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FOR HUMAN RIGHTS

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on the observance of human and citizens' rights and freedoms

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INTRODUCTION

The principle of universal respect for human rights and fundamental freedoms set forth in the Charter of the United Nations is a key for successful development of society and nation. Blatant negligence of fundamental human rights leads to tragic consequences and turmoil that we are all experiencing in recent months.

Due to the scope of violations of the human rights throughout November 2013 – February 2014, the first results of proceedings on violation of human rights are thoroughly examined by the Commissioner in close cooperation with civic activists and human rights defendants in a Special report of the Commissioner presented on 28 February 2014.

So far, the proceedings are ongoing; the Commissioner with representatives of civil society organizations collects evidence and documented violations of human rights during this tragic period. Ukrainian society and international community expect transparent and efficient investigation of the violation of rights of thousands who took part in protest actions.

Therefore, within the mandate granted to me for performing parliamentary oversight of the observance of human rights and freedoms, I will pay every possible effort to make sure that the law enforcement bodies carry out efficient investigations and finally provide answers to all questions on who should be brought to liability for the loss of human life and destiny maimed.

2013 will stay in memory of numerous generations as a year of mass protests and blatant violations of human rights. It was a time when the Commissioner responded to a number of significant challenges in the area of protection of human rights. A significant number of efforts was paid to further strengthen institutional capacity of Secretariat of the Commissioner and achievement of ambitious goals that were set in Strategic plan of actions of the Ukrainian Parliament Commissioner for Human Rights for 2013-2017.

Secretariat of the Commissioner for Human Rights was the first state institution to launch ongoing external civic assessment of the Commissioner and its Secretariat.

Two monitoring surveys were conducted in 2013 accessing the work of the Commissioner. First survey was carried out by the Centre for Civil Liberties with the support of UN Development Programme, and the second – by a working group on monitoring of the work of Commissioner of Advisory Council to the Human Rights Commissioner. The results of both surveys and the respective recommendations are published at the Commissioner's web-site.

In addition, within the framework of implementation of national preventive mechanism, the Secretariat together with Kharkiv Institute for Social Researches developed and presented two reports of the Commissioner on the matters of human rights observance in prison settings. In particular, thanks to the support of European Commission and UNICEF, the Commissioner developed Special report of the Commissioner on observance of children's rights in social rehabilitation facilities, and thanks to International Renaissance Foundations – Special report of the Commissioner on observance of right to health care in pre-trial detention centres of State Penitentiary Service of Ukraine.

The institution has also provided a substantial contribution to bring our country closer to the European community. Within preparation to liberalization of visa regime, an efficient system of personal data protection was launched. The respective amendments to the legislation were developed and approved based on the results of hard work on both national and international level within the framework of EU evaluation mission.

The Commissioner for Human Rights as a constitutional institution that meets all the EU requirements is entrusted with additional obligations in the area of personal data protection, and fulfilling of these obligations is of paramount importance for successful European integration of Ukraine.

It is worth noting that the recommendations to last-year Annual report provided by the Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations and human rights defendants were taken into account in 2013 Annual report.

In particular, the Annual report additionally focuses on the issue of observance of the right to accessing public information and rights of labour migrants, and pays special attention to the protection of the rights of ethnic minorities.

Valeriya Lutkovska,
Ukrainian Parliament Commissioner for Human Rights
March 2014

OBSERVANCE OF THE RIGHT TO PROTECTION OF PERSONAL DATA

On 3 July 2013, the Verkhovna Rada of Ukraine has introduced amendments to the Law providing for the Ukrainian Parliament Commissioner for Human Rights to act as an authorized body in the area of personal data protection starting 1 January 2014. In particular, in order to perform such oversight, the Commissioner should carry out verifications based on citizens' complaints or on its own initiative. Upon the results of verifications, the Commissioner is entitled to issue mandatory orders to prevent or eliminate the violations of legislation on personal data protection and draw up administrative offence protocols and submit them to court. The Commissioner also has a right to provide clarifications of the legislation in the area of personal data protection, to submit proposals to amend it, and directly interact with the holders of the personal data on matters related to the personal data protection.

For the time being, it is legitimate to state that the Law of Ukraine "On the Protection of Personal Data" provides legislative framework to set up personal data protection system.

The results of monitoring of the observance of right to personal data protection in 2013 showcased first of all that there was a lack of legal regulations on personal data processing within the in-house informational systems, and that the legislation on personal data protection was not interpreted accurately, jeopardizing the rights of personal data holders.

At the end of 2013, due to political developments that took place starting late November 2013, the dissemination of confidential information about certain groups of people on the Internet became quite prevalent. In particular, the lists containing personal data of officers of special police unit "Berkut", officers and other staff of law enforcement agencies, judges, owners of vehicles, civic activists, journalists, etc. were disseminated on the Internet. The substance (nature) of a published data make it possible to conclude that the disseminated information was obtained from the in-house information systems (IIS) which are maintained by public authorities.

In this regard, first of all it is necessary to emphasize that legal regulation of database maintenance in such areas as law enforcement, education and health care are amid those that apply to the most sensitive groups of personal data.

Violation of the legislation in the area of personal data protection concerns also an infringement of one of the main principles – voluntary consent to the processing of personal data. Inaccurate interpretation of the legal provisions on personal data protection might provoke such artificial situations, when a person – while he/she has a right at his/her discretion to decide whether to give consent on personal data pro-

cessing – is not able to obtain the respective vital services stemming from her right to health care, social protection, education, etc. unless he/she gives such consent.

In addition, throughout 2013 the Commissioner received a significant number of complaints related to establishment of the Unified State Demographic Register, in particular, to the information stored in the Register, the fact that the law enforcement authorities has access to all the information there, and to biometric document production. According to the analysis of legal acts in this area, it is necessary to revise the state policies on the procedure of identifying personality and of issuing IDs, documents proving citizenship or a special status of a person. This procedure should bear in mind a right to privacy. In addition, it is necessary to introduce amendments to the Law of Ukraine "On the Unified State Demographic Register and Documents which Confirm the Citizenship of Ukraine, Identify Personality or His/Her Special Status" in order to bring it in line with the legislative requirements on personal data protection.

PREVENTING AND COMBATTING DISCRIMINATION

1. Although a lot of unsolved matters remain in the area of anti-discrimination legislation, the main barrier to observance of the equality principle and to countering all kinds of discrimination is low level of awareness and understanding of provisions of the Law of Ukraine "On the Principles of Preventing and Combatting Discrimination in Ukraine". In particular, it concerns judges, the officials of central and local executive authorities, local self-government bodies, etc. Therefore, they do not take active stand and implement the provisions of Law superficially.

2. Being a national institution on equality and non-discrimination and aiming to ensure efficient application of the mechanisms of protection from discrimination, the Commissioner for Human Rights adopted the Strategy of activity of the Commissioner in the sphere of prevention and counteraction of discrimination in Ukraine for 2014-2017 (Order # 23/02-13 of 15 November 2013). At the same time, the Commissioner for Human Rights believes that for the appropriate coordination of efforts of state authorities to prevent and combat discrimination, the Government should develop and adopt a nation-wide comprehensive package of actions in this area.

3. Another area of concern is recording and investigation of criminal offences committed on the grounds of racial, national, religious or other forms of hatred. Such offences affect most of all the representative of migrant communities, minority religious communities (like Jehovah's Witnesses) and representatives of LGBT communities. The comprehensive modality of separate recording of such offences is not in place. In addition, due to lack of special knowledge and skills, law enforcement authorities often neglect the hatred motive while classifying and investigating such criminal offences.

4. The authorized agencies almost do not pay attention to the use of hate speech and abetment to discrimination in mass media, as well as to ethnic profiling or ethnic-based graded approach in the activities of law enforcement bodies. These problems lack adequate legal regulation, too. These are mostly migrants and representatives of Roma national community who suffer from such ethnically-motivated inspections.

5. Monitoring visits of the Commissioner to the areas of compact settlement of Roma people in a number of regions of Ukraine showcased that this national minority had significant barriers in the access to education, health care, social services, and employment that are inter alia caused by discriminatory attitudes towards them.

First of all, very few Roma have IDs or documents proving citizenship. In its turn, it

leads to serious problems in almost every area of social life. However, the most significant problems are: a number of barriers made by local state authorities to prevent issuing passports to Roma people (in particular, making requests not stipulated by the law), and lack of consistent national policy aiming to provide the respective solutions.

The second most acute problem is education of Roma children. Their access to education is often hampered not only due to lack of documents preventing Roma children from being enrolled to schools, but also due to actual segregation on ethnic grounds.

At the same time, it is complicated to carry out accurate quantitative assessment of the problems that Roma people face. In particular, it is due to fact that the system to collect ethnic-disaggregated data in the country is not in place, many Roma people don't have documents, and due to high level of distrust to public authorities.

6. There is a number of pressing problems in terms of the observance of right to freedom of conscience and religion. In particular, the procedure of arranging peaceful assembly of faith-based communities is still discriminatory: unlike other civil society organizations, they are requested to apply for permit to organize public events.

   In addition, discrimination takes place when the religious communities are registered by local executive authorities. It is also manifested through the fact that there is no reasonable accommodation to the needs of certain categories of believers at all, in particular in prison settings.

7. Significant problems are noticed in the area of access of disabled persons to justice, goods and services, and employment. In particular, it is due to lack of reasonable accommodation to their needs. It is provoked by low level of awareness about the legislative provisions on the protection of disabled persons and drawbacks of the very legislation. Thus, the legislation neither establishes liability for failure to provide reasonable accommodation nor specifies the public authority in charge ofoversight over the fulfilment of obligation to ensure reasonable accommodation, etc.

OBSERVANCE OF EQUAL RIGHTS AND OPPORTUNITIES OF WOMEN AND MEN

1. There is a number of pressing problems in the area of ensuring equal rights and opportunities of women and men in social and economic sectors. In particular, numerous provisions of labour legislation do not provide for equal rights of working men who have two or more children under 14 or disabled children or are single fathers (in comparison with women).

2. There is a significant number of urgent problems in the area of ensuring the right of men and women to the protection from domestic violence. First of all, the legislation does not set forth an efficient mechanism to secure the right to protection of a person who survived violence in family. The powers with regard to protection from domestic violence entrusted with bodies and authorities are of a general nature. If a case of domestic violence is identified, their activities are not coordinated and consistent.

Secondly, only 22 centres of social and psychological care are providing comprehensive assistance (psychological, social, living, education, health care, informational and legal services) to persons who suffered from domestic violence. They are typically located in oblast centres and thus residents of remote areas can have poor access to them.

In addition, the level of public awareness about legal principles of prevention and combatting domestic violence and available kinds of assistance is low.

Thirdly, referral of perpetrators to the correctional programmes is a challenge that has not been met so far. Whereas the perpetrators are not mandated to complete such programmes, it neither provides for termination of domestic violence nor mitigates the risk of the repetitive offense.

At the same time, it is complicated to carry out accurate quantitative measurement of the prevalance of domestic violence. First of all, it is due to lack of the nation-wide system to collect and process respective data – including data disaggregated by sex, age and other indicators. Indeed, agency statistics is not representative, it derives from numerous sources and does not specify the kinds of violence – physical, sexual, psychological or economic.

3. Although a significant number of efforts was paid by the Commissioner for Human Rights, the legislative gap still remain in the Criminal Executive Code of Ukraine with regard to implementation of the right of men sentenced for life to long-term visits on the same level as women can enjoy it.

OBSERVANCE OF THE RIGHT TO ACCESSING PUBLIC INFORMATION

2013 was the third year after the enactment of the Law of Ukraine "On Access to Public Information" (hereinafter – "the Law"). Therefore, it is legitimate to state that the practice of its implementation was already accumulated, thus its evaluation would provide opportunities to identify gaps and reasons thereof.

Throughout January-December 2013, NGO "Centre of Political Studies and Analysis" carried out a monitoring of how local authorities ensure access to public information within implementation of project "Access to Public Information. Policy Development in the Area of Access to Classified Information" that is supported by the UNDP Project "Promoting the activities of the Secretariat of Ukrainian Parliament Commissioner for Human Rights through targeted support to the projects of civil society organizations".

How do local authorities respond to the requests for public information?

The councils of small town did not respond to 36% informational requests submitted during the monitoring, and 21% district state administration, 13% city councils of oblast centres and 8% oblast state administrations did neither. The monitoring identified that inadequate responses were systematically provided to requests submitted by e-mail. In particular, it is not uncommon that the response is provided on something other than on an official letterhead, does not specify full details of the authority holding the information and/or responsible official who provided the information, and/or lacks his/her signature. As a result, whereas the letter has no signs allowing for identification of an authority and an official responsible for provision of information, a requesting individuals/entities can be uncertain about the agency that holds information and provided response, as well as about reliability and relevance of the very information.

In 20% cases, the councils of small towns missed the deadlines for providing responses to the requests. It also concerns city councils of oblast centres (19%), oblast state administrations (17%) and district state administrations (11%). Analysis of the responses showcases that a holder of information sometimes provides response by e-mail later than five days after the respective request was submitted, but the response is dated as if it was sent within the deadline. Such practice cannot be considered legitimate, whereas the date of an electronic message should be regarded as a date when the response was provided.

Public authorities violate the Law most frequently when they fail to provide responses to all questions in the request. Only 63% councils of small towns, 61% district state administrations, 55% oblast state administrations and 56% city councils of oblast centres provided full responses to all questions of the request.

The drawbacks specified above demonstrate that the problems causing the infringement of a right to access to public information concern both the level of legislation and of administrative practice. In order to provide solutions to the challenges of administrative practice, it seems necessary to systematically provide training and capacity building to deputy heads of executive authorities, personnel of their structural units and officials responsible for ensuring access to public information.

In order to overcome legislative challenges, it seems necessary to recommend to the Cabinet of Ministers of Ukraine to approve model procedure for production of the responses that holders of public information will use to provide responses to requests submitted by e-mail. Unless the unified requirements with regard to production of such responses are established, it seems necessary to recommend to the holders of public information to provide responses to requests submitted by e-mail by scanning a response that is produced in-writing.

Restricting the access to information

Monitoring of of the relevance of the list of data containing the information for internal use approved by local executive bodies and bodies of local self-government was based on the information furnished by 100 authorities (24 oblast state administrations and Council of Ministers of the Autonomous Republic of Crimea, 25 city councils of oblast centres, 25 councils of small towns, and 25 district state administrations).

Analysis of information collected throughout the monitoring exercise demonstrates that the lists of data for internal use are approved in 18 oblast state administrations, 15 city councils of oblast centres, 14 councils of small towns, and 19 district state administrations. The lists are approved but not summarized in one document in 5 oblast state administrations, 2 city councils of oblast centres (Simferopol and Vinnytsia). The lists are lacking in 3 councils of small towns (Kivertsi, Vasylkiv and Semenivka). 2 state oblast administrations (Mykolaiv, Chernihiv), 4 councils of small towns (Olevsk, Dolyna, Pervomaisk, Novodnistrovsk) and 3 district state administrations (Domania, Syshaky and Vyzhnytsia) are just directly quoting the provisions of Article 9 of the Law.

In order to eliminate these problems, it seems advisable to recommend to these entities to compile the list of data containing information for internal use, and if such lists are compiled – to make sure that they are in compliance with the requirements of the Law.

Jurisprudence

The Department of Jurisprudence Study and Court Statistics of Higher Administrative Court of Ukraine carried out an analysis of jurisprudence on dispute settlement between the holders of public information and those who request it and identified a number of problems in this areaarea:

- lack of statistical reporting of administrative courts that would provide opportunities to track quantitative indicators of review of administrative cases related to application of the Law;
- identification of object-based jurisdiction, if a holder of public information does not bear authority;
- unequivocal understanding of the notion 'public information';

- unequivocal understanding of difference between an informational request on the grounds of the Law of Ukraine "On Access to Public Information" and a citizen's request on the grounds of the Law of Ukraine "On Citizens' Requests";

- different approaches of courts to justification of the judgments in the same-nature disputes with regard to access to public information;

- different jurisprudence with regard to interpretation of the Law on providing information that is classified as the information for internal use.

With this being said, and taking into account the essential role of jurisdiction for ensuring appropriate application of the provisions of the Law, it seems necessary to recommend the following:

- State Court Administration should arrange collecting and processing of court statistics on resolution of disputes related to application of the Law;

- Based on the results of summary of jurisprudence on resolution of disputes related to application of the Law, Higher Administrative Court of Ukraine should provide to lower courts the respective clarifications and recommendations.

OBSERVANCE OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Throughout 2013, legal regulation of the freedom of peaceful assembly was not subject to significant amendments. Notwithstanding two drafts of the Law of Ukraine "On Freedom of Peaceful Assembly" were registered in the Verkhovna Rada of Ukraine, a line law has not been adopted yet to regulate the organization and carrying out peaceful assembly of citizens in Ukraine.

Due to lack of such a law, legal vacuum is filled in with by-laws adopted by local authorities. It also results in unjustified bans of peaceful assembly by administrative courts, bringing participants of peaceful assembly to administrative liability, various violations of human rights by law enforcement officers, and establishment of various restrictions of the freedom of peaceful assembly on the part of local authorities.

In 2013, the European Court of Human Rights issued two judgments with regard to violation of the right to peaceful assembly. The ECtHR suggests that Ukraine promptly amend its legislation and administrative practice in order to establish requirements with regard to organization and carrying out peaceful assembly and possible grounds to restrict them.

In March 2013, the Government of Ukraine received a recommendation of the Universal Periodic Review of the UN Human Rights Council to adopt appropriate legislation with regard to freedom of peaceful assembly that would be in compliance with international human rights standards.

Nevertheless, it is legitimate to acknowledge that no single legal act has been adopted so far to bind the state to fulfil positive obligations with regard to participants of peaceful assembly, first of all to guarantee their security, and to protect other people and their property. Unfortunately, the state regularly fails to fulfil these commitments. According to the jurisprudence of the European Court under Article 11 of the Convention of the Protection of Human Rights and Fundamental Freedoms, it is a direct violation of the freedom of peaceful assembly.

Due to the lack of special law on carrying out peaceful assembly, bodies of local self-government may differently interpret and abuse legal provisions in this areaarea and commit other illegal actions. For example, in violation of the Constitution of Ukraine they may establish the rules of carrying out peaceful assembly by themselves.

According to the results of monitoring conducted by the Centre for Political and Legal Reforms, the number of judicial cases on the restriction of right to peaceful assembly considered by district administrative courts in 2013 has slightly reduced in comparison with previous year – 253 resolutions in 2013 compared to 358 resolutions in 2012. The percentage

of bans remained high and in 2013 numbered to 83% (209 resolutions).

The practice of re-review of cases on ban of peaceful assembly in appellation court was not also positive for the participants of assembly: in 38 of 46 cases, the appellation courts made judgments in favour of an authority. Throughout 2013, the Higher Administrative Court of Ukraine adopted only one judgment in favour of citizens who organized peaceful assembly, while in 10 other cases the ban of peaceful assembly was reinforced.

Another problem that needs solution is differentiating between peaceful assembly organized according to Article 39 of the Constitution of Ukraine and the so-called 'individual protests', or excercise of the freedom of belief and thought by individual citizens, when such citizens stay in public places holding posters or banners, disseminate informational materials, etc.

Thus, the Ministry of Internal Affairs and the prosecutor's offices should promptly provide clarifications to the law enforcement officers on prohibition of detention and bringing citizens to liability for individual protests under Article 1851 of the Code of Ukraine on Administrative Offences. The Verkhovna Rada of Ukraine should provide legislative solution to this problem.

The results of civic monitoring of protest actions in Kyiv city in December 2013 demonstrate that although the protest actions were peaceful, the state authority did not provide basic conditions for excercise of the freedom of peaceful assembly.

As a result of unacceptably negligent and unprofessional actions of the state authorities, some part of protesters were engaged into conflicts with law enforcement officers, representatives of both sides suffered injuries, citizens were not able to obtain services during peaceful actions, and in some cases they did not have possibility to receive necessary health care.

The Code of Conduct for Law Enforcement Officials (UN General Assembly, 17 December 1979), Declaration on the Police (Parliamentary Assembly of the Council of Europe, 1979) and European Code of Police Ethics (Committee of Ministers of the Council of Europe, 19 September 2001) provide for a number of international obligations in terms of observing human rights and fundamental freedoms in the activities of law enforcement authorities, which Ukraine has voluntarily committed itself to.

In order to fulfil these obligations, the Verkhovna Rada should establish legislative mechanisms that would provide opportunity to identify each and every law enforcement official (managers and personnel) who take part in providing security during peaceful assembly.

Currently, a draft Law of Ukraine "On Introducing Amendments to Several Legal Acts" is registered in the Parliament that concerns identification of law enforcement officials and presence of special police units and internal troops at peaceful assembly. Experts and representatives of civil society organizations took part into numerous round tables to discuss its most important points.

If this Law is adopted, not only it will improve Ukrainian legislation in the areaarea of law enforcement activities, but also increase the level of trust to state authorities, first of all to law enforcement agencies.

Summarized recommendations on legislative regulation of the freedom of peaceful assembly

It is necessary to promptly consider and approve a respective law:

- to regulate the procedure of notifying state authorities and bodies of local self-government about organization of peaceful assembly to enable them to fulfil their positive obligations with regard to ensuring the right to freedom of peaceful assembly;

- to identify clear positive obligations of state authorities and bodies of local self-government on ensuring the right to freedom of peaceful assembly;

- to establish clear and exhaustive grounds and ways to restrict the freedom of peaceful assembly in the interests protected by part two of Article 39 of the Constitution of Ukraine;

- to guarantee the right to simultaneous peaceful assembly, including counter-assembly, to spontaneous peaceful assembly, as stipulated by international commitments of Ukraine;

- to establish judicial guarantees and mechanisms to protect the freedom of peaceful assembly.

It is also necessary to improve the legislation through introducing amendments to legislative acts such as:

- Code of Administrative Proceedings of Ukraine – on improvement of judicial proceedings in cases with regard to restriction of the freedom of peaceful assembly, eliminating barriers and banning the interference into excercise of the freedom of peaceful assembly;

- Code of Ukraine on Administrative Offences – on eliminating the violation of the procedure of organization and carrying out peaceful meetings, street rallies and demonstrations as grounds for bringing to administrative liability;

- the Law of Ukraine "On Militia" – on the necessity to warn about the use of physical force and special means by police during meetings, street rallies and demonstrations;

- the Law of Ukraine "On Local Self-Government in Ukraine" – on clarification of authority of the respective local self-government bodies with regard to ensuring the freedom of peaceful assembly;

- the Law of Ukraine "On the Capital of Ukraine – Hero City of Kyiv" – on excluding the right of local self-government body to adopt by-laws regulating the excercise of the right to freedom of peaceful assembly;

- the Law of Ukraine "On Freedom of Belief and Religious Organizations" – on establishing that public worship services, religious ceremonies and processions outside religious buildings or other facilities and adjacent areas can be carried out upon notification (currently, there is a need to obtain permit to conduct such events), and that the law on freedom of peaceful assembly should apply to such events;

- the Law of Ukraine "On Court Fee" – on elimination of barriers and prohibition to interfere into excercise of the freedom of peaceful assembly;

- the Law of Ukraine "On Introducing Amendments to Several Legislative Acts" (on identification of law enforcement officers and presence of special police units and internal troops at peaceful assembly).

The Ministry of Internal Affairs and the prosecutor's offices should promptly provide clarifications to the law enforcement officers on prohibition of detention and bringing citizens to liability for individual protests under Article 1851 of the Code of Ukraine on Administrative Offences. The Verkhovna Rada of Ukraine should provide legislative solution to this problem.

The Ministry of Internal Affairs of Ukraine should:

- analyse legal documents of the MIA in the area of ensuring public order and security of citizens during excercise of citizens' right to freedom of peaceful assembly in order to bring them in line with requirements of the Constitution of Ukraine and OSCE Guidelines on Freedom of Peaceful Assembly;

- in cooperation with representatives of civil society, launch the system of joint monitoring of MIA activities in the area of conducting mass events and improvement of performance of civil security units.

OBSERVANCE OF THE RIGHT TO FREEDOM OF ASSOCIATION

The Law of Ukraine "On Public Associations" # 4572-VI as of 22 March 2012 came into force 1 January 2013. It provides framework regulation with regard to several kinds of non-profit organizations, including those the activity of which is governed by special laws.

Throughout 2013, the Commissioner for Human Rights together with Ukrainian Centre for Independent Political Research and European Law Development Network carried out a monitoring of the observance of new legislation on the freedom of assembly within the framework of OSCE Project "Capacity Building of State Authorities and Civil Society Organizations of Ukraine".

Item 8 is one of the most disputable transitional provisions of the Law – it requires that local branches of NGOs should be dissolved within five years if such branches bear a status of legal entityentity. This request stems directly from the provisions of the Civil Code, and the Law "On Associations of Citizens" provided for the opportunity to establish them only by 1 April 2011. Thus, apparently, no amendments are introduced with regard to newly-established organizations of branches. But this transitional provision explicitly violates the fundamental legal principle prohibiting retroactive effect of the law. It is highly likely that the Verkhovna Rada will abrogate the request on elimination of branches registered earlier even before the expiration of five-year transitional period. It is worth noting that the Law does not stipulate mandatory dissolution of branches or application of other sanctions to NGOs on this ground.

A draft law on amending the Law of Ukraine "On Public Associations" (on ensuring the activities of pan-Ukrainian public associations) was registered in the Verkhovna Rada of Ukraine. It is aiming at providing legislative framework for the possibility to maintain the structure of pan-Ukrainian public organizations registered before enactment of the Law # 4572-VI.

The draft law suggests providing to local branches of pan-Ukrainian public organizations (those that had a status of legal entity on the day of enactment of this Law) the right to keep this status further.

If this draft Law is approved, it will make it possible for pan-Ukrainian public organizations to keep their legal status. In particular, it concerns the NGOs of disabled persons and their territorial structures there were developing during long decades.

Confirmation of pan-Ukrainian status of NGOs is the most disputable issue. Although the transitional provisions of the Law do not require such confirmation from pan-Ukrainian or international organizations registered before (item 7), at the practical level many organizations did not manage to officially register their local branches in local registration authorities, as was required by Article 15 of the Law of Ukraine "On

Associations of Citizens". Therefore, if the justice authorities don't have information about the confirmation of official registration of local branches – whether with a status of legal entityentity or without it – they answer negatively to the responses of state authorities on whether certain organization has a pan-Ukrainian status (and, respectively, whether it is entitled to financial support from the state budget).

Unfortunately, the law still allows justice authorities to control the changes of composition of the managerial bodies of NGOs, which does not comply with item 48 of the Recommendation of Committee of Ministers of the Council of Europe on the legal status of non-governmental organizations in Europe CM/Rec(2007)14. The requirements with regard to legal expert assessment of any amendments to the Statutes (not only the change of name and goals of NGOs) are also in contradiction with item 43 of the CoE Recommendations.

The Cabinet of Ministers of Ukraine has not fulfilled the requirements of the Law yet, whereas it had to submit draft law on introducing amendments to legislative acts of Ukraine in order to bring them in conformity with the Law of Ukraine "On Public Associations" as stipulated in subitem 1 of item 14 of its final and transitional provisions. This draft law was due 22 September 2012.

Notwithstanding, the draft law is still not registered in the Verkhovna Rada of Ukraine. It may cause legal conflict during the application of its provisions to NGOs of disabled persons, associations of employers or other non-profit organizations.

It is necessary to state that Article 14 of the Law allows the registration bodies to intervene, for example, in case of the change of composition of the NGOs' managerial bodies. In particular, if the Statutes are violated, the registration body has a right to refuse accepting notification about such change or leave the documents undecided. It is entitled to leave the claim undecided inter alia if there is no written consent of a person who missed the meeting of managerial body where the decision about change of the composition of this or other managerial body was made.

Summarized recommendations

To develop draft legal acts on:

1) standards of administrative services in the area of registration of NGOs;

2) setting the list of 'basic information' about NGOs and their activities that should be accessible through the Register;

3) classification of NGOs according to kinds of activities that correspond to the UN accounting system for international comparisons;

4) exchange of information on the attributes of non-profitability of NGOs.

To consider introducing amendments to the Law of Ukraine "On Public Associations" with regard to:

1) the procedure of how the NGOs should submit electronic documents;

2) providing for the procedure of temporary accreditation of foreign NGOs;

3) withdrawal of the requirement to register the NGO not having a status of legal entity within 60 days;

4) assumption that the information submitted by NGOs is introduced into the Register if no refusal or other decision is provided within certain term (not more than 20 working days);

5) providing for shorter limitation period for challenging the decisions of managerial bodies of NGOs (from one to three months);

6) providing for additional procedures of reorganization of NGOs (in addition to merger).

It is also necessary to introduce amendments to final and transitional provisions of the Law # 4572-VI in order to provide local branches of pan-Ukrainian NGOs (that had a status of legal entity on the day of enactment of this Law) the right to keep this status with them.

RIGHT TO JUDICIAL PROTECTION

During 2013, the Commissioner for Human Rights received more than 4 700 citizens' appeals with regard to violation of their right to effective judicial protection within criminal, civil and administrative proceedings. It is 1 000 claims less than in 2012. This data shows some decline in the number of appeals that can be attributed to the introduced amendments to the current legislation, improvement of judicial authorities performance, timely response of the Commissioner to notifications about the violation of citizen's rights and providing them with adequate clarification on legal means to restore their rights.

Many appeals concerned the violation of provisions of the new Criminal Procedure Code by law enforcement authorities during pre-trial investigation, in particular: failure to introduce data about the criminal offence to the Unified register of pre-trial investigation, unjustified termination of criminal proceedings, violation of freedom from illegal detention or arrest, and violation of the right to legal protection. In most cases, the inspections carried out by the prosecutor's offices upon the Commissioner's address did observe the violation of procedural law on the part of law enforcement authorities, and actions were taken to restore the rights of claimants.

Having studied the appeals, it is legitimate to state that the main reasons of such appeals are violation of provisions of the Criminal Procedure Code of Ukraine by law enforcement officials and lack of control on the part of law enforcement managers and prosecutor's office. The first year after the new Criminal Procedure Code entered into force demonstrated that these officials were not ready to operate under new rules. Therefore, the continued reform of the system of criminal justice should become one of top priorities of the Verkhovna Rada of Ukraine in the current year. In order to prevent the violation of rights and freedoms of citizens in new criminal process, the Commissioner continues to implement a project "Monitoring of Implementation of New Criminal Procedure Code of Ukraine", supported by UNDP, the U.S. Department of Justice and other international organizations.

Throughout 2013, the Commissioner also received appeals on violation of reasonable terms of judicial proceedings in civil and administrative cases, on infringement of the right to effective implementation of judicial judgments, etc. Upon the results of verifications it was identified that the reasons for such appeals remained the same as specified in Annual Report of the Commissioner in 2012, such as: excessive workload of judges, lack of judges, and inadequate material and staffing resources of courts. Similar situation can be observed in the state executive bodies.

Thus, the above-mentioned systemic violations in civil and administrative cases are still relevant – exemplified by the respective judgments of the European Court of Human Rights adopted in 2013. The violations result from a number of factors of legislative and economic nature. Unfortunately, the government does not pay any effort to eliminate them, notwithstanding the damages that the state budget suffers annually due to the need to implement the judgments of the European Court of Human Rights issued against Ukraine.

OBSERVANCE OF SOCIAL AND ECONOMIC RIGHTS

The results of the monitoring of the Commissioner for Human Rights and proceedings initiated upon the appeals of citizens showcased that in **2013, no drastic changes were observed in the systems of social labour relations and social protection that could significantly improve the equality and quality of life of Ukrainian families.**

Activities of the Commissioner for Human Rights in the area of protection of social, economic and humanitarian rights of person and citizen aimed to identify systemic problems, improve effective legislation, restore violated human rights, provide assistance in resolving problems and raise legal awareness of claimants.

Result: in one out of six appeals considered, the abused rights were restored or specific steps were taken in order to provide solutions to the problems raised by citizens.

Main trends, challenges and ways out:

1. ***In the area of observance of constitutional labour rights, one can observe a progressive trend towards deterioration of protection of employees.***

First of all, it is due to mismatch between the effective provisions of labour legislation and other legal acts and contemporary social and economic developments, international trends and standards, as well as due to the lack of efficient state policies over the labour market and employment sector. It is especially manifested through the problems such as creation of decent workplaces, reduction of 'shadow' employment and payment of wages, informal and non-standard employment, and improper and untimely response to new challenges emerging at the labour market with regard to greater globalization.

The most prevalent violations in the area of labour relations are late payment of wages, unfair dismissal and poor working conditions.

A number of legislative amedments are proposed to solve the above-mentioned problems, such as:

- *bringing labour legislation in conformity with the requirements of European Social Charter (revised) and the conventions of International Labour Organization;*
- *providing for legal mechanisms to resolve the problems of labour relations and wages legalization;*
- *setting up a guarantee Fund for securing the protection of financial claims of employees in case of employer's bankruptcy;*
- *increasing the responsibility of employers for delayed payment of wages to their employees;*

- *ensuring the observance of the right to judicial protection and unconditional implementation of the court judgments, particularly in cases involving the illegal dismissal of employees;*

- *improving of the functions of state surveillance and control over the observance of labour legislation.*

2. In the area of observance of constitutional human rights to social protection, the main problems entailing violation of the right to an adequate standard of living and other social and economic rights enforced by the Constitution of Ukraine and international agreements ratified by Ukraine are:

- *long-standing failure of the government to reliably define such basic social standard as a minimum living wage that is used as a basis for determining state social benefits and standards with regard to income of the population, costs of housing services, social and cultural services, education and health care;*

- *inefficiency of numerous state programmes aimed to support poor population due to complicated mechanisms accessing benefits of such programmes. It does not provide for overcoming the stratification of people on the ground of income and, consequently, does not improve positive feeling of social justice and social protection among claimants.*

The poverty rates in Ukraine are high, especially among families with children (32.7% of them are poor), multi-child families (61.7%), childless households with unemployed persons (36.9%), and among those residing in rural areas (34.8%) and small towns (28.2%). The main resones are:

- *failure of the government to provide adequate practical implementation of legislation in the area of observance of constitutional rights of disabled persons, homeless persons and children. It has a negative impact on the level of their social protection and rehabilitation for them to fully excercise their political, economic, cultural and civil rights;*

- *gaps in the legislation regulating awarding and payment of pensions, other social payments, providing benefits to several vulnerable groups of people, and care to persons recognized as incapable by a court.*

3. The results of monitoring of observance of human rights in the area of health care encompass the following problematic areas:

- *poor implementation of the Law of Ukraine "On the Procedure of Reforming the System of Health Care in Vinnytsia, Dnipropetrovsk, Donetsk regions and the City of Kyiv" due to the following factors:*

  – *lack of the state approved strategy for health care sector reform;*

  – *lack of clear local plans aimed at improvement of the health care facilities network of (both of primary and secondary health care) – as a result, the population has a poor understanding of the new developments in this area;*

  – *lack of adequate informational campaign to promote the reform;*

- *quality and accessibility of primary and secondary health care for population, with emphasis to the following issues:*

– *rural district hospitals were closed down not only in the pilot regions, but also in other regions which led to protests of the population;*

– *poor equipment of out-patient facilities for the provision of wider range of services as a part of family health care system;*

– *shortage of family doctors and their insufficient capacity;*

– *lack of funds necessary to increase salaries, to complete the renovation of health care facilities, and to procure all necessary equipment and materials;*

– *deterioration of access to secondary health care due to poor condition of roads and lack of regular transport connection between rural areas and district centres;*

- *insufficient protection of the rights of terminally ill patients to adequate pain medications, providing hospice and palliative care;*

- *inadequate protection of the rights of patients to accessible treatment of socially dangerous diseases such as tuberculosis, HIV/AIDS, viral hepatitis, high-quality vaccination from communicable diseases;*

- *poor ensurance of the rights of people suffering from cancer to accessible health care and rehabilitation services.*

4. The following problems and solutions are highlighted in the area of housing and certain property rights of people:

- *inefficient state policy on providing affordable and social housing to citizens and on managing poor or dilapidated housing.*

In particular, although in 2013 the government of Ukraine has taken certain measures to implement the Programme of mortgage cost reduction for affordable housing to those citizens who need toimprove their housing condition (the Programme was approved by the Resolution of the Cabinet of Ministers of Ukraine #343 as of 25 April 2012; in addition, the State Programme on Providing Housing to Young People for 2002-2012 was extended until 2017 according to the Resolution of the Cabinet of Ministers of Ukraine #967 as of 24 October 2012), no significant impact was made in the area of improving housing rights of the citizens. In 2013, no adequate funding was provided to the majority of budgetary programmes aiming for provision of housing to socially vulnerable groups of people.

After the Law "On Social Housing" was adopted in 2006, state authorities never adopted a single targeted programme document aiming to implement the provisions of the Law and to respond to the challenges in this area.

The plans of Government to provide solutions to housing problem exclusively through the implementation of state programmes to support construction industry, and failure to provide proper funding to budgetary programmes targeted at the reduction of mortgage costs without increasing the solvency of the population seem unjustified.

Currently, 4.9 million square meters of dilapidated and emergency housing are in operation in Ukraine, with 117 500 people living there. Almost 30% of housing in Ukraine requires capital renovation.

If a current pace of reduction of the dilapidated and emergency housing continues, Ukraine would need at least 20 years to secure the housing rights of the population. It is also necessary to bear in mind that living in such houses poses an everyday threat to the life of inhabitants and to loss of their only housing due to the risk of collapse of the construction elements – floors, walls or stairwells.

- *failure to provide rights and guarantees to citizens stipulated by the Law of Ukraine "On Securing the Excercise of Housing Rights of Dormitory Residents", in particular with regard to acquisition of ownership over the living premises in dormitories. It is due to inadequate financial provision for implementation of National Targeted Programme of Transferring Dormitories to the Ownership of Territorial Communities for 2012-2015;*

- *the need to improve the legislation, in particular with regard to:*

  – *bringing the housing legislation in conformity with recent requirements of European provisions and standards of the quality of housing – in particular, identification of standards of housing affordability to socially vulnerable populations;*

  – *re-focusing state housing policy on the construction of housing for socially vulnerable populations;*

  – *improving extra-judicial mechanisms for land dispute settlements;*

  – *providing regulation of state surveillance and control over the excercise of property rights of the citizens – recipients of financial services.*

5. ***Positive results of the proceedings initiated by the Commissioner and the problems that need response on the part of public authorities in the area of observance of human rights to a safe and healthy environment, affordable and quality housing services, in particular with regard to:***

- *ensuring steadfast observance of the provisions of fundamental international agreements in the area of protection of environment and nature, human rights to participation in public decision making on environment and to obtaining information about assessment of impact of such decisions on the environment.*

With this view, it is necessary to pay particular attention to the following problems: failure of public authorities to secure the rights of community to contribute to decision-making in the area of environment protection; obtaining information about assessment of environmental impact of highly environmental hazardous construction projects of . It is directly related to implementation of obligations that Ukraine undertook within the framework of international agreements, in particular the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) ratified by Ukraine in July 1999. The proceedings of the Commissioner for Human Rights encompassed inter alia cases on ensuring the rights of residents of Azov region, Donetsk oblast and the Autonomous Republic of Crimea on their participation in decision making with regard to viability of shale gas extraction at Yuzivska gaseous section in Donetsk and Kharkiv oblasts, obtaining full and reliable information about the impact of gas extraction on environment and health of population;

- *the necessity to launch legal mechanisms aiming to ensure environmental security of the population which entail encouraging business owners to upgrade industrial wastewater treatment plants, to apply the advanced environmentally balanced resource-saving technologies, low-waste closed loops and water recycling and reuse technologies;*

- *providing people with high-quality drinking water through creating favourable conditions that would enable local self-government bodies to attract investments for these purposes;*

- *reform of housing and community economy of Ukraine;*

- *taking legislative measures to establish unified principles and rules for calculating housing services tariffs and launching efficient mechanism of control over price, amount and quality of services provided and their adequacy to the price paid by the consumerto;*

- *taking legislative measures for more efficient diversification of administrative fines for violation of construction legislation in terms of the social effects of administrative offence on the violated human rights and freedoms, rights and legitimate interests of legal entities, property, public order and safety.*

In the course of parliamentary oversight of the Ukrainian Parliament Commissioner for Human Rights over the observance of social and economic human rights, the staff members of the Commissioner's Secretariat participated in 30 meetings of the committees of the Verkhovna Rada of Ukraine, 17 committee hearings, round tables and seminars. During these events, the staff members submitted proposals of the Commissioner for Human Rights on the most urgent problems of human rights observance, and the majority of them were reflected in the respective decisions and recommendations of the committees. The Secretariat of Commissioner considered approximately 260 legal acts on social and economic human rights submitted for the consideration of the Cabinet of Ministers of Ukraine and initiated proposals on improvement of effective legal acts. In particular, the Secretariat initiatied 31 submissions to public authorities and local self-government bodies and carried out approximately 60 verification visits.

OBSERVANCE OF THE RIGHT TO ADDRESS INTERNATIONAL ORGANIZATIONS FOR THE PROTECTION OF THE HUMAN RIGHTS

Analysis of the appeals submitted to the Commissioner for Human Rights showcases that in 2013 the noncompliance of Ukraine with the judgments of the European Court of Human Rights had aggravated. First of all, it concerns the payments and other financial measures required upon the judgments of Ukrainian courts. Delays in payment of fair remedy were not also uncommon.

The Commissioner for Human Rights considers that it is necessary to ensure that Ukraine consistently fulfils its obligations on full and timely implementation of final judgments of the European Court of Human Rights, to which our state is a part. For this to happen, it is inter alia necessary to annually allocate adequate funds in the state budget of Ukraine for making payments upon the judgments of the European Court, and to adopt a legislative provision on establishing a term within which the judgments of the European Court should be fulfilled in terms of payments and other financial measures for the benefit of claimants upon the decisions of national courts, and to ensure that delay penalty is paid in case of late implementation of the judgments.

In order to prevent new bulk of claims to the European Court of Human Rights, the state should promptly take measures to overcome systemic problems in the area of human rights that are referred to in the judgments of this international institution. In particular, it is necessary to implement nation-wide efficient means of legal protection or combination thereof, and the means that can ensure adequate and sufficient remedy for non-compliance and untimely compliance of the judgments of national courts in accordance with the principles of the Convention and jurisprudence of the European Court.

In addition, in oder reduce the number of claims to the European Court of Human Rights that do not correspond to the eligibility criteria, it is necessary to take legislative action to enforce the right of specific populations (identified by the law) to free legal aid at the stage of preparing claims to international organizations.

IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM IN UKRAINE

The total number of institutions in Ukraine which formally fall under the definition of custodial setting is about 6 thousand. In 2013 these settings were in the charge of 11 ministries and agencies – State Migration Service, State Penitentiary Service, State Border Service, State Court Administration, Ministry of Revenues and Duties, Ministry of Internal Affairs, Ministry of Defence, Ministry of Education, Science, Youth and Sports, Ministry of Health Care, Ministry of Social Policies and Security Service of Ukraine.

However, as a result of monitoring efforts new kinds of institutions were deemed to formally meet the definition of custodial settings. They are, specifically, the premises at international airports for holding individuals not allowed into the territory of Ukraine on grounds of violation of the legislation on the protection of state borders; wards for compulsory tuberculosis treatment at anti-TB facilities and other similar wards in the health care system. Such settings will become eligible for NPM monitoring in 2014.

During 2013 monitoring visits embraced 262 institutions, of which 24 were visited for the second time. On the basis of the results of each visit NPM sent detailed reports to the leadership of the relevant ministry or agency, with indication of identified deficiencies and recommendations regarding their elimination.

In order to increase the efficiency of government response to the recommendations of the Commissioner, on November 4, 2013 it was decided to establish a Permanent interagency working group composed of representatives of relevant ministries and agencies (at the level of deputy heads), Presidential Administration and Prosecutor General's Office. Moreover, it was decided to also involve a group of experts from the civil society. The working group implements the following main tasks:

- develops proposals aimed at improvement of the legislation safeguarding human rights and freedoms of individuals in custodial settings (joint elaboration of draft regulations related to human rights and freedoms, analysis of the current legal framework for compliance with the existing national and international standards);

- develops the national standards of proper treatment of individuals in custodial settings (criminal suspects, administrative detainees, persons with mental disorders, children institutionalized in residences, etc.);

- conducts joint monitoring of the status of respect of the rights and freedoms of individuals in custodial settings (joint inspection visits, including such based on the facts of outrageous violations of human rights);

- conducts advanced trainings for custodial settings personnel in the

sphere of human rights and freedoms;

– exchanges best practices in protection of human rights and freedoms against ill-treatment.

On the basis of the results of NPM implementation in the course of 2013 the Human Rights Commissioner sent 26 submissions for immediate action to eliminate gross violations of human rights and freedoms as well as systemic violations systemic disorders in the performance of custodial settings:

7 such acts were communicated to the Prime Minister of Ukraine;

6 – to Prosecutor General;

4 – to Minister of Justice;

4 – to Minister of Internal Affairs;

3 – to Minister of Social Policies;

1 – to Minister of Education and Science, and

1 – to the Head of Vinnitsa Regional State Administration.

Submissions which addressed issues that required coordinated actions of several central executive authorities were directly communicated to the Prime Minister of Ukraine. For example, the results of custodial settings monitoring in the first half of last year revealed a systemic problem related to gross violations of human rights and freedoms of arrested persons during their participation in court hearings. In fact it was found that the whole process of delivering arrested criminal defendants from remand prison to court and back could amount to cruel or degrading treatment, and in some cases – even to torture.

The arrested who are to participate in court hearings are early in the morning placed into the admittance boxes at remand prisons, where the holding conditions in the vast majority of instances fail to meet the minimum standards (lack of ventilation and windows, no opportunity to sit down). After a several hours wait and without any breakfast these individuals are placed into special vehicles the conditions in which in the hot or cold weather are unbearable (absence of ventilation or any light, a very small floor area - less than 0.5 square meters per person). Upon arrival to court the arrested are held in special premises (cells) for criminal defendants, which in most of the site-visited courts are mere cages without any natural light, ventilation or toilet. Quite a number of courts are not equipped even with such cells and the arrested wait for the hearing (sometimes for several hours) in the special vehicles, not being able to satisfy even their natural needs. On returning after the court hearing to prison they usually miss their dinner. Most remand prisons do not provide them with dry rations.

In order to secure a response to such obvious violation of human rights the Ombudsman made a report at the hearings in the Parliament and sent a submission to the Prime Minister of Ukraine seeking his relevant instructions to the leaderships of the State Court Administration, Ministry of Internal Affairs and State Penitentiary Service, for their immediate action to respect the rights and freedoms of persons involved in court proceedings and to prevent their cruel and degrading treatment.

Another outstanding issue discovered during a visit to the facilities of different pro-

files and subordination was that of involuntary seclusion and application of physical restraints to persons with mental illnesses in the absence of any legal regulation of such procedure. This issue is especially acute in the psychiatric and neuropsychiatric institutions of the Ministry of Social Policies, Ministry of Health Care and State Penitentiary Service.

In the absence of relevant legal regulations the institutional staff on their own decides how to deal with the agitated patients. As a result of such situation the monitoring of, e.g., the neuropsychiatric residences under the Ministry of Social Policies revealed numerous instances of placement of such persons in isolated and unequipped premises or even metal cages in which they were kept for a long time without being able to satisfy even their basic needs. Monitoring of psychiatric and neuropsychiatric hospitals of the Ministry of Health Care revealed multiple instances of the use of makeshift straightjackets and belts for physical restraint of patients.

As a result of the Ombudsman's official letter to the Prime Minister of Ukraine the Ministry of Health Care was instructed to develop a draft Regulation on the use of physical restraints and seclusion during psychiatric assistance to persons with mental disorders.

Monitoring of the respect of the rights of persons detained for administrative offences has shown that the current law does not regulate the procedure and conditions of custody for this category of offenders, which does not comply with the Constitution of Ukraine and Ukraine's international commitments. In part these matters are regulated by legal acts of the Cabinet of Ministers of Ukraine and by agency and interagency Orders that reflect different approaches to the standards relating to equipment of holding facilities and protection of detainees' rights and freedoms.

This situation has entailed numerous violations of human rights and freedoms of the administratively detained persons that can be regarded as their cruel, inhuman or degrading treatment.

In particular,

- the facilities for administrative detainees fail to meet the standards accepted in the UN and CoE member states (especially with regard to floor area and space per person, free access to fresh air and drinking water, requirements as to ventilation, lighting, etc.);

- the procedures for restriction of the rights and freedoms of administrative detainees are not prescribed by law and the procedure of ensuring the rights and obligations of this category of detainees rests only upon inner departmental regulations.

In this regard *the Ombudsman made a submission to the Prime Minister of Ukraine with a request to establish a working group composed of experts from the Ministry of Justice of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine and the State Border Service of Ukraine, with involvement of employees of the Ombudsman's Secretariat, for devising a draft law that would define uniform national standards of detention of persons arrested for committed administrative offenses and the procedure for restriction of their rights and freedoms. Currently this group exists with the Ministry of Justice of Ukraine. Regrettably, as*

of 31.12.2013 the relevant draft has not been developed.

Another issue of systemic nature revealed in the course of monitoring is the lack of consistency between departmental regulations of various ministries and agencies (Ministry of Internal Affairs, Security Service, SBSU, SMSU, SPSU) where they concern the number and types of items that a detainee may have, receive or buy at own cost or the items that are strictly forbidden. In her submission addressed to the Prime Minister of Ukraine the Ombudsman noted that the main differences in the detention or sentence enforcement procedures in the custodial institutions should be the purpose and duration of custody and the prisoners' status in the criminal or administrative process, while the differences in the conditions of custody for these persons should be minimal, and the security measures should depend on the degree of the social danger or national security threat that each individual poses.

However, the aforementioned state agencies apply different approaches to the regulation of the conditions of detention of persons in subordinate institutions and even resort to utterly ungrounded security procedures. The effective legislation and the agency regulations on the operation of these institutions contain significant discrepancies in the lists of items, objects and foodstuffs allowed to possess, buy or receive and in the lists of items allowed for use.

Pursuant to the Ombudsman's submission the Ministry of Justice established an interagency working group in order to develop uniform requirements for conditions of detention in custodial settings, in view of the domestic and international best practices. Unfortunately, as of 31.12.2013 the relevant draft has not been developed.

OBSERVANCE OF CONSITUTIONAL RIGHTS AND FREEDOMS OF MILITARY SERVANTS, PROPOSALS ON CONSOLIDATION OF LEGALITY AND ELIMINATION OF GAPS AND DRAWBACKS IN THE WORKOF MILITARY ORGANIZATION AND STATE LAW ENFORCEMENT BODIES

Subject to Article 101 of the Constitution of Ukraine, the Laws of Ukraine "On Ukrainian Parliament Commissioner for Human Rights" and "On Democratic Civil Control over Military Organization and Law Enforcement Bodies of the State", the Commissioner for Human Rights carries out systemic monitoring to prevent abuse of civil and personal rights of military servants.

According to the monitoring results, the most prevalent problems are protection of life and health of military servants, protection of their honour and dignity, personal immunity and safety, and providing fair and favourable conditions of service.

Rights of citizens to life and health, honour and dignity are natural, integral and inalienable; in no circumstances they can be restricted for military servants. Notwithstanding, the meticulous attention of the government, human rights defendants and society to these problems, the loss of life in peaceful time continues to disturb public opinion. The lack of attention to the health of military personnel also is unjustifiable. All these issues require that military command takes necessary moral, psychological, legal and administrative measures to address them.

Salary of military servants is the main and – in most cases – the only means of livelihood of their families. Analysis of the situation proves the following: the amount of salary is not adequate to physical and psychological workload of the military servants; there are significant disparities in the amount of salaries of various military units; the main salary and additional payments do not match with the nature and structure of service duties.

In order forthe main and additional wages of military servants to correspond to the terms of reference, amounts of salary and conditions of services, to increase the proportion of the main wage and impove financial encouragement of developing military skills, it is recommended to continue developing and introducing amendments to the respective legal acts of the Cabinet of Ministers of Ukraine.

The Commissioner for Human Rights keeps on her control the issue of protection of the rights of citizens of Ukraine to the benefits to be paid due to recruitmentor enrollment to military service and due to discharge from service, as provided for by the Labour Code of Ukraine and the Law of Ukraine "On Military Duty and Military Service".

The Commissioner's monitoring of the observance of social and economic rights of military servants, soldiers and officers, military veterans and their families demonstrates that the insecurity of housing remains a major problem.

The Commissioner for Human Rights has to reiterate that annual target indicators for housing provision to military servants,

as well as retired or resigned servicemen, enforced by the *Comprehensive Programme of Housing Provision to Military Servants, Servicemen and Officers of Law Enforcement Bodies, State Criminal Executive Service, Servicemen of Customs Authorities and Members of their Families are never met*.

The amount and procedure of budget allocations for construction and purchase of housing, lack of transparent and efficient mechanism of creating and maintaining the fund of service housing of military units and garrisons, lack of exhaustive actions to produce technical documentation for buildings reconstructed for accommodation purposes and appropriate identification of their status are amid numerous reasons of poor level of fulfilment of housing rights of military servants, retired servants and members of their families.

Due to these reasons, over 45 thousand military servants of the Armed Forces of Ukraine are on the list for housing provision for decads. Housing rights of 12 700 families of servicemen retired from military service are not fulfilled – they stay on the list of the Armed Forces of Ukraine and of local self-government authorities at their place of residence. Some 2 thousand families wait for resettlement from military camps, which were left by military units.

The Commissioner for Human Rights continues to monitor the observance of housing rights of military servants and emphasizes the need to secure adequate financing, to develop state programme of housing provision to persons retired from military service and service in law enforcement authorities, and members of their families who stay on the list for housing provision of local self-government authorties, and to undertake other administrative and organizational measures.

Within democratic civil control, the Commissioner for Human Rights pays attention to the observance of rights of persons retired from military service and certain other groups of persons to adequate pension.

The results of the monitoring conducted by the Commissioner for Human Rights showcase a number of systemic challenges in this area that should be adressed. Therefore, the Commissioner insists on amending the Resolutions of the Cabinet of Ministers of Ukraine #1294 as of 7 November 2007 and #45 as of 13 February 2008 in order to bring the main and additional wages of military servants in conformity with terms of reference, amounts of salary and conditions of services, to increase the proportion of the main wage and impove financial encouragement of developing military skills and taking it into account while re-calculating pensions awarded earlier.

The Commissioner for Human Rights takes measures to control how these problems are resolved. Currently, the Commissioner carries out an analysis of the reasons of violation of social and economic rights and prepares her response in accordance with the Law of Ukraine "On Ukrainian Parliament Commissioner for Human Rights", aimed at unconditional fulfilment of state obligations in terms of social protection of military servants, military pensioners, veterans of war and military service, and members of their families.

RIGHTS OF THE CHILD

1. Although the institution of the Commissioner for Human Rights was established long time ago, only in 2013 Ukraine joined the European Network of Ombudspersons for Children (ENOC).

2. No effective measures are taken at the national level to protect children from abuse and violence and to prevent these problems. First of all, the Commissioner is concerned with imperfection of the mechanisms to protect children who survived violence or witnessed violence, in particular violence committed by their parents. According to the current legislation, parents are legal representatives of children. But apparently, they cannot represent the interests of a child if they are perpetrators. Therefore, it is necessary to provide for the procedure of appointing temporary legal representative of a child during the investigation of case of violence committed by parents (or other legal representatives). Such functions should be performed by a guardianship and trusteeship authority.

In addition, the results of monitoring visits to centres of social and psychological care, shelters for children and centres of social and psychological rehabilitation of children demonstrate that identificattion of a child as a victim of violence can be challenging. It is also necessary to state that children have limited access to services. The level of awareness of adults and children about the services provided by staff of such centres is also low.

3. In order to fulfil the right of disabled children to education free from discrimination and based on the principle of equality of opportunities, the state should provide access to life-long inclusive education at all stages. Notwithstanding, the legislative regulation on inclusive education at the level of pre-school, vocational school, higher education and after school education is still missing. Only secondary schools are able to open special and inclusive classes to teach children with special needs.

At the same time the Commissioner states that due to the lack of adequate infrastructure and shortage of professionals to conduct correctional and development activities, the vast majority of disabled children currently have the only option – to receive education through individualized modality.

The problem of transporting disabled children to educational centres and providing such children with special comfortable buses is not resolved as well.

4. The Ukrainian government hardly considers the alternative solutions to the sever problem of ensuring housing rights of children. Therefore, there is a need to study the feasibility of using premises left after re-organization of boarding schools as social dormitories, of legislative regulation on usage of revenuereceived from real estate develop-

ersin the form of equity participation in infrastructure development for purchasing housing for orphans and children deprived of parental care, or on obligation of a real estate developers to provide certain percentage of constructed housing to local self-government body as a social housing, etc.

5. When it comes to the protection of rights and interests of refugee and asylum seeker minors -, it is necessary to state that there is no accurate information on number of such children in Ukraine, whereas a clear processing data system to record refugee and asylum seeker children separated from their families is not in place.

First of all, it is necessary to adress the problem of permanent accommodation for asylum seeker children, including accommodation within the families that have established friendly relations with such children, legal regulation of the status of legal representatives of asylum seeker children, performing control over housing conditions of such children, their social management, as well as ensuring their right to access education and obtain the respective education certificates.

In addition, the authorized bodies often face with a problem of dealing with unaccompanied minors who do not apply for any status in Ukraine. No legislaturehas been adopted to regulate this issue so far.

OBSERVANCE OF THE RIGHTS OF FOREIGNERS WHO STAY UNDER THE JURISDICTION OF UKRAINE

According to analysis of appeals to the Ukrainian Parliament Commissioner for Human Rights submitted by asylum-seekers, foreigners and stateless persons who are subject to compulsory deportation, and Ukrainians living abroad, it is evident that the legislation in this area still has gaps and requires attention on the part of the Verkhovna Rada of Ukraine.

First of all, it concerns the need to eliminate the drawbacks of the Law of Ukraine "On Refugees and Persons Who Need Additional or Temporary Protection" – in particular, it is necessary to improve the procedure of granting refugee status and providing additional or temporary protection in Ukraine.

However, there are also other systemic legislative gaps in this field, inter alia lack of legislative provision determining a clear detention procedure for foreigners and stateless persons in the case of their compulsory deportation, including those who were denied refugee status or additional or temporary protection.

In particular, the respective amendments have to be introduced to the Code of Administrative Legal Proceedings of Ukraine – it is necessary to differentiate the proceedings on administrative claims of foreigners and stateless persons challenging the decisions on their compulsory deportation to the country of origin or third country, and the proceedings on administrative claims of state authorities on compulsory deportation of these individuals; to determine the particularities of administrative proceedings related to detention of a person for implementation of court judgment on compulsory deportation; to bring the detention of individuals for their compulsory deportation under the jurisdiction of administrative courts, and to define particularities of proceedings in such cases. At the same time, the assistance of attorney and translator/interpreter should be provided at every stage of the proceeding.

Protection of the rights of Ukrainians living abroad is also a matter of concern. After gaining its independence, Ukraine became a centre of unity for Ukrainians from all over the world, therefore strengthening the ties between Ukraine and these specific groups of foreigners and stateless persons, and promoting their return to Ukraine is an inalienable component of foreign economic policy of the country.

Nevertheless, discrepancies between the provisions of the Laws of Ukraine "On Foreign Ukrainians", "On Legal Status of Foreigners and Stateless Persons" and "On Employment of the Population" create additional barriers for foreign Ukrainians to arrive to Ukraine for permanent or temporary stay, in particular with regard to obtaining the respective residence permit. It does not allow for practical implementation of the right of foreign Ukrainian to employment in Ukraine on the same conditions as the citizens of Ukraine.

Introducing the respective amendments to the above-mentioned laws of Ukraine will contribute both to efficient legislative regulation of this matter and to strongthe ties of foreign Ukrainians with their historic homeland, whereas it would ensure the right of every foreign Ukrainian to return to Ukraine, inter alia in order to get employment.

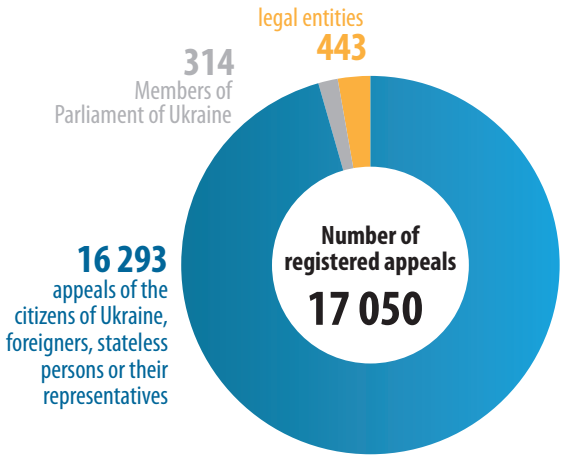
It is also necessary to pay particular attention to the violation of rights of foreign Ukrainians that arose from incompliance with the Law "On Foreign Ukrainians".

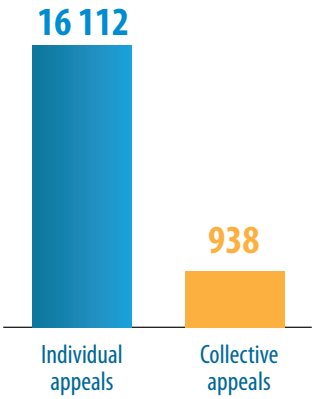
In particular, the Commissioner initiated proceedings with regard to violation of rights of persons who were granted the status of foreign Ukrainians to obtain higher education in Ukraine during the university admission campaign in 2013. The respective proceeding was submitted to the Prime Minister of Ukraine. Thanks to these actions of the Commissioner, more than 150 foreign Ukrainians were able to enjoy their right to obtaining higher education in Ukraine in 2013, while in 2012 there were only 47 foreign Ukrainians who managed to do so despite the quota of 310 persons established for them.

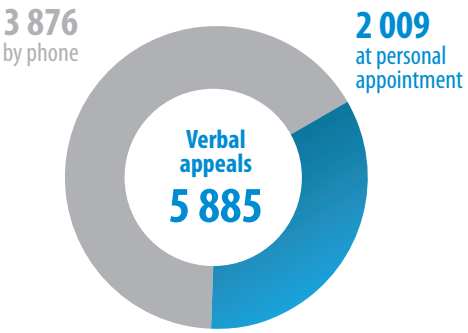
STATISTICAL INFORMATION ON THE CITIZENS' APPEALS TO THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS IN 2013

Appeals to the Commissioner for Human Rights, 2013

59 016
Total number of persons who submitted appeals to the Commissioner



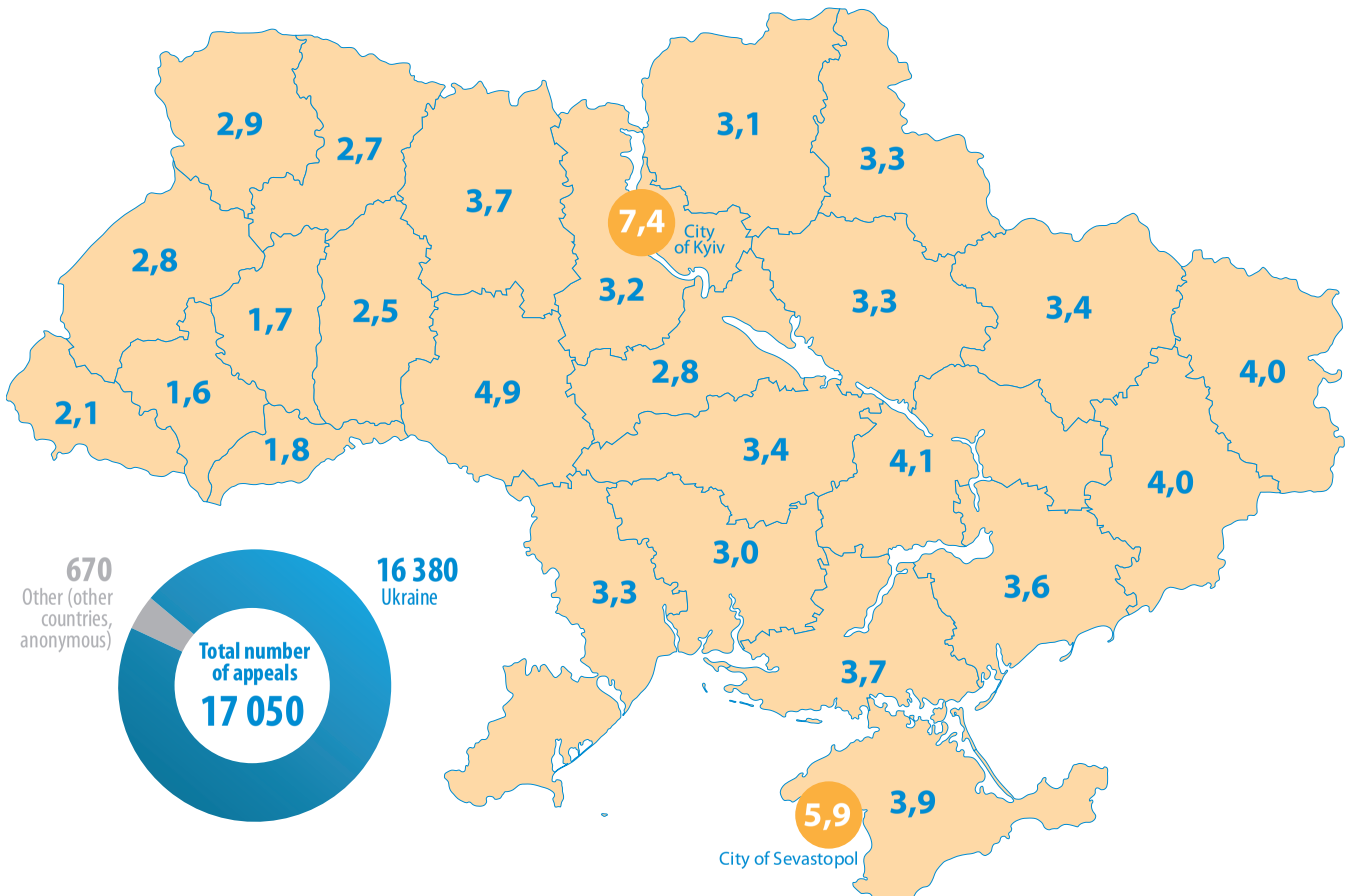


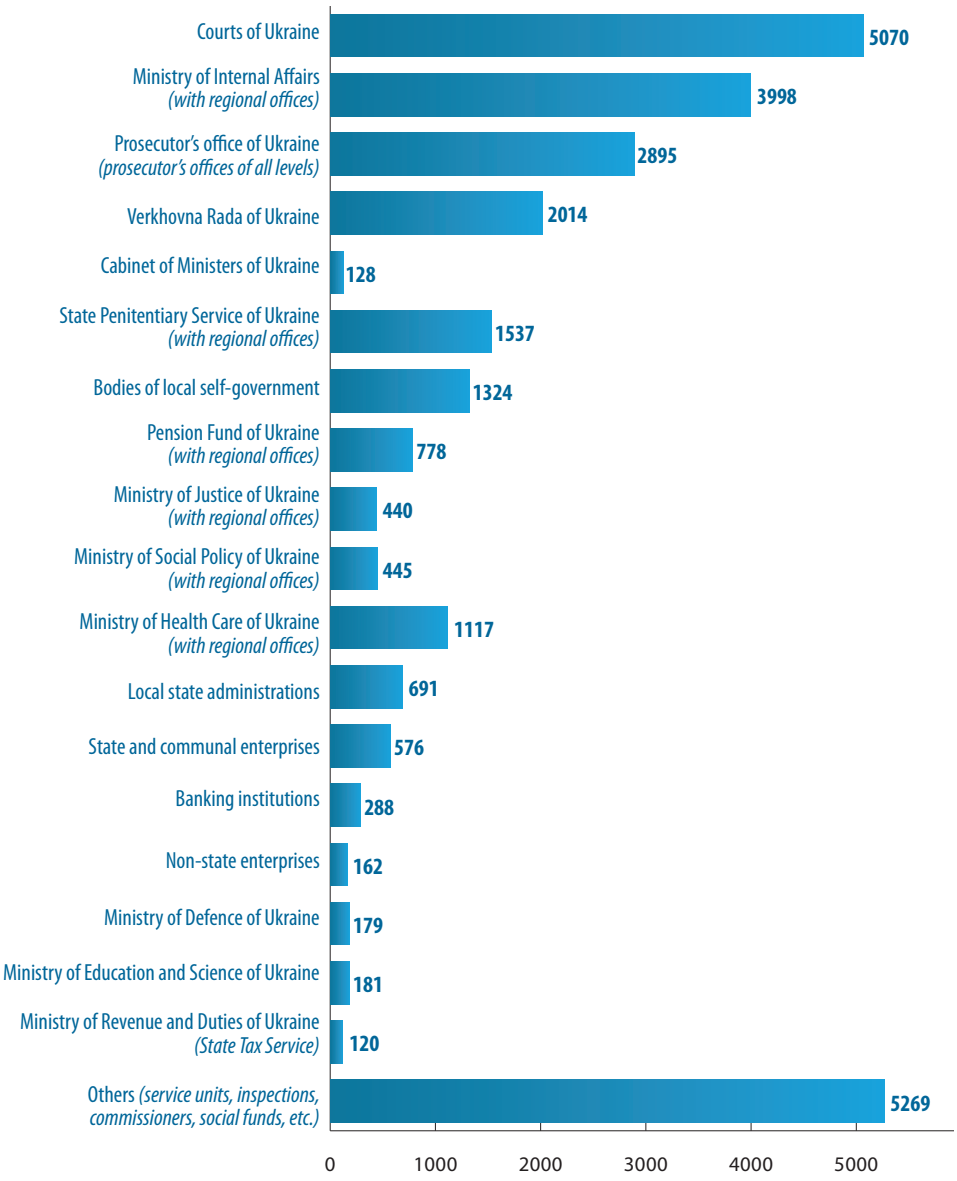


1 179
appeals submitted by e-mail

53 131
person signed there appeals

Number of written appeals to the Commissioner for Human Rights from different regions of Ukraine (and per 10 thousand people) and from other states, 2013





Total number of appeals 27 212