



THE UKRAINIAN PARLIAMENT COMMISSIONER  
FOR HUMAN RIGHTS

# ANNUAL REPORT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

on the observance  
of human and citizens'  
rights and freedoms

SUMMARY

2014

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Parliament Commissioner  
for Human Rights, 2014

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# INTRODUCTION

In the history of the contemporary Ukraine, the year 2014 will undoubtedly be remembered as the year of the huge national uplift and, at the same time, of unprecedented challenges to human rights and fundamental freedoms. Rights and freedoms of millions of Ukrainians guaranteed by both basic international instruments and the Constitution of Ukraine were violated. Unprecedented in the history of independent Ukraine human rights violations committed during the Revolution of Dignity were analysed in the Special Report of the Ukrainian Parliament Commissioner for Human Rights 'Violations of Human Rights and Freedoms in Ukraine: the Events of November 2013 – February 2014' which was presented to the Parliament in March 2014. This report was actually the first official document submitted to the Office of the Prosecutor of the International Criminal Court approached by Ukraine to bring proceedings to investigate the crimes against humanity committed during the Revolution of Dignity. Thereafter, all the materials gathered by the Commissioner for Human Rights in cooperation with non-governmental human rights organisations over that period were used in preparing an official petition to the International Criminal Court. .

Unfortunately, tragic events on the Maidan Nezalezhnosti (Independence Square) were only the beginning of other serious tests that Ukraine has been going through. In February, Russia launched occupation of Crimea and in March it started taking actions to destabilise the situation in the Southern and Eastern regions which led to the loss of control by Ukraine over a part of its territory in Donbas. The events in Crimea have had tragic consequences for an entire ethnic group – the Crimean Tatars who for the second time in their history have been facing deportation from their Motherland, albeit in a veiled form. The Ukrainians in Crimea got the status of a national minority and are subjected to harassment because of their nationality. By reason of pressure and safety risks in March 2014 the Regional office of the Ukrainian Parliament Commissioner for Human Rights in the Autonomous Republic of Crimea (located in Simferopol) had to be closed, which made it almost impossible for the Ombudsman to supervise the observance of human rights and freedoms on the territory of the of the occupied Crimea.

At the same time, close cooperation with civil society organisations enables the Commissioner to receive regularly information on violations of human rights and fundamental freedoms in Crimea. Disappearances of people and kidnapping, beatings and torture, hidden deportation, deprivation of the rights to education and property, as well as considerable restrictions on freedom of assembly are now the Crimean realities. Due to Ukraine's actual loss of control over certain areas in Donetsk and Lugansk regions the most vulnerable population groups have been unprotected. Besides, since 2014 Ukraine has

been facing a new challenge – an extremely large number of internally displaced persons who had to leave their homes to escape the horrors of war. As the armed conflict in the Donbas developed, the unsatisfactory situation with logistical support for and protection of the rights of servicemen led to tragic consequences. But national unity, an upsurge in volunteering and the selfless heroism of Ukrainian military men managed to overcome the consequences of the years-long neglect of the needs of the servicemen who now had to defend the country.

In view of an unprecedented scale of human rights violations in the Donbas, it was decided to prepare a Special Report by the Ukrainian Parliament Commissioner for Human Rights on the situation in Donetsk and Lugansk regions, which will be presented later this year. Violations of human rights and freedoms in Crimea and Eastern Ukraine will be recorded in tens and hundreds of volumes of cases that will, without doubt, be examined by international judicial bodies.

It should be noted that Ukraine's other regions that were not part of the anti-terrorist operation area also saw numerous violations of human rights and freedoms. In view of a loss of over 20% of the state's economic potential, the issue of safeguarding the socioeconomic rights of people whose income fell sharply as the national currency devalued is of critical importance.

Amidst a huge number of new challenges for our state, this year was remarkable in terms of international cooperation. The Ombudsman is involved in performing a number of the state's international obligations. In particular, the EU-Ukraine Agreement on Association defines a set of tasks in the area of the protection of human rights and freedoms which are the responsibility of the Commissioner for Human Rights.

One should also note the solidarity shown by NHRIs from all over Europe that twice (in March 2014 and March 2015) issued official statements in support of Ukraine's state sovereignty and territorial integrity. At the end of 2014, based on the findings from examination of two years of activity of the Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) granted the institution of the Ukrainian Parliament Commissioner for Human Rights the highest accreditation level, status A, which indicates full compliance with the Paris Principles approved by the UN General Assembly in 1993. Thus, the ICC gave the institution of the ombudsman of Ukraine the credit of trust until 2019.

Given the urgent need for reform in a significant number of legal relations areas, the process of preparing the National Human Rights Strategy was launched. It should be emphasised that the human rights activists community pins great hope on implementation of such a comprehensive document.

*The Ukrainian Parliament Commissioner for Human Rights  
Valeriya Lutkovska,  
March 2015*

# VIOLETIONS OF HUMAN RIGHTS AND FREEDOMS DURING THE REVOLUTION OF DIGNITY (November 2013 – February 2014)

## **1.1. Violations of human rights and freedoms detected by employees of the Secretariat of the Commissioner for Human Rights during the Revolution of Dignity**

Due to the dramatic events that began in our country in late 2013 and escalated last year, the Department for Implementation of the National Preventive Mechanism (hereinafter – the NPM Department) together with the Special Investigations Division of the Secretariat of the Commissioner performed fast response functions, immediately checking information on human rights violations at given institutions, responding to complaints about torture and maltreatment of Revolution of Dignity activists etc. Employees of the Commissioner's Secretariat in that period visited bodies and subdivisions subordinate to the Main Department of the Ministry of Internal Affairs of Ukraine in Kyiv, the Kyiv pre-trial detention facility, healthcare facilities to which injured activists were taken and other facilities.

Detained persons held at those facilities were talked to, detected violations against them were recorded, actions were taken to ensure that their right to legal assistance and medical care was respected and so on.

In the course of these actions, apart from violations of the right to life, numerous infringements of human rights and freedoms were found which, according to the European Court of Human Rights (ECHR) case-

law, can be regarded as none other than torture or inhumane or degrading treatment.

### *1.1.1. Violation of the right to life*

According to the official statistics of the Ministry of Health of Ukraine, in the period from 1 January to 22 February 2014, as a result of the events at Maidan Nezalezhnosti in Kyiv, 105 persons died (94 of them in clashes on Instytutska Street). Most of the lethal cases were due to gunshot wounds.

In order to prevent falsification of the cause of their deaths by law enforcement officers, the Commissioner for Human Rights instructed two employees of the NPM Department – specialists in forensic medicine – that they should be present at post-mortem examinations of the bodies of the dead and record what the forensic experts were doing.

In respect of facts of violation of the right to life, proper acts of the Commissioner's response were filed with the Prosecutor General's Office of Ukraine and the Ministry of Internal Affairs of Ukraine.

### *1.1.2. Torture and ill-treatment*

During the said events, employees of the Commissioner's Secretariat recorded numerous facts of infliction of bodily injuries on activists by law enforcement officers.

In order to record facts of infliction of bodily injury as a result of torture and maltreatment, the Commissioner's Secretariat established regular exchange of information with the Department of Health of Kyiv City State Administration, in particular, about persons who had sought medical care at Kyiv healthcare facilities.

Overall, 2,394 calls for ambulance teams were recorded during the mass protests in Kyiv. 1,890 persons were taken to Kyiv's inpatient healthcare facilities.

Analysis of data from healthcare facilities shows that activists sought medical care or were taken to hospitals mostly because of bodily injuries caused by blunt objects (head injuries of various severity, bone fractures, injuries to internal organs), gunshot and blast wounds (caused by explosions of special-purpose grenades – flashbang and tear ones), chemical and thermal burns etc.

Apart from infliction of bodily injuries, multiple facts were recorded of prolonged holding (sometimes for over 10 hours) of detained persons, including those with bodily injuries, in special-purpose vehicles in sub-zero temperatures, without appropriate outer clothing, without access to drinking water and the possibility of relieving themselves.

#### *1.1.3. Violations of the right to medical care*

During the Revolution of Dignity, employees of the Commissioner's Secretariat detected numerous violations of the right to medical care. They consisted of non-provision of medical care for persons who needed it and in late notification by medical facilities of detainees who had been inflicted with bodily injuries, including extremity fractures, head injuries etc. In numerous

cases such care was only provided upon intervention by employees of the Secretariat.

In respect of facts of infringement of the right to medical care detected by employees of the Commissioner's Secretariat, proper acts of the Commissioner's response were filed with the Prosecutor General's Office of Ukraine and the Ministry of Internal Affairs of Ukraine.

#### *1.1.4. Violation of the right to defence*

Employees of the Commissioner's Secretariat in carrying out measures during the said events found numerous violations of the right of detained activists to defence. Instead of giving immediate notification of detention of a person to a body (institution) authorised to provide free legal assistance as stipulated by law, such notifications were given late, often more than 10 hours after detention.

There were also facts of mass concealment of persons' detentions and a failure to give notification of a person's detention to the free legal assistance centre.

### **1.2. The Commissioner's activity to safeguard the rights and freedoms of children during the mass events of November 2013 – May 2014**

Children also took part in the conflict in Kyiv and other cities, and they too were detained by law enforcement officers and were inflicted with bodily injuries. According to the Ministry of Internal Affairs of Ukraine, in the period from 30 November 2013 to 5 February 2014 law enforcement officers in Ukraine's regions detained more than 60 children aged 12 to 17 because of their possible involvement in the mass protests.



Employees of the Commissioner's Secretariat closely monitored the situation with observance of the rights of children during the mass protests both in Kyiv and in Ukraine's other regions.

In the course of the monitoring, appropriate complaints and requests were sent by the Commissioner to the heads of the children affairs services, health departments of state administrations and the Criminal Police Department on Children's Affairs of the Ministry of Internal Affairs of Ukraine demanding that they immediately provide information on detentions of underage persons and on the possible infliction of bodily injuries to them. Attention of the said officials was drawn to the need to abide by the law in case of detention of an underage person, in particular, to timely notify a guardianship and caregiving authority, the parents and the free legal assistance centre, and to observe the other fundamental rights of the child.

The Commissioner for Human Rights repeatedly drew the attention of all the parties to the conflict to the need to strictly adhere to the provisions of the Optional Protocol to the Convention on the Rights of the Child about participation of children in armed conflicts.

At the same time, the Commissioner for Human Rights published an open letter to children's parents and the organisers of mass events asking them to take every possible measure to prevent children from taking part in the protests and emphasising the need to abide by the basic principles declared in the UN Convention of the Rights of the Child, since a child, due to his/her physical and mental immaturity, requires special protection and care.

In the course of the monitoring, checks were made by attending, asking questions, examining appropriate documents etc. of the lawfulness of detention of children and the facts of infliction of bodily injuries on them by law enforcement officers.

Numerous violations of children's rights were detected. These included unlawful detentions, beatings, non-provision of medical care, prolonged holding in special-purpose vehicles in sub-zero temperatures without appropriate outer clothing, late notification of free legal assistance centres and parents of detention, unjustified bringing to criminal responsibility and others.

In order for the detected violations to be remedied and the reasons and conditions that led to the violations of children's rights to be eliminated, the Commissioner for Human Rights filed relevant acts of response with the Prosecutor General's Office of Ukraine and with prosecutor's offices of the relevant regions. A record of responses to the Commissioner's acts was then carefully kept.

Also, a submission with the findings of the monitoring by the Commissioner for Human Rights was lodged with the Cabinet of Ministers of Ukraine.

### **1.3. Responses by prosecution bodies and Ministry of Internal Affairs bodies to acts by the Commissioner for Human Rights**

In the period of the mass protests, employees of the Commissioner's Secretariat made monitoring visits to bodies and subdivisions subordinate to the Main Department of the Ministry of Internal Affairs of Ukraine in Kyiv. Letters with information on violations found during the visits and demands

that effective and unbiased investigation be held of each fact of violation were sent to the Prosecutor's Office of Kyiv and the Prosecutor General's Office of Ukraine. In order to prevent violations of human rights, acts of the Commissioner's response were also filed with the Ministry of Internal Affairs of Ukraine.

In particular, such acts were sent to the Prosecutor General of Ukraine on 2 December 2013, 30 January 2014 and 27 December 2014.

Acts of the Commissioner's response were sent to the Minister of Internal Affairs of Ukraine on 29 January 2014, 6 February 2014 and 27 December 2014.

On 25 December 2014, in response to a submission by the Commissioner for Human Rights the Prosecutor General's Office of Ukraine informed the Commissioner that criminal proceedings had been instituted in respect of abuse of authority or powers – a criminal offence which is the subject of Part 2 Article 365 of the Criminal Code of Ukraine.

#### *The events in Cherkasy (January 2014)*

The most dramatic events related to the protests in the city of Cherkasy took place in the period from 23 to 27 January 2014 and on 20 February 2014. A special investigation of these events was conducted by the Commissioner in which representatives of the local community were involved.

The investigation proved systemic violations of human rights and freedoms which, according to ECHR practice, can be regarded as none other than torture or inhumane or degrading treatment. These include:

- excessive use of force by police officers during detention or use of force against detained persons who did not put up resistance to law enforcement officers, and infliction on detainees of bodily injuries of various severity;
- placement into patrol cars of a much bigger number of detained persons than a car was designed to carry (for example, 5-6 persons were carried in a car with 2 seats for detainees). In addition, detainees were also put into passenger buses where, on the demand of police officers, they had to lie on the floor for a long time, with sub-zero temperatures outside;
- late provision of medical care for detained and conveyed persons who had bodily injuries, including head injuries, extremity fractures etc.

Multiple facts were found and recorded of concealment by high-ranking law enforcement officers of information on the infliction of bodily injuries on people by police officers. This concealment took place in the absence of proper prosecutor supervision over compliance with the law by police authorities which is to be exercised by prosecution bodies.

The investigation, apart from maltreatment, revealed a number of other violations which during the said events were numerous. These include:

- unlawful detentions and conveyance of detained persons to police authorities without legal reasons;
- infringement of the right to legal assistance, in particular, non-notification or late notification of free legal assistance

- centres of persons' detention, obstruction of lawyers' access to detainees etc.;
  - non-notification or late notification of close relatives of detained persons, including underage detainees;
  - forging of official documents in order to conceal facts of holding detained persons for periods exceeding the terms established by law;
  - non-performance by judges of their obligations to protect human rights as stipulated by the Criminal Procedure Code of Ukraine;
  - infringement of the right to property of detained persons and other participants in the said events, in particular, deliberate damage to and destruction of photo, audio, video and computer equipment, cars etc.
- being committed by law enforcement officers, the information was not entered in the Unified Register for Pre-Trial Investigations, checks were carried out in accordance with the Law of Ukraine 'On Citizens' Petitions'.

Furthermore, employees of the Commissioner's Secretariat found facts that the Prosecutor's Office of Cherkasy Region had provided untrue information to the Prosecutor General's Office of Ukraine on the status of investigation of the said events. In particular, in notification to the Prosecutor General's Office of Ukraine on the status of pre-trial investigation of criminal proceedings No. 4201425000000039 of 24 February 2014, the Prosecutor's Office of Cherkasy Region gave a list of persons who were found to have been wronged. However interviews of these persons by employees of the Commissioner's Secretariat revealed that none of them had been a subject of procedural or investigative actions.

The investigation also revealed ineffective investigation of human rights violations by prosecution bodies of Cherkasy Region. In particular, employees of the Special Investigations Division of the Commissioner's Secretariat who, on 11-15 March 2015, interviewed many persons affected and did not find any person who had been questioned by prosecutor's office officials under criminal proceedings. Prosecutor's office officials did not request information from healthcare facilities on persons who had suffered bodily injuries during the events of 23-27 February 2014. Information was not requested on persons detained in that period and conveyed to district police departments, on those placed into temporary holding facilities. Other measures stipulated by the criminal procedure law were not implemented. When complaints were filed by certain persons about an offence

The findings of the actions carried out as part of the investigation as of 15 March 2014 were presented by the Commissioner at a special press conference.

*The situation with responses by prosecution bodies to acts submitted by the Commissioner for Human Rights*

On 16 April 2014, the submission of the Ombudsman of Ukraine 'On the effectiveness of investigation of the facts of torture and maltreatment taking into account the case-law of the European Court of Human Rights' was lodged with the Prosecutor General of Ukraine in order for appropriate measures to be taken to bring the procedure for investigating facts of torture and maltreatment into compliance with the requirements of national law and ECHR case-law.

Upon examination of the submission, the Commissioner was informed that the Investigation Department of the Prosecutor's Office of Cherkasy Region was conducting an investigation of criminal proceedings in respect of all the facts mentioned in the submission. A number of officials of police authorities and prosecution bodies had been brought to criminal responsibility. In respect of a number of officials suspected of committing criminal offences against participants in the mass protests, bills of indictment had been issued and sent to a court of law.

In early February 2015, a working meeting was held whose participants included the Head of the Special Proceedings Department of the Main Investigation Department of the Prosecutor General's Office of Ukraine, investigators and employees of the Special Investigations Division of the Secretariat of the Commissioner for Human Rights, where cooperation mechanisms were determined and generalised information was provided on the status of pre-trial investigation under the criminal proceedings regarding the mass protests in the period from November 2013 to February 2014.

Currently, pre-trial investigations in respect of the said facts are being conducted by investigators of the Prosecutor General's Office of Ukraine.

*The situation with responses by the Ministry of Internal Affairs of Ukraine to acts of submission by the Commissioner for Human Rights*

On 28 February 2015 the Ministry of Internal Affairs of Ukraine informed the Commissioner that based on the results of processing of the information on violations of

human rights and freedoms that occurred during the events in the period from November 2013 to February 2014 in Kyiv and Cherkasy, and examination of the acts of the Commissioner's response regarding these events, a number of measures had been taken.

In particular, internal investigations were carried out concerning the lawfulness of actions by police officers who had been suspended from performing job duties for the time of the investigations. The conclusions of the internal investigations were sent to the Prosecutor General's Office of Ukraine so that they could be taken into account during the pre-trial investigation.

In the course of the pre-trial investigation, prosecution bodies, based on the conclusions of internal investigations, informed 19 officers of the Main Department of the Ministry of Internal Affairs in Kyiv of suspicion of committing a criminal offence provided for by Part 1 Article 364 of the Criminal Code of Ukraine. These officers included 7 officers of the former 'Berkut' special-purpose police regiment, and 12 State Traffic Police officers. The suspicion centred on the deliberate entering of untrue data in administrative offence protocols drawn up as regards persons violating the Traffic Rules.

Based on the findings of the internal investigations, 42 officers, including 37 State Traffic Police officers were dismissed by Order of the Main Department of the Ministry of Internal Affairs in Kyiv of 30 January 2015.

## HUMAN RIGHTS IN UKRAINE'S TEMPORARILY OCCUPIED TERRITORY – THE AUTONOMOUS REPUBLIC OF CRIMEA (ARC)

Since the beginning of the Russian occupation of Crimea, the situation with observance of virtually all human rights – from the right to life and personal integrity to the right to own and use private property – has deteriorated catastrophically.

The situation in Crimea developed rapidly. In February and March, the Commissioner for Human Rights made a number of public statements and open addresses about the state's obligation to ensure that Ukrainian citizens enjoy the right to safe life and health, that allegations about violation of the rights of Russian-speaking Ukrainian citizens in Crimea are groundless and that under the pretext of protection of human rights, military intervention into Ukraine's territory was taking place. As early as 2 March 2014, the Commissioner for Human Rights made an official trip to the Autonomous Republic of Crimea, where she met, in particular, with representatives of human rights organisations to discuss the situation with the rights of people living in the ARC.

After the Supreme Council (Parliament) of the ARC took the decision to hold an all-Crimean referendum, the Commissioner openly addressed the ARC Parliament demanding that it stops supporting the establishment in Crimea of military dictatorship by another state's armed forces and that international missions be allowed into the territory of the Autonomous Republic of Crimea, as well as filed a submission with the Constitutional Court of Ukraine

about non-compliance of the decree of the Supreme Council of the Autonomous Republic of Crimea 'On Holding an All-Crimean Referendum' with the Constitution of Ukraine. This position of the Commissioner was upheld by Decision of the Constitutional Court of Ukraine No. 2-rp/2014 of 14 March 2014 that declared the above decree unconstitutional.

Furthermore, with the assistance of the Commissioner for Human Rights and the civil society, a monitoring began into observance of the constitutional rights and freedoms in the Autonomous Republic of Crimea, which helped to assess the real situation with observance of human rights on the territory of Crimea and Sevastopol and supplemented information that was regularly provided by the regional office of the Ukrainian Parliament Commissioner for Human Rights which functioned in the Autonomous Republic of Crimea at that time, but since 7 April 2014 this regional office of the Ukrainian Parliament Commissioner for Human Rights effectively has not operated because its employees were put under pressure by both representatives of the self-proclaimed Crimean authorities and pro-Russian activists. They were regularly under surveillance and received threats that they could be arrested as Ukrainian spies.

But this did not mean that the Commissioner for Human Rights did not receive information on the situation in Crimea. Such information was regularly provided

by representatives of human rights and other non-governmental organisations, in particular, by the Crimean Field Mission on Human Rights which currently is the only organisation that can carry out its activities on the temporarily occupied territory.

Analysis of the findings of the close monitoring of observance of human rights on the temporarily occupied territory of the Crimea and Sevastopol makes it possible to identify a number of problems.

From March to October 2014 there were multiple cases of kidnapping and murder of both Crimean Tatars and Ukrainians who actively spoke out against the Russian occupation. Monitoring by the Commissioner and the Crimean Field Mission revealed several dozens of such cases (about 40). Furthermore, since March to June 2014 some Crimean Tatar and Ukrainian activists were tortured and expelled from Crimea.

Continuing to put pressure on Crimean Tatar population, representatives of the occupation administration barred from entering the territory of Crimea the leader of the Crimean Tatar people Mustafa Dzhemilyev and later the Head of the Mejlis of the Crimean Tatar people Refat Chubarov, as well as other representatives of the Crimean Tatar people.

In addition, Crimea's occupation government introduced the practice of imposing prohibitions on peaceful assemblies and meetings on grounds which are incompatible with either the provisions of the Constitution of Ukraine or the Convention on the Protection of Human Rights and Fundamental Freedoms. Analysing this practice, it should be emphasised that most of them affected assemblies organised by Crimean Tatars and ethnic Ukrainians on the occa-

sions of national holidays and commemorative dates.

Moreover, acting to openly prevent the legal activities by the Mejlis of the Crimean Tatar people, the self-proclaimed Crimean authorities seized the building in Simferopol that housed the Mejlis, the 'Crimea' Charitable Fund and the editorial office of 'Avdet' newspaper and, on far-fetched grounds, conducted a number of searches in the building of the Mejlis of the Crimean Tatar people, the house of the Head of Bilogirsk Regional Mejlis Mustafa Asabi, the apartment of the Mejlis member Eskender Bariyev and four houses of Crimean Tatars in the village of Kolchugino of Simferopol District. During the searches, personal belongings were taken, FSS officials were rude and offhand, did not allow lawyers in, and the documents that authorised the searches were not drawn up in the proper way.

The situation in the area of protection of the right to freedom of conscience and religion was especially critical. Representatives of most religious confessions of Crimea (apart from the Orthodox Church of the Moscow Patriarchate) are under various forms of pressure – intimidation, defamation, deprivation, damage to and destruction of property, creation of alternative religious organisations that contribute to splitting of the population in terms of religion. Religious persecution became systemic in nature. For example, on the pretext of searching for 'prohibited Islamic literature', searches were conducted in the medrese building in the village of Kolchugino of Simferopol District of the Autonomous Republic of Crimea, in Borchokrak Jamisi mosque in Simferopol and in Derekoi mosque in Yalta; Kyiv Patriarchate churches were closed in Sevastopol, Krasnoperekopsk, Kerch and

the village of Perevalne, and many priests of the Ukrainian Orthodox Church of Kyiv Patriarchate had to leave the peninsula together with their families.

Legal conditions were created for depriving religious organisations not loyal to the new Crimean authorities of their property. Those threatened with deprivation, first of all, include the Ukrainian Orthodox Church (Kyiv Patriarchate) and the Spiritual Directorate of the Crimean Muslims whose property is expected to be transferred to the Russian Orthodox Church and the Tavrian Mutfiyat. Religious activity is further complicated by the requirement that religious organisations be re-registered 'in accordance with Russian law'.

Facing the threat of church closure are all the religious communities whose priests do not hold Russian citizenship, which was effectively imposed on the Crimeans, which is a direct violation of Article 15 of the Universal Declaration of Human Rights.

In accordance with the relevant legislation of the Russian Federation, all Ukrainian citizens and stateless persons who permanently resided on the territory of the Republic of Crimea or on the territory of Sevastopol were recognised as citizens of the Russian Federation, with the exception of those persons who within one month declared their desire to retain their and/or their underage children's citizenship.

Also, people had to acquire Russian citizenship because to get a job, one need to have a Russian passport. There were many cases when during the hiring procedure people were required to renounce Ukrainian citizenship, the presence of a permit for permanent or temporary residence being ignored.

Thus, a large number of Crimeans were granted Russian citizenship without any signs of voluntariness.

Moreover, persons who retained Ukrainian citizenship had difficulty with obtaining a permanent residence permit due to large queues, quotes and the need to declare income sources in the absence of a chance to get a job.

The absence of this permit, in turn, may entail problems related not just to getting employment, but also to exercising a number of proprietary and social rights, in particular, the right to medical care.

Also under threat was children's right to citizenship which is enshrined in Part 1 of Article 8 of the UN Convention on the Rights of the Child that obliges contracting parties to respect a child's right to preserve identity, including citizenship, name and family relations, and to avoid unlawful intervention.

According to the statistics, as of 1 January 2014, 4,323 orphans and children deprived of parental care lived in the Autonomous Republic of Crimea (and 672 in Sevastopol). Most of them (4,252) were brought up in guardians' and caregivers' families, adopted families and family-style orphanages. Part of the children who were brought up in such families originated from other regions of the state and had relatives in the continental part of Ukraine.

Some of them were brought into continental Ukraine, but most of them still remain on the occupied territory, since the Government did not take measures to move these children to government-controlled territory due to occupation of Crimea by the Russian Federation.

As a result, the government bodies of the Russian Federation started to promote adoption of Ukrainian orphans and children deprived of parental care and taking them to various regions of the Russian Federation without consideration of their place of origin and family relations.

Also of note is the fact that, according to Russian Federation law, a child receives a passport when she/he has turned 14, so orphans and children deprived of parental care are virtually deprived of the right to reject Russian Federation citizenship since the heads of child care facilities collaborate with the Russian authorities.

Violations of the right of Ukrainians to receive education and information in their native language are significant as well.

In Crimea, there is a large-scale shortening of Ukrainian-language classes and schools, and pupils' parents are forced to reject Ukrainian as a language of teaching, so there is a danger that Ukrainian-language education institutions will eventually cease to exist and that children living on the said territory will have their right to study the state language restricted.

Also, there are almost no Ukrainian-language mass media and official versions of regional and municipal mass media in Ukrainian, and Crimeans are denied access to Ukrainian-language websites.

In order to ensure observance of human rights, a letter was sent on several occasions to the Russian Federation's Commissioner for Human Rights Ella Pamfilova, demanding that all necessary measures be taken to eliminate the violations of Crimeans' rights and stop the discrimination, but on most occasions no answer was received.

In order to publicise the said facts of violation of human rights in the territory of occupied Crimea, in 2014 the Commissioner made 25 business trips abroad, during which reports and proofs of occupation of the part of Ukrainian territory by Russia were presented at official and additional events at the UN, Council of Europe, European Commission, OSCE and NATO. At the same time, undisputable facts were given that allegations of discrimination of Russian-speaking people in Ukraine have not been confirmed.

In particular, the Commissioner met with the UN High Commissioner for Human Rights Navi Pillay and Council of Europe officials – Council of Europe Commissioner for Human Rights Nils Muiznieks. In particular, an agreement was reached with Nils Muiznieks on the possibility of setting up a joint monitoring mission to control observance of the rights of persons held in penitentiary facilities on the territory of the Autonomous Republic of Crimea, but this issue has not been settled yet due to the position of the Russian Federation Commissioner for Human Rights.

Furthermore, information on infringements of human rights in the Autonomous Republic of Crimea and Sevastopol was given by the Commissioner for Human Rights to UN Assistant to the Secretary General for Human Rights Ivan Simonovic at their meetings and was reflected in his visits around Ukraine. Issues regarding discrimination of Crimean Tatars and Ukrainians who continued to reside in Crimea were also discussed at the Commissioner's regular meetings with OSCE High Commissioner on National Minorities Astrid Thors who also offered to examine the possibility of setting up a joint monitoring mission with her participation and that of the Ukrainian Parliament Commissioner for Human Rights and the Russian Federation Commissioner for Human Rights.



## ANTI-TERRORIST OPERATION. OCCUPATION OF THE EAST

It should be noted that developments in the Donbas were accompanied by numerous violations of constitutional human rights and freedoms. After Ukraine virtually lost control of part of its territory, killing, kidnapping and torture of people who actively supported the integrity of the state and spoke out against separatism became widespread.

Throughout the year, the Commissioner for Human Rights also received numerous complaints about violations of human rights by illegal armed groups that provided allegations of torture and kidnapping, including illegal taking of children in care to education institutions and social protection system facilities out of Ukraine, infringements of the rights of persons at penitentiary facilities in the occupied territory etc.

### **3.1. Protection of children's rights in connection with the armed conflict in Eastern Ukraine**

Throughout the year, the Ukrainian Parliament Commissioner for Human Rights kept control of issues regarding observance of the right to life and health of children, in particular, orphans and children deprived of parental care who were at state facilities of Donetsk and Lugansk regions.

Following exacerbation of the situation in Ukraine's eastern regions, the Commissioner for Human Rights, in order to mini-

mise its negative impact on children's lives and health, sent repeated requests to the Prime Minister of Ukraine, Prosecutor General of Ukraine, Head of the Security Service of Ukraine, heads of ministries, heads of Donetsk and Lugansk region state administrations about taking children in care institutions to residential facilities out of the dangerous anti-terrorist operation zone.

For the first time the Commissioner requested the Government to take urgent actions to save the lives and health of vulnerable population groups, in particular, children, on 18 June 2014. Overall in that period more than 20 requests were sent to the heads of the Government and central executive bodies that emphasised the need to immediately take decisions in the interests of children and organise their evacuation to safe Ukrainian regions.

At the end of the summer of 2014, more than 40 facilities for orphans and children deprived of parental care functioned in the 'hot spots'. Part of the facilities still function on the territory not controlled by Ukraine.

Throughout the year, the Commissioner for Human Rights received multiple requests from heads of children's facilities and subdivisions of regional state administrations asking her to prevent illegal taking of children to the territory of the Russian Federation and to assist in taking children to safe places on the territory of Ukraine, since in June 2014 representatives of the so-called

DPR and LPR began to require that local government bodies provide them with information on orphans and children deprived of parental care, their health certificates and written consent by a facility head in order to take children into the Russian Federation.

Throughout the year, the separatists made a number of attempts to forcibly take children out of Ukraine.

A shocking fact took place on 8 August 2014: 8 Ukrainian children aged 8 months to 2 years from an orphanage who were receiving inpatient treatment at one of the Lugansk hospitals were virtually kidnapped by an armed terrorist group. These were children with disabilities who, without being accompanied by any medical personnel or documents, were forcibly taken through the border crossing point of Izvaryne in Lugansk Region into the territory of Rostov Region of the Russian Federation.

On 13 August 2014, the children were handed over to Ukraine's representatives – the Commissioner for Human Rights and the chief physician of the orphanage.

This is just one of several cases that ended in children being successfully moved to safe regions of Ukraine.

The Commissioner also keeps control of the issue of observance of the rights of orphans and children deprived of parental care and families with children who had to move to safe regions of Ukraine.

According to recent information, more than 608,000 persons, including 129,000 children, moved out of Donetsk and Lugansk regions in 2014.

The Commissioner for Human Rights, within her competence, helps solve problems encountered by internally displaced people. In particular, such issues were settled as accommodation of multi-child families, transfer of students to higher education institutions in safe regions, provision of social payments for families with children, renewal of lost documents etc.

In the opinion of the Commissioner for Human Rights, a separate legal act needs to be adopted on the comprehensive settlement of issues regarding protection of children's rights in connection with the occupation of the Autonomous Republic of Crimea and the conduct of the anti-terrorist operation.

Under the Constitution of Ukraine, a human, his/her life and health, honour and dignity, personal integrity and safety are acknowledged in Ukraine as the highest social value, and the right to life enshrined in Article 27 of the Constitution of Ukraine is inalienable.

Nobody can be deprived of life arbitrarily. The state must protect human life. However residential buildings, children's facilities, places with many people and vehicles with people trying to get into a safe area of Ukraine are being shot at.

Unfortunately, the overall number of children killed and injured is not known.

According to recent information provided by Donetsk and Lugansk regional state administrations, 60 children died in 2014 after the launch of the ATO. The first child, an 8-year-old girl, died on 8 June 2014 in Slovyansk. Those injured included children as well.

In connection with the killing of civilians in Donetsk and Lugansk regions, the Commissioner for Human Rights has to state that Ukrainian citizens currently do not feel safe and that there is a real threat to their lives and health.

**Proposals** for the Cabinet of Ministers of Ukraine:

- to settle the issue of re-allocation of funds for caring for orphans and children deprived of parental care in case they are moved from facilities located in Donetsk and Lugansk regions to other regions;
- to immediately take actions to legally settle issues regarding the exercise of the rights of orphans and children deprived of parental care who were taken out of the ATO zone and placed into families;
- to consider the issue of increasing the number of employees of bodies dealing with social protection of the population, children's affairs services, social services for the family, children and young people in the government-controlled territory by reducing the number of employees of such services on the territory beyond the control of Ukraine.

### **3.2. Results of monitoring of the situation with the rights of persons kept in places of deprivation of liberty in the ATO zone**

The situation with safeguarding the rights and freedoms of persons kept in places of deprivation of liberty in the ATO zone has been monitored by the Commissioner for Human Rights both through dialogue

with relevant government authorities and during visits to such facilities (including as part of implementation of the national preventive mechanism), by conducting phone surveys of facility heads, requesting information from representatives of central executive bodies, local government authorities, international, volunteer and human rights organisations and by analysing complaints and statements, and reports in the media.

Emphasis during the monitoring, apart from traditional analysis of the situation with the rights and freedoms of persons in care, was made on assessment of the risks to the lives and health of these persons that existed due to the antiterrorist actions on the territory of Donetsk and Lugansk regions.

#### *Social protection and education system facilities*

There are 62 stationary facilities for elderly persons and persons with disability, part of which are located in the military action zone. Of 553 healthcare facilities, 39 had ceased to operate as of the end of the last year.

On the temporarily uncontrolled territory, there are 21 residential facilities for elderly persons and persons with disabilities (11 of them in Donetsk and 10 in Lugansk) where more than 4,500 persons live.

As of 20 February 2015, 119 disabled children and 61 lifelong disabled persons lived at residential facilities located in the ATO military action zone (children's unit of Rovenki residential facility for people with special needs, Krasnodon children's residential facility in Lugansk Region and Shakhtarsk children's residential facility).

On the government-controlled territory and in the military action zone, there are 16 residential schools in Lugansk Region (1,854 children) and 54 residential schools in Donetsk Region (7,659 children).

#### *Penitentiary facilities*

On the territory temporarily not controlled by the Ukrainian government, there are 27 facilities, including 14 facilities in Donetsk region where some 8,700 persons are held and 13 facilities in Lugansk Region (3 of them are completely destroyed) where some 4,000 persons are held.

Furthermore, there are also 47 subdivisions of the criminal enforcement inspection in the anti-terrorist operation zone.

It should be emphasised that the situation with the penitentiary facilities in the uncontrolled territory is critical. Government bodies virtually ceased to finance the activity of these facilities.

The State Penitentiary Service of Ukraine has not resolved the issue of centralised provision of the facilities with food products.

Unfortunately, since the Commissioner's recommendations about evacuation were not followed in time, a significant number of the persons who were at penitentiary, education, healthcare and social protection system facilities still remain on the temporarily occupied territory. The Ministry of Social Policy, in particular, says that persons in care can't be taken out because of the absence of their consent for relocation and of the physical possibility of transporting bed patients.

The situation with safeguarding of the rights and freedoms of persons kept in

places of the deprivation of liberty located in the anti-terrorist operation zone remains under the Commissioner's control. In 2015, further regular visits will be made to these facilities, and a Special Report of the Commissioner for Human Rights 'The situation with safeguarding of human rights and freedoms in places of the deprivation of liberty in the anti-terrorist operation zone' will be prepared based on their results.

## RIGHTS OF INTERNALLY DISPLACED PERSONS

Last year, due to the events in Ukraine that had a considerable impact on safeguarding of the constitutional rights of a large part of its population, one of the priority issues in the activity of the Commissioner for Human Rights was parliamentary control over observance of the rights of people who moved from Ukraine's temporarily occupied territory and the anti-terrorist operation area, as well as of those who still live on these territories.

Close monitoring initiated by the Commissioner of safeguarding of the constitutional rights of this category of people showed that the scale of involuntary relocation related to the occupation of the Autonomous Republic of Crimea and Sevastopol and the armed conflict in the East of Ukraine had become a huge challenge for Ukraine.

Overall, according to the Ministry of Social Policy of Ukraine, 824,730 persons moved from the temporarily occupied territory and the anti-terrorist operation area to other regions in 2014, including almost 20,000 from the Autonomous Republic of Crimea and Sevastopol.

Given the scale of the move and due to exacerbation of the situation in the East of Ukraine, in the period from June to August 2014 the Cabinet of Ministers of Ukraine introduced the corresponding amendments in a number of legislative and regulatory acts in the area of social protection, labour and education; in October and November

2014 regulatory acts were issued that resolved the issue of making social payments in the conflict zone, established the procedure for keeping a register of internally displaced persons and provision of financial support for them, in particular, to cover their costs of living, including those of utilities.

At the same time, despite some efforts made by the Government to ensure social protection of people moving from Ukraine's temporarily occupied territory and the anti-terrorist operation area, there is a number of unresolved issues, in particular, those regarding practical application of the provisions of the Decrees of the Cabinet of Ministers of Ukraine No. 509 of 1 October 2014 and No. 505 of 1 October 2014.

In this regard, the most critical issues are:

- ambiguity in determining the boundaries of the anti-terrorist operation area, which, in turn, significantly affects the possibility of exercise by displaced persons of their right to targeted assistance;
- the refusal to register as internally displaced persons those who do not have in their passport a stamp that currently their registered place of residence is a populated place on the temporarily occupied territory or the ATO area, although they can prove

documentarily that they resided in the ATO area (entries in the employment record book, housing rental agreements, documents confirming ownership of immovable property etc.) and moved from it due to military action;

- the refusal to register persons who had to leave the temporarily occupied territory in the spring and because of the need to re-register their business or for other reasons received temporary registration of residence on the territory of continental Ukraine before the official registration procedure was established;
- various approaches to registering underage persons who move unaccompanied by their parents and granting them targeted assistance.

It should be noted that every unjustified refusal to register internally displaced persons results in people becoming disappointed with the authorities' actions.

With the adoption (more than half a year after the illegal referendum in the Autonomous Republic of Crimea was held and the conflict in the Donbas erupted) and the coming into force of the Law of Ukraine 'On Safeguarding the Rights and Freedoms of Internally Displaced Persons', problems arose as well relating to differences between the terms and definitions used in a number of decrees of the Cabinet of Ministers of Ukraine and those used in this Law and to mechanisms of implementation of these regulatory acts to safeguard the rights and freedoms of Ukrainian citizens who had to move from Ukraine's temporarily occupied territory and the anti-terrorist operation area.

Practices of application of the said regulatory provisions became the main subject of monitoring visits by representatives of the Secretariat of the Commissioner for Human Rights in the autumn and early winter of 2014. During the visits, the practices of government and local government authorities were examined which, in particular, ensure observance of the rights of internally displaced persons, and places of temporary residence of these persons were visited in 14 regions of Ukraine.

Based on the findings of the monitoring by the Commissioner of situation with the rights of internally displaced persons, acts of response to detected violations or issues requiring urgent solution were sent to both central executive bodies and local government authorities.

Overall, some 60 acts of response were submitted in 2014.

In September 2014, in order to consolidate efforts by the Office of the Commissioner for Human Rights and the public aimed at preventing violations of the rights of people who had to leave their places of residence due to the temporary occupation of the Autonomous Republic of Crimea and Sevastopol or the conduct of the anti-terrorist operation and at protecting the rights of people who continue to live on the temporarily occupied territory, on the initiative of the Commissioner for Human Rights, a Resource Centre for assistance to internally displaced persons was created as part of a joint project with support from the UN Development Programme in Ukraine and in partnership with non-governmental organisations including 'Centre for Civil Freedoms' non-governmental organisation ('Euromaidan SOS' initiative), 'Almenda' Educational Centre, 'Employment Centre for

Free People' non-governmental initiative, 'Crimean Diaspora' non-governmental organisation, 'Crimea SOS' non-governmental organisation, 'Right to Protection' All-Ukrainian Charitable Foundation, 'Rokada' Charitable Fund, 'Centre for Social Action' non-governmental organisation ('Without Borders' project, and the 'House of Friends' initiative).

Most of the circumstances that led to violations of human rights were established during subsequent monitoring visits by employees of the Secretariat of the Commissioner for Human Rights together with representatives of the aforesaid organisations in 20 regions of Ukraine (including Donetsk and Lugansk regions) where places of temporary residence of internally displaced persons were visited.

The visitors checked living conditions and preparedness of rooms for winter, sanitary conditions, issues regarding registration, employment, education, payment of pensions and benefits, satisfaction of other needs and non-discrimination. Socially vulnerable population groups – children, disabled people and the elderly – make up a significant proportion of internally displaced persons. The scale of the situation requires coordination of efforts to solve their problems. Internally displaced persons are faced with a number of organisational issues as well that include:

- 1) provision of food and accommodation;
- 2) timely payment of pensions and social benefits;
- 3) provision of employment;
- 4) access to kindergartens and schools;

- 5) access to social services;
- 6) provision of medical care;
- 7) lack of socio-psychological and information support for internally displaced persons.

The developments in the East of the country and enactment by Decree of the President of Ukraine No. 875 of 14 November 2014 of the resolution of the Council for National Security and Defence of Ukraine 'On Urgent Measures to Stabilise the Socio-economic Situation in Donetsk and Lugansk Regions' and adoption of the Decree of the Cabinet of Ministers of Ukraine 'Some Issues Related to Financing of State-Funded Institutions, Making Social Payments to the Population and Provision of Financial Support for Some Enterprises and Organisations in Donetsk and Lugansk Regions' No. 595 of 7 November 2014 that virtually led to termination of payment of pensions and social benefits to persons living on the temporarily occupied territory causing an increase in the number of persons who chose to move to safer areas of the country.

The nature of this problem, its complexity and possible consequences were described by the Commissioner for Human Rights in her act of submission filed with the Prime Minister of Ukraine where she emphasised the need to develop a clear plan for interaction between all government bodies in a situation necessitating the urgent moving of civilians from the anti-terrorist operation area.

We should recognise that the state was not prepared for occupation of part of its territory nor for dealing with large-scale terrorist activity. Volunteers and the public for quite a long time have helped

internally displaced persons, thereby performing part of the state's functions. Now, however, a year since the beginning of the said events, it's time for government bodies to take complex, well thought-out decisions. To this end, a clear state policy must be drawn up in relation to internally displaced persons and its implementation ensured.

Given the aforesaid, the Ukrainian Parliament Commissioner for Human Rights believes that it is necessary:

- 1) to introduce amendments in the Law of Ukraine 'On Safeguarding the Rights and Freedoms of Internally Displaced Persons' with regard to:
  - extension of the list of circumstances that confirm grounds for registering internally displaced persons;
  - the procedure for registering underage internally displaced persons who move unaccompanied by their parents or legal representatives;
- 2) to urgently develop regulatory acts provided for by paragraph 4 Article 20 of the Law of Ukraine 'On Safeguarding the Rights and Freedoms of Internally Displaced Persons';
- 3) to bring the provisions of Decree of the Cabinet of Ministers of Ukraine No. 509 of 1 October 2014 in compliance with the provisions of the Law of Ukraine 'On Safeguarding the Rights and Freedoms of Internally Displaced Persons' in respect of documents confirming grounds for registering internally displaced persons;
- 4) to urgently develop and approve a comprehensive state programme for support and social adaptation of Ukrainian citizens who relocated from the temporarily occupied territory of Ukraine and the anti-terrorist operation area to Ukraine's other regions;
- 5) to develop a state strategy for using the potential of internally displaced persons that should provide for creating opportunities for them to develop their creative, labour and economic potential;
- 6) to develop a policy document on the creation of additional jobs for internally displaced persons;
- 7) to resolve the issue of paying financial assistance to insured persons whose certificates of incapacity for work have been accepted by the employer and the procedure for their financing has been launched in cooperation with the Fund, and in cases when the employer has accepted certificates of incapacity for work but they have not been transferred to the Fund's office in order for financing to be started because the insurer is located on temporarily uncontrolled territory;
- 8) to determine mechanisms for resolving issues relating to granting some types of pensions that require provision of clarifying documents by an employer in case of termination by the employer of its activity due to the temporary occupation or the conduct of the anti-terrorist operation, or its non-relocation to the government-controlled territory;
- 9) to develop legislative proposals concerning the issue of documents on



the civil status of an internally displaced person based on information contained in documents issued by the occupation authorities of the Autonomous Republic of Crimea or bodies operating in the territory not controlled by the Ukrainian government, and proposals concerning acceptance by Ukrainian citizens of inheritance located on the temporarily occupied territory of the Autonomous Republic of Crimea, the anti-terrorist operation area or the territory not controlled by the Ukrainian government;

10) to ensure active engagement of non-governmental organisations in the review of and decision-making on issues regarding legislative improvement of the mechanisms for social protection of internally displaced persons.

## PROTECTION OF THE RIGHTS OF UKRAINIAN CITIZENS ABROAD. THE CASES OF N. SAVCHENKO, O. SENTSOV, O. KOLCHENKO AND OTHERS

In 2014, the Ukrainian Parliament Commissioner for Human Rights received only 174 petitions regarding protection of the rights of Ukrainian citizens abroad. But this year, unlike the previous one, most of the petitions and investigations launched by the Commissioner for Human Rights on her own initiative concerned the issue of violation by law enforcement agencies of the Russian Federation of the right to freedom and personal integrity, as well as of the right to citizenship.

In this regard, of highest attention is the case of Ukrainian citizens Oleg Sentsov, Oleksandr Kolchenko, Gennadiy Afanasyev and Oleksiy Chyryni, detained by officers of the Federal Security Service of the Russian Federation 'on suspicion of organising an act of terror on the territory of Crimea and for possession of firearms'. The said persons were subjected to torture during investigative actions in order to extract from them a confession of their guilt. In particular, the fact of use of torture against Oleg Sentsov was confirmed first by his lawyer and then by Oleg himself at a court session.

Moreover, Ukraine's consul was not allowed to meet these persons to give them legal assistance, which meant that Ukrainian citizens were virtually deprived of the right to protection by Ukraine. According to the Commissioner for Human Rights of the Russian Federation, the consul was not allowed to meet them because, in accordance with a newly adopted law, these Ukrainian citi-

zens had automatically acquired citizenship of the Russian Federation.

But the Russian Federation has repeatedly infringed the rights of Ukrainian citizens to consular legal assistance even when their Ukrainian citizenship was indisputable.

An example of this is proceedings in the case of Yuriy Yatsenko and Bogdan Yarychevsky who were detained by law enforcement officers of the Russian Federation on the territory of Kursk Region for a breach of the rules for staying on the territory of the Russian Federation and then accused of espionage by flying a balloon from the territory of Ukraine equipped with a video surveillance camera. In November 2014 Yuriy Yatsenko, in addition, was charged with possession of weapons and/or explosive substances.

The same situation was with Ukrainian citizens Yuriy Soloshenko, Stanislav Klykh and Valentyn Vygovsky, detained by Russian law enforcement officers.

Another flagrant example of violation of the rights of Ukrainian citizens by the Russian Federation is detention by the Investigative Committee of the Russian Federation of five officers of the Armed Forces of Ukraine who together with another 438 servicemen of the Armed Forces of Ukraine and officers of the State Border Service of Ukraine in the late night of 3 August 2014 crossed the Russian-Ukrainian border be-

cause most of them and their subordinates had been injured and needed urgent medical care.

During proceedings in the said cases the Commissioner for Human Rights throughout the year made phone calls and sent requests to both the Russian Federation Commissioner for Human Rights and the Commissioners for Human Rights in the relevant regions of the Russian Federation demanding that they help arrange a meeting of Ukraine's consul with the said Ukrainian citizens to ensure observance of their rights, check the conditions of their detention, safeguard their right to retain Ukrainian citizenship etc.

Also, requests were sent to law enforcement agencies of the Russian Federation, in particular, to the Prosecutor General's Office of the Russian Federation and the Investigative Committee of the Russian Federation. Shortly after receipt of a request by the Commissioner for Human Rights, senior officials of the Investigative Committee of the Russian Federation decided to release the Ukrainian officers, although the court had remanded them in custody.

Of this list of violations of the rights of Ukrainian citizens by the Russian Federation, the case of Nadiya Savchenko is an example of, perhaps, the most blatant disregard for human rights (and foreigners' rights) in Russia.

As soon as it was ascertained that N. Savchenko had been forcibly taken out of Ukraine and handed over to the Russian Federation's law enforcement officers, a request was sent to the Commissioner for Human Rights in Voronezh Region asking her to help arranging a visit of the Ukrainian Parliament Commissioner for Human

Rights for the purpose of meeting with Ukrainian citizen N. Savchenko as a victim of kidnapping by a foreign state, who at that time was in custody in Voronezh, but the request was turned down.

Multiple phone conversations between the Commissioners for human rights also failed to yield the desired result of getting an opportunity to meet with Nadiya Savchenko. A call by the Ukrainian Parliament Commissioner for Human Rights to the President of the Russian Federation to take appropriate measures to release N. Savchenko who was illegally held in custody was also left unanswered.

In order to meet with Nadiya Savchenko, a representative of the Commissioner on implementation of the National Preventive Mechanism together with a group of members of the Ukrainian Parliament was on a visit in Voronezh on 16-18 July. Although they did not get permission to see her, Nadiya was informed by her lawyers about the presence of our colleagues near the pre-trial detention facility.

When information was received from the lawyers of N. Savchenko that Nadiya had been taken from the Voronezh pre-trial detention facility to an undisclosed location, the Russian Federation Commissioner for Human Rights was asked to establish the whereabouts of N.V. Savchenko, to find out what conditions she was being held in and to provide possible assistance in protection of her rights. This time, a reply came on the same day saying that Nadiya had been taken to Moscow for psychiatric examination but it did not give answers to all the questions, so another request was sent to E.O. Pamfilova earnestly requesting that she finds an opportunity and visits Nadiya at the V.P. Serbsky State Scientific Centre

for Social and Forensic Psychiatry in order to find out what conditions she was being held in and to assist in protection of her rights.

Based on the results of visiting Nadiya at V.P. Serbsky State Scientific Centre for Social and Forensic Psychiatry, a reply was received from the Russian Federation Commissioner for Human Rights saying that the conditions Nadiya was being kept in comply with the sanitary norms. Strict supervision had been lifted; Nadiya had been allowed to meet with her lawyers, the head of the consular division of the Ukrainian Embassy in the Russian Federation and her mother and to receive two parcels.

Upon completion of the examination, N.V. Savchenko was transferred to the pre-trial detention facility No. 6 of Moscow, and on 13 December 2014 N. Savchenko went on a hunger strike in protest against her illegal detention on the territory of the Russian Federation.

Permanent control was exercised over the situation with Nadiya Savchenko and contact was maintained with her relatives and lawyers.

When information was received from Nadiya's lawyers that her health had deteriorated, a letter was sent to the Russian Federation Commissioner for Human Rights asking that she assisted in arranging Nadiya's medical examination by an independent physician.

In order to ensure that Nadiya's sister Vira Savchenko would be able to meet with her, the Ukrainian Parliament Commissioner for Human Rights also requested Russian Federation Commissioner for Human Rights E.O. Pamfilova to help arranging a meeting

of the sisters and to assist Vira Savchenko with crossing the border with the Russian Federation since the Russian Federation's authorities had prohibited Vira Savchenko from entering the territory of Russia until 31 December 2014. In several days, the permission was obtained.

Moreover, the Commissioner informed the Basmany District Court of Moscow of her intention to be a guarantor of Nadiya Savchenko should the court impose on her the pre-trial restriction of personal guarantorship. At the same time, if the court found personal guarantorship impossible, in accordance with the Convention on Human Rights and Fundamental Freedoms and the ECHR case-law in cases concerning keeping in custody of persons suffering from a serious disease which makes it impossible for them to be held in detention, Commissioner offered to impose on N. Savchenko the pre-trial restriction of house arrest, given also the fact that the Ministry of External Affairs of Ukraine had taken care to provide Nadiya with a place of residence in Moscow.

Also, a letter was sent to the Russian Federation Commissioner for Human Rights asking her to support this request and to be also a guarantor of Nadiya Savchenko. The Head of the Investigative Committee of the Russian Federation was also offered to ask the court to impose on her a pre-trial restriction other than being held in custody.

But unfortunately all these initiatives were left unanswered by the Russians.

The case of Nadiya Savchenko and those of all the aforesaid persons being held by the Russian Federation's law enforcement agencies remain under the Commissioner's control.

## SPECIAL PROCEEDINGS OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

Special proceedings of the Commissioner are initiated for cases of the most high-profile human rights violations that — in the Commissioner's opinion — did not have proper official investigation, as well as for cases on violations that seem to be systemic. The Special Proceedings Division, a separate unit of the Secretariat of the Commissioner, deals with special proceedings.

Officers of the Division worked on 118 opened proceedings in 2013. 111 of these proceedings were opened for cases of violation of the rights of specific individuals to address the petitions to the Commissioner, 7 proceedings were opened at the instigation of the Commissioner for high-profile human rights violations and for violations that seemed to be systemic. There are cases on human rights and freedoms violations during the protest actions in Ukraine in the period from 21 November 2013 to 22 February 2014, high-profile events during the mass riots in Odessa on 2 May 2014, cases of regular violations of human rights by officers of enforcement bodies, prosecution agencies and courts in different regions of Ukraine etc.

In 2014, the Commissioner received over 1,500 complaints on illegal actions, in particular torture and improper behaviour of law enforcement officers in Ukraine. Moreover, 1,383 persons with injuries contacted public health facilities, stating that such injuries were inflicted by militia officers.

All these petitions required proper investigation by prosecution agencies. However the results of the Commissioner's special proceedings show that the work of prosecution agencies tends to show regular violations of legislation, thus rendering impossible the effective investigation of torture, cruelty and other violations of basic human rights, in particular:

- failure to enter information about such events in the Unified State Register of Pre-trial Investigations;
- handling complaints about cruel treatment in violation of the Criminal Proceedings Code according to the legislation on petitions of citizens;
- referring requests for checking facts of torture and cruel treatment by militia officers to the law enforcement bodies.

Such violations by prosecution agencies result in the loss of evidence that may be important for investigation of circumstances of a crime and for identification of individuals who committed a crime and, as a result, cause the violation of a right to a fair official investigation of improper behaviour taking into account case-law of the European Court of Human Rights.

The results of the Division's work also reveal the inaction of prosecution agencies in cases of illegal detention of crime suspects without the ruling of an investigating

judge or court. Prosecutors who supervise the observance of the laws in pre-trial inquiries by means of procedural guidance of pre-trial inquiry do not respond to such violations. Due to such inaction, we can observe endemic detentions by officers without any ruling of an investigating judge or court and without any legal grounds.

The special proceedings have also detected some other systemic violations of procedural rights of the detainees. The first to mention: concealing of the actual time of detention and violation of the prescribed detention periods as well as violation of rights to legal assistance.

The Division's officers also dealt with several petitions to protect the rights of representatives of vulnerable groups in 2014. The majority of them (29 petitions) were about violations of rights of drug addicts by law enforcement officers. The results of handling of such petitions have shown a range of systemic violations of rights of such people including:

- cruel treatment;
- illegal detentions and long detentions in subhuman conditions and in places not designed for such detention;
- violation of the right to medical assistance including breaking continuous treatment with replacement and antiretroviral agents;
- violation of right to legal assistance;
- making use of withdrawal state and drug intoxication to obtain testimony;
- violation of procedural rights in prejudicial investigations of crimes.

The majority of the Ombudsman's special proceedings benefited from the active involvement of NGOs. For the most efficient actions within the initiated proceedings, we turned to the capabilities of the NGOs' counselling offices, expert and human rights protection potential of civil society institutes and so on.

Examples of efficient special proceedings in cooperation with the public:

- proceeding on human rights and freedoms violations during the protest actions in Kyiv in the period from 21 November 2013 to 22 February 2014,
- proceeding on human rights and freedoms violations during the protest actions in Cherkasy from 23 to 27 January 2014;
- proceeding on human rights and freedoms violations during the mass riots in Odessa on 2 May 2014;
- proceedings on human rights and freedoms violations by officers of law enforcement bodies, prosecution agencies and courts of Sykhiv District of Lviv, Tsentralny district of Mykolaiv, and Bila Tserkva, Kyiv Region during the pre-trial investigations of crimes.

# NATIONAL PREVENTIVE MECHANISM IMPLEMENTATION

## 7.1 Main performance indicators of the national preventive mechanism in Ukraine in 2014

The total number of facilities in Ukraine that can be formally identified as a custodial setting is constantly changing. For example, as a result of suspension of the army draft the number of military units decrease by half from 386 in 2013 to 158 in 2014. The number of orphanages subordinated to the Ministry of Social Policy of Ukraine decreased over three times: from 42 in 2013 to 12 in 2014. At the same time, the National Preventive Mechanism (NPM) in 2014 focused attention on other types of facilities — narcological dispensaries and hospices — that may also be regarded as custodial settings.

Each type of custodial setting has a formalized questionnaire to be filled in by a monitoring group member. 7 working days after the site visit, a detailed report describing the observed human rights and freedoms violations is made, with recommendations given to eliminate them.

All reports are sent to the heads of the responsible ministry or institution to respond. Thereafter, the NPM Department monitors implementation of recommendations made after the visits.

In addition to general visits, there are issue-related visits dedicated to scrutiny of a certain problem. For example, last year officers

of the NPM Department and experts of the Association of Independent Monitors and Kharkiv Institute of Social Research with the support by UNICEF visited 6 juvenile correctional facilities under the State Penitentiary Service of Ukraine. The findings of the monitoring visits are presented in the Special Report of the Human Rights Commissioner 'Observance of Rights of Minors Detained in Juvenile Correctional Facilities under the State Penitentiary Service of Ukraine'

Table 1 shows the official statistics about the number of custodian settings provided by the Commissioner's Secretariat from respective ministries and agencies as well as the figures of monitoring visits in the last three years.

According to the data of Table 1, the number of monitoring visits in 2014 is much less than in 2013 (145 and 262 respectively). Such difference is mainly caused by dramatic developments that started in our country at the end of 2013 and escalated last year. As mentioned above, during the first months of the 2014 the NPM Department performed unusual functions: urgent verification of information about human rights violation in different bodies, responding to specific complaints about torture and improper behaviour against the activists of the Revolution of Dignity etc.

Consequently, the Department could turn to the monitoring visits only in May 2014.

## 7.2. Monitoring results of custodian settings under different authorities

### 7.2.1. Ministry of Internal Affairs of Ukraine (MIA)

The network of custodian settings within the Ministry of Internal Affairs is the most widespread as compared to other agencies.

As of 1 January 2015, the facilities designed for detention under the MIA include over 2,000 permanent custodian settings (detention rooms of front offices of internal affairs agencies, temporary detention facilities, special reception centres for persons under administrative arrest, reception centres for children, special centres and wards at health care institutions) where 102,019 persons were detainees during the year. About 650 vehicles to escort detained, arrested and convicted persons (equipped motor cars and carriages) performed 58,428,000 journeys.

The largest number of persons detained by the MIA's special facilities are kept in temporary detention facilities (94,896 persons during the year).

In 2014, officers of the NPM Department together with civil society representatives visited 49 custodian settings under the MIA's responsibility including:

- 28 militia offices of municipal, district and local levels;
- 16 temporary detention facilities;
- 1 special reception centre for persons under administrative arrest;
- 2 special wards at health care institutions.

They also checked 1 special carriage of ST type and 1 special motor car for transporting detained, arrested and convicted persons.

In order to check the performance of recommendations after previous visits, there were 6 follow-up visits to militia offices and subdivisions in 2014.

As a result of these visits the Commissioner communicated information to the MIA and General Prosecutor's Office about the discovered defects and violations as well as gave recommendations for their elimination and prevention at all special facilities and offices of municipal, district and local levels subordinated to the MIA. However, there was no proper response to the recommendations, and follow-up visits detected the same defects and violations, proving their systematic nature.

Common violations detected during the visits of MIA's custodian settings in 2014:

- torture and cruel treatment when performing enforcement measures related to detention, including against minors;
- violation of procedural rights of detainees during the first hours after actual detention (a detainee is not told about the reasons for detention, right to defence is not guaranteed, information about detention is not communicated to relatives etc.);
- the use of premises for detention (ward-type rooms of special facilities, detention rooms of front offices) with dimensions that do not meet minimum national and international standards;



- improper feeding of detainees of special facilities and detention rooms of front offices;
- improper equipment of detention settings (no permanent free access to running, potable and hot water, nor improper ventilation, insufficient artificial and natural lighting, improper supply of medical equipment and consumables at special facilities and detention rooms of front offices as defined by national and international standards);
- violation of right to privacy;
- the administration of militia offices and special facilities do not take actions to prevent torture and other types of improper treatment as defined by legislation.

Recommendations to MIA for the improvement of legislation concerning protection against torture and improper treatment:

- to introduce a system of efficient investigation into cases of torture, illegal detention and other cases of improper treatment;
- to forbid by law the detention or keeping of detainees at any premises of militia bodies except for the investigator's room and detention rooms of front offices;
- to ensure recording (audio, video recording with data storage for at least a month) of all actions involving all persons at inter-district offices regardless of status (a detainee, person delivered to the police department or visitor);
- to develop and introduce a 'unified personal detainee file', facilitating control

over the observance of rights starting from the moment of actual detention;

- to make the conditions of detention comply with the requirements of international and national legislation.

#### 7.2.2. State Penitentiary Service of Ukraine

Currently, 150 facilities situated on the territory under the control of Ukrainian authorities are under the umbrella of the State Penitentiary Service of Ukraine. 72,602 persons were being held there at the beginning of 2015. 27 facilities and 47 subdivisions of the criminal execution inspectorate are in Donetsk and Luhansk regions that are temporarily beyond the control of Ukrainian authorities so official statistics about the number of persons there are not available. It is known that as of 1 February these facilities held about 12,700 persons. Moreover, some of the facilities are in the occupied Autonomous Republic of Crimea. As of March 2014, 4 facilities of ARC held about 3,200 persons.

The State Penitentiary Service of Ukraine reported that as of 21 December 2014, 13 pretrial detention centres and 16 penitentiary facilities with pretrial detention function within the territory controlled by the Ukrainian authorities held 15,638 individuals taken into custody and convicted. 1,921 individuals were at the stage of pre-trial inquiry, 5,503 individuals – at the stage of court hearings (before judgement). 115 penitentiary facilities held 56,521 convicts in total.

In 2014, the Commissioner's officers, together with civil society representatives conducted monitoring visits to 25 facilities (10 pretrial detention centres, 8 penal colonies, 7 correctional facilities), one of which

was a follow-up visit. Visits covered 15 regions (Volynska, Dnipropetrovsk, Donetsk, Zhytomyr, Zaporizhzhia, Kyiv, Lviv, Luhansk, Poltava, Rivne, Sumy, Ternopil, Kharkiv, Khmelnytskyi and Chernigiv regions).

The monitoring visits helped to detect systemic violations of the procedure of holding in custody and serving of sentence that led to cruel or humiliating treatment of prisoners and convicts. The most notable violations:

- beating different parts of the body with leaving no visible traces, the use of different torture so called 'stretchers,' 'swallow' (feet and hands are tied together on the back, the person may be hung and beaten), sprinkling of self-inflicted injuries with salt (Kuriazka Penal Colony, Pervomaiska Penal Colony (No. 117));
  - public humiliation by making a prisoner clean public use sites and toilet facilities out of their turn (Dykanivska Penal Colony (No. 12), Temnivska Penal Colony (No. 100));
  - rigid handcuffing (Kyiv pretrial detention centre, Berdychivska Penal Colony (No. 70));
  - inhuman or cruel treatment of convicts and detainees by certain officers (Berdychivska Penal Colony (No. 70), Zamkova Penal Colony (No. 58));
  - unreasonable restrictions not stipulated under legislation and abuse of safety measures against convicts and detainees (Shostkynska Penal Colony (No. 66));
  - abuse of corrective function by the administration of pretrial detention centres and penitentiary facilities (Berezanska Penal Colony (No. 95);
  - negative practice of involving convicts in activities related to supervision of the behaviour of other convicts (Dykankivska Penal Colony (No. 12), Pervomaiska Penal Colony (No. 117));
  - unreasonable transfer from one facility to another, bringing to disciplinary liability, limiting TV-viewing;
  - biased internal investigations, impossibility of obtaining legal consultation and violation of the procedure of petition sending, thus making it impossible to appeal against the actions of the administration (Bilenkivska Penal Colony (No. 99), Pervomaiska Penal Colony (No. 117), Dubenska Penal Colony).
- Among other things, they tolerate unreasonable restrictions of the rights of convicts and detainees that are granted by law, in particular:
- violation of convict's right to phone calls. Due to limited availability of telephones and call schedules that are made for the convenience of the administration, call duration is only 3-5 min;
  - convicts and detainees complain heavily about the food and cooking. The food is of poor quality and organoleptical properties. The diet of convicts and detainees is lacking in fresh vegetables and fat;
  - there are cases of the exploitation of convicts as free labour: they are brought to production sites for overtime work or during normal working

hours but without respecting time sheets, as well as cases of recording products made by convicts for the benefit of so-called 'assets' (of foremen);

- the allocations under the approved cost sheets for labour remuneration of convicts that perform domestic duties are not enough to accrue the minimum monthly salary (UAH 1,218). In practice, the convicts receive only 0.25 or 0.5 of the minimum salary. Work at weekends or holidays is not compensated, in breach of the Labour Code of Ukraine.
- insufficient supply with personal protective gear and supplemental nutrition was detected at almost every facility.

Special attention shall be paid to unsatisfactory handling of convicts' requests by the administration, especially as regards the explanation of their rights guaranteed by law. Information boards are neglected, hardly updated and contain outdated information. 'Legal Information' boards contain no information about the rights of convicts. The majority of premises have no visual information about prevention of socially dangerous diseases.

As a result of negligent performance of its obligations, the facility administration has conflicts with convicts. A striking example was recorded in October 2014 in Zamkova Penal Colony (No. 58).

The visit found out that about 230 convicts refused the meals provided by the facility to protest against misconduct and negligence of the administration. They complained about inadequate conditions, in particular insufficient space, unsatisfac-

tory technical condition of toilet facilities, poor illumination and ventilation, meals and medical services. There were many complaints about unreasonable bringing to disciplinary liability and compulsion by prosecution and facility officers to write statements that the convicts have no complaints.

All in all, the custody conditions in penitentiary facilities do not comply with the legal requirements, in particular:

- the number of bed sets exceeds the area limits prescribed by law. The accommodation units have practically no free space. Lockers for personal effects of convicts are full of rubbish while they keep their personal belongings under beds;
- dwelling and utility rooms of structural subdivisions of some facilities are misused;
- power supply networks are laid in breach of safety and insulation rules and their operation is extremely dangerous;
- some facilities do not have an equipped disciplinary room;
- toilet facilities of the majority of visited facilities are in a poor condition.

In 2014, the administration of penitentiary facilities continued concluding commercial contracts on service provision with customer-owned raw materials (on sewing of knitwear and other goods) with the minimum labour remuneration rates for convicts. For example, the remuneration rate for a pair of gauntlets was 5 kopecks in Berdychivska Penal Colony (No. 70).

Thus, many of the contracts concluded by penitentiary facilities have no economic benefit for convicts since they do not ensure any fair salary.

In breach of the provisions of article 110 of the Labour Code of Ukraine, article 30 of the Law of Ukraine 'On Labour Remuneration', the administrations of penitentiary facilities and enterprises did not inform the convicts about the amounts of their remuneration, in particular, about totals of accrued salary, amounts and grounds for deductions and net salary to be credited to personal accounts of convicts.

To address the violations above, the Human Rights Commissioner submitted the following act of response:

- about gross violation of basic rights and freedoms of minors at the A.S. Makarenko Kuriazka Correctional Facility;
- about violation of basic rights and freedoms of individuals serving their sentences in Temnivska Penal Colony (No. 100);
- about violation of constitutional rights and freedoms of individuals serving their sentence in Berdychivska Penal Colony (No. 70).

### Suggestions:

In order to secure rights of the mentioned individuals it is advisable to modify the Law of Ukraine 'On Pretrial Detention' as follows:

- a) article 7: concerning the reversion to the Government of confiscated money, securities and property of detainees when they are kept at pretrial deten-

tion facilities only subject to the judgement, since article 41 of the Constitution of Ukraine provides that private property is inviolable, and property confiscation may be applied to the judgement only. An officer shall submit a report about confiscation of money, valuables and other property to the court;

- 6) article 9:
- concerning the right to daily 2-hour walks for pregnant women and women with children, minors and those unwell — with the permission of MD and their consent. Setting a specific time for daily walks of such individuals will prevent less than 2-hour walks;
  - concerning the detainees' right to receive deliveries or parcels and money transfers and deliveries with no limitation in quantity;
- b) article 12: concerning the detainees' right to visits of relatives and other individuals;
- r) article 13: concerning delivering of responses to petitions, complaints and letters directly to a detainee. The procedure set by article 13 prescribing that the administration of pretrial detention facility shall make the detainees familiar with responses to petitions, complaints and letters against acknowledgments that are attached to their personal files, contradicts the right, provided by article 32 of the Constitution of Ukraine, to freely collect, store, use and disseminate information orally, in writing or otherwise, at their own discretion.

The issue that the standard ward area in pretrial detention facilities prescribed by Ukrainian legislation does not comply with the current standards of human rights is still not addressed. According to the Law 'On Pretrial Detention', the mentioned standard shall be at least 2.5 m<sup>2</sup>, and current international standards prescribe at least 4 m<sup>2</sup>.

Another matter to be addressed is modification of the Criminal Executive Code of Ukraine as regards the provision of a convict who serves his or her sentence with an opportunity to be transferred to a location not far from the place where their close relatives live.

### 7.2.3. State Border Service of Ukraine

The State Border Service of Ukraine has the following custody settings that are subject to NPM monitoring:

- temporary holding facilities (THF);
- special premises for administrative detainees;
- designated locations (including transit areas) at border check-points for accommodation of individuals that were refused entry to a country (accommodation sites for individuals that were not allowed to cross the border — ASINA).

1,058 individuals from 43 countries were kept in such settings in 2014, 348 of whom stayed there for over 3 days.

In 2014, NPM monitors visited: Temporary Holding Facility of Lviv border detachment, special premises and transit areas in Kyiv and Lviv airports and Kyiv railway station.

### Typical violations of human rights that were recorded in 2014

Violations of rights of detainees that could be qualified as torture, cruel, inhumane or degrading treatment or punishment were not detected in 2014.

However, there were problems related to misbehaviour, in particular:

- detainees do not have free access to useful information in some custody settings;
- not all temporary holding sites have health workers;
- detainees have limited walks in some custody settings;
- some rooms for detainees do not have the requisite furniture.

### Legal framework deficiencies

The Instruction for holding of individuals who were detained by the State Border Service of Ukraine for administrative violation of the legislation on the State border of Ukraine and on suspicion of committing a crime does not fulfil the minimum standards for treatment of detainees.

The issues related to disciplinary punishment of detainees of holding facilities of the State Border Service are not regulated.

Regulatory documents of the State Border Service define only the general procedure for giving information about rights and freedoms to detainees.

There are no defined obligations of the authorities and procedures for ensuring good

conditions of stay in transit areas of international airports for persons who were refused entry to Ukraine.

### **About observance of human rights and freedoms at Ukrainian border checkpoints**

The monitoring visits showed that the conditions of stay in transit rooms of international airports for foreign citizens who were refused entry to Ukraine do not satisfy the minimum standards or requirements of the European Court of Human Rights, such as individuals having no access to any counsel or any useful information.

Another problem is the absence of a mechanism for the protection of a foreign citizen's right to freedom of movement, protection against abuse of power of border officials, who are allowed to forbid entry of foreigners to Ukraine based on the results of so-called interviews. For example, border officials of Lviv International Airport during 9 months of 2014 refused entry to Ukraine on these grounds to almost half of all foreigners that were not allowed to cross the border, despite holding valid entry visas.

On 5 September 2014, border officials at Lviv airport did not allow Mr. M, a citizen of Turkey, to enter Ukraine. He was refused entry because the border service's database had a decision of the regional office of the State Migration Service of Ukraine on prohibition of entry to Ukraine of this individual.

And the border official did not consider the fact that Mr. M presented copies of judgments of two courts that had already cancelled the prohibition.

Despite the absence of official premises for holding individuals who are not allowed to enter the country under supervision of the State Border Service, the NPM monitoring recorded the existence of unofficial holding facilities. In particular, such a facility was detected on 13 February 2015 during the NPM monitoring visit to the central railway station in Kyiv. The monitoring revealed that in 2014 over 140 individuals that were refused entry to Ukraine were kept under supervision of the border service in a closed room for about 12 hours. Since Ukraine does not have any legal framework defining the procedure for restriction of rights and freedoms of individuals in such a room, the holding of foreigners who are not allowed to enter may be deemed illegal confinement.

Moreover, the mentioned room does not meet minimum standards for treatment of detainees.

The Human Rights Commissioner is convinced that the absence of clear criteria for a justified decision on refusal of entry to an individual, and the absence of a mechanism for governmental control over the observance of human rights when making such a decision lead to the increased risk of violation of rights and freedoms, in particular, of the right to freedom of movement.

**Suggestions** on improvement of legislation for prevention of improper treatment:

- 1) To make the instruction that would regulate the procedure of holding detainees and comply with minimum standards governing treatment of detainees.
- 2) To set and introduce requirements pertaining to welfare and medical as-

sistance to citizens of Ukraine who are held in THF (SP) of the State Border Service of Ukraine.

- 3) To introduce regulatory instructions on ensuring good conditions of stay in transit areas of international airports for persons who have been refused entry to Ukraine.

#### 7.2.4. Ministry of Defence of Ukraine

Facilities subject to NPM monitoring:

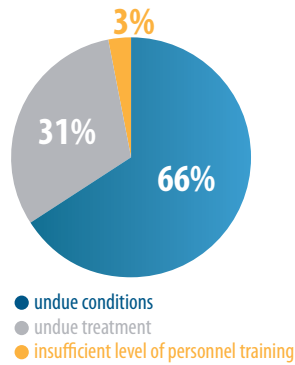
- disciplinary battalion of the Armed Forces of Ukraine (DB of AFU);
- military custody;
- rooms for temporarily detained servicemen (RTDS);
- special wards of military health care establishments (special wards);
- military units of Armed Forces of Ukraine<sup>11</sup>;
- psychiatric facility of the Main Military Clinical Hospital of the Ministry of Defence of Ukraine.

The military custody of the Central Administration of the Armed Forces of Ukraine and psychiatric facility of the Main Military Clinical Hospital of the Ministry of Defence of Ukraine were re-visited in 2014. The military unit A0139 (Kyiv) was monitored in terms of the observance of rights and freedoms of conscript soldiers.

During the visit to the m/u A0139 the monitoring group had to wait for about an hour for permission to enter the territory.

<sup>11</sup> These are military units where citizens of Ukraine serve compulsory military service;

#### Violation of the rights of servicemen in custodian settings



Analysis of detected violations shows that the majority of violations (66%) are related to material support of living conditions, 31% are related to improper treatment, and 3% relate to poor organization and training of personnel in the prevention of mistreatment of individuals held in custody settings.

#### Typical violations of rights that were detected as a result of monitoring visits

Facts of torture or cruel treatment of servicemen in 2014 were not detected. However, some restrictions of rights and freedoms that may be qualified as inhumane or degrading treatment were recorded.

For example, conscript soldiers, who are patients of the psychiatric facility of the Main Military Clinical Hospital of the Ministry of Defence of Ukraine, have no walks in the fresh air, live 10-12 persons in a ward, have limited access to the toilet, have to breathe cigarette smoke because the toilet does not have proper ventilation. The patients are hospitalized without their written consent, are not informed about treatment

goals, diagnosis, names of medications taken and they are illegally limited in communication with outside world.

Monitoring of a military hospital in Vinnytsia uncovered facts of violation of constitutional rights of injured servicemen. The Human Rights Commissioner communicated act of response based on the visit findings to the administration of the Ministry of Defence of Ukraine.

The living conditions of conscript soldiers in the military unit A0139 (Kyiv) do not meet the minimum standard in terms of space, access to fresh air or condition of bed clothing.

The medical aid station of the military unit A0139 does not have the necessary rooms (isolation room for contagious patients, bandaging room, x-ray room, physiotherapy room etc.), the space standards per patient, air temperature and disinfection requirements are not fulfilled.

Training materials about prohibition of torture are not included in the personnel training for units that protect and escort convicted, detained and arrested servicemen.

### **Suggestions:**

- introduce a written form of informed consent to hospitalization in the psychiatric facility for servicemen;
- have regulatory definition of type and grade of regime restrictions for conscript soldiers during examination at the psychiatric facility of military health care establishments by the assignment of military medical examining boards;

- make the living conditions in lodgings of conscript soldiers comply with minimal international standards.

### *7.2.5. State Migration Service of Ukraine*

According to article 13 of the Law of Ukraine 'On Ukrainian Parliament Commissioner for Human Rights', the following facilities of the State Migration Service of Ukraine (SMSU) are subject to monitoring:

- temporary accommodation centres for foreign citizens and stateless persons that remain in Ukraine illegally (TAC):
- refugee centres<sup>2</sup>.

The SMSU of Ukraine has the Volynskiy and Chernigivskiy TACs that are designed to accommodate 373 individuals at the same time. According to the official information of the SMSU, 407 foreigners and stateless persons stayed there in 2014.

NPM monitoring groups visited the Chernigivskiy TAC twice because it was not checked previously: it was closed in the second half of 2013.

As a result of the visits, the monitors noted the willingness to dialogue of the administration of SMSU and the diligence of the administration of Chernigivskiy TAC in performance of the NPM'S recommendations given after the first visit.

However, there are issues that may be qualified as a display of misbehaviour among migrants.

<sup>2</sup>Since, according to Ukrainian legislation, asylum seekers that reside in refugee centres are not restricted by the state to choose whether to stay or not in such centres and may - of their own free will - leave and return to the centres, the national preventive mechanism does not monitor such facilities. But the NPM maintains a constant watch over the legal framework in the domain in order to establish if such facilities can be qualified as custodial facilities as defined in article 4 OPCAT.



The TAC administration confiscates smartphones (mobile phones with photo and video cameras) when placing individuals into the TAC.

Medical service is provided by only one physician assistant (though there are three vacant positions) and a physician who works on a part-time basis and comes 1-2 times a week.

There is no practice of giving foreign citizens — when placing them in the facility — a list of useful information that would help them adapt faster to the new conditions.

Personal effects of migrants regardless of their will are confiscated when they are placed in the TAC.

The sanitary condition of toilets and shower cubicles is unsatisfactory. They are cleaned by migrants and not by cleaning staff.

### **Legal framework deficiencies that cause ill-treatment.**

The current legislation gives the State Migration Service and State Border Service of Ukraine the authority to make decisions about placing individuals in the TAC (Law of Ukraine 'On Legal Status of Foreign Citizens and Stateless Persons'; Law of Ukraine No. 5453-IV 'On Amending Some Legislative Acts of Ukraine as a Result of Adoption of Law of Ukraine 'On Legal Status of Foreign Citizens and Stateless Persons', dated 16 October 2012).

Therefore an individual remains in the TAC for a considerable period of time (up to 12 months) in conditions of actual custody without a court decision, and this may be considered a violation of right to freedom.

Regulation about the temporary accommodation centre for foreign citizens and stateless persons that stay in Ukraine illegally (approved by the Order No. 390 of MIA of 16 October 2007) does not comply with certain provisions of Ukrainian legislation and international legislation concerning the protection of rights and freedoms of foreign citizens, in particular:

- the mandatory requirement to make comprehensive and helpful information known to a migrant in their native language or any other language that they understand before placing them in a TAC;
- a clear list of belongings allowed (not allowed) for use in the TAC;
- to eliminate the possibility of placing foreign citizens and stateless persons in so-called confinement rooms (as a disciplinary punishment);
- mandatory written permission from a physician to place migrants in such rooms and daily medical examination of their mental and physical health;
- to guarantee the confidentiality of medical examination of foreign citizens and stateless persons;
- an opportunity to give personal effects to an authorized officer of the TAC for safekeeping at any time and at their own discretion;
- to ensure the free opportunity for families to spend daytime together.

**Suggestions:**

Introduce judicial control over the decision of competent authorities on placing migrants in temporary accommodation centres and the periodical review of the necessity of their further stay at the TAC (at least once every two months).

Amend the current version of the Regulation on the temporary accommodation centre for foreign citizens and stateless persons that stay in Ukraine illegally in the part concerning:

- the mandatory requirement before placing a migrant in a TAC to make comprehensive and helpful information known to a migrant in their native language or any other language that they understand so that they could adapt faster in conditions of restricted freedom;
- a clear list of belongings allowed (not allowed) for use in the TAC;
- eliminating the possibility of placing foreign citizens and stateless persons in so-called confinement rooms (as a disciplinary punishment);
- a mandatory written permission from a physician to place migrants in such rooms and daily medical examination of their mental and physical health;
- guaranteeing the confidentiality of medical examination of foreign citizens and stateless persons;
- providing an opportunity to give personal belongings to an authorized officer of the TAC for safekeeping at any time and at their own discretion;

- ensuring that families have the opportunity to spend daytime together.

*7.2.6. State Judicial Administration of Ukraine*

In 2014, NPM monitors visited 7 local courts of general jurisdiction (Solomianskyi, Dniprovskyi and Svyatoshynskyi district courts of Kyiv city; Boryspil Municipal and District Court of Kyiv Region; Ripkinskyi District Court in Chernigiv Region; Prydniprovskyi and Sosnivskyi district courts, Cherkasy Region). The treatment of persons on trial (convicts) in cells and court rooms was monitored.

Typical violations of rights and freedoms of the accused (persons on trial/convicts) recorded in 2014:

- overcrowded cells for the accused (persons on trial/convicts)<sup>3</sup>;
- the rooms for the accused (persons on trial/convicts) do not comply with the international minimal standards of custody<sup>4</sup>;
- not adequate or no nutrition on the date of participation of the accused (person on trial/convict) in the court session<sup>5</sup>;
- no fresh air in the premises because of cigarette smoke and poor ventilation.
- no proper illumination.

<sup>3</sup> E.g., during the visit it was recorded that the cells of the Dniprovskyi district court of Kyiv city had 2 persons each, every person had 1.4 m<sup>2</sup> of space while the national standard is at least 4 m<sup>2</sup> (DBN V.2.2-26:2010. Courts).

<sup>4</sup> The space of one-man cells in Prydniprovskyi district court of Cherkasy city is 1.2-1.3 m<sup>2</sup>; in the Ripkinskyi district court of Chernigiv Oblast it is 1 m<sup>2</sup>; in Svyatoshynskyi district court of Kyiv: 0.7 m<sup>2</sup>;

<sup>5</sup> Dniprovskyi district court of Kyiv: the persons delivered from the Lukianivskyi pretrial detention centre had only a slice of white bread and a boiled egg for lunch. Prydniprovskyi district court of Cherkasy: the accused S. had nothing for lunch.

- many courts in their court rooms still use metal bars instead of Plexiglas barriers;
- there are no toilets or drinking fountains for the accused or they are in poor sanitary condition.
- no bactericidal lamps for air disinfection;
- some courts are not equipped to ensure the participation of persons with special needs in the court session;
- no conditions for a confidential talk between the accused (convict) and a solicitor.

**Suggestions** on modification of legislation:

It is necessary to modify the National Construction Standards of Ukraine (Houses and Constructions. Courts. DBN V.2.2-26:2010) providing for:

- the rate of space of at least 4m<sup>2</sup> and the rate of air of at least 9m<sup>3</sup> per person in the premises for the accused (persons on trial/convicts);
- technical requirements for natural and artificial illumination in the premises for accused (persons on trial/convicts) sufficient for prisoners to be able to read case files (documents);
- equipment of rooms for confidential conversations of accused (persons on trial/convicts) with solicitors in the courts;
- equipping of smoking areas for the accused (persons on trial/convicts).

According to Instruction No. 1.1-1074/13-119 of the Ukrainian Parliament Commissioner for Human Rights of 11 June 2013 and Instruction No. 24003/1/1-13 of the Cabinet of Ministers of Ukraine of 20 June 2013, the Ministry of Justice of Ukraine has to complete the preparation of an action plan to ensure the protection of rights of individuals involved in criminal proceedings.

*7.2.7. Ministry of Health of Ukraine*

According to the information of the Ministry of Health of Ukraine, at the beginning of 2014 Ukraine had: 84 psychiatric/psychoneurology hospitals with 37,856 beds, 46 children's homes for 4,880 beds, 60 branches of palliative and hospice care and 40 detoxification institutions.

In 2014, NPM Department officers made 25 visits to health care establishments:

- 10 psychiatric/psychoneurology hospitals, 8 branches of palliative and hospice care,
- 3 detoxification institutions and 4 children's homes

Violations of human rights and freedoms detected during the visits of psychiatric (psychoneurology) hospitals are as follows:

The problem of regulating the use of restraint tools for patients with psychological disorders remains unresolved.

Violation of child's rights when providing psychiatric care: on admission, children sign documents, e.g. the Informed Consent of Patient but they do not understand its content. The admission procedure of orphans and children deprived of parental care is violated: for children over 14 years

old — only their legal guardians give consent, the guardianship and custodianship agencies are not informed about their hospitalization. Treatment and keeping of children and adults in the same ward at the Ukrainian Psychiatric Hospital under intensive supervision of the Ministry of Health of Ukraine are a gross violation of rights.

Systemic violations of human rights in compulsory treatment: the violation of right to be personally present at the hearing of a case on extension, change or cessation of the application of compulsory treatment, the use of handcuffs when transporting and keeping individuals in in-patient departments of other hospitals, in particular, when treating physical illnesses; no mechanism for the use of age pension and social payments by patients under compulsory treatment.

Numerous problems were recorded related to proper nutrition of patients: due to the financial crisis and price escalation the hospitals were not able to meet the daily meal requirements. Taking into account the side effects of medications given to psychiatric patients, those who did not receive food packages from relatives were actually undernourished.

Violation of the right to proper medical treatment: overcrowded wards in the most visited hospitals, the absence of chairs, cupboards, tables and other furniture makes it impossible to ensure a proper curative environment.

Limited right to communication: the absence of a unique procedure for the use of mobile phones leads to restrictions being introduced at the discretion of hospital staff; seeing relatives at weekends and holidays is forbidden in the Ukrainian Psychiat-

ric Hospital under intensive supervision of the Ministry of Health of Ukraine.

No conditions for recreation and rehabilitation: there are no recreation rooms at all, or they are too small; there are no rehabilitation activities at psychiatric hospitals with patients under compulsory treatment, for example, in the Ukrainian Psychiatric Hospital under intensive supervision of the Ministry of Health of Ukraine.

Violation of rights in the Ukrainian Psychiatric Hospital under intensive supervision of the Ministry of Health of Ukraine:

- the subdivision of the State Penitentiary Service of Ukraine protects and supervises the patients in the premises of the hospital, which represents a gross violation of the national legislation and respective international standards;
- violation of periods of stay of individuals for whom the court has changed the type of compulsory treatment;
- limitation of patients' right to communication, including interfering with one-on-one meetings of the patient with their solicitor or legal representative;
- improper medical care;
- overcrowded wards, no free access to sanitary rooms etc.

In response to multiple requests of the Commissioner, the officials of the Ministry of Health Care, instead of holding their own inspection, transferred the requests to the hospital, which represents a gross violation of the legislation and discredits the inspection objectivity and actually signifies the

self-removal of the Ministry's administration from solving patients' problems. So, on 24 November 2014, the Human Rights Commissioner sent a proposal to check the information and take appropriate measures to the Prosecutor General of Ukraine.

Due to the firm stand of the Human Rights Commissioner and the involvement of prosecution agencies, the observance of rights of the hospital patients was improved: the schedule of visits was changed and the right to be present at court sessions is secured.

**Suggestions** on improvement of legislation based on the monitoring findings:

- 1) Initiate amendments to article 9 of the Law of Ukraine 'Principles of Ukrainian Legislation on Health Care': add the application of preventive measures to an individual who is going to be under consideration of or has already received a decision on the application of compulsory treatment according to article 508 of the Criminal Procedure Code of Ukraine, to the list of grounds for limitation of rights related to the health condition of an individual.
- 2) Develop, taking into account the simplicity for psychiatric individuals, especially for children, the form of informed consent to volunteer hospitalization for psychiatric care.
- 3) Amend the Order No. 359 of the Ministry of Health of Ukraine of 19 December 1997, by adding 'Forensic Psychiatry' to the list of medical specialties.
- 4) Develop and approve typical documents of psychiatric and psychoneurology hospitals.

- 5) Amend the Procedure for Provision of Children with Psychiatric Care approved by Order No. 400 of the Ministry of Health of Ukraine of 18 May 2013 in order to make the mechanism of notification of children's guardianship and custodianship agencies about hospitalization of children clearer.
- 6) Review the clinical protocols of provision of psychiatric care taking into account the latest achievements in medicine.
- 7) Facilitate the use of video conferences and equipping rooms for on-site sessions in psychiatric/psychoneurology hospitals when hearing cases on forced hospitalization, change or cancellation of compulsory treatment.

#### *7.2.8. Ministry of Social Policy of Ukraine*

According to the information of the Ministry of Social Policy of Ukraine, the network of social protection bodies in 2014 consisted of:

- residential facilities for elderly and disabled people — 67 facilities (7,025 individuals);
- assisted living facilities for war veterans and labour veterans, elderly care facilities – 28 facilities (5,726 individuals);
- special boarding houses – 2 facilities (256 individuals);
- psychoneurology residential facilities – 144 facilities (28,262 individuals);
- orphanages – 49 facilities (2,436 individuals);

- stationary branches of local centres of social servicing (social service provision) – 339 facilities.

In 2014, the NPM Department's officers together with regional coordinators of the Human Rights Commissioner visited 29 facilities of the social protection system and service for children. Monitoring re-visits were performed to 9 facilities.

Typical violations of rights and freedoms of inmates of the facilities were recorded during the year.

The application of physical restraining and isolation that is not regulated by any legislative document. The psychoneurology residential facilities have rooms that are used for isolation of patients in an acute psychological condition.

Improper treatment and servicing of prostrate patients, inmates:

- at the time of visit all children of 4th profile Komarivskiy orphanage were lying in wet draw-sheets;
- all bed-ridden women of the Malyzhen-skiy psychoneurology residential facility were without incontinence pads, lying on rubber sheets covered with draw-sheets. The staff explained that they were going to wash the patients. But a re-visit found the same situation: women were without incontinence pads and some of them were lying on wet draw-sheets;
- patients of Lvivskiy elderly care facility do not have enough quantity of incontinence pads (one incontinence pad a day), women of the Vynogradivskiy elderly care facility do not have any hygiene products.

Moreover, the visit detected violations of patient's rights to health care and medical aid:

- the biggest problem is insufficient staffing of the facilities, especially with the nursing staff and medical attendants. The majority of vacant positions are caused by the remoteness of the facilities' location (20-50 km from the district centre, 70-200 km from the centre of the region);
- another important problem is the advanced training and re-training of doctors and nursing staff involved in the social protection system at their own expense, since the salary is extremely low;
- the residential facilities have poor organization of sanitary and disease control measures;
- there is no regulatory framework for the frequency of inspections of rooms and patients by medical staff;
- the patients do not have basic dental care, not to mention a specialist.

Improper maintenance of medical documentation: primary medical records are not made in accordance with the forms set by the Ministry of Health Care of Ukraine.

Poor medical care of TBC patients and insufficient TBC prevention activities:

- the administration of facilities provides for the transportation of some patients to health care establishments every year, bed-ridden patients do not have X-rays at all;

- there were 13 cases of pulmonary tuberculosis recorded in 2011-2013 among patients of the Kirovskiyi house for disabled persons, and 14 of their patients caught TBC in 2014; three of them died. This was caused by a spread in Novozlatopil'ska Psychiatric Hospital, Huliay-Pole District, Zaporizhzhia Region, where the patients were treated.

#### Violation of the rights of individuals with special needs to rehabilitation:

- outdated regulation on the number of staff at residential facilities (of all types);
- no developed modern and affordable methods for implementing rehabilitation programs at residential facilities;
- no adequate qualified personnel who could perform rehabilitation for special needs individuals;
- the social and household rehabilitation is limited to work in the garden and cleaning in neuropsychiatric residential facilities, and to self-care in geriatric and residential facilities for elderly and disabled people. There are no workshops at all, and the sports and rehabilitation activities are organized only partially;
- insufficient supply of wheelchairs, making regular walks of bed-ridden patients more difficult, and specially equipped chairs;
- no rehabilitation activities and leisure time organized for bed-ridden patients.

#### Poor condition of rooms:

- violation of international standards in terms of residential space per person is typical for neuropsychiatric residential facilities and orphanages;
- rooms have poor illumination;
- since there are not enough cupboards and wardrobes, personal clothes and belongings are kept on beds, hangers, windowsills or in cloakrooms accessible only to the staff;
- poor condition of rooms, lounges (broken tiles, no curtains, poor lighting, broken appliances, fungus on the walls);
- worn-out upholstered furniture: clothes, mattresses, pillows and bed-sheets. The majority of bed-sheets are not marked. There are no markings on the clothes and footwear of patients and the clothes and footwear are not suitable or adequate in terms of size and season;
- inadequate ventilation in residential buildings: persistent odour of urine;
- since there are no refrigerators to store food, the patients cannot store food packages from relatives;
- the patients do not have unimpeded 24/7 access to potable water: there are no drinkable water reservoirs in public areas or in rooms.

#### Inadequate equipment and exploitation of sanitary rooms:

- the condition of the plumbing is very poor; residences have an inadequate

number of toilet bowls so the basic needs of patients are not met properly;

- the sanitary rooms do not have toilet paper or disinfectant; some of the patients do not have toothbrushes or toothpaste;
- the doorframe is too narrow, and there are no special devices in the sanitary room for young patients; the access to hygienic procedures for wheelchair users is hindered;
- there are no partitions in showers and toilets, which violates the right to privacy.

Inadequate equipment and exploitation of other premises, for example:

- the public area does not have any cover for protection from rain and snow and sunshine, and there are no benches or pavilions;
- the bath and laundry room do not have heat treatment equipment, making the work of staff more complicated.

Violation of right to equality:

- the Lvivskiy elderly care facility groups the patients depending on their neatness and social skills to eat food in different rooms;
- when giving permission for meetings and visits of patients to relatives (guardians), the administration of the Nizhynskiy orphanage requires that relatives (guardians) handover X-ray results, citing a non-existent regulation.

Violation of right to information:

- no possibility to exercise the right to complain: there are no director's visiting hours, no records of visitors and no book of complaints and suggestions; there is no access to information about human rights and addresses of authorities dealing with patients' petitions;
- the staff controls the opportunity, time and duration for watching TV;
- limited list of periodicals available in the facility (for staff mainly).

*Requests of the Ukrainian Parliament Commissioner for Human Rights*

On 29 January 2014, the Commissioner for Human Rights sent the Zaporizhzhia Region State Administration requests about ensuring the rights of children from the Chernigivskiy orphanage of Zaporizhzhia Region Council.

Given the lack of adequate medical care seriously ill children from the Chernigivskiy orphanage and absence for years of results of efforts to solve this problem, the Ombudsman suggested taking immediate measures to protect the rights of seriously ill children from cruel, inhumane or humiliating treatment by transferring them to another institution and reforming of the Chernigivskiy orphanage.

In response to the request, the Head of Zaporizhzhya Region State Administration informed the Commissioner about a decision on the phased reform of the orphanage into a neuropsychiatric residential facility and the transfer of children to facilities that are closer to the centre of the region.



Pursuant to this decision, 27 children from the Chernigivskiy orphanage have already been moved to the Zaporizhzhia orphanage and 8 children to the Kirovskiy House for the Disabled.

**Suggestions** on improvement of legislation to prevent improper treatment based on the monitoring results:

- take actions to license medical practice at residential facilities that should meet unified qualification requirements in order to ensure adequate medical care and service;
- regulate the procedure for physical restraint and isolation of individuals suffering from mental diseases and kept in social protection institutions (neuropsychiatric residential facilities and orphanages) in pursuance of article 8 of the Law of Ukraine 'On Psychiatric Aid');
- improve the quantity of medical staff of residential facilities (of all types) and stationary branches of local centres of social servicing in order to improve the social servicing and rehabilitation services provision to fosterlings;
- develop sanitary rules and norms for equipment, maintenance and organization of activities of residential facilities of the social protection system;
- advance the adoption of the new version of Model Regulation at the neuropsychiatric residential facility and the modification of Model Regulation at the residential facility for elderly and disabled people and the orphanage to ensure they comply with the international and national modern standards of supporting elderly and disabled people and children;
- regulate the functioning of departments and 'supervision rooms' and their equipment;
- regulate the organization of sanitary and disease control measures in residential facilities;
- regulate the indications and counter-indications for placing the elderly and the disabled in residential facilities of the social protection system;
- develop Procedure for recording, keeping and control of spending of a part of pensions of disabled patients (25% that the facility is a guardian of);
- develop the Model Rules of Conduct of residential facilities of a specific type;
- introduce unique requirements for maintenance of internal documentation (records of visits, records of shifts of personnel, injury records, incoming and sent documents (correspondence) registration logs etc.) by the facilities;
- bring Order No. 62 of the Ministry of Social Protection of Ukrainian Soviet Republic, dated 25 April 1983 'On Approval of the Instruction for Calculation of Lingerie, Bed-sheets, Clothes and Footwear' into compliance with current legislation.

#### *7.2.9. Ministry of Education and Science of Ukraine*

The education system establishments to be monitored by the officials of the national preventive mechanism include 801

residential facilities in state and communal ownership that had about 115,000 students and preschool children enrolled and residing at the beginning of the 2014-2015 academic year.

The officers of the NPM Department visited 7 education system establishments in 2014.

According to the results of monitoring visits to the above mentioned institutions of the Ministry of Education and Science of Ukraine, there were instances with violations of the rights of pupils to privacy and personal space, adequate medical care and rehabilitation and a decent standard of living. A significant number of deficiencies identified during the monitoring visits are related to the need for repairs in the rooms, showers, toilets, laundries, assembly halls and gyms.

**Suggestions** on improvement of legislation for prevention of improper treatment based on the monitoring results

- 1) Modify the Regulation on special secondary boarding school for children requiring the correction of physical and (or) mental development in order to review a number of counter-indications for admission and ensure their right to education at schools.
- 2) Provide a choice of rehabilitation means, medical facilities tailored to the individual needs of children with disabilities by initiating — together with the Ministry of Health and the Ministry of Social Policy of Ukraine — changes to the Regulation on provision of certain categories of people with technical and other means of rehabilitation and formation of the state order.
- 3) Ensure the functioning of an appropriate network of institutions for education of children with conditions close to family ones by reforming the existing and creating new types of residential institutions.

# THE RIGHT TO PERSONAL DATA PROTECTION

## 8.1. General information about the first year of functioning of the Department for Personal Data Protection

In 2014, the Commissioner received 928 petitions about personal data protection. 485 proceedings on violation of personal data protection rights were initiated to address the petitions. 365 of them did not discover any violations and explanations of the provisions of the Law were given to citizens. The majority of petitions were about personal data protection violations in the following fields: finance (40%), education (30%), Internet (13%), health care (7%), social protection (6%), public utilities (4%).

53 routine and occasional checks of personal data controllers were conducted in 2014. Educational establishments (27), health care institutions (12), public utilities (1), railway transport (2), trade unions (1), financial institutions (5) and law enforcement bodies (5) were checked among others. Based on the results of petition consideration and routine checks held, in 89 cases the consultations were given to prevent or remedy violations of the legislation on personal data protection (30 of them followed the checks). There were 8 protocols about bringing to administrative responsibility.

It should be also noted that in 2014 the officers of the Department for Personal Data Protection delivered 29 lectures for representatives of law enforcement, health care, education agencies, legal counsels, judges,

officials of HR services, public bodies and local authorities to increase their awareness of personal data protection.

## 8.2. Human rights violations in the processing of personal data

### 8.2.1. *In law enforcement*

Within the routine activities to control the observance of legislation on personal data protection by internal affairs agencies, special attention was paid to the procedures of making, maintaining and use of fingerprint records.

The checks of municipal and district internal affairs offices discovered a large number of cases of the illegal storage of fingerprints of persons that are not obliged to be fingerprinted under the legislation (e.g. witnesses) and persons whose fingerprints should have been deleted (e.g. those who were at a certain point suspected, detained etc., but later they were acquitted/criminal proceeding was ceased). For example, there were about 1,000 cases of illegal fingerprinting in 2014 detected in 2 out of 5 inspected district offices.

Such a situation contradicts not only the legislation about personal data protection and law enforcement activity but also the caselaw of the European Court of Human Rights. In cases of *MK v. France*, *S and MARPER v United Kingdom*, the European Court of Human Rights decided that hold-

ing fingerprints of arrested individuals who were later acquitted or charges against them were dropped is a violation of the right to privacy under the European Convention on Human Rights

This situation is caused, among other things, by the outdated nature of legal framework in the domain of fingerprinting and its provisions do not comply with the provisions of the Law of Ukraine 'On Personal Data Protection'.

### 8.2.2. In health care

Consideration of petitions and random routine checks held in health care establishments and local offices of the Ministry of Health Care of Ukraine detected a range of issues related to the processing of personal data in the health care domain, in particular:

- no unified practice for processing of patients' personal data and for storage of such information by health care establishments;
- legislative provisions regarding the use of personal data for research are far from being perfect. For example, some regulatory acts require the research to be conducted with anonymous data exclusively, whereas others allow research with personal data. In reality, the research is usually performed with the use of personal data;
- unjustified collection of personal data about health of individuals by health care administrations. It often happens that health care bodies at region/municipal level collect the medical information about individuals from health care establishments at the request of other public bodies/private actors or for their own needs. Health care establishments are not notified about the grounds and purpose of such information requests, and this is a violation of article 16 of the Law of Ukraine 'On Personal Data Protection'. Moreover, such information — in violation of articles 6 and 11 of the Law — is often kept by the health care body though it is not necessary for its duties;
- no/improper recording of actions related to medical personal data and documents that contain such data; this is a violation of clause 3.11 of the Standard Procedure for Personal Data Processing. Medical information kept at health care establishments is usually not registered, the operations related to access to such information are not recorded (for example, there are no records about when certain documents that contain medical information about an individual are viewed and by whom). Such a situation makes it impossible to identify a responsible person and, consequently, to restore the rights of the data subject in case of loss of medical documents.
- introduction of the automated information system 'E-register of Patients of Ukraine' with no regulatory acts regulating its creation, testing and operation. The issue of introduction and operation of the automated information system 'E-register of Patients of Ukraine' should be regulated by the respective law that will clearly define: administrator/controller of the E-register of Patients of Ukraine, location of information carriers where the register's data is stored;

information entered into the register when an individual seeks medical help; term for register's data storage and sources of data collection; rights of patients; general requirements pertaining to the procedure of register maintenance (data entry, modifying, copying, deleting etc.); the need to introduce for register users different access levels to personal data and other information on the register depending on their duties; the need to ensure that users undertake measures to maintain the confidentiality of the information of the register; basic principles of registered data exchange between executive authorities, health care institutions as well as other enterprises, establishments and organizations; general requirements pertaining to the recording of operations related to personal data processing in the register; register control activities; key principles of protection of the information in the register.

Based on and in pursuance of the proposed law, in order to make its provisions clearer, the Cabinet of Ministers of Ukraine should develop and adopt relevant regulations that would define certain procedures of personal data processing in the E-register of patients including the recording procedure of operations related to data processing, mechanism of interaction and information exchange between users of the register.

#### *8.2.3. In advocacy and legal practice*

The Secretariat of the Commissioner receives many petitions about violation of an advocate's rights to access to personal data. The majority of personal data are con-

fidential so they are classified as sensitive information. According to the Law of Ukraine 'On Advocacy', an advocate does not have any right to obtain sensitive information. This provision limits the right of the advocate to obtain confidential information about their clients as well. Thus, the advocate is not able to secure the right to protection and legal assistance; and this also undermines the equality of rights with other parties of the proceeding, adversary nature and freedom in evidence provision. Given this, it is advisable to modify the Law of Ukraine 'On Advocacy' so as to expand the rights of advocates to collect personal data and copies of documents with such data in order to use them as evidence as prescribed by law.

#### *8.2.4. In notary*

The Commissioner has detected the ambiguous application of the Law of Ukraine 'On Notary' (part 2 art. 44) related to the presentation of a certificate that an individual does not suffer any mental disease that may affect their ability to understand and control their actions. According to provisions of the Law of Ukraine 'On Notary', the notary officer may only obtain a certificate that an individual does not suffer any mental disease. However the Law does not define what kind the certificate should be if a customer of the notary officer does have a mental disease. The mechanism for obtaining such a certificate (the notary officer requests independently or otherwise) is not defined either. Thus, the provision of the Law of Ukraine 'On Notary' (and, if necessary, article 6 of Law of Ukraine 'On Psychiatric Help') needs to be clarified and have a clear definition of the powers of the notary officer and of the mechanism for obtaining a certificate about the psychological condition of an individual.

### 8.2.5. *In education*

In 2014, the Secretariat officers performed routine field checks of preschool and secondary school institutions to check whether they observe legislative requirements on personal data protection. In general, processing of data of employees, pupils and their parents meets the requirements of the relevant legislation. At the same time the attention of the Ministry of Education and Science of Ukraine was drawn to major systemic defects and violations in the domain, in particular:

- many educational establishments keep documents with personal data of pupils, including medical information, in the archives though the retention period has expired;
- some educational establishments collect and store copies of passports and ID codes of parents and other family members though this is not stipulated by any regulatory act that regulates the activity of educational establishments;
- most educational establishments do not require their employees to undertake measures to maintain the confidentiality of personal data that have become known to them in connection with performance of their professional duties and job descriptions do not have provisions about liability for disclosure.

### 8.2.6. *In housing and public utilities*

The Commissioner receives many complaints about excessive lists of personal data (as well as copies of documents with such data) that consumers are required to submit when concluding public utilities

contracts. A public utilities contract shall be drafted in accordance with the public utilities provision rules and model agreement.

In practice, companies often ask consumers to present information (copies of passport, ID code, property title etc.) that is not required by the regulations mentioned above. At the same time it should be stressed that by-laws that regulate public utilities provision sometimes require much less data than is actually necessary for proper performance of the contract when concluding a service contract with a consumer.

Thus, the process of personal data collection in order to conclude a service contract shall be regulated by the state and based on a pro rata principle. It is advisable to define a clear list of information (documents) to be presented by a consumer to a public utility company.

### 8.2.7. *In labour relations*

Introduction of fingerprint identification procedure by some enterprises (before granting access to premises the fingerprint of employee is compared to its digital copy in the database of the company) was one of the thorny questions in the petitions of 2014. If the right of a company's administration to collect and use biometric data is not defined by the law, the processing of such data is subject to special voluntary consent of an employee (with no compulsion or threat of being fired). Thus, in this case it is advisable to use the verification procedure (before granting access to premises the fingerprint of the employee is compared to its digital copy that is stored on a secured microchip in the key). Storage of biometric data on a local device and not in the unified database

significantly reduces the risk of unauthorized access or illegal use.

### **8.3. Improper application of legislative provisions on personal data protection during data processing**

Again it should be stressed that, according to article 11 Law No. 2297-VI, the consent of a data subject is only one of six grounds for personal data processing. Employers process information about their employees and hospitals process information about their patients since this is required by the law (clause 5 part 1 article 11 of the Law) so they do not need any special consent of employees (patients). Public bodies and local authorities also do not need any special consent to personal data processing because they have to process personal data according to the permit provided by the law to perform their obligations (clause 2 part 1 article 11 of the Law).

At the same time, in Ukraine, the consent as a basis for personal data processing was widely used both by public bodies and local authorities, by educational and health care establishments. Thus, the exercise of rights by individual often depended directly on such consent (e.g. the State cadastre registrar cannot give any cadastre number to a land lot without the applicant's consent to their personal data processing). Such a situation leads to a violation of the principle of voluntary consent as well as a violation of the respective rights of an individual.

Therefore, there is a strong need to have the analysis of regulatory acts concerning the relations in the competence of public bodies if they comply with the requirements of the Law of Ukraine 'On Personal Data Protection', in particular the analysis of the grounds for personal data processing defined by such acts.

## THE RIGHT TO ACCESS TO PUBLIC INFORMATION

### Typical violations of the right to access to public information and recommendations on measures to be taken to address them

Analysis of application of the Law of Ukraine 'On Access to Public Information' indicates that the typical violations of the right to information are:

- Failure to reply to a request within the period defined by law;
- Refusal to grant an access due to the fact that the information requested is considered to be restricted;
- Refusal to grant an access due to the fact that access to information has been lawfully restricted prior to the receipt of the request;
- Failure to provide information on spending of budget funds, possession, use or disposal of state or municipal property;
- Denial of access to copies of declaration of assets, revenues, expenses and financial liabilities;
- Failure to provide information with reference to public sources or with reference to the fact that the requestor has not indicated the purpose for which information requested; or with invitation to review the information

requested in the premises of the administrator;

Based on analysis of the definition of 'public information' contained in Article 1 of the Law of Ukraine 'On Access to Public Information', it appears that all information held by an authority is public information.

The access to public information may be limited, particularly if it is for restricted circulation only. To ensure the proper implementation of the right to access to public information, the following algorithm is recommended to spending units when defining whether the requested information is for restricted circulation only:

- 1) verify whether such information belongs to the categories defined in Article 9 of the Law of Ukraine 'On Access to Public Information'. It is important to understand that, this being the case, it shall not automatically entail classification of this information as restricted. The above regulation only stipulates that such information may be considered restricted. That is, information contained in any memorandum shall not automatically be considered restricted. This is possible if a three-level test (required by Article 6 of the Law of Ukraine 'On Access to Public Information') has proved the grounds for such restriction;
- 2) determine whether such information belongs to the category, access



to which cannot be restricted under the law, including by classifying it as restricted information for service use only. Such information, in particular, shall include information specified in sections five and six of Article 6 of the Law; information that must be disclosed pursuant to section 15 of the Law, as well as other types of information, access to which may not be restricted according to the law (e.g., the Laws of Ukraine 'On Information', 'On Principles of Prevention and Combating Corruption', 'On Local Government', etc.);

- 3) conduct a three-level test, i.e. check the compliance with the set of requirements as stipulated by Article 6. In this case, denial of access to information shall be justified, if the administrator provides respective explanations to the requestor: a) what interests may be threatened by disclosure of the information requested (national security, territorial integrity, public order); b) what is the purpose of restricting access to it (prevention of disorder or crime, protection of public health, protection of reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary); c) how grave is the materiality of the damage that may be inflicted to those interests by disclosure; d) why does the damage from disclosure of such information outweigh the public interest in obtaining it.

Denial of access shall be considered unreasonable if the administrator is not able to explain the risks related to disclosure of the requested information (i.e., such risks may as well not be the case).

It should be remembered that one and the same information cannot be simultaneously classified as restricted information and a state secret. However, confidential information and information which is secret by law (except a state secret), can also be restricted by the administrator provided the steps above are respected. In addition, when using the terms 'national security', 'public order', 'public health', 'reputation or rights of others', it is recommended to resort to the clarifications given in the Siracusa Principles regarding restrictions and deviations from the provisions of the International Covenant on Civil and Political Rights (<http://legislationline.org/ru/documents/action/popup/id/14624>).

According to section four of Article 6 of the Law of Ukraine 'On Access to Public Information', restricted information must be provided by the information administrator if there is no legitimate reason for restricting access to such information that existed previously. This means that failure to provide information would be justified only if the administrator has a reasoned opinion that legitimate grounds for restricting access to the information requested persist to the day of response to the requestor (i.e., in every case when access to such information is denied, a three-level test should be conducted). A reasoned opinion on the three-level test results should be provided by the information administrator whenever it denies access to information.

A common practice is refusal to provide requested information citing the fact that it contains personal data of officials who did not give their consent to the disclosure of information about them.

Guarantees of both the right to information (Article 34), and the right to privacy (Article

32) granted to every citizen by the Constitution of Ukraine require balancing the private interests of personal information confidentiality and the public interest in such information.

According to Article 2 of the Law of Ukraine 'On Personal Data Protection', processing of personal data is any action or combination of actions including the use and distribution (distribution, sale, transfer) of personal data. Analysis of the provisions of Article 11 of the Law of Ukraine 'On Personal Data Protection' indicates that personal data can be processed in accordance with the law or with the consent of the individual. Similar provisions are contained in the first paragraph of Article 16 of the Law of Ukraine 'On Personal Data Protection', according to which 'the procedure for access to personal data by third parties shall be determined by the consent of the subject of personal data provided to the controller of personal data for processing these data, or according to the requirements of the law'.

In order to balance the interest of individuals to limit access to their personal information and the right of the society to know socially necessary information, the law provides for a number of occasions when personal data can be distributed without their consent. Several of these cases involve the provisions of Article 5 of the Law of Ukraine 'On Personal Data Protection'.

Accordingly, if the requested information, inter alia, contains personal data of a person, but access to such information is not limited by law (e.g., part five of Article 6 of the Law of Ukraine 'On Access to Public Information'), such information (personal data) shall be provided in accordance with the law, and the consent

of the subject of personal data is not necessary.

In addition, section two of Article 5 of the Law of Ukraine 'On Personal Data Protection' determines that personal data of public officials of a state or local government authority relating to performance of their official functions shall not be considered confidential information.

So, each time an information administrator receives a request for access to information containing personal data of an official (officer), it should be checked, to see if the information requested is related to the persons' performance of their official functions.

It is not allowed to restrict access to information on disposal of budget funds, possession, use or disposal of state or municipal property, including copies of relevant documents, conditions for receiving such funds or property, surname, name and patronymic of individuals and entities that received the funds or property. Under the requirements of Article 6 of the Law of Ukraine 'On Access to Public Information', this provision does not apply to cases where publication or disclosure of such information may harm the interests of national security, defence, investigation or prevention of crime (part five Article 6 of the Law of Ukraine 'On Access to Public Information').

The list of administrators of such information under the Act is not limited to public authorities. Information on disposal of assets (property) received by an economic entity from local or state budget shall be socially necessary information. All business entities, including state or municipal enterprises, institutions and organizations shall

be administrators of information on spending of budget funds or state or municipal property received under the provisions of Article 13 of the Law of Ukraine 'On Access to Public Information'.

Unfortunately, the analysis of complaints received by the Commissioner shows that currently the authorities' refusal to provide copies of officials' declarations remains common practice.

In this context, it should be emphasized that data contained in the declaration of assets, revenues, expenses and financial liabilities, drafted in the form and manner established by the Law of Ukraine 'On Principles of Prevention and Combating Corruption', shall not be considered as restricted information, excluding the data specified in paragraph two of Article 12 of this Law (section six of Article 6 of the Law of Ukraine 'On Access to Public Information').

Personal data specified in declaration of assets, revenues, expenses and financial liabilities drafted in the form and manner established by the Law of Ukraine 'On Principles of Prevention and Combating Corruption' shall not be considered as restricted information, except the information specified in this Law (Article 5 of the Law of Ukraine 'On Personal Data Protection'). Current case law on this issue: Resolution of the Supreme Administrative Court of Ukraine No. K/800/13813/14 of 14 January 2015.

## FREEDOM FROM DISCRIMINATION

### 10.1. Overall situation with implementation of the principle of non-discrimination

Amendments introduced to the Law of Ukraine 'On Principles of Prevention and Combating Discrimination in Ukraine', in particular with active participation of experts and advocacy on behalf of the Commissioner for Human Rights, are a positive trend in the legal provision of the non-discrimination principle. The Law was amended and thus brought in line with the European standards in terms of conceptual apparatus and, also, the list of prohibited discrimination forms was expanded; the mandate of the Commissioner in monitoring compliance with the principle of non-discrimination was broadened; the types of legal liability for discrimination were specified; the principle of division of the burden of proof in discrimination cases was introduced.

At the same time, a significant number of laws require harmonization with each other and with the Law of Ukraine 'On Principles of Prevention and Combating Discrimination in Ukraine'; anti-discrimination regulations must be introduced. Also, further improvement of legal regulation is needed, in particular on the use of affirmative action, anti-discrimination examination procedures and 'decriminalization' of discrimination sui generis, which is neither an effective nor a proportional way to bring the perpetrators of discrimination to justice.

The monitoring of central and local authorities' performance of their mandate in the field of non-discrimination demonstrated a lack of a comprehensive and integrated approach. In particular, the core activities of state bodies in the sphere of combating discrimination in Ukraine are focused on awareness-raising events and other functions, such as drafting proposals on streamlining legislation on preventing and combating discrimination, while promoting scientific development and implementation of affirmative action were actually ignored. The reason for this is, above all, the low level of awareness of executives at various levels of local government and self-government on the provisions of anti-discrimination legislation, and lack of information about the best practices of its implementation.

Analysis of discrimination cases tried in civil and administrative courts, which is an insignificant, but actively developing trend, points to the urgent need for training judges on international standards and European anti-discrimination law to eliminate the revealed deficiencies in law enforcement and interpretation.

Despite the effective implementation of the Action Plan for the Commissioner's Strategy 2014-2017 for Preventing and Combating Discrimination in Ukraine in 2014, this strategy is no substitute for a comprehensive government strategy, the adoption of which is essential for streamlin-

ing the system and ensuring efficient performance of public authorities in this field. Provided adequate coverage of preventing and combating discrimination is ensured, the National Human Rights Strategy developed by the government may play this role.

### **10.2. Discrimination based on the grounds of ethnicity (nationality) and the rights of national communities in Ukraine**

The issue of further harmonization of Ukrainian legislation protecting the rights of national communities in Ukraine and the right to freedom from discrimination based on grounds of ethnicity (nationality) in line with the norms of international law recognized by Ukraine and taking into account the specific needs of individual ethnic groups or vulnerable members of these groups through the adoption of legislation providing for appropriate positive action at national and local levels, remains high on the agenda.

Massive internal displacement involving members of certain ethnic communities, which occurred as a result of occupation of the Crimean peninsula by the Russian Federation and the anti-terrorist operation in the eastern Donetsk and Lugansk regions, has led to increased ethnic, linguistic and religious patchiness of the population in areas accommodating immigrants. Accordingly, this situation has made more pressing the issue of rethinking measures aimed at preserving the ethnic, linguistic, and religious identity of internally displaced persons being representatives of national communities, and preventing unwanted assimilation processes.

The Commissioner's monitoring of observation of internally displaced persons'

rights revealed a number of problem situations with the placement of Roma temporary immigrants. In particular, information was received on the refusal to admit and temporary accommodate Roma IDPs in several areas, and on involving law enforcement agencies in forced evictions of Roma from their equipped habitats and more.

Despite the nearly two-year implementation of the Action Plan on Implementation of the Strategy for Protection and Integration of the Roma Minority into the Ukrainian Society until 2020, the situation with Roma rights in comparison with previous years has not changed fundamentally. Monitoring visits to regions, analysis of the central authorities' performance and the results of public monitoring of implementation of the Roma Strategy Action Plan, conducted jointly with NGOs, showed virtually the same acute problems of the Roma in the areas of documentation, access to education, health and employment.

This inefficiency of ensuring the rights of the Roma, among other things, is due to the shortcomings of the Action Plan, which focuses mainly on informational and educational activities for members of Roma communities, but almost does not provide at all for similar activities for officials of state and local government and lacks proper performance indicators and budget support. Although these shortcomings were pointed out since the adoption of the Action Plan in 2013, no amendments have yet been introduced.

Despite a slight increase in the number of criminal proceedings instituted based on reports of crimes and offenses motivated by intolerance, in most cases, law enforcement agencies continued to qualify hate crimes without proper motive and did not

properly account for them. The reason for this lies in the shortcomings in legal regulation and inadequate training of police officers and prosecutors to work with cases involving hate crimes.

### **10.3. Discrimination based on the grounds of religious belief and the rights of religious communities**

There remain unresolved issues with permitting peaceful public assembly of believers and religious organizations; and the issue of double registration of religious communities introduced in 2012.

While the Constitution of Ukraine guarantees the right of believers to substitute any kind of military service, including conscription during mobilization, with alternative (non-military) service, the law considers only non-military service as an alternative to military service. Accordingly, this legislative gap gained urgency in 2014 during partial mobilizations in connection with the anti-terrorist operation due to violation of the constitutional rights of citizens whose religious beliefs do not allow military service.

Discriminatory attitudes to members of certain religious groups were also manifested as hate crimes, including physical violence against members of religious communities due to and during their religious activities; vandalism and attempted arson on religious buildings and other property damage; as well as attempts of violent coercion of religious communities to confession changes. These crimes based on religious intolerance that have occurred in large numbers in the temporarily occupied territory of Ukraine and in the territory of Donetsk and Lugansk regions outside the control of Ukrainian authorities are only a

fraction of the total number of such crimes.

However, one should point out some positive trends in the response of law enforcement and judicial authorities to criminal offences against citizens because of their religious activities – increased number of qualifying criminal incidents as hate crimes, increased attention of judges to this issue, and taking into consideration the intolerance motive as aggravating circumstances when considering the case.

Lack of legislative regulation for reasonable accommodation to the needs of believers continuously leads to violations of the right to freedom of religion and indirect discrimination of persons serving sentences in prison. In particular, this concerns cases of undue and disproportionate bans on convicts performing certain rituals, wearing beards or clothing required by respective religious doctrine.

### **10.4. Discrimination based on the grounds of disability and health**

The greatest number of problems is observed in relation to accessibility of public and civil facilities, landscaping elements, transport infrastructure, road service facilities, information facilities, etc. for people with disabilities. A particularly acute issue is the access for people with disabilities to justice, which is impossible due to lack of key elements of architectural and informational accessibility in most courts.

Also, judges often do not take into account the need to provide reasonable accommodation in cases involving people with disabilities. Despite the lack of architectural accessibility elements, it is rarely decided to appoint offsite hearings or videoconference hearings/proceedings.

Discrimination against people with disabilities in the labour market remains widespread and takes the form of both direct discrimination and refusal of employers to take measures for reasonable accommodation; and also discrimination of the disabled in access to goods and services remains widespread.

Also, there remains a problem of discrimination based on positive HIV status of a person. In particular, migration regulations include a ban on immigration for HIV-positive people enshrined in law, which certainly represents direct discrimination and is not an effective means for preventing the spread of HIV, undermining government efforts in this direction, and so on.

In addition, as in previous years, there have been cases when during the admission campaign some higher educational institutions issued discriminatory requirements for submission of attestations on a lack of HIV infection by applicants who are citizens of foreign states.

### **10.5. Sexual orientation and gender based discrimination**

Despite the removal of draft laws concerning the prohibition and establishing liability for the so-called promotion of homosexuality from the Parliament of Ukraine, and an explanatory letter of the High Specialized Court of Ukraine for Civil and Criminal Cases on non-discrimination in employment based on sexual orientation, there is no adequate legislative regulation to forbid discrimination on the grounds of sexual orientation. The new draft Labour Code of Ukraine, which is currently under consideration in Parliament, does not contain a clear prohibition of discrimination on the grounds of sexual orientation.

In 2014, the number of cases of physical violence and damage to property on the grounds of intolerance based on sexual orientation increased to about forty. However, in criminal proceedings these incidents were not qualified as hate crimes that once again proves the imperfection of regulations and norms of the Criminal Code of Ukraine.

In fact, there has been no positive change in the rights and freedoms of people in need of correction of sex (transgender people). There remains a problem of legal regulation and administrative practice for sex correction procedures and subsequent changes on a person's gender identity in their documents. Thus, the provisions of existing acts inappropriately limit the rights to liberty and security of a person and respect for private and family life, are contrary to the principle of legal certainty, constitute discrimination on grounds of marital status and sexual orientation; while administrative practices are characterized with lack of transparency of procedures, lack of effective patient control over their course, absence of free choice of methods of diagnosis and treatment and a lack of mechanisms for appealing decisions.

## ENSURING EQUAL RIGHTS AND OPPORTUNITIES FOR WOMEN AND MEN

In order to study the ability of the local authorities and local governments to effectively implement policies to ensure equal rights and opportunities for women and men, in 2014 the Centre for Political Studies and Analysis in partnership with the Secretariat of the Parliament of Ukraine on Human Rights conducted a functional review of 166 public authorities.

The said public functional review discovered that the main reason why state policy for ensuring equal rights and opportunities for women and men is being ineffectively implemented at the grassroots level is the irrational distribution of functions in this area. Typically, local authorities entrust the implementation of gender policy to one official. However, gender issues are not the only responsibility of such a person. Therefore, due to the large workload, activities in this area are either selective or not implemented at all. In addition, only 5 regions used their right to appoint advisers to ensure equal rights and opportunities for women and men.

Another deterrent for regional implementation of public policy in this area is the lack of adopted programs on equal rights and opportunities for women and men, which is contrary to the requirements of the law. In some regions, regional programs are complex and involve assignments in different areas of public policy (family, gender, demography, youth, rehabilitation and recreation for children, combating human

trafficking etc.). The issue of gender policy does not have a significant share in these programs. Activities do not have financial support, are declarative and are not aimed at achieving a particular result.

Monitoring of the situation has demonstrated citizens' low awareness of the possibility of appealing to executive authorities, local governments and their officials against gender discrimination. This is evidenced by the fact that executive authorities and local governments do not receive complaints from citizens concerning gender discrimination at all.

Particular attention is paid by the Commissioner to observance of women's rights in vulnerable groups (disabled, imprisoned, rural women etc.).

In order to reflect the real situation of women living in rural areas in 2014, at the initiative and with expert support of the Ukrainian Parliament Commissioner for Human Rights of Ukraine and 'Democratization, Human Rights and Civil Society Development in Ukraine' Project, UNDP in Ukraine, and the sociological company GFK Ukraine, a Comprehensive Study of women living in rural areas (hereinafter – Comprehensive Study) was conducted.

Specific problems faced by women living in rural areas are being neglected by the state. As a result, the study found that a significant proportion of rural women, especially



those over 50, live in poor and very poor conditions and experience financial difficulties.

Despite equal access of rural women to education along with rural men, the main barriers to raising their professional level are: lack of money to be paid for education, limited access to the Internet and over-employment of rural women. One way of removing barriers to learning can be the development of distance learning programs targeted at rural women.

Employment in rural areas is limited for women. They usually perform unskilled jobs with irregular working day in spheres with extremely low level of automation.

Low civic participation of rural women leads to the fact that they mostly have only passive suffrage. Their reluctance to participate in political life and activities of NGOs has led to underestimation of their own capabilities and priorities in favour of the family. In order to attract women as active participants in social and political life, the established gender stereotypes on distribution of social roles in the community must be minimized by conducting comprehensive awareness-raising activities.

As in previous years, the system of human rights monitoring by the Commissioner prioritizes the protection of women from male violence.

The lack of an effective system for referral and joint actions in case of detecting violence against women or men by representatives of the authority responsible for implementing the national policy on preventing domestic violence, childcare services, Centres of Social Services for Families, Children and Youth, and respective divisions of the

Ministry for Internal Affairs, remains one of the stumbling blocks for domestic violence prevention.

Common practice is helping those affected by domestic violence without sending the persons who committed domestic violence for rehabilitation (correctional programs).

In addition, monitoring of the national jurisprudence in criminal, civil cases and cases on administrative offences related to domestic violence has revealed cases of administrative penalties in the form of a fine imposed by courts on unemployed persons; and administrative penalties in the form of community services imposed on persons of retirement age. A common practice is exemption of domestic violence perpetrators from administrative liability due to the minor significance of the violation, whereas there is no legal definition of 'minor significance'.

## ENSURING SOCIO-ECONOMIC RIGHTS

In 2014, parliamentary control showed a significant deterioration in violations of fundamental, constitutional, socio-economic rights, first of all conditioned by the tragic events in our country related to the occupation of the Autonomous Republic of Crimea, the Donbas military conflict, and its consequences: loss of lives, destruction of businesses, infrastructure, housing and property of citizens, suspension of wages, pensions and social benefits, internal displacement of people, rising unemployment and a significant economic downturn, lack of public and bank funds, depreciation of the national currency and high external debt.

These processes have set new challenges for the government in terms of ensuring the implementation of constitutional socio-economic rights and basic social guarantees of the population.

The Commissioner's monitoring of the investigation of violations reported by citizens showed that executive bodies are unable either to timely and effectively solve the acute problems of the society and of a particular individual, or to take measures to prevent the negative impact of new threats on national security and human livelihood (life).

The state has shifted the burden of addressing a large part of the most pressing socio-economic problems to civil society, volunteerism and assistance of international organizations.

Given the impact of armed conflict on the formation of government policy, unreasonable decisions initiated by the Cabinet of Ministers of Ukraine and inscribed into law led to massive violations of people's constitutional socio-economic rights, and today the consequences of those decisions carry a threat of spreading negative social phenomena such as poverty, marginalization and social exclusion.

In the field of employment, labour market monitoring results indicate that the government's hopes to boost the economy in 2014 only through market self-regulation and reducing the tax burden on business have not led to stabilization of the economy, nor have they contributed to job creation, legalization of wages and employment, or budget revenue increase.

The above is confirmed by a significant unemployment increase among the economically active population and reduction of job offers in the labour market in 2014. Thus, according to a survey conducted in accordance with the methodology of the International Labour Organisation (ILO), during 2014, the number of unemployed compared to last year increased by 337.2 thousand people and constituted nearly 1.9 million. The number of vacancies submitted to employment centres by employers during the year decreased by 17%.

The Commissioner is sure that it will be possible to overcome negative trends in

employment only with a clear National Strategy for further economic development, active labour market policy, and introduction of appropriate mechanisms for its implementation. An active labour market policy will create jobs with decent and safe working conditions, and decent remuneration; pump up the State Budget of Ukraine and social insurance funds; support the banking system and national currency stability.

At the same time, the implementation of state policy entailing preferences for businesses by (contrary to international law) termination of state supervision and control over compliance with labour laws and compulsory state social insurance, has led to massive violations of labour and social rights.

In 2014, the Commissioner received almost 1.8 thousand claims on violations of the right to work, which makes up 16.4% of all claims on violations of economic rights. During the implementation of the Cooperation Agreement between the Commissioner and the Federation of Trade Unions of Ukraine, the Commissioner was informed about almost 44.7 thousand labour law violations identified by legal inspectors of FTUU member organizations in 2014. Employees, whose labour rights have been violated, amounted to more than 766,000, which is twice as many as in 2013.

The vast majority of labour rights violations are violations in remuneration.

According to the State Statistics Service of Ukraine, the amount of wage arrears in Ukraine in 2014 increased 2.2 times and on January 1, 2015 amounted to UAH 2.437 billion (excluding the temporarily occupied territory of the Autonomous Republic

of Crimea and in Sevastopol), in particular: 83.4% – arrears in economically active enterprises, 15.1% – bankrupt enterprises, 1.5% – economically inactive companies. This is the highest rate of wage arrears since April 2003, when it exceeded UAH 2.45 billion.

Reducing the number of inspections in the field of supervision and control over compliance with labour laws related to the implementation of the Law of Ukraine 'On Amendments to Some Legislative Acts of Ukraine to Limit Interference with Business Entities' and 'On Amending the Law of Ukraine on State Budget of Ukraine for 2014' limits control functions of the state over observance of labour rights.

In this regard it should be noted that the Law of Ukraine 'On Amendments to Some Legislative Acts of Ukraine to Limit Interference with Business Entities', which came into force on 17 August 2014, does not meet ILO Conventions No. 81 and No. 129 on labour inspection in industry, trade and agriculture, ratified by Ukraine, and limits the powers of state supervision (control) over the observance of labour legislation and labour safety under these conventions. In addition, Article 31 of the Law of Ukraine 'On State Budget of Ukraine for 2014' stipulates that inspections of enterprises, institutions and organizations, and sole traders by supervisory authorities (other than the State Fiscal Service of Ukraine) shall be carried out during August-December 2014 only with the permission of the Cabinet of Ministers of Ukraine or in case of application by the entity for inspection.

However, during the second half of 2014 no authorization of the Cabinet of Ministers of Ukraine to conduct inspections was re-

ceived by the State Inspectorate of Ukraine on Labour.

Therefore, it should be noted that in 2014 the adoption of aforementioned legislation led to negative consequences in respect of labour rights.

According to the complaints received by the Commissioner, workers were unable to challenge illegal actions of employers and seek protection of their labour rights at state supervision (control) authorities overseeing the observance of legislation on labour, employment, and compulsory state social insurance as regards the allocation, calculation and payment of benefits, compensation, social services and other allowances.

Failure to provide the right of employees of bankrupt enterprises to salaries has been relevant and unsolved for the past 15 years, as the Commissioner stressed in the annual reports for 2012 and 2013. As of 1 January 2015 the debts of these enterprises amounted to UAH 368.6 million, or 15.1% of total arrears.

In 2014 there was an increased number of complaints to the Commissioner from people working without official registration of labour relations. In most cases it concerned violations related to involvement in the execution of hazardous work (in particular, work without special clothing and personal protective equipment, without payment for the work done or the payment amount being less than the subsistence minimum). According to the State Statistics Service of Ukraine, in 2014 informal and shadow employment involved 4.6 million people, or 25% of the total employed population.

Monitoring of the Commissioner showed some improvements in addressing this

problem: namely, on 28 December 2014 the Parliament of Ukraine adopted the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Reform of Compulsory Social Insurance and Legalization of Payroll' (No. 77-VIII), which entered into force on 1 January 2015.

At the same time, concerns have been growing with respect to the actual and practical implementation of these rules, given the effective absence of state oversight and control over the observance of labour legislation by employers who violate labour rights of citizens by evading taxes, making large-scale wage payments in envelopes, or not paying wages at all.

There remains an acute problem related to ensuring due wages for workers, including civil servants (government executives and local government officials, the judiciary and others). However, limited financial resources mean the issue cannot be resolved quickly. Given the difficult economic situation in the country and its financial capacity, the State Budget of Ukraine for 2015, unfortunately, also did not provide for increased spending on wages.

Activities of the Commissioner related to protection of labour rights show a progressively declining trend in protection of workers; instead, abuse and violation of labour laws and labour rights by employers are widespread. The above is primarily due to mismatch of labour legislation with the modern socio-economic realities and international norms and standards, as well as improper and untimely response to new labour market challenges under the influence of increasing globalization, and so on.

To solve the pressing problems above, the Commissioner considers it necessary:

- a) to adopt the following regulations:
- the new Labour Code of Ukraine in line with the requirements of the European Social Charter (revised), and Conventions of the International Labour Organization;
  - National Economic Development Strategy, taking into account the proposals of the Commissioner on development and implementation of an active labour market policy;
  - the Law on ratification of ILO Convention No. 173 on the protection of workers' claims in the event of insolvency of the employer;
- In the field of social security, the main issues that lead to violations of human rights to an adequate standard of living, pensions, etc., enshrined in the Constitution of Ukraine and international treaties, are:
- The state's failure to provide an objective definition of the basic 'living wage' standard, which is an important indicator, characterizing living standards and determining most social indicators of the budget;
  - The ineffectiveness of the pension and social security system in Ukraine, where, despite the considerable amount of social spending, the quality of social services and other social protection measures is low, and social needs of the most vulnerable groups are not being met adequately;
  - Inadequate legislation governing the accrual and payment of pensions, social benefits, allowances, and provision of benefits to vulnerable population categories;
  - Failure of competent executive bodies to timely address social security issues, in particular due to the impossibility of implementing relevant legislative changes requiring significant additional expenditures from the State Budget, given the difficult economic situation in Ukraine.
- b) to amend the legislation, including:
- The abolition of restrictions on the powers of state supervision and control of the State Service of Ukraine on Labour in full compliance with the ILO Conventions ratified by Ukraine: No. 81 and No. 129 on labour inspection in industry, trade and agriculture, and No. 159 on labour administration;
  - Creation of a Guarantee Fund for satisfying the claims of employees due to employer's insolvency (Declaration of Bankruptcy);
- b) to take organizational measures for revitalization of the Government Commission on Arrears in Wages (Salaries), Pensions, Scholarships and Other Social Benefits, in order to implement the constitutional right to timely payment for labour, and monitor the timely payment of wages.
- Despite these difficulties, in 2014 certain systemic problems were resolved that the Commissioner emphasized in the previous Annual Report, and whereon relevant response instruments were submitted to the central executive authorities. In particular:

- From 7 May 2014, due to introduction of corresponding amendments to Article 122 of the Penal Code of Ukraine by the Law of Ukraine No. 1186-VII from 8 April 2014, convicted persons became entitled to state pensions while serving their sentence in prison;
  - The Decree of the Cabinet of Ministers of Ukraine No. 374 from 11 August 2014 introduced changes to the Procedure for provision of technical and other means of rehabilitation to disabled children and other specific population groups; and to the list of means No. 321 from 05 April 2012, approved by the Cabinet of Ministers of Ukraine, having settled the issue of providing technical and other rehabilitation means to persons with disabilities resulting from industrial injury, who were previously not classified as persons entitled to receive technical and other rehabilitation means at the expense of the Social Insurance Fund for Industrial Accidents and Occupational Diseases of Ukraine; and establishing the term during which such persons with disabilities must be given new technical means;
  - The adoption of the Law of Ukraine No. 77-VIII 'On Amendments to Certain Legislative Acts of Ukraine on the Reform of Compulsory Social Insurance and Legalization of Payroll' from 28 December 2014 settled the issue of ensuring the constitutional right of insured persons to social protection by provision of material support at the expense of compulsory state social insurance for temporary disability (temporary disability assistance, assistance for pregnancy and childbirth) in the absence of the insured employer at the registered place of business;
  - The Procedure for burial of the dead wards of boarding institutions of labour and social protection No. 313 from 21 August 2006, approved by the Ministry of Labour and Social Policy of Ukraine, which was used without proper state registration at the Ministry of Justice of Ukraine and recently recognized as non-compliant with the legislation of Ukraine, was cancelled.
- At the same time, a wide range of problems remain unresolved. Thus, in 2014 the Commissioner made proposals on legislative regulation of the following issues:
- Improving the living wage calculation mechanism and increasing its amount; withdrawal of the 'official subsistence level' coefficient applied in accrual of social assistance;
  - Reviewing the mechanism for calculating pensions;
  - Improvement of pension benefits indexation;
  - Increasing the size of compensation payments to individuals providing care to the relevant categories of persons, and ensuring their participation in compulsory state pension insurance;
  - Regulating the appointment and payment of pensions to survivors, including those appointed due to accident at work or occupational disease;
  - Provision of pensions to Ukrainian citizens who left for permanent residence abroad;
  - Provision of social security to prisoners;

- Ensuring the right of incapacitated persons having no guardian appointed by the court, to receive social benefits;
- Reviewing the mechanism for retrieving excess funds paid to a pensioner;
- Developing the procedure for calculation and payment of temporary disability allowances to persons insured by compulsory state social insurance due to the absence of the insured employer at the registered place of business;
- Provision of preferential pensions to men who worked as milking machine operators;
- Provision of social assistance to orphans and children deprived of parental care who were under guardianship and continue their education, by paying them respective assistance until they reach 23 years of age or until graduation;
- Settling the question of placing homeless people on the social housing waiting list;
- Defining the Procedure for burying the dead of residential wards of boarding institutions of labour and social protection.

Regarding constitutional rights to health care, the Commissioner highlights the following issues:

- Inefficiency of the existing healthcare system in the context of introduction of health sector reform under the Laws of Ukraine 'On Amendments to the Basic Laws of Ukraine on Health Care' and 'On the Procedure of Healthcare Reform in Vinnytsia, Dnipropetrovsk, Donetsk Regions and in the City of Kyiv';
- Insufficient support of local healthcare institutions and health management authorities for addressing the issues of licensing activities related to narcotic drugs, psychotropic substances and precursors in the context of emergency care restructuring and in response to enactment of the Law of Ukraine 'On Emergency Medical Care';
- Failure to ensure the rights of persons with disabilities and seriously ill patients, particularly those receiving treatment at home, to timely and effective pain relief;
- Failure to ensure the constitutional right to sanitary-epidemic welfare and protection from infectious diseases by vaccination;
- Delays in legislative settlement of purchasing vaccines and medicines to ensure the implementation of the Coalition Agreement in relation to public procurement reform, and legal and technical support of transferring the function of purchasing medicines, including vaccines, to international organizations;
- Failure to fully ensure the rights of patients to accessible treatment of such socially dangerous infectious diseases like HIV/AIDS, tuberculosis and viral hepatitis;
- Improper resolution of the issue of life-saving treatment of patients with chronic renal failure who need dialysis, in particular in the areas of Ukraine

with the largest number of immigrants as a result of hostilities;

- Inadequate protection of the rights of people living with cancer and rare (orphan) diseases;
- Failure of local authorities to provide disabled persons with medicines, and technical and other means under the rehabilitation program;
- Addressing the issue of sending citizens abroad for treatment in an untimely and excessively bureaucratized manner;
- Improper consideration of complaints about unlawful actions of medical staff, medical errors and negligence.

For addressing the issues raised, suggestions were made, including on:

- The need to speed up approval of the Concept and Strategy of Health Reform in Ukraine, the development of which is envisaged by the Executive Order of the Government of Ukraine No. 847-p, dated 17 September 2014 'On the Implementation of the Association Agreement between Ukraine, on the One Part, and the European Union, the European Atomic Energy Community and their Member States, on the Other Part', and a detailed plan for their implementation;
- Awareness raising during health care reform on its purpose, content, expected results, and the relevant measures taken by central and local executive bodies and local self-government authorities;
- Organizational measures to be taken in order to prevent violations of the rights of persons in need of constant pain relief drugs, in particular in terms of providing appropriate licenses to health care institutions, and ensuring strict compliance with the requirements for prescriptions for drugs for such persons;
- Taking appropriate measures to increase spending on the purchase of medicines, medical products, medical equipment and facilities, and special vehicles needed to provide prevention and treatment of diseases that are critical in shaping the overall structure of morbidity and mortality in Ukraine, and in protection of public primary and emergency medical care;
- Ensuring timely public procurement of medicines; increasing transparency and openness of such procurement; taking measures for the approximation of national legislation in this area to European standards;
- Ensure timely and full funding of state programs and creating conditions for the treatment of patients with rare diseases in Ukraine.

Regarding provision of individual housing and property rights, the following problems that require immediate response of the state and government, were highlighted:

- незабезпечення державою Failure to provide vulnerable population categories with social housing;
- Failure to ensure the right of citizens to privatize housing in dormitories;



- Lack of transparency in the procedure for provision of land for housing construction and maintenance to citizens by local authorities;
- Failure to implement the Action Plan for repair of damaged (destroyed) social and transport infrastructure, and housing and utility systems in the Donetsk and Lugansk regions, approved by the Cabinet of Ministers of Ukraine from 16 October 2014, No. 1002-p.
- Develop proposals for appropriate amendments to the land law in order to ensure transparent mechanisms for implementation of the constitutional right to land, in particular, promote self-solving of families' housing problems by citizens without assistance from the State;
- Solve legislative problems related to restructuring of consumer loans in foreign currency to relieve social tensions and dissent among consumers of financial services.

In order to address these problems there is an urgent need to develop a clear housing strategy, based on clear rules of law concerning objectives, priorities and sources of appropriate financial support.

Unfortunately, over the past year the Government has not:

Last year the Commissioner took measures to:

- Urgently address the development of an effective mechanism for repairing the damage caused to property of citizens of Ukraine due to the ATO, as the Commissioner believes that early adoption of this instrument would reduce the level of social tension among the affected citizens;
- Develop proposals for appropriate funding of the National Target Program for 2012-2015 for Transferring Ownership of Hostels to Local Communities through appropriate amendments to the Law of Ukraine 'On State Budget of Ukraine for 2015', and the swift legislative regulation of mechanisms for realization of housing rights of residents of hostels, the categories of which were not defined by the Law of Ukraine 'On Ensuring Realization of Housing Rights of Residents of Hostels';
- Published any target policy document aimed at implementing the Law of Ukraine 'On Social Housing' adopted in 2006 in order to resolve the problems related to ensuring the constitutional right of vulnerable population categories to receive housing;
- Formed a coherent strategy to resolve housing problems even for those citizens who are entitled to priority provision of housing by the state. Among those waiting are war and Chernobyl invalids, veterans of labour and military service, single mothers and large families, orphans and other preferential categories of the population;
- Introduced a mechanism for providing financial assistance and compensation to victims affected during the antiterrorist operation in the Donetsk and Lugansk regions, which resulted in the fact that victims could not repair and rebuild their housing in the pre-winter period. In view of the continued fight-

ing, the number of victims and their losses will only grow;

- Provided the necessary budget lines in the general fund of the State Budget of Ukraine for the implementation of the State Target Socio-Economic Program for the Construction (Purchase) of Affordable Housing in the years 2010-2017, the National Target Program for 2012-2015 for Transferring Ownership of Hostels to Local Communities and budget programs for provision of housing to youth and certain categories of socially disadvantaged groups.

Also, several issues remain unresolved at the legislative level:

- Broadening the scope of the Law of Ukraine 'On Ensuring Realization of Housing Rights of Residents of Hostels' to hostels that were included in the authorized capital during the privatization process, and then sold or resold (transferred or disposed of by other means) to other legal entities; lack of a mechanism for the transfer of ownership of such hostels to local communities;
- Documenting the legal relationship with citizens who do not have their own homes and for a short or long period (five years or more) reside in dormitories under a residential tenancy agreement, concluded without a special warrant for a dwelling in a hostel under the Civil Code of Ukraine without the right to privatization of residential and non-residential premises in the hostel, but with the option to buy the respective premises;

- Determination of the mechanism for restructuring consumer loans in foreign currency.

To address the issues raised, some proposals were submitted, particularly regarding the need for:

- Adoption of a National Strategy for further development of housing in the medium and long term on the basis of regional economic development. Particular attention in the National Strategy should be paid to providing social housing and determining a realistic mechanism and sources of funding for it;
- A transparent mechanism for ensuring the right to land for housing construction and maintenance;
- Provision of funding for the National Target Program for 2012-2015 for Transferring Ownership of Hostels to Local Communities through appropriate amendments to the Law of Ukraine 'On State Budget of Ukraine for 2015', and the swift legislative regulation of mechanisms for realization of housing rights of residents of hostels, the categories of which were not defined by the Law of Ukraine 'On Ensuring Realization of Housing Rights of Residents of Hostels';
- Determining the procedure for providing financial assistance and compensation to victims affected during the antiterrorist operation in the Donetsk and Lugansk regions, and ways to implement it;
- Urgent adoption of the law on restructuring consumer loans in foreign currency.

In the area of human rights to a safe and healthy environment, the Commissioner highlighted the problems that require immediate response of the state and government, including:

- Existing environmental threats to the security of the population living in areas of potential damage from man-made disasters, and disasters related to the destruction of chemical, metallurgical and coal mining plants in eastern Ukraine, as well as from possible terrorist attacks at technogenic and nuclear hazards;
- Inadequate reaction of state supervision and control bodies regulating sanitary safety of the population and urban development on numerous instances of town planning legislation violations, illegal destruction of green space and park areas within settlements for construction purposes, inadequate living conditions and substandard housing and utility services, and individuals' and legal entities' failure to comply with legislation;
- Inadequacy of national legislation on environmental rights.

To address the issues raised, some **proposals** were submitted, particularly regarding the need for:

- Creating a national system for monitoring and forecasting emergency sources, as stipulated in Articles 20, 22 of the Law of Ukraine 'On Environmental Protection';
- Identify the potential and existing environmental problems which have arisen or may arise through military action, raise awareness of the dangers inherent in these problems and develop a detailed plan to eliminate them;
- Ensure raising awareness on civil protection in case of man-made disasters through media among the population living in areas of potential damage;
- Restore effective state supervision and control in the field of environmental protection, natural resources and sanitary welfare;
- Activate legislative work on improvement of national legislation on environmental rights, and harmonize it with international standards;
- Ensure free access to information on the environment and public involvement in environmentally important decision-making;
- Provide adequate funding for environmental measures.

## RIGHTS OF THE CHILD

### 13.1. The child's right to live in a family

The Constitution of Ukraine guarantees that family, childhood, motherhood and fatherhood are protected by the state. Decisions and actions of administrative bodies should be consistent with the basic principles proclaimed by the Constitution and the Family Code of Ukraine, according to which the state creates conditions for motherhood and fatherhood; ensures protection of the rights of mother and father; and financially and morally encourages and supports motherhood and fatherhood.

That is why the issue of a child's right to a family education was and is being monitored by the Commissioner.

In 2014, special attention was paid to studying the situation of the needs of families with children among internally displaced persons due to the risk of their falling into complicated life circumstances and providing them with social assistance.

Analysis of the information requested from 8 regions (Donetsk, Odessa, Dnipropetrovsk, Kharkiv, Kyiv, Poltava, Zaporizhia and Kyiv regions) where, as of 1 November 2014, the largest number of families with children from temporarily occupied territory and counterterrorist operation zones relocated, showed that only 14.4% of households were inspected by social service centres for families, children and youth in terms of discovering difficult life circum-

stances; 11.7% are registered in the centres as being in difficult circumstances; 1.5% of families receive social support. However, social support is mostly limited to assistance in applying for social benefits.

This situation concerning social support of families with children requires quality enhancement of the social and psychological services rendered to families in order to prevent child abandonment and neglect.

One of the factors that influenced the situation was reduction of expenditures for maintenance of social workers in 2014. Therefore, there was a significant reduction in the number of specialists in social work.

The consequences of such belt-tightening for social workers can lead to a decrease in social protection, especially of the most vulnerable groups, including persons with disabilities, orphans and children deprived of parental care and families with children.

In this regard, the Commissioner for Human Rights has repeatedly drawn the attention of the Government and the Ministry of Social Policy to the fact that amidst the antiterrorist operation and socio-economic crisis in Ukraine, there is a risk of significant increase in families with children, and children falling into difficult life circumstances, which may result in the growth of social orphanhood.

In case of loss of parental care by children, the state ensures the priority of family upbringing of the child (Article 5 of the Family Code of Ukraine). During 2014, according to Ministry of Social Policy, over 8.6 thousand children were placed in families (under guardianship, in foster families and family type homes), which is half that in 2013.

National legislation specifies that, when determining the placement form for the child having acquired the status of orphan or deprived of parental care, respective authorities must, in the child's best interests, take into account the circumstances under which he/she lost parental care, life, family ties, siblings, contacts with the social environment, health, education and other needs.

Instead, during 2014, the common practice observed was separating siblings from large families during placement in a foster family or adoption. As a result, children are deprived of the right to communicate with one another and other relatives.

Despite the fact that the law requires that guardians, caregivers, foster parents and school heads ensure regular contact between children, parents and close relatives, including periodic meetings, correspondence, telephone conversations, exchanging photographs etc., there is no legal regulation for procedures to ensure such contacts.

### **13.2. The child's right to protection from violence and abuse**

The UN Convention on the Rights of the Child establishes the obligation of the state to ensure child protection from all forms of physical or mental violence, torture and other cruel, inhuman or degrading treatment or punishment (Article 19).

Performance analysis of public bodies and services dealing with the problems of children during the events in Ukraine within the period of November 2013 – February 2014 showed a complete lack of communication and exchange of information between law enforcement agencies, childcare services and health authorities in cases when a child had suffered violence. Thus, childcare services did not have information about children who were in hospital with injuries, were detained by police and held in police stations, and therefore could not immediately take steps to protect children in emergency situations.

As a result of such a lack of coordination, children did not receive timely medical and legal assistance.

Given the situation in the east of Ukraine, the Commissioner's special attention during 2014 was focused on monitoring of the rights of children in the zone of the anti-terrorist operation. Children in the conflict zone are most vulnerable to violence and abuse.

The Commissioner has repeatedly drawn the attention of the Government, as well as governmental, law enforcement and security agencies and the public that there is a real threat to life and health of children living in settlements that are exposed to gunfire. These children are witnesses and victims of armed conflict, violence and abuse. They suffer from hunger, cold and neglect; their rights to health care, education and a safe environment are being violated.

According to current information, during the period of the ATO in 2014, 60 children were killed. Many children received injuries of varying severity.

Providing timely evacuation of civilians, including children and families with children, from the conflict zone, must be a top priority for central executive bodies, local authorities and local governments. This particularly applies to children, directly patronized by the state: orphans and children deprived of parental care, and children with disabilities.

Instead, based on the information received from these regions, it is clear that civilians leave the conflict areas independently, without any information on the state agency that can help in resettling and addressing social issues in the future.

In this regard, the Commissioner twice appealed to the Prosecutor General of Ukraine with a demand to investigate the fact of non-performance or improper performance by officials of the central executive authorities, whose inaction carried the threat to life and health of children from boarding institutions of Donetsk and Lugansk regions, where the anti-terrorist operation is being conducted.

The Prosecutor General of Ukraine ignored the said appeal without proper consideration.

One should point out some positive steps to improve the current legislation. Thus, in November 2013 and 2014, the Cabinet of Ministers of Ukraine approved the Procedure for identifying families (persons) being in difficult circumstances, providing social services to such families, providing social support, and interaction of respective social support players. In addition, the Ministry of Social Policy of Ukraine approved forms of accounting of social services rendered to families (persons) who are in difficult circumstances

and in October 2014 it approved the Procedure for consideration of petitions and messages about child abuse or the threat thereof.

Over the past year, the number of complaints to the Commissioner from parents whose children suffer abuse in educational institutions has increased.

Also, parents complain of inadequate responses to such incidents by teachers and administrators of educational institutions. Such cases have been recorded in boarding institutions for children deprived of parental care.

The above mentioned gives reason to conclude that cases of abuse and violence against children, unfortunately, are not alone in nature. Therefore, work on the appropriate response from the administration of educational institutions to any violence in the school environment, should be enhanced. An effective response to violence against children can also include awareness raising and education among children in order to increase their awareness of the rights guaranteed by the legislation of Ukraine, authorities, services and institutions where they can seek protection of their rights in case of violence against them or cruel treatment.

In 2014, the OSCE Project Coordinator in Ukraine jointly with the Ministry of Education and Science of Ukraine and the Secretariat of the Ukrainian Parliament Commissioner for Human Rights conducted a series of trainings on human rights for teachers of secondary schools and Institute of Post-graduate Education within the framework of the project 'Support for the Development of Legal Education and Human Rights Education in Ukraine.'

To increase the awareness of children about their rights and government agencies to which they can lodge the respective complaint, the project developed a series of information materials and published and distributed the Convention on the Rights of the Child.

### **13.3. Rights of child refugees and asylum seekers**

The most frequently violated right was that of refugee children and child asylum seekers, separated from their families, for prompt consideration of cases on granting refugee status or the status of a person in need of additional protection within a reasonable time, as envisaged by the Law of Ukraine 'On Refugees and Persons in Need of Additional or Temporary Protection'; as well as the rights to appropriate living conditions and education.

Despite the regulatory settlement in 2013, the procedure for assessing the asylum-seeker's age remains inadequate. In particular, its timelines are not defined, which leads to violations of children's rights to adequate protection.

At the initiative of the Ukrainian Parliament Commissioner for Human Rights in cooperation with the Hayes Inc. Delegation in Ukraine and the Council of Europe, the situation and peculiarities of access for a child separated from his/her family to the state procedures for granting refugee status or the status of a person in need of additional protection; social protection of children; the access to educational services and medical examination; and the need to harmonize legislation in this sphere – were discussed at the round table 'Child Refugees and Asylum Seekers, Children Separated from their Families, Providing Protection and Rights

to their Future in Ukraine' held in April 2014 with the participation of representatives of central executive bodies and human rights organizations.

Recommendations elaborated in the course of the roundtable were submitted by the Commissioner to the Cabinet of Ministers of Ukraine. As a result, the central executive bodies within their competence undertook the following measures: methodological explanation was provided to education authorities on the use of mechanisms for unimpeded access to education for children separated from their families, who came unaccompanied to Ukraine, and issuing education documents to these children on the basis of certificates of application for protection in Ukraine; the issue of registration for independent external evaluation in 2015 and for higher or vocational education on the basis of a certificate of application for protection in Ukraine, was regulated; territorial bodies of the State Migration Service of Ukraine were instructed to compulsorily inform the legal representative of a child separated from their family on the decision of the SMS of Ukraine on granting or refusal to grant the status of refugee or a person in need of additional protection; statistical reporting procedure was introduced in SMS agencies related to reporting on identification and provision of access to the procedures for granting the status of refugee or a person in need of additional protection to children separated from their families, and their gender and age structure.

### **13.4. Rights of orphans and children deprived of parental care being in conflict with the law**

As part of monitoring the observance of children's rights in Ukraine, employees of

the Secretariat of the Ukrainian Parliament Commissioner for Human Rights in cooperation with the UN Children's Fund (UNICEF) in Ukraine, representatives of NGOs (non-governmental monitors) carried out monitoring visits to all juvenile correctional facilities during the month of May 2014.

During the visits, special attention was paid to the organization of social and legal protection of orphans and children deprived of parental care.

The monitoring results revealed a lack of interaction between childcare services at the primary place of registration of children, those at the place of previous residence of the child and those at the location of correctional facilities.

There were frequent cases when a juvenile arrived at a facility without documents in their personal file confirming the status of orphan or child deprived of parental care; the establishment of custody over the child and the child's property; appointment of social benefits, pensions, alimony, and so on.

Interviews revealed that most minors did not have information on housing secured for them, placement on housing lists, or availability of state-guaranteed benefits.

Most minors are not aware of childcare services and social services, their powers and duties. Direct communication between prisoners and representatives of the guardianship body almost never occurs, or is conducted only as a formality.

Monitoring visits have shown that correctional facilities have undue restrictions related to communication with the family. In some colonies telephone conversations

are allowed only on weekends or during certain hours, and the privacy of prisoners' telephone conversations is not ensured.

Considering the above, the Commissioner brought to the attention of the Ministry of Social Policy of Ukraine and the State Penitentiary Service of Ukraine information on the need to strengthen interagency cooperation in matters of timely provision of information to relevant childcare services on the arrival of orphans and children deprived of parental care to correctional facilities, transferring the personal files of orphans and children deprived of parental care, monitoring the detention conditions of this category of children and ensuring their social and legal protection.



## CONSTITUTIONAL RIGHTS AND FREEDOMS OF MILITARY PERSONNEL

In 2014, the observance of the rights and freedoms of military personnel and law enforcement officers directly affected the nature of the tasks defined by the military and political leadership of the state aimed at providing comprehensive territorial integrity of the country and conducting to this end anti-terrorist operations.

Monitoring shows that the most common problems are problems of preservation of life and health of military personnel, protection of their honour and dignity, personal integrity and security, ensuring just and favourable conditions of service, including:

- Violations during conscription and mobilization, and significant deficiencies in the maintenance of statutory and living conditions of soldiers;
- The poor state of medical care during military mobilization deployment of the Armed Forces of Ukraine because of the remoteness of military medical institutions from military units; lack of proper medical equipment, medicines, personnel in hospitals, which hampered the timely provision of primary health care, as well as diagnosis and treatment of wounds, injuries, diseases, leading to brutal violations of human rights of soldiers to preserving life and health;
- Non-readiness of the common system of military psychological support to effectively conduct psychological training of personnel and support operations against terrorism, to help overcome the effects of combat trauma and provide psychological rehabilitation after completion of the ATO tasks;
- Lack of investigation materials and other documents about the circumstances of how military personnel sustained wounds, injuries, contusions or diseases, making it impossible to define their causal connection with the performance of military duties in the area of counter-terrorism operations, which became an obstacle in the implementation of socio-economic rights of servicemen;
- Improper implementation of the rights of military servicemen to favourable conditions of service due to lack of proper accounting, which leads to serious violations of their right to social protection in case of injury or trauma; and in the case of their death – to violations in ensuring the rights of their family members to state social protection guarantees;
- Inadequacy of organizational and legal support that limits the ability of military personnel and law enforcement officers who took part in the ATO to exercise their right to receive the status of combatant;

- Lack of legislative resolution for referring to those persons who participated in the ATO as part of volunteer units (not part of the law enforcement agencies) or volunteers with military units (not included in their lists) as combatants, which impedes proper determination of their status;
- Low level of knowledge and underestimation of problems by the military command; awkwardness of administrative staff in legal relations relating to exemption from military service, especially in the case of demobilization for health or family reasons, which leads to various complications for the right of a serviceman to retirement;
- Impossibility of exercising the right of military personnel to adequate living conditions, provision of housing to persons discharged from military service, and resettlement of those who lost contact with military units from remote military bases, due to problems of a legal, financial and organizational nature;
- Imperfection of the system for remuneration of military and law enforcement personnel, leading to significant differences in its amount in various military units and law enforcement agencies, which has certain characteristics of discrimination *officio*, reduces motivation for exercising the duty, is a prerequisite for violation of the right to adequate pensions for persons discharged from military service or service in law enforcement bodies, and in case of their death – impedes the rights of their families.

**Proposals:**

- Promptly develop an effective system for ensuring compliance with social standards, norms and guarantees to defenders of the Fatherland and providing legal and financial stability for proper functioning of the military security sector;
- - Align the procedure of granting the status of war veterans with the regulations of the Cabinet of Ministers of Ukraine and central executive bodies, and return right to grant the status of combatant to departmental commissions of enforcement agencies.

## THE RIGHT TO JUDICIAL PROTECTION

In 2014 the Commissioner for Human Rights received more than 5,000 petitions on violation of citizens' rights to fair judicial protection. In comparison with 2013, the number of complaints on this issue has increased, which can be explained due to complication of the socio-political situation in the country.

Most applications contained complaints against the police and prosecution service for not complying with the current Criminal Procedural Code of Ukraine, specifically, failure to provide the Unified Register of Pre-trial Investigation (URPTI) with information about criminal offences committed by members of the law enforcement, groundless violations and unjustified closures of criminal proceedings, violations of freedom from arbitrary arrest or detention, violation of the right to a defence, unwarranted extension of detention and others.

An interesting observation is that in 2014 the number of complaints about failure to provide the URPTI with applications on criminal offences decreased by half. However, the applications received by the Commissioner on the subject drew attention to the fact that they contained complaints against the prosecutor's office, which refused to register the application for criminal offences committed by police officers directly. If such criminal cases were taken under consideration, then a very short period of time was undertaken for those cases to be closed.

It should also be noted that additional verifications on the legality of such decisions that were held by the prosecutors at various levels on the initiative of the Commissioner testified their prematurity and baselessness. As a rule, the results of such inspections led to decisions being cancelled, and criminal proceedings upgraded.

Thus, we can conclude that the prosecution authorities have deliberately allowed violations of the Code of Ukraine to avoid criminal proceedings concerning police and regarding the closure of such cases.

In 2014 the most common subjects of complaints to the Commissioner were groundless infringement of criminal proceedings against citizens. Each treatment reported to have the apparent falsification of materials of criminal proceedings, the lack of control by the prosecution, corruption schemes in the structures of local law enforcement. According to the results of investigations conducted on the initiative of the Commissioner, it was discovered that the cause of these cases was the abuse of power by the police and official authority and lack of control from management and prosecutors.

In 2014 petitions have also contained complaints against law enforcement officers who carried out the detention of applicants in accordance with Article 208 CCP Ukraine, i.e. without the court's permission.

It should be noted that under Article 29 of the Constitution of Ukraine no one can be arrested or held in custody other than by the reasoned decision of the court and only on grounds and in the manner prescribed by law. Similar rules, stipulated in Articles 207 and 208 of the CPC of Ukraine, according to which the authorized officer shall have the right without ruling investigating judge to detain a person suspected in a crime that took place recently.

However, observations show that members of the SBU, the Prosecutor General of Ukraine, and State Affairs of Ukraine in the city of Kyiv widely used the practice of detaining people without approval of the ruling investigating judge specifically in those cases where they talked about the crimes committed by them a few months or even a few years before their arrest.

Thus, we can state that law enforcement officials admit outright violation of Article 29 of the Constitution of Ukraine and Article 208 of the CCP of Ukraine. Additionally, investigative judges under Article 3 of the CPC of Ukraine intended to exercise judicial control over observance of rights, freedoms and interests of individuals in criminal proceedings do not perform their duties and responsibilities fully as outlined in this Code and, when considering applications of investigators and prosecutors on taking a detainee into custody, they do not investigate the above circumstances and, by doing so, they urge law enforcement officers to further abuse their authority and violate the procedural rights of detainees.

In 2014, citizens' petitions continued to be related to mistreatment of citizens' rights to protection during detention by police, namely, skipping the procedure of informing local centres of free secondary legal aid

about persons' detention; not providing opportunities for a detainee to immediately report their detention and location to close relatives, family members or others; avoiding information on the person's right to legal counsel and the right to meet him before the first questioning; declination to the denial of a defence counsel; no explanation or right of appeal to the court decision on detention; improper registration time of actual detention, which results in a person being held longer without a court decision than that stipulated under current legislation.

In addition, through citizens' petitions it became obvious that to date the police have a number of practices for abusing the status of a witness during preliminary investigation. Whereas under Article 303 of the CCP of Ukraine witnesses are not entitled to appeal against their decisions, actions, and inaction during the preliminary investigation of the criminal proceedings, the investigating body benefits from involvement of the person as a witness and persuades him/her to participate in the desired cooperation. Later, at the end of the preliminary investigation, the witness is declared to be suspected of having committed a criminal offence and in a very short time the indictment against this person is transmitted to the court therefore allowing intentional violation of the right to protection of the indicated participant in the criminal proceedings.

Information was also provided on citizens' petitions concerning unjustified extension of their detention during the preliminary investigation and also concerning the 'automatic' extension of detention after the indictment to the court.

As practice shows, the investigator or prosecutor, in contravention of Articles 177, 183

of the CPC of Ukraine provides petitions to the Court about the need for the person's custody or request for an extension of his/her detention with minimal justifications, which usually only refers to the severity of the crime the person is suspected of committing and its possible influence on witnesses or victims.

However, petitions are worthy of special attention, which raise the question about the extension of the detention of the accused in the period from the date of the indictment act to the court and before the date of the preparatory court session, because quite often there are cases where the detention period set by the preliminary ruling investigator judge expires during this period.

Under Article 315 of the CCP of Ukraine during the preparatory court session the court, at the request of the participants of the proceedings, may choose, change, or cancel measures to secure criminal proceedings, including a preventive measure chosen in reference to the detainee; in the absence of such applications measures to secure criminal proceedings, chosen during the preliminary investigation, are considered to be prolonged.

The court practice has developed in such a way that during the above mentioned period the judge usually does not consider the extension of the detention of the accused, despite the expiration of the terms of his detention according to the latest ruling by the investigating judge. This practice has caused the emergence of the decision of the European Court of Human Rights from 09 October 2014 as in the case of *Chanyev vs. Ukraine*, in which the Court came to the conclusion that the new Code of Ukraine clearly and justly does not set-

tle the issue of detention of the accused in custody in the aftermath of completion of the pre-trial investigation and pending trial, which allows the continuation of holding the person in custody without a court order for a period of the next two months. In this regard, the Court found violations by Ukraine of Article 5 § 1 of the Convention of the Protection of Human Rights and Fundamental Freedoms.

As a rule, in order to implement the specified decision by the European Court of Human Rights, the amendments to Article 315 of the CCP of Ukraine should take place as soon as possible in order to avoid the ambiguous interpretation and unequal application of the Code of Ukraine in the future, which regulate the issues of detention of the accused.

Everyone knows that the current Code of Ukraine introduced a more humane approach to the question of a preventive measure in the form of detention. Under the provisions of this Code the issue should be considered by the court every two months, irrespective of petitions of the participants of the criminal proceedings.

As the Commissioner continues to receive hundreds of complaints from persons against whom criminal proceedings continue to be subject to the Code of Ukraine of 1960, in February 2015 the Commissioner submitted a proposal to the Parliamentary Committee on Human Rights, National Minorities and International Relations to amend paragraph 12 Title XI 'Transitional Provisions' of the Code of Ukraine in 2012 in the new part of conducting criminal cases referred to court after the abolition of appeal or cassation decisions taken in these criminal cases, in the order as established by the CCP of Ukraine of 2012.

In addition, the Commissioner continues to receive complaints from prisoners who are already serving sentences or from persons sentenced to life imprisonment. In their petitions these persons report violations of the law that were committed during their arrests, illegal methods of investigation and other essential infringement of procedural law which then, during the trial, were not taken into account neither by the court of the first instance, nor by the courts of higher instances. The study of these claims confirms the likelihood of violations of national law enforcement and judicial authorities of the rights and freedoms embodied in the Convention for the Protection of Human Rights and Fundamental Freedoms.

In connection with this, in April 2014, the Commissioner appealed to the Parliamentary Committee on Human Rights, National Minorities and Interethnic Relations with proposal to adopt the draft law 'On Amendments to Certain Legislative Acts to Expand the Grounds for Review of Judicial Resolutions in Criminal Proceedings of the Highest Specialized Court of Ukraine for Civil and Criminal Cases and/or the Supreme Court of Ukraine'. The main objective and purpose of this bill is to establish a mechanism to ensure the review of judicial decisions of criminal matters, during the adoption of which the human rights and fundamental freedoms were violated due to the violation of substantive or procedural law.

This mechanism lies in empowering the Commissioner to appeal with the appropriate application to the High Specialized Court of Ukraine for Civil and Criminal Cases or to the Supreme Court of Ukraine with the application for reviewing of sentences in criminal proceedings and decisions on the application of compulsory measures of a medical nature after viewing them in cas-

sation order, in cases and the order established by law.

It should be noted that in 2014 the Commissioner did not remain indifferent to those problematic issues that have arisen in criminal proceedings in connection with the temporary occupation by the Russian Federation of the Autonomous Republic of Crimea and upholding of the Anti-terrorist Operation (ATO) in the Donetsk and Lugansk regions.

Laws of Ukraine 'On ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine', dated 15 April 2014 and 'On administration of justice and criminal proceedings in connection with the anti-terrorist operation' from 12 August 2014 outline that the criminal cases that are legible in the court proceedings in Crimea, Donetsk and Lugansk regions, should be transferred to the courts in other areas to continue their review.

However, in practice such transfer of cases did not take place, resulting in a stream of petitions to the Commissioner on the violation by the judicial authorities of these regions of their rights to liberty, the right to participate in the criminal proceedings, the right to trial of criminal proceedings within a reasonable time, the right to appellate and cassation appeal of court decisions taken by these courts.

Unfortunately, all the meetings and appeals of the Commissioner to state bodies and institutions whose remit is to resolve the earlier mentioned issues did not find an effective response and, therefore the Commissioner now has to take its own measures, including at a legislative level, to speed up the renovation of procedural

rights of the aforementioned persons.

Adoption of the new Code of Ukraine is one of the most important steps towards reformation of the criminal justice system in Ukraine. However, since the Code entered into force, another essential question arose, as to whether the CPC of Ukraine presupposes enough measures in 2012 and whether they are effective to avoid and prevent violations of rights and freedoms of any participant of criminal proceedings.

In this regard, with the support of the United Nations Development Programme in Ukraine (UNDP), the Council of Europe's project 'Support for the Reform of Criminal Justice in Ukraine', funded by the Government of Denmark and the US Department of Justice and the US Embassy in Ukraine, the Commissioner initiated a pilot project 'Monitoring the Implementation of the New Criminal Procedure Code of Ukraine'.

Monitoring was carried out in the courts of first and appeal instances in the city of Kyiv in the period from July 2014 to January 2015 respectively. Currently, the results of this monitoring are being processed and will be presented in a separate report of the Commissioner. After these results, the study will also be decided on the feasibility of its implementation in other regions.

In addition to complaints related to criminal proceedings in 2014 there continued to be complaints of violations of reasonable trial time in civil and administrative cases on violations of the right to adequate enforcement of judgments and so on. The inspections found that the complaints appeared for the same reasons, which are emphasized in the annual report of 2012 and for 2013, namely owing to the excessive workload of judges, shortage of judges, in-

adequate financial and staff inefficiency in courts. The same problems continue to occur in the state executive service.

Thus, the practice continues to certify that the above violations in civil and administrative cases continue to be systemic. These violations are the result of many factors which are of economic and legal domains. Unfortunately, the government does not use any measures to address these issues, despite sizeable losses in the annual state budget of Ukraine due to the implementation of rulings of the European Court of Human Rights against Ukraine.

## THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

In 2014, legal regulation of freedom of assembly did not undergo any changes compared to previous years. Normative legal acts that regulate national organization and holding of peaceful assembly and establish responsibility for violations in this area are the Constitution of Ukraine, the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine, a separate section of the Code of the Administrative Procedure of Ukraine and also the Decision of the Constitutional Court of Ukraine, dated 19 April 2001 No. 4-rp/2001 in case No. 1-30/2001 of the constitutional petition of the Ministry of Internal Affairs of Ukraine concerning official interpretation of the provisions of Article 39 of the Constitution of Ukraine on early notification of executive authorities or local authorities about upholding meetings, rallies, marches and demonstrations (the case of prior notification of peaceful assembly).

The right to peaceful assembly is also guaranteed by Article 11 of the European Convention on Human Rights and Fundamental Freedoms, which is part of national law in accordance with Article 9 of the Constitution of Ukraine.

Article 39 of the Constitution of Ukraine guarantees the right to assemble peacefully without arms and to hold meetings, rallies, and demonstrations, of which executive authorities or local authorities are informed beforehand.

Restrictions on realization of this right may be established by the court in accordance with the law and only in the interests of national security and public order, prevention of disorder or crime, for the protection of public health or the rights and freedoms of others.

Currently there is not even a registered draft basic law that would regulate the organization and holding of peaceful assemblies of citizens. The lack of such a law leads to filling the legal vacuum with regulation acts by local authorities to unjustified ban of peaceful assemblies by administrative courts, to administrative liability of participants of assembly, violations of various human rights by law enforcement agencies, to establish different kinds of restrictions on peaceful assembly by local authorities and improper application of Decree No. 9306 of the Presidium of the Supreme Soviet of the USSR, dated 28 July 1988 'On the Procedure for Organizing and Holding Meetings, Rallies, Marches and Demonstrations in the USSR'.

In fact, today, each legal act does not require from the state the implementation of positive obligations relating to assembly members, primarily as it concerns the guarantee of their safety and protection of other people and their properties. Failure to comply with these obligations by the state, unfortunately, is a widespread phenomenon, which is, according to the European Court and in accordance with Article 11 of the



European Convention on Human Rights, a direct violation of freedom of peaceful assembly.

It should be noted that the enforcement of the freedom of peaceful assembly, the prosecution of officials guilty of the illegal suspension of protests and beating members of these protests were one of the main requirements of the Revolution of Dignity (November 2013 – February 2014).

The absence of a law that would guarantee the protection of peaceful assembly leads and will continue to lead to further separate regulation of this guarantee and utilization by the local government of Decree No. 9306-XI of the Presidium of the Supreme Soviet of the USSR, dated 28 July 1988. Cancellation of such orders does not guarantee that the next local government documents that restrict the participants of peaceful assembly wouldn't be approved.

Analysing judicial practice in cases of peaceful assembly in 2014, we can confidently state that the situation has genuinely improved as compared to previous periods, particularly in terms of reducing the number of injunctions themselves and improvements of the motivation of approved adjudications. In this context it should be noted that the quantitative and qualitative improvements started since President Yanukovich's removal from power.

However, the negative trends concerning bans on peaceful assembly are preserved without proper verification of the question as to whether such a ban is necessary in a democratic society.

In 2014, administrative courts of the first instance considered 113 cases of restrictions on the right to peaceful assembly (accord-

ing to YERDR), of which 90 cases were partially or fully satisfied, or 79.65%.

It can be argued that despite the changes that have occurred recently in the state the percentage of the claim of restrictions on the right to peaceful assembly, as a whole, remained almost unchanged.

At the same time, in 2014, a number of lawsuits about restrictions on freedom of assembly by local authorities was reduced (113 against 253 in 2013).

Many of the claims on a restriction of freedom of assembly and freedom of assembly injunctions in 2014, as in 2013, were recorded in the Kharkiv Region, with 25 (22.5%) claims of all of them satisfied. Compared to 2013 the number of claims on restrictions and bans on rallies and demonstrations in Odessa Region has increased rapidly- 23 (20.7%) complaints, 21 of which (91.3%) were satisfied.

Meanwhile, in many regions (city of Kyiv, Kyiv, Vinnytsia, Volyn, Zhytomyr, Ivano-Frankivsk, Kirovograd, Rivne, Ternopil, Khmelnytsky, Cherkasy, Chernivtsi, Chernihiv regions), since March 2014, local authorities have not complained about restrictions on freedom of assembly. In Lviv, Dnipropetrovsk and Sumy regions such claims were rejected by the courts.

The report of the European Committee for the Prevention of Torture (CPT) of February 2014 outlined that the greatest concern to the committee is the fact that most employees of the 'Berkut' Special Forces and employees of internal troops did not have identification numbers on their helmets. The Code of Conduct for officials of Law Enforcement (UN General Assembly, 17 December 1979), Declaration on the Police

(Parliamentary Assembly of the Council of Europe, 1979), European Code of Police Ethics (Committee of Ministers, 19 September 2001) reflected a number of international obligations relating to human rights and fundamental freedoms in the activities of law enforcement agencies that Ukraine voluntarily took over.

The Special Report of the Commissioner on violations of human rights during the events that took place in Ukraine between 21 November 2013 and 22 February 2014 contained recommendations for the Parliament of Ukraine, in particular, to amend the Law of Ukraine 'On the Police' as regards the provision for marking police officers who serve in uniforms with individual markings and establishing clear rules for usage of special tools.

The Bill on Amendments to the Law of Ukraine 'On the Police' (introduction of special police markings identifying the person using helmets and other means of personal protection) has not been passed.

Establishment of a mechanism of personal identification of police officers that are involved in ensuring public order during peaceful measures will enable citizens to easily identify, remember and record using data devices the police officer in case of possible misconduct from his or her part, or when the officer does not want to introduce himself or present his or her official identification.

In order to create conditions for the free exercise of freedom of peaceful assembly in Ukraine in accordance with Article 39 of the Constitution of Ukraine, Article 21 of the International Covenant on Civil and Political Rights, article 15 of the Convention on the Rights of the Child, Article 11

of the European Convention on Human Rights Guidelines, main guidance of OSCE on freedom of assembly, the OSCE/ODIHR and the Venice Commission of the Council of Europe it should be urgently considered and adopted a law which should protect participants and organizers of peaceful assembly, as well as:

- Establish a procedure under which peaceful assembly requires notification rather than permission in order to be held;
- Prohibit restrictions of rallies, demonstrations, pickets, and other peaceful assemblies, imposed by local government authorities;
- Allow spontaneous peaceful assembly, as citizens should be able to instantly react to violations of their rights or interests;
- Secure the right and the duty to counter assembly and the obligations of authorities and the police to prevent clashes and to ensure the safety of participants of counter assembly;
- To establish a clear and comprehensive list of reasons for which the courts may restrict peaceful assembly. Such restrictions may be applied only by the court and only in exceptional cases and only when they are necessary in a democratic society;
- Allow the holding of peaceful assemblies everywhere except in certain places (e.g., runways, nuclear facilities and other facilities of increased risk), the list of which is clearly defined and comprehensive;

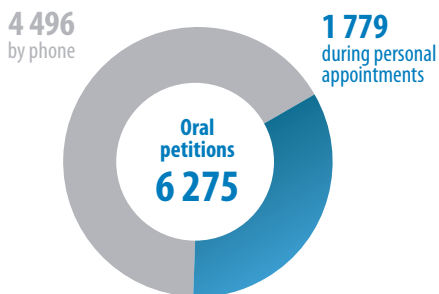
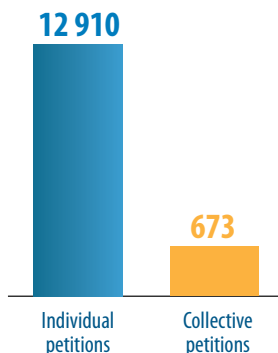
- To establish the procedure of mediation - oblige authorities to consult and negotiate with the organizers of peaceful assembly to address issues which will be addressed by the peaceful assembly;
  - Set the minimum period of notice of a peaceful assembly;
  - Guarantee clearly that failure to provide notification is not ground for prohibiting a peaceful assembly;
  - To ensure the right to appeal against injunctions on peaceful assembly;
  - Protect against administrative and criminal liability of the organizers and participants of peaceful assembly;
  - Establish liability for officials for violation of the freedom of peaceful assembly.
- an effective and unified methodology for data collection and generalization. Maintain separate statistics for events (concerts, festivals, promotions, sporting events etc.) and assemblies guaranteed by Article 39 of the Constitution of Ukraine.
- 3) Introduce statistical assessment of use of force by members of the Ministry for Internal Affairs of Ukraine for meetings and number of detainees participating in the assembly.
  - 4) In accordance with the decisions of the ECHR in the cases 'Vyerentsov vs. Ukraine' and 'Shmushkovych vs. Ukraine', not to detain persons for violation of the organization and holding of peaceful assembly (Art. 1851 CAO) and not to qualify as malicious insubordination to the legitimate requirement of a law enforcement officer (Art. 185 CAO), refusal of the organizers, participants of peaceful assembly and third parties to observe the order of organization and holding of a peaceful assembly.

Generalized recommendations by the Ukrainian MIA:

- 1) Develop with the participation of a wide range of public representatives and approve by the order of the Ministry for Internal Affairs of Ukraine with a registration in the Ministry of Justice of Ukraine of an instruction on ensuring the order during peaceful assemblies and events. Instruction should take into account the judgments of the European Court of Human Rights and the Guidelines on Freedom of Assembly of the OSCE/ODIHR.
- 2) Update the number of differentiated statistics maintained on conducted peaceful assemblies and their members. To maintain the statistics, develop
- 5) To ensure the safety of the organizers and participants of any assembly, including contra assembly and spontaneous assemblies, regardless of their political positions. Particular attention is to be paid to the security of peaceful assembly, which previously led to a sharp rejection by the majority of the population

# STATISTICAL INFORMATION ON PETITIONS TO THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS IN 2014

## Petitions to the Commissioner for Human Rights, 2014

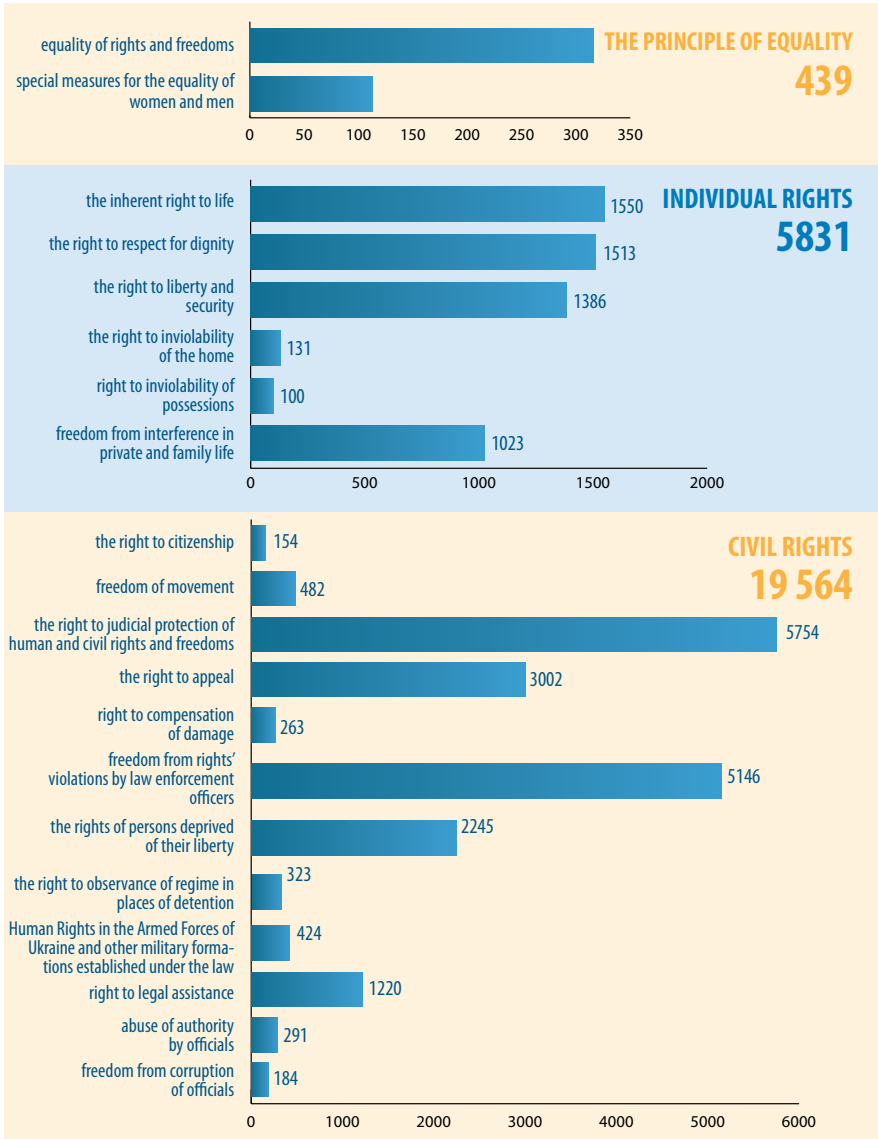


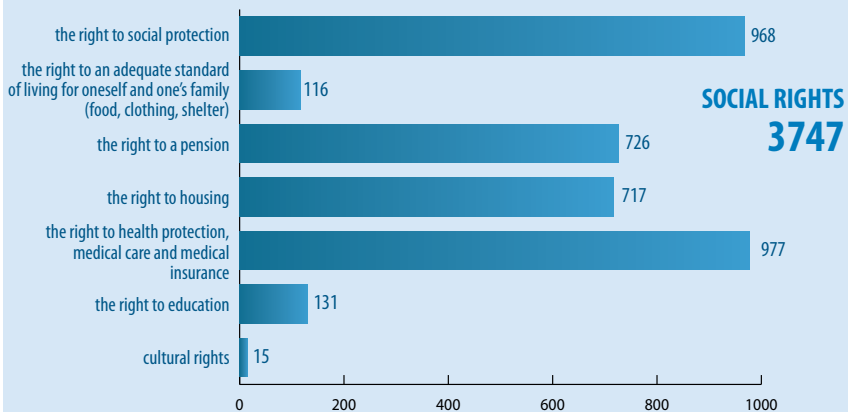
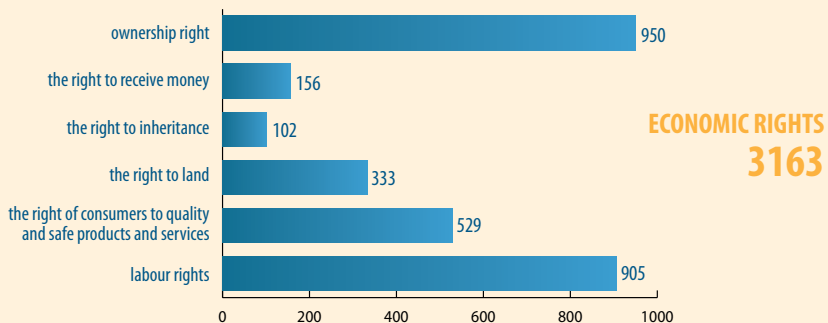
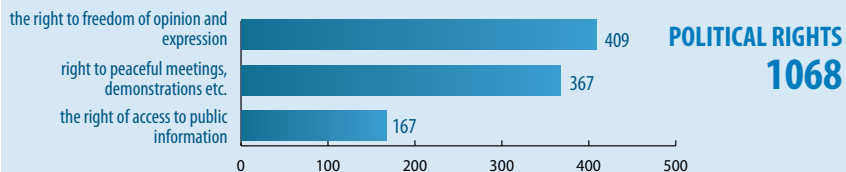
@  
emailed  
1 219  
petitions

✍  
signed  
24 140  
persons

**Types of violated rights by written petitions  
to the Commissioner for Human Rights, 2014**

**Total applications 35 125**





**CHILDREN'S RIGHTS** **3163**

