant explanations have not been provided 
114	Develop and implement a mechanism to assess the housing needs of internally displaced persons by including relevant data in the Unified Information Database on Internally Displaced Persons ( <i>item 5.2. «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> relevant legal act has not been approved 

No.	Commissioner's recommendation	State of implementation
115	<p>Develop, and submit in the prescribed manner, amendments to Cabinet of Ministers of Ukraine Resolution 226 "On Improving the Education, Training, Social Protection and Material Security of Orphaned Children and Children Deprived of Parental Care" of 5 April 1994 in terms of:</p> <p>raising the minimum standards of financial support for orphaned children and children deprived of parental care for providing clothing, footwear, and equipment to ensure compliance with natural standards; revising the minimum amount of financial assistance for admission to vocational and higher education institutions, which is set by Resolution 226 at 2.5 non-taxable minimum incomes; determining the standard amount of financial support to provide for basic necessities (detergents, cleaning products hygiene products) for orphaned children and children deprived of parental care who live and/or study in orphanages and boarding schools (<i>item 7.3. «Right to an adequate standard of living, including adequate food, clothing and housing» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i>)</p>	<p><b>Not implemented</b> </p> <p>relevant draft act has not been developed</p>
116	<p>Accelerate approval of the Model Regulations for residential facilities for elderly people and people with disabilities (<i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i>)</p>	<p><b>Implemented</b> </p> <p>Resolution of the Cabinet of Ministers Ukraine of 02.09.2020 #772</p>
117	<p>Develop a joint order on the organization and provision of healthcare to patients at inpatient residential care facilities (on determining the conditions and type of healthcare in residential care facilities, the frequency of medical examination of patients, and mechanisms for interaction between doctors and medical staff working in these facilities and primary, secondary and tertiary care providers) (<i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i>)</p>	<p><b>Not implemented</b> </p> <p>relevant legal act has not been approved</p>

No.	Commissioner's recommendation	State of implementation
<b>118</b>	Develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to Article 300 of the Civil Procedure Code of Ukraine, to supplement the provision on dismissal of a guardian from his/her powers and appointment of another guardian at the request of a person who has been declared legally incapacitated ( <i>item 7.5 «Right to professional legal aid» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
<b>To the Ministry of Health of Ukraine</b>		
<b>119</b>	In the context of the launch of second stage of the healthcare reform, to allocate funding to pay salaries to health professionals according to the respective needs, and take measures to ensure that healthcare facilities in the rural areas are prioritized ( <i>item 1.2 «Right to healthcare» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> Law of Ukraine of March 17, 2020 #533-IX, Resolutions of the Cabinet of Ministers of Ukraine #331 of 24.04.2020, #610 of 19.06.2020 Selective monitoring has shown insufficient staffing of health care facilities in rural areas</p>
<b>120</b>	To create a register of citizens suffering from rare/orphan diseases, envisaged by Article 531 of the Law of Ukraine "On Fundamentals of Legislation of Ukraine on Healthcare," to develop and approve the relevant regulatory acts on the planning and calculation of the need for medicines, special foods and medical products purchased for citizens suffering from rare/orphan diseases at the expense of local budgets ( <i>item 1.2 «Right to healthcare» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> (Annual Report, chapter 4, item 4.4, p.170)</p>
<b>121</b>	To ensure the development and adoption in accordance with the established procedure of appropriate legal acts on regulation of issues around sending citizens of Ukraine for treatment abroad and to ensure control over targeted and effective spending of funds provided in the State Budget under the budget programme "Treatment of Ukrainian Citizens Abroad" ( <i>item 1.2 «Right to healthcare» of the Chapter 1 «Observing social rights»</i> )	 <p><b>Implemented partially</b> Law of Ukraine «On the State Budget of Ukraine for 2020» #294-IX of 14.11.2019, Cabinet of Ministers of Ukraine Ordinance #1417 of 11.11.2020</p>

No.	Commissioner's recommendation	State of implementation
122	When developing fees for medical services under the programme of medical guarantees for secondary/specialized healthcare, to provide in the calculations the share of expenditures for paying salaries to health professionals ( <i>item 1.2 «Right to healthcare» of the Chapter 1 «Observing social rights»</i> )	<b>Implemented partially</b> Resolution of the Cabinet of Ministers of Ukraine of 19.06.2020 #513 
123	To bring the Order of the Ministry of Health of Ukraine #251 of 14 August 1998, registered at the Ministry of Justice of Ukraine on 11 September 1998 under #563/3003 "On Approval of the Regulation on the System of Licensed Integrated Examinations of Specialists with Higher Education in the Areas of Medicine and Pharmacy" and the Order of the Ministry of Health of Ukraine #53 of 31 January 2005, registered at the Ministry of Justice of Ukraine on 17 February 2005 under #244/10524 "On Approval of the Regulations on the Organization and Procedure for State Certification of Students Enrolled in Higher Education Institutions of 3rd and 4th Accreditation Level in the Area of Medicine" in compliance with requirements of the Laws of Ukraine "On Education," "On Higher Education." ( <i>item 1.4 «Right to education» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> relevant order has not been approved 
124	To adopt a sectorial legal act to approve the Procedure of Conducting Licensed Integrated Examinations that will specify that the respective exams are organized by the public organization "Centre for Testing Professional Competence of Specialists with Higher Education in the Areas of Medicine and Pharmacy at the Ministry of Health" ( <i>item 1.4 «Right to education» of the Chapter 1 «Observing social rights»</i> )	<b>Implemented partially</b> draft order has been developed. In the process of approval by state bodies 
125	To make changes to the documents required for enrollment of a child in general secondary and preschool education, and provide that information on vaccination is included in the certificate of health of a child ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> Resolution of the Cabinet of Ministers of Ukraine of 20.01.2021 #31. Draft Order of the Ministry of Health of Ukraine «On approval of the Form of primary accounting documentation № #026/o «Medical opinion on admission/non-admission of a child/entrant to visit an educational, health and recreation institution «(public discussion)» 
126	To strengthen outreach on the need to vaccinate children ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> (Annual Report, chapter 3, item 3.1, p.120) 

No.	Commissioner's recommendation	State of implementation
127	To develop regulations aimed at providing adequate nutrition in education institutions for children with various types of food intolerances and/or allergies ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Ministry of Health of Ukraine Order of 25.09.2020 #2205 
128	To control the provision of children suffering from rare/orphan diseases with medicines and foods at their place of residence or treatment ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> (Annual Report, chapter 3, item 3.1, p.117) 
129	To create a state register of citizens suffering from rare/orphan diseases ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Ministry of Health of Ukraine Order of 28.02.2020 #587 
130	To facilitate the regulation of the accession of patients with cystic fibrosis to the European Register (ECFC Patient Registry) ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Not implemented</b> no appropriate measures taken 
131	To make changes to the National List of Essential Medicines and regulate their procurement from the budget funds ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Resolution of the Cabinet of Ministers of Ukraine of 23.12.2020 #1300 
132	Bring the Rules for use of physical restraint and/or isolation in the provision of psychiatric care to persons with learning disabilities, and the systems in place for documenting incidents (approved by Ministry of Health of Ukraine Order 240 of 24 March 2016) in line with the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment "Means of restraint in psychiatric establishments for adults" (CPT/Inf (2017)), in particular, in regard to the prohibition of physical restraint in the presence of other patients; without certified fixation belts; with the use of beds with armoured nets; as well as in relation to the definition of chemical fixation procedures ( <i>item 7.1 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> relevant legal act has not been approved 

No.	Commissioner's recommendation	State of implementation
133	Develop and approve a draft Ministry of Health of Ukraine order to regulate the procedure for physical examination during hospitalization and stay in psychiatric care facilities, for interviews following injuries and documentation of injuries, as well as notification of the relevant law enforcement agencies ( <i>item 7.1 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
134	Accelerate approval of the Ministry of Health of Ukraine Order "On Approval of the Sanitary Regulations for Nursing Homes for the Elderly and Persons with Disabilities, Special Boarding Schools, Inpatient Departments of Territorial Centres of Social Services." ( <i>item 7.3. «Right to an adequate standard of living, including adequate food, clothing and housing» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
135	Develop and approve the Action Plan for the Concept of development of mental healthcare in Ukraine until 2030, approved by Cabinet of Ministers of Ukraine Ordinance 1018-p of 27 December 2018 ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Implemented partially</b> draft act has been developed. In the process of approval by relevant state bodies 
136	Approve the standards for inpatient psychiatric care in accordance with Article 1 of Law of Ukraine 1489-III "On Psychiatric Care" of 22 February 2000 and the requirements for medical services provided in inpatient settings ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
137	Amend Form of Primary Records 086-1/o, particularly concerning amending this form to include information about the child's vaccination status ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>Not implemented</b> relevant legal act has not been approved 

No.	Commissioner's recommendation	State of implementation
<b>138</b>	Amend the Procedure for Pharmacovigilance approved by Ministry of Health of Ukraine Order 898 of 27 December 2006 to bring it into line with the Law of Ukraine "On the Protection of Personal Data", i.e. the introduction of anonymized data collection ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
<b>To the Ministry of Education and Science of Ukraine</b>		
<b>139</b>	To take measures to provide funding to establish the Research Centre on Deafness in the M.P. Drahomanov National Pedagogical University; training of sign language interpreters; providing the department of special and inclusive education of the University with modern technical means and special equipment for workplaces for individual and group work with students who have impaired vision, hearing, speech, musculoskeletal system ( <i>item 1.4 «Right to education» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> no appropriate measures taken 
<b>140</b>	To take measures to ensure the right to education for children with special education needs, namely: strengthening awareness-raising on the benefits of inclusion, ensuring equal, unimpeded (including architectural accessibility) access, training of teachers to work in inclusive environment ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
<b>141</b>	To take measures to strengthen awareness raising activities on combating the bullying/cyberbullying and providing safe Internet space for children ( <i>item 3.4 «Counterring bullying and observing the right of the child on the Internet» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Order of the Ministry of Education and Science of Ukraine #1646 of 28.12.2019 
<b>142</b>	To strengthen preventive measures to combat bullying ( <i>item 3.4 «Counterring bullying and observing the right of the child on the Internet» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented</b> Decree of the President of Ukraine #195/2020 of 25.05.2020 

No.	Commissioner's recommendation	State of implementation
143	To take measures to strengthen awareness raising activities on combating the bullying/cyberbullying and providing safe Internet space for children ( <i>item 3.4 «Counterring bullying and observing the right of the child on the Internet» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> The Ministry of Education and Science of Ukraine in letters dated 14.08.2020 and 26.11.2020 recommended that postgraduate pedagogical education institutions include relevant training modules in their professional development programs 
144	Take measures to ensure that persons with disabilities have unimpeded access to educational institutions ( <i>item 11.1 «Combating discrimination on the grounds of disability and health conditions» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
<b>To the Ministry of Culture and Information Policy of Ukraine</b>		
145	To determine the standard of accessibility of cultural institutions of the basic network of the local level and the standard (criteria and indicators) of the quality of services, which must be provided by local cultural institutions ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> relevant standards have not been approved 
<b>To the Ministry of Internal Affairs of Ukraine</b>		
146	To ensure the implementation of the provisions of the Safe Schools Declaration ( <i>item 3.3 «Right of the child in the context of an armed conflict» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> (Annual Report, chapter 3, item 3.3, p.142) 
147	Develop a draft law to amend Article 23 of Law of Ukraine “On National Police” of 2 July 2015 #580-VIII in terms of empowering the police to detain and transport persons detained on suspicion of committing criminal offences, persons towards whom a preventive measure in the form of detention has been applied, as well as persons subjected to administrative arrest, and submit in the prescribed manner for consideration by the Verkhovna Rada of Ukraine ( <i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Implemented</b> draft Law of Ukraine (reg. no. 4214 of 13.10.2020) 

No.	Commissioner's recommendation	State of implementation
148	Approve the Ministry of Internal Affairs of Ukraine Order on the norms for providing necessary equipment for detention rooms in duty units, temporary detention centres, reception centres for persons detained for vagrancy, special reception centres for persons subjected to administrative arrest, and temporary detention facilities for foreigners and stateless persons who are in Ukraine illegally ( <i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
149	Amend the Instructions on the organization of the transportation and holding of accused/defendants and prisoners in courts, approved by Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, Supreme Court of Ukraine, High Specialized Court of Ukraine, State Judicial Administration of Ukraine, Prosecutor-General's Office of Ukraine Order 613/785/5/30/29/67/68 of 26 May 2015, that determines the procedure for providing meals to accused/defendants who are not provided with packed lunches before being transported to court, including the possibility of providing hot drinks ( <i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
150	Pursuant to Article 3 of Section 105 of the Action Plan, draft a law on the regulation of liability for crimes committed on the grounds of intolerance based on race, colour, religious beliefs, sexual orientation and gender identity, disability, and language, and submit this for consideration to the Verkhovna Rada of Ukraine in accordance with the established procedure ( <i>item 11.3 «Countering discrimination on the grounds of sexual orientation and gender identity» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>In the process of implementation</b> draft act has been developed. In the process of approval by relevant state bodies</p>

No.	Commissioner's recommendation	State of implementation
<b>To the Ministry of Defence of Ukraine</b>		
151	Bring the provisions of Chapter 2 of Section II of the Regulations on Military Medical Examination in the Armed Forces of Ukraine, approved by Ministry of Defence of Ukraine Order 402 of 14 August 2008, into alignment with Article 70 of Law of Ukraine 2801-XII "Fundamentals of the Legislation of Ukraine on Health Care" in terms of mandating the military medical commissions of military commissariats to determine the fitness of conscripts for military service, and ensuring adequate medical examination of citizens called up for military service ( <i>item 4.1 «Rights of military servants» of the Chapter 4 «Observing the rights of military servants»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>
152	Strengthen implementation of the measures provided by law for social protection of military personnel released from illegal detention/captivity, their psychological rehabilitation, and provision of appropriate healthcare ( <i>item 4.2 «Rights of Ukrainian military personnel in captivity» of the Chapter 4 «Observing the rights of military personnel»</i> )	 <p><b>Not implemented</b> relevant legal acts have not been approved</p>
153	relevant legal acts have not been approved Strengthen implementation of measures provided for by law to achieve equal rights and opportunities of women and men during their service in military units, including the prevention of gender-based violence ( <i>item 4.3 «Gender issues in the Armed Forces of Ukraine and other military formations» of the Chapter 4 «Observing the rights of military servants»</i> )	 <p><b>In the process of implementation</b> appropriate measures taken</p>
154	Amend regulations to expand the powers of the Military Law Enforcement Service in the Armed Forces of Ukraine ( <i>item 4.3 «Gender issues in the Armed Forces of Ukraine and other military formations» of the Chapter 4 «Observing the rights of military servants»</i> )	 <p><b>Not implemented</b> relevant legal acts have not been approved</p>

No.	Commissioner's recommendation	State of implementation
<b>to the Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine</b> <i>(Ministry of Reintegration of Temporarily Occupied Territories of Ukraine)</i>		
<b>155</b>	As the inter-agency coordinator of interaction of relevant public authorities, implement Cabinet of Ministers Resolution 1122 "Certain Issues of Social and Legal Protection of Persons Deprived of Liberty Due to Armed Aggression against Ukraine, after Their Release" of 11 December 2019 on providing free legal aid, psychological rehabilitation to released persons, and social and/or professional adaptation support to persons deprived of liberty as a result of armed aggression against Ukraine, after their release <i>(item 4.2 «Rights of Ukrainian military personnel in captivity» of the Chapter 4 «Observing the rights of military personnel»)</i>	<b>Not implemented</b> appropriate measures were not implemented 
<b>156</b>	Ensure the establishment of a State Register of civilians affected by armed conflict <i>(item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»)</i>	<b>In the process of implementation</b> (Annual Report, chapter 5, item 5.1, p.211) 
<b>To the Ministry for Communities and Territories Development of Ukraine</b>		
<b>157</b>	Develop and submit in the manner prescribed in law for consideration by the Verkhovna Rada of Ukraine a draft law on stock-taking of abandoned housing in order to free up housing stock for temporary accommodation of internally displaced persons, as well as a mechanism to compensate the owners of such property <i>(item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»)</i>	<b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine 
<b>158</b>	Together with local self-government bodies (or, if not available, with relevant military-civil administrations), take stock of abandoned housing in order to free up housing stock for temporary accommodation of internally displaced persons. <i>(item 5.2 «Restitution. Right to housing and compensation for property/material damage to civilians affected by armed conflict» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»)</i>	<b>Not implemented</b> no appropriate measures taken 

No.	Commissioner's recommendation	State of implementation
<b>Not implemented no appropriate measures taken To the Ministry of Justice of Ukraine</b>		
<b>159</b>	Develop a draft law to resolve certain issues concerning involvement of interpreters and translators in criminal proceedings, and submit this in the prescribed manner for consideration by the Verkhovna Rada of Ukraine ( <i>item 6.2 «Right to education» of the Chapter 6 «Observing social rights»</i> )	 <p><b>Implemented</b> draft Law of Ukraine (reg. no. 4332 of 05.11.2020)</p>
<b>160</b>	Develop a draft law aimed at bringing the content of Article 127 of the Criminal Code of Ukraine into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and submit this to the Verkhovna Rada of Ukraine ( <i>item 7.1 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	 <p><b>Implemented partially</b> draft Law of Ukraine is in the process of approval by relevant state bodies</p>
<b>161</b>	Bring the conditions of detention and healthcare in medical units in pre-trial detention centres and detention centres into line with sanitary and hygienic requirements established by European penitentiary rules, the Criminal Enforcement Code of Ukraine and Law of Ukraine 3352-XII "On Pre-trial Detention" #of 30 June 1993. In particular, ensure the proper functioning of ventilation systems, and abolish the practice of placing prisoners in overcrowded cells that do not allow for the minimum spatial requirements for prisoners in accordance with international standards ( <i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	 <p><b>Not implemented</b> no appropriate measures taken</p>
<b>162</b>	Approve the Procedure for conducting medical examinations of persons sentenced to deprivation of liberty in correctional centres for the purpose of implementing part one of Article 59 of the Criminal Executive Code of Ukraine ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	 <p><b>Not implemented</b> relevant legal act has not been approved</p>

No.	Commissioner's recommendation	State of implementation
163	Ensure that vacancies in the medical units of the Health Centre of the State Penitentiary Service of Ukraine are filled ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Implemented partially</b> 50% of vacancies in the medical units of Health Centre of the SPS are filled 
164	Ensure compliance with Ministry of Health of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, and State Drug Control Service of Ukraine Order 821/937/1549/5/156 "On Approval of the Procedure for Interaction of Healthcare Facilities, Law Enforcement Agencies, Pre-Trial Detention Centres and Correctional Centres to Ensure Continuity of Substitution Maintenance Therapy" of 22 October 2012 ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Not implemented</b> no appropriate measures taken 
165	Provide compulsory tuberculosis screening for newly arrived prisoners. in accordance with the Unified Clinical Protocol of Primary, Secondary (Specialized) and Tertiary (Highly Specialized) Healthcare "Tuberculosis," approved by Ministry of Health of Ukraine Order 620 of 4 September 2014. Conduct preventive medical examinations of all prisoners twice a year ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Not implemented</b> no appropriate measures taken 
166	Ensure access of medical units of the Health Centre of the State Penitentiary Service of Ukraine to the register of patients with diabetes, and ensure that this register is kept updated with details of prisoners held in penitentiary institutions ( <i>item 7.4 «Right to health care and medical assistance» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Not implemented</b> no appropriate measures taken 
167	Develop and approve a plan of legal education activities to raise legal awareness among the population and update them about their rights and freedoms. Work with and engage representatives of free secondary legal aid centres to raise awareness of human rights among people in different types of detention. Ensure that lawyers from the free secondary legal aid system regularly visit places of detention ( <i>item 7.5 «Right to professional legal aid» of the Chapter 7 «Observing the right not to be subjected to torture»</i> )	<b>Not implemented</b> relevant legal act has not been approved 

No.	Commissioner's recommendation	State of implementation
168	Take measures to expedite the conclusion of an Agreement between Ukraine and Greece on the supervision of conditionally convicted or conditionally released offenders ( <i>item 8.2 «Rights of citizens of Ukraine who are in penitentiary institutions abroad» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>In the process of implementation</b> Draft law is developed by Greece</p>
169	Take measures to accelerate the conclusion of an Extradition Agreement between Ukraine and the Kingdom of Thailand ( <i>item 8.2 «Rights of citizens of Ukraine who are in penitentiary institutions abroad» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>In the process of implementation</b> Draft law is developed by the Kingdom of Thailand</p>
170	Prepare proposals for the conclusion of extradition agreements between Ukraine and other countries, in particular with the People's Republic of Bangladesh, the Lao People's Democratic Republic, the Arab Republic of Egypt, and the Federal Republic of Nigeria ( <i>item 8.2 «Rights of citizens of Ukraine who are in penitentiary institutions abroad» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>In the process of implementation</b> draft laws are developed by the other party</p>
171	In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Part 3 of Article 17 of Law of Ukraine 2939-VI "On Access to Public Information" of 13 January 2011, regarding the identification of specific mechanisms for conducting state oversight of access to public information ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
172	In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Articles 38, 212-3 and 254 of the Code of Ukraine on Administrative to simplify the procedures for imposing administrative sanctions and increase the penalties for violating the right to information ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>

No.	Commissioner's recommendation	State of implementation
173	Develop, and submit in the prescribed manner, amendments to Cabinet of Ministers of Ukraine Resolution 583 "Issues of Implementation of the Law of Ukraine 'On Access to Public Information' in the Secretariat of the Cabinet of Ministers of Ukraine and central and local executive bodies" of 25 May 2011, to update and expand the list of exemplary internal organizational regulations. in the area of access to public information in the Secretariat of the Cabinet of Ministers of Ukraine and central and local executive bodies, and in local self-government bodies. These draft amendments should take into account the ambiguous practice of arranging work, and the lack of a consistent approach to publishing information, and copying and printing documents ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	 <p><b>Implemented partially</b> Resolution of the Cabinet of Ministers of Ukraine #4 of 15.01.2020. Relevant changes have been made to a number of regulations of central executive bodies</p>
174	In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Law of Ukraine 393/96-VR "On Petitions of Citizens" of 2 October 1996. In particular, amendments should cover consideration of petitions from legal entities, vexatious petitions (i.e. those constituting an abuse of the right to petition), and development of clear mechanisms to monitor compliance with the legislation on citizens' petitions enshrined in Article 28 of the Law of Ukraine "On Petitions of Citizens" 393/96-BP of October 2, 1996 ( <i>item 9.2 «Right to petition» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	 <p><b>Implemented partially</b> draft Law of Ukraine (reg. no. 3475 of 14.05.2020)</p>
175	In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Articles 212-3 and 254 of the Code of Ukraine on Administrative Offences to simplify the procedure for imposing administrative sanctions and increase the penalties for violations of the right to petition, as well clarifying the phrase: "other violation of the Law of Ukraine 'On Petitions of Citizens'" ( <i>item 9.2 «Right to petition» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	 <p><b>Not implemented</b> draft law has not been submitted to the Verkhovna Rada of Ukraine</p>
176	Take measures to expedite the conclusion of the Agreement between Ukraine and Greece on the Supervision of Probationers or Parolees ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	 <p><b>In the process of implementation</b> draft law is developed by Greece</p>

No.	Commissioner's recommendation	State of implementation
<b>To the Ministry of Foreign Affairs of Ukraine</b>		
177	Act to increase international awareness on the rights of Ukrainian citizens persecuted by the Russian Federation on baseless and politically motivated charges in order to increase pressure international for their release, through Ukraine's participation in international organizations and special missions and cooperation with foreign states ( <i>item 8.1 «Rights of citizens of Ukraine prosecuted by the Russian Federation on baseless and politically motivated charges» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>Implemented</b> appropriate measures were implemented</p>
178	Ensure regular visits to citizens of Ukraine who are under arrest, detained, imprisoned or serving sentences abroad in order to effectively monitor observance of their rights and freedoms ( <i>item 8.2 «Rights of citizens of Ukraine who are in penitentiary institutions abroad» of the Chapter 8 «Observing the rights of Ukrainian citizens who are in places of detention abroad and in the temporarily occupied territory»</i> )	 <p><b>In the process of implementation</b> appropriate measures were mostly implemented</p>
179	Develop a draft regulatory legal act on waiving consular fees for administrative services for persona with disabilities who are temporarily or permanently residing outside Ukraine ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	 <p><b>Implemented</b> draft Law of Ukraine (reg. no. 4539 of 24.12.2020)</p>
180	Prepare for the establishment of a Consulate of Ukraine in Wroclaw, Poland. The new consular district should cover Wielkopolskie, Lubuskie, Opolskie, and Lower Silesia Voivodships in the Republic of Poland ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	 <p><b>In the process of implementation</b> the issue was worked out, proposals to the President of Ukraine on the establishment of a consular office were prepared</p>

No.	Commissioner's recommendation	State of implementation
181	Provide details of contact information for the Ukrainian Parliament Commissioner for Human Rights on the websites of diplomatic missions outside Ukraine, in order to enable Ukrainian citizens to report violations of their rights to the Commissioner ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	<b>Implemented</b>  the Ministry of Foreign Affairs of Ukraine instructed foreign diplomatic missions to post on their websites the contact information of the Commissioner
182	Explore the possibility of concluding an additional protocol to the Agreement between the Cabinet of Ministers of Ukraine and the Government of the State of Israel on Temporary Employment of Ukrainian Workers in Certain Sectors of the Labour Market of the State of Israel, on the employment of Ukrainian citizens in the care sector on the territory of the State of Israel ( <i>item 13.2 «Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine» of the Chapter 13 «Protection of rights and freedoms of Ukrainian citizens at the international level»</i> )	<b>In the process of implementation</b>  draft protocol is developed by the State of Israel
<b>Ministry of Digital Transformation of Ukraine</b>		
183	Produce a video guide on the procedure for registration with the Unified State Open Data Web Portal and the procedure for creating and uploading open datasets to the web portal, and post this video guide on the portal ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>Implemented</b>  relevant e-learning course is posted on the Unified State Open Data Web Portal
184	Develop and implement an integrated electronic system that would enable citizens to track their petitions from submission to state bodies or local self-government bodies in real-time. The system would independently track the receipt of the petition, the processing time, and the stages of its consideration, and would generate a response to the petitioner ( <i>item 9.2 «Right to petition» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>In the process of implementation</b>  Resolution of the Cabinet of Ministers Ukraine #976 of 27.11.2019 relevant services is available for submission of petitions to state bodies
<b>State Service of Ukraine for Geodesy, Cartography and Cadastre</b>		
185	To develop and submit for approval in accordance with the established procedure a standard template of organizational and administrative order on the disposal of agricultural land ( <i>item 2.3 «Right to land» of the Chapter 2 «Observing economic rights»</i> )	<b>Implemented</b>  standard forms of orders were created on the basis of the Automated document management system «DOK PROF 3»

No.	Commissioner's recommendation	State of implementation
<b>To the Pension Fund of Ukraine</b>		
<b>186</b>	To make financial and economic calculations of the expenditures needed to provide pension payments to internally displaced persons for earlier periods and to citizens of Ukraine living in the temporarily occupied territories or in settlements on the 'contact line' (item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»)	<b>Implemented partially</b> (Annual Report, chapter 5, item 5.1, p.214) 
<b>To the National Bank of Ukraine</b>		
<b>187</b>	Provide clarification for institutions rendering financial services regarding the inadmissibility of violating the rights of citizens from the temporarily occupied territories to access banking services (item 5.3 «Rights of citizens of Ukraine living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»)	<b>Implemented</b> relevant clarification has been developed 
<b>To the National Agency of Ukraine for Civil Service</b>		
<b>188</b>	Develop and implement a unified programme for advanced training of state officers on access to public information, for administrators in charge of releasing information (item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»)	<b>Not implemented</b> relevant programme has not been developed 
<b>To the Central Election Commission</b>		
<b>189</b>	Amend the Requirements for Premises of Precinct Election Commissions and Premises for Voting, approved by the Central Election Commission on 19 January 2012 No. 5, so that they are in line with the provisions of DBN of Ukraine V.2.2-40:2018 "Inclusiveness of Buildings and Structures" approved by Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine Order 327 of 30 November 2018 (item 11.1 «Combating discrimination on the grounds of disability and health conditions» of the Chapter 11 «Compliance with the principle of non-discrimination»)	<b>Implemented</b> resolution of CEC No. 164 dated 08.08.2020 

No.	Commissioner's recommendation	State of implementation
<b>To the State Migration Service of Ukraine</b>		
<b>190</b>	Intensify efforts to document representatives of the Roma national minority ( <i>item 11.2 «Equal observance of rights and freedoms of national minorities» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> (Annual Report, chapter 1, item 1.2.2, p.39) 
<b>To the State Statistics Service of Ukraine</b>		
<b>191</b>	Draft a decree on the collection of data for monitoring gender equality and submit this for consideration to the Cabinet of Ministers of Ukraine, taking into account the recommendations of the Statistical Department of the European Union (Eurostat) and the United Nations Statistics Division ( <i>item 11.5 «Respect for the equal rights and opportunities of women and men» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
<b>To the Prosecutor-General's Office</b>		
<b>192</b>	Prepare draft amendments to relevant sectoral regulations to bring them into line with Law of Ukraine 2617-VIII "On Amendments to Certain Legislative Acts of Ukraine to Simplify Pre-trial Investigation of Certain Categories of Criminal Offences" of 22 November 2018 (that enters into force on 1 July 2020) ( <i>item 6.1 «Rights of participants in criminal proceedings during detention, arrest and investigation» of the Chapter 6 «Compliance with the rule of law in the exercise of justice»</i> )	<b>Implemented</b> approved: orders of the General Prosecutor #298 and #299 of 30.06.2020, #509 of 04.11.2020 with the Ministry of Justice of Ukraine #2655/5/362 of 06.08.2020 with other law enforcement bodies # 337/564/206/123/363/85 of 28.07.2020 
<b>193</b>	Ensure effective supervision of compliance with the law by pre-trial investigative bodies, in particular the requirements of Article 214 of the Criminal Procedure Code of Ukraine with regard to the consideration of statements and reports of criminal offences, and proper control over the organization of pre-trial investigations ( <i>item 6.1 «Rights of participants in criminal proceedings during detention, arrest and investigation» of the Chapter 6 «Compliance with the rule of law in the exercise of justice»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 

No.	Commissioner's recommendation	State of implementation
194	Strengthen oversight of compliance with the law during pre-trial investigation of crimes committed against mass media workers and other persons in connection with the exercise of their right to freedom of speech ( <i>Chapter 12 «Freedom of speech in Ukraine»</i> )	<b>In the process of implementation</b> (Annual Report, chapter 1, item 1.4, p.64) 
<b>To the State Bureau of Investigation</b>		
195	Take comprehensive measures to ensure that all information received from statements and reports, as well as information obtained from other sources (including requests made by the Commissioner or the prosecutor's office) about circumstances that may indicate crimes that belong to the jurisdiction of the State Bureau of Investigation are promptly entered in the Unified Register of Pre-Trial Investigations in line with the procedure stipulated in Article 214 of the Criminal Procedure Code of Ukraine, and ensure the investigation of such cases ( <i>item 7.2 «Right to liberty and security of person» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Implemented</b> non-compliance with the relevant measures during the year was not recorded 
196	Take measures to prevent State Bureau of Investigation officials from redirecting statements about illegal actions of law enforcement officers to the bodies in which they serve, or to other institutions under their control ( <i>item 7.2 «Right to liberty and security of person» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> cases of redirection of relevant complaints were recorded 
197	Ensure that the territorial bodies of the State Bureau of Investigation are equipped with detention rooms and that these are used in accordance with the requirements of national legislation ( <i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> no appropriate measures taken 
<b>To the National Police of Ukraine</b>		
198	Systematically conduct awareness-raising activities for its staff on the impermissibility of ethnic profiling ( <i>item 11.2 «Equal observance of rights and freedoms of national minorities» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> (Annual Report, chapter 1, item 1.2.2, p.36) 

No.	Commissioner's recommendation	State of implementation
199	Ensure that LGBTI people are able exercise their legally guaranteed rights (in particular, freedom of expression and personal inviolability, right to freedom from inhuman or degrading treatment, freedom of peaceful assembly, etc.) and ensure that offences related to discrimination on the grounds of sexual orientation and gender identity are prosecuted in accordance with Article 161 of the Criminal Code of Ukraine ( <i>item 11.3 «Countering discrimination on the grounds of sexual orientation and gender identity» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
200	Strengthen oversight of compliance with the law during pre-trial investigation of crimes committed against mass media workers and other persons in connection with the exercise of their right to freedom of speech ( <i>Chapter 12 «Freedom of speech in Ukraine»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
201	Ensure effective and impartial pre-trial investigation of criminal offences related to murders and attacks on public figures (activists), journalists, and other violations of freedom of speech ( <i>Chapter 12 «Freedom of speech in Ukraine»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
202	Pay special attention to inaction and inappropriate responses by authorized state bodies and their officials to crimes committed against journalists and public figures. Develop new legal mechanisms to protect the right to freedom of conscience and speech in Ukraine, taking into account the latest technological and cyber challenges and threats, and, in particular, strengthen guarantees to protect media representatives and public activists from the illegal actions of state officials, politicians, and oligarchic structures ( <i>Chapter 12 «Freedom of speech in Ukraine»</i> )	<b>Not implemented</b> relevant legal act has not been approved 
<b>Coordination Centre for Legal Aid</b>		
203	Ensure that centres for free secondary legal aid prioritize the provision of primary and secondary legal aid to socially vulnerable categories of persons in places of detention and ensure cooperation between these centres and detention facilities, in line with item 8 of Article 13 of Law of Ukraine 776/97-VR "On the Ukrainian Parliament Commissioner for Human Rights" of 23 December 1997 ( <i>item 7.5 «Right to professional legal aid» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> no appropriate measures taken 

No.	Commissioner's recommendation	State of implementation
<b>High Council of Justice, the High Qualifications Commission of Judges of Ukraine</b>		
<b>204</b>	Take measures to accelerate the filling of vacant positions of judges in the courts. <i>(item 6.2 «Right to education» of the Chapter 6 «Observing social rights»)</i>	<b>Implemented partially</b> appropriate measures implemented by HCJ HQCJ have not been formed 
<b>Central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, Kyiv State City Administration and oblast councils</b>		
<b>205</b>	Implement the provisions of the United Nations Guidelines on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) <i>(item 7.1 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»)</i>	<b>Not implemented</b> relevant legal acts have not been approved 
<b>206</b>	Ensure effective internal control over the observance of human rights in places under their jurisdiction and control where persons deprived of their liberty are or may be detained, by order of a public authority or upon its instructions, or with its knowledge or tacit consent <i>(item 7.1 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»)</i>	<b>Not implemented</b> results of monitoring show that no appropriate measures have been taken 
<b>207</b>	Ensure unconditional compliance with the requirements of the Fire Safety Rules in Ukraine approved by Ministry of Internal Affairs of Ukraine Order 1417 of 30 December 2014, and with sectoral regulations on fire safety in all places of detention <i>(item 7.2 «Right to liberty and security of person» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»)</i>	<b>Not implemented</b> no appropriate measures taken 

No.	Commissioner's recommendation	State of implementation
208	Provide full financing, maintenance and support of activity to residential and detention bodies, institutions and facilities in order to bring the living conditions in them into line with sanitary and hygienic requirements established by the legislation of Ukraine and in accordance with European standards ( <i>item 7.3 «Right to protection from torture, cruel, inhuman or degrading treatment or punishment» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> results of monitoring show that no appropriate measures have been taken 
209	Take comprehensive measures to arrange unimpeded access to buildings and premises for people with disabilities in accordance with DBN of Ukraine B.2.2-40:2018 "Inclusiveness of buildings and structures," approved by Ministry of Regional Development, Construction and Housing of Ukraine Order 327 of 30 November 2018 ( <i>item 7.3. «Right to an adequate standard of living, including adequate food, clothing and housing» of the Chapter 7 «Observing the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment»</i> )	<b>Not implemented</b> results of monitoring show that no appropriate measures have been taken 
<b>Central executive bodies, other state bodies, and local self-government bodies</b>		
210	To strengthen control over compliance with labour law requirements by the employers, including on timely payment of wages, as well as on formalization of labour relations with employees ( <i>item 1.3 «Right to social work» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> no appropriate measures were implemented 
211	Ensure the implementation of effective employment programs for people with disabilities ( <i>item 1.3 «Right to social work» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> no appropriate measures were implemented 
212	To ensure the performance of functions in the field of protection of children's rights provided by national legislation, in particular, the Family Code of Ukraine, the Laws of Ukraine "On Child Protection" # 2402-III of 26 April 2001, "On Ensuring Organizational and Legal Conditions of Social Protection of Orphaned Children and children Deprived of Parental Care" #2342-IV of 13 January 2005, "On the Framework of Social Protection of Homeless Persons and Homeless Children" #2623-IV of 2 June 2005, the Procedure for conducting activities related to the protection of children's rights by the guardianship authorities, approved by the Resolution of the Cabinet of Ministers of Ukraine #866 of 24 September 2008 #866 ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	<b>Implemented partially</b> results of monitoring show that appropriate measures have been taken 

No.	Commissioner's recommendation	State of implementation
213	Ensure that public information is made available on their websites, in accordance with the list and requirements in Articles 101, 15 of Law of Ukraine 2939-VI "On Access to Public Information" of 13 January 2011 and Cabinet of Ministers of Ukraine Resolution 835 "On Approval of the Regulation on Datasets to be Published in the Form of Open Data" of 21 October 2015 ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>In the process of implementation</b> the selective monitoring showed that relevant information was made available 
214	Develop and implement a record-keeping system for public information in accordance with Law of Ukraine 2939-VI "On Access to Public Information" of 13 January 2011 ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
215	Review internal organizational regulations, taking into account the reduced marginal costs for copying and setting of marginal costs for scanning documents resulting from the Government's amendments to the Cabinet of Ministers of Ukraine Resolution 740 "On Approval of the Marginal Norms of Costs for Copying or Printing Documents Provided following Requests for Information" of 13 July 2011 ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
216	In their activity, take into account the legal positions stated in Plenum of the High Administrative Court of Ukraine Resolution 10 "On Practical Application of the Law on Access to Public Information by Administrative Courts" of 29 September 2016, and in the Review of Jurisprudence that contains legal positions for 2018-2019 and which was conducted by the Supreme Court to facilitate systematic understanding of certain issues related to violations of the right to access to public information ( <i>item 9.1 «Right to information» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
217	Strictly observe the requirements of Law of Ukraine "On Petitions of Citizens" of October 2, 1996 in accordance to their authority including in the consideration of electronic petitions submitted by citizens ( <i>item 9.2 «Right to petition» of the Chapter 9 «Observance of the right to information and to petition state bodies»</i> )	<b>Implemented partially</b> results of monitoring show that appropriate measures have been taken 
218	Ensure protection of personal data and non-disclosure by employees of personal data that becomes known to them in connection with the performance of their professional or work duties, unless otherwise provided for in law ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 

No.	Commissioner's recommendation	State of implementation
219	Look through the information posted on the official website of the respective body to prevent disclosure of personal data ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
220	When providing answers to requests made by third parties, comply with the requirements of Law of Ukraine 2297-VI Pay attention, in particular, to whether there is a confirmation that the content of the request corresponds to the powers of the requester, and whether the purpose and legal grounds correspond to the request ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
221	Uphold the right of individuals to familiarize themselves with their own personal data by providing opportunities for this to happen ( <i>item 10.2 «Right to access one's own personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
222	Pursuant to the requirements of Article 12 of Law of Ukraine 2297-VI "On the Protection of Personal Data" of 1 June 2010, inform each person whose personal data have been collected about the controllers of personal data, the composition and content of the collected personal data, the person's rights established by the Law, the purpose of collecting personal data, and the persons to whom personal data are transferred ( <i>item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
223	Analyse the relevant body's compliance with the requirements of the legislation on protection of personal data ( <i>item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are mostly taken 
224	Ensure that infrastructure is accessible in accordance with DBN of Ukraine V.2.2-40:2018 "Inclusiveness of Buildings and Structures" approved by the Ministry for Communities and Territories Development of Ukraine, Construction and Housing and Communal Services of Ukraine Order 327 of 30 November 2018 to create a barrier-free architectural environment for persons with disabilities and/or limited mobility ( <i>item 11.1 «Combating discrimination on the grounds of disability and health conditions» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> (Annual Report, chapter 1, item 1.2.1, p.33) 

No.	Commissioner's recommendation	State of implementation
225	In the first half of 2020, conduct needs assessments of Roma in their districts and develop comprehensive action plans to address the social issues faced by Roma ( <i>item 11.2 «Equal observance of rights and freedoms of national minorities» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>In the process of implementation</b> results of monitoring show that appropriate measures have been taken</p>
226	Take measures to address the social protection needs of Roma people who have found themselves in difficult life circumstances ( <i>item 11.2 «Equal observance of rights and freedoms of national minorities» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>In the process of implementation</b> results of monitoring show that appropriate measures have been taken</p>
227	Strengthen awareness-raising activities aimed at raising citizens' legal understanding of issues relevant to preventing and combating discrimination ( <i>item 11.3 «Countering discrimination on the grounds of sexual orientation and gender identity» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	 <p><b>In the process of implementation</b> results of monitoring show that appropriate measures have been taken</p>
<b>Oblast administrations and Kyiv State City Administration</b>		
228	To take measures to strengthen local authorities' control over the conditions of care and education of children in institutions, the quality of services to children and families raising orphaned children and children deprived of parental care or who found themselves in difficult life circumstances ( <i>item 3.1 «Rights of the child in alternative care system» of the Chapter 3 «Observing the rights of the child»</i> )	 <p><b>Implemented partially</b> the monitoring showed that appropriate measures are mostly taken</p>
229	To take measures to prevent the restriction of children's right to education in the context of decentralization due to the adoption by local authorities and local self-government bodies of local regulations that contradict the legislation of Ukraine on education ( <i>item 3.2 «Right of the child and family in the context of decentralization» of the Chapter 3 «Observing the rights of the child»</i> )	 <p><b>Implemented partially</b> the monitoring showed that appropriate measures are mostly taken</p>

No.	Commissioner's recommendation	State of implementation
<b>Luhansk and Donetsk Oblast Civil Military and Kherson State Oblast Administrations</b>		
<b>230</b>	Ensure registration of reports of persons missing in special circumstances and information on their family members at all the checkpoints on the 'contact line'/administrative border and provide necessary legal assistance to applicants in organizing the search for such persons ( <i>item 5.1 «Right of conflict-affected civilians to social protection» of the Chapter 5 «Observing rights and freedoms of persons who suffered temporary occupation and armed conflict»</i> )	<b>Not implemented</b> no appropriate measures taken 
<b>To the entities implementing measures to prevent and combat domestic violence and gender-based violence</b>		
<b>231</b>	Strengthen the mechanism for establishing cooperation for the prompt referral and triangulation of data on the number of cases of domestic violence ( <i>item 11.6 «Right to protection against domestic violence» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Not implemented</b> no appropriate measures taken 
<b>To Local state administrations</b>		
<b>232</b>	To ensure proper guardianship and custody services and strengthen the oversight of the guardians' activities ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	<b>Not implemented</b> citizens' appeals to the Commissioner testify to the facts of inaction of such bodies to protect persons in need of guardianship and care 
<b>To Local self-government bodies</b>		
<b>233</b>	To take measures to ensure the implementation of their own and delegated powers in the field of social protection of the population, in particular in the provision of social services, organization of social protection of homeless persons and persons released from prisons, their re-socialization, privileged transportation for the burial of certain categories of persons ( <i>item 1.1 «Right to social protection» of the Chapter 1 «Observing social rights»</i> )	<b>Implemented partially</b> results of the monitoring of individual communities showed that the powers are exercised within the financial possibilities, without taking into account the actual needs of the population 

No.	Commissioner's recommendation	State of implementation
234	To undertake surveys of typical groups of houses and develop housing renovation plans ( <i>item 2.1 «Right to housing» of the Chapter 2 «Observing economic rights»</i> )	<b>Not implemented</b> no appropriate measures taken 
235	Require employees who have access to personal data to sign written declarations on non-disclosure of personal data that they have access to in connection with performance of their professional or work duties ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are taken 
236	Ensure that the procedures for processing of personal data are brought into line with the requirements of the current legislation on personal data protection. In particular, take measures to ensure an adequate level of protection of personal data stored in personal files (make or update a list describing the documents contained in each case file, and do not collect or store excessive information) ( <i>item 10.1 «Right to protection of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are taken 
237	Stop demanding consent from employees and applicants for personal data processing in cases when the processing of the personal data is carried out on other grounds provided for by law ( <i>item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are taken 
238	Refrain from actions and decisions that may be discriminatory and strictly fulfill the obligation to ensure compliance with the principle of non-discrimination in their activities, as set out in Article 12 of Law of Ukraine 5207-VI "On the Principles of Prevention and Countering Discrimination in Ukraine" of 6 September 2012, and conduct awareness-raising activities on the need to ensure the right of people to different views and beliefs ( <i>item 11.3 «Countering discrimination on the grounds of sexual orientation and gender identity» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>Implemented partially</b> results of monitoring show that appropriate measures have been taken 
239	Ensure implementation of the legislation regulating state policy on the observance of the right to education in the native language, so that representatives of national minorities living in territorial communities are able to enjoy this right at district, city, settlement and village level ( <i>item 11.4 «Observance of the rights of citizens to non-discrimination on the grounds of language» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> results of monitoring show that appropriate measures have been taken 

No.	Commissioner's recommendation	State of implementation
<b>To local executive authorities and local self-government bodies</b>		
<b>240</b>	To create conditions in cultural institutions for persons with disabilities and low-mobility groups, providing architectural accessibility, reasonable accommodation, universal design of premises, providing relevant publications to the libraries ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are taken 
<b>241</b>	To contribute to appropriate measures to preserve the staffing capacity of cultural institutions, improve the organization of capacity building of cultural workers, update the incentive system in the field of cultural and artistic activities ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are taken 
<b>242</b>	To take measures to strengthen and update the technical and training resources of cultural institutions, to ensure their interrupted activity ( <i>item 1.5 «Right to culture» of the Chapter 1 «Observing social rights»</i> )	<b>In the process of implementation</b> the selective monitoring showed that appropriate measures are taken 
<b>243</b>	Incorporate gender analysis into the development of regional and local programmes, as well as the recommendations of the CEDAW Committee on CEDAW implementation and the provisions of the Beijing Declaration and Platform for Action ( <i>item 11.5 «Respect for the equal rights and opportunities of women and men» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 
<b>244</b>	Organize and conduct an awareness-raising campaign in 2020 among Ukrainian citizens about the mechanism for protection against domestic and gender-based violence and the procedures for seeking protection and assistance in case of violence ( <i>item 11.6 «Right to protection against domestic violence» of the Chapter 11 «Compliance with the principle of non-discrimination»</i> )	<b>In the process of implementation</b> appropriate measures were implemented 

No.	Commissioner's recommendation	State of implementation
<b>Controllers of personal data</b>		

**245**

Ensure that the procedures for processing personal data are brought into line with the requirements of the current legislation on personal data protection, namely:

1. Amend/develop internal legal documents in accordance with the requirements of the legislation on personal data protection, and specify the procedure for processing personal data in these documents.
2. Ensure the recording of operations related to the processing of personal data, and make these records accessible.
3. Stop demanding consent for personal data processing in cases when such processing is carried out on other grounds provided for by the law.
4. Develop and approve a document (action plan/guidelines etc) on the sequence of activities in cases of unauthorized access to personal data, damage to equipment, and emergencies, etc (*item 10.3 «Observance of the right to privacy by the controllers of personal data» of the Chapter 10 «Observance of the right to privacy»*)

**Implemented partially**

the selective monitoring showed that appropriate measures are taken

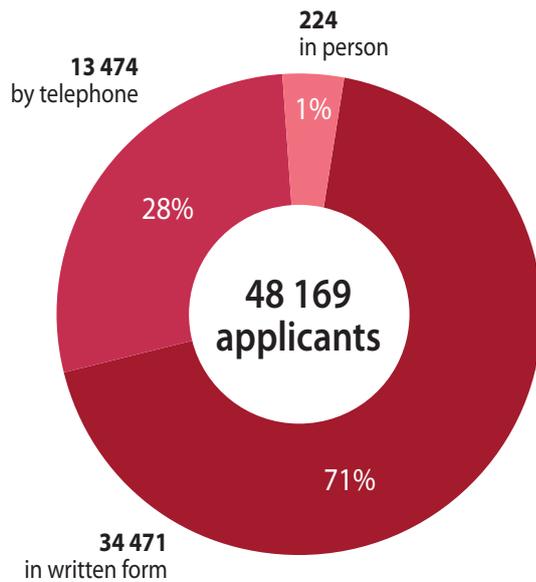


# ANNEXES

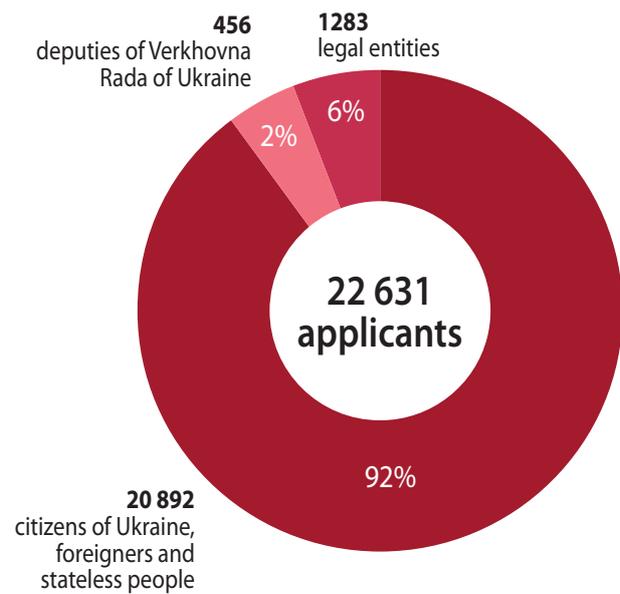


## INFORMATION ON RECEIVING AND CONSIDERING CITIZENS REPORTS

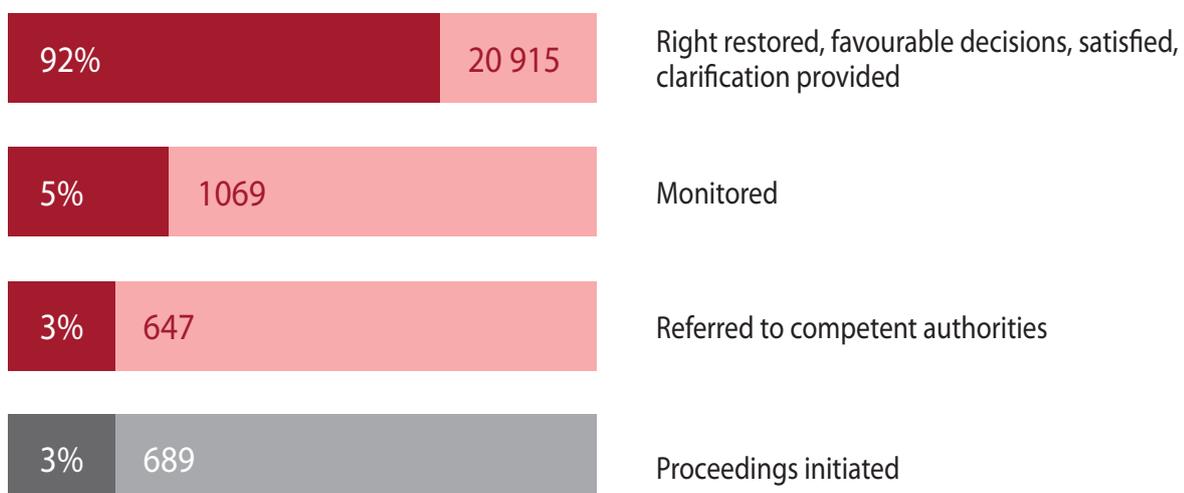
### Number of people reported on human rights violations



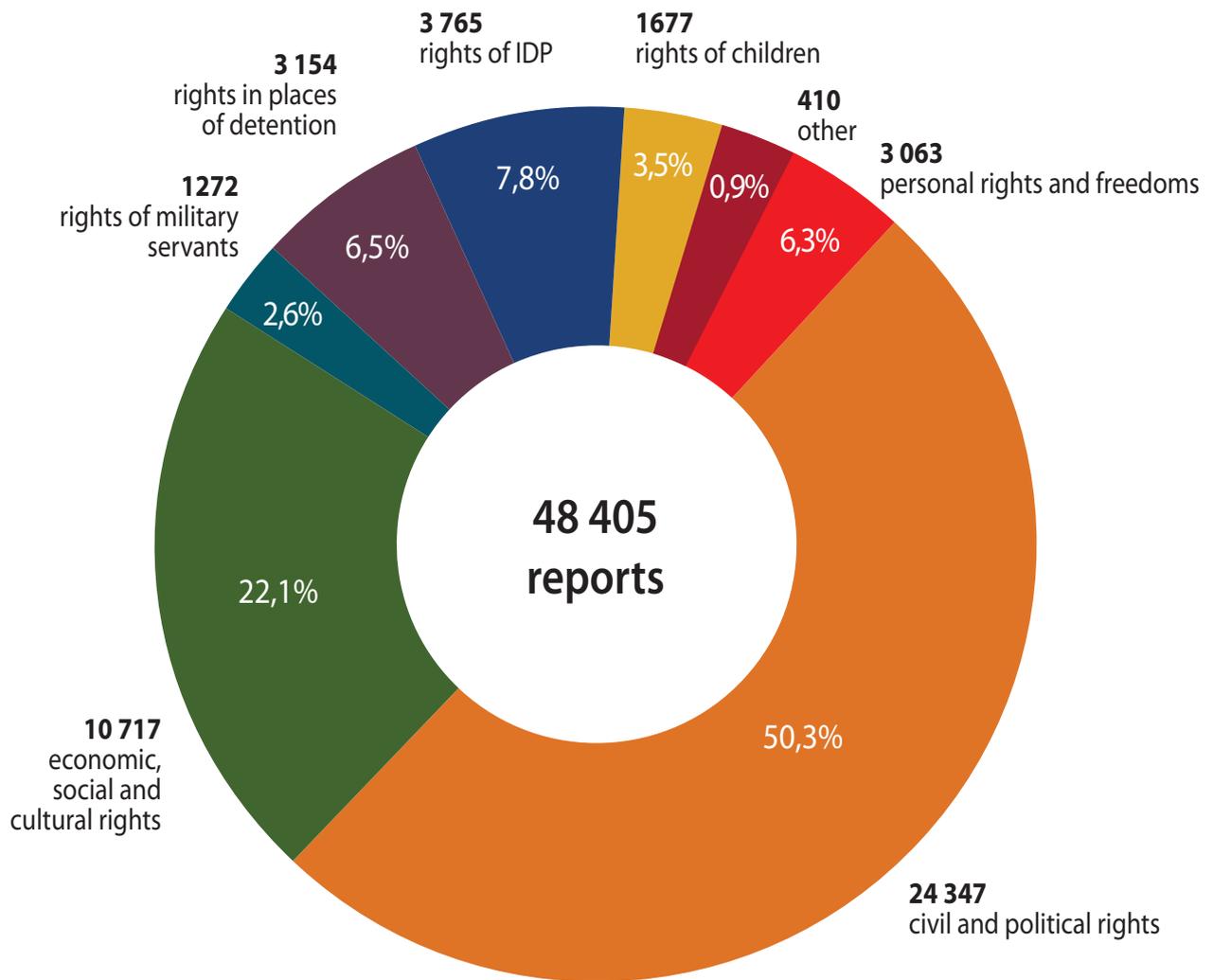
### Applicants



### ACTIONS TAKEN AFTER CONSIDERATION OF REPORTS

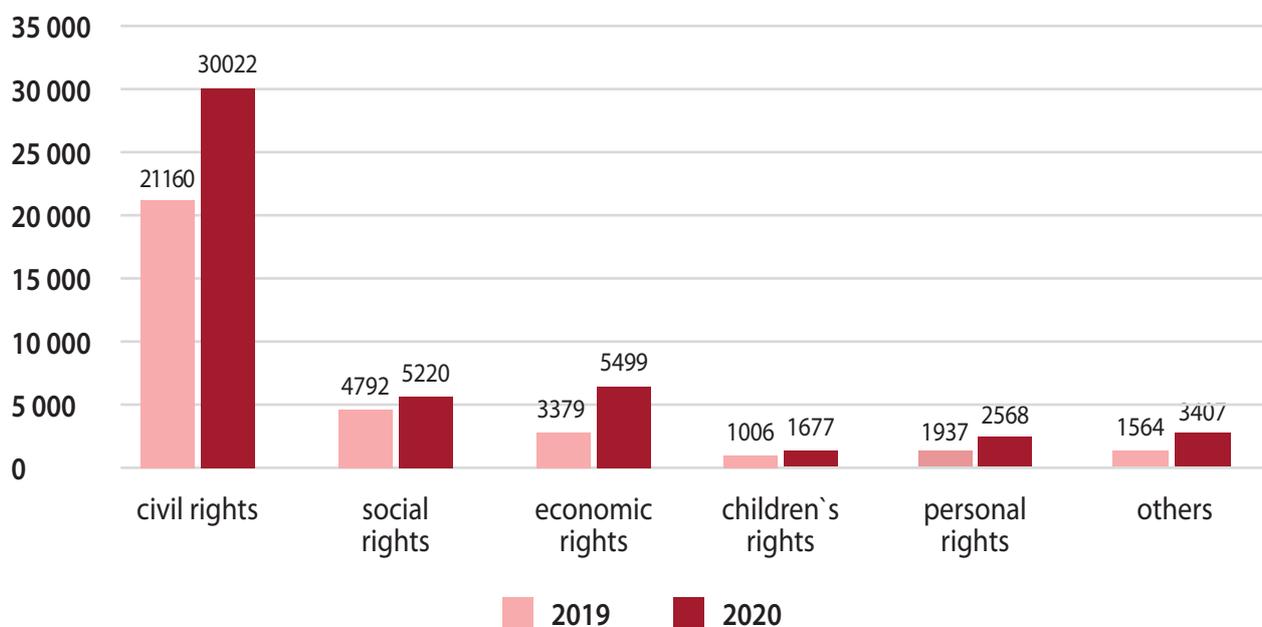


## RIGHTS VIOLATIONS REPORTED

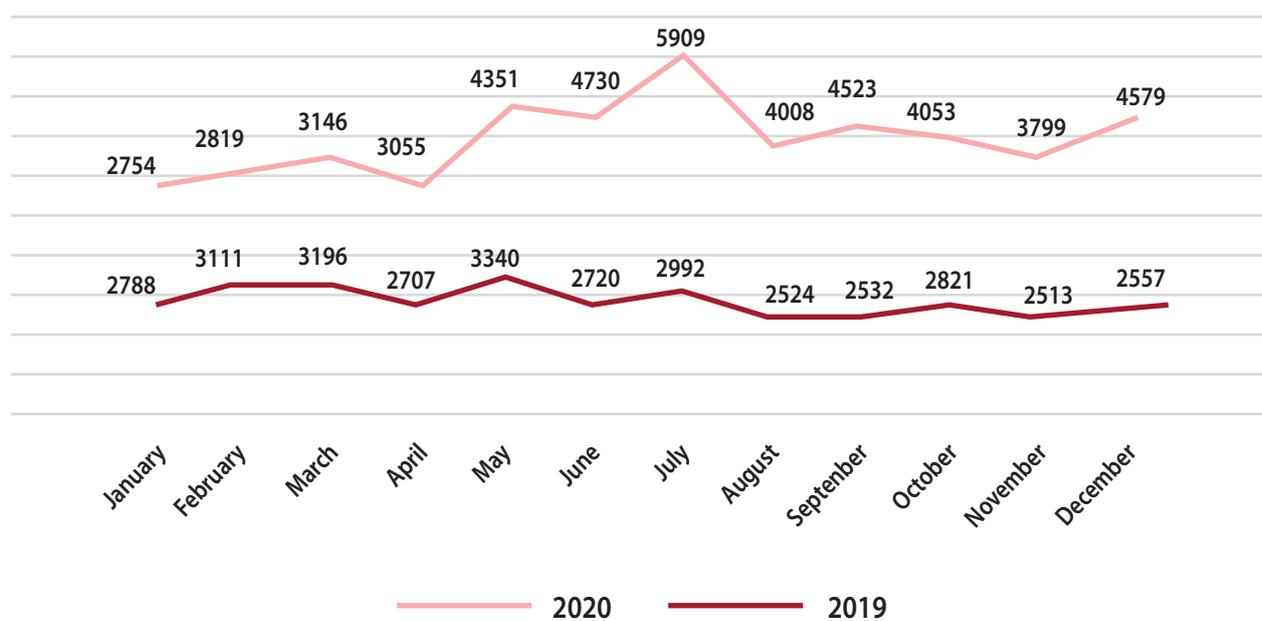


## RIGHTS VIOLATIONS REPORTED

### NUMBER OF RIGHTS VIOLATION REPORTED

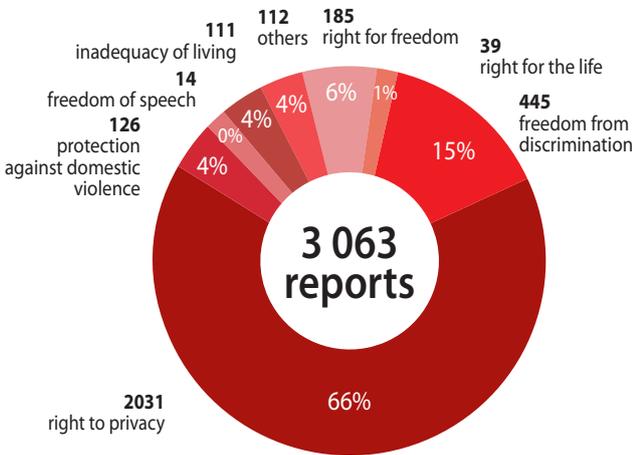


### NUMBER OF RIGHTS VIOLATION REPORTS

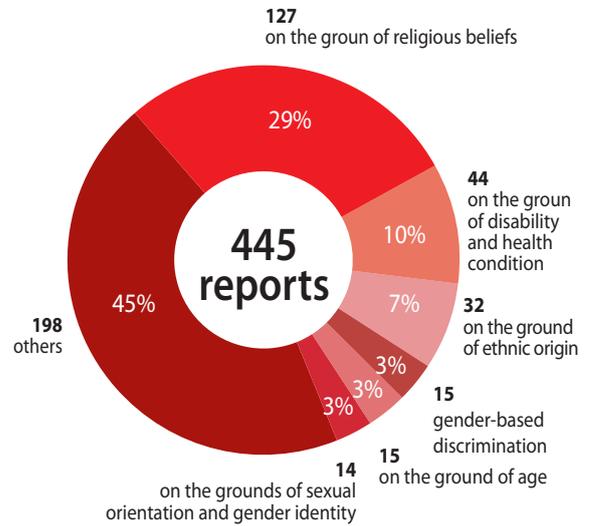


## NUMBER OF REPORTS BY TYPE OF RIGHTS VIOLATION

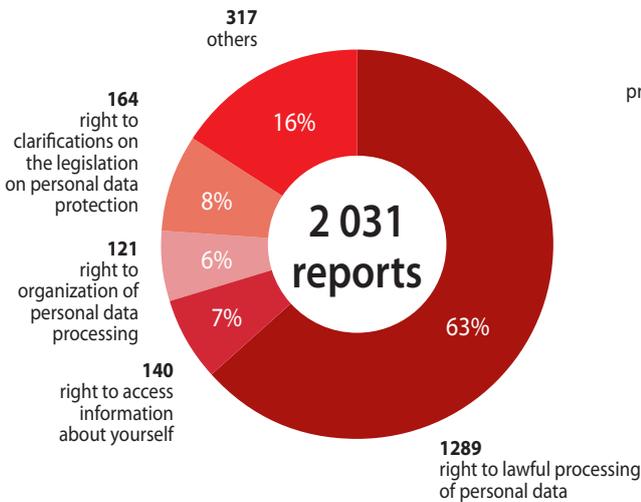
### Personal rights and freedoms



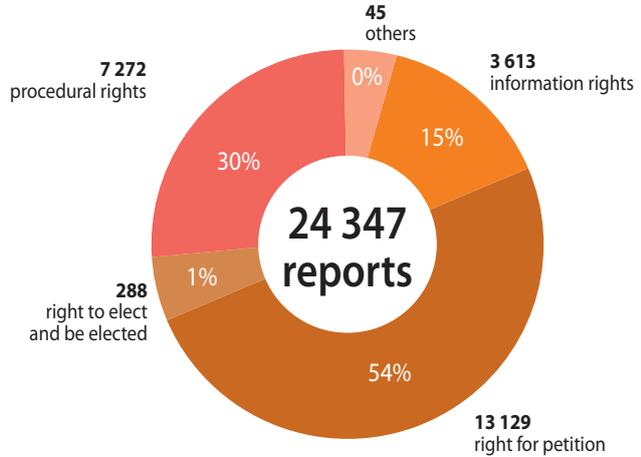
### Freedom from discrimination



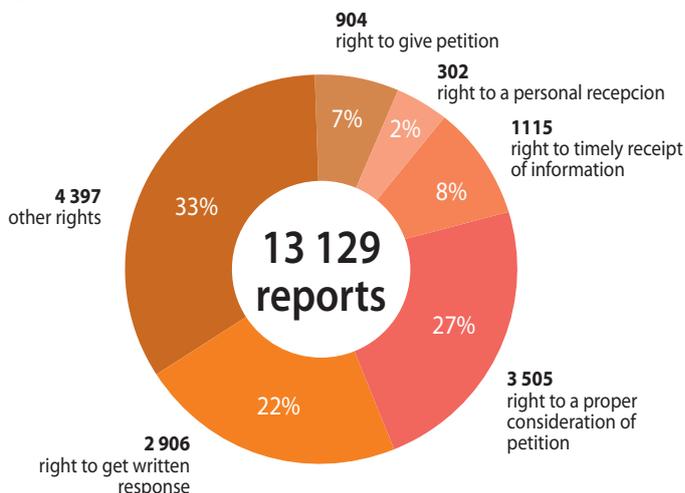
### Right to privacy



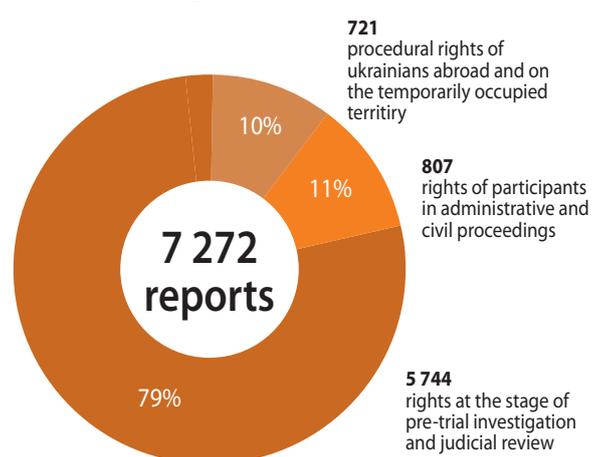
### Civil and political rights



### Right for petition

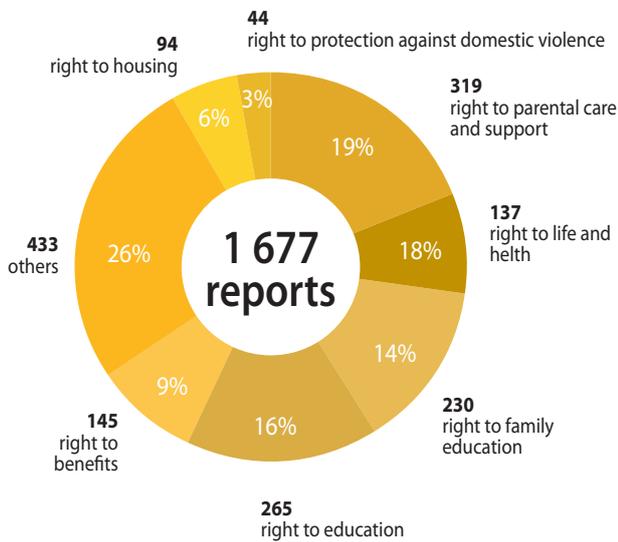


### Procedural rights

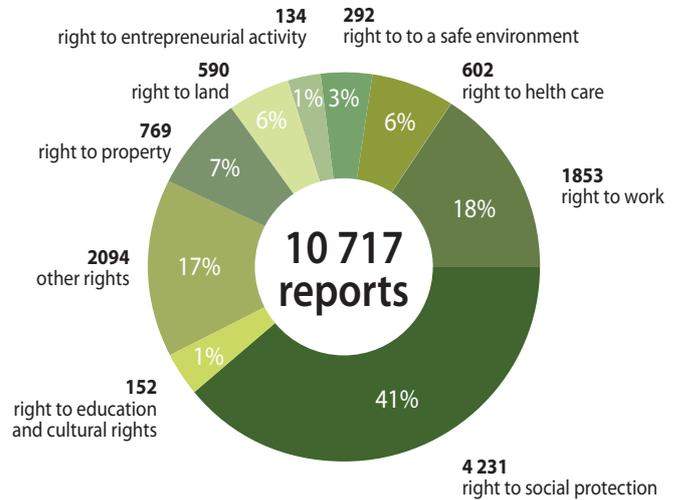


# NUMBER OF REPORTS BY TYPE OF RIGHTS VIOLATION

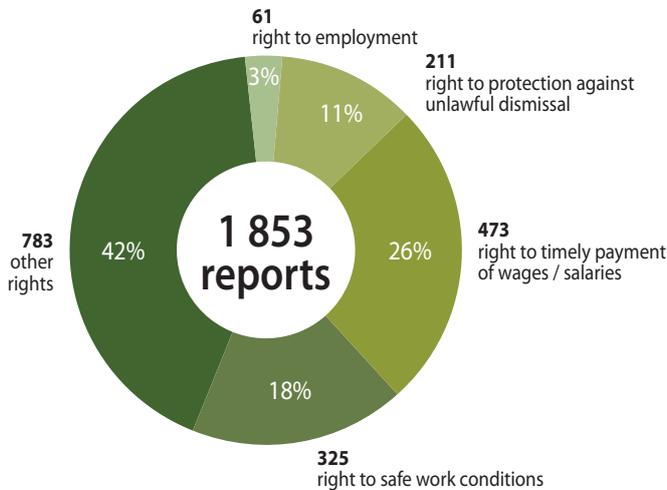
## Childrens rights



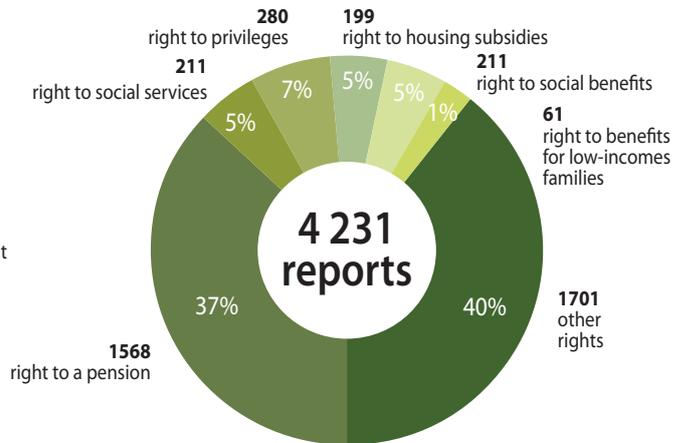
## Economic, social and cultural rights



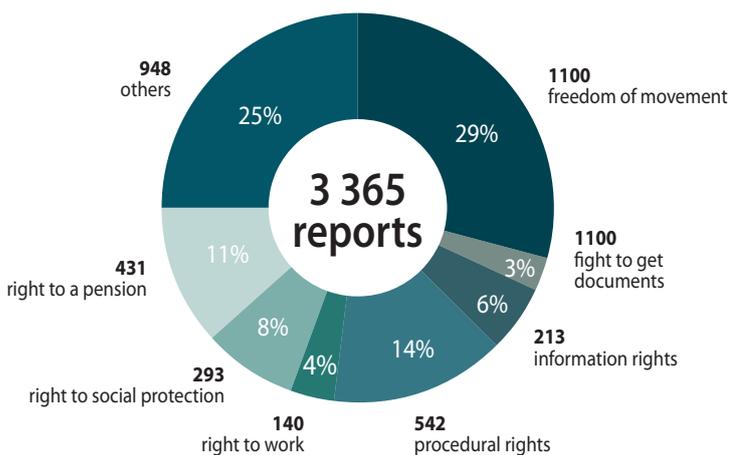
## Right to work



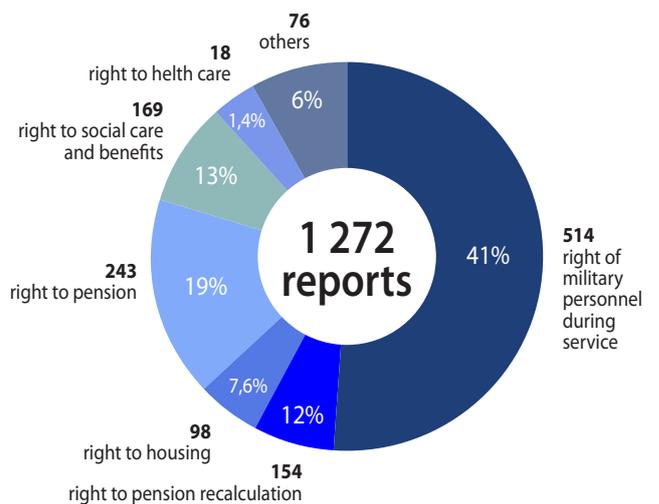
## Right to social protection



## Rights of persons affected by the armed conflict

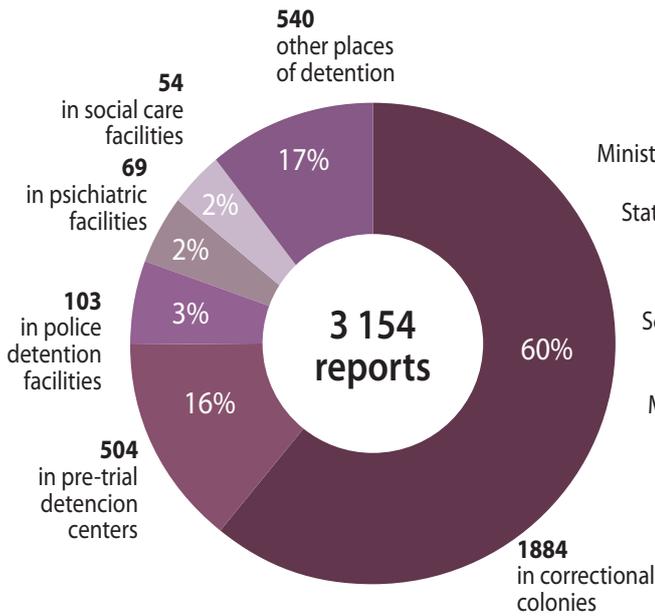


## Rights of military personnel



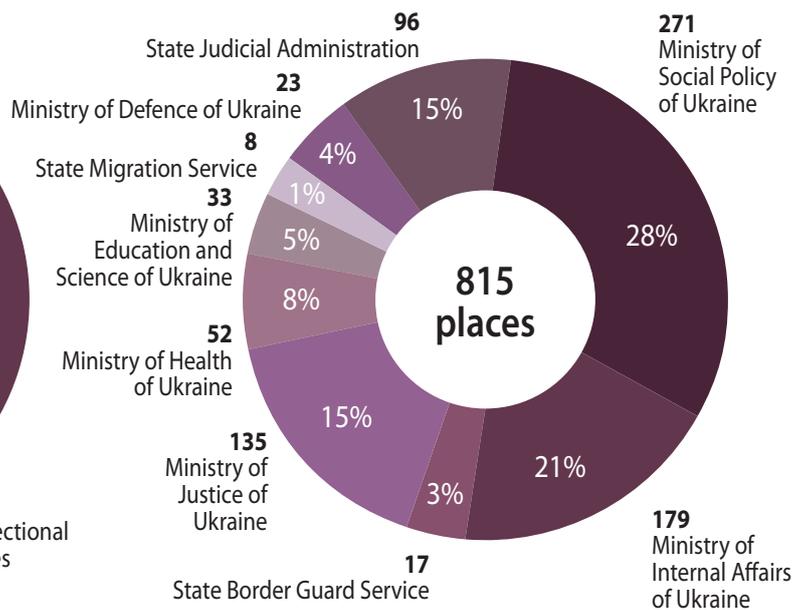
## IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM

Number of reports of inadequate conditions of detention in places of custody

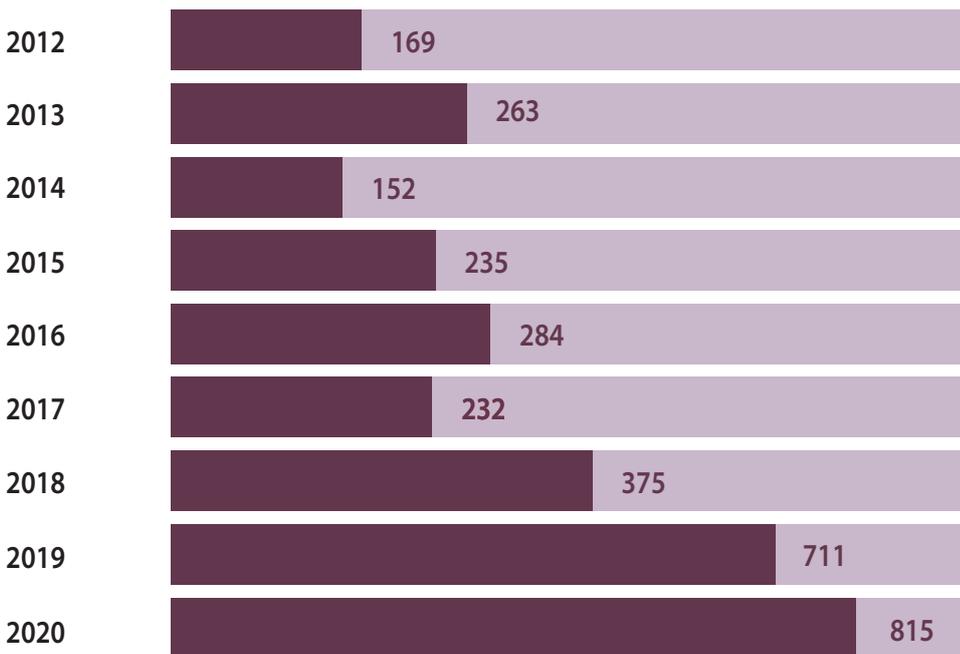


4 720 places of detention as of 01.01.2020

Number of NPM visits in 2020 by state bodies



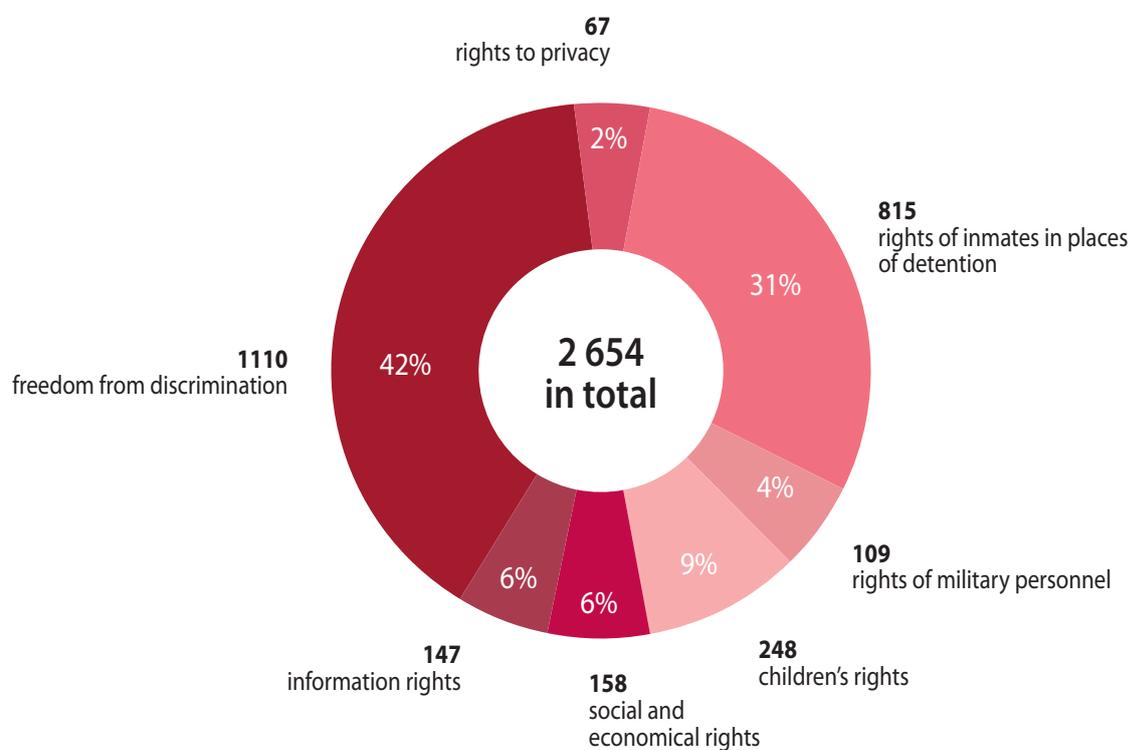
Number of visits of the National Preventive Mechanism in 2012-2020\*



IN TOTAL 3 236

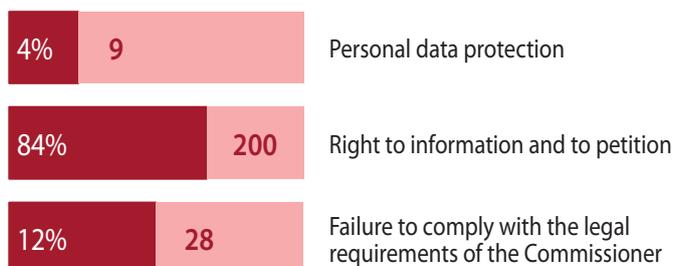
\* in 2012, Ukraine ratified the Optional Protocol to the Convention against Torture; the Commissioner was entrusted with responsibility for its implementation.

## MONITORING VISITS AND INSPECTIONS TO OBSERVE THE RIGHTS AND FREEDOMS OF CITIZENS AND OTHERS



## MEASURES TAKEN IN RESPONSE TO VIOLATIONS OF THE RIGHTS AND FREEDOMS OF CITIZENS AND OTHERS

### Protocols on administrative offences



In total 237

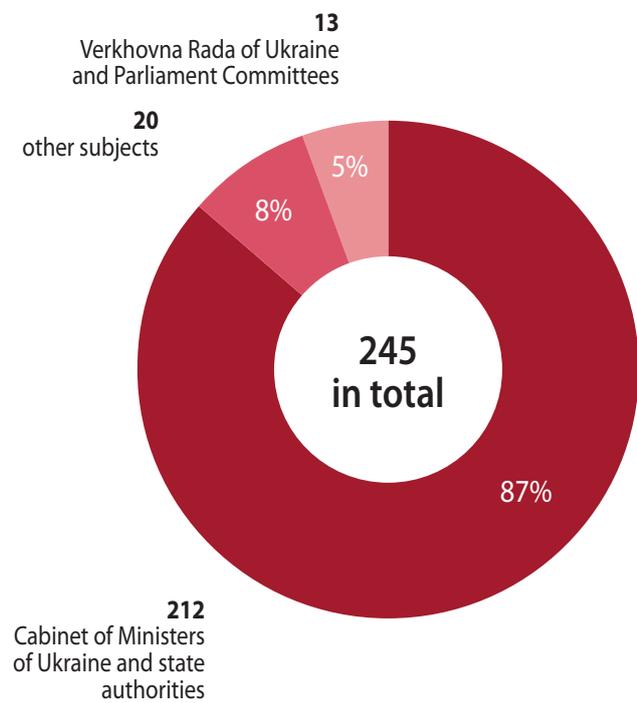
### Response measures, requests and petitions



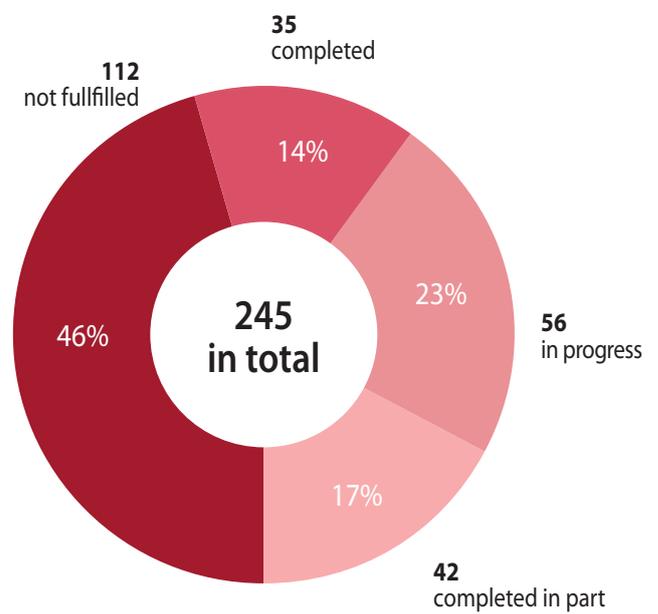
In total 20 104

## STATE OF IMPLEMENTATION OF THE RECOMMENDATIONS OF PUBLIC AUTHORITIES AND LOCAL SELF-GOVERNMENT PROVIDED IN THE ANNUAL REPORT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS FOR 2019

### Commissioners recommendations



### State of implementation of the commissioners recommendations



## ANALYSIS OF DRAFT REGULATIONS IN THE FIELD OF HUMAN RIGHTS AND FREEDOMS

### 1832 Commissioners positions to draft regulations



831 draft laws



1001 to drafts of the regulations of the Cabinet of Ministers of Ukraine and state authorities



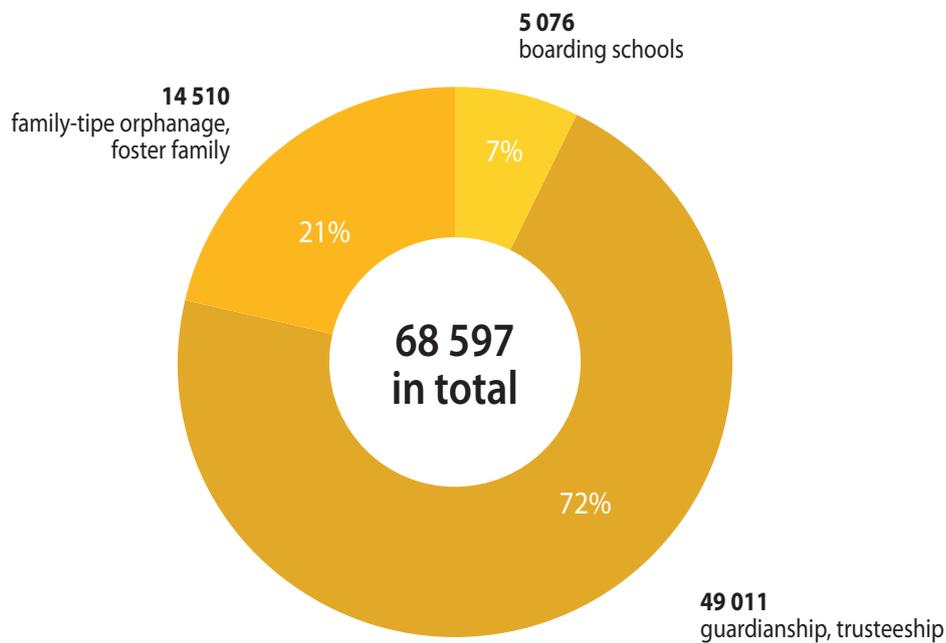
## ANNEXES TO SECTION 3 RIGHTS OF THE CHILD

### Annex 3.1

#### Information on children's vaccination (according to the Ministry of Health data)

Disease / vaccination in Ukraine	2018, number of vaccinations		2019, number of vaccinations		2020 (11 months), number of vaccinations	
	planned	actual / %	planned	actual / %	planned	actual / %
<b>Tuberculosis / BCG-1</b>	335 874	302 457/ <b>90,1%</b>	317 920	281 594/ <b>88,6%</b>	307 380	249 257/ <b>81,1%</b>
<b>Poliomyelitis</b>						
Polio-3 (under 1 year of age)	333 477	237 121/ <b>71,1%</b>	330 738	259 299/ <b>78,4%</b>	296 084	224 845/ <b>75,9%</b>
Polio-4 (18 months)	340 684	230 940/ <b>67,8%</b>	345 910	272 359/ <b>78,7%</b>	315 328	243 846/ <b>77,3%</b>
Polio-5 (6 years of age)	439 697	357 345/ <b>81,3%</b>	445 558	357 963/ <b>80,3%</b>	429 329	326 125/ <b>76%</b>
Polio-6 (14 years of age)	371 370	297 786/ <b>80,2%</b>	370 088	299 552/ <b>80,9%</b>	369 125	279 568/ <b>75,7%</b>
<b>Diphtheria, tetanus, pertussis</b>						
DPT-3 (under 1 year of age)	333 477	231 009/ <b>69,3%</b>	330 738	266 354/ <b>80,5%</b>	296 084	220 372/ <b>74,4%</b>
DPT-4 (18 months)	340 684	225 128/ <b>66,1%</b>	345 910	278 361/ <b>80,5%</b>	315 328	232 740/ <b>73,8%</b>
<b>Diphtheria, tetanus</b>						
Td (6 years of age)	439 697	366 922/ <b>83,4%</b>	445 558	324 786/ <b>72,9%</b>	429 329	231 346/ <b>53,9%</b>
Td-m (16 years of age)	348 233	271 136/ <b>77,9%</b>	346 708	317 071/ <b>91,5%</b>	348 112	237 455/ <b>68,2%</b>
<b>Haemophilus influenzae</b>						
Hib-2 (under 1 year of age)	333 477	175 159/ <b>52,5%</b>	330 738	252 991/ <b>76,5%</b>	296 084	230 038/ <b>77,7%</b>
Hib-3 (1 year of age)	342 149	197 331/ <b>57,7%</b>	333 477	266 936/ <b>80%</b>	312 559	239 952/ <b>76,8%</b>
<b>Measles, mumps, rubella</b>						
MMR-1 (1 year of age)	344 126	313 128/ 91 %	333 477	310 838/ <b>93,2%</b>	312 559	239 496/ <b>76,6%</b>
MMR-2 (6 years of age)	439 697	393 523/ <b>89,5%</b>	445 558	408 427/ <b>91,7%</b>	429 329	335 451/ <b>78,1%</b>
<b>Hepatitis B/ Hep B3</b> under 1 year of age	333 477	223 341/ <b>67%</b>	330 738	254 779/ <b>77%</b>	296 084	216 285/ <b>73%</b>

## Orphans and children deprived of parental care in boarding schools and families (%)



## Duration of legal proceedings on separating children from parents with or without termination of parental rights (according to the results of remote inspections of social protection institutions for children as of 01.06.2020)

674 children in total:	
Duration of legal proceedings on <i>separating children from parents without termination of parental rights or immediate separation when the child's life or health is seriously endangered</i> under the Article 170 of the Family Code of Ukraine (77 children):	Duration of legal proceedings on <i>termination of parental rights</i> under the Article 164 of the Family Code of Ukraine (597 children):
25 children (32,5%) – from 3 to 6 months	83 children (13,9% – from 3 to 6 months
35 children (45,5%) – from 6 to 12 months	422 children, (70,6%) – from 6 to 12 months
14 children (18,1%) – more than 1 year	51 children, (8,5%) – more than 1 year
3 children (3,9%) – more than 1,5 year	41 children (6,8%) – more than 1,5 year

## Annex 3.4

Number of internally displaced children and those who were granted the status of children affected by military hostilities and armed conflicts (regional breakdown)

Region	Number of internally displaced children having grounds for being granted the status of children affected by military hostilities or armed conflicts	Number of children who were actually granted the status of children affected by military hostilities or armed conflicts
VINNYTSIA oblast	1874	351
VOLYN oblast	577	293
DNIPROPETROVSK oblast	11449	1108
DONETSK oblast	61621	24158
ZHYTOMYR oblast	1342	197
ZAKARPATTIA oblast	735	53
ZAPORIZHZHIA oblast	7399	538
IVANO-FRANKIVSK oblast	812	148
KYIV oblast	11941	833
KIROVOHRAD oblast	1233	351
LUHANSK oblast	21796	24740
LVIV oblast	1741	125
MYKOLAIV oblast	1396	59
ODESA oblast	6935	218
POLTAVA oblast	3531	371
RIVNE oblast	665	73
SUMY oblast	1918	155
TERNOPIIL oblast	424	65
KHARKIV oblast	17482	877
KHERSON oblast	1791	73
KHMELNYTSKY oblast	1276	105
CHERKASY oblast	2029	93
CHERNIVTSI oblast	554	103
CHERNIHIV oblast	1238	359
city of KYIV	24980	1207
<b>TOTAL:</b>	<b>186739</b>	<b>56653</b>



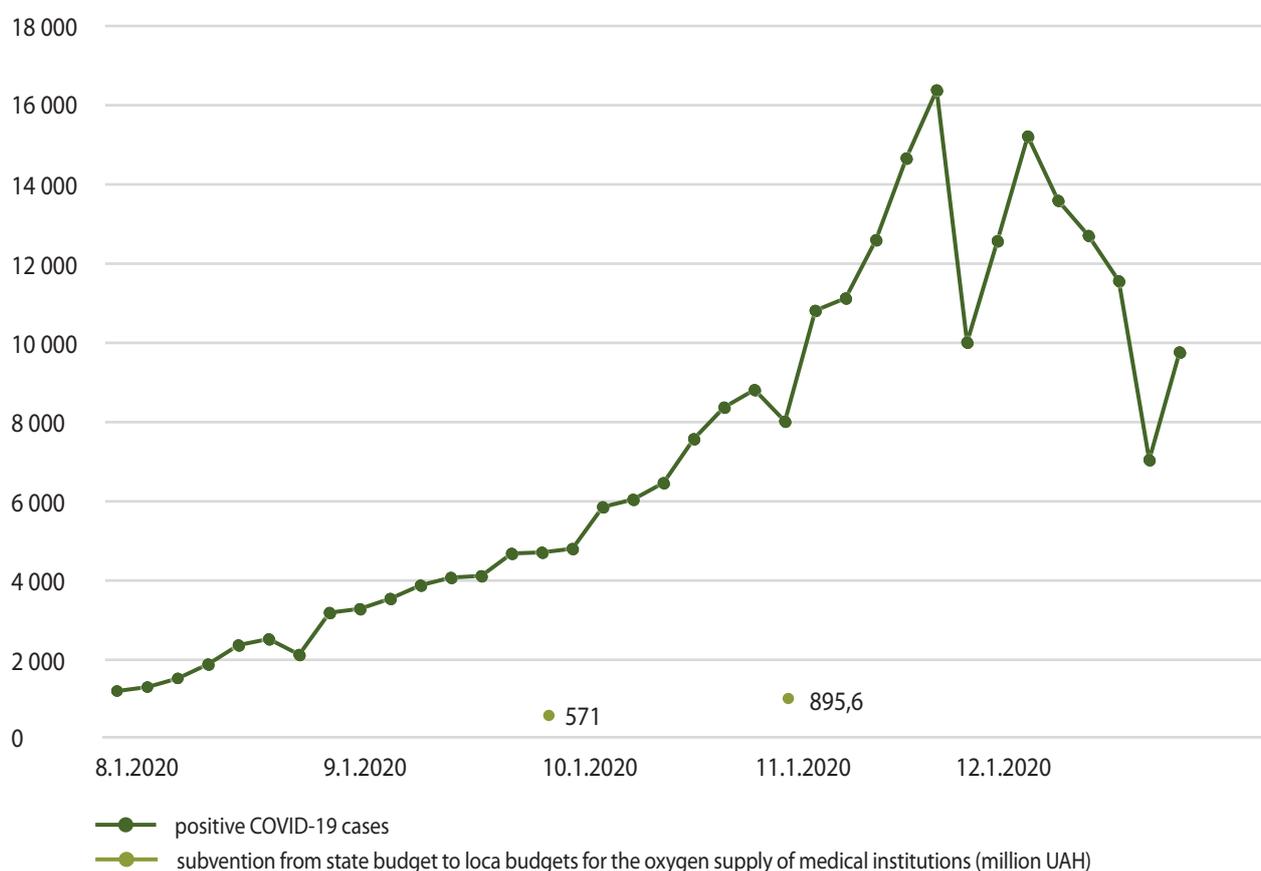
## ANNEXES TO SECTION 4 ECONOMIC, SOCIAL AND CULTURAL RIGHTS

## Annex 4.1

Cases of acute respiratory disease COVID-19 among employees of health care facilities as of 01.10.2020 according to the monitoring of the Commissioner										
№	Region of Ukraine	Total number of health workers	Number of cases among health workers	Percentage of health workers who got infected from the total number of health workers	Number of cases recognized as occupational disease among health workers who got infected	Percentage of cases that are recognized as occupational disease among health workers who got infected	Number of cases among health workers	Percentage of health workers who got infected from the total number of health workers	Number of cases recognized as occupational disease among health workers who got infected	Percentage of cases that are recognized as occupational disease among health workers who got infected
	1	2	3	4	5	6	7	8	9	
1	Vinnitsia	25880	647	2,5	27	4,2	384	2,3	27	7,0
2	Volyn	19580,5	607	3,1	23	3,8	536	3,4	23	4,3
3	Dnepropetrovsk	47681	329	0,69	101	30,7	290	1,07	100	34,5
4	Donetsk	34750	139	0,4	3	2,2	130	0,7	3	2,3
5	Zhytomyr	21857	459	2,1	46	10,0	417	3,2	45	10,8
6	Zakarpattia	21000	840	4,0	15	1,8	731	3,4	7	0,9
7	Zaporizhzhia	32833	197	0,6	18	9,1	163	0,6	28	17,2
8	Ivano-Frankivsk	26685	934	3,5	82	8,8	853	3,2	82	9,6
9	Kyiv	21037	568	2,7	82	14,4	508	2,9	79	15,5
10	Kirovohrad	19711,5	205	1,04	8	3,9	175	1,16	8	4,6
11	Luhansk	12608,6	29	0,23	0	0	29	0,3	0	0
12	Lviv	46697,7	2008	4,3	53	2,6	1802	4,7	53	2,9
13	Mykolayiv	16400	123	0,75	27	21,9	84	0,84	27	32,1
14	Odesa	35000	700	2,0	25	3,6	650	2,4	25	3,8
15	Poltava	28833	173	0,6	5	2,9	160	0,8	5	3,1
16	Rivne	18392	938	5,1	33	3,5	745	5,5	33	4,4
17	Sumy	10800	108	0,03	3	2,8	102	0,44	3	2,9
18	Ternopil	20375	489	2,4	79	16,2	461	2,7	78	16,9
19	Kharkiv	25550	511	2,0	82	16,0	478	2	82	17,1
20	Kherson	15250	61	0,4	3	4,9	51	0,4	3	5,9
21	Khmelnysky	22909	252	1,1	76	30,1	229	1,3	75	32,7
22	Cherkasy	23908	208	0,87	36	17,3	200	1,48	35	17,5
23	Chernivtsi	13418,9	993	7,4	21	2,1	904	8,1	21	2,3
24	Chernihiv	20420	243	1,19	39	16,0	220	1,38	40	18,2
25	city of Kyiv	49617,4	908	1,83	122	13,4	857	2,16	122	14,2
	<b>Total</b>	<b>631194,6</b>	<b>12669</b>	<b>2,0</b>	<b>1006</b>	<b>7,9</b>	<b>11159</b>	<b>2,257</b>	<b>1004</b>	<b>8,99</b>

## Annex 4.2

### Number of positive cases of the COVID-19 from August to December 2020 and financing local budgets for oxygen supply to health care institutions



## Annex 4.3

### The employment status of persons with disabilities employed through the state employment service in 2019 and 2020

Number of persons with disabilities who received employment services		% rate of persons with disabilities who received employment services	Number of actually employed persons with disabilities		% rate of persons with disabilities who received employment services		Increase in the number of persons with disabilities who were actually employed through the employment service, column 6 - column 7
1	2		4	5	6	7	
2019	2020		2019	2020	2019	2020	
53 119	61203	15,2	13 830	11 735	26	19,1	- 6,9 %

## Annex 4.4

## Placement of orphans and children deprived of parental care (ratio in%)

	received services (in total)		of these had unemployed status		total got a job		of these unemployed		growth of people with disabilities employed in 2020 (compared to 2019)	number of unemployed people received career guidance services		received services (in total) at the end of the period		of these the unemployed at the end of the period	
	2019	2020	2019	2020	2019	2020	2019	2020		2019	2020	01.01.2020	01.01.2021	01.01.2020	01.01.2021
A	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Ukraine	53 119	61 203	47 887	56 985	13 830	11 735	12 073	10 757	-6,9	46 267	50 985	20 442	25 849	17 113	22 741
Vinnitska	2 881	3 147	2 718	3 027	775	608	726	576	-7,6	2 655	2 893	1 077	1 210	964	1 114
Volynska	1 598	1 917	1 528	1 862	402	337	371	323	-7,6	1 517	1 799	595	763	554	730
Dnipropetrovska	1 694	1 807	1 553	1 702	727	537	676	489	-13,2	1 532	1 673	529	659	446	607
Donietska	2 892	3 140	2 513	2 844	765	614	689	576	-6,9	2 421	2 741	1 049	1 259	790	1 021
Zhytomyrska	3 512	3 926	3 194	3 679	806	734	644	667	-4,3	3 181	3 656	1 423	1 617	1 242	1 447
Zakarpatska	633	879	567	810	167	147	138	128	-9,7	558	778	240	406	202	358
Zaporizhska	3 054	3 270	2 756	3 003	649	579	602	537	-3,5	2 707	2 941	1 141	1 300	944	1 126
Ivano-Frankivska	1 542	1 843	1 354	1 698	527	420	403	362	-11,4	1 319	1 667	624	754	477	633
Kyivska	2 473	2 906	2 247	2 674	527	502	461	458	-4,0	2 083	1 996	1 003	1 220	839	1 044
Kirovogradska	1 653	1 952	1 456	1 763	386	299	339	273	-8,0	1 418	1 655	754	963	565	778
Luganska	816	985	591	766	300	311	168	201	-5,2	544	620	371	479	213	299
Lvivska	4 031	5 168	3 480	4 725	919	765	812	707	-8,0	3 366	4 403	1 662	2 389	1 265	2 004
Mykolaivska	1 650	1 765	1 515	1 664	342	249	303	230	-6,6	1 449	1 588	617	757	543	684
Odeska	1 636	2 038	1 407	1 794	495	387	423	338	-11,3	1 366	1 687	696	1 000	492	776
Poltavska	3 632	4 041	3 264	3 810	827	729	704	677	-4,7	3 150	2 869	1 432	1 702	1 259	1 590
Rivnenska	1 978	2 077	1 686	1 845	558	512	413	421	-3,6	1 615	1 415	710	811	608	684
Sumska	1 812	2 048	1 699	1 957	394	336	357	314	-5,3	1 382	1 030	712	824	641	780
Ternopil'ska	1 356	1 590	1 218	1 504	426	372	338	338	-8,0	1 191	1 452	498	660	454	613
Kharkivska	1 802	2 008	1 668	1 927	696	514	667	496	-13,0	1 646	1 651	529	750	437	685
Khersonska	1 210	1 261	1 005	1 129	296	237	265	224	-5,7	907	936	472	559	348	450
Khmelnitska	3 800	4 538	3 623	4 383	927	940	876	911	-3,7	3 561	4 053	1 494	1 917	1 388	1 812
Cherkaska	3 210	3 627	3 066	3 524	845	751	783	730	-5,6	3 052	3 489	1 203	1 519	1 119	1 439
Chernivetska	899	1 012	819	943	205	166	172	147	-6,4	783	864	380	454	301	388
Chernigivska	1 733	2 089	1 568	1 927	445	402	378	369	-6,4	1 535	1 727	717	880	594	746
Kyiv	1 622	2 169	1 392	2 025	424	287	365	265	-12,9	1 329	1 402	514	997	428	933

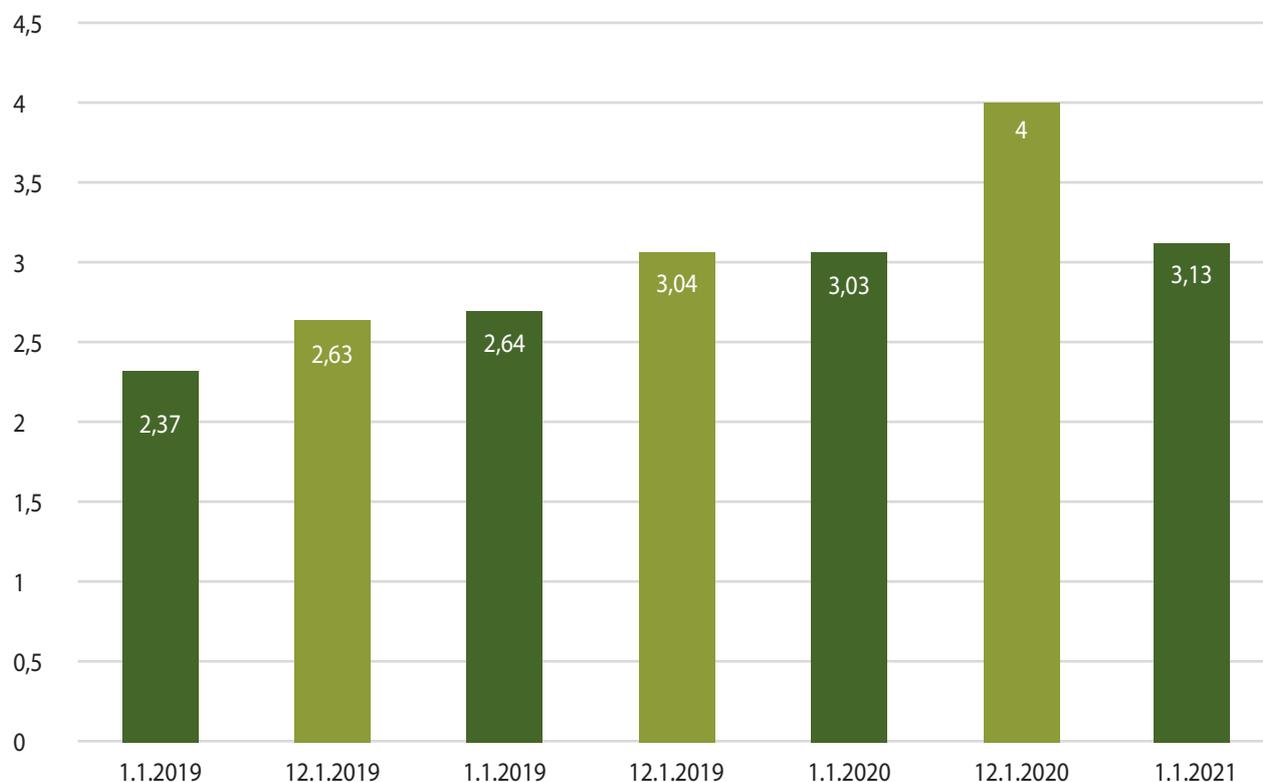
## Annex 4.5

## Information on the payment arrears of the Social Insurance Fund of Ukraine for the period from 15.12.2020 to 31.12.2020

№	Budget items	Overdue wages (12 working days)	including	
			Overdue wages (2 working days)	Due wages (10 working days)
1	Temporary incapacity for work benefit, including "Isolation for COVID-19"	1 370 834,92	211 170,85	1 159 664,07
1.1	Temporary incapacity for work benefit	1 365 726,57	211 170,85	1 154 555,72
1.2	Isolation for COVID-19	5 108,35		5 108,35
2	Maternity benefit	268 447,10	41 681,79	226 765,31
3	Funeral grant	3 181,60	471,50	2 710,10
	<b>Total:</b>	<b>1 642 463,62</b>	<b>253 324,14</b>	<b>1 389 139,48</b>

Annex 4.6

## Wage arrears for 2018-2021, UAH billion



Annex 4.7

Distribution of wages arrears amount due to employees of economically active enterprises (institutions, organizations) by business organizational and legal forms and regions as of 2020 (without taking into account the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and part of the temporarily occupied territories in Donetsk and Luhansk oblasts)

	Wages arrears amount							
	billion UAH	of which in %						
		State-owned Enterprises	Municipally Owned Enterprises	Joint Stock Companies	Limited Liability Companies	Branches (other separate subdivisions)	Private Enterprises	Other organizational forms
As of January 1, 2020	1,9	28,0	2,4	40,2	7,1	16,5	0,6	5,2
As of December 1, 2020	2,7	31,8	7,7	25,0	8,5	21,0	0,2	5,8



## ANNEXES TO SECTION 5 RIGHTS OF CIVILIANS AFFECTED BY THE ARMED CONFLICT

### Information on arrears of pension

№	regions	Number of pensioners who were registered as of 01.01.2014 (person)	From line 3 number of pensioners who were registered on the temporarily occupied territory, (thousands person)	Number of pensioners among IDPs, who receive pension as of 01.01.2021 (thousands person)	From line 5 have arrears of pension as of 01.01.2021	
					Number, person	Sum, thousands UAH
1	2	3	4	5	6	7
1	Donetsk	1 392 403	767,3		X	X
2	Lugansk	730 291	510,9	X	X	X
3	Total in Ukraine	13 533 308	1 278,2	634,4	282 646	10 963 389,9

\*There is no data if pensioners are alive, or they live at a registered address or have moved to another countries

## Annex 5.1

					from lines 6-7					
Debt to pay the pension to persons who have lived on the temporarily occupied territory and have applied for renewal of pension or admission to pension at least once as of 01.11.2020		Debt to pay the pension to persons who have lived on the temporarily occupied territory and not once applied for renewal of pension or admission to pension, as of 01.01.2021*		Debt to pay the pension to IDPs with disability of group 1 or 2 as of 01.01.2021		Debt to pay the pension to IDPs, who receive a survivor's pension 01.01.2021 (except for column 12, 13)		«Debt to pay the pension to IDPs over 80 years old as of 01.01.2021 (except for column.12-15)»		
Number, person	Sum, thousands UAH	Number, person	Sum, thousands UAH	Number, person	Sum, thousands UAH	Number, person	Sum, thousands UAH	Number, person	Sum, thousands UAH	
8	9	10	11	12	13	14	15	16	17	
X	X	71 445	X	X	X	X	X	X	X	
X	X	47 743	X	X	X	X	X	X	X	
612 119	77 042 454,0	119 188	X	13 597	440 633,6	26 054	979 364,9	24 205	1 125 290,6	

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Liudmyla Denisova, the Ukrainian Parliament Commissioner for Human Rights, expresses her sincere gratitude to the staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights for their contribution to drafting the Annual Report.

