



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

2019

Verkhovna Rada of Ukraine

In accordance with Article 18 of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights,” hereby I submit to the Verkhovna Rada of Ukraine the annual report for 2019 on the status of observance and protection of human rights and freedoms of citizens of Ukraine by public authorities, local self-government bodies, associations of citizens, enterprises, institutions, organizations irrespective of the form of ownership and their officials and employees who violated human rights and freedoms of citizens by their action or omission, as well as on the identified deficiencies in the law on protection of human rights and freedoms of citizens.

Ukrainian Parliament Commissioner for Human Rights
Liudmyla Denisova

Kyiv, March 2020

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ABBREVIATIONS AND ACRONYMS

AFU	–	Armed Forces of Ukraine
ASBGS	–	Administration of the State Border Guard Service of Ukraine
ATC	–	Amalgamated territorial community
ATO	–	Anti-terrorist Operation
BSEC	–	Organization of the Black Sea Economic Cooperation
CAO	–	Code of Ukraine on Administrative Offenses
CEA	–	Central executive authority
CEB	–	Council of Europe Development Bank
CCU	–	Criminal Code of Ukraine
CCP	–	Code of Civil Protection of Ukraine
CMU	–	Cabinet of Ministers of Ukraine
CoF	–	Community-owned facility
CPC	–	Civil Procedure Code of Ukraine
Commissioner	–	Ukrainian Parliament Commissioner for Human Rights
ECRI	–	European Commission against Racism and Intolerance
ECtHR	–	European Court of Human Rights
EECP	–	Entry-exit checkpoint
EU	–	European Union
GDP	–	Gross domestic product
Geocadastre	–	State Service of Ukraine on Geodesy, Cartography and Cadastre
HCJ	–	High Council of Justice
HIV/AIDS	–	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HQCJ	–	High Qualification Commission of Judges of Ukraine
IDP	–	Internally displaced person
ILO	–	International Labour Organization
IU	–	Investigative unit
LGBTI	–	Lesbian, gay, bisexual, transgender and intersex
MDNP	–	Main Department of the National Police
MECI	–	Ministry of Energy and Coal Industry of Ukraine
MES	–	Ministry of Education and Science of Ukraine
MFA	–	Ministry of Foreign Affairs of Ukraine
MIA	–	Ministry of Internal Affairs of Ukraine
MIU	–	Ministry of Infrastructure of Ukraine
MoC	–	Ministry of Culture of Ukraine
MoD	–	Ministry of Defence Ukraine
MoDT	–	Ministry of Digital Transformation of Ukraine
MoF	–	Ministry of Finance of Ukraine
MoH	–	Ministry of Health of Ukraine
MoJ	–	Ministry of Justice of Ukraine
MoR	–	Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine

MoV	–	Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine
MTOT	–	Ministry of Temporarily Occupied Territories and Internally Displaced Persons of Ukraine
MSP	–	Ministry of Social Policy of Ukraine
NF AFU	–	Naval Forces of the Armed Forces of Ukraine
NGO	–	Non-governmental organization
NHRI	–	National Human Rights Institution
NPM	–	National Preventive Mechanism
NPU	–	National Police of Ukraine
OO	–	Office of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine
OSCE	–	Organization for Security and Cooperation in Europe
OUF	–	Operation of United Forces
PA BSEC	–	Parliamentary Assembly of the Organization of the Black Sea Economic Cooperation
PACE	–	Parliamentary Assembly of the Council of Europe
PCO	–	participant in combat operations
PD	–	Police department
PFU	–	Pension Fund of Ukraine
PGOU	–	Prosecutor-General's Office of Ukraine
SBI	–	State Bureau of Investigation
SBU	–	Security Service of Ukraine
SCU	–	Supreme Court of Ukraine
SDA	–	State District Administration
SES	–	State Employment Service of Ukraine
SESU	–	State Emergency Service of Ukraine
SFS	–	State Fiscal Service of Ukraine
SIZO	–	Pre-trial detention centre
SJA	–	State Judicial Administration of Ukraine
SLS	–	State Labour Service of Ukraine
SMS	–	State Migration Service of Ukraine
SOA	–	State Oblast Administration
SSC	–	Single compulsory social insurance contribution
SSS	–	State Statistics Service of Ukraine
SSTS	–	State Service of Transport Security of Ukraine
STS	–	State Tax Service of Ukraine
STU	–	State Treasury of Ukraine
SoE	–	State-owned enterprise
TsNAP	–	Centre for Administrative Service Provision
UN	–	United Nations

OPENING STATEMENT

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



Armed aggression of the Russian Federation on the territories of Donetsk and Luhansk oblasts and temporary occupation of Crimea remain the main challenges in the field of protection of human rights and freedoms of citizen in 2019.

Over full six years of the armed conflict, more than 13,000 people have been killed, including more than 3,000 civilians and 146 children. Seven thousand of our fellow citizens are injured, and 1.5 million have been forced to leave their homes and become displaced. Among them are 200,000 children who are adapting to new living conditions, including 40,000 children who have already been granted the status of a child affected by war and armed conflict.

The temporary loss of part of Ukraine's territory significantly affected the economy of the country as a whole. Nationalization of strategic enterprises and critical infrastructure located in the temporarily occupied territories by the occupation administration of the Russian Federation has led to a decrease in industrial production and thus to the decline in our country's GDP.

The State Budget does not receive a significant amount of revenue, which makes it impossible for the government to fulfil its commitments in full. First of all, it concerns the social sector. Persons affected by the armed conflict, namely internally displaced persons and citizens of Ukraine who still reside in temporarily occupied territories, are the most vulnerable in this situation. Women and girls are disproportionately affected by the conflict and its consequences – discrimination, sexual and gender-based violence, and trafficking in human beings.

It is confirmed by the appeals to the Commissioner's Office – more than 47,000 persons claimed having suffered violations of their rights, of which 63% suffered violations of civil rights and 24%, social and economic rights.

In addition, such violations were also detected through 2,300 monitoring visits and inspections.

This situation shows that the social crisis is accelerating, and a new challenge – overcoming the pandemic of coronavirus infection and its consequences – can exacerbate it.

Against the background of the nationwide response to COVID-19, new manifestations of intolerance and discrimination have emerged in Ukrainian society. An example is the reaction to the return of our citizens to Ukraine and their observation. Protests in Vinnytsia, Novi Sanzhary and spontaneous actions in other cities of Ukraine are caused by the ignorance of citizens about the rights and freedoms of others and the general poor awareness of population.

The implementation of the priority strategic direction of the activities of the national human rights institution 2020 - namely, large-scale awareness raising – will increase legal awareness of the population of Ukraine on human rights and freedoms and will prevent the manifestation of various forms of discrimination in society.

In 2019, the Ukrainian Parliament Commissioner for Human Rights was accredited with status A – the highest status of compliance with the UN Principles relating to the Status of National Institutions on the promotion and protection of human rights (Paris Principles). The institution of the Commissioner was recognized as a legitimate, reliable, relevant and effective institution that protects and promotes human rights at the national and regional levels. The afore-mentioned status entitles the Commissioner to the annual meetings of the Global Network of Human Rights Institutions (GANHRI) and the United Nations Human Rights Council for the next five years.

Together with my team, I will continue to exercise parliamentary scrutiny over the observance of the constitutional human rights and freedoms of citizens in 2020. Everyone who needs protection of their rights and freedoms will receive it.

The activity of the public authorities of Ukraine of all levels, institutions and organizations regardless of the form of ownership should focus not only on serving the interests of society, but first be compliant and respect human rights and freedoms of citizens.

Ukrainian Parliament Commissioner for Human Rights
Liudmyla Denisova

Kyiv, March 2020

CHAPTER 1

OBSERVING SOCIAL RIGHTS

OBSERVING SOCIAL RIGHTS

In 2019, the reform of local self-government and territorial organization of government continued in Ukraine. The process of forming the amalgamated territorial communities brought about the issue of the ability of local self-government bodies to ensure the observance, realization and protection of rights of citizens to social protection, healthcare, work, education and culture. Therefore, one of the strategic directions of the Commissioner's activity was to exercise parliamentary oversight over the observance of social rights of citizens in the context of decentralization.

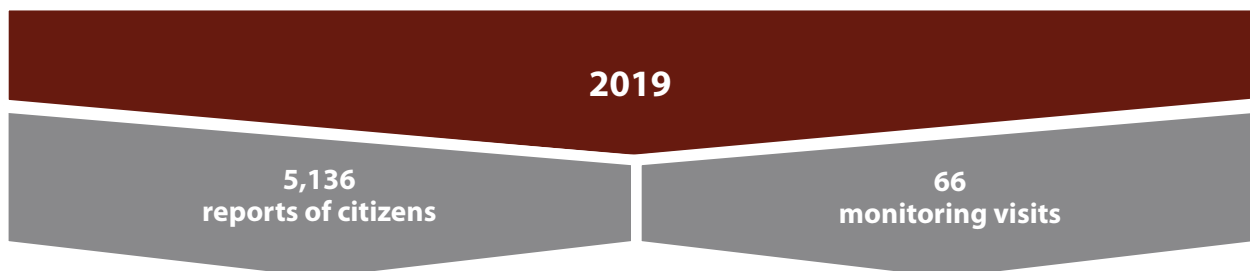
As a result of consideration of more than 5,136 reports from citizens to the Commissioner and 66 monitoring visits to local authorities, amalgamated territorial communities, state administrations, departments of labour and social protection, departments on social protection, territorial centres of social services (providers of social services), health care institutions, education and culture facilities revealed a number of systemic violations of social rights of citizens.

In particular, the violations of the right to healthcare, especially in rural areas were identified – specifically, healthcare facilities are not adequately staffed with medical personnel. At the same time, financial needs of healthcare institutions far exceed the amount of medical subvention from the State Budget. The decentralization reform has exacerbated the problem of exercising the right to cultural services and access to quality education due to the low level of local governments' investment in the development of education and culture.

During 2019, there was a trend towards an increase in wage arrears, thus violating the right of citizens to receive timely remuneration for work. In addition, the insured persons did not receive in time payments in connection with the temporary disability, pregnancy and childbirth at the expense of the Social Insurance Fund of Ukraine.

The Commissioner's monitoring proves that the court decisions, including the decisions of the Constitutional Court of Ukraine, the ECtHR (e.g., in the case *Burmych et al. v. Ukraine*) aimed at restoring the right to social protection of citizens, in particular persons affected by Chornobyl disaster, have not been implemented for a long time.

Thus, the results of the parliamentary oversight by the Commissioner showed that there were systemic violations of social human rights that needed urgent comprehensive solution.



20 1.1. Right to social protection

In 2019, the Commissioner received more than 3,246 reports on human rights violations in the field of social protection.

Most reports referred to violations of the rights to retirement benefits, half of them were related to the improper enforcement of court decisions on renewal of their rights. The rest was about securing the right to an adequate standard of living, obtaining benefits and appropriate entitlement status, and the right to a housing subsidy.

The Commissioner received reports from persons with disabilities, citizens affected by Chornobyl disaster, rehabilitated or victims of repression, citizens of other privileged categories to protect their rights. Citizens also appealed for protection of the rights of incapacitated persons who are deprived of guardianship guaranteed by law.

The monitoring also revealed a number of systemic violations of human rights in the field of social protection.

Regular changes in the legislation on the allocation of housing subsidies for housing and utility services have led to reduced number of persons who can actually use the services. This has caused social tension in society, as evidenced by the numerous appeals of citizens on this issue.

During the monitoring of the Commissioner and in the consideration of the citizens' appeals on observance of their rights in the field of social protection, both individual and systemic violations of human and citizen's rights and freedoms were identified, and legislative amendments are necessary to address many of them.

The right of citizens to an adequate standard of living and social protection

The rights to an adequate standard of living and social protection are violated due to the failure to apply the actual subsistence level calculated in accordance with the Law of Ukraine "On the Subsistence Minimum" #966-XIV of 15 July 1999, since this indicator is the basis for determining the size of most social benefits and pensions.

In May 2019, the Commissioner forwarded a respective submission to the Prime Minister of Ukraine. However, as evidenced by the provisions of the Law of Ukraine "On the State Budget of Ukraine for 2020" # 294-IX of 14 November 2019, the situation does not change.

Given the inflation and the constant rise in prices for goods and services, including housing and utility services, the pension benefits are not enough to ensure adequate standard of living guaranteed by Article 48 of the Constitution of Ukraine (see Annex 1.1).

The right to pension

Including the period of work, for which no insurance social security contribution has been paid due to a fault of employer into the person's length of service insurance and calculating the amount of his/her pension remains unresolved at the legislative level. The problem of arrears of payment of insurance premiums on liquidated enterprises without determining the successor is critical. According to the PFU, 9,679 enterprises that were liquidated without a successor have arrears of payment of compulsory state pension insurance and a single compulsory social insurance. As a result, 383,152 persons have lost their length of service insurance (See Annex 1.2).

Example

Due to the arrears of Odesa production chemical-pharmaceutical enterprise "Biostimulator" on payment of insurance premium for compulsory state pension insurance for the period from November 2006 to September 2010, the rights of 1,025 employees of the enterprise in the field of compulsory state social insurance were violated, as 33 months of work were not included into their length of service insurance.

The citizens' rights in the above case are renewed by the courts. The position of the courts is that the arrears of the enterprise on insurance premiums cannot be a reason for not counting the respective periods of work to a person's insurance length of service when calculating the pension¹. However, when executing such court decisions, the PFU bodies in the calculation of pensions account that the salary for the missed period was zero, which leads to unjustified decrease in the amount of pension.

Late awarding/recalculation of a pension

The Commissioner received reports of violations by the PFU bodies of the citizens' right to timely award/recalculation of pensions. The respective facts were confirmed during the consideration of the appeals.

Example

In January 2019, the Commissioner was addressed by citizen D. from Donetsk oblast who reported that he had been receiving a reduced pension since 01.10.2018, as the PFU territorial body does not recalculates his pension although a person received a more severe disability group. The PFU continues paying the reduced pension which violates his right to adequate retirement benefits.

At the request of the Commissioner to the Main Department of the PFU in Donetsk oblast, only in March 2019 the right of citizen D. to receive his due pension was renewed from the date of establishment of disability of a more severe group (10 October 2018, for five months). In addition, as the error in calculating the pension amount in the previous period was identified, additional amount of pension was awarded to him for the period from 01.04.2018 (for 11 months).

¹ Resolutions of the Supreme Court of 24 May 2018 in case #490/12392/16-a, of 04 August 2018 in case #482/434/17, of 01 November 2018 in case #199/1852/15-a.

22 *Violation of the right to retirement benefits of civil servants, officials of local self-government bodies and other equal persons*

The Commissioner was approached by pensioners who used to work as civil servants, local self-government officials and equal persons to return them conditions and procedure for awarding/recalculation of pensions that they were eligible to during their work in the civil service and local self-government bodies (as at that time they had special legal status and were paying higher pension contributions).

The Commissioner's proposals to address this issue were not supported by the Ministry of Social Policy and the Cabinet of Ministers of Ukraine. The latter referred to the fact that the state pension insurance policy is aimed at introducing unified approaches to pension payment for pensioners of all categories.

To protect the rights of the specified category of citizens, in November 2019, the Commissioner filed a case to the Constitutional Court of Ukraine regarding the conformity of the provisions of Article 90, sub-item 1, item 2, section XI, "Final and Transitional Provisions" of the Law of Ukraine "On Civil Service" #889-VIII of 10 December 2015, part seven of Article 21 of the Law of Ukraine "On Service in Local Self-Government Bodies" # 2493-III of 7 June 2001 with the Constitution of Ukraine, under which the Constitutional Court opened a constitutional proceeding². The case is currently being considered in the closed part of the written procedure.

Non-payment of pensions to citizens of Ukraine who reside abroad

There is no legal regulation to the issue of paying pensions to Ukrainian citizens when they leave for permanent residence abroad, unless Ukraine has concluded an international pension agreement with the respective state.

To protect the rights of this category of citizens of Ukraine, including those who received pension payments in 2014 from the bodies of the PFU currently located in the temporarily occupied territories in Donetsk and Luhansk oblasts, in accordance with the court decisions issued in their favour in November 2019, a submission was sent to the Prime Minister of Ukraine.

The Commissioner's proposals were left unanswered, as the recipient referred to the impossibility of securing the implementation of the relevant legislative initiatives, since they require significant expenditures from the PFU budget, which could lead to its imbalance.

However, international agreements already signed by Ukraine (Agreement between Ukraine and the State of Israel on social security of 28 December 2012, Agreement between Ukraine and the Federal Republic of Germany on social security of 28 September 2019) have not yet been ratified.

² www.ccu.gov.ua/novyna/konstytucijni-podannya-stanom-na-4-lyutogo-2020-roku.

Violation of citizens' rights to retirement benefits while in prison

There is a need for legislative regulation of ensuring the exercise of the right to receive a pension for citizens detained in pre-trial detention facilities, since the effective legislation regulates these issues only for sentenced prisoners.

The proposals of the Commissioner are supported by the Ministry of Social Policy that is developing the respective draft regulatory act.

Failure to comply with court decisions regarding retirement benefits

A large part of citizens' appeals to the Commissioner in 2019 concerned problems with enforcement of the court decisions on payment of pension, in particular, the failure to take into account the rulings and legal assessment of the courts included in the justification part of such decisions in the award/recalculation of pension payments to citizens.

Example

In May 2019, the Commissioner was addressed by citizen V. from Dnipropetrovsk oblast. The court in his case ordered the PFU territorial body to reconsider the documents for granting the pension on preferential terms, taking into account the legal assessment and the ruling of this court regarding the wrongful refusal to grant the pension.

However, when considering the enforcement of the court decision, the PFU territorial body did not take into account the court's arguments and again refused to grant a preferential pension to the applicant. At the request of the Commissioner to the PFU, only in July 2019, the right of citizen V. to his due pension was restored, and the additional money were paid for the period from April 2018 to July 2019 (for 16 months).

Other facts of improper enforcement of court decisions passed in favour of citizens have been also established³.

The results of a monitoring visit by the Commissioner's Secretariat in August 2019 to the PFU Main Department in Dnipropetrovsk oblast revealed a number of other issues and deficiencies in implementation of citizens' rights to pension that require legislative changes. In particular, it concerns the settlement of:

- recalculation of pensions due to changes in the legislation in cases for which no individual mass recalculation was made on the date of entry into force of the regulatory act, as well as the timing of updating the pension recipients on the feasibility of choosing other pension calculation options, which is currently only possible when the respective pensioners submit the relevant applications. It will ensure that the pension is increased from an earlier period;

³www.ombudsman.gov.ua/ua/all-news/pr/ponovleno-pravo-gromadyanina-na-otrimannya-pens%D1%96%D1%97-v-nalezh-nomu-rozm%D1%96r%D1%96-v%D1%96dpov%D1%96dno-do-r%D1%96shennya-sudu/.

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- automatic calculation of pensions in case of dismissal or termination of income-generating activities, which is the basis for the calculation of the single compulsory social insurance contribution, based on the information of the Insured Persons Register;
 - additional payment of pension to a person upon being notified that the insurer/employer has repaid (in whole or in part) its arrears of payment of insurance premium for another period of employment, than provided for in item 4.3 of the Procedure for submitting and processing documents for awarding/recalculation of pensions in accordance with the Law of Ukraine “On Compulsory State Pension Insurance,” approved by the Resolution of the Board of the Pension Fund of Ukraine # 22-1 of 25 November 2005 “On Approval of the Procedure for Submission and Registration of Documents for Awarding/Recalculation of Pensions under the Law of Ukraine “On Compulsory State Pension Insurance.”

Following the findings of the monitoring visit, the appropriate requests were sent to the leadership of PFU and the Ministry of Social Policy to resolve the identified problems. As a result of their consideration, the PFU transferred all the pensioners – who will benefit from such a transfer – from the retirement pension to the disability pension in accordance with the Law of Ukraine “On Compulsory State Pension Insurance” #1058-IV of 9 July 2003 since 1 July 2019⁴. However, these bodies took no measures to address other issues raised by the Commissioner.

The Commissioner’s monitoring revealed the violation of the right of citizens to receive pension and other money by court decisions, in particular due to the lack of necessary expenditures in the State Budget to cover the state’s debt for these purposes.

The Law of Ukraine “On the State Budget of Ukraine for 2019” # 2629-VIII of 23 November 2018 allocated UAH 600,000 to the budget programme 3504040 “Measures to execute court decisions guaranteed by the state” (repayment of debt carried out in accordance with the Resolution of the Cabinet of Ministers of Ukraine # 845 of 3 August 2011 “On Approval of the Procedure for Execution of Decisions on Recovery of Funds of State and Local budgets or Debtors.”)

According to the Treasury, 110,859 executive documents were executed under this budget programme in 2019.

At the same time, as of the end of 2019, 63,872 priority executive documents for the total amount of UAH 360,457,000 remain on the Treasury’s record under this budget programme.

According to the forecasts of this body, with the proper financing under the budget programme 3504040, taking into account the amount of balances of unused funds, it will be possible to repay the debt on all the court decisions, which are now registered with the Treasury bodies and are of priority for repayment.

The problem is that the persons for whom binding decisions have been made cannot receive compensation for the late execution of court decisions, because in accordance with Article 5 of the Law of Ukraine “On State Guarantees for Enforcement of Court Decisions” #No. 4901- VI of 5 June 2012, payment of the relevant compensation is provided only for court decisions on recovery of funds.

The Government adopted the Resolution of the Cabinet of Ministers of Ukraine #649 of 22 August 2018 “Issue of Repayment of Arrears of Pension Payments by Court Decisions,” under which PFU directly repays

⁴ As of the end of 2019, the PFU bodies transferred more than 14,000 persons from the retirement pension to the disability pension based on their applications.

the arrears resulting from the awarding/recalculation of pensions for execution of court decisions made after 1 January 2013 at the expense of the funds that the State Budget allocates to the PFU for this purpose. However, it did not provide the pensioners with an opportunity to receive arrears as requested by the court decisions as soon as possible, since the procedure defined by it was long-lasting⁵, as evidenced by the dynamics of debt repayment according to PFU (see Annex 1.3).

The said Resolution also does not regulate the repayment of debt to the heirs in case of death of the pension recipient.

At the same time, the legitimacy of the procedure for repayment of arrears of pension payments by court decisions approved by the Resolution of the Cabinet of Ministers of Ukraine #649 of 22 August 2018 remains unclear, as according to the decision of the District Administrative Court of the city of Kyiv of 12 November 2019 in case #640/5248/19 it was found unlawful and revocable. This court decision is appealed in accordance with the procedure established by law.

In general, the Government had to take appropriate measures in 2019 to comply with the ECtHR judgment of 12 October 2017 in case #46852/13 *Burmych et al. v. Ukraine*. Draft laws submitted on this matter to the Verkhovna Rada of Ukraine of previous convocation have been withdrawn.

Implementation of judgments of the Constitutional Court of Ukraine on restoration of privileges and state guarantees to different categories of citizens

Another problem is the failure of the Government to enforce a number of judgments of the Constitutional Court of Ukraine adopted in previous years – in particular, on the need to renew privileges for citizens affected by Chernobyl disaster (judgment #6-r/2018 of 17 July 2018 in the case upon constitutional submission of 50 MPs of Ukraine on conformity of sub-items 2-7, 12 and 14 of item 4 of Section I of the Law of Ukraine “On Amendments and Declaring Invalid Certain Legislative Acts in Ukraine” #76-VIII of 28 December 2014 with the Constitution of Ukraine), to the veterans of the war (decision #12-r/2018 of 28 December 2018 in the case upon constitutional submission of 50 MPs of Ukraine regarding the conformity of item 9 of Section I of the Law Of Ukraine “On Amendments and Declaring Invalid Certain Legislative Acts in Ukraine” #76-VIII of 28 December 2014 with the Constitution of Ukraine (case on social protection of war veterans and members of their families).

In practice, the respective public authorities continue to apply the rules of legislation that were declared unconstitutional.

The problem is caused by the fact the effective legislation lacks a clear mechanism for enforcement of the decisions of the Constitutional Court of Ukraine. Consequently, there are different approaches to addressing this issue.

⁵ In 2019, UAH 100.0 Million were allocated from the State Budget to make payments for the execution of court decisions (Resolution of the Cabinet of Ministers of Ukraine #544 “On Amendments to the Budget of the Pension Fund of Ukraine for 2019” of 26 June 2019, the money are used in full as they were transferred to the debtors so that they repay their debts. Most money was paid in the second half of 2019.

As of year-end, the PFU was reviewing the decisions of the courts that came to the PFU bodies in 2015.

In 2019, the Commission established by the PFU on the payment of arrears of pension payments by court decisions concluded that there were reasonable grounds to pay money under 15,890 court decisions.

As of 1 February 2020, 32,376 court decisions totalling UAH 644.5 Million are recorded in the Register of Court Decisions which are implemented under a separate budget programme.

- 26 According to the existing case law⁶, the courts recognize that public authorities unlawfully apply in their practice the provisions of effective legislation that are declared unconstitutional, despite the fact that the relevant legislative acts have not been amended accordingly.

The Ministry of Justice refers to the legal position of the Constitutional Court of Ukraine⁷, according to which “the decisions of the Constitutional Court of Ukraine, irrespective whether they specify the procedure and terms of their implementation or not, are binding on the whole territory of Ukraine. Public authorities should refrain from applying or using legal acts or provisions thereof, which are declared unconstitutional. The decisions of the Constitutional Court of Ukraine have direct effect and do not require confirmation by any public authority to enter into force.”

The Ministry of Social Policy sees the restoration of the rights of the citizens affected by Chornobyl disaster and war veterans in accordance with the decisions of the Constitutional Court of Ukraine # 6-r/2018 of 17 July 2018 and #12-r/2018 of 18 December 2018 is only possible through amending the respective laws. At the same time, the decision of the Constitutional Court of Ukraine of #2-r/2019 of 4 June 2019 in the case upon constitutional submissions of 45 MPs of Ukraine regarding the conformity with Constitution of Ukraine of certain provisions of the Law of Ukraine “On Pension Coverage” #1788 XII of 5 November 1991 and of 48 MPs of Ukraine regarding the conformity with Constitution of Ukraine of certain provisions of the laws of Ukraine “On Pension Coverage,” “On the Status and Social Protection of Citizens affected by Chornobyl Disaster,” “On Pension Coverage of Persons Dismissed from Military Service and Certain Other Persons,” “On Civil Service,” “On Forensic Examination,” “On the National Bank of Ukraine,” “On Service in Local Self-Government Bodies,” “On the Status of the Member of Parliament of Ukraine,” “On Diplomatic Service,” “On Compulsory State Pension Insurance,” “On the Cabinet of Ministers of Ukraine,” “On the Prosecutor’s Office,” as well as the Regulation on the Assistant Consultant of the MP of Ukraine approved by the Verkhovna Rada of Ukraine #379/95-BP of 13 October 1995 on the right of citizens to retirement pension shall be enforced without amending the pension legislation by applying its provisions without amending the laws that have been declared unconstitutional⁸.

The Verkhovna Rada of Ukraine is considering the draft laws aimed at enforcing the decisions of the Constitutional Court of Ukraine, in particular: the draft law “On amendments to certain laws of Ukraine on restoration of the appropriate social guarantees of citizens affected by Chornobyl disaster, for ensuring implementation of the decisions of the Constitutional Court of Ukraine” (reg. #1117 of 29.08.2018); the draft law “On amendments to certain laws of Ukraine on restoration of existing rights and freedoms of war veterans, labour veterans, children of war and victims of Nazi persecution (reg. #1118 of 29.08.2019); draft law “On amendments to the Law of Ukraine “On the Status of War Veterans, Guarantees of their Social Protection” regarding the renewal of benefits due to the decision of the Constitutional Court of Ukraine #12-r/2018 of 28 December 2018 and clarification of certain provisions” (reg. #2046 of 03.09.2019). They should be considered as soon as possible.

⁶ The decision of the Supreme Court #240/4937/18 of 21 January 2019 (#PZ/9901/55/18) (concerning the recalculation of pensions due to Chornobyl disaster) declared the omission by the Ovruch Unified Department of PFU in Zhytomyr oblast unlawful as it failed to award and pay increased pension since 17 July 2018 to an applicant as an unemployed pensioner living in the territory of radioactive contamination, based on the provisions of Article 39 of the Law of Ukraine “On the Status and Social Protection of Citizens affected by Chornobyl Disaster” #796-XII of 28 February 1991, which the Constitutional Court of Ukraine declared inconsistent with the Constitution by its judgment # 6 r/2018 of 17 July 2018.

⁷ <http://zakon.rada.gov.ua/laws/show/v013p710-18>.

⁸ According to the PFU, after the Constitutional Court of Ukraine issued a decision #2-r-2019 of 4 June 2019, a total of 1,892 persons applied for a retirement pension in accordance with Article 54, item (a), and Article 55 of the Law of Ukraine “On Pension Coverage” #1788-XII of 5 November 1991, and 1,579 of them were awarded a pension. During the validity of the provisions which were declared unconstitutional by the decision of the Constitutional Court of Ukraine, 41 persons were denied a retirement pension, but their right to that pension was renewed as they applied for such a renewal after the relevant decision of the Constitutional Court of Ukraine was adopted.

Respect for the rights of citizens of privileged categories

In 2019, the Commissioner initiated proceedings on numerous appeals by citizens affected by Chornobyl disaster on violations of their rights to social protection and pensions.

One of the positive developments in the area of exercising the right of this category of citizens to retirement benefits is the fact that the Resolution of the Cabinet of Ministers of Ukraine #543 of 26 June 2019 “On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine” amended item 9-1 of the Procedure for Calculating Pensions to Persons affected by Chornobyl Disaster, approved by the Resolution of the Cabinet of Ministers of Ukraine # 1210 of 23 November 2011 “On Enhancing Social Protection of Citizens Affected by Chornobyl Disaster.” This amendment was made to implement the judgment of the Constitutional Court of Ukraine No. 1-r(II)/2019 of 25 April 2019 on the extension of special conditions for calculating disability pension in the amount of 5 minimum wages established by law on 1 January of the respective year for all categories of military servants who were directly involved in liquidation of effects of Chornobyl disaster and subsequently suffered disability⁹.

The Commissioner believes that all the persons who were directly involved in liquidation of effects of Chornobyl disaster and subsequently suffered disability listed in Article 10 of the Law of Ukraine “On the Status and Social Protection of the Citizens Affected of Chornobyl Disaster” #796-XII of 28 February 1991 should have equal conditions of pension coverage. The draft law “On amendments to the Law of Ukraine “ On the Status and Social Protection of the Citizens Affected of Chornobyl Disaster” in terms of raising the level of pension and social coverage of individual categories of persons (reg. #10169 of 20.03.2019) that aimed to regulate this issue is withdrawn because of the election of the new convocation of the Verkhovna Rada of Ukraine. Therefore, the issue remains unresolved.

As the PFU territorial bodies recalculated the pensions of specified categories of citizens in accordance with item 9 1 of the said Procedure, there was a significant increase in the size of the pensions paid to military servants who were directly involved in liquidation of effects of Chornobyl disaster and subsequently suffered disability, However, it is worth noting that the formula for calculating the pension for this category of pensioners, set out in item 9-1 of the Procedure is currently losing its meaning due to the rapid increase of the average wage/income of an average insured person in Ukraine from which the insurance premiums were paid, compared to the minimum wage established by law on 1 January of the respective year. It results in a decrease in the average monthly wage rate that serves as the basis for calculating the pension. Therefore, there is no significant increase in the pension.

The Commissioner’s proposals for raising the level of pension coverage for the persons affected by Chornobyl disaster were not supported by the Ministry of Social Policy, as the latter referred to the limited budget resources.

The violation of the rights of persons affected by Chornobyl disaster to receive timely compensations and other allowances guaranteed by the legislation of Ukraine was identified.

⁹ According to PFU data, as of 1 January 2020, there are about 20,600 persons registered with PFU bodies who have amounts of disability pension or of pension in connection with the loss of the breadwinner calculated in accordance with item 9-1 of the Procedure for Calculating Pensions to Persons affected by Chornobyl Disaster, approved by the Resolution of the Cabinet of Ministers of Ukraine # 1210 of 23 November 2011 “On Enhancing Social Protection of Citizens Affected by Chornobyl Disaster.”

- 28 Namely, it is due to the lack of funds allocated from the State Budget to cover the budget programme 2501200 “Social Protection of the Citizens Affected by Chornobyl disaster.”¹⁰

In November 2019, the Commissioner submitted a motion to the Prime Minister of Ukraine on violation of the rights of citizens affected by Chornobyl disaster to receive timely compensation and benefits guaranteed by law.

Due to insufficient funding from the State Budget to cover actual needs, there are violations of the rights of privileged categories of citizens for sanatorium treatment, provision of technical and other means of rehabilitation to persons with disabilities¹¹.

Certain national programmes do not work at all due to lack of funding. In particular, funds for the purchase of cars for people with disabilities from the State Budget in 2019 were not allocated. The facts of violation of the rights of a particular category of citizens for privileged travel have been revealed.

Example

The Commissioner received an appeal from a mother of a serviceman who died during military service on violation of her right to a 50 percent discount on fares in Intercity railways, since the railway ticket offices require a coupon sheet from her, while the ID being the only legal document entitling her to privileged travel should be enough.

At the request of the Commissioner to the Ministry of Infrastructure to take measures to secure the right to privileged travel of the specified category of citizens, the PJSC “Ukrainian Railways” resumed the sale of tickets with a 50% discount for long-distance railway ride to the specified category of persons only requesting their IDs (since 1 June 2019)¹².

Violation of the rights of rehabilitated and victims of repressions

The Commissioner’s monitoring revealed cases of violation of the rights of citizens to obtain the status of rehabilitated person or of a victim of repressions due to late establishment of regional commissions on rehabilitation by the Heads of State Oblast Administrations and Kyiv City State Administrations or their improper functioning.

The respective commissions should be established within three months from the date of their approval by the Ministry of Culture (Order #926 of 25 October 2018 “On Approval of the Regulations on the National Rehabilitation Commission and Model Regulation on the Regional Rehabilitation Commission”, hereinafter – Order of the Ministry of Culture #926).

¹⁰ According to the Ministry of Social Policy, as of 1 October 2019, in all regions of Ukraine, the arrears on payment of compensations and allowances under the budget programme amounted to UAH 256,077,600, including UAH 88,603,400 of arrears on monetary compensation for the cost of food for citizens affected by Chornobyl disaster (category I and category II). The highest level of arrears was in Zhytomyr (UAH 123,812,800), Kyiv (UAH 32,695,700), Rivne (UAH 16,352,900) oblasts and in the city of Kyiv (UAH 22,680,500).

¹¹ According to the Ministry of Social Policy, a total of UAH 1,624,099,000 is needed to implement the budget programme for providing certain categories of population with technical and other means of rehabilitation, as confirmed by the data of the social protection bodies for 2019. The allocated funds in the amount of UAH 1,335,591,000 under this programme in 2019 were not sufficient to meet the actual needs.

¹² www.ombudsman.gov.ua/ua/all-news/pr/zavdyaki-reaguvannyu-upovnovazhenogo-v%D1%96dnovleno-pravo-na-p%D1%96lgovij-pro%D1%97zd-m%D1%96zhm%D1%96skim-zal%D1%96znichnim-transportom/.

Example

In the course of consideration of the appeal of citizen Sh. from Ivano-Frankivsk oblast, it was found that the commission for rehabilitation at the Ivano-Frankivsk State Oblast Administration did not start functioning until July 2019 due to the long formation of its membership.

At the end of 2019, the composition of the regional commission of *Zhytomyr State Oblast Administration* was not formed.

In violation of the requirements of the Model Regulations on the Regional Commission on Rehabilitation approved by the Order of the Ministry of Culture #926, the announcement on the commencement of the work of the regional commission and its personal composition is not published on the official websites of *Chernivtsi, Kyiv, Luhansk, Rivne, Sumy, Ternopil, Zaporizhia, and Zhytomyr SOAs*. Certain SOAs do not publish information on the date, time, venue and agenda of their meetings on their websites no later than 10 days before the date of the meeting as requested.

Citizens' right to social protection in the context of decentralization

During 2019, the Commissioner conducted 13 monitoring visits to 36 sites in different regions of Ukraine – local self-government bodies, amalgamated territorial communities (hereinafter referred to as ATCs), state administrations, departments of labour and social protection of the population, departments on social protection, territorial centres for social services focusing on the observance of human rights and freedoms of citizens in the field of social protection in the context of decentralization.

During these monitoring visits, a number of systemic violations and deficiencies in the field of observance of citizens' right to social protection were identified, in particular:

- insufficient/lack of funding for local budget programmes for the provision of sanatorium treatment to certain categories of citizens;
- insufficient/lack of funding to provide free travel to privileged categories of the population. There is also the problem that certain administrative and territorial units lack municipal and suburban transport routes, which makes it impossible to exercise the right of citizens to free travel in a certain territory. In particular, inter-regional buses that the citizens use because of the lack of suburban routes are not required to provide privileged ride;
- failure to implement measures to prevent homelessness and identify the homeless people in full scope as required by the law;
- failure to identify the needs of the population of the administrative-territorial unit in social services;
- the internal and external evaluation of the quality of social services and control of their provision do not take place.

The Commissioner's proposals for the elimination of identified violations following the results of monitoring visits were not properly implemented, as the recipients of these proposals referred to the limited financial resources of the communities.

- 30 As of the end of 2019, the Ministry of Social Policy has not developed a number of by-laws to ensure implementation of the Law of Ukraine "On Social Services" #2671-VIII of 17 January 2019.

Violation of the rights of incapacitated persons

Example

The monitoring visit upon collective appeal of the residents of the city of Bila Tserkva identified that the body of guardianship and custody of the Executive Committee of Bila Tserkva City Council failed to properly protect the rights and interests of an incapacitated adult V. after the death of his legal guardian. It was also found that another person who was not the legal representative/guardian of V. illegally disposed of his property and placed him in the psychoneurological clinic.

As a result of consideration of requests of the Commissioner to the Executive Committee of Bila Tserkva City Council, law enforcement agencies, and the Ministry of Social Policy, the rights and interests of an incapacitated adult V. were protected.

Consideration of other appeals to the Commissioner in this field indicates that the problem is of a systemic nature.

It requires the development and adoption of a unified legal act that will define key legal, social and organizational framework and guarantees of national policy on guardianship and custody of incapacitated adults and persons whose civil capacity is limited and making sure that such a legal act is reflective of modern requirements and international provisions.

Violation of citizens' rights to receive housing subsidy

In 2019, in accordance with the Regulation on the procedure for the allocation of housing subsidies approved by the Cabinet of Ministers of Ukraine #848 of 21 October 1995 "On Simplifying the Procedure for Providing Subsidies to the Population to Re-imburse the Costs of Housing and Utility Services, Purchase of Liquefied Natural Gas, Solid and Liquid Domestic Fuel," changes have been repeatedly made to improve and simplify the procedure for obtaining it.

Some of the significant changes are the launch of cash-based housing subsidy (Resolution of the Cabinet of Ministers of Ukraine # 1176 of 27 December 2018 "Certain Issues of Providing Housing Subsidies to the Population in Cash" and # 62 of 6 February 2019 "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine."

Implementation of the relevant mechanism was accompanied by a number of problems, since between the adoption of the Resolution and the actual implementation of the changes proposed by it, the social protection authorities did not have time to prepare for their implementation and to develop a clear algorithm of action. As a result, the cash subsidy mechanism was actually launched only in March 2019.

A significant achievement is the fact that the Resolution of the Cabinet of Ministers of Ukraine # 878 of 20 October 20 "On Amendments to the Resolutions of the Cabinet of Ministers of Ukraine # 848 of 21 October 1995 and # 1156 of 27 July 1998" amended the Regulation on the procedure for awarding housing subsidies, which make it possible to disregard the arrears of payment of housing and utility services which have lapsed when determining the right to a housing subsidy.

However, in practice, utility providers continue to provide social security authorities with information on the consumers' debts for utility services irrespective of their statute of limitations.

In the course of consideration of citizens' appeals, the Commissioner identified the lack of contracts between the providers of housing and utility services and units of JSC "Oshchadbank" regarding the transfer of housing subsidies in non-cash form and bank fees, which made it impossible for individuals to receive subsidies to pay for housing and utility services and to pay for utility costs in the houses where the associations of co-owners of a multi-apartment building were established.

This is due to the fact that in accordance with the provisions of the Regulation on the procedure for the allocation of housing subsidies, which were effective from 01.01.2019 to 01.05.2019, the obligation to pay the fee to the JSC "Oshchadbank" was put on providers of housing and utility services, and it caused them to refuse to conclude the respective contracts. The problem was resolved after the Resolution of the Cabinet of Ministers of Ukraine # 373 of 17 April 2019 "Certain Issues of Housing Subsidies and Benefits for the Payment of Housing and Utility Services, the Purchase of Solid Fuel and Liquefied Gas" amended the Regulation on the procedure for the allocation of housing subsidies. Specifically, it established that since 1 May 2019, the JSC "Oshchadbank" collects a fee from the amount of subsidies accrued while transferring funds from the account for payment of housing subsidies to the accounts of service providers.

Although the Government is able to promptly address systemic issues in granting subsidies, the provisions of the Regulations on the procedure for the allocation of housing subsidies have adverse consequences for citizens in exercising their right to receive a housing subsidy. It is particularly true with regard to:

- non-awarding of a housing subsidy in the absence of personal data of household members or their family members in the declaration, although an applicant may find it difficult to access personal data of household members and/or family members;
- inclusion in the household of all persons registered in the house/apartment, as well as taking into account – when assigning housing subsidy – the income of family members of the household while these family members have the actual place of residence different from the address of the household. The implementation of the above approaches does not take into account the definition of the concept of household, which is given in Article 1 of the Law of Ukraine "On the All-Ukrainian Population Census" #2058-III of 19 October 2000. Specifically, a household is a group of persons living together in one house/apartment or part thereof, providing themselves with everything they need for a living, run a joint economy, fully or partially pool and spend money;
- unsettled issue of granting housing subsidy to foreigners and stateless persons who legally stay on the territory of Ukraine but do not have a passport of a citizen of Ukraine and the tax ID. Amendments should be made to the approved templates of the application and declaration for receiving a housing subsidy. Specifically, the applicants should be entitled to entering their passport data and data according to which their records are kept by the State Fiscal Service of Ukraine;

- 32 • unsettled issue of payment of housing subsidy accrued but not paid to the recipient due to his/her death, although according to Article 1227 of the Civil Code #435-IV of 16 January 2003, amount of salary, pension, scholarship, alimony, temporary disability benefits, compensation for injury or other damage to health, other social benefits that were due to the deceased person but who did not receive them when alive are transferred to the members of his/her family, and in their absence, are part of the inheritance.

While considering the citizens' appeals, the Commissioner revealed the problem of arrears in payment of housing subsidy for purchase of liquefied gas, solid and liquid household fuel.

Example

While a solid fuel subsidy was awarded to citizen P. from Kirovohrad oblast in January 2019, she only received it in April 2019 after she applied for protection of her rights to the Commissioner and the Commissioner submitted the respective request to the Department of Social Protection of the Population of Kirovohrad State Oblast Administration.

This problem is confirmed by data published on the official web-portal of the State Statistics Service of Ukraine¹³.

During the monitoring visits to the social protection bodies of the city of Kyiv, a number of shortcomings in the implementation of the housing subsidy legislation were identified, in particular related to:

- lack of information exchange between social protection bodies and the State Border Guard Service of Ukraine and the Ministry of Justice of Ukraine;
- lack of automated exchange of information between social protection bodies and organizations providing housing and utility services and lack of responsibility for violation of the deadlines for providing information;
- failure to fund the cost of sending notifications on the awarding of a housing subsidy and updating on the changes in its provision;
- unresolved issues of timely payment of housing subsidy in cash by the facilities of JSC "UkrPoshta";
- failure to provide the commissions with guidelines on applying the provisions of the Regulation on the provision of subsidies for their equal application.

The Commissioner has repeatedly submitted relevant proposals on addressing these and other issues to the Ministry of Social Policy, but they were not taken into account, in particular when drafting a new version of the Procedure for Allocation of Housing Subsidies approved by the Resolution of the Cabinet of Ministers of Ukraine #807 of 14 August 2019 "On Amendments and Declaring Invalid Certain Resolutions of the Cabinet of Ministers of Ukraine," effective since 1 October 2019.

¹³ As of 01 April 2019, the debt on the payment of housing subsidy for the purchase of liquefied gas, solid and liquid household fuel amounted to UAH 350,625,500; as of 01 May 2019 – to UAH 425,189,600; as of 01 June 2019 – to UAH 179,261,500; and as of 01 November 2019 – to UAH 10,500; www.ukrstat.gov.ua/express/expr2019/04/53.zip, www.ukrstat.gov.ua/express/expr2019/11/158.zip.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. To draft and submit to the Verkhovna Rada of Ukraine the draft laws on ratification of the Agreement between Ukraine and the State of Israel on social security and the Agreement between Ukraine and the Federal Republic of Germany on social security.
2. To draft and submit for consideration of the Verkhovna Rada of Ukraine the draft law on guardianship and custody of incapacitated adults and persons with limited civil capacity.
3. To develop and approve the procedure for calculating compensation for late enforcement of court decisions.
4. To ensure an unbiased definition of the basic state standard of living wage setting it at the level not lower than the actual one, and remove the indicator “level of subsistence minimum” used in the provision of state social benefits.
5. To improve the PAYG pension system by:
 - adequate differentiation of the amount of the pension depending on the length of service and salary;
 - reviewing the mechanism for calculating pensions for employed pensioners;
 - addressing issue of including the period of work for which the insurance/single social contribution has not been paid due to a fault of the employer in the length of service insurance;
 - regulation of the issue of pension provision for persons who were employed at special positions.
6. To address the issue of payment of pensions to pensioners during their permanent residence abroad, if Ukraine has not concluded an international pension agreement with the respective state.
7. To take appropriate measures to comply with the ECtHR judgment of 12.10.2017 in case #46852/13 *Burmych et al. v. Ukraine*.
8. When developing the State Budget for the respective year, provide for a sufficient amount of expenditures for the execution of programmes of debt settlements by court decisions.
9. To review the mechanism for repayment of court pension arrears determined by the Resolution of the Cabinet of Ministers of #649 of 22 August 2018 “Issue of Repayment of Pension Arrears upon Court Decisions” and to settle the issue of repayment of arrears to heirs in case of death of direct recipients.
10. To ensure the enforcement of judgments of the Constitutional Court of Ukraine #6-r/2018 of 17 July 2018 and # 12-r/2018 of 18 December 2018.
11. To provide in the State Budget the amount of expenditures for the implementation of programmes related to social protection of citizens at the level necessary for timely payments and provision of statutory guarantees.
12. To address systemic issues around housing subsidies by reviewing the provisions containing adverse consequences for citizens in exercising their right to receive a housing subsidy.

34 **To the Ministry of Social Policy of Ukraine:**

1. To develop and adopt in accordance with the established procedure the legal acts for ensuring implementation of the Law of Ukraine "On Social Services" #2671-VIII of 17 January 2019 and to ensure control over the observance of the requirements of this Law in the manner determined by the Cabinet of Ministers of Ukraine.
2. To improve legal regulation, technical support and coordination of the activities of central and local executive authorities, local self-government bodies on guardianship and custody of incapacitated adults and persons whose civil capacity is limited, and their social protection.
3. To improve organization of work on the provision of subsidies to cover the costs of housing and utility services, liquefied gas, solid and liquid household fuel, compensation for additional costs for utilities given the increased prices and rates for services.

To local self-government bodies – to take measures to ensure the implementation of their own and delegated powers in the field of social protection of the population, in particular in the provision of social services, organization of social protection of homeless persons and persons released from prisons, their re-socialization, privileged transportation for the burial of certain categories of persons.

To local state administrations – to ensure proper guardianship and custody services and strengthen the oversight of the guardians' activities.

1.2. Right to healthcare

In 2019, the Commissioner received 918 reports on violations of the rights of citizens to healthcare, including on financing the treatment of patients suffering from rare/orphan diseases, elimination of wage arrears to health professionals, providing treatment for citizens abroad.

Insufficient funding of healthcare violates the health care guarantees

Monitoring the implementation of citizens' rights in the health sector shows that underfunding leads to violations of citizens' rights to receive adequate healthcare, as well as breaches of labour guarantees for health professionals, in particular, wage arrears to them.

The amount of medical subventions for all types of healthcare (except for primary health care) in 2019 was forecasted at the level of UAH 55.5 billion, which is UAH 1.9 billion less than in 2018 (UAH 57.4 billion)¹⁴ (see Annex 1.4).

¹⁴ Out of total estimated GDP (UAH 3946,9 Billion), health expenditures were reduced to 3.1% in 2019 compared to 3.5% of GDP in 2018. Not only it does not meet the WHO recommendations, but also the requirements of part five of Article 4 of the Law of Ukraine "On State Financial Guarantees of Public Health Services" # 2168-VIII of 19 October 2017 stipulating that the expenditures for implementation of the programme of medical guarantees should amount to at least 5% of GDP. Thus, in 2019, government expenditures on healthcare actually decreased.

The amount of medical subsidy in 2019 averaged 68.1% of the need to cover current expenditures of healthcare institutions, excluding utility and energy costs¹⁵. 35

The Law of Ukraine “On the State Budget of Ukraine for 2020” #294-IX of 14 November 2019 approved the expenditures under the budget programme 2308020 “Provision of primary health care to the population” in the amount of UAH 15.2 billion, while the law did not provide for the distribution of expenditures separately to cover services to patients from the “green” and “red” lists.

On 1 April 2019, funding for primary care was discontinued for patients who did not file a declaration on selecting a primary care provider (the so-called “red list”)¹⁶.

Also, during 2019, funding for the implementation of the secondary health care reform was reduced, since the Cabinet of Ministers of Ukraine has reduced the budget of other budget programme 230805 “Pilot project on implementation of state financial guarantees of public health services under the programme of medical guarantees for out-patient polyclinic secondary/specialized healthcare” so that additional UAH 1 billion could be allocated to the budget programme 2308020 “Provision of primary health care to the population.”

It should be noted that in 2019, the medical guarantees programme – which is approved by the Verkhovna Rada of Ukraine within the Law on the State Budget of Ukraine for the corresponding year in accordance with Article 4, item 5 of the Law of Ukraine “On State Financial Guarantees” – was not included in the State Budget.

Violation of the right of medical workers to receive wages in a timely manner

Payment of wage arrears to healthcare workers was on the Commissioner’s watch list throughout 2019, and she took the respective measures to address appeals of citizens in this field.

According to the Ministry of Health, the total amount of wage arrears as of 01.09.2019 was about UAH 1.8 billion. The largest amounts of arrears were observed in Kharkiv (UAH 205.2 million), Lviv (UAH 152.8 million), Ivano-Frankivsk (UAH 151.3 million), and Dnipropetrovsk (UAH 117.1 million) oblasts.

This problem was also confirmed during the monitoring visits.

¹⁵ At the same time, the needs for financing the health care facilities far exceed the amount of medical subvention from the State Budget. While in average, the medical subventions covered 68.1% of the need, for different local self-governments surveyed this indicator ranged from 26% to 95.3%. At the same time, additional funding from the local budgets across all the respondents averaged to 15.2% of the need and ranged from 0.1% to 55.9% (Data of the Association of Cities of Ukraine, 07.07.2019”O

¹⁶ On 1 April 2019, the Resolution of the Cabinet of Ministers of Ukraine #295 of 3 April 2019 “On Amendments to the Procedures Approved by the Resolutions of the Cabinet of Ministers of Ukraine # 2836 of 28 March 2018 and #1117 of 18 December 2018” came into effect. It amended the Procedure for implementation of state guarantees of public healthcare under the programme of medical guarantees for primary health care for 2019.

Example

During a visit to the city of Korostyshiv, Zhytomyr oblast, wage arrears to employees of the municipal non-profit enterprise “D.I.Potekhin Korostyshiv Central District Hospital” of Korostyshiv District Council were revealed. As of October 2019, they amounted to UAH 5.9 million.

In the follow-up of the monitoring, the respective requests were sent to Korostyshiv District Council, Korostyshiv City ATC, the Health Department of Zhytomyr State Oblast Administration, and they took appropriate measures. Additional funds were allocated from local budgets to repay the arrears to medical workers.

To repay the wage arrears, the Cabinet of Ministers of Ukraine adopted the Ordinances #1112-r of 27 November 2019 “On the Redistribution of Certain State Budget Expenditures Envisaged for the Ministry of Health for 2019 and the Distribution of Medical Subvention from the State Budget to Local Budgets in 2019,” #1328-r of 20 December 2019 “On Redistribution of Certain Expenditures of the State Budget Envisaged for the Ministry of Health for 2019 and Distribution of Medical Subvention from the State Budget to Local Budgets in 2019,” #1336-r of 24 December 2019 “On Redistribution of Certain Expenditures of the State Budget Envisaged for the Ministry of Health for 2019 and Distribution of Medical Subvention from the State Budget to Local Budgets in 2019.” These Ordinances increased the amount of medical subsidy from the State Budget to the local budgets in 2019 by UAH 415.1 million. These measures allowed for repayment of the wage arrears (as of 31 December 2019) in all the regions of Ukraine except for Chernihiv oblast, where outstanding arrears in the amount of UAH 4.6 million remained.

Provision of healthcare facilities with medical personnel

Insufficient provision of healthcare facilities with qualified personnel makes it impossible to submit declarations on selecting primary care physicians, which violates the rights of citizens to receive adequate healthcare. There is no regulation of the workload and remuneration of general practitioners-family primary care physicians during the replacement of temporarily and/or permanently absent doctors, as well as in the need to provide medical assistance to citizens who are deprived of the opportunity to submit declarations when the maximum acceptable number of declarations has been submitted. Analysis of citizens’ requests to the Commissioner and field monitoring of observance of the right to receive primary care at the place of residence proves that such situation is common, especially in rural areas, and across almost all regions of Ukraine.

Example

The Commissioner received an appeal from citizen R., a resident of the Brovary district of Kyiv oblast, on renewal of his right to choose a doctor. As a result of the measures taken by the Commissioner, the applicant was invited to contact the doctors of Kalynivka General Family Medicine Clinic and to submit a declaration on selecting a doctor.

Example

In the follow-up of monitoring visit to Uzyn city ATC of Bila Tserkva district of Kyiv oblast, it was found out that the residents of the community are deprived of the opportunity to receive proper and timely primary healthcare, since the procedure for Uzyn General Family Medicine Clinic to receive patients is not regulated. The patients can only come to appointments in the morning. As a result of measures taken, since 1 July 2019, the physicians of the clinic receive patients from 8:00-20:00 according to the approved schedule.

Observing the rights of citizens suffering from rare/orphan diseases

Observing the rights of citizens suffering from rare/orphan diseases to free healthcare is always on the Commissioner's watch list.

Limited access of such citizens to medicines is due to the lack of a state register of citizens suffering from rare/orphan diseases, envisaged by Article 531 of the Law of Ukraine "Fundamentals of Legislation of Ukraine on Healthcare" # 2801-XII of 19 November 1992. It complicates keeping record of these patients and determining the actual need for medicines and products for special dietary intake.

The repeated requests of the Commissioner to the Ministry of Health helped make sure that the Law of Ukraine "On the State Budget of Ukraine for 2020" #294-IX of 14 November 2019 allocated a total UAH 8.1 billion to the budget programme 2301400 "Provision of medical measures of individual national programmes and complex measures of a programmatic nature" for covering the needs of patients (in the initial draft of the State Budget, only UAH 4.9 billion was allocated for this purpose).

The MoH Decree #2498 of 17 December 2019 "On Approving the Guidelines for Planning and Calculating the Need for Medicines, Special Foods and Medical Devices Purchased from State and Local Budgets" approved the Guidelines for Planning and Calculating the Need for Medicines, Special Foods and Medical Products Purchased from State and Local Budgets for citizens suffering from rare/orphan diseases. These Guidelines partially address the issues of providing such patients with treatment. These issues arise from the imperfect Procedure for providing citizens suffering from rare/orphan diseases with medicines and foods for special dietary intake, approved by the Resolution of the Cabinet of Ministers of Ukraine #160 of 31 March 2015 "On Approving the Procedure for Provision of Citizens Suffering from Rare/Orphan Diseases with Medicines and Appropriate Foods for Special Dietary Intake."

However, legal regulation of planning and calculating the resources necessary to cover these needs from the local budgets is still pending.

Example

Due to the intervention of the Commissioner following the appeal of citizen M., a resident of the city of Boryslav, Lviv oblast, the Department of Health of Lviv State Oblast Administration requested Lviv Oblast Council to consider allocation of the targeted funding from the oblast budget to provide special nutrition to phenyl ketonuria adult patients through adding the respective workstream to the regional sectorial action plan for 2019. The decision of the session of Boryslav City Council approved the municipal programme to support phenyl ketonuria patients in 2019. The implementation of the programme is entrusted to the city councils of cities of oblast significance, and it should be funded from the local budgets.

Example

Due to the intervention and recommendations of the Commissioner in the interests of citizen Ya. from the city of Kropyvnytskyi, the Ministry of Health included the Charge Syndrome into the List of Rare/Orphan Diseases. The Order of the Ministry of Health #2664 of 24 December 2019 "On Approving Changes to the List of Rare/Orphan Diseases that Reduce the Length of Life of Patients or Cause Their Disability and that Have Recognized Treatment Methods" approved the relevant changes and expanded the List of Rare/Orphan Disease.

Observing the citizens' right to medical treatment abroad

Within the scope of parliamentary oversight over the observance of human rights and freedoms of citizen, the Commissioner identified a systemic problem regarding violations of the rights of Ukrainian citizens who are sent for medical treatment abroad to proper healthcare, due to the inadequate control over the quality of such care.

At the request of the Commissioner to address the issue, the Ministry has engaged relevant foreign and consular institutions of Ukraine that committed to assist in establishing cooperation between the Ministry of Health and other relevant health authorities in other countries, including the U.S., India, Belarus, Italy, and Turkey.

The Ministry of Health has drafted and is currently endorsing with the central executive authorities the Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure of Sending Citizens of Ukraine for Treatment Abroad, Approved by the Resolution of the Cabinet of Ministers of Ukraine # 1079 of 27 December 2017." It includes the Procedure for keeping record of citizens who need referrals for treatment abroad and regulation of cooperation with charities on the avoidance of double payment for treatment of Ukrainian citizens abroad in order to reduce the burden on the State Budget and the possibility of financing the treatment of more patients who need treatment abroad.

To increase the efficiency and transparency of the provision of healthcare to the population of Ukraine in terms of producing a conclusion on the impossibility of providing necessary health care in Ukrainian institutions, the Order of the Ministry of Health of Ukraine #447 of 22 February 2019 “On Amendments to the Regulation on the Expert Groups of the Ministry of Health of Ukraine” introduced amendments to the Regulation on the Expert Groups of the Ministry of Health of Ukraine approved by the Order of the Ministry of Health #302 of 21 March 2017¹⁷.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – to develop and submit to the Verkhovna Rada of Ukraine a draft law on amending the State Budget of Ukraine for 2020 in order to bring the level of healthcare expenditures to the requirements set out in Article 4, item 5 of the Law of Ukraine “On State Financial Guarantees of Public HealthCare” #2168-VIII of 19 October 2017.

To the Ministry of Health of Ukraine:

1. In the context of the launch of second stage of the healthcare reform, to allocate funding to pay salaries to health professionals according to the respective needs, and take measures to ensure that healthcare facilities in the rural areas are prioritized.
2. To create a register of citizens suffering from rare/orphan diseases, envisaged by Article 531 of the Law of Ukraine “On Fundamentals of Legislation of Ukraine on Healthcare,” to develop and approve the relevant regulatory acts on the planning and calculation of the need for medicines, special foods and medical products purchased for citizens suffering from rare/orphan diseases at the expense of local budgets.
3. To ensure the development and adoption in accordance with the established procedure of appropriate legal acts on regulation of issues around sending citizens of Ukraine for treatment abroad and to ensure control over targeted and effective spending of funds provided in the State Budget under the budget programme “Treatment of Ukrainian Citizens Abroad.”

To the Ministry of Health of Ukraine, the Ministry of Finance of Ukraine – when developing fees for medical services under the programme of medical guarantees for secondary/specialized healthcare, to provide in the calculations the share of expenditures for paying salaries to health professionals.

¹⁷To implement the findings of the efficiency audit of the use of State Budget funds allocated by the Ministry of Health for the treatment of citizens abroad conducted by the Accounting Chamber (decision of the Accounting Chamber # 12-1 of 12 May 2018) and the state financial audit of the budget programme “Treatment of Ukrainian Citizens Abroad” for the period from 1 January 2016 to 1 July 2018, conducted by the State Audit Service of Ukraine (audit report #04-24/17 of 5 November 2018), the MoH Order #701 of 1 April 2019 approved the Action Plan of the Ministry of Health on implementation of recommendations upon the results of the state financial control conducted by the Accounting Chamber and the State Audit Service of Ukraine.

40 **1.3. Right to work**

In 2019, the Commissioner received 929 reports from citizens on violations of labour rights.

Given the range of issues raised in appeals and the findings of monitoring, the Commissioner focused on observance of the citizens' rights to timely payment of wages; timely receipt of financial support due to temporary disability, pregnancy and childbirth, as well as insurance payments; to official registration of labour relations; to employment, in particular of persons with disabilities, to protection against unlawful dismissal.

Observing the citizens' right to receive timely remuneration for work

Late payment of wages remains the critical and urgent issue in the field of labour rights. Non-payment of wages is a problem faced by employees of enterprises of private, public and community sectors of the economy, employees of state-funded institutions and organizations.

Example

The Commissioner was contacted by citizen R. on the fact the leadership of community-owned enterprise of the executive body of Kyiv City Council (Kyiv City State Administration) "Kyivpastrans" violated her right to receive timely salary. Due to the intervention of the Commissioner, the constitutional right to receive remuneration for work was restored.

Example

The staff of SoE "State Centre for Certification and Expertise of Agricultural Products," which was managed by the Ministry of Agrarian Policy and Food of Ukraine, complained of violation of the wage payment deadlines by the SoE leadership. As a result of the measures taken at the request of the Commissioner, the wage arrears were repaid in full.

Example

The right of employees of pre-school education institutions of Borzna City Council to receive timely remuneration for work after the measures taken by the Commissioner has been restored.

According to the State Statistics Service, since 1 January 2019, wage arrears to employees have increased by UAH 389.3 million (or 14.7%) and as of 1 January 2020 amounted to UAH 3.03 billion (see Annex 1.5). When it comes to the structure of wage arrears structure, at the beginning of 2020, most of the debt (UAH 1.85 billion) was borne by economically active enterprises, institutions and organizations, which did not pay salary to 107,600 employees in time; while the arrears of state-owned enterprises amounted to UAH 518.3 million.

Region-wise, the most significant increase in wage arrears in 2019 was observed in Dnipropetrovsk (2.6 times), Ternopil (2 times), Zhytomyr (+77.9%), Lviv (+77.7%), Volyn (+61.1%), Ivano-Frankivsk (+58.8%), Kirovohrad oblasts (+48.3%) and the city of Kyiv (+39.1%)¹⁸.

Pursuant to the Action Plan for Implementation of the Strategic Areas of the Commissioner's Activities in 2019, the Commissioner monitored the observance of the constitutional rights of citizens to timely and full remuneration in the context of decentralization, in particular through monitoring visits to public authorities and local authorities of Dnipropetrovsk, Kharkiv, Kyiv, Zaporizhia oblasts and the city of Kyiv, as well as to the central executive authorities – the Ministry of Energy and Coal and State Property Fund of Ukraine.

The findings of monitoring of how the local authorities exercise their powers on controlling the repayment of wage arrears have shown that measures are being taken at the local level to ensure the reduction and prevention of wage arrears.

At the same time, given that the main debtors are state-owned enterprises subordinated to central executive authorities and insolvent enterprises, measures taken by local authorities do not yield significant results.

In October 2019, the Commissioner sent a request to the Prime Minister of Ukraine to take urgent effective measures to ensure the constitutional right of citizens to receive timely and full remuneration for their work.

Upon the instructions of the Prime Minister of Ukraine, the Ministry of Social Policy provided the response that proves that the Government had not taken the necessary measures to repay the wage arrears. Instead, it provided the statistical data that indicate a progressive increase in wage arrears. Neither in 2018 nor in 2019 the meeting of the Commission on the repayment of arrears of wages, pensions, scholarships and other social benefits took place.

The recommendations and proposals provided in the 2018 Annual Report of the Commissioner to address the problem of wage arrears were not taken into account by the Government.

Observance of the right of employees of coal-mining enterprises to receive timely remuneration for work

Commissioner keeps the issue of payment of wage arrears to employees of coal-mining enterprises on her watch list constantly. Systemic violations of payroll deadline contribute to social tension among the staff of mines and cause protests.

The Commissioner sent repeated requests to the Prime Minister of Ukraine, the Ministry of Energy and Coal and the State Labour Service to ensure sustainable operation of the coal industry, to provide state financial support for the technical re-equipment of mines, as well as to fully pay wages to miners and to promptly repay the existing arrears.

The monitoring carried out in the Ministry of Energy and Coal proved that no effective measures are taken to ensure repayment of wage arrears to the employees of coal mining enterprises subordinated to the Ministry. In particular, the Ministry did not intensify the activities of the Temporary Commission

¹⁸ Information of the State Statistics Service of Ukraine, http://ukrstat.org/uk/operativ/menu/menu_u/zp.htm.

- 42 on the Arrears Payment (in 2018, only three meetings of the Temporary Commission were held, and in the 7 months of 2019, only one meeting). No measures were taken with regard to the heads of the enterprises that violated of the requirements of the legislation on timely payment of remuneration and do not ensure repayment of wage arrears.

The measures taken by the Commissioner were not unsuccessful.

In August 2019, the Government allocated an unused balance of budget allocations in the amount of UAH 100.0 million and allocated additional UAH 150.0 million from the reserve fund of the State Budget for repayment of wage arrears to employees of coal-mining enterprises.

The Verkhovna Rada of Ukraine adopted the Law of Ukraine # 265-IX of 31 October 2019 "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2019" that stipulates allocation of UAH 1 billion to balance the financial situation of state-owned coal-mining enterprises and provide financial sources for payment the wages to miners, as well as preventing the mines from being disconnected from the electricity supply.

According to the Ministry of Finance, the Treasury allocated the budget funds were allocated to state-owned coal mining companies as distributed by the Ministry of Energy and Coal.

As a result, as of 1 December 2019, wage arrears to employees of coal mining enterprises decreased by 44.2% compared to 1 November 2019 and amounted to UAH 265 million.

At the same time, as of 1 January 2020, wage arrears increased by 23.7% compared to 1 December 2019, amounting to UAH 327.9 million.

It is worth noting that the Government failed to comply with the decision of the National Security and Defence Council of Ukraine enforced by the Decree of the President of Ukraine #874/2019 of 2 December 2019 "On the Decision of the National Security and Defence Council of Ukraine of 2 December 2019 "On urgent measures to secure energy security" that mandates the Cabinet of Ministers of Ukraine to ensure that comprehensive measures are taken by 1 January 2020 to repay the arrears and pay wages to employees of state-owned coal-mining enterprises and prevent wage arrears in future.

Observance of the right of employees of insolvent enterprises and economically inactive enterprises to remuneration

Critical violation of the right to receive wages of employees of insolvent and liquidated enterprises remains unresolved at the legislative level. As Ukraine ratified Part II of ILO Convention 173 on the Protection of Workers' Claims (Employer's Insolvency), the State guaranteed protection to workers through a privilege. However, practical experience proves the imperfection of this mechanism, because if the liquidation assets are not sufficient, employees do not receive repayment of wage arrears.

The wage arrears of insolvent and economically inactive enterprises amount to UAH 1.2 billion, or 39% of the total wage arrears in Ukraine.

Ratification of Part III of ILO Convention No. 173 on the Protection of Workers' Claims (Employer's Insolvency) and the adoption of a law on satisfying the claims of employees in the event of employer insolvency should be an effective mechanism to address this issue.

Ensuring the rights of insured persons to receive timely payments of compulsory state social insurance

During 2019, the Commissioner received numerous reports of significant delay of payments due to temporary disability, pregnancy and childbirth, as well as insurance payments to be paid by the Social Insurance Fund of Ukraine.

As a result of consideration of appeals of citizens regarding violation of their rights to receive financial support in due time, rights of citizens were renewed in full after the intervention of the Commissioner.

Example

Citizen O. received maternity benefits; citizens Yu., P., B., L. received financial support due to temporary disability. They could not receive these payments for 2-4 months.

In May and November 2019, the Commissioner submitted requests to the Prime Minister of Ukraine, sent repeated requests to the Ministry of Social Policy and the Executive Directorate of the Social Insurance Fund of Ukraine calling to restore the violated rights of citizens for timely obtaining of financial support and stabilize the financial situation of the Fund.

The measures taken by the Commissioner helped partially improve the financial situation of the Fund through the increase in the Government's share of the single social contribution directed to the Fund in August 2019. It enabled the reduction of arrears of payments to the insured persons.

On 27 November 2019, the Government amended the budget of the Fund, allowing for increase of the amount of its social payments by UAH 1.37 billion.

As even this money was not enough to fully and timely provide allowances to insured persons with regard to temporary disability, pregnancy and childbirth and insurance payments to victims of employment injuries, on 18 December 2019, the Government increased the expenditures of the Fund by UAH 1 billion at the expense of additional payments of single contribution, saving of funds and reduction of the balance of funds at the year-end.

At the same time, according to the Executive Directorate of the Social Insurance Fund of Ukraine, as of 1 January 2020, the arrears of payments to the insured persons based on the statements and calculations submitted by the insurers throughout 9-28 December 2019 (16 working days) amounted to UAH 951.1 million, including UAH 646.0 million to pay temporary disability benefits and UAH 292.3 million to pay the maternity. Overdue debt (6 working days) amounted to UAH 359.6 million and debt due (10 working days), to UAH 591.5 million.

Observing the citizens' rights to employment and protecting them against unlawful dismissal

The labour rights of employees are violated as the citizens are employed without proper paperwork (employment contracts) and payment of envelope wages.

- 44 According to the State Employment Service of Ukraine, the number of citizens aged 15-70 in informal employment in the 9 months of 2019 is 125,000 persons less compared to the corresponding period of 2018, amounting to about 3.5 million people.

Sectors with the most common informal employment are agriculture, forestry and fisheries (43%), wholesale and retail trade, repair of motor vehicles (17%), and construction (17%)¹⁹.

Despite some positive trends in reducing the number of informally employed, employment in the informal sector remains quite significant. For example, one of five employed persons has not registered employment.

The number of complaints to the Commissioner regarding employment without formal registration and payment of envelope wages has not decreased. The employers completely disregard labour legislation and constitutional human rights, as evidenced by the appeals of citizens.

Example

The Commissioner was contacted by citizen V., a resident of Volyn oblast, who reported that since 2017 she has been working in a store without having her employment formalized. When dismissed in 2019, the employer did not pay her wages. The inspection carried out by the State Labour Service did not confirm the fact that V. was in labour relations with the employer.

Following the Commissioner's request to the law enforcement authorities in this case, criminal proceedings were opened to investigate the crime provided for in part one of Article 172 of the Criminal Code of Ukraine (gross violation of labour law).

The monitoring of observance of the constitutional labour rights of citizens by the local executive authorities proved that the activity of the working groups on the legalization of salary payment and employment established by the state administrations pursuant to the Ordinance of the Cabinet of Ministers of Ukraine # 359 of 2 March 2010 "On Approval of the Action Plan on Unshadowing Income and Employment relations" is not effective enough to detect shadow employment.

Analysis of implementation of the Action Plan to implement the recommendations set out in the Concluding observations of the UN Committee on the Rights of Persons with Disabilities to the first periodic report of Ukraine on the implementation of the Convention on the Rights of Persons with Disabilities until 2020, approved by the Ordinance of the Cabinet of Ministers of Ukraine #1073-r of 28 December 2016 proves that no measures were taken to support employment of persons with disabilities. The Ministry of Social Policy failed to develop the mechanisms to stimulate private and public employers to employ people with disabilities and amendments to the standard of providing case management at the workplace considering the needs of persons with intellectual and mental disabilities.

¹⁹ Information of the State Statistics Service of Ukraine, www.dcz.gov.ua/analytics/67.

According to the State Employment Service, during 2019, 47,900 unemployed persons with disabilities received services from the State Employment Service. The number of persons with disabilities employed during 2019 with the assistance of the State Employment Service amounted to only 13,800 persons, which is 5% more than in 2018. 332 persons with disabilities were employed at newly-created workplaces, and re-imburement of single contribution was paid to their employers²⁰.

Findings of visits to monitor how the local executive authorities and local self-government bodies perform functions on ensuring employment of persons with disabilities also showed low level of employment of persons with disabilities, ineffectiveness of programmes to promote the employment of persons with disabilities and of the measures taken by local authorities.

Considering the above, the national policy on ensuring the right of persons with disabilities to work is not effective enough and needs improvement – in particular, it is about implementation of active labour market policies for persons with disabilities, modern approaches to addressing the employment of such category of persons, including individual needs-based approach to rehabilitation of persons with disabilities, case management at the workplace, launch of new forms of supported employment for people with intellectual and mental disabilities, improving mechanisms to encourage employers to employ persons with disabilities and others.

The rights of workers to protection against unlawful dismissal are also violated. The applicants report repeated cases of employers ignoring court decisions regarding reinstatement of employment.

Example

The Commissioner was approached by citizen P. who looked for protection of her right to enforce the court's decision to be reinstated at work at one of the territorial branches of the Social Insurance Fund of Ukraine. The court ruled that the dismissal was unlawful and obliged the employer to reinstate P. at work. However, the court's decision was not enforced for a long time, since the position occupied by the applicant had been reduced, which forced her to seek the protection of her rights with the Commissioner. Due to the measures taken by the Commissioner, the right of P. to work was restored, the employer created the new position to which the applicant was employed.

The results of the parliamentary oversight by the Commissioner showed systemic violations of labour rights and a number of issues that need an urgent comprehensive solution.

The national labour policy should focus on priorities such as addressing the problems of wage arrears; legalization of employment and wages; improvement of legal framework on labour that would contribute to the effectiveness of legal support for labour relations.

²⁰ Information of the State Statistics Service of Ukraine, www.dcz.gov.ua/analytics/67.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. To develop and submit to the Verkhovna Rada of Ukraine a draft law on ratification of Part III of ILO Convention 173 on the Protection of Workers' Claims (Employer's Insolvency).
2. To develop and submit to the Verkhovna Rada of Ukraine a draft law on ratification of Article 25 of the European Social Charter (revised).
3. To develop and submit to the Verkhovna Rada of Ukraine a draft law on observing the requirements of employees in case of insolvency of the employer.
4. To ensure the resumption of the activities of the Commission on payment of wage arrears, pensions, scholarships and other social payments, as well as its regular meetings.
5. To strengthen control over the implementation of the Emergency Action Plan on Repayment of Wage Arrears, approved by the Ordinance of the Cabinet of Ministers of Ukraine #517-r of 22 July 2016 "On Approval of the Emergency Action Plan on Repayment of Wage Arrears."
6. To bring the provisions of national labour legislation in line with international and European labour norms and standards.
7. To ensure control over the implementation by the Ministry of Social Policy of Ukraine of measures to increase the number of employed able-bodied persons with disabilities that were identified as a priority by the Programme of Activities of the Cabinet of Ministers of Ukraine approved by the Resolution of the Verkhovna Rada of Ukraine #188 of 4 October 2019 "On the Programme of Activities of the Cabinet of Ministers of Ukraine."

To executive authorities and local self-government bodies:

1. To strengthen control over compliance with labour law requirements by the employers, including on timely payment of wages, as well as on formalization of labour relations with employees.
2. To ensure implementation of effective employment programmes for persons with disabilities.

1.4. Right to education

In the context of education reform in Ukraine, it is extremely important to ensure the accessibility and free of charge of vocational, technical and higher education in public and community-owned education institutions. Therefore, the Commissioner focused on the exercise of parliamentary oversight over the observance of the rights of students of vocational-technical and higher education in the context of reform.

During the reporting period, the Commissioner considered 39 appeals submitted by school children, students, as well as their parents to restore the right to receive higher education, proper scholarship, to obtain the benefits provided by law.

In 2019, the Commissioner also made six monitoring visits to local education authorities and institutions of vocational-technical education in Kyiv, Sumy and Cherkasy regions, O.O.Bohomolets National Medical University and M.P.Drahomanov National Pedagogic University. A total of 12 institutions were monitored.

Following the results of monitoring visits and consideration of citizens' appeals, the Commissioner identified a number of issues regarding the realization of human rights and freedoms of citizens in the field of vocational-technical and higher education.

Access to vocational-technical education and free choice of vocational-technical institution by Ukrainian citizens regardless of their region of residence

In the context of decentralization, funding mechanisms for vocational-technical institutions to receive money from the state and local budgets (budgets of oblasts, cities of oblast importance – oblast centres and the budget of the city of Kyiv) have changed. Under these conditions and due to insufficient funding of the sector, a number of vocational institutions decreased, and as of 01.01.2019 amounted to 736 (compared to 814 in 2014)²¹.

The monitoring revealed the facts of inadequate funding of vocational-technical institutions by the bodies of local self-government in the cities of Sumy and Cherkasy were established. It aggravated the problem of access to vocational-technical education and free choice of vocational-technical institution by Ukrainian citizens irrespective of their region of residence. The outdated material and technical resources of institutions, the lack of qualified teachers, the mismatch of the content of education and teaching methods to the requirements of the modern labour market and the personal needs do not contribute to improving the quality of vocational-technical education and improving its reputation.

Inconsistency of effective legislation regarding the implementation of organizational and managerial functions in relation to vocational-technical institutions, financial and economic issues, delaying the development of the draft Law of Ukraine "On Vocational-Technical Education" do not contribute to the realization of human rights and freedoms of citizens in the field of vocational-technical education.

Ensuring the right to education for persons with special needs

No effective measures have been taken to create appropriate conditions for education of persons with special educational needs (persons with disabilities) in vocational-technical institutions. As of 01 January 2019, 4,100 persons with disabilities study in such institutions (1.6% of the total number of students of vocational-technical institutions)²².

²¹ According to the State Statistics Service, www.ukrstat.gov.ua/.

²² According to the Ministry of Education and Science, <http://mon.gov.ua/ua/tag/profesiyno-tekhnichna-osvita>.

- 48 Issues with architectural accessibility, reasonable accommodation, universal design of premises of institutions, dormitories, professional capacity of staff of institutions, technical support of education process did not become a priority. Only a third of buildings and premises of vocational-technical institutions are equipped with ramps, sound alarms, information boards.

Example

The monitoring visit to M.P.Drahomanov National Pedagogic University on the observance of human rights and freedoms of citizens with special education needs identified that the objectives and activities of the State Targeted Programme “National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities until 2020,” approved by the Resolution of the Cabinet of Ministers of Ukraine # 706 of 1 August 2012 (namely, sub-items 1, 2, item 2 of Section XII “Education” of the NAP) in terms of establishing the Research Centre on Deafness and training of 900 sign language interpreters in this University 2012-2020 have not been implemented. In addition, there is no adequate barrier-free access to the University’s dormitories and training facilities, and no special equipment and furniture for people with disabilities is available.

Organization and conduct of the KROK licensed integrated examination

During 2019, the Commissioner received numerous appeals from students concerning the wrongful expulsion from medical universities as they failed to pass the KROK licensed integrated examination.

The monitoring visit to the O.O.Bohomolets National Medical University identified a number of shortcomings and unsettled issues regarding the organization and conduct of integrated licensing exams, which adversely affected their results. At the same time, no violations of the rights of students were identified.

To remedy the identified shortcomings and make management decisions, the Commissioner sent the respective proposals to the Ministry of Health on providing adequate regulatory and legal framework for the procedure of licensing integrated examinations. In response, the Ministry of Health reported that it had intensified efforts on bringing in line the sectorial orders in line with effective legislation and had taken measures to improve performance of public organization “Centre for Testing Professional Competence of Specialists with Higher Education in the Areas of Medicine and Pharmacy at the Ministry of Health” that is responsible for organizing the exams.

Exercise of the right of students to receive benefits provided by law

Example

The Commissioner keeps on her watch list an appeal from citizen P. from Ivano-Frankivsk oblast in the interests of his daughter, the child of a person recognized as a participant in combat operations in the territory of other countries, on being awarded a social scholarship and free accommodation in the dormitory of the State Fiscal Service of Ukraine.

The monitoring revealed that the problem of non-awarding of social scholarship arose from inconsistency of the Procedure and the conditions for providing state targeted support to certain categories of citizens for obtaining vocational and higher education, approved by the Resolution of the Cabinet of Ministers of Ukraine #975 of 23 November 2016 “On providing State Targeted Support to Certain Categories of Citizens for Obtaining Vocational-Technical and Higher Education” with the requirements of the Law of Ukraine “On the Status of the War Veterans, the Guarantees of Their Social Protection.”

Due to the measures taken by the Commissioner, the Resolution of the Cabinet of Ministers of Ukraine #686 of 17 July 2019 “On Amendments to the Resolutions of the Cabinet of Ministers of Ukraine #975 of 23 November 2016 and #673 of 29 August 2018” amended the Procedure. Now it extends to children of persons recognized as participants in combat operations in the territory of other countries.

At the same time, free accommodation of P’s daughter in the hostel of the State Fiscal Service of Ukraine remained unresolved. The proceedings of the Commissioner are ongoing in this case.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. Develop and submit to the Verkhovna Rada of Ukraine draft law on professional/vocational-technical education.
2. During the formation of the State Budget of Ukraine for 2021, to provide adequate funds for the modernization of the material resources of vocational-technical institutions.
3. To take measures to increase the salaries of the teachers of n the institutions of vocational-technical institutions by amending the Resolution of the Cabinet of Ministers of Ukraine #1298 of 30 August 2002 “On Remuneration of Employees Based on the Unified Tariff Grid Grades and Coefficients of Remuneration of Employees of State-Financed Institutions and Organizations of Certain Areas of Public Sector.”
4. To improve the system of funding and management of vocational-technical education by approving the respective legal framework, providing for a clear division of powers and responsibilities between central and regional levels of government.

To the Ministry of Education and Science of Ukraine – to take measures to provide funding to establish the Research Centre on Deafness in the M.P.Drahomanov National Pedagogical University; training of sign language interpreters; providing the department of special and inclusive education of the University with modern technical means and special equipment for workplaces for individual and group work with students who have impaired vision, hearing, speech, musculoskeletal system.

50 **To the Ministry of Health of Ukraine:**

1. To bring the Order of the Ministry of Health of Ukraine #251 of 14 August 1998, registered at the Ministry of Justice of Ukraine on 11 September 1998 under #563/3003 "On Approval of the Regulation on the System of Licensed Integrated Examinations of Specialists with Higher Education in the Areas of Medicine and Pharmacy" and the Order of the Ministry of Health of Ukraine #53 of 31 January 2005, registered at the Ministry of Justice of Ukraine on 17 February 2005 under #244/10524 "On Approval of the Regulations on the Organization and Procedure for State Certification of Students Enrolled in Higher Education Institutions of 3rd and 4th Accreditation Level in the Area of Medicine" in compliance with requirements of the Laws of Ukraine "On Education," "On Higher Education."
2. To adopt a sectorial legal act to approve the Procedure of Conducting Licensed Integrated Examinations that will specify that the respective exams are organized by the public organization "Centre for Testing Professional Competence of Specialists with Higher Education in the Areas of Medicine and Pharmacy at the Ministry of Health."

1.5. Right to culture

The issue of creating an effective system of providing the population with accessible and high-quality cultural services is of particular importance given the culture reform in the context of decentralization.

Within the framework of the Commissioner's exercise of parliamentary oversight over the observance of the constitutional rights of citizens in the area of culture in the context of decentralization, four monitoring visits were made to local executive authorities and local self-government bodies, as well as to their subordinate cultural institutions in Kharkiv, Kyiv and Vinnytsia oblasts. The monitoring covered 22 facilities.

Monitoring findings and appeals from citizens indicate that there are a number of problems and unsettled issues in terms of ensuring the conditions for the exercise of cultural rights.

It is not uncommon that during the amalgamation of territorial communities, newly-formed local self-government bodies refuse to enter cultural institutions in their books. The lack of effective managerial decisions leads to the fact that local budgets are not capable of maintaining cultural institutions on their own. As a result, the network of cultural and artistic institutions is reduced by 2,000-2,5000 units each year, and the accessibility of cultural services is limited²³.

Although the Law of Ukraine "On Voluntary Amalgamation of Territorial Communities" #157-VIII of 5 February 2015 stipulates that the ATC population should be provided with cultural and artistic services at a level no lower than prior to amalgamation, approval of minimum standards for providing citizens with cultural services and the responsibility of the authorities for the preservation and development of cultural and artistic institutions in the regions remains an issue.

²³ Ordinance of the Cabinet of Ministers of Ukraine #27-r of 23 January 2019 "On Approving the Concept of Reforming the System of Providing Cultural Services to Population."

For example, in Vinnytsia oblast, 13% cultural institutions that are part of the ATCs continue to be financed from the district budgets or through local subsidies. In recent years, the Nartsyziv village club library in Lypovets district and Nemyriv district library for children have been liquidated; and the activity of three cultural institutions in the villages of Khmilnyk district was suspended. At the same time, in violation of Article 22 of the Law of Ukraine “On Culture,” the executive authorities and local self-government bodies of Nemyriv district did not apply to the Ministry of Culture of Ukraine to remove Nemyriv district library for children from the basic network.

The material and technical resources of most rural cultural institutions remain unsatisfactory. In particular, in Kyiv oblast, 15 libraries and 24 culture clubs have been temporarily suspended due to the emergency condition of their premises and the lack of staff. Almost 400 cultural institutions are in need of overhaul, 469 are not provided with energy supplies, which makes it impossible for them to operate in the winter.

Urgent solutions are necessary to create conditions to provide quality staff for the system of cultural services, in particular by bringing the level of salaries of cultural workers closer to the level of average salaries in the country, and providing training to them.

In *Vinnytsia* and *Kyiv oblasts*, only 48.8% employees of cultural institutions have higher education background. There is a noticeable shortage of professionally trained staff with arts education. Almost 14% positions in arts and culture institutions remain vacant. The average salary of a librarian is UAH 4,000-5,000, of a teacher of an arts institution, UAH 5,500-6,000.

There are no adequate conditions for seamless visits of persons with disabilities and low-mobility groups to cultural institutions. In Kyiv oblast, only 49 libraries (10% of total number) are equipped with ramps, sound alarms, information boards. Providing specialized libraries with Braille books for visually impaired people and Braille music books remains an issue.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine “On Culture” #2778-VI of 14 December 2010 that will define the general framework of providing cultural services to the population, functioning of the basic network of cultural institutions in new conditions (allow local governments to modify the basic network for the needs of the community, etc.), key provisions on formation and functioning of the cultural district, the system of government bodies in the field of culture and monitoring the implementation of national culture policy.
2. To develop and submit to the Verkhovna Rada of Ukraine a draft law on ratification of the Marrakesh Treaty in order to ensure access of the blind and visually impaired people or other persons with disabilities to the printed information.

- 52 3. To develop and approve the standards for the provision of cultural services to residents of territorial communities in due course.
4. To ensure, in due course, the introduction of a system of subsidies and subventions from the State Budget, aimed at providing the state-guaranteed amount of cultural and artistic services for every citizen of Ukraine, the development of culture and arts in individual amalgamated territorial communities; approximation of the level of salaries of cultural workers to the level of average salaries in the country.

To the Ministry of Culture, Youth and Sports of Ukraine – to determine the standard of accessibility of cultural institutions of the basic network of the local level and the standard (criteria and indicators) of the quality of services, which must be provided by local cultural institutions.

To local executive authorities and local self-government bodies:

1. To create conditions in cultural institutions for persons with disabilities and low-mobility groups, providing architectural accessibility, reasonable accommodation, universal design of premises, providing relevant publications to the libraries.
2. To contribute to appropriate measures to preserve the staffing capacity of cultural institutions, improve the organization of capacity building of cultural workers, update the incentive system in the field of cultural and artistic activities.
3. To take measures to strengthen and update the technical and training resources of cultural institutions, to ensure their interrupted activity.

CHAPTER 2

OBSERVING ECONOMIC RIGHTS

OBSERVING ECONOMIC RIGHTS

As Ukraine progresses towards sustainable development and European integration, dynamic economic and social reforms were implemented in 2019. Given that the Constitution of Ukraine proclaims state responsibility before the individual for the state activity, the public authorities are obliged to provide opportunities for the person and the citizen to exercise their rights in the area of property, business, housing, safe environment and consumption, to protect people from the consequences of financial and economic or political crisis.

In 2019, the Commissioner received 3,035 reports/appeals from citizens, conducted 88 monitoring visits and inspections of observance of human rights and freedoms of citizens that revealed systemic violations of economic rights of citizens.

It was established that the local self-government bodies restrict the citizens' rights to land by defining certain conditions of acquiring ownership of land, which is not provided by the effective legislation.

The rights of citizens to housing are violated as a result of failure to reconstruct and overhaul the worn-out housing stock.

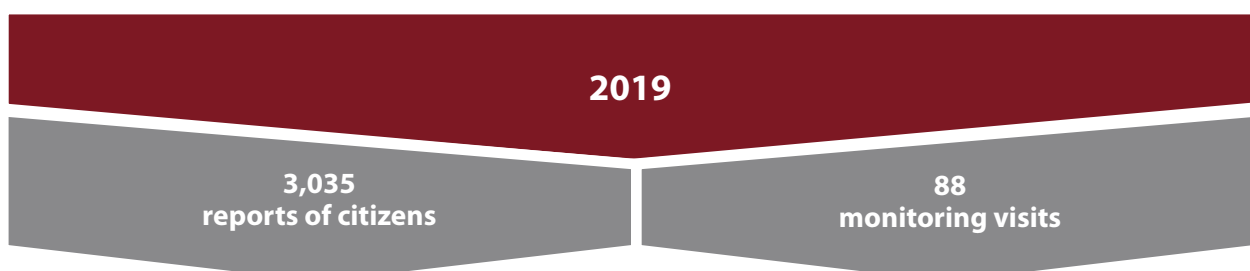
The problem of environmental degradation is urgent. Local governments and businesses that are required to take waste management measures and ensure that citizens have access to quality drinking water carry out such actions with many violations or do not take them at all.

The Commissioner established a violation of the rights of private entrepreneurs (hereinafter referred to as FOP) as they are obliged to pay a single contribution to compulsory state social insurance for a period in which they did not carry out business activities and did not actually receive income. Such national policy has led to a mass termination of activities of FOPs (over 300,000 FOPs decided to close their businesses only in the three months of 2017).

During the exercise of her powers of parliamentary oversight over the observance of the constitutional rights and freedoms of person and citizen, the Commissioner identified numerous facts of consumer rights violations, a considerable part of which take place in the sector of financial services. A striking example is the complaints about the activity of debt recovery companies that sometimes resort to neglect of human dignity, invasion of privacy, which violate the rights and freedoms protected by the Constitution.

Yet another critical issue is protection of the rights of consumers of transport services. Violation of the legislation by drivers of vehicles certainly endangers the life and health of citizens.

Therefore, analysis of current situation with observance and protection of economic rights reveals a number of problems, in particular the imperfection of the mechanism of their realization and proper legal protection. Given that they relate to the fundamental areas of human life, and are reflective of human freedoms in the economic and social sectors, their provision and protection should be a priority for the government.



56 2.1. Right to housing

During 2019, the Commissioner received 673 reports of citizens on violation of their property rights, some of which concerned housing rights.

The citizens claim that the government does not provide them with proper living conditions, they have to live in houses that need urgent overhaul, are dilapidated and/or in emergency condition.

Observance of housing rights of citizens in the context of deterioration of the housing stock

Deterioration of the housing stock constructed in the mid-last century and lack of resources in the owners of such housing to overhaul it has become systemic.

According to the State Statistics Committee, as of 1 January 2019, total housing stock of Ukraine amounts to 993,299,000 square meters. 93.7% of it is privately owned, 4.9% is in community ownership, and 1.4%, in state ownership. Over 60% residential buildings were built back in the Soviet times by typical series (up to 1970), and according to effective legislation, they require modernization. It is necessary to emphasize that 45,600 houses are considered dilapidated and in emergency condition, totalling to 4,305,200 square meters.

Therefore, realization of the right to housing that meets the sanitary and technical requirements by the co-owners of houses considered as outdated housing stock is a critical issue. Key reasons are the deterioration of housing stock and low level of financial capacity of owners to repair the apartment buildings.

According to Article 10 of the Law of Ukraine "On Privatization of State Housing Fund" # 2482-XII of 19 June 1992, territorial communities and the state that owned apartment buildings prior to their privatization were obliged to finance their repair and facilitate organization of repair in the procedure determined by the Cabinet of Ministers of Ukraine.

At the same time, according to the Law of Ukraine "On Particularities of Exercising the Property Right in Apartment Buildings" #417-VIII of 14 May 2015, the obligation to carry out the current and major repairs of joint property of apartment buildings was transferred to its co-owners – i.e., the citizens. However, as the co-owners of houses lack necessary funds to finance the major repairs, the legislation of Ukraine does not provide solution to this situation and, therefore, the repairs are not carried out, which leads to a violation of the rights of the co-owners of houses to proper and safe living conditions.

It should be noted that the problem of depreciation of the housing stock will be further especially exacerbated in the settlements where the residential buildings were actively constructed together with local economic mainstays 40-60 years ago.

Example

In 2019, the house on 101/1 Hrushevskogo St. in the city of Drohobych, Lviv oblast, suffered an emergency – the collapse of the part of the building from the first to the fourth floor. It resulted in the death of eight persons, including one child. According to the Technical report on the results of a detailed survey of a residential building to determine technical condition after the collapse of its part, provided by the Department of City Economy of Drohobych City Council, the collapse was caused by the destruction of the middle bearing wall of the basement. The destruction may have been due to the subsidence or destruction of the brickwork because of poor quality of brick and solution, considerable moisture and lack of waterproofing and concrete flooring.

Timely repairs to the house could protect its residents from tragedy.

Securing the right of citizens to financial compensation for the destruction of housing in natural disasters

During the review of the appeals of the citizens affected by the disasters, the Commissioner identified the failure of local self-government bodies to provide housing to citizens who had their houses destroyed or financial compensation for its repair due to lack of adequate funding in local budgets and no support from the national government.

Example

For a long time, the problem of monetary compensation to citizens in Chernihiv who were affected by the floods that took place in 2018 and again in 2019 is not addressed.

Chernihiv State Oblast Administration has repeatedly requested the Cabinet of Ministers of Ukraine for help to settle the problem of damages to the affected citizens. However, the requests did not produce a positive result, and funds from the State Budget were not allocated for these purposes.

Pursuant to item 6 of part one of Article 21 of the Code of Civil Protection of Ukraine (CCP), citizens of Ukraine have the right to social protection and compensation in accordance with the law for damage to their life, health and property caused by emergencies or work on prevention and elimination of their consequences. According to Article 22 of the Civil Code of Ukraine, a person who suffered violation of his or her civil rights is entitled to compensation.

In addition, Article 86 of the CCP of Ukraine stipulates that the housing for citizens whose housing became unfit for living as a result of an emergency should be provided by local state administrations, local self-government bodies and economic entities, and the construction or purchase of residential houses or apartments for victims who resided in private housing should be provided at the expense of state funds allocated for these purposes, minus the funds received by the affected citizens who had their housing insured.

The Commissioner's monitoring showed that the revenue of the local budgets was not sufficient to provide compensation for damage or loss of property due to natural disasters.

To the Cabinet of Ministers of Ukraine:

1. To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" #294-IX of 14 November 2019 with regard to determining the expenditures necessary for the audit of an outdated housing stock and bringing it in accordance with the standards of proper and safe living conditions.
2. To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" #294-IX of 14 November 2019 regarding the definition of expenditures necessary to compensate for the damage caused to citizens as a result of a natural disaster.
3. Develop and approve a State Programme for auditing obsolete housing stock and determining ways to bring it in compliance with standards of adequate and safe living conditions.
4. Annually, during the formation of the State Budget for the next year, provide for targeted expenditures necessary to compensate for the damage caused to citizens as a result of emergencies and natural disasters.

To local self-government bodies – to undertake surveys of typical groups of houses and develop housing renovation plans.

2.2. Consumer rights

During 2019, the Commissioner received 948 reports of abuse of consumer rights. A lot of them concerned financial and transport services.

Observance of the rights of consumers of financial services in the course debt collection

Citizens have reported to the Commissioner violations of their rights by debt collection companies when settling issues of overdue credit agreements or debts on contracts they did not enter into.

The findings of monitoring and analysis of citizens' appeals prove that this problem has become systemic.

According to the Deposit Guarantee Fund, during 2014-2017, 96 financial institutions were withdrawn from the financial market due to insolvency. As a result, claims for hundreds of millions of hryvnias and customer registration data were transferred to the debt collection companies. In their complaints to the Commissioner, the citizens report that such companies resort to pressure, compulsion to pay debts which in many cases exceed their actual amount.

Example

The Commissioner was contacted by citizen L. from the city of Zhytomyr, a retiree by age. The applicant alleged that she had timely fulfilled the terms of the loan agreement with the financial institution, but the last payment she had paid had not been credited to the creditor's account due to the deterioration of liquidity and the subsequent insolvency of Khreschatyk Bank that served the creditor.

At the same time, the financial institution did not warn the applicant in due time of such artificial debt and liquidation of the bank, transferring the rights of claim under the loan agreement in the amount of UAH 3,900 and personal data of L. to the debt collection company. The applicant refused to pay this amount and thus, debt collection company continued to demand payment of non-existent debt by unlawfully increasing the amount of claims up to UAH 74,000, using psychological pressure in the form of threats and blackmail.

As a result of the measures taken by the Commissioner, a systemic problem has been identified that requires legislative regulation – a state regulator should be granted the authority to regulate debt collection activities of debt collection companies

It should be noted that the Law of Ukraine "On Financial Services and State Regulation of Financial Service Markets" #2664-III of 12 July 2001 establishes only the legal framework for the protection of the rights and interests of clients of financial institutions and private entrepreneurs who provide financial services, but does not cover all aspects of such activity, including the methods of debt collection.

In their appeals to the Commissioner, citizens report interference of debt collection companies with their private lives, moral and physical pressure.

Example

Citizen Ch. from the city of Vinnytsia reported to the Commissioner the violation of her rights by representatives of debt collection companies that demanded her to pay money under loan agreements, which she did not enter into. Representatives of the debt collection company put moral pressure on the applicant, threatened her and her family with physical violence.

Following the violations identified, the Commissioner referred the appeal to law enforcement agencies requesting them to verify the facts of threats and possible violence by the representatives of the debt collection company against the applicant and her family.

The Commissioner requested the debt collection company to immediately terminate violations of the rights of consumers of financial services and do not commit them in its further activities.

The Draft Law of Ukraine "On Protection of the Rights and Legal Interests of Debtors in Collecting Activity" was submitted to the Verkhovna Rada of Ukraine (reg. #2133 of 12.09.2019). It was adopted on 12.12.2019 as the basis in the first reading.

- 60 The Commissioner provided the Verkhovna Rada of Ukraine with a note requesting to supplement the draft law with the provisions on the rights of individual debtors entitling them with the right to appeal the activities of debt collection companies, foreseeing a mechanism for termination of activities prohibited during debt collection, as well as types and amount of administrative responsibility for activities that the debt collection companies are prohibited to undertake.

Ensuring citizens' rights to adequate quality of transport services

Yet another urgent issue is the protection of the rights of consumers of transport services, the state guarantees of which are set at the legislative level.

Following monitoring of mass media reports, the Commissioner revealed numerous violations of citizens' rights to transport services.

The major part of such violations concerned the passenger road transportation, including providing such services without a valid license for this type of activity (70% of the total) and constant changes in the schedules of buses of intercity regular services (30%).

In response to the revealed violations of consumers' rights to quality passenger transportation services, the Commissioner submitted the respective requests to the Patrol Police, National Police of Ukraine, the Ministry of Infrastructure, the State Service of Transport Security and the State Labour Inspection. Pursuant to these requests, these agencies carried out road inspections of the owners of vehicles providing passenger transport services, as well as checks on transportation companies that provide irregular passenger transportations.

According to the National Police of Ukraine, 4,218 violations of law on road transport were detected and administrative penalties were imposed for a total amount of UAH 3.4 million.

Considering that millions of passengers use passenger transportation services, quality control and safety of passenger transportation should be among key priorities of the state.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – to expedite the consideration and adoption of the draft law of Ukraine "On Protection of Debtors' Rights and Legal Interests in Collecting Activities" #2133 of 12.09.2019.

To the Cabinet of Ministers of Ukraine – to develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Code of Administrative Offenses in the part of increasing responsibility for violations of legal requirements on passenger transportation.

2.3. Right to land

Monitoring the observance of citizens' right to acquire land ownership revealed numerous violations of the constitutional rights of Ukrainian citizens to land. In 2019, the Commissioner received 622 reports of violations in the field of land rights, of which 50% concerned violations of the right to land by local self-government bodies, 35%, by other citizens and legal entities, and 15%, by the State Geocadastre and its territorial departments.

Within the scope of parliamentary oversight over the observance of constitutional rights of citizens in the field of land in the context of decentralization, the Commissioner monitored 17 sites. In particular, monitoring visits were made to the city, settlement councils and territorial departments of the State Geocadastre in Cherkasy, Vinnytsia, Khmelnytskyi, Rivne, Zhytomyr, Poltava, Chernihiv oblasts.

Systemic violations of land rights of citizens

During the monitoring visits, a number of systemic irregularities were identified that related to:

- violation of the legal requirements by the local self-government bodies regarding holding sessions of councils on the allocation of land plots and issuance of permits in the field of economic activity - at least once a month;
- failure to decide on granting a permit or to provide reasoned refusal during the consideration by the sessions of city councils of draft decisions on granting citizens the permits to develop a land management plan for acquiring land plots into ownership (members of local councils abstent from voting instead of voting "for" or "against" such decisions);
- requirements of the territorial departments of the State Geocadastre regarding the endorsement of retrieving information from the cartographic documents by the local self-government bodies;
- refusal in permits for the development of a land management plan for acquiring a land plot into ownership because of granting the permit for the same land plot to another citizen or because of granting the permit for another land plot to the same citizen.

The monitoring revealed an unprecedented case of violation of citizens' land rights.

Example

Brusyliv village council by its decision introduced a moratorium on decision-making – in particular, on granting citizens the permits to develop land management plans for acquiring land plots into ownership – until the stock-taking of land plots that were transferred to the municipal property of the village council are.

The introduction of such a moratorium by the village council is a violation of the Constitution of Ukraine, the Land Code of Ukraine, the Law of Ukraine "On Local Self-Government in Ukraine" #280/97-BP of 21 May 1997, and thus deprives citizens of the constitutional right to receive land in ownership.

62 Pursuant to the acts submitted by the Commissioner, the village council decided to lift the moratorium.

In addition, the monitoring confirmed that the territorial authorities of the State Geocadastre systematically neglect the requirements of the Regulation on the Main Oblast Department of the State Geocadastre approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine of # 333 of 29 September 2016 that stipulates that the Main Oblast Department implements its authority by issuing organizational and administrative acts, including on refusal of a permit for the development of a land management plan for acquiring a land plot into ownership

Example

The Main Department of the State Geocadastre in Ternopil oblast refused to issue to citizen A. a permit for the development of a land management plan for acquiring a land plot into ownership. This refusal was formalized as a letter instead of an administrative act.

To restore and prevent the restriction of the citizens' constitutional rights to receive land plots into ownership, the Commissioner sent appropriate requests that made the State Geocadastre eliminate such violations in the activities of its territorial departments.

Observance of citizens' rights during acquisition of land plots into property

During 2019, the Commissioner monitored 50 official websites of local councils for acts adopted by local councils that set out a separate procedure for obtaining land plots by citizens that contravenes with the land legislation and creates additional obstacles to the exercise of the right to receive land free of charge.

In accordance with Article 118 of the Land Code of Ukraine, citizens willing to acquire a land plot from state or community ownership into their property free of charge within the limits of free privatization shall submit an application to the relevant executive authority or local self-government body specifying the purpose, approximate dimensions and attach graphic materials with the desired location.

Example

Velykomostivska City Council of Sokal district, Lviv oblast, has adopted its own procedure for the allocation of land plots for construction and maintenance of residential houses and business structures. It established that the land plots are provided only to Ukrainian citizens who are registered and reside in the territory of this city for at least five years, exceptions are the combatants of the anti-terrorist operation, registered on the territory of the city. There is also a requirement to provide a certificate with family composition. If a land plot was to be acquired by several family members, it only could be granted to one of the applicants.

It also envisaged keeping records of citizens who want to get a land plot – every two years the citizens had to update the applications for obtaining the land plot. In addition, the land plot is first leased for a period of 5 years, they can be transferred to ownership after at least 20% of construction works are complete.

After the Commissioner sent its request, the City Council reported the cancellation of this order. It resulted in the restoration of the violated right of citizens to the ownership of land plots. 63

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Land Code of Ukraine with regard to ensuring the balance between the right of citizens to receive land plots for free ownership and interests of the territorial community in the context of decentralization.
2. To develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Code of Administrative Offenses in terms of establishing responsibility for violations by executive bodies or local self-government bodies of the term of consideration of an application for the development of a land management plan for acquiring a land plot into property.

To the State Service of Ukraine for Geodesy, Cartography and Cadastre – to develop and submit for approval in accordance with the established procedure a standard template of organizational and administrative order on the disposal of agricultural land.

2.4. Right to a safe environment

An important feature of a safe environment is the rational use of natural resources, compliance with environmental requirements in the process of environmental management, including compliance with standards and limits for the use of natural resources, taking into account the scientific justification of the compatibility of environmental, economic and social interests and needs of society and the individual.

Respecting citizens' rights to a safe environment in waste management

The Commissioner received 250 reports from citizens on violations of environmental rights and the omission of public authorities and local self-government bodies responsible for environmental policy.

Waste management is an urgent issue for Ukraine. Lack of effective waste management system and adequate state control causes excessive waste accumulation leading to the pollution of land, water and atmospheric resources. Ukraine disposes of about 94% of waste in landfills. The problem is exacerbated by the misuse of waste and the annual increase in waste. According to the State Statistics Service, only in 2018, 352,333.9 thousand tons of waste (8,335 kg per person) were generated.

- 64 The largest amount of waste accumulated at waste disposal sites is concentrated in the following oblasts: Dnepropetrovsk – 82.6%, Donetsk – 6.9%, Kirovohrad – 4% and Lviv – 1.8% (see Annex 2.1).

The legislation of Ukraine prohibits the unauthorized disposal of waste in the territories of cities, other settlements and territories of the nature reserve fund and other places that may pose a danger to the environment and human health.

At the same time, landfills for waste disposal are overwhelmingly spontaneous (especially in rural settlements), do not meet sanitary and environmental standards, and in some cases waste disposal in water protection areas is documented. The responsibility for improper waste management rests with the owner of the waste, which in many cases is unknown.

In addition, the Law of Ukraine "On Waste" # 187/98-BP of 5 March 1998 is ineffective due to the lack of adequate infrastructure, financing, weakening of environmental supervision and a conflict between economic development and conservation of ecosystems.

In accordance with the Action Plan for Implementation of the Strategic Directions of the Commissioner's Activity in 2019, 45 monitoring visits and inspections were conducted on waste management to cities and amalgamated territorial communities of Kharkiv, Poltava, Dnipropetrovsk, Odesa, Mykolaiv, Kirovohrad, Chernihiv, Zhytomyr, Zakarpattia, Ivano-Frankivsk, Lviv, Chernivtsi, Volyn, Khmelnytskyi, Vinnytsia, Ternopil oblasts.

Monitoring revealed systemic violations of the environmental legislation of Ukraine that have negative impact on the rights of citizens:

- the population is not updated about the impact of the waste and the places or objects of its storage and disposal on the environment and human health;
- there are no schemes for sanitary cleaning of settlements;
- use of unregistered solid waste landfills;
- no separate collection of household waste is organized;
- providers of household waste removal services are not competitively selected.

It should be noted that the environmental legislation obliges local self-government bodies to ensure the collection of household waste (including separate waste collection). Therefore, these are the territorial communities that should initiate change in this area.

Ensuring the right of citizens to access quality drinking water

In 2019, the quality of drinking water gradually deteriorated due to discharges of industrial enterprises into local rivers and lakes without proper and quality wastewater treatment.

Most Ukrainians consume water from surface sources – lakes, ponds, rivers. In particular, nearly 30 million people drink water from Dnipro river. As every year a large amount of improperly treated wastewater is discharged into the basins, the population of Ukraine consumes water that does not meet the standards and is a danger to their health.

Observing the rights of citizens to quality water for consumption and observing the standards of its purification is under the special control of the Commissioner. During 2019, 14 monitoring visits were made to water supply companies in Ukraine.

During the monitoring, a number of significant violations of environmental legislation were identified, including:

- insufficient control over the quality of polluted sewage discharged into rivers and lakes after water treatment plants;
- lack of control by the institutions under the management of the State Agency of Water Resources for quantitative indicators of specific synthetic contaminants (pesticides, pharmaceuticals and other preparations) present in wastewater;
- failure to update the public through the media on total volume and quality composition of the discharge of backwaters into surface water bodies.

Example

During the monitoring visit to Lvivvodokanal municipal company, the lack of proper control over the quantitative indicators of specific synthetic contaminants (pesticides, pharmaceuticals, etc.) present in wastewater discharged to Poltva river was identified.

It is a violation of Article 44 of the Water Code of Ukraine, since water users are obliged, in particular, to comply with the established standards for the maximum permissible discharge of pollutants.

With the interference of the Commissioner, the supply of electricity to the pumping station from the second Donetsk waterway was resumed. As a result, the supply of drinking water by Sloviansk regional production department of Voda Donbasu municipal company was restored, and the guaranteed right to quality and safe drinking water was ensured.

A lot of violations that cause damage to the environment and human health are due to the lack of proper legal regulation in this area.

Effective norms for maximum permissible discharges enshrined in the Resolution of the Cabinet of Ministers of Ukraine #465 of 25 March 1999 "On Approval of the Rules for the Protection of Surface Water from Pollution by Backwaters" do not meet present requirements. Given that the projected discharge indicators used in the 1960s are still used, water resources need immediate state protection to guarantee citizens the right to a safe environment.

Analysis of current environmental situation in Ukraine proves that a significant number of environmental problems can be addressed at the national level and require urgent action.

To the Cabinet of Ministers of Ukraine:

1. To develop and approve the procedure for granting permits for operations in the field of waste management in accordance with the Laws of Ukraine "On Environmental Protection" #1264-XII of 25 June 1991 and "On Waste" #187/98-BP of 5 March 1998.
2. To include measures to strengthen state control over the quality of sewage in the section "Improving water quality and water management, including the marine environment. Complete phasing out of the discharge of untreated and insufficiently treated sewage into water bodies and ensuring compliance of sewage treatment quality with the established standards, as well as prevention of groundwater pollution" of the National Environmental Action Plan for 2020-2025, developed in implementation of item 3 of the Law of Ukraine "On the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine until 2030" #2697-VIII of 28 February 2019.

2.5. Right to entrepreneurship

Realization of the right to entrepreneurship creates opportunities for raising the level of employment of able-bodied persons, overcoming poverty, economic development of the country.

The Commissioner received 117 reports on violation of citizens' rights to entrepreneurship.

Observance of the rights of private entrepreneurs with regard to payment of single social contribution (SSC) for periods in which they had no income

According to the State Statistics Committee, in 2018 there were 1,483,716 private entrepreneurs in Ukraine, which is significantly less than in 2016 (1,559,161 persons, see Annex 2.2).

To a certain extent, this is due to the Laws of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" #1774-VIII of 6 December 2016 and "On Amendments to Certain Legislative Acts of Ukraine on Raising Pensions" #2148 -VIII of 3 October 2017 that requested private entrepreneurs to calculate and pay the SSC in the amount of the minimum insurance premium, regardless of whether they conducted business activities and whether they had any revenue.

The Commissioner was contacted by entrepreneurs who considered that this duty is unfair and violates their rights.

In certain cases, citizens indicated that in previous years, they intended to engage in entrepreneurship and registered their activities in the form of an individual entrepreneur. However, they did not have enough money to develop their business, and they did not receive any profit, so they had to temporarily suspend their activities.

In other appeals to the Commissioner, the entrepreneurs indicated that the reasons for their temporary suspension of economic activity were circumstances that did not directly or indirectly depend on them. Factors that forced them to cease their business activities included temporary disability due to disease, maternity leave to take care of a child or incapacitated family member, seasonal or irregular nature of their activity, temporary stay in places of custody or imprisonment, etc.

However, during these periods, the supervisory authorities charged them tens of thousands of hryvnias as arrears on payment of SSC and took coercive measures to recover them through the enforcement services.

The draft law of Ukraine “On Amendments to the Law of Ukraine “On Collection and Accounting of the Single Contribution to Compulsory State Social Insurance” on Resuming the Payment of Single Social Contribution Depending on the Income of Small and Medium-Sized Entities and Prevention of their Mass Termination” (reg. #1142 of 29.08.2019) was submitted to the Verkhovna Rada of Ukraine that provides for the right of an individual entrepreneur to voluntarily determine the basis of accrual of a single social contribution if such an entrepreneur does not receive income/profit in the reporting year or in specific month of the reporting year.

Example

Citizen T. appealed to the Commissioner with a complaint to the State Fiscal Service of Ukraine that accrued to him the single social contribution as to a disabled person of group III with visual impairments (for life). Citizen T. reported to this authority that he renders justice-related services to people with impaired vision, and is accounted for in the tax authority as a self-employed person conducting independent professional lawyer’s activities. He has no regular monthly income, as the number of clients is limited, and there is no state or municipal service provider in Ukraine that would provide such services and where he can find a job. The State Fiscal Service of Ukraine, referring to the requirements of the legislation and not taking into account the explanations provided and the circumstances, decided to maintain its request for debt payment in the amount of more than UAH 20,000.

According to effective legislation, the request of the tax authority for debt payment is fulfilled by the state enforcement service, including through the arrest and compulsory sale of the debtor’s property.

The Commissioner sent the relevant request to the Ministry of Finance and State Tax of Ukraine, but these authorities responded that the calculation of the SSC was done correctly.

Court decisions on this issue were made in favour of both entrepreneurs and supervisory bodies. The decisions of the Supreme Court of 02.09.2019 in case #520/3939/19 and of 04.12.2019 in case #440/2149/19 proclaimed that the request of the supervisory authority for payment of debt for SSC in cases where such a payer is entrepreneur who simultaneously performs an independent professional activity or is a hired employee is unlawful and cancelled this request.

Despite positive progress in the case law, the issue has not been fully resolved and, therefore, the violations of entrepreneurs’ rights continue.

- 68 To restore social justice and abolish the legal provisions that obliged the entrepreneurs to pay the SSC for periods in which they do not receive actual income, the Commissioner prepared and sent to the Constitutional Court of Ukraine a constitutional submission on recognition the provisions of item 2 of part one of Article 7 of the Law of Ukraine “On Collection and Accounting of the Single Contribution to Compulsory State Social Insurance” #2464-VI of 8 July 2010 unconstitutional. It was received at the Court Registry on 18 November 2019 and registered under # 5/7130 (19)²⁴.

The Constitutional Court of Ukraine opened the constitutional proceedings in the case. The case will be examined by the Constitutional Court of Ukraine in the form of written proceedings.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – to accelerate the consideration and adoption of the draft law of Ukraine “On Amendments to the Law of Ukraine “On Collection and Accounting of the Single Contribution to Compulsory State Social Insurance” on Resuming the Payment of Single Social Contribution Depending on the Income of Small and Medium-Sized Entities and Prevention of their Mass Termination” (reg. #1142 of 29.08.2019).

²⁴ www.ccu.gov.ua/novyna/konstytucijni-podannya-stanom-na-18-lystopada-2019-roku.

CHAPTER 3

OBSERVING THE RIGHTS OF THE CHILD

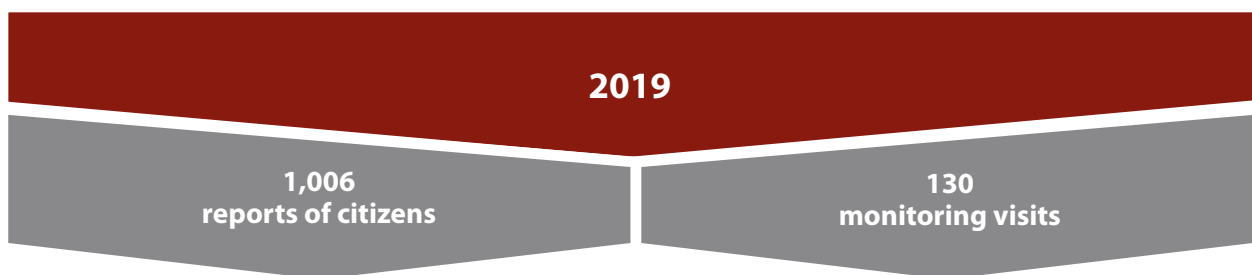
OBSERVING THE RIGHT OF THE CHILD

In 2019, the 30th anniversary of the UN Convention on the Rights of the Child was celebrated. In the context of an armed conflict for Ukraine, the Convention should be assessed not only in terms of its commitments, but also in terms of the effectiveness of this international instrument for the protection of children. After all, according to statistics, every fifth citizen of our country is a person under 18. In 2019, there were 7,579.7 thousand children in Ukraine.

The Commissioner's activities in the framework of monitoring the observance of the rights of the child and reports from citizens (1,006) received by the Commissioner during the year revealed violations of the rights of the child in Ukraine in the system of alternative care (guardianship, foster families, family-type orphanages, care institutions, families of foster carers); lack of capacity of territorial communities to ensure equal access of every child to the exercise of fundamental rights guaranteed by the Constitution of Ukraine and the laws of Ukraine; lack of access of children affected by hostilities and armed conflict to quality services, rehabilitation and lack of financial support from the government. Also, one of the risks of violations of the rights of the child is using electronic communications to commit violence on the Internet – cyberbullying.

To ensure proper control over the observance of the rights of children and families in these fields, 130 monitoring visits were carried out to 15 oblasts (*Cherkasy, Donetsk, Kharkiv, Khmelnytsky, Kirovohrad, Kyiv, Luhansk, Lviv, Mykolaiv, Odesa, Rivne, Vinnytsia, Zakarpattia, Zaporizhia, Zhytomyr oblasts*).

As a result of the visits, the Commissioner sent 10 submissions and 206 requests (namely, to institutions and organizations – 84, to public authorities – 67, to local self-government bodies – 45) to take measures to eliminate identified violations of the rights of the child and prevent them in the future.



3.1. Rights of the child in alternative care system

To monitor the observance of the rights of the child in the system of alternative care, the visits covered 8 oblasts (*Donetsk, Kharkiv, Kyiv, Luhansk, Lviv, Odesa, Zaporizhia, Zhytomyr*) and evaluated the activities of service providers for children, centres of social services for families, children and youth and other facilities where children stay.

The monitoring was conducted within the framework of a multilateral Memorandum of Understanding between the Ukrainian Parliament Commissioner for Human Rights, the United Nations Children's Fund

72 (UNICEF) in Ukraine, the Ministry of Social Policy and the Ukrainian Network for the Rights of the Child. It revealed facts of inactivities of the staff of service providers for children, centres of social services for families, children and youth, illegal removal of children from their parents, untimely granting of the status of an orphan and a child deprived of parental care, failure to monitor observance of the rights of the child who stay at the families of caregivers, foster care, family type homes, boarding schools, etc.

As a result of the visits, the Commissioner sent 7 submissions and 163 requests to public authorities, local self-government bodies, institutions and organizations.

Findings of the monitoring and issues identified during the monitoring visits were discussed at the Inter-Regional Forum on the Status of the Rights of the Child, initiated by the Commissioner and supported by the United Nations Children's Fund (UNICEF) in Ukraine and the Ukrainian Network for the Rights of the Child on 15 May 2019²⁵.

Guardianship, care

A total of 69,200 orphaned children and children deprived of parental care are there in Ukraine. At the same time, the analysis of the situation proved that most orphaned children and children deprived of parental care are placed under guardianship. According to the data of the Ministry of Social Policy, at the end of 2019, 49,714 children were brought up by guardians, which is 71.4% of the total number of orphaned children and children deprived of parental care.

Monitoring visits showed the lack of social support for families of guardians, carers and also revealed problems in the relationship between children and guardians, especially in adolescence.

For example, there are cases when the orphaned children and children deprived of parental care who are placed under guardianship or care are referred to the centres of social and psychological rehabilitation of children. For example, in 2014 there were 35 children of this category in the centres of *Zaporizhia oblast*, then in 2018 their number increased to 64 to decrease again to 29 children in the first half of 2019.

However, in no region do service providers for children and centres of social services for families, children and youth providing case management to the families of guardians and carers to help them overcome or minimize difficult life circumstances.

These situations were analyzed in detail during the monitoring visits and discussed with service providers, as well as at the Inter-Regional Forum on the Status of the Rights of the Child.

In addition, the restriction of a child's stay under care or guardianship up to 18 years of age puts a child in unequal conditions with children of the same category who are brought up in foster families and family-type orphanages. In particular, children who continue their education in secondary schools are suspended from receiving state benefits for children under guardianship or custody. Guardians – mostly grandparents – are unable to support financially their grandchildren who have obtained the status of orphaned children, children deprived of parental care (up to 23 years).

²⁵ www.ombudsman.gov.ua/ua/all-news/pr/u-ki%D1%94v%D1%96-v%D1%96dbuvsya-m%D1%96zhreg%D1%96onal-nij-forum-mon%D1%96toring-prav-ditini-u-sistem%D1%96-alternativnogo-doglyadu/.

The Commissioner drew attention of the officials of the Ministry of Social Policy who were involved in monitoring visits to the need to address such a discriminatory situation. At present, a request has been sent to the Ministry to provide information on the number of such children in order to prepare appropriate financial justifications and initiate amendments to the legislation.

Foster families, family-type orphanages

While the number of orphaned children and children deprived of parental care is decreasing every year, according to the Ministry of Social Policy, at the end of 2019 the number of such children in foster families and family-type orphanages increases: 2017 – 13,689 children (19.2% of the total number of orphaned children and children deprived of parental care), 2019 – 14,056 children, or 20.0% (see Annex 3.1).

The legislation provides for the mandatory social support to foster families and family-type orphanages. However, monitoring visits, appeals from children, as well as messages received from the media and social networks, showed its inadequate quality, namely: lack of psychological support for the child and the difficulties of adaptation of children in the new family and school community; lack of psychological support for the family in case of difficulties in communicating with the child; violation of legal requirements on upgrade of qualification of foster parents (they should undergo respective training every 2 years) taking into account the individual features of foster children.

Conclusions on the condition of maintenance, education and upbringing of the child do not reflect the efforts of social workers on providing case management to such families, as they only indicate the number of services provided to families. Recommendations to foster parents on further upbringing and development of children are not provided.

As a result, the number of children leaving foster families and family-type orphanages due to lack of understanding between children and foster parents, violence against children, failure of foster parents to perform their obligations with regard to the children has increased over the last three years. While in 2017, there were 58 such children, in 2019 their number increased to 119.

Example

The Commissioner opened proceedings to protect the rights and interests of foster children in one of the family-type orphanages in Dnipropetrovsk oblast where children were sexually abused by the ex-husband of the foster mother. In addition, according to foster children, it became known that they were involved in forced labour. Criminal proceedings are underway, and the Service Unit for Children of Dnipropetrovsk State Oblast Administration together with the Dnipropetrovsk Regional Centre of Social Services for Families, Children and Youth conducted an official inspection at the request of the Commissioner. According to its findings, the Deputy Head of Pokrov State District Administration of Dnipropetrovsk oblast was dismissed, and the Head of the Service Unit for Children and the Head of the Population Protection Department of Pokrov State District Administration were reprimanded.

74 *Institutional care and education*

Visits to 35 institutions of care and education of children and 20 service units for children of local executive bodies and local self-government bodies proved that the service units do not adequately control the conditions of care and education of children.

The monitors recorded violations of children's rights to information, privacy, appeal, and consideration of the child's opinion. Isolated cases of placement of children in psychiatric institutions without compliance with any legally established procedure; transfer of children from institution to institution; stay of children in the orphanage after reaching 18 were documented. Exceeding the period of stay of children in the centres of social and psychological rehabilitation of children remains an issue.

In addition, in special boarding schools, training and rehabilitation centres of the Ministry of Education and Science that at the beginning of the 2019/2020 school year had more than 31,700 children enrolled, poor quality of training and lack of equipment for medical and rehabilitation services were observed.

Violations of the procedure for placing children in such institutions have also been established.

Example

At Terpinia special boarding school of Zaporizhia Oblast Council, parents first had to apply for enrollment of their children in the institution and only after that the conclusion of the inclusive resource centre on the need to place a child in a special boarding school was provided. In addition, 13 children of the first grade turned out to be residents of the village of Terpinia.

In order to clarify this situation, in December 2019, the Commissioner sent the request to the leadership of the Ministry of Social Policy, the Ministry of Health, the Ministry of Education and Science to check the legality of the grounds for enrollment of school students in this education institution. The issue is on the watch list of the Commissioner.

It should be noted that, according to the statistics of the Ministry of Education and Science, at the beginning of the 2019/2020 school year there were more than 62,400 children in boarding schools and orphanages of the Ministry of Education and Science, of which only 3,000 were orphaned children and children deprived of parental care. Other children have parents.

In addition, monitoring revealed a trend to reduce the referral of children to public institutions of institutional care and education. For example, the Service Unit for Children of Zaporizhia City Council, has sharply decreased the number of requests for recreation vouchers for children in the city of Zaporizhia over the past 3 years: from 41 in 2017 to 29 in 2018, and 10 in 2019. Instead, the number of children placed in the private Orthodox Charitable Orphanage "Nadiya" of Zaporizhia Eparchy of the Ukrainian Orthodox Church grows every year: in 2017 – 6 children, in 2018 – 30 children, in 2019 – 26 children.

These examples are evidence of the fact that children are artificially enrolled in the boarding schools. It is against the objectives of the reform of institutional care of children launched in 2017 that aimed to provide care and upbringing of a child in the family or close-to-family environment.

The results of the first stage of reform indicate slow pace of de-institutionalization, including: the decrease in the number of children in institutions is too slow (2017 – 105,400 children, 2019 – 99,900 children); 47 institutions changed only the type of institution without giving up the round-the-clock stay of children; in three oblasts (Dnipropetrovsk, Odesa, Sumy), regional plans for reforming institutions of care and education have not been approved at all (see Annex 3.2).

As an alternative to institutional care for a child during the period for his/her parents to overcome difficult life circumstances and/or deciding on his/her future, in 2017 the law was adopted that allowed education and rehabilitation of a child in the family of a foster parent. At the same time, this modality is being implemented very slowly.

According to the Ministry of Social Policy, as of 1 January 2020, 121 foster families have been created. At the same time, in 5 oblasts of Ukraine – Chernivtsi, Khmelnytskyi, Rivne, Ternopil, Zakarpattia – there are no foster families, and in Ivano-Frankivsk and Volyn oblasts, only one foster family per oblast was created. (see Annex 3.3).

This situation is due, in particular, to the fact that foster carers who enter into a foster care agreement with the guardianship authority do not receive payment if they do not have a foster child; unwillingness of foster parents to provide patronage over a child with a disability with musculoskeletal disorders, impaired vision, hearing.

The Commissioner also keeps on her watch list the protection of the rights and interests of orphaned children and children deprived of parental care who went abroad to study. Analysis of the information received from the oblast administrations and Kyiv State City Administrations showed that from 2016 to the first half of 2019, 104 orphaned children and children deprived of parental care went abroad to study. At the same time, permits to travel abroad was granted by the guardianship authorities only in 23 cases.

Moreover, such children were not subject to temporary consular registration – therefore, there is a risk that the children may become victims of human trafficking.

According to the results of the Commissioner's request to the Prime Minister of Ukraine on this issue in September 2019, the Government adopted the Resolution of the Cabinet of Ministers of Ukraine #85 of 29 January 2020 "Certain Issues of Registration of Ukrainian Citizens Living Abroad," which provides that in case of temporary departure of an orphaned child or a child deprived of parental care outside Ukraine for a period of more than 90 days, the legal representatives of such a child are obliged to notify the service unit for children and put the child on consular registration.

The monitoring showed that the reasons for poor case management of families and control over the observance of the rights of the child in families and institutions of care are staff turnover and high workload on employees; low level of professional training of specialists; entrusting the service units for children with functions not inherent in them; and lack of transport and funds for business trips.

In October 2019, the Commissioner sent the request to the Ministry of Social Policy to ensure proper organizational, legal, technical and informational support to the centres of social services for families, children and youth so that they provide quality social services aimed at forming responsible parenting to families in difficult life circumstances.

RECOMMENDATIONS

To the Ministry of Social Policy of Ukraine:

1. To develop and submit in the established manner for consideration by the Verkhovna Rada of Ukraine a draft law on amendments to the Law of Ukraine "On State Assistance to Families with Children" #2811-XII of 21 November 1992 in terms of continuing payment of state assistance to children who are subject to guardianship, custody, in the case of continuing education in a secondary school after they reach 18
2. To introduce periodic training (every two or three years) in order to improve education capacity of guardians and carers regardless of whether they are in a family relationship with children.
3. To take measures to strictly comply with the requirements of the law in terms of timely training of foster parents (every 2 years), taking into account the individual features of foster children.
4. To initiate amendments to the General Regulations on the Centre for Social Services for Families, Children and Youth, approved by the Resolution of the Cabinet of Ministers of Ukraine #573 of 1 August 2013 with regards to authorizing regional centres of social services for families, children and youth to control the activities of local centres of social services in order to ensure the right of individuals, families and children to receive quality social services.

To the Ministry of Social Policy of Ukraine, the Ministry of Education and Science of Ukraine – to take measures to systematically improve the skills of employees who provide social and psychological support to children.

To the oblast administrations and Kyiv State City Administration – to take measures to strengthen local authorities' control over the conditions of care and education of children in institutions, the quality of services to children and families raising orphaned children and children deprived of parental care or who found themselves in difficult life circumstances.

3.2. Right of the child and family in the context of decentralization

The right to education

The results of analysis of the citizens' reports received by the Commissioner in 2019 and findings of 41 monitoring visits to the amalgamated territorial communities revealed a number of systemic issues in ensuring the right of children to education. Key issues are the lack of inclusivity, lack of seats in pre-school institutions, discriminatory approach to the provision of education, children attending education institutions without vaccinations, issues of nutrition in preschool institutions, etc.

Notwithstanding active promotion of inclusivity in education, the vast majority of education institutions today are not adapted for children with special education needs. Mostly this is due to architectural

inaccessibility. In addition, parents complain about the lack of a teacher's assistant, maladaptation of the child's classroom needs, poor performance of a psychologist/social educator. These problems do not allow for following the recommendations of inclusive resource centres. These facts, among other things, indicate insufficient training and qualification of specialists who work with children.

Example

Citizen Sh. (Kyiv oblast), the father of a child with a disability, addressed the Commissioner regarding the failure to provide appropriate conditions for his child's education and violation of his child's right to dignity.

As a result of the measures taken, the rights of the child were restored: primary school teachers with appropriate professional education were appointed, the psychological climate in the team was improved, a team of psychological and pedagogic support for children with special needs was created, etc. In addition, disciplinary measures were taken against the leadership of the education institution for violations they committed in the organization of inclusive education of children with special education needs.

While the number of inclusive resource centres is growing (according to the Ministry of Education and Science, 610 centres were opened by the end of 2019), they do not meet the needs of children to receive services in full.

There are also a number of problems in ensuring the right to education in the context of decentralization, the transition from funding of education from the state budget to the local budgets.

Local self-government bodies make decisions that restrict the rights or benefits for children who receive education in institutions outside their place of residence, and require parents to re-imburse the costs associated with providing education to such children.

Example

In March 2019, Kyiv City Council introduced priority enrollment in preschool education for children registered in Kyiv. It restricts access to preschool education for children whose place of residence is registered in another locality. At the same time, such restrictions apply not only to enrollment in an education institution, but also to the amount of payment for the child's meals and the establishment of tuition fees.

Namely, the decision of Kyiv City Council of #1369/5433 of 13 September 2018 established that in case when a child not registered in the city of Kyiv (except for children of internally displaced persons and children of ATO participants) is enrolled to a community preschool institution, his/her family has to pay a monthly fee for preschool education.

In this regard, in May and September 2019, the Commissioner sent requests to Kyiv Mayor to abolish this discriminatory provision. Judicial proceedings are currently underway to appeal the decision of Kyiv City Council. The Commissioner keeps this issue on her watch list.

- 78 Due to high level of internal migration in Ukraine, many families do not live at their registered place of residence. It causes problems in accessing general secondary education at the place of actual residence of a child. In addition, a lot of families do not have the opportunity to prove the fact of living on the territory of the education institution.

This problem is the most relevant for children living in rural areas in the territories of ATCs that have no schools, and for children living in small settlements.

For a long time, the Commissioner has been monitoring the situation with provision of food for children with various types of food intolerances/allergies.

There are many cases when the heads of education institutions refuse to provide special dietary food for children with intolerance to gluten and dairy products due to lack of appropriate regulations and funds for buying such food. As a result, children cannot get the food they need to maintain their health, making it difficult or even impossible for them to attend preschools and general secondary schools.

Example

The Head of the Gluten-Free and Lactose-Free Nutrition in Ukraine Project contacted the Commissioner on behalf of the parents of children in need of special dietary food (city of Kyiv, Kyiv, Ivano-Frankivsk, Khmelnytskyi, Odesa, Rivne oblasts).

During the consideration of the appeal, the Commissioner found out that the Institute of Public Health has developed a draft of the Sanitary Regulations for general secondary education institutions²⁶ that recommend to organize dietary nutrition for students with various health disorders.

At the same time, these Regulations did not fully regulate dietary nutrition for students with various health disorders. Therefore, in August 2019, the Commissioner sent comments to the Ministry of Health that were taken into account.

One of the most common issues is the violation of children's right to education due to the lack of vaccinations of children who have medical counter-indications against vaccination. In particular, such appeals were received from Vinnytsia, Zhytomyr, Dnipropetrovsk, Poltava, Cherkasy and Odesa oblasts.

This is due to the fact that the legislation does not clearly provide for the need and does not define the template for submitting a vaccination document to education, training, health and other children's institutions.

In November 2019, the Commissioner sent a letter to the Prime Minister of Ukraine, emphasizing the need to improve the legislation in order to set forth a clear procedure for providing documents containing information on health condition of a child when enrolling in education institution. Currently, upon instruction of the Prime Minister of Ukraine, the Ministry of Health is making amendments to the template of primary accounting document #086-1/o "Certificate of a student of a secondary school on the results of mandatory preventive medical examination."

²⁶ http://moz.gov.ua/uploads/1/6845-pro_20180828_1.pdf.

The right to health care

During 2019, the observance of the rights of children with disabilities to access to rehabilitation measures for appropriate healthcare and provision of medicines to children with rare/orphan diseases was monitored.

Example

Parents of children applied to the Commissioner due to impossibility of rehabilitation of their children with disabilities of subgroup A, although these children had medical indications and recommendations to receive appropriate rehabilitation. It was found out that only children with disabilities due to cerebral palsy were able to receive free rehabilitation measures.

As a result of the Commissioner's intervention, the right of all children with disabilities to rehabilitation measures at the expense of state funds was ensured. To this end, amendments were made to the Law of Ukraine "On the State Budget of Ukraine for 2019" #265-IX of 31 October 2019 and the Resolution of the Cabinet of Ministers of Ukraine #309 of 27 March 2019 "On Approval of the Procedure for Using Funds Provided in the State Budget for Rehabilitation of Children with Disabilities."

According to the findings of monitoring visits to health care facilities where children are staying, as well as analysis of information of regional hospitals and orphanages on compliance with children's right to adequate healthcare and provision of medicines during 2019, it was established that the medicines defined by the National List of Essential Medicines that are fully or partially funded from the State Budget and/or local budgets do not fully meet the needs of children. In particular, after additional examination and consultations, specialized doctors prescribe medicines not included in the National List. As a result, medicines that the children need are mostly purchased by their parents and/or sponsors.

In response to this situation, in December 2019, the Commissioner requested the Prime Minister of Ukraine to revise the National List of Essential Medicines and regulate their procurement from the budget funds. Currently, the Government has instructed the Ministry of Health to address the issue and come up with appropriate proposals. The Commissioner keeps this issue on her watch list.

Parents of children with cystic fibrosis who reside in the cities of Kyiv, Dnipro, Kherson, Kharkiv, Kropyvnytskyi, as well as Zhytomyr and Dnipropetrovsk oblasts also applied to the Commissioner for assistance in joining such patients to the European Register (ECFC Patient Registry).

According to the Centre for Medical Statistics of the Ministry of Health, the number of children with cystic fibrosis is growing. In 2010, there were 552 such children, and in early 2019, their number increased to more than 600²⁷. Depending on the complexity and course of this genetic disease, the indirect cost of special dietary food per child can range from UAH 20,000 to UAH 50,000 per year, which is an excessive burden for their families.

In the context of the above, it should also be noted that the lack of a state register of citizens suffering from rare/orphan diseases, as requested by Article 531 of the Fundamentals of Health Legislation of

²⁷ <http://medstat.gov.ua/ukr/statdan.html>.

80 Ukraine is yet another negative factor in the field of health care. This situation makes it difficult to determine actual number of these patients and the real need for medicines and special dietary foods. Therefore, it causes violations of the right of citizens, in particular of children, to appropriate health care.

In December 2019, the Commissioner addressed the Ministry of Health. The latter reported that the transformation of the health care system in Ukraine is underway, and the treatment and provision of such patients with health care has been identified as one of the priorities. This issue remains on the watch list of the Commissioner.

The right to social protection

Monitoring of the the right of the child to social protection proved that only 5 (Malynivska village amalgamated territorial community in Kharkiv oblast, Baranynska village amalgamated territorial community in Zakarpattia oblast, Novoukrainska municipal amalgamated territorial community in Kirovohrad oblast, Stepankivska village amalgamated territorial community in Cherkasy oblast, Krynycha village amalgamated territorial community in Dnipropetrovsk oblast) out of 41 visited ATCs perform guardianship functions in the field of protection of the rights of the child.

At the same time, in violation of the Law of Ukraine “On Bodies and Service Units for Children and Special Institutions for Children” #20/95-BP of 24 January 1995, 36 ATCs covered by monitoring did not establish a service unit for children, and no structural unit or employee was entrusted with protection of the rights and interests of children. According to the statistics of the Ministry of Social Policy, as of 1 December 2019, out of 834 ATCs, only 207 (24.8%) established service units for children.

Therefore, no adequate activities are taken at the local level for the social protection of children in difficult life circumstances, in particular to ensure their right to family education, granting the status of an orphaned child and a child deprived of parental care, a child affected by hostilities and an armed conflict, placement of orphaned children and children deprived of parental care, protection of personal, property and housing rights of children, etc.

As a result of the monitoring visits, the Commissioner sent requests to the leadership of ATCs to establish service units for children or to appoint a relevant employee. Following these requests, 18 ATCs plan to establish such service units in 2020 or entrust their employees with respective functions.

Example

Borodyanka village council in Kyiv oblast established a service unit for children, approved the relevant regulations and in January 2020, announced a competition for the positions of employees of the service unit.

In addition, the staff of the Secretariat of the Commissioner conducted trainings on the methodology of monitoring and the main problems of children’s rights at the local level for the representatives of the ATCs and service units for children from *Ivano-Frankivsk, Kyiv, Luhansk, Odesa, Poltava and Zhytomyr oblasts*.

Notwithstanding the decentralization, the state district administrations continue performing the functions of the guardianship authority. It leads to duplication of work and delays in the consideration of cases related to family disputes, adoption, deprivation of parental rights, etc.

At the same time, the Cabinet of Ministers of Ukraine on 3 November 2019 adopted the Resolution #926 "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine and Repeal of the Resolution of the Cabinet of Ministers of Ukraine #746 of 19 June 2019," according to which the vacancies of employees of service units for children in local state administrations are reduced.

According to the statistics of the Ministry of Social Policy, the highest percentage of vacancies is in the district service units for children (13.0%) (see Annex 3.4).

Thus, the reduction of vacancies, in particular in state district administrations, and the lack of relevant service units in the ATC will only jeopardize the protection of children's rights.

The monitoring also revealed a significant number of problems in the realization of the child's rights to be informed, heard, to have a proper representative, etc.

To obtain unbiased information, in 2019, the Commissioner together with the OSCE Project Co-ordinator in Ukraine implemented Support to Civil Society in Trial Monitoring Project focused on whether the courts and guardianship authorities take into account the views and best interests of the child. The project attended 80 court hearings, 29 meetings of guardianship authorities and child protection commissions that considered issuing an opinion on deprivation of parental rights, determining the child's place of residence, determining the ways of upbringing a child, establishing guardianship and custody, granting a child the status of a victim of hostilities and an armed conflict, etc.

The monitoring proved that children are normally absent from the hearings in matters that concern their interests. Only in every third case, a child's opinion was heard. Only every third respondent said that the guardianship authorities or courts are pro-active in protecting the child's interests (they gather evidence, involve a representative on their own initiative, provide detailed explanations, clarify the child's interests, etc.).

The situation with the observance of the general rules and rights of the participants in the proceedings of guardianship and custody bodies is worse than in the courts. 70% meetings of guardianship and custody bodies were held with violations of the rights of participants in the case, including 24% – with gross violations. Moreover, no single case when the guardianship and custody bodies explain the procedure of consideration or the rights of participants of the meeting was documented.

To address issues related to the social protection of children and families with children, the Commissioner submitted proposals to draft regulations developed by the Government and central executive bodies. In particular, in 2019, the Law of Ukraine "On social services" #2671-VIII of 17 January 2019 was adopted (entered into force on 1 January 2020) that defines basic organizational and legal framework for the provision of social services aimed at preventing difficult life circumstances, overcoming or mitigating their negative consequences for persons/families who are in difficult life circumstances. To properly implement it, the Cabinet of Ministers of Ukraine had to develop over 20 regulations. However, as of early 2020, the Government and the Ministry of Social Policy approved only 9 regulations.

- 82 In addition, the Commissioner recommended that the draft Resolution of the Cabinet of Ministers of Ukraine “Certain Issues of the Organization of Social Service Provision” to include children in difficult life circumstances in the list of recipients of social services free of charge, regardless of family income, as such children may be deprived of the opportunity to receive necessary social services due to financial situation of their parents.

Also, during the work on the draft Resolution of the Cabinet of Ministers of Ukraine “Certain Issues of Providing a Child at Birth with Baby Package One-time Financial Aid”, the Commissioner recommended to include foster parents in the list of persons eligible for receiving monetary compensation.

The Commissioner supported the proposal of the Ministry of Social Policy to approve the State Standard of Social Services for Temporary Recreation of Parents or other Persons Caring for Children with Disabilities. To take into account the interests of families with such children, simplify the procedure for obtaining such services, determine individual needs of the child, appropriate comments were sent to the draft order of the Ministry of Social Policy, and a working meeting with developers of regulations was conducted.

These proposals of the Commissioner were taken into account by the developers of regulations.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – to accelerate the adoption of regulations to shape appropriate conditions for the implementation of the Law of Ukraine “On Social Services” #2671-VIII of 17 January 2019.

To the Ministry of Education and Science of Ukraine – to take measures to ensure the right to education for children with special education needs, namely: strengthening awareness-raising on the benefits of inclusion, ensuring equal, unimpeded (including architectural accessibility) access, training of teachers to work in inclusive environment.

To the Ministry of Health of Ukraine, the Ministry of Education and Science of Ukraine:

1. To make changes to the documents required for enrollment of a child in general secondary and preschool education, and provide that information on vaccination is included in the certificate of health of a child.
2. To strengthen outreach on the need to vaccinate children.

To the Ministry of Health of Ukraine:

1. To develop regulations aimed at providing adequate nutrition in education institutions for children with various types of food intolerances and/or allergies.
2. To control the provision of children suffering from rare/orphan diseases with medicines and foods at their place of residence or treatment.

3. To create a state register of citizens suffering from rare/orphan diseases.
4. To facilitate the regulation of the accession of patients with cystic fibrosis to the European Register (ECFC Patient Registry).
5. To make changes to the National List of Essential Medicines and regulate their procurement from the budget funds.

To the Ministry of Social Policy of Ukraine:

1. To ensure control over the ATCs in terms of establishing service units for children in accordance with part seven of Article 4 of the Law of Ukraine “On Bodies and Services for Children and Special Institutions for Children” # 20/95-BP of 24 January 1995.
2. To strengthen technical support for the activities of guardianship and custody bodies, service units for children, social services centres for families, children and youth.
3. To provide systematic training to employees of service units for children and centres of social services for families, children and youth.

To oblast administrations and Kyiv State City administration – to take measures to prevent the restriction of children’s right to education in the context of decentralization due to the adoption by local authorities and local self-government bodies of local regulations that contradict the legislation of Ukraine on education.

To executive bodies and local self-government bodies – to ensure the performance of functions in the field of protection of children’s rights provided by national legislation, in particular, the Family Code of Ukraine, the Laws of Ukraine “On Child Protection” # 2402-III of 26 April 2001, “On Ensuring Organizational and Legal Conditions of Social Protection of Orphaned Children and children Deprived of Parental Care” #2342-IV of 13 January 2005, “On the Framework of Social Protection of Homeless Persons and Homeless Children” #2623-IV of 2 June 2005, the Procedure for conducting activities related to the protection of children’s rights by the guardianship authorities, approved by the Resolution of the Cabinet of Ministers of Ukraine #866 of 24 September 2008.

3.3. Right of the child in the context of an armed conflict

The armed conflict in Eastern Ukraine continues to affect the rights of the child.

According to the Ministry of Social Policy, as of 31 December 2019, 197,414 children were registered as internally displaced persons. At the same time, as of the end of 2019, 39,063 children received the status of a child affected by hostilities and armed conflict, which is only 20% of the number of internally displaced children.

84 The Commissioner's monitoring showcased that few children affected by hostilities and armed conflict receive this status because of low level of awareness of parents (other legal representatives) and the children themselves about the possibility of obtaining such a status. For example, children participating in the International Conference on the Protection of the Rights of the Child in Armed Conflict Living in Areas Next to Hostilities were unaware of their right and opportunity to obtain this status.

There were also cases when the state district administration did not consider the issue of granting the status of a child affected by hostilities and armed conflict while the parents applied for it (*Svatove SRA of Luhansk oblast*), or the heads of institutions where orphaned children and children deprived of parental care, including those who moved from the non-government-controlled areas, are raised, did not initiate granting this status to children (Mykolaivka general boarding school #7 of Donetsk Oblast Council, Luhansk oblast orphanage #2).

According to the report of OSCE Monitoring Mission, in the period from January 2018 to October 2019, 31 children were killed or injured by mines and other explosive devices²⁸.

In addition, according to the study "Assessment of the needs of children affected by mines or explosives as a result of the armed conflict in Eastern Ukraine"²⁹ produced by Danish Refugee Council – Danish Demining Group with the United Nations Children's Fund (UNICEF), in the period from 2014 to 2018, a total of 39 cases in which children were affected by mines or explosive remnants of war in Donetsk and Luhansk oblasts in the government-controlled areas were recorded.

The results of the study were presented at a meeting of the Coordinating Council for the Rights of the Child and the Family where a representative of the Commissioner took part, and recommendations were sent to central executive authorities to strengthen assistance to children affected by mines or explosive remnants of armed conflict. In particular, it is necessary to collect data on injured children, including the cause of injury and the needs of victims, ensuring the right to adequate health care, rehabilitation, providing psychological and psychosocial, social, economic support to children affected by mines and other explosives.

At the same time, the education process in the area of active hostilities continues. According to the Departments of Education and Science of Donetsk and Luhansk State Oblast Administrations, in cities and areas on the contact line with intense hostilities, where more than 33 thousand children live (in Donetsk oblast, 24 989 children, in Luhansk oblast, 8 255 children), 84 schools continue to operate.

Children living in the areas along the contact line say that one of the most important concerns for them is the security of the education process – they pay attention to the lack of properly equipped bomb shelters and the presence of the military in schools.

The media continue to report the facts of deployment of military servants of the Armed Forces of Ukraine and other paramilitary groups in the premises of schools in the areas along the contact line. It increases the risk of damaging the infrastructure of the education system and endangers the civilian population.

In this regard, the Commissioner welcomes that on 20 November, Ukraine accessed the Safe Schools Declaration providing contains a number of guidelines for preventing and responding to attacks and the use of education institutions for military purposes during the armed conflict. Today, 101 countries are signatories to the Safe Schools Declaration.

²⁸ www.osce.org/uk/special-monitoring-mission-to-ukraine/442219?download=true.

²⁹ <http://reliefweb.int/sites/reliefweb.int/files/resources/Mine%20Victim%20Assistance%20UKR.pdf>.

Given that ensuring the rights of the child in armed conflict around the world is a priority, in November 2019, the International Conference “Ensuring the Rights of the Child in Armed Conflict” initiated by the Commissioner took place³⁰.

The event was attended by the Commissioner and representatives of offices from countries where the armed conflicts took place (Bosnia and Herzegovina, Georgia, the Republic of Albania, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Croatia, the Republic of Moldova, the Republic of Northern Macedonia, the Republic of Serbia). Human rights institutions presented their own experience in ensuring and protecting the rights of children in the context of local armed conflicts.

Children living in the area of Operation of the United Forces took an active part in the conference.

The event was also attended by representatives of international organizations, including the Director of UNICEF Regional Office in Europe and Central Asia, the Chairperson of the Verkhovna Rada of Ukraine, MPs of Ukraine, representatives of central executive authorities, representatives of regions of Ukraine affected by an armed conflict.

As a result of the above-mentioned conference, recommendations were developed on measures and ways to address the most critical issues that need immediate response for protecting the rights of children affected by an armed conflict. The recommendations are addressed to the Global Alliance of National Human Rights Institutions (GANHRI), the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC), the UN Committee on the Rights of the Child, the United Nations International Children’s Fund (UNICEF), the Parliament and the Government of Ukraine and the Governments of the participating States for consideration in policy implementation.

RECOMMENDATIONS

To the Ministry of Social Policy of Ukraine:

1. To develop and submit in the established procedure for consideration by the Verkhovna Rada of Ukraine a draft law on the establishment of social guarantees and benefits for children who have received the status of a child affected by hostilities and armed conflict.
2. To take measures to implement the recommendations of the International Conference on Ensuring the Rights of the Child in Armed Conflict in the national policy of Ukraine.
3. To develop and submit to the Cabinet of Ministers of Ukraine the procedure for granting children affected by mines and/or explosives as a result of an armed conflict the status of a child affected by hostilities and armed conflict through a simplified procedure.

³⁰ www.ombudsman.gov.ua/ua/all-news/pr/u-ki%D1%94v%D1%96-proxodit-m%D1%96zhnarodna-konferencz%D1%96ya-zabezpechenn-prav-ditini-v-umovax-zbrojnogo-konfl%D1%96ktu/.

86 **To the Ministry of Internal Affairs of Ukraine, the Ministry of Defense of Ukraine and the Ministry of Education and Science of Ukraine** – to ensure the implementation of the provisions of the Safe Schools Declaration.

To the Ministry of Social Policy of Ukraine, SOAs and Kyiv State city administration – to intensify awareness raising and explanatory activities on the procedure for obtaining the status of a child affected by hostilities and armed conflict.

3.4. Counterring bullying and observing the right of the child on the Internet

Currently, there are numerous manifestations of violence against children in society, including in education.

The prevalence of bullying, in particular in the education context, is evidenced by the analysis of appeals received by the Commissioner in 2019. Of the total number of complaints about violations of children's rights to education, 34% relate to violations of their right to dignity, as well as physical and psychological violence by peers, teachers, parents of other students.

Parents mostly seek protection of children's rights who report bullying of children in secondary and preschool institutions.

Example

The Commissioner received an appeal from citizen K. (Biliaivka district of Odesa oblast) regarding the systemic psychological pressure, the use of threats and incorrect statements that her son suffered from the class teacher. After the Commissioner's intervention, disciplinary measures were taken to the teacher.

The Commissioner welcomed the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Combating Bullying" # 2657-VIII of 18 December 2018

(hereinafter – the Law #2657) that introduced legal definition of bullying and provided for liability for it.

According to the National Police of Ukraine, in 2019, 344 administrative offenses were recorded under Article 173-4 of the Code of Administrative Offenses "Bullying of a participant in the education process," 331 persons were identified as offenders, 19 of them minors.

At the same time, the provisions of the Law #2657 apply mainly to bringing offenders to liability, while the prevention of bullying, in particular work with victims and perpetrators, seems neglected.

The lack of a procedure for responding to cases of bullying hinders effective implementation of the Law #2657. In this regard, in December 2019, the Commissioner sent a letter to the Ministry of Education and Science to expedite the adoption of the relevant regulations. Currently, the Order of the Ministry of

Education and Science #1646 of 28 December 2019 “Certain Issues of Responding to Cases of Bullying and the Use of Disciplinary Measures in Education Institutions” taking into account the remarks of the Commissioner is registered with the Ministry of Justice.

The Commissioner also draws attention to the need for a comprehensive approach to awareness raising activities by the Government, the media, media content producers as an important component of combating the bullying.

In turn, following a round table held at the Secretariat of the Commissioner on 14 August 2019 featuring participation of representatives of the Ministry of Education, Ministry of Social Policy, National Police of Ukraine, National Council of Ukraine on Television and Radio Broadcasting, researchers, educators, media representations, the recommendations were developed and adopted aimed at raising awareness on mechanisms of combating bullying, preventing prejudices and errors in covering this topic.

These recommendations were sent to the National Council of Ukraine on Television and Radio Broadcasting for distribution among the TV and radio entities of Ukraine and posted on the website of the institution. Also, the Representative of the Commissioner for the Observance of the Rights of the Child and the Family presented them during a public discussion on protecting children’s interests in the information space in September 2019 in Kyiv for representatives of the media and the civic sector.

The Commissioner also conducted the respective awareness raising activities on ensuring the rights of the child in the media space. In particular, the staff of the Secretariat of the Commissioner conducted 2 trainings for students and teachers of the Institute of Journalism of Taras Shevchenko Kyiv National University, as well as the training for the team of the project Ukraine Speaking.

At the request of TV channels, the Commissioner provided consultations to minimize harmful risks for the children after the release of television broadcasts.

The topic of violence against children, including bullying, was covered during the interview on Rada TV Channel (September 2019) and on Hromadske Radio (December 2019).

Also, the Representative of the Commissioner for the Observance of the Rights of the Child and the Family made specific proposals for overcoming conflicts in the school environment during the participation in the International Forum on the Rights of the Child and Mediation “Community Mediation Forum” (Kherson, May 2019). In particular, they concerned the creation of school mediation services, special training for parents, teachers, school psychologists. After all, the work of school mediation services is an effective way to prevent bullying. Currently, such services are created in education institutions in Kherson, Odesa, Vinnytsia, Mykolaiv and other oblasts of Ukraine.

As part of annual pan-Ukrainian campaign 16 days against violence, the Representative of the Commissioner for the Observance of the Rights of the Child and Family recorded and posted on Facebook an appeal to children on ways to protect themselves from violence.

Combating bullying and protection mechanisms were also discussed during direct communication with children, in particular, during the School of Children’s Rights at Moloda Hvardia Ukrainian Children’s Centre (Odessa, May, November 2019), Training of school ombudspersons for senior students of secondary schools in Vyshhorod (October 2019), information and awareness raising meetings with students of the Technical Lyceum of Kyiv (as part of a guided tour to the Verkhovna Rada of Ukraine organized jointly with Docudays UA).

- 88 Rapid development of online technologies is contributing to the spread of the so-called cyberbullying – a form of violence using electronic communications.

According to an online survey of more than twelve thousand parents and children in Ukraine about their experience of using the Internet, conducted by experts of the International Telecommunication Union, 60% children need protection on the Internet. At the same time, the vast majority of parents – whom, according to the survey, the children normally contact to seek protection – lack information on how to protect their children³¹.

The Representative of the Commissioner for the Observance of the Rights of the Child and the Family took part in the 23rd Annual Conference of the European Network of Children's Ombudspersons (ENOC) (Belfast, UK, September 2019) that focused on the violations of the rights of children and young people on the Internet, in particular cyberbullying³².

Following joint work of the conference participants, the ENOS General Assembly issued an official statement to international and national organizations, governments of ENOS Member States, business representatives, as well as all digital producers to take effective measures to protect children's rights in the digital era. This statement was published on the official website of the Commissioner.

In cooperation with Docudays UA, representatives of the Secretariat of the Commissioner took part in a round table on ways to effectively combat cyberbullying and cyber grooming in Ukraine and developed a leaflet on combating cyberbullying that was presented in June 2019.

The Secretariat of the Commissioner also contributed to the development of the National Concept of Safe Internet for Every Child.

Protection of children's right to dignity and safety of children on the Internet needs further monitoring and remains on the Commissioner's watch list.

RECOMMENDATIONS

To the Ministry of Education and Science of Ukraine for effective prevention of bullying:

1. To accelerate the adoption of the procedure to respond to bullying.
2. To strengthen preventive measures to combat bullying.

To the Ministry of Education and Science of Ukraine, the Ministry of Digital Transformation of Ukraine and the Ministry of Social Policy of Ukraine – to take measures to strengthen awareness raising activities on combating the bullying/cyberbullying and providing safe Internet space for children.

³¹ www.ukrinform.ua/rubric-society/2820237-kozna-treta-ditina-v-ukraini-pidsila-na-internet.html.

³² <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf>.

CHAPTER 4

**OBSERVING THE RIGHTS
OF MILITARY PERSONNEL,
POLICE OFFICERS,
RETIRED MILITARY
SERVICE PERSONNEL,
VETERANS AND THEIR
FAMILY MEMBERS**

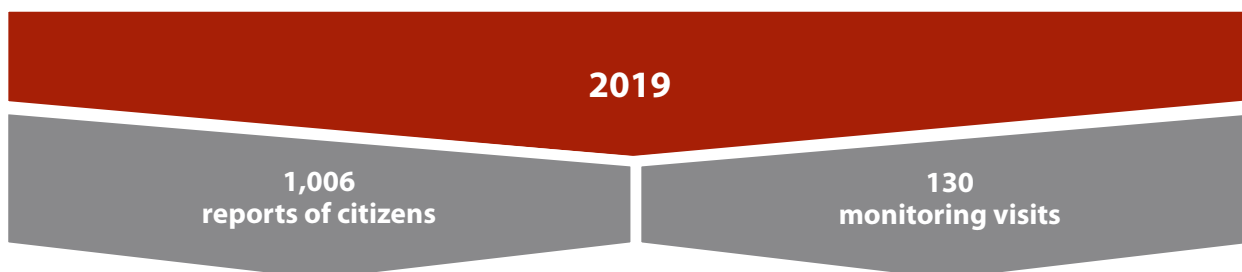
OBSERVING THE RIGHTS OF MILITARY PERSONNEL, POLICE OFFICERS, RETIRED MILITARY SERVICE PERSONNEL, VETERANS AND THEIR FAMILY MEMBERS

In the context of the military aggression of the Russian Federation against Ukraine that began over six years ago, the state has taken measures to strengthen the level of social and legal protection of the personnel who are directly engaged in repelling the aggressor in the OUF area, as well as of persons who have retired from security and defence bodies, combatants and service veterans. Efforts are also being made to rescue and rehabilitate personnel illegally detained by the aggressor state and to provide comprehensive support to their families.

However, monitoring proves that violations of rights concerning providing military personnel with housing, improving service conditions, increasing the amount of financial support (in particular for personnel in the OUF area), and resolving issues concerning their leave during the special period have not been resolved.

Therefore, parliamentary oversight over observance of the constitutional rights and freedoms of military personnel, service veterans and members of their families remains a priority for the Commissioner.

During 2019, 461 appeals and 998 reports from citizens were considered from persons serving in military detachments and law enforcement agencies, war and service veterans, military pensioners, conscripts, and members of their families. In addition, visits to 107 military administration bodies, the pension fund and specialized security and defence units were conducted (40 of which were to the OUF area). This all revealed a number of systemic violations of the rights and freedoms of this category of citizens.



4.1. Rights of military personnel

During monitoring visits to military units and military administration bodies, as well as consideration of the appeals of military personnel, systemic violations by officials of the rights and freedoms of military personnel and members of their families were revealed.

Arrears in payment to military personnel of indexation and additional types of monetary support, as well as monetary compensation for property not received on release from service

The inspections of military detachments and law enforcement agencies for violations of the state-guaranteed right of the military to sufficient financial support have proven that the State Border Guard Service Administration did allocate funds for its subordinate bodies, while units of the National Guard of

- 92 Ukraine created artificial barriers to the payment of compensation for real property to military personnel who ended their service.

Insufficient funding to assist with the rehabilitation of personnel, to resolve their social and household issues and creation of the obstacles to receive these payments is a common problem of all military detachments.

Example

The Commissioner received a complaint from V., a former member of the Sumy Border Detachment, who alleged that the command structure of his detachment had not allocated financial support for the personnel. After the Commissioner sent an instruction, this violation was resolved.

Example

The Commissioner was approached by the wife of armed forces personnel member K., who stated that her husband had not been provided with rehabilitation assistance, although he had submitted a request for this type of monetary support several months earlier. The payment was made following the intervention of the Commissioner.

Restrictions on the right of military personnel to receive additional paid leave during a special period

The Commissioner receives appeals regarding military personnel who are participants in combat operations who have not been granted additional paid leave to study or meet their spouses, or the leave provided for in law for personnel who have two or more children or a child with a disability. This violates Law of Ukraine 2011-XII "On the Social and Legal Protection of Military Personnel and Members of Their Families" of 20 December 1991, which established their right to study leave and parental leave.

The Commissioner has made numerous requests to public authorities to develop relevant amendments to the legislation to renew this right. It was also considered by the Grand Chamber of the Supreme Court³³, and is to be settled through adoption by the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On Social and Legal Protection of Military Servants and Members of Their Families" (registered as no. 2343 of 29 October 2019).

Violation of the right of military personnel to be provided with housing

Despite long waiting lists, in some military garrisons housing has not been built for personnel for a long time. The amount of compensation set by the Government for renting military housing is lower than the actual cost of such housing. Because of insufficient funding from the budget, this payment cannot be provided to everyone who needs it. As a result, military units' command structures create artificial obstacles to military personnel receiving this support.

³³ www.reyestr.court.gov.ua/Review/84153019

Example

The Commissioner received an appeal from the wife of serviceman K. who serves in Odesa garrison. She noted that despite the necessary documents being filed, compensation for renting a home had not been provided to their family for a long time. After the intervention of the Commissioner, a payment for compensation to the serviceman was made from the time of submission of the initial request for compensation.

This also violates the right to housing for personnel who, having become eligible for pensions, resigned from military service on the grounds of termination of the contract, as they are excluded from the list of persons in need of improved living conditions at the military unit in the place of service.

Example

Citizen B. complained to the Commissioner about his command's unlawful refusal to grant permission to acquire the service apartment that he occupied at his time of release from military service as private property. The command referred to the fact that the applicant had had his service contract terminated, notwithstanding his over 20 years of service. After the intervention of the Commissioner, the issue was resolved positively.

Ensuring the rights of personnel who have been discharged from military service and acquire the right to pension – to remain in the lists of persons who require improved living conditions at the place of service is being implemented with the adoption of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Protection of Military Personnel and their Family Members" (registered as no. 2343 of 29 October 2019).

Failure to respect the rights of participants in the Operation of United Forces to receive the state-guaranteed benefits and privileges they are eligible to

Despite the requirements of legislation, in some cases, Armed Forces of Ukraine personnel who participate in the OUF only receive the documents proving their status as participants in hostilities (combatant) from the military commissariats after their release from service. This significantly delays the time it takes to obtain the status, and sometimes makes it difficult to collect the necessary documents. Until they receiving the status of participant in hostilities, former personnel may not receive state-guaranteed benefits and privileges.

Example

Former servicewoman L. complained to the Commissioner about the inaction of the military authorities in granting her the status of a combatant. At the same time, the applicant alleges that the archives of the Armed Forces had created obstacles to her searching for copies of the orders sending her to the OUF area, and that these copies had not been attached to her personal files. After the intervention of the Commissioner, the issue was resolved positively.

During the reporting period, 17 former personnel of the Armed Forces of Ukraine applied to the Commissioner with similar requests for assistance, as they could not obtain combatant status for a long period after their release from service. The issue was settled after the intervention of the Commissioner.

Violation of the state-guaranteed right of citizens to release and deferment from military service

Monitoring revealed numerous cases of conscription commissions ignoring medical documents indicating that the conscripts had serious health problems, as well as documents that entitled them to deferment from service due to family circumstances.

This not only violates the legally guaranteed right of a person to deferment, but also in some cases creates a real threat to the health and life of the conscript or his family members, who are left without the necessary care and security due to the conscription of their son.

Example

The Commissioner received an appeal from F. on behalf of her son. She reported that her son was being called up for military service and the fact that he was a full-time student in the second year of studies was ignored. Following the Commissioner's intervention, by a decision of Izmail District Conscription Commission the applicant's son was granted a deferment for education until 30 June 2021,.

Example

The Commissioner was approached by single 70-year-old pensioner H., who stated that his son had received a summons to appear before the conscription board, despite the fact that his son was the only person caring for H., and despite repeated appeals to the military commissar to grant him a deferment from conscription due to family circumstances. After the intervention of the Commissioner, the conscription board decided to grant the conscript a deferment.

During the reporting period, following the Commissioner's intervention, certain military personnel (in particular, private S. called up for military service by Zavodskyi District Military Commissariat of Zaporizhia despite congenital heart disease) were discharged from military service early due to health conditions, following decisions by military medical commissions.

In October 2019 the Commissioner made a submission to the Ministry of Defence on preventing the conscription of persons unfit for military service. As a result of this submission, in November 2019, the Minister of Defence acted to bring the Regulations on military medical examination in the Armed Forces of Ukraine into alignment with the requirements of Article 70 of Law of Ukraine 2801-XII “Fundamentals of the Legislation of Ukraine on Health Care” of 19 November 1992, under which the health condition of conscripts must be assessed by a collegial body – the military medical commission.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – expedite consideration and adoption of draft Law of Ukraine 2343 “On Amendments to the Law of Ukraine “On Protection of Military Servants and Their Family Members” of 29 October 2019 on granting military personnel the following: paid additional leave provided by law for combatants; study leave; leave to meet with their spouses; and leave for personnel who have two or more children or a child with a disability at special times. The law would also allow veterans to retain the right to remain in the queue for military service housing.

To the Ministry of Defence of Ukraine – bring the provisions of Chapter 2 of Section II of the Regulations on Military Medical Examination in the Armed Forces of Ukraine, approved by Ministry of Defence of Ukraine Order 402 of 14 August 2008, into alignment with Article 70 of Law of Ukraine 2801-XII “Fundamentals of the Legislation of Ukraine on Health Care” of 19 November 1992, in terms of mandating the military medical commissions of military commissariats to determine the fitness of conscripts for military service, and ensuring adequate medical examination of citizens called up for military service.

4.2. Rights of Ukrainian military personnel in captivity

During 2019, the Commissioner received numerous reports of systematic human rights violations committed by public officials of the Russian Federation and representatives of illegal armed groups. These reports were submitted by lawyers and members of the families of military personnel of the Armed Forces of Ukraine who were captured by the Russian Federation on 25 November 2018 in the Kerch Strait, and of military personnel and police officers detained by illegal armed groups in Donetsk and Luhansk oblasts.

Ignoring the right to liberty and security of the person

During the anti-terrorist operation (hereafter OUF) in certain areas in Donetsk and Luhansk oblasts, hundreds of military personnel and police officers were detained by representatives of illegal armed groups formed in violation of Ukrainian legislation.

- 96 The capture of Ukrainian Armed Forces personnel in the Kerch Strait on 25 November 2018 and the armed aggression committed by officials of the Federal Security Service of the Russian Federation once again confirms that fundamental human rights law is also violated by states bound by international law.

Violation of the right to humane treatment, use of torture, abuse of human dignity, abusive and degrading treatment

Confirmed cases of psychological and physical mistreatment of prisoners/hostages (torture, threats, beatings, humiliation, detention in solitary confinement for long periods) indicate constant and intentional violations of international humanitarian law by members of illegal armed groups.

Example

The Commissioner was approached by the mother of prisoner of war E. who was intentionally subjected to pain and suffering, as officials of the Federal Security Service of the Russian Federation forced him to walk without assistance, despite being wounded, and placed the prisoner of war in solitary confinement without daylight. In order to respond immediately, the Commissioner drew the attention of the Commissioner for Human Rights of the Russian Federation to the need to comply with international human rights law regarding the inadmissibility of inhumane treatment against military personnel of the Armed Forces of Ukraine.

Cabinet of Ministers of Ukraine Resolution 1122 “Certain Issues of Social and Legal Protection of Persons Deprived of Liberty Due to Armed Aggression against Ukraine, after Their Release” of 11 December 2019 aims to regulate the social and legal protection offered to this category of persons. Despite the adoption of this Resolution, there are challenges to facilitating the process of reintegration of citizens released on 29 December 2019 from detention by illegal armed groups, in particular in terms of provision of psychological rehabilitation.

Lack of proper medical examination and assessment to provide information on health conditions

Notwithstanding the requirements of international legal acts on the humane treatment of persons captured and held as prisoners of war, the aggressor state and representatives of illegal armed groups are systemically violating the right of this category of persons to receive the primary health care they need.

The Commissioner was made aware of issues affecting military personnel released from detention, relating to access to health care even after their return to the territory of Ukraine. It should be noted that after they underwent appropriate examinations and treatment in military medical facilities, some military personnel sought treatment in other health care facilities not run by the Armed Forces of Ukraine, as they did not receive appropriate medical assistance in the military health facilities.

Example

The Commissioner was approached by the father of serviceman S., who reported that his son had been seriously injured during his capture by representatives of the Federal Security Service of the Russian Federation. The prisoner of war was not given a proper medical examination and was not provided with necessary primary health care. The Commissioner sent official letters to representatives of the Russian authorities, drawing attention to serviceman S.'s right to medical examination and assistance from medical personnel of the relevant authorities of the aggressor country, as set forth in international humanitarian law. As a result of these letters, S. was immediately examined and received appropriate medical care.

Forcing prisoners of war to remove their uniforms

The Commissioner undertook monitoring of the conditions of prisoners and detainees in places of temporary detention and imprisonment, which revealed that the representatives of illegal armed groups and the aggressor state had violated the right of prisoners of war to wear uniforms with distinctive insignia in captivity and deprived them of their identity documents.

Lack of healthcare during the detention of prisoners in the Russian Federation

Monitoring undertaken by the Commissioner of the conditions of military personnel detained by the Russian Federation in temporary detention facilities revealed systematic and persistent violations of international law on the proper quality of healthcare for detainees, including emergency care, examinations and surgeries, by representatives of public authorities of the aggressor country

Example

In September 2019, a medical examination of serviceman H. at the National Military Medical Clinical Centre "Main Military Clinical Hospital" revealed that he had developed a tumour as a result of the conditions under which he had been held captive. If the tumour had been removed in the military medical institution, this would have resulted in the discharge of the serviceman from military service for health reasons.

With the participation and support of the Commissioner, specialists from foreign clinics were involved in the treatment, including surgery, which meant that H. was able to continue with his military service once the tumour had been removed.

Violation of the right to legal protection during detention, and prosecution, and in court proceedings

Representatives of public authorities of the Russian Federation are systematically denying detainees the right to access qualified legal assistance and to consult with lawyers of their choice, or to access

- 98 other mechanisms for the protection of their rights. At the same time, despite the Russian Federation's efforts to uphold the principles of democracy and the rule of law, personnel held by illegal armed groups are generally deprived of such assistance during detention, sentencing by courts outside Ukraine, and further serving of illegal sentences.

Deprivation of the right of 24 Ukrainian Navy personnel to receive one-off financial assistance

To provide additional measures to protect military personnel who were captured and released on 7 September 2019, the Cabinet of Ministers of Ukraine adopted Resolution 845 "Certain Issues of Social Support for Persons Who Have Been Illegally Deprived of Personal Liberty" of 11 September 2019. However, during implementation of its provisions, these persons were denied the one-off financial assistance provided for in this Resolution. Namely, 24 Navy personnel of the Armed Forces of Ukraine were deprived of the right to receive such one-time financial assistance.

The Commissioner drew the attention of the Prime Minister of Ukraine to the need for strict observance of socio-economic rights. As a result, the one-off cash benefit was paid to all groups of persons provided for in the above-mentioned Cabinet of Ministers of Ukraine Resolution.

Failure of public authorities to take appropriate and sufficient measures to search for missing persons

This is a violation of the right of family members to obtain information about the whereabouts of a missing person, the circumstances of his/her death and the place of burial (if known), as well as the right to receive his/her remains.

Monitoring of implementation of measures to identify, register, search for and socially protect missing persons and members of their families, provided by the Law of Ukraine 2505-VIII "On the Legal Status of Missing Persons" of 12 July 2018 revealed that after the Law was adopted, the only actions taken were the approval of the composition of the Commission on Persons Missing in Special Circumstances and the adoption of Cabinet of Ministers of Ukraine Resolution 726 of 14 August 2019 on the "Procedure for Maintaining the Unified Register of Persons Missing in Special Circumstances".

However, the Commission has not started its work as the Government has failed to adopt the relevant regulation; therefore, the Commission cannot perform its functions. The above-mentioned Register has also not been created, as the procedure for its formation, the status of an administrator and so on have not been determined by law. This means that the legally guaranteed rights of missing persons and members of their families can be violated.

To settle this legal conflict, the Secretariat of the Cabinet of Ministers of Ukraine, the Ministry of Internal Affairs, the Ministry of Justice and the Ministry of Social Policy are working on appropriate amendments to the regulations, with input from the Commissioner.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – develop and submit to the Verkhovna Rada of Ukraine a draft law amending the Law of Ukraine 2505-VIII “On Legal Status of Missing Persons” of 12 July 2018 on the functioning of the Commission on Persons Missing in Special Circumstances, and creation and maintenance of the Unified Register of Persons Missing in Special Circumstances.

To the Ministry of Defence of Ukraine – strengthen implementation of the measures provided by law for social protection of military personnel released from illegal detention/captivity, their psychological rehabilitation, and provision of appropriate healthcare.

To the Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine as the inter-agency coordinator of interaction of relevant public authorities – implement Cabinet of Ministers Resolution 1122 “Certain Issues of Social and Legal Protection of Persons Deprived of Liberty Due to Armed Aggression against Ukraine, after Their Release” of 11 December 2019 on providing free legal aid, psychological rehabilitation to released persons, and social and/or professional adaptation support to persons deprived of liberty as a result of armed aggression against Ukraine, after their release.

4.3. Gender issues in the Armed Forces of Ukraine and other military formations and law enforcement agencies

During monitoring visits and interviews with personnel of military units, units of the National Police of Ukraine, the State Border Guard Service and other agencies, the Commissioner learned of systematic violations of gender equality, which are ignored by the commanders of military units.

Of particular importance are reports of sexual harassment and gender-based violence, which indicate conditions conducive to the violation of a person’s right to sexual freedom and sexual integrity.

Example

In December 2018, Lieutenant S. submitted a written complaint to the territorial division of the Military Law Enforcement Service in the Armed Forces of Ukraine stating that that Colonel I., the commander of the military unit where she served, was coercing her to have sex with him. An inspection conducted by the Military Law Enforcement Service of the Armed Forces of Ukraine failed to establish that the conduct of the commander of the military unit was illegal. To protect Lieutenant S. against possible negative consequences, she was transferred to another military unit in January 2019. However, she later resigned from military service in the Armed Forces. According to the results of an in-house inspection for compliance with the position and the recommendation of the attestation commission, Colonel I. was transferred to another military unit.

- 100 The case described above indicates that the Military Law Enforcement Service lacks the authority to deal with cases of gender-based violence, as this unit of the Ministry of Defence has no mandate to conduct investigative activities during the pre-trial investigation, and the Armed Forces of Ukraine have no mechanism to respond to such cases.

Given the importance of ensuring observance of equal rights and opportunities of women and men during conscription and military service, this issue remains on the Commissioner's watchlist.

RECOMMENDATIONS

To the Ministry of Defence of Ukraine:

1. Strengthen implementation of measures provided for by law to achieve equal rights and opportunities of women and men during their service in military units, including the prevention of gender-based violence.
2. Amend regulations to expand the powers of the Military Law Enforcement Service in the Armed Forces of Ukraine.

4.4. Rights of persons receiving pensions in accordance with the Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons," as well as of war and service veterans

Monitoring visits to the territorial offices of the Pension Fund of Ukraine revealed systematic violations of the rights of war and military service veterans, as well as persons receiving a pension in accordance with the Law of Ukraine 2262-XII "On Pensions to Persons Released from Military Service and Certain Other Persons" of 9 April 1992 (hereafter Law 2262), during the processing of appeals.

Using different approaches in appointment and recalculation of pensions

Adoption of Cabinet of Ministers of Ukraine Resolution 103 "On Recalculation of Pensions for Persons Released from Military Service and Certain Other Categories of Persons" of 28 February 2018 (hereafter Resolution 103) led to a change in the procedure for financial support used in the recalculation of pensions. This resulted in violation of the Constitution of Ukraine on pensions and an artificial reduction in the pension index.

Analysis of the numerous appeals received by the Commissioner from persons receiving pensions under Law 2262 after the adoption of Resolution 103, as well as the responses of the Ministry of Social Policy, revealed systematic violations of the rights of military pensioners to proper pension recalculation.

Following the opening of proceedings on the issue in September, the Ministry of Social Policy responded to the Commissioner's request that "options for resolving the issues of pension payment for persons released from military service and some other persons are being developed."

To this end, legislative amendments are being drafted to Law 2262 to set uniform conditions for the calculation and recalculation of pensions.

However, as of 1 January 2020, the Parliament has not received any draft law from the Government on this issue, which indicates that the Ministry of Social Policy is not taking action to address these problems. In its decision in case 826/3858/18³⁴, the District Administrative Court of Kyiv declared items 1 and 2 of Resolution 103 and amendments to item 5 and Annex 2 of the Procedure for recalculation of pensions granted in accordance with the Law Of Ukraine “On Pensions to Persons Released from Military Service and Certain Other Persons” (approved by Cabinet of Ministers of Ukraine Resolution 45 of 13 February 2008) illegal and invalid (the decision entered into force on 5 March 2019), declared the decision in case 826/12704/18 (entered into force on 14 June 2019)³⁵ illegal, and repealed item 3 of Resolution 103.

Currently, the Verkhovna Rada of Ukraine is considering a draft Law of Ukraine “On Amendments to the Law of Ukraine “On Pensions to Persons Released from Military Service and Certain Other Persons” on Restoring Previous Provisions of this Law” (reg. no. 2141 of 13 September 2019). The adoption of this draft Law will contribute to restoration of the social rights of this group of pensioners in accordance with the provisions of the Constitution of Ukraine (in particular Article 92, which stipulates that forms and types of pensions are determined exclusively by the laws of Ukraine).

This issue remains on the Commissioner’s watch list.

Lack of systematic approach among employees of territorial bodies of the Pension Fund of Ukraineto pension recalculation

Monitoring visits to the territorial offices of the Pension Fund of Ukraine (PFU) revealed violations of the right of military pensioners to proper recalculation of pensions. At the same time, there are many cases of recalculations being made using incorrect parameters, and refusal to recalculate pensions despite the provision of certificates clarifying the basis for financial support, as well as PFU employees interpreting the legislation of Ukraine at their own discretion, which leads pensioners as a whole to have negative attitudes towards the PFU.

Example

T., a veteran, applied to the Commissioner after his pension was recalculated on the basis of clarifying information on financial support provided in June 2017.

In his case, the amount paid after recalculation in 2017 only covered the previous 12 months, in accordance with Article 51 of Law 2262 (in line with the Article valid until 1 January 2016). As a result of the intervention of the Commissioner, citizen T. received backdated payments covering almost nine years (1 January 2008 to mid-2016).

³⁴ <http://reyestr.court.gov.ua/Review/80454350>.

³⁵ <http://reyestr.court.gov.ua/Review/82368814>.

- 102 *Failure to provide sanatorium and resort vouchers to military veterans and veterans of the National Police of Ukraine, as well as veterans of other units of the security and defence sector who received pensions not under Law 2262, but in accordance with other laws of Ukraine*

Analysis of appeals of military service veterans who receive a pension not under Law 2262, but under other laws, gives grounds to allege systematic violations of the rights of this group of veterans to rehabilitation and recreation.

The Procedure for providing sanatorium and resort vouchers to military personnel, war veterans, military service veterans, police veterans and certain other categories of persons and members of their families (approved by Cabinet of Ministers of Ukraine Resolution 446 of 27 September 2011) sets forth that public authorities only provide vouchers for sanatoriums to persons covered by Law of Ukraine 203/98-BP "On Status of Veterans of Military Service, Veterans of Internal Affairs, Veterans of the National Police of Ukraine and Certain Other Persons and Their Social Protection" of 25 March 1998, and who receive pension in accordance with Law of Ukraine 2262-XII "On Pensions to Persons Released from Military Service and Certain Other Persons" of 9 April 1992. At the same time, this Procedure does not regulate provision of vouchers to veterans of military service, who receive pensions under other laws.

The Ministry of Defence, with the support of the Commissioner, has developed a draft resolution of the Cabinet of Ministers of Ukraine, which should eliminate this problem.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – expedite consideration and adoption of the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Pensions to Persons Released from Military Service and Certain Other Persons" on Restoring Previous Provisions of this Law" (reg. no. 2141 of 13 September 2019).

To the Cabinet of Ministers of Ukraine – amend Cabinet of Ministers of Ukraine Resolution 446 "On Approval of the Procedure providing sanatorium and resort vouchers to military servants, war veterans, military service veterans, police veterans and some other categories of persons and members of their families) of 27 April 2011 to request public authorities to provide vouchers to sanatoriums not only to persons covered by Law of Ukraine 203/98-BP "On the Status of Veterans of Military Service, Veterans of Internal Affairs, Veterans of the National Police of Ukraine and Certain Other Persons and Their Social Protection" of 25 March 1998 who receive pensions in accordance with Law of Ukraine 2262-XII "On Pensions to Persons Released from Military Service and Certain Other Persons" of 9 April 1992, but also to veterans of military service who receive pensions under other laws.

To the Ministry of Social Policy of Ukraine – strengthen regulatory control over the compliance of the Pension Fund of Ukraine with legislation on the setting, calculation/recalculation and payment of the above-mentioned pensions.

CHAPTER 5

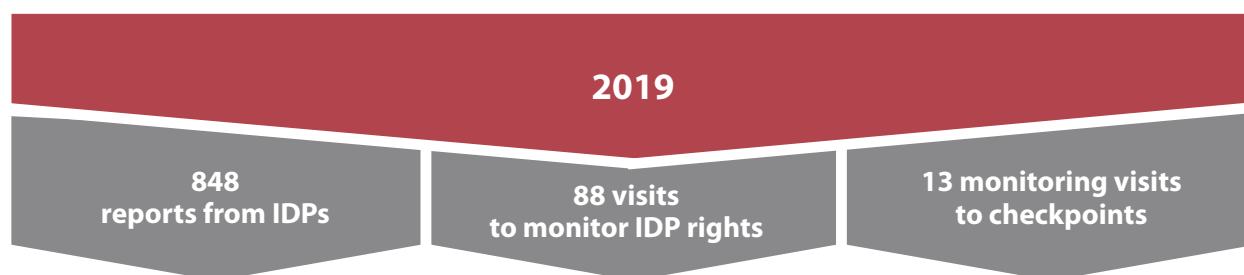
OBSERVING THE RIGHTS AND FREEDOMS OF PERSONS WHO SUFFERED TEMPORARY OCCUPATION AND ARMED CONFLICT

OBSERVING RIGHTS AND FREEDOMS OF PERSONS WHO SUFFERED TEMPORARY OCCUPATION AND ARMED CONFLICT

With regard to the armed conflict in the eastern part of the country and the occupation of part of the territory of Ukraine, the state was faced with the need to strategically plan activities to protect the rights of persons affected by the temporary occupation.

Civilians suffer the most from the military aggression of the Russian Federation: they sustain injuries or other health impacts or die as a result of injuries while living/staying in the areas where hostilities are taking place; they go missing in unclear circumstances; they are illegally detained as a result of armed aggression against Ukraine; and they become internally displaced persons.

Since the beginning of the armed conflict in Eastern Ukraine, more than 3,000 civilians have been killed and more than 7,000 wounded, while about 4,500 civilians have gone missing and more than 1,400,000 have become internally displaced.



5.1. Right of conflict-affected civilians to social protection

Analysis of legislation in the field of social protection of civilians affected by armed conflict and systematic monitoring of their rights and freedoms has highlighted a number of issues, such as the lack of a clear legal definition of civilians affected by armed conflict meaning that many are not registered; social insecurity of persons illegally detained as a result of the armed aggression against Ukraine; violation of the rights and interests of family members of persons who have gone missing in unclear circumstances; and violation of the right to receive state-guaranteed social benefits, including pension benefits for internally displaced persons and civilians living in non-government-controlled areas.

Lack of a clear legal definition and registration of civilians affected by an armed conflict

The current legislation in place in Ukraine does not regulate the issue of social protection for civilian victims of armed conflict at the stage when they transition to peaceful life.

Law of Ukraine 3551-XII “On the Status of War Veterans, Guarantees of Their Social Protection” of 22 October 1992 contains a provision that regulates the procedure for granting the status of a “person

106 with a disability due to war". This status can be granted to persons who have a disability resulting from injuries or other damage to health sustained from explosives, ammunition and military weapons in the ATO area (up to 1 December 2014), and since 1 December 2014, on the territory of the ATO/OUF and in settlements located on the 'contact line' during the ATO/OUF.

Other civilians who have suffered injuries or health impacts as a result of the hostilities, but have not been assigned a disability group, do not receive any attention from the Government.

The Commissioner noted the lack of a unified state system to register civilians killed and wounded during hostilities. Public authorities and local self-government bodies in Luhansk and Donetsk oblasts have different approaches to the registration of war victims (or do not keep such records at all). Data from various sources on fatalities and on wounded and missing persons differ significantly.

According to Luhansk and Donetsk regional military-civil administrations, since the beginning of hostilities 534 civilians have applied to medical institutions and been registered as having sustained injuries or other health impacts related to the hostilities; of these 513 were registered in Luhansk and 21 in Donetsk oblasts. However, the actual number of injured civilians is unknown³⁶.

According to the Ministry of Veterans, as of 6 February 2020, 107 applications had been submitted to the Inter-Agency Commission to establish the presence of injuries or other health impacts sustained from explosives, ammunition and military weapons in the ATO/OUF area. The Commission ruled that 83 of these persons had sustained injuries or other health impacts, but denied 6 applications. Consideration of the remaining applications was postponed for clarification of information for 7 persons, and a further 11 applications were not considered.

Social insecurity of persons illegally detained as a result of the armed aggression against Ukraine

As evidenced by the problems highlighted in appeals to the Commissioner from persons who were detained in the temporarily occupied territories of Donetsk and Luhansk oblasts, the current legal framework provides for the payment of one-time cash benefits and other social benefits only to those who were released on 27 December 2017, 24 January 2018, 7 September and 29 December 2019³⁷.

This leaves many affected people without access to social protection. For instance, the NGO Ukrainian Association of Prisoners, which cares for more than 3,000 released persons, almost half of whom are civilians of all ages, has campaigned to protect the right to one-off cash benefits for persons released from captivity between 2014 and 27 December 2017.

Following a request for clarification from the Commissioner, the Ministry of Veterans reported that the respective acts of the Cabinet of Ministers of Ukraine do not extend to persons released from captivity before 27 December 2017. Their social protection requires legislative regulation³⁸.

³⁶ These data do not take into account cases that occur in non-government-controlled areas, and do not take into account health problems sustained for various reasons that eventually led to disability.

³⁷ Protection of the rights of persons detained as a result of the armed aggression against Ukraine after their release is regulated by a number of acts, in particular, Cabinet of Ministers of Ukraine Resolutions 38 "Certain Issues of Social Support to Persons Released from Captivity" of 31 January 2018, 84 "Certain Issues of Social Support to Persons Illegally Deprived of Personal Liberty" of 11 September 2019 and 1122 "Certain Issues of Social and Legal Protection of Persons Deprived of Liberty as a Result of Armed Aggression against Ukraine, after Their Release" of 11 December 2019.

³⁸ During 2017 and 2018, draft laws were registered in the Verkhovna Rada of Ukraine aimed at regulating the legal status of persons who had illegally been detained. Two of these were revoked, and a number of significant comments and suggestions were made to the third draft law (registered as no.8205 of 27 March 2018 and re-registered as no. 0936 of 29 August 2019).

The Commissioner sent a request to the Prime Minister of Ukraine to encourage development of a legal framework to regulate the legal status and social protection of persons illegally deprived of their liberty as a result of the armed aggression against Ukraine. The issue remains unresolved.

Violations of the rights and interests of family members of persons who have gone missing in unclear circumstances

On 17 June 2015, Ukraine acceded to the International Convention for the Protection of All Persons from Enforced Disappearance. Law of Ukraine 2505-VIII “On the Legal Status of Missing Persons” of 12 July 2018 (hereafter Law 2505) defines the mechanism for acquiring the relevant status and the right to social protection for family members. It does not, however, establish which categories of persons are granted the status of person missing in unclear circumstances based on submission of correspondence about the fact of disappearance of a person, and which are granted this status based on a court decision.

Pursuant to Law 2505, Article 1461 was added to the Criminal Code of Ukraine to define responsibility for enforced disappearances, but no court decision has been made on this issue.

At the same time, monitoring of the implementation of the provisions of the above-mentioned Law proves that no secondary legislation has been adopted for its effective implementation.

Therefore, in March 2019, the Commissioner submitted a proposal to the Prime Minister of Ukraine to take measures to implement the provisions of Law 2505.

As a result, the Cabinet of Ministers of Ukraine adopted Ordinance 248-p “On the establishment of the Commission on Persons Missing in Special Circumstances” of 10 April 2019 and Resolution 433 “On Approval of the Procedure for Payment of Average Earnings Authorized to Perform the Functions of the State Who Went Missing during an Armed Conflict, Hostilities, Riots or in connection with the Performance of Official Duties to Eliminate the Consequences of natural or Man-made Emergencies” of 22 May 2019.

However, payments have not been made calculated against average earnings, as the Commission had not been able to start its activities by the end of 2019, due to the fact that Regulations for its activities have not been approved.

The Unified Register of Persons Missing in Special Circumstances has also not been established.

Since the onset of the armed conflict, various data on missing persons have been published. For example, the Security Service of Ukraine reported on 403 missing persons. The International Committee of the Red Cross (ICRC) has received reports on the disappearance of 768 persons. The NGO Myrnyi Bereh reports that 4,820 persons have gone missing during the entire period of the armed conflict.

However, even such information does not reflect the real scale of the situation, as it only provides data on those who went missing during the hostilities. Civilians who have gone missing in the temporarily occupied territories are not registered. It is also impossible to tell the exact number of people who have been abducted and relocated to the territory of the Russian Federation.

108 *Violation of the right to receive state-guaranteed social benefits, including pension benefits, for internally displaced persons and civilians living in non-government-controlled areas*

The Commissioner received 654 reports of violations of the right to receive state-guaranteed social benefits, including pension benefits, for internally displaced persons and civilians living in non-government-controlled areas. A significant proportion of these appeals contains information on non-compliance with court decisions mandating the PFU to resume pension benefits. Following consideration of appeals and intervention by the Commissioner, in 132 cases the right of citizens to social benefits (including pensions) was restored, and payments in arrears were made.

Example

Citizen N. appealed to the Commissioner to protect her right to a pension. In her application, she stated that she was internally displaced and had been registered with the PFU in a district of Kyiv since January 2018. At the time of the application, N. was owed UAH 5,890.61 in arrears on her pension (for the period January to May 2018). The situation was complicated by the fact that the applicant had an incurable cancer and needed funds for treatment. After the Commissioner's intervention, the money was paid to citizen N.

According to the Procedure for payment of pension arrears by court decisions approved by the Cabinet of Ministers of Ukraine Resolution 649 of 22 August 2018 (as amended), the PFU pays the pension arrears within the available budget allocations. At the end of the year, arrears to pensioners based on court decisions amounted to more than UAH 9 billion.

Given the urgent need to address these problems with pension payments to internally displaced persons, the Commissioner sent letters to the Prime Minister of Ukraine in April and November 2019.

The letters highlighted the need to amend Cabinet of Ministers of Ukraine Resolution 637 of 5 November 2014 "Certain Issues of Social Benefits to Internally Displaced Persons", in terms of the regulation of a separate procedure for payment of pensions not paid for the month of their renewal.

However, many issues affecting internally displaced persons have not been resolved through the Commissioner's interventions, indicating a need to improve the legislation in force and ensure that relevant central executive authorities act correctly.

The Verkhovna Rada of Ukraine has registered a draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Exercise of the Right to a Pension" (no. 2083-d of 26 November 2019) aiming to regulate pension payments to internally displaced persons and persons living in the temporarily occupied territories of Ukraine.

Every citizen of Ukraine should be able to enjoy constitutional rights and freedoms in full, regardless of whether or not they are registered as internally displaced. Establishment of additional requirements and responsibilities is only allowed in cases and to the extent conditioned by the use of additional/special benefits and that is necessary to prevent abuse of the right to such benefits.

The existing legal framework creates room for discrimination on the basis of a person's place of residence, violates property rights and deprives those who are physically unable to cross the 'contact line' of the right to a pension³⁹.

The right to social protection includes the right of citizens to financial support when they get older. An old-age pension, seniority pension and other retirement benefits earned in the course of previous employment are a form of social protection. This right determines the content and nature of the state's obligation to those citizens who have acquired the right to receive a pension. By enshrining at constitutional level the right to social protection of every citizen, without any exceptions, the state is implementing the provisions of Article 24 of the Constitution of Ukraine, according to which citizens have equal constitutional rights and there are no restrictions based on race, colour of skin, political, religious or other beliefs, sex, ethnic and social origin, property status, place of residence, language or other features.

Given the social importance of pensions, a citizen's right to a pension cannot be linked to conditions such as permanent residence in Ukraine; in accordance with constitutional principles, the State is obliged to guarantee this right regardless of where the person resides – in Ukraine or abroad⁴⁰.

Therefore, applying the principle of legal analogy and effective legislation⁴¹, it can be stated that the right of a person to a pension cannot be limited because of his/her place of residence. This is also confirmed by national and international case law on similar issues.

Some of the appeals addressed to the Commissioner indicate that the authorities take a "tick-box" approach to implementation of Law of Ukraine 1706-VII "On Ensuring the Rights and Freedoms of Internally Displaced Persons" of 20 October 2014 (hereafter Law 1706-VII) with regard to removal of internally displaced status by social protection bodies. The Law requires the establishment not only of the fact that the person has been absent from that person's temporary place of residence for a certain period of time, but also that there are reasonable grounds to believe that the person has returned to the abandoned permanent place of residence.

However, local social protection authorities do not try to obtain such information and consider that if an internally displaced is absent from that person's place of temporary residence for more than 60 days, the status should be revoked. In many cases, the internally displaced persons may be absent from their place of residence (because they are in hospital, for instance), but they have remained in government-controlled areas and have not crossed the 'contact line'.

The decision to revoke the certificate may be appealed to the court of administrative proceedings. However, all this time, the person will not be receiving financial assistance, social benefits and pensions. This puts the internally displaced persons on the brink of survival, as even after the internally displaced certificate is renewed, the arrears incurred are not paid.

³⁹To date, the residents of the temporarily occupied territories can only receive social payments and pensions if they travel to the territory controlled by Ukrainian authorities and register as internally displaced persons.

⁴⁰The Constitutional Court in case 1-32/2009.

⁴¹ Under Law of Ukraine 1058-IV "On Compulsory State Pension Insurance" of 9 July 2003, the conditions and provisions of compulsory state pension insurance are changed exclusively by amendments to this Law. In this context, it is important to note that during the occupation of part of the territory of Ukraine by the Russian Federation, no changes were made to this Law concerning pensions for citizens living in the occupied territories or who had relocated from there.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – expedite consideration and adoption of draft Law of Ukraine 2083-d “On Amendments to Certain Laws of Ukraine Concerning the Exercise of the Right to Pension” of 26 November 2019.

To the Cabinet of Ministers of Ukraine:

1. Develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on social protection of civilians affected by armed conflict.
2. Develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on the regulation of legal status and social protection of persons illegally detained as a result of the armed aggression against Ukraine, as well as members of their families.
3. Develop and submit to the Verkhovna Rada of Ukraine a draft law on regulations for obtaining legal status of persons who have gone missing in special circumstances and persons who have disappeared in the temporarily occupied territories.
4. Develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the State Budget of Ukraine for 2020, providing for expenditures to ensure observance of the rights and interests of persons missing in special circumstances and social protection for their families, and include the respective expenses in the budgets for the following years.
5. Develop and approve lists of social services to be provided to persons deprived of their liberty as a result of the armed aggression against Ukraine, as well as to members of their families.
6. Develop and approve Regulations on the Commission on Persons Missing in Special Circumstances and ensure its operation.
7. Develop and approve a procedure for making social payments to internally displaced persons for earlier periods, providing a mechanism for making such payments in accordance with court decisions.
8. Develop and approve a procedure for payment of pensions and other social benefits to citizens of Ukraine living in the temporarily occupied territories or in settlements on the ‘contact line’.
9. Take measures to shape appropriate conditions for the provision of necessary health care and psychological rehabilitation to civilians affected by armed conflict.

To the Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine – ensure the establishment of a State Register of civilians affected by armed conflict.

To the Ministry of Social Policy of Ukraine – develop and provide explanations to state oblast administrations on the procedure for establishing reasonable facts of absence of a person for a certain period of time at the place of residence, in accordance with Law of Ukraine 1706-VII “On Ensuring the Rights and Freedoms of Internally Displaced Persons” of 10 October 2014.

To the Pension Fund of Ukraine – make financial and economic calculations of the expenditures needed to provide pension payments to internally displaced persons for earlier periods and to citizens of Ukraine living in the temporarily occupied territories or in settlements on the ‘contact line’

To Luhansk and Donetsk Oblast Civil Military and Kherson State Oblast Administrations – ensure registration of reports of persons missing in special circumstances and information on their family members at all the checkpoints on the ‘contact line’/administrative border and provide necessary legal assistance to applicants in organizing the search for such persons.

5.2. Restitution⁴². Right to housing and compensation for property/material damage to civilians affected by armed conflict

The Commissioner monitored the legislation and case law on observance of the rights of Ukrainian citizens affected by the armed conflict to housing, and to restitution or compensation. For internally displaced persons, the right to housing is enshrined in Law 1706-VII, the implementation of which is guaranteed by allocations from the appropriate authorities to local self-government bodies and local state administrations. The current legal framework recommends that local self-government bodies (or, if not available, the relevant military-civil administrations), should provide funding to create housing stock for temporary residence of internally displaced persons from the relevant local budgets, taking into account the need for such housing and the need for increased capacity of these authorities to provide the internally displaced persons with housing for temporary residence and to facilitate access to administrative services for residents of settlements on the ‘contact line’ and in the temporary occupied territories of Donetsk and Luhansk oblasts⁴³. This objective was achieved by reducing the amount of co-financing of relevant measures from local budgets from 50 to 30 per cent. While the Government tries to settle this issue, it is ensuring the creation of temporary housing stock by approving the Procedure and conditions for providing subsidies from the state budget to local budgets. The funding for such measures is critically low, however⁴⁴.

The lack of sufficient financial resources to implement the mechanisms to provide internally displaced persons with housing and to operate established funds and programmes may necessitate involving national and international donors, legal entities and individuals to finance housing programmes, and exploring co-

⁴² Restitution is the restoration of violated property rights, bringing them back to the state that existed at the time of the act that caused the damage, i.e., the return or restoration of tangible assets in kind (the same or similar, or assets of the same value). If they cannot be returned in kind, their monetary value is reimbursed. In international law, restitution is the return under a peace treaty of property wrongfully seized during a war by one state from the territory of another state.

⁴³ In pursuance of the Strategy for the Integration of Internally Displaced Persons adopted in 2017 and the implementation of long-term decisions on internal displacement until 2020, in January 2018, the Government amended the Procedure for Establishing Housing Stock for Temporary Residence and the Procedure for Provision and Use of Housing from Housing Stock for Temporary Accommodation in terms of extending their effect to internally displaced persons. The Cabinet of Ministers of Ukraine adopted Resolutions 582 “On Approval of the Procedure for Formation of Housing Stock for Temporary Residence of Internally Displaced Persons and the Procedure for Providing Temporary Use of Housing from Housing Stock for Temporary Accommodation of Internally Displaced Persons” on 26 June 2018 and Resolution 793 “On Amendments to Item 4 of the Procedure and Conditions for Submitting a Subsidy from the State Budget to Local Budgets for the Implementation of Measures to Support Territories Affected by the Armed Conflict in Eastern Ukraine” on 21 August 2019.

⁴⁴ According to the Ministry of Veterans, the total amount of the subsidy for the procurement of temporary housing for internally displaced persons in 2017 was UAH 17 million (UAH 16.3 million was used). The subsidy was used to buy 72 apartments for 240 internally displaced persons. In 2018, the subsidy was UAH 34 million (UAH 27.3 million used), with 360 internally displaced persons provided with housing, and in 2019, UAH 34 million. Law of Ukraine 294-IX “On the State Budget of Ukraine for 2020” of 14 November 2019 provides for expenditure from the general state budget fund to implement measures to support the territories affected by the armed conflict in Eastern Ukraine to the amount of UAH 20 million.

112 financing of housing programmes and projects from local budgets in the context of decentralization⁴⁵.

Not only does the state lack resources to provide internally displaced persons with housing, it also cannot provide accurate information on the housing needs of this group of people⁴⁶. In addition, not all housing programmes currently operating at the national and regional levels are for just the internally displaced persons. By his Decree 837/2019 “On Urgent Measures to Conduct Reforms and Strengthen the State” of 8 November 2019, the President of Ukraine tasked the Cabinet of Ministers of Ukraine with developing a state targeted programme to address the housing needs of ATO/OUF participants and internally displaced persons through public-private partnership and soft loans, which should have a positive impact on the situation.

Realization of the right of the civilians to restitution of housing, land and property, payment of compensation for housing and other property destroyed or damaged as a result of the armed conflict⁴⁷

According to Article 2 of Law of Ukraine 2268-VIII “On the Peculiarities of National Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts” of 18 January 2018, the liability for material or non-material damage caused to Ukraine as a result of the armed aggression by the Russian Federation falls to the Russian Federation, in accordance with the principles and norms of international law. At the same time, the state, not being able to protect persons under its jurisdiction from violations of their fundamental human rights as a result of hostilities and to implement its positive obligations, should ensure effective mechanisms to protect and restore violated rights, including compensation for damage. Ukraine is also obliged to take all necessary measures aimed at assessing all damages caused by the armed aggression and have them compensated by the Russian Federation through the procedure of bringing it to international legal arbitration, in accordance with international law.

Compensation for property destroyed during the armed conflict has been considered by the European Court of Human Rights (ECtHR) on numerous occasions⁴⁸. The legal position of the ECtHR is based on the assertion of the responsibility of the state, which is obliged to ensure peace and order in society, as well as the personal security and security of property of people under its jurisdiction. Today, Ukrainian legislation provides for civil and criminal remedies to address violations of property rights. Legislation covers filing criminal charges with law enforcement; filing complaints to the heads of public authorities/higher authorities about illegal actions or omissions of public authorities; and filing civil lawsuits in court for reimbursement of damages. The courts are receiving more and more claims for recovery of monetary compensation for real estate damaged or destroyed during the ATO/OUF.

⁴⁵ See ‘Improving the national legislation of Ukraine on the protection of human rights of internally displaced persons. Revised baseline analysis’ Council of Europe, Internal Displacement in Ukraine: Building Solutions Project, 2019, p. 83.

⁴⁶ Back in 2018, the Accounting Chamber drew attention to the need to finalize the Unified Information Database on Internally Displaced Persons and update the information therein. Agreeing with this conclusion, it should be noted that, based on the needs assessment, the database should include information on the number of internally displaced persons in need of better housing.

⁴⁷ International instruments – including the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949; United Nations Principles on Housing and Property Restitution in the Context of Return of Refugees and Internally Displaced Persons (Pineiro Principles); United Nations Guiding Principles on Internal Displacement; Resolution of the Parliamentary Assembly of the Council of Europe 1708 (2010) “Solving property issues of refugees and displaced persons” – provide and guarantee the principle of the inviolability of rights to property located in the territory of an armed conflict, as well as provide for the right to compensation or restitution for destroyed or damaged property. PACE Resolution 1708 (2010) calls for timely and effective redress for the loss of access and rights to housing, land and property abandoned by refugees and internally displaced persons without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory (item 10.1).

⁴⁸ In particular, the ECtHR’s position on this issue, which concerns not only Ukraine, is demonstrated in the cases of Dogan and others v. Turkey, Saghinadze and others v. Georgia, Gulmammadova v. Azerbaijan, Radanovic v. Croatia, and Xenides-Arestis v. Turkey.

Some of the claims are against the Russian Federation; the others are against the Cabinet of Ministers of Ukraine in view of the provisions of Law of Ukraine 638-IV “On Combating Terrorism” of 20 March 2003, and the Code of Civil Protection (CCP) of Ukraine⁴⁹. Only a few court decisions regarding destroyed housing have been finalized. Some were overturned after appeals to higher courts, while others are still pending before the courts of appeal or cassation. Important legal positions were expressed by the Grand Chamber of the Supreme Court of Ukraine in case 265/6582/16-ts, which concerned damage to/destruction of commercial property during the anti-terrorist operation as a result of a terrorist act (artillery shelling of a residential area in Mariupol on 24 January 2015). The court confirmed the State’s obligation to provide compensation for damaged and destroyed residential real estate⁵⁰.

Barriers to implementation of the procedures for compensation for destroyed housing provided by the CCP of Ukraine include the lack of a mechanism to assess property destroyed or damaged as a result of hostilities; the absence of a single register of such facilities; and the lack of a mechanism to restore such property and/or to pay compensation for damage or destruction.

In July 2019, the Government adopted a new version of the Procedure for providing and determining financial assistance or compensation to victims of emergencies remaining at the previous place of residence, approved by Cabinet of Ministers of Ukraine Resolution 947 of 18 December 2013 (as amended), which is a positive step towards ensuring that the property rights of this group of people are protected. However, Resolution 947 only covers a small number of people (who remained at their previous places of residence) and does not take into account the interests of all persons affected by an armed conflict, in particular those who were forced to leave their place of residence. Following the analysis of the above-mentioned Procedure, in August 2019, the Commissioner sent proposals to the Ministry of Temporarily Occupied Territories for its finalization. The State should take a comprehensive approach to the legal regulation of the provision of compensation for property/material damage to affected citizens and introduce a transparent, accessible, out-of-court (arbitration) mechanism of restitution and compensation for material damage caused to property owners as a result of the armed conflict, including the development of a unified framework to assess damage, and exploration of alternative means of restoring violated rights for affected citizens.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. Develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to the Housing Code of the Ukrainian SSR to ensure observance of the constitutional right to housing for internally displaced citizens of Ukraine.

⁴⁹It is necessary to take into account the position of the Venice Commission, which stated in its Opinion on the Law on Occupied Territories of Georgia (CDL-AD (2009) 015, 17 March 2009) that “... 37. Article 7 of the “Law on the occupied territories of Georgia” explicitly fixes the responsibility of the Russian Federation for human rights violations, moral and material damage and the destruction of cultural heritage in Abkhazia (Georgia) and South Ossetia (Georgia). As a rule, questions of international responsibility cannot be regulated on the basis of national law, but are solved on the basis of international law... 39. The reimbursement of “moral and material damages inflicted on the Occupied Territories” regulated in Article 7 para. 3 will also have to be fixed on the basis of international law. Georgian courts would not be competent to adjudicate on claims against the Russian Federation according to the principles of State immunity”.

⁵⁰Although the case concerns commercial real estate, the conclusions made in the case are also significant in the context of compensation for damaged and destroyed housing. In particular, the Supreme Court of Ukraine noted the difference in the social importance of residential real estate compared to non-residential real estate. However, in seeking compensation, the applicants should have pointed out that the State had failed to protect private property during the “terrorist act” rather than claim that it had not established a compensation mechanism for the damage caused by the “terrorist act”.

- 114 2. Develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on restitution and/or compensation for damage to housing/property as a result of hostilities in Eastern Ukraine.
3. Develop and approve a procedure for compensation for property destroyed on the territory of the anti-terrorist operation, in particular that provided by the Law of Ukraine 638 “On Combating Terrorism” of 20 March 2003.
4. Take measures to develop and approve the regulations needed for implementation of a mechanism to provide monetary compensation to persons whose housing was destroyed or damaged as a result of hostilities in Eastern Ukraine.
5. In accordance with the recommendations provided by the Parliamentary Assembly of the Council of Europe (PACE) in Resolution 2198 (2018), assess opportunities for joining the European Bank of Reconstruction and Development to implement projects to satisfy the housing needs of internally displaced persons in Ukraine.

To the Ministry of Social Policy of Ukraine, the Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine – develop and implement a mechanism to assess the housing needs of internally displaced persons by including relevant data in the Unified Information Database on Internally Displaced Persons.

To the Ministry of Development of Communities and Territories of Ukraine:

1. Develop and submit in the manner prescribed in law for consideration by the Verkhovna Rada of Ukraine a draft law on stock-taking of abandoned housing in order to free up housing stock for temporary accommodation of internally displaced persons, as well as a mechanism to compensate the owners of such property.
2. Together with local self-government bodies (or, if not available, with relevant military-civil administrations), take stock of abandoned housing in order to free up housing stock for temporary accommodation of internally displaced persons.

5.3. Rights of citizens of Ukraine living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol

The Commissioner monitored the legal framework and case law on the observance of the rights of citizens of Ukraine living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol.

During the period of temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol, monitoring revealed a lack of effective mechanisms to ensure the rights of citizens of Ukraine living in these territories.

The main problems faced by Ukrainian citizens living in the temporarily occupied territory of the Autonomous Republic of Crimea and the City of Sevastopol are restrictions to access to financial services in connection with their status as non-residents in the government-controlled area of Ukraine; complicated procedures for civil registration (births and deaths); and violations of the right to religious freedom by the occupation administration.

Restrictions to access to financial services in connection with the status of non-residents of the government-controlled area of Ukraine

Law of Ukraine 1636-VII “On the Creation of a Free Economic Zone Crimea and on Peculiarities of Carrying Out Economic Activities in the Temporarily Occupied Territory of Ukraine” of 12 August 2014 (hereafter Law 1636-VII) is discriminatory against residents of Crimea and restricts their rights and freedoms compared to other citizens of Ukraine, even those living under the same legal regime of occupation in Donetsk and Luhansk oblasts.

Law 1636-VII categorizes Ukrainian citizens who are registered as residents of Crimea but do not have internally displaced certificates as non-residents, or foreigners. This leads to violations of their civil rights on a daily basis. For example, when receiving inheritance, a non-resident pays 18 per cent in personal income tax, while residents pay only 5 per cent.

Ukrainian banks that have established separate structural subdivisions since the start of the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol are denying citizens of Ukraine who are residents of Crimea the right to withdraw their money from savings accounts, even if they have a court decision ordering that this right be upheld.

Example

In August, citizen N. filed a complaint with the Commissioner alleging that a Ukrainian bank had violated his right to withdraw his money from his savings account. In his application, N. stated that he had been unable to withdraw his money from a savings account opened with a Ukrainian bank in the temporarily occupied territory of the Autonomous Republic of Crimea, contrary to the decisions of the court of first instance and appellate court. In support of his claims, the applicant stated that in early February 2014, a savings agreement had been concluded between him and the bank, under the terms of which the money had been deposited in the savings account for a period of 366 days.

By the decision of Shevchenkivskyi District Court of Kyiv of 26 March 2015 in case 761/33484/14-ts, upheld by a decision of the Kyiv Court of Appeal of 16 June 2015, the bank was charged an amount under the savings agreement in favour of the applicant. In addition, in March 2017, Shevchenkivskyi District Court of Kyiv ruled in absentia that the bank was obliged to pay a fine in favour of the applicant. However, at the time of the appeal to the Commissioner, none of the court decisions had been implemented. The bank's debt to the applicant as a whole amounted to over UAH 1 million. Following the Commissioner's intervention in September 2019, the bank implemented the court's decision and paid the debt to the applicant in full.

116 Monitoring of court decisions recorded in the Unified State Register of Court Decisions indicates that in dozens of similar cases, decisions have been made in favour of citizens of Ukraine⁵¹.

In response, the banks argue that the courts ignore the fact that it is not possible for them to return money to the plaintiffs, due to the fact that under the laws of the Russian Federation and in accordance with the decision of the Central Bank of the aggressor state of 21 April 2014 and decisions of the courts of the Russian Federation, responsibility for returning money from these savings accounts rests with an autonomous non-profit organization of the Russian Federation, the Depositors Protection Fund. According to Article 1 of Law of Ukraine 1207-VII “On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine” of 15 April 2014, the temporarily occupied territory of Ukraine is an integral part of the territory of Ukraine, where the Constitution and laws of Ukraine have effect. Therefore, the failure of banks to fulfil their obligations to return money on these grounds is unjustified.

Complexity of the procedure for civil registration (births and deaths)

State registration of births and deaths in the temporarily occupied territory of Ukraine currently takes place in accordance with Article 317 of the Code of Civil Procedure of Ukraine, taking into account Article 49 of the Civil Code of Ukraine and Law of Ukraine 2398-VI “On State Registration of Civil Status” of 1 July 2010. This means that a court decision is needed to register a birth or death. This mechanism has several disadvantages. In particular, applications to establish the fact of birth can be submitted to any court in Ukraine, while an application to establish a fact of death in the temporarily occupied territory can only be made at a court in a special list⁵².

In addition, another significant barrier to establishing a fact of death in the temporarily occupied territory is that applicants entitled to go to court do not include the heirs of the deceased who have no family ties with the testator but have a reasonable and legitimate interest in establishing the legal fact of his/her death. Such circumstances significantly complicate observance of the rights of Ukrainian citizens to inheritance.

In April 2017, the Supreme Specialized Court of Ukraine for Civil and Criminal Cases issued an explanation to the oblast-level courts of appeal and the city of Kyiv court of appeal with clarification on the use of wording in court decisions that determine the place where births and deaths occurred. This document, among other things, emphasizes the case law of the European Court of Human Rights in cases against Turkey, as well as the case law of Moldova and Russia⁵³.

⁵¹ The courts make such decisions taking into account national banking legislation and acts adopted in connection with the aggravation of the security situation in the Crimean peninsula, in particular, National Bank of Ukraine Resolution 260 “On Revocation of Banking Licenses and General Licences for Foreign Currency Exchange Operations of Individual Banks and Closing of Separate Bank Divisions located on the Territory of the Autonomous Republic of Crimea and the city of Sevastopol” of 6 May 2014. Not surprisingly, however, certain courts refer to the decision of the Central Bank of the Russian Federation RH-33/1 of 21 April 2014, which states that since the adoption of this decision the activities of separate structural units of Ukrainian banks in the Autonomous Republic of Crimea are terminated.

⁵² An application to establish the fact of birth in the temporarily occupied territory of the Autonomous Republic of Crimea may be filed by the parents or other legal representatives of a child to any court of Ukraine outside the temporarily occupied territory. An application to establish the fact of death in the temporarily occupied territory of the Autonomous Republic of Crimea may be filed by the relatives of the deceased or their legal representatives to a court of Ukraine outside the temporarily occupied territory. [Article 12 of Law of Ukraine 1207-VII “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” of 15 April 2014. Information letter of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases regarding the use in court decisions of wording reflecting the place where legal facts happened 9-697/0/4-17 of 11 April 2017].

⁵³ The Court concluded that documents issued by bodies and institutions (such as medical institutions) in the temporarily occupied territory could be taken into account by national courts in exceptional cases and in conjunction with other evidence when considering cases on establishing legal facts. This practice is fully consistent with the foundations of international humanitarian law – the Geneva Conventions.

Article 50(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that the occupying Power shall take all necessary measures to facilitate identification of children and registration of their family ties. This rule of international law was later extended to define the obligation of the occupying Power to register births, deaths and marriages⁵⁴. It was for this reason that the court procedure to establish the legal fact of a birth or death was introduced. However, going to court involves dealing with bureaucratic red tape. Citizens of Ukraine living in the temporarily occupied territory must apply to any civil registry office in the government-controlled territory, presenting a birth certificate issued by the occupation administration, and be denied registration of the fact of birth. Such a refusal is a ground for going to court.

Although the court procedure for such applicants is simplified, only around 5,000 Ukrainian birth certificates were issued to children born in the occupied territories in the first half of 2019, while data from open sources of the occupying state show that more than 17,000 children were born in this territory in the same period.

Law of Ukraine 3674-VI "On Judicial Fees" of 8 July 2011 provides for an exemption from payment of court fees for applicants in cases of establishing legal facts – births and deaths – that took place in the temporarily occupied territories. But unfortunately, not all the applicants from the temporarily occupied territories are aware of this right, and therefore not everyone enjoys it⁵⁵.

Contrary to the requirement of legislation in force regarding that such cases should be considered immediately, the court procedure is lengthy. In particular, the time between the first visit to the registration authority and issuance of the certificate averages two to six weeks. During this time, the applicant has to stay in the government-controlled territory of Ukraine and spend money on accommodation.

There is yet another significant shortcoming in establishing the fact of birth. It is only possible to apply for Ukrainian documents through the administrative procedure within one year of the child's birth. If more than a year has passed, the procedure for renewal of the act record is applied, and this can last at least three months.

There are also problems establishing the fact of the birth if the mother's name on her marriage certificate issued by the occupation administration and that in her Ukrainian passport are not the same. In this case, the court cannot establish the fact of marriage or paternity and, as a result, the woman receives the status of single mother, and paternity is established in court.

Law 2268-VIII was the first step towards introduction of an administrative procedure for citizens from the temporarily occupied territory in Donetsk and Luhansk oblasts. Unfortunately, the mechanism provided by this Law can only be applied to the temporarily occupied territories in Donetsk and Luhansk oblasts; therefore, the needs of the residents of occupied Crimea are again ignored.

⁵⁴In national law, such international standards are enshrined in Article 9 of Law of Ukraine 1207-VII "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" of 15 April 2014: any act (decision, document) issued by the authorities and/or persons who operate illegally on the territory of the Autonomous Republic of Crimea is invalid and does not create legal consequences.

⁵⁵According to NGOs, in 2018 and 2019 in Kherson City Court, 90 and 93 per cent applicants paid court fees in cases establishing the facts of the birth of a child, and 65 and 68 per cent of applicants paid court fees in cases establishing the facts of death respectively. In addition, case law shows that in most cases, judges throughout Ukraine interpret the rule on exemption from court fees as applicable only to internally displaced persons, leading to situations where other groups of persons affected by the conflict are forced to pay court fees in such cases.

- 118 International humanitarian law requires the State to register children immediately after birth, as this will ensure that the child is in touch with the State and prevent statelessness. Lack of registration deprives such persons of access to medical, educational and social services, and they may become victims of abduction, sale or trafficking.

In 2018, PACE called on Ukraine to introduce administrative procedures for the civil registration of citizens living in the temporarily occupied territories⁵⁶.

Violation of the right to freedom of religion by the occupation administration

Findings from the analytical report *Freedom of Religion in Focus* published by the Institute for Religious Freedoms (hereafter the IRF)⁵⁷, indicate that the occupying power uses the concept of the 'Russian world' to strengthen its authority, exemplified by methods of terror used against pro-Ukrainian religious organizations and communities to destroy any oppositional thought in society.

According to the IRF, most church institutions and religious communities in the Russian-occupied Autonomous Republic of Crimea have ceased operations or are operating underground. In particular, for most denominations it has become impossible to hold services in their own temples or houses of worship. The main reason is the seizure of religious buildings by the occupying power or the threat of identification of parishioners of a particular religious community and their further persecution.

In addition, media monitoring by the Commissioner recorded information about the seizure of the Church of the Intercession of the Holy Virgin from representatives of the Ukrainian Orthodox Church (Kyiv Patriarchate) in the village of Perevalne of Simferopol district, and the Church of the Holy Martyr Clement of Rome in the city of Sevastopol⁵⁸.

According to the instruction of the Russian Federation, in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, most religious associations have been subject to unfounded accusations of extremism, espionage in favour of Ukraine or the United States, sabotage, and so on. These allegations have been accompanied by illegal arrests and confiscation of church property.

In addition, the Russian Federation is still not implementing the decision of the Council of Europe⁵⁹ of 3 May 2017 CM/Del/Dec (2017) 1285/2.1bisb on lifting the ban on the Crimean Tatar People's Mejlis as an extremist organization.

⁵⁶ Resolution 2198 (2018) of the Parliamentary Assembly of the Council of Europe "Humanitarian Consequences of the War in Ukraine."

⁵⁷ <http://irf.in.ua/files/publications/2018.10.24-IRF-Report-UKR.pdf>.

⁵⁸ <http://ua.krymr.com/a/25406219.html>.

⁵⁹ http://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168070ec02.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. Develop and submit to the Verkhovna Rada of Ukraine a draft law to invalidate the Law of Ukraine “On the Creation of a Free Economic Zone Crimea and on Peculiarities of Carrying Out Economic Activities in the Temporarily Occupied Territory of Ukraine” #1636-VII of 12 August 2014.
2. Develop and submit for consideration to the Verkhovna Rada of Ukraine a draft law on amendments to certain legal acts of Ukraine on introducing administrative procedures for state registration of births and deaths that take place in the temporarily occupied territories of Ukraine.
3. Compile materials for submission to the International Court of Justice of a consolidated claim against the Russian Federation regarding the implementation of its international legal responsibility for the armed aggression against Ukraine.

To the National Bank of Ukraine – provide clarification for institutions rendering financial services regarding the inadmissibility of violating the rights of citizens from the temporarily occupied territories to access banking services.

5.4. Right of citizens of Ukraine living in the temporarily occupied territories to freedom of movement

Respect for the rights and freedoms of civilians remains a crucial issue in an armed conflict. The Commissioner has repeatedly drawn the attention of public authorities to the needs of people who have to overcome difficult obstacles to visit relatives on both sides of the ‘contact line’, receive a pension or buy food, especially the need to create appropriate conditions for citizens at entry-exit checkpoints when the citizens travel to/from the temporarily occupied territories.

In 2019, 16.257 million citizens of Ukraine crossed the ‘contact line’/administrative border through eight operating checkpoints⁶⁰. Of these, 13.9 million crossed the ‘contact line’, and 2.3 million crossed the administrative border with the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. Seasonal changes in the weather and, accordingly, the hours of operation of the checkpoints, technical disruptions (lack of energy supply, and so on), reconstruction, as well as security measures are key factors influencing the process of crossing the checkpoints.

⁶⁰ It should be noted that the number of crossings is increasing from year to year (2016 – 8.569 million; 2017 – 11.842 million, 2018 – 13.620 million).

- 120 Stanytsia-Luhanska checkpoint is one of the most crowded.. During the reporting year, 3.6 million citizens of Ukraine crossed the 'contact line' there (or 26 per cent of all those who crossed the 'contact line' in Donetsk and Luhansk oblasts). The large number of people crossing at this checkpoint shows that there is an urgent need to increase the number of checkpoints, especially in Luhansk oblast, where only pedestrian crossing is possible. Specifically, an agreement should be made with the occupation administration of the Russian Federation on the opening of Zolote checkpoint.

Representatives of the Commissioner for the Observance of the Rights of Residents of the Autonomous Republic of Crimea and the City of Sevastopol and Residents of the Donetsk and Luhansk Oblasts monitor observance of the rights of persons crossing the checkpoints. In 2019, 13 monitoring visits were conducted. According to the latest monitoring, after the repair and rearrangement of the checkpoint, the situation concerning the rights of citizens who cross the checkpoints and the conditions of their stay at the checkpoint have significantly improved compared to previous monitoring visits. In particular, the State Emergency Service has established standing heating points (instead of tents) where people can get hot tea. There are medical centres, places for recreation with canopies and toilets, including for persons with disabilities (however, the number of toilets is still insufficient, as an average of 8-10,000 people travel through the checkpoint every day).

In addition, the monitoring established that the Centre for Administrative Service Provision located at Kalanchak checkpoint is not actually functioning. According to Kherson State Oblast Administration, it is operating in pilot mode.

Not every checkpoint has information and explanatory stands, and where there are information stands these contain outdated information. Conditions at the checkpoints do not meet sanitary and hygienic norms. Crossing the 'contact line' is still physically difficult for a lot of older people and persons with disabilities. For example, last year, ambulances were called to the checkpoints 290 times, with 27 deaths recorded.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine:

1. Make a decision on determining the status of the checkpoints, their subordination and the balance holder, in order to ensure the maintenance of the checkpoint infrastructure and to enable appropriate conditions for citizens when they cross the 'contact line'.
2. Ensure that ambulances and other emergency healthcare services are always available at the checkpoints in Luhansk, Donetsk and Kherson oblasts, and also take measures to equip them with necessary resources.

CHAPTER 6

**COMPLIANCE
WITH THE RULE
OF LAW IN THE EXERCISE
OF JUSTICE**

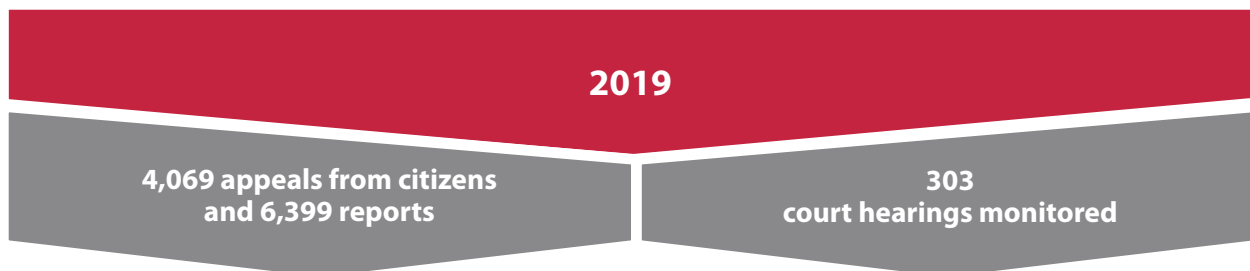
COMPLIANCE WITH THE RULE OF LAW IN THE EXERCISE OF JUSTICE

One of the key mechanisms for the protection of human rights in Ukraine is the right of every person to appeal in court against the decisions, actions or omissions of public authorities. At the same time, the main guarantee of judicial protection of human rights is the principle of the rule of law.

In Ukraine, the justice system is not adequately regulated and it does not ensure respect for the fundamental rights of participants at all stages of criminal, civil and administrative proceedings, as well as at the stage of execution of court decisions. This is evident in the 4,069 appeals and the 6,399 reports made to the Commissioner in the reporting year from citizens, officials and lawyers relating to violations of procedural rights.

Significant shortcomings in the functioning of the judiciary have also been evidenced by the large number of appeals from judges regarding the lack of court premises, as well as a significant number of open vacancies and the absence of judges from courts. This situation leads to violations of the constitutional right to judicial protection.

The Commissioner has been focusing on all of these issues. In 2019, measures were taken to: restore the rights of citizens when these were violated; identify systematic problems in the functioning of the justice system and send requests regarding these; and monitor compliance concerning procedural rights for all participants in 303 open hearings, in order to prevent such violations in the future.



6.1. Rights of participants in criminal proceedings during detention, arrest and investigation

In 2019, the Commissioner received 2,702 reports on violations of procedural rights of participants in criminal proceedings, including improper pre-trial investigation, failure to meet reasonable pre-trial investigation deadlines, violation of the right to defence, failure to enter information into the Unified Register of Pre-Trial Investigations (URPTI), and failure or refusal to issue an URPTI excerpt.

The right to an effective pre-trial investigation

A significant proportion of the reports received by the Commissioner concerned improper conduct of the pre-trial investigation: failure to enter information on a criminal offence into the URPTI; failure or refusal to provide excerpts from the URPTI; inaction on the part of the investigator and/or prosecutor;

- 124 failure to notify persons specified by law of the closure of criminal proceedings; excessive length of pre-trial investigation; and violation of the right to defence.

Following consideration of these reports, the Commissioner sent requests for complainants' rights to be restored to the prosecutor's office as procedural managers in criminal proceedings for inspection. Most allegations of ineffectiveness of investigations were confirmed, and the prosecutor's office responded by giving written instructions to investigators on specific investigative/search actions, and in some cases initiating the removal of investigators from further pre-trial investigation and transferring proceedings to other investigators.

Example

The Commissioner received a request from T. in which the applicant complained about the improper, in his opinion, pre-trial investigation in criminal proceedings relating to arson committed on the applicant's vehicle (that took place on 18 May 2018). Arson is a criminal offence under part 2 of Article 194 of the Criminal Code.

To verify the stated facts, the Commissioner sent a request to the Prosecutor's Office of Volyn oblast. As a result, the prosecutor proposed to the head of the pre-trial investigation body that the head suspend the investigator from the investigation, due to the ineffective way in which the pre-trial investigation was being conducted.

Progress in the pre-trial investigation and procedural guidance in the proceedings was considered at an extended operational meeting at the Oblast Prosecutor's Office, with the participation of the leadership of the Main Department of the National Police in Volyn Oblast. As a result, measures aimed at strengthening the pre-trial investigation were taken.

Example

L.'s appeal to the Commissioner referred to the ineffective pre-trial investigation in criminal proceedings opened on 15 September 2018.

According to the letter written by the Commissioner, Cherkasy Local Prosecutor's Office conducted an inspection and took measures to strengthen the pre-trial investigation; in particular, the investigation was entrusted to another investigator.

In addition, Cherkasy Local Prosecutor's Office initiated an official investigation into violations of the requirements of criminal procedure legislation during the pre-trial investigation, overseen by the leadership of the Main Department of the National Police in Cherkasy oblast.

Another example of the inaction of investigators is the collective appeal to the Commissioner from P. and others regarding progress in the pre-trial investigation in criminal proceedings opened on 6 September 2018 that was conducted by investigators from the investigative department of the Bila Tserkva unit of the Main Department of the National Police in Kyiv oblast. At the initiative of the Commissioner, the Local Prosecutor's Office in Bila Tserkva in Kyiv oblast conducted an inspection. As a result of the investigation, the head of the pre-trial investigation body assigned another investigator to the proceedings, to

improve the efficiency of the investigation and ensure that it was completed as soon as possible. In addition, the investigator was given written instructions on how to conduct the necessary investigative and procedural actions.

The right to have a pre-trial investigation conducted within a reasonable timeframe

One of the general principles of criminal proceedings enshrined in the Criminal Procedural Code (CPC) of Ukraine is that of reasonable time limit. This principle also applies to the right of a person to have reasonable time limits for pre-trial investigation observed.

Taking into account the case law of the ECtHR, the term “reasonable time” should be understood as the shortest period for consideration and resolution of a criminal case, procedural action or procedural decision, that is sufficient to provide timely (without undue delay) judicial protection of violated rights, freedoms and interests, achieving the goals and procedural actions and objectives of criminal proceedings.

Violations of a person’s right to reasonable time limits for pre-trial investigation are evidenced not only by the number of appeals received by the Commissioner in this regard, but also by the number of cases confirmed during inspections by prosecutors’ offices.

Analysis of information received from 226 appeals shows that often investigators do not perform procedural actions within a reasonable timeframe to fully and objectively establish the circumstances of the criminal offence, and delay consideration of petitions from participants in criminal proceedings, leading to further loss of evidence.

Unfortunately, in 2019 the practice of closing criminal proceedings without conducting proper pre-trial investigation, failure to notify persons specified by law of the results of the pre-trial investigation, and failure to send applicants copies of decisions to close the proceedings, continued.

Inspections carried out by prosecutors’ offices following requests made to them resulted in the revoking of six decisions to close criminal proceedings, while two applicants were provided with copies of decisions to close proceedings, enabling them to exercise the right to appeal these decisions, and two investigators were disciplined.

Example

In his appeal to the Commissioner, citizen K., among other things, alleged the possible illegal closure of criminal proceedings.

The Commissioner initiated an investigation by the Poltava Oblast Prosecutor’s Office into the facts laid down in K.’s appeal. Following the investigation, on 11 October 2019 the procedural manager revoked the decision to close the criminal proceedings made by the investigator of the investigative unit of Hadiach police unit of Main Department of the National Police in Poltava oblast as of 20 September 2019. The investigator was suspended from the pre-trial investigation in the proceedings, and the pre-trial investigation was entrusted to another investigator.

126 Since then, the investigation in the criminal proceedings has proceeded, and the person who is suspected of committing the offence has been notified, as stipulated in part one of Article 286 of the Criminal Code of Ukraine. In addition, the Main Department of the National Police in Poltava oblast began an official investigation to decide whether or not to bring to justice those who committed violations of the law and improperly performed their official duties.

Example

S. appealed to the Commissioner regarding the unjustified, in his opinion, closing of criminal proceedings.

At the request of the Commissioner, on 9 December 2019 the Dnipropetrovsk Local Prosecutor's Office 2 revoked a 13 November 2019 decision of the investigator of the investigative unit of Soborne police unit of the Main Department of the National Police in Dnipropetrovsk oblast to close the criminal proceedings, on the grounds that this was premature and unjustified. In order to ensure a full, high-quality and impartial investigation into the criminal proceedings, the procedural manager provided the investigator with written guidance.

Failure to complete adequate pre-trial investigations is justified by the excessive workload on investigators and the increase in the number of criminal proceedings.

One solution to problems related to the failure of the authorized bodies to ensure effective and reasonable pre-trial investigations would be swift simplification of the pre-trial investigation of certain categories of criminal offences. Law of Ukraine 321-IX "On Amendments to Section II 'Final and Transitional Provisions' of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Simplify Pre-trial Investigation of Certain Categories of Criminal Offences" of 3 December 2019 would introduce the notion of misdemeanours. Consideration of the law has been postponed, however, from 1 January 2020 to 1 July 2020. In addition, pre-trial investigative bodies need high-quality staffing.

Right to legal defence

One of the fundamental human rights in criminal proceedings is the right to legal defence. Observance of the principle of early access to a defence lawyer, guaranteeing that the state will provide no cost defence to those accused of a crime, ensuring the effectiveness of legal defence and enabling suspects to choose a defence lawyer freely as part of the right to a fair trial are of fundamental importance in criminal proceedings.

The Commissioner continues to receive complaints concerning the right to legal defence; in 2019, 161 such complaints were received.

Monitoring revealed that officials from the National Police in Kharkiv oblast did not comply with the requirements of notifying the centres for free secondary legal aid about cases where they apprehended a suspect, or subjected a suspect to administrative arrest or pre-trial detention.

Actions such as these committed by officials are violations of the right to defence. As the monitoring revealed that this was a systematic problem, in September 2019, the Commissioner sent a request to the Minister of Internal Affairs of Ukraine and the Prosecutor of the Kharkiv oblast to take action to eliminate violations of the right to legal defence during detention.

The Main Department of National Police in Kharkiv oblast conducted an official investigation into the incidents described in the submissions. Two persons were disciplined in connection with these incidents for having failed to carry out their official duties in line with the requirements specified in the legislation.

Special attention should be paid to complaints about the failure of prosecutors in local prosecutor's offices to carry out their duties, in particular in regard to implementation of procedural guidance for pre-trial investigations. In response to these complaints (and having verified the facts of the case in each complaint), the Commissioner filed a motion with the Prosecutor of the city of Kyiv to requesting that the Prosecutor take action to eliminate violations of human rights and freedoms by prosecutors from local prosecutor's offices in the City of Kyiv.

The applicant's right to have information about a criminal offence entered into the Unified Register of Pre-Trial Investigations and to obtain an appropriate excerpt from the URPTI

Like any state governed by the rule of law, Ukraine guarantees to every person the right to report illegal acts to law enforcement agencies. In addition, the law obliges the investigator or prosecutor to enter the relevant information into the URPTI no later than 24 hours after the submission of the statement and/or report on the committed criminal offence.

In 2019, citizens actively exercised their right to report illegal actions to law enforcement agencies. However, law enforcement officers did not always properly perform their duties; there were cases when information from citizen's reports on crimes was not entered into the URPTI, and when excerpts from the URPTI on crimes or on the closing of criminal proceedings were not provided on request, or where requests were refused.

These violations can be explained by the fact that investigators and prosecutors may try to "improve" statistical data on the investigation of crimes and referral of crimes to the courts by being selective about what information they enter into the URPTI on statements and/or reports of criminal offences. Investigators and prosecutors may also seek grounds to avoid entering information into the URPTI as they carry out certain procedural actions. This practice indicates ineffective prosecutorial oversight of compliance with the law when considering allegations of criminal offences.

To restore their rights in such cases, some applicants have appealed the investigators' decisions in court, and the investigating judges have upheld the complaints and ordered the relevant authorities to enter information into the URPTI.

The actions of these law enforcement officers discredit law enforcement agencies, and citizens are forced to apply to the Commissioner for protection of their rights. In 2019, 152 complaints were received on the issues outlined above.

- 128 After receiving these appeals, the Commissioner referred information about the failure of law enforcement officers to enter information into the URPTI to the State Bureau of Investigations, as these actions constitute criminal offences. The Commissioner also sent letters concerning the failure to enter information into the URPTI to the prosecutor's office, which as a result reconsidered the legality of decisions made following the statements and reports of the relevant criminal offences in 15 cases.

Example

The Commissioner received a letter from the Head of the United Nations Human Rights Monitoring Mission in Ukraine, Matilda Bogner, on behalf of married couple F. The police had refused to enter the information that they had provided regarding the discovery of an explosive device near their house into the URPTI.

The Commissioner sent a letter to the Prosecutor's Office in Donetsk Oblast, which also found no grounds for entering this information into the URPTI.

To verify the legality of the decisions made by the Donetsk Oblast Prosecutor's Office and the police, the Commissioner sent a letter to the Prosecutor General's Office of Ukraine. In turn, the Prosecutor General's Office of Ukraine instructed Donetsk Oblast Prosecutor's Office to conduct an appropriate inspection.

On 25 October 2019, Donetsk Oblast Prosecutor's Office entered information into the URPTI under part one of Article 129 of the Criminal Code of Ukraine on the threat of homicide, and F. and his wife were recognized as victims.

Example

Following an appeal from T., in which he reported the use of physical force by police officers against him, the Commissioner sent a letter to the Prosecutor's Office in Mykolaiv Oblast. As a result and following verification of the facts, on 11 November 2019 the Mykolaiv Oblast Prosecutor's Office entered information on this case into the URPTI on the use of physical violence by the police under part two of Article 365 of the Criminal Code of Ukraine.

In total, the SBI entered information into the URPTI and launched pre-trial investigations into 10 allegations and reports of criminal offences.

In 2019 the Commissioner sent 738 requests to public authorities on rights violations identified as a result of letters and appeals to her, including 111 to the National Police of Ukraine, 406 to prosecutors' offices, 73 to the SBI, and 148 to the judiciary. The Commissioner also monitored compliance with procedural rights in 101 court hearings.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – ensure the preparation of draft amendments to the regulations of ministries and other central executive bodies, to bring them in line with Law of Ukraine 2617-VIII “On Amendments to Certain Legislative Acts of Ukraine to Simplify Pre-trial Investigation of Certain Categories of Criminal Offences” of 22 November 2018 (that enters into force on 1 July 2020.)

To the Prosecutor-General’s Office, the Supreme Court, the Security Service of Ukraine, and the State Bureau of Investigation – prepare draft amendments to relevant sectoral regulations to bring them into line with Law of Ukraine 2617-VIII “On Amendments to Certain Legislative Acts of Ukraine to Simplify Pre-trial Investigation of Certain Categories of Criminal Offences” of 22 November 2018 (that enters into force on 1 July 2020).

To the Prosecutor-General’s Office – ensure effective supervision of compliance with the law by pre-trial investigative bodies, in particular the requirements of Article 214 of the Criminal Procedure Code of Ukraine with regard to the consideration of statements and reports of criminal offences, and proper control over the organization of pre-trial investigations.

6.2. Right to timely consideration of a criminal case by a court

In criminal proceedings, each party has the right to a reasonable time limit for the trial. This is a guarantee that the court will provide prompt protection to the person whose rights have been violated, recognizing that any delay may adversely affect the right to protection. The lack of timely judicial protection can lead to situations in which the court’s subsequent actions will no longer matter to the person and his/her rights.

The right to be heard by a court within a reasonable time limit

During 2019, the Commissioner received 1,122 reports of violations of the rights of participants in criminal proceedings at trial stage, in particular relating to violations of reasonable time limits for trial. Most reports concern lengthy, sometimes years-long, proceedings, which not only fail to restore the rights that have been violated, but also lead to new violations.

Most often, such reports concerned situations in which judges were not appointed to the local court, or they did not exercise their powers for valid reasons. When this happens, cases can remain unreviewed for months or even years.

130 It is a matter of concern that these reports came not only from individuals party to civil and criminal proceedings, but also from judges.

For example, in their letter of 1 February 2019, judges from Oleksandriia District Court in Kirovohrad oblast drew attention to the problem of meeting reasonable deadlines for cases, which directly depends on the availability of judges in court. At the time the letter was sent 6 judges were sitting at this court but there were a further 14 vacancies for judges.

Judges from Balakliia District Court in Kharkiv oblast described a similar situation in their letter of 18 July 2019: 13 judges were administering justice, and the court had a further 9 vacancies for judges.

In response to a letter sent by the Commissioner in December 2019, Kharkiv Court of Appeal stated that justice was being administered by 28 judges out of 60. On average, each judge was dealing with 750 cases, although one judge was considering 1,033 cases.

In addition, according to information disseminated in the media, all four posts for judges in Zhydachiv District Court in Lviv oblast are vacant.

These facts indicate not only a violation of the basic principles of justice, but also of the constitutional right of everyone to go to court to protect their rights.

According to information received in November 2019 from the High Qualification Commission of Judges of Ukraine at the request of the Commissioner, as of 1 November 2019 in 249 general local courts 25 to 49 per cent of judicial positions were vacant, and in a further 135 general local courts, 50 to 75 per cent of judicial positions were vacant. In addition, in six district courts across Ukraine, including the Zhydachiv District Court mentioned above, there were no judges sitting at all, meaning that in these districts, justice is not being administered.

At the same time, judges who work in courts where there are a significant number of vacant judicial positions face a very high workload, which leads to delays in the consideration of cases for reasons beyond their control.

The Commissioner notified the High Council of Justice of this situation, requesting that the High Council expediate recruitment of judges in order to ensure the right of every person to a trial within a reasonable time limit.

The Commissioner received 323 complaints in 2019 regarding excessively long trials in criminal proceedings, constituting violations of the rights guaranteed under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

During the consideration of these complaints, the Commissioner sent inquiries to courts of general jurisdiction to determine the reasons for lengthy court proceedings. One of the reasons is the abovementioned shortage of judges and judges' significant workloads, as a result of which court hearings are scheduled 2-3 times a month. Court hearings are often then adjourned due to the absence of prosecutors or defence lawyers, or failure to deliver the accused to the courtroom.

During consideration of these complaints, the Commissioner also learned of significant violations of the right to have a case heard within a reasonable time limit in Babushkynskyi District Court in the city of Dnipro.

Example

The Commissioner received a complaint from K. on the lengthy hearing of his court case. The Commissioner's investigation revealed that K's case had been pending since 2012. The case was due to be heard by Judge Ch. of Babushkynskyi District Court in the city of Dnipro, who was dismissed from the post of judge in February 2016.

The investigation into K's case also revealed that for more than three years, 578 other cases due to be heard by the above-mentioned judge remained pending in Babushkynskyi District Court. The cases had been logged as completed, meaning that they were not automatically redistributed to other judges.

To address this issue, in November 2019, the Commissioner sent a request to the Head of the State Judicial Administration of Ukraine (SJA) to ensure organizational and legal regulation of the mechanisms for the automatic redistribution of these cases, in order to reduce violations of the right to trial within a reasonable time limit, as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In turn, the Head of the SJA of Ukraine notified the Commissioner that the procedure for automatic redistribution of court cases is determined by the "Regulation on the automated document management system of the court", approved by Council of Judges of Ukraine Decision 30 of 26 November 2010 (as amended on 15 September 2016). The Head of the SJA also reported that since 1 July 2016, a new computer program "D-3" has been used for court record keeping.

As the Head of SJA of Ukraine appeared unwilling to act on this matter, the Commissioner notified the Council of Judges of Ukraine, which is currently inspecting the organization of Babushkynskyi District Court's activities in the city of Dnipro.

The right to free interpretation/translation

The ability of the accused to communicate in court in his/her native language and to receive copies of court decisions translated into his/her native language or another language s/he speaks, as well as the ability to use the services of an interpreter/translator is one of the components of his/her right to defence and trial under independent and impartial procedural laws.

Access to an interpreter's assistance in court is also one of the principles of the right to a fair trial set out in subitems (a) and (e) of item 3 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Despite this regulatory framework, failure to provide free legal interpretation/translation at the stage of court proceedings to persons who do not have a good command of the state language is an issue.

In May 2019, the Commissioner sent a request to the Ministry of Justice to remove obstacles to receiving the free services of an interpreter/translator as part of the right to a fair trial.

- 132 Following consideration of the request and on the initiative of the Ministry of Justice, on 14 August 2019 the Cabinet of Ministers of Ukraine adopted Resolution 711 “On Amendments to item 6-1 of the Instruction on Procedure and Amounts of Compensation/Reimbursement and Remuneration to Persons Called to Bodies of Pre-Trial Investigation, Prosecutor’s Office, Court or Bodies in Charge of Administrative Offences, and Payment to the State Specialized Institutions for Forensic Examination and Performance of the Functions of Experts and Specialists by their Staff” to regulate payment for interpretation/translation services. However, the issues of maintaining and filling the register of interpreters/translators, and the mechanism of their involvement in criminal proceedings, remain to be settled. The Commissioner reminded the Minister of Justice of Ukraine of the need to take appropriate measures to address the latter issue.

At the end of 2019, the Ministry of Justice announced the establishment of a working group to develop a proposal for a legislative settlement of certain issues regarding the definition of requirements for interpreters/translators and the mechanism for their involvement in pre-trial investigation and trial. The working group will include representatives of the Ministry of Justice, the Ministry of Internal Affairs, the State Migration Service, the National Police of Ukraine, the Ministry of Education and Science, the Prosecutor-General’s Office, the Security Service of Ukraine, the SJA of Ukraine, the Legal Aid Coordination Centre, the Ukrainian Association of Educators and Translators, and the NGO Association of Translators of Ukraine.

This issue will remain on the Commissioner’s watch list until the relevant legal act is adopted.

RECOMMENDATIONS

To the High Council of Justice, the High Qualifications Commission of Judges of Ukraine – take measures to accelerate the filling of vacant positions of judges in the courts.

To the Ministry of Justice of Ukraine – develop a draft law to resolve certain issues concerning involvement of interpreters and translators in criminal proceedings, and submit this in the prescribed manner for consideration by the Verkhovna Rada of Ukraine.

6.3. Right to timely enforcement of a court decision

Every person has the right to a fair trial. The ECtHR considers the execution of a court decision as a component of this right. Without the execution of a court decision, judicial protection of a person’s rights cannot be considered effective. Failure to comply with a court decision jeopardizes the very essence of the right to a fair trial.

Numerous decisions of the ECtHR against Ukraine state that non-execution of a court decision awarding a person monetary compensation violates not only the right to a fair trial, but also the right to free possession of one's property. In effect, this is a violation of the right to own and dispose of one's property within the meaning of Article 1 of Protocol 1 to the Convention (ECtHR judgment in *Shmalko v. Ukraine* of 20 July 2004, *Naumenko v. Ukraine* of 9 November 2004, *Varanitsa v. Ukraine* of 5 April 2005, and *Shchukin and others v. Ukraine* of 13 February 2014).

Example

In August 2019, P., a resident of Lviv Oblast, wrote to the Commissioner regarding the non-execution of a decision by Sokal District Court of Lviv oblast on 6 September 2011. The decision had awarded the applicant a lump-sum cash benefit of UAH 1,373.00 as a war veteran.

In response to the Commissioner's request, the Treasury reported that the decision of Sokal District Court of Lviv oblast of 6 September 2011 was only executed on 20 May 2019 – eight years after the final court decision in the case.

The Commissioner received numerous complaints from citizens regarding non-enforcement of court decisions on recovery of funds in cases where the debtor was a state body. These complaints were sent to the Treasury with requests to clarify the reasons for long-term non-compliance with court decisions and to take measures to restore property rights.

In response, the Treasury reported that according to paragraph 2 of sub-item 1 of item 9 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine, the undisputed write-off of the state budget amounts is carried out by the Treasury in the order of receipt of such decisions. The amount of funds established annually by the laws of Ukraine within the state budget is insufficient for the timely execution of court decisions by the Treasury.

Non-enforcement of court decisions in Ukraine is systematic. During 2019, 278 applicants filed complaints with the Commissioner regarding non-enforcement of court decisions. Similar to the above, this is the result of many economic and legislative factors.

Following consideration of these complaints, in August 2019 the Commissioner sent a request to the Minister of Justice of Ukraine to take action to address violations of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms regarding the right to a fair trial.

Despite numerous ECtHR rulings against Ukraine that record such violations, the national legal system is still unable to address the root causes of the systemic problem identified by the ECtHR, and to provide an effective remedy at national level. No progress has been made, despite the recommendations made in recent years, in particular the interim resolutions of the Committee of Ministers of the Council of Europe, which called on Ukraine to take the necessary decisive action in its domestic legal system without further delay.

134 In a Memorandum on “Cases considered by the Committee of Ministers concerning non-execution or late execution of decisions of national courts in Ukraine (case Yurii Ivanov v. Ukraine and group of cases Zhovner v. Ukraine)” published in 2018, the Committee of Ministers of the Council of Europe identified the main shortcomings related to execution of court decisions made by national courts in Ukraine that require priority solutions:

- a lack of adequate budget funding to execute court decisions against state enterprises, institutions and organizations;
- the impossibility of seizing state-owned property or property belonging to insolvent companies owned by the State in accordance with the moratorium on the forced sale of property;
- a lack of appropriate enforcement procedures;
- a lack of due responsibility (criminal, administrative, civil or disciplinary) of state executors for non-execution of court decisions, and lack of responsibility of administrators in bankruptcy and liquidation proceedings for non-execution of decisions;
- the inefficiency of the executive service; and
- a lack of appropriate and effective rules to ensure the effectiveness of compensation for delays in the enforcement of judgments and the need to implement effective national remedies that must meet the essential requirements of the Convention following a pilot decision of the ECtHR in this matter.

In its decision of 25 September 2019, the Committee of Ministers of the Council of Europe expressed a warning about the lack of further real action in developing appropriate institutional, legislative and other practical measures to implement decisions in the group of cases Yurii Ivanov, Zhovner, Burmych and others v. Ukraine. It reiterated that the delay in full implementation of the general measures is a matter of serious concern.

To address this problem, an appropriate legal act needs to be developed that will regulate the implementation of these decisions of the ECtHR.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – develop and approve the National Strategy for implementation of general measures to enforce the decisions of the European Court of Human Rights in cases of Yurii Ivanov v. Ukraine and Burmych and others v. Ukraine.

CHAPTER 7

**OBSERVING THE RIGHT
NOT TO BE SUBJECTED
TO TORTURE OR
TO CRUEL, INHUMAN OR
DEGRADING TREATMENT
OR PUNISHMENT**

OBSERVING THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

During the year, the State continued to carry out structural reforms that covered almost all areas of public life, in particular, healthcare, education, social protection, decentralization, and the functioning of law enforcement agencies.

At the same time, the regulations for ministries approved by the Cabinet of Ministers of Ukraine and other legal acts, however, do not cover regulation of how ministries or their departments oversee the activities of institutions subordinate to them, including places of detention of various types. This means that there is no requirement to assess the impact of reforms on the persons in such institutions.

Reflecting this situation, the deinstitutionalization of certain types of places of detention, in particular those included in reform programmes, and changes in approaches in their activities, were under the special control of the Commissioner in 2019 during implementation of the National Preventive Mechanism.

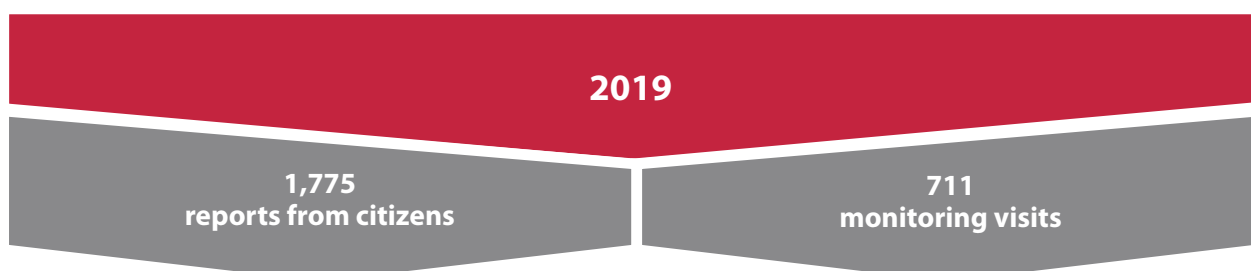
In 2019, 711 monitoring visits were conducted to places of detention (as of 1 January 2019, there were 5,044 such institutions in Ukraine). The number of public monitors involved in such visits increased in 2019 to 175 people, which indicates an increase in the level of openness in the implementation of this function by the Commissioner.

The Commissioner also considered a total of 1,775 reports from citizens in prisons and their families about violations of their rights.

As a result of monitoring visits, law enforcement agencies launched pre-trial investigations in 63 criminal cases, covering illegal actions by law enforcement officers and prosecutors including injuries, torture, abuse of office, and endangering the safety of a person. This included 40 proceedings initiated by the State Bureau of Investigations.

These measures taken by the Commissioner helped identify the main human rights violations in places of detention, in particular: torture, cruel, inhuman or degrading treatment or punishment; violations of the rights to liberty and security of person; inadequate living conditions, including provision of adequate food, clothing, housing; lack of access to health care and medical assistance; and lack of access to professional legal aid.

Elimination and minimization of such violations require active measures to be taken by central executive authorities responsible for the development and implementation of national policy on the functioning of places of detention. These should take into account the recommendations provided by the Commissioner in the context of the National Preventive Mechanism.



138 7.1. Right to protection from torture, cruel, inhuman or degrading treatment or punishment

The right to protection from torture, cruel, inhuman or degrading treatment or punishment is guaranteed by the Universal Declaration of Human Rights and the Constitution of Ukraine. The results of monitoring visits to the vast majority of places of detention of various types, however, prove that such violations are common in Ukraine.

Beatings, infliction of other bodily injuries, excessive use of restraints and special means to restrain persons in places of detention, prolonged isolation in unsuitable premises, non-provision of analgesics to severely ill patients, including cancer patients, are among the violations revealed during monitoring visits undertaken by the National Preventive Mechanism. However, bodily harm is often not documented, as requested by the United Nations Guiding Principles on the Effective Investigation and Documentation of Torture, Other Cruel, Degrading Treatment or Punishment (partially incorporated into Ukrainian law) and regulations in force, and the victims are not provided with healthcare.

Example

During a monitoring visit to Hosiivskiyi police department of the MDNP in the city of Kyiv, it was revealed that police officers had used physical violence against detainee E. in order to obtain a confession from him. In one of the offices, police officers beat the detainee, stretched him to inflict pain, put on him a gas mask and threatened him with a firearm. As a result of these actions, the detainee sustained an internal injury in the chest area, bruises, abrasions, and a hematoma on his back⁶¹.

After the Commissioner published this information, investigators from the Central Office of the SBI entered data on the criminal offence into the URPTI and started a pre-trial investigation into criminal proceedings under part one of Article 127 (torture) of the Criminal Code. The pre-trial investigation is ongoing.

Excessive use of force by police officers during apprehension is common.

Example

A monitoring visit to Karlivskiyi MDNP police department in Poltava oblast revealed the case of detainee R., who suffered an internal fracture of the tibia during use of special means (handcuffs) by police officers. This case is indicative⁶².

⁶¹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/6219-ld-fakti-pobittya-nenalezhnij-oblik-ta-porushennya-prava-lyudini-na-zaxis/.

⁶² Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zi-tu-do-pol%D1%96cz%D1%96j-m%D1%96sta-karl%D1%96vka-poltavsko%D1%97-oblast%D1%96/.

Cases of torture and ill-treatment by staff in educational institutions where orphaned children and children deprived of parental care stay are also quite widespread. Examples of ill-treatment include isolation and forcing children to exercise in a way that degrades their dignity.

Example

During a conversation with 30 primary school students at Novoprazka special boarding school in Kirovohrad Oblast, the children complained that as a form of punishment for disobedience, they were put on their knees and forced to sit in a static position with their arms outstretched⁶³.

In the social protection system, the most common examples of ill-treatment include excessive use of isolation, use of restraints (e.g., clothing with elongated sleeves for tying hands), and establishment of an informal hierarchy among residents, so that some of them assist the staff in performing certain tasks, and are allowed to use violence against other residents, with the tacit consent of the staff.

None of the boarding schools document injuries sustained by persons under their care, including the cause of the injury and any follow-up. Cases of injuries of such persons are not investigated, and there are no reports filed on inspections of incidents.

Example

During a monitoring visit to Starodobroviivskiy psychoneurological residential care facility in Dnipropetrovsk oblast, the patients complained to the monitoring group about sexual violence carried out by informal leaders that were among the other patients. The monitors also found patients with bruises. According to the patients, the bruises were inflicted by the nurses at the facility. No investigations had been conducted into this and similar situations and no medical records were kept. Many of the patients drew attention to the particular cruelty of two medical orderlies. According to them, on 1 May 2018, these medical orderlies inflicted bodily injuries on patient B. Later that day, he died, which is confirmed by an entry in the death register for the facility.

Patient Z. also died at the facility, a day after being hit in the stomach by a medical orderly on 21 April 2019 and denied medical care.

Following the report of the monitoring visit, the police launched a pre-trial investigation in two criminal cases⁶⁴.

⁶³ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-novoprazko%D1%97-specz%D1%96alno%D1%97-zagalnoosv%D1%96tno%D1%97-shkoli-%D1%96nternatu-%D1%96-%D1%96%D1%96-stu-pen%D1%96v-na-k%D1%96rovogradshhin%D1%96/.

⁶⁴ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/u-starodobrovolskomu-psixonevrolog%D1%96chnomu-%D1%96n-ternat%D1%96-zaf%D1%96ksovan%D1%96-fakti-zhorstokogo-povodzhennya,-znushhannya,-a-takozh-prinizhennya-chest%D1%96-ta-g%D1%96dnost%D1%96-p%D1%96dop%D1%96chnix/.

- 140 In residential care facilities, the use of physical restraint (bed restraint and various other restraints) and isolation against children (aged 6 to 18) and young people continues, in violation of the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“Means of restraint in psychiatric establishments for adults” (CPT/Inf (2017))).

Example

Children living in Dniprianskyi psychoneurological residential care facility in Kherson Oblast Council, reported being punished for disorder and trying to escape by having their ankles tied to an iron bracket nailed to the floor by a chain. Some of the children had marks on their ankles indicating that they had been restrained in this way, and the floor bracket was visible. In addition, the monitoring group learned that some patients helped to restrain other patients as requested by the staff⁶⁵.

The situation is similar in residential health care facilities for persons with learning disabilities. The practice of applying physical restraint and/or isolation without documenting this continues.

Violations were found in Rivne Oblast Centre for Mental Health⁶⁶, Vinnytsia Oblast Psychoneurological Hospital 2⁶⁷, Zhytomyr Oblast Psychiatric Hospital 2⁶⁸ and others.

No hospital has separate wards for use of physical restraint, meaning that patients are restrained in the presence of other patients.

Monitoring visits revealed cases of bodily injuries inflicted by other patients; these injuries were not documented in any way, and no relevant reports were sent to the police. It should be noted that when a person staying in a medical institution receives bodily injuries and no measures are taken to establish all the circumstances of these injuries, case law from the ECtHR indicates that this is a direct violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

During the year, the Commissioner repeatedly provided recommendations to the Ministry of Health on the need to develop a procedure for physical examination during hospitalization and stay in psychiatric institutions, for interviews following injuries and documentation of injuries, as well as notification of the relevant law enforcement agencies in accordance with the United Nations Guidelines on the Effective Investigation and Documentation of Torture, and Other Cruel and Degrading Treatment or Punishment. However, this recommendation has yet to be implemented.

⁶⁵ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/komfortn%D1%96-umovi-dlya-prozhivannya-p%D1%96dop%D1%96ch-nix-potri-brak-f%D1%96nansuvannya-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-dn%D1%96pryanskogo-psixonev-olog%D1%96chnogo-%D1%96internat%D1%96-na-xersonshhin%D1%96/.

⁶⁶ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/11219-mo-u-rivnenskomu-oblasnomu-tsentri-psichnogo-zdor-ovya-naselennya-zbudzh/.

⁶⁷ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/8219-ua-spivrobotniki-sekretariatu-upovnovazhenogo-vidvidali-z-monitorin-govim/.

⁶⁸ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/mon%D1%96toringova-grupa-viyavila/.

Example

During a visit to Ostroh Oblast Psychiatric Hospital, patient S. was found to have numerous abrasions and hematomas of the head and lower extremities. According to the staff, he suffered the injuries when falling out of bed on his own. A criminal investigation is currently being conducted by Ostroh MDNP police department in Rivne oblast⁶⁹.

Torture, cruel and degrading treatment are used in the penitentiary system. Along with the use of physical violence, a minority of prisoners often face stigmatization and rejection by most other prisoners. Such persons are forced to live separately from other convicts and in unsuitable premises and in appalling conditions.

Examples were found during monitoring visits to the Starobabanivska Correctional Colony (92)⁷⁰, Synelnykivska Correctional Colony (94)⁷¹, and Kolomyia Correctional Colony (41)⁷².

MPs in Ukraine submitted a draft Law “On Amendments to the Law of Ukraine ‘On Pre-trial Detention’ (regarding the implementation of certain standards of the Council of Europe) (no. 0882 of 29 August 2019). Implementation of its norms would improve the conditions of detention of prisoners by bringing Ukraine’s legislation into line with Council of Europe human rights standards for the conditions of detention, as laid out by the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment. The draft law was adopted in the first reading, but has not yet been submitted for the second reading.

Excessive use of force and “special means” by penitentiary staff against convicts and prisoners results in bodily injuries, which, as in other types of places of detention, are not documented. In such cases, healthcare is not provided or is provided just “to tick the box”.

When it comes to courts, in some cases defendants or convicts who have come to attend court hearings are held in conditions that amount to torture and ill-treatment, due to a lack of adequate facilities for holding them. Such persons are often forced to wait for hours in convoy cars or in completely unsuitable premises without free access to fresh air, water, food and toilets.

⁶⁹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-ostrozhko%D1%97-oblasno%D1%97-psix%D1%96atrichno%D1%97-l%D1%96karn%D1%96-na-r%D1%96vnenshhin%D1%96/.

⁷⁰ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/21319-zi-u-starobabanivskij-vipravnij-koloniii-92-na-cherkaschini-medichnu-dopo/.

⁷¹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/17419-pp-v-sinelnykivskij-vipravnij-koloniii-94-zasudzheni-otrimuyut-svidotstva/.

⁷² Report published at: www.ombudsman.gov.ua/ua/all-news/pr/zasudzhen%D1%96-z-bereznya/.

Example

In Teplyk District Court of Vinnytsia oblast, defendants and convicts attending court hearings are kept in two rooms, one of which is a stone “black hole” measuring 1x1 square metres, with a concrete floor and no windows⁷³.

Inconsistencies between the definition of the concept of torture in Article 127 of the Criminal Code of Ukraine and the definition in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment create an enabling environment for violations of the right to freedom from torture and ill-treatment in places of detention to take place. The difference between the concepts is the absence of a reference to the crime being committed by a state official in the Criminal Code, meaning that torture can only be prosecuted as regular violence.

In addition, lack of internal control over the activities of places of detention by central executive authorities and inadequate control by state oblast administrations and oblast councils leads to a lack of incentives for prison staff to adhere to international and domestic standards for adequate treatment of detainees.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – expedite consideration and adoption of the draft law of Ukraine “On Amendments to the Law of Ukraine ‘On Pre-trial Detention’ (concerning the implementation of certain standards of the Council of Europe)” (no. 0882 of 29 August 2019).

To central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, Kyiv State City Administration and oblast councils:

1. Implement the provisions of the United Nations Guidelines on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
2. Ensure effective internal control over the observance of human rights in places under their jurisdiction and control where persons deprived of their liberty are or may be detained, by order of a public authority or upon its instructions, or with its knowledge or tacit consent.

⁷³ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/tepliczkij-rajonnij-sud-v%D1%96nniczko%D1%97-oblast%D1%96-ponad-r%D1%96k-ne-zd%D1%96jsnyu%D1%94-pravosuddya-rezultati-mon%D1%96toringovogo-v%D1%96zitu/.

To the Ministry of Health of Ukraine:

1. Bring the Rules for use of physical restraint and/or isolation in the provision of psychiatric care to persons with learning disabilities, and the systems in place for documenting incidents (approved by Ministry of Health of Ukraine Order 240 of 24 March 2016) in line with the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment “Means of restraint in psychiatric establishments for adults” (CPT/Inf (2017)), in particular, in regard to the prohibition of physical restraint in the presence of other patients; without certified fixation belts; with the use of beds with armoured nets; as well as in relation to the definition of chemical fixation procedures.

2. Develop and approve a draft Ministry of Health of Ukraine order to regulate the procedure for physical examination during hospitalization and stay in psychiatric care facilities, for interviews following injuries and documentation of injuries, as well as notification of the relevant law enforcement agencies.

To the Ministry of Justice of Ukraine – develop a draft law aimed at bringing the content of Article 127 of the Criminal Code of Ukraine into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and submit this to the Verkhovna Rada of Ukraine.

7.2. Right to liberty and security of person

The right to life, liberty and security of person is a key and fundamental human right protected by the Constitution. High-profile events at the end of 2019 in penitentiary institutions, the results of monitoring visits to places of detention of various types, a significant number of complaints addressed to the Commissioner, and accounts published in the media on violations of human rights and freedoms indicate that the level of security guarantees in places of detention requires significant intervention from state and non-state institutions.

The right to life, liberty and security of person is enshrined in the normative definition of the legal status of persons in places of detention, and the regulation of their rights, legitimate interests and responsibilities, in particular on fire safety.

However, monitoring visits undertaken by the National Preventive Mechanism in 2019 proved that some places of detention are not ensuring that state guarantees on the safety of persons detained in such institutions are met, leading to violations of the rights of individuals in detention and a number of actual and potentially dangerous situations.

Example

During a monitoring visit to the Plyskivskiy psychoneurological residential care facility in Vinnytsia oblast⁷⁴, it was found that the institution is not equipped with a fire alarm system, while fire extinguishers are stored in a locked room and have not been regularly checked. The territory of the facility is effectively abandoned, and overgrown with weeds; there are unprotected trenches and open sewer pits; and the territory is cluttered with construction debris, with a broken fence and benches, and an unfenced transformer booth, which poses a potential threat to life and health of patients. The institution's buildings also need urgent repair.

In addition, the monitoring team found people who were illegally staying in the facility without proper documents.

Following the Commissioner's intervention, the police entered information into the URPTI in regard to criminal violations and initiated a pre-trial investigation in a criminal case under part one of Article 146 (illegal imprisonment) of the Criminal Code of Ukraine.

Some educational institutions are also failing to comply with the Fire Safety Rules for education institutions and institutions of the education system of Ukraine, approved by Ministry of Education and Science of Ukraine Order 974 of 15 August 15 2016.

The buildings of educational institutions are not equipped with fire alarm systems. Wooden elements in the attics of buildings are not treated with fire retardants, which provide group I fire protection efficiency.

There is no protection against direct lightning strikes and the secondary impacts of lightning strikes.

There are no fire extinguishers, as required under the Rules mentioned above (at the community-owned facility "Baturyn special boarding school of Chernihiv Oblast Council"⁷⁵, community-owned facility "Lyman boarding school of I-II degrees of Odesa Oblast Council"⁷⁶).

A number of other institutions are not equipped with a fire safety system (such as the community-owned facility "Pryvilne special boarding school of Bashtanka district of Mykolaiv oblast"⁷⁷).

In violation of the Fire Safety Rules, windows in some educational institutions are fitted with non-removeable bars.

Similar violations of the Fire Safety Rules were found in many social and health care facilities, posing a direct threat to the lives of those staying in these institutions. For example, in 2019, fires took the lives of people in the Odesa Psychiatric Hospital and Starobilsk Oblast Psychoneurological Residential Care Facility.

⁷⁴ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/antisan%D1%96tar%D1%96ya,-zhaxliv%D1%96-umovi-prozhivannya-ta-nenalezhne-medichne-obslugovuvannya-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-plisk%D1%96vskogo-psixonevrolog%D1%96chnogo-%D1%96internatu-na-v%D1%96nnichchin%D1%96/.

⁷⁵ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/6519-sq-u-rezultati-reformuvannya-shkil-na-chernigivschini-pokraschil-isy-a-umov/.

⁷⁶ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/u-limansk%D1%96j-specz%D1%96aln%D1%96j-zagalnoosv%D1%96tn%D1%96j-shkol%D1%96-%D1%96internat%D1%96-na-odeshin%D1%96-viyavleno-porushennya-prava-d%D1%96tej-na-rozvitok-osobistost%D1%96/.

⁷⁷ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/25319-ai-u-privilnenskij-spetsializovaniy-zagalnoosvitnij-shkoli-internati-na-m/.

People coming into contact with the bodies and institutions of the police and the penitentiary system also face risks to their personal security.

Monitoring visits by the National Preventive Mechanism revealed that the use of physical violence, by staff in places of detention as well as psychological pressure in the form of threats and intimidation of detainees to obtain information or – vice versa – to conceal certain human rights violations, are common practices. One such case was revealed during a monitoring visit to Fastiv police unit of Vasylykiv police department of the MDNP in Kyiv oblast⁷⁸.

Example

The Commissioner received complaints about human rights violations in Berdiansk Correctional Colony (no. 77)⁷⁹ and undertook a monitoring visit. Following these, in March 2019, the Commissioner sent requests to the SBI, the Prosecutor-General's Office and the Ministry of Internal Affairs to respond to reports of possible brutal beatings and torture, as well as extortion of money from relatives of convicts held in the correctional colony. The Commissioner also sent a request to the Minister of Justice of Ukraine to take urgent measures to ensure the safety of four convicts who may have been subjected to this abuse.

The SBI investigators began a pre-trial, criminal investigation into these reports under part two of Article 127 (torture by a group of persons), part two of Article 365 (excess of power or official authority by a law enforcement officer), part two of Article 364 (abuse of power or official position), and part two of Article 189 (extortion committed repeatedly, or by prior conspiracy by a group of persons, or an official using his/her official position) of the Criminal Code of Ukraine.

It should be noted that the SBI investigators and territorial offices often refuse to enter information on criminal offences revealed during the monitoring visits of the National Preventive Mechanism into the URPTI.

Some requests made by the Commissioner and representatives of the Commissioner in cases of human rights violations by law enforcement officers are forwarded by the territorial bodies of the SBI directly to the bodies where these same law enforcement officers are employed. Answers received by the Commissioner from these law enforcement bodies often state that there are no circumstances indicating that a criminal offence has been committed.

The Commissioner sent claims to local courts on the failure of investigators to act in eight cases where officials of the SBI territorial offices had refused to enter information into the URPTI. All these claims were upheld by the courts. Law of Ukraine 3352-XII "On Pre-Trial Detention" of 30 June 1993 establishes rules on separate detention in places of pre-trial detention. These rules of consistently ignored, leading to conflicts between prisoners, sometimes resulting in bodily harm or more serious crimes. Administrators at these institutions often try to hide such cases and do not document complaints. Instead, injuries received by prisoners are recorded as accidental injuries.

⁷⁸ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/27319-si-u-politsiii-mista-fastova-na-kiiivschini-viyavleni-porushennya-prav-gr/.

⁷⁹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/13319-dw-dlya-vzhittya-zaxodiv-reaguvannya-schodo-mozhlivogo-porushennya-prav-z/.

146 *Violations of this kind were recorded in Kyiv pre-trial detention facility*⁸⁰.

Example

During a visit to the Kholodnohirska Correctional Colony (no. 18), the monitoring group was approached by convict S., who stated that he had been beaten by the institution's staff and suffered a fracture to his right arm. According to the convict, the officers took advantage of the fact that he was in severe physical pain to pressurize him to "confess" on camera that he had been injured when he fell down from a gymnastics bar while exercising.

According to S.'s account, he was not provided with healthcare until he gave a favourable explanation for his injuries to the administration. Only after that was he hospitalized in the city hospital and received healthcare.

Kharkiv Local Prosecutor's Office 2 entered information on this fact into the URPTI as no. 424019221080000144 on the grounds of a criminal offence under part two of Article 365 of the Criminal Code of Ukraine (excess of power or official authority by a law enforcement officer with the threat of violence)⁸¹.

Example

Cases of violence between convicts were revealed during a visit to Zhovti Vody Correctional Colony (no. 26). The visit and confidential communication with the convicts revealed that informal relations (bullying) between convicts are common, as various subcultures of convicts are detained in the institution, leading to intimidation and violence among the convicts, especially against working and stigmatized persons or those who refuse to support criminal customs.

National Preventive Mechanism monitoring visits also revealed examples of excessive use of force during special regimes in penitentiary institutions and pre-trial detention facilities.

Example

During a monitoring visit to Kropyvnytskyi pre-trial detention facility⁸², the monitoring team found that the medical unit at the facility had received 97 complaints from 82 prisoners about injuries sustained during the regime measures, including from a juvenile inmate. Representatives of the Commissioner also identified a large number of convicts who had bodily injuries but who had not been examined by medical staff, and whose injuries were not documented by the facility.

⁸⁰ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/u-ki%D1%97vskomu-sl%D1%96dchomu-%D1%96zolyator%D1%96-uvyaz-nenix-utrimuyut-v-kamerax,-vkritix-pl%D1%96snyavoyu-ta-gribkom.

⁸¹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/v-xolodnog%D1%96rsk%D1%96j-viprav%D1%96j-kolon%D1%96%D1%97-na-xark%D1%96vshhin%D1%96-dos%D1%96/.

⁸² Report published at: www.ombudsman.gov.ua/ua/all-news/pr/predstavnik-upovnovazhenogo-z-dotrimannya-prav-lyudi-ni-v-m%D1%96saczyax-nesvobodiz%D1%96jsniv-mon%D1%96toringovij-v%D1%96zit-do-kropivniczkogo-s%D1%96zo/.

The Prosecutor's Office began pre-trial investigations into these reports under part one of Article 367 (negligence), Article 139 (health professional's failure to provide assistance to a patient), and part two of Article 365 (excess of power, official authority) of the Criminal Code of Ukraine. 147

RECOMMENDATIONS

To central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, Kyiv State City Administration and oblast councils – ensure unconditional compliance with the requirements of the Fire Safety Rules in Ukraine approved by Ministry of Internal Affairs of Ukraine Order 1417 of 30 December 2014, and with sectoral regulations on fire safety in all places of detention.

To the State Bureau of Investigation:

1. Take comprehensive measures to ensure that all information received from statements and reports, as well as information obtained from other sources (including requests made by the Commissioner or the prosecutor's office) about circumstances that may indicate crimes that belong to the jurisdiction of the State Bureau of Investigation are promptly entered in the Unified Register of Pre-Trial Investigations in line with the procedure stipulated in Article 214 of the Criminal Procedure Code of Ukraine, and ensure the investigation of such cases.
2. Take measures to prevent State Bureau of Investigation officials from redirecting statements about illegal actions of law enforcement officers to the bodies in which they serve, or to other institutions under their control.

7.3. Right to an adequate standard of living, including adequate food, clothing and housing

Violations of the human right to an adequate standard of living, including adequate food, clothing, and housing identified during monitoring visits of the National Preventive Mechanism can be divided into two categories: inadequate conditions of detention due to insufficient funding for places of detention, and lack of staff action to meet the priority needs of detainees.

- 148 As a minimum, any place of imprisonment should provide Ventilation, free access to drinking water, opportunities for walking exercises and to take part in cultural and leisure activities, cleanliness, provision of bed linen, clothing and footwear appropriate for the season, and nutritious food that meets requirements and takes into account dietary needs of the person. Monitoring visits have revealed, however, that this minimum is unattainable for persons detained in various types of detention facilities.

Example

Monitoring visits to Potiivska Special Boarding School of I-III Degrees under Zhytomyr Oblast Council⁸³, and the Pavlohrad Education and Rehabilitation Centre under Dnipropetrovsk Oblast Council⁸⁴ revealed that children did not have free access to drinking.

Accessibility for persons with disabilities is an issue.

In the vast majority of facilities visited in 2019, appropriate conditions have not been created to ensure unimpeded access to buildings, premises and other facilities in accordance with the State Construction Norms of Ukraine B.2.2-40: 2018 “Inclusiveness of buildings and structures”.

As a result, persons detained in education institutions, institutions of social protection, health care facilities and penitentiary institutions cannot move around freely and are deprived of the opportunity to walk exercise. Attending public events, and access to other facilities, including sanitation, is difficult for such persons and is often accompanied by humiliating procedures, when other detainees help persons with disabilities to move to and use classrooms, canteens or toilets.

The Commissioner provided recommendations to the Ministry of Social Policy concerning Standard Regulations on residential facilities for elderly people and people with disabilities, but these have not yet been approved. As a result, there are no regulatory requirements for activities and equipment used in these facilities.

Example

There is no barrier-free environment for low-mobility patients in Kytiahorod Residential Care Facility for elderly people and persons with disabilities in Khmelnytskyi oblast. There is no ramp at the entrance to the residential building, while there are 22 bedridden patients in the facility, most of whom use wheelchairs. In fact, the patients are deprived of opportunities to go outside the residential building⁸⁵.

None of the healthcare facilities visited in 2019 have sanitary facilities equipped in accordance with the standards for people with limited mobility.

⁸³ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/m%D1%96st%D1%96-loxviczya-na-poltavshhin%D1%96/.

⁸⁴ Report published at ланням: www.ombudsman.gov.ua/ua/all-news/pr/zd%D1%96jsneno-mon%D1%96toringovij-v%D1%96zit-do-pol%D1%96cz%D1%96%D1%97-smt.-sof%D1%96%D1%97vka-dn%D1%96propetrovsko%D1%97-oblast%D1%96/.

⁸⁵ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/porushennya-prava-na-svobodu-ta-osobistu-nedotorkann%D1%96st-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-pol%D1%96cz%D1%96%D1%97-m%D1%96sta-kaneva/.

Bedridden patients often do not leave their beds at all for long periods of time, in some cases for several months.

Institutions for the care of orphaned children and children deprived of parental care do not receive enough funding.

The recommendations of the Commissioner on amendments to Cabinet of Ministers of Ukraine Resolution 226 “On Improving the Education, Training, Social Protection and Material Security of Orphaned Children and Children Deprived of Parental Care” of 5 April 1994 are yet to be implemented in terms of:

- raising the minimum standards of financial support for orphaned children and children deprived of parental care for providing clothing, footwear, and equipment to ensure compliance with natural standards;
- revision of the minimum amount of financial assistance for admission to vocational and higher education institutions, which is set by Resolution 226 at 2.5 non-taxable minimum incomes; and
- determining the standard amount for financial support to provide basic necessities (detergents, cleaning products hygiene products) for orphaned children and children deprived of parental care who live and/or study in orphanages and boarding schools.

Access to courts is not enabled for persons with disabilities.

At the entrances to the buildings where the courts are located (usually on the second floor or higher) there are call buttons at a distance of approximately 1.5 m from the ground, meaning that a person in a wheelchair cannot use them without assistance. At the same time, next to the button, there is no information on how to call employees of institutions located in the building. There are no ramps or lifts to provide access to the premises for people with disabilities. According to court employees, in cases where people in wheelchairs were participants in the trial, judges went outside and interrogated them (Orativ District Court in Vinnytsia oblast⁸⁶, Krasyliv District Court of Khmelnytskyi oblast⁸⁷ and Dniprovskiy District Court of the city of Dniprodzerzhynsk/Kamianske⁸⁸).

In addition, many of the buildings of the establishments and institutions that were visited are in disrepair and pose a threat to residents. These included a number of educational institutions, such as Pryluky Special Boarding School of I-II Degrees under Chernihiv Oblast Council⁸⁹, Olhivskiy Scientific Lyceum-Boarding School of Kherson Oblast Council⁹⁰, and others.

Virtually all health care facilities visited restrict patients’ movement without justification.

Persons who are hospitalized voluntarily are not able to leave the wards on their own, which meaning they have no access to a positive therapeutic environment. Offices are locked with wagon-type locks, under rules that are no longer valid (the rules of arrangement and operation of psychiatric hospitals,

⁸⁶ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/v-orat%D1%96vskomu-rajsud%D1%96-na-v%D1%96nnichchin%D1%96-majzhe-r%D1%96k-ne-zd%D1%96jsnyu%D1%94tsya-pravosuddya-rezultati-mon%D1%96toringovogo-v%D1%96zitu/.

⁸⁷ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-krasil%D1%96vsko-go-rajonogo-sudu-xmelnicko%D1%97-oblast%D1%96/.

⁸⁸ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-dn%D1%96provsko-go-rajonogo-sudu-m.-dn%D1%96prodzerzhinska/.

⁸⁹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/22319-um-monitoringovij-vizit-do-prilutskoi-spetsialnoii-zagalnoosvit-noii-shko/.

⁹⁰ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/22319-pw-rezultati-monitoringovogo-vizitu-do-olgivskogo-naukovogo-litseyu-inter/.

150 approved by the Ministry of Health of the USSR on 15 April 1977). The current regulations do not specify that health care facilities should be run in this way. In accordance with Article 25 of the Law of Ukraine “On Psychiatric Care” #1489-III of 22 February 2000, persons who are provided with psychiatric care have the right to receive it with as few limitations as possible, depending on their mental health condition.

At the same time, the Ministry of Health has not yet approved the Sanitary Regulations for nursing homes for the elderly and persons with disabilities, special nursing homes, and inpatient departments of territorial social service centres.

Example

At Odesa Oblast Clinical Psychiatric Hospital 4⁹¹ and Poltava Oblast Psychiatric Hospital 2 in Snityno⁹², monitoring visits found patients in closed yards under staff supervision. The patients were not allowed to enter the premises without staff permission.

In accordance with the requirements of sub-item 1 of item 1 of Section VII of the Instruction on the organization of the regular service of bodies/units of the National Police of Ukraine approved by Ministry of Internal Affairs of Ukraine Order 440 of 23 May 2017, each territorial police unit should be equipped with at least one room for detainees.

Monitoring visits to the bodies of the National Police of Ukraine established that in most cases such rooms are either absent or not used, as they are in poor condition. As a result, the detainees remain in the offices of police officers that are not intended for detention, before being placed in temporary detention facilities or other places of detention.

In addition, according to Article 23 of Law of Ukraine 580-VIII “On National Police” of 2 July 2015, the police have no authority to detain and escort persons detained on suspicion of committing criminal offences when a preventive measure is applied in the form of detention in custody or administrative arrest. Due to this legislative gap, it is virtually impossible to allocate funds to improve the conditions of detention for these persons.

These violations were revealed during monitoring visits to Poltava oblast MDNP temporary detention centre (ITT) 3 (Lokhvytsia)⁹³, Sofiivske police unit of Zhovti Vody police department in Dnipropetrovsk oblast⁹⁴, and Kaniv police unit of Zolotonosha police department in Cherkasy oblast⁹⁵.

According to the Instructions on the organization of the regular service of bodies/units of the National Police of Ukraine approved by Ministry of Internal Affairs of Ukraine Order 440 of 23 May 2017, food is

⁹¹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/provedeno-mon%D1%96toring-dotrimannya-prav-os-%D1%96b,-yak%D1%96-perebuvayut-v-oblasn%D1%96j-psix%D1%96atrichn%D1%96j-l%D1%96karn%D1%96/.

⁹² Report published at: www.ombudsman.gov.ua/ua/all-news/pr/l%D1%96karnya-v-yak%D1%96j-ne-l%D1%96kuyut,-a-utrimuyut-lyudej-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-poltavsko%D1%97-oblasno%D1%97-psix%D1%96atrichno%D1%97-l%D1%96karn%D1%96/.

⁹³ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/m%D1%96st%D1%96-loxviczya-na-poltavshhin%D1%96/.

⁹⁴ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/zd%D1%96jsneno-mon%D1%96toringovij-v%D1%96zit-do-pol%D1%96cz%D1%96%D1%97-smt.-sof%D1%96%D1%97vka-dn%D1%96propetrovsko%D1%97-oblast%D1%96/.

⁹⁵ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/porushennya-prava-na-svobodu-ta-osobistu-nedotorkann%D1%96st-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-pol%D1%96cz%D1%96%D1%97-m%D1%96sta-kaneva/.

only provided for detainees if they are placed in rooms for detainees, but as these rooms do not exist or are unusable, detainees do not receive food.

Most of the temporary detention facilities of the National Police of Ukraine visited during monitoring require renovation and urgent overhaul of water supplies, sewerage systems, power supply systems, ventilation, air conditioning.

The State Migration Service manages separate premises used to temporarily house foreigners and stateless persons who are in Ukraine illegally. These premises also need to be renovated, and the State Migration Service needs proper financial support to be able to maintain them.

Example

During a monitoring visit to the temporary detention centre at Chernihiv Border Detachment, monitors found that the canteen only had four sets of utensils and cutlery, despite the fact that fifteen people were detained at the centre. As a result, the detainees had to take turns to eat⁹⁶.

In most of the pre-trial detention centres visited, living conditions were extremely poor. Some prisoners were not provided with individual beds, so detainees had to take turns sleeping. Most cells are overcrowded. When allocating prisoners to a cell, the administration of the facilities does not take into account the actual area of the cell. As a result, the statutory norm for the minimum area per person is violated, as well as the right of detainees to eight hours of sleep per night.

Penitentiary institutions often do not comply with the minimum spatial requirements for each prisoner. Beds are close together, the bed linen is worn out, windows are barred when they do not need to be, and there is no proper ventilation. In a number of the facilities visited, procedures for cooking and eating do not comply with sanitary requirements, and there were examples of foodstuffs being used that were beyond expiry date. It is not uncommon for prisoners to sleep in rooms that are completely unsuitable.

Example

During the monitoring visit to Zhovti Vody Correctional Colony (no. 26), it was established that prisoners had been moved from a social and psychological service department that was under repair to a bakery and another department for more than four months while repairs were being carried out. The bakery premises were defined as auxiliary and not adapted for living. During the visit, the prisoners were transferred to premises with adequate living conditions. The monitoring group requested that the Prosecutor's Office and the National Police of Ukraine conduct an investigation. Zhovti Vody Local Prosecutor's Office and the Oblast Prosecutor's Office entered information on these reports of keeping prisoners in premises not adapted for residential use and in unsanitary conditions, without hygiene products, into the URPTI under part one of Article 127 (torture) of the Criminal Code of Ukraine⁹⁷.

⁹⁶ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/u-punkt%D1%96-timchasovogo-trimannya-chern%D1%96g%D1%96vsko-go-prikordonnogo-zagonu-ponad-vstanovlen%D1%96-term%D1%96ni-utrimuyutsya-15-os%D1%96b/.

⁹⁷ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/26319-qe-u-zhovtovodskij-vipravnij-koloniii-na-dnipropetrovschini-uvyazne-nix-tr/.

- 152 Article 7 of Law of Ukraine 794-VIII “On the State Bureau of Investigation” of 12 November 2015 establishes the functions of the SBI authorities and its authorized officials. Specifically, they have no right to detain persons suspected of committing crimes, meaning that the territorial bodies of the SBI have no suitable rooms to hold detainees. If suspects are detained, they must be taken to appropriate pre-trial detention facilities in the prescribed manner.

In 2019, the Commissioner reported on the detention of suspects by investigators of territorial units of the SBI for extended periods (one and a half days) in inappropriate conditions, and without free access to water, food and bedding.

Example

Investigators from the territorial unit of the SBI in Lviv detained suspects B. and L. at 12:20 on 27 February 2019, during a pre-trial investigation in a criminal case and in line with item 1 of part one of Article 208 of the CPC of Ukraine.

The detainees were brought to the military prosecutor’s office of Uzhhorod garrison in the Western region of Ukraine at about 19:20 for procedural paperwork.

On 28 February 2019 at about 14:30, the detainees were transported by internal security officers (from Mukachevo Border Detachment of the Department of Internal Security “West” of the State Border Guard Service) from the military prosecutor’s office of Uzhhorod garrison in the Western region of Ukraine to Lychakiv District Court in Lviv.

According to information received from the Department for Monitoring the Observance of Human Rights of the Ministry of Internal Affairs of Ukraine, suspects B. and L. were taken to MDNP Temporary Detention Facility 5 in Lviv Oblast only on 1 March 2019, at about 01:00. That is, more than 36 hours passed from the moment of their actual detention until the moment of their placement in the temporary detention facility, and they were deprived of proper conditions of detention during that time.

RECOMMENDATIONS

To the central executive authorities (Ministry of Health of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Justice of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Internal Affairs of Ukraine, State Migration Service of Ukraine, Administration of the State Border Guard Service of Ukraine, Ministry of Defence of Ukraine), Security Service of Ukraine, State Bureau of Investigation, State Judicial Administration of Ukraine, state oblast administrations, Kyiv State City Administration and oblast councils:

1. Provide full financing, maintenance and support of activity to residential and detention bodies, institutions and facilities in order to bring the living conditions in them into line with sanitary and hygienic requirements established by the legislation of Ukraine and in accordance with European standards.

2. Take comprehensive measures to arrange unimpeded access to buildings and premises for people with disabilities in accordance with the State Construction Standards of Ukraine B.2.2-40:2018 "Inclusiveness of buildings and structures," approved by Ministry of Regional Development, Construction and Housing of Ukraine Order 327 of 30 November 2018.

To the Ministry of Social Policy of Ukraine:

1. Develop, and submit in the prescribed manner, amendments to Cabinet of Ministers of Ukraine Resolution 226 "On Improving the Education, Training, Social Protection and Material Security of Orphaned Children and Children Deprived of Parental Care" of 5 April 1994 in terms of:

- raising the minimum standards of financial support for orphaned children and children deprived of parental care for providing the clothing, footwear, and equipment to ensure compliance with normal standards;
- revising the minimum amount of financial assistance for admission to vocational and higher education institutions, which is set by Resolution 226 at 2.5 non-taxable minimum incomes;
- determining the standard amount of financial support to provide for basic necessities (detergents, cleaning products hygiene products) for orphaned children and children deprived of parental care who live and/or study in orphanages and boarding schools.

2. Accelerate approval of the Model Regulations for residential facilities for elderly people and people with disabilities.

To the Ministry of Health of Ukraine – Accelerate approval of the Ministry of Health of Ukraine Order "On Approval of the Sanitary Regulations for Nursing Homes for the Elderly and Persons with Disabilities, Special Boarding Schools, In-patient Departments of Territorial Centres of Social Services."

To the Ministry of Internal Affairs of Ukraine:

1. Develop a draft law to amend Article 23 of Law of Ukraine 580-VIII "On National Police" of 2 July 2015 in terms of empowering the police to detain and transport persons detained on suspicion of committing criminal offences, persons towards whom a preventive measure in the form of detention has been applied, as well as persons subjected to administrative arrest, and submit in the prescribed manner for consideration by the Verkhovna Rada of Ukraine.

2. Approve the Ministry of Internal Affairs of Ukraine Order on the norms for providing necessary equipment for detention rooms in duty units, temporary detention centres, reception centres for persons detained for vagrancy, special reception centres for persons subjected to administrative arrest, and temporary detention facilities for foreigners and stateless persons who are in Ukraine illegally.

3. Amend the Instructions on the organization of the transportation and holding of accused/defendants and prisoners in courts, approved by Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, Supreme Court of Ukraine, High Specialized Court of Ukraine, State Judicial Administration of Ukraine, Prosecutor-General's Office of Ukraine Order 613/785/5/30/29/67/68 of 26 May 2015, that determines the procedure for providing meals to accused/defendants who are not provided with packed lunches before being transported to court, including the possibility of providing hot drinks.

154 **To the Ministry of Justice of Ukraine** – bring the conditions of detention and healthcare in medical units in pre-trial detention centres and detention centres into line with sanitary and hygienic requirements established by European penitentiary rules, the Criminal Enforcement Code of Ukraine and Law of Ukraine 3352-XII “On Pre-trial Detention” #of 30 June 1993. In particular, ensure the proper functioning of ventilation systems, and abolish the practice of placing prisoners in overcrowded cells that do not allow for the minimum spatial requirements for prisoners in accordance with international standards.

To the State Bureau of Investigation – ensure that the territorial bodies of the State Bureau of Investigation are equipped with detention rooms and that these are used in accordance with the requirements of national legislation.

7.4. Right to health care and medical assistance

The Commissioner’s findings indicate that for the second year running, the right to health care and medical assistance has not been upheld in the vast majority of places of detention.

Significant attention was paid to this issue in the annual report of the Ukrainian Parliament Commissioner for Human Rights for 2018 (on observance and protection of human rights and freedoms of citizens of Ukraine) and in four thematic reports. The Commissioner issued a number of recommendations on addressing human rights violations and ensuring the provision of adequate healthcare to the central executive authorities, law enforcement agencies, state institutions, state oblast administrations and oblast councils that coordinate the activities of places of detention.

However, in 2019, the situation did not significantly improve. Key issues that continue to jeopardize the right to healthcare and medical assistance in most types of places of detention in 2019 include: a lack of necessary licences for medical practice; inadequate numbers of doctors; a lack of medicines; poor quality medical examinations; lack of proper medical records; and detainees being unable to give informed consent for treatment.

Monitoring visits found many cases in which patients who are being treated in psychiatric facilities (and have been there for a long time) are not being treated for physical medical complaints.

Example

Patient B. was found in Budaniv Oblast Psychiatric Hospital, and said she had been at the hospital for more than four years. Patient B. does not have legal capacity, meaning that although she has a malignant neoplasm of the breast, she is not receiving any treatment for cancer because her guardian had refused to allow it⁹⁸.

⁹⁸ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/v%D1%96ziti-do-m%D1%96scz-nesvobodi-ternop%D1%96lshhini/.

Example

At Poltava Oblast Psychiatric Hospital 2 in Snityno, some patients have been receiving treatment for decades, without ever having given their informed consent for hospitalization and treatment. During the monitoring visit they expressed a desire to leave the institution. The same violations were detected by monitors during a visit in December 2018.

Following a request to the prosecutor's office after the monitoring visit, Lubny Local Prosecutor's Office entered information into the URPTI about the criminal offence and started a pre-trial investigation under part one of Article 146 (illegal imprisonment) of the Criminal Code of Ukraine⁹⁹.

Standards for in-patient psychiatric care in accordance with Article 1 of Law of Ukraine 1489-III "On Psychiatric Care" of 22 February 2000 and the requirements for inpatient medical services, as well as the Action Plan of the Concept for the Development of Mental Health in Ukraine until 2030, approved by Cabinet of Ministers of Ukraine Ordinance 1018-p of 27 December 2017, would address a number of issues related to provision of healthcare to patients in psychiatric institutions. However, the Ministry of Health has not yet approved these.

There is no effective regulation of the organization and provision of healthcare to patients at in-patient residential care facilities run under the social protection system (in particular, on the conditions and type of healthcare in the facilities, the frequency of medical examination of patients, and mechanisms for interaction between doctors and medical staff working in residential care facilities and primary, secondary and tertiary care providers). The Commissioner has repeatedly made recommendations to the Ministry of Social Policy on the development of the relevant legal act, but these recommendations have not been implemented.

Monitoring visits to first-aid rooms in educational institutions identified cases of retention of expired medicines or of storage of medicines in violation of storage conditions specified by Law of Ukraine 1707-VII "On Medicines" of 20 October 2014.

There is no monitoring of whether individual rehabilitation programmes for children with disabilities are updated in a timely manner.

Violations of the right to health care in the penitentiary system are systematic.

The Health Centre of the State Penitentiary Service of Ukraine does not comply with legislation in force in the field of licensing, significantly affecting the quality of healthcare provided to prisoners.

The Health Centre of the State Penitentiary Service of Ukraine oversees 20 separate branches which include 110 medical units, 16 medical facilities and 2 health posts (Ministry of Justice of Ukraine Order 4610/k of 22 November 2017). From November 2017 to 2019 inclusive, these were operating in violation of current legislation as they did not have the required licences, significantly affecting the quality of healthcare provided to prisoners.

⁹⁹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/l%D1%96karnya-v-yak%D1%96j-ne-l%D1%96kuyut,-a-utrimuyut-lyudej-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-poltavsko%D1%97-oblasno%D1%97-psix%D1%96atrich-no%D1%97-l%D1%96karn%D1%96

156 Only in April 2019 were measures taken to obtain licences for each separate branch (i.e. for the medical units and/or medical facilities that make up the branch), in accordance with the Licence Conditions for conducting medical practice, approved by Cabinet of Ministers of Ukraine Resolution 285 “On Approval of Licensing Conditions for Conducting Medical Practice” of 2 March 2016.

As of 1 January 2020, 19 branches of the Health Centre of the State Penitentiary Service of Ukraine have acquired the right to conduct medical practice. The exceptions are branches in Dnipropetrovsk and Donetsk oblasts.

Updating the public about the activities of the Health Centre of the State Penitentiary Service of Ukraine is also an issue. Today, the activities of the institution are not transparent, as the official website of the State Penitentiary Ukraine does not contain any information about the structure of the institution and its activities, contacts, its branch and units, procurement of medicines, or statistics on the morbidity and mortality of prisoners.

The following issues remain unresolved:

- conducting medical examinations for prisoners held in correctional centres (these centres do not have their own medical units, and other medical facilities often fail to provide health care to these prisoners);
- adequate examinations of prisoners for tuberculosis and provision of health care to patients with various forms of tuberculosis;
- continuous treatment with antimycobacterial therapy for prisoners suffering from a contagious form of tuberculosis;
- appropriate levels of screening of prisoners for HIV and the provision of healthcare to people living with HIV and AIDS;
- continuous treatment with highly active antiretroviral therapy for prisoners living with HIV;
- concealment of injuries sustained by prisoners during their stay in institutions;
- proper provision of medical units with the necessary equipment and medicines, as well as adequate staffing;
- failure to conduct medical examinations of prisoners (or conducting medical examinations just to “tick the box”) when they are released from punitive confinement or after special measures are used against them;
- medical units of the Health Centre of the State Penitentiary Service of Ukraine not having access to the register of patients with diabetes, and failure to update this register with details of prisoners held in penitentiary institutions; and
- lack of healthcare for prisoners during transportation.

Prisoners suffering from communicable infectious diseases (such as tuberculosis) are transferred between penitentiary facilities together with other prisoners, without providing facilities for isolating sick prisoners or personal protective equipment, which contributes to the high rates of tuberculosis in the penitentiary system.

Monitoring visits to pre-trial detention and penitentiary institutions in 2019 revealed cases of failure to provide adequate healthcare.

Example

Multidisciplinary hospitals under the control of the Health Centre of the State Penitentiary Service of Ukraine (Buchanska¹⁰⁰, Shepetivska¹⁰¹, Dariivska¹⁰² and others) were not able to provide some treatments and surgery as they did not have licences for the drugs needed for use in general anaesthesia.

A prisoner who was serving his sentence in Bila Tserkva Correctional Colony (#35)¹⁰³ and required immediate surgery, was forced to abstain from food for two days, until he could be treated at the surgical department of the municipal hospital in the city of Bila Tserkva, Kyiv oblast.

X-ray rooms were closed and work with ionizing radiation sources was suspended in all medical institutions of the Health Centre of the State Penitentiary Service of Ukraine, due to the lack of a permit to operate in the field of nuclear energy. This affected the quality of healthcare in pre-trial detention facilities (Kyiv pre-trial detention centre that holds about 2,000 people, and others), penitentiary institutions, and in particular, in specialized tuberculosis hospitals (Hohoriv, Kherson, Snihuriv, Dnipropetrovsk, Zbarazh and others). Infection control in penitentiary and medical institutions were also jeopardized.

Monitoring visits to temporary detention facilities and other facilities under the control of the National Police of Ukraine revealed a lack of mandatory medical kits, or kits that did not meet the minimum standards and/or included medicines that have expired.

Currently, there are no regulations on providing police units and institutions with medical equipment and consumables, because Ministry of Internal Affairs of Ukraine Order 946 "On Approving the Norms for Providing Necessary Equipment for Detention Rooms in Duty Units, Temporary Detention Centres, Reception Centres for Persons Detained for Vagrancy, Special Reception Centres for Persons Subjected to Administrative Arrest, and Temporary Detention Facilities for Foreigners and Stateless Persons Who Illegally Stay in Ukraine" of 25 September 2006 is no longer valid (Ministry of Internal Affairs of Ukraine Order 592 "On Recognizing Orders of the Ministry of Internal Affairs of Ukraine Invalid" of 10 July 2018).

Recommendations provided by the Commissioner to the Ministry of Internal Affairs on developing and approving these regulations remain unaddressed.

¹⁰⁰ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/u-buchansk%D1%96j-vipravn%D1%96j-kolon%D1%96%D1%97-na-ki%D1%97vshhin%D1%96-porushuyutsya-prava-zasudzhenix/.

¹⁰¹ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/18319-tw-u-shepetivskij-vipravni-koloniii-na-xmelnichchini-zafiksovani-vipadki/.

¹⁰² Report published at: www.ombudsman.gov.ua/ua/all-news/pr/u-v-discipl%D1%96narnomu-%D1%96zolyator%D1%96/.

¹⁰³ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/22419-zh-umovi-pratsi-dlya-zasudzhenix-u-bilotserkivskij-vipravnij-koloniii-35/.

To the Committee of the Verkhovna Rada of Ukraine on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories in Donetsk, Luhansk Oblasts and the Autonomous Republic of Crimea, the city of Sevastopol, National Minorities and International Relations – initiate parliamentary hearings on health care in penitentiary institutions and pre-trial detention centres in accordance with the Concept on reforming/development of the penitentiary system of Ukraine, approved by Cabinet of Ministers of Ukraine Ordinance 654-p of 13 September 2017.

To the Ministry of Health of Ukraine:

1. Develop and approve the Action Plan for the Concept of development of mental healthcare in Ukraine until 2030, approved by Cabinet of Ministers of Ukraine Ordinance 1018-p of 27 December 2017.
2. Approve the standards for inpatient psychiatric care in accordance with Article 1 of Law of Ukraine 1489-III “On Psychiatric Care” of 22 February 2000 and the requirements for medical services provided in inpatient settings.

To the Ministry of Social Policy of Ukraine and the Ministry of Health of Ukraine – develop a joint order on the organization and provision of healthcare to patients at inpatient residential care facilities (on determining the conditions and type of healthcare in residential care facilities, the frequency of medical examination of patients, and mechanisms for interaction between doctors and medical staff working in these facilities and primary, secondary and tertiary care providers).

To the Ministry of Justice of Ukraine:

1. Approve the Procedure for conducting medical examinations of persons sentenced to deprivation of liberty in correctional centres for the purpose of implementing part one of Article 59 of the Criminal Executive Code of Ukraine.
2. Ensure that vacancies in the medical units of the Health Centre of the State Penitentiary Service of Ukraine are filled.
3. Ensure compliance with Ministry of Health of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine, and State Drug Control Service of Ukraine Order 821/937/1549/5/156 “On Approval of the Procedure for Interaction of Healthcare Facilities, Law Enforcement Agencies, Pre-Trial Detention Centres and Correctional Centres to Ensure Continuity of Substitution Maintenance Therapy” of 22 October 2012.
4. Provide compulsory tuberculosis screening for newly arrived prisoners in accordance with the Unified Clinical Protocol of Primary, Secondary (Specialized) and Tertiary (Highly Specialized) Healthcare “Tuberculosis,” approved by Ministry of Health of Ukraine Order 620 of 4 September 2014.

5. Conduct preventive medical examinations of all prisoners twice a year.

6. Ensure access of medical units of the Health Centre of the State Penitentiary Service of Ukraine to the register of patients with diabetes, and ensure that this register is kept updated with details of prisoners held in penitentiary institutions.

7.5. Right to professional legal aid

According to Articles 13-15 of Law of Ukraine 3460-VI "On Free Legal Aid" of 2 June 2011, the vast majority of detainees have the right to free secondary legal aid guaranteed by the state, on various grounds. This legal aid includes legal defence, procedural representation, and assistance with drafting procedural documents, and is provided by centres for free secondary legal aid and by lawyers in the register of lawyers who provide free secondary legal aid.

Monitoring visits by the National Preventive Mechanism revealed that in most of the social protection, education and health care institutions that were visited, residents are not aware of the opportunities available to them to exercise their right to legal aid, and contacts have not been established with relevant centres providing free secondary legal aid. This makes it impossible to lodge a complaint with the authorities in cases of torture and ill-treatment, or to report violations of economic and social rights that patients cannot resolve on their own.

Members of the monitoring group studied the case histories of residents of care facilities run by the social protection system, and undertook individual interviews with residents. These revealed that the residents were not aware that they could apply to the court for restoration of legal capacity in accordance with Article 300 of the CPC of Ukraine. Information stands in these facilities do not provide information on the rights of persons with disabilities in language that is accessible for people with learning disabilities, or hotline numbers for officials, including the Commissioner and the free legal aid centres and their addresses.

In psychiatric care facilities including clinical psychoneurological hospitals and psychiatric hospitals, patients have limited access to lawyers. Analysis of patient personal files, including copies of court decisions, gives grounds to conclude that in most cases, the presiding judges do not summon the person who is the subject of the hearing. Doctors accept applications for refusal to participate in court hearings from the patients, but these patients do not know that they have the right to appear in court.

Lawyers appointed by the court and acting on behalf of the regional centre for free legal aid do not have any contact with these patients. Instead, the court makes a decision on the appointment of a lawyer in each case, meaning that these lawyers are acting in violation of Ministry of Justice of Ukraine Order 368/5 "On Approval of Quality Standards for Free Secondary Legal Aid in Criminal Proceedings" of 25 February 2014. Under this Order, a lawyer who has been granted power of attorney should conduct a confidential meeting with the client to explain the client and the lawyer's rights and responsibilities, to clarify and obtain information from the client and agree the legal position.

160 Monitoring visits conducted in 2019 revealed violations of the right to professional legal aid affecting persons detained in penitentiary facilities and places of pre-trial detention.

Contrary to the requirements laid out in the Criminal Executive Code of Ukraine, in Sokyryanska Correctional Colony 67) Kamyanska Correctional Colony 101, Kryvyi Rih Correctional Colony 80) Dniprovskaya Penitentiary Institution 4 and others, prisoners are notified of the place and time of disciplinary commission meetings on the day the meeting is due to take place, which effectively deprives prisoners of their right to professional legal aid.

Prisoners are prohibited from making complaints to the relevant authorities about any actions or decisions made by the administration of the penitentiary facility, leaving them at risk of additional restrictions.

In most of the institutions visited by the monitoring group, information stands do not provide contact information for institutions where the detainees can report violations of their rights.

The ECtHR has repeatedly reminded the Ukrainian authorities of the obligation to ensure that a person accused of a crime has the right to a lawyer from the outset of criminal proceedings, as exercise of this right is a fundamental guarantee against ill-treatment.

Articles 208 and 213 of the CPC of Ukraine contain clear provisions that oblige the authorized official who apprehended a person to immediately notify the relevant centre for free secondary legal aid. However, monitoring visits carried out by the National Preventive Mechanism in 2019 revealed that some police officers are acting in violation of these requirements.

Example

During a monitoring visit to Kaniv police unit of Zolotonosha Police Department, monitors learned that Ya., who was detained in the MDNP temporary detention centre 7 (in Kaniv) in Cherkasy oblast, first met his lawyer 21 hours after he had been apprehended¹⁰⁴. This was because the police officers had entered inaccurate information in the official documents about the actual time of his apprehension, and had only notified the oblast legal aid centre four hours after the apprehension.

Similar cases were recorded in other police units, where the officers only notified the oblast legal aid centres 5-17 hours after the apprehension of a citizen.

Actions of police officers that lead to violation of a citizen's right to defence may constitute a criminal offence under Article 374 of the Criminal Code of Ukraine (violation of the right to defence). Thanks to information obtained during monitoring visits to bodies and institutions under the control of the National Police of Ukraine, in 2019 territorial departments of the SBI opened five criminal, pre-trial investigations under Article 374 of the Criminal Code of Ukraine.

¹⁰⁴ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/porushennya-prava-na-svobodu-ta-osobistu-nedotorkann%D1%96st-rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-pol%D1%96cz%D1%96%D1%97-m%D1%96sta-kaneva/.

In addition, monitoring visits to temporary detention facilities run by the SBS and to temporary detention facilities for foreigners and stateless persons (who are in Ukraine illegally) run by the SMS identified numerous cases of violation of the rights of foreigners and stateless persons to defence during administrative detention.

Example

Officials from Lutsk¹⁰⁵ and Podillia¹⁰⁶ State Border Guard Service detachments stated in the protocols recording the administrative detention of N. and M. (citizens of the People's Republic of Bangladesh) and B. (citizen of the Socialist Republic of Vietnam) that the detainees did not need legal aid and they would defend themselves personally.

However, during interviews with monitors, N., M. and B. reported that at the time of their apprehension they were minors (17, 15 and 14 years old), did not speak Ukrainian, Russian or English, and were unable to defend themselves personally, and that the border guards did not ask them whether they needed a lawyer. N., M. and B. did not refuse the services of a lawyer; rather, the fact that they had the right to free secondary legal aid was not explained to them.

RECOMMENDATIONS

To the Ministry of Justice of Ukraine:

Develop and approve a plan of legal education activities to raise legal awareness among the population and update them about their rights and freedoms. Work with and engage representatives of free secondary legal aid centres to raise awareness of human rights among people in different types of detention. Ensure that lawyers from the free secondary legal aid system regularly visit places of detention.

To the Ministry of Social Policy of Ukraine – develop and submit to the Verkhovna Rada of Ukraine a draft law on amendments to Article 300 of the Civil Procedure Code of Ukraine, to supplement the provision on dismissal of a guardian from his/her powers and appointment of another guardian at the request of a person who has been declared legally incapacitated.

¹⁰⁵ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-spec-z%D1%96alnogo-prim%D1%96shhennya-v%D1%96dd%D1%96lu-prikordonnogo-sluzhbi-sv%D1%96tyaz-luczko%D1%96gogo-prikordonnogo-zagonu-p%D1%96vn%D1%96chnogo-reg%D1%96onalnogo-uprav%D1%96nnya-derzhavno%D1%97-prikordonno%D1%97-sluzhbi-ukra%D1%97ni/.

¹⁰⁶ Report published at: www.ombudsman.gov.ua/ua/all-news/pr/rezultati-mon%D1%96toringovogo-v%D1%96zitu-do-punktu-tim-chasovogo-trimannya-pod%D1%96lskogo-prikordonnogo-zagonu-p%D1%96vdenno%D1%96gogo-reg%D1%96onalnogo-uprav%D1%96nnya-derzhavno%D1%97-prikordonno%D1%97-sluzhbi-ukra%D1%97ni/.

162 **To the Coordination Centre for Legal Aid –**

1. Ensure that centres for free secondary legal aid prioritize the provision of primary and secondary legal aid to socially vulnerable categories of persons in places of detention
2. Ensure cooperation between these centres and detention facilities, in line with item 8 of Article 13 of Law of Ukraine 776/97-VR “On the Ukrainian Parliament Commissioner for Human Rights” of 23 December 1997.

CHAPTER 8

**OBSERVING THE RIGHTS
OF UKRAINIAN CITIZENS
WHO ARE IN PLACES
OF DETENTION
ABROAD AND
IN THE TEMPORARILY
OCCUPIED TERRITORY**

OBSERVING THE RIGHTS OF UKRAINIAN CITIZENS WHO ARE IN PLACES OF DETENTION ABROAD AND IN THE TEMPORARILY OCCUPIED TERRITORY

The Commissioner works to protect the rights and freedoms of Ukrainian citizens regardless of their whereabouts.

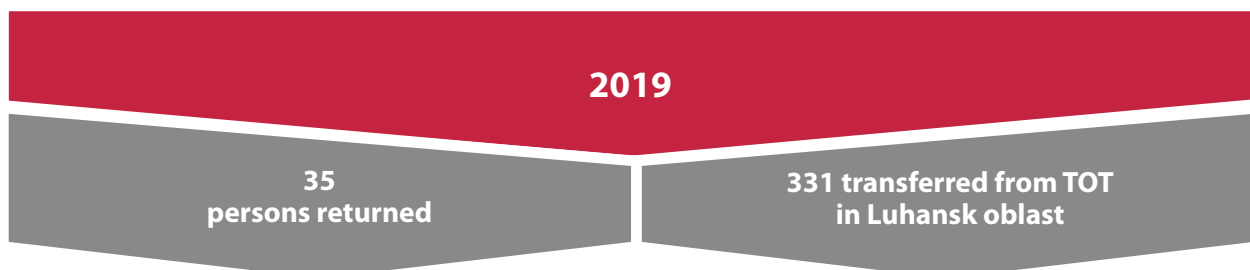
As of the end of 2019, more than 20,000 Ukrainian citizens were in places of detention abroad and in the temporarily occupied territories of Ukraine, and each of them needed the care and protection of the state.

Therefore, the Commissioner actively monitored the observance of this group of citizens' rights and freedoms. Based on this monitoring, the most common human rights violations experienced by this group were: torture; violations of the right to a fair trial; violations of the right of prisoners to communicate with their families, relatives and diplomatic representatives of Ukraine; violations of the right to freedom of religion; poor conditions of detention including non-compliance with sanitary, hygienic and technical norms; and failure to provide detainees with proper health care.

Thanks to the joint efforts of the President of Ukraine Volodymyr Zelenskyi and the international community, and with the direct participation of the Commissioner and representatives of the competent authorities of Ukraine, on 7 September 2019, 35 Ukrainian citizens who were illegally detained in the Russian Federation and temporarily occupied Crimea were returned to Ukraine. On 29 December 2019, 72 citizens of Ukraine who were imprisoned in the temporarily occupied territories in Donetsk and Luhansk oblasts were also released.

In addition, during 2019, the Commissioner personally ensured the transfer of 331 citizens of Ukraine from the temporarily occupied territory in Luhansk oblast, who as of August 2014 were serving criminal sentences. Of these, 125 were released as their sentences had expired.

At the international level, in 2019 the Commissioner fostered cooperation with representatives of Ukrainian foreign diplomatic missions to ensure the release and repatriation of Ukrainian citizens who were in penitentiary institutions abroad.



166 **8.1. Rights of citizens of Ukraine prosecuted by the Russian Federation on baseless and politically motivated charges**

In the context of the long-term armed aggression of the Russian Federation, the Commissioner continues to monitor the observance of the rights of Ukrainian citizens who are known to face persecution by the aggressor country on the grounds of baseless and politically motivated accusations.

At the beginning of 2019, 68 Ukrainian citizens in total were in prisons located in the territory of the Russian Federation and the temporarily occupied territory of the Autonomous Republic of Crimea. This included 38 people who were detained in the territory of the Russian Federation, of whom 2 were at the stage of preliminary investigation, 12 were on trial, and 24 had been convicted and were serving their sentences. There were only 30 people in prisons in the temporarily occupied territory of the Autonomous Republic of Crimea; 17 were at the preliminary investigation stage, 2 were on trial, and 9 people had been convicted and were serving sentences.

During 2019, the Commissioner received more data on the number of Ukrainian citizens detained by the Russian Federation, with information coming directly from the citizens themselves, their relatives or representatives, as well as from human rights organizations and from media reports.

Exact places of detention were established with the assistance of diplomatic missions and consular offices of Ukraine in the Russian Federation.

In general, the complaints received by the Commissioner in 2019 concerned the following systematic violations.

Torture

Citizens of Ukraine were tortured by law enforcement officers of the Russian Federation in order to obtain confessions. The most common methods are beatings and electric shocks during detention, interrogation, sleep deprivation, and psychological pressure, such as mock execution. These actions are direct violations of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereafter the ECHR).

Example

In March 2014, K., a citizen of Ukraine, was illegally apprehended in the Russian Federation and subsequently illegally convicted. According to available information, K. was subjected to physical and psychological torture by officers of the Federal Security Service of the Russian Federation. According to K.'s complaint to the ECtHR, he was subjected to the following types of torture: beatings, strangulation, sleep deprivation, electric shocks passing through his genitals and limbs, use of needles under his fingernails, and threats to abduct his son. During the torture committed against him, the Ukrainian pleaded guilty and signed the documents provided to him by law enforcement officers. As a result of the torture, K. tried to commit suicide using a nail he found in his cell.

Prohibition on communication with families and relatives

Under international law, including the Minimum Standard Rules for the Treatment of Prisoners, persons being held in detention have the right to receive family visits, letters, phone calls, and consular assistance. The Russian Federation did not grant this right to detained Ukrainian citizens.

Example

During his detention in a penitentiary facility, citizen K. was not given the opportunity to correspond with relatives and friends at all, which is also a violation of the provisions of the national legislation of the Russian Federation.

Violation of the right to freedom of religion

Citizens of Ukraine who are in detention were prohibited from satisfying their religious needs; in particular, they were not allowed to meet with clergy, to have and use religious literature, or to perform religious rites inherent in their religions.

Example

Members of the clergy were denied access to Ukrainian citizens who were illegally detained in places of detention in the Russian Federation, and S., a citizen of Ukraine, was deprived of the right to receive consular assistance.

Example

Citizens of Ukraine – Crimean Tatars, who were apprehended during searches on 27 March 2019 and subsequently imprisoned in the temporarily occupied territory of the Autonomous Republic of Crimea, were not allowed to satisfy their religious needs. In particular, they were forbidden from keeping and reading the Quran and were not given prayer rugs. They were also unable to pray at the correct times as they had no access to clocks and could not establish the current time of day. In addition, pork was added to their diets, though Muslims cannot eat pork.

Poor conditions of detention that do not comply with international sanitary, hygienic and technical standards

Citizens of Ukraine who have been illegally arrested in the territory of the Russian Federation and the temporarily occupied territory of the Autonomous Republic of Crimea are kept in penitentiary institutions where conditions are inadequate.

In particular, the buildings are not adapted for residential use, the number of prisoners exceeds the number of available beds, there is no ventilation, sanitary conditions do not meet international standards,

- 168 there is no safe drinking water, and there are rats, cockroaches, bedbugs and fleas in the cells. This is in direct violation of the Standard Minimum Rules for the Treatment of Prisoners.

Example

D., a citizen of Ukraine, was illegally detained in the temporarily occupied territory of the Autonomous Republic of Crimea. D. was held in a cell at a pre-trial detention centre that was in very poor condition and did not meet technical and sanitary standards. The size of the room did not meet international standards for persons in pre-trial detention as it was only 2 square metres. In addition, water flowed from the ceiling, and the plumbing was in disrepair.

Violation of the right to healthcare

Almost every report received by the Commissioner included details indicating systematic violations of the right to receive health care. Health care was not provided to citizens of Ukraine when their health deteriorated, and exacerbation of chronic health conditions, including chronic renal failure, gastric ulcers, hypertension, cardiovascular disease, or sudden increase in body temperature above 38°C, were generally ignored.

Example

B. is a citizen of Ukraine who was illegally detained by law enforcement agencies of the Russian Federation in the temporarily occupied territory of the Autonomous Republic of Crimea. B. is a person with a group I disability, and who has diabetes and underwent heart surgery prior to detention, but he was not provided with adequate health care while in detention. B. has numerous diseases that significantly threaten his life: he is at risk of a recurrent heart attack or sudden death from acute coronary syndrome caused by a cardiovascular condition, and is also at risk of septic shock resulting from an unhealed wound on the stump of his right leg.

Example

G., a citizen of Ukraine who was illegally detained on the territory of the Russian Federation, has a diagnosis that requires urgent treatment in the leading specialized medical institutions of the Russian Federation or Europe, but did not receive adequate assistance.

According to medical opinion based on the results of examinations conducted at a diagnostic centre, G. suffers from a congenital malformation causing: cavernous transformation of the portal vein, portal hypertension, splenomegaly, hyperbilirubinemia, exacerbated chronic cholecystitis, erosive gastritis, polyp of the antrum of the stomach, ulcer of the descending duodenum, intestinal dysbacteriosis in the third degree, acne, and demodex.

Violation of the right to receive consular assistance

In violation of Article 36 of the Vienna Convention on Consular Relations, citizens of Ukraine who are illegally detained in the territory of the Russian Federation are not entitled to meet with diplomatic or consular representatives of Ukraine.

Example

Staff at a penitentiary institution in the Russian Federation did not allow representatives of the diplomatic mission of Ukraine to meet B., a citizen of Ukraine. B. was taken into custody and convicted by the so-called “court of the Republic of Crimea.”

Example

Representatives of foreign diplomatic missions in Ukraine were not allowed to visit citizens of Ukraine S. and B., who were illegally detained in the Russian Federation.

Following monitoring, the Commissioner and Ukrainian diplomats took measures to prevent violations and address violations of the rights and freedoms of individuals that had been identified.

In each case, the Commissioner sent a request calling for the restoration of the violated rights of the citizens of Ukraine to the Commissioner for Human Rights in the Russian Federation and to the regional Commissioners in the Russian Federation, to local public authorities in the Russian Federation that monitor human rights in places of detention, and to law enforcement officials in the Russian Federation.

The international community was also actively involved in putting pressure on the Russian Federation to save the lives of Ukrainian citizens and ensure that their human rights and freedoms were protected.

The Commissioner has regularly raised the issue of the release and protection of the rights of Ukrainian citizens prosecuted on baseless and politically motivated charges before the international community. This has included addresses to: Council of Europe Commissioner for Human Rights Dunja Mijatović; President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Mykola Hnatovskyi; Chairperson of the United Nations Committee against Torture Jens Modvig; Vice-President of the International Committee of the Red Cross Gilles Carbonnier; Chairperson of the International Committee of the Red Cross Delegation to Ukraine Alan Ashliman and his successor Florence Gillette; and the Head of the United Nations Human Rights Monitoring Mission in Ukraine Fiona Fraser and her successor Matilda Bogner.

In order to highlight blatant violations of the fundamental rights of Ukrainian citizens in the Russian Federation in the international arena, in particular during the “trials” of Ukrainians taking place in Rostov-on-Don, Russia, the Commissioner addressed the Consuls-General of the Republic of Armenia, Romania and Belarus in the city of Rostov-on-Don with requests to use diplomatic mechanisms and levers of influence in order to encourage the Russian Federation to adhere to the principles of humanism and respect for human rights.

- 170 Joint efforts by the President of Ukraine Volodymyr Zelenskyi and the international community (with the direct participation of the Commissioner and representatives of the competent public authorities of Ukraine) led to the release of 35 citizens of Ukraine who had been prosecuted by the Russian Federation for political reasons. The citizens returned home in September 2019.

Of all those released, 11 people had been imprisoned on unjustified and politically motivated charges and detained in places of detention in the Russian Federation and the Crimean peninsula: Roman Sushchenko, Oleh Sentsov, Oleksandr Kolchenko, Volodymyr Balukh, Stanislav Klykh, Mykola Karpiuk, Oleksii Sizonoviyh, Pavlo Hryb, Edem Bekirov, Yevhen Panov, and Artur Panov.

After their release, these citizens of Ukraine personally confirmed that they had suffered the gross human rights violations listed above. One of the first actions of the state was to provide them with a full examination and treatment by qualified professionals.

The Russian Federation has continued to persecute Ukrainian citizens for political reasons, and the number of Ukrainians detained has almost doubled.

As of the end of 2019, 115 citizens of Ukraine were illegally detained in the territory of the Russian Federation and in the temporarily occupied territory of the Autonomous Republic of Crimea, including: 62 people in the territory of the Russian Federation (10 were under preliminary investigation, 9 were on trial, and 43 persons had been convicted and were serving sentences) and 53 people in the temporarily occupied territory of the Autonomous Republic of Crimea (25 people were under preliminary investigation, 4 were on trial, and 24 had been convicted and were serving sentences).

The Commissioner is continuing to take measures to ensure the release of citizens of Ukraine.

At the legislative level, however, the State has not yet resolved the issue of determining and consolidating the legal status of citizens of Ukraine who have been prosecuted on baseless and politically motivated charges, and providing them with social guarantees.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – develop and submit to the Verkhovna Rada of Ukraine a draft law on determining the legal status of persons who have been prosecuted on baseless and politically motivated charges and providing social guarantees to them.

To the Ministry of Foreign Affairs of Ukraine – act to increase international awareness on the rights of Ukrainian citizens persecuted by the Russian Federation on baseless and politically motivated charges in order to increase international pressure for their release, through Ukraine's participation in international organizations and special missions and cooperation with foreign states.

8.2. Rights of citizens of Ukraine who are in penitentiary institutions abroad

In 2019, the Commissioner received 469 reports from citizens who are in prisons abroad or from their relatives. In response to each report, the Commissioner took measures to ensure the restoration of these citizens' rights by negotiating with ombudspersons of other countries, with the heads of their public authorities, with representatives of the ICRC, and with the United Nations Monitoring Mission for Human Rights in Ukraine, with a view to promoting effective protection of human rights and freedoms.

During the year, representatives of the Commissioner's Office made visits to places of imprisonment where Ukrainian citizens are detained in Greece, Italy, the Kingdom of Thailand, and the Russian Federation.

The Commissioner noted that the most common violations of the rights of Ukrainian citizens detained in places of imprisonment abroad are as follows.

Violation of the right to a fair trial

These violations include prejudice of judges, failure to provide an interpreter during court hearings or a copy of a court decision in a language understandable to the person on trial, lack of access to legal aid, and disregard for the special status of a person as a victim of trafficking in court. These rights violations were recorded with regard to citizens of Ukraine detained in places of detention in Greece, Italy, the Russian Federation, Thailand, the Arab Republic of Egypt, and the Federal Republic of Nigeria.

Example

In July 2019, the Republic of Italy illegally sentenced Vitalii Markiv, an official of the National Guard of Ukraine, to 24 years in prison for the alleged murder of Italian journalist Andrea Rocchelli in Ukraine in 2014 on the territory of the Anti-Terrorist Operation. The case against Vitalii Markiv was based on the testimony of a single witness, and no investigative examination was conducted. The Ukrainian authorities repeatedly suggested that the Italian side set up a joint working group to investigate and establish those responsible for the murder of Andrea Rocchelli.

In December 2019, the Commissioner paid a visit to Vitalii Markiv, who is being held in the Opera Correctional Facility in Milan. During the visit, they discussed the circumstances of the case in detail, including how the Italian court found him guilty, and established that the case is of political significance.

Further activities to protect Vitalii Markiv's right to a fair trial have been identified.

The Commissioner drew attention to violations of the rights of 168 Ukrainian citizens detained in early 2019 in penitentiary institutions in Greece, 110 of whom were sentenced to 50 to 225 years in prison for illegally crossing the borders of the European Union and for transporting migrants.

- 172 In particular, during court proceedings, citizens of Ukraine were often not provided with full legal assistance, as well as translators with a sufficient level of proficiency in Ukrainian or other languages that they understood. As a result, the detainees were not able to fully testify and prove their innocence, or to communicate with lawyers and find out the circumstances of the case.

In 2019, 30 Ukrainian citizens were released on parole in Greece. These people cannot leave for Ukraine, but also cannot stay in Greece, as they need to obtain residence and employment permits, which the Greek authorities have not provided. To address this problem, the Ministry of Foreign Affairs has prepared a draft Agreement between Greece and Ukraine on permission for released parolees to return to Ukraine. The draft Agreement is currently under consideration by the Greek authorities.

Rights monitoring undertaken by the Commissioner has established that some foreign courts do not take the special status of victims of trafficking in human beings into account. Cases were recorded in particular in Greece, the Russian Federation and the Kingdom of Thailand.

Example

Courts in the Kingdom of Thailand did not take the status of victims of trafficking into account (as confirmed by the Ministry of Social Policy of Ukraine) when considering criminal proceedings with regard to such persons, and sentenced them to 25 years in prison.

On 18 December 2019, the Commissioner visited these persons at the Klongprem Central Prison in Bangkok, checked whether their rights were being protected, and planned to take measures to speed up the process of repatriation of the victims.

The largest number of Ukrainian citizens who are fraudulently involved in illegal drug distribution activities are in the territory of the Russian Federation. As of the end of 2019, almost 2,000 Ukrainian citizens were being held illegally in prisons in the Russian Federation. Many detainees have already been identified as victims of trafficking, but they continue to be detained illegally by the Russian Federation.

In December 2019, the Commissioner initiated and held a working meeting with national authorities to address the issues relating to Ukrainian citizens who have become victims of human trafficking, including with regard to their release.

Poor conditions of detention that do not comply with international standards

Reports from citizens of Ukraine on their conditions of detention abroad and monitoring undertaken by the Commissioner's Office revealed many cases of prisoners being held in inadequate conditions. These included: lack of compliance with norms for the minimum amount of space per person (sometimes cells hold three times as many people as are allowed in that space); lack of beds and bedding; lack of food or not receiving enough calories to maintain health and strength; lack of basic necessities; and hostility from prison staff.

Ukrainian citizens held in places of detention in Greece, Poland, Hungary, France, the People's Republic of Bangladesh, the People's Republic of China, the Lao People's Democratic Republic, the Russian Federation, and the Kingdom of Thailand all experienced violations of these rights.

Example

T., a citizen of Ukraine, was sentenced to 20 years in prison in the Republic of Iraq. The conditions under which T. is kept in detention are inadequate, and he does not receive good quality food or necessary healthcare. The room where T. is kept is unsanitary: the walls and ceiling are covered with fungus, the sanitation facilities are outdated and need renovation, natural and artificial lighting is not sufficient, and the room is not properly ventilated.

Citizens of Ukraine in places of detention in Bangladesh are not provided with enough beds, so they have to take turns sleeping or sleep on the floor. The bedding is damaged and needs to be replaced urgently, and there is no access to fresh air and drinking water.

Citizens of Ukraine serving sentences in the Lao People's Democratic Republic report a lack of personal hygiene and basic necessities, poor fitness, and health problems due to poor quality nutrition, as well as indifference and hostility from penitentiary staff.

In December 2019, the Commissioner paid monitoring visits to four penitentiary facilities in Thailand: Klongprem Central Prison, Central Women's Correctional Institution, Bangkwang Central Prison, and Bangkok Remand Prison, and conducted confidential meetings with 18 citizens of Ukraine.

During the meetings, the Commissioner recorded violations of the conditions of detention, including: lack of compliance with norms for the minimum amount of space per person; lack of access to clean drinking water; lack of access to sports facilities; limited access to news from their country (the only broadcasts people can watch are Thai television series, sometimes even without English subtitles, and there are time restrictions on online communication with relatives).

Citizens of Ukraine convicted in Thailand are also deprived of opportunities to serve their criminal sentence at home, as there is no extradition agreement between Ukraine and the Kingdom of Thailand. To address this issue, the Commissioner met with the Chief Ombudsperson of the Kingdom of Thailand Viddhavat Rajatanun, who assured the Commissioner of his assistance in the development and signing of such an Agreement.

At the request of the Commissioner, the President of Ukraine Volodymyr Zelenskyi instructed the Ministry of Justice and the Ministry of Foreign Affairs to intensify cooperation with the competent authorities of the Kingdom of Thailand to negotiate the signing of a bilateral extradition agreement.

At present, there are grounds to believe that such an Agreement will be signed in 2020.

174 *Lack of provision of healthcare*

The Commissioner's monitoring of conditions of detention abroad revealed violations of the human right to health care, in particular failure to conduct a qualified medical examination and provide appropriate treatment, as a result of which prisoners reported that chronic diseases were exacerbated.

Prisoners reporting lacking access to medicines that they need to use regularly, as well as refusal from the heads of penitentiary institutions to issue permits allowing relatives and friends to send medicines.

Ukrainian citizens in places of detention in Georgia, Italy, Azerbaijan, Bangladesh, the Russian Federation, the Kingdom of Thailand, Turkey, Iraq, and the State of Libya reported violations of these rights.

Example

On 18 December 2019, during a visit to a penitentiary institution in Bangkok, Thailand, the Commissioner raised the case of R., a Ukrainian citizen, who had repeatedly complained about her health to the penitentiary administration, but who had not undergone a proper medical examination or received any treatment.

Following the Commissioner's request to the Ombudsperson and the Ministry of Justice of the Kingdom of Thailand, R. was given a medical examination and received appropriate treatment.

RECOMMENDATIONS**To the Ministry of Justice of Ukraine:**

1. Take measures to expedite the conclusion of an Agreement between Ukraine and Greece on the supervision of conditionally convicted or conditionally released offenders.
2. Take measures to accelerate the conclusion of an Extradition Agreement between Ukraine and the Kingdom of Thailand.
3. Prepare proposals for the conclusion of extradition agreements between Ukraine and other countries, in particular with the People's Republic of Bangladesh, the Lao People's Democratic Republic, the Arab Republic of Egypt, and the Federal Republic of Nigeria.

The Ministry of Foreign Affairs of Ukraine – ensure regular visits to citizens of Ukraine who are under arrest, detained, imprisoned or serving sentences abroad in order to effectively monitor observance of their rights and freedoms.

8.3. Rights of citizens of Ukraine held in places of detention in the temporarily occupied territories

In 2019, the Commissioner continued to receive requests from persons currently held in detention in the temporarily occupied territories (and their relatives) to be transferred to the government-controlled-territory of Ukraine to serve out their sentences.

Some of these people have already served their full prison terms and should have been released a year or two ago, while others are serving life sentences.

The Commissioner also received letters from citizens of Ukraine who were convicted by the so-called “courts of the Republic of Crimea” after the occupation of Crimea. The requirements of the European Convention on the Transfer of Sentenced Persons (1983) cannot be applied to these cases, as Ukraine does not recognize court decisions made by the occupying power in the Autonomous Republic of Crimea, the Russian Federation.

As of the end of 2019, the Commissioner had received requests relating to 568 persons detained in penitentiary institutions located in the temporarily occupied territory in Donetsk oblast, and 385 persons detained in penitentiary institutions located in the temporarily occupied territory in Luhansk oblast to be transferred to the government-controlled-territory to serve out their sentences. In all cases, these people were already serving sentences in penitentiary institutions at the beginning of the armed aggression against Ukraine.

In addition, in their appeals, citizens of Ukraine noted violations of their rights, in particular regarding failure to ensure proper conditions of detention, and cases of failure to provide health care. These prisoners also reported forced unpaid labour, including being forced to repair weapons and military equipment, dig trenches, and participate in illegal armed groups.

In 2019, with the direct participation of the Commissioner, 331 convicted citizens of Ukraine were transferred from prisons in the temporarily occupied territory in Luhansk region to the government-controlled-territory of Ukraine. On 7 February 2019, 33 persons were transferred, on 20 March 2019 – 60 persons, on 22 April 2019 – 60 persons, on 24 May 2019 – 60 persons, on 24 July 2019 – 64 persons, on 12 September 2019 – 54 persons. So far, 125 persons have been released after serving out their sentences.

Transfer of Ukrainian citizens detained in the temporarily occupied territory of Donetsk oblast in 2019 was complicated by the unwillingness on the part of the those on the Donetsk side to transfer prisoners to the government-controlled-territory of Ukraine, with no reasons given for this decision.

The Commissioner has been receiving individual appeals on behalf of citizens of Ukraine illegally detained in the temporarily occupied territories of Donetsk and Luhansk oblasts since the beginning of the occupation. The Commissioner continued to bring information on violations of the rights and freedoms of this category of persons to the attention of the Anti-Terrorist Centre of the Security Service of Ukraine, and international organizations.

Parliamentary oversight over the observance of constitutional and human rights and freedoms in places of detention in the temporarily occupied territories of Donetsk and Luhansk oblasts is impossible. In light of this, the Commissioner has called on international humanitarian organizations to organize visits

176 to these places of detention, in order to carry out impartial and unbiased monitoring of observance of the rights of illegally imprisoned Ukrainian citizens.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – take measures to involve the international community in the protection of the rights of persons in places of detention in the temporarily occupied territories of Ukraine.

CHAPTER 9

OBSERVANCE OF THE RIGHT TO INFORMATION AND TO PETITION STATE BODIES

OBSERVANCE OF THE RIGHT TO INFORMATION AND TO PETITION STATE BODIES

The informatization and digitalization of society in the global modern era have led to a growing need among people to gain access to high quality, reliable, and timely information in digital formats. The state and society in Ukraine have reached a high level of digitalization, which is reflected in increasing demands for provision and receipt of electronic services, mass communication on social networks, and associated risks.

The right to information and to petition state bodies, local self-government bodies, civil servants and officials of these bodies in order to exercise other constitutional rights and freedoms are important conditions for enabling a democratic society, and a key indicator of a public authority's openness and transparency.

These rights are not properly observed by the State. In 2019, the Commissioner received 10,937 reports of violations of the right to access to information and to petition state bodies. Following these reports, and with the active assistance of the general public and the international community, the Commissioner's Office conducted 142 monitoring visits and 107 awareness-raising activities. The Commissioner's Office also drew up 286 protocols on administrative offences in violation of Law of Ukraine 393/96-VR "On Petitions of Citizens" of 2 October 1996, and Law of Ukraine 2939-VI "On Access to Public Information" of 13 January 2011, and submitted these to the court.

Effective state oversight is necessary, alongside parliamentary and public oversight, to ensure implementation of state policy in these areas and to respond properly to citizens' petitions, provide timely and substantiated answers, and offer citizens broader access to public information.



9.1. Right to information

The Commissioner sent response letters to those identified as violating citizens' right to information, in the framework of parliamentary oversight of observance of the human right to access to information. Monitoring visits, inspections, and awareness-raising activities were also conducted following consideration of citizens' petitions. Analysis of implementation of these tasks, as well as close cooperation with the regional representative offices of the Commissioner, confirmed a trend towards an improved culture of openness among the administrators of information. This is evidenced, for example, by a 23 per cent decrease in the number of reports of violations of the right to access public information compared to 2018 – from 4,201 to 3,237.

Monitoring of the observance of this right also shows a reduction in cases in which the public information provided was not actually the information requested. The practice among administrators of information of charging people who have made requests for the costs of document copying and printing was also

180 reported less frequently. Administrators' awareness of the obligation to disclose public information in the form of open data also improved: that is in a format that enables automated processing of the data for reuse to increase transparency and openness, assist in the fight against corruption, and improve the investment climate, especially at regional level.

At the same time, the Commissioner identified the following violations of the right to information.

Failure to provide or incomplete provision of information by state and public utility enterprises and joint-stock companies on the disposal of budget funds, state and municipal property

Under the Law of Ukraine "On Access to Public Information", it is prohibited to restrict access to information (copies of documents) on the disposal of budget funds; possession, use or disposal of state or municipal property; conditions for obtaining these funds or property; or the surnames, given names and patronymics of individuals and the names of legal entities that received these funds or property.

Example

The Commissioner received complaints from residents of residential buildings owned by JSC "Ukrtransnafta" about violations of the Law in connection with the failure to provide information about the privatization of these buildings, and their classification under the state housing fund. As a result of the Commissioner's intervention, protocols on administrative offences were drawn up against the officials of JSC "Ukrtransnafta", and the right of the residents to information was restored.

Failure to provide information in the public interest

Information classed as in the public interest is information that may: indicate a threat to state sovereignty or the territorial integrity of the state; influence the implementation of constitutional rights, freedoms or obligations or violate them; or indicate that the public has been misled with regard to the occurrence of environmental damage or the negative consequences of activity (or inactivity) of individuals or legal entities, and so on¹⁰⁷. It should be noted that information that should be made public to protect the life or freedom of a person, as well as information regarding the state of the environment, the quality of food and household items, accidents, disasters, natural hazards and other emergency events that have occurred or may occur and threaten the safety of citizens, should be provided by the administrator no later than 48 hours from the date of receipt of the request.

Example

In response to a request from an NGO, the State Fiscal Service (SFS) of Ukraine refused to provide a copy of the settlement agreement between Ukraine and Philip Morris International Inc., Philip Morris Global Brands Inc., Philip Morris Brands Sarl, Philip Morris Ukraine, as approved by Cabinet of Ministers Order 946-r of 5 December 2018. The SFS of Ukraine argued that access to this agreement needed to be restricted because it contained confidential information.

¹⁰⁷ The list of information provided in Article 29 of the Law of Ukraine 2657-XII "On Information" of 2 October 1992 that may be the subject of public interest is not exhaustive.

Responding to the failure of the SFS to agree to the Commissioner's request to provide the text of the agreement to the NGO, two protocols on administrative offences were drawn up against the SFS officials and submitted to the court.

By the decision of the Kyiv Shevchenkivskiy District Court in case 761/48303/19 of 7 February 2020, the SFS of Ukraine was found guilty of committing an administrative offence under part two of Article 212-3 of the Code of Ukraine on Administrative Offences. The Commissioner is continuing to monitor the issue of restoring the right of the NGO to access to information.

Unjustifiable classification of information as confidential

The Commissioner recorded examples of information being classed as confidential for unjustified reasons, often when this information concerned the exercise of authority by persons who hold positions related to the exercise of the functions of state or local self-government bodies.

Taking into account the publicity, professionalism, and transparency of such activity and the requirements of Law of Ukraine 2297-VI "On the Protection of Personal Data" of 1 June 2010, all information concerning a person's compliance with the qualification requirements for a professional position and further service are not judged to be confidential.

The Constitutional Court of Ukraine noted this fact in its decision 2-rp/2012 of 20 January 2012 in the Case Following the Constitutional Petition of the Zhashkiv Raion Council of Cherkasy Oblast Concerning the Official Interpretation of the Provisions of Parts One, Two of Article 32, and Parts Two, Three of Article 34 of the Constitution of Ukraine¹⁰⁸.

Example

In response to the applicant's request, the Main Department of the SFS in Kyiv Oblast refused to provide timesheets for its employees, citing the fact that this information was confidential as it contained data on childcare leave and other personal data on its employees.

As a result of the response from the Commissioner and her provision of relevant explanations of the legislative provisions and recommendations, the right of the requester to information was restored.

Failure to apply the "three-part test", i.e. ignoring the requirement to justify restrictions of access to certain public information when considering requests

This requirement was enshrined in the Law of Ukraine "On Access to Public Information" and establishes the obligation of the administrator of information to explain to persons making requests the legal grounds for refusing to satisfy their requests in connection with the possible harm to interests protected by the state. The courts of Ukraine also emphasize that such justification is necessary, in particular in Plenum of the High Administrative Court of Ukraine Resolution 10 "On Practical Application of the Law on Access to Public Information by Administrative Courts" of 29 September 2016¹⁰⁹, and in the Review of Jurisprudence carried out by the Supreme Court that contains legal positions for 2018-2019¹¹⁰.

¹⁰⁸ <http://zakon.rada.gov.ua/laws/show/v002p710-12>.

¹⁰⁹ <http://zakon.rada.gov.ua/laws/show/v0010760-16>.

¹¹⁰ <http://supreme.court.gov.ua/supreme/pres-centr/news/879875/>.

Example

The Commissioner received a petition on the violation of the requirements of Article 6 of the Law of Ukraine “On Access to Public Information” by a military unit, in the form of unjustified restriction of access to a copy of the Agreement for the Purchase of the Services for Repair of Warship Engines (plus annexes), concluded between the military unit and “Kuznya na Rybalskomu” Public Joint Stock Company. As a result of the measures taken by the Commissioner in response to this request and the clarification of the provisions of the above stated Law that her Office provided, the administrator provided the petitioner with a proper justification for restricting access (by conducting a three-part test) to the classified information that was requested.

Failure to publish information and incomplete publishing of information that must be published under the laws of Ukraine

The development of digitalization and e-government in Ukraine has led to an increase in the number of reports from citizens concerning non-publication of public information, both on the websites of administrators and on some portals in the form of open data. In accordance with the Law of Ukraine “On Access to Public Information”, after a request for information has been submitted some administrators of information are required without delay, and within five working days, to publish the complete and accurate information if it falls within the list and categories of information set out in Articles 10 and 15 of this Law and in other laws of Ukraine.

Example

An inspection initiated in response to a report from a petitioner revealed that the State Judicial Administration of Ukraine does not publish all public information in the form of open data, in particular information on the stages of court proceedings and the list of court cases scheduled for consideration. Measures taken in response by the Commissioner ensured the publication of some open datasets, and approval of internal organizational regulations for the State Judicial Administration of Ukraine to ensure systematic work on the publication and updating of public information.

Poor access to public information at local level

Reports to the Commissioner indicate that at local level, it is often difficult to access public information, in particular information that is administered by local self-government bodies.

The overwhelming majority of complaints about the actions of officials from self-government bodies concern failures to provide information on the availability of vacant land plots and information on the disposal of municipal property.

It should be noted that the obligation to provide information on vacant land plots is assigned exclusively to local self-government bodies in accordance with Law of Ukraine 3038-VI “On the Regulation of Urban Development Activities” of 17 February 2011.

Example

The Commissioner received a complaint from a limited liability company that the Procedure for Leasing a Municipal Property, which had been approved by a decision of Boryspil District Council, had not been published on the Council's official website. The Commissioner investigated and found this complaint to be justified, and stated that Boryspil District Council had a legal requirement to release this information. When this did not happen, the Commissioner's office drew up an administrative offence protocol against the Head of the Council, based on Articles 188 and 212 of the Code of Ukraine on Administrative Offences, and submitted it to the court.

In total, in 2019 the Commissioner's Office drew up and submitted to the court 254 protocols on administrative offences¹¹¹, relating to denials of access to information, and following 121 monitoring visits to administrators in charge of releasing information¹¹². This is one of the mechanisms for restoring the right to access information when this right has been violated.

At the same time, the Commissioner notes that the procedure for drawing up protocols on administrative offences and imposing administrative sanctions on violators requires changes at legislative level. In particular, the prescribed 24-hour time limit from the moment of identifying the violator during which a protocol on administrative offence may be drawn up needs to be removed. Article 38 of the Code of Ukraine on Administrative Offences, which covers the imposing of administrative penalties, also needs to be amended, to address the current judicial practices of illegally returning protocols for finalization, or closing cases on the grounds of expiry of the period for imposition of administrative sanctions.

One of the main reasons for the failure of administrators responsible for releasing information to comply with the requirements of the Law of Ukraine "On Access to Public Information" is that in some cases, those requesting access to information abuse this right. This is done with the aim of provoking the administrator to violate the Law, meaning the person can then submit a petition to the Commissioner to draw up an administrative offence protocol. Such vexatious cases possibly occur due to the absence of any legal protection at legislative level against violations of the right to information.

In this regard, it should be noted that the receipt of information by citizens is greatly simplified when it is published on the administrators' websites and web portals, including the Unified State Open Data Web Portal (data.gov.ua). This eliminates any need for communication between the person requesting the information and the administrator responsible for releasing the information.

In view of this, in 2019, the Commissioner conducted, for the first time, an All-Ukrainian Monitoring of the Unified State Open Data Web Portal concerning the publishing of information by some local self-government bodies in the form of open data. The obligation to publish open data is included in Articles 10 and 15 of Law of Ukraine 2939-VI "On Access to Public Information" of 13 January 2011 and in Cabinet of Ministers of Ukraine Resolution 835 "On Approval of the Regulation on Datasets to be Published in the Form of Open Data" of 21 October 2015.

¹¹¹ In particular, 240 protocols were drawn up under Article 212-3 of the Code of Ukraine on Administrative Offences (violation of the right to information and the right to petition) and 34 protocols were drawn up under Article 188-40 of the Code of Ukraine on Administrative Offences (failure to comply with the legal requirements of the Ukrainian Parliament Commissioner for Human Rights).

¹¹² The monitoring visits and inspections/verifications were organized and conducted in accordance with Commissioner Orders 80/02-18 of 27 November 2018 and 93.15/19 of 17 September 2019.

184 Preventive measures and Recommendations made during the monitoring doubled the number of registered items on the portal, and increased the number of published datasets by a factor of almost six (from 145 datasets as of July 2019 to 843 datasets as of November 2019, to 194 registered objects).

In the course of the monitoring, in addition to other response measures, more than 100 protocols on administrative offences were drawn up under Articles 212 and 188 of the Code of Ukraine on Administrative Offences, and submitted to the court.

Consideration of these protocols by the courts of Ukraine led to the development of the relevant positive practice of considering this category of cases in relation to failure to publish public information in the form of open data. A detailed Monitoring Report can be found on the Commissioner's website¹¹³.

Analysis of information received as a result of monitoring showed a need to strengthen and improve the awareness-raising activities and online technical support provided by the portal administrator (Ministry of Digital Transformation), and to make a video guide for the Unified State Open Data Web Portal.

The Secretariat of the Commissioner, together with the Commissioner's Regional Public Relation Coordinators, also monitored the activities of Oblast State Administrations and local self-government bodies (at the level of oblasts and cities of oblast subordination), as these bodies are administrators of public information. The monitoring was conducted in accordance with the Methodology for Evaluation of the Level of Providing Access to Public Information by the Authorities^{114 115}.

The Commissioner's Office conducted an awareness-raising campaign that included 82 training sessions with state bodies and local self-government bodies, including at regional level, in order to reduce the number of violations of the right to information, as well as to increase legal knowledge. Awareness-raising activities revealed a need to develop and implement in practice a unified methodology on access to public information at the state level, and to plan advanced training for state officials and officials from local self-government bodies in this area.

In view of the need to improve Ukraine's legislation on access to information, as well as to provide expert support to the Commissioner, a Coordination Council for Access to Public Information was established in 2019. The Council includes several People's Deputies of Ukraine, representatives of state bodies, representatives of civil society, scientists and experts. The Council's activities have included discussing amending Law of Ukraine 2939-VI "On Access to Public Information" of 13 January 2011. The Council also works to resolve conflict of laws issues in law enforcement, and to implement measures to strengthen monitoring of the publication of public information and awareness-raising activities.

The most important legislative proposals aimed at improving the exercise of the right to information include:

- the introduction of modern approaches to communication between the administrators in charge of releasing information and those requesting information;
- improvement of the flow of electronic documents; and
- creation of an effective mechanism for state oversight alongside parliamentary and public oversight (adopting regulations, issuing mandatory instructions, carrying out investigative functions and imposing administrative sanctions on those violating the right to access information), by establishing

¹¹³ <http://www.ombudsman.gov.ua/ua/all-news/pr/v-of%D1%96s%D1%96-ombudmana-obgovorili-udoskonalennya-mon%D1%96torin-gu-oprilyudnennya-%D1%96nformacz%D1%96%D1%97-u-form%D1%96-v%D1%96dkritix-danix/>.

¹¹⁴ http://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/methodology-access-to-public-info.html.

¹¹⁵ The extended monitoring report is available at http://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/monitoring-access-to-justice-in-regions-in-Ukraine.html.

a separate independent supervisory institution (information commissioner, commissioner, commission, agency, etc.) in the area of access to public information that will meet the standards of independence and efficiency, as well as Ukraine's international commitments of Ukraine.

In this aspect, ratification of the Council of Europe Convention on Access to Official Documents is important for Ukraine. The relevant draft Law, No. 0032 of 31 January 2020, has been submitted to the Verkhovna Rada of Ukraine.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – speed up consideration and adoption of draft Law of Ukraine No. 0032 “On the Ratification of the Council of Europe Convention on Access to Official Documents” of 31 January 2020.

To the Ministry of Justice of Ukraine –

1. In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Part 3 of Article 17 of Law of Ukraine 2939-VI “On Access to Public Information” of 13 January 2011, regarding the identification of specific mechanisms for conducting state oversight of access to public information.
2. In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Articles 38, 2123 and 254 of the Code of Ukraine on Administrative to simplify the procedures for imposing administrative sanctions and increase the penalties for violating the right to information.
3. In accordance with the established procedure, draft and submit amendments to Cabinet of Ministers of Ukraine Resolution 583 “Issues of Implementation of the Law of Ukraine ‘On Access to Public Information’ in the Secretariat of the Cabinet of Ministers of Ukraine and central and local executive bodies” of 25 May 2011, to update and expand the list of exemplary internal organizational regulations in the area of access to public information in the Secretariat of the Cabinet of Ministers of Ukraine and central and local executive bodies, and in local self-government bodies. These draft amendments should take into account the ambiguous practice of arranging work, and the lack of a consistent approach to publishing information, and copying and printing documents.

To the Ministry of Digital Transformation of Ukraine – produce a video guide on the procedure for registration with the Unified State Open Data Web Portal and the procedure for creating and uploading open datasets to the web portal, and post this video guide on the portal.

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

186 To the central executive bodies, other state bodies, and local self-government bodies –

1. Ensure that public information is made available on their websites, in accordance with the list and requirements in Articles 101, 15 of Law of Ukraine 2939-VI “On Access to Public Information” of 13 January 2011 and Cabinet of Ministers of Ukraine Resolution 835 “On Approval of the Regulation on Datasets to be Published in the Form of Open Data” of 21 October 2015.
2. Develop and implement a record-keeping system for public information in accordance with Law of Ukraine 2939-VI “On Access to Public Information” of 13 January 2011.
3. Review internal organizational regulations, taking into account the reduced marginal costs for copying and setting of marginal costs for scanning documents resulting from the Government’s amendments to the Cabinet of Ministers of Ukraine Resolution 740 “On Approval of the Marginal Norms of Costs for Copying or Printing Documents Provided following Requests for Information” of 13 July 2011¹¹⁶.
4. In their activity, take into account the legal positions stated in Plenum of the High Administrative Court of Ukraine Resolution 10 “On Practical Application of the Law on Access to Public Information by Administrative Courts” of 29 September 2016, and in the Review of Jurisprudence that contains legal positions for 2018-2019 and which was conducted by the Supreme Court to facilitate systematic understanding of certain issues related to violations of the right to access to public information.

9.2. Right to petition

The right to submit individual or collective petitions or to apply in person to state bodies, local self-government bodies, civil servants and officials of these bodies, who should consider the petitions and give substantiated responses within the period established by law, is the constitutional right of a person and a citizen. It is also the main communication channel between the citizen and the state, facilitates decision-making and implementation of citizens’ social, economic and other constitutional rights by the public authority and its officials, and is an effective way to address their unresolved issues and observe the principles of good governance in the state. At the same time, general economic, social, political, legal, and other factors have led to widespread dissatisfaction among citizens with living standards and a lack of capacity to meet their social and domestic needs, which induces them to submit petitions to the authorities with requests to resolve vitally important issues.

Analysis of citizens’ petitions received by the Commissioner shows that a significant proportion of citizens’ petitions relate to the failure of state bodies and local self-government bodies to uphold citizens’ social and economic rights; in particular, the rights to social protection, housing, an adequate standard of living of the citizens and their families, health care, a safe environment for life and health, education, and employment.

From 2018 to 2019 the number of reported violations of the constitutional right to petition increased by 20 per cent, from 6,152 to 7,700.

Analysis of citizens’ reports of violations of their right to petition and related monitoring visits to state bodies and local self-government bodies¹¹⁷ helped to identify systematic violations.

¹¹⁶ <http://zakon.rada.gov.ua/laws/show/4-2020-%D0%BF>.

¹¹⁷ Twenty-one monitoring visits on the observance of the right to petition were carried out as part of parliamentary oversight.

Violation of time limits for consideration of citizens' petitions and referral

In cases where a citizen's petition has been submitted to one body or official, but in fact lies within the powers of other bodies or officials, the petition should be referred to those bodies or persons as appropriate within five days. The petitioner should receive notification of this.

Violations of the time limits for considering citizens' petitions and referral occur because the large number of petitions sent to the public bodies means that responses to them are prepared in bulk during the last days of the month allowed for the consideration of citizens' petitions. These responses are then sent to the petitioners by mail. A petitioner does not take this into account, instead believing that their petition has been ignored. To restore the right to petition, s/he then addresses the Commissioner with a complaint about the violation of this right.

After the Commissioner's intervention, it is often revealed that the citizen's petition was not received at all by the relevant state body to which it should have been referred, or that the response that was prepared and sent to the petitioner by mail had not yet arrived at the petitioner's place of residence. This substantiates the need to introduce an electronic system to manage the stages of consideration of citizens' petitions, as this would enable petitioners to be informed about the status of their petitions, and would reduce the number of repeated petitions and requests for information on the results of initial petitions.

Example

During 2019, the Commissioner received a significant number of citizens' petitions both personally and through people's deputies of Ukraine regarding violations by the Office of the President of Ukraine of Article 20 of Law of Ukraine 393/96-VR "On Petitions of Citizens" of 2 October 1996. These violations related to time limits for consideration of petitions. These applicants' right to petition was restored thanks to the Commissioner's intervention. Following her request, the Office informed the Commissioner that the processing of letters sent to the email address designated for electronic petitions at the Office of the President of Ukraine had been delayed because the number of emails received every day had increased by more than 20 times since 20 May 2019.

To ensure implementation of the right of citizens to timely and proper consideration of petitions, the Commissioner's Office requested the Government of Ukraine to consider involving the "Government Contact Centre" State Institution in processing citizens' electronic petitions sent to the President. As a result, the Cabinet of Ministers of Ukraine approved Resolution 976 of 27 November 2019 to establish the Procedure for Interaction between the Office of the President of Ukraine, state collegial bodies, executive bodies, the Secretariat of the Cabinet of Ministers of Ukraine and the "Government Contact Centre" State Institution, to ensure timely response to petitions arriving by telephone and online.

Violations of the right of citizens to personal reception by the heads and other officials of state bodies, local self-government bodies, enterprises, institutions and organizations (irrespective of the forms of ownership), and associations of citizens

The Commissioner receives numerous petitions concerning failure of the heads (and other officials) of the above-stated bodies, enterprises, institutions, and organizations to personally receive citizens as per their approved schedules, which is a direct violation of their obligation under the Law of Ukraine "On Petitions of Citizens".

Example

A resident of Kyiv complained to the Commissioner about the refusal of officials from Kyiv City Council to receive her in person. After the Commissioner wrote to Kyiv City Council, the petitioner's right to a personal reception by the Deputy Chairman of the Kyiv City Council was restored.

Example

Citizen A., a resident of the city of Mariupol, petitioned the Commissioner regarding the refusal of the management of the Executive Committee of the City Council to receive him in person. Following the Commissioner's intervention, the right of the petitioner A. was restored, and the petitioner had a personal reception with the mayor. Following this reception, the mayor gave instructions to the relevant structural units of the city council to thoroughly consider all the issues raised by A. at the meeting.

Failure to take measures required to resolve issues raised in petitions, negligence, and formalism in the consideration of petitions resulting in their resubmission

State bodies, local self-government bodies, enterprises, institutions, and organizations have a duty to consider petitions in an objective and timely manner, verify the facts stated in them, make decisions in accordance with the applicable laws, ensure implementation of such decisions, and inform citizens about the results of the consideration.

Example

A resident of the city of Bila Tserkva in Kyiv Oblast submitted a petition to the Commissioner regarding a violation by the Bila Tserkva State Tax Inspectorate of the Main Department of State Fiscal Service in Kyiv Oblast of her right to petition. To verify the details of the case and restore the applicant's rights, the Commissioner's Office sent relevant requests to the said territorial bodies of the State Fiscal Service of Ukraine. Responding to the request, the territorial bodies undertook an inventory of the petitioner's "individual entrepreneur's integrated taxpayer's card", and the debts for paying the single social security contribution were cancelled and the penalties and fines on debts were cancelled.

Submission of complaints for consideration to bodies or officials whose actions or decisions are being appealed against

In some cases, citizens' complaints are considered by the very body or official against whom the complaint has been made, rather than by a hierarchically higher body or official of higher rank. This is expressly prohibited by Law of Ukraine 393/96-VR "On Petitions of Citizens" of 2 October 1996.

Failure to ensure accessibility of premises in which personal receptions take place for persons with additional needs

Some citizens who wish to exercise their right to petition and who have additional needs are unable to exercise their legal right to personal receptions with the heads of state bodies, local self-government bodies, enterprises, institutions, or organizations, because access to the relevant premises is hindered by the lack of ramps and lifts.

Failure to provide petitioners with explanations of the procedure for appealing against responses

Lack of information about how to appeal against the response to a petition leads to the violation of a citizen's right to appeal against the actions or decisions of state bodies, local self-government bodies, enterprises, institutions, organizations, associations of citizens, mass media, and officials. It also leads to violation of citizens' rights to defend their rights and legal interests, and to restore them in cases of violations.

In this regard, the procedure for drawing up the protocols on administrative offences and imposition of administrative sanctions on violators needs to be changed at legislative level. In particular, the prescribed 24-hour time limit from the moment of identifying the violator during which a protocol on administrative offence may be drawn up needs to be removed.

The Commissioner acted in response to complaints submitted to her concerning the right to petition. Actions included sending response acts and letters clarifying relevant legislation and regulations and including recommendations. Following monitoring visits, the Commissioner informed the relevant officials of the need to address identified violations of the requirements of Law of Ukraine 393/96-VR "On Petitions of Citizens" of 2 October 1996 and to strictly observe its requirements in the future.

In 2019, regional representative offices of the Commissioner were involved in carrying out 25 awareness-raising activities. These activities were intended to increase the legal awareness of the persons responsible for considering and processing citizens' petitions in state bodies and local self-government bodies, as well as to ensure proper application of the provisions of the legislation.

Successful parliamentary oversight of observance of the right to petition has revealed that the current Law of Ukraine "On Petitions of Citizens" requires amendments and additions. In particular, the procedure for considering petitions from legal entities to the authorities needs to be reviewed. Another area that requires attention is procedures for considering vexatious petitions. In these cases, petitions are contentious, are only intended to have a disruptive impact on state bodies and local self-government bodies, and are motivated by a desire to cause inconvenience by involving as many human and material resources as possible. The time and resources needed to consider vexatious petitions mean that the right of other petitioners to proper and timely consideration of their petitions is in effect restricted.

In this regard, amendments should also be made to the phrase "other violation of Law of Ukraine 393/96-VR 'On Petitions of Citizens' of 2 October 1996" in part seven of Article 212 of the Code of Ukraine on Administrative Offences¹¹⁸, in order to provide examples of what forms these violations take (for example, submission of complaints for consideration to those bodies or officials whose actions or decisions are being appealed against, or violations of the time limits for referral of citizens' petitions to other relevant authorized bodies, abuse of the right to petition, etc).

¹¹⁸ Code of Ukraine on Administrative Offences: <http://zakon.rada.gov.ua/laws/show/80731-10>; <https://zakon.rada.gov.ua/laws/show/80732-10>.

- 190 At present, the lack of detail in this provision of the Code on Administrative Offences enables broad interpretations of certain violations of the requirements of this Law.

RECOMMENDATIONS

To state bodies, local self-government bodies, enterprises, institutions and organizations, irrespective of forms of ownership – strictly observe the requirements of Law of Ukraine 393/96-VR “On Petitions of Citizens” of 2 October 1996 in accordance to their authority including in the consideration of electronic petitions submitted by citizens.

To the Ministry of Justice of Ukraine –

1. In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Law of Ukraine 393/96-VR “On Petitions of Citizens” of 2 October 1996. In particular, amendments should cover consideration of petitions from legal entities, vexatious petitions (i.e. those constituting an abuse of the right to petition), and development of clear mechanisms to monitor compliance with the legislation on citizens’ petitions enshrined in Article 28 of the Law of Ukraine “On Petitions of Citizens”.

2. In accordance with the established procedure, draft and submit for consideration to the Verkhovna Rada of Ukraine a draft Law on amendments to Articles 212 and 254 of the Code of Ukraine on Administrative Offences to simplify the procedure for imposing administrative sanctions and increase the penalties for violations of the right to petition, as well clarifying the phrase: “other violation of the Law of Ukraine ‘On Petitions of Citizens’”.

To the Ministry of Digital Transformation of Ukraine – develop and implement an integrated electronic system that would enable citizens to track their petitions from submission to state bodies or local self-government bodies in real-time. The system would independently track the receipt of the petition, the processing time, and the stages of its consideration, and would generate a response to the petitioner.

CHAPTER 10

OBSERVANCE OF THE RIGHT TO PRIVACY

OBSERVANCE OF THE RIGHT TO PRIVACY

In 2019, decentralization reform continued in Ukraine, including the formation of united territorial communities, meaning that the need to ensure that local self-government bodies observe the rights and freedoms of persons and citizens is now a priority, in particular protection of the right to privacy. In this context, one of the strategic areas of the Commissioner's activity in 2019 was to monitor the observance of human rights in the field of personal data protection, given that local self-government bodies are responsible for maintaining and administering the registers of united territorial communities.

Inspections of 16 executive bodies of villages, settlements, and city councils and Centres of Administrative Services Provision led to several examples of systematic violations of the right to privacy. In response, the Commissioner prepared Recommendations on the application of legislation on personal data protection for registration bodies (i.e. executive bodies of villages, settlements, and city councils and Centres of Administrative Services Provision).

Besides, digitalization of economy of Ukraine, specifically, digitalization as a part of economy, remains relevant.

The digital economy is based on information and communication digital technologies. The dynamic development and dissemination of these digital technologies are already affecting the traditional (physical-analogue) economy, transforming it from one that consumes resources into one that creates them. Data are the fundamental resource of the digital economy. Data are generated and ensure electronic and communication interaction through the functioning of electronic digital devices, means and systems¹¹⁹.

The processing of personal data is a key aspect of the introduction of any electronic services and means of electronic communication between citizens and state bodies. In the second half of 2019, the Commissioner undertook several inspections concerning observance of the right to privacy; these included reviewing the functioning of the electronic health care system and the integrated video surveillance system in the city of Kyiv. The Commissioner's inspection resulted in three orders and recommendations in nine response acts on proper compliance with the requirements of the legislation on personal data protection. As the issues raised are complex and urgent, these areas will continue to be monitored in 2020.

In total, in 2019 the Commissioner considered 1,061 reports relating to the right to privacy, and drew up 10 protocols on administrative offences under Part 4 of Article 188-39 of the Code of Ukraine on Administrative Offences, and submitted these to court.

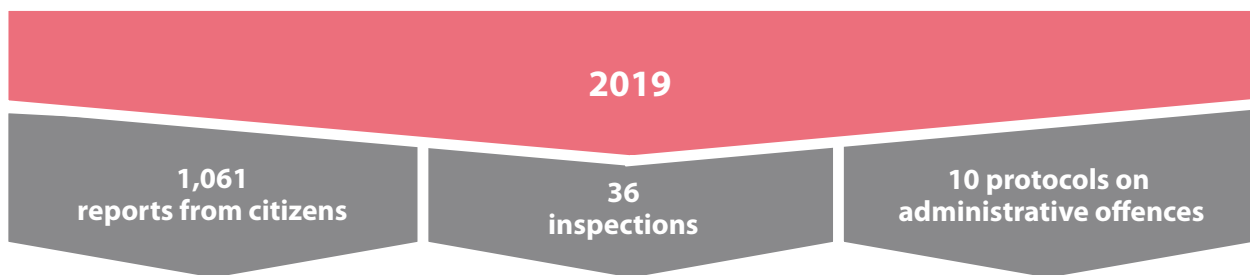
Most violations of the right to protection of personal data were recorded in the areas of financial and banking services, insurance, housing and public utility services, health care, social protection, and education, as well as when personal data were processed during video surveillance or for records of administrative and criminal offences.

One of the most common issues raised in complaints submitted by citizens during 2019 was unlawful determination of the grounds for processing personal data. This included refusal to assign unique

¹¹⁹ Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020, approved by Cabinet of Ministers of Ukraine Resolution 67 of 17 January 2018.

194 numbers for each entry in the register and energy identification codes of a natural gas market entity and a commercial accounting point, because of incorrect interpretation of certain provisions of Law of Ukraine 2297-VI “On the Protection of Personal Data” of 1 June 2010. In this regard, the Commissioner published some recommendations to the controllers of personal data regarding the application of certain provisions of the legislation on the protection of personal data on her the official website¹²⁰.

In general, fewer violations were recorded relating to the processing of personal data in 2019 than in the Commissioner’s annual report for 2018. In particular, there was a decrease in the number of cases of failure by the controllers of personal data to notify the Commissioner about processing of personal data that might entail a particular risk to the rights and freedoms of the subjects of personal data, and of failure to appoint a person responsible for arranging the protection of personal data during their processing.



10.1. Right to protection of personal data

A person has the right to protection of his/her personal data from illegal processing and accidental loss, destruction, damage due to deliberate concealment, failure to provide personal data or delaying providing such data, as well as to protection from provision of information that is inaccurate or compromises the person’s honour, dignity and business reputation¹²¹.

Dissemination of personal data without the consent of the person concerned or of a person authorized by him/her is permitted in cases determined by the law and only (where necessary) in the interests of national security, economic welfare, and human rights¹²².

Unlawful dissemination of personal data

Complaints submitted to the Commissioner revealed cases in which controllers of personal data violated the right to protection of personal data. In particular, the Commissioner recorded cases of unlawful dissemination of personal data in response to unjustified requests, and publication of personal data in publicly accessible places, on web sites, and also on social media.

¹²⁰ <http://www.ombudsman.gov.ua/ua/all-news/pr/rozasnennia-unzr-ta-eis-kody-ne-zaminiuiut-imeni-liudyny>.

¹²¹ Item 7 of Part two of Article 8 of Law of Ukraine 2297-VI “On the Protection of Personal Data” of 1 June 2010.

¹²² Part two of Article 14 of Law of Ukraine 2297-VI “On the Protection of Personal Data” of 1 June 2010.

Example

A complaint received by the Commissioner stated that a Cherkasy City Council deputy published a “building license” on the Facebook social media platform that contained personal data of the license holder (surname, name, patronymic, taxpayer record card registration number, passport number, issuing authority and date of issue, address of residence). On verification of the information provided, it was established that the publishing of this data was in violation of the requirements of the Law of Ukraine “On the Protection of Personal Data”, and that the information about the person was made public without that person’s consent.

Responding to this case, the Commissioner took measures to remove the personal data from public access, and drew up and submitted to the court an administrative offence protocol under Part 4 of Article 188-39 of the Code of Ukraine on Administrative Offences . The Commissioner also provided explanations on how prevent repeat violations.

Example

A person complained to the Commissioner that a register of compensations contained consumers’ personal data of (name, initials, address, personal account number, type of consumer, date of compensation, date of non-compliance with the guaranteed standard of quality of electricity supply that gave rise to the compensation, and the amount of compensation provided) was published on the “DTEK Kyiv Power Grids” public joint stock company website. Examination of the information provided in the complaint established that publication of the register took place in violation of the Law of Ukraine “On the Protection of Personal Data”, as the register contained personal data.

In this regard, a request for immediate removal of the personal data from public access was sent to “DTEK Kyiv Power Grids” public joint stock company . In her letter, the Commissioner also stated that similar violations should be prevented in the future. Based on this, an administrative offence protocol under Part 4 of Article 188-39 of the Code of Ukraine on Administrative Offences was drawn up and submitted to the court.

Example

On its official website, Sviatoshynska District State Administration in the city of Kyiv posted a report on the results of an inspection, in line with Law of Ukraine 1682-VII “Lustration Law ” of 16 September 2014. The report contained personal data (date and place of birth, place of residence, passport details, taxpayer record card registration number). According to the legislation, information on the results of these types of inspection should be posted on the official website in compliance with the provisions of the Law of Ukraine “On the Protection of Personal Data”.

In this regard, the Commissioner sent a request to Sviatoshynska District State Administration to remove the personal data from public access and provided clarifications on the legislation on the protection of personal data. A protocol on administrative offences under Part 4 of Article 188-39 of the Code of Ukraine on Administrative Offences was also drawn up and submitted to the court.

- 196 The Commissioner also received repeated requests from controllers of personal data (in particular, from state bodies) for clarification regarding the legality of the grounds for providing personal data at the request of third parties. The Commissioner provided clarification during the year to, among others, the General Prosecutor's Office of Ukraine, the Ministry of Social Policy, the State Migration Service, the Main Centre for Processing Special Information of the State Border Guard Service of Ukraine, Berdiansk City Council of Zaporizhia Oblast, and "Inforesource" State Enterprise.

Uncontrolled circulation of copies and scanned copies of documents containing personal data

According to the general requirements for personal data processing, the composition and content of personal data must be relevant, adequate, and not excessive in relation to the purposes for which they are processed.

Monitoring visits revealed repeated cases in which employees' personal files included copies of documents that were not duly marked (i.e. they did not include the relevant text). Such practices indicate that obligations under Part 1 of Article 24 of the Law of Ukraine 2297-VI "On the Protection of Personal Data" of 1 June 2010 are not being met, and may also lead to third parties gaining illegal access to such documents, or their loss or destruction.

Example

The Commissioner received a letter from the European Business Association concerning the publication of scanned copies of documents containing personal data on the website of the ProZorro electronic procurement system, a website in the public domain. The Commissioner's review revealed that such documents were posted to confirm compliance with the criteria established by the bidding documents and in accordance with the provisions of the Law of Ukraine "On Public Procurement"; as such, access to these documents could not be restricted. At the same time, the Commissioner became aware of multiple cases of seizure of the said scanned copies for fraudulent purposes.

The Commissioner sent letters to the Ministry of Digital Transformation of Ukraine and the State Enterprise "Prozorro" proposing that scanned documents of this nature should automatically be watermarked. The watermarks will indicate the source of origin of the respective scanned copies and make it more difficult for copies of the documents to be used illegally, reducing the uncontrolled circulation of scanned copies of documents containing personal data in the ProZorro electronic procurement system.

This method is currently being implemented taking into account the proposals and recommendations of the Commissioner.

Gaps in legislation relating to the grounds for collecting personal data

Under the provisions of Law of Ukraine 2297-VII "On the Protection of Personal Data" of 1 June 2010, processing, in particular the collection of personal data, can only be carried out if there are appropriate legal grounds. In spite of these legal provisions, the Commissioner frequently records cases of violations of this rule.

Example

The Commissioner received complaints from parents that children's educational, training and health-improvement facilities required the parents to provide them with personal data on their children; namely information on whether the children had been vaccinated against preventable illnesses.

The Commissioner made a specific request to the Prime Minister of Ukraine to take measures to improve the legislation on this, and stated the need for a consistent approach to the procedure for submitting documents containing information on a child's state of health when enrolling in educational establishments.

On the instructions of the Prime Minister of Ukraine the Ministry of Health drafted an order amending Form of Primary Records 086-1/o. To date, the relevant legislative amendments have not been made.

Example

Representatives of the Commissioner's Office reviewed practices in the monitoring of the effects of medical drugs after they have been licensed for use. These reviews revealed that personal data were being collected and processed for the identification, collection, evaluation, study, and prevention of adverse reactions to drugs, adverse events after immunization/ tuberculosis diagnostics and any other issues related to the safety and efficacy of drugs, vaccines and tuberculin, and that this was taking place without proper legal grounds and outside the appropriate regulatory framework.

In response to the findings of these reviews, the Commissioner sent a letter to the Ministry of Health stressing the need to address this issue. As one solution, the Commissioner proposed making changes to the Procedure for monitoring the effects of medical drugs after they have been licensed for use, in particular, in the implementation of anonymized data collection.

Illegal cross-border transfer of personal data

Under personal data protection legislation, personal data can be processed outside the borders of Ukraine (including their transfer and storage), but only if the rights of the person concerned are upheld. In particular, persons whose personal data are being processed outside Ukraine need to be notified of this fact, and give their consent.

Person whose personal data are being processed outside Ukraine should be provided with comprehensive information about their rights, and in particular, should receive information about who will be processing their personal data and/or will have access to them, and the purpose of such processing.

Monitoring undertaken by the Commissioner revealed human rights violations relating to cross-border transfer of personal data.

Example

An inspection of the Higher School of Advocacy of the National Bar Association of Ukraine revealed that personal data (name, surname, phone number, e-mail address, user IP-address, region, date and time of entry) of people registered for online courses was being processed through an online platform (www.antitreningi.ru) physically hosted on the territory of the Russian Federation, and that direct registration of users and payment for services was made through an online form physically hosted in Germany.

The personal data of lawyers, assistant lawyers, trainee lawyers, and also other persons were thus being transferred to individuals who were carrying out activities on the territory of other states. As this was taking place without their knowledge and unambiguous consent, and also without any legal grounds, this practice constitutes illegal cross-border transfer of personal data.

Following the Commissioner's inspection, an administrative offence protocol under Part 4 of Article 188 of the Code of Ukraine on Administrative Offences was drawn up, and an order was made to halt this violation.

RECOMMENDATIONS**To the Ministry of Health of Ukraine –**

1. Amend Form of Primary Records 086-1/o, particularly concerning amending this form to include information about the child's vaccination status.
2. Amend the Procedure for Pharmacovigilance approved by Ministry of Health of Ukraine Order 898 of 27 December 2006 to bring it into line with the Law of Ukraine "On the Protection of Personal Data", i.e. the introduction of anonymized data collection.

To central executive bodies, other state bodies, and local self-government bodies –

1. Ensure protection of personal data and non-disclosure by employees of personal data that becomes known to them in connection with the performance of their professional or work duties, unless otherwise provided for in law.
2. Look through the information posted on the official website of the respective body to prevent disclosure of personal data.
3. When providing answers to requests made by third parties, comply with the requirements of Law of Ukraine 2297-VI "On the Protection of Personal Data" of 1 June 2010. Pay attention, in particular, to whether there is a confirmation that the content of the request corresponds to the powers of the requester, and whether the purpose and legal grounds correspond to the request.

To local self-government bodies – require employees who have access to personal data to sign written declarations on non-disclosure of personal data that they have access to in connection with performance of their professional or work duties.

To local self-government bodies and other controllers of personal data – ensure that the procedures for processing of personal data are brought into line with the requirements of the current legislation on personal data protection. In particular, take measures to ensure an adequate level of protection of personal data stored in personal files (make or update a list describing the documents contained in each case file, and do not collect or store excessive information).

10.2. Right to access one's own personal data

Ukrainian legislation establishes the right of persons to familiarize themselves with their own personal information, unless any of this information constitutes a state secret or other secret protected by law. Nevertheless, the Commissioner recorded repeated cases of violations of this right.

Appropriate measures were taken in relation to each case.

Example

The Commissioner received a complaint from a citizen about a violation of her right to access her personal data, in particular, the right to receive copies of medical documentation on childbirth held by Kyiv City Maternity Hospital 5 and her right to familiarize herself with the relevant medical documentation.

Following this complaint, the citizen's rights were restored, and she was provided with copies of the medical documentation she requested and was able to familiarize herself with the medical documents related to her. To prevent similar situations in the future, the Commissioner also provided an explanation to Kyiv City Maternity Hospital 5 of the procedure for granting people access to their personal data on request.

Example

In May 2019, the Commissioner received a complaint from an individual who wished to see copies of her medical documentation, but had been prevented by officials of the Dnipro Inter-district Medical and Social Expert Commission of the Healthcare Department of the executive body of the Kyiv City Council (of Kyiv City State Administration). At the request of the Commissioner, the woman was provided with the information she requested.

Example

The Commissioner received a complaint concerning the failure of Kyiv Children's Music School 22 to provide the petitioner with information on salary accrued. The Commissioner took measures to ensure that the right of this person to receive the necessary information about himself/herself was upheld.

RECOMMENDATIONS

To central executive bodies, other state bodies, local self-government bodies, and other controllers of personal data – uphold the right of individuals to familiarize themselves with their own personal data by providing opportunities for this to happen.

10.3. Observance of the right to privacy by the controllers of personal data

During the year, the Commissioner carried out inspections of 36 controllers/processors of personal data: 27 were scheduled visits, 5 were unscheduled, and 4 were monitoring visits.

In 2019, special attention was paid to monitoring observance of human rights in the field of personal data protection in relation to the obligations of local self-government bodies to maintain and administer registers of united territorial communities. This monitoring took place to reveal and prevent violations of the legal requirements.

During these inspections, the following systematic violations were revealed of rights relating to personal data by the controllers of personal data:

- the right to protection of personal data from illegal processing and accidental loss due to inappropriate registration of obligations on non-disclosure of the personal data, and illegal distribution of the information on the person following requests from third parties;
- the right to revoke consent to the processing of personal data, to object to the processing of personal data, to make reservations to limit the processing of personal data, in connection with improperly determined grounds for the processing of personal data; and
- the right to receive information on the processing of personal data, including on the conditions for access to personal data, and in particular, information about third parties to whom personal data are transferred.

Violations of the right to protection of personal data recorded in the offices of controllers of personal data included the absence of internal documents regulating the procedure for processing and protecting the personal data, and the storage of excessive quantities of copies of documents in personal files, which raises the risk that these will be used illegally.

The State Migration Service has developed a secure, automated system for managing the registers of united territorial communities – the “Register of Territorial Communities”. Despite this, some registration bodies of united territorial communities continue to use other software products that do not provide an appropriate level of protection of personal data. As the Commissioner’s monitoring revealed, this can lead to illegal access or violations of the integrity of the personal data.

The Commissioner issued four orders to address violations of personal data protection legislation, and prepared Recommendations on the Application of Legislation on Personal Data Protection for Registration Bodies (executive bodies of village, settlement and city councils, and Centres of Administrative Services Provision).

To clarify the state of protection of the human right to privacy during implementation of health care reform in Ukraine, the Commissioner undertook several inspections of bodies that process personal data in the electronic health care system. These included: the National Health Service of Ukraine; “Electronic Health” State Enterprise; the owners of electronic medical information systems – Healthy UA LLC, Medstar Solutions LLC, Health 24 LLC, Ciet Holding LLC; and medical institutions providing primary medical care, including Community Non-profit Enterprises “Pechersk District Primary Health Care Centre”, “Rusanivka” Primary Health Care Centre of Dniprovskyi district of the city of Kyiv”, and “Zhashkivskyi Raion Primary Health Care Centre”.

The Commissioner issued three orders to address violations of personal data protection legislation, and gave recommendations on application of the legislation.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine –

1. Ensure that its own regulatory legal acts, as well as the regulatory legal acts of the executive bodies that determine the procedures for personal data processing, are brought into line with the provisions of Law of Ukraine 2297-VI “On the Protection of Personal Data” of 1 June 2010, in particular:

- development of a clear statement on the purpose of personal data processing;
- providing an exhaustive list of personal data that can be processed under the regulatory legal act;
- providing guidance on compliance with the principles of personal data processing, such as: relevance, adequacy, and the requirement not to collect excessive personal data in relation to the purposes for which they are processed; and
- removal from the regulatory legal acts of provisions on the obligation to obtain consent for the processing of personal data by state bodies.

2. Take into account the requirements of legislation in the field of personal data protection at the stages of design, development, and introduction of the state electronic resources (information systems, portals and registers), and address the Commissioner for appropriate expert assistance.

- 202 3. Approve the provisions on public registers, databases of personal data, as well as the procedures for personal data processing in such public registers and databases of personal data, in cases when such regulatory legal acts are absent.

To central executive bodies, other state bodies, and local self-government bodies –

1. Pursuant to the requirements of Article 12 of Law of Ukraine 2297-VI “On the Protection of Personal Data” of 1 June 2010, inform each person whose personal data have been collected about the controllers of personal data, the composition and content of the collected personal data, the person’s rights established by the Law, the purpose of collecting personal data, and the persons to whom personal data are transferred.

2. Analyse the relevant body’s compliance with the requirements of the legislation on protection of personal data.

To local self-government bodies – stop demanding consent from employees and applicants for personal data processing in cases when the processing of the personal data is carried out on other grounds provided for by law.

To the controllers of personal data – ensure that the procedures for processing personal data are brought into line with the requirements of the current legislation on personal data protection, namely:

1. Amend/develop internal legal documents in accordance with the requirements of the legislation on personal data protection, and specify the procedure for processing personal data in these documents.
2. Ensure the recording of operations related to the processing of personal data, and make these records accessible.
3. Stop demanding consent for personal data processing in cases when such processing is carried out on other grounds provided for by the law.
4. Develop and approve a document (action plan/guidelines etc) on the sequence of activities in cases of unauthorized access to personal data, damage to equipment, and emergencies, etc.

CHAPTER 11

COMPLIANCE WITH THE PRINCIPLE OF NON-DISCRIMINATION

COMPLIANCE WITH THE PRINCIPLE OF NON-DISCRIMINATION

The Commissioner paid particular attention to ensuring equality of human rights and freedoms in all fields of social relations, as compliance with the provisions of international and national law that guarantees freedom from discrimination on any grounds is an important condition for Ukraine's European integration.

The key priorities during the reporting period were to bring Ukraine's anti-discrimination legislation into line with international standards, to monitor the status of compliance with the principle of non-discrimination in the work of state bodies, local self-government bodies, and private legal entities, and to conduct educational work with professional and target groups to raise awareness about preventing and combating discrimination.

During 2019, the Commissioner considered 385 reports from citizens, which included 422 reports of cases of discrimination. Sixty-one proceedings were initiated based on the results of ongoing monitoring of compliance with the principle of non-discrimination. To address the violations identified, the Commissioner sent requests to authorities and private organizations and enterprises and provided explanations to petitioners on the procedures for restoration of their rights. The Commissioner also sent recommendations to state bodies and local self-government bodies on the need to apply fundamental principles and norms of international law, such as respect for human dignity, equality of rights and freedoms, tolerance and non-discrimination to the full range of human rights.

The Commissioner is constantly monitoring the implementation of the Action Plan for the Implementation of the National Human Rights Strategy for the Period up to 2020, approved by Cabinet of Ministers of Ukraine Order 1393-r of 23 November 2015 (hereinafter referred to as the Action Plan), which includes activities intended to ensure equal enjoyment of human rights and freedoms.

The Commissioner notes that it is necessary to accelerate implementation of paragraph 3 of Section 105 of the Action Plan, which calls for the drafting of a law to amend current legislation to ensure punishment for crimes committed on the grounds of intolerance on grounds of race, colour, religious beliefs, sexual orientation and gender identity, disability, and language (amendments to paragraph 3 of Article 67, Part two of Articles 115, 121, 122, 126, 127, 129 and Article 293 of the Criminal Code of Ukraine), and its submission to the Cabinet of Ministers of Ukraine.

Legally binding regulations to govern the use of administrative sanctions for discriminatory acts also need to be introduced, as these will help to ensure effective protection against discrimination in accordance with international standards, and strengthen the capacity of duty-bearing authorities in the area of anti-discrimination policy.

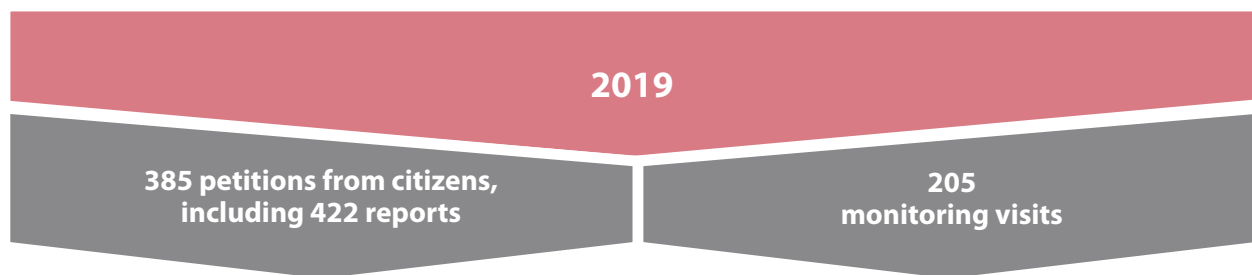
The Commissioner provided comments on provisions included in the draft Law of Ukraine "On Amending Certain Legal Acts of Ukraine on Harmonization of Legislation in the Field of Prevention and Countering Discrimination with European Legislation" (registration No. 0931 of 29 August 2019) contradict anti-discrimination legislation. Adoption of this law (which was on its second reading) could result in a weakening of the existing anti-discriminatory provisions in the law. Thanks to the response of the Commissioner, the discriminatory amendments were rejected.

The Commissioner carried out several educational activities aimed at raising citizens' awareness of preventing and combating discrimination, with the aim of increasing tolerance and reducing instances

206 of discrimination, xenophobia, and intolerance in Ukraine. In cooperation with the representative office of the Friedrich Ebert Foundation in Ukraine, three training sessions were held in the cities of Vinnytsia, Cherkasy, and Chernihiv for police officers (investigators and patrolmen) on “Recognition and Combating Discrimination. Hate Crimes as an Extreme Form of Discrimination”; 75 people participated.

The Commissioner also ran educational activities on preventing and combating discrimination with schoolchildren and students. For instance, pupils at Secondary School of I-III levels No. 70 of Shevchenkivskyi District in the city of Kyiv attended a lecture on “Equal Rights and Opportunities”, while a training course on “Discrimination: from Awareness to Opposition” was conducted for students at B. Grinchenko Kyiv University.

As part of the annual “16 Days against Violence” campaign, the Secretariat of the Commissioner held 73 workshops, training sessions and lectures to draw public attention to issues of concern to Ukrainian society today, namely overcoming domestic violence, combating human trafficking and child abuse, gender-based violence, and ensuring equal rights and opportunities for women and men.



11.1. Combating discrimination on the grounds of disability and health conditions

Ensuring the equality of rights and fundamental freedoms of people living with disabilities and other people who have limited mobility was a special focus of the Commissioner in 2019.

The results of monitoring and analysis of reports from citizens show that people with disabilities are unable to fully exercise their rights on equal terms with other citizens, particularly in the areas of education, health care, employment, transport services, unimpeded access to housing and utility services and public facilities, access to information, and the exercise of electoral rights.

Physical barriers to accessibility

In 2019 the Commissioner developed and approved a “Regulation on the Organization and Conduct of Monitoring Visits on Discrimination and Observance of Equal Rights and Freedoms, as well as the Procedure for Monitoring the Accessibility of Infrastructure in accordance with the Needs of People with Disabilities and Other Limited Mobility Groups”. This Regulation ensures that monitoring visits to assess issues relating to discrimination can be conducted effectively.

The Commissioner carried out 154 monitoring visits in 2019, to assess the accessibility of social, medical and educational institutions, cultural and leisure facilities, transport infrastructure, and banks for persons living with disabilities and/or limited mobility. Relevant recommendations were sent to state bodies, local self-government bodies, and private legal entities when violations were identified in the course of monitoring. The Commissioner's Office also monitored the status of implementation of these recommendations.

The Commissioner emphasizes the need for all branches of state power to carry out appropriate activities to raise awareness among citizens of the rights of persons with disabilities, to promote their role and potential in society, and to foster respect for their rights, personality, and dignity.

Right to access services

The lack of access to administrative services for persons living with disabilities remains an unresolved issue.

Example

The Commissioner continues to monitor progress of the execution of the judgment of the Court of Appeal of Lviv Oblast in case 461/431/13 (dated 2 October 2013), which relates to persons with disabilities being able to purchase discount tickets through the website: <http://booking.uz.gov.ua>.

To resolve this issue, the Commissioner sent letters to executive bodies and competent institutions requesting them to act. As a result, from January 2019, persons with disabilities can apply for travel documents through this website.

The Commissioner also receives complaints of discrimination from persons with disabilities in regard to the Sportlife network of sports clubs, in particular regarding Sportlife's refusal to sell membership cards to persons with impaired vision, and their failure to allow people with impaired vision to pay for membership in instalments .

In response to these complaints, the Commissioner sent letters to Sportlife. The Commissioner is continuing to review these complaints and to take measures to address them, as provided for in the anti-discrimination legislation.

Right to access information

Access to information and communication technologies and systems, as well as television and radio broadcasting, remains a pressing issue for persons with disabilities.

This is evidenced by complaints submitted by persons with hearing disabilities regarding violations of their right to information resulting from the lack of subtitling and sign language interpretation on most national television channels. The Commissioner's investigations revealed that the provision of sign language interpretation of television programmes is not yet regulated by Ukrainian legislation.

- 208 The draft Law of Ukraine “On Ukrainian Sign Language” (registration No. 2340 of 29 October 2019) is before the Verkhovna Rada of Ukraine. The Commissioner expressed support for the draft law as one intended to create the necessary conditions for persons with hearing impairments to exercise their rights and freedoms on an equal basis with other citizens in political, economic, social, cultural and other spheres.

Right to access education

Violations of the rights of persons with disabilities to access education were revealed during the monitoring of media and social networks.

Example

The administration of the Kropyvnytskyi Higher Vocational School refused to enrol a girl, stating that the premises of the institution do not meet the accessibility requirements for the needs of persons with disabilities. Following the Commissioner’s intervention, an official investigation was conducted at the educational institution, during which it was revealed that the decision of the deputy director for education at the vocational school to refuse to allow the person with a disability to enrol at the institution was illegal. He received a reprimand for this. The girl subsequently enrolled at the school and was provided with the support necessary to be able to study there.

Electoral rights of people living with disabilities and other people with limited mobility

2019 saw presidential elections and extraordinary elections of people’s deputies in Ukraine. Because of this, observance of citizens’ electoral rights was identified as one of the Commissioner’s priorities in the reporting period. To monitor the status of the observance of citizens’ electoral rights, the Commissioner set up a hotline. Citizens had opportunities to contact the hotline by phone or online.

In total, 1,754 reports of violations of citizens’ electoral rights were reported to the hotline, and 10 per cent of these related to lack of access to polling stations for persons with disabilities and/or with limited mobility.

On election days, the Office of the Commissioner conducted 417 monitoring visits to ordinary and special polling stations in all regions of Ukraine. The monitoring visits revealed multiple cases of violations of electoral rights, including voting premises being physically inaccessible, the absence of Braille ballots, and failure to provide subtitling and sign language interpretation on the national television channels, meaning that persons with impaired hearing could not watch the pre-election television debates during the election campaign.

Example

Most polling stations in the cities such as Vinnytsia, Lviv, Ternopil, Cherkasy, and Kyiv are not adapted to the needs of persons with disabilities. The Commissioner sent letters to the Central Election Commission and to Vinnytsia, Lviv, Ternopil, Cherkasy, and Kyiv City Councils requesting them to ensure accessibility for people with disabilities and/or limited mobility to enable them to exercise their voting rights.

RECOMMENDATIONS

To the Verkhovna Rada of Ukraine – speed up consideration and adoption of draft Law of Ukraine No. 2340 “On Ukrainian Sign Language” of 29 October 2019.

To the Committee of the Verkhovna Rada of Ukraine on Social Policy and Protection of Veterans’ Rights – initiate parliamentary hearings on arranging access for persons with disabilities to the physical, social, economic, and cultural environment, enhancing liability for refusal to provide reasonable adaptations to enable participation.

To the Central Election Commission – amend the Requirements for Premises of Precinct Election Commissions and Premises for Voting, approved by the Central Election Commission on 19 January 2012 No. 5, so that they are in line with the provisions of State Building Standards of Ukraine V.2.2-40:2018 “Inclusiveness of Buildings and Structures” approved by Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine Order 327 of 30 November 2018.

To the Ministry of Education and Science of Ukraine – take measures to ensure that persons with disabilities have unimpeded access to educational institutions.

To executive bodies and local self-government bodies – ensure that infrastructure is accessible in accordance with State Building Standards of Ukraine V.2.2-40:2018 “Inclusiveness of Buildings and Structures” approved by the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine Order 327 of 30 November 2018 to create a barrier-free architectural environment for persons with disabilities and/or limited mobility.

11.2. Equal observance of rights and freedoms of national minorities

During 2019, the Commissioner paid special attention to preventing discrimination on the basis of race, colour, ethnic (national) origin, countering the spread of hostility against national minorities, and preventing crimes motivated by intolerance on the basis of nationality.

Example

In June and November 2019, the Commissioner sent three letters to the Main Departments of the National Police in Mykolaiv, Dnipropetrovsk, and Kyiv Oblasts requesting them to investigate damage to Jewish sacred sites. The police departments initiated criminal proceedings in the response to the Commissioner’s intervention.

- 210 Analysis of citizens' complaints and the results of mass media and internet monitoring showed frequent manifestations of xenophobia and intolerance on the above-mentioned grounds.

Example

On 10 November 2019 during the Shakhtar vs Dynamo football match in the city of Kharkiv, fans of Kyiv FC Dynamo used racist language against the players of FC Shakhtar, who are citizens of Brazil. Responding to this, the Commissioner sent relevant letters to the law enforcement bodies of the city of Kharkiv and the Football Association of Ukraine.

The Football Association of Ukraine imposed penalties on FC Dynamo, and the Main Department of the National Police in Kharkiv Oblast initiated criminal proceedings in the case.

Example

A journalist from the parliamentary newspaper "Golos Ukrainy" published a xenophobic post on his personal Facebook page. In this post, the journalist used racist, anti-Semitic and homophobic rhetoric in comments on the inclusion of the sportsman Zhan Beleniuk as one of the top ten candidates of the "Sluha Narodu" (Servant of the People) party. The Commissioner contacted the newspaper's editorial office and stressed that the statement made by this journalist was unacceptable and a manifestation of hate speech, incitement of hatred, and aggression on the basis of race, skin colour and national origin.

The editorial office of the "Golos Ukrainy" newspaper published an official statement apologizing for the incorrect statement.

Since the adoption in 2013 of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the Period until 2020, the state has made integration of the Roma a priority issue. However, Roma people continue to be one of the most vulnerable groups in society, experiencing systemic and systematic discrimination in access to education and health services, employment, documentation, housing, and residence registration.

Evidence of this discrimination is highlighted in a study conducted in 2019 by the international Minority Rights Group and the "Roma Women's Fund "Chirikli" international charitable organization, within the framework of the European Union project "Partnership for All: Developing Strategies for Socio-Economic Cooperation Between Roma Communities and Local Authorities in Ukraine"¹²³.

The results of the survey showed that only 22.9 per cent of Roma reported not facing any violation of their rights and freedoms, while 36.8 per cent reported violations of their rights to receive social assistance (benefits, payments, etc.), 35.3 per cent to employment, and 31.7 per cent to obtain official documents. Roma also faced rights violations in accessing education (10.9 per cent) and in carrying out business activities (4.8 per cent), although discrimination was less in these areas.

It should be noted that prejudice against members of the Roma national minority manifests in society in various forms, from ignoring their problems to committing discriminatory acts.

¹²³ http://minorityrights.org/wp-content/uploads/2019/05/MRG_Rep_Ukraine_UKR_Apr19.pdf.

Example

On 1 June 2019, men of Roma nationality (one of whom was a minor) who were living in an informal Roma settlement were brought to the Desnianskyi District in the City of Kyiv Military Commissariat. In this regard, the police of the city of Kyiv conducted two official investigations, which did not reveal the fact that the Roma had been illegally detained or delivered. Proceedings are ongoing now. A second request was sent to the National Police of Ukraine.

Example

In May 2019, a Roma family was attacked in the village of Vyshenky in Boryspil Raion, Kyiv Oblast. The Commissioner sent letters to the Minister of Internal Affairs and the Head of the National Police of Ukraine with a request to immediately carry out an official investigation into the attack and to take personal control over the pretrial criminal investigation. The Commissioner also sent a letter to the Territorial Department of the State Bureau of Investigations, located in the city of Kyiv, requesting a legal assessment of the actions of police officers of the Boryspil Police Department of the Main Department of the National Police in Kyiv Oblast. Proceedings are now underway.

The use of hate speech against the Roma in the media and on social networks remains acute, leading to biased attitudes and pervasive negative stereotypes towards Roma people.

Example

On 8 August 2019, a post containing hate speech towards Roma was published on the Facebook page of "Kyiv Operatyvnyi". The Commissioner sent a letter to the Cyber Police Department of the National Police of Ukraine with a request to provide a full legal assessment of the actions of the person who made the post and to take action in accordance with the requirements of the legislation. As a result of the response, the post was deleted.

The Commissioner is particularly concerned about extreme expressions of xenophobia against Roma and crimes motivated by intolerance.

Example

Anzhelika Belova, a Roma activist and Head of the Zaporizhia Roma Center "Lacho Drom", sustained a serious attack near her home in October 2019. Given the victim's ethnic background and her active social work in defending the rights and freedoms of members of the Roma national minority, the Commissioner promptly sent a request to the National Police of Ukraine for a full, unbiased and impartial investigation of the criminal offence in question, taking into account intolerance on the basis of ethnicity as a motive.

212 Roma are also subject to systematic discrimination in accessing medical services, evidenced by the facts highlighted in a petition sent to the Commissioner by the European Roma Rights Centre and the “Roma Women’s Fund ‘Chirikli’” international charitable organization.

Typical violations cited in this appeal are failure to provide full medical services, sick women with children being accommodated in wards with that are in very poor condition, and the contemptuous attitude of medical staff.

The Commissioner sent a letter to the Health Department of the Zakarpattia Oblast State Administration on the prevention of discrimination against Roma women in access to medical services, and calling for awareness-raising activities for health care personnel to be strengthened and better organized.

One of the unresolved problems facing Roma in the area of documentation are complicated procedures for obtaining identity documents. In the recommendations set out in its Report on Ukraine (fifth monitoring cycle), the European Commission against Racism and Intolerance (ECRI) emphasizes the need to simplify this procedure; in particular, court fees shall be waived in cases where Roma are seeking to prove their identity for the purpose of obtaining personal identification documents¹²⁴.

The Commissioner made a specific request to the Ministry of Culture to ensure that ECRI’s recommendation is implemented.

Despite the adoption in 2013 of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the Period until 2020, no positive changes have taken place at either central or local government levels. When developing the new Strategy, it is extremely important to take into account that effective implementation will only be possible if there is comprehensive knowledge about the specific needs of the Roma population in Ukraine. This will require both the collection of statistical data, and the involvement of representatives of the Roma community in the development and implementation of the Strategy, and in the monitoring of its implementation.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine –

1. Draft and submit for consideration to the Verkhovna Rada of Ukraine a draft law on Amendments to Law of Ukraine 3674-VI “On Court Fees” of 8 July 2011, to provide exemptions for Roma from paying fees for court procedures related to establishing the fact of birth or issuance of birth certificates.
2. Intensify the work of the Inter-agency Working Group responsible for implementation of the Action Plan for the implementation of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the Period until 2020.

To the National Police of Ukraine – systematically conduct awareness-raising activities for its staff on the impermissibility of ethnic profiling.

¹²⁴ <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-V-2017-038-ENG.pdf>.

To the State Migration Service – intensify efforts to document representatives of the Roma national minority. 213

To state bodies and local self-government bodies –

1. In the first half of 2020, conduct needs assessments of Roma in their districts and develop comprehensive action plans to address the social issues faced by Roma.
2. Take measures to address the social protection needs of Roma people who have found themselves in difficult life circumstances.

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

The year 2019 saw more mass events organized by the lesbian, gay, bisexual, trans and intersex (LGBTI) community than in any previous year¹²⁵. This was facilitated by an increase in the level of support for the LGBTI community in society, as well as the availability of effective assistance from state bodies, in particular, law enforcement bodies.

In April 2019, the Second European Lesbian Conference of CIS countries was held in the city of Kyiv, with the assistance of the Secretariat of the Commissioner

The Commissioner remains concerned, however, that some representatives of state bodies and local self-government bodies openly support bans on LGBTI community activities.

Example

The Commissioner received petitions from the NGO “Human Rights Bureau ‘WE ARE’” dated 22 March 2019 and 22 April 2019 regarding the decisions of the Uzhhorod City Council (15 May 2018) and Tarutyne City Council of Odesa Oblast (08 June 2018). The petitions stated that these official decisions contained incitement to discrimination on the grounds of sexual orientation and gender identity.

The Commissioner sent letters to the city councils requesting them to revoke these decisions as they violate the right to respect for the honour and dignity of the LGBTI community.

Unfortunately, such occurrences are common in the activities of local self-government bodies and are systematic in nature (in particular, the Chernivtsi City Council repeatedly made illegal decisions to restrict the rights of citizens to peaceful assembly). Attention should also be paid to the fact that some radical

¹²⁵The Equality March, which took place in Kyiv on 23 June 2019, was the largest ever held in Ukraine. It was attended by public figures including representatives of state bodies. Separate columns of soldiers and persons with disabilities were formed for the first time. The organizers of the event estimated that about 8,000 people participated in the march. On 23 November 2019, the Trans-March, dedicated to the International Day of Remembrance of Transgender People who died as a result of transphobia, was held in Kyiv for the fourth consecutive year. One of the problems that the organizers of the march wanted to draw attention to was the need to update the clinical protocol governing the procedure of gender transitioning and the need to introduce gender identity into anti-discrimination legislation. LGBTI Pride was organized and held in the city of Kharkiv for the first time. According to different data sources, 1,000 to 2,000 people participated. About 300 people took part in Pride in the city of Odesa. Police officers detained three opponents of the Equality March, and drew up administrative offence protocols under Article 173 of the Code of Ukraine on Administrative Offences (Minor hooliganism). Smaller events were held in other cities, in particular, in Zaporizhia and Kherson.

- 214 organizations operating in the country openly declare positions of intolerance towards people on the basis of their sexual orientation or gender identity.

Example

On 12 September 2019, a group of unknown persons dressed in T-shirts with the logo of the Right Sector and of the NGO “Freikor” tried to disrupt a lecture on “Tolerance as One of the Components of the Modern Ukrainian National Idea”, which was being held at the Kharkiv Literary Museum within the framework of Kharkiv Pride. On 15 September 2019 after LGBTI Pride in the city of Kharkiv, members of radical groups beat Pride participants and initiated clashes with the police, inhibiting the right of the organizers and others present at the event to peaceful assembly and free expression of their beliefs.

Some public figures, politicians, and clergy members openly stated that they did not support the equality marches.

Example

In early September, Kharkiv Mayor Hennadiy Kernes wrote on Facebook about his intention to limit the Equality March and appeal to the court, referring to the fact that the event “will create inconveniences for the citizens of the city”. Subsequently, he announced a change in his intention.

Example

In June 2019, a discriminatory post contributing to strengthening prejudice against LGBTI people and violating their right to respect for honour and dignity was published on the personal Facebook page of I. V. Mosiichuk, a People’s Deputy of Ukraine. In this published post, the deputy said that he had filed a lawsuit with the District Administrative Court against the Kyiv City State Administration demanding that they ban the Equality March in Kyiv. In response, the Commissioner sent a request to the Chairman of the Verkhovna Rada of Ukraine that he prevent People’s Deputies of Ukraine from disseminating discriminatory statements humiliating the honour and dignity of certain groups of society.

The Commissioner is extremely concerned by the fact that LGBTI people are not only deprived of equal rights in terms of civil and family legislation, but also that their constitutional rights are often oppressed; in particular, the right to freedom of expression and personal inviolability, and the right to freedom from inhuman or degrading treatment. A significant number of police officers were involved in activities to ensure the peaceful running of events. At the same time, despite Ukraine’s commitments to improve legislation to reduce discrimination on the grounds of sexual orientation and gender identity, no changes were made to existing regulatory legal acts¹²⁶.

¹²⁶The prohibition of discrimination on the grounds of sexual orientation and gender identity is only explicitly provided for in the Labour Code (Article 21); and on the grounds of sexual orientation – in Article 7 of Law of Ukraine 2505-VIII “On the Legal Status of Missing Persons” of 12 July 2018. These terms are also specified in by-laws (Ministry of Internal Affairs Order 1179 of 09 November 2016, and Cabinet of Ministers of Ukraine Order 1002-r of 30 November 2016).

Despite numerous requests from the Commissioner to law enforcement bodies, investigators still avoid prosecuting offences related to discrimination on the grounds of sexual orientation and gender identity under article 161 of the Criminal Code of Ukraine, which covers crimes committed against a person on the basis of their race, ethnicity, religious beliefs, disability and other grounds¹²⁷.

Effective documentation of discrimination on the grounds of gender identity and sexual orientation, as well as the proper legislative regulation of these issues, will be tangible markers in ensuring Ukraine's progress towards European integration.

RECOMMENDATIONS

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

To the Cabinet of Ministers of Ukraine –

1. Draft a law on the legalization of registered civil partnership in Ukraine for heterosexual and same-sex couples, taking into account property rights and non-property rights (in particular, ownership and inheritance of property, mutual support/maintenance of partners in case of disability or loss of a breadwinner, constitutional right not to give testimony against your partner) and submit this for consideration to the Verkhovna Rada of Ukraine.

2. Draft a law on amendments to Law of Ukraine 5207-VI “On the Principles of Prevention and Countering Discrimination in Ukraine” of 6 September 2012 and submit this for consideration to the Verkhovna Rada of Ukraine. This should include an amendment of the definition of “discrimination” to include discrimination on the grounds of sexual orientation and gender identity, expansion of the full list of categories of persons who are considered to be discriminated against to include LGBTI people, as well as guidance on which actions or inactions may be considered discriminatory towards LGBTI people.

To the National Police of Ukraine – ensure that LGBTI people are able exercise their legally guaranteed rights (in particular, freedom of expression and personal inviolability, right to freedom from inhuman or degrading treatment, freedom of peaceful assembly, etc.) and ensure that offences related to discrimination on the grounds of sexual orientation and gender identity are prosecuted in accordance with Article 161 of the Criminal Code of Ukraine.

To the Ministry of Internal Affairs of Ukraine, National Police of Ukraine – pursuant to Article 3 of Section 105 of the Action Plan, draft a law on the regulation of liability for crimes committed on the grounds of intolerance based on race, colour, religious beliefs, sexual orientation and gender

¹²⁷ According to the information available, in 2019 the police only initiated one criminal proceeding related to an attack on an LGBTI person under Article 161 of the Criminal Code of Ukraine.

216 identity, disability, and language, and submit this for consideration to the Verkhovna Rada of Ukraine in accordance with the established procedure.

To state bodies and local self-government bodies – strengthen awareness-raising activities aimed at raising citizens' legal understanding of issues relevant to preventing and combating discrimination.

To local self-government bodies – refrain from actions and decisions that may be discriminatory and strictly fulfil the obligation to ensure compliance with the principle of non-discrimination in their activities, as set out in Article 12 of Law of Ukraine 5207-VI "On the Principles of Prevention and Countering Discrimination in Ukraine" of 6 September 2012, and conduct awareness-raising activities on the need to ensure the right of people to different views and beliefs.

11.4. Observance of the rights of citizens to non-discrimination on the grounds of language

In the reporting year, the Commissioner considered reports of discrimination against citizens on the grounds of language; in particular, during employment, advanced training of employees, and the provision of banking services (mainly in the southern oblasts). These citizens' rights were restored following the Commissioner's intervention acts.

Example

Citizen K. wrote to the Commissioner regarding a violation of his linguistic rights by the Chornobyl Nuclear Power Plant State Specialized Enterprise (hereafter Chornobyl NPP SSE). The Commissioner sent a letter to the State Agency of Ukraine for Exclusion Zone Management calling on the Agency to restore the violated rights of citizen K. Subsequently, the State Agency of Ukraine for Exclusion Zone Management took the measures needed to ensure the use of the state language in the work of Chornobyl NPP SSE.

The Commissioner carried out monitoring visits to Zakarpattia and Mykolaiv Oblasts to determine whether the linguistic rights of national minorities, in particular Hungarian and Roma minorities, were being observed. These visits revealed that the local self-government bodies were contributing to the harmonization of interethnic and interfaith relations.

The Verkhovna Rada of Ukraine adopted Law of Ukraine 2704-VIII "On Ensuring the Functioning of the Ukrainian Language as the State Language" of 25 April 2019. The purpose of the Law is to regulate procedures for the use of the Ukrainian language as the State language in all public spheres of social life. The law does not cover the language of religious rites or private communication between individuals.

The Commissioner sent her views regarding the compliance of the Law with current anti-discrimination legislation to the Constitutional Court of Ukraine. The Law does not establish the necessary balance in

society between popularization of the Ukrainian language and a proper level of protection for the linguistic rights of national minorities. This position coincides with the conclusion of the Venice Commission (Opinion 960/2019 of 9 December 2019), which recommends adopting a Law to give the linguistic rights of national minorities the same level of protection as the state language as soon as possible.

For the implementation of this Law, the Commissioner held an open competition in September 2019 and submitted for consideration of the Cabinet of Ministers of Ukraine a candidacy for the position of the Commissioner for the Protection of the State Language. In November 2019, the Cabinet of Ministers of Ukraine appointed a Commissioner for the Protection of the State Language.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – draft a law on the protection of the linguistic rights of national minorities and submit this for consideration to the Verkhovna Rada of Ukraine.

To the local self-government bodies – ensure implementation of the legislation regulating state policy on the observance of the right to education in the native language, so that representatives of national minorities living in territorial communities are able to enjoy this right at district, city, settlement and village level.

11.5. Respect for the equal rights and opportunities of women and men

Ukraine has recently seen progress in implementation of the gender equality policy, significant strengthening of the national gender equality mechanism, and an increase in women's role in politics. A 30 per cent voluntary gender quota was introduced in the electoral lists of candidates for deputies, and following this, at the extraordinary parliamentary elections held in 2019, the representation of women in the Verkhovna Rada of Ukraine increased to 22 per cent.

Adoption of laws and regulations to ensure gender equality led to the introduction of Father's Day in 2019, and to the approval of methodological recommendations on implementing and using a gender-responsive approach in the budget process and on identifying cases of gender discrimination, and on the mechanism for providing legal assistance.

Positive shifts in 2019 included implementation of the Government's Priority Action Plan, which incorporated the Concluding Observations on the Eighth Periodic Report of Ukraine provided by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), and the introduction of other national documents on gender equality issues. The Plan was implemented within nine months, indicating a need to include a gender component in the Government's Priority Action Plan for the following years.

218 At the same time, Article 4 of Law of Ukraine 2866-IV “On Ensuring Equal Rights and Opportunities for Women and Men” of 8 September 2005 – which requires all current legislation to go through legal review by gender experts – is not fully being implemented. In particular, there is no procedure for conducting a gender expertise of the draft laws submitted by the President of Ukraine and by the People’s Deputies of Ukraine to the Verhovna Rada.

It should be noted that there is no effective national system in Ukraine for monitoring and evaluating implementation of international and national commitments on gender equality, in particular, those under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the ILO Convention concerning the Rights of Women Workers and Working Mothers, and other international agreements in the area of equal rights and opportunities for women and men.

There are no mechanisms to measure unpaid domestic work; this is one of the barriers women face to exercising their rights to participate in economic and political activities.

The process of decentralization has seen a trend of decreased representation of women at the level of local government heads.

The Commissioner considered reports of cases of discrimination on the grounds of gender, and also registered in many cases female politicians being subjected publicly to sexist insults from male politicians, as well as to insults designed to humiliate of their human dignity and that indicated distrust of their professionalism.

Example

The Commissioner received a complaint from People’s Deputy of Ukraine V. Yu. Ptashnyk regarding unethical and discriminatory statements by fellow People’s Deputy of Ukraine V. Yu. Mysyk. The Commissioner initiated proceedings that included informing V. Yu. Mysyk of the inadmissibility of his actions, statements, and deeds, and that these compromised him, voters, the Verkhovna Rada of Ukraine, and the State.

Example

The Ministry of Education and Science introduced a course entitled “Fundamentals of the Family” for school students, which includes elements that are discriminatory on the grounds of religious belief and gender. The Commissioner sent a letter to this department, requesting that the Ministry take action to comply with the requirements of anti-discrimination legislation.

Analysis of monitoring of the observance of equal rights and opportunities for women and men makes it clear that stereotypes about the roles of women and men in the family and society are still very strong in Ukraine. In particular, the Commissioner’s Office identified cases of discriminatory advertising in which women are depicted as sexual objects. The Commissioner’s intervention in this area led to an end to the dissemination of discriminatory advertising, and advertisers were fined under the procedure for imposing fines for violations of advertising legislation.

At the Commissioner’s and NGOs’ initiative, national consultations were held to discuss the results and recommendations of the parallel report of Ukrainian women’s organizations on Ukraine’s implementation

of the Beijing Declaration and Platform for Action, as part of preparation of the Global Report. An international training seminar was also held on governmental and non-governmental interaction on implementation of CEDAW and United Nations Security Council Resolution 1325 on women's rights during armed conflict.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine –

1. Draft a law on amendments to the Law of Ukraine 270/96-VR "On Advertising" dated 3 July 1996 to counteract discrimination and submit this for consideration to the Verkhovna Rada of Ukraine. These amendments should help to counteract discrimination and encourage citizens to go to the courts and combat discriminatory advertising.
2. When developing the Programme of Activities of the Cabinet of Ministers of Ukraine, take into account the principle of equal rights and opportunities for women and men in all spheres of society.
3. During the preparation and submission of expert opinions to draft laws registered with the Verkhovna Rada of Ukraine, ensure that the legal opinions of gender experts are also sought.

To the State Statistics Service of Ukraine – draft a decree on the collection of data for monitoring gender equality and submit this for consideration to the Cabinet of Ministers of Ukraine, taking into account the recommendations of the Statistical Department of the European Union (Eurostat) and the United Nations Statistics Division.

To local state administrations and local self-government bodies – incorporate gender analysis into the development of regional and local programmes, as well as the recommendations of the CEDAW Committee on CEDAW implementation and the provisions of the Beijing Declaration and Platform for Action.

11.6. Right to protection against domestic violence

Preventing and combating domestic violence is one of the Commissioner's priorities, within the system of monitoring the observance of human rights and freedoms in Ukraine.

The Commissioner received reports of domestic violence. In all cases, the Commissioner initiated proceedings and sent the relevant requests to the entities implementing measures to prevent and combat domestic violence.

The system for preventing and combating domestic violence and gender-based violence is still under development. Due attention is being paid to responding to and preventing each case of violence, and the list of entities responsible for responding to cases of domestic violence has been expanded to include health care, education, justice, and judicial bodies. The role of law-enforcement agencies and social services was also strengthened.

220 The Commissioner analysed the relevant regulatory legal acts¹²⁸, in particular: the procedure for the creating and maintaining the Unified State Register of Domestic and Gender-Based Violence, as well as access to this register; the standard provisions on specialized support services for victims of domestic violence and/or gender-based violence; and the Concept Note for the State Social Programme for Preventing and Combating Domestic Violence and Gender-Based Violence for the period to 2022.

It should be noted that the State Social Programme for Preventing and Combating Domestic Gender-based Violence for the Period to 2022 has not yet been adopted, and this is why it is not possible to comprehensively address the issues around reducing domestic violence at regional and local levels.

In its Concluding Observations on the Eighth Periodic Report of Ukraine, the CEDAW Committee expressed concern that the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) had not yet been ratified. Ukraine's failure to ratify this Convention deprives victims of domestic violence of the right to use international legal protection mechanisms.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine –

1. Draft a law on ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and submit this for consideration to the Verkhovna Rada of Ukraine.
2. Adopt the State Social Programme for Preventing and Combating Domestic Gender-based Violence for the Period to 2022.
3. Improve the system for providing assistance to victims of domestic and gender-based violence by: introducing state statistical reporting on preventing and combating domestic and gender-based violence; developing a list of indicators for central executive authorities to record cases of domestic and gender-based violence; and introducing continuous monitoring of the quality of services provided to victims of domestic gender-based violence.

To the entities implementing measures to prevent and combat domestic violence and gender-based violence – strengthen the mechanism for establishing cooperation for the prompt referral and triangulation of data on the number of cases of domestic violence.

To local state administrations and local self-government bodies – organize and conduct an awareness-raising campaign in 2020 among Ukrainian citizens about the mechanism for protection against domestic and gender-based violence and the procedures for seeking protection and assistance in case of violence.

¹²⁸ Joint Resolution 369/180 of the Ministry of Social Policy and Ministry of Internal Affairs "On Approval of the Procedure for Assessing the Risks of Committing Domestic Violence" of 13 March 2019, registered with the Ministry of Justice under No. 333/3304 on 2 April 2019, and Ministry of Health Resolution 262/33233 "On Approval of the Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Likely to Be Victims of Domestic Violence and Providing Them with Medical Assistance" dated 14 March 2019 were adopted.

CHAPTER 12

FREEDOM OF SPEECH IN UKRAINE

FREEDOM OF SPEECH IN UKRAINE

The right to freedom of expression is one of the fundamental principles enshrined in international and national normative instruments, and is a priority issue for the international community and civil society in Ukraine.

Ukraine is ranked 102 out of 180 countries in the 2019 World Press Freedom Index. Reporters Without Borders points out that Ukraine's score deteriorated because the elections held in 2019 resulted in an increase in the number of threats and attacks against journalists, violations of the right to the confidentiality of sources, instances where investigative journalists were placed under surveillance, and abuse of news.

During 2019, the Commissioner comprehensively monitored observance of the right to freedom of speech and freedom of peaceful assembly, including accordance with United Nations and Council of Europe standards. Data collected by the Institute of Mass Information NGO indicate that the situation concerning freedom of conscience and speech in general deteriorated compared to 2018. During 2019, 243 cases of violations of freedom of speech in Ukraine were recorded, 172 of which took the form of acts of physical aggression against journalists¹²⁹. In accordance with Council of Europe guidelines, the State is responsible for protecting journalists and public activists and is obliged to create safe conditions for their activities.

The Commissioner was particularly concerned by the attempt of the Cabinet of Ministers of Ukraine to submit a draft law that would introduce criminal liability for the dissemination of disinformation for consideration to the Verkhovna Rada of Ukraine, given that in 2019, only a small number of lawsuits for the protection of honour, dignity and business reputation were filed against public activists and journalists.

Right to life

Vadym Komarov, a journalist from Cherkasy, died on 20 June 2019 in hospital from injuries sustained in an attack; he never woke up from a medically-induced coma. The Commissioner made a specific request to the prosecutor of Cherkasy Oblast to take immediate measures to conduct a pre-trial investigation and identify those involved in committing the crime. The pre-trial investigation has been ongoing on for six months now, but the perpetrators have not yet been brought to justice. The Commissioner has been continually monitoring this case.

In 2019, a report was published on the attacks on Kateryna Gandziuk and other public activists, based on an investigation carried out by the Temporary Investigative Commission of the Verkhovna Rada of Ukraine¹³⁰. The work of the Temporary Investigative Commission helped to identify those who ordered the murder of Kateryna Gandziuk and those who carried out her murder. Some of these people are still in hiding. The Temporary Investigation Commission, whose members included a representative of the Secretariat of the Commissioner, also revealed gross violations of rights and freedoms of citizens by law enforcement officers. For example, the first person detained on suspicion of committing the attack on

¹²⁹ <http://imi.org.ua/monitorings/svoboda-slova-v-ukrayini-u-2019-rotsi-pogirshylasya-imi-i31267>.

¹³⁰ Verkhovna Rada of Ukraine Resolution 366-IX "On Establishing the Temporary Investigative Commission of the Verkhovna Rada of Ukraine to Exercise Parliamentary Control over the Investigation of the Attacks on Kateryna Gandziuk and other Public Activists during 2017 and 2018" of 12 December 2019.

224 Kateryna Gandziuk was Mykola Novikov, who gave false testimony under pressure from law enforcement officers. He later withdrew his testimony and was released from custody.

The Commissioner has continued to monitor the case of the murder of journalist Pavlo Sheremet, who was killed on 20 July 2016. At the end of 2019, the investigation identified the suspects in the murder of Pavlo Sheremet. The pre-trial investigation is underway. All the necessary procedural steps to conduct an objective study of all the circumstances and persons involved in this crime are being taken.

Right not to disclose the source of information

Professional journalism relies on access to confidential sources of information, as coverage of socially important issues by journalists is one of the key components of a democratic society.

The Commissioner recorded cases of law enforcement officers interfering in professional journalistic activities to gain access to “sources of information” during the last year. There were attempts to gain access to a significant amount of information about communications with confidential sources, in particular from journalists working on the “Mr. Petro Incognito” investigative project, such as Natalia Sedletska, Kristina Berdyskykh and Ivan Verstiuk.

The Commissioner repeatedly submitted her response acts stating that it is inappropriate to violate the right of journalists not to disclose the source of their information, or to disclose information that makes it possible to identify the sources of information, except in cases when they are obliged to do so by a court decision based in law.

Right to freedom of speech in the temporarily occupied territories

Armed aggression by the Russian Federation in the east of Ukraine and the annexation of the Autonomous Republic of Crimea and the city of Sevastopol have had a significant impact on the situation with regard to freedom of speech on the territory of our state. It is practically impossible for independent journalists to work in the temporarily occupied territories of Ukraine. Over the past five years, according to the National Union of Journalists of Ukraine, more than 300 cases of pressure on journalists in Crimea were recorded, including attacks, torture, detention, seizure of property, searches, threats, psychological pressure, filming bans and denial of access to information.

Example

On 30 September 2016, Roman Sushchenko, a Ukrainian journalist and correspondent for the Ukrainian National News Agency Ukrinform, was illegally detained and arrested in Moscow, in the Russian Federation, for allegedly spying for Ukraine. In June 2018, the Moscow City Court sentenced Roman Sushchenko to 12 years in a maximum-security prison.

Since the beginning of Roman Sushchenko’s detention, the Commissioner has taken measures at national and international levels, drawing attention to the illegal detention of Roman Sushchenko and calling for his release from prison in Russia as soon as possible.

In 2017, the European Parliament adopted a resolution on “Political Prisoners in the Prisons of the Russian Federation and the Situation in Crimea”,¹³¹ which states that Roman Sushchenko and other Ukrainian citizens are illegally detained in the Russian Federation. Members of the European Parliament called for the immediate release of these persons and their return to their homeland. The same demands were made by the Organization for Security and Cooperation in Europe (OSCE) and the Parliamentary Assembly of the Council of Europe (PACE). The International and European Federations of Journalists also joined this call. Anthony Bellenger, General Secretary of the International Federation of Journalists, called the detention of the Ukrainian journalist in Russia “an attack on media freedom”.

Thanks to these joint efforts, Roman Sushchenko was freed from captivity in the Russian Federation on 7 September 2019.

The Commissioner continued to monitor the case of the Crimean journalist Mykola Semena, who was illegally convicted for his professional activities. In particular, the Commissioner’s Office carefully monitored Mykola Semena’s access to medical care, as well as calling for his release. This included submitting appeals on this case to international organizations.

Example

On 19 April 2016, members of the Federal Security Service of the Russian Federation searched the house of the Crimean journalist and Ukrainian citizen Mykola Semena, author of “Crimea. Realities”. He was accused of resorting to “public calls to commit acts aimed at violation of the territorial integrity of Russia” in the occupied peninsula, namely for writing an article published under the heading “Views”.

On 22 September 2017, the Russian-controlled Simferopol Railway District Court handed Mykola Semena down a two-and-a-half year suspended sentence with probation, and banned him from participating in public activities for three years.

As Mykola Semena’s name is widely known, including outside Crimea, any of his words can be interpreted as a violation of the court’s injunction, including comments and publications made on social media. Thus, Russia managed to achieve its main objecting, i.e. to silence the journalist.

During the period that he was under probation, Mykola Semena experienced heart pains and needed urgent treatment at a cardiology clinic in Kyiv. But the occupying Russian authorities consistently refused to allow Mykola Semena his legal right to health care, in violation of the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR).

Under pressure from the Ukrainian authorities and the European community, the Russian-controlled Simferopol Railway District Court terminated Mykola Semena’s period of probation period early, and also expunged his conviction from the record.

¹³¹ European Parliament resolution 2017/2596(RSP) “Political Prisoners in the Prisons of the Russian Federation and the Situation in Crimea”. http://www.europarl.europa.eu/doceo/document/RC-8-2017-0190_EN.html.

226 The Commissioner continued to monitor the rights of other Crimean journalists who have remained on the temporarily occupied peninsula and were detained and convicted by the occupying authorities. The Commissioner sent numerous requests for their fundamental rights and freedoms to be respected, in particular, requesting guarantees regarding appropriate detention conditions, a fair trial, adequate legal defence, freedom of expression, and access to medical care.

At least 18 Ukrainian information websites and 2 social media sites are completely blocked on the occupied peninsula.

Ten civic journalists, participants in the Crimean Solidarity Initiative, were arrested and are currently being held in detention facilities: Server Mustafaiev, Tymur Ibrahimov, Marlen Asanov, Seiran Saliiev, Remzi Bekirov, Ruslan Suleimanov, Osman Arifmemetov, Rustem Sheikhaliev, Ernes Ametov, and Nariman Memedeminov.

The international community has repeatedly stressed that these journalists should be released. In particular Arlem Dezir, the OSCE Representative on Freedom of the Media, condemned the arrest of the "Crimean Solidarity" activists following mass searches in annexed Crimea, and called for their immediate release from Russian pre-trial detention facilities. On 27 March 2019, in connection with the arrests of Ukrainian journalists in occupied Crimea, the European Union called on the Russian Federation to immediately stop illegal actions against Crimean Tatars. The US Embassy in Ukraine called on the Russian authorities to stop unjust arrests, detentions, searches and harassment of Crimean Tatars, activists and journalists. On 14 November 2019, the United Nations General Assembly supported a draft resolution submitted by Ukraine on the protection of human rights in Crimea under Russian occupation, which demanded the immediate release of all illegally detained citizens of Ukraine and their unimpeded return to their homeland, and called on the international community to continue, through international advocacy, its condemnation of the Russian Federation's violations of human rights in Crimea at bilateral and multilateral levels.

The Commissioner has been constantly monitoring the fate of all these citizens and has intervened at national and international levels to ensure the prompt release of our citizens.

Right to freedom of peaceful assembly

The right to hold peaceful assemblies without impediment is key to the functioning of a democratic society as a whole, as such events provide an opportunity to openly defend one's rights and express one's position.

As of the end of 2019, Ukraine does not have a law regulating peaceful assemblies, although Article 185 of the Code of Ukraine on Administrative Offences provides for liability for violations of the right to peaceful assembly. In 2019, court rulings were issued in favour of public activists under this article.

Right to freedom of political and public activity

The decision of the Constitutional Court of Ukraine of 6 June 2019 on a Constitutional petition submitted by the Commissioner is extremely important. This decision declared unconstitutional the provisions of paragraph 5 of Part 1 of Article 3 of Law of Ukraine 1700-VII “On Prevention of Corruption”¹³² of 14 October 2014 on the financial control of the state over the activities of public associations and persons carrying out activities to prevent and combat corruption in Ukraine, as limiting the freedom of political and public activities guaranteed by the Constitution of Ukraine.

In its decision, the Constitutional Court of Ukraine noted that these provisions could be used to persecute individuals engaged in anti-corruption activities, in particular, by initiating proceedings to bring these individuals to justice for failure to submit – or late submission of – indicating provision or publication of false, inaccurate or incomplete information by a person authorized to perform functions of the state or local self-government body.

Also, the Constitutional Court of Ukraine stressed that the state is obliged to oversee the activities of public associations to ensure that they and their members comply with the relevant provisions of Ukrainian law, but this oversight should not be excessive and should not hinder the lawful activities of these associations and the exercise by citizens of their constitutional right to freedom of association in political parties and public organizations. State interference in the functioning of civil society institutions must be for a legitimate reason, be proportionate, and take into account the balance of private and public interests.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – draft a law on amendments to Article 185 of the Code of Ukraine on Administrative Offences, in particular, to abolish liability for violations of the procedure for holding peaceful assemblies due to the absence of such a procedure, and submit this for consideration to the Verkhovna Rada of Ukraine.

To the Cabinet of Ministers of Ukraine – draft a law on enhancing criminal liability for obstructing journalistic activity and for crimes against journalists and submit this for consideration to the Verkhovna Rada of Ukraine.

To the Prosecutor-General’s Office – strengthen oversight of compliance with the law during pre-trial investigation of crimes committed against mass media workers and other persons in connection with the exercise of their right to freedom of speech.

¹³² Constitutional Court of Ukraine Decision 3 of 6 June 2019. <http://zakon.rada.gov.ua/laws/show/v003p710-19>.

228 **To the National Police of Ukraine, the State Bureau of Investigation, the Security Service of Ukraine and the Prosecutor-General's Office –**

1. Ensure effective and impartial pre-trial investigation of criminal offences related to murders and attacks on public figures (activists), journalists, and other violations of freedom of speech.
2. Pay special attention to inaction and inappropriate responses by authorized state bodies and their officials to crimes committed against journalists and public figures.
3. Develop new legal mechanisms to protect the right to freedom of conscience and speech in Ukraine, taking into account the latest technological and cyber challenges and threats, and, in particular, strengthen guarantees to protect media representatives and public activists from the illegal actions of state officials, politicians, and oligarchic structures.

CHAPTER 13

PROTECTION OF RIGHTS AND FREEDOMS OF UKRAINIAN CITIZENS AT THE INTERNATIONAL LEVEL

PROTECTION OF RIGHTS AND FREEDOMS OF UKRAINIAN CITIZENS AT THE INTERNATIONAL LEVEL 231

In 2019, the Commissioner continued to take measures intended to protect the rights of Ukrainian citizens who are outside Ukraine. This included drawing attention to cases where the rights of Ukrainian citizens were violated as migrant workers, as victims of trafficking or as victims of violence; or who for various reasons ended up in places of custody in the host country or in other situations that resulted in violations of their human rights.

To ensure the restoration of the violated rights of Ukrainian citizens abroad, the Commissioner held bilateral meetings with other Ombudspersons and representatives of foreign institutions and organizations working to protect human rights. The Commissioner received support from the international community, carried out monitoring visits to prisons and detention centres abroad, and made use of other mechanism.

The Commissioner participated regularly in the meetings of international and regional associations of national human rights institutions, which, inter alia, have raised issues relating to protection of the rights of the civilian population in the temporarily occupied territories in Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol, resulting in the drafting of general decisions for implementation by state bodies.

13.1. Adoption of Guidelines on Strengthening the Human Rights Protection System with associations of National Human Rights Institutions and international organizations*United Nations*

The Commissioner drew the attention of the international community to violations of the rights of Ukrainian citizens in the temporarily occupied territories in Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol at sessions of United Nations human rights treaty bodies, including the United Nations Human Rights Council. In particular, the Commissioner raised the issues of the illegal detention of Ukrainian citizens in prisons and detention centres, the problem of torture and ill-treatment, lack of access to medical care, involvement in forced labour, and treatment that is degrading to human dignity.

In a speech at the 40th session of the United Nations Human Rights Council (28 February 2019, Geneva), the Commissioner gave examples of ill-treatment inflicted on citizens of Ukraine who are in the temporarily occupied territories in the Donetsk and Luhansk Oblasts and the Autonomous Republic of Crimea, and requested support to monitor the conditions of prisoners in the temporarily occupied territories and to arrange their transfer to the territory controlled by Ukraine.

Participants at this session were also informed of violations of the economic and social rights of Ukrainian citizens in the temporarily occupied territories in Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol. These included, in particular, the loss of employment,

232 property and housing; lack of access to social and medical services; and difficulties obtaining pensions and state-guaranteed social benefits¹³³.

The Commissioner stressed that the protection of territorial integrity requires an increase in the share of security and defence costs, but that the Government of Ukraine needs to establish a balance between defence costs and the costs of ensuring that the economic, social, and cultural rights of Ukrainian citizens are upheld.

In this context the Commissioner has supported the recommendation of United Nations independent expert Juan Pablo Bohoslavsky on the need to assess the impact on human rights of economic reform policy in Ukraine presented in his report “Impact of Foreign Debt and Other International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural Rights” at the session of the United Nations Human Rights Council.

In 2019, the Commissioner’s Office continued its active cooperation with the United Nations Monitoring Mission on Human Rights in Ukraine. Several joint meetings were held during which the Commissioner discussed in detail the situation in eastern Ukraine related to the payment of pensions and state-guaranteed social benefits to citizens of Ukraine who live in the temporarily occupied territories, and who have regularly to cross the ‘contact line’ in order to exercise their right to social benefits and social protection.

The Commissioner requested that the United Nations Human Rights Monitoring Mission share information, and drew the Mission’s attention to the issue of transferring prisoners from the temporarily occupied territories in Donetsk and Luhansk Oblasts to the territory controlled by the Government of Ukraine. In particular, the Commissioner drew the Mission’s attention to the fact that in 2019, this process was blocked by representatives of self-proclaimed bodies that usurped the power functions in certain districts in Donetsk Oblast.

The Commissioner’s Office continued its cooperation with the United Nations Children’s Fund (UNICEF) Representative Office in Ukraine with the aim of strengthening protection of the rights of children, especially those affected by military operations, armed conflicts and psychological and physical violence. This cooperation was ensured during the reporting period under the Cooperation Agreement between the Ukrainian Parliament Commissioner for Human Rights and UNICEF, dated 13 July 2018.

At the Commissioner’s initiative, an international conference was held in Kyiv on Securing Children’s Rights in the Context of Armed Conflict (26-27 November 2019). Representatives of 10 ombuds institutions from countries that have experience of armed conflicts and overcoming their consequences participated. The Government of Ukraine accepted a number of recommendations made by the participants, including recommendations for all States and parties to the conflict on the territory where an armed conflict is taking place to uphold the best interests and prioritize the rights of the child at every stage of the armed conflict, as set out in the Convention on the Rights of the Child, and to take into account the views of children. Further implementation of these recommendations by the Government of Ukraine will be monitored by the Commissioner¹³⁴.

¹³³ <http://webtv.un.org/search/clustered-id-sr-on-right-to-food-ie-on-foreign-debt-9th-meeting-40th-regular-session-human-rights-council/6008308366001/?term=Denisova&sort=date>.

<http://webtv.un.org/search/clustered-id-sr-on-human-rights-defenders-and-on-torture-10th-meeting-40th-regular-session-human-rights-council-/6008352523001/?term=Denisova&sort=date>.

¹³⁴ http://www.youtube.com/watch?v=wgW1QwzApTc&fbclid=IwAR1yaCKKs6ZM1YHJruOzs3NPeBd_vxsTBOEQQfbp_NgojcRjzT_Ato7wJZo.

Council of Europe

A meeting of representatives of the European Equality Bodies and National Human Rights Institutions with Dunja Mijatović, the Commissioner for Human Rights of the Council of Europe, and representatives of European Equality Bodies (26 September 2019, Paris) discussed issues relating to human rights and the prevention of discrimination in the context of the use of artificial intelligence.

The European Union published “Ethics Guidelines for Trustworthy Artificial Intelligence”, which covered confidentiality and data management, reliability, security, as well as accountability. On the basis of these Guidelines, the Commissioner is already developing appropriate recommendations on the use of artificial intelligence systems and these are being implemented by public authorities in Ukraine.

To promote equality, non-discrimination, stability, peace, and security in Europe, the Commissioner took part in the Conference on the occasion of the 25th anniversary of the Council of Europe’s European Commission against Racism and Intolerance (26-27 September 2019, Paris). At this conference, participants discussed the development of an inclusive society and the impact of innovative technologies and the internet on manifestations of intolerance and discrimination. The Commissioner will draw on this new knowledge to monitor the efforts of Ukrainian state bodies to develop effective mechanisms of equality and inclusiveness aimed at overcoming discrimination, and improving national legislation to combat racism and intolerance in accordance with the standards of the Council of Europe.

Organization for Security and Cooperation in Europe

The Commissioner brought the issue of the release of hostages and prisoners held illegally in the non-government controlled areas in Donetsk and Luhansk Oblasts to the attention of Ambassador Toni Frisch, the OSCE Coordinator, during a meeting of the working subgroup on humanitarian issues of the Trilateral Contact Group held in Kyiv on 31 January 2019.

The Commissioner also raised the issues of protection against discrimination, ensuring tolerance, prevention of torture and ensuring the rule of law in the temporarily occupied territories in Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol, during her participation in the Annual Human Dimension Implementation Meeting of OSCE participating States (23-24 September 2019, Warsaw)¹³⁵. The Commissioner drew special attention to searches and mass detentions of members of Hizb ut-Tahrir, an organization considered terrorist in the Russian Federation, and members of the Crimean Solidarity public movement, that were carried out by the Federal Security Service of the Russian Federation in cooperation with the police and the National Guard of the Russian Federation. The Commissioner stressed that since the beginning of the occupation of the Crimean peninsula by the Russian Federation, 59 persons had been arrested and/or convicted on charges of links with banned Muslim groups in Crimea.

¹³⁵ <http://www.5.ua/polityka/denisova-na-naradi-obsye-u-varshavi-u-rf-i-okupovanomu-krymu-prodovzhuiut-zalyshatysia-113-ukrain-tziv-199765.html>.

234 *Association of National Human Rights Institutions*

The Commissioner used her participation in the activities of the Global Alliance of National Human Rights Institutions (GAHNRI), the European Network of National Human Rights Institutions (ENNHRI), the International Ombudsman Institute (IOI) and the European Network of Ombudspersons for Children (ENOC) to draw attention to the promotion and protection of human rights in Ukraine and Ukrainians abroad. These are all powerful international platforms for developing joint actions and identifying areas for cooperation to strengthen the role of ombudsmen in ensuring human rights, in the light of challenges that their countries face.

The Commissioner addressed the European Ombudsmen (members of ENNHRI) at a meeting in Brussels (13-14 February 2019) on the need to strengthen the role of national human rights institutions in the protection of human rights in the temporarily occupied territories in Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol. At the meeting, participants confirmed the importance of directing the activities of national human rights institutions in support of measures to strengthen social sustainability for the restoration and development of peace in areas affected by hostilities.

The Office of the Commissioner participated in the 23rd ENOC Annual Conference “Children’s Rights in the Digital Environment” (25-27 September 2019, Belfast)¹³⁶, which discussed establishing safe information spaces for children and counteracting bullying. At the end of the conference the ENOC General Assembly issued an official statement on the need to take measures to protect the rights of children in the digital age. The statement was sent to international and national organizations, governments, national human rights institutions that are ENOC members, business representatives, and national producers of digital products. The Commissioner continues to monitor implementation of this statement by the Government.

During 2019, the National Institute for Human Rights worked to join other associations of national human rights institutions. In particular, an application was filed with the Association of Mediterranean Ombudsmen, which will ensure effective dialogue, strengthen cooperation and promote the exchange of experience in the protection of human rights in the Mediterranean basin and beyond. The Commissioner will become a member of the Association of Mediterranean Ombudsmen in 2020.

Black Sea Economic Cooperation Organization

For the strengthening and development of democracy, rule of law and human rights protection, the Commissioner stressed the need for further consultations with the members of the parliamentary delegations to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization and the Ombudsmen of the Black Sea Economic Cooperation Organization Member States on the establishment of the Alliance of National Human Rights Institutions within the Black Sea Economic Cooperation Organization during the meeting with the Secretary-General of the Parliamentary Assembly of the Organization of the Black Sea Economic Cooperation Asaf Gadzhiev (17 November 2019, Istanbul).

¹³⁶ <http://www.facebook.com/office.ombudsman.ua/posts/453838481894998/>.

To the Verkhovna Rada of Ukraine –

1 When adopting the legislative acts of Ukraine on economic reform, take into account international and European standards provided for in the documents of the United Nations, the International Labour Organization and the Council of Europe, to which Ukraine is a party, as well as European directives provided for in the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States, in order to prevent violations of the economic, social and cultural rights of human beings and citizens.

2. For the promotion and protection of human rights in the region, recommend that the Permanent Delegation of the Verkhovna Rada of Ukraine to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization takes measures to hold consultations with the members of parliamentary delegations to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization on the establishment of an Alliance of National Human Rights Institutions within the Black Sea Economic Cooperation Organization.

To the Cabinet of Ministers of Ukraine:

1. Ensure the development of effective equality and inclusion mechanisms aimed at overcoming discrimination and improving national legislation to combat racism and intolerance, in accordance with the recommendations of the European Commission against Racism and Intolerance of the Council of Europe.

2. Instruct the Ministry of Foreign Affairs of Ukraine to assist in organizing and conducting, through the Secretariat of the Black Sea Economic Cooperation Organization, further consultations with the members of parliamentary delegations to the Parliamentary Assembly of the Black Sea Economic Cooperation Organization and the Ombudsmen of the Black Sea Economic Cooperation Organization Member States on the establishment of an Alliance of National Human Rights Institutions within that organization.

13.2. Cooperation with the Ombudsmen and institutions of foreign states on the protection of human rights in Ukraine

The Commissioner used all international platforms available to her to inform the international community of and draw their attention to the human rights situation in Ukraine. The Commissioner continued to nurture bilateral cooperation with colleagues in other countries through working visits, and held numerous meetings to exchange experience and develop common positions and mechanisms.

The Commissioner raised issues relating to the protection of the rights of migrant workers and ensuring decent working conditions for Ukrainian citizens in Poland during a meeting with the Polish Commissioner

236 for Human Rights, Dr Adam Bodnar, in September 2019¹³⁷. The two ombudspersons also discussed cases of hate crimes against Ukrainian citizens; in particular, violations of the right to life, freedom and personal inviolability, and the right to freely enjoy rights and freedoms without discrimination on any grounds. In this context, the Commissioner stressed the need to take all possible measures to prevent hate crimes and hate offences against Ukrainian citizens in Poland. In view of this, the two ombudspersons signed a Letter of Intent declaring that they would exchange information on specific cases and interventions, as well as on views, and lessons learned¹³⁸. At the same time, certain measures to protect human rights should be taken by the state bodies of Ukraine in connection with the increase in the number of migrant workers in Poland. Consular representation in Poland needs to be expanded.

The Commissioner received many letters from Ukrainian citizens with disabilities who are temporarily or permanently residing outside Ukraine, relating to violations of their right to benefits when they are asked to pay consular fees for administrative services, in particular for issuing identity documents. The issue of granting them relevant a right (a privilege not to pay a fee) shall be addressed through the consular offices.

The Commissioner also stressed the need to strengthen protection for Ukrainian migrant workers in Czechia. During a meeting with Helena Válková, the Government Commissioner for Human Rights of Czechia (November 2019), the Commissioner raised the implementation of the “Regime – Ukraine” and “Project – Ukraine” projects by Czechia. Ms. Válková assured the Commissioner that protection of the rights of the Ukrainian national minority in Czechia would be a priority in her activities for the next year¹³⁹.

To ensure observance of the rights of Ukrainian citizens in employment in the State of Israel, the Commissioner held a meeting with Shoshana Strauss, Deputy District Attorney for the Population, Immigration and Border Control Authority of the Ministry of Internal Affairs of the State of Israel (December 2019). In particular, they discussed the status of the implementation of the Intergovernmental Agreement on temporary employment of Ukrainian workers in certain sectors of the labour market of the State of Israel (ratified by Ukraine on 16 November 2016) and developed a common position on the need to review the Agreement’s implementation mechanism, including by signing an Additional Protocol regarding the employment of Ukrainian citizens in the care sector in Israel.

The issue of ensuring the rights of citizens of both countries to receive social benefits and pensions was discussed separately during a meeting between the Commissioner and the General Director of the Israeli Knesset Albert Saharovich, where they agreed on the need for Ukraine to ratify the bilateral Agreement on social security, which Israel ratified back in 2017.

At the same time, the Commissioner reported on the situation with the protection of human rights of the State Controller (Ombudsman) of Israel Matanyahu Englman and familiarized herself with the experience of her colleague.

The Commissioner also agreed to develop cooperation with her counterpart in Greece, Andreas Pottakis, the Ombudsman of the Hellenic Republic, at a meeting where the parties, inter alia, exchanged experience on the protection of the rights of citizens of both countries and concluded a Cooperation Agreement

¹³⁷ <http://www.ombudsman.gov.ua/ua/all-news/pr/lyudmila-den%D1%96sova-provela-zustr%D1%96ch-z-upovnovazhenim-z-gromady-anskix-prav-polshh%D1%96-adamom-bodnarom/>.

¹³⁸ <http://www.facebook.com/denisovaombudsman/posts/2997174167021979/>.

¹³⁹ <http://www.facebook.com/denisovaombudsman/posts/3200131050059622>.

(February 2019). Within this agreement, the Ombudspersons will provide mutual assistance in the promotion and protection of the rights and freedoms of citizens of both countries within their powers and jurisdiction¹⁴⁰. The Commissioner also stressed the need to monitor observance of procedural rights, as well as the right to adequate conditions of detention of Ukrainian citizens in penitentiary institutions in Greece, during her meeting with Andreas Pottakis. In this context, it should be stated that the executive bodies of Ukraine must take measures to expedite the conclusion of the abovementioned Agreement between Ukraine and Greece on the Supervision of Probationers or Parolees.

During her working visit to Italy in 2019, the Commissioner attended a court hearing in the case of Ukrainian citizen Vitalii Markiv, in order to monitor observance of his right to a fair trial (December 2019)¹⁴¹. The Commissioner stressed that the Government of Ukraine and representatives of the international community should also act to protect Vitalii Markiv, who was convicted for the murder of Italian journalist Andrea Rocchelli (but maintains his innocence), and that this high-profile case should be monitored.

The Commissioner discussed issues relating to the rights of Ukrainian citizens in prisons and detention centres in the Kingdom of Thailand during a meeting with the Chief Ombudsman of this country, Viddhavat Rajatanun (December 2019)¹⁴². The two discussed the rights of the 21 Ukrainian citizens who are imprisoned in Thailand, in particular, their right to immediate provision of qualified medical treatment. The Commissioner drew attention to the fact that there is no agreement on the transfer of convicted persons between these two states, and agreements were reached to join efforts to resolve this issue as soon as possible. The agreement will create legal grounds for the transfer of convicted persons to continue serving their sentence in the territory of the state of their citizenship, and a mechanism for cooperation between the competent authorities of both states.

In 2019, the Commissioner initiated measures to uphold the rights of Ukrainian citizen Roman Zolotarev, who had been sentenced to death in Malaysia. The Commissioner personally requested the Chairman of the Malaysian Human Rights Commission, Mr. Tan Sri Razali bin Ismail, to assist in upholding the right of the Ukrainian citizen to a fair trial, and stressed evidence indicating that Roman Zolotarev was not guilty. Cooperation between the Commissioner's Office and the competent authorities and institutions in Malaysia resulted in the death sentence being overturned.

One of the Commissioner's priorities for 2019 was to enable the return of 115 citizens of Ukraine held on politically motivated charges in detention facilities in the Russian Federation and temporarily occupied Crimea to their homeland. This was the subject of a meeting with the Chief Ombudsman of Turkey, Şeref Malkoç, during the Second Istanbul International Ombudsman Conference (November 2019)¹⁴³. The Commissioner gave Mr. Malkoç a list with information about the 115 citizens, who include 86 Crimean Tatars, and requested support and strengthened cooperation for the return of the Ukrainian political prisoners. The Commissioner also informed Mr. Malkoç of problems regarding protection of human rights in the temporarily occupied territories in Donetsk and Luhansk Oblasts.

¹⁴⁰ <http://www.ombudsman.gov.ua/ua/all-news/pr/mizh-ombudsmanami-ukraini-ta-gretsiii-pidpisano-memorandum-pro-spiivpratsyu/>.

¹⁴¹ http://www.facebook.com/denisovaombudsman/posts/3214059198666807?__tn__=K-R.

¹⁴² <http://www.ombudsman.gov.ua/ua/all-news/pr/lyudmila-den%D1%96sova-p%D1%96d-chas-zustr%D1%96ch%D1%96z-golovnim-ombudsmanom-korol%D1%96vstva-ta%D1%97land-obgovorila-pitannya-pomiluvannya-ukra%D1%97ncz%D1%96v,-yak%D1%96stali-zhertvami-torg%D1%96vl%D1%96-lyudmi/>.

¹⁴³ <http://www.ombudsman.gov.ua/ua/all-news/pr/u-stambul%D1%96-upovnovazhenij-provela-zustr%D1%96ch-z-golovnim-ombudsmanom-respubl%D1%96ki-turechchina-sherefom-malkochem/>.

- 238 In the context of expanding cooperation for implementation of the national preventive mechanism, the Commissioner had a detailed discussion with Suleyman Arslan, the Chairman of the Institute of Human Rights and Equality of Turkey, on issues affecting illegally imprisoned Crimean Tatars in the Russian Federation and temporarily occupied Crimea. As a result of the meeting, the parties expressed interest in strengthening cooperation and agreed to draft an Agreement on Cooperation. The Agreement would cover implementation of the national preventive mechanism and organization of joint, legal awareness-raising events among the populations of the two countries. The two ombudspersons also considered the possibility of creating a joint working group to develop effective mechanisms for preventing human rights violations.

RECOMMENDATIONS

To the Cabinet of Ministers of Ukraine – draft a law on the ratification of the Agreement between Ukraine and the State of Israel on social security and submit for consideration to the Verkhovna Rada of Ukraine.

To the Ministry of Foreign Affairs of Ukraine –

1. Develop a draft regulatory legal act on waiving consular fees for administrative services for persons with disabilities who are temporarily or permanently residing outside Ukraine.
2. Prepare for the establishment of a Consulate of Ukraine in Wroclaw, Poland. The new consular district should cover Wielkopolskie, Lubuskie, Opolskie, and Lower Silesia Voivodships in the Republic of Poland.
3. Provide details of contact information for the Ukrainian Parliament Commissioner for Human Rights on the websites of diplomatic missions outside Ukraine, in order to enable Ukrainian citizens to report violations of their rights to the Commissioner.

To the Ministry of Foreign Affairs of Ukraine and the Ministry of Social Policy of Ukraine – explore the possibility of concluding an additional protocol to the Agreement between the Cabinet of Ministers of Ukraine and the Government of the State of Israel on Temporary Employment of Ukrainian Workers in Certain Sectors of the Labour Market of the State of Israel, on the employment of Ukrainian citizens in the care sector on the territory of the State of Israel.

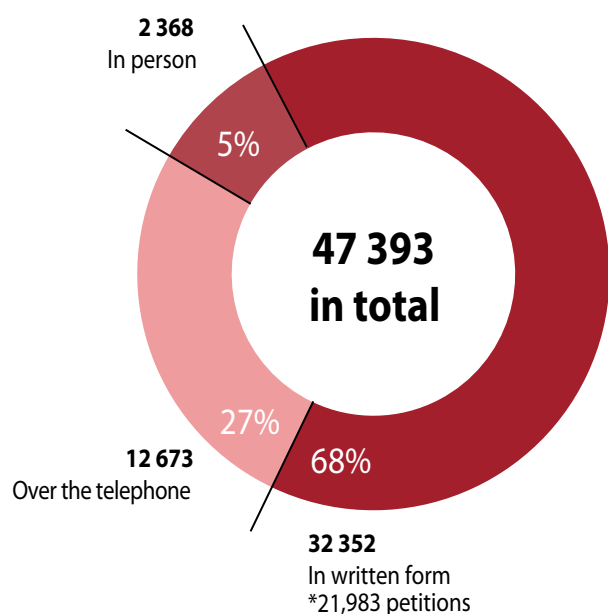
To the Ministry of Justice of Ukraine –

1. Take measures to expedite the conclusion of the Agreement between Ukraine and Greece on the Supervision of Probationers or Parolees.

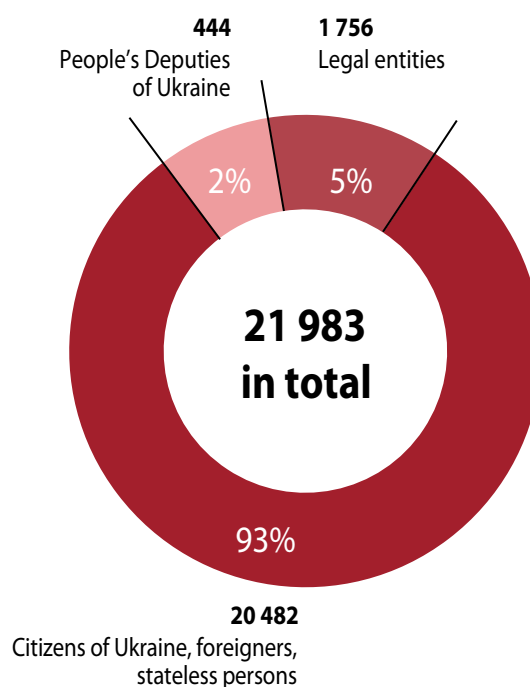
ANNEXES

INFORMATION ON RECEIVING AND CONSIDERING CITIZENS' REPORTS

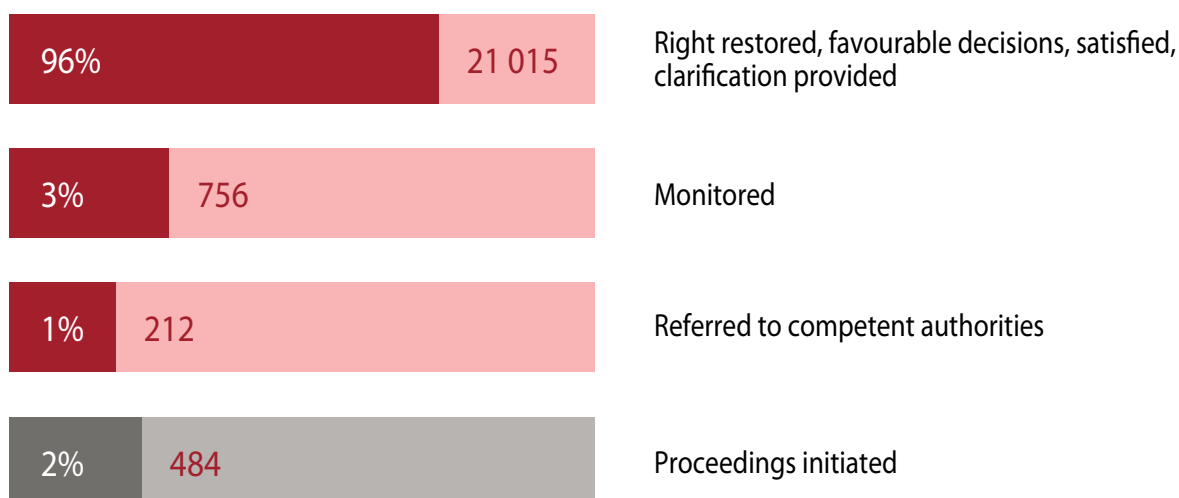
Number of people who submitted reports



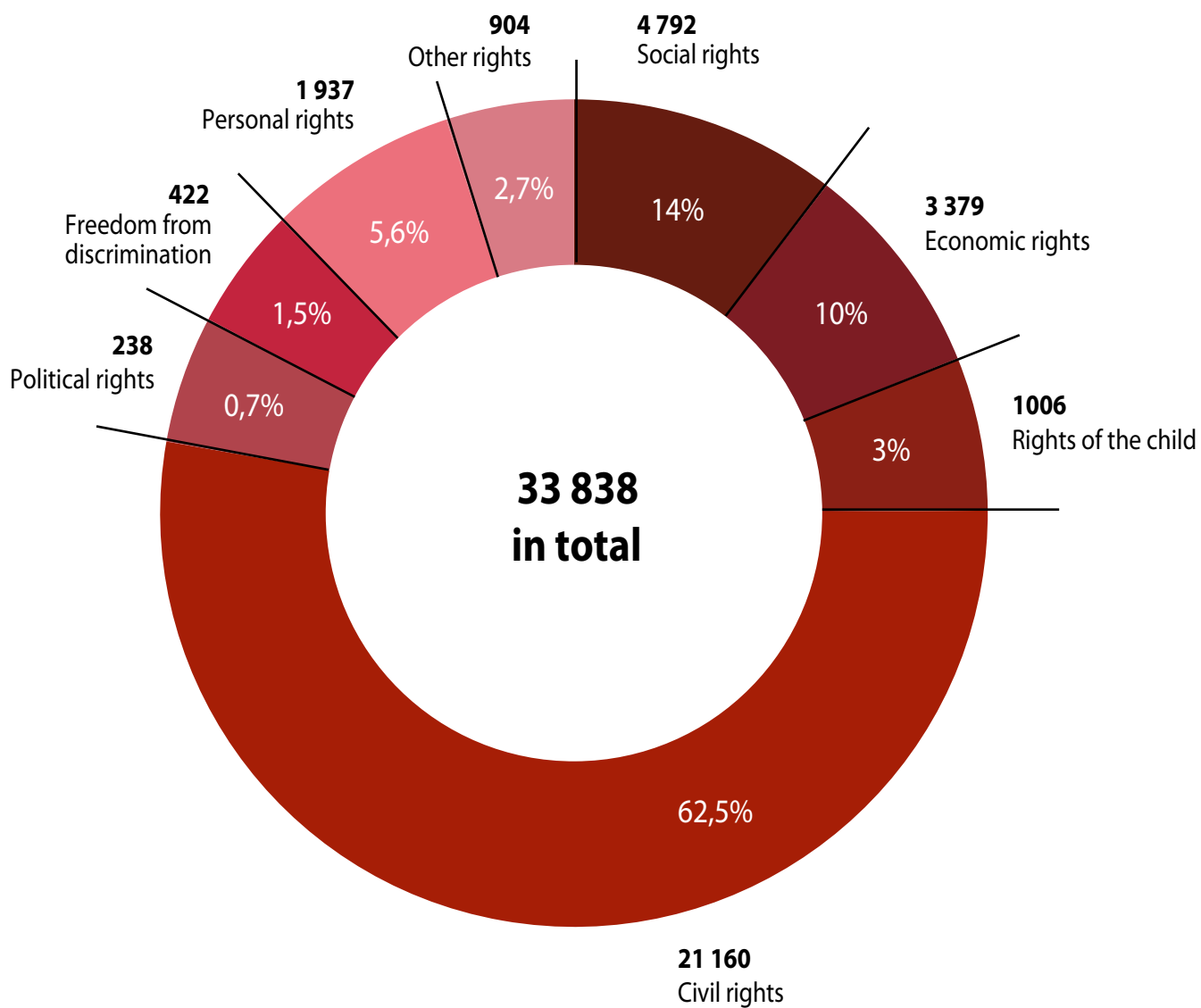
People who submitted reports



Actions taken after consideration of reports

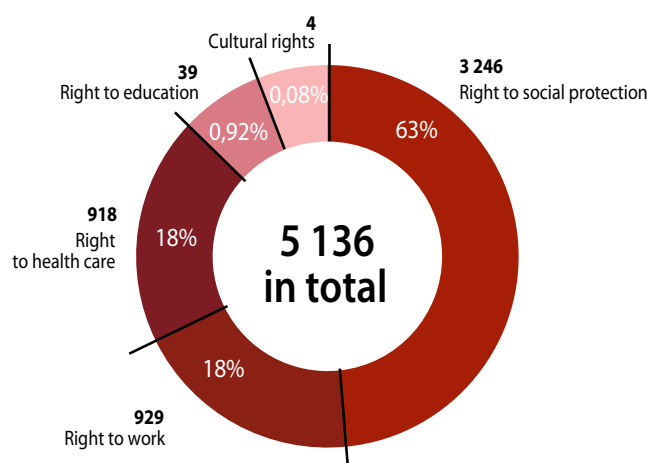


242 RIGHTS VIOLATIONS REPORTED

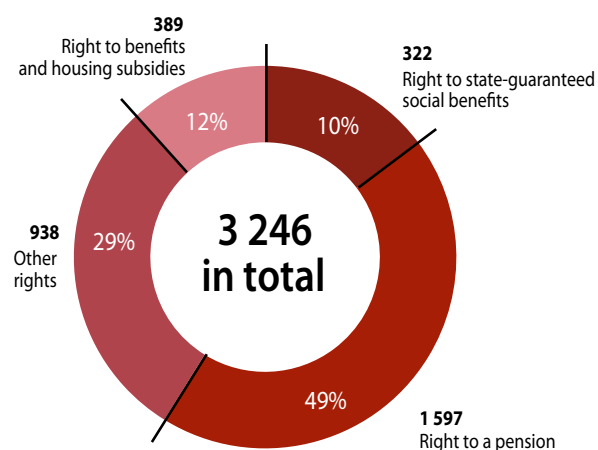


NUMBER OF REPORTS BY TYPE OF RIGHTS VIOLATION

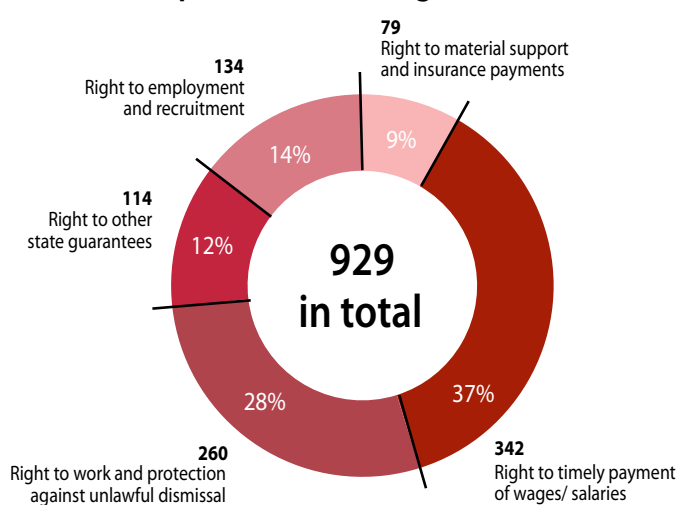
Social rights



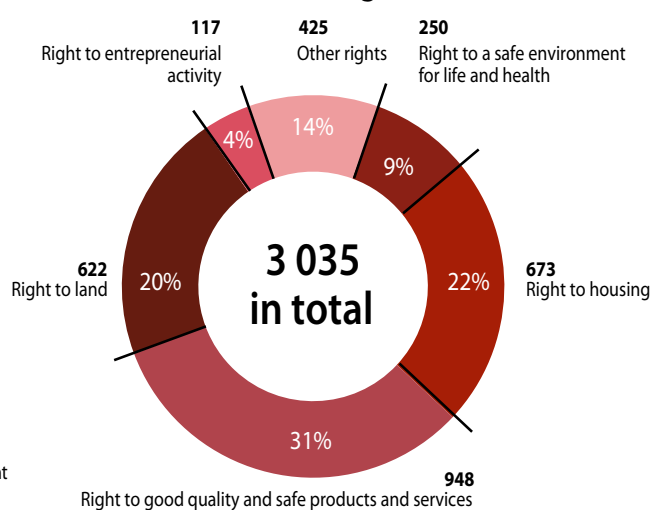
Reports under the right to social protection



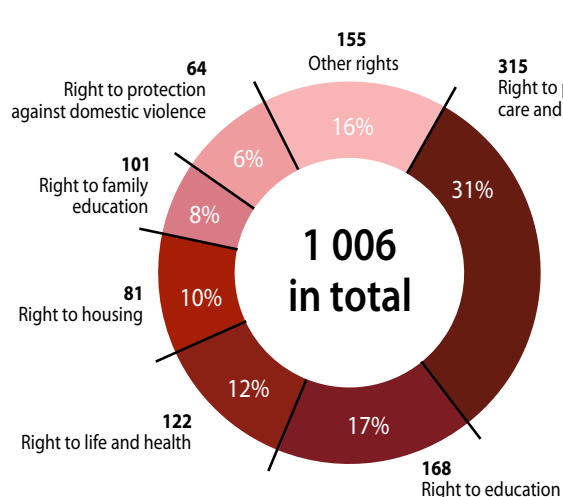
Reports under the right to work



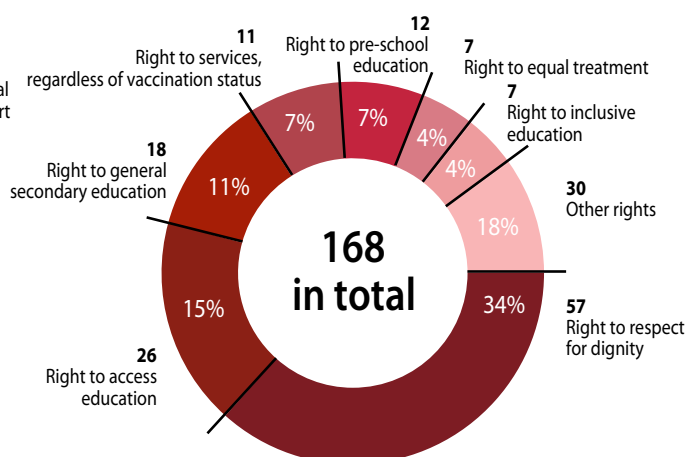
Economic rights



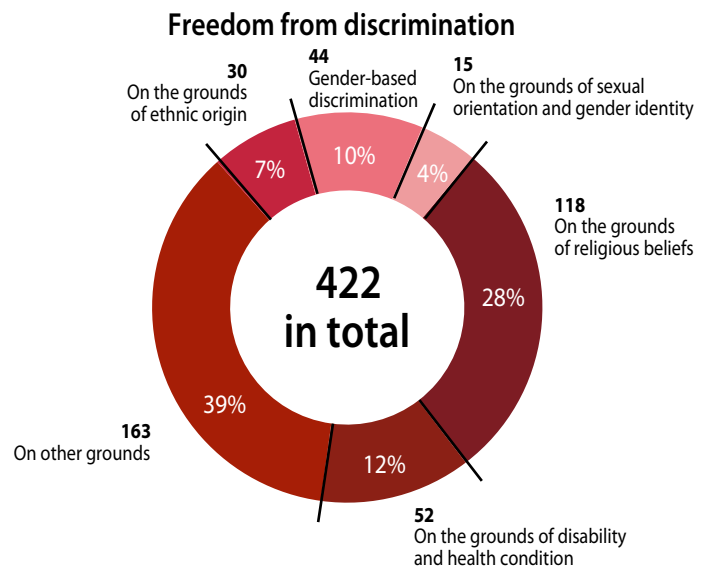
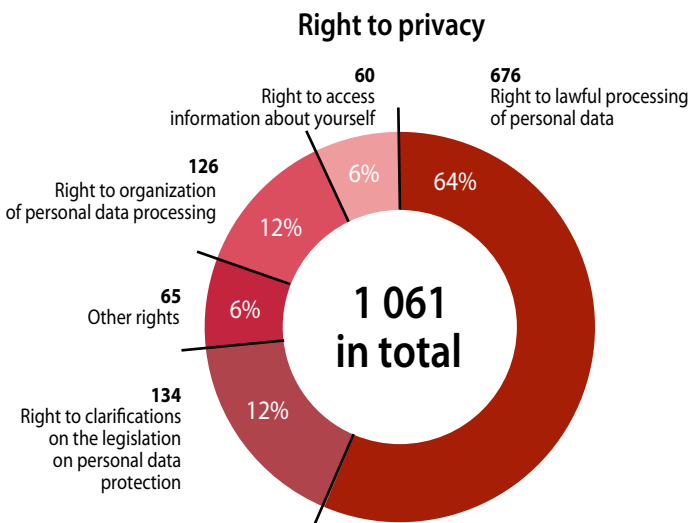
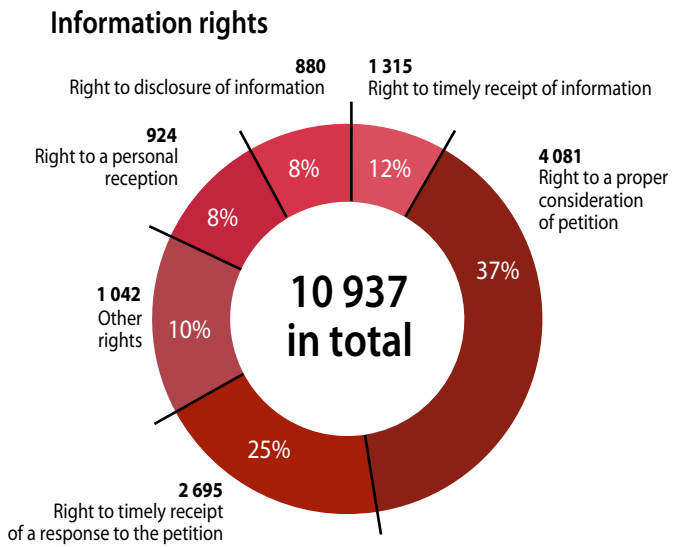
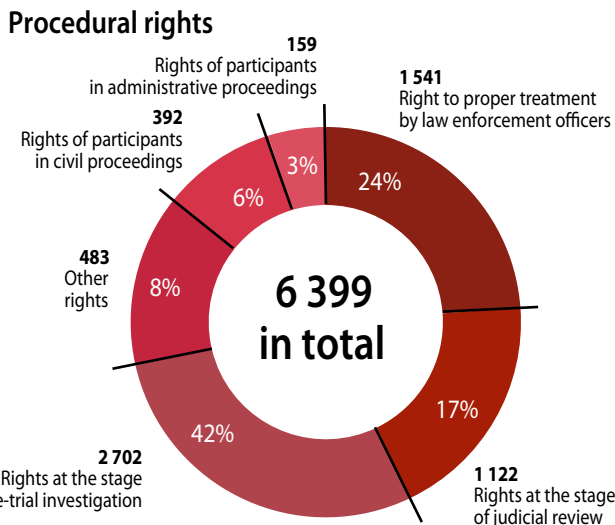
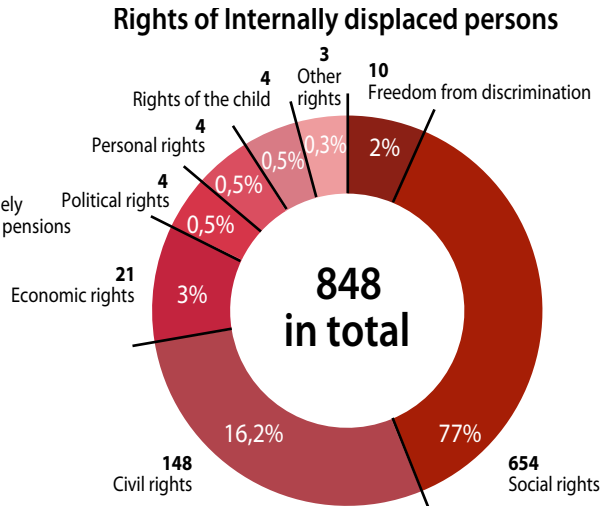
Rights of the child



Children's right to education



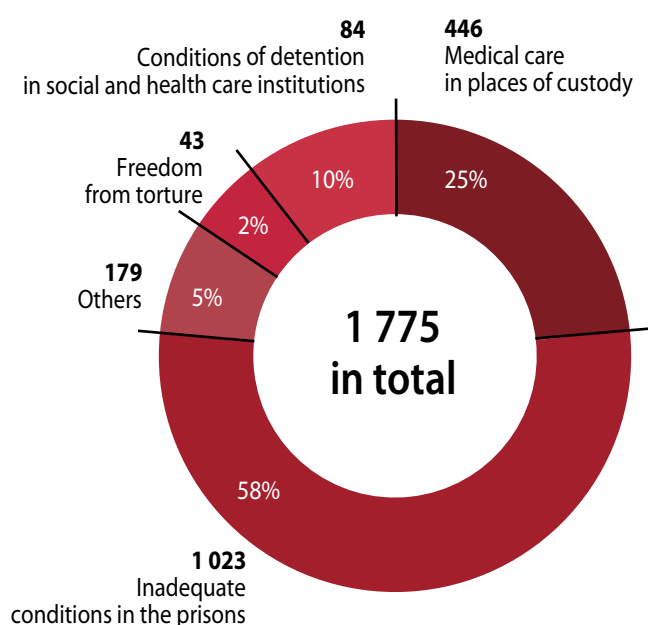
244 NUMBER OF REPORTS BY TYPE OF RIGHTS VIOLATION



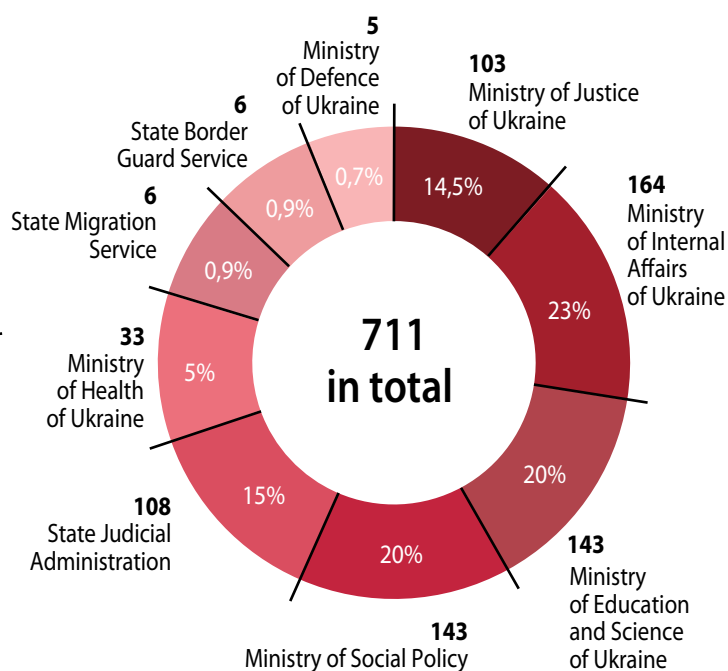
IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM

5,044 places of custody as of 01.01.2019

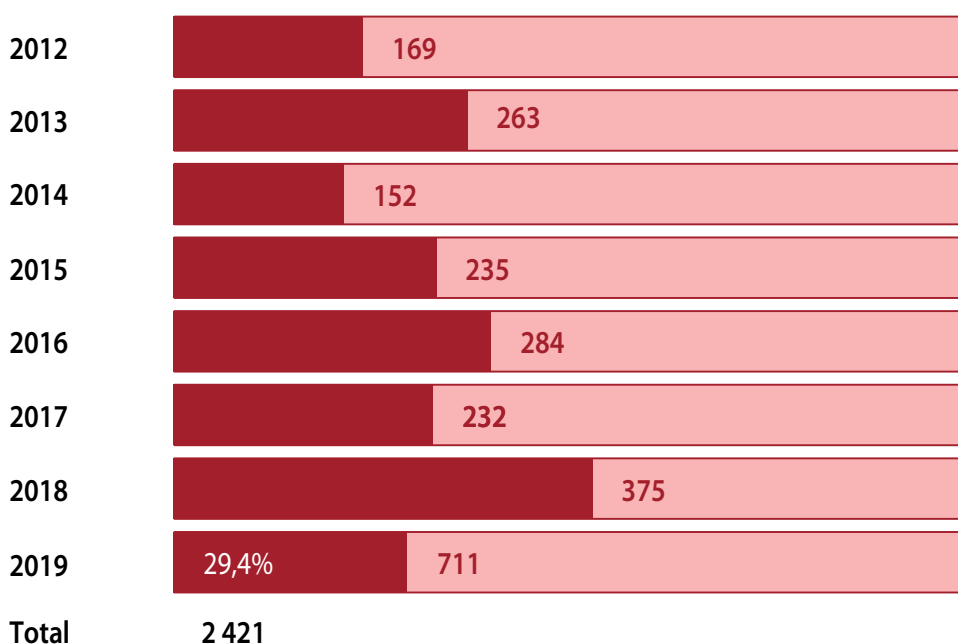
Number of reports of inadequate conditions of detention in places of custody



Number of visits of the National Preventive Mechanism in 2019 by state bodies

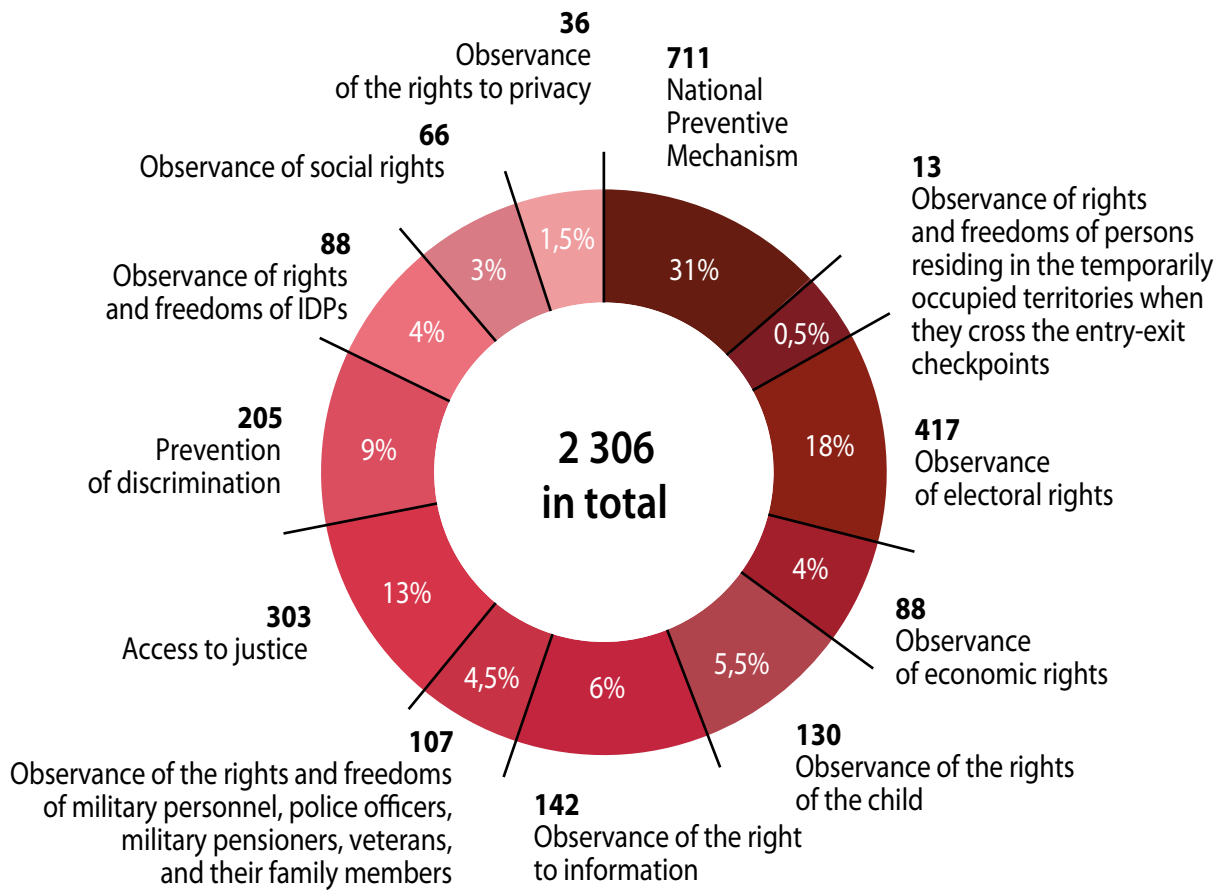


Number of visits of the National Preventive Mechanism in 2012-2019



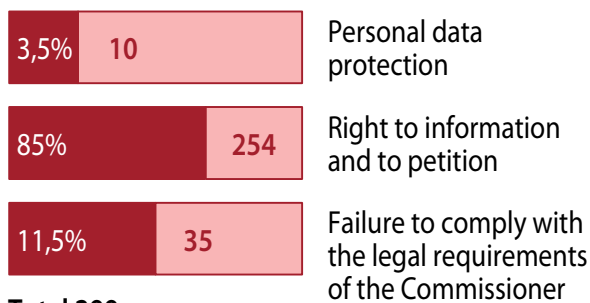
* in 2012, Ukraine ratified the Optional Protocol to the Convention against Torture; the Commissioner was entrusted with responsibility for its implementation.

MONITORING VISITS AND INSPECTIONS TO OBSERVE THE RIGHTS AND FREEDOMS OF CITIZENS AND OTHERS



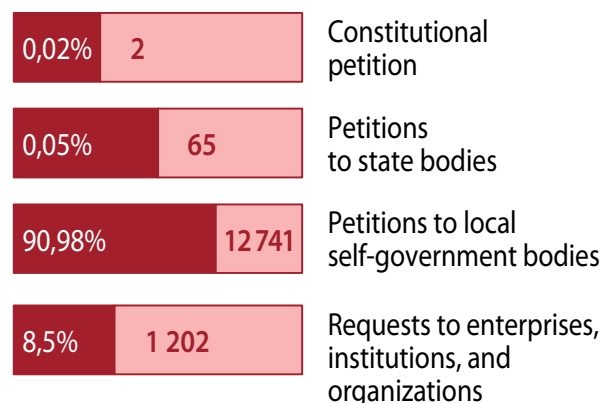
MEASURES TAKEN IN RESPONSE TO VIOLATIONS OF THE RIGHTS AND FREEDOMS OF CITIZENS AND OTHERS

Protocols on administrative offences



Total 299

Response measures, requests, and petitions



Total 14 010

ANNEXES TO SECTION 1. OBSERVANCE OF SOCIAL RIGHTS

Annex 1.1

Number of pensioners and average pension by type of pension
*(data of the Pension Fund of Ukraine)**

Indicator	As of 01.01.2019		As of 01.01.2020	
	Number of pensioners, persons	Average assigned pension (UAH, kop.)	Number of pensioners, persons	Average assigned pension (UAH, kop.)
Total	11 470 405	2 645,66	11 334 730	3 082,98
Retirement pension	8 693 013	2 648,24	8 534 558	3 064,77
Disability pension	1 415 294	2 118,58	1 454 500	2 641,07
Pension due to lost of the family head	645 659	2 491,45	648 622	2 916,51
Seniority pension	629 118	3 970,58	616 040	4 500,49
Social pension	84 027	1 499,59	77 632	1 644,25
Lifetime financial support to judges	3 294	28 702,37	3 378	45 874,24

*information is generated without data from the temporarily occupied territories

Annex 1.2

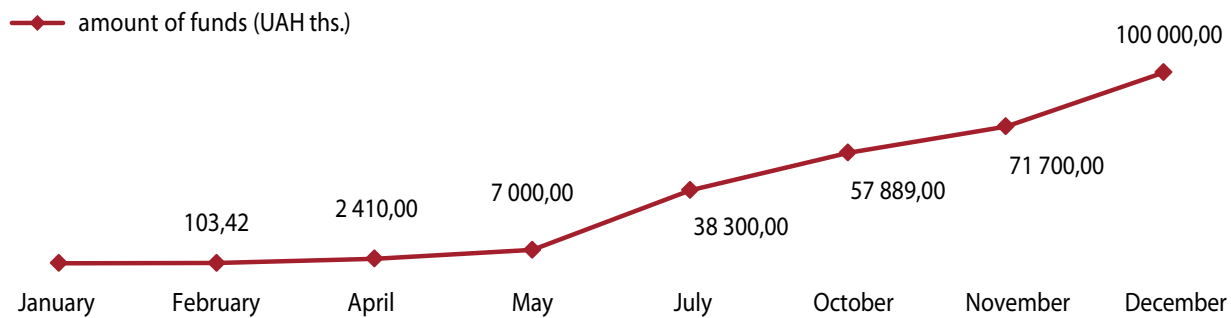
Arrears in payments of pension contributions by liquidated enterprises,
whose successors have not been determined *(data from the Pension Fund of Ukraine)*

Year of liquidation of plan sponsors	Number of plan sponsors		Number of people who have lost their qualifying pensionable service	
	Pension contribution payers (until 01.01.2011)	Single social security tax payers (after 01.01.2011)	Pension contribution payers	Single social security tax payers
1	2	3	4	5
2004	12	x	246	x
2005	117	x	1 495	x
2006	290	x	6 277	x
2007	514	x	20 973	x
2008	1 397	x	45 779	x
2009	1 466	x	42 647	x
2010	1 246	x	52 795	x
2011	975	73	29 562	3 345
2012	945	135	29 814	3 617
2013	1 095	128	38 502	9 588
2014	490	42	18 528	3 236
2015	237	13	17 034	3 632
2016	162	14	19 891	1 863
2017	118	14	8 726	4 858
2018	97	3	12 916	203
2019	94	2	7 362	263
Разом	9 255	424	352 547	30 605

248 INFORMATION ON RECEIVING AND CONSIDERING CITIZENS' REPORTS

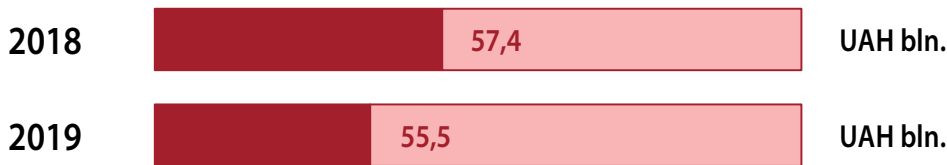
Annex 1.3

Dynamics of the status of payment in 2019 by the Pension Fund of Ukraine of funds to citizens under court decisions made in their favour, in accordance with Cabinet of Ministers of Ukraine Resolution No. 649 "Issue of Repayment of Arrears in Payments of Pension Contributions by Court Decisions" of 22 August 2018



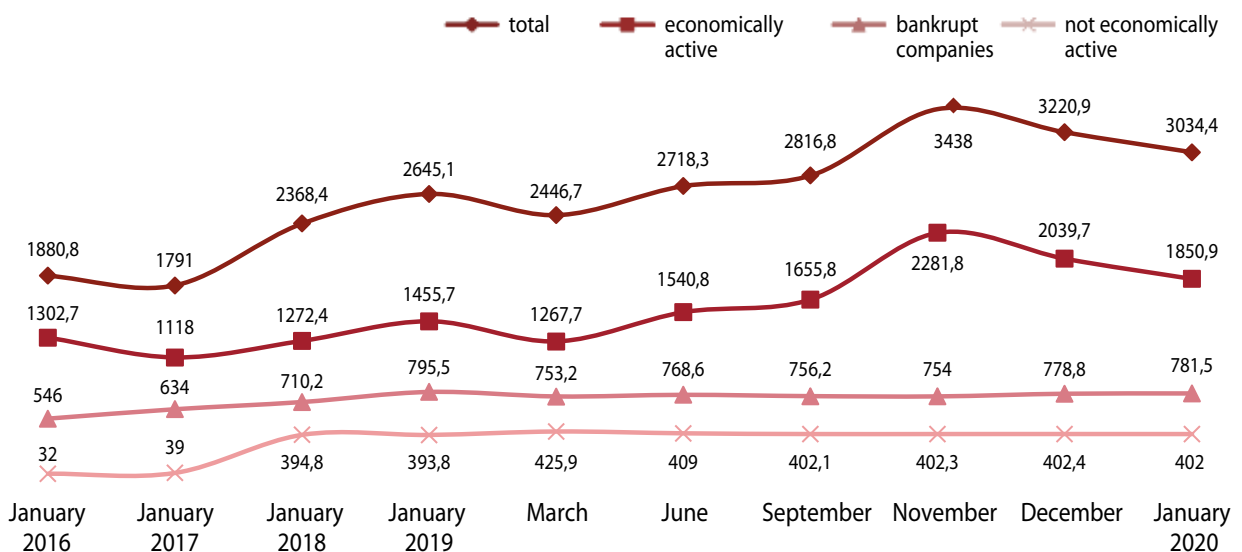
Annex 1.4

Medical subsidies provided for in the state budget in 2018 and 2019



Annex 1.5

Dynamics of repayment of wage arrears in 2016-2019 (UAH million, as of day 1 of the month)*



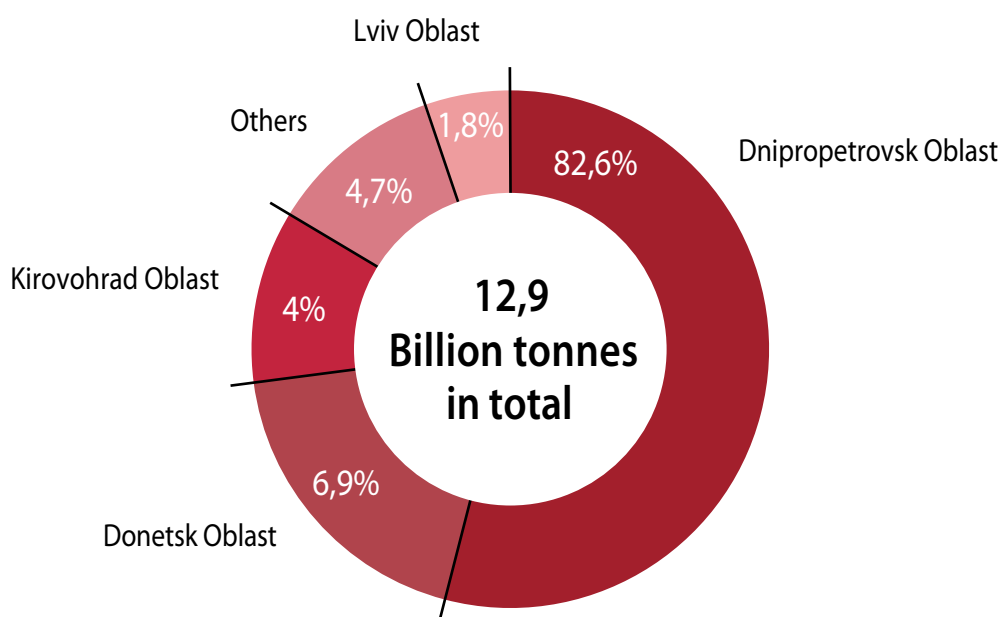
* not including temporarily occupied territories of the Autonomous Republic of Crimea, the city of Sevastopol and parts of the temporarily occupied territories in Donetsk and Luhansk Oblasts

ANNEXES TO SECTION 2. OBSERVANCE OF ECONOMIC RIGHTS

249

Annex 2.1

Data from the State Statistics Service of Ukraine on the total amount of waste at waste disposal sites by regions in percentage terms in 2018



Annex 2.2

Data from the State Statistics Service of Ukraine on the number of individual entrepreneurs in 2016-2018



250 ANNEXES TO SECTION 3. OBSERVANCE OF THE RIGHTS OF THE CHILD

Annex 3.1

Orphans and children deprived of parental care living with foster families or in family-type children's homes

Year	Total number of orphans and children deprived of parental care	Number of orphans and children deprived of parental care living with foster families or in family-type children's homes	% of children who were living with foster families or in family-type children's homes
2017	71 178	13 689	19,2
2018	69 352	13 943	20,0
2019	69 280	14 056	20,0

Annex 3.2

Number of children in institutions run by different ministries
(according to the DI platform data)

	2017	2019	Difference
Institutions within the Ministry of Health system	2 773	2 834	+ 61
Institutions within the Ministry of Education and Science system	97 553	92 185	- 5 368
Institutions within the Ministry of Social Policy system	5 087	4 898	- 189
Total:	105 413	99 917	- 5 496

Annex 3.3

Information on the network of foster carer families
(according to the operative data of the Ministry of Social Policy)

Year	Number of families of foster carers	Number of children living in foster families
2017	24	52
2018	71	204
2019	121	510

Annex 3.4

Staffing of Offices of Children's Services
(according to the Ministry of Social Policy as of 01.12.2019)

Regional Offices of Children's Services		Raion Offices of Children's Services		Municipal Offices of Children's Services		District Offices of Children's Services	
On the payroll	Actually working	On the payroll	Actually working	On the payroll	Actually working	On the payroll	Actually working
267	224	2 001,8	1 742,75	917	873,5	597	548

REPRESENTATIVES OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

- Representative of the Commissioner for the Observance of the Right to Information and Representation in the Constitutional Court of Ukraine – Viktor Barvitskyi
- Representative of the Commissioner for Personal Data Protection – Inna Bernaziuk
- Representative of the Commissioner for the Observance of the Equal Rights and Freedoms – Viktor Ivankevych
- Representative of the Commissioner for Partnership with Civil Society Institutions – Andrii Mamalyha
- Representative of the Commissioner for the Observance of the Procedural Rights – Viacheslav Petlovanyi
- Representative of the Commissioner for the Observance of the Social and Economic Rights – Olena Stepanenko
- Representative of the Commissioner for the Protection of the Rights of the Child and Family – Aksana Filipishyna
- Representative of the Commissioner for the Protection of the Rights of Military Personnel – Oleh Chuiko

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PUBLIC RECEPTION OFFICE OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS IN THE REGIONS OF UKRAINE

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Chernihiv Oblast:

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Khmelnytskyi, 29001
Tel.: (097) 108-31-53

Cherkasy Oblast:

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Kherson Oblast:

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Kherson, 73000
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Kirovohrad Oblast:

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254 **EASTERN OBLASTS**

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Poltava Oblast:

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Donetsk Oblast:

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75, Bankivska street,

Sloviansk, 84122
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AUTONOMOUS REPUBLIC OF CRIMEA AND CITY OF SEVASTOPOL

Representative of the Ukrainian Parliament Commissioner for Human Rights of the Autonomous Republic of Crimea and the city of Sevastopol

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