



UKRAINIAN
PARLIAMENT COMMISSIONER
for human rights

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ADDRESS
of the Ukrainian Parliament Commissioner for Human Rights to the
Verkhovna Rada of Ukraine

Dear Chairman,
Dear people's deputies,

From the first day of work my purpose became the affirmation of the Commissioner for Human Rights as an effective mechanism for parliamentary control over the observance of human rights and fundamental freedoms at the national level and strengthening of influence on state and local authorities to ensure the appropriate observance of the rights and freedoms of everyone.

The specificity of the role of the Commissioner for Human Rights is a combination of features of loud-speaker of human rights defense community and state body with special status, which fulfills the function of mediator - the intermediary between man and the state.

Effective parliamentary control over the observance of human rights is, in particular, in the implementation of a preventive function in the protection of human rights and reacting in situations of lack of appropriate state bodies actions. Analysis of the situation of human rights in Ukraine testifies a number of serious problems that exist in our country. During the last year, about 100 thousand people applied to the Commissioner for Human Rights, the analysis and their consideration of applications indicate the need of specific reaction in the following fields:

- Prevention of torture and ill-treatment.
- Observance of the socio-economic and humanitarian rights.
- Observance of the rights of the child, non-discrimination and gender equality.

These issues were prioritized in the activity of the Secretariat.

However, these priorities do not diminish importance of secondary spheres of legal relationships that are under constant monitoring.

During the last year institution is actively developed under the model "Ombudsman +", which foresees close cooperation with non-governmental organizations. The activity of the Advisory council was initiated, which includes 28 representatives of leading human rights defense organizations and is cochaired by well-known human rights activist Mr. Yevgeniy Zakharov. Besides, several specialized expert councils and groups of experts and specialists of separate branches were created. Guided by the principles of partnership, accessibility and openness, Office of the Ombudsman regularly holds jointly with human rights defense organizations events of human rights defense orientation.

To enhance accessibility of everybody who wish to apply to the Commissioner free nationwide hotline and email system receiving of applies were installed, communication is carried out through social networks and Skype.

Also in 2012 the Ombudsman was entrusted with new functions and obligations. Pursuant to the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading, Treatment or Punishment the realization of the national preventive mechanism was launched. In 2006, Ukraine ratified the Optional Protocol to the Convention against Torture, assuming the liability to create a national preventive mechanism during one year. However, this obligation remains unfulfilled for six years. On October 2, 2012 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Law "On the Ukrainian Parliament Commissioner for Human Rights concerning the national preventive mechanism", according to this law functions of national preventive mechanism were assigned to the Ukrainian Parliament Commissioner for Human Rights.

For the purpose of affirmation of the Commissioner in the international arena during the year about hundred meetings with international partners were held. The issues of cooperation were enshrined by appropriate agreements with the Ombudsman of the Republic of Moldova, UNICEF Representative in Ukraine, the OSCE Office for Democratic Institutions and Human Rights, OSCE Project Coordinator in Ukraine, the International Organization for Migration and the International Labour Organization. It is necessary to pay special attention to the first step of regional positioning of the office of the Ombudsman of Ukraine and holding of the meeting of CIS Ombudsmen in Kyiv.

Summing up the activity of the Commissioner in 2012, and pursuant to Article 18 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" the annual report is proposed to your attention concerning the observance and protection of human rights and citizen in Ukraine as a document which indicated and analyzed the systemic problems that led to the violation of rights and freedoms in Ukraine.

In this case, the Ombudsman welcomed the positive achievements and progress that we observed last year.

However, according to international standards and practices of national institutions the report focuses on the revealed problems and deficiencies, and recommendations for their solution.

The purpose of this report is not so much a criticism of the current human rights situation in Ukraine but to facilitate improvements in the field of human rights and freedoms in our country.

You can acquaint more in detail with the content of the report, both in written form and on the web-site of the Commissioner.

Now in my address I would like to focus attention on the systemic problems that, unfortunately, exist in our country and are the subject of constant complaints of the people, and propose variants of measures for their solution.

First, it is necessary to focus on this shameful phenomenon of torture and other kinds of ill-treatment.

As already mentioned, on October 2, 2012 the Verkhovna Rada of Ukraine by amending the legislation entrusted the Ukrainian Parliament Commissioner for Human Rights with realization of the national preventive mechanism and on November 4, 2012 the appropriate law came into force.

The adoption of specialized law was extremely important step towards implementing effective national preventive mechanism in Ukraine under the Optional Protocol, because the function of NPM based on the law is one of the key principles of an independent system of monitoring visits to places of detention.

As of December 31, 2012 employees of the department held monitoring visits to 169 institutions.

During visits to places of detention basic attention was paid to conformity with national and international standards of conditions and detention of persons who are in places of detention.

All monitoring visits Department held without warning of administration of the institution concerning the time, place and date of visit.

The total number of institutions in Ukraine, according to the formal features, can be referred to places of detention, exceeds more than 6 thousands. Such places are currently subordinated to 11 ministries and departments.

As a result of the implementation of monitoring visits to places of detention and analysis of revealed systemic problems the following recommendations were prepared concerning improvement of legislation in the sphere of prevention of ill-treatment:

1. At the legislative level to prohibit interrogations and other investigations and surveys of citizens by operatives in premises that are not equipped with a video system with data archiving.
2. To coordinate the provision of the Law of Ukraine "On custodial arrest" and the Law of Ukraine "On fight against TB-illness" concerning the right to health care of persons suffering from tuberculosis in custody.
3. To amend Article 9 of the Law of Ukraine "On custodial arrest" concerning:
 - determine the frequency of receiving parcels (dispatches) by person taken into custody.
 - duration of walks of pregnant women and women who are carrying children, juveniles, and patients with doctor's permission and their consent, foreseeing their duration not least two hours because sanitary standards fixes daily walk duration for such period of time.
 - rights of persons in custody to visit (currently exclusive competence of the administration, not the right of person), clearly anticipating the duration of visits (today in determining the length from one hour to four, usually visit is foreseen for only one hour);
 - the right people to visit when they are treated in health care institutions;
4. To amend Article 145 of the Criminal-executive Code of Ukraine regarding the duration of punishment, according to it convicted juveniles may be subject to disciplinary reprimand as detention in the isolation ward for up to ten days, while Article 15 of the Law of Ukraine "On custodial arrest" foresees that detained juveniles who allegedly violate the requirements of the regime may be detained in the punishment cell for up to five days.
5. In order to ensure the right to social protection, exclude from the Article 51 of the Criminal Code of Ukraine the ban on visits from relatives and other persons, and to receive parcels (dispatches) and wrappers of persons sentenced to the punishment as arrest.
6. To amend Article 51 of the Criminal-executive Code of Ukraine regarding the ensuring of minimum duration for a walk for sentenced to detention as at this moment walking is foreseen for one hour, and for minors - up to two hours, in fact, forms the basis for a significant reduction by administration of time for a walk.

7. To foresee in the Criminal-executive Code opportunity to convict to effect pension, benefits for the child, etc.

**Dear Chairman,
Dear people's deputies,**

Almost a third of the total number of appeals received by the Ombudsman, concerned violations of human rights within the system of judicial branch.

However, I would like to draw your attention to the fact that neither the Constitution of Ukraine, nor the law on the commissioner, or the law on judiciary do not foresee the opportunity for the Commissioner to influence in any way on the administration of justice. Accordingly, the Commissioner's jurisdiction is limited to the analysis of the existing problems.

In particular there are often complaints on human rights and freedoms violations by law enforcement officers during the pretrial investigation, including the right to pre-trial investigation in reasonable time, freedom from arbitrary arrest or detention, the use of illegal methods of inquiry and investigation, the right to protection and legal assistance of lawyer.

A large number of complaints also related to compliance with procedural rights during the court proceedings, including the right to trial within a reasonable time, the right to change the preventive measure, the violation of the presumption of innocence, the right to obtain copies of legal procedure documents etc.

The largest number of complaints received from Kyiv City, Donetsk, Dnipropetrovsk, Kharkov, Odessa and Lugansk regions.

The annual report cites examples that prove inappropriate observance of criminal procedure legislation by the law enforcement officers. However, the causes of these violations in the criminal proceedings, including pretrial investigation, are partially connected with the imperfection of the criminal process.

So if we talk about the right to criminal prosecution, with the entry into force of the new Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine) number of applies concerning this issue should diminish.

System analysis of applies to the European Court of Human Rights and number of its decisions as a result of cases' consideration clearly indicate a number of systemic problems in the criminal proceedings. A number of appeals to the Commissioner on these issues additionally confirms this fact. Today we can say that in the criminal judiciary, violations of rights and freedoms of citizens were

systemic. From the analysis of appeals to the Ombudsman it was found out that the list of these rights include: freedom from unlawful criminal proceedings, the right to hold criminal proceedings within a reasonable time, freedom from arbitrary arrest or detention, the right to protection, the right to substitute preventive measure of protection etc.

However, unfortunately, complaints of violations of mentioned rights in most cases remain without a proper response and investigation on behalf of law enforcement bodies and the courts, even after the review of cases by the European Court of Human Rights and a finding by this Court of a violation of listed rights.

Entry into force of the new CPC of Ukraine and the completion of reforming as the whole of the criminal justice system in accordance with this Code, including amendments to the Law of Ukraine "On Prosecutor's Office" give hope that the protection of the rights and freedoms of individuals, their affirmation and ensuring in the criminal justice system will be optimized. Taking into consideration the fact that by Articles 8, 9, 445 of this Code possibility of using practice of the European Court of Human Rights was enshrined normatively not only by the judicial authorities, but by all subjects of the criminal justice.

In this regard, one of the main problems of modern Ukrainian statehood and political power is the introduction / implementation in criminal justice of principles and traditions of the European community, ensuring of a high degree of protection of rights and freedoms, the establishment of reliable mechanisms of inhibitions and balances, an additional system of guarantee for validity and expediency of limitations of constitutional rights and freedoms of person.

With regard to judicial protection in civil and administrative proceedings mostly citizens who are the most vulnerable, including pensioners, war veterans and children, the disabled, those affected by the Chernobyl accident, large and single mothers, persons, victims of crime, residents of rural areas, the unemployed and the poor who need legal assistance apply to the Ombudsman for the protection of the rights.

Violation of reasonable period of lawsuits continues to have systemic character and the reason is improper organization of material and human resources of the courts, the excessive burden of judges, considerable duration of expertise, default of appearance of parties of the proceedings etc. However, violations of procedural deadlines and unreasonable delays in the consideration of cases are caused by not only the abovementioned shortcomings, but improper attitude of some judges to fulfill their duties, which leads to disruption of reasonable time of cases' consideration.

A separate extremely serious problem that has recently been discussed in this hall during the parliamentary hearings is non fulfillment of court decision.

According to the Ministry of Justice of Ukraine, currently only about 30% of the decisions of domestic courts are executed. Thus, the remaining 70% - a violation of citizens' rights to judicial protection. As a result, we have critically low level of public confidence in the judicial system of Ukraine, which would be the most powerful basis for the existence of the rule of law.

Total non fulfillment of judgments in Ukraine is the result of many factors, which lay in the economic sphere, and imperfections are based on a number of legislative acts. After all, Ukraine is not the only country in the world that has legislative prohibition of the execution of judgments and has constitutional guarantees of execution of final decision.

**Dear Chairman,
Dear people's deputies**

In 2012 parliamentary control revealed systemic problems and violations of constitutional socio-economic and humanitarian rights of man and citizen. Failure of labor rights, appropriate level of wages and its timely payment, social security, including pensions, lack of quality health and education services, violations of housing and environmental rights cause a high number of applies.

The main causes of socio-economic rights of man and citizen, in my opinion, are imperfect legislative and normative legal acts whose implementation does not provide the rule of law, limited state financial resources and ineffective fulfillment of powers by state executive power bodies and local self-government, the lack of constructive public dialogue in solving acute problems of socio-economic and human rights, distrust and lack of access to justice etc.

Monitoring, particularly according to applies of citizens and public control over observance of norms of labor legislation testify the violation of the human right to work and other labor rights guaranteed by Articles 43-45 of the Constitution of Ukraine and laws of Ukraine, international acts, including conventions of the International Labour Organization that are ratified by Ukraine.

One of the widespread human rights violations in Ukraine is a violation of workers' rights to timely and full payment for labor.

Also, proceedings for citizens appeals testified many systemic problems in the sphere of constitutional rights to social protection.

In the sphere of pensions 2012 became the first full year of the implementation of the pension reform, the mass recounting of pensions which were fixed earlier, particularly due to increased living wage and more. The average pension in Ukraine as of January 1, 2013 is 1470.73 UAH, which is 17.4% more than at the beginning of 2012. About 17.8% of pensioners pension does not exceed 1000 UAH. The share of pensioners with pension of more than 1500 UAH in 2012 was 26.1% against 16.0% in 2011, number of elderly people with pensions below the minimum level of living wage decreased for 24.7 thousands. But, unfortunately, there was not significant increase of pensions expected by people, there were tens of thousands of pensioners actually lost previously designated pensions because of non fulfillment of the court's decisions.

In practice the court decisions are not fulfilled concerning pension payments, the state debts continue to accumulate.

Taking into consideration that the accrued costs in accordance with the decisions of the courts can be paid only under condition of adequate funding from the state budget of Ukraine, the Commissioner submitted proposals to the Verkhovna Rada of Ukraine to foresee in the state budget funds to pay debt upon court decisions, which the Pension Fund of Ukraine has for the citizens. Unfortunately, during the adoption of the Law of Ukraine "On State Budget of Ukraine for 2013" abovementioned suggestions were not taken into account.

It is clear that, considering the large amounts of required financial resources, limited capacity of the state budget, the need to eliminate discrimination in matters of social security and pensions of those who gained the judicial decision, and those who had neither the strength nor the means to pursue the state, finding of the optimal solution is extremely difficult task.

Therefore, I believe that is necessary to hold a balanced socio-political dialogue with representatives of authorities and civil society, which would allow determine the actual mechanisms of constitutional rights to social protection.

Also monitoring testified the presence of violations of the right of citizens to receive adequate pensions because of death of earner as a result of an industrial accident or professional disease. Because of gaps in the law the Pension Fund of Ukraine granted basic amount of pension because of death of earner as a result of an industrial accident or professional disease mentioned in Article 19 of the Law of Ukraine "On Pension Security" at level as of July 1, 2003, namely: 150 UAH.

Failure to provide necessary medicines, inaccessibility of medial care through reducing hospital network, the prevalence of informal payments, the high cost of medicines and treatment, including surgery, inadequate fulfillment by some doctors of professional duties etc are also subject to numerous complaints. As President of Ukraine rightly stated, it isn't necessary to destroy the system of

medical care, it should be changed and improved. Unfortunately, the monitoring testified exactly the reverse process.

Despite the safeguards for people with disabilities to have an equal with all other citizens opportunities in practice for such persons the proper conditions for normal life according to individual abilities, skills and interests were not created. In particular, for unrestricted access for people with disabilities most public facilities and national purpose, accomplishment, transport infrastructure, road service, information and communication etc are not suited. The main cause of violation of human rights of persons with disabilities is the lack of awareness of state bodies, local authorities, the general public of the need to create for these people a barrier-free environment as norm of everyday life as well as the fact that people with disabilities are not involved in the elaboration and adoption of decisions on the establishment of unhampered inhabitable environment.

The ability of citizens by the state assistance or on your own to solve housing issues are extremely complex problem, the level of accessibility of people, especially middle-and lower-income to high-quality housing in Ukraine is extremely low. Unfortunately, the implementation of state guarantees to ensure privileged categories of population of housing in priority or special order extends over a decade, people expect realization of their rights during all their life.

In 2012, a quarter of complaints of violations of social rights related to housing rights. Accordingly, the legislative regulation requires the creation of favorable environment for building, improving the mechanisms of housing purchase and ensuring of state obligations on the availability of housing for all citizens of Ukraine.

It should focus on numerous appeals for the facts of massive violations of housing rights of citizens of Ukraine, who have no their own homes, forced to live a long time in the dorms, which belong, inter alia, to private ownership. Solving these problems is possible, in particular by accelerating solution of issues of privatization of residential dorm by residents. It is necessary to ensure effective control over the implementation of the National Target Program on livery of hostels to ownership of local communities for 2012-2015, including: keeping terms and amount of financing of measures, the number of state-owned dormitories livered to local communities, the number of people who acquired ownership of dwellings in these dorms.

As in previous years, unsolved problems remain ensuring of right of citizens to obtain proper housing communal services, establishing fair rates for these services, receiving housing subsidies, home repair, installation of individual heating, and protection against illegal disconnection of dwellings with gas, electricity and water.

It needs to settle the issue and to ensure reimbursement of costs invested by people in credit unions. Many applicants raise issues of establishing state guarantees for the reimbursement of funds invested in credit unions, citing the fact that the state permitted the existence of credit unions, but did not take care of ensuring their activity and guarantees of reimbursement of invested costs.

Despite numerous initiatives at both the national and international level, the environment is still not properly guaranteed, and the state of constitutional environmental rights of citizens is unsatisfactory. Monitoring testifies that air pollution remains a sensitive problem for the state. Donetsk-Dnieper region suffers the greatest anthropogenic impact, where there are about 5,000 factories, including giants of mining and metallurgical, chemical, coal, energy, engineering and other branches of industry. This, incidentally, is another problem that the Parliament should solve in the near future - the modernization of the industry with a focus on environmental safety that will require, on my point of view, and additional funding, and probably tax incentives.

**Dear Chairman,
Dear people's deputies**

The most vulnerable category which needs protection is children. Monitoring indicates that most acute problems remains children's rights to life and health, overcoming child poverty, homelessness, neglect, child abandonment, violence against children, violations of children's rights for state social benefits, alimonies, housing, education in the family.

The situation that is in Ukraine with health of children needs immediate solution at the national level. The primary objective is to stop the deterioration of health that can be achieved through the implementation of public policy in the health sector through economic, social and other tools.

Another task that must be fulfilled at legislative level, is to solve the systemic problems that exist in the field of vaccination. This, in particular, the lack of government policy vaccination and lack of information of vaccination, and the lack of reliable statistics on infectious diseases etc.

It should be noted that the main idea of health care reform of children should be to create a model of health care that would ensure absolute accessibility to health care for all, guaranteeing their quality, efficiency, effectiveness. The priority should be the prevention of child morbidity. It should also ensure unconditional observance of the constitutional provisions concerning free treatment for children.

Urgent is the problem of child abandonment. At the beginning of 2013 in Ukraine there were 93 thousand orphans and children deprived of parental care. Despite the

positive trend in the reduction of the total number of children, their share in the child population remains high.

Recently, the family-based care is actively implemented. Number of orphans and children deprived of parental care significantly increased, which are placed to foster families and family-type homes. In developing this system, special attention should be paid to the quality of the creation of such families and the effectiveness of their social support. The state should not restrict our attention only to the form of placement of children, but to support the development of all forms of family parenting, including adoption and tuition.

Most acute problem for families with children is to ensure proper living conditions, protection of children's right to possession and use of living premises. Because of this, special attention is paid to the protection of housing rights of families with children, as well as providing property and housing rights of orphans and children deprived of parental care. Particular concern causes the situation when the parents take mortgage loans, and as a result can not pay back loan obligations and they and also their children stay on the street.

Another problem is the protection of housing rights of orphans and children deprived of parental care, which stay under guardianship expired in foster care, family-type orphanages, public institutions or individuals. This problem is due to failure to guardianship bodies to keep their property, as well as the failure of legislation to provide the children of this category with adjusted housing.

The results of monitoring revealed hidden form of trafficking is the use of modern reproductive technology support for the birth of the child, including surrogacy maternity.

Lack of proper legal regulation of surrogacy procedures, and appropriate control over providing such paid medical care creates an opportunity for the use of scientific achievements in criminal purposes, including trade-born children, and the violation of rights and legitimate interests of the child. I am sure that a child born by surrogate mother can not be the subject of the contract.

**Dear Chairman,
Dear people's deputies**

Legislation on preventing and combating discrimination in Ukraine is relatively new, and the problem of compliance with the right to freedom from discrimination - urgent.

Ensuring freedom from discrimination in practice is perhaps the most problematic issue in Ukraine. This is indicated not only by the Commissioner's monitoring and

analysis and recommendations that Ukraine received in the second cycle of the Universal Periodic Review (over 30% of the recommendations are somehow related to the prevention and combating of discrimination), the analysis report of the European Commission on the progress of Ukraine in the implementation of the ENP EU (15.05.2012), reports on the progress of Ukraine in the implementation of the liberalization of the EU visa regime for Ukraine, the report of the European Commission against racism and intolerance within the fourth monitoring cycle (21.02.2012) etc.

The held analysis of national legislation testifies that nowadays there is no effective mechanism of access of victims of discrimination to justice, restoration of their rights and compensation for material and moral damages inflicted by discriminatory actions or inaction, bringing of guilty to liability for discrimination etc.

In this context, I emphasize that the step towards solving these problems is submitted by the Government and registered in the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On amendments to certain legislative acts of Ukraine on prevention and combating discrimination in Ukraine" (№ 2342).

Particular concern continue to cause extreme forms of discrimination - intolerance crimes.

In order to more effectively combat intolerance crimes legislative amendments are required. Taking into consideration the complexity of the disposition of Article 161 of the Criminal Code of Ukraine, which contains as many as four component element of the crime, I believe that the most promising way would be to strengthen the articles of the Code by provisions that require encumbrance penalties for crimes committed with a discriminatory motive.

Concerning the issue of non-discrimination and gender equality it is necessary to discuss separately the issue of parity of representation and participation of women in political life, which is not available in the absence of legal rights, and mechanisms that are able to ensure equal representation of women and men in elected bodies. The Verkhovna Rada of Ukraine is still predominantly male organ representation.

In connection with that initiatives of consolidation in parliament of those who are willing to overcome gender inequality in Ukraine deserves support.

**Dear Chairman,
Dear people's deputies,**

Article 39 of the Constitution of Ukraine guarantees the right of citizens to assemble peacefully without arms and to hold meetings, rallies and demonstrations. This right is an integral component of social democracy tools and fixed by number of international conventions and agreements which Ukraine became a party of in its aspiring to build a legal democratic state.

However, since independence our country has no specific law to regulate this right. It is necessary to mention that the Verkhovna Rada of Ukraine in May 2008 trying to consider the draft Law of Ukraine "On freedom of peaceful assembly." The fact that such long consideration of the draft law is evidence of great importance of issues which regulation will be relied on the act of legislation after its adoption by the Parliament. This is confirmed by the considerable attention to this draft law of Ukrainian and international non-governmental associations and organizations, comments and suggestions today are widely discussed in the community.

It is necessary to speed up immediately the finalization and adoption of the Law of Ukraine "On freedom of assemblies" mentioned special act of legislation should be liberal European legal act and it should be based only on the notification basis, not authorization order of holding of peaceful assemblies.

According to the Law of Ukraine "On democratic civilian control over the military and law enforcement agencies," the Ombudsman is one of the subjects of civilian control. However, because of lack of time, I would now just draw your attention to the relevant section in the report containing an analysis of the problems in this field, which also relates to material and domestic, and pensions of military men, as well as problems with the implementation of housing rights.

**Dear Chairman,
Dear people's deputies**

Every day the Ombudsman received applies of hundreds of people, every week me personally and staff of the Secretariat of the Commissioner contact personally with people whose life circumstances forced to seek additional protection.

Selected by Ukraine European integration path leads us to the daily work for the affirmation of Ukraine as a country where human rights and fundamental freedoms - in the first place, which implemented the rule of law, and the authorities act in such a way that the rights and freedoms of each is unconditional.

In conclusion, it should be noted that the improvement of the legal framework in order to prevent human rights violations, finding solutions to the abovementioned system problems have been the subject of constant interaction with the authorities.

Due to the legislative initiative of the President of Ukraine national preventive mechanism against torture and other ill-treatment is successfully implemented.

According to the consideration of reaction acts of the Commissioner for Human Rights Prime Minister of Ukraine, heads of ministries and other central executive authorities undertook measures which stop really violations of human rights, restoring violated rights and measures were undertaken to prevent repetition of violations.

I would like to thank you for the constructive cooperation with parliamentary committees, namely:

- Committee on Human Rights, National Minorities and Interethnic Relations;
- Committee for pensioners, veterans and disabled persons;
- Committee for Family, Youth, Sports and Tourism;
- Committee for Social Policy and Labour.

Thank you for attention
and look forward to further cooperation!