
HUMAN RIGHTS IN UKRAINE – 2013



HUMAN RIGHTS ORGANISATIONS REPORT

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This book considers the human rights situation in Ukraine during 2013, it is based on studies by various non-governmental human rights organizations and specialists in this area. Each unit concentrates on identifying and analysing violations of specific rights in this period, as well as discussing any positive moves which were made in protecting the given rights. Current legislation which encourages infringements of rights and freedoms is also analyzed, together with draft laws which could change the situation. The conclusions of the research contain recommendations for eliminating the violations of human rights and fundamental freedoms and improving the overall situation.

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FROM THE EDITORS

This report focuses on the human rights situation in Ukraine in 2012. It contains a “Civic Assessment of government policy in the area of human rights” and an in-depth analysis of specific aspects of the human rights situation during the period in question.

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Arkadiy Bushchenko, Yevhen Zakharov

Part I

**CIVIL ASSESSMENT
OF GOVERNMENT POLICY
IN THE AREA
OF HUMAN RIGHTS**

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HUMAN RIGHTS SITUATION IN UKRAINE IN 2014: OVERVIEW¹

In 2013, the state, all political forces and society concentrated upon the preparation of the Association Agreement of Ukraine with the European Union scheduled to be concluded at the Vilnius summit on 28–29 November. Back in February, the execution plan of the so-called requirements of Štefan Füle (European Commissioner for Neighborhood Policy) was designed; for the fulfillment of these requirements the EU agreed to sign the Agreement. The basic requirements included the cessation of selective justice (in fact, it was about the release of political prisoners Yuliya Tymoshenko and Yuriy Lutsenko), reform of the judiciary and laws on elections. Yuriy Lutsenko was pardoned by the President and released in April 2013; at the same time the President disagreed to discharge Yuliya Tymoshenko rejecting all options offered to him and fearing that she would return to politics. Several so-called European integration bills were passed; they dealt with the amendments to the law on personal data protection, anti-corruption drive; the new redactions of the Law on the Prosecution and the Judicial System and more were approved in the first reading. All of it showed the clear criteria of the ruling elite's attitude to the requirements of the EU: it agreed to comply with all requirements which did not openly affect its political and economic interests and strongly opposed the actual implementation of those requirements that threatened its interests.

Thus, the law on judicial reform was blatantly manipulative: the provision of appointment of judges by the President rather than the Verkhovna Rada actually gave this question in charge of the Mafia. The reform of the Procuracy proved to be illusory only because its punitive functions were expected to be transferred to the State Bureau of Investigation, which would be responsible for the investigation of criminal cases against state and municipal employees, control of corruption and so on. The quality of many of European integration is rather low; they were a pro-forma efforts intended only to report on the work done on the EU requirements; the Verkhovna Rada of Ukraine did not actually care how these laws met the standards of human rights and satisfied the public interest. The obvious examples include very bad law on non-discrimination, which was not reviewed despite the objections of the public and the ombudsman, openly lobbying law on the single demographic register adopted in the interests of the EDAPS Corp. The State cheerfully reported on the fulfillment of the requirements for the introduction of biometric passports, and but a few people were interested in that in addition to a passport more than 10 internal documents went biometric without any need bringing pressure to bear on the state budget and that the function of preparation and issuance of biometric documents combined with the function of registering the residents Ukraine, for which a comprehensive database was compiled.

¹ Prepared by Yevhen Zakharov, Director of KHPG.

In 2013, there was strengthening of public dissent in connection with increasing violations of social and economic rights. The promised “life quality improvement today” for the majority of the population left much to be desired. On the contrary, the socio-economic status deteriorated as a result of price increases and maintenance of the level of wages. In the consolidated budget the situation deteriorated dramatically in the payment of salaries and pensions. Both pension and health reforms failed; public access to health facilities deteriorated, especially in rural areas. Budgetary expenditures for medical, educational, scientific and cultural institutions were significantly reduced. The unemployment increased, especially the shadow one. The social and economic rights were neglected at every turn in 2013...

The effects of the new Criminal Procedure Code partially changed the state penal system. The number of prisoners in the investigatory investigation ward for the year was halved; the total number of prisoners fell down. However, the new CPC had virtually no impact on the situation with the mass distribution of maltreatment: the investigating authorities were trying to circumvent the safeguards specified in the CPC, while the prosecutors were ineffective in their investigation of the complaints of unlawful violence during the arrest and indictment of a crime. The problem of ill-treatment in the penal system, in particular, the lack of adequate medical care to prisoners also remains rather acute, while the system itself still remains inaccessible to public scrutiny.

In summer, Russia started unheard of pressure, introduced actual economic blockade combined with propaganda battle against Ukraine in the media. It was hard to watch the televised “Five-Minute Inoculation of Hatred” by Dmitriy Kiselev filled with lies and inciting hostility. The Ukrainian businessmen who exported their products to Russia were overtly told that they would lose their business. According to various estimates, the total losses of the state and business amounted to \$18 or \$20 bn. Forty deputies of the Verkhovna Rada, members of the Party of Regions whose business was Russia-oriented said that they could not support the European integration because they were losing their business. These processes and the lack of budget funds to pay in mid-December the interest on foreign loans (\$4.5 bn) inhibited the process of preparation for the signing of the Association Agreement. The EU did not offer compensation for losses and a week before the Vilnius summit the Ukrainian government stopped preparing the signing of the Agreement. It also suspended the adoption of European integration laws and froze the issue of dismissal of Yuliya Tymoshenko. In this case, the government violated the Constitution and laws of Ukraine on the basic principles of foreign policy and European integration, as, according to the Constitution, the Verkhovna Rada and not the government was entitled to change these principles, but the former failed to do it.

On November 21, the Ukrainian society promptly responded with peaceful mass protest actions bursting out in all oblast centers and cities of our; they numbered from hundreds of thousands in Kyiv and tens of thousands in western cities to hundreds and thousands in the east and south. The peaceful rallies with slogans for European integration were called Yevromaidans. The pointed and brutal beating by “Berkut” of about 300 Yevromaidan ralliers, including forty journalists, on the Independence Square in Kyiv on the night 30 November and 1 December on the Bankova Street, imprisonment of people out there who did not participate in the provocation of attacking the militiamen and internal troops near the Presidential Administration led to mass protests and demands of resignation of the government, the President and the Verkhovna Rada. On December 1, about one million Kyivites

and visitors from all over Ukraine joined the protest rally in Kyiv. The non-violent resistance became more widespread. However, the government and the president did not respond to the demands of protesters demonstrating their indifference to them and only intensifying repressions.

The ralliers were impressed to the quick by the almost complete lack of investigation into the illegal use of force by “Berkut” troopers on December 1. Everybody saw the stream with demonstrative and impertinent beating of demonstrators without any legitimate reason. The actions of individual soldiers of “Berkut” are qualified as torture. However, the militiamen usually torture people in secret, and those whom they believe to be criminals. But now there happened horrible and brutal public beatings of people with torture and the world could see the crime with their own eyes. As for me, during the independence there was no more serious crime committed by agents of the state. And actually it was easy to investigate this crime: the authorities just had to make an effort. But the authorities did not want to embroil in the investigation. There was no answer to the question who gave the criminal order, who would be held accountable, and why the “Berkut” troopers resorted to torture. The regime, which allowed itself to do so, was doomed as subsequent events proved.

On January 16, violating all rules of parliamentary procedure of routine legislative activities the parliamentary majority adopted a number of laws that flagrantly violated the constitutional guarantee of almost all fundamental rights and freedoms. They were called “the laws about dictatorship”. It was a kind of a set of rapid response measures to protests and actions of Ukrainians. The proponents of the adopted regulations treated as axioms the following considerations:

1. The protest against the general activity and some specific government actions are identical with the anti-state activities and extremism.
2. The mass protest rallies of the citizens are a negative phenomenon, which should be prevented and brutally quelled.
3. The mass rallies of citizens are a vivifying environment for public disorders and their participants should be considered potential offenders a priori.
4. The right to self-defense does not apply to protection against unlawful acts of employees of power structures.
5. The institutions of civil society (media, social networks, NGOs, social activists, etc.) can potentially contribute to the development of extremism in society and therefore should be subject to strict surveillance of law enforcement bodies.

The above “basic foundations” reflect totalitarian mind-set and are incompatible with modern notions of democratic constitutional state. They created a legal framework for the mass political repressions and excluded the possibility of a peaceful dialogue of the society with the state. In fact, these laws virtually rendered any form of peaceful protest and dissent impossible and actually had to destroy civil society. Moreover, the parliamentary majority issued indulgence to the law enforcers who committed crimes against the peaceful demonstrators. As a result of it the authorities finally lost their legitimacy. All this showed the people that the government did not accept any arguments except force. And such power inevitably meets with a rebuff of citizens.

The peaceful non-violent resistance of the people transformed into the uprising, which resulted in the tragic events on the Hrushevsky Street on January 19–22: five killed protesters and hundreds wounded on both sides. 139 protesters disappeared and currently there is

no information on their whereabouts. At least 19 people were wounded in the eye as a result of aimed fire and at least 10 of them lost the sight of one eye. The law enforcers launched targeted attacks against journalists and deliberately beat them and destructed their equipment. Dozens of cars were burnt to ashes. Overall, more than 2,000 people were wounded.

In the west and center of the country, the protesters began seizing administrative buildings and creating parallel structures of power. However, the current government did not step down voluntarily; it increased political repressions, especially in Kyiv, in the east and south of the country. Hundreds of protesters were accused of organization and participation in riots, arrested and sent to the investigatory isolation wards.

On January 28 “the laws about dictatorship” were abolished, the government dissolved, but the release of those arrested had to take place only after the promised vacation of office buildings across the country and deblocking of the streets in the downtown Kyiv. However, the government continued political repressions and while freeing certain prisoners arrested others.

While adopting “the laws about dictatorship” on January 16, the people’s deputies amended the Law of Ukraine “On elimination of negative impacts and prevention of prosecution and punishment of persons in connection with the events that took place during peaceful gatherings” no. 731-VII of December 19, 2013 which provided, *inter alia*, for exemption from liability of civil servants for certain crimes related to the mass protests that erupted on November 21, 2013 and closure of the relevant criminal proceedings. On January 28, this law was not revoked, though the modified law now apparently covered the law enforcers who illegally used force, even excessive one, and brutally beat people, particularly journalists.

On February 12 the Kyiv prosecutor’s office said that under this law the courts closed the cases against Olexandr Popov, Volodymyr Sivkovych and other suspects (accused) of beating on November 30, December 1, and December 11. Acting Minister of Internal Affairs Volodymyr Zaharchenko stated that these criminal cases were closed due to lack of corpus delicti. Generally 21 people were exempted from liability. The bodies of prosecution closed books on thirty-five cases when the suspects were not established.

In this way the government justified the brutal and illegal violence and legitimized further violence committed by militia officers. Impunity generates permissiveness and leads to further escalation of violence. In a few days we saw extremely brutal human rights violations that qualify as crimes against humanity: murder, extrajudicial executions, enforced disappearances for political reasons, and demonstrative torture of abducted people.

Direct physical violence was accompanied by mass illegal arrests and detention of people, most of whom committed no criminal offenses at all. The Law of the same title as no. 731-VI adopted by the Verkhovna Rada on January 29 linked the release of these men and closures of criminal proceedings with the vacation of all buildings and premises of public authorities and local governments seized during protests and deblocking of transport communications. In this way the law turned the detained people into hostages and put the Ukrainian state on the same level with pirates and terrorists who used the institute of hostages as a tool to influence the situation. It meant commitment of crime under article 147 of the Criminal Code: the taking of hostages. This practice uses the principle of collective guilt and destroys the foundation upon which the legislation is built.

On February 18–21 the power face-off went on and led to the defeat of the regime. This confrontation cost more than 100 dead downtown from the bullets of snipers and “Berkut”

troopers. Several dozen militia officers were killed as well. President Yanukovych and his entourage fled from Ukraine. On February 22 a new power and a new phase of history began in Ukraine.

These developments indicate that the Ukrainian people without prior arrangement realized their natural unstipulated by the Ukrainian legislation right to revolt against the political regime, which had usurped power and used it exclusively for its own enrichment subjecting all opponents to repression in flagrant violation of human rights and fundamental freedoms. Ukrainians once again demonstrated that for many of them freedom, justice, honor and dignity weighed more than their own lives. It was the revolution of dignity the spirit of which is perfectly conveyed by the monologue shared in social networks at the end of January.

I realized that we had already won:

— *When I saw priests of different faiths and religions standing between the “Berkut” and protesters.*

— *When at the Maidan subway exit I ran into the huge army tent “Donetsk Mariupol Yenakiyevo” and on the wall I saw laser images of the monument to liberators and Eternal Flame.*

— *When in the midst of the Maidan next to the portrait of fallen Belarusian Misha Zhiznevsky there stood a small glass with bread, candle and six-liter plastic container with a cut top and inscription: “for the funeral”. The container was full of money; nobody guarded it, because everyone knew that nobody would hanker after it.*

— *When I saw how guys from Donetsk boys sang a song to the guitar with boys wrapped in the flag of the UIA.*

— *When the blind and youth with cerebral spastic infantile paralysis helped to serve tea and make sandwiches.*

— *When my friends from the regions were sending me money to buy warm socks to people feeling cold on the Maidan.*

— *When I joined the chorus and sang the hymn with several hundreds of thousands of people simultaneously.*

— *When I saw the ashamed drunken people taken away from the entrance to the perimeter.*

— *When the Afghanistan veterans came and said that the “Berkut” troopers would first have to deal with them before attacking the students.*

— *When during the assault the people did not run away from the unit of attacking “Berkut” troopers and ran to resist it.*

— *When a guy in a balaclava played piano against the background of burning tires.*

— *When after a month and a half of face-off on the Maidan with skylight “Globe” in the center not one section of the dome was broken.*

— *When during the night attempt of “Berkut” and internal troops to force people out from the Maidan tens of thousands of people came within an hour and a half; the legal and illegal taxi drivers transported passengers for free if the Maidan was the destination of the trip.*

— *When in almost all major cities the ultras (!) came to protect protesters from possible attacks and provocations.*

— *When I saw the detachment of masked fighting grandmothers — Valkyries with bowls on their heads “Will you arrest us as well?”*

— *When after the reciprocal assault of “Berkut” troopers I came to the drugstore to buy medications on the list, I was given the remainders only: “Everything’s been sold out,” the drug-gist smiled at me.*

— When my apolitical and non-mobile friends on a part-time basis went patrolling the streets at night to keep order there.

— When the private Lvov hospitals announced that they would admit all injured in Kyiv free of charge.

— When my friends from Russia wrote to me that they were ready to come at any time and help with the money.

— When I felt for the first time that I loved Ukraine.

I do not know who will be in power now, what will fate decree to the country, whether there will be division, decentralization, or nothing at all will change in the politics, but I know for sure that I live among beautiful, kind, magic people; I know that on the Maidan of Independence the Donetsk guys fraternized with their Lviv counterparts, students read poems to the proletarians, ultra-right-wingers carried from the battlefield anarchists stunned with grenades, and Buddhist monks were standing next to the Orthodox believers. And it is the victory that will not be marred by any Masonic plan.

Lord, thank you for the fact that I live in a time of change, and I see it with my own eyes. Rest the souls of those who died in this war, give health to ordinary people, extremists, militiamen, “Berkut” troopers, all those who suffered from cold weather, bullets, fire, or blows. Give us all wisdom and Love and, first of all, love for those who are doomed to be considered our enemies. After all, if we love, we will win.

Thank you, Ukrainians, Russians, Belarusians, Georgians, Armenians and other wonderful people whom I see smiling and determined at minus twenty Centigrade not to back off.

I love you.

POLITICAL PERSECUTIONS¹

Even before Yevromaidan, during 2013, the human rights organizations documented numerous cases of politically motivated persecution of the representatives of civil society, the objects of which were human rights activists, journalists, public activists, and lawyers. In the arsenal of such persecutions there were both the use of legal procedures (initiation of criminal and administrative cases on the basis of falsification of evidence, incriminated offense or in the absence of an event or of an offense or presence of an offense committed by another person) and extralegal harassment in order in the form of pressure, threats and assault and battery of people.

According to the *Guide*², the “political reasons” include real reasons of unacceptable in a democratic society actions or inaction of law enforcement or judicial authorities, other government entities that aim to achieve at least one of the following:

- 1) strengthening or retention of power by government agencies;
- 2) involuntary termination or change in the nature of public activities of a person.

The following briefly describes some of the forms of harassment the most illustrative examples of which occurred in 2013. Many illegal actions were committed by the militia, such as destroying equipment of journalist Natalia Barbarosh, search in the apartment of journalist Anatoly Lazarenko, beating a member of the *Vilnyi Prostir* NGO Roman and Nazar Olekseych, obstructing the viewing of the film-almanac “Open Access” in the regions and so on.

In May-July 2013 investigators of Brovary and Boryspil regional militia stations repeatedly called and visited public activists Maxym and Kostiantyn Latsyba at home and in connection with the instigation of criminal proceedings against car robbers. Allegedly the law enforcers had the video at their disposal where the car was registered driven by the robbers from the place robbery the license plates of which were similar to the license plates of the car, which belonged to Maxym Latsyba. This attention of the militiamen to the car of public activists may be explained by the fact that this car was present at the protest action in Mezhirya, after which exerting pressure on its participants began.

Another example: the court ruling on administrative arrest for violation of peaceful assembly rules by Vasyl Liubarets, organizer of the Vradiyivka march, which began after the rape of 29-year-old female by militia officers. Before this, on June 18, 2013 the rally on Independence Square was illegally dispersed by the law enforcers.

From the same series: imposition of administrative penalty of five days in jail on the participants of action on August 16, 2013 protesting against the illegitimacy of Kyiv City Rada. The administrative protocols were drawn up on four activists under art. 185 of CUAV (“Persistent disobedience to a lawful order or requirement of a militia officer”) and the journalist (protocol under art. 173 of CUAV “Disorderly conduct”).

Before Yevromaidan there was a common practice of unlawful restrictions on freedom of peaceful assembly by law enforcers. There were documented cases of involvement of law

¹ Prepared by Olexandra Matviychuk, Center for Civil Liberties, and Yevhen Zakharov, KHPG.

² Guide to the definition of the term “political prisoner” <http://www.khpg.org/ru/index.php?id=1384001187>

enforcement officers without uniform, in uniform without proper insignia, interference in order to prevent participation in peaceful assemblies, favoring one side during peaceful assemblies, inactivity when conflicts arise in the course of peaceful assembly, arbitrary termination of peaceful assembly and detaining protesters, excessive use of force and special means against participants, and prosecution of peaceful assembly participants after the event.

This category includes the cases of Denys Levin about bringing to administrative responsibility for violation of the rules of conducting peaceful gatherings, arrest of artist Davyd Chichkan and Olexandr Burlaka for their action against clericalism in Ukraine near the Art Arsenal, selective removal passengers from the train to Kyiv who intended to take part in the opposition rally in May 2013 and so on.

For example, on July 27, 2013, three activists of the women's movement Femen and journalist Dmytro Kostiukov were going out of doors to carry out a protest downtown. In the yard they were attacked by people in civilian clothes, knocked to the ground and booted. Then militia vehicles pulled up. The girls with the journalist were taken to the district station. The flash drives with footage were confiscated. After a while they called an ambulance, which provided first aid to the victims, and Dmytro had his broken forehead stitched up.

Instead, the militia accused the journalist of willful disobedience to militia officers, and the women were accused of disorderly conduct: according to militiamen, the girls walked naked along the streets of Obolon District of Kyiv. The court found all participants guilty; Dmytro Kostiukov was fined.

Taking into account the increased incidence of beatings and harassment of individuals engaged in social activities of particular concern is the inaction of law enforcement agencies both in the course of such offenses, and in the course of an investigation intended to determine the perpetrators and bring them to justice.

This is evident in the lack of results on the complaint of TSN correspondent of the channel "1+1" Serhiy Halchenko concerning his being shadowed, lack of adequate response to complaints of journalist Serhiy Levitanenko about death threats from people's deputy of the Party of Regions, attack made on the Head of the Public Committee "Against Development on Serafimovich Street" Andriy Nakonechny, beating of several activists of the "Hospitable Republic" and so on.

The most telling case that demonstrates the criminal inaction of law enforcement agencies was the notorious beating of Channel 5 journalist Olga Snitsarchuk and photographer of Kommersant-Ukraine Vlad Sodel. So, on May 18, 2013, in Kyiv, they both came to undertake their professional journalistic activities in the course of the opposition rally. Near the site of the meeting, namely, near the MIA main administrative building they tried to shoot how unknown sportive guys beat the representatives of All-Ukrainian Union "Svoboda".

Although there was a cordon of militia officers, the unknown sportive youngsters in tracksuits rushed to journalists, knocked them to the ground and began booting. Despite the appeal of journalists to militia with request to protect them, the latter did not mind beating.

The court's decision on punishment of culprits who had beaten journalists was rather an exception that was caused by mass protests across the country.

The inaction of law enforcement authorities investigating the beating and pressure on individuals engaged in public activities in the terms of assault and battery of activists of the "road control" is conspicuous.

Thus, on July 21, 2013, in Donetsk, two unidentified persons beat the activist of "Road control" Oleg Bohdanov at the entrance of his house. Later the doctors diagnosed the closed head injury, brain concussion, broken nose and jaw bones. Upon beating the criminal pro-

ceedings were instigated under part 2 of art. 296 of the Criminal Code (hooliganism committed by a group of people).

Six months before that, on November 1, 2012 Oleg Bogdanov's car was burned. Based on this incident the militia opened a criminal case under part 2 of art. 194 of the Criminal Code of Ukraine (deliberate arson), and for the moment the crime is not solved. Oleg Bogdanov's mobile phone received many sms threats.

In 2013, there were reported cases of harassment of independent lawyers. In July 2013 the qualification and disciplinary commission examined cases of 15 lawyers, 20 lawyers were brought to book according to the court's ruling. In particular, we can provide a concrete example: on April 17, 2013, the qualification and disciplinary commission of the Bar brought to book lawyer Mykola Siryi based on the lawyer's assessment of the new CPC of Ukraine. In this case, they issued a warning for his violation of the Regulation of legal ethics despite the fact that the lawyer made his comments four days prior to the adoption of this Regulation.

In 2013, a wide response was drawn by a new form of persecution: forced treatment in a psychiatric hospital. The judicial decision concerning the activist who struggled against the illegal building in Zaporizhzhia, Rayisa Radchenko, was based on alleged appeal of janitors and restaurant staff with complaints against her inappropriate behavior. Confirming the diagnosis the psychiatrists referred to the history of the disease, which was not exhibited in court. The court refused to conduct an independent examination in Kyiv. More than two weeks the activist spent in a psychiatric hospital and was released only after a public outcry and the active intervention of the Ombudsman.

The refusal of the leadership of the state on November 21 to sign an association agreement with the EU generated opposition across the country, which, after horrific beating of about 300 protesters on Independence Square in the small hours on November 30, triggered serious disorders. That beating, no doubt, had political motives (e. g., termination of protests against government policy) and all its victims should be recognized as victims of political persecution. Some of them united to create the group "November 30" and initiated criminal proceedings against "Berkut" as aggrieved persons.

Up to January 18 the protests were peaceful, but they did not cause any reaction of the top administration apart from the new persecutions for political reasons: ban on rallies, administrative harassment of activists, beating Yevromaidan activists and journalists, including Tetiana Chornovol on whose life they made an attempt, burning of cars and more. Consideration of political persecution and other human rights violations during the events of Yevromaidan will be made in the report covering the events of 2014.

Special attention should be paid to the cases of people who were imprisoned throughout 2013 or for a certain period only, which with a high probability fall within the criteria of the Guide to the definition of the term "political prisoner". This list is not meant to be exhaustive covering 12 cases in which 39 activists were imprisoned. Seventeen of them were detained for taking part in the events of Yevromaidan.

THE CASE OF YURI KOSAREV, ADVOCATE OF WAGE WORKERS

In the evening of May 22, 2011 in the village Volnukhino the Kosarevs together with their friends Serhiy Ihnatyev and his wife Iryna grilled shish kebabs in the court of the house which belonged to Yuri Kosarev, member of the NGO "Luhansk Human Rights Group".

Previously, as part of his job responsibilities, on May 5, 2011 Yuri Kosarev wrote complaints to various instances of violation of labor and environmental laws by the management of JSC "Uspensky Karyer".

The black jeep (license plate BB 1122 BX) drove up to the house, three men stepped out of it. After talking with them, Kosarev Yuri said that they were the managers of JSC "Uspensky Karyer" which required him to stop his activity (stir up trouble among workers) and threatened him that he was heading for trouble.

After a while two cars drove up to the house: the previous jeep and white Zhyhuli, from which three men in militia uniform stepped out. His wife, Iryna Kosarev argues that one of them, approaching them, was holding a pistol in his outstretched hand.

"They wanted to apprehend Yuri, but he disagreed and demanded a writ to be shown, because the next day, May 23, in the morning, the investigation had to take place in the Lutuhino prosecutor's office based on the illegal activities of "Uspensky Karyer". Yuri offered them to meet in the morning and find out everything in Lutuhino. Then one of the militiamen spoke on the phone: "Shall I clip the mother-fucker?" Iryna Kosarev told us. This scene was filmed and uploaded to the site "Luhansk. Media style".

Then the militiamen knocked Yu. Kosarev down, handcuffed him and started booting him. Two men from the jeep participated in the beating (Haponenko Olexandr Olexandrovych and his bodyguard Andriyevskiy N. V.). S. Ihnatov stuck up for Yu. Kosarev.

From the application of Yu. Kosarev to the European Court of Human Rights: "They refused to show documents; I told them that in case of refusal to provide documents confirming that they were militia officers and had the appropriate order of the court, I am entitled under existing law to keep them out of the territory of my estate and defend my property in case of illegal penetration. Instead, they entered my estate illegally, knocked me to the ground, handcuffed and began beating with their hands and feet".

Yuri Kosarev, Serhiy Ihnatov and his wife Iryna were arrested and taken to Lutuhino prosecutor's office, Iryna Kosarev escaped. Upon her return to Luhansk she put in an application to Luhansk Oblast Prosecutor's Office.

From the complaint put in to the prosecutor's office by witness Iryna Bimbat: "I was brought to Lutuhino prosecutor's office. Then I, Kosarev, Ihnatov, militiamen Melnikov and two his partners were taken to Lutuhino hospital for medical examination. There I saw Yuri Kosarev. He had visible injuries on his face: external bruises, bumps. He complained of pain in the ribs. I did not see any visible injuries or damage in people in militia uniform. I overheard one of the militiamen chiding his friend: the examination detected alcohol in his blood. Then this militia officer was excluded from the list of victims who were allegedly beaten by Ihnatov and Kosarev".

From the recourse of Serhiy Ihnatov to the European Court of Human Rights: "Without my consent I was taken to the Lutuhino District Militia Department of the MIA-of-Ukraine Department in Luhansk Oblast. Kosarev Yuri repeatedly called for ambulance. He had visible traces of beatings, he complained that he had a headache and broken ribs". In his application to the European Court of Human Rights Yuri Kosarev maintains that health workers were not allowed to see him. He said that militiamen feared that the traces of beatings remained on his body.

On May 22, 2011 the Lutuhino Regional Department of the MIA of Ukraine received three calls with complaints of bullying on the part of Yuri Kosarev. Two criminal cases were initiated against him: for resisting militia and threats or violence against a law enforcer.

Head of the Public Relations Center of the Department of MIA of Ukraine in Luhansk Oblast Tetiana Pohukay made a formal statement that Yuri Kosarev intentionally uploaded this advantageous clip. "Why does not this clip show how he and his friends attacked the militiamen and beat them?" Also Tetiana Pohukay suggested that Yuri Kosarev attacked law enforcers because he was drunk. "He himself provoked this conflict. Even his clip shows with a shovel," she said.

The response no. 6/6-2984 of June 21, 2011, signed by Yu. S. Kazan, Deputy Chief of Personnel Department of the Ministry of Internal Affairs of Ukraine to the written request of D. Snehirov, President of CF "Support of Ukrainian Initiatives" reads: "...The information uploaded to the site "Luhansk. Media Style" in the article "Shall I clip the mother-fucker?" the Luhansk militia is accused of executing the order of bandits which is partially confirmed by the fact of rough and tactless behavior on the part of some law enforcers from Lutuhino Regional Station during their conversation with Kosarev Yu. M., for which they were disciplined. The validity check materials were submitted to the Lutuhino Regional Prosecutor's Office for a decision in accordance with the laws of Ukraine".

However, the response maintains that the checkup found that Yuri Kosarev threatened N. V. Andrievsky with physical violence. According to the document, Yu. Kosarev and S. Ihnatyev "resisted and caused moderate and moderately severe injuries" to militia officers. The response mentions the names of not three, but two militia officers: Potapina O. H. and Melnikov and O. S.

Iryna Imbat told about pressure exerted on her as a witness. "I was questioned by investigating prosecutor Miller S. V. He said that he was paid \$3,000 by the quarry owner to jail Kosarev. And if I do not say that Kosarev attacked the militia, he will jail me as well for five years for assaulting militia officers".

On June 9 in Lutuhino court the preliminary hearings in the case of Yuri Kosarev and Serhiy Ihnatov were held, which ended in guilty verdict. At the time of preliminary hearing both accused were in the prison hospital (Yu. Kosarev after exhaustion as a result of hunger strike, S. Ihnatyev underwent surgery). The observers from "Luhansk Human Rights Group" — Andriy Vasylenko, Assistant of Deputy Anatoly Yahoferov, and Iryna Oleinikova, human rights activist — were not allowed at the hearing.

According to Iryna Kosarev, O. Melnykov and O. Potapin, militia men from the Lutuhino Regional Station of the MIA of Ukraine, went to the office of the judge. They were followed by the representative of the Lutuhino prosecutor's office. The official observers kept waiting for the start of the trial for several hours. Subsequently, the Judge Vasyl Shpychko informed them that the hearing had just ended and the sentence was passed.

During the hearing the prisoners at the bar planned to file a motion to change the preventive measure and to hear new witnesses in the case, but they had no such possibility in view of the conduct of the hearing in their absence. Iryna Kosarev filed a complaint against the judge.

The Luhansk Oblast Prosecutor's Office in its response to an information request states that as a result of the investigation by the prosecutor the verdict of guilty for Yu. Kosarev and S. Ihnatyev is confirmed and the case is referred to the court for consideration on the merits. At the same time, the response stated that after reviewing the application of Yu. Kosarev about beating him by law enforcers, the Lutuhino Department of the MIA and Prosecutor's Office denied prosecution against the militiamen. Subsequently the Artemivsk District Court of Luhansk recognized that the prosecutors' decision not to institute criminal proceedings against the law enforcers of the Lutuhino Regional Militia Department was illegal.

Yu. Kosarev and S. Ihnatyev applied to the European Court of Human Rights. In September 2012, the Lutuhino Militia Department decided to remit the case for further investigation. At the same time, at the prosecutor's request the Appellate Court of Luhansk Oblast early in 2013 reversed the ruling of the court of first instance and remanded the case for reconsideration of the court with the new composition of the court, which took more than six months to define. The new hearing in the Slovyanoserbsk District Court began on April 25, 2013, at which the second defendant Serhiy Ihnatov was released from custody in the courtroom after eighteen-month stay in the investigative isolation ward.

At the end of 2013 the trial of criminal case continued.

CASE OF "VASYLKIV TERRORISTS" **IGOR MOSIYCHUK, SERHIY BEVZA, AND VOLODYMYR SHPARA**

On August 22, 2011 the SSU raided the office of Public Utility Company "Vasylkiv Public Utility Center", where two activists of *Patriot Ukrayiny* Organization worked. They seized more than two dozen CDs, a number of leaflets, computers, and an improvised explosive device. One of the removed leaflets dealt with the takedown of the monument to Lenin in Boryspil and contained threat of physical violence against President of Ukraine Viktor Yanukovych. The activists denied their privity to this postcard and the seized explosive device. Upon arrival to the room of Deputy of the Vasylkiv City Rada Serhiy Bevza and co-founder of Taras Shukhevych Sports Society *Solovey* Vitaly Zatelepa all four persons were arrested. On that same day Volodymyr Shpara, Commander of Vasylkiv Cell of *Patriot Ukrayiny* Organization was arrested as well.

During the interrogations, which lasted all night long, the lawyers were not admitted. In the morning all detainees were released without arraignment. All questioned persons claimed that they were submitted to physical and psychological pressure.

On August 23, 2011 eight people were arrested: Igor Mosiychuk, Serhiy Bevz, Volodymyr Shpara, Olexiy Cherneha, Maxym Bondarenko, Yuri Boiko, Vitaly Telepa, and Viktor Pukhtiy. A little later, Olexandr Krykunov, lawyer of Vasylkiv City Rada, was detained. Between two days of August 23 and 24, 2011 the secret service agents searched the apartments of those arrested; in I. Mosiychuk's apartment they confiscated eight live pistol cartridges, and in the apartment of V. Shpara a pistol, TNT block and a bag with an unknown white powder. Both detainees declared that they had nothing to do with the confiscated items. In S. Bevza's apartment the searchers in the presence of journalists and social activists confiscated a gas canister and "a knife, allegedly cold weapon".

On August 26, 2011 the Solomyanka District Court of Kyiv held its session to choose the preventive measure. Despite the declaration of willingness of three people's deputies (Andriy Parubiy, Andriy Pavlovsky and Ivan Zayets), entire Vasylkiv City Rada and Vasylkiv Mayor Serhiy Ivashchenko to take the detainees on bail, Igor Mosiychuk, Serhiy Bevz and Volodymyr Shpara were condemned to two months of keeping in custody. Olexandr Krykunov, who was discharged on recognizance not to leave and showed reporters the marks of beatings, was arrested again and later discharged only after his refusal to appeal about documenting

the marks of beatings. No decision was taken about Olexiy Cherneha and Vitaly Zatelepa; other detainees were announced witnesses.

This was followed by exertion of pressure on certain leaders of the organization. Thus, in Lutsk the head of the local branch and two men were arrested at the walls of the local SSU when trying to hand in their appeal requiring releasing of detainees. In Luhansk, the leader of the local branch was arrested for “offenses committed previously”. Nevertheless, in many cities across the country the rallies were held in protest against the illegal detention.

The Solomyanka District Court of Kyiv twice (on October 18 and December 16, 2011) extended the term of keeping the detainees behind the bars.

On September 2, 2011 Olexiy Cherneha, recently detained and recognized witness in the case of “Vasylkiv terrorists”, announced his open video message to President Viktor Yanukovich. In his address he said that after being detained on August 23, he was interrogated for four days without a break and without sleep and food in the Kyiv Oblast SSU as he was forced to give false evidence against Volodymyr Shpara, Serhiy Bevz and Igor Mosiychuk. On the night of August 27 O. Cherneha was forced to sign consent to become a secret informer of the SSU and a letter to the Head of the SSU, which confirmed the voluntary nature of this consent and the non-use of physical restraint techniques. In view of the above facts O. Cherneha said that he renounced all his previous testimonies and to prevent further pressure will have to lie in hiding.

Another witness, Yuri Boiko, also renounced his previous testimonies and wrote the relevant application to the Prosecutor General’s Office. SSU operative Dmytro Yermakovich appointed him an informal meeting during which he expressed his indignation Boiko’s renouncement of previous testimony, though he acknowledged the physical and psychological pressure on witnesses and falsification of the whole case. This meeting was secretly filmed and later publicized by TVI Channel reporters (in the course of hearing on March 19, 2012 the Court accused the channel of exerting pressure on the investigation).

On February 9, 2012 Maxym Bondarenko, another witness, renounced his testimony and also filed his application to the Prosecutor General’s Office.

During the investigation Volodymyr Shpara was asked to acknowledge that he had something to do with the bag with an unknown white powder found in his apartment during the search, otherwise his wife would be convicted of drug possession. V. Shpara refused the offer and through his lawyers disclosed this fact in the media.

On January 4, 2012 the Kyiv-Sviatoshyn District Court began its consideration on the merits of the case of “Vasylkiv terrorists”. Igor Mosiychuk, Serhiy Bevz and Volodymyr Shpara were charged with preparing a terrorist attack, public calls for the overthrow of the constitutional order by force, and illegal handling of weapons and explosives.

On January 23, 2012 on the eve of the next court hearing the attempt was made to illegally take “Vasylkiv terrorists” off the Lukyanivka investigatory isolation ward, but due to the information of the accused publicized in the press this attempt failed.

During the trial presided over by Judge Yuri Burbela a number of grave violations of the right to protection by the presiding and unreasonable delay of the process were recorded. Groundlessness of existence of the case is confirmed by the fact that the monument to Lenin in Boryspil, Kyiv Oblast, which allegedly the “Vasylkiv terrorists” tried to blow up, had been removed long before by the local authorities.

As of November 2013 the trial of this criminal case continued.

**CASE OF “INDUSTRIAL SPIES”
OLEXIY RUD, SERHIY CHYCHOTKA, AND VOLODYMYR CHUMAKOV**

In 2008 Professor Volodymyr Chumakov, Head of a chair at Kharkiv National University of Radio Electronics (KNURE) was approached by his former student Olexiy Rud who proposed to invest into research work of the scientist. Olexiy Rud worked with a Chinese firm that took interest in the old works of the Professor, namely his scientific work “Protection — B”, which described the work of railotron apparatus. At that time, the principle of operation of railotron was in the public domain in the internet.

The agreement on scientific and technical cooperation between the Sinoninvest Co. and the university was drawn up and signed; this agreement was approved by the vice-chancellor for scientific work. Under the agreement Volodymyr Chumakov had to prepare a rated-capacity-and-explanatory note on the possibility of implementing an electrodynamic mass accelerator with specific parameters. The professor performed necessary calculations using the material to his own teaching guide based on his publications and reference books on the subject of research that is publicly available in scientific periodicals and monographs.

Then Volodymyr Chumakov was visited by SSU agents who said that the foreign investor is a resident of the Chinese secret service. They instructed the scientists to confidentially inform the Chinese representative at the office of Sinoninvest Co. that the planned co-work contains state secrets of Ukraine, which the latter did not respond to.

In the fall 2009, Volodymyr Chumakov was invited to a meeting with the Head of the Kharkiv Oblast Department of the SSU, who asked the scientist to make an appointment with the Chinese representative and give him the folder containing the allegedly secret materials of the project. The Chinese representative had to be arrested at the time of handing the folder. Volodymyr Chumakov refused to do so and changed his job moving to Sevastopol. There he was repeatedly visited by the SSU agents who maintained that Olexiy Rud and Serhiy Chychotka, head of the firm “Top Science Ukraine” (the new name of Sinoninvest Co.), are spies and tried to persuade professor to give evidence against them.

On August 9, 2012 Professor Volodymyr Chumakov was charged with treason in the form of spying for China. According to the expertise of the Kharkiv Physico-Technical Institute, the textbook “Pulsed processes and systems”, on which this professor’s study is based, has no scientific value, because it contains the well-known facts that are in the public domain. Furthermore the user has the act of expert examination by the Committee of Naval Academy, which gave permission for the publication.

However, the investigation finds that Honored Worker of Science and Technique of Ukraine Volodymyr Chumakov has committed treason, namely, published in 2012 a guide for students “Pulsed processes and systems” and uploaded it for free online access. The textbook has been removed from libraries because of certain paragraphs, which constitute state secret as it was found a year after the release of the manual and the university course taught on its basis to students.

In early January 2012 Serhiy Chychotka was arrested. Olexiy Rud was arrested in April 2012. They were accused of treason in the form of spying for China. Two famous Kharkivites vouched for Professor Chumakov which saved him from detention in investigatory ward. At the end of 2013 the consideration of the two criminal cases was still underway. The answer to the query of the National Academy of Sciences came signed by Vice-President of the NAS of Ukraine

Volodymyr Horbulin maintaining that the monograph of Chumakov could not contain secret information as it was based entirely on open sources. The previous national expert on state secrets of the Ministry of Defense removed the security classification from all sections of the Chumakov's manual after which the guide reappeared online. The court is awaiting the results of the sixth review now. And Chychotka and Rud are still kept in the investigatory isolation ward.

CASE OF THE PARTICIPANT OF LINGUISTIC MAIDAN VITALY HRUZYNOV

Vitaly Hruzynov was arrested on August 27, 2012 in connection with instigation of the criminal case for resisting militia and infliction of bodily harm during the protest against the adoption of "language law", which was held under the Ukrainian House in July 2012.

He was arrested right on the premises of Shevchenkivsky Court of Kyiv, which considered a criminal case about damaged tiles on Independence Square during the protest against the adoption of the Tax Code in November-December 2010 (known as the "Tax Maidan"). Vitaly is one of the defendants in this case.

According to investigators, Vitaly seemingly snatched helmet from the soldier of BARS special unit, which caused minor injuries (bruises). Vitaly Hruzynov did not admit his guilt. On the video clip added to the case the witnesses, including militia officers, did not identify Vitaliy.

On August 30, 2012 Natalia Cherednychenko, judge of Holosiyiv Court decided to keep Vitaly for 2 months in the Lukyanivka Investigatory Isolation Ward, Kyiv, where he spent 2.5 months. Then the court changed the preventive measure for the recognizance not to leave.

On October 1, 2013 at a regular meeting in the Podil District Court of Kyiv the prosecutor introduced a resolution to change the charge and cleared him from the charge of inflicting bodily harm to the law enforcer.

On October 17, 2013 Judge Vasyl Borodiy sentenced Vitaly Hruzynov to two years of restriction of liberty on probation for one year.

CASE OF VITALY PRYMENKO

On September 26, 2011 director of a local enterprise turned to the Slovyansk City Department of militia and told that at 10.20 her driver and part-time security guard found under her car parked on the opposite side of the administrative building a suspicious purse. From this purse wires were sticking out. The guard picked up the finding and cast it aside. The explosion thundered and as a result the façade of the building and three window openings were damaged. No one was injured.

In this incident the militia commenced an action on hooliganism committed with the use of explosive device and illegal possession of explosives and weapons. On September 28, 2011 on suspicion of the crime they arrested Vitaly Prymenko, founder of Tryzub Branch in the Donetsk Oblast, which has been ever since kept in custody.

The day before the explosion Vitaly Prymenko stayed with his mother in Siversk, Donetsk Oblast, and on the morning of September 26, 2011 he came to see his friend in Slovyansk. From there he went to the Village of Auli, Dnipropetrovsk Oblast, where he was arrested.

The investigators believe that the motive for the crime committed in Slovyansk was the desire to provide a friendly service to a guy who was a former husband of the businesswoman. The main evidence against the accused is his avowal made at the beginning of the investigation. Vitaly argues that he did it under threats to the health of his wife and mother.

Earlier, on January 22, 2011 they searched the apartment of Vitaly Prymenko in Kyiv in connection with the blasted monument to Stalin in Zaporizhzhia.

On April 26, 2013 the Slovyansk City Court of Donetsk Oblast presided over by judge Profatylo sentenced Vitaliy to six years and six months of imprisonment.

**CASE OF STENCILERS WITH THE “SHOT-THROUGH YANUKOVYCH”:
VOLODYMYR NYKONENKO, OLEXANDR KIRNOS**

On January 14, 2013 Volodymyr Nykonenko was sentenced by the Zarechny Court to one year of restriction of liberty under article 296 of the Criminal Code (“Hooliganism”). In the framework of the same case, the court sentenced to various terms of imprisonment three more young men: I. Hannenko, D. Danylov and M. Pysartsov. In December 2010, these three youngsters threw plastic bag with a light brown paint the façade of Sumy Jewish Charity Center “Hesed Haim”. In April 2011, the same guys threw glass containers with black paint at the façade of the building. On August 29, 2011 Hannenko with his friend wrote HOME! and painted swastika on nearby hostel wall for foreign students. After that they broke the window, set fire to a smoke bomb and threw it into the dorm room where there were three students from Nigeria. The ensuing conflagration burned furniture, beds and other property of the University of Sumy, personal belongings and money of students. On his way home Hannenko painted inscriptions on the pavement and walls of buildings: “NON-WHITES GO HOME, NS-WP.WS”, “BLACK SHIT GO HOME NS-WP.WS”. So these people cannot be considered political prisoners.

Volodymyr Nykonenko was accused of making graffiti featuring a man similar not unlike President of Ukraine Viktor Yanukovich with spots on his forehead, as if a bullet wound. In court, Volodymyr Nykonenko confirmed that graffiti in Sumy was drawn by him, but refused to recognize this as an act for which the law stipulates criminal liability. In the verdict, there is not a word about Yanukovich. The case in question is about a depicted person, “which arouses sympathy, because he is wounded”. Meanwhile Nykonenko said that the spot on the man’s forehead on the picture is a Krishna’s sign.

The crimes committed by young men listed by the prosecution do not include the scandalous graffiti. The defense called the verdict politically motivated.

On March 28, 2013 the Appellate Court of the Sumy Oblast presided over by Mykola Honcharov dismissed the complaint of defense and upheld the verdict. On the other hand, the judges rejected the appeal of the prosecutor, who demanded stricter sentence for the author of graffiti.

In solidarity the like pictures appeared in Kyiv, Odesa, Sumy, Sevastopol, Lviv, Mykolayiv as well as in Brovary, Kyiv Oblast, and Kryvyi Rih. The solidarity actions took place in Sumy, Kharkiv, Rivne, Kyiv and other cities.

Later People’s Deputy Serhiy Pashynsky said that he learned from the media that Nykonenko appealed to people asking to hire him, because the job placement would allow him to go at large in August. The People’s Deputy asked to consider his statement as an “official offer of employment”.

Volodymyr stayed in Konotop penal institution from April 12 till August 2013.

On June 25, 2013, in Sevastopol, in the evening on the Omega beach Olexandr Kirnos and his friends were attacked by a group of unknown persons with developed muscles of the body and beat guys. One of the boys had his ribs broken, teeth knocked out, nose broken and kidneys injured. Olexandr was knocked to the ground and dragged along the ground behind the trading tent. Then he was handcuffed and driven away to an unknown destination.

Olexandr Kirnos spent two days at the local militia station; the lawyer was not allowed to see him because the investigator was not there on the weekend.

Meanwhile the Public Relations Sector of the MIA of Ukraine in Sevastopol informs that Olexandr has been arrested during the militia operation "Migrant Laborer". According to them, the law enforcement officials took notice of the young man, who began fleeing. After arrest the law enforcers confiscated his knife and a gun.

An action was commenced against Olexandr for illegal possession of a firearm and vandalism (graffiti). Olexandr argues that they planted the gun. The Court decided on 60-day detention as preventive measure.

Olexandr Kirnos claims that earlier the law enforcers came to him and threatened with death if he continued painting stencils with "wounded Yanukovych".

CASE OF BROVARY PARK DEFENDERS: MYKOLA SMIRNOV, RUSLAN TKACHENKO, OLEG SHEVCHUK

On May 25, 2013 the activists of Brovary branches of political parties held a rally for pulling down the illegally erected building fence that fenced off a part of the park. During the fight initiated by unidentified musclemen the militiamen arrested Mykola Smirnov and Ruslan Tkachenko. And the attacking youngsters, including the one who beat journalist Andriy Kaczor during the protest, were not arrested.

Mykola Smirnov and Ruslan Tkachenko were charged with hooliganism committed by a group of persons. The judge in the case of Tetiana Mikhiyenko referring to the request of investigators of the Investigatory Department of Brovary City Station of the Main Office of the MIA of Ukraine in Kyiv Oblast in coordination with the prosecutor of the Brovary Inter-district Prosecutor's Office of the Kyiv Oblast said that during the rally each activist "seriously violated public order accompanied by the most outrageous insolence which took the form of calling other participants of the meeting to tear down the fence around the land leased to the private enterprise "Fesco" on the territory of the park Peremoha in the city of Brovary and rushed one of the first through the militia cordon to tear down the wooden fence and damaged a part of the said fence kicking and breaking with their hands the fence thereby provoking the rest of the participants of the rally to follow them".

As evidence of the offense committed by Smirnov and Tkachenko the court ruling contained the attestations of Bondar V. V., Aksenin V. S. and Dobash M. O. According to the suspects, the first two are ordinary construction workers of the PE "Fesco" while Dobash is a trainee at Brovary militia. According to Roman Simutin, former trial lawyer in the case of Smirnov and Tkachenko, all three may not appear as witnesses, because they are biased or interested parties.

It should be noted that witness Bondar says that during the events of May 25, 2013 five people knocked to the ground the lieutenant colonel of militia and beat him. This is denied by all participants of the rally. Instead, there are photos and video, which show how five militiamen knocked Mykola Smirnov to the ground and held him for a long time.

As for Oleg Shevchuk the ruling of the court as evidence of the “breakdown of social order” and “breaking the fence” refers to the evidence of only one witness, district militiaman Dyachenko O. S., which arrested the activists.

Mykola Smirnov and Ruslan Tkachenko were tried on May 25 and 30 for administrative offenses. However, later the case was requalified as a criminal one.

On June 5, 2013 the Brovary City Court presided over by Judge Tamara Mikhiyenko appointed for the activists house arrest as a preventive measure until August 4, 2013.

Prosecutor of Brovary City&Region Prosecutor’s Office Liudmyla Taran said that defendants Smirnov and Tkachenko were suspected of a serious crime and Shevchuk of a moderate crime. According to the prosecutor, there is reason to believe that the activists may exert unlawful influence on witnesses in the said criminal proceedings, may commit another criminal offense or interfere with the criminal proceedings in another way, which is justified by the fact that during the action they did not respond to the comments of militiamen and committed disobedience.

On June 7, 2013 the hearing of the criminal case of Oleg Shevchuk took place after the action “Down with political terror!” conducted by the opposition parties to support the “prisoners” and against political persecution. The judge imposed the preventive measure in the form of “house arrest” until August 5, 2013.

It should be noted that Smirnov and Tkachenko actually were deprived of legal protection during consideration of the request for precautionary measure. Defender of Roman Simutin on the day of trial, June 5, was requalified as witness; earlier he was also twice detained by the militia. Later it was announced that the next day the Kyiv Administrative Appellate Courts denied the deputy the right to legal practice and excluded him from the Unified Register of Advocates of Ukraine.

Notwithstanding the foregoing, Judge Tamara Mikhiyenko fully satisfied all three charges. It should be noted that, according to activists, all three activists supported their children whom it would be difficult to feed now because the men were obliged to stay at home for two months and therefore they would be unable to work. Besides, the video to which initially referred the militia investigator in his suit and which was taken into account during the trial disappeared from the file. However, the prosecutor emphasized that currently the case is under investigation, which is why this evidence was not added to the case file.

On June 13, 2013 the Kyiv Appellate Court considered the appeals of Smirnov and Tkachenko on illegality of decisions taken by the trial court. According to Mykola Smirnov, the court concerning both activists only corrected some errors of Brovary court, but left in force.

On June 14, 2013 the appeal of Oleg Shevchuk against the house arrest as a preventive measure chosen in relation to the activist by Brovary City&Region Court. The panel of judges confirmed the decision of the first instance.

On July 8, 2013 the Court changed the preventive measure for Oleg Shevchuk, Mykola Smirnov and Ruslan Tkachenko from house arrest to non-personal obligations. Judge of Brovary City&Region Court of Kyiv Oblast Olena Kichynska motivated the decision by the fact that for these people the house arrest actually meant the loss of opportunities to support

their families, and is “an attempt to interfere with the functioning of parliamentary political force on the territory of the whole Brovary Region”. Also, the judge rejected the request to extend the house arrest of the activists until the fall.

CASE OF THE PEACEFUL PROTESTERS NEAR MEZHYHIRYA

On April 10, 2013, the activists of the party “Democratic Alliance” planned to conduct an action against the poor state of roads in Ukraine near the presidential residence in the Village of Novi Petrivtsi (near Mezhyhirya). The Kyiv District Administrative Court banned the peaceful gathering because on that day the villagers planned to clean the consequences of the spring flood.

Therefore the activists decided to check the progress of flood relief and arrived at the scene of the action, where the militia arrested Maxym Panov. The court sentenced the activist to administrative detention in Ivankiv investigatory isolation ward for seven days for violation of the organization and holding of peaceful assembly.

On April 12 the action was organized in support of Maxym Panov in the Village of Novi Petrivtsi near Mezhyhirya. During the action Vasyl Hatsko was detained and sentenced to five days of administrative arrest for violation of the rules of organizing and conducting peaceful assemblies.

CASE OF THE ORGANIZER OF “VRADYIVKA PROCESSION” VASYL LIUBARETS

On July 18, 2013 in the downtown Kyiv, on the Independence Square, the rally was held by the residents of the urbanized area Vradiyivka as part of the all-Ukrainian action “Vradiyivka procession”. The action “Vradiyivka procession” began on July 7 after the gang rape of the 29-year-old woman in Mykolayiv Oblast, which recognized her attackers in two local militiamen. The meters were joined by capital community activists. In the evening of July 18 the militia began to bring down tents pitched on Independence Square and detain activists.

Two arrest reports were drawn up on Vasyl Liubarets on charges of violating the rules of peaceful assembly on different days: on 19 and 20 July.

The Shevchenko Kyiv City Court presided over by Judge Anzor Saadulayev awarded ten days of administrative arrest to Vasyl Liubarets for violation of the organization and conduct of peaceful assembly. Only two journalists and two activists were allowed to enter the courtroom. In response to this decision Vasyl Lyubarets went on hunger strike.

On the same day another judge of Shevchenko Court on the same charges acquitted Vasyl Liubarets for lack of corpus delicti.

CASE OF THE PROTESTERS AGAINST ILLEGITIMATE KYIV CITY RADA

On August 16, 2013 the activists of the public movement “Save Old Kyiv” and political initiative “Volia” and journalist Tetiana Chornovol came to the session hall of the City Rada. They took the chair in protest against the scheduled for August 19 session of the City Rada the mandate of which ended on June 2, 2013 and refused to leave the hall.

The law enforcement officers arrested Olexiy Herman, Igor Lutsenko, and Yegor Sobolev and brought them to the district station. The Shevchenko District Court of Kyiv sentenced all three to administrative detention for 5 days.

CASE OF RAYISA RADCHENKO

According to her daughter, on July 10, 2013 three people rang the doorbell to their apartment; they identified themselves as militia officers and a psychiatrist. They informed about the judgment of 27 June 2013 concerning psychiatric examination of Rayisa Radchenko involuntarily. She refused to open the door because the officials did not show documents in support of such court's decision.

On July 11, 2013 Rayisa Radchenko went to the Leninsky District Court of Zaporizhzhia to learn about the judgment. In court, the woman was detained; she barely had time to call her daughter and ask for help. The daughter and her 5-year-old invalid child, who came to court to find out the location of mother and grandmother, were brutally treated by several men in civilian clothes. Although the court granted permission only for a psychiatric examination of Rayisa Radchenko, the psychiatrists immediately started her "treatment" despite the failure to obtain consent from the patient.

On July 13 the psychiatric hospital administration refused activists, journalists and even lawyer Mr. Radchenko to visit Rayisa Radchenko on the grounds of possible worsening of her mental health. The daughter was allowed a very short visit to her mother. According to daughter, the hospital attendants linked arms with her mother and led her out because she could no longer walk on her own.

On July 15 Head of Komunar district court of Zaporizhzhia Serhiy Herasymenko satisfied the appeal of the oblast psychiatric hospital for her coercion hospitalization. According to her daughter, which is also confirmed by the available material, Rayisa Radchenko was never registered as mentally ill. When diagnosing "organic brain damage" the psychiatrists refer to her medical history that had not been brought into court. Instead, the court refused to conduct an independent examination in Kyiv.

According to the Department of public relations of the regional branch of the MIA of Ukraine in Zaporizhzhia Oblast, the grounds for sending for compulsory examination in a psychiatric hospital included the appeals of janitors, local bank and restaurant personnel with complaints about allegedly inappropriate behavior of Rayisa Radchenko.

Moreover, the explanations were provided by the organizations with which Rayisa Radchenko was in conflict relationships because she championed the interests of the community, which opposed the land development.

Despite allegations of aggressive and illegal behavior, no arrest records were ever drawn up about administrative offenses of Rayisa Radchenko; she was never subjected to administrative detention. Before that Rayisa returned from a trip to Kyiv, where she met with officials and filed complaints, in particular, to the Secretariat of the Ombudsman of Ukraine.

On July 26, 2013 Rayisa Radchenko was released from the mental hospital. Currently, she is at home with her daughter and grandson. According to her daughter Daryna Radchenko, the health of her mother worsened due to medication she took in the mental hospital.

On August 8, 2013 the Appellate Court of Zaporizhzhia Oblast reversed the decision of Komunar District Court of Zaporizhzhia on compulsory psychiatric treatment of activist Rayisa Radchenko.

On August 12, 2013 the lawyer of Rayisa Radchenko lodged a complaint to the Appellate Court against the decision of the Leninsky District Court of Zaporizhzhia on compulsory psychiatric examination of the activist in the Zaporizhzhia Oblast Psychiatric Hospital.

CASE OF THE “BANKOVA PRISONERS”³

After clashes of the protesters with Berkut units and interior troops on December 1, 2013 on Bankova Street in Kyiv near the Presidential Administration of Ukraine 9 people were detained: Yaroslav Prytulenko, Volodyslav Zahorovko, Yehor Previr, Yuri Bolotov, Olexandr Ostashchenko, Valery Harahuts, Serhiy Nuzhnenko, Mykola Lazarevsky, and Hennady Cherevko. Everyone was facing criminal charges of organizing mass disturbances. The Court chose the preventive measure for them: two-month detention.

Detainees were not acquainted with each other before, had no problems with the law, and were not members of political parties.

The information of lawyers, relatives and friends of those detained boils down to as follows:

Lazarevsky Mykola: 23 years old, studies to become an architect designer, Ternopil resident. At 22.00 on 01.12.13 he called his bride and said that he is in the emergency hospital. The video shot on Bankova Street shows that Mykola, who did not resist, was brutally booted in the face, and then his wallet was taken from him. Badly hurt head, brain concussion, broken nose, signs of bruises and hematomas all over his body.

Previr Yehor: 27 years old, studies to become an IT specialist. For the first time took part in the protest. Yegor was badly beaten by Berkut troopers: internal brain injury, brain concussion, broken nose, dislocated jaw. The troopers took off his jacket, put him face down on the pavement and periodically trampled down on his body when he attempted to stir a little. In this way they treated him until 22:00 and then brought him to the Holosiyiv District Militia Department. He was rendered first medical aid at 10 am on December 2. Almost a week after the events of December 1 he occasionally lost consciousness.

Zahorovko Volodyslav: 38 years, international long-distance hauler, and father of three children. Arrested on 01.12.13 at 16:55 on Bankova Street, his lawyers were informed at 03:50 on 02.12.13. The stun grenade damaged his eye. After his arrest he was kept lying on the pavement for a few hours, then the troopers forced him to his knees and brutally beat up. Aside from the damaged eye, he has his head badly hurt, broken ribs, numerous bruises all over his body, especially on the legs. After numerous requests of his lawyer he was transferred to the hospital at the investigatory isolation ward.

Ostashchenko Olexandr: 32 years, designing engineer, father of a young daughter. Olexandr's friends told that he was on the video of assault and battery of people near the Administration: he is the man who raises both hands to avoid being beaten; then video shows how the Berkut troopers beat Olexandr, there was also a moment when he was kicked with a foot

³ From the Yevromaidan SOS news release “Review of developments in the period of mass peaceful protests; issue 1 (from 30.11.2013 to 18.12., 2013).”

to check if he was still alive. He has brain concussion, broken fingers, bruised chest, and hematomas all over his body.

Bolotov Yuri: 39 years, entrepreneur, ex-manager of the band “Okean Elzy”, and father of two children. According to his friend, Yuri watched the events on the Bankova. Immediately after the clean-up operation on the street the communication with Yuri interrupted. The video of the events on Bankova Street showed how a Berkut trooper truncheoned Yuri shouting: “On your knees, scum”. As a result of the beating he has numerous soft-tissue lesions, hematomas and bruises, galled knees, and elbows. Like others, after being detained he spent two hours lying on the pavement.

Harahuts Valery: 45 years, known Dnipropetrovsk journalist and public activist, founder of the newspaper “Litsa”. 01.12.13 he had the first aid kit with him and tried to administer first aid to the victims from the Bankova; they promptly seized him and began beating, and then he was forced for not less than two hours to lie on the pavement, he was not allowed to rise, occasionally they truncheoned him on the back and head. He has a brain concussion, multiple hematomas on the legs and body.

Nuzhenko Serhiy: 31, photographer from Kirovohrad, lives in Kyiv. He is not a member of political organizations; he is in trade and enjoys photography. As a volunteer Serhiy takes care of children orphanages. According to Serhiy’s friend, on 01.12.13 on Bankova Street he just took pictures, but he caught it from the Berkut troopers. He has cerebral injury, multiple bruises, and hematomas. After the arrest he was held on the pavement and booted until he lost consciousness. After beating Serhiy was taken to the emergency hospital.

Prytulenko Yaroslav: 21 years, student, works in the shop, he has nothing to do with either political parties or organizations. According to his friend, they went to see what’s boiling on Bankova Street. For some time after the arrest, his cell-phone was active; Yaroslav informed that he was beaten, but not much. He was arrested on the Shovkovychna Street: the plainclothes men knocked him down, pressed his chest to the asphalt, and kicked him in the face and punched his kidneys.

Cherevko Hennady: 41 years, bargaining agent of Lubny, non-partisan, and father of two children. During the arrest they continued beating him when he was already down; according to Hennady’s lawyer, he was led between two rows of troopers who struck at him as he passed. As a result, he has broken wrist, head cut, numerous hematomas, including ones on his face.

The “prisoners of Bankova” were forced to sign a written consent to the dismissal of criminal charges and plea, though they were not guilty. Valery Harahuts was the only one who did not agree to accept such discharge and continues to participate in the criminal proceedings against the Berkut troopers as the victim of beating.

A few days later, Andriy Dzindzia and Volodymyr Kadura, activists of “Traffic Control”, were detained. They were accused of stealing a bulldozer on December 1. Later Victor Smoliy, Dzindzia’s lawyer, was beaten and detained as he was charged with alleged attacking the judge during hearing of the Dzindzia’s case. In Lviv they arrested photographer Oleg Panas and transferred him to Kyiv. The court chose for all of them a preventive measure in the form of two months in custody.

In addition, three men — Vitaliy Blahodarnyi, Oleg Matiash and Roman Bilenky — were also kept in custody for their alleged fight with the militiamen near the Cabinet of Ministers of Ukraine on November 24. Another arrested Maidan activist Olexandr Solonenko is suspected in a fight near the monument to Lenin on December 1.

SECURITY SERVICE OF UKRAINE AND HUMAN RIGHTS

(SOME ASPECTS)

SOME GENERAL PROBLEMS

The Security Service of Ukraine (SSU) is both the security service and law enforcement agency. Nowhere in the world the security service carries out law enforcement functions; its purpose is to collect information within its authority.

In accordance with part 1 of article 1 of the Law on SSU *"The Security Service of Ukraine is the state special purpose law enforcement body, which furnishes state security of Ukraine"*². At the same time, a significant part of the SSU units performs law enforcement functions related to the effort to combat corruption, organized crime, smuggling, drug traffic, and economic crimes. These powers actually duplicate the functions of other law enforcement agencies: procuracy, State Tax Inspectorate, State Customs Service, Directorate General for Organized Crime Control of the MIA of Ukraine, Department of Government Service for Economic Crimes Control of the MIA of Ukraine and others.

This dualism should be done away with. At the first stage the SSU could go on performing the law enforcement functions relating to Ukraine's national security and control of terrorism. To this end, such powers as conducting inquiry, investigation and other powers related to the control of corruption, organized crime, smuggling, and economic crimes should be taken off the SSU.

It should be noted that the reform of the SSU in 2008–2009 was planned to move this centaur towards the modern security service. The relevant legal basis for changing the SSU included the Concept of reforming the Security Service of Ukraine and Complex target program of reforming the Security Service of Ukraine approved by the decisions of the National Security and Defense Council of Ukraine and enacted by the Decrees of the President of Ukraine on 20 March 2008 and on March 20, 2009, respectively. Both the Concept and the Program issued the challenge to transform the SSU into purely counterintelligence agency without the law enforcement functions.

After the 2010 presidential elections and reshuffling of the leaders of the SSU both the Concept and the Program were rejected like the new redaction of the Law of Ukraine "On the Security Service of Ukraine" (no. 4839 of 16.07.09). These documents lost their topicality after the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of

¹ Prepared by Yevhen Zakharov, KHPG. Since this section is included in the report for the first time, it examines not only the events of 2013, but what was going on in previous years as well.

² Hereinafter in this report the excerpts from normative acts are quoted from the computerized legal system "Liga-Zakon".

Ukraine in order to bring them into conformity with the Constitution of Ukraine". The respective bill was registered in the Verkhovna Rada on October 7, 2010 and on the same day it was passed without any prior review of parliamentary committees, expert institutions and so on. The law was intended to harmonize with the Constitution of 1996 a series of laws after the decision of the Constitutional Court of Ukraine of 30 September 2010 in the case of the constitutional petition of 252 people's deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 no. 2222-IV (case of compliance with operating procedures for amending the Constitution of Ukraine). This Ruling of the Constitutional Court of Ukraine abolished the amendments to the Constitution of 12.08.2004, and the Yanukovych's team was in a hurry to consolidate its power by forcing Verkhovna Rada to vote for rather questionable amendments to 32 laws according to which the President received authorities which previously belonged to the government and the parliament. This was especially true of amendments to the Law on the SSU.

According to these amendments (Law no. 2592-VI), the SSU is subject only to the President of Ukraine. Head of the Security Service and his deputies are appointed and dismissed by the President without any involvement of Verkhovna Rada; the same applies to the SSU board. §16 of the article 24 "Duties of the Security Service of Ukraine" binds the SSU "to perform by order of the President of Ukraine other tasks that are directly aimed at ensuring internal and external security of the state". There is no explanation what "other tasks" include. Note that the phrases "other actions", "other tasks", "in other cases" after enumerating legal causes can extend the limits of state agency intervention in a particular sector and threaten human rights. The amendments to the Law on SSU actually eliminated parliamentary control over the activities of the SSU, which had already been quite weak. The annual reports of the SSU or even public information from these reports, to our knowledge, are not published; nothing is known about the activities officials designated by the President to oversee the activities of the SSU; the Regulation that determines their powers and legal guarantees of their activity remains a mystery as well. It seems certain that the SSU operates almost uncontrollably, or at least the public knows nothing about this control.

It is also necessary to pay attention to the shortcomings of the Law on SBU, as a result of which some of the actions of the SSU are illegal.

1. Though the responsibility of the SSU includes detection, suppression, detection and investigation of crimes within the competence of the SSU, inquiry and investigation in these cases, search for people wanted in connection with the commission of these offenses (clause 3, article 24), the Law does not mention the right to detain and arrest suspects and accused. The Law "On Militia", for example, regulates this right in great detail. The Law on SSU contains no reference either to the Law "On Militia" (as is done on the procedure of storing, carrying, application and use of weapons and other special means), or any other legislation. However, since the Security Service uses the detention and arrest very often, they are probably regulated in closed departmental instructions. But under article 57 of the Constitution "Laws and other normative legal acts that determine the rights and duties of citizens, but that are not brought to the notice of the population by the procedure established by law, are not in force." The lack of regulation of the arrest and detention in this open parliamentary act is a violation of the fundamental laws and may lead to a complete lack of control of the SSU.

2. §5 of article 25 of the Law gave SSU right to have detention centers to keep persons arrested and detained by the SSU. However, the Law of Ukraine of 06.02.2003 no. 488-IV excluded this paragraph. Therefore, the isolation wards of the SSU are operating illegally. This fact was also repeatedly underlined by former Ombudsman of the VRU Nina Karpachova³. As is known, the investigatory isolation ward of the SSU was at 3b, Askold Lane. In 2009, there was a complete renovation meeting all European standards. The institution keeps individuals there against whom the investigation is conducted by the SSU and General Prosecutor, individuals arrested by the SSU before their transportation to Lukyanivka investigatory isolation ward. In fact, this institution serves as a detention center.

3. Paragraph 1 of article 25 "Rights of the Security Service of Ukraine" entitles its agencies and officers *"to demand from citizens and officials to cease violations of the law and actions that hinder the exercise of the powers of the Security Service of Ukraine, to check in connection with this their IDs, and to inspect persons, their belongings and vehicles, if there is a danger of escape of a suspect or destruction or concealment of material evidence of criminal activity."* However, no mention is made of the offer of proofs by the SSU officers of the said danger in connection with which such actions are carried out. The SSU officer is not even obliged to show her/his service certificate. Moreover, article 36 of the Law requires mandatory fulfillment by the citizens and officials of the legal requirements of SSU officer and disobedience or resistance to lawful demands entail liability under the current legislation.

SSU ACTIVITIES RELATING TO HUMAN RIGHTS

On March 11, 2010 Valery Khoroshkovsky was appointed the Head of the SSU; at the same time all deputy heads of the SSU and other heads of departments were relieved of their positions. On the same day the newly appointed Head of SSU told reporters about the termination of the process of establishing the truth about the history of the twentieth century Ukraine and declassification of the archives: "a lot of materials have been already declassified... all truth Ukrainians needed has been given them", "and the special services are supposed to guard their secrets in the first place, protect the laws that created these secrets."

The most glaring was the fact that the top official was confident that the truth people needed had already been given, and that's enough. So, there is truth one should not know? The officials are trying once more to decide for the society what it needs to know and what it needn't.

After the 2010 presidential elections the political freedom shrank significantly, and the SSU was in the picture significantly boosting its activity as compared with the previous five years. On the whole, it should be noted that the SSU intervenes in social life and social processes in general much more than before. Moreover, the aims of this intervention, generally speaking, go beyond the limits of competence of the Service determined by the law as *"defense of national sovereignty, constitutional order, territorial integrity, economic, scientific and defense potential of Ukraine, legitimate interests of the state and rights of citizens against in-*

³ <http://ukr.obozrevatel.com/news/szo-sbu-v-Kyivi-funktsionue-nezakonno-karpachova.htm>

telligence and subversion of foreign special services, encroachment by individual organizations, groups and individuals, and guarding state secrets."

This may be attested by such facts⁴ as visits of the SSU officers to rectors of universities bringing up the requirement to sign a letter where the rector would agree to forewarn students of participation in any protests "unauthorized by the government", complaints of students from many parts of the country who participated in the protests against the new minister of education and against the practice of paid services in public higher educational institutions in accordance with the resolution of the Cabinet of Ministers no. 976 against being pressurized. The "prophylactic conversations" were held in the Dean's office with parents and even with threats of expulsion if the students did not give up their protest actions. The similar "prevention" of protest actions the SSU applied to NGO activists. About such facts informed the activists of "Democratic Alliance", Foundation of Regional Initiatives, Student self-government in Kyiv, Cherkasy, Mykolayiv, Kharkiv regional organization "Union of Ukrainian Youth" and others.

The SSU also attacked the problem of journalists in the form of conversations and in the form of surveillance. For example, correspondent of the newspaper "Komersant-Ukraine" Artem Skoropadskyi about such conversation with the SSU officers, Victoriya Siumar, director of the Institute of Mass Information, and other journalists informed about the surveillance. In the course of such "prevention" the SSU swore blogger Oleg Shynkarenko to stop "sharply" criticizing the government in his blog. The same were the steps of the SSU checking international fund "Vidrodzhennia" with the NGOs in the Kyiv Oblast.

Inadequate was the response of SSU to the actions of director of the Ukrainian office of the Conrad Adenauer Foundation in Ukraine Nico Lange, who was detained at the airport "Boryspil" for 10 hours trying to deport him as a person whose presence in Ukraine is undesirable. Only the intervention at the highest diplomatic level saved Nico Lange from deportation. This SSU response to the critical article of Nico Lange about the first 100 days of the presidency of Viktor Yanukovich is simply illegal.

Saving face, the Prosecutor General of Ukraine together with the SSU officially recognized his actions as "interference in the internal affairs of Ukraine", but what was the point of this "interference" remains unknown. The SSU refused to explain the reasons for the ban on entry to Ukraine of Nico Lange even in response to the parliamentary inquiry of Lesia Orobits⁵ where the first deputy head of the SSU Volodymyr Khimei wrote: "The SSU barred Nico Lange entry into Ukraine under the provisions of paragraph two of the part two of article 25 of the Law on the legal status of foreigners and stateless persons. According to the law on information, it is impossible to mail you a copy of the text of the instruction of SSU prohibiting Lange's entry to Ukraine." And according to the second paragraph of part 2 of article 25 of the Law on the Legal Status of Foreigners "the entry into Ukraine for foreigners and persons without citizenship is not permitted in the interest of security of Ukraine or maintenance of a public order."

⁴ For more detailed description of the facts, see: <http://khpg.org/index.php?id=1321886708>

⁵ <http://www.pravda.com.ua/news/2010/07/23/5243624/>

Commenting on the detention of Nico Lange, former Foreign Minister Borys Tarasiuk said⁶: “The fact of SSU’s barring the representative of the Conrad Adenauer Foundation entry into Ukraine demonstrates the repressive, authoritarian character of law enforcement bodies and Security service of Ukraine... At the time when the state borders are reopened for such Russian chauvinists like Luzhkov, Zatulin and others, they bar entry of representatives of international organizations that are essentially democratic and in no way violate Ukrainian laws. This indicates the curtailment of democratic freedoms in Ukraine and the beginning of practice that goes well beyond the practice of Kuchma times.”

Correspondent of the German newspaper *Frankfurter Allgemeine Zeitung* Conrad Schuller told the *Ukrayinska Pravda* that the SSU interrogates persons contacting with foreign journalists. He said that the SSU men repeatedly met with people whom he contacted in Ukraine during the preparation of journalistic materials on the presidential campaign. These meetings took place in late April 2010. “At least two” of those with whom he contacted were invited to hold a talk with the officers of the SSU. According to these people, the conversation was about the “journalistic work” of Schuller.

In June the correspondent wrote in to Valery Khoroshkovsky, head of the SSU, demanding to explain the purpose and basis of such meetings. The SSU answered that the SSU did not take any actions concerning the correspondent of the German newspaper *Frankfurter Allgemeine Zeitung* Conrad Schuller⁷. However, later Khoroshkovskyi had but acknowledge that Conrad Schuller was under surveillance. The Head of the SSU admitted it in his interview in the Sunday issue of *Frankfurter Allgemeine*. Khoroshkovskyi said that checking did take place due to the fact that Schuller had problems with accreditation. “Therefore the officers wondered whether you traveled as a journalist, or in some other capacity,” said the Head of the SSU addressing Schuller⁸.

The German journalist let no grass grow under his feet. Conrad Schuller said the *Deutsche Welle*⁹ that the SSU could call him about accreditation and not spy on him and intimidate his informants.

Schuller admitted that at the time when the SSU began to show increased interest in his activities in Ukraine, he had no valid accreditation. But he stressed that he was not informed about binding character of compulsory accreditation for journalists in Ukraine.

The journalist wondered why only now Ukrainian agencies took interest in the absence of accreditation which fact had not prevented him from interviewing four Ukrainian Foreign Ministers (Tarasiuk, Ohryzko, Poroshenko and Hryshchenko), two prime ministers (Tymoshenko and Yanukovich) and two presidents (Yushchenko and Yanukovich).

“I wonder that such facts of my biography apparently escaped from the notice of SSU and Ukrainian government and that they entertained suspicions as to whether I was really a journalist, or a spy,” said Schuller.

⁶ <http://www.pravda.com.ua/news/2010/06/26/5175825/>

⁷ <http://www.pravda.com.ua/news/2010/08/27/5335960/>

⁸ <http://www.pravda.com.ua/news/2010/10/11/5466355/>

⁹ <http://www.pravda.com.ua/news/2010/10/13/5471831/>

He believes that even if accreditation is mandatory for foreign journalists--although the wording on this in the Ukrainian legislation is rather vague — such incidents should not become the subject of the scrutiny by SSU, let alone become a pretext for surveillance.

It is obvious that in all democratic countries they practice secret surveillance to timely prevent terrorist attacks or real threats to the life of a public figure or public safety. It is also clear that all of the above Ukrainians and foreigners did not constitute such danger. In a democratic country the like intimidation and pressure on citizens and visitors is not only forbidden, but unthinkable, and there is no place for so-called “prevention”.

The SSU also expanded its competence with respect to the courts. Valéry Khoroshkovsky claimed that the SSU monitored the legality of judicial decisions in criminal matters, which the agency investigated, explaining it by the corruption of the judicial system: “Things are falling apart, which actually have been completed and all evidence has been collected.”

Absurd seems the criminal investigation into the preparation for the transfer of information containing state secrets and seizure of archival materials in the office of director of the museum department of the “Prison on Łacki Street” Ruslan Zabily and archival materials in the museum. The archival documents on Soviet-era political repressions cannot contain state secrets of the independent Ukrainian state.

All the above indicates a significant expansion of preventive and operative actions of the SSU comparative with the previous period, which had a serious chilling effect on the public and political life.

It is also necessary to rivet attention to active involvement of SSU in criminal cases against former statespersons Yuliya Tymoshenko, Yuriy Lutsenko, Anatoly Makarenko, Igor Didenko and others: in the “gas” case, debts of UESU etc. All of these cases were politically motivated and therefore the SSU was used as a tool for political persecution of oppositionists¹⁰. The leadership of SSU was twice reshuffled: in January and February 2012 and January 2013; however, the use of the SSU as an instrument of struggle against opponents of the regime of Yanukovych continued in all cases.

The SSU officers often acted in the worst traditions of the Soviet era. This is evidenced by their actions against Yuliya Tymoshenko, in Kharkiv criminal case against Professor Volodymyr Chumakov and young engineers Serhiy Rud and Olexiy Chychotka charged with treason in the form of espionage in favor of China¹¹, Academician of NAS of Ukraine, Director of the Institute of Sorption and Ecology of the NAS of Ukraine Volodymyr Strilka, who was suspected of spying for the USA¹², call for questioning of the whole Academic Council of the Institute of Sociology of the NAS of Ukraine¹³ and others.

During the direct collision of the people and the Yanukovych regime in November 2013 — February 2014 the SSU was quiet and canny at first. On November 25 the activists halted a bus on Yevromaidan, which was full of listening equipment, weapons accompanied

¹⁰ The participation of the SSU in political persecution of politicians is covered in a separate report KHPG. See: <http://khp.org/index.php?id=1321885956>

¹¹ Read more in the section “Political persecution”.

¹² <http://www.segodnya.ua/criminal/ukrainckij-uchenyj-jakoby-otpravljaj-v-csha-icchedovannija-kotorye-cvja-zany-c-chaec.html>

¹³ <http://www.unian.ua/politics/621480-ves-sklad-vchenoji-radi-institutu-sotsiologiji-viklikayut-na-dopit-v-sbu.html>

by several men. The SSU acknowledged that the bus belonged to them and demanded to investigate this case¹⁴. On December 8 the SSU began an inquiry in connection with the actions of certain politicians aimed at seizing power in Ukraine; on February 8 it terminated the proceedings under the law about amnesty¹⁵. During February 19 the SSU reopened the same criminal proceeding¹⁶. The inquest will establish whether the SSU participated in shooting Maidan activists on February 18–20 and the extent of such participation.

INFORMATION SECURITY

In January 2012, the President decreed to reorganize the data protection bureau of the SSU into the “Department of counterintelligence protection of state interests in the field of information security”. The President said that the new body shall “promote concentration of forces and facilities, optimization of management activities tackling the issues of protecting the legitimate interests of the State and civil rights in the information area against intelligence and subversive activities of foreign intelligence special agencies, and illegal encroachments of organizations, groups and individuals”.

Information security is mentioned in hundreds of normative acts with dozens of documents directly focused for 15 years now on its protection. These include the Doctrine of Information Security; decrees of the last three Presidents; several decisions of the National Security and Defence Council; international documents regarding cooperation within the CIS. In not one of them is there a definition of this concept, and what in fact is being protected we must try to understand from a list of the numerous threats and measures for overcoming them.

Article 17 §1 of Ukraine’s Constitution states that protection of “information security is ...a matter of concern for all the Ukrainian people” It is quite difficult to comment on this essentially meaningless assertion since in it the purely governmental task of protecting information on restricted access in the possession of State bodies is viewed virtually as a strategic task for the whole of society. Or should this be understood as the protection of freedom of information from the arbitrary interference of the State?

We suggest adding the following definition of the term information security to the Law on Information:

«Information Security

The information activities of subjects of information relations fall within the constraints of information security.

Ukraine’s information security shall involve ensuring (guaranteeing) free access of each person to open information and the protection and guarding of state or other secrets envisaged by law.

The safeguarding of Ukraine’s information security is one of the most important functions of the State and a matter of concern for all the Ukrainian people»¹⁷.

¹⁴ <http://www.pravda.com.ua/news/2013/11/26/7003039/>

¹⁵ <http://www.pravda.com.ua/news/2014/02/8/7013200/>

¹⁶ http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=122099&cat_id=39574

¹⁷ A draft law on amendments to the law «On information» produced by the Kharkiv Human Rights Protection Group. The bill was registered in the Parliament on 15 May, 2009, registration number 4485.

Information security is effectively not viewed within the context of protection of freedom of information. My address will focus on particular mistakes with legal regulation of freedom of information in Ukraine as a component of information security and some negative consequences of these mistakes.

The formulation of the right to information and its restrictions (Articles 5 and 6 of the Law on Information and Article 6 of the Law on Access to Public Information) do not meet international standards, in particular, Article 10 of the European Convention. Article 10 §1 states that: *«Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.»*

Nowhere in the Ukrainian legislation do we find mention of the right to information being exercised **regardless of frontiers** although in the age of the Internet this is axiomatic. Then, according to Article 5 §2 of the Law on Information *«The exercise of the right to information must not infringe the civil, political, economic, social, spiritual, environmental or other rights, freedoms and legitimate interests of other citizens, the rights and interests of legal entities»*. This norm is impossible to implement: the exercise of the right to information, as a rule, infringes somebody's interests. This norm effectively jeopardizes the exercising of the right to information and makes it possible for officials, when the wish arises, to refuse to meet the majority of information requests.

Article 10 §2 of the European Convention states that: *«The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary»*.

Compare this with Article 6 §2 of the Law on Information which firstly restricts the very right to information, and not its exercise, and secondly, contains no presumption that the restrictions must be those **needed in a democratic society**.

The norms of Article 10 needed to be fixed in the new version of the Law on Information since the judgments of the European Court are a source of law in the domestic legal system in accordance with Article 17 of the Law on Implementation of the Judgments and Application of the Practice of the European Court of Human Rights.

Mistakes in the definition of basic concepts lead to a significant reduction in freedom of information in legislative regulation. In practice the situation is even worse.

From approximately the middle of 1995, a trend gradually developed towards ever more classifying of information and restriction of freedom of information exchange observed throughout the post-Soviet realm. This would seem more dangerous for the country's future than any other violations of human rights and fundamental freedoms. The reasons are as follows.

The information sphere is the foundation on which all political, administrative, economic and other decisions in the sphere of human activity are based. The more information used when taking such decisions, the more well-founded and effective these decisions will be. The most important political decisions are usually consolidated at the level of law and set down in various normative acts.

We thus have a three-tier system for decision-making: information, politics, legislation. One can use the metaphor of a tree: roots, trunk and crown. The more developed the root system, the stronger the tree. And when at the legislative (third) level acts are passed which prohibit or limit access of the participants in controversial political debate (the second level) to information (to the first level), then the quality of the political decisions will inevitably deteriorate. An unnatural situation arises where the crown does not let its own roots nourish the tree. This happens particularly often in cases where there are attempts by the State executive or even parliamentary institutions to limit and control the information flow. This is usually done with the best intentions, yet societies thus blighted by isolationism end up in stagnation, their intellectual elite emigrating and their economic complex turning into a supply of raw materials for their more open and therefore more dynamic neighbours.

This situation seems to some degree natural if we consider the organic nature and character of the relations between information and the authorities: in the cybernetic sense information is the "amount of unforeseen things contained in a notification" (Abraham Mohl). For the purpose of social stability the government pushes information novelties into the far background and at first it seems as though nothing bad is happening. Crisis and profound social frustration appear later. As a result, the government's good intentions and the government itself are discredited. To avoid such situations experienced democracies draw up constitutional safeguards prohibiting anybody from interfering with freedom of information. A vivid example of such guarantees is the First Amendment to the US Constitution which prohibits even Congress from taking decisions which threaten freedom of information.

Since specifically new knowledge makes it possible to effectively resolve social problems, restriction of access to information indicates unconditional hampering of social development and runs counter to the idea of scientific progress. As the XX century western philosopher of science Paul Feyerabend said, in the interests of scientific progress everything is permissible since science is a collage and not a bureaucratically organized system. It therefore seems a mistake to classify the Law on State Secrets to items of information which are a state secret, information about scientific, scientific research, research-planning and planning work, which should form the basis of progressive technologies, new forms of production, or technological processes which have important defence or economic significance or greatly influence foreign economic activities and Ukraine's national security. The state can and should restrict access to information where this is needed to carry out the functions of protecting order and safety, information which at their own risk are gathered by the information bodies and which are clearly items of information which if divulged can cause harm. However one must under no circumstances restrict access to information regarding the content of what is not yet known for the future.

These days it would be hard to find people still doubting that it is those societies in which creative thinking develops most freely and swiftly and finds inspiration from the information sphere which develop most efficiently. It is for this reason that the linear defensive trend in Ukrainian legislative work seems so systemically dangerous for the country. In general science in which the political and economic future of the country is scarcely scratching out an existence. The one possibility for defining real values of scientific and technical creation is taking part in international projects since the scientific market within the country in any other form is virtually non-existent. However the free exchange of scientific information

to foreign colleagues, unhampered scientific discourse clearly worries the State bodies as is clearly evidence both by normative acts passed, and by everyday practice.

The following cases are typical: the accusations later withdrawn against Volodymyr Strelko, a member of Ukraine's Academy of Sciences of leaking secret information to the USA; accusations against Volodymyr Chumakov and two young Kharkiv engineers of spying for China (see above); the sentences in criminal cases under Article 333 of the Criminal Code «Infringing the procedure for international transfers of goods which are subject to State export control».

Physicist V. worked on a contract from one of Ukraine's leading higher education institutes, with a Chinese institute on creating a device which has no military purpose. In accordance with the contract he passed on quarterly reports on the work. These actions were deemed by a court to constitute elements of the crime under Article 333 §1 of the Criminal Code and V received a 3 year suspended sentence. The Court of Appeal reduced the sentence to a fine. The device was, post factum, recognized as being dual purpose, although all the necessary assessments had been carried out and a permit received for making it. The Chinese are demanding either return of the money paid, or the device itself, yet neither has been provided.

At present the main asset of any country is people able to create new things. It is they who bring the country much needed investment. John Locke once said that individuals differ in terms of their intellectual capacity more than people differ from animals.

The above, in my opinion convincingly demonstrates that with incorrect information orientation points the SBU as specially empowered state body on protection of state secrets is swiftly turning into a direct threat to Ukrainian civil society.

There is no need to prove that lack of openness regarding information in the entire world has only one result: it leads to stagnation and mass exodus of talented people. We therefore need broad public discussion regarding what information should be controlled and how such cases in our long-suffering country can become impossible.

CONTROL OF TERRORISM

According to the SSU, in 2009 and 2010 proceedings were commenced one case each year under article 258 of the Criminal Code of Ukraine "terrorist act"¹⁸. The paper "The results of the SSU activities in 2010 in numbers"¹⁹ states that in 2010 "135 displays with the signs of a terrorist nature were exposed".

The SSU investigated the case under article 258 of the Criminal Code on charges of blowing up the bust of Stalin at the office of Zaporizhzhia Oblast Committee of the Communist Party of Ukraine 20 minutes before the New Year on December 31, 2010. There were no accused in this case and the search for the criminals continues.

¹⁸ <http://www.pravda.com.ua/news/2011/11/9/6742710/>

¹⁹ http://ssu.gov.ua/sbu/control/uk/publish/article?art_id=104509&cat_id=104182

According to the SSU, in 2011, 8 crimes committed in a socially dangerous way and with signs of terrorist act²⁰ were solved.

On January 20, 2011, in Makiyivka, early in the morning there were two explosions at a distance of 600 meters from each other: the first one in the downtown near the administrative building of Public Enterprise "Makiyivvuhillia", the second one near the mall "Golden Plaza". There were no victims and injured people. The perpetrators allegedly demanded from local celebrities in Makiyivka €4.2 million. Head of the SSU Khoroshkovskiy on the same day stated that the explosions would be prosecuted under article 258 of the Criminal Code.

On February 15, the law enforcement officers reported about the arrest of two suspects. According to the militia, after the holdup of a taxi driver in the same Makiyivka close in the tracks of perpetrators the officers arrested two young men, 23 and 24 years, who during interrogation confessed to carrying out terror attacks on January 20 as well.

In the course of investigation into the case of "Makiyivka explosions" the SSU investigators received evidence that the suspects arrested by the militia could not commit this terrorist act. The ZN.UA reported about this²¹ citing an informed source in Donetsk Oblast Department of the SSU. "The interrogation revealed that they knew absolutely nothing about blasting work. They burst out into a lot of drivel... Their testimonies have nothing to do with reality," said the source. Nevertheless, the detainees are still held in the investigatory isolation ward and continue to assert that they were the perpetrators of the terrorist attack.

In addition, the explosives experts finally found what explosives were used by criminals in committing the terrorist attack. According to sources, this was the ammonite used in many industries, including the mining.

The investigation continues. The basic version is still "demands for ransom".

Despite the SBU doubts about the ability of the accused to commit an explosion in early September the Makiyivka court sentenced the accused in the January blasts in Makiyivka Dmytro Onufrak to 15 years in prison and Antin Voloshyn to 8 years of imprisonment.

On April 27, 2012, in Dnepropetrovsk, the ransom demands of \$4.5 million were announced within short time intervals, or explosions would continue. On June 1, 2012, the Prosecutor General of Ukraine Viktor Pshonka said that the investigation into the explosion had been fully solved and that in this case there was sufficient evidence to arrest four suspects detained the day before. The investigation established that two years earlier the same group of terrorists carried out explosions in Dnipropetrovsk, in the fall of 2011 in Kharkiv and Zaporizhzhia and again in Dnepropetrovsk. Two of the defendants admitted their guilt: Victor Sukachov in part and Vitaly Fedoriak in full. The trial is now underway.

Two others accused of complicity in terrorism Dmytro Reva and Lev Prosvirin did not plead guilty: Reva refused from the start, Prosvirin at first owned up to a crime, then he repudiated his evidence, and now he adheres to his stand. Usia received SMS from his friend Sukachov. Reva does not know Fedoriak. The Reva's lawyer said that there was no evidence of his guilt in his file.

²⁰ http://www.ssu.gov.ua/sbu/control/uk/publish/article?art_id=109816&cat_id=109679&mustWords=%D0%A0%D0%B5%D0%B7%D1%83%D0%BB%D1%8C%D1%82%D0%B0%D1%82%D0%B8&searchPublishing=1

²¹ http://news.zn.ua/SOCIETY/v_sbu_okonchatelno_ubedilis_-_zaderzhannye_militsiey_makeevskie_vzryvniki_terakt_sovershit_ne_mogli-79010.html

The lawyer of Prosvirin also believes her client innocent and gives serious arguments to support her position. Meanwhile Prosvirin wrote an open letter to the President of Ukraine Viktor Yanukovych, in which he stated: "Instead of exculpating me, the officials of the investigation department of the SSU and prosecutors began to actively falsify evidence of my alleged involvement and put pressure on me to obtain false data". Basing on these facts, Prosvirin as early as on August 29, i. e. before the end of pre-trial investigation, wrote a statement. Having received no reply to this statement, on October 16 he wrote to the prosecutor of Dnipropetrovsk Oblast another application. However, these claims have not been verified.

Can we expect that the court will objectively examine all the materials related to the case and admit the absence of the proof of guilt and announce Reva Prosvirin innocent, when the first persons of the country told nationwide about four terrorists, when the awards were received, when in the movie "Hellish hell" televised on the First National Channel they were called criminals?

As can be seen from the above, in all cases of terrorism investigated by the SSU all judgments gave rise to doubts.

MINISTRY OF INTERNAL AFFAIRS OF UKRAINE AND HUMAN RIGHTS

During the 2013, the bodies of the Ministry of Internal Affairs of Ukraine continued to function as a “complex” violator of human rights, because reforming strategic objectives, working principles and structure of this major law enforcement agency were not reviewed and dealt with by the state. At the same time, the negative trends in the activity of the MIA of Ukraine hampered its further development; for all that these same trends promoted awareness of the public and inspired public monitoring of the militia.

Among the shortcomings of the bodies of the Ministry of Internal Affairs system it is possible to distinguish the following.

ABANDONMENT OF REFORMATION

The Law of 2002, the overall strength of the Ministry of Internal Affairs was determined to the tune of 324,400 servicemen, including 240,200 of the so-called “certified” personnel (rank and file and command personnel), i. e. uniformed persons who have special ranks. Besides, the Ministry of Internal Affairs includes internal security troops with the level of strength of 33,300 as of December 30, 2005, including 32,700 servicemen.²

In this way, in 2005, per 100,000 of population there were 577 militiamen/servicepersons who could maintain public order with the use of standard-issue weapons and special facilities. This figure was 1.9 times the average number of police officers per 100,000 of population of European countries (300 policepersons) and 2.6 times higher than the amount recommended by the UN or 222 policepersons officers per 100,000 of population.

The course of European integration allowed Ukraine to reduce slightly the number of “uniformed persons”, which on 21/11/2013 permitted V. Zakharchenko to inform about the actual strength of the Ministry of Internal Affairs as 171,000 rank and file and command personnel.³ Together with 27,210 servicepersons of internal troops it made 198,210 of uniformed personnel who have special or military ranks. However, even this number was 1.5 times the average European rate and was almost twice as much as recommendations of the UN anticipated.

¹ Prepared by Oleh Martynenko, UHHRU.

² Law of Ukraine dated January 10, 2002 no. 2925-III “On the general structure and overall strength of the Ministry of Internal Affairs of Ukraine”.

³ “Ministry of Internal Affairs will become the European-standard agency”//http://www.kmu.gov.ua/control/uk/publish/printable_article?art_id=246863148

Overall, in 2013 Ukraine the bodies of the Ministry of Internal Affairs employed 261,000 people including personnel of internal troops, cadets and civilians. With 21,840,000 of economically active population this means that every 83rd working citizen today receives a salary from the Ministry of Internal Affairs of Ukraine.

Among many projects of reforming the Ministry of Internal Affairs the last attempt was associated with the draft law “On Police” dated 03.07.2012 and even the presentation of the new militia uniform.⁴ The project was based on the recommendations of the Coordination Center for Implementation of Economic Reforms under the President, which did not foresee any major changes in the functioning of the Ministry of Internal Affairs, apart from the “take-over” by the latter of the units of the Ministry of Emergency.⁵ The project was developed in typically corporate manner, without discussion and consultation with the public. It was assumed that the reform of the Ministry of Internal Affairs would start at year-end in 2012, immediately after the entry into force of the new Criminal Procedure Code of Ukraine.

On April 13, 2013 ended the deadline set by the President when the Ministers of Ministry of Internal Affairs and the Ministry of Justice had to submit the worked-out Reformation conception, since Ukraine had committed to the European Council to reform its law enforcement agencies by 2015. However, after meeting of O. Lavrynovych (Ministry of Justice), V. Zaharchenko (MIA) and V. Yanukovych in April 2013 it was announced that the reform of the Ministry of Internal Affairs would be postponed for 2015. This position was not changed even after later mass protests caused by brutality of militia against the participants of the “Vradyivka March” and Yevromaidan.

MILITARIZED MODEL OF ACTIVITY

Despite the transition of the Armed Forces of Ukraine to the contract basis and cancellation as of 2014 of the compulsory service for young people, the Ministry of Internal Affairs retained the draft procedure for the internal forces. In addition, to improve the quality of manning of internal troops by draftees, the MIA of Ukraine in 2013 introduced the assignment of military units to educational establishments “in order to organize military and patronage work aimed at military professional orientation and patriotic education of youth”.⁶ Moreover, the MIA’s concern about clearly militarized orientation of training runs counter to the course at developing civil service model of the MIA declared in 2011.

The cancellation of draft confirmed the confidence of the armed forces to overcome potential external dangers in case of occurrence; however, the actions of the MIA testified to the opposite or lack of confidence in the ability to carry out militia functions without constant involvement of military units. Thus, the population of Ukraine is under threat of being held hostage in a situation when the Ministry of Internal Affairs having its own armed forces beyond the control of the minister of defense may become an independent player in the implementation

⁴ The Bill of Ukraine dated 03.07.2012, no. 10688, “On Police” initiated by V. Hrytsak, V. Konovaliuk.

⁵ Ukrainian Militia is Being Renamed Police and Starts Politicking // <http://vesti.ua/strana/14845-ukrainskih-milicionerov-pereimenujut>.

⁶ Order of the Ministry of Internal Affairs on August 30, 2013 no. 1493/ 24025 “On Approval of the Regulation on the organization of military and patronage work in the Ministry of Internal Affairs of Ukraine”.

of the state military doctrine. Especially, as the internal troops of the Ministry of Internal Affairs are armed not only with small arms and armored vehicles, but also with grenade launchers, AAC guns, artillery equipment with artillery, mortar and grenade-launcher ammunition⁷.

In addition, the events of 2013 drew attention to the fact that the “traditional” mobilization of internal troops of the Ministry of Internal Affairs to maintain public order is not only morally unacceptable in peacetime, but also directly contradicts article 17 of the Constitution, according to which “the military units cannot be used by anybody to limit the rights and freedoms of citizens.” Given the fact that the troops in the modern state have very specific purposes, at the level of parliament and the government the question was brought up to withdraw military forces from the Ministry of Internal Affairs of Ukraine and reallocate them to the jurisdiction of the Ministry of Defense.⁸

Along with the wide use at its own discretion of its own military units, the Ministry of Internal Affairs during 2013 continued to stick to mostly militarized tactics in maintenance of public order. Despite the experience acquired during the “Euro-2012” concerning the non-conflict management of mass actions, in 2013 during management of peaceful assemblies the personnel of the bodies of the Ministry of Internal Affairs resorted to mostly brutal variants of response like in the case of mass riots. This included numerous cases of termination of peaceful assemblies in the event of minor breaches of public order by individual members of assembly; demonstrative readiness to launch more drastic coercive methods, equipping personnel according to instructions reserved for the case of mass unrest only, widespread detention of peaceful assembly participants in situations which gave no obvious cause for such response; actively collect on-line information about participants of peaceful assemblies.

Even in his public speeches the Minister of Internal Affairs to his staff used the word “activist” as an equivalent for the words “storm troopers” and “provocateurs”, which should paid particular attention to⁹.

In September 2013 one of the consequences of militarized pattern of activity became the insistent proposals of the MIA to make Ukrzaliznytsia to enter passport data in the passenger's ticket. The Ministry of Internal Affairs gave grounds to it like protection of human rights and combating terrorism and necessity to “find people who present operational interest” and “identify persons who are exposed to the observation control”.¹⁰ In this way the MIA of Ukraine ignored the fact that there are simply no juridical definition of these terms in Ukrainian legislation, and the use of so-called “observation control” in the practice of Russian law enforcers the European Court ruled illegal as early as in 2011, because it violated the right to privacy (“Shimovolos against the Russian Federation”¹¹).

⁷ Order of the Ministry of Ukraine of 02.04.2013 no. 330 “On approval of the Regulation on arms service of internal troops of the Ministry of Internal Affairs of Ukraine”.

⁸ Draft Law on Amending the Law of Ukraine “On Militia” (regarding the re-allocation of internal troops of the Ministry of Internal Affairs to the Ministry of Defense of Ukraine) no. 3765 from 12.17.2013 initiated by Pinzenyk V. M.

⁹ Address of V. Zakharchenko to his staff // Moments no.11 (“Imenev Zakonu”, no. 48 (5902).

¹⁰ Letter to the Department of Transport Militia of the MIA of Ukraine dated 19.09.2013 no. 23/2-643 “About proposals to implement a software system “Rozshuk-Magistral” // <http://www.pravda.com.ua/news/2013/10/4/6999275/>

¹¹ Ruling of the European Court of Human Rights dated 21.06.2011 “Shimovolos vs. Russian Federation” [Rus., Eng.] // <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=INT;n=52001;dst=0>; ECHR acknowledged illegal creation of militia DB “Storozhevoy kontrol” // <http://www.privacy-info.ru/events-pd/2011/06/22/echr-recognized-police-database-control.html>

OPACITY OF FINANCIAL ACTIVITIES

According to art. 24 of the Law of Ukraine “On Militia” funding and logistical support for the militia are carried out at the expense of the State Budget of Ukraine, funds received under the contracts from the ministries and other central executive authorities, public bodies, enterprises, institutions, organizations and individuals, as well as other sources not prohibited by law.

However, the current implementation of these legal provisions is problematic for two reasons. First, the annual budgetary financing of MIA does not exceed 40% of the prescribed amount. Second, the Ukrainian legislation contains no juridical clarification of what “the sources not prohibited by law” are, which can be used by law enforcement agencies.

For a long time the MIA kept trying to tackle these problems in two ways. The easiest way was to increase the annual application for state funding which brought the MIA budget up from UAH 11,167 mln. in 2009 to UAH 15,056 mln. in 2013. In 2014, instead of tackling the system problem of chronic underfunding, the MIA followed the traditional road again asking for more taxpayer’s money up to the tune of UAH 18.3 bn.

However, despite the maximum closedness of financial operations of the MIA for public control, there are notorious cases of budget squandering. Thus, in November 2013 the Kharkiv State Motor Vehicle Inspection Management entered into an agreement to purchase three upmarket Toyota Camry cars not only at value of complete set, but with UAH 36,486 overpayment at that¹².

Another way to cover the deficit financing consists in introducing a wide range of paid administrative services of MIA and formation of the so-called “special fund”. Procedures of the latter, as shown by 2011 survey, are not transparent to the public and are related to systemic violations of the rights of citizens (soliciting “donations”, unreasonably high tariffs, monopolist pricing, and lack of service standards). Due to these circumstances every year this special fund can accumulate sums up to UAH 2.5 bn, with which later the MIA covers the lack of budgetary financing¹³.

According to the survey of ten regional centers of Ukraine, every third citizen (33.9%), who received administrative services from the bodies of the Ministry of Internal Affairs, considers this system inefficient because of constant lines, complexity and intricacy of procedures; difficulties with finding reliable information on the procedures, fees, contacts with professionals. Every year at least two million people suffer from the imperfections of administrative services of the SMVI and MIA licensing system.

The experts maintain that the existing scheme of service for citizens rendered by the MIA is actually outside the legal regulation which creates a favorable ground for abuse and manipulation. 28.8% of respondents had to pay bribes only for the registration and re-registration of vehicles, 17.3% had to do the same for the issue of driving licenses for the right to drive vehicles.

¹² *Segodnia Daily* / “Upmarket cars for the SMVI”, 12.11.2013.

¹³ “Monitoring of proprietary right in the activities of the State Automobile Inspection of the Ministry of Interior of Ukraine: analysis of violations and finding ways to solve problems”, “monitoring of the right of property in the activities of the bodies of the Ministry of Internal Affairs: status and actual problems” conducted by Odesa Human Rights Group “Veritas”, 2011.

Unadapted to the requirements of state laws departmental acts have no safeguards against corruption, bureaucratic indifference and negligence of officials. The opacity of procedures, involvement of commercial intermediary entities for providing services, introduction of associated paid services, and lack of control over the quality of their rendering turned Ukrainian militia from the agency protecting rights of consumers of administrative services into one of the biggest offenders in this field¹⁴.

UNACCOUNTABILITY TO CIVIL SOCIETY

Formally following the legal requirements regarding open information policy and advisory work of the agencies of the Ministry of Internal Affairs of Ukraine in general has failed to change its closed and biased policy in dealing with the public.

On 03.12.2013 the MIA registered its Order no. 230 about the revised procedure for conducting official inquiry into an incident. Despite numerous proposals of NGOs and expert advice, the wording of this document completely ignores the possibility of participating in the investigation of the applicant who is a victim of the illegal actions of the militia. Under the terms of the order, the victim can only be questioned to the point of her/his application; however, s/he has no right to engage counsel or experts to study the materials of the investigation, provide additional materials and even get a full response on the outcome of the investigation.

The MIA's order no. 509 of 27.05.2013 repealed the activity of mobile groups for monitoring of fulfilling the rights and freedoms in the bodies of the Ministry of Internal Affairs which is the only form of public control over the militia places of imprisonment that had been operating since 2006. The order was worked out in secrecy without public discussion and without suggestion of alternative forms of public control over the militia. The official representatives of the Ministry of Internal Affairs explained the cancellation of the order by the development of the national preventive mechanism against torture (NPM) in the Office of the Ombudsman ignoring the very fact that the NPM is a form of parliamentary rather than public control. The same ideology of NPM provides assistance to various forms of public control over the authorities.

During the 2013 the civil observers recorded numerous violations of the principle of public accountability by the militia officers during public performance of their duties. Usually it showed itself in the refusal contrary to the Law of Ukraine "On Militia" to identify themselves and their positions when communicating with citizens, in illegal banning on photo and video in order to avoid personal identification.

During peaceful actions, the problem of anonymity and unaccountability of the personnel of the bodies of the Ministry of Internal Affairs found itself in the limelight.

Thus, during the peaceful gathering near the Mezhyhirska residence of the President of Ukraine on April 15, 2013 the public observers recorded the group of people in similar black uniforms without insignia. These men wore bulletproof vests, carried rubber batons,

¹⁴ Administrative services of STA and MIA: analysis of legal principles of rendering services and results of sociological research. Scientific and practical edition — Kyiv, 2013 — 92 p.

walkie-talkies and other special means of passive defense. The group operated in cooperation with the personnel of the Headquarters of the Ministry of Internal Affairs of Ukraine in Kyiv Oblast, militia unit “Berkut” and persons in civilian clothes with means of video recording and walkie-talkies. The group actively interfered with the holding of peaceful assembly, impeded the free movement of participants, and then, without any warning, along with other officers of the bodies of MIA of Ukraine, blocked a group of protesters, and surrounded them without any requirements or explanations. Moreover, the unknown persons in black uniforms arrested one of the activists of the peaceful assembly and took him to the service bus of a body of MIA. In response to official requests all law enforcement agencies of Ukraine denied the belonging of unknown people to their employees. Only after five-month-long correspondence the Headquarters of the MIA of Ukraine in Kyiv Oblast had to admit that unknown persons were employees of their unit “Berkut”.¹⁵

The events of forceful dispersal of “Vradiyivka March” and Yevromaidan only accentuated the problem after the Prosecutor General acknowledged that the investigation, even having relevant video recording, was not able to identify individual employees of “Berkut”, which illegally and very severely had beaten the participants of the peaceful assembly¹⁶.

CORRUPTION AMONG THE PERSONNEL OF THE BODIES OF MIA

Illegal getting posts and special ranks as perhaps the only kind of “inside” corruption in the in the bodies of MIA up to 2005 has now given way to a developed system of “tariffs” covering almost all areas of activity of law enforcement bodies.

Due to the open letter of the personnel of the Headquarters of the State Motor Vehicle Inspection in Kirovohrad Oblast dated May 2013 to the Minister of Internal Affairs it cropped up that every SMVI crew had to hand their chiefs UAH 400 out of daily take of bribes; weekends and holidays are sold by chiefs of local STA companies for UAH 250 and UAH 3,000 respectively¹⁷. At the same time the SMVI personnel of Ternopil Oblast addressed their the minister and wrote that after the shift each crew had to hand in money to the tune of \$500, as well as weekly and monthly delivery of “shadow revenue” for leaders at all levels of regional SMVI agencies¹⁸.

In an open letter the employees of the Bakhchisarai Regional Department published the fact that the chief of the regional department had forced them to hand him UAH 5–6,000 from each service¹⁹. In September 2012, a similar statement was made by one half of the

¹⁵ <http://www.youtube.com/watch?v=4CNHhiF3X48>, <http://newcitizen.org.ua/news/taiemnicyu-lyudey-u-chornomu-z-mezhigirya-rozkrito>

¹⁶ Pshonka is for the ID insignia on the uniforms of “Berkut” soldiers // <http://www.radiosvoboda.org/articleprintview/25200762.html>

¹⁷ To be manacled with one’s own handcuffs. Militiamen on problems inside the MIA. Valeriya Burlakova // <http://tyzhden.ua/Politics/84908>

¹⁸ The SMVI wages war on corruption and overloads the Minister accusing its chiefs. The new appeal was submitted by the personnel of Ternopil SMVI, 13.05.13 // <http://ord-02.com>

¹⁹ Bakhchisarai Regional Department: nothing unusual, just ordinary militia corruption // http://www.ukr.net/news/bahchisarajskij_rajotdel_milicii_nichego_osobennogo_obychnaja_milicejskaja_korrupcija-20286378-1.html

personnel of Sumy “Berkut” complaining of their chief’s extortion; then the “Berkut” chiefs staged re-certification and transferred the initiators of the letter to other subunits.

The above failings motivated a number of MIA bodies’ personnel to commit crimes and offenses, because of which the Ministry of Internal Affairs, as the Minister acknowledged, received during 2013 about 195,000 appeals regarding misconduct of law enforcers, or nearly one complaint per certified employees of a MIA body²⁰. During the first nine months of 2013 the public prosecution bodies investigated about 11,176 criminal cases concerning the personnel of MIA bodies and 429 cases were submitted to arbitration applying to 547 militia officers.

The corrupt practices and illegal use of violence, especially in the course of the investigation, remain the main components of “militia’s” crime.

Despite the introduction of the state system of secondary legal aid and guaranteed providing lawyers to all detainees the dishonest part of personnel of the MIA bodies quite easily adapted to new conditions. The 2013 poll of lawyers showed the wide use by the personnel of the MIA bodies of illegal practices: falsifying time of detention, pre-trial investigation and collection of evidence against a person without informing her/him about it; preventing information of the lawyer, untimely information of a lawyer on conducted investigative measures, applying pressure on people to make them to refuse from the services of a lawyer and tampering with a lawyer. The interdepartmental actions taken by MIA proved to be ineffective in relation to these phenomena²¹.

In 2013 the media reported 68 cases of violence by law enforcement officials as well as nine deaths of citizens that occurred as a result of being kept in militia establishments or communicating with militia officers.

*In the summer of 2013, three operatives and the deputy chief of the Sector of the Criminal Investigation of Melitopol City District Militia used the shocker to make the 26-year-old district resident to confess to stealing. Later on the victim’s body 30 thermal burns were found. After the event, all four law enforcers kept company and quitted the city department of militia. At first, their actions were qualified as “abuse of power”, but in the end the former militia officers were handed a notification of suspected “torture committed by a group of persons acting in collusion”. The court ruled a preventive measure for the defendants in the form of collateral. For their temporary freedom two former militia officers stood bail to the tune of 80 times the minimum wage (UAH 97,440), other two militiamen paid UAH 57,350. The former law enforcement officers fully deny their guilt.*²²

During the first 9 months of 2013 the prosecuting authorities conducted 3031 pre-trial investigations of criminal cases against law enforcement bodies personnel accused of abuse. Of these, according to art. 365 of the Criminal Code of Ukraine (abuse of power) 2,638 pro-

²⁰ “MIA will become a European-type agency” // http://www.kmu.gov.ua/control/uk/publish/printable_article?art_id=246863148

²¹ The joint Order of the Ministry of Justice and the Ministry of Internal Affairs of Ukraine of 26.03.2013 no. 289/540/5 “On Measures concerning compliance with the legislation during the arrest without the decision of the investigating judge, trial of those suspected of committing a crime, and the choice of preventive measure for the said suspects as detention during criminal proceedings”; Order of the Ministry of Ukraine of 07.08.2013 no. 750 “On the issues of activity of commissions on ethics and official discipline in the bodies of MIA”

²² The militiamen who wrested admission of guilt from the prisoners with the shocker are tried in Melitopol // http://censor.net.ua/news/256496/militsionerov_kotorye_vybivali_iz_zaderjannyh_priznaniya_elektroshokerom_sudyat_v_melitopole

ceedings, art. 364 (abuse of power) 192 and under art. 127 (torture) 48 proceedings. However, only 49 criminal proceedings concerning 96 militia officers were passed to court with imputation of guilt. Of these, 43 proceedings against 80 people were under art. 365 of the Criminal Code of Ukraine (abuse of power) and 5 proceedings against 15 militia officers under art. 127 (torture).

As can be seen from the distribution of the proceedings, the prosecution continued to classify most of the facts of brutal treatment as abuse of authority or misuse of power avoiding art. 127 (torture). This erroneous practice has long been hiding the real extent of the problem of torture, which is not conducive to criminal prosecution of violence by militia officers. Although only in 2013, according to the decisions of the European Court, as compensation for brutal treatment by the militia the state had to pay UAH 1,210,000.

Owing to the vast wave of protest actions (12% of which occurred because of the illegal actions of law enforcement agencies) 2013 revealed new features of violations of human rights for the realization of peaceful assembly. The first feature relates to the failure to proper mediation of the personnel of MIA bodies with the organizers and participants of peaceful assemblies. The vast majority of NGO activists' reports stated that in 2013 the interaction of the bodies of the MIA of Ukraine and participants of peaceful actions was limited to informing about the line of march and fact-finding about application for the event.

Under conditions of potential conflict, no one conducted mediation and purposeful negotiations with the participants of protest rally because of the lack of trained professionals in the MIA bodies. And in some cases interaction and mediation took place rather due to personal qualities of individual militia officers than because of standard legal requirements of the MIA of Ukraine. And in some cases interaction and mediation took place rather due to personal qualities of individual militia officers than because of standard legal requirements of the MIA of Ukraine.

The second feature is connected with the wide involvement by political forces of mercenary athletes who have committed violent actions against protesters in most oblasts of Ukraine²³. It is significant that in so doing during the strongmen's provocations the militiamen were trying to "ignore" the illegal actions of mercenaries and were indulgent to lawbreakers.

Uzhhorod "titushky" beat journalists in the building of the City Rada

On Uzhhorod Day observed on September 28 the Mayor's guards and guys in tracksuits beat reporters and girls-students and threatened them with murder on the premises of Uzhhorod City Rada. The militia led by deputy chief of public security militia Uzhhorod City Department of the Ministry of Internal Affairs of Ukraine Vyacheslav Hryhoryev was present during the incident and did not defend the journalists and did nothing to stop or detain the attackers²⁴.

²³ The first resonant case was officially registered on May 18, when a group of unknown persons during the rally "Rise up, Ukraine!" in Kyiv attacked the protesters and injured journalist Olga Snitsarchuk and photographer Vlad Sodel. After identification and criminal prosecution of one of the attackers, V. Titushko, such mercenary athletes were called "titushky".

²⁴ <http://job-sbu.org/uzhgorodskie-titushki-izbili-zhurnalistov-v-zdanii-gorsoveta-21021.html>

**“The “titushky” have brutally beaten the activists of “Batkivshchyna” and “Svoboda”:
the militia did not even try to detain them**

On 25.10.13 in Kharkiv Oblast during a protest near the City Rada of Chuhuyiv against illegal land allocation the unknown athletes-“titushky” brutalized activists of All-Ukrainian Associations “Svoboda” and “Batkivshchyna”. Ten youngsters of athletic appearance broke fishing rods with the party and state flags, broke the camera of the press service employee and inflicted injuries to several activists. The militia did not even try to detain the attackers²⁵.

The above errors of judgment and negative trends became most clearly evident during the events of Yevromaidan on 30 November when by brutal force the special units of militia and internal troops unlawfully inflicted injuries to about 200 participants of a peaceful assembly and media professionals. The reason for this was a series of unprofessional and illegal actions by the Ministry of Internal Affairs:

- the incompetent assessment of the situation and incompetent actions of the participants of assembly as such which require urgent mass use of physical force;
- the body of MIA unprofessionally chose the tactics of forcible suppression resulting in unduly injured protesters and law enforcers;
- the “interference situations” were realized with serious violations of legal requirements, established tactics, and rules for the use of special means.

As a result, militia officers and interior troops massively maimed civilians with repeated blows with rubber truncheons on blow-prohibited areas of the body, fists and feet instead of stabilizing the situation by blocking and removal provocateurs from the crowd. Instead of resorting to the international standards of the means of mediation and distance influence the employees of “Berkut” acted without warning and using only hand-to-hand methods of fighting, which far and away increased the risk of injury to both sides. Some “Berkut” servicemen, contrary to law, were armed with cold weapons²⁶.

Almost all detainees stated Berkut’s ignoring not only their rights to communication with relatives and informing their lawyers, but their rights to first aid as well. At the same time there were reported cases of ill-treatment of servicemen of internal troops who because of criminal negligence of their commanders were forced to stay for two hours without adequate protection in a situation of collision with aggressive provocateurs and to deter the attackers from the obstacle zone for a long time without relief for heating, as a result of which part of the soldiers got injuries and got their extremities frostbitten.

The course of events also helped to ascertain the involvement of the MIA bodies in organizing provocations against participants of Yevromaidan both personally and through the promotion of illegal actions of titushky mercenaries²⁷.

²⁵ <http://censor.net.ua/n257607>

²⁶ Berkut has armed itself with knives // <http://www.socportal.info/foto/berkut-vooruzhilsya-nozhami>

²⁷ In Kyiv drunk militiamen attack people // <http://uapress.info/uk/news/show/12347>; A drunk captain and militia inspector provoke the Yevromaidan // http://tvi.ua/new/2013/12/16/pyani_kapitan_ta_inspektor_miliciyi_provokuyut_yevromaydan; Maidan activists detained a militiaman with company who had pistol-lighter // <http://www.unn.com.ua/uk/news/1281437-aktivisti-na-maydani-zatrimali-militsionera-z-tovarischami-yaki-mali-pistol-zapalnichku>

RECOMMENDATIONS

1. The Parliament of Ukraine should initiate the development of optimal models of reform of the Ministry of Internal Affairs of Ukraine with simultaneous calculation of redistribution of state and local budgets, formation of expert groups on reform and introduction of regular consultations with the public.

2. To settle conflicts that arise at the level of constitutional provisions regarding appropriateness of involving military forces (internal forces) to protect public order in peacetime and in the absence of emergencies, which necessitate the use of troops.

3. The Government of Ukraine shall step up its efforts to create the State Bureau of Investigation as specified by the Criminal Procedure Code. Given that the functions of the State Bureau should include the investigation of complaints against illegal actions of the militia, this body must meet five principles established by the European Court, namely independence, adequacy, timeliness, public scrutiny and participation of victims in the proceedings. It would be reasonable to provide for in the structure of the State Bureau the separate department to investigate deaths in custody and deaths due to the use of lethal force by state agents.

4. The Government of Ukraine shall consider introducing a system of joint with NGOs monitoring of MIA's activity with greater involvement of the public and NGOs to work in an advisory and consultative bodies of the Ministry of Internal Affairs of Ukraine, experts and temporary working groups, which shall not be limited to existing forms of public councils.

5. The Government of Ukraine shall improve the mechanism of state statistics so as to provide for separate statistics on crimes that include elements of torture as provided for in article 1 of the Convention against Torture and other brutal, inhuman and degrading treatment or punishment and compulsory periodic publication of these statistics.

6. The Government of Ukraine shall adjust the legal principles and mechanisms of administrative services rendered by the units of the Ministry of Internal Affairs of Ukraine providing for their transparency, protection against monopoly and corruption risks, clear system of quality standards for services and monitoring of their rendering.

7. The Ministry of Justice shall provide for the implementation of a wide range of legislative activity aimed at:

- amending the provisions of article 127 of the Criminal Code of Ukraine (torture) in order to meet the requirements of the UN Convention against torture;
- possibility of initiation and conduct of independent public investigations in support for the Office of the Ombudsman concerning the incidents that occurred with the participation of law enforcement agencies;
- adjusting the terms of the involvement of law enforcement staff without uniforms to maintain order during peaceful assemblies;
- proper identification of every law enforcement officer in the performance of his duties in uniform;
- reduction of discretionary powers of law enforcement officials to restrict freedom of peaceful assemblies.

8. The Ministry of Justice and Ministry of Interior Affairs of Ukraine shall together regulate the procedure of internal investigations of complaints of citizens so as to fully ensure the

protection of the rights of the injured person to a fair and effective trial. Thus, in particular, they shall provide for:

- full participation of the applicant in an official investigation into her/his case (possibility of study of the investigation materials and their evaluation, presence during questioning of the persons involved in the investigation, possibility of submission of supplementary materials at any stage of the investigation, etc.);
- the applicant's opportunity to engage in internal investigation of a lawyer or other expert in the field of law, human rights activists and independent experts;
- the possibility of removal of police officers from their duties for the time of the official investigation (where it is necessary to ensure the objectivity of investigation);
- implementation of measures to protect against pressure from militiamen applicant and other persons involved in internal investigation.

9. Ministry of Internal Affairs of Ukraine shall initiate analysis of departmental normative legal documents in the field of maintaining public order and security of citizens during exercise by citizens of their right to freedom of peaceful assembly in order to implement the recommendations set out in the "European Code of Police Ethics", Declaration "On Police", and OSCE guidelines on freedom of peaceful assemblies.

10. MIA of Ukraine shall improve the management system to ensure effective interaction with the chiefs of the MIA bodies with participants of peaceful assemblies ensuring compliance with mandatory gender parity in the formation of groups of mediation.

11. Analyze and, if necessary, upgrade the system of training of the personnel of special units and patrol service of the Ministry of Internal Affairs in the domain of human rights while maintaining public order during holding of peaceful assemblies, protection of participants of peaceful assemblies and the basics of mediation, grounds and conditions for the use by the personnel of the MIA bodies of special means and physical force.

12. To charge the Ministry of Internal Affairs of Ukraine with developing canonic standards for promoting mass events based on their intensity, potential hazards, economic expedience and other factors ensuring the observance of the principles of non-discrimination and proportionality when it is necessary to limit the freedom of peaceful assemblies, maintenance of free holding spontaneous peaceful meetings.

UKRAINIAN CONSTITUTIONAL PROCESS IN 2013: HOPE VS. REAL POSSIBILITIES¹

As has been repeatedly noted earlier, after the Constitutional Court of Ukraine on September 30, 2010 had abolished the “political reform” that had divided national political entity into supporters and opponents of the parliamentary republic, the constitutional process came under the influence of the idea of Leonid Kravchuk about establishment of the Constitutional Assembly of Ukraine, which would update the national basic law. Viktor Yanukovich has supported the initiative and January 25, 2012 issued the relevant Decree. The community of politicians met this move in different ways, because it was problematic to update the Constitution of Ukraine on a voluntary basis, as required by the Decree. Either way, the opposition refused to join the constitutional forum.

As Volodymyr Shapoval, Professor of Constitutional Law, wrote in the 90’s, the Constitution of Ukraine in 1996 was designed as a Basic Law of the state, and not of the civil society, that is, its potential regulatory a priori had time and space limits. Intended for the post-totalitarian state the Constitution proved functionally deficient in terms of political freedom and market economy. Therefore the Constitutional Assembly in its activities decided to follow not only the laws of Ukraine, but also the principles and norms of international law. It targeted the principles of supremacy of law, collegiate style, self-government, transparency, openness, independence in decision-making, professionalism and scientific orientation.

The work of the Constitutional Assembly resulted in publication in September 2012 of the reports of the heads of commissions² and the project of the “Concept of amending the Constitution of Ukraine” (hereinafter: the Concept) adopted on June 21, 2013. It was brought up for critical discussion, but ended in prior approval (66 pros and 4 cons). So the official Ukraine gained a renewed philosophy of its constitutional existence.

COMMON APPROACHES

The concept begins with a statement of “general methodological approaches”. In particular, it reads that the renewed Basic Law shall “implement the best modern European constitutional achievements in the field of constitutional law”. The Renewed Constitution has to become an act which “establishes principles of an innovative model of social and national

¹ Prepared by Vsevolod Rechitsky, UHHRU representative in the Constitutional Assembly of Ukraine, constitutional expert of the KHPG. The abridged version, see: Rechitsky V. Constitution for the Dreamland//Krytyka, nos. 7–8 (189–190), July–August 2013. — P. 10–15.

² A brief review of these reports see: Rechitsky V. The constitutional process in Ukraine in 2012//Human Rights in Ukraine — 2012. Report. — Kharkiv Human Rights. 2013. — P. 33–56.

development". But if Ukraine really tends to progress, it will not suffice to confine itself to the achievements of European constitutionalism only. The fact is that European constitutionalism is but a mild reflection of bolder American constitutional approaches.

Even if one does not take into account that Mykhailo Hrushevskiy considered American constitutionalism exemplary and that American constitutional ideology experienced its ups and downs, one may assert that the modern American constitutionalism is tempting not only for the east and center, but also for the west of Europe. The case in question is the doctrine of economic constitutionalism, as well as the unique attitude of the U.S. Constitution toward the freedom of speech and press (including the more recent decisions of the Supreme Court of the United States and toward the intellectual freedom of expression in general). With the adoption of the First Amendment the North Americans brought freedom of speech and of press beyond the possible legal restrictions boosting domestic progress. In this way they legally separated spheres of symbolic and subject-material (physical) reality. Hence, in 1791, in the United States the postmodern principle in the field of intellectual creativity actually became effective: anything goes. Since then, the U.S. Congress is not empowered to seriously modify or optimize by setting any limits to the freedom of speech, freedom of expression of a modern man.

Meanwhile, Europeans, pursuant to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the provisions of the Charter of Fundamental Rights of the European Union (2000) strongly forbid limiting the freedom of intellectual expression only in the fields of literature, art and science. This approach is like that in the U.S., but not identical to it. According to Ulrich Beck, current progress is determined not by the parliamentary or governmental activity but by free chaotic and stochastic work of creative people and institutions. That is why the most active type is best suited with the ban on any limitations of the freedom of intellectual expression in legislation, not just on the executive level. It is no mere chance that the greatest number of discoveries in the world is made in the U.S., and the total number of American scientists is more than four times the number in a united Europe.

If the Constitutional Assembly of Ukraine is serious about Ukrainian progress, it should declare the inadmissibility of restrictions on freedom of speech and press by referendum or legislative assembly. And this ban should top the list of priorities of the Basic Law. Unfortunately, the draft Concept does not tackle this question.

The next issue of strategic importance and weight is the definition of "the highest social value". The current Constitution declares a person's life to be such value (it tops the corresponding list in Article 3). The concept does not even mention the possibility of changing that rule. The only thing that the members of the Assembly dared to admit was adding of the category of freedom to the existing list of social values. The Concept reads: "In order to ensure the real principle of justice and establish a democratic, legal, socially-oriented, environmental state the focus should be on the recognition of the priority of human values (life, health, honor, dignity, *freedom* (my italics — V. R.), immunity, and security."

The unjustified absence of freedom in the listed categories of the highest social values of the Constitution was often in the limelight. As early as on January 11–13, 1996 the International Juridical Forum in Huta-Syniohora proposed to add the category of freedom to the list of the highest constitutional values. However, a few weeks later the Ukrainian developers removed the concept of freedom from the constitutional project.

However, it is not enough to simply include the fundamental category of freedom into Article 3 of the current Law. Firstly, this notion is far down the list from the top-rated values (and there are no random lists in the Basic Law); secondly, the list combines values from substantially different semantic registers. For example, the value of physical life openly contrasts with the value of the preservation of national freedom: it is clear that the words of the national anthem of Ukraine “souls and bodies we’ll lay down, all for our freedom” put freedom above the physical existence of a citizen.

Noteworthy is the fact that the life of an individual as a physical being was not the highest social value neither for the Christian martyrs, nor for such authorities of antiquity as Socrates, Herodotus, and Sophocles. Later historical and philosophical understanding that the human life is the highest social value was argumentatively criticized by Hegel and nowadays by Alexander Kozhev and Francis Fukuyama. That is, there is no doubt that the human life is of the highest personal value for an individual. However, the nations tend to relatively easily sacrifice the lives of their citizens to preserve their sovereignty, political freedom and territorial integrity of the country. A politically immature, “infantile” nation can sometimes fail to differentiate values of freedom, on the one hand, and the lives of citizens, on the other, but politically experienced people readily hierarchize priorities.

The concept also states that “the constitutional regulation is based on relationship between an individual and the state, society and the state”. This approach is reminiscent of an extract from a Soviet law textbook. Consciously or unconsciously the authors of the concept ignored the thesis universally recognized in the Euro-constitutionalism that the purpose of any real (organic) Constitution is functional limitation of any (even democratic) government. Based on the ideas of Rousseau, Montesquieu and Locke’s the main constitutional models are grounded on the fact that the state is a potentially dangerous subject prone to chronic extrapolation of its power. That is, any state in terms of the purpose of the constitutional regulation is a rigorous Hobbesian Leviathan. To cope with it, one had to devise a constitution as a meta-law of civil society.

In dealing with the issues of strategic importance and content the Concept should have been guided by the fact that the mature Basic Law is a legal guarantee of cultural, political and economic development of the country. As follows from the classical doctrine, the organic constitution is designed to prevent “splitting of the atoms of freedom, democracy and market”. The strategic objective of genuine constitution is progress which is achieved due to creative initiative and activity of the maximum number of individual and collective actors. This refers to a radical acceleration of all social transactions, rapid growth of social capital (trust in the individual, her/his abilities), reduction of control, registration and licensing bodies, ensuring the economic, political and personal freedoms, non-interference in the private sphere and life of the whole civil society.

Hence, the renewal of the Constitution of Ukraine should rely not on the state but on the civilized business, science, education, academic freedom, spontaneous creativity, resources of the information society and globalized world in general. From the perspective of the renewal of the Constitution of Ukraine the market economy should become the embodiment of the principles of economic freedom, like the liberal democracy embodies the principles of political freedom and inviolability of private and family sphere as a guarantee of individual freedoms of an individual. All reasonable (not necessarily moderate) interests of individuals and private entities should be protected by the Constitution. In terms of modern constitu-

tional design, no one can abrogate economic, political and personal freedoms of the people. Only partial limitations of their implementation expressly specified in the Constitution as a meta-law may be possible.

The state should not limit or control business initiatives. At the constitutional level, this should mean that the Ukrainian State guarantees on its territory the free movement of persons, goods, services, and capital. The size of state and local taxes should not threaten economic freedom. The trade should be optimally free and domestic and foreign investments should be encouraged in every possible way. No wonder, the idea that the state must guarantee the free movement of labor, goods, services and financial resources is a leading European slogan. This regulatory requirement is a key element of the Charter of Fundamental Rights of the European Union and the Lisbon Treaty and is, in fact, a basic principle of vital activity of the united Europe. According to classical liberalism which has been fully confirmed by the history of the USSR, the state eventually abolishes the market economy replacing it with comprehensive totalitarian socialism, if it is not restricted with genuine constitution.

According to the concept "in order to ensure the stability of the constitutional order in the revised Fundamental Law of Ukraine it is necessary to implement the separation of laws [into] constitutional, organic, conventional, laws on ratification of international treaties". This requires a different number of votes of the deputies depending on the seriousness of the subject regulation. This approach seems thoughtless from the political point of view as it allows the immature Ukrainian opposition to block the adoption of the most important bills. The Ukrainian political opposition is constructive only on paper. In practice, it is overly excited and unyielding. Ukraine lives without the Greater Coat of Arms of Ukraine, because 300 deputies are against its graphical design. If the same fate befalls the "constitutional laws" about elections, referendum, impeachment or local self-government, the country is not to be envied.

PREAMBLE AND PRINCIPLES OF THE CONSTITUTIONAL ORDER

As follows from the concept, the Constitutional Assembly suggests to "save value objectives and initial targets worded in the Preamble of the Constitution of Ukraine". The novel for the Preamble reads as follows: "to supplement the list of political and legal guidelines <...> with the provisions relating to the strengthening of the unbroken completeness and unity of Ukraine and statement of Ukrainian state as a part of the World European Community with the desire to develop an environmental state [and] civil society". The Assembly also considers it possible to include in the preamble the objective of "social justice".

The deficiency of this approach consists in the lack of understanding of the Basic Law as a strategic limiter of the government and poorly disguised statist paternalism. The idea of autonomism, separateness of a politically free and conscious of her/his goals individual is the genetic resource of Western constitutionalism. That is the constitution is a manifestation not so much of the spirit of unity and collectivism, as healthy individualism and creative freedom. The organic basic law protects the free state of society and therefore integrates people based on their "collective" desire not to be under wardship. Unfortunately, the Ukrainian interpretation of the Constitution, at least for now, is significantly different: it is considered as a kind of Leninist "Iskra", a collective propagandist and organizer.

The intention to “develop” civil society worded in the Preamble also sounds paternalistic. The integrative feature of civil society is realized through the desire of its members to preserve and defend (against the state) their political, economic and personal freedom. In the context of Ukraine, the quest for the “social justice” looks rather problematic. Unfortunately, Ukraine still remains a state of poor workers and peasants. And for the majority of poor people the ideal of social justice consists in a redistribution of wealth, not its growth. Against this background, the slogan of social justice looks like moral affixment held by domestic dictators, demagogues and political adventurers.

There is also a provocative statement in the Concept that “the provisions of the fourth part of Article 5 of the Constitution of Ukraine: “The right to determine and change the constitutional order in Ukraine belongs exclusively to the people and shall not be usurped by the State, its bodies or officials” were not developed in other Articles of the Constitution of Ukraine <...> remaining an abstract declaration.” In fact, if we do not take into account the Law of Ukraine “On the National Referendum” approved in 2012, in Ukraine there is no constitutional mechanism that would help to avert a political disaster in the case if the state or separate branches of power usurp national sovereignty.

The Constitution unequivocally condemns the seizure of popular sovereignty by the state apparatus, but does not utter a word about a legitimate way out of this situation. The Constitutions of many Western democracies provide in this case for the right of people to legitimate democratic uprising. The constitutions and constitutional laws of the United Kingdom, Germany, Lithuania, the United States, Czech Republic, Greece, Estonia and others foresee different forms of the possibility of a popular uprising. So the focus of the Constitutional Assembly on the guarantee of national sovereignty is clearly justified. Unfortunately, it is nothing but external focus in this case.

The concept practically does not recognize the legitimacy of the democratic justification of the rights of the Ukrainian people to rebellion. From the formal legal side, this approach is, in its own way, logical for the current Constitution does not recognize freedom as the highest social value of Ukrainian people. And if the freedom of people is not the highest social value, then who needs a democratic rebellion? Instead the Concept repeats once and again about the principles of “guaranteeing”, “compliance”, “protection” and “assurances” by Ukrainian state of the rights and freedoms of man and citizen. Such declarative statements in the area of human rights and freedoms require more specific explanation.

First, attention is drawn to the fact that the Concept once again speaks of ensuring and guaranteeing the subjective rights and freedoms in the paternalistic spirit. For example, it dwells on “the duty of the state to observe and protect these rights”, “determination of an effective system to ensure and protect the constitutional rights and freedoms”, “optimization of correlation of the civil society and the state” and even a combination of “self-regulation of social processes in economics, politics, spiritual and other spheres of life with public administration in these domains.” The international statistics shows the true value of this approach. Having included into the Constitution the proposition that human life is “the highest social value” (Article 3), Ukraine (according to the magazine *The Economist*) ranks first in the world in terms of its population mortality. In its strange urge toward combining and merging everything the Concept says, on the one hand, about the individualistic “human value and guarantees by the state of its rights”, and, on the other, about the “principle of unanimity of

state power”, “constitutional institutionalization of social partnership” and “public importance of ownership”.

Instead, the real guarantees of subjective rights by the state should have meant the implementation, in the first place, of market relations as a broader system of timely recognition and rewarding of human abilities and talents. This includes the full recognition of land ownership and the “absolutism” of property in general. Today the property objects may be taken away at book (not market) value when it comes to satisfaction of “social” needs. Also Ukraine would better abolish internal passports with the registration of citizens and foreigners at the place of residence. Even more acute is the problem of autonomy of even the best universities and academic freedom in general in Ukraine. It’s high time for implementation of insurance medicine, radical narrowing of the bracket of budget salaries, cancellation of fantastic privileges and sinecures for officials.

THE RIGHTS, FREEDOMS, AND DUTY

This section of the Concept is one of the most appropriate. However, the alarming is the requirement to “balance” human rights and freedoms with “the rights and lawful interests of other subjects and the entire community as a whole”. It is unclear who shall install or restore the appropriate balance and how to combine the requirement of balancing human rights with the rights of the state and society on the basis of *priority subjective rights* already declared in the principles of constitutional order. Obviously, the Concept’s positive is the requirement “to extend constitutional possibilities of civil society organizations (especially the most representative trade unions and associations of human rights organizations) to affect the rights and freedoms and *control* (my italics — V. R.) their implementation and prosecution of officials accountable for their violations.” In addition, the Concept points to the need to “create real conditions for public human rights institutions to [implement] sufficiently broad powers necessary to carry out their functions.”

The scientific analysis and simple common sense suggest principles on which the renewal of Ukrainian approaches to the formulation of the rights and freedoms of man and citizen ought to be based:

- the constitutional definition of subjective rights, freedoms and duties of man and citizen should be realized both as the legal standard for a country that considers itself a potential member state. This means that the in-transit people that crossed the border of Ukraine should not encounter significant reduction of guarantees of their subjective rights. For this we need to establish a reliable national standard of protection of rights and freedoms;
- the rights and freedoms must be submitted in the wording of the European Convention 1950 and protocols to it signed on behalf of Ukraine. It is necessary to add to the Ukrainian list of rights certain rights and freedoms of the Charter of Fundamental Rights, to which refers the Lisbon Treaty;
- defining the subjective rights and freedoms one should be guided by the fact that the number of foreigners in Ukraine is constantly increasing. This refers to persons permanently or temporarily residing in Ukraine, while remaining foreigners or stateless

persons. The Constitutional Code of rights and freedoms should focus on the rights of foreigners in Ukraine to a far greater extent than today.

In so doing the entire range of constitutional rights and freedoms should be perceived not as a sphere of detailed paternalistic efforts of the Ukrainian state, but as a space of autonomism, “separatistic” individual, in which limits he really determines his priorities and gradient of his efforts. In this very domain a person chooses her/his own strategy and tactics of his conduct and is fully responsible for her/his actions. In this way it would be worth doing away with non-obvious, but actual perception of the Ukrainian Constitution as “the basic law for the poor”.

The complex of constitutional rights and freedoms should contain (as a principle or otherwise) references to the three-part test by which any restrictions on rights and freedoms must a) be established by the constitution and the law only; b) accurately reflect legitimate (provided for in the Constitution) objective; c) initially deemed necessary in the democratic society. In addition, the constitutional code of rights and freedoms should include a presumption that certain constitutional rights, freedoms and duties apply not only to individuals but also legal entities. Therefore the title of the second chapter of the Constitution should be rather changed to: “The rights, fundamental freedoms, and duties”.

It is also worth changing the legal form of consolidation of social and economic rights. It is expedient to determine it following the legal model applied in the International Covenant on Economic, Social and Cultural Rights (1966). Then all positive social and economic rights shall be seen as the strategic objective, program of the government activity in the future. Obviously, most of the socio-economic benefits in Ukraine may be provided only by an effective market. And only in the case of socially weakened condition of an individual the realistic guarantees should be granted by the society and the state. In the future such legally proper guarantees may be sought juridically.

Formulating specific subjective rights it is necessary, as has been said above, to use not only the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), but also protocols to it adopted later. There is also a need to adopt basic rules of the European Charter of Fundamental Rights, in particular about the inviolability of human dignity, academic freedom, rights of young people, access to public information, rights of elderly people and so on. If the experience of using American First Amendment seems too radical to us, it is worth banning all restrictions of freedom of speech (self-expression) in the fields of science, literature, and art. The corner stone of the whole constitutional superstructure should be the constitutional principle of free movement of people, goods, services, and capital.

The constitutional list of the subjective rights and freedoms of speech and press (freedom of symbolic expression) should be defined not just as the first generation human right, but as a classic means of providing political and intellectual freedom, main pillars of the progress of Ukraine, channels of realization of the creative potential of Ukrainian people. The gist of this approach is in the fact that the freedom of speech and of the press (freedom of media) cannot be limited either by the parliamentary majority, or even the all-Ukrainian referendum. To do this, the freedom of speech and press should be moved to the “pre-political” space of Ukraine. This broad guarantee of intellectual freedom must be included into the first (principles of the constitutional order) part of the Basic Law.

ACADEMIC FREEDOM

It should be noted that the latest version of the Concept provides a laconic thesis as follows: "It is proposed to include into Article 53 of the current Constitution of Ukraine additional provisions that the state promotes academic freedom and university autonomy, including the use of material resources and funds in accordance with their statutory tasks." In general, the issue of constitutional recognition of academic freedom and/or autonomy of universities in Ukraine has deep philosophical and political and pragmatic dimensions.

At the philosophical level, the academic freedom and the associated autonomy of universities is a sort of "secondary" reflection of broader issues of intellectual freedom. Intellectual freedom is a prerequisite for social work, for which it is advantageous if the ideas (their circulation, rotation) have no boundaries. According to Bronislaw Malinowski, the intellectual freedom may be described in terms of a condition necessary and sufficient for determining and setting any goals; the conversion of this goal into effective actions through the instruments of culture; finding pleasure as a result of this kind of activity. In its turn, the intellectual freedom is adequately realized on conditions that: a) the objective of mental activity is selected by individuals on a free basis (indoctrination prohibited), b) actions intended to attain the objectives should remain autonomous (uncontrolled), c) the results of intellectual developments should remain freely available to the subjects of intellectual action³.

As Albert Einstein wrote on a similar occasion, the most outstanding scientific achievements were made in an atmosphere of freedom; therefore the limitation of intellectual freedom is permissible only there where it is directly related to the threat to the survival of mankind⁴. Although intellectual activity often serves the achievement of *predetermined objectives*, in its best use it *traditionally goes beyond the scope of the plan and its results cannot be predicted*. No wonder, between science and higher education, on the one hand, and constitutional law, on the other hand, important relationships have been established. The main feature is the recognition of the fact that the control and excessive regulation ruin or destroy intellectual (scientific, educational) efficiency.

It is natural that in today's globalized world a number of imperatives, which are considered the foundation of academic freedom and university autonomy, have formed. In particular, since the best results of scientific and educational activities are direct results of intellectual freedom, this activity requires constitutional safeguards against the pressure of religion, politics, social prejudices, myths, etc.

That is the progress of culture needs the free market of ideas, guarantees of spontaneous improvement in science, art, and education. Equally necessary is a competition of educational strategies and methodological pluralism. The post-totalitarian countries urgently need to overcome vanity and xenophobia in the humanities. In general, the modern world encourages replacing the "instructive society" with a "community of dialogue" (Ulrich Beck), which stipulates the transformation of educational guidelines, stimulates multiplicity in research methodologies and learning as a whole. The globalization also generated the need of global education, university courses modernization toward global studies. Today the universities

³ Malinowski B. Freedom and Civilization. — London: George Allen, 1947. — P. 25, 170.

⁴ Einstein A. Out of My Later Years. — London: Thames and Hudson, 1950. — P. 19.

are supposed to develop critical thinking skills in students and encourage them to unconventional synthetic approaches and solutions.

All of it means that the university education should be as close to the research standards that are consistent not only with the principles of transparency didactics, but with “free work of imagination as well”. According to the theory of science, most of the discoveries were made in the past and are made today not so much due to the rules of logical inference, but rather due to “unaccountable performance” of scientific intuition. From this it follows in part that the best students should determine the scope of their interests on their own, choose disciplines and be masters of their knowledge. This, in its turn, makes Eastern European governments to provide for the University autonomy and academic freedom on their own territory. As for the older democracies of Western Europe and the U.S., the freedom and autonomy of universities are traditionally considered there as important institutions of law.

That is the academic freedom and university autonomy are seen in the Euro-Atlantic world as organizational and legal prerequisites for social go-ahead and progress. In particular, in the United States they distinguish ***four essential freedoms of universities***: a) freedom to determine the grounds of academic essentials of education; b) freedom to choose and invite lecturers on their own; c) freedom to determine the methods of teaching on their own, and d) freedom choose future students on their own (which was dwelled upon by Ronald Dworkin).

This approach is based on a number of constitutional decisions of the Supreme Court of the United States, one of which states: “The University is supposed to ensure that atmosphere which is most suitable for reflection, experimentation, and creativity. This is the atmosphere in which there are four dominant rights of universities: to decide on their own whom to teach, what to teach, how to teach and whom to accept as students.”⁵

On the European continent, the academic freedom and/or the autonomy of institutions of higher education are granted by art. 58 of the Constitution of Slovenia (1991), art. 40 of the Constitution of Lithuania (1992), art. 67 of the Constitution of Croatia (1990), art. 53 of the Constitution of Bulgaria (1991), art. 46 of the Constitution of Macedonia (1991), art. 33 of the Constitution of Italia (“the academic freedom is provided for in institutions of higher education equated to the state ones”), p. 35 of the Constitution of Moldova etc.

In addition, art. 70 of the Constitution of Hungary (1990) states that solution of scientific issues and determination of viability of research is the prerogative of professional people involved in science. Art. 207 of the Constitution of Brazil (1988) contains a provision that guarantees educational, scientific and administrative autonomy for the universities, which is supplemented by their right to freely manage their finances and property. In addition, the universities have to operate on the principle of “indissoluble unity of learning and research”. The Constitution encourages universities to invite foreign lecturers, researchers, and professionals.

In accordance with art. 33 of the Italian Constitution (1947), art, science and teaching are proclaimed independent. In its turn, art. 5 of the Basic Law of Germany (1949) guarantees everyone the right to obtain knowledge from any existing sources. At the same time art, research and teaching shall be free. Art. 70 of German Basic Law guarantees the ***autonomy*** of higher educational institutions. The autonomy of the universities is stipulated by art. 70

⁵ Civil Rights Decisions of the United States Supreme Court. The 20th century. — San Diego, California: Excellent Books, 1994. — P. 221–222.

of the Constitution of Poland (1997), the freedom of scientific activity is specified in art. 23 of the Constitution of Japan (1947) and so on.

The current Basic Law of Ukraine directly does not provide for the autonomy of universities and/or academic freedom. The national treatment of this issue is based on the provisions of art. 10 of the European Convention on Human Rights and Fundamental Freedoms (1950), which contains over a dozen restrictions on the realization of the freedom of intellectual self-expression. Almost all of them were included into art. 34 of the current Constitution of Ukraine. However, this does not mean that the Ukrainian regulation of intellectual freedom is accredited by the European standards.

Firstly, in Ukraine they do not apply the three-part test, under which the limitation of the exercise of fundamental freedoms can take place only under the law and only when it meets a legitimate purpose and is necessary in a democratic society. Secondly, the Constitution of Ukraine lacks a very important provision present in the EU countries specifying that all limitations of the freedom of speech stipulated by national constitutions cannot be applied in the fields of literature, science, and art. This norm is included in the Charter of Fundamental Rights of the European Union (2000), and is sometimes directly reproduced at the national level. Thirdly, the Constitution of Ukraine does not provide for the right of an individual to receive and disseminate information regardless of frontiers as it is specified in art. 10 of the European Convention (1950). In addition, the classical European and American understanding of academic freedom and university autonomy prohibits the police to enter the educational campus, which in Ukraine cannot be even discussed.

Summarizing this range of problems, John Stuart Mill once wrote: "The main danger of our time consists in the fact that so few people have the courage to be eccentric." It was actually a matter of the threat of unification of Western education and culture. Later Vaclav Havel called educational unification "*the criminalization of the principle of plurality*". In the Soviet Union such unification was carried out for decades. According to Jean Cocteau, "the ants' ideology like the Russian one" considered ideological diversity a crime. As a result, it so happened that by putting their countries out of the value game box, the communist leaders created a "closed system with specific principles"⁶.

Currently, the most resolute and consistent in protecting academic freedom and university autonomy is the constitutional doctrine and practice of the United States. Firstly, it a priori does not recognize a possible existence of "erroneous ideas". According to the U.S. Supreme Court, the truth can be achieved only on the market of "free selling ideas" in competitive environment⁷. Secondly, educational institutions under any circumstances must avoid becoming "enclaves of totalitarianism", and their administrations must not establish absolute control over the students⁸. Thirdly, the free education is threatened with pressure even from such factors as the "national unity", "patriotism" or "saluting the flag"⁹.

⁶ Jean Cocteau. In three volumes with pictures of the author. Vol. 1 — Moscow: Agraf, 2001. — P. 238. (In Russian).

⁷ Freedom of the Press Decisions of the United States Supreme Court. — San Diego, California: Excellent Books, 1996. — P. 58.

⁸ Freedom of Speech Decisions of the United States Supreme Court. — San Diego, California: Excellent Books, 1996. — P. 154-156.

⁹ Freedom of Speech Decisions of the United States Supreme Court. — San Diego, California: Excellent Books, 1996. — P. 74-75.

The United States, wrote Francis Fukuyama, succeeded due to their dedication to *the ethics irrational*, which implies a serious demand of *protection of all unpredictable and spontaneous in business and science*. As far the democracy is not so much a creative as selective talent, the ordinary citizens can be successful, as a rule, only within the limits of environment created by bright intellect of their national elites. The logical development of this thesis means that if the democracy in Ukraine is not preceded by the university or academic freedom, our citizens will go on consuming intellectual secondhand. There is also no doubt that this threat should be a serious point in the current rating of Ukrainian constitutional issues that require resolution.

DIRECT DEMOCRACY

The Assembly proposes to determine at the constitutional level a range of issues for which a referendum is a must, as well as issues on which a referendum cannot be held. Severally the concept offers “to make a list of spheres for regulation by law, on which a referendum cannot be held on popular initiative”.

It is known that on November 6, 2012 the Verkhovna Rada of Ukraine adopted the Law “On national referendum”. Then became ineffective the previous Law “On the all-Ukrainian and local referendums” (1991), which significantly differed from the Constitution. Under the new law both the new redaction of the Constitution of Ukraine, and amendments thereto may become a subject of the referendum. The referendum can also cancel any law amending the Constitution of Ukraine. In the same way, it is possible to adopt and cancel common laws of Ukraine, as well as amendments to them (except laws on taxes, budget, and amnesty).

All of it created additional incentives for the activity of Constitutional Assembly. Before the adoption of the law on referendum its proposals about amendments to the Constitution directly depended on the Verkhovna Rada. And now the adoption of a renewed constitution can occur without the participation of people’s deputies, i. e. only by the will of the people and on their own initiative. No wonder that Ukrainian politicians perceive the law “On national referendum” in different ways.

In addition, the adoption of the law on the all-Ukrainian referendum significantly deepened the meaning of Article 5 of the current Constitution on the sovereignty of people. As stated in the third part of this article, “the right to determine and change the constitutional order in Ukraine belongs exclusively to the people and shall not be usurped by the state, its agencies or officials.” Given the legal meaning of this provision, only a referendum (in addition to the requirements of Chapter XIII of the current Constitution) should be held to change all the rules of the Basic Law, which are legally involved in the determination of the parameters of the constitutional order in Ukraine. Simply put, the law allows for a referendum to abolish the amendments to the Basic Law submitted for consideration by the Verkhovna Rada of Ukraine, but really irrelevant to the interests of the Ukrainian people. It is possible to say that this law is a reasonable current domestic analogue of the people’s right to democratic uprising present in the Western constitutionalism.

One of the manifestations of acute reaction to the law “On national referendum” was a reproach to the parliament for its refusal to exercise its own prerogatives. And only

a few critics of the law understood that the process of amending the Constitution of Ukraine should not be limited to the thirteenth chapter and the rules defined by Article 5 of the Basic Law, which still did not have a proper specification. If the meaning of this provision is interpreted in strict accordance with its purpose (teleological interpretation), all laws that directly affect the determination of the essential characteristics of the constitutional order of Ukraine shall be passed only by nationwide vote. The Basic Law does not accidentally use in Article 5 the word “exclusively”, stressing in this way that the change of the elements of the constitutional order requires not an approval of these changes (after their initial parliamentary support) at a referendum, but a direct — without the mediation of the Verkhovna Rada — popular vote. For example, in this manner it would be good to change in 2004 the Ukrainian form of government.

So, the Law of Ukraine “On National Referendum” fills with the meaning the notion of guarantees against the usurpation of national sovereignty by the state. Obviously, the usurper of public authority may be not only a legislative but also executive and judiciary branches, not to mention the president. That is the constitutional referendum may be considered the only legitimate means in Ukraine of controlling government revolt against the interests of the people.

Unfortunately, the latest version of the Concept provides for the prohibition of referendums initiated by people, which might highlight any “positive” (in the sense: not yet resolved) questions. According to the members of the working group of the Assembly, the referendums initiated by people shall only be used to adjust existing laws. That is such referendums can only exclude and not include into the legal field of Ukraine new norms at the level of law. Professor Volodymyr Shapoval supported by a working group of the Constitutional Assembly went even further in his political and legal aspirations. He believes that the referendums initiated by people shall be held only on questions predefined by the Constitution of Ukraine...

PARLIAMENT (VERKHOVNA RADA OF UKRAINE)

The concept advises to reduce immunity of the people’s deputies simultaneously improving the mechanism of their responsibility for adopted decisions. The proposed novels included strengthening parliamentary control over the executive branch, introduction of interpellation (holding hearings on the activities of the Cabinet of Ministers of Ukraine), recognition of the possibility of voluntary dissolution (two-thirds of votes) of the Parliament, introduction of “public” legislative initiative, making the Cabinet of Ministers the only body responsible for putting forward a draft budget resolution, introduction of division of laws into constitutional and ordinary ones.

The Constitutional Assembly revitalized the idea (as yet unsupported) of a bicameral Legislative Assembly. The Upper House (such as the Chamber of Regions or Senate), which will be a political representation of 24 oblasts, Autonomous Republic of Crimea and the separate capital district, Kyiv city, should be directly elected by the population or respective radas: oblast, Verkhovna Rada of the Autonomous Republic of Crimea and Kyiv City. The senators may include ex officio every former president of Ukraine, unless he was impeached. The Lower House of 300 deputies might be elected by adult citizens of Ukraine on the basis

of equal, direct, universal and secret suffrage. The introduction of a bicameral parliament might reduce conflicts in the governance mechanism. Not canceling cultural differences between the east and west of the country, it would boost harmonious development, contribute to regional development, step up the authority of the local self-government, increase the representational functions of Parliament, and support the political course of Ukraine to join the European Union. In general, the existence of a bicameral parliament in a unitary country is no exception to the rule. Such parliaments exist in Poland, Italy, Japan, Spain, the Netherlands, Romania, France, Croatia, the Czech Republic, the Philippines and Ireland. Bicameral are the majority of legislative Assemblies in old democracies regardless of form of governance (Great Britain, France, Italy, USA, and Switzerland). The upper and lower chambers usually differ in quantitative composition, order of formation, competence, status and so on. The most often the lower chambers are elected by population in general equal and direct elections. With them the ideas of popular representation, rule of the legislature with the power to approve the budget and other important laws are connected.

In countries with bicameral parliaments the concurrence to appoint the government is usually given (excluding the U. S.) by lower (as in Italy) or by both upper and lower chambers. In the majority of such parliaments the chambers have different status. The Ukrainian Concept could be guided by the same principle. For the most part the bicameral parliaments make a more efficient system of popular representation than unicameral ones: they represent the interests of regions in more efficient way; they correct legislative mistakes much easier and adopt more balanced decisions.

PRESIDENT OF UKRAINE

The section of the Concept dedicated to the status of the President of Ukraine reflects the conflicting aspirations of the members of Constitutional Assembly to establish, on the one hand, the “appropriate legal framework for balanced and effective functioning of the mixed form of governance”, and, on the other hand, to strengthen the role of the state leader “ensuring stable functioning of the state mechanism”. For this purpose the members propose ... “to allow the President of Ukraine to realize the functions of political arbitration”. The analysis of this part of the Concept shows that it is — as it was in the past—empowers the President of Ukraine to concurrently execute multiple functions.

Under the current Constitution, the president is the head of state, guarantor of state sovereignty and territorial integrity of Ukraine, observance of national Constitution, as well as the rights and freedoms of an individual and citizen. He, as is clear from the text of his oath, must “with all his doings protect the sovereignty and independence of Ukraine, take care of the good of the Motherland and the welfare of the Ukrainian people, protect civil rights and liberties, abide by the Constitution and laws of Ukraine, perform his duties for the benefit of all fellow citizens, and enhance the prestige of Ukraine in the world.” By comparison, the U. S. President entering upon his duties swears only that “he will responsibly fulfill his duties as the President of the United States and in every possible way preserve, protect and defend the Constitution of the United States.”

The stylistic difference of these texts is caused, of course, by lexical features of Ukrainian or English languages. This is a significant difference between the North American and Ukrainian constitutional paradigms. In the first case we see the civilization of the universal market type where everything “follows its customary routine” and real law-based state, where the president’s role is reduced to maintaining appropriate procedures (“*how*” as opposed to “*what*”); it reminds of croupier in a national casino, which controls the rules of the game and not the size of winnings and betting. The second refers to the fundamentally different political and legal stereotype when the state led by its head is the mover of everything, all existing and potential developments. We see the president-demiurge that completely determines and controls the entire political process.

The Concept declares the transformation of the constitutional status of the President toward expansion of her/his arbitration functions. And it would rather into details and explain in what way the transformation of the president’s role from carrying out material to more procedural power would take place.

As for the rules of impeachment of the President, crime is named as a sole cause of her/his forced removal from office. However, the crimes differ essentially depending on whether they are committed intentionally or through negligence. In addition, the crime is not a typical temptation for a president or a characteristic behavior pattern: significantly more risky for the society is the commitment by the president of gross violations of the Constitution. If the Constitutional Assembly agreed with this approach, the basic list might be included in the body of the Constitution. The optional violations of the Basic Law should be referred to the Constitutional Court.

THE CABINET OF MINISTERS OF UKRAINE, OTHER EXECUTIVE BODIES

The special attention should be paid to a cursory mention in the Concept of the need for “singling out law enforcement agencies intended to protect the life, health, rights and freedoms of a person, ensure his/her inviolability and safety, protection of national and public safety, protection of the interests of society and the state against illegal assault, and prevention and combating of crime.” Strange as it may seem, the Concept suggests no details of this “singling out”. It offers only to secure at the constitutional level the principle of depoliticization and non-partisanship of the personnel of these bodies and define by law the parameters permitted-for-use “coercive measures”.

In fact, the Concept and later the Constitution should rather secure a full-scale parliamentary control of law enforcement agencies requiring the definition of law rather than by presidential decree or decision of the government of their status, manning table, functions and funding; providing for the possibility of full parliamentary inquiry, including the prohibition for senior officials to refuse to provide information to parliamentary committees; implement monitoring by human rights organizations of the law enforcement activities; empower Ukrainian Ombudsman to suspend for 48 hours operation or any act (including a minister) of an official of the Ministry of Internal Affairs, penitentiary system and so on.

JUDICIAL AUTHORITY, OFFICE OF PUBLIC PROSECUTOR

The Concept names “strengthening of the guarantees of independence of courts and judges” as the main task of constitutional reform in the judicial sphere; however, it would be worthwhile to start with improving education and training (“intelligence”) of the corps of judges of Ukraine. It is rather a question of overall quality of “human capital” in the domestic legal sphere. The lack of trust in the courts and judges is also associated with a lack of respect for human dignity in general. The law students at Ukrainian universities even of the fourth (highest) level of accreditation are trained in an atmosphere of hard realism and pragmatism. This is not education, but rather a sort of “training for a community”. They simply have neither time nor place for everything intellectually challenging, high and postmodern.

According to the authors of the Concept, if the judges are appointed to the post by the President of Ukraine upon submission of the revised High Council for Justice, it will reduce their political bias and ideological dependence. To achieve this goal the appointed judge is to be a professional of more mature age (30 years) who has greater work experience (5 years). However, informal contacts with judges show that many of them finds the key issue of judicial reform not better education or age limit, but establishment of such an order of filling the position of the president of the court of justice, which provides for the secret rating voting of his candidacy by the judges. If the president of the court of justice is chosen by voting by secret ballot by his fellow judges, it will improve not only the moral and ethical climate. But if the president of the court of justice is appointed by upper administration, it will be impossible to modernize the courts.

As for the status of the public prosecutor, the Concept offers no clear solution yet. The office of public prosecutor is traditionally tied to the protection of the centralized state interest. Empowered to institute, investigate and recommit criminal cases to court, the office of public prosecutor was always in Ukraine an administrative lash. Now, at the intuitive level an approach comes forth through which prosecutors would have to monitor the compliance with the Constitution and laws of Ukraine only in those state bodies and structures, in which people may find them in the most risky and socially weakened, dependent situation without real freedom of choice of behavior.

It is, above all, the matter of the structures of militia (police) and Security Service of Ukraine, branched sphere of penal institutions, units of the Armed Forces of Ukraine and other military or paramilitary formations. Perhaps it would be worthwhile to entrust the Procuracy of Ukraine with the tasks as follows: a) criminal proceedings against a person, arraignment and indictment; b) public prosecutor in court; c) representation of public interest in litigations as established by law, d) supervision of the observance of laws by bodies that conduct detective and search activity, inquiry and pre-trial investigation, e) supervision of the observance of laws in the execution of judicial decisions in criminal cases, as well as the application of other measures of coercion related to the restraint of human liberty; f) supervision of the observance by the executive bodies, officers and employees, other public authorities of the laws on human rights and fundamental freedoms; g) supervision of the observance of human rights and fundamental freedoms in the units of the Armed Forces of Ukraine and other military and armed formations.

In accordance with their legal and actual status the units of the Armed Forces of Ukraine and other military and armed formations can resort to violence, physical, mental and ideological coercion and pressure under conditions of restricted individual freedom in an uncontrolled way. This primarily applies to citizens who undergo compulsory or contract military service.

TERRITORIAL DIVISION, AUTONOMOUS REPUBLIC OF CRIMEA, LOCAL SELF-GOVERNMENT

The questions of territorial division of Ukraine considered in the Concept boil down to a conclusion that the present division in Ukraine is too small-scale, that there is still no law on the territorial division and about Sevastopol, and the legal procedure for resolving issues of administrative and territorial division is not determined yet. The Concept suggests extending the jurisdiction of local communities and their associations to cover the land of the settlements and adjoining land for the development of economic, social, transport and other infrastructure. It also proposes to create a new administrative and territorial unit—the community after which the territorial division of Ukraine shall be presented at three levels: regional (Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol); about five times enlarged (!) regions; and communities. It also provides for the formation of specialized (medical, social, educational, statistical and other) districts. In addition to that the Concept suggests recognizing officially that “the system of governance in the Autonomous Republic of Crimea is an independent subsystem of public authorities”.

The proposals of the Concept on modernizing local self-government in most cases (except for radical consolidation of regions and recognition of communities as territorial units) are acceptable. Urgent in Ukraine is to bring constitutional and legal framework of local self-government in compliance with the requirements of the Council of Europe and European Union: the European Charter of Local Self-Government (1985) and Protocols thereto. Consolidation at the constitutional level also requires the principle of complete authority of local self-government, recognition of the right of local radas to determine the system and structure of their executive bodies, total number of staff, as well as expenditures for their upkeep within the limits of the local budget.

THE CONSTITUTIONAL COURT OF UKRAINE

According to the Concept, the status of the Constitutional Court of Ukraine has not undergone significant changes. The novels apply only to certain aspects of the activity of the Court and boil down to the new order of appointment of constitutional judges to their positions, revocation of the right of the Constitutional Court of Ukraine to interpret the laws of Ukraine, charging the Court to verify the constitutionality of bills submitted to a national referendum.

Changing the order of appointment of judges to the position involves the transfer of this function to the President of Ukraine. Candidates for the position of a judge must receive

a recommendation from the Congress of Judges of Ukraine, National Academy of Juridical Sciences and the Ministry of Justice of Ukraine. If Ukraine had a bicameral parliament, the President could appoint judges to the constitutional position on submission by the upper chamber. A similar procedure for the appointment of judges is operating in the United States. Experience shows that when the judges simultaneously are empowered by two branches of power, this makes the Court relatively independent politically. Even more important is that consideration of nominees for judges in the upper chamber makes the process of selecting judges more demanding and public (transparent).

But the most important for Ukraine is a general rethinking of the role of the single body of constitutional jurisdiction. Indeed, in contrast to general courts designed mainly to protect law and order, the constitutional courts must protect the freedom of the sovereign people. Taking into account the traditional laconism of constitutional texts, the protection of civil liberties requires from the judges the highest level of education and culture. Because it is much harder and more responsible job to defend freedom, than to defend positive conventionalism of everyday routine. In the law-based state, the constitution is an abstract controller that stands above power personified in human beings. Society is dynamic and successful mainly because it has a real opportunity to play its creative forces and ambitions. And constitutional judges are expected to ensure the free play of human passions and energies.

P. S.

Later (after September 15, 2013) the Constitutional Assembly worked on the draft Concept of meetings in the format of a specially created *working group* comprising 10 to 12 key (in terms of the professional hierarchy in the Assembly) persons and about the same number of experts but without the right to vote. The Working Group reduced the original text of the Concept by 40–50% having redacted most of its provisions. The updated concept plan had to be reconsidered and finally approved by the Assembly on December 6, 2013, but due to the emergence of Ukrainian “Yevromaidans” and, as a result, “the uncertainty of the political situation in the country” (Kravchuk) the implementation of the plan was suspended indefinitely.

Part II

**THE OBSERVANCE OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS**



I. RIGHT TO LIFE¹

1. PUBLIC ADMINISTRATION OF PROTECTION OF LIFE OF INDIVIDUALS UNDER STATE CONTROL

The state is responsible for the life of controlled individual, for example, in places of imprisonment or interim detention, armed forces, public hospitals (especially in the places of compulsory medical treatment) and so on.

Numerous violations of the right to life in the places of imprisonment or interim detention of individuals (detention center, investigative isolation ward, institutions of execution of punishments and so on) cause a substantial problem. The terrible conditions of detention, often absent or ineffective medical treatment result in lethal end.

In establishments of the penitentiary system the prisoners are kept in overcrowded cells in insanitary conditions, with insufficient natural and artificial lighting, poor ventilation, heating and water-supply. In the cells there is excess moisture content, the walls are very often affected with fungi.

The consumptives (even with active disease) may be kept in the same cells with healthy prisoners.

Very often there exists improper provision of meals for prisoners, especially when escorting a suspect or an accused to a court.

The norms of useful area per prisoner in colonies and investigative isolation wards are not maintained. Moreover, the national norms of useful area per prisoner specified in the Ukrainian legislation do not meet the standards of the European committee for the prevention of torture and maltreatment.

The fixtures in cells are either in very poor condition or their term of service has expired.

In some establishments, the cells are made in basements unadjusted for long-term keeping of prisoners.

On the whole, many buildings and premises of the penitentiary system are past their term of service and need complex reconstruction and repair.

The problem of improper terms of keeping prisoners in Ukrainian establishments of the penitentiary system is a structural one and needs immediate solution as it leads, among other things, to spreading of various diseases and, as a result, to the deaths of the confined prisoners.

Unfortunately, we have to conclude that, although the situation in other establishments intended for holding of persons deprived of freedom (including the establishments of MIA) is somewhat better, the problems on the whole remain analogical to those of the institutions of the penitentiary system: failure to meet standards of useful area, insanitary conditions, ill-

¹ Prepared by lawyer Mykhailo Tarakhkalo.

timed and poor nutrition, absence of permanent access to running, potable and hot water, insufficient lighting in the cells, poor ventilation, worn-out equipment, and so on.

The new CPC liberalized the choice of preventive measures. The number of persons preventively kept in punitive detention is much lower today. In Its turn it reduces the number of detainees in the investigative isolation wards.

During one year the number of detainees in investigatory isolation wards and detention centers dropped by eight thousand persons.

Speaking about the investigative isolation ward, Vasyl Kozhukhar, the deputy chief of the department of supervision of the observance of the laws in the case of the enforcement of coercive measures under the Prosecutor General's Office of Ukraine, said, "As of November 1, 2012 there were 30 000 such persons, as of November 1, 2013 their number makes 22 000." The number of detention center detainees fell to 110 thousands against 160 thousands in November of the past year.

He noted that such decrease of the number of prior detainees is due to application of the norms of new CPC that envisage such alternative measures as the house arrest. He added that out of the total number of investigative isolation ward detainees at the point in time of implementation of the new CPC 1700 detainees had their preventive measures changed and they were released from these establishments.²

Unfortunately, some courts fail to properly interpret the norms of the CPC in the redaction of 2012 and they distort the implementation of preventive measures related to holding under guard.

Another key factor influencing the death rate among the persons deprived of freedom is an improper or the absence of medical aid in the places of deprivation of freedom. It is a result of improper organization of work of corresponding subdivisions of institutions of execution of punishments and lack of financial backing, and also refusal to admit detainees to the establishments of the Ministry of Healthcare of Ukraine.

We have but admit the low quality and insufficiency of medical care in the institutions of confinement that may lead to grave consequences for the detainees.

Often the equipment of medical units does not meet both national and international standards and the premises need repair.

The insufficient financing, substandard equipment of medical units and deterioration of buildings housing them results in low-quality or even absence of medical aid, improper nutrition, including specialized one, as well as overcrowding of wards, and so on.

Unfortunately, there is no system approach to tackling the above problems.

«It is worth bringing out the trends of morbidity and mortality. Organs six-month lethality data provided by the penitentiary service to "Donetsk Memorial", 476 detainees died (against 537 dead during the same period in 2012), 77 of them died in the investigative isolation wards.

Mortality in 2013 remains pretty high, like in two previous years: 7.00 dead per 1,000 detainees (in 2012—6.94, in 2011—7.59). It is notably higher than in 2009–2010, when this index equaled 5.15—5.25, not to mention the year of 2003, when this index made 4.3.

² During one year the number of detainees in investigative isolation wards diminished by 8 thousand: Prosecutor General's Office/<http://www.novostimira.com.ua/novyny/76456.html>

Rather alarming is the steep rise of suicide incidents: 41 suicides during first six months of 2013 (32 incidents for the same period of 2012) which equals the total of such incidents for 2003. In terms of a year it means 0.60 incidents per 1 detainees, while in 2012 there were 0.42 incidents, in 2008–2010 0.27—0.30 annually, and in 2003 only 0.21). It means triple increase in a decade.

The number of patients with the active pulmonary consumption has been stabilized; as of 01.01.2013 their number made 4479 detainees, and although it means a yearly decrease of 528 patients, but this amount is proportional to the decrease of the total number of prisoners; therefore the index remains the same: 32.9 patients per 1,000 detainees.

The number of the HIV-positive prisoners continues going up slowly. Although their total number grew only by 56 prisoners during six months, the growth per 1,000 detainees made +8.9% for the six-month period and +23.5% in terms of a year.”³

In connection with the above it is necessary to pay attention to the case of *Salakhov and Isliamova vs. Ukraine* from March 14, 2013, in which the European court adjudged the violation of the article 2 of the Conventions as a result of failure to render assistance and improper medical aid, which resulted in the death of an individual.

On November 20, 2007 the applicant was detained by militia officers on suspicion of committing a burglary and taken into custody in the detention center of the Bakhchisarai Regional Department of the Chief Administration of MIA of Ukraine in the Autonomous Republic of Crimea (hereinafter referred to as the Bakhchisarai detention center).

Organs applicant, the applicant informed about his HIV-status on the same day and expressed his fears concerning possible deterioration of his condition during his detention, which was ignored by public organs.

During medical examinations of the applicant in Bakhchisarai detention center no bodily harms were found and he lodged no complaints in this relation.

On December 2, 2007 he was transferred to Simferopol investigative isolation ward, where he was examined by physicians and no diseases were found. Later he was again transferred to Bakhchisarai detention center.

On June 5, 2008 by results of medical examination conducted in Bakhchisarai detention center by the infectiologist of the Bakhchisarai central district hospital (hereinafter referred to as Bakhchisarai Central Regional Hospital) the official diagnosis listed a number of diseases including AIDS, stage 4. However, the medical report stated that there was no need in urgent hospitalization.

On June 6, 2008 the applicant's lawyer filed a motion to the Bakhchisarai district court of Autonomous Republic of Crimea (hereinafter referred to as the Bakhchisarai district court) for the release of the applicant and rendering of urgent medical assistance taking into account serious diseases diagnosed at the Bakhchisarai Central Regional Hospital. The application noted that taking into account the applicant's condition he presented no threat for the society.

The Bakhchisarai district court dismissed the above application.

On June 11, 2008 following the instruction of the office of public prosecutor of the Bakhchisarai region of the Autonomous Republic of Crimea (hereinafter referred to as an office of public prosecutor of the Bakhchisarai region) the applicant was sent to the Bakhchisarai Cen-

³ The criminal-executive system for the first six months of 2013: statistics by Olexandr Bukalov, “Donetsk Memorial”/ <http://ukrprison.org.ua/statistics/1376062438>

tral Regional Hospital with the aim of finding out if his condition permits to apply such preventive measure as detention in custody. The consequent medical examination of the applicant diagnosed HIV infection, stage 2, that did not need urgent medical aid.

On June 16, 2008 the applicants appealed to the European Court of Human Rights (hereinafter referred to as the European Court) demanding that in accordance with the Rule 39 of the Regulations of the European Court that the latter oblige the Government to hospitalize the applicant. On June, 17, 2008 the European Court satisfied the above application and pointed to the urgency of such measure.

On June 18, 2008 the lawyer of the applicant petitioned to the Bakhchisarai district court for the second time for the release of the applicant making reference to the above instruction of the European Court. However, having conducted medical examination the Bakhchisarai district court dismissed the application.

As a result of appeal of the applicant to the head doctor of the Bakhchisarai Central Regional Hospital and repeated confirmation of the VHI infection, stage 4, the applicant was hospitalized under guard at the Bakhchisarai Central Regional Hospital. Organs applicant, the patient was handcuffed to the bed.

On June 20, 2008 the applicant submitted an "explanatory note" to the Bakhchisarai district department of militia that he did not inform the administration of the investigative isolation ward and detention center about his HIV-status "on respective grounds". However, the applicant's mother noted that previously the applicant underwent medical examination at the Bakhchisarai hospital, after which he was prescribed certain medications and the above message he wrote under duress.

On June 26, 2008 the applicant was transferred to hospital no. 7.

On July 2, 2008 the administration of Bakhchisarai detention center denied to the applicant prosecution concerning non-provision of the proper medical aid to the applicant. On the same day, the main doctor of hospital no. 7 reported to the Bakhchisarai district department of militia about the necessity of the long-term treatment of the applicant and that his motions cannot be restricted.

On July 4, 2008 the Bakhchisarai district court adjudged the applicant guilty of swindling and imposed a fine upon him. In addition, it ruled that until the moment of entry of this decision into force the applicant must remain under guard.

On July 18, 2008, the above decision entered into force and the applicant took the detainee home. However, the next day he was hospitalized again in connection with the aggravation of his condition.

On August 2, 2008 the applicant died. After his demise the applicant party appealed to the office of public prosecutor on the grounds of failure to render timely and proper medical aid to the applicant in custody that that led to the death of applicant.

The European court, among other things, established the violation of the article 2 Convention in the context of material aspect taking into account the failure by the state to observe its positive duty in relation to protection of health and life of the applicant, in particular, he was denied urgent hospitalization which he kept requesting for two weeks; he was kept in custody absolutely unfounded and in a critical condition; despite the recommendations of doctors he was continuously handcuffed in the hospital, which aggravated his condition. The European Court concluded that such behavior of public organs resulted in the death of the applicant.

I. RIGHT TO LIFE

Morbidity and mortality in the institutions of the Department⁴

Indexes	1.1.2004	1.1.2010	1.1.2011	1.1.2012	1.7.2012	1.1.2013	1.7.2013
Number of prisoners in the places of confinement	191 677	147 716	154 027	154 029	152 076	147 112	136 233
Died	824	761	808	1169	440	1021	476
<i>Per 1,000 detainees</i>	4.30	5.15	5.25	7.59	5.79	6.94	7.00
Cases of suicide	41	44	44	59	32	65	41
<i>Per 1,000 detainees</i>	0,21	0.30	0.29	0.383	0.42	0.442	0.60
Patients with active tuberculosis	9080	5667	5486	4822	5007	no data	4479
<i>Per 1,000 detainees</i>	47.37	38.36	35,62	31.3	32.9	—	32.88
HIV-positive	1917	6069	6020	6910	6347	6957	7013
<i>Per 1,000 detainees</i>	10,0	41.1	39.1	44.9	41.7	47.3	51.5

2. OFFICIAL VIOLENCE BY THE AGENTS OF THE STATE

There still exists a topical problem of official violence sometimes resulting in the death, including suicides.

In this aspect it should be noted that with the approval of the new CPC in 2012 the situation in this field somewhat improved.

This CPC, in comparison with the previous one, contains certain effective guarantees intended to prevent such disgraceful phenomenon in the law-enforcement system as torture.

With the adoption of the CPC the new system of investigative judges which are authorized to effectively control the investigation and promptly respond to abuses committed by investigators was implemented in Ukraine.

So, for example, in accordance with the article 206 of the CPC the investigative judge must carry out guarantees against illegal and groundless detention, as well as abuses by the authorized organs during pre-trial investigation.

According to the said article every investigative judge of the court within the limits of whose territorial jurisdiction an individual is held in custody is authorized to make a decision and oblige any public authority or officer to provide for fulfillment of rights of such individual.

Moreover, if an investigative judge gets from any sources information that may trigger reasonable suspicion that within the limits of territorial jurisdiction of the court there is an individual confined in the absence of effective court decision or who has not been released after payment of the bail specified by the CPC it must make a decision and oblige any public authority or officer responsible for detainment to immediately bring this individual to the investigative judge to establish the reasons for confinement.

⁴ The criminal-executive system for the first six months of 2013: statistics by Olexandr Bukalov, "Donetsk Memorial" /<http://ukrprison.org.ua/statistics/1376062438>

This point entitles the lawyer or any other person (detainee, her/his relatives, family members, and any third parties in no way connected with her/him) to appeal to the investigative judge and require the release of the confined individual.

The investigative judge must release the confined person, if the public authority or officer responsible for the confinement of this person shows no effective court decision or does not prove the availability of other legal grounds for confinement of the said person.

This requirement of release of the individual is unconditional and such release must take place without delay.

Such guarantee is very important for an effective control of inhuman treatment resulting in death of suspects, because the majority of incidents of inhuman treatment of the suspects take place in the first days (or even hours) after detention and in many cases such detention is illegal.

The new system of admission of evidence in criminal cases needs particular attention.

According to the article 95 of the CPC, a court can base its conclusions only on testimonies obtained directly in court or under the specifications of the article 225 of the CPC (procedure of interrogation of witnesses and victims when they cannot be interrogated in court following the general rules due to objective reasons). The court cannot substantiate court decisions by testimonies given to an investigator, public prosecutor, or refer to them.

This prohibition along with the general prohibition to use any evidence obtained through inhuman treatment renders senseless all attempts to wrest an admission of guilt with the help of inhuman treatment.

Besides, the courts must rule out of order any evidence obtained due to the information obtained as a result of inhuman treatment or other substantial violation of the rights and freedoms of individual.

However, despite the indicated positive changes, there remains the problem of inhuman treatment of suspects by law enforcers intended to wrest information about evidence in the case, to force refusal from the lawyer, forge evidence (for example, falsification of investigatory actions for recreation of situation and circumstances of crime, and so on). As a result, it results in death of suspects and suicides.

The striking example is the case of Vasyl Vradiy.

In July 2013, in Smila, Cherkasy Oblast, militiaman B. was killed. During apprehension the militiaman was killed by a local resident Vasyl Vradiy. Later Vasyl was also found dead. He, according to law enforcers, accomplished suicide: he killed himself with a screwdriver.

This past spring the dead person demonstrated on the TSN TV channel the traces from electric shocks. In 2012, he commented, three militiamen tortured him during interrogation: they coiled the bare wire round his extremities. They required signing confession stating that Vradiy had beaten his former cohabitant.

He was tortured for several hours until at long last Vradiy signed the protocol about administrative violation. And then he was given seven days of administrative arrest.

Vasyl went out and complained to the office of public prosecutor. They initiated action against militiamen under two articles: torture and exceeding authority and abuse of power.

The trial had to begin in the late July. But a month before the trial the Smila militiamen summoned Vasyl to testify in a case about beating a woman. However, the law enforcers maintain that he failed to come.

Yuri, his brother, says that he did not see Vasyl from the day of interrogation. He also did not try to establish contact. According to Yuri, there were threats to his address and he knew who exactly did it.

"Say, the militia gains if he does not exist so that he could not testify against them", admits Yuri.

The office of public prosecutor of the Cherkasy Oblast accepted the matter of his brother's disappearance for processing. They guesstimate that the man could be scared by the pressure of militia and he simply holes up. Nevertheless the action was initiated because there was an appeal by Yuri Vradiy about possible involvement of militia in the disappearance.

Vasyl was found in the Friday evening. The militia drove out to perform the arraignment. However the man began to offer resistance and attacked them with a knife. One of militiamen was killed on the spot.

According to militia, then Vradiy killed itself. However his brother is sure that this was a murder, because among the militiamen there was allegedly the same law enforcer whom Vasyl accused of tortures.⁵

There is one more case: the case of Dmytro Pozdneyev.

Dmytro Pozdneyev was detained on September 25 being accused of robberies. On September 29, 20 minutes after his return to the regional department from the investigatory experiment he felt sick. Despite the efforts of physicians, two hours after arrival of the ambulance he died.

According to the first medicolegal investigation, the death of Pozdneyev was of non-violent nature and came as a result of heart trouble. However, the friends of Dmytro assert that he never complained of heart pains and actively indulged in sports. They told also that during the identification of the body they saw bruises on him.

The law enforcers failed to explain the origin of bruises on Pozdneyev's body.⁶

Note should also be taken of the case of Yaroslav Muzychuk.

The tragedy with the youth happened on September 12. About 17.00 the mother found 18-years-old Yaroslav Muzychuk hanged in the kitchen.

According to his mother and sister, the law enforcers arrived, took the body down and inspected the premises and his personal belongings. They found his phone, checked SMS, phone logs and wiped out all info.

Yaroslav was questioned within the framework of criminal investigation of drug marketing. However, he had nothing to do with it, and interrogations were illegal, they were conducted under pressure, maintains the lawyer of the relatives of the hanged youth. In opinion of the relatives of the dead think that such behavior of the law enforcers led to his suicide.⁷

The important guarantees against inhuman treatment introduced by the new CPC include instant informing of kin and relatives (other prisoners of suspect's choice) of the suspect (accused) about the detention and also early access of the lawyer to the detention procedure.

It is worthwhile to make mention of positive changes related to introduction of the system of free legal aid, the lawyers of which are promptly informed and respond to the deten-

⁵ <http://kp.ua/daily/130713/403665/>

⁶ http://www.bbc.co.uk/ukrainian/news_in_brief/2013/10/131008_or.shtml

⁷ <http://www.0352.com.ua/news/395747>

tion of suspects in criminal cases, which also brings significantly down the possibility of application of inhuman treatment.

Unfortunately, the law enforcement authorities not always inform in due course or sometimes fail to inform the offices of free legal aid about detention of the prisoners suspected of crimes.

The making in 2012 of national preventive mechanism, an organ which freely visits and monitors the places of confinement with the aim of non-admission of tortures became an important step in control of inhuman treatment in Ukraine. Since 2013 the said mechanism began working double tides.

It is worthwhile to make mention of the system of monitoring by the state of its representatives, especially in the law enforcement authorities.

However, the control by the state of the storage and use of weapons by the law enforcers and military is still at low enough level.

In addition, the system of monitoring of the psychological state of law enforcement authorities arouses concern, when they do not carry out the periodic analysis of psychological state of the law enforcers or do it for appearances' sake only, or if they do conduct such analysis they do not register in a proper way the existing insanities of law enforcers. Moreover, even if they do register such facts, the chiefs of the bodies of internal affairs or their subdivisions not always adequately and in good time manage such disorders, as well as not always properly evaluate the personality of their subordinates (problems with abuse of alcohol, unjustified cruelty, groundless displays of aggression, and so on), which may result in lethal incidents.

3. PUBLIC PACKAGE INTENDED TO PROTECT LIFE

Prosecutor General's Office: statistics of victims of crimes and dead persons (Jan.–Oct., 2013).⁸

		victims of criminal violations	out of them			
			dead	female	underage	minors (below 14 yrs of age)
Total of victims of criminal violations		430 114	7775	178 806	8033	4063
out of them	of grave and gravest crimes	120 189	6968	49 423	1734	1047
	Intentional homicide (and attempts)	3432	2416	1121	41	77
	out of them Two or more persons	157	157	88	6	9
	rape (and attempts)	484	6	390	77	35

⁸ <http://www.gp.gov.ua/ua/stst2011.html?dir id=110141&libid=100820&c=edit&c=fono>

I. RIGHT TO LIFE

out of them	Intentional grave bodily harm		2479	698	482	25	5
	incl.	Causing the death of the victim	690	690	202	1	2
	traffic accident		12 747	3147	5956	870	911
	as a result of family violence		2001	114	1430	113	183
	deputies of all levels		152	3	30	X	X
	Mass media personnel		205	4	86	X	X
	doctors		2558	9	1773	X	X
	seniors and invalids, group 1 and 2		32 667	778	19 127	X	X
	foreigners		3785	108	1496	33	32
	business managers		2803	4	386	X	X
	finance and credit system personnel		2078	20	1410	X	X
				8	9	10	11
personnel	public prosecutor's office		75	2	25	X	X
	body of MIA		880	21	92	X	X
	courts		164	1	73	X	X
	the Bar		344	3	91	X	X
	security service		29	1	3	X	X
	organs of public internal revenue service		16	0	3	X	X
	customs		88	1	33	X	X
	border service		32	0	5	X	X
	servicemen		582	9	51	X	X

In this aspect it should be noted that in 2013 the number of victims of crimes increased comparatively with the same period last year by, approximately, 29%⁹.

⁹ <http://mvs.gov.ua/mvs/control/main/uk/publish/article/813157>

Especially alarming is the sharp increase of the number of dead victims of crimes in 2013: by 27%. 7775 persons perished from January to October 2013.

In this relation it is necessary to mark a great number of dead from grave and gravest crimes, as well as the traffic accidents.

To our mind, the subdivisions responsible for the detection of crimes and crime prevention have long needed reformation to improve their efficiency and increase their professionalism.

However, there remains a major problem of duplication of functions in various subdivisions in the structure of some law enforcement agencies and among various law enforcement agencies. For example, there is a global problem of duplication between operational units whose main function is to search for evidence or information about evidence and investigation, the function of which in practice boils down to fixing of found evidence. Unfortunately, specified problem is not resolved in the CPC 2012.

Another important problem is the overwork of individual units, when there remains virtually no time for the core functions. For example, the departments of district militia officers, whose main task is to maintain an ongoing dialogue with the residents in their district and through this dialogue prevention of crimes, in practice, because of the incredible overwork with minor social functions, they have little time for their key task.

Serious concerns are also related to the cases when the militia officers are required to work during their time-off without adequate compensation and extra days off.

In this respect, there remains a separate problem of improper technical equipment of the units of law enforcement agencies, as well as superficial and low-quality expert investigations in criminal cases.

Taken together these problems substantially degrade the system of crime prevention and impede their investigation which in its turn increases the number of crimes committed, including those resulting in fatalities.

The big number of deaths in road accidents also needs separate attention.

This situation is not acceptable and requires immediate intervention by the public authorities.

We believe that this situation, among other causes, is a result of poor quality of roads, including the lack of installed safety features, and problems related to the operation of road patrol units, when in some cases for some reason the offenders are not brought to book by road patrol officers, which in turn leads to distortion of public opinion about the need to follow the rules of road safety.

In general, there is a situation when it is necessary to enhance traffic safety and improve technical standards to create a system of inevitable administrative and criminal liability, including for the regulatory authorities.

In addition, there is a serious problem of numerous cases of contract killing.

In this respect it should be noted that there exist numerous cases of illegal arms trade.

It is necessary to pay special attention to a letter of the MIA to the Prime Minister of Ukraine dated September 11, 2013, which reveals a number of structural problems concerning the control of the illicit trafficking of weapons.

"The analysis of the crime situation in the country indicates the increase in the number of crimes committed using firearms. First of all, this is due to the adjustment of a large number of firearms made of mock-ups (hereinafter mock-ups) illicitly possessed by people.

...

It should be noted that the State Concern "Ukroboronprom" was created under Decrees of the President of Ukraine of December 9, 2010 no. 1085/ 2010 and of December 28, 2010 no. 1245/ 2010 and regulations of the Cabinet of Ministers of Ukraine of December 29, 2010 no. 1221 and of August 31, 2011 no. 993. The main purpose of its activities is the effective governance of the defense-industrial complex of Ukraine and increase of efficiency of the enterprises of the Concern with the help of the State Company "Ukrspetsexport", which is an intermediary authorized by the state in foreign trade activity in the export and import of products and services for military and special purposes. Its main activities are as follows:

- export and import of goods and services for military and special purpose, including weapons and ammunition, military and special equipment, components, explosives and other items that can be used to create and manufacture weapons, military and special-purpose machinery;
- repair, maintenance and modernization of armament and military equipment of foreign customers, export of advanced technologies, design documentation, and other scientific and technical military and special-purpose production;
- design and construction of special-purpose productions and objects;
- providing marketing, consulting and investment services in the field of foreign trade in arms and military equipment, which is sold in Ukraine, the so-called "complete military sets without barrels", stub-barreled firearms without barrels and mock-ups.

Military sets of weapons (MP pistols, Nagant M1895 Revolvers) without barrels are sold to the licensed enterprises specializing in the manufacturing and trade in special means, which are later supplied with barrels designed to fire cartridges equipped with traumatic rubber bullets and sell them as special devices in retail stores for about UAH 4,000 apiece, which is hundreds of times greater than the original purchase price of military weapons sets (the average price of UAH 30–50 per piece).

The lack of legislative responsibility for the illegal traffic of main parts of firearms allows open marketing opportunity in the country of firearms' mock-ups, which later can be remade over and used in the commission of grave and gravest crimes resulting in worsening of crime situation.

In addition, the state company "Ukrspetsexport" sells at public sales to private companies for a song the mock-ups PM, TT, APS, R-38 (Luger) pistols, Nagant M1895 Revolvers, Kalashnikov submachine and machine guns, sniper rifles and other military firearms, which are deactivated according to the national recycling program for weapons at military facilities (troop units) in Nizhyn, Chernihiv Oblast, Shostka, Sumy Oblast, Balakliya, Kharkiv Oblast, Shepetivka, Khmelnytsky Oblast. In their turn, the private companies sell to people mock-ups that that need no permits and licenses as mock-ups under the laws of Ukraine are not subject to the licensing regulations. At the same time there increases the number of clever hands who in the cottage-craft conditions turn the mock-ups into rifled firearms and sell them out. In many cases, the deactivation of weapons (cutting) at these military premises is carried out without complying with technical standards (no control whatsoever) which permits the clever hands to bring them up to scratch. In addition, they have special equipment (lathe, milling machine, etc.) and tools and in the cottage-craft conditions they manufacture essential parts of any firearms, such as barrels (rifled), locks and bolts, cylinders, bodies, shot gun receivers and sell them to the population of Ukraine and abroad. Thus, anyone can purchase a firearm through the Internet or

in shops trading in mock-up weapons. In particular, through the Internet and in places where craftsmen sell main parts of firearms people buy needed parts of weapons even without necessary skills for assembly works; according to the methodological recommendations of the sellers of such parts the amateurs make up the mock-ups with necessary parts turning them into combat rifled firearms.”¹⁰.

The high mortality rate remains¹¹, including child mortality¹². In this regard it should be noted that the health care system needs urgent quality reform because the current reform, according to experts, has some significant drawbacks, namely the lack of clearly marked objectives, constant revision of the strategies of reform, lack of clear policy providing for implementation of decisions, ignoring the scientifically proven and tested practical approaches, forms and methods of transformation, significant impact on decision-making of lobby groups (pharmaceutical companies), low rates of implementation, inconsistent and contradictory actions.

4. DUTY OF THE STATE TO GUARANTEE EFFECTIVE INVESTIGATION OF DEPRIVATION OF LIFE

The duty of the State to protect the right to life implies that in cases when a person has been deprived of life there should be a formal investigation. Such an investigation should be carried out immediately by an independent and impartial body; this investigation should include all reasonable steps to secure the evidence concerning the relevant incident and so on.

However, the investigation was not always carried out properly, especially in cases in which government representatives were crime suspects.

It should be noted that in 2012 adopted a new PDA, which changed the approach to register allegations of crimes and their subsequent investigation.

Now, in order to initiate an investigation and be able to collect evidence in the case, you only need to enter information about a crime in the Unified Register of Pretrial Investigation (hereinafter URPI).

Thus, there are no obstacles for starting an investigation without delay. Moreover, the CPC does not contain the grounds for refusal of entering information about the crime into the URPI and inaction of the investigatory body concerning its failure to enter the information or delays in entering the information about the crime into the URPI may be appealed to the investigating judge who considers the complaint within 72 hours.

The specified procedure is efficient and allows you to immediately initiate an investigation, which, in turn, prevents the loss of important evidence in the case.

Moreover, according to the CPC in the edition of 2012, in contrast to the CPC in the edition of 1960, any evidence collected is valuable and can be used in the future.

It should be noted that the new CPC puts in claims to creation in 2017 of a new investigating agency, the National Bureau of Investigation (NBI), which will assume responsibility

¹⁰ <http://zn.ua/static/file/20131108/MVD.pdf>

¹¹ [http://www.ukrstat.gov.ua/Express/issues/Mortality in Ukraine from external daily causes](http://www.ukrstat.gov.ua/Express/issues/Mortality%20in%20Ukraine%20from%20external%20daily%20causes)

¹² [http://www.ukrstat.gov.ua/Express/issues/Demographic situation in Ukraine](http://www.ukrstat.gov.ua/Express/issues/Demographic%20situation%20in%20Ukraine)

for investigation and will specialize in investigating crimes committed by officials and law enforcement officers.

The creation of such a body is designed to overcome the conflict of interests in the procuracy, which currently is at the same time supervising the investigation and representing the prosecution in the investigation (inquest) of the offense in which a person is suspected who had been subjected to ill-treatment (caused death, driven to suicide, etc.) and directly investigating the death as a result of ill-treatment, which significantly affects the quality of the investigation.

Moreover, today the procuracy has no operating unit and while conducting investigation of crimes it has to use the services of the units of other law enforcement agencies, including the Ministry of Internal Affairs, which in many cases casts a shadow over the independence and impartiality of the investigation.

With the creation of NBI, a full-blown investigating body, this problem should disappear.

Also, today, the draft Law of Ukraine "On Prosecutor's Office" is under consideration; it contains additional guarantees of the independence of prosecutors. Unfortunately, it is impossible to predict whether these guarantees will be effective in practice.

There is still a problem of informing the public and interested parties about the process of investigation. Unfortunately, all too often the informing takes place in the form of generalized formulation and with significant delays; the interested parties often and without any reasons are not given an opportunity to receive copies of the investigation materials.

Also common is the practice when the families of the dead are not granted the status of the victim in proper time, which in turn prevents their timely access to the records.

One should point out that currently the national legislation does not provide for the victim to get free legal aid. The Law "On Free Legal Aid" provides such assistance to vulnerable groups in stages, starting on January 1, 2014. In its entirety such assistance will be available as of January 1, 2017.

The quality of investigations of deaths is still a separate problem. This problem is complex and related to both the technical equipment and competence of the direct representatives of the investigation bodies and their interest in the investigation.

Despite the fact that in order to improve the quality of investigation they take certain measures, there is no effective respective comprehensive program, which would include the development of national registers (fingerprints, DNA, etc.), improvement of expert research, quality of investigation, periodic advanced training of the law enforcers and others.

Moreover, the quality of investigations is also affected by the corruption in law enforcement system. Although there is an acting state program of corruption control in 2011 — 2015, we note that this program is not effective enough to tackle this problem.

Therefore common is the situation when the investigatory body refuses to carry out an effective investigation. This is especially true in cases of deprivation of life by a law enforcement agency, deaths in hospitals, deaths in road accidents, deaths in detention, and so on.

Later the decisions to close a criminal case may be abolished by the courts, but often it does not affect the effectiveness of the investigation.

It should be noted that in 2013 (as of November 1, 2013) the European Court passed six judgments finding violations of Article 2 of the Convention on Human Rights which confirm inadequate investigation of deaths.

These are the judgments in the following cases: *Zubkova vs. Ukraine*, no. 36660/08, 17 October 2013; *Pozhyvotko vs. Ukraine*, no. 42752/08, 17 October 2013; *Yuriy Illarionovich Shchokin vs. Ukraine*, no. 4299/03, 3 October 2013; *Salakhov and Islyamova vs. Ukraine*, no. 28005/08, 14 March 2013; *Mosendz vs. Ukraine*, no. 52013/08, 17 January 2013; and *Slyusar vs. Ukraine*, no. 39797/05, 17 January 2013.¹³

In these judgments, among others, the European Court found that:

- The investigations were too protracted and did not lead to any final judgment that, according to the European Court, considerably undermined public confidence in the justice system;
- The investigations contained many shortcomings, which riveted attention of the national authorities, but they were not corrected in a timely manner;
- Many investigatory actions were either not performed, or were performed as an afterthought and were not timely;
- During the investigation, there were long periods when no investigation was conducted;
- And so on.

Thus, in view of the judgment of the European Court, it can be concluded that the tendency of ineffective investigation of deaths is still there. Thus the public authorities are not working effectively to improve the situation.

5. DISAPPEARANCE OF PERSONS

Ukraine has not signed the UN International Convention for the Protection of All Persons from Enforced Disappearance. The said Convention entered into force on December 23, 2010, 30 days after the number of member states reached twenty. As of November 18, 2013 already 40 countries have ratified the Convention.¹⁴

6. RECOMMENDATIONS

1. To implement effective mechanisms for investigation of deaths, particularly those caused by the actions of law enforcement officers, namely:

- To develop detailed guidelines, which are intended to determine a minimum set of investigatory actions to be conducted in every case of death in order that the investigatory body could bring up a question of closing the criminal case. In the event of unjustified refusal to abide by these instructions the investigators should be taken off the job and should be imposed disciplinary sanctions;
- To regularly organize training (retraining) of the personnel of investigatory bodies to improve the quality of their investigatory actions;

¹³ See more on the above decisions on the official site of the European Court.

¹⁴ <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg no=IV-16&chapter=4&lang=en>

I. RIGHT TO LIFE

- To carry out structural reform of the law enforcement agencies, during which minimize the functions and tasks that may be duplicated by various departments and agencies to reduce the burden on law enforcers by reducing the number of minor roles and responsibilities (it is important to implement it in practice), to end the practice of getting the law enforcers to work after hours without extra weekend and to introduce an effective system of remuneration;
 - To improve the material and technical equipment of law enforcement subunits;
 - To improve the quality of expert research;
 - To create the national register of information about persons accused or convicted of committing crimes (registers of fingerprints, DNA, etc.).
2. To establish the effective system of prevention of crime. In this respect, among others, there is a need to increase the effectiveness of interaction of district militia officers with the public.
3. To create a practical system of inevitable responsibility for all cases of unjustified violence by the law enforcers.
4. To establish an effective system of control over the use and storage of weapons by militia officers. To grant permits on the use of weapons on the basis of a comprehensive analysis of each individual militia officer. To create an effective system of responsibility of the chiefs of the law enforcement departments for permission to use arms by the subordinate without analyzing their person or in the case of a formal approach to this analysis.
5. To establish an effective monitoring of the psychological state of the law enforcement officials and to suspend them following the decision of the psychologist.
6. To conduct systematic training and instruction of law enforcement officers involved in special operations to detain persons suspected of crimes.
7. To create a new system of investigative isolation wards outside the city. To improve the material and technical conditions in detention in accordance with the recommendations of the CPT.
8. To establish an effective system of medical care in the institutions of confinement.
9. To carry out reforms in health care according to the recommendations of experts in order to prevent increasing mortality, including infant and child mortality.
10. To strengthen the technical standards of road safety and establish a system of inevitable responsibility, including regulatory authorities.
11. To sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance adopted on December 20, 2006 (UN General Assembly Resolution A/RES/61/177).

II. PROTECTION FROM TORTURE AND OTHER BRUTAL TREATMENT¹

According to sociologists, the militia and prosecutors have a negative balance of trust in Ukraine: militia — 47%, public prosecutor's office — 43%. The survey was conducted from 17 to 22 May 2013; 2,010 respondents aged 18 years and more in all regions of Ukraine. The sample error was 2.3%. The survey was conducted by the fund Ilko Kucheriv Democratic Initiatives and social service Razumkov Center².

Brutal treatment of suspects and detainees is considered a key negative trait of the activities of militia by over a third of respondents in Dnipropetrovsk (35.3%), Donetsk (39.2%), and Kirovohrad (35.0%) oblasts. Most respondents indicate the impunity of militia officers in Dnipropetrovsk (37.5%), Lviv (38.3%), and Luhansk (36.7%) oblasts. The inactivity of militia as a want is noted by more than a third of respondents in almost all oblasts of Ukraine³.

During the meeting of the board of the Prosecutor General's Office of Ukraine (PGO) dedicated to the public prosecutor's supervision of the observance of the constitutional rights of detainees, arrested and convicted prisoners the Prosecutor General said that "the outrageous facts of daring use of unlawful methods of investigation are rather widespread among militia officers" and that "the issue of violence and other kinds of brutal treatment concerns the whole law enforcement system. However, the analysis shows that the vast majority of these facts take place among the employees of the militia." According to the Prosecutor General, the arrangements made by the Ministry of Internal Affairs of Ukraine for prevention, timely response and elimination of the causes of this negative phenomenon "yielded no proper results". The Prosecutor General also acknowledged that in most regions of the country the steps are not taken to timely prosecute law enforcers who tortured suspects and detainees⁴.

At the same time, according to Ombudsman Valeriya Lutkovska, the number of complaints of torture by the militia has decreased. "With the entry into force of the new Criminal Procedure Code the situation with resorting to torture, in my opinion, has much improved. Also improved the different situation with human rights violations during the pre-trial investigation," said Lutkovska. She said: "Lately we've received no complaints against the militia actions in the case of illegal searches. For some time past we've got almost no complaints against militia officers doing task purchases; we have received almost no complaints relating to torture for a month now..." "There are practically no complaints like we had against torture by the militia in connection with wringing out of giving oneself up," added Lutkovska⁵.

¹ Prepared by Yana Zayikina, lawyer, KHPG.

² <http://www.unian.net/news/584061-ukraintsyi-ne-doverayut-vlasti-i-pravoohranitelyam-opros.html>

³ <http://khpg.org/index.php?id=1367864828>

⁴ <http://www.komitet-k.org.ua/node/5550>

⁵ <http://www.pravda.com.ua/news/2013/08/22/6996472/>

The Ministry of Justice of Ukraine on its official website posted the draft sixth periodic report of the Government⁶ prepared as part of the report of the UN Committee against Torture. Accordingly, this project represents the Government's report on the situation of torture in Ukraine.

On November 6, 2013 the European Committee for the Prevention of Torture (ECPT) published its annual report, which noted also ad hoc visit to Ukraine in 2012 indicating that the information collected by it in Ukrainian colonies nos. 25 and 81 points to the fact that the brutal treatment has become common practice to maintain order and control the prison subculture in these institutions.

The ECPT also maintained that the measures taken by the staff at these institutions with the help of specially selected group of prisoners were apparently aimed at achieving their submissive behavior from the beginning of their enduring the punishment.

Regarding statistics of the UHHRU network offices, they show that although in comparison with 2011 this year the number of complaints of ill-treatment has gone down, last year there were less such complaints than in 2013. Thus, the UHHRU network offices for 11 months in 2013 registered 198 complaints of torture and other forms of abuse, in 2012 — 178 complaints and in 2011 — 241 complaints.

1. CASES OF BRUTAL TREATMENT IN 2013

1.1. The use of force against peaceful demonstrators

1.1.1. The events on the night of November 30 to December 1, 2013 at the Maidan Nezalezhnosti

The most striking case of the use of violence by law enforcers became the night crack-down by Berkut⁷ units⁸ on peaceful protest on Maidan Nezalezhnosti in Kyiv on the night of November 30 to December 1, 2013, participants of which expressed dissatisfaction with the refusal of the President of Ukraine Viktor Yanukovich to sign the association agreement with the EU at the summit in Vilnius.

According to eyewitnesses, around 4:00 am a man in civilian clothes appeared on the square, probably a municipal official, who asked the protesters to disperse, so that the workers would be able to install a Christmas tree. After that, the protesters stood in a chain around the monument in the center of the square. In response, a riot militia attacked them suddenly without warning: they beat protesters with batons, pushed them away from the monument and dragged away. The entire operation lasted about 20 minutes⁹.

Igor, who, according to him, spent all night among the protesters on the square, said: "They mostly thrashed our hands and feet." He added that militia also pummeled and booted

⁶ <http://www.minjust.gov.ua/41050>

⁷ Special armed units under the MIA of Ukraine (translator's note).

⁸ http://news.liga.net/articles/politics/932334-evromaydan_v_kieve_den_devyatyy-obnovlyaetsya.htm

⁹ <http://www.hrw.org/ru/news/2013/12/04/ukraina-izbytochnaya-sila-protiv-demonstrantov>

the fallen and pursued those who fled from them. One militiaman hit Igor on the back with a stick when he tried to screen the girl, who stood nearby¹⁰.

63-year-old participant of the events Liubomyra said that a special squad soldier hit her on the right wrist with his baton when she tried to screen the youth. The doctor diagnosed fractured wrist¹¹.

According to 49-year-old man, a medical person told him that he had three ribs broken as a result of being hit by a militia baton in the chest. He said the security forces, having struck him, dragged him into a bus and took him to the district station. There he spent three hours, and only then he could seek medical aid¹².

As one of the Yevromaidan activists Zorian Shkiriak informed, "The brutal mopping-up on the Maidan took place at 4.10 hrs. More than 2000 armed shock troopers against several hundred peaceful demonstrators. They beat everyone indiscriminately. They used batons, booted people, threw noise grenades, and gassed everybody. The communication gap lasted over an hour. Dozens of detainees. Even after mopping-up they dispersed people if over three persons came together. "Another Yevromaydan activist Yevhen posted on his page in Facebook: "The Berkut and buses with militia are patrolling the night center. They are searching for escapers or survivals. They fix them and pack into paddy wagons. During the assault, they thrashed mercilessly. Girls, women. Everybody." According to witnesses, 20 to 30 victims were hospitalized¹³.

On November 30, the official release of the Ministry of Internal Affairs stated that the city administration had asked the riot militia to intervene as the protesters obstructed the activities of public utility workers intending to prepare the square for the New Year holidays. According to the Ministry of Internal Affairs, when the militia units reached the square, the protesters began to behave aggressively: they began throwing trash, water bottles, burning sticks and other things at the shock troopers¹⁴.

On November 30, 2013 MIA Minister Vitaly Zaharchenko apologized for the use of excessive force by the militia and promised to launch an investigation. On December 3, Prime Minister Mykola Azarov apologized for the actions of the militia in the parliament.

1.1.2. Events of December 1, 2013 in front of the Presidential Administration

Around 16:00 on December 1, a series of clashes between militia and protesters near the presidential administration building on Bankova Street took place. Dozens of people were injured. The media reported that a group of activists drove up a bulldozer and tried to break through militia cordon and ranks of soldiers of internal troops holding a post in front of the building of the Administration; several militia officers were injured. Then a group of activists tried to break through the militia cordon with sections of metal fences. Some activists also pulled at militia shields and threw cobblestones at militiamen. At this very moment the Berkut units started mopping-up actions using tear gas and smoke grenades and began

¹⁰ <http://www.hrw.org/ru/news/2013/12/04/ukraina-izbytochnaya-sila-protiv-demonstrantov>

¹¹ Ibid.

¹² Ibid.

¹³ <http://www.pravda.com.ua/news/2013/11/30/7003683/>

¹⁴ <http://www.hrw.org/ru/news/2013/12/04/ukraina-izbytochnaya-sila-protiv-demonstrantov>

advancing against the protesters and beating people with batons. Witnesses told that militia beat many people, including those who behaved themselves peacefully and tried to hide in the adjacent streets¹⁵.

As a result of clashes many people were injured. In particular, there were reports on hundreds of injured militia officers and soldiers of internal troops. Also, two dozen people received chemical burns. In the Internet there appeared the video of brutal beating by Berkut troopers of detained rioters near the Presidential Administration on December 1. The video shows how the Berkut troopers boot and beat with batons people; these people offered no resistance, they just lay on granite¹⁶.

According to information made public by the Ministry of Health, for the period from 30 November to 2 December in Kyiv 248 people turned for emergency medical aid, including 190 between 12:00 on December 1 to 6:00 on December 2. 139 people were hospitalized, including 76 law enforcement officers and 3 journalists¹⁷.

1.2. Beating of detainees

On September 4, 2013 the militia officers arrested Andriy Ivashchychyn from Lviv. Six men in plain clothes grabbed him at the entrance of his house, overmastered him using punches, handcuffed and pushed into a car and only then announced that he was detained. They didn't allow him to call his relatives and inform them about his detention. Andriy was shown a photo of an unknown girl and told that she was raped and murdered. They paid no attention to his explanations that he did not know the girl on the photo and instead drove him to the Shevchenko district militia department in Lviv.

In the district militia station they brought him to the office, where all sorts of people entered both in uniform and in plain clothes. Each entrant abused the detainee with dirty insults and found it necessary to hit him. They pummeled his body and punched on the head. Then they started pulling a plastic bag on his head demanding to own up to the crime. His attempts to explain that on the day, when the crime was committed, he was not even in Lviv was not taken into account. Despite the hot weather Andriy was not given water to drink. Late in the evening he was transferred to another office, made him sit down on a chair and chained him to this chair with three pairs handcuffs.

In the morning he was beaten again and then taken to the forensic medical examination; they forewarned him to hold in abeyance about "physical oppression" for he would make it only worse. However, the detainee informed the experts that the law enforcers beat him black and blue.

Nearly three days Andriy Ivashchychyn was kept in handcuffs and beaten: they wanted him to confess to rape. The torture stopped only when they found the true criminal, and released only after the intervention of the lawyer¹⁸.

¹⁵ <http://www.hrw.org/ru/news/2013/12/04/ukraina-izbytochnaya-sila-protiv-demonstrantov>

¹⁶ <http://tsn.ua/politika/berkut-po-zviryachomu-biv-zatrimanih-pid-ap-na-kolina-merzota-revoluciya-s-ka-video-323166.html>

¹⁷ <http://www.hrw.org/ru/news/2013/12/04/ukraina-izbytochnaya-sila-protiv-demonstrantov>

¹⁸ <http://fakty.ua/169388-tri-dnya-menya-derzhali-v-rajotdele-milicii-v-naruchnikah-pytkami-zastavlyaya-soznatsya-v-iznasilovanii-i-ubijstve-devushki>

The Lviv procuracy commenced criminal proceedings on the subject of beating Andriy Ivashchyschyn at the district militia station. However, the case of this Lviv resident who was tortured for three days without allowing him to contact his family and lawyer, without formal registration of his status as a detainee shows that after the adoption of the new Criminal Procedure Code, where there is no such rule as “giving oneself up”, the crime detection practice of law enforcement officers has undergone no changes. Often the militiamen make a person to admit a crime keeping her/him in militia stations for a long time, through physical abuse and psychological pressure.

1.3. Beating a person in custody in an investigative isolation ward¹⁹

Andriy Luniov was in custody since January 2012 on suspicion of committing crimes under art. 307 and 311 of the Criminal Code. In the investigative isolation ward he was placed in a medical unit for medical care as a patient suffering from a number of infectious diseases. On the night of January 9, 2013 he lost consciousness. He was hardly brought round. The doctor diagnosed “acute disturbed cerebral circulation (stroke). Critical condition. Needs urgent hospitalization in the intensive care unit at Starobilska CRH.”

After Andriy received the necessary medical care at the Starobilska CRH of the Ministry of Health, he was again placed in the investigative isolation ward, while he was in the soporose state and verbal contact was unattainable.

On January 17, the lawyer of Andriy appealed to the European Court of Human Rights with a request to provide urgent medical examination and treatment of Andriy.

The next hearing in the criminal case of Luniov in the Town of Brianka was appointed for January 31. On his way from the investigative isolation ward to the court, on January 30, Andriy was in the Alchevsk detention center (a few kilometers from the Town of Brianka). At about 17:25 in the detention center two militia officers began pressing L. to sign a waiver of appeal to the ECHR concerning failure to provide proper treatment and state that he had been properly treated in the investigative isolation ward. Trying to be persuasive the law enforcers beat him. They stopped beating only after he had signed the needed statement.

Andriy and his lawyer filed a statement to the Brianka prosecutor’s office about brutal treatment by the militiamen in the Alchevsk detention center. The investigation into the complaint is still ongoing.

In addition, Andriy filed a complaint to the European Court about violation of Article 3 of the Convention on Human Rights in relation to him. At present, the case has passed the stage of communication with the Government of Ukraine and Andriy is waiting for the decision of the European Court in his case²⁰.

1.4. Beating of detainees and prisoners in penal institutions

Beating detainees and prisoners in the institutions of the penal system continues. Ukrainian prisoners complain of mass beatings and poor conditions of detention. According to

¹⁹ <http://www.khpg.org/ru/index.php?id=1360239927>

²⁰ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122154>

human rights organizations, only from the beginning of 2013 about two hundred prisoners formally turned for help.

It is impossible to find out how many episodes of beating and abuse take place in the colonies because there is no relevant statistics. Their number pops up in the European Court rulings in favor of prisoners and millions of compensatory payments from the budget. The Prosecutor General's Office reports only on individual inspection: from the early 2013 they have conducted nearly a hundred inspections by now. However, for employees who are guilty of abuse, these checks usually come to nothing²¹.

The colony no. 99 (Bilenke Village, Zaporizhzhia Oblast). Early in the year the human rights organization "Association of Bohdan Khmelnytsky" received information from the prisoners of the colony no. 99 about regular tortures and beatings. The personnel of the colony continuously beat prisoners, especially the first-timers. The same "measures of influence" are applied to those who refuse to work, even if the refusal is motivated. As a means of pressure the guards threaten disobedient prisoners to pour urine from bottles on them which guards always carry with them. The colony no. 99 is intended for first-timers and is considered a determined for of those convicted for the first time and is considered an exemplary institution²².

Shyriayevsky Correctional Center of the Department of the State Penitentiary Service of Ukraine, Odesa Oblast. The public prosecutor's office initiated three criminal proceedings against personnel of the Shyriayevsky Correctional Center of the Oblast Department of the State Penitentiary Service of Ukraine under part 3 of art. 364, under part 2 of art. 365 and under part 1 of art. 127 of the CC of Ukraine respectively (abuse of power and abuse of office; transgression of authority or misuse of power; torture).

During the morning exercise of inmates the chief of penal institution, against the will of one of them, forced him to carry out gymnastic exercises. After the convict's refusal to make exercises due to the deteriorating health the law enforcer decided to punish the prisoner and threaten the rest of inmates and inflicted a series of blows with rubber baton on the convict's legs, back and head causing bodily injuries.

In addition, it was found that during the period from February to April 2013 one of the chiefs Shyriayevsky Correctional Center deliberately kept prisoners in disciplinary detention facility at an air temperature of 10 °C causing suffering of convict's as a long-term (7 to 14 days) deprivation of heat in unhealthy conditions and other violent actions²³.

The human rights advocates have compiled the anti-rating of Ukrainian "problem" colonies²⁴:

- Oleksiyivska colony no. 25 (Kharkiv Oblast): beatings, suicides, tortures.
- Zamkova colony no. 58 (Town of Iziaslav, Khmelnytsk Oblast): terrible upkeep conditions.
- Penal colony number 89 (Dnipropetrovsk): inadequate medical care.
- Kamyanska penal colony no. 101 (Zaporizhzhia Oblast): humiliation and beatings.

²¹ <http://maidanua.org/special/pk/?p=5542>

²² <http://obx.org.ua/в-колонии-запорожской-области-персон/>

²³ <http://maidanua.org/special/pk/?p=6402>

²⁴ maidanua.org/special/pk/?P=5542

1.5. Beating of journalists

The whole country has witnessed the episode with beating of the journalists of the 5th Channel and *Kommersant* publication during mass events on May 18, 2013.

The assault on journalist of 5th Channel Olga Snitsarchuk and photographer of the publication *Kommersant-Ukrayina* Vladyslav Sodel took place on May 18, 2013 near the headquarters of the Ministry of Internal Affairs in Kyiv on Velyka Zhytomyrska Street where they carried out their professional activities. The journalists were attacked by about ten people in sportswear. According to Sodel, the militia did not intervene in the incident, although the journalists repeatedly asked militia officers to protect them.

He said that the men beat them till they bled, particularly Snitsarchuk had a split lip and smashed hands, her phone was also broken. Sodel, who tried to protect her, also received minor injuries. He remained at the scene to make an official report on crime, while Snitsarchuk was taken to the emergency hospital to show by document the marks of blows²⁵.

The statement of the Independent Media Trade Union of Ukraine (IMTUU) maintained that the public prosecutor's office commenced criminal proceedings in the case of inaction of law enforcement officers during the assault on Olga Snitsarchuk and Vdad Sodel only due to the sharp reaction of journalistic community. When the dust had settled, the case was closed. The officials of the media trade union insist: "The public prosecutor's office is covering the militia, which regularly closes its eyes on the very fact of beating journalists. Moreover, it turned out that the attackers on journalists operate under the shield of the militia. The public prosecutor's office does not want to put an end to it"²⁶.

The journalistic ethics committee noted with regret that this outrage became another evidence of the dangerous trend. The bureaucracy, law enforcers, private bodies or individuals ignore the current legislation on the information space.

The endeavor of honest journalists to do their job more often end now in beatings, damaged equipment, and abuses²⁷.

2. LEGISLATION

On November 20, 2012 the new CPC of Ukraine came into force. The provisional report mentioned a number of novels intended to increase guarantees of protection against torture and promote effective investigation.

In this report, we try and analyze whether the expectations that relied in this context on the new CPC made successful headway.

In particular, the provisions of the new CPC of Ukraine, which include mandatory commencement of criminal proceedings in all cases of existence of circumstances which may indicate criminal offense (article 214 of the CPC) had to solve the repeatedly stated in the decisions of the European Court issue of numerous failures to commence criminal proceedings

²⁵ <http://www.pravda.com.ua/news/2013/05/18/6990166/>

²⁶ <http://sprotiv.org/2013/07/27/prokuratura-pokrivaye-miliciyu-u-spravi-pobittya-zhurnalistiv/>

²⁷ <http://www.cje.org.ua/statements/117/>

on complaints of individuals and conduct all necessary investigative steps that should solve the problem of failure to take all necessary investigatory actions intended to gather evidence during the investigation.

However, the Chairman of the Committee on Legislative Support of Law Enforcement A. Kozhemyakin at the meeting with the experts of the Council of Europe on February 19, 2013 drew attention to significant distortions in the application of the new CPC and “the main problem of its application consists in open sabotage of the bodies conducting pre-trial investigation”²⁸.

The experts suggested that the stage of commencing a criminal case and any check before entering the application in the Unified Register of Pretrial Investigation (URPI) is a “gray area”, not controlled by the law, in which the main falsifications take place. That is the international experts supported such procedure for registering applications (without preverification) as a safety measure against tortures and mass falsifications that earlier were made before the stage of criminal proceedings.

As a result, the first part of article 214 of the CPC requires to register the application immediately, but not later than 24 hours after its submission. Part four clearly prohibits refusal and registration of application.

But nine days before the new CPC was enacted the Prosecutor General ordered to amend the instructions on the accepted procedure of registration. In fact, these changes empower the law enforcement authorities to carry out unspecified by law and not regulated by law verification of the application before entering it into the registry in the course of seven days. Actually, the instruction distorts one of the main ideas of the code: the elimination of the human factor from the decision to start an investigation. In fact, this instruction substitutes the law and stands above the norms of the CPC. As a matter of fact, this instruction brings back the old order of receiving applications about crimes, but in a more distorted variant.

According to A.Kozhemyakin, the committee every day gets current information from the Ministry of Internal Affairs of Ukraine; it clearly shows that now the militia determines to register an application for a criminal offense or not at its own discretion. As a result, it is unknown what has become of one half of the applications of citizens. On February 9, 2013 they refused the registration of 2615 applications and reports. On February 15, in violation of article 214 of the CPC, they refused the registration of 2550 applications and reports.

A subtle distinction in this case is in the fact who determines whether the message has signs of a criminal offense or not. As far as these criteria are not specified in the Code, the presence or absence of such criteria is determined by militia officers on their own discretion²⁹.

As a result of amendments to the above provision in 2013, the regulation specifying the seven-day verification was removed. However, taking into account the statistics according to A. Kozhemyakin, it is obvious that during its effective period the idea of an immediate early investigation suffered an irreparable damage, because thousands of applications about crimes were not entered into the Unified Register of Pretrial Investigation.

On the whole the New Code of Ukraine regulates in detail the admissibility of evidence in criminal proceedings. Thus, the CPC in part 1 of article 87 consistently establishes the

²⁸ <http://www.cje.org.ua/statements/117/>

²⁹ <http://copwatch.fri.com.ua/?p=280>

doctrine of the “fruits of the poisoned tree”, when not only the evidence obtained directly as a result of violation are recognized inadmissible, as well as the evidence that would not been obtained if the former ones were not obtained in the first place. In this way, the evidence, admissible by itself, obtained using information originating from inadmissible evidence becomes inadmissible, too. This design of the law of evidence has to force the investigating authorities to behave very cautiously because any doubt about the voluntariness of obtaining certain evidence could have fatal consequences for the evidentiary material collected during the investigation. However, these provisions will have practical effect only if the courts will interpret the relevant provisions of the Code in good faith³⁰.

Moreover, the significant violations of human rights and fundamental freedoms due to allowance of which the evidence is recognized inadmissible mean, in particular, violations of human rights of defense, testimony or explanation from a person, who was not notified of her/his right to refuse to testify and not to respond to questions, or their obtainment in violation of the this law, obtainment of evidence from a witness who later will be recognized a suspect or accused in the criminal proceedings.

Under the new Code of Ukraine, the participation of a lawyer in the proceedings on charges of committing heinous crimes is a must. The suspect and an accused may waive counsel. In this case such waiver must occur only in the presence of defense counsel after the opportunity for confidential communication. The waiver of defense counsel is recorded in the minutes of legal proceedings. The waiver of defense counsel is not approved if the counsel’s participation is required. In this case, if the suspect or the accused waives counsel and does not admit another counsel, a defense counsel must be admitted in the prescribed manner to defend the accused.

On June 2, 2011, the Law of Ukraine “On Free Legal Aid” was adopted; tis law specifies the content of the right to free legal assistance, procedure for exercising this right, the grounds and procedure for the provision of legal aid, and state guarantees to provide free legal aid.

Since the beginning of 2013 the centers providing free legal aid (FLA) started their activity; according to the law “On Free Legal Aid”, they should ensure participation of a lawyer as a protector of persons prosecuted under criminal proceedings who cannot hire a lawyer on their own, or when the interests of justice require such procedure. To ensure the right to the protection of individuals from the first moment of detention the procedure for informing FLA centers cases about detention was adopted, which covers both the apprehension of a suspect of a crime and administrative detention³¹. Immediately after the actual apprehension the apprehender (and if this officer fails to do it, this should be done by an officer in charge of apprehended persons) should inform the appropriate FLA center, which provides for the arrival of a lawyer to the detention station, usually one hour from the moment of commissioning the lawyer. In point of fact, the investigating authorities violate the duty of immediate notification about the detention, and do it at their own discretion, usually after the official registration of detention.

There is also the problem of lawyer’s reaching the detainee in rural areas, where the centers are not staffed with the FLA lawyers. Therefore, in such cases they make the detainee to

³⁰ <http://helsinki.org.ua/index.php?id=1362642458>

³¹ <http://zakon4.rada.gov.ua/laws/show/1172-2012-%D0%BF>

write a waiver of counsel, although the above Procedure provides that the waiver of counsel must be made in his presence. There is one more way to circumvent the requirement to call a lawyer from the FLA center when the detainee allegedly intends to hire a lawyer herself/himself, but in fact no lawyer comes there. It should be noted that the remuneration of the lawyers who come to pre-trial investigation institution to provide legal assistance to the detainee is so low that they motivate the lawyers to leave the custody as soon as possible. We can say that the introduction of the system of FLA failed to become a factor changing the situation with the use of unlawful violence during the preliminary investigation.

The new CPC contains provisions for the establishment of the State Bureau of Investigation to investigate crimes of law enforcers. In connection with the establishment of the State Bureau of Investigation the office of a public prosecutor will be responsible for the investigation of complaints of ill-treatment.

Almost always the brutal treatment was used to obtain an avowal of guilt from a detainee because the admissibility of evidence in criminal proceedings is crucial to ensure the legality of the latter. In this context it should be stressed that, unlike the Code in force until November 20, 2012, the new Criminal Procedure Code of Ukraine contains no provisions that allow the use in criminal proceedings of confessions obtained during preliminary investigation. Thus, in accordance with article 95 ("Evidence") of the Criminal Code of Ukraine, the court can base its conclusions only on the testimony that he immediately perceived during the trial or received in accordance with the procedure specified in article 225 ("The examination of a witness aggrieved during the preliminary investigation during the judicial session") of this Code. The court has no right to justify its judgments with evidence given to an investigator or prosecutor, or refer to it.

Unfortunately, it should be noted that the practice of torture in the district stations continues. However, as reported above, according to the statistics available to the Ombudsman, the number of complaints of torture at the militia bodies has decreased considerably³².

3. THE "ANTI-TERRORIST" UNIT

The previous annual reports informed about the set-up in 2005 special unit allegedly designed for anti-terrorist purposes³³, which was used for mass beatings in the institutions of the penal system to intimidate prisoners and persons under investigation.

The mass beatings of prisoners by this special unit was described in detail in the decisions of the European Court of Human Rights in cases *Davydov and Others vs. Ukraine*³⁴ and *Karabet and Others vs. Ukraine*³⁵. In these cases, the Court found violations by Ukraine of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in connection with mass beating of prisoners.

³² <http://www.pravda.com.ua/news/2013/08/22/6996472/>

³³ <http://zakon2.rada.gov.ua/laws/show/z0138-06>

³⁴ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99750>

³⁵ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115886>

Taking into account the findings of the European Court on the inadmissibility of the use of military units for intimidation and beating, the annual reports repeatedly recommended disbanding the special anti-terrorist unit and stopping the practice of mass beatings in penal institutions and detention facilities.

However, the Government, having made a first step towards disbanding of this anti-terrorist unit (the decision on state registration of the aforesaid order of the State Department of Ukraine for Enforcement of Sentences on the establishment of this special unit was canceled on the advice of the Ministry of Justice no. 15/88 dated 24.12.2007³⁶ and on January 14, 2008 it was excluded from the State Register of Legal Acts) later clearly demonstrated disregard for the rulings of the European court in the cases of Karabet and Davydov.

Then on July 3, 2013 the Ministry of Justice of Ukraine issued a new order approving the Regulation on the territorial (inter-regional) paramilitary unit of the State Penitentiary Service of Ukraine³⁷. Thus the “anti-terrorist unit” continues to exist.

4. INVESTIGATIONS BY THE BODIES OF PROCURACY

According to the statistics of the Prosecutor General's Office of Ukraine³⁸ and its response to the request sent by KHPG, with the coming into effect of the new CPC the number of reported criminal offenses under article “Torture” in comparison with the previous years remained virtually unchanged confirming the view that such legal qualification of unlawful coercion by law enforcement officers is almost never used. The number of registered allegations of a criminal offense “excess of power or authority” increased slightly short of 80 times if we compare the first quarter of 2013 with the same for 2012. Obviously, the adoption of the new Criminal Procedure Code should have solved the problem with the opening of criminal proceedings on complaints (applications) of torture. But by and large it has not changed the situation with bringing the perpetrators to justice, as the number of cases (proceedings) taken with accusatory acts to court remained almost at the same level and is just over 1% of the total number of applications for such crimes.

On April 9, 2013 carrying out the pilot decision in the case of Kaverzin the Ukrainian Government submitted to the Committee of Ministers of the Council of Europe the Global Action Plan (DH-DD (2013) 411)³⁹, which included a number of measures both to ensure the effectiveness of the investigation and prevention of ill-treatment by the militia.

Thus, the measures to prevent brutal treatment by the militia include as follows:

- Establishment of a national preventive mechanism (NPM) as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Kinds of Treatment and Punishment;
- Advanced training of government agents;

³⁶ <http://zakon4.rada.gov.ua/laws/show/v0015323-07>

³⁷ <http://zakon4.rada.gov.ua/laws/show/z1133-13>

³⁸ <http://www.gp.gov.ua/ua/stat.html>

³⁹ <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2297998&SecMode=1&DocId=2004126&Usage=2>

II. PROTECTION FROM TORTURE AND OTHER BRUTAL TREATMENT

- Novels of the new CPC particularly regarding legal representation of suspects/accused in a criminal case, issues associated with obtaining evidence and its admissibility in criminal proceedings, introduction of the post of the investigating judge;
- Use of video devices in places of detention.

Regarding measures intended to ensure effective investigation of complaints of brutal treatment by the militia, the Government of Ukraine globally informed the Committee of Ministers of the Council of Europe as follows:

- According to the new CPC, a full-scale investigation begins as soon as notice of a criminal offense is entered into the Unified Register of pre-trial investigations, i. e. the stage of pre-checking that existed under the old CPC in 1960, and was repeatedly criticized by the European Court has been abolished;
- Under the new CPC the status of victim has been formalized and includes now a number of procedural rights;
- State Bureau of Investigation, which will take care, in particular, of the investigation of complaints of brutal treatment by the militia, will be created in 2017 at latest⁴⁰.

Creation of the State Bureau of Investigation, as an independent body (without any hierarchical or institutional relations between the Bureau and the Ministry of Internal Affairs or the Prosecutor General's Office) authorized to investigate allegations of brutal treatment by militia officers can actually solve the systemic problem of ineffective investigation, which is usually carried out by the bodies of procuracy.

Indeed, the failure of prosecution to conduct an effective investigation of such complaints is largely caused by the fact that it is essentially an independent body. Thus, the procuracy has functions that lead to "conflict of interests" in its activities: on the one hand, it is the public prosecutor's office that is responsible for checking the legality of the activity of militia, and, on the other hand, the procuracy backs a charge in court and therefore has strong professional relationships with the militia.

Thus, the creation of the State Bureau of Investigation is one of the main tasks envisaged in the global plan of the Government to ensure the effective investigation of complaints of torture by the militia.

However, up to now the Bureau has not been set up. Therefore, the Ukrainian government has yet to get through a big chunk of work to overcome the problem of inefficient investigation of complaints of torture.

5. PRACTICE OF NATIONAL COURTS

5.1. Judicial practice of bringing law enforcers to book

In previous reports we have repeatedly referred to the existing judicial system in Ukraine responsible for taking to book the law enforcers for torture not under article 127 of the Criminal Code of Ukraine, which is about the responsibility for torture and other articles, but

⁴⁰ <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2297998&SecMode=1&DocId=2004126&Usage=2>

rather under articles 364 ("Abuse of power or abuse of office") or 365 ("Excess of power or authority") of the Criminal Code of Ukraine.

The convictions of militiamen under articles other than article 127 of the Criminal Code of Ukraine and the discharge of law enforcement officers from law enforcement bodies making the former civilian persons at the time of sentencing distorts judicial statistics of bringing to book militia officers for torture.

For six months of 2013 38 criminal proceedings were brought to trial concerning 65 militia officers for offenses attributed to torture or other brutal treatment⁴¹.

Unfortunately, quite often the courts pronounce too lenient sentences in relation to "butchers in uniform" that creates a sense of impunity among law enforcement officers who resort to tortures during the execution of their functions. Below there are several examples of cases concerning the militia officers who were accused of abuse in applying brutal treatment in the course of performance of their duties.

5.1.1. About the case of two Feodosiya militiamen

In March 2013 the Feodosiya City Court considered the criminal case against the personnel of Feodosiya Criminal Investigation Department. The law enforcement officers were accused of wanton infliction of physical sufferings to the detained on suspicion of stealing. The militiamen detained a taxi driver who did his night shift, and his wife and submitted them to 24-hr beating to get a confession of crime out of them. The taxi driver was continuously beaten from 10 till 12 a. m. on the following day and strangled him with a rope; they also threatened his wife with physical violence and gang rape.

They were motivated by their desire to improve the statistics of crime detection. The court established that the law enforcers used torture to beat out a detainee's confession; nevertheless the court freed them from the real term for serving their punishment.

The verdict published in the Unified State Register of Court Judgments read that pursuant to article 365 of the Criminal Code of Ukraine (abuse of power or authority) the court sentenced two Feodosiya law enforcers to five years of imprisonment with deprivation of the right to work in law enforcement bodies for up to three years. However, under article 75 of the Criminal Code of Ukraine, the court dismissed militiamen from the main sentence with probation for two years⁴².

5.1.2. About the case of ex-militiaman Olexandr Fartushny

In May this year, Olexandr Fartushny, former assistant detective of the Koreabel District Militia Station of Mykolayiv, was sacked.

On January 9, 2013 the Central Court of Mykolayiv sentenced the ex-militiaman for beating three students to four years of deprivation of freedom and a fine of UAH 8,700.

However, a former militia officer appealed the verdict of the court of first appearance and the Court of Appeal of Mykolayiv Oblast abolished the sentence⁴³.

⁴¹ http://eng-new.kafanews.com/novosti/70083/65-militsionerov-v-ukraine-poschitali-vinovnymi-v-pytkakh_2013-08-22

⁴² http://kafanews.com/novosti/60850/sud-dal-otsrochku-feodosiyskim-militsioneram_2013-03-07

⁴³ <http://news.pn/ru/criminal/87769>

5.1.3. About the case of former militia officer Dmytro Karadzha

The Ovidiopol Regional Court of Odesa Oblast absolved from all blame former deputy chief of the local regional militia station of VIA Dmytro Karadzha⁴⁴.

This officer was often at the center of scandals because of his questionable methods of “combating crime”. In court, he was charged with two criminal episodes when the personnel of regional department of internal affairs derided and beat a detained local resident, who was doped and drove the moped, and they beat another detainee during fingerprinting.

These facts became known because the law enforcers shot their “diversions” on a mobile phone and showed clips to their relatives and friends. When the prosecution opened on these facts a criminal case, all the militia officers involved and deputy chief of the regional militia station Karadzha were immediately dismissed on grounds of “discrediting militia bodies”.

However, usually the militiamen who have committed violations of the law are discharged with the softer phrasing. More often than not it means simply quitting one’s job. And then they are tried not as law enforcement officials, but as civilians.

6. THE EUROPEAN COURT PRACTICE

In the case of *“Samoylovich vs. Ukraine”* (application no. 28969/04, judgment of 16.08.2013) the applicant during the entire period of his detention (from August 1999 to August 2006) complained about the lack of physical exercise in the fresh air and poor nutrition, poor sanitation, and therefore the Court found a violation of article 3 of the Convention.

In the case of *“Barilo vs. Ukraine”* (application no. 9607/06, judgment of August 16, 2013) the European Court found that the applicant was not provided with appropriate medical care during her detention and the conditions of her detention in Saki detention center fell under article about inhuman and degrading treatment. Although the applicant stayed in the above circumstances only 10 days, she experienced suffering which aggravated her sickness.

In the case of *“Gavula vs. Ukraine”* (application no. 52652/07, judgment of October 7, 2013), the Court noted that a set of factors such as overcrowding and poor hygienic conditions from which the applicant suffered for a considerable period of time is sufficient to conclude that the conditions of detention of the applicant in the Kyiv investigative isolation ward amounted to inhuman and degrading treatment.

In the case of *Kobernik vs. Ukraine* (application no. 45947/06, judgment of July 25, 2013), the Court decided that the material conditions of detention of the applicant in the investigative isolation ward, including: 1.5 m² of cell space per detainee, inadequate ventilation, poor sanitary conditions and non-isolated toilet, amounted to abasement of human dignity.

In the case of *“Vasylchuk vs. Ukraine”* (application no 24402/07, judgment of September 13, 2013) the applicant alleged that one of the militia officers intentionally pushed her down, and she, unable to get up, had to crawl into the barrack, and thus underwent treatment contrary to art. 3 of the Convention. Having regard to the evidence, the Court could not conclude beyond a reasonable doubt as to whether the applicant did undergo treatment contrary

⁴⁴ <http://dumskaya.net/news/v-odesskoj-oblasti-razvalilos-esche-odno-pytochn-029283/>

to art. 3 of the Convention. The Court concluded that the investigation into the applicant's case was not effective, that does not meet the requirements of art. 3 of the Convention.

In the case of *"Vitkovskiy vs. Ukraine"* (application no. 24938/06, judgment of September 26, 2013) the European Court, having regard to the applicant's injuries documented in the medical expert opinion, has no doubt that the applicant underwent treatment contrary to art. 3 of the Convention even in the absence of any evidence to prove the applicant's allegations about the fact that electric current was applied to his fingers and testicles. The Court also notes that the conditions the applicant refers to, namely: poor hygiene bedding, irruption of insect parasites exceeded the allowable threshold under art. 3 of the Convention. The Court states that the applicant did not receive proper medical care during his detention. The Court concluded that the applicant was deprived of a thorough and effective investigation into his statement about the fact that he had been brutally treated by the militia.

In the case of *"Yuriy Illarionovich Shchokin vs. Ukraine"* (application no 4299/03, judgment of October 3, 2013) the Court noted that the state has violated its duty to protect the life of the applicant's son, who came under its control and was in a particularly vulnerable situation due to his detention because of the threat of reprisals against him after the attempt of the applicant's son to escape. The Court concluded that there had been torture within the meaning of art. 3 of the Convention and ineffective investigation of this incident.

In the case of *"Voloshyn vs. Ukraine"* (application no. 15853/08, judgment of October 10, 2013) the applicant complained of two searches daily during the entire period of his detention (from June 10 to 18, 2004), during which the applicant was ordered to undress completely, he was placed in an iron cage, pushed him with sticks and forced to part buttocks. The applicant also complained about the poor sanitary conditions of detention, in particular the lack of bed linen, insect pests, non-isolated toilet, and lack of hygienic means. The European Court found that the conditions of detention amounted to degrading the dignity.

In the case of *"Taran vs. Ukraine"* (application no. 31898/06, judgment of October 17, 2013) the European Court found a violation of guarantees under art. 3 of the Convention, as the applicant's complaints about the conditions of his detention and transportation are detailed and consistent. These complaints relate to specific allegations concerning the transportation of the applicant in a metal cage. The Court finds that the notice of the applicant, which the Government has failed to deny, are confirmed by international and domestic reports considered by the court in cases of *Yakovenko* and *Koktysh* and the findings of the Court in cases concerning the conditions of detention in the Sevastopol detention center and mode of transportation between the Simferopol detention center and Sevastopol investigative isolation ward.

In the case of *"Sergey Savenko vs. Ukraine"* (application no. 59731/09, decision of October 24, 2013) the European Court considered that the authorities failed to take adequate measures to establish the attending circumstances of occurrence of applicant's injuries. In particular, the testimonies of the applicant and his cellmate do not fully coincide, it was not established, whether the applicant used salt to increase the pain from his injuries, as his cellmate maintained, and if so the how the applicant could obtain salt in the punishment cell. In light of the foregoing, the Court finds that the government has failed to provide a plausible explanation for the etiology of injuries of the applicant and has failed to rebut the applicant's allegations of brutal treatment by the personnel of correctional institution. For this reason,

the Court finds that there has been inhuman and degrading treatment and there was no effective investigation.

In the case of *"Tarasov vs. Ukraine"* (application no. 17416/03, judgment of October 31, 2013) the applicant has received numerous injuries, the origin of which had not been fully established. The Government did not deny the applicant's reference to the findings of the Forensic Medical Expert Examination Bureau of Donetsk, as proof that he had been brutally treated. Also from the case materials it is not clear whether the national authorities fully explored the possible causal relationship between the alleged brutal treatment and disability of the applicant, which developed during his detention, which made the applicant to attend hearing on a stretcher. The European Court found such treatment of the applicant a torture.

In the case of *"Sizarev vs. Ukraine"* (application no. 17116/04, judgment of April 17, 2013) the applicant complained, in particular, of overcrowding of the cell, lack of natural light, terrible sanitary conditions (lack of furniture in the cell, isolated toilet, no drinking water), inability to perform daily outdoor exercise including. Taking into account that the applicant was placed in such conditions immediately after discharge from the hospital, the European Court found incompatible with art. 3 of the Convention the detention of the applicant for more than two weeks in these conditions. The Court also finds violation of art. 3 of the Convention in the fact that the State failed to guarantee the safety of the applicant's detention in the Yevpatoriya detention center and therefore is responsible for the brutal treatment which he suffered from his cellmate. Furthermore, the Court decided that the national authorities had failed to conduct an effective investigation. With regard to the handcuffing the applicant in the hospital, the Court concluded that the measure was inconsistent with the requirements of safety and unnecessary humiliation, given that the windows of his ward were barred, the doors were locked, and he himself was always watched by three guards. Consequently, there has been inhuman and degrading treatment with respect to the applicant in the present case.

In the case of *"Gerashchenko vs. Ukraine"* (application no. 20602/05, judgment of November 7, 2013) the European Court noted that the lack of information in the medical report issued by a neurosurgeon about the damages the applicant received, according to him, due to beatings by the militiamen, cannot serve the proof that the applicant did not suffer these injuries, because the volume of neurosurgical examination was rather limited and the neurosurgeon looked for neurological injuries only, without assessing the overall health of the applicant and establishing the presence or absence of physical injuries. The Court finds a violation of art. 3 of the Convention, because the Government has not provided any plausible version of the origin of the applicant's injuries (injury of the right kidney); therefore there is reason to believe that the applicant received these injuries during or after his arrest by the militia.

In the case of *"Belousov vs. Ukraine"* (application no. 4494/07 decision of November 7, 2013) the European Court found implausible the version of the militia personnel regarding the fact that the applicant after being summoned for questioning voluntarily pleaded guilty of a crime, and then inflicted himself numerous injuries, which only the militia personnel managed to stop. In the context of the above and given that the brutal treatment of the applicant was performed by several militia officers behind the closed doors, which cruel treatment the applicant was unable to resist, and the fact that the applicant's physical pain associ-

ated with the inflicted injuries was intensified due to the feeling of helplessness, acute stress and anxiety, which may be ascribed to severe brutal treatment suffered by the applicant that was deliberate in its essence, continued several hours and was aimed at getting him to confess to a crime, the Court found the brutal treatment of the applicant a torture.

7. ON NATIONAL PREVENTIVE MECHANISM

According to the amendments to the law “On Ombudsman” approved by the parliamentarians on October 2, 2012, the ombudsman can without notice visit places of detention of people: isolators, rooms for detainees, military units, pre-trial custodies, disciplinary battalions, guardhouse, and more. The rights of Ombudsman and persons delegated by her/him are considerably extended: the number of visits to places of imprisonment is unlimited; the inspectors can question detainees to obtain information. In her/his work on prevention of torture, the Ombudsman may involve non-governmental organizations empowered by a separate written instruction, for example, for monitoring of penitentiary facilities⁴⁵.

The monitoring has shown that a significant obstacle to the establishment of a national preventive mechanism became the lack of funds. On the one hand, the previous Ombudsman has left his post, almost exhausting the next year budget. On the other hand, the financing of the national preventive mechanism is not provided for in the budget due to the absence of such direction of the activity of Ombudsman in the past. The way out was found in the fundraising. For example, all office equipment to complete the work of the structural unit was provided in the form of irrevocable charitable assistance by the UNDP Office in Ukraine. If needed, the Department personnel is sent for specialized training at the expense of grants obtained by non-governmental organizations involved in this activity⁴⁶.

In 2013 a law “On Amending the Law of Ukraine “On the Ombudsman of the Verkhovna Rada of Ukraine” concerning the national preventive mechanism” was adopted, which includes the state budgeting of the national preventive mechanism. But there still remain problems associated with the procedures regulating the activities of public authorities. The Ombudsman is not able to finance the monitoring visits of public figures. That is why the question of adequate material support of regular monitoring activities within the national preventive mechanism remains open⁴⁷.

Also it should be noted that in the case of an appeal to the Ombudsman of the Verkhovna Rada of Ukraine in most cases appeals and complaints are forwarded to the public prosecution bodies, which with rare exception find no violations of the law by the personnel of law enforcement agencies. An example of this would be the case of Luniov mentioned above, who was beaten in Alchevsk detention center for his appeal to the European Court

⁴⁵ “The Ombudsman has been vested with a function to control torture in prisons” Internet Publication “Europe”; 06.11.2012 — <http://europe.newsru.ua/article/16358398>

⁴⁶ “National Preventive Mechanism based on the model “Ombudsman +”, activity of the Ombudsman of the Verkhovna Rada of Ukraine — Report of human rights organizations “Human Rights in Ukraine — 2012”, Ukrainian Helsinki Human Rights Union, 2013

⁴⁷ Ibid.

of Human Rights about the application to him of the Rule 39 of the Court Regulations. Presenting the facts the victim filed an appeal to the Ombudsman of the Verkhovna Rada of Ukraine, which, in her turn, simply forwarded his appeal to the public prosecutor's office. The more effective response is the practice of the Ombudsman of filing the act of responding with the bodies of state power, because this practice requires measures to be taken by public authorities, and thus it is more likely to improve conditions of detention in places of captivity than the investigation conducted by the Public prosecutor's office following the Ombudsman appeals.

In addition, according to the instructions issued by the Ombudsman to the NGO representatives, such persons can monitor places of imprisonment only with the participation of the Secretariat of the Ombudsman. Therefore, the nature of such instructions and purpose of their issuance remain obscure, as far as the monitor is not entitled to visit the place of imprisonment without Ombudsman's secretariat staff. At the same time, in our view, there is no need in such instructions if the monitor visited a colony or other place of imprisonment with the Ombudsman's office employee.

8. RECOMMENDATIONS

1. Establish an independent body for effective investigation into the allegations of torture by law enforcement officers and employees of the penitentiary system.

2. Disband special "anti-terrorist unit" created by the order of the Ministry of Justice of Ukraine on July 3, 2013.

3. Public authorities should disclose the true scale of torture. To do this, the law enforcement bodies, institutions of penal system and courts should carry out statistical assessment of the cases of torture and publish their data.

4. Law enforcement officers against whom criminal law suits were filed on their use of torture should be suspended from their duties at the time of the investigation, but not released until passing of sentence by the national court.

5. Law enforcement agencies should take steps to form among their employees a "zero tolerance" toward brutal treatment.

6. To amend the provisions of Article 127 of the Criminal Code of Ukraine in order to match the requirements of the UN Convention against Torture.

7. Continue to work together with the Ombudsman and NGOs to monitor places of imprisonment. Improve the NPM model by allowing monitors from the NGO sector to visit places of imprisonment by an employee on behalf of the NGO without a staffer of the Office of Ombudsman.

8. Provide funds in the state budget to finance the regular monitoring activities as part of the national preventive mechanism.

9. Ombudsman should extend the practice of filing the act of responding with government agencies, because such practice requires measures to be taken by public authorities, and thus is more likely to improve conditions of detention in places of imprisonment than the investigation conducted by the Public prosecutor's office on the appeal of the Ombudsman.

10. Doctors of the medical institutions of the MIA and State Penitentiary Service of Ukraine are servicepersons, have military ranks, are on the staff list of an institution under the State Penitentiary Service of Ukraine and obey the orders of the command. In this regard, it is necessary to reattach the medical services of the Ministry of Internal Affairs and State Penitentiary Service of Ukraine to the Ministry of Health.

11. The law enforcement personnel need regular retraining, including the personnel of special purpose units, in order to prevent the use of brutal treatment in the future.

12. GPO shall conduct an effective investigation into allegations of the use of violence by law enforcement officers to the civilian population during the events of November 30 and December 1, 2013 and report on the results of the investigation to the public.

13. The State Penitentiary Service of Ukraine in the implementation of measures intended to prevent brutal treatment in penal facilities, shall pay special attention to the colonies included into anti-rating by the human rights activists.

III. RIGHT TO LIBERTY AND SECURITY¹

1. CONTROL OF DETAINEES IN THE NEW CRIMINAL PROCEDURE CODE

With the adoption of the new Criminal Procedure Code there was a significant progress in the legal control of detainees during criminal proceedings. In particular, the grounds for detaining a person suspected of a crime by an authorized official without court sanction were aligned with the Constitution of Ukraine: in the case of perpetration of an offence or attempt to commit an offence and if immediately after commitment of an offence a witness or a set of obvious signs indicate that a certain person has just committed a crime an offence. After a detention an authorized person shall by technical means report on detention to the agency carrying out the preliminary investigation and bring the detained person to the nearest body of the pre-trial investigation and immediately register there the delivery of the detainee and if the delivery of the detainee takes more time than it is objectively necessary, the investigator is expected to investigate the reasons for this and solve the issue of liability of officials who are to blame².

According to art. 209 of the CPC Ukraine, the detention period is calculated from the moment of detention, which is determined by the Code in accordance with the practice of the ECHR, that is when the above person by force or through submission to the orders has to stay with the authorized officer or in the room defined by an authorized official.

Article 212 of the CPC of Ukraine specifies that in each unit of the pre-trial investigation there is an official in charge of keeping the detainees, who shall immediately register the detainee, explain her/him the reasons for detention, her/his rights and responsibilities and to ensure proper treatment of detainees and respect for her/his rights and prompt rendering of appropriate medical aid, as well as making a formal record by a health worker of the injury or deterioration of the health of the detainee, including, following the expressed will of a detainee, to admit a specific person who has the right to engage in health activities, to ensure recording of information about all actions performed involving the detainee. However, neither the CPC nor the MIA instruction about the on-duty militia organization which duplicates the last position of the CPC does not even mention the very document in which the above records should be entered about the actions conducted involving the detainee.

Actually, in the bodies of internal affairs the functions of such official responsible for the detention are performed on a “part-time” basis by a duty officer having a huge number of other priority duties. Currently, the officers’ supervisory duties, including the responsibility for the health of the detainees, are not included in a separate regulatory document, but are only mentioned in one subparagraph of the instruction on the organization of the on-duty re-

¹ Prepared by Gennady Tokarev, lawyer, Head of the Strategic Litigations Department, KHPG.

² Art. 210 CPC.

sponsibilities of the internal affairs agencies with a rather inappropriate title “Consideration of the circumstances of people brought to an internal affairs agency”. For comparison, in England and Wales there is a separate Procedural Code regarding the detainees, their treatment and interrogation by police officers as part of the Law on Police and Collection of Evidence in Criminal Proceedings of 1984 (PACE), which regulates in detail all aspects of receiving, holding and transfer (release) of detainees on police premises. Therefore, the legal regulation of these issues in the Ukrainian legislation is manifestly inadequate. Even in the previous CPC³ the procedure of short-term detention of persons arraigned on suspicion of having committed a crime an offense was defined by a separate normative act of the FSU⁴.

Despite the legislative innovations, the entry into force of the new CPC brought about no significant changes in law enforcement, and such kinds of violations of the law as unacknowledged detention, delay in registration of detention under the false pretext are in use until now.

The operatives go on arraigning persons and the official arrest report is done not by them, but by the investigators. Accordingly, they enter a distorted time and place of the actual arrest into the report; thus they hide the delay in registration of detention, and, which is most important, the detainee is kept under control of operatives indefinitely without assigning them the status of a suspect and therefore depriving detainees of opportunities to take advantage of the relevant procedural rights.

According to the lawyers acting as defense attorneys, in order to leave out the CPC provisions the law enforcers employ various tricks, including entries in the relevant registers about a “visit” of a person paid to the militia station of their own free will who later went away, while in fact the person continues to be kept at the militia station. In general, the registration of the arraigned person brought to the militia premises as a visitor is used by militia officers to interpret the status of a person as “free person”, which is not in a position of subordination to the officer, who has ordered her/him to stay at hand, and allegedly is free to leave the premises of the militia station.

In order to beyond the general prohibition to carry out detention without judicial approval in some cases they use the “procedure” as follows: at first the person is actually arraigned and kept at the district militia station, where they get from her/him the right information about the crime. Then the investigator brings an action before the court about taking into custody and after obtaining judicial sanction s/he executes a process-verbal about detention, which as the time of arrest indicates the time that followed the decision of the court, as well as a fictitious place of detention.

There is no doubt that the new CPC having banned grounding court judgments with testimony furnished to the investigator or the prosecutor, that is the process-verbal of the relative investigation and, therefore, made futile receiving obtaining confession from the detainee and significantly complicated the task to substantiate the charge in court. However, obtaining information from a person under physical and/or psychological pressure which will provide evidence of a crime, including material, in condition of being illicitly kept under control of officers from the moment of actual arrest and until the time of the official registration of arrest

³ <http://zakon2.rada.gov.ua/laws/show/1002-05>; art. 106-1 CPC (1960).

⁴ <http://zakon2.rada.gov.ua/laws/show/v4203400-76>

provides sufficient motivation for torture in the course of pre-trial investigation. In addition, through the use of physical and psychological violence they can intimidate a detainee who later during her/his meeting with the lawyer either repudiates testimony or being somewhat afraid of future ill-treatment by officers choose a position of admission of guilt.

Moreover, despite the fact that the CPC explicitly specifies that the explanations received from participants in the criminal proceedings and other persons are not evidence; such explanations selected by the personnel of the body of pre-trial criminal investigation, continue to be attached to the materials of criminal proceedings. In fact, during the entire stay at the militia department and until detainee's transfer to the detention center the detainee remains under control of the public agents in the law enforcement agencies where the operational staff mostly perform arraignment without the sanction of the investigating judge and later repeatedly contact with this person and take her/him to a body of pre-trial investigation, serve as a convoy during transportation to a court, during the choice of the measure of restraint, etc., that is they can exert pressure on the detainee. Obviously, the officers are motivated to use illegal methods of investigation, especially torture and ill-treatment. Of course, the illegal practice of arrest and detention of persons without registration at the agencies of internal affairs is combined not only with the application of pressure to make them to confess or get relevant information, but also with the ill-treatment in terms of the lack of food and conditions for normal sleeping on the premises of the investigating agencies.

The duty units of regional militia stations have registers recording all individuals coming to the militia station; each entry comprises information about name, middle name and surname of the person, information about a militia officer who invited the person to come to the district department or who arraigned the person, address of the person visiting the district department, as well as a column fixing claims filled out by the arrested or invited person with indication of the essence of the claim or the lack thereof.

It should be noted that even after its entry into force the new CPC the MIA, despite the clear definition of the moment of detention in article 209 of the Code, left some means for manipulating both in determining the time of arrest, and even with the recognition of the fact of detention. According to the MIA's instruction on organization of the work of duty units of militia bodies since the yearend of 2011 instead of two registers — one for the persons brought in and another for visitors and invited persons — they used a single register to record the detainees, visitors and invited persons. It gives the law enforcers virtually unlimited discretion to grant the status of persons brought by them to the militia, including after their previous physical arraignment.

Thus, presently the legal status of a person is not determined by the real nature of the relationship of authorized officers with the person (physical detention or voluntary consent to come to the militia), but the content of the entry in the register. A person can actually be arrested, taken to the militia and recorded in the register as a visitor or not registered at all, and then the actually detained person is deprived of jail-placement time keeping and in the absence of official status of a detained person the detainee cannot enjoy formal procedural rights provided by the law.

Another problem is that according to the MIA Instruction on the organization of the daily work of the duty units of the militia agencies a person is considered "delivered" only when s/he has been delivered to the duty unit of the militia agency, and the militia ward for these individuals is called "rooms for detainees and delivered". Thus, the individuals who have

been forcibly brought to the militia skirting the duty unit and are (illegally) held on other premises acquire the status of detainees only if the relevant record is written down.

Thus, a part of the people forcibly detained in militia cells is not granted the status of detainees since the very moment of their actual detention. This ambiguity in the legal status of persons forcibly brought to the militia is explained by special regulation on arraignment on suspicion of commitment of a crime and administrative detention preceded by “bringing” over to the militia without giving the status of the detainee. It should be noted that the new CPC contains no concept of “a delivered person”; the term remains in the Code of Ukraine on Administrative Offences (art. 265-9, 260). If a person is taken onto the militia premises and is not transferred to the duty unit, s/he is not deemed to have been forcibly kept at militia station. Of course, such a regulatory settlement for short-term detention of people, like the very practice of keeping persons on the premises of law enforcement authorities, does not comply with the provisions of article 5 of the Convention and practice of the ECHR, for example, in the case *I. I. vs. Bulgaria*.

2. JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS AGAINST UKRAINE ON THE VIOLATION OF ARTICLE 5 OF THE CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

2.1. Arbitrary arrest and taking into custody

The ECHR in the case *Taran vs. Ukraine*, application no. 31898/06, judgment of October 17, 2013 again expressed its clear position that “§1 of article 5 of the Convention requires that, in order to consider it free from willfulness, it is not sufficient to apply deprivation of freedom in accordance with national law only, it should also be deemed necessary in the given circumstances”.

In the case *Sizarev vs. Ukraine*, application no. 17116/04, January 17, 2013 and *Tymoshenko vs. Ukraine*, application no. 49872/11, judgment of April 30, 2013 the ECHR reminded once more that the court, when considering the application of taking into custody, should hear the arguments of the parties: “although article 5 of the Convention imposes no obligation on the judge when considering complaints about detention to look into every argument contained in the appellant’s submissions, her guarantees might have been deprived of effect, if judge, based on national laws and practice, could interpret as irrelevant or ignore specific facts relied upon by the detainee, which could be able to question the “legality” of deprivation of freedom”.

Instead, in the case of *Syzarev* the court did not take into account the fact that the sick-leave certificate, which proved the applicant’s inability to participate in the investigation, and information about his alleged intimidation of the victim were based solely on the statement of the latter; moreover, “the findings of the court about several trips of the applicant without the permission of the investigation do not contain facts, even in a generalized form”.

In the resonant case of *Tymoshenko* the ECHR repeated the view about the critical importance of the observance of the general principle of legal certainty when the deprivation of freedom is considered: “so that the conditions, under which under national law the deprivation of freedom is carried out, were clearly defined and so that the application of this

legislation was predictable to the extent that meets the standard of “lawfulness” under the Convention, “and acknowledged that decision about taking the applicant into custody” is in itself contrary to the requirement of legality”. Also, the ECHR held that “the reasons for taking her into custody put forward against her do not point to any risk of applicant’s avoidance of justice” and the court order for taking her into custody contained no references to her violation of the preventive measure in the form of violation of the pledge not to leave and there was no reason to treat her coming to the court a few minutes late as “reluctance on her part to cooperate”. Based on the judge’s decision, “the main reason for the applicant’s detention was alleged obstruction to the establishment of truth in the case and disdainful behavior” which in the sense of art. 5 §1 of the Convention is not grounds for imprisonment. In addition, “the Court cannot see why the replacement of applicant’s pledge not to leave the jurisdiction pending trial by taking into custody was in those circumstances the most appropriate precaution”. Given that the grounds and, consequently, the purpose of pretrial detention of the applicant remained unchanged until the conviction, the ECHR concluded that her deprivation of freedom throughout this period was arbitrary and illegal.

In the case of *Taran*, the ECHR underlined the need to justify pre-trial detention by specific circumstances of the case: “Arguments pro and contra discharge, including the risk of interference of the accused with the proper conduct of the proceedings, should not be presented in abstracto, but must be supported by facts. The risk of escape of the accused cannot be measured only by the severity of the sentence he faces. It has to be evaluated with reference to a number of other factors that may either confirm the existence of danger of escape or make it so small that it cannot justify detention in custody for the duration of the proceedings (§68 of the judgment).

In the case of *Barilo vs. Ukraine*, application no. 9607/06, judgment of May 16, 2013 the ECHR found a violation of Article 5 §1 of the Convention in the case where the judge extended the detention to ten days just to ensure that the investigating authorities have time to prepare their adduction for taking detainee into custody with the subsequent refusal of the prosecutor to allow for it in the absence of evidence of any circumstances which might prevent making it before the above adduction because the criminal case was initiated three days before arraignment of the applicant and adduction was submitted to the court three days after the arrest.

In the case of *Taran*, the ECHR also found a violation of §1 (c) in conjunction with article 5 §3 of the Convention in terms of government’s failing to prove the existence of risks for the use of pre-trial detention as a preventive measure and justification of its application solely on the basis of the severity of punishment faced by the accused and violation of §1 (c) of Article 5 of the Convention on the extension of keeping the applicant in custody after the preliminary investigation and referral of criminal cases to court in the absence of a judgment on (extension of) detention.

In the case of *Gerachenko vs. Ukraine*, application no. 20602/05, November 7, 2013 the ECHR found a violation of §1 (c) of Article 5 of the Convention by the Court of Appeal which, setting aside of judgment, imposed further detention without specifying any reasons for this and determining its deadline.

2.2. The use of deprivation of freedom for an illegitimate purpose

In the case of *Tymoshenko*, the ECHR stated that although the applicant’s deprivation of freedom was formally carried out for the purposes provided for by sub-paragraph “c” of

paragraph 1 of Article 5 of the Convention “for the purpose of bringing her before the competent legal authority on reasonable suspicion of her having committed an offense”, but the actual context and motivation given by the state authorities indicate that the real purpose of the event was the punishment of the applicant’s contempt of court, which, as stated, she demonstrated by her conduct during the proceedings.

2.3. Unregistered detention

In the cases of *Gavula vs. Ukraine*, application no. 52652/07, judgment of May 16, 2013 and *Belousov vs. Ukraine*, application no. 4494/07, judgment of November 7, 2013 the ECHR found a violation of §1 of article 5 of the Convention on inconsistencies in registration of the actual moment of arraignment when the delay in registration made one day. Moreover in the case of the case of *Belousov* (§83) the ECHR concluded that “the applicant was treated as a suspect and he remained under the de facto control of the militia at the militia station... and he was not allowed to leave the building of the militia station voluntarily”.

The ESPL confirmed its position that “the absence of the record of the arrest should be considered a serious offense by itself, because, as established by the court, the unacknowledged detention of an individual is a complete negation of the fundamental guarantees provided for in article 5 of the Convention and is a serious violation of this provision” (case of *Havula*, §82).

2.4. Imposition of administrative arrest as an administrative penalty

In 2013, the ECHR again made a decision which read that in Ukraine persisted the problem of administrative detention under a false pretext in order to be able to carry out legal proceedings related to suspicion of a criminal offense (the cases *Kvashko vs. Ukraine*, application no. 40939/05, judgment of September 26, 2013), *Rudnychenko*⁵ *vs. Ukraine*, application no. 2775/01, judgment of July 11, 2013. In the case of *Rudnychenko* the ESPCH declared this practice also a violation of the principles of legal definiteness and protection from arbitrariness enshrined in article 5 §1 of the Convention.

Moreover, in the case of *Kvashko* the ECHR found a violation of Article 5 §3 of the Convention in respect of undue delay in bringing the detainee before a judge as a result of delay of administrative and penal procedures that occurred without a break in time.

2.5. Illegal arraignment of the participants of the Yevromaidan

30.01.2014, there was a massive beating by the service personnel of former Berkut Special Forces of MIA of Ukraine of the participants of Yevromaidan and arraignment of more than 30 people. The ECHR gave a priority status to the application including the illegal detention of one of the victims of the dispersal of peaceful action Igor Syrenko (*Sirenko vs. Ukraine*,

⁵ In this and other cases the clerks responsible for court records stick to transliteration rules typical of Russian language and not Ukrainian. The correct transliteration in this case according to the rules of Ukrainian language is *Rudnychenko* (translator’s note).

application no. 9078/14)⁶. The circumstances of the case testify to the effect that after beating executed by special force the applicant was taken to the militia station and kept there for several hours without informing him of the grounds for detention. The ECHR sent the case to the Government of Ukraine for communication requesting information about conformity of the detention to the provisions of §1 article 5 of the Convention⁷.

2.6. Unfounded extension of detention

For the most part the legal decisions made by the ECHR in 2013 in cases against Ukraine on violations of Article 5 of the Convention related to the absence of changes in the justification by the courts of detention of the applicants over certain periods of time, their actual refusal to review the legality of the detention and considering the use of alternative preventive measures.

In the case of *Herashchenko* the ECHR noted numerous violations by Ukraine in the past of Article 5 §3 of the Convention on the grounds that, even in the event of a long period of detention the domestic courts relied on the same arguments for the existence of such throughout the period of imprisonment or even used the stereotypical formulations totally ignoring the flow of time. Moreover, the Court reminded the rules by which the prolonged detention may be considered reasonable:

- It “may... be justified only if there are factual indications that the requirements of a valid public interest, despite the presumption of innocence, outweigh the rule of respect for individual liberty laid down in Article 5 of the Convention”;
- “When deciding on the release or detention of a person, the authorities should consider alternative measures to ensure her/his appearance in court”;
- National courts should, “giving due consideration to the presumption of innocence, examine all the evidence for and against the existence of public interest which justifies a departure from the provisions of Article 5 and set them in their decisions on the applications for release”.

According to the established practice of the ECHR (the cases of *Herashchenko*, *Rudnychenko*, *Syzarev*, and *Taran*), “the solid reasons for the period of detention are never assessed in abstracto”, “§3 of article 5 of the Convention cannot be viewed as one implicitly allowing pre-trial detention on condition that it takes no longer than a certain period”, and “justification of any period of detention, no matter how short it may be, must be demonstrated by the authorities beyond any doubt”.

The ECHR repeated its view on the judgments in the cases of *Rudnychenko* and *Herashchenko* that “the continued existence of reasonable suspicion as to the fact that the person arrested has committed a crime is a must with respect to the lawfulness of the continued detention, but in length of time it becomes insufficient”.

In the case of *Havula* the ECHR suggested that although the first applicant’s detention could be justified by the seriousness of the charges brought against him and the likelihood of

⁶ <http://tyzhden.ua/News/100956?attempt=1>

⁷ [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspxno. {%22docname%22:\[%22sirenko%22\],%22respondent%22:\[%22UKR%22\],%22documentcollectionid%22:\[%22DECISIONS%22,%22COMMUNICATEDCASES%22\],%22itemid%22:\[%22001-141427%22\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspxno.%22docname%22:[%22sirenko%22],%22respondent%22:[%22UKR%22],%22documentcollectionid%22:[%22DECISIONS%22,%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-141427%22]})

escape and obstructing the investigation, “over a period of time the courts were expected to give clearer reason for continued detention” “in fact, ... they often relied on the same grounds without providing specific details and without analyzing whether the changes in the situation of the applicant have taken place”. The ECHR found the argument of the need of the investigation insufficient for continued detention of the applicants for several years and in the absence of data that the courts had considered the use of any alternative precautions concluded about the abuse of Article 5 §3 of the Convention.

In the case of *Syzarev* the ECHR, having found a violation of §§1 and 3 of Article 5 of the Convention, stated that “the justification provided by the national courts in order to deprive the applicant of freedom ... was described in general terms and did not take into account its specific and substantial argument” against taking into custody. Moreover, “the case file contains nothing to show that this substantiation has been developed over time and that further detention of the applicant in custody until his discharge was properly grounded”.

In the case of *Taran*, the ECHR found a violation of Article 5 of the Convention in terms of long-term detention of the applicant based on the content of court judgments which were formulated in general terms “which does not suggest that the courts have properly assessed the facts relating to the issue of the need for this very preventive measure under the circumstances. Moreover, over time, the further detention of the applicant required better justification, but the courts did not provide any further argument with regard to this”.

In the case of *Rudnychenko* the national court did not assess the applicant’s arguments concerning the emergence of new circumstances that were to be taken into account when considering the continued detention and justified such attitude only by the applicant’s previous criminal record.

In the judgment on the case of *Samoylovich vs. Ukraine*, application no. 28969/04, judgment of May 16, 2013 the ECHR expressed its position on justification of prolonged pre-trial detention of the applicant who had no criminal record in the past and was accused of committing one episode of robbery: “in the case of special length of the detention of the applicant the reasons for this should be extremely serious” and acknowledged the insufficiency of grounds to justify the applicant’s detention in custody for 5 years.

Also, the ECHR found a violation of Article 5 §3 of the Convention in the case of *Kobernik vs. Ukraine* (application no. 45947/06, judgment of July 25, 2013) when the judgment of the Court of Appeal on return of the case for further investigation did not contain justification to let the detainer stand for the applicant.

In the cases of *Herashchenko*, *Komarov*, *Rudnychenko*, and *Havula* the ECHR stated the rule that even when the reasons for continued detention are “applicable” and “sufficient” “the Court must ascertain whether the competent authorities have shown a “special diligence” in the conduct of the proceedings”. Based on this position, the ECHR in the case of *Rudnychenko* the delay in the proceedings related to the changing composition of the court found a violation of the applicant’s right “to be tried within a reasonable time or to be released before the end of the trial” because it contradicts the position of the ECHR: “When these reasons are “applicable” and “sufficient” the Court must ascertain whether the competent authorities have shown a “special diligence” in the conduct of the proceedings”.

In the case of *Komarov vs. Ukraine*, application no. 13371/06, judgment of May 16, 2013 the ECHR stated that “the national court kept justifying further detention by the absence of grounds for his discharge, while §3 of article 5 of the Convention provides for the opposite

approach and obliges national authorities to specify the reasons for the continued detention of a person". Moreover, "there is no data ... that courts have considered the possibility of using alternative preventive measures".

In the case of *Herashchenko* the Court found a violation of §3 of article 5 of the Convention because the justification of primary ruling about taking into custody by the seriousness of the offense and the risk of escape or commitment of a new crime was neither developed with the elapse of time of the proceedings, nor an alternative measure instead of keeping in custody was considered.

2.7. The absence of the detainee when considering detention

In the case of *Taran*, the ECHR found a violation of Article 5 of the Convention in terms of long-term detention (five years and nine months) on the basis of court decisions, some of which were taken without hearing the applicant personally and were formulated in general terms, which does not suggest that the courts have properly assessed the facts relating to the issue of the need for this particular preventive measure under the circumstances. Moreover, over time, the detention of the applicant required further justification, but the courts did not provide any further argument with regard to this matter.

2.8. Violation of the right to review without delay of the lawfulness of the detention

In the case of *Tymoshenko*, the ECHR concluded "that the scope and nature of judicial review provided to the applicant by the Pechersk Court do not meet the requirements of §4 of article 5 of the Convention". At the same time, it took note of the numerous requests of the applicant for release from custody, in which she noted specific and important arguments in favor of discharge without specifying whether any of these arguments were considered at all apparently considering them irrelevant to the lawfulness of the pre-trial detention of the applicant, as well as suggestions on bail, all of which were rejected by the national court (§279 of the judgment).

In the case of *Syzarev*, the ECHR found the term of appeal proceedings to review the legality of pre-trial detention of the applicant for 1 month and 5 days inconsistent with the requirement of "without delay" of §4 of Article 5 of the Convention.

In the case of *Taran*, the ECHR once again found a violation of §4 of Article 5 of the Convention on the absence in Ukraine at the time of the events complained of (2005) of the procedure of review of the legality of continued detention after the completion of preliminary investigation.

2.9. Violations of the right to compensation for the victim of unlawful arrest or keeping in custody

In the case of *Tymoshenko*, *Kvashko*, and *Taran*, the ECHR found a violation of §5 of Article 5 of the Convention on the grounds that the right to compensation for unlawful detention occurs when the illegality of the detention is determined by the decision of the national court while the laws of Ukraine do not stipulate a procedure for appeal to the national court

to demand compensation for imprisonment if the ECHR finds a violation of any paragraph of Article 5 of the Convention.

2.10. Implementation of the CPC (2012) concerning the right to freedom

Naturally, with the entry into force of the new CPC no changes automatically occurred in the approach of the courts (investigating judges) to preventive measures. The practice shows that the severity of the crime continues to be a dominant factor in the application of preventive measures in the form of taking into custody. The judicial practice with relation to the new for the Ukrainian criminal procedure concepts of “reasonable suspicion” and “risks” in many cases is very different from the precedents of the European Court of Human Rights. There is a number of problems concerning the application of preventive measures, especially in the form of taking into custody, some of which are specific to the new criminal proceedings and related to the specific regulation of these issues by the CPC (2012), while other are traditional for our criminal justice system:

- Laying the burden of proof of the absence of reasonable suspicion of having committed a crime, risks (art. 177 of the CPC) and the possibility of using less rigorous measure of restraint on the suspect contrary to the requirements of Part 2 of art. 194 of the CPC;
- Ignoring all the circumstances to be considered when deciding on detention, including health status (part 1 of art. 178 of the CPC), and when considering a request for a preventive measure (part 1 of art. 194 of the CPC);
- Consideration of the property and the family status of the suspect when determining the size of bail (part 4 of art. 182 of the CPC);
- Insufficient use of alternative preventive measures: house arrest, bail, personal surety;
- Extension of keeping in custody after the expiry of the approval of detention, in particular in case of expiry of approval of the investigating judge (part 4 of article 196 of the CPC) or the maximum period of detention in pre-trial investigation (art. 197 of the CPC), for example, in the case of transfer delay of the indictment to the court, error in the calculation of the expiration of the ruling of investigating judge on detention, violation by a prosecutor or investigator of the deadline for application for extension of keeping in custody (art. 199 of the CPC);
- Ignoring new developments that must be considered in accordance with part 3 of art. 199 of the CPC of Ukraine for extension of the period of detention.

On 04.04.2013, the High Specialized Court of Ukraine issued an information letter about some issues of the use of preventive measures during pre-trial investigation and court proceedings under the Criminal Procedure Code of Ukraine, in which it gave an explanation on the application of the relevant provisions of the CPC⁸.

It should be noted that there were cases when the courts considering the application of preventive measures not only demonstrated compliance with the national legislation, but

⁸ <http://cn.cr.court.gov.ua/sud0122/10sudf/10qfdsazxcds/04042013/>

acted in accordance with the approach of the European Court of Human Rights; examples are given below.

Thus, on 09.12.2013 the Appellate Court of Cherkasy Oblast rejected the prosecutor's appeal to the ruling of the investigating judge on the application of preventive measure in the form of house arrest instead of keeping in custody, which had been petitioned by the investigator. The court motivated its decision including the fact that "the investigator failed to prove that other softer precautions cannot prevent risks as stipulated by art. 177 of the CPC of Ukraine and did not take into account that detention is an exceptional preventive measure"⁹.

On 12.12.2013, the Solomyanka District Court of Kyiv with reference to the letter of the High Specialized Court of Ukraine for Civil and Criminal Cases of 04.04.2013 no. 511-550/0/4-13 "On some issues of the procedure of the use of preventive measures during pre-trial investigation and court proceedings under the CPC of Ukraine" dismissed the petition of the investigator about the use of keeping in custody as preventive measure in the case of expiry of the decision of the investigating judge on permission to arrest a person and her/his non-delivery to the court in session¹⁰.

On 12.12.2013, the Court of Appeal of Zakarpattia Oblast quashed the decision of the investigating judge on the use of the preventive measure in the form of keeping in custody if earlier another preventive measure was selected for the suspect. The investigator failed to mention in his petition the new circumstances that arose after the previous decision on the application of a preventive measure or existed at the time but were unknown to the investigating authorities. In addition, the investigator substantiated suspicion of commitment a crime by a person by evidence obtained prior to the entry of information about crime into the Unified Register, which, respectively, is inadmissible¹¹.

2.11. Some results of the introduction of the new CPC

There is one positive aspect of the practice consisting in continuing trend to reduce the number of criminal procedural arrests: they declined by 30. The number of applications of investigators and prosecutors for keeping in custody has decreased by 45% and the number of searches by 30%. According to MIA statistics, the investigators of the agencies of internal affairs without court authorization under art. 207 and art. 208 of CPC detained on suspicion of commitment a crime in the first quarter of 2013 3801 persons. This statistics fixes under one heading the arrests made both by authorized officials and civilians, and the resulting summary index of the number of detentions is included in the reporting forms of the bodies of pre-trial investigation. Firstly, it seems illogical to consider together arrests carried out by law enforcers and civilians since each of these types of arrest is regulated by separate rules, and that makes such statistics ambiguous. Secondly, it follows that there is still a standing rule recognizing the investigator as the official performing the arrest, although it is clear that in most cases investigators do not witness the commission of crimes or criminal attempt or

⁹ <http://reyestr.court.gov.ua/Review/35929130>

¹⁰ <http://reyestr.court.gov.ua/Review/36007274>

¹¹ <http://reyestr.court.gov.ua/Review/36048507>

stay close to the perpetrator immediately after the commission of crime. Currently, in fact, these arrests are carried out by others, mostly by militia operatives.

Based on the information of MIA and Prosecutor General's Office, the number of applications for permission to arrest the suspect accused with a view to bring her/him to the court is not expected to be an index of statistical reporting on the activity of the bodies of pre-trial investigation.

Analysis of crime statistics for the first quarter of 2013 compared with the corresponding data for 2012 shows that the number of people in investigative isolation wards declined by 35% or 11,000 prisoners: from 32 down to 21 thousand. The number of requests for taking into custody decreased by 45% from 2,500 monthly submissions in 2012 down to 1,350 monthly requests in the first quarter of 2013. Comparison with the year 2011 shows a decrease of 70%: monthly number applications in 2011 made 4,350. The incidence of alternative preventive measures also increased. Every month, up to 40 people used personal bail, up to 250 people — home arrest, and 2,100 people — personal commitment¹².

According to official statistics, the Supreme Court of Ukraine the number of submissions of the investigating agencies about the preventive measure of keeping in custody in the first half of 2013 compared with the number of submissions their views on about the preventive measure of taking into custody in the first half of 2012 fell by almost 70%. The number of cases of bail as preventive measure increased up to 2.65 times. But the same index in the first half of 2013 amounted to only 6% of all cases of keeping in custody.

Index	First 6 mos. of 2012	First 6 mos. of 2013
No. of submissions about taking into (keeping in) custody/approved by courts (investigating judges)	16.3/14	9.7/8.3
Bail as preventive measure	505	190

Since the entry into force of the new Criminal Procedure Code (as of 19.06.13), as stated by the expert of the Center for Political and Legal Reforms Olexandr Banchuk, about 12,500 individuals out of about 32 thousand were discharged from investigative isolation wards in Ukraine. He also noted about 30% reduction in the number of arrested suspects and fewer people are kept in investigative isolation wards. "If at the start of the new CPC there were 32 thousand prisoners in investigative isolation wards, as of June 1, 2013 there are 19,503 prisoners in investigative isolation wards. That is in fact 40% of prisoners were discharged from detention centers..."¹³

2.12. Keeping in custody with the aim to extradite an offender.

Retrial in the course of extradition procedure

The legal protection of persons subject to extradition cannot be considered effective. Moreover, in Ukraine there is no mechanism for individual assessment of the need for detention of every migrant or asylum-seeker as required by international law.

¹² <http://www.pravda.com.ua/columns/2013/05/21/6990340/>

¹³ <http://www.khpg.org/index.php?id=1371649248>

III. RIGHT TO LIBERTY AND SECURITY

Thus, the General Prosecutor of Ukraine informed that during 2009–2013 it received 640 requests for extradition of foreign citizens and 47 requests for temporary extradition. During this period, the Prosecutor General's Office of Ukraine decided to extradite 420 people, temporary extradite 43 and transport in-transit through the territory of Ukraine 116 people. And here is the statistics of requests for extradition to foreign countries due to their criminal prosecution.

No. of requests received	No. of requests approved	No. of requests turned down
38	14	2

The statistics of the court proceedings on the application of extradition arrest in 2013 confirms the low efficiency of relief at law in proceedings regarding the extradition of persons to foreign countries mainly using keeping in custody as a preventive measure¹⁴:

Type of procedure	Judgment	
	Approved	Turned down
Motion of the prosecutor on the application of extradition arrest	28	6
Motion of the prosecutor to extend extradition arrest	38	0
Appeal against extradition arrest:		
• office of a public prosecutor	2	7
• Detained (counsel for the defense)	3	18
Petition of the detainee (counsel for the defense) to replace the extradition arrest with another preventive measure	0	5

Foreigners and stateless persons who are illegally residing in Ukraine are not provided for by the legislation of Ukraine as special subjects of the right to free secondary legal aid. The Law of Ukraine postponed to 01.0.2015 the realization of this right for persons covered by the Law of Ukraine "On refugees and persons in need of additional or temporary protection"¹⁵. Therefore these categories of persons cannot effectively exercise their right to judicial protection of their rights, including the appeal against detention and interim custody.

The statistics of complaints regarding violations of various aspects of the right to freedom and personal immunity by the agencies of the Security Service of Ukraine, Mia and public prosecutor's office received by the Secretariat of the Ombudsman of the Verkhovna Rada of Ukraine from 01.01. to 15.11.2013 is as follows:

Violated rights	No.
Right to freedom and personal immunity:	2035
• Right to court verification of the validity of keeping in custody	92
• Freedom from arbitrary arrest or detention	403
• Right to know the reasons for the arrest or detention	18
• Right of the arrested or detained person to know her/his rights	6

¹⁴ According to the Unified State Register of Court Decisions <http://reyestr.court.gov.ua/>

¹⁵ <http://zakon1.rada.gov.ua/laws/show/733-18>

Violated rights	No.
• Right of the arrested or detained for the defense and legal assistance of a lawyer (articles 29, 63)	221
• Right of the detainee to challenge her/his detention in court	—
• Freedom from unlawful compulsory treatment	517
• Right of the arrested person to change the preventive measure	253
• Right to notification of the relatives about the arrest or detention	23
Other violations of this issue	502

3. RECOMMENDATIONS

1. To implement the control system in relation to:
 - Cases of actual detention of individuals by the militia operatives without the approval of the investigating judges, including the cases without arrest reports;
 - Compliance with the provisions of article 209 of the CPC recognizing the moment of arrest of the suspect of a crime as the time of her/his deprivation of freedom of movement;
2. In order to make article 208 of the CPC more exact it is advisable to specify the time of the arrest report.
3. Prepare and adopt the law about regulation on detention in militia, which would detail the procedure for detention of persons for the whole period of their stay under the control of law enforcement agencies from the moment of arrest and up to the time of bringing this person to the investigating judge.
4. To monitor compliance with the provisions of the CPC about entrusting the prosecutor with the necessity to prove the existence of reasonable suspicion, risk of escape of the suspect, accused, damage or destruction of evidence, adverse impact on witnesses or other persons and so on, as well as insufficiency of other preventive measures.

IV. RIGHT TO FAIR TRIAL: NON-CRIMINAL ASPECTS

The year 2013 was marked by the increasing political dependence of the judicial system and preparation of amendments to the Constitution with respect to the judiciary reform.

The results of the sociological poll carried out by Razumkov Center testify to the aggravation of situation reflecting the political dependence of the judicial system. Thus, by July 2013 the level of public trust towards courts has reached critically low mark. Over 80% of citizens believe that courts are dependent; 51% of respondents stated that the courts depended on President; 18% of respondents stated that the courts depended on executive bodies of power; 14% of respondents stated that the courts depended on the Supreme Rada. The courts enjoy the least trust among all the governmental institutions².

1. CONSTITUTIONAL STAGE OF THE JUDICIARY REFORM

Political power declared that after judiciary reform of 2010 and introduction of the new Criminal Procedural Code in 2012 appropriate changes of the Constitution were regarded as the next reform step. It was also a requirement of the European structures.

On July 4, 2013 the President submitted to the Supreme Rada the draft law on changes to the Constitution of Ukraine stipulating the strengthening of judges' independence guarantees³. Earlier the draft law was positively assessed by the Venice Commission. It is noteworthy that the draft law was devised by the Presidential Administration without active contribution from the Constitutional Assembly — an expert consultative and advisory body, set up by the President to elaborate appropriate amendments to the Constitution.

On October 10, 2013 the Supreme Rada expressed its preliminary approval of the draft law by 244 votes. The votes of at least 300 peoples' deputies at the coming session (starting in February 2014) are needed for the final approval.

The draft law specifically requires non-participation of the Supreme Rada in the process of judges' corps formation. All the decisions concerning appointments, transfers and discharges of the judges shall be made by the President on the motion from the Highest Council of Justice, and, in case of transfers, by the Highest Qualification Board of Judges. The judges

¹ Prepared by R. Kuibida and T. Ruda. Center for political and legal reforms.

² Nationwide sociological poll "Courts and judiciary reform in Ukraine: public assessment" // national security and defense no. 2-3 (139-140), 2013 p. // Internet source: http://www.uceps.org/ukr/files/category_journal/Zrnl_sud_2013_fnl_rdc.pdf.

³ The draft law on changes to the Constitution of Ukraine stipulating the strengthening of judges' independence guarantees no. 2522a of July 4, 2013 // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47765

will be appointed for life (currently the President appoints judges for 5 years, and then the Supreme Rada elects them for life). The Highest Qualification Board will be composed predominantly by the judges elected by the judges' convention.

The draft law also addresses the legalization of the Highest Council of Justice competences to appoint chief justices and their deputies on the motion from the respective judges' councils.

In general terms, the draft law takes into consideration the Venice Commission recommendations, with the exception of the clauses dealing with preservation of two independent bodies — the Highest Council of Justice and the Highest Qualification Board of Judges, whose functions might be duplicated; too broad scope of judges' immunity; and also the clause concerning Prosecutor's General membership in the Highest Council of Justice (the draft law only bans Prosecutor General from participating in decision-making processes with respect to judges).

Nevertheless, many experts believe that the passing of the abovementioned law will not put an end to the political dependence of the judges, but, on the contrary, will enhance an impact on judicial system under the President, as the President will participate not only in the judges' appointment, but also in resolving all the matters of their professional growth. Meanwhile, the Highest Council of Justice and the Highest Qualification Board will remain the instruments of influencing the judicial system, used by the President and his administration. Although the majority of judges are elected by other judges in compliance with European standards, currently the judges' convention in charge of the process fully depends on the President (the mechanism of this dependence is addressed in more detail below).

The procrastination in the constitutional process allowed the power avoiding the introduction of other necessary changes in the mechanisms of selection and responsibility of the judges, judges' self-governance etc. The opposition reluctance to support the Constitutional changes is also convenient for the political power, because under the circumstances the opponents can be accused of hindering the necessary reforms and hampering the process of Euro-integration.

2. JUDGES' SELF-GOVERNANCE: SERVING THE INTERESTS OF THE POLITICAL POWER

Following 2010 reform the re-organized system of the judges' self-governance also became politically steered.

The political situation at the time was as follows: the Chief Justice of the Supreme Court V. Onopenko, de facto in charge of the general jurisdiction courts severely criticized the reform. He was supported by the Council of Judges of Ukraine, composed predominantly of the Supreme Court judges.

Meanwhile Chief Justices of the Highest Administrative Court and Highest Economic Court supported the reform, proposed by the President Yanukovich, which envisaged the broadening of the scope of courts' competences with simultaneous restrictions of competences of the Supreme Court. It was at the time that the conflict between the said courts and the Supreme Court arose.

Then the chief justices of the specialized courts had a huge influence on the judges of the administrative and economic courts. The reform writers counted on this influence. Under the new law of 2010 "On Judicial System and Judges' Status" the two thirds of the high-

est bodies of the judges' self-governance (the judges' convention and the Council of Judges of Ukraine) were composed of the administrative and economic courts' officials, predominantly loyal to the President Yanukovych.

As to the judges of the general jurisdiction courts, their first conference under the new law of 2010 was called by the "organizational bureau", composed of the appellate courts representatives. The Supreme Court was left completely outside of the process. Eventually the control over the conference and judges' council was taken over by the newly formed Highest specialized court for civil and criminal cases, headed by the people's deputy from the presidential Party of Regions L. Fesenko.

The bodies of the judges' self-governance are in fact appointed: the convention delegates are elected by the judges' conferences, appointed, in their turn, by the judges' councils, set up by the same conferences of judges.

The general courts representing the largest vertical in the judicial system are insufficiently represented in the judges' convention and the Council of Judges of Ukraine. In particular, the general courts' judges, comprising about 2/3 of all judges, are represented by less than one third of all the convention delegates from the Council of Judges of Ukraine. Thus, only 30 delegates out of 6 700 judges of the general jurisdiction are represented at the judges' convention, while 2400 judges of the specialized courts have the representation of 60 delegates. Other delegates (3 per entity) are elected by the Supreme Court and Constitutional Court.

The XI regular convention of the judges of Ukraine was held on February 22, 2013 with the judges' participation described above (93 judges out of 96 delegates participated in the event). It is noteworthy that the highest body of the judges' self-governance not only abandoned any criticism of the judiciary reform and the entire situation in the field of justice, but also stressed the positive changes in this field and expressed its support of the President who initiated the draft laws aimed at improving the actual administration of justice⁴.

Almost all the decisions made public by the head, were approved unanimously. In his comment the judge of the Supreme Court V.Kosarev (probably, the only delegate who was at least relatively active in the deliberations) stated that he "had a feeling that all the convention decisions have been prepared in advance"⁵.

3. THE SUPREME COURT: CONTROL ESTABLISHED

For some time the power was struggling to gain control over the Supreme Court of Ukraine. The Court was stripped of certain competences and its influence was substantially reduced in 2010 allegedly due to its lack of loyalty and for counteracting the judicial reform.

On May 17, 2013 changes occurred in the Supreme Court leadership. Ya. Romanyuk, formerly the first deputy of the chief justice was elected chief justice. He held the office of the Council of Judges' of Ukraine head till February 2013. Right after the elections the new chief justice promised to restore the Supreme Court influence lost as a result of 2010 reform.

⁴ Decisions of XI judges' convention of February 22, 2013 // <http://court.gov.ua/userfiles/rishXI.pdf>.

⁵ Convention of the judges of Зїзд суддів України: життя в новому форматі // <http://ua.racurs.ua/186-z-yizd-suddiv-ukrayiny-jyttya-v-novomu-formati>.

As early as October same year the respective draft law “On introducing changes into some legal acts of Ukraine regulating the Supreme Court of Ukraine competences” was submitted by the people’s deputies close to Presidential Administration to the parliament.⁶ By the way, it was not the first instance of giving promises with respect to the restoration of the Supreme Court influence with the goal of electing Presidential Administration protégée as chief justice at the Supreme Court Plenum.

Under the draft law the following competences should be granted to the Supreme Court:

- providing mandatory conclusions on the correct interpretation of material laws or procedural law in defining relevant jurisdiction on the request of the heads of appellate courts, allowed for consideration in the Supreme Court by the highest specialized court;
- providing mandatory conclusions on defining relevant jurisdiction in specific cases on the request of cassation courts (respective highest specialized court);
- reviewing cases on the grounds of different interpretations of a norm of procedural law by the courts (cassation court) in defining relevant jurisdiction;
- reviewing cases on the grounds of non-compliance of the cassation court ruling with the decision of the Constitutional Court or the conclusion spelled out in the court ruling of the Supreme Court.

The restoration of the Supreme Court competences dating back to the soviet system of justice was also proposed, i. e. supplying the general jurisdiction courts with explanations-recommendations with respect to the use of legal norms; studying, alongside with the highest specialized courts practices of norm use (actually this requirement earlier served to justify the right to organize all types of inspections for all the courts of lower level, especially when chief justice of a court had to be removed).

The Supreme Court conclusions supposedly shall have the force of a law, as non-compliance of a court ruling with such conclusions will become the ground for appealing the ruling in appellate or cassation court.

To ensure the judges’ support of the draft law an increase in salary for the access to state secrets was proposed, as well as pension increase for the retired judges.

At the same time the draft law retained the procedure for submitting cases to the Supreme Court by the highest specialized courts, as well as the competences of the highest specialized courts to review the cases independently without remanding them to the Supreme Court, if the European Court for Human Rights passes a ruling against Ukraine and the violation in question will involve non-compliance with the procedural law requirements. Obviously, this provision is related, in particular, to the possibility of Yu. Tymoshenko’s verdict revision following the next hearing in the European Court for Human Rights, and the Supreme Court’s actions remain unpredictable as far as political power goes.

The need for enhancing the role of the Supreme Court arises from the Venice Commission conclusion, which pointed out only political motives for restricting its authority in 2010⁷.

⁶ The draft law “On introducing changes into some legal acts of Ukraine regulating the Supreme Court of Ukraine competences” no. 3356 of October 4, 2013 // http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48555.

⁷ Joint conclusion on the Law of Ukraine “On Court system and judges’ status” no. 588/2010 of October 15–16, 2010 prepared by the Venice commission and Directorate for the technical cooperation of the Directorate General for human rights and legal issues of the CE.// Internet source: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)026-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)026-e).

However, the combination of submitting this draft law to parliament and the election of the new Supreme Court Chief Justice gives grounds for concern. It looks like another step of strengthening political influence on the judicial system alongside with the restoration of certain administrative (out of court) levers in the Supreme Court operation.

The draft law⁸ was signed by the leaders and people's deputies of the two opposition fractions — "Bat'kivshchyna" and "UDAR". It differs substantially from the draft law devised by the Supreme Court and Presidential Administration.

This draft law envisaged the restoration of the Supreme Court competences on reviewing cases addressing controversial use of the procedural law norms. It also contains the proposal to empower the Supreme Court to remand cases for the Supreme Court review when need arises.

The Supreme Court also got the competences on reviewing cases when a cassation court ruling is contrary to the Constitutional court decision or legal position or interpretation spelled out in the Supreme Court ruling. The Supreme Court should be composed of 72 judges instead of 48.

The clauses enabling an individual access to justice represent an important novelty. The courts will be deprived of possibility to reject consideration of a case. The conflict issues of courts' jurisdiction will be addressed by the Supreme Court. If a court of different jurisdiction should handle the case, it should be sent to that court.

The latest draft law submitted by the opposition looks the most well-grounded among others, although it needed finalizing (especially in the part concerning the refusal of the Supreme Court and highest specialized courts to provide clarifications on the use of law outside court procedures; rejection of unjustified increase in the Supreme Court composition).

4. ACCESS TO JUSTICE

Under the law "On introducing changes to some legal acts of Ukraine regulating payment of court fees" of September 19, 2013 twice higher tariffs for court fees have been established for almost all the categories of cases. Moreover, the legislator introduced the court fees even if a person is penalized by the court for an administrative infringement.

The fair balance between the court fees paid for filing a petition in administrative and civil cases has been disrupted.

Earlier the amount of court fee for filing a petition against a body of authority in administrative case was smaller, but the introduced changes obliged the petitioner to pay twice as much if property claims against a body of power are lodged (0,2% of minimum wages, but not less than 1,5 minimum wages and no more than 4 minimum wages) — as opposed to civil claims against a private agent under the civil law (1% of the claim cost, but not less than 0,2 minimum wages and not more than 3 minimum wages).

Therefore after introducing the changes in 2013 the administrative claims' fees amounted to UAH 1720.5, while civil cases fees remained at the level of UAH 229.4. Note-

⁸ Draft law on introducing changes into some legal acts of Ukraine regulating the competences of the Supreme Court of Ukraine as the highest judicial body within the system of the courts of general jurisdiction no. 3356-2 of October 24, 2013 Internet source: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48798.

worthy, the bodies of authority are exempt from paying the fee in property claims against private individuals.

In fact the legislator stipulated that only one tithe of the administrative claims' fees is to be paid, while the court will collect the rest after the case is resolved, according to the compensation obtained. Nevertheless the fear to lose such a lump sum hinders many claimants from filing property claims against bodies of authority. This risk is also enhanced by the fact that the administrative courts are reluctant to make decisions on compensation to be paid by the administrative bodies.

Hence, the changes in the law defining court fees significantly restricted access to justice, especially in cases related to private property claims against the bodies of authority.

5. SELECTION OF JUDGES AND THEIR RESPONSIBILITIES

Formally the decisions on judges' appointments, transfers and removals are made by the President and the Supreme Rada, but in fact they are guided only by the motions from the Highest Council of Justice and Highest Qualification Board of Judges. Both bodies play key role in the formation of the Judges' corps and holding the judges accountable, and are, to a certain extent, under presidential and parliamentary majority control. No wonder that in many matters (judges' transfers, their appointment to administrative offices) they act in a synchronized mode, although the decisions are made independently.

Selection of judges to the courts of higher instances and also for the positions of chief justices and their deputies is being done "in chambers." The law not only fails to provide objective selection criteria, but stipulates no competition to that end. Characteristically, the majority of judges is transferred from Donetsk and Lugansk oblast' to hold leading offices in the courts. This "policy" led to a large number of judges' vacancies in the said oblast's.⁹ Slight progress has been registered in the procedure of primary judge's appointment: despite certain manipulations, some candidates got to the office by way of fair competition, without prior agreements or clout. But the mechanisms of career advancement and judges' responsibility, which present the largest threat for a judge's independence, almost annihilated this progress.

In 2013 the power continued applying the mechanisms of disciplinary responsibility to impose pressure on judges. The basics for judges' responsibilities are spelled out in the law in such a way that any judge can be held liable. Thus, for making "independent" decisions, a judge can lose his/her office, for example, for non-adherence to the time-frames designated for the consideration of a case. In practical operation, due to the judges' work overload, this becomes the main pretext for bringing a judge to disciplinary responsibility.¹⁰ The public

⁹ No one is left to administer justice to Donbass residents // <http://www.pravda.com.ua/news/2013/05/28/6990889>

¹⁰ As of first six months of 2013, the average monthly rate of cases filed with the general court per judge amounts to 63.5. It means that to avoid disciplinary sanctions a judge of a local general court, working without holidays should address at least three cases a day. In the appealation and administrative courts the average monthly workload per judge amounts to 280.7 cases, i. e. a judge working without holidays should address at least 12 cases a day.

monitoring results testify¹¹ that the disciplinary practice is inconsistent and often acquires the characteristics of targeted persecution. So, the justice is selective with respect to judges as well. These developments hamper the judges' operation and make them the censors of their own decisions, even under the absence of any guidance as to the specific outcomes of a court decision.

These and other mechanisms of the judges' dependence have been revealed, in particular, in the decision passed by the European Court for Human Rights in the case "*O. Volkov vs. Ukraine*" of January 9, 2013. The European Court for Human Rights made a note that under a disciplinary body discretion any action can be classified as the violation of oath and lead to the removal of a judge. Within the focus of the use of disciplinary mechanism to influence judges, the European Court for Human Rights obliged Ukraine to reform the system of judges' discipline.¹²

6. POLITICALLY STEERED JUSTICE

The courts developed into the means for achieving political and commercial goals, in lieu of performing their role as the instrument of human rights' protection. Political power has been using courts to resolve political issues (e. g. stripping the opponents of their deputy mandates, continuance of mayor and city council elections in the capital).

The administrative courts, sticking to the prevailing tendencies of former years kept banning many peaceful gatherings under the false pretexts. Virtual absence of decisions classifying the violations in resolutions, actions or inertia manifested by the President and higher state bodies and officials is most eloquent in itself.

The Constitutional Court, which is used to justify constitutionally dubious, but badly needed decisions, remains a trustworthy ally for political power. The practice of the Constitutional Court is politically predictable. The Constitutional Court used to ignore its earlier practices based on political expediency. In 2013 the power kept renewing the composition of the Constitutional Court, appointing loyal judges. As a result, for the first time the Constitutional Court has in its ranks the majority of judges (10 out of 18) with the experience in the inquest and investigation bodies; 9 — with the prosecutor's office background. Less than a half (seven judges) grew professionally in Donetsk or Lugansk oblast'. O. Tupytsky became a new, the seventh, judge from Donetsk. He used to work in the prosecutor's office, and, like the majority of judges in the Constitutional Court, had no prior expertise in the constitutional law. Only four judges in the Constitutional Court have scholarly background, specifically dealing with the constitutional law. The composition of the body under discussion fails to meet the European standards.¹³

¹¹ Disciplinary responsibility of the judges in Ukraine: legal and practical problems/ R. Kuibida, M. Sereda. — K.: FOP O. Moskalenko, 2013. — 72 p. (http://pravo.org.ua/files/A_D_NEW_final.pdf).

¹² Decision passed by the European Court for Human Rights in the case "*O. Volkov vs. Ukraine*" of January 9, 2013. // www.minjust.gov.ua/file/26531

¹³ Experts claim that another Donetsk judge in the CC in fact invalidates its independence // <http://www.unian.ua/news/570784-eksperti-kajut-scho-sche-odin-donetskiy-u-ks-faktichno-nivelyue-yogo-nezalejnist.html>.

Although judiciary reform substantially weakened the influence of the chief justices on the judges, the courts' heads still are perceived as the "center" representatives, as they are appointed by the Highest Council of Justice¹⁴ on the motion from the council of judges of the general courts, economic courts or administrative courts.

In cases of judges' non-compliance with the court heads' recommendations, they can be disciplined by the Highest Council of Justice or the Highest Qualification Board of Judges.

In practice the judges' councils of the respective courts, the Highest Council of Justice or the Highest Qualification Board of Judges, President and the Supreme Rada act in the totally harmonized way in personnel issues and in the appointment of the courts' heads. Very often the judges recently transferred from another courts (predominantly from Donbass) are appointed to hold the office.

7. RECOMMENDATIONS

1. Finalizing the draft law on changes to the Constitution, approved earlier by the Supreme Rada, with respect to the enhancement of guarantees of the judges' independence, aimed at complete implementation of the Venice Commission conclusions and due consideration to the opinion of the Constitutional assembly.

Finalizing procedure should cover the following areas:

- President should be empowered to appoint a judge on the motion from the Highest Council of Justice, but should not be involved in the judges' transfers or removals;
- the Highest Council of Justice should choose the court where the judge would work or transfer him/her to another court on the basis of competition;
- a standing qualification and disciplinary collegiums within the framework of the Highest Council of Justice in lieu of the Highest Qualification Board of Judges should be set up;
- The appointment of the courts' heads should become the prerogative of the judges' self-governance bodies;
- The concept of judges' immunity should be narrowed to the functional aspects;
- Prosecutor General should be removed from the Highest Council of Justice;
- Reject the proposal of increasing the retirement age for the judges up to 70 (the proposal to increase the minimum age for the judges from 25 to 30 is also worth revision, considering the need to have more representatives of young generation among the judges 'corps — i. e. young professionals with knowledge of foreign languages and appreciation for the European values).

2. The constitutional changes should be accompanied by the whole set of amendments to the law regulating court system, judges' status and administration of justice, otherwise they will only increase the judges' dependence. The aforementioned amendments should be introduced even prior to the changes in the Constitution.

¹⁴ The Constitution does not stipulate this competences among the competences of the Highest Council of Judges, the list of which is exhaustive.

They should mandatorily address:

- ***the reform of the judges' self-governance system.*** It should be simplified by cutting off the appointing bodies — the judges' conferences and councils of the general and specialized courts, so that each court could send its representative to the higher bodies of the judges' self-government. The number of delegates will probably grow as a result, but imposing political pressure on the larger of judges will become more difficult. Besides, the authority to appoint the courts' heads should be vested in the judges' meetings;
- ***the reform of the judges' selection.*** The mechanisms of competition in judges' career growth with objective criteria should be devised;
- ***the reform of the judges' disciplinary responsibility.*** The grounds for the disciplinary responsibility should be spelled out precisely; commensurate sanctions and statutes of limitations should be defined for the disciplinary responsibility; the contestant procedure for disciplinary action should be established; the uniform disciplinary body should be set up.
- ***the increase of the Supreme Court role in establishing consistent judicial practice.*** The draft law, introduced by the "Bat'kivshchyna" and "UDAR" fractions, can be used as framework document, with the amendments concerning the rejection of clarifications to be provided by the Supreme Court and highest specialized courts on the use of laws beyond the court procedures, as well as the rejection of the unjustified increase in the composition of the Supreme Court;
- ***revision of the court fees' tariffs.*** The discrimination of claimants against power bodies seeking property damages should be banned.

V. THE RIGHT TO PRIVACY¹

The right to privacy in Ukraine is protected by constitutional guarantees. For example, article 32 of the Constitution of Ukraine provides: “No one shall be subject to interference in his or her personal and family life, except in cases envisaged by the Constitution of Ukraine”. The concrete definition of protection of individual components of privacy is carried out by their protection in certain articles of the Constitution: protection of the inviolability of his or her dwelling place — article 30 of the Constitution of Ukraine, privacy of mail, telephone conversations, telegraph and other correspondence — article 31 of the Constitution of Ukraine, the collection, storage, use, and dissemination of confidential information about a person without his or her consent shall not be permitted — article 32 of the Constitution of Ukraine, no person shall be subjected to medical, scientific or other experiments without his or her free consent — article 28 of the Constitution of Ukraine.

Despite the existence of constitutional protection and protection at the level of relevant laws the enforcement meets with some controversies.

1. SECRET SEARCH, SURVEILLANCE, VIDEO CAMERAS IN PUBLIC PLACES, AND PHONE-TAPPING

In February 2013 in Kharkiv the Office for Combating Economic Crimes attempted to search the office of lawyer Atiskov, who conducted the case of Arsen Avakov, under the guise of a search of the company, which had not been there for a long time. Only the intervention of the people’s deputies with reference to relevant articles of laws banning the arbitrary search of the lawyer’s office permitted to stop the search².

On March 30, 2013, in Chernivtsi, illegal surveillance of Arseniy Yatseniuk, Head of the Batkivshchyna Party, was detected and representatives of opposition parties caught those, who conducted it. According to the press service of the Batkivshchyna Party, the vehicle belonged to the SSU surveillance service. However, Pavlo Deyneko, spokesman for the Chernivtsi SSU, refused to comment on this situation³. Later the action was undertaken against Yatseniuk on charges of interfering in the activities of the law enforcer⁴.

¹ Prepared by Ruslan Topolevsky, Center for Legal and Political Studies “SIM”.

² A. Avakov Accidents ... // <http://blogs.pravda.com.ua/authors/avakov/511a83ea6b0e2/>

³ The opposition detected persons who followed Yatsenyuk in Chernivtsi // <http://tyzhden.ua/News/75979>

⁴ The Chernivtsi militia undertook action against Yatseniuk on charges of interfering with the work of law enforcers // http://ipress.ua/news/militsiya_chernivtsiv_sprostovuie_stezhennya_za_yatsenyukom_i_zvynuvachuie_yogo_u_vtruchanni_v_ih_robotu_17859.html

In September, the officers of the Ministry of income and taxes searched “Era FM” radio host Tetiana Demyanenko during which they committed a number of procedural infringements, but failed to find anything⁵.

The politically motivated searches continued.

Thus, on December 9, 2013 the MIA and SSU officers searched the office of the political party. Though the MIA maintained that the search took place in the building on the 19-B, Turivska Street and not on 13, Turivska Street, where the office of the *Batkivshchyna* was situated at the time. Interestingly, the judgment authorizing the search specified the former address. During the storm of the office the windows were damaged, doors broken, servers were searched for and confiscated⁶. The officers also seized computers of the online edition *Tsenzor.net*, whose office was next door to the office of the *Batkivshchyna*⁷.

There were also searches in the apartments of individuals who were beaten and arrested after clashes on Bankova Street on December 1. On December 9, the officers searched the apartment of Yehor Previr, one of those none arrested people. According to journalist Ivanna Kobernik, the search started without waiting for the arrival of lawyers and during the search the officers seized the system unit of the computer, blank application form for entry into the organization *Bratstvo* and propaganda materials of the *Bratstvo* of Dmytro Korchynsky⁸. The next day, the apartments of Mykola Lazarevsky, Yaroslav Prytulenko and Vyacheslav Zahorovok were searched as well⁹.

On December 10, 2013 the National Commission for the State Regulation of Communications and Informatization approved¹⁰ the Telecommunication Sector Regulations (rules for the Internet access services)¹¹. The providers and their associations gave careful consideration to the draft of these rules. The Internet Association of Ukraine opposed the enforcement of these rules, because these rules were contrary to the Law of Ukraine “On Telecommunications”, which provided for the establishment of common rules for the all kinds of activities in the telecommunications sector, and not any separate rules for the Internet access services. The regulations also do not take into account the technical, legal and organizational features of Internet access services and contrary to the Law of Ukraine “On Telecommunications” they distort the concept of telecom operator and extend existing technological requirements for telecommunication operators to Internet service providers and other entities in telecommunications. So, they are obliged to install at their own expense on their telecommunications networks hardware necessary to conduct investigation and search operations for the authorized bodies. According to the Internet Association of Ukraine, these

⁵ SOS: Klimenko’s vultures searched the apartment of the journalist of “Era FM” // <http://k-z.com.ua/proisshestviya/27803-sos-stervyatniki-klimenko-obyskali-kvartiru-zhurnalistki-era-fm>

⁶ Servers were taken out from the office of *Batkivshchyna* // <http://www.pravda.com.ua/news/2013/12/9/7005711/>

⁷ Militia says that they searched neighbors of *Batkivshchyna* // <http://www.pravda.com.ua/news/2013/12/9/7005739/>

⁸ Arrested activist searched on charges of participation in the “storm near AP” // <http://www.pravda.com.ua/news/2013/12/9/7005645/>

⁹ One more Bankova detainee searched // http://society.lb.ua/accidents/2013/12/10/245698_kvartire_zaderzhannogo.html

¹⁰ On February 3, 2014 the Regulations were registered with the Ministry of Justice of Ukraine.

¹¹ <http://zakon4.rada.gov.ua/laws/show/z0207-14>

measures are intended to create illegal instruments of additional regulatory pressure on Internet providers¹².

The issue of functioning video cameras in public places as part of solving crimes remains unsolved. In the first place, the chiefs of the bodies of internal affairs wish to install as many cameras as one can linking them into a unified system with a central control room. However, there is no requirement, for example, concerning the storage of records and access procedure.

For example, the Ministry of Internal Affairs of Ukraine developed the draft enactment of the Cabinet of Ministers of Ukraine on adoption of state target-oriented program of law enforcement concerning the installation of video surveillance and fast response in public places. The Ministry of Internal Affairs believes that all settlements Ukraine need at least 26 thousand video surveillance systems. In 2013, there were 136 cameras in Kyiv and 800 in Donetsk. It is noteworthy that this Concept stipulated the state budget allocation of about 5.99 bn UAH for the purchase of video surveillance systems from 2013 till 2016¹³.

According to European standards¹⁴, the video surveillance is acceptable; however, it must meet the following requirements: the monitored areas must be systematically designated; an independent national body should be set up for the independent control of the establishment of surveillance, as well as the storage and use of personal data.

On January 8, 2013 sentenced former Prime Minister Yuliya Tymoshenko, who was imprisoned in the Central Clinical Hospital of Ukrzaliznytsia (Kharkiv), left her ward and moved to the bathroom to protest the installation of cameras which enabled round-the-clock surveillance. These cameras were installed in September 2012¹⁵.

On February 22, 2013 the administration of the State Penitentiary Service of Ukraine, after the televised wish of Viktor Yanukovych, instructed the Chief of Kachanivska Penal Colony to remove surveillance cameras in her ward. Tymoshenko returned to the ward.

Another issue is the question of clarifying the regulation of trading in technical means of data accessing.

On February 7, 2013 the SSU officers based on the judgment of court searched the apartment of Kherson journalist of the *Dorozhny Control* Newspaper Vytaliy Kosenko looking for prohibited key-chain mini-cam for motor vehicles¹⁶. Such persecution was a part of the tactics intended to subdue the activists of this organization, which filmed the illegal actions of the traffic militia. Prosecution under article 359 of the Criminal Code of Ukraine became one of the key activities of the SSU. Thus, only in 2013 under this article the courts of Ukraine passed about 100 sentences.

¹² IAU appeal concerning the adoption of the Rules of activities in the sphere of Internet access services // <http://reklamaster.com/articles/id/46399/index.html>

¹³ MIA will spend 6 bnUAH to buy cameras to keep crime off the streets // <http://proit.com.ua/news/telecom/2013/09/10/170320.html>

¹⁴ European commission for democracy through law (Venice commission), Opinion "On video surveillance in public places by public authorities and the protection of human rights", adopted by the Venice commission at its 70th plenary session (Venice, 16-17 March 2007) // [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)014-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)014-e.asp).

¹⁵ Jailers claim that the militia also survey Tymoshenko // <http://www.pravda.com.ua/news/2012/09/6/6972223/>

¹⁶ SSU searches the apartment of the Dorozhny Control Newspaper journalist Vytaliy Kosenko // <http://roadcontrol.org.ua/node/1712>

Article 359 of the Criminal Code of Ukraine establishes liability for illegal purchase, sale or use of special means of obtaining information; however, it is impossible to determine what should be considered as such gadget. Thus, the situation of legal uncertainty prevails when a person cannot make out whether her/his action is subject to criminal liability. According to current practice, such determination needs expert examination¹⁷. The prohibition by the Security Service of Ukraine of the sale of Google Glass may serve an example. At first, the SSU representatives maintained that the sale is potential, and then they banned to use them¹⁸.

Wiretapping of citizens by the government agencies is still an urgent problem due to decoding of the telephone conversations that get into the hands of journalists. For example, former Deputy Head of the Security Service of Ukraine Olexandr Skipalsky during a press conference said that the secret services of Ukraine had all necessary technical means for tapping both at home and abroad¹⁹.

The militia also used to locate citizens by the cellular phone number and then dialed the owners trying to identify them²⁰.

2. PROTECTION OF PERSONAL DATA AND IDENTIFICATORY DOCUMENTS

It is noteworthy that currently the identification number issued by the State Tax Administration remains the main electronic classifier on the basis of which the gathering and processing of personal data of the citizens of Ukraine are performed by governmental authorities.

The scope of its usage goes beyond the purpose for which it was introduced: tax accounting. Without an identification code there cannot be legal employment, access to pensions, realization of the right to education, collection of scholarships and unemployment benefits, obtainment of subsidies, opening of bank accounts, registering business entities, obtainment of degree credentials and more. That is, actually, there evolved an administrative practice of conscious breach by state authorities of the Law of Ukraine on integrated register of natural persons — taxpayers and use of tax number for purposes not covered by this Law.

The protection of personal data is carried out according to the Law of Ukraine “On Personal Data Protection” (adopted on June 1, 2010)²¹, which regulates the relations connected with the protection of personal data during their processing,

On January 25, 2013 the Kyiv District Administrative Court passed judgment on the action of journalist Serhiy Leshchenko which denied issuance of the constitutional petition for public inspection. It read: “In line with the instruction of the Head of the Constitutional Court

¹⁷ Legal uncertainty ... // <http://blogs.pravda.com.ua/authors/golovan/5130a7cc3c2e0/>

¹⁸ Ukrainians will not be able to legally buy Google Glasses because of the ban on “spy” gadgets // <http://ua.korrespondent.net/lifestyle/gadgets/1522010-ukrayinci-ne-zmozhut-legalno-kupiti-okulyari-google-glass-cherez-zaboronu-na-shpigunski-gadzheti>

¹⁹ Ex-SSU man: secret agencies are tapping citizens both at home and abroad // <http://www.pravda.com.ua/news/2013/06/27/6993126/>

²⁰ I got a call from the militia // <http://blogs.korrespondent.net/blog/celebrities/3222977-meni-podzvonyly-z-militsii>

²¹ <http://zakon1.rada.gov.ua/laws/show/2297-17>

the classified documents “For Official Use Only” include information on constitutional files at all stages of constitutional proceedings... The information contained in the constitutional files pertains to personal data of citizens”²². This absurd attribution of public information, which is created during the proceedings, to personal data is nothing more than a way obstruction in getting socially significant information. And taking into account the fact that the Constitutional Court of Ukraine, which is supposed among other things to protect the constitutional rights, takes up such position, the situation is all the more absurd.

On February 15, 2013, a round table “Changes in the legislation on personal data protection: achievements, problems and ways to tackle them” took place; it was organized by the Ukrainian Association for protection of personal data with support of the State Service on Protection of Personal Data. Olexiy Mervinskiy, Head of this Service, said that on February 7, 2013 for the first time the legal entity that had violated the legal requirements for the protection of personal data was fined 3,400 UAH. As of February 2013 the state service issued about 50 orders intended to eliminate violations of the law on protection of personal data. He also said that at the time it more than two million applications for registration of personal data were filed, of which more than 90,000 applications were processed and about 30 thousand were registered²³.

On January 30, 2013 the government adopted changes to the list of information subject to inclusion in the National Register of personal data under the provisions of the National Register of Personal Data Base and its scheme²⁴.

Under the changes, the Cabinet of Ministers dismissed holders of personal data from the obligation of registration of personal data processing of which is connected with the provision and implementation of employment relationships and personal databases that contain lists of the members of public and religious organizations, trade unions and political parties.

At the same time they supplemented the list of information to be entered into the State Register of personal data. In particular, the Register shall include information about third parties to which personal data are transmitted as well as transboundary transmittance of personal data. In addition, there shall be information on the composition of personal data processed.

In addition, the list of information publicly available on the website of the State Register of Personal Data has been expanded. In particular, the information on the composition of personal data processed, information about third parties to which personal data are transmitted, information on the transboundary transfer of personal data, information about other managers of personal data including name and location for legal entities and surname, name and patronymic (if any) for individuals shall be in the public domain.

On July 3, 2013 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On amendments to certain legislative acts of Ukraine concerning the improvement of the protection of

²² Circus exercises around Yanukovych taking the oath // <http://blogs.pravda.com.ua/authors/leschenko/511be761b7f7d>

²³ Round table “Changes in the legislation on personal data protection: achievements, problems and ways to tackle them” // http://press.liga.net/announces/kruglyy_stol_izmeneniya_v_zakonodatelstve_o_zashchite_personalnykh_dannykh_dostizheniya_problemy_i_p

²⁴ Resolution of the Cabinet of Ministers of Ukraine of 25.05.2011 no. 616 “On approval of the National Register of Personal Data Base and its scheme” // <http://zakon4.rada.gov.ua/laws/show/616-2011-%D0%BF>

personal data”²⁵, which, in particular, provided that from 1 January 2014 the Public service for the protection of personal data will be liquidated and the registration of personal data will be replaced with notification by the holders of the personal data of the Ombudsman of Verkhovna Rada of Ukraine about processing of personal data which are of particular risk to the rights and freedoms of the subjects of personal data.

The organs of state power and local self-government, as well as the holders taking the risk of carrying out data processing shall determine the department (person) responsible for the organization of protection of personal data during their processing. The information on the above responsible department or person should be brought to the notice of the Ombudsman of the Verkhovna Rada of Ukraine which shall ensure its publication.

The law gives a new definition of the personal data holder. Now this is a physical entity that determines the purpose of personal data processing, composition of these data and procedures of processing, unless otherwise provided by law, subject of personal data as physical entity whose personal data are processed, and the third party.

It also specifies that if the new goal of the personal data processing is incompatible with the previous one, the consent of the subject to such a change is necessary. The list of sensitive data shall include additional biometric and genetic data, though the accusation of crime shall be excluded.

It is assumed that the person shall be entitled to know the source of the collection and location of her/his personal data, purpose of processing, location or place of residence (stay) of the holder of the personal data, and to receive no later than thirty calendar days after receipt of the request, except cases stipulated by law, the answer about whether her/his personal data are processed, and to receive the contents of such personal data. In addition, s/he may file a complaint concerning processing of her/his personal data to the Ombudsman or a court.

It has been legitimized that the Ombudsman shall have the right to carry out inspections both upon complaints and on her/his own initiative, access to any information (documents) (classified data including) of owners or personal data administrators necessary for control of relevant databases or card files, classified information, adopt regulatory legal acts for personal data protection, use results of inspection and consideration of appeals to issue mandatory instructions on the prevention or elimination of violations and provide recommendations for the practical application of the legislation, clarify the rights and obligations of the relevant persons, draw up reports on calling to administrative account and take the cases to court and more.

It also assumes that processing is permitted without the law on protection of personal information by an individual for personal or household use, as well as solely for journalistic and creative purposes provided that the balance between the right to respect for private life and the right to freedom of expression is preserved. It should be noted that the force of the articles governing the general questions of personal data, sensitive personal data and human subjects (art. 6-8) may be restricted to protect the interests of national security, economic well-being and protection of the rights and freedoms of subjects of personal data or other persons. The administrative responsibility was also established for violation of obligations

²⁵ <http://zakon4.rada.gov.ua/laws/show/383-18>

to notice and react to the instructions of the Ombudsman, violation of the rules of personal data processing.

It should be noted that the Law mistakenly contains the previous definition of the State Register of Personal Data (§4 of article 2 of the Law); however, the definition of personal data subject's consent (§5 of article 2 of the Law) has been removed. Obviously this is a mistake that needs to be corrected.

In March 2013, the representatives of the two committees of the Verkhovna Rada of Ukraine sent an open letter to the Head of the EU Delegation in Ukraine Jan Tombiński signed by Chairman of the Committee for European Integration Hryhoriy Nemyria and First Deputy Chairman of the Committee on Human Rights Andriy Shevchenko on the state of the protection of personal data in Ukraine

In particular, it stated that under the pretext of meeting the requirements of the EU Action Plan on Visa Liberalization immediate amendments were made to the law "On the unified state demographic register and documents certifying the citizenship of Ukraine, personal identity or her/his special status" that creates significant risks of violation of fundamental rights and freedoms. They emphasized that the law gives excessive powers to the authorities, promotes corruption and the Unified demographic registry violates the human right to non-interference in her/his personal life and can lead to total state control over Ukrainians. Due to the fact that in order to cover undemocratic steps the government is using European rhetoric, the authors of the letter asked the representatives of the European Union to dissociate themselves from such dubious innovations initiated by the government.

The authors of the letter stressed that Ukraine has so far no "independent state supervisory board for the protection of personal data" and also drew attention to the "inconsistencies of legislation on personal data protection with the law on access to public information"²⁶.

This letter was probably devised in connection with the fact that on March 13, 2013 the Cabinet of Ministers of Ukraine issued Resolution no. 185²⁷, which in pursuance of the Law of Ukraine "On Unified State Demographic Register and documents proving citizenship of Ukraine, prove identity of a person or her/his special status" approved sample documents with an electronic chip bearing biometric data and determined the pattern of their production, issuance and destruction.

Although the introduction of biometric passport is one of the requirements and standards of the European Union under the European integration process, the need to use biometric chips in other documents that are circulated only in Ukraine and characterize the social, civil, financial and special status of the person is doubtful. In fact they intended to establish a single centralized system for the collection of personal data.

However it is worth noting that the whole regulation was intended to satisfy the needs of only one structure, i.e. the EDAPS Consortium owned by private individuals. This consortium has become a monopolist in the production of passports and other ID documents many and set excessive prices²⁸. It is also noteworthy that on April 25, 2013 the President appointed

²⁶ <http://www.pravda.com.ua/news/2013/03/3/6984738/>

²⁷ Some question of realization of the Law of Ukraine "On Unified State Demographic Register and documents proving citizenship of Ukraine, prove identity of a person or her/his special status" // <http://zakon1.rada.gov.ua/laws/show/185-2013-%D0%BF>

²⁸ The EDAPS kickback // http://gazeta.dt.ua/internal/vidkit-yedapsa_.html

Vasyl Hrytsak with which journalists associated creation of EDAPS the Deputy Chairman of the State Migration Service (SMS) (which was responsible for issuing these documents).

On June 3, 2013, on the site of *Visnyk Derzhzakupivel*, appeared the information that the SMS determined the winner of the competition for the production of electronic (biometric) documents: ID cards and foreign passports. Obviously the EDAPS Consortium became the winner. Other three contestants were not allowed to participate in the tender. Director of the Printing Facility *Ukraine* Maxym Stepanov appealed against tendering of Migration Service to the Antimonopoly Committee.

On June 7 the Antimonopoly Committee invalidated the results of the tender of the State Migration Service for procurement of biometric passports²⁹. Accordingly, on June 12, 2013 the Cabinet of Ministers of Ukraine stopped the government decree no. 185³⁰.

Presumably, the government decided to replace the production of EDAPS by Printing Facility *Ukraine*, which purchased all necessary equipment for execution of this order.

On September 11, the Cabinet of Ministers of Ukraine approved a plan to implement biometric passports. In order to create the Unified State Demographic Register the Government of Ukraine allocated 793.3 million UAH up to 2016³¹. In November 2013, the Cabinet of Ministers of Ukraine out of these funds allocated for the Ministry of Internal Affairs 295.1 million UAH for creation and operation of this register³².

However, it is clear that the existence of this law in its current form poses a potential threat to the right to privacy.

The observers also noted the presence of the practice, according to which, during processing of foreign passports at the Department of Citizenship, Immigration and Registration of Persons, except for the payments for a passport specified by the law, the visitors were informed about the need to pay additional charges. For example, they were asked to pay the Public Enterprise "Document" of the State Migration Service for the provision of consulting services, but with no mention of their optionality, if you turned down the proposal.

On December 3, 2013 the Supreme Court of Ukraine ruled that for obtaining passport the citizen has to pay only 170 UAH³³. However, in practice it turned out that the SMS officials did not consider this ruling as binding for an indefinite number of persons. Presumably, in order to obtain a passport for such a price other persons should again go to the law³⁴.

Despite the existence of legislation on personal data protection, in practice, public authorities often ignore it guided by different reasons.

²⁹ The EDAPS kickback // <http://gazeta.dt.ua/internal/vidkit-yedapsa-.html>

³⁰ Stopping the enactment of the Regulation of the Cabinet of Ministers of Ukraine dated March 13, 2013 no. 185// <http://zakon1.rada.gov.ua/laws/show/415-2013-%D0%BF>

³¹ Government approved the plan to introduce electronic passports//<http://www.info-kmu.com.ua/2013-09-12-000000am/article/16017498.html>

³² Cabinet of Ministers allocated 300 million UAH for the creation of Unified State Demographic Registry // http://zn.ua/ECONOMICS/kabmin-vydelil-pochti-300-millionov-griven-na-sozdanie-edinogo-demograficheskogo-gosreestra-132548_.html

³³ The Supreme Court solved the problem of the passport price: 170 UAH// <http://www.pravda.com.ua/news/2013/12/24/7008196/>

³⁴ Investigation: Ukrainians can get passport for 170 UAH only by a court ruling // http://zik.ua/ua/news/2013/12/27/zakordonnyy_pasport_za_170_grn_ukraintsi_mozhut_otrymaty_lyshe_cherez_sud_rozsliduvannya_450222

As of 6 April 2013 the Ukrzaliznytsia returned to the so-called “personalized tickets” with passengers’ personal data put down. Obviously, this personal information was used for purposes far removed from initial collection targets. For example, there were cases when the militia removed opposition-minded people from trains, probably knowing which car they were riding in. For example, on May 17, in the Donetsk Oblast, the militia removed from the train “Mariupol-Kyiv” 30 supporters of the All-Ukrainian Union “Svoboda” on their way to action “Arise, Ukraine!” in Kyiv. According to the All-Ukrainian Union “Svoboda”, militia knew in advance about who was going to go by train to the event from Mariupol because the officers addressed them by name and surname. Later the media published a copy of the letter sent by Department Head of transport militia Vyacheslav Pysarenko to the Head of Ukrzaliznytsia Serhiy Bolobolin. The letter upheld the need to introduce in Ukraine information retrieval system “Search-Mainstream” intended to automatically hunt for people who “represent operational interest”, identification of individuals, and analysis of information. For this purpose, the Ukrzaliznytsia was proposed to indicate in the travel document not only the first and last name, but also the series and number of the ID document.

After appeals for the cancellation of such train tickets³⁵ the State Service for Protection of Personal Data issued an instruction, according to which the Ukrzaliznytsia is “to ensure such entries in travel documents as first and last based on the words of the payer for the travel document without storing personal data in the Unified system and in any other databases”. Subsequently the Ukrzaliznytsia announced that the passenger’s information would remain on the ticket only and would not be entered into the database³⁶.

The politically motivated data collection about individuals goes on.

In September, the Department of Education and Science, Youth and Sports of the KCSA demanded that the schools compile lists of children whose fathers were journalists with indication of the first and last name of a child, name of its father journalist and mother journalist and places of their work³⁷. Moreover, in Ukrainian education the system was formed by which schools gathered information about schoolchildren’s parents, including information on their place of work. The educational institutions send these data to the Education management information system (EMIS) and then it is entered into the Unified state electronic database on education (USEDE)³⁸.

The Prosecutor General’s Office and MIA demanded personal information on media channel “24” journalists covering the events of 30 November and 1 December in Kyiv. Once the channel refused to provide such personal data guided by the law on personal data protection, on December 11 Roman Andreyko, channel’s CEO, received a summons to appear in PGO for questioning³⁹.

³⁵ Vira Serdyuchka watching you!//<http://www.umoloda.kiev.ua/number/2351/176/83639/>

³⁶ Ukrzaliznytsia has fulfilled the requirements of the ruling of the SSPPD of Ukraine//<http://zpd.gov.ua/dszp/uk/publish/article/64463>

³⁷ But you, Stirlitz, please...//<http://gazeta.dt.ua/internal/a-vas-shtirlic-ya-poproshu-.html>

³⁸ Ministry of Education denies gathering “dossier” on parents of the pupils//http://dt.ua/UKRAINE/minosviti-zaperechuye-zbir-dosye-batkiv-shkolyariv-129230_.html

³⁹ PGO and MIA required to provide personal information of the journalists of the media channel “24”//http://24tv.ua/home/showSingleNews.do?gpu_ta_mvs_vimagayut_nadati_personalni_dani_zhurnalistiv_telekanalu_24&objectId=391232

Also the Prosecutor General's Office within the framework of investigation into alleged abuse of power by militia officers during the rallies of 30.11.2014 ordered Taras Shevchenko Kyiv National University to submit complete personal data of students who without good reason skipped lectures on the 29.11.2014 and 12.02.2014 and also lecturers who were absent without good reason as well. In addition the PGO required providing a list of initiators, activists, organizers who stirred students to actions⁴⁰. As university administration refused to provide such information, the same info was requested by First Deputy Minister of Education Yevhen Sulyma⁴¹.

Overall, according to unofficial information, the practice of collecting by militia sensitive personal information about individuals (information about political views, religious beliefs, sexual orientation, participation in the program replacement therapy, etc.) continues.

The staffers of Druzhkivka Department of Labor and Social Welfare were instructed to collect personal information under the guise of filling out by residents of the "profiles of supporters" of PR. The questionnaire among other things had to specify the full name, home address, loyalty (treatment of the Party of Regions), date of birth, place of employment and phone number. As stated, the employees of the department had to conduct door-to-door round and interview residents using the questionnaire. The Druzhkivka Mayor, who was also chairman of the municipal organization of the Party of Regions, Valery Hnatenko said that he had no info on such questionnaire⁴².

The state employees were forced to fill out similar forms in Poltava⁴³ and Torez⁴⁴.

In February 2013 the "Instruction on the organization of the criminal minors' militia" came into force⁴⁵. Among other issues, the instruction has put in order the delinquency prevention register that directly affects the processing of personal data.

The law specifies preventive registration of minors in eight cases: enforcement of punishment not connected with imprisonment; court decision on setting a minor free from criminal responsibility by applying compulsory educational measures; court decision on setting a minor free from prosecution and punishment under the amnesty; serving a minor a notification of suspicion of a criminal offense; setting free from special educational facility for minors of the State Penitentiary Service of Ukraine; copy of the official warning about the inadmissibility of the commission of domestic violence; detection by the officer of the criminal minors militia (KMM) of a minor who has committed an administrative or criminal offense and who was issued a diagnose of "drug addiction", "toxicomania", "alcohol" by a health care institution; detection by a KMM officer of a minor who has committed administrative offense two or more times and who has been called to administrative account.

⁴⁰ PGO requires information about Shevchenko University students and faculty who came to the Maidan // <http://tyzhden.ua/News/95671>

⁴¹ Dymon wants to know the names heroes: the Ministry of Education will help MIA with reprisals // <http://obkom.net.ua/news/2013-12-01/1055.shtml>

⁴² Officials are forced to put questions about the loyalty to the Party of the Regions // <http://www.pravda.com.ua/news/2013/10/28/7000914/>

⁴³ Public activist: in Poltava state employees are forced to fill out the "Form of supporter" // <http://www.poltava.pl.ua/news/24726/>

⁴⁴ Who is canvassed at Torez lyceums and enterprises?.. // <http://progorod.info/story/92155>

⁴⁵ <http://zakon4.rada.gov.ua/laws/show/z0121-13>

Thus, a minor drug addict will not be put on the record by militia. It will take place only when such minor commits an offense.

The procedure for early removal from the register of preventive educational work was also established. However, the information about registered minors is covered by the law on personal data protection.

There remains a peculiar situation when a person receiving information about her/himself from the state registers is to pay for it, while the sum of payment is different in different registers, although they are financed at budget's expense. In September and October 2013 there was a conflict between the Ministry of Justice of Ukraine and the developers of client access to public registers of the Ministry of Justice "Art-master" and "Z-T" in connection with the appointment of the new head of the State Enterprise *Information Centre of the Ministry of Justice of Ukraine* responsible for administration of the state registers of the Ministry of Justice. The personnel of the State Enterprise *Information Centre of the Ministry of Justice of Ukraine* charged L. Bohdanov, the new head, with the fact that on the first day of his incumbency the new director ordered to copy all DB by individuals⁴⁶ who were not employees of the company; as a result their interference stopped the work of registers. Justice Minister Olena Lukash, in her turn, argued that trying to take control of the state registers the Ministry of Justice refused to pay these firms to support registers, as a result of which the developers blocked the access to the registry. Later, the access to registers was renewed⁴⁷.

On October 19, the access to the Unified State Register of Legal Entities and Individual Entrepreneurs (Uniform State Register of Enterprises and Organizations of Ukraine) was opened via the Internet⁴⁸.

3. BODILY ASPECT OF THE RIGHT TO PRIVACY

The compulsory medical procedures such as centralized vaccination of children remain subject to debate in the media primarily due to the quality of immunization vaccines purchased by the Health Ministry. In connection with this a part of parents refuses to make them while doctors warn about the threat of epidemics. The point at issue was the procurement by the Ministry of Health of Ukraine of vaccines and medical preparations produced by "Pharm-standard-Biolik".

In January 2013 it was reported that the Prosecutor General's Office ruled on the audit and review of compliance with the law by the Ministry of Health in the procurement of vaccines made by this manufacturer. The realization of hepatitis B vaccine produced by "Pharm-standard-Biolik" was temporarily banned in Ukraine.

These measures were taken in response to the interpellation of Andriy Senchenko, Batkivshchyna deputy, who, referring to the materials published by the media, claimed the death of 11 children from using the vaccine of "Biolik"; other reviewers wrote about 8 deaths. At the

⁴⁶ Raiders seized personal data of the citizens // <http://www.pravda.com.ua/rus/news/2013/10/3/6999185/>

⁴⁷ Ministry of Justice: Security Service confirmed the integrity of the personal data of Ukrainians // <http://www.pravda.com.ua/news/2013/10/7/6999468/>

⁴⁸ Ukrainian State Register declassified data of the state registry of entrepreneurs // <http://proit.com.ua/news/gosregulation/2013/10/21/160551.html>

same time, the Ministry of Health of Ukraine believes that all these cases are not related to vaccination but are due to other causes of deaths that just coincided in time with the use of the vaccine. It is clear that these events have added arguments to supporters of rejection of vaccination. It should be noted that the procedure of obtaining permit for the use of certain vaccines and investigation of deaths possibly related to vaccination were carried out under the supervision of the Ministry of Health of Ukraine.

Overall the use of vaccines produced by this company was banned 16 times, but over and over again the permit was renewed⁴⁹.

On March 11 a group of deputies from opposition demanded from the Prosecutor General of Ukraine, chief of SSU, deputy prime minister responsible for health care and minister of internal affairs to conduct immediate inspection of numerous instances of unlawful clinical tests of doubtful drugs conducted on children, and institute criminal proceedings against all the officials responsible for the deaths due to the use of untested drugs and vaccines. They maintained that in the past two years, the officials of the Ministry of Health of Ukraine effectively provided protection for the unlawful clinical testing of questionable medicines on children, as evidenced by numerous facts. In particular, in the ward of pediatric endocrine pathology of the public institution "V.P. Komisarenko Institute of Endocrinology and Metabolism of the NAMS of Ukraine" 26 patients participated in clinical tests of the Chinese medical preparation "Dzhintropin" after the expiration of the period covered by insurance contract. The informational consent in the case of 9 patients, contrary to law, was signed by only one parent instead of the required two.

In addition, the cases of failure to inform the bodies of guardianship and care about participation of one child in clinical tests conducted in the ward of pediatric cardiology of the Research Medical Center of Pediatric Cardiology and Cardiac Surgery of the Ministry of Health of Ukraine to study medical preparation "Bosentan" were found. These clinical tests were conducted without accreditation certificate of a health institution. The deputies also emphasized that clinical tests of Doripenem therapy in the pediatric ward of the Poltava Oblast Children's Hospital were performed without accreditation certificate during eighteen months⁵⁰.

In May 2013, the Verkhovna Rada of Ukraine set up the interim commission⁵¹ on the results of the activity of which the draft report of the Commission⁵², which partially brought up the issue of procurement of "Biolik" vaccines; however, it was not considered by the Verkhovna Rada of Ukraine. Nevertheless, in July and August more infants vaccinated with vaccine "Pharmstandard-Biolik" died⁵³.

It is noteworthy that submitting children to mandatory vaccinations with vaccines of questionable quality, as well as conducting clinical tests of medicines on children in contravention of applicable law undoubtedly constitutes a breach of privacy.

⁴⁹ Who is responsible for the scandalous vaccine? Part Two // <http://www.epravda.com.ua/publications/2013/08/27/391586/>

⁵⁰ The opposition accuses the authorities of experiments on orphans // http://texty.org.ua/pg/news/movchun/read/44127/Opozycja_zvynuvachuje_vladu_v_doslidah_nad_ditmysyrotamy

⁵¹ <http://zakon2.rada.gov.ua/laws/show/236-vii>

⁵² <http://www.apteka.ua/article/255708>

⁵³ <http://portal.dikl.gov.ua/PublicSite/QLA/DocList.aspx>

The current procedure of forced placement of a person in a psychiatric hospital does not adequately protect the individual from arbitrariness. The objectives of the placement are different: from acquisition apartment⁵⁴ to prosecution for public activity⁵⁵.

On July 11 in Zaporizhzhia the officials detained and forcibly placed in a hospital activist Rayisa Radchenko, who had previously criticized militia for abuse and collected signatures for the resignation of the mayor. The authorities maintained that there existed the court's ruling that she should be hospitalized for coercive treatment. When Rayisa Radchenko went to court to get an explanation she was not let out from there. Only on July 13 her daughter and a familiar doctor familiar were let in the psychiatric hospital where her mother was kept. On the body of Rayisa Radchenko they found bruises and hematomas. In addition, the medical personnel did injections without telling the names of drugs. The doctors maintained that the mother signed a written consent to use the injectable drugs, but the activist claimed to the contrary that she had written a renunciation of the use of coercive injections. According to doctor Tetiana Smyrnova, who was present during this visit, the activist's friend, those were aminazine injections. The daughter of Rayisa Radchenko argued that the court's decision on the compulsory examination had no force⁵⁶. On July 16 the Komunarsky District Court of Zaporizhzhia left activist Rayisa Radchenko for compulsory treatment in the oblast out-patient psychiatric facility⁵⁷. After the story caused a sensation, on July 26, the doctors of Zaporizhzhia Oblast mental hospital let her go home arguing about the transfer to outpatient treatment, and subsequently the Zaporizhzhia Oblast Court of Appeal reversed the judgment of first instance⁵⁸.

Another component of the bodily aspect of privacy arose due to introducing in the Verkhovna Rada of Ukraine of the Bill on Amendments to the Law of Ukraine "On the transplantation of organs and other anatomical materials" (about taking human transplants from living donors and deceased persons)⁵⁹. The project involved the presumption of consent for cadaveric donation, if that person, while still alive, did not write a statement of refusal or if her/his family during an hour after the announcement of the death did not express active protest.

Some doctors take a positive view of such a procedure, as it is, in their opinion, as well as in the opinion of officials of the Ministry of Health of Ukraine⁶⁰ helps to save more lives⁶¹, while others indicate that this will not necessarily increase the number of transplantations,

⁵⁴ Healthy Ukrainians for money are sent to psychiatric hospitals // <http://tsn.ua/video/video-novini/zdorovih-ukrayinciv-za-groshi-zaprotoryuyut-do-psihlikaren.html>

⁵⁵ In Zaporizhzhia the activist was thrown into a mental hospital and inject her unknown drugs // <http://tsn.ua/politika/u-zaporizhzhii-aktivistku-kinuli-do-psihlikarni-ta-kolyat-nevidomi-preparati-302292.html>

⁵⁶ In Kyiv, an activist thrown into a mental hospital and unknown drugs are injected // <http://tsn.ua/politika/u-zaporizhzhii-aktivistku-kinuli-do-psihlikarni-ta-kolyat-nevidomi-preparati-302292.html>

⁵⁷ Rayisa Radchenko: the government wants to close my mouth sending me to a mental hospital // <http://www.radiosvoboda.mobi/a/25047080.html>

⁵⁸ Where the party of Yanukovich is ruling: the case of Raisa Radchenko // <http://expres.ua/main/2013/07/29/91125-tam-pravyt-partiya-yanukovycha-istoriya-rayisy-radchenko>

⁵⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47378

⁶⁰ Ministry of Health: there is a need to amend the Law of Ukraine "On the transplantation of organs and other anatomical human materials" // http://www.kmu.gov.ua/control/uk/publish/article?art_id=246820121&cat_id=244277212

⁶¹ Who will be dismembered? // http://society.lb.ua/health/2013/06/21/208122_organ_i_poydet.html

as well as the risk of rejection of transplants may increase; they are focusing on the need to introduce social compensators for live donors⁶².

However, in general, the Ukrainian society disapproves of this presumption of consent to donorship primarily because of fear of abuse by doctors and officials⁶³. Obviously, to ensure that this procedure is not met with such resistance from the community, if it is really needed, it is necessary not only to explain the need for such a procedure and create effective mechanisms of the possibility to abandon it, but to carry out reforms that would be able to increase the level of trust in doctors and officials in charge of this area.

4. RECOMMENDATIONS

1. Stop the administrative practice of unlawful use of an identification number (code) of the taxpayer for purposes not provided for by law. Stop also use of the term “personal number”, the use of which is not provided by any law.

2. Amend the Law “On the Unified State Demographic Register” in order to reduce the list of documents, which provide a record of biometric data leaving only the information on foreign passport and doing away with the Unified State Demographic Register in the form in which it is stipulated by the law.

3. Amend the legislation providing for the publication of an annual report with respect to impersonalized data concerning the tapping of communication channels in the course of covert investigative (search) actions.

4. The MIA must stop unmotivated collection of sensitive personal information about individuals (information about political views, religious beliefs, sexual orientation, participation in the replacement therapy program, etc.).

5. Pass a law and other normative legal instruments protecting the rights of patients, in particular as regards compulsory medical procedures and confidentiality of health information.

6. Amend the legislation and normative legal instruments in order to eliminate the discrepancy between the compulsory vaccination for children going to small schools and the right to education for children whose parents deliberately refuse to do the vaccinations, especially when such vaccinations are contraindicated.

7. Regulate video surveillance in public areas, providing, among other things, for storage and deletion of records.

8. Stop using searches as politically motivated means of ensuring loyalty and persecution of political opponents.

9. Regulate video surveillance of prisoners to maintain balance between the requirements of security and human dignity.

⁶² Pashkov V. M. Anatomical Materials of the Deceased: the presumption of consent. — *Ukrayinskyi Medychnyi Chasopys*. — 2013. — no. 6 (98) — XI/XII. — Mode of access: <http://www.umj.com.ua/article/69505/anatomichni-materiali-pomerloi-lyudini-prezumpciya-zgodi>

⁶³ The LB.ua readers do not support of post-mortem donorship of organs // http://society.lb.ua/health/2012/11/27/180353_chitateli_lbua_podderzhivayut_ideyu.html

10. Change the law on secrecy of adoption guarding the secret even from the child. In particular, it is necessary to make exceptions to the provisions of the legislation specifying absolute confidentiality of adoption (articles 226, 229 and 230 of the Family Code, article 168 of the Criminal Code).

11. Develop a mechanism rendering the abuse impossible in the procurement of vaccine for immunization.

12. Exclude from the register “For Official Use Only” of the Constitutional Court of Ukraine information on the constitutional submissions as those which are of particular public interest and are created through the work of public authorities.

13. Clarify the list of special technical means intended to obtain information in a way that the average citizen could determine which ones belong to prohibited (permissible) means.

14. Define the effective price of processing foreign passport indicating with a special note that no additional fees can be charged to obtain foreign passport.

15. Restore in the Law on personal data protection the determination of the consent of the subject of personal data (§5 of article 2 of the Law) deleting at the same time the definition of the State Register of personal databases (§4 of article 2 of the Law).

16. Develop a system of social compensators for living donors.

17. To unify the system of obtaining by a person information about herself/himself from the state registers doing away with payments for information about herself/himself.

18. To bring the procedure for collecting personal data of parents of schoolchildren for the Unified State Electronic Database on Education (USEDE) in accordance with the Law of Ukraine “On Personal Data Protection”.

19. Cancel the Rules of telecommunications activities (rendering Internet access services) or amend them taking into account the position of relevant NGOs.

VI. FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION

1. OVERVIEW

The situation in this area has not changed a lot, although there have been negative trends toward increased state regulation and limitation of religious freedom. Throughout the year there were a number of dangerous legislative initiatives on the part of pro-government factions of the parliament, but they were not considered. It is a traditionally contentious domain, though there are traditional instruments to tackle such conflicts. All domestic denominations can enjoy sufficient freedom of religion. Even in spite of the outdated and sometimes stringent law on freedom of conscience and religious organizations, its shortcomings are largely made up for by positive administrative practice of the authorities. Nevertheless it is clear that in the absence of clear legal guarantees of religious freedom the situation remains precarious and unpredictable and a lot depends on the government policy.

In the years 2012–2013 there were certain preferences in the actions of the central government connected with the Ukrainian Orthodox Church (Moscow Patriarchate) [UOC (MP)]. This manifested itself in the position of power to lease premises, allocation of funds from the state budget for the restoration of religious buildings that are in use of this church, and other activities to support it.

According to the Institute for Religious Freedom, in 2013 the Parliament had under consideration about 30 bills related to freedom of religion or of religious organizations in the spiritual, social and other spheres. However, most of the relevant committees wavered in their support for initiatives aimed at expanding the legal right to freedom of religion.

On October 16, 2012 unexpectedly the parliament passed controversial amendments to the law on religious organizations². Numerous non-governmental organizations, human rights activists and religious organizations were against this law. But on November 21 the President signed it all the same, and on December 12, 2012 the law came into force. Moreover, on December 7 he instructed the Ministry of Justice to immediately prepare a bill on amendments to the Law “On Freedom of Conscience and Religious Organizations”.³ The Ministry of Justice and Ministry of Culture prepared a draft law in May, in June, it was considered

¹ Prepared by Volodymyr Yavorsky, member of the Board of UHHRU.

² See the full text of the law “On Amendments to Certain Legislative Acts of Ukraine regarding the activities of the Ministry of Justice of Ukraine, Ministry of Culture of Ukraine and other central executive bodies directed and coordinated through the respective Ministers, and State Space Agency of Ukraine », <http://zakon2.rada.gov.ua/laws/show/5461-17>.

³ The president requires to immediately amend the law “On Freedom of Conscience and Religious Organizations” in order to enhance the freedom of religion: <http://www.president.gov.ua/news/26318.html>

by the All-Ukrainian Council of Churches and Religious organizations, and then it was submitted to the Cabinet. However, by the end of 2013, the bill was not placed for consideration of the parliament without obvious reasons.

We sure remember that the amendments strengthened double registration of religious organizations, when the charter of the organization is registered first, and then goes the same organization as a legal entity. Also, the new redaction of article 29 of the Law empowers a wide range of authorities to exercise state control over observance of legislation on freedom of conscience and religious organizations. Though the types and forms of state control in this field are not clearly defined.

However, the preapprehension of the experts proved to be wrong. According to the Institute for Religious Freedom, the practice of the law "On Freedom of Conscience and Religious Organizations" has not changed except for elements of registration procedure. Primarily, this is due to the fact that in the case of regulatory ambiguity the responsible officials resort to the established practice.

The problem of discrimination on religious grounds is very serious, but the majority is willing to accept it when it applies only to the public sphere of social life, especially when there are no effective legal tools to combat discrimination.

As of January 1, 2013 the religious network⁴ in Ukraine included 55 denominations combining 36,995 religious organizations, which comprised 87 centers and 295 boards, 35,460 religious communities (31,313 clerics give guidance), 500 monasteries (6,834 monks), 370 missions, 81 brotherhoods, 202 spiritual educational establishments (19,752 students), 13,157 Sunday schools. Alongside the registered religious organizations, there are 1,879 unregistered ones, the majority of which is situated in the AR of Crimea (682) and Vinnytsia Oblast (260).

The number of religious communities is the biggest in the Western oblasts and gradually goes down in SE direction: 8 oblasts of Western Region (Volyn, Zakarpattia, Ivano-Frankivsk, Lviv, Rivne, Ternopil, Khmelnytsk, Chernivtsi) accumulate 39% of religious network, 9 oblasts North-Central Region (Vinnytsia, Zhytomyr, Kyiv, Kirovohrad, Poltava, Sumy, Cherkasy, Chernihiv oblasts and City of Kyiv) 31.0%, 10 oblasts of SE Region (Autonomous Republic of Crimea, Dnipropetrovsk, Donetsk, Zaporizhzhia, Luhansk, Mykolayiv, Odesa, Kharkiv, Kherson oblasts and City of Sevastopol) 30.0%.

The distribution of religious organizations by denomination shows the prevalence of Orthodoxy (UOC (MP), UOC KP, UAOC), which as Jan. 1, 2013 comprised 19,107 religious organizations or 51.6% of all domestic religious communities.

The statistics shows the priority dynamics of UOC (MP) for the decade: the annual number of its communities increases by about 250 organizations. Significantly lower is the growth rate of the UOC KP, i. e. about 70 communities annually. The communities of the UOC (MP) represent over 37% of all religious organizations.

At the same time out of 23,814 religious buildings and premises belonging to all religious organizations 10,561 (44%) belong to the Ukrainian Orthodox Church (Moscow Pa-

⁴ The religious organizations in Ukraine (as of Jan. 1, 2013 p.)// RISU, <http://risu.org.ua/ua/index/resourses/statistics/ukr2013/51768/>; Information Report of the Ministry of Culture of Ukraine "On the State and trends in the development of the religious situation and church-state relations in Ukraine" (summary), <http://mincult.kmu.gov.ua/mincult/uk/publish/article/327651;jsessionid=C576ABCB3D48CB82182949A7237D6CDE>.

triarchate). From 2010 to 2012 the number of premises of the UOC (MP) added more than 300 objects. At the same time, the number of objects of the UOC KP increased by less than a hundred premises and makes 2,939.

2. FREEDOM TO PROFESS RELIGION OR BELIEF

2.1. Establishment and operation of religious organizations

There still exist old problems with complicated registration of religious organizations. This procedure contains many violations of European standards; it is very bureaucratic and not clearly defined. However, the religious organizations agree with this, because, by making such registration, they become practically free from further control, except when it is connected with the activity of aliens.

In our previous Reports we dwelt on the problems of legislation on registration of religious organizations. Nothing much has changed during 2013 and our estimate is consistent with the present situation.

Our state does not comply with the decision of the European Court of Human Rights *St. Michael Parish vs. Ukraine*. This has resulted in a further lack of clear definitions of key concepts: religious organization, religious community, members of the religious community and others. Added to this is the inability of the church to obtain legal status. This creates favorable conditions for despoilment of the places of worship. In some cases a part of the community suddenly decides to adhere to some other church, and sometimes it happens even in a more brutal way when a crowd emerges and declare themselves members of the community and announces the transition to another church. Such conflicts in the country take place at every turn. And in addition to the traditional interest in such conflicts of local authorities, this obviously is due to the unclear legislation.

A typical example is the conflict over the church building in the Town of Mostyska, Lviv Oblast.⁵ The building was owned by the religious community of the Ukrainian Autocephalous Orthodox Church. A part of the community decided to change their religious affiliation and decided to move to the UOC KP. According to the statute, the property had to remain in the ownership of the Ukrainian Autocephalous Orthodox Church. Meanwhile, a part of the community backed by the local authorities registered the amendments to the statute, as if the whole congregation had moved to the UOC KP. The court found illegal the re-registration of the Charter of the religious community *“as it had been carried out in the absence of legal grounds and without documented consent of the religious community of the UAOC of the Church of the Protecting Veil of the Mother of God of the Town of Mostyska which had actually changed its religious (denominational) affiliation that in the organizational structure of the Patriarchate of the Ukrainian Autocephalous Orthodox Church in Ukraine led to the violation of rights, freedoms and legitimate interests of religious organizations and the religious community, which is under the Orthodox jurisdiction of the UAOC.”* A panel of judges of the appellate

⁵ For the initial outline of the conflict see: Christian raiding or why the militia need the church in Mostyska?// July 12, 2011, <http://portal.lviv.ua/chronicle/2011/07/12/155229.html>

court in administrative cases of the Supreme Court of Ukraine by its Order dated November 10, 2009 left the ruling intact. That is the UAOC proved their case in the courts of several instances.

However, in 2010, all of the re-registration procedure was repeated verbatim: on April 8, 2010 the Head of Lviv Regional State Administration instructed (order no. 318/0/5-10) to carry out illegal re-registration of amendments to the articles of the rules of the UAOC community of Mostyska, Lviv Oblast, changing the confessional (religious) affiliation and name of the religious community, i. e. returning to the name of Religious community of the UOC KP Mostyska, Lviv Oblast. In this case, the applicants submitted the registration statement and the minutes of the parish meeting of alleged religious community UAOC with the seal of the religious community of the UOC KP affixed.

In 2013, the conflict continued. On March 12, 2013 the Lviv District Administrative Court⁶ invalidated another persisting decision to register changes in the statute: the ruling of the Head of Lviv Oblast State Administration no. 266/0/5-12 of 26.04.2012 "On the statute of the religious community". The court also ordered the Lviv Oblast State Administration to register the amendments to the Statute of the religious community of the UAOC in Mostyska, Lviv Oblast (the Church of the Protecting Veil of the Mother of God of the Town of Mostyska) registered by the decision of the Executive Committee of the Lviv Oblast Rada on 17.09.1991, no. 495, and approved by the Parish meeting of 01.03.2009. October 16, 2013 the Lviv Administrative Court of Appeal fully supported this decision and dismissed the appeal of the Lviv Oblast State Administration and the UOC KP⁷.

However, it seems that even this court's decision will not be enforced because the local authorities are pressing for the decision suitable for them.

Another story that indicates systemic problems covers the conflict that arose around the Saint Volodymyr Church in Novoarkhanhelsk, Kirovohrad Oblast. On March 19, 2013 it got about that the unknown persons seized the St. Volodymyr Church of Kyiv Patriarchate. On April 23 the parishioners tried to drive them out of the church. As a result, there was a fight, the parishioners were beaten by the militiamen which closed and sealed the temple. As it turned out, the congregation was truly surprised to come to know that their community had suddenly moved from the UOC KP to the UOC (MP).⁸ The attempts to bring the parish under the jurisdiction of the of UOC (MP) the officials of Kirovohrad Oblast, according to the believers of the Kyiv Patriarchate, made repeatedly over several years in a row. In spring of 2007, they, along with the clergy of the UOC (MP), urged father superior of the parish archpriest Illia Sovych to shift the parish to the Moscow Patriarchate and confront the community with the accomplished fact. In response to pressure from local authorities, on August 2, 2012 the father superior called the parish meeting, at which the believers adopted the new redaction of the Statute. However, it was not registered. Instead, on November 30,

⁶ For decision see: <http://www.reyestr.court.gov.ua/Review/30056839>.

⁷ For decision see: <http://www.reyestr.court.gov.ua/Review/34542510>.

⁸ For more details see: In Kirovohrad Oblast the governor forcibly forced the transfer of the parish of Kyiv Patriarchate to the Moscow one — the statement of the UOC KP //RISU, http://risu.org.ua/ua/index/all_news/state/church_state_relations/50521/; In Kirovohrad Oblast the unknown persons seized the St. Volodymyr Church, — UOC KP //RISU, http://risu.org.ua/ua/index/all_news/community/protests/52068/; the UOC KP demands to bring to justice the militia officers who beat the believers in Novoarkhangelsk //RISU, http://risu.org.ua/ua/index/all_news/state/church_state_relations/52302/

2012 the Kirovohrad Oblast Administration order (no. 729-r) to register the amendments to the charter of the community attesting to the transition to the UOC (MP). The community appealed against the decision juridically. On February 4, 2013 the Kirovograd District Administrative Court rejected the claim and refused to recognize the decision on registration of amendments to the statute unlawful⁹. As it turned out, the changes were submitted by ten individuals who were the founders of the community in 2001. Formally, they are recognized community members. In reality, however, at this time they were not community members, and the parish was managed by other members of the community. In fact, as in the case of *St. Michael Parish vs. Ukraine*, the dispute arose around the issue of who should be considered members of the community and who has the right to decide on amendments to the statute. The court sided with the UOC (MP), although the legislation was not clear and was quite controversial. On March 14, 2013 the Dnipropetrovsk Administrative Court of Appeal dismissed the appeal¹⁰ and upheld the first instance using the same argument. Paradoxically, the Court in its decision also referred to the practice of ECHR and decision in the case *St. Michael Parish vs. Ukraine*, but argued quite differently concluding that the authority had no right to refuse registration of amendments to the charter. Thus, it is obvious that the court ignored the other part of this decision and actually on its own filled a gap in the legislation defining who was a member of the community and was entitled to participate in the general meeting of the community. On May 29, 2013 the Supreme Administrative Court initiated the cassational proceedings in this case,¹¹ but it failed to consider the case by year's end. The community challenged the validity of the state registrar, but this claim was rejected on July 9, 2013 by the Kirovohrad District Administrative Court¹². Although the community representatives argued that the changes were filed illegally to the state registrar under allegedly forged power of attorney because it had been published before the amendments to the charter of the community were registered. Also, it was found that the changes to the community charter were submitted personally by Volodymyr Demishkan, one of the founders of the religious community of the urban village of Novoarkhanhelsk, people's deputy of Ukraine from the Party of Regions.¹³

Here are more characteristic refusals to register the statutes of religious communities.

For a long time, they groundlessly refused to register the religious communities of Scientologists that actually operated without registration since 2002. In 2009–2011, the court already canceled the refusal to register this community. On June 25, 2011 the KSCA once more refused to register the rules of the religious community “The Kyiv Church of Scientology” in the Dniprovsky District of Kyiv. The community appealed this refusal as well. On February 22, 2012, the District Administrative Court of Kyiv¹⁴ found the refusal to register the community illegal and decided to re-examine the documents submitted for registration. Its decision read: “First of all, neither from the wording of the impugned order of the KSCA, nor

⁹ See: <http://www.reyestr.court.gov.ua/Review/29066151>

¹⁰ See: <http://www.reyestr.court.gov.ua/Review/30830363>

¹¹ See: <http://www.reyestr.court.gov.ua/Review/31558308>

¹² See: <http://www.reyestr.court.gov.ua/Review/32762455>

¹³ See also: The Court went on hearing the case: “*Father Superior vs. Registrar*” // <http://gre4ka.info/suspilstvo/4409-sud-prodovzhyv-rozhliad-spravy-nastoiatel-prot-y-reiestratora-foto>

¹⁴ For the court decision see: <http://www.reyestr.court.gov.ua/Review/22117601>

from the above conclusion of the State Committee of Ukraine on Nationalities and Religions of July 27, 2011 no. 7/4-13-85, nor other material of the cases permit to conclude which provisions of the statute “Kyiv Church of Scientology” was contrary to the laws of Ukraine. At the hearing the defendant’s representatives also failed to point out the specific provisions of the statute. Therefore, the argument of the defendants that the articles of the rules of the religious community “Kyiv Church of Scientology” in the Dniprovsky District of Kyiv submitted for registration contradict the current legislation of Ukraine does not deserve the attention of the court.” On September 27, 2012 the decision was upheld by the Kyiv Administrative Court of Appeal¹⁵. On August 22, 2013 the Supreme Administrative Court of Ukraine dismissed the appeal and left the decision of September 27 in force¹⁶. Thus, the KSCA had to reconsider the documents submitted for registration. At the end of the year the results of this review remain unknown.

On March 25, 2013, the District Administrative Court of Kyiv pronounced unlawful¹⁷ and overruled the ruling of the Executive Body of Kyiv City Rada (Kyiv City State Administration) of August 1, 2012 no. 1349 “On the refusal to register the statute of the Independent Christian religious community “Resurrection of Christ” in the Obolon District of Kyiv”. The court found no evidence that the activity of the community had been against the law. However, on July 9, 2013 the Kyiv Administrative Court of Appeal overturned this and made a new award¹⁸ which totally dismissed the claim. The Court referred to the fact that those who were the founders of this organization belonged to the unregistered Ukrainian Autocephalous Orthodox Church Canonical, as far as it was stated on the website of the church (<http://www.soborna.org/>). However, the documents submitted for registration had nothing in common with the UAOC-C. This relationship had been established solely on the basis of information from the Internet. Such evidence and grounds for refusal can but set wondering.

On December 5, 2012 the Sumy District Administrative Court accepted the claim¹⁹ against the Main Department of Public Relations of the Sumy Oblast State Administration, Department of Culture and Tourism of the Sumy Oblast State Administration, 3rd party: Department for Religions and Nationalities of the Ministry of Culture, about the acknowledgment of inactivity illegal and recognition of actions unlawful. On April 4, 2012, the citizens filed an application to the chairman of the Sumy Oblast State Administration about the registration of the rules of the religious community “The Truly Independent Orthodox Parish of the Nativity” in Sumy. On April 27 the officers of the Main Department of Public Relations of the Sumy Oblast State Administration directed the package of documents submitted for registration of the statute to the Department for Religions and Nationalities of the Ministry of Culture for expert review of religious aspects, which was also contrary to the requirements of applicable laws, including the Law “On Freedom of Conscience and Religious Organizations”

¹⁵ For the full text see: <http://www.reyestr.court.gov.ua/Review/26347497>

¹⁶ For the decision of the Supreme Administrative Court of Ukraine see: <http://www.reyestr.court.gov.ua/Review/33189689> and here: <http://www.reyestr.court.gov.ua/Review/33189721>. Two solutions are available because the cassation applications were filed by two groups of founders and were combined at the stage of preparing the case for trial.

¹⁷ For the full text see: <http://www.reyestr.court.gov.ua/Review/30275406>

¹⁸ For the full text see: <http://www.reyestr.court.gov.ua/Review/32438977>

¹⁹ For the full text see: <http://pravoscope.com/act-postanova-2a-1870-6229-12-l-m-opimax-05-12-2012-organizaci-gospodarsko-diyalnosti-u-tomu-chisli-s>

as far as such kind of expert examination of religious matter was outside the jurisdiction of the Ministry. As a result, the ministry returned the said documents to the Main Department and offered to prepare relative information according to the List of questions about religious practices and social activities of a religious organization. However, the authorized body vested the claimant with the function of preparing responses to the List of questions about religious practices and social activities of a religious organization setting the deadline for execution for 25.06.2012. Having obtained the refusal of the claimant to answer these questions, the respondent on 03.07.2012 returned the documents and application without giving his proposals to the Head of the OSA on registration or refusal to register the statute. Obviously, such actions of the government body did not meet the requirements of the law: in particular, the authority had no right to send the documents for expert examination and had no right to return the documents to the applicant without providing answers on registration or refusal to register the statute. On March 12, 2013 the Administrative Court of Appeals, Kharkiv,²⁰ dismissed the appeal of the Department for Information and Communal Services of Sumy Oblast State Administration and upheld the decision of first instance. On May 16, 2013 the SACU turned down the appellate proceedings.

During 2012 the citizens kept trying to register the statute of the religious community "Church of Christ", Ivano-Frankivsk. However, in response once and again they kept receiving letters demanding to eliminate certain deficiencies in the submitted documents. Thus, the chairman of the meeting was informed in writing on 12.03.2012 by the Ivano-Frankivsk Oblast State Administration, office no. 10984/3/1-11/01-120, that the petition was considered and the relative request was sent to Ivano-Frankivsk City Rada to provide appropriate conclusion; as a result there emerged certain comments on the documents submitted for registration of the religious community. The necessary amendments should be carried out. The package of documents submitted for registration was returned to the chairman of the meeting with a copy of official opinion, though such a procedure was not specified by law. By letter office no. 8195/2/1-12/01-120 dated 14/12/2012 informed the citizens about another review of the request on the statute registration and listed the inadequacies in the statute to be corrected. Again the required documents returned to the chairman of the meeting with the conclusion of the Executive Committee of Ivano-Frankivsk City Rada. The procedure for return of documents was not specified by law. The citizens brought an action before the court and on March 6, 2013 the Ivano-Frankivsk District Administrative Court gave judgment²¹ pronouncing illegal the inactivity of Ivano-Frankivsk OSA concerning the non-adoption of relevant decision as a result of consideration of applications about registration of the statute of the local religious organization of the community "Church of Christ, Ivano-Frankivsk. On June 14, 2013 the Lviv Administrative Court of Appeal citing numerous precedents set by the ECtHR dismissed the appeal of OSA and upheld the decision of the local court²².

On February 8, 2013 the Zakarpattia District Administrative Court recognized unlawful²³ the refusal to register the statute of the Greek Catholic Community Ascension of the Lord in

²⁰ See the full text of the decision: <http://pravoscope.com/act-uxvala-sudu-2a-1870-6229-12-bershov-g-ye-12-03-2013-ne-viznachenos>

²¹ See the full text of the decision: <http://www.reyestr.court.gov.ua/Review/29842468>

²² See the full text of the decision: <http://www.reyestr.court.gov.ua/Review/32015047>

²³ See the full text of the decision: <http://www.reyestr.court.gov.ua/Review/29340980>

the Village of Bilasovytsia, Volovetsky Region and ordered the Zakarpattia Oblast State Administration to reconsider the documents submitted for registration. The Zakarpattia OSA refused to register the statute of the Religious Greek Catholic community of the Ascension of the Lord in the Village of Bilasovytsia, Volovetsky Region, because the Zakarpattia OSA requested the conclusions of Volovetsky Regional State Administration and Executive Committee of Bilasovytska Village Rada, which, in their turn, were negative. The officials also took into account the appeal of the parishioners of the Orthodox community that petitioned not to register the Greek Catholic community. Therefore, the Zakarpattia OSA believed that there was no reason to carry out the registration of the statute of the Greek Catholic community of the Ascension of the Lord of the Village of Bilasovytsia, Volovetsky Region. The OSA indicated that according to the decision of the 18th session of the 6th convocation of Bilasovytska Village Rada no. 214 of 01.11.2012 it considered the appeal of the parishioners of the Orthodox communities of the villages of Bilasovytsia and Latirka and decided to request the Zakarpattia OSA not to register the Greek Catholic community of the Village of Bilasovytsia “in order to prevent strife and conflict on religious basis between the faithful of the said communities.” It is obvious that the legislation contains no such grounds for refusal of registration. Notably, the court in its decision, *inter alia* referred to the numerous decisions of the ECHR.

An important step in the registration of religious organizations is to provide it with a status of non-profit organization exempt from income tax, in particular, donations, due to which almost all religious organizations may function. Despite the fact that article 18 of the Law “On Freedom of Conscience and Religious Organizations” states that “the financial and property donations and other income of religious organizations are not taxed,” a religious organization cannot use this privilege for it is not possible without a tax authority decision to include it in the Register of non-profit institutions and organizations. Having obtained the status of a legal entity, which needs double registration procedure, the religious organization must submit its statute to the State Tax Administration of Ukraine to obtain non-profit status and be entered in the register of non-profit institutions and organizations. The bodies State Tax Administration of Ukraine formally, often utterly hollow pretext, refuse to give non-profit status and enter religious organizations in the Register. In practice, religious organizations face the fact that the tax authorities require them to amend statutory documents (i. e., encourage them to once more undergo two stages of registration), without which, they believe, the non-profit status cannot be given to the religious organization. As an example, the tax authorities may be taken up with such wordings in the statutes of religious organizations as “distribution of religious literature”, or “popularization of religious values and literature through advertising” and so on.

2.2. Organization and conduct of peaceful religious meetings

The Law on Freedom of Conscience and Religious Organizations, contrary to article 39 of the Constitution, establishes the authorization-based procedure for conducting peaceful religious meetings. In practice, holding of peaceful religious meetings runs into much more problems.

During 2013 the development of the law on freedom of peaceful assemblies continued. In the fall two more projects were registered in the parliament. The transitional pro-

visions of both projects contained amendments to the law on freedom of conscience and religious organizations intended to abolish the authorization-based procedure for conducting peaceful religious meetings and hold them on general grounds. These amendments might mark a substantial progress in this area, but these projects were not reviewed during the year.

2.3. Rights of foreigners and stateless persons

The legislation continues to substantially restrict freedom of religion for foreigners and stateless persons. This is reflected in the inability to set up religious organizations, or engage in preaching or other religious activities. In addition, these restrictions apply even to people permanently residing in Ukraine. The foreigners are allowed to carry out preaching activities only at the official invitation of a registered religious organization (although registration is not legally binding) and authorization of the government bodies dealing with religious affairs. The lack of permit entails administrative liability for foreigners (fine), and a warning and further possible forced closure for the religious organizations.

We believe that the requirement of the permission from the authorities for foreigners is an unnecessary discriminatory burden. To eliminate potential threats to society it is sufficient that the person could stay in Ukraine at the official invitation of registered religious organization. During the registration the authorities evaluate the religious doctrine and then monitor the activities of religious organization. In this case, if a foreigner come to the country to preach the same religion, such actions may not bear a direct danger to the public interest and such interference cannot be justified in a democratic society.

However, the situation with the concurrence of religious activities is only getting worse, especially in the last three years, as we wrote in the previous Reports on human rights.

For example, the KSCA resorts to highly controversial interpretations of existing legislation on the legal status of foreign citizens. There was a notorious fact, when the Department of KSCA at the request of endorsing the invitation of a U.S. citizen for preaching in Ukraine formally responded that such activities are possible only subject to obtaining a temporary residence permit in Ukraine.²⁴

Thus, there are cases when foreign nationals from the countries with which Ukraine established a visa-free regime are forced to obtain visa type “D” followed by the annual registration permit for temporary residence in Ukraine only to stay for a few days in Ukraine with the purpose of religious activities. This interpretation and practical application of current legislation at the level of the KSCA significantly limits the rights of foreign nationals in their religious activities.

To some extent, this is due to the ambiguity of most legislative acts. As an example, part 6 of article 4 of the Law “On Legal Status of Foreigners and Stateless Persons”, which deals with the legality of residence in the territory of Ukraine with a religious purpose in the presence of a temporary residence permit in Ukraine, does not provide for any exceptions or references to other reasons for lawful residence of foreigners in Ukraine, in particular, on the basis of a visa or a visa-free regime.

²⁴ According to the Institute for Religious Freedom, <http://www.irs.in.ua/>

At the same time it should be noted that the Ministry of Culture as a central body of executive power in matters of religion, as a whole, provides a balanced policy toward granting approvals to foreign nationals in religious activities. The State Migration Service and the Ministry of Foreign Affairs also contribute to this. But not always in these matters the central authorities may influence the practice of administrative divisions for religious affairs in the structure of local state administrations.

In addition, there are cases when the representatives of religious organizations were simply banned from entering the country without providing adequate explanation. In November 2013 the Protestant preacher from Sweden Karl-Gustav Severyn was banned from entering Ukraine. At the airport "Boryspil" he was handed a relevant decision²⁵ and sent home. As the RISU informed at the press service of the church "New Life" (Donetsk), the reason for the ban was the instruction of an unspecified state authority. The Border Control Service provided no explanations to the religious community. Karl-Gustav Severyn had to tour several cities with sermons, meet with people, carry out divine services. According to the church "New Life", the Swedish preacher is known throughout the world. Since the late 80's he visited Ukraine every year without problems.²⁶

2.4. Social and charitable activities of religious organizations

According to the estimates of the Institute for Religious Freedom, the greatest difficulties in social and charitable activities of religious organizations were connected with the change in the order of execution of humanitarian aid, which is imported to Ukraine for distribution among the poor with the help of religious organizations.

In the last months of 2012 the long-term mechanism of execution of documents, customs clearance and import to Ukraine of humanitarian aid significantly changed as a result of administrative reform. The humanitarian activities of churches and other benefactors were most significantly affected by elimination of the Commission on Humanitarian Aid of the Cabinet of Ministers through amendments to the law "On humanitarian aid".

As a result, on December 2, 2012, when the government the powers of the liquidated Commission were transferred to the Ministry of Social Policy, the social and charitable activities of religious organizations associated with the distribution of humanitarian aid became virtually impossible because of the lack of appropriate legal and regulatory framework, uncertainty and long duration of procedures for the clearance of humanitarian aid.

As an example, just two months later, the Cabinet of Ministers by its resolution dated January 30, 2013 no. 39 approved the new procedure for the registration of beneficiaries of humanitarian aid. According to this document, the religious organizations must go through the procedure of re-inclusion in the Unified Register of Recipients of Humanitarian Aid. Thus the mentioned procedure failed to define specific terms required by the Ministry of Social Policy for final decision on the inclusion of the applicant in the Register.

²⁵ See the copy of the decision here: http://risu.org.ua/php/uploads/files/articles/ArticleFiles_54279_severyn.pdf

²⁶ The well-known Swedish preacher was banned entry in Ukraine// RISU, November 15, 2013, 12:26, http://risu.org.ua/ua/index/all_news/ukraine_and_world/international_relations/54279/

Moreover, the legislative changes did not determine a specific period during which the Ministry of Social Policy should consider the issue of accepting the declared goods (works, services) as humanitarian aid.

The delay in the recognition of the aid received from abroad as a humanitarian cargo usually led to charging for storage at the customs temporary warehouses and in case of refusal by the Ministry of Social Policy to recognize this cargo a humanitarian aid to the VAT and customs duties surcharge. As a result, during 2013, the recipients of humanitarian aid were forced to abandon humanitarian goods to the state, and foreign donors tended to suspend shipment of humanitarian aid.

The Council of Evangelical Protestant Churches of Ukraine in its address to the President urged him to take measures to eliminate bureaucratic obstacles to the prompt official registration of humanitarian goods for the purpose of their timely delivery to needy citizens.

3. STATE AND RELIGIOUS ORGANIZATIONS: THE PRINCIPLE OF SEPARATION AND NEUTRALITY

The compliance with these principles is one of the biggest problems in the administrative practice of the authorities, which is often based on the support of the dominant religions in the area and the discrimination of religious minorities. This is primarily due to the fact that the authorities fighting for the support of the electorate always show a positive attitude to dominant religions. Obviously, this patronage informally implies that these dominant religious organizations have more rights.

This is clearly shown by the examples of property issues, including the allocation of plots of land for building houses of worship or the return of religious property confiscated by the Soviet regime. In addressing these issues, such favoritism acquires a practical dimension. The positive decisions on these issues, with few exceptions, are made exclusively in favor of the dominant religious organizations. It should be noted that in this context the dominant religious organizations are the most prevalent in a particular area (oblast). Thus in each oblast different religious organizations dominate, usually the UOC (MP) or UOC KP.

In consequence, some religious organizations can obtain land plots for religious buildings, while others may not. In some topical cases the UOC (MP) just seized the plot of land for the construction of religious buildings, without any title documents. In this case, the authorities looked the other way.

In May 2013 the draft law no. 2993 was registered²⁷ amending some laws of Ukraine (concerning conditions for the restitution of religious buildings to religious communities). It was submitted by People's Deputy Yuri Miroshnychenko and five more people's deputies from the pro-government factions. Yuri Miroshnychenko is the President's representative in the Parliament, and often advances motions promoted by the Administration of the President. With high probability we can say that this project has been coordinated with the AP. According to the Bill, the Government received the authority to transfer the monuments of national importance to the free use or ownership by religious organizations.

²⁷ The text of the Bill is here: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=46905

On July 22 People's Deputy Yuri Miroshnychenko put forward the Bill no. 3007 about the revival of the unique symbol of Orthodoxy — the Church of Our Lady (the Church of the Dime) in Kyiv²⁸. The project involved the creation of government-led National architectural and historical, spiritual and symbolic complex intended to revive the unique symbol of Orthodoxy — the Church of Our Lady (the Church of the Dime) in Kyiv. It is noteworthy that the conflict around this place has been going on for years. The state has long been ignoring the arbitrarily constructed by the UOC (MP) the Monastery of the Dime on the site of the Church of the Dime in Kyiv²⁹. And the authorities make themselves agreeable to the audience and in different ways defend the interests of the Ukrainian Orthodox Church (Moscow Patriarchate) in this question³⁰.

Thus, on April 9, 2012 the Ministry of Culture created the Dime Church History Museum, which a few months later was headed by appointee P. V. Doroshenko, or hierodeacon Yaroslav, priest of the "Dime Monastery of the Nativity of the Blessed Mother of God" of the UOC (MP) operating illegally on the territory of the National Historical Museum of Ukraine, which caused an open protest of the experts.³¹

Already on September 5, the same people's deputy together with others put forward the draft bill no. 3194 on amending some laws of Ukraine (concerning management of the public property)³². It made provisions for empowering the government to decide on the transfer of religious buildings and property belonging to the cultural heritage to the free use or ownership by religious organizations. At the same time the bill suggested to exclude from the list of objects of the cultural heritage that cannot be privatized the Pochayiv Lavra, specifically the Cathedral of the Assumption, the Cathedral of the Holy Trinity, monastery cells, building of the archiereus, bell tower and gatehouse complex. In fact, it meant the further transfer of these objects to the UOC (MP).

All three bills were not considered, but it is obvious that the government takes a keen interest in their consideration and is only waiting for the opportune moment. In justification of these projects the state authorities refer to the need to fulfill obligations to the Council of Europe to restitute religious buildings to the religious organizations. However, these bills have nothing to do with the requirements of the Council of Europe, which required adopting a bill that would define a common mechanism of restitution, that is the bill would define common principles for the return of such property for all religious organizations. Instead, it turns out that the case in question is the restitution of a part of the property to one denomination only, even in spite of existing dispute concerning this property with other denominations.

²⁸ The text of the Bill is here: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47953

²⁹ See, for example, the latest information on the building site: the "tytushky" and seminarians defend the builders on the Desiatynny Lane // UP, October 12, 2013, <http://www.pravda.com.ua/news/2013/10/12/6999863/>

³⁰ See, for example, the Church of the Dime as a test of the maturity of the Ukrainian people, Yuri Miroshnychenko, People's Deputy of Ukraine (faction of the Party of Regions), representative of the President of Ukraine in Verkhovna Rada // "Ukrayinska Pravda", December 17, 2012, <http://www.istpravda.com.ua/columns/2012/12/17/103735/>

³¹ See. The conflict between the researchers and churchmen in the Dime Church Museum // UP, November 26, 2012 <http://www.istpravda.com.ua/short/2012/11/26/101613/>

³² See the full text of the draft law: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48160

Other churches perceived these bills negatively. Thus, the head of the UGCC called directly upon the Chairman of the Verkhovna Rada of Ukraine and people's deputies not to pass the iconic Christian shrines to one denomination only³³.

Actually the objects of Kyiv-Pechersk Lavra have been largely transferred to the use of the UOC (MP). Out of 79 buildings transferred to the free use by the Holy Dormition Kyiv-Pechersk Lavra 64 are monuments of architecture of the national and local levels, 15 buildings and structures belong to the background constructions.³⁴ Not all structures have relevant documentation, while the lack of documentation makes it possible, for example, to modify objects without the required permits, which leads to devaluation of the object.

The non-dominant religions in the region cannot get support from the local authorities. For example, the impasse remains in Sevastopol concerning the return of the kostel³⁵ to the local Catholic community. 2013 became another year of no-return to the Catholics of the former Catholic Kostel of St. Clement in Sevastopol. For a long time these communal premises housed the children's movie theater "Druzhba". Today it is vacant and is in disrepair. At a meeting in Sevastopol City State Administration on March 28, which was devoted to the preparation for the celebration of the 1025th Anniversary of Kyivan Rus, the officials informed that after the relevant orders of the President of Ukraine the Sevastopol authorities would soon resolve the issue of the transfer of the kostel to the Roman Catholic Church.³⁶ However, no further steps were undertaken by the authorities.

The Karaites also cannot get help in the Crimea³⁷.

This past July Patriarch Filaret took part in the consecration of the first temple of the UOC KP in the Luhansk Oblast — Holy Trinity Church — and the building of the eparchy. In this case, none of the local officials agreed even to meet with him because the local Ukrainian Orthodox Church (Moscow Patriarchate) came out strongly against his visit³⁸.

4. THE RIGHT OF PARENTS TO RELIGIOUS EDUCATION OF CHILDREN AND THE PRINCIPLE OF THE NEUTRALITY OF THE STATE

According to international standards, the religious education in schools and higher educational establishments may be introduced, but such courses should be standard and based on the principles of objectivity, non-discrimination and impartiality. Such courses cannot in-

³³ The head of the UGCC called on the Chairman of the Verkhovna Rada of Ukraine and people's deputies not to pass the iconic Christian shrines to one denomination, September 16, 2013, http://news.ugcc.org.ua/news/glava_ug-kts_zaklikav_golovu_verhovnoi_radi_ukraini_ta_narodnih_deputat%D1%96v_ne_peredavati_znakovich_hristiyanskih_svyatin_odn%D1%96y_konfes%D1%96i_67419.html

³⁴ 81% of the buildings, which were transferred to the Kyiv-Pechersk Lavra, are monuments of architecture // UP, 28.08.2013, <http://life.pravda.com.ua/culture/2013/08/28/137452/>

³⁵ Catholic church (translator's note).

³⁶ The Sevastopol authorities informed the public that they are eager "to tackle the problem with the kostel" // RISU, 02-04-2013, http://risu.org.ua/ua/index/all_news/community/land_and_property_problems/51823/.

³⁷ See: The Karaites appeal to the Ukrainian authorities to restitute their shrines, 14.08.2013, <http://www.religion.in.ua/news/vazhlivo/23018-karaimy-prosyat-vlast-ukrainy-vernut-ix-svyatyni.html>.

³⁸ For further details see: Luhansk: Patriarch Filaret Passion. Part one // RISU, July 19, 2013, <http://risu.org.ua/ru/index/exclusive/reportage/53025/>; Luhansk: Patriarch Filaret Passion. Part two // RISU, July 22, 2013, <http://risu.org.ua/ru/index/exclusive/reportage/53038/>; Luhansk: Patriarch Filaret Passion. Emotions after the fact // RISU, July 25, 2013, <http://risu.org.ua/ua/index/exclusive/reportage/53103/>

clude the teachings of only one religion or belief. The state shall respect the right of parents to religious education of their children.³⁹

On September 6, 2010 the MES passed its decision to recommend for use in educational organizations the study program “Foundations of Christian Ethics” for grades 1–4 and 7–11.⁴⁰ This course contains no religious rites; however, it fails to meet the above international standards. It includes the study of Christian religious sources and actually the Christianity only. It does not contain even a mention of other religions or alternative views on religion. One of the basic forms and methods to encourage pupils during the lessons of Christian ethics is grading. The object of grading is the knowledge obtained by pupils in the classroom. To grade a pupil the teacher uses estimates and per-lesson grading according to the prescribed 12-point system. In schools with optional course of “Christian ethics” they use estimates like “passed a test” and “failed the test”.

Simultaneously the MES conducts experiments at the educational establishments teaching the course “Development of spirituality, national consciousness of an individual based on Christian morality and national values of the Ukrainian people”.

On May 16, 2013 the MES circulated the letter “On the study courses of spiritual and moral guidance in 2013/2014 academic year”⁴¹. It significantly altered the focus and directly referred to the study of Christian values: “The Ministry pays considerable attention to teaching courses of spiritual and moral guidance, including elective courses on Christian ethics, as their study contributes to education of children in the spirit of Ukraine’s traditional Christian values: truth, piety, kindness, love, beauty, dignity, duty, honor, and conscience. At present the list of courses on this subject has been expanded, and pupils can study such subjects of their choice: “The Diversity of Religions and Cultures of the World”, “History of Religions”, “History of World Religions and Spiritual Culture”, “History of World Religions”, “Christian Ethics in Ukrainian Culture”, “Fundamentals of Orthodox Culture”, “Christian Ethics”, “Christian Culture”, “Ethics: spiritual principles”, “Fundamentals of Orthodox Culture of Crimea”, “Biblical and Christian Ethics”, “Moral education”, “Principles of Christian Morality and Ethics”, “Psychology of Spiritual Development”, “Orthodox Ethics”, “Philokalia”, “Wells of Spirituality. Bible as text: moral and ethical canon and aesthetic phenomenon”, “Fundamentals of Religion”, “Interesting Bible” and so on.”

The letter also informed that annually the ministry developed and brought to the attention of local education authorities, oblast (municipal) institutes of postgraduate pedagogical education the guidelines regarding the study courses of spiritual and moral guidance in educational establishments. The oblast (municipal in Kyiv and Sevastopol, republican in the Autonomous Republic of Crimea) institutes of postgraduate pedagogical education annually conduct for teachers training courses on spiritual and moral guidance (according to regional data, more than 10,000 teachers were trained). On the regular basis they hold conferences, seminars, round tables dedicated to these subjects; contests, competitions (such as “Young

³⁹ For further details see: Toledo guiding principles on teaching about religions and beliefs in public schools, prepared by the ODIHR advisory council of experts on freedom of religion or belief, OSCE 2007

⁴⁰ The full text of the program is available here: http://www.irs.in.ua/index.php?option=com_content&view=article&id=713%3A1&catid=38%3Apub&Itemid=65&lang=uk

⁴¹ Letter of MES no. 1/9-324 dated 16.05.13, http://osvita.ua/legislation/Ser_osv/35943/

Connoisseurs of the Bible", "Crystal Owl") for pupils and competition "Teacher of the Year" for teachers.

The study of Christian ethics began in 1992, the number of educational institutions, where courses of spiritual and moral guidance are taught, is on the rise. In 2004/2005 academic year the subjects of spiritual direction were studied in the Autonomous Republic of Crimea, 17 oblasts of Ukraine, Kyiv and Sevastopol (i. e. 20 out of 27 regions). Currently the courses of spiritual and moral subjects are taught in all 24 oblasts of Ukraine, Autonomous Republic of Crimea, Kyiv, and Sevastopol.

Also, the letter stated that during the next 2013/2014 academic year the course "Ethics" will be taught in grade 6 as an invariant component, and in the 5th grade as a variable component of the standard curricula.

The letter also specified that ***teaching of the subjects of spiritual and moral guidance in educational establishments is possible only in the case of written parental consent and if the trained teachers are on the staff. According to the Law "On General Secondary Education", only the individuals who have a degree in teaching and a certificate of appropriate training courses can teach the subject "Ethics" and elective courses of moral and ethical character.***

Generally, this is consistent with international standards. However, this procedure is not always respected, and in the latter case the local officials are to blame. Here are a few examples.

The conflict of parents with the director of the school no. 25 in Kyiv over thrusting religious component upon their children lasted throughout a year. The school pilot program was implemented based on the educational system of K. Ushynsky that included a religious program. The parents complain that in the presence of a priest and without the permission of parents the children were forced to read prayers, sing hymns, and go to church. Many parents were against such an experiment. So, on December 15, near the school the parents staged a picket requiring to stop this experiment. On the basis of the school the spiritual and educational center of Orthodox culture named after the Equal-to-the-Apostles Princess Olga, which in 2011 with the participation of the Representative of the President in the Parliament, People's Deputy of Ukraine Yuri Miroshnichenko was inaugurated by the NGO "Orthodox Ukraine"⁴² operating under the auspices of the clergy of the UOC (MP).⁴³ It is obvious that the authorities hushed up such a situation.

On December 12 in Davydivka Settlement, Shakhtarsk Region the first-graders of the school no. 21 were initiated as Kozaks. All 35 first-graders decided to become Kozaks. Senior priest of the Church of the Nativity of the Blessed Mother of God in Oleksievo-Orlivka Settlement Dmytro Solohub ministered the priestly service, the Kozak boys swore an oath to faithfully serve their Motherland and be guardians of the Orthodox faith. The oath was taken by Kozaks of Shakhtarsk Regiment together with their Hetman Mykola Mykolayovych Kovalenko. The Kozak boys have their

⁴² Read more on this organization and its activities in schools: <http://www.orthodox-fund.org/uk/pravoslavno-mupedagogu>.

⁴³ Read more: Raiders capture metropolitan school: what has the church to do with it? "Well, to be sure!" // New channel, <http://www.abzats.novy.tv/video/44645/Reyderskiy-zahvat-stolichnoy-shkoly-pri-chem-zdes-cerkov-Abzac-19122013>; Kyiv parents are for the secular education // http://opium.at.ua/news/kyevskie_roditeli_ot-staivajut_svetskoe_obrazovanie/2013-12-17-354; SHOCK! Like spring, like winter crops: they cultivated reason, kindness and eternal in the downtown Kyiv // UP blogs, <http://blogs.pravda.com.ua/authors/svirko/528dc1e3c850c/>; Parents and pupils posted pickets near the Kyiv school no. 25 against thrusting of religious education, http://www.religion.in.ua/news/ukrainian_news/24332-roditeli-i-shkolniki-proveli-u-sten-kiievskoj-shkoly-25-piket-protiv-navyazyvaniya-religioznogo-vospitaniya.html.

own uniform and flag. Now, alongside with the secular education the children will receive spiritual and patriotic education. The older Kozaks will come to them and tell them about the basics of the faith, Orthodox holidays, cultivate their love for their Motherland and main Kozak qualities: courage to profess the Orthodox faith and speak openly about their patriotism, courage to defend their own beliefs, respect for parents and elders, readiness to, if necessary, to help and protect their neighbors... Taking the Kozak oath in the settlement school is a long-standing tradition already... This is one of the schools where the Christian ethics is not taught because of the lack of teachers. The Kozak movement helps children not only to gain knowledge of Christian morality, but also to implement it in practice because each Kozak must always act in the spirit of Christianity. It cannot always be achieved only by teaching ethics as one of the subjects of school program.⁴⁴

On November 30, chief priest of Symeiz Church of the Blessed Mother of God Yevhen Halabuzar consecrated the building of Yalta secondary specialized school no. 12. At the request of the administration and school teaching staff Father Yevhen performed the rite of consecration and prayed for the staff and pupils. After the service the priest besprinkled all school premises with holy water. Every teacher asked the students to pray for her/his class, higher intellect and better physical health. After the consecration the teaching staff warmly thanked Father Yevhen for showing pastoral care.⁴⁵

There are too many such examples and much more might be on the list.

The legislative activity of pro-government people's deputies raise doubts. On June 18, 2013 people's deputies Yuri Miroshnychenko and H. Herman registered the bill no. 2340 on amending some laws of Ukraine (concerning the partnership relations among the state, school and church)⁴⁶. This project actually identifies the concepts of "morality", "spirituality" and "religion" and opens the way for the church to step into the domain of general education. In 2013 the project was not considered within the Parliament.

5. ALTERNATIVE SERVICE

The Law "On alternative (non-military) service" was adopted in 1991 and since then it remained essentially the same. At the time it was quite progressive, but now it needs improvement. Previously, the right to alternative service was not considered in the context of the right to freedom of conscience and religion. Therefore, establishing the possibility of conscientious objection depended on the will of the state and was not conditional on any implementation of international commitments on human rights.

Ever since the national legal systems of the member states of the Council of Europe and at the international level have changed significantly. In 2002–2003 all member states of the Council of Europe practically agreed on the recognition of conscientious objection. The UN Committee on Human Rights concluded that the right to conscientious objection can be derived from article 18 of the International Covenant on Civil and Political Rights.

⁴⁴ Shakhtarsk. *The first graders of the Davydivka Settlement took the Kozak oath: to love their Motherland and protect the Orthodoxy*, <http://pravoslavie.org.ua/2013/12/шахтерск-первоклассники-посёлка-дав/>

⁴⁵ Yalta. Senior priest of Symeiz church sanctified the school building, <http://pravoslavie.org.ua/2013/12/ялта-настоятель-симеизского-храма-ос/>

⁴⁶ Read more: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47456

In 2009, in the case *Bayatyan vs. Armenia*, application no. 23459/03, the European Court of Human Rights changed its court rulings and recognized absence of right to conscientious objection because of belief as violation of article 9 of the European Convention on Human Rights and fundamental freedoms (freedom of thought, conscience and religion). In 2011, the Grand Chamber of the European Court of Human Rights confirmed this decision and it became the precedent for all member states of the Council of Europe. Thus, although article 9 of the Convention expressly provides for the right to conscientious objection to military service, the European Court of Human Rights found that the objection to military service when the motive behind this rejection is a serious and insurmountable conflict between the duty to serve in the army and beliefs of particular person or her/his deep and sincere religious or other opinions, and her/his beliefs or views are so undeniable, serious, consistent and meaningful that it is subject to guarantees of article 9 of the Convention on Human Rights..

Thus, considering the alternative service in the context of freedom of conscience and religion, it is necessary to change the law on alternative service. In particular, it is necessary to expand the right to alternative service not only because of religious but also because of other convictions.

Back in 2005, the PACE directly demanded from Ukraine to make the following changes⁴⁷.

In line with the Presidential Decree of October 14, 2013 no. 562/2013 “On the timing of the next drafts, the next draft of the citizens of Ukraine to the Ministry of Internal Affairs and dismissal in 2014” the number of persons eligible for army draft in Ukraine went significantly down. Moreover, these draftees will go to the units of the Ministry of Internal Affairs only. This makes it necessary to reconsider the general draft policy and bring it to international standards on the basis of respect for human rights.

On November 21 the bill no. 3663 on amendments to the law “On alternative (non-military) service” (in line with the European standards)⁴⁸, which aims at tackling this problem, was registered in the Parliament. The project has not yet been considered.

6. RECOMMENDATIONS

1. It is necessary to bring Ukrainian legislation in line with articles 9 and 11 of the European Convention on Human Rights and Fundamental Freedoms in the light of the judicial practice of the European Court of Human Rights. It is helpful to use in this case the Guidelines for Review of Legislation Pertaining to Religion or Belief adopted by the Parliamentary Assembly of the OSCE and the Venice Commission in 2004.⁴⁹

2. In order to eliminate discriminatory administrative practices and conflicts among churches it is necessary to adopt clear legal provisions on the grounds, procedure and tim-

⁴⁷ See paragraph 271 of the Report of the Parliamentary Assembly of the Council of Europe on the implementation by Ukraine of obligations and commitments, including the Resolution of PACE no. 1466 and PACE Recommendation no. 1722 dated October 5, 2005.

⁴⁸ Read more: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=49135

⁴⁹ Freedom of religion and belief in Ukraine in the context of European standards/Ed. by Volodymyr Yavorsky/UHHRU, NGO Centre for Legal and Political Studies “SIM”. Kharkiv: Folio, 2005. Available online at UHHRU: <http://www.helsinki.org.ua/index.php?id=1137518398>.

ing of the restitution of the church property. It is also advisable to draw up a detailed plan for the restitution of religious property with determination of relevant procedures with proper time frames per each object. If the restitution is impossible, a kind of indemnity should be provided for, including financing of new places of worship or allotment of the plots of land.

3. Turn down the bills nos. 2993, 3007, 3194 and 2340 as contrary to human rights standards and recommendations of the Council of Europe and the OSCE in this field.

4. Amend the legislation to expand the grounds for alternative (non-military) service, in particular, to provide for such service not only for religious reasons but for requirements of other convictions as well. In this regard, we recommend that the Parliament adopts the Bill no. 3663 of 11.21.2013 amending the Law of Ukraine “On alternative (non-military) service” (to conform to European standards).

5. Local authorities should review their adopted legal acts that specify discriminatory provisions and additional extralegal restrictions on the right to freedom of religion in the course of peaceful assembly, renting premises, allocation of the plots of land and restitution of religious buildings. The general principles of allocation of the plots of land for construction of places of worship should be clearly outlined.

6. Cancel the procedure of the official approval by the relevant public authority of the activities of aliens preaching religious beliefs, performing religious rites or other canonical activities (article 24 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations”). The invitation of the legalized religious organization whose doctrine passed the state examination shall be sufficient grounds for such activities of foreigners in Ukraine. It is necessary to annul the two-step approvals of the religious activities of foreigners during issuing registration certificates for temporary residence in Ukraine, but also significantly shorten the coordination of activities of foreigners, because the established procedures contradict the current legislation.

7. Cabinet of Ministers of Ukraine shall instruct the Ministry of Internal Affairs, Ministry of Foreign Affairs and other central executive authorities together with the representatives of the All-Ukrainian Council of Churches and religious organizations to work out draft amendments to the ruling of the Cabinet of Ministers of Ukraine of 28.03.2012, no. 251, aimed at increasing the possible duration of the temporary permit to stay in Ukraine for foreign religious workers under the terms specified in the invitation, but not more than three years.

8. State Tax Service of Ukraine with participation of the representatives of the Ukrainian Council of Churches and Religious Organizations shall work out amendments to the Regulation on the Register of nonprofit institutions and organizations approved by the Order of the STAU dated 24.01.2011, no. 37, in order to facilitate granting non-profit status to the registered religious organizations, including automatic entering by tax authorities in the Register of non-profit institutions and organizations and specifying clear grounds for adoption of decisions by the tax authorities about exclusion of religious organizations from this Register.

VII. FREEDOM OF EXPRESSION

1. STATISTICAL DATA

During 10 months of 2013 41 complaints of violations of freedom of expression by the authorized public persons were added to the monitoring map². For comparison: in 2012 there were 76 such cases. In these years, the largest number of violations of freedom of expression was registered in July. The complaints come mostly from Kyiv. There were also many incidents, when there was an alleged interference of public authorities, but this was not proved.

For 10 months in 2013 the Institute of Mass Media registered³ 74 cases of attacks against journalists and threats against them (65 cases for the entire 2012), 115 cases of putting obstacles in the way of journalistic activities, 40 cases of censorship and 39 cases of political and economic pressure.

2. OVERVIEW

The greatest number of violations the IMM registered in the category “impeding legal professional journalism”.

The second biggest number was registered in the category of “threats and attacks against journalists”. The number of these violations has increased and the type of threats has changed. Increasingly, the instruments of these violations included not the representatives of the government, but allegedly the “athletic young men” hired by them.

There is also a rising new type of pressure on journalists and the media: cybercrimes (tampering computers, remote data storage services, DOS attacks on the web servers).

The number and variety of subjects of violations of the freedom of expression increased as well (without the help of the media).

The practice of closing down or seizure of the local government channels continued.

After the change of ownership there were employment layoffs of journalists in *Correspondent*, *Forbes Ukraine*⁴ and TVi because of disagreement with the new editorial policy.

According to the monitoring by “Telekritika”, the number of materials in the media with the signs of sponsored articles (censorship) in 2013 remained on the level of 2012.

¹ Prepared by Natalia Zubar, Director of the Information Centre “Maidan Monitoring”.

² Monitoring Map “Maidan Monitoring” <http://maidanua.org/monitor>

³ Freedom of Speech Barometer for October 2013 <http://imi.org.ua/barametr/42042-barometr-svobod-slova-za-jovten-2013-roku.html>

⁴ “Stop Censorship” encourages owners of Forbes Media to intervene in Ukraine.

However, there are positive developments, too.

In 2013, the public fight of media for their rights due to mass awareness of threats to the profession intensified. The professional trade unions are expanding. For example, the Independent Media Trade Union of Ukraine has created new organizations in Chernivtsi, Lviv, Kremenchuk, and Kerch.

Due to the active position of the journalist unions an important precedent was set for punishment for the attack against journalists under article 171 of the Criminal Code of Ukraine, which had been actually dead earlier.

The journalists of UNIAN with the help of trade unions and international media organizations set an example of successful opposition to the owner's censorship. In Kerch, the journalists of the *Breeze* Broadcasting Company founded the trade union and were able to effectively oppose⁵ the attempts to take away the plot of land the radio transmission tower had been built on.

During the year, a number of trials took place in which the courts protected the right of journalists to freedom of expression and did not satisfy the claims of government and public institutions about spreading false information.

3. FREEDOM OF SPEECH AND LEGISLATIVE INITIATIVES

In 2013 the Law no. 409-VII "On Amendments to Some Laws of Ukraine to ensure transparency regarding ownership of the media"⁶ was adopted and entered into force. The law specifies mandatory indication in the application for the state registration of the printed media of the data on the legal or natural person who controls the founder (co-founder), owner (owners) of the printed media as well as a legal entity which is controlled by the founder, owner (co-owner). At that, the above control means the direct or through related persons ownership of shares (stocks) that deliver 50% or more votes in the supreme organ of the legal person, which is the founder (co-founder) of the printed media.

During 2013 several bills important to ensure freedom of expression were also introduced.

The draft law no. 3396 "On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Legislation on the Elections" Submitted for the second reading contains the extension of liability for breach of campaigning not only to the media but also to the news agencies, as well as distributes the power to impose fines on offenders between the National Council of Ukraine on Television and Radio and the State Committee in Television and Radio-Broadcasting of Ukraine.

The project improves the norm specifying the liability for violation of the electoral law by mass media or news agency. Thus, in addition to the license suspension and prohibition of publishing of the printed matter the law introduces the suspension of the news agency, if it relates to such breach. If a court, when considering an election dispute finds the violation the

⁵ The Kerch journalists forced the city council to cancel the illegal decision <http://nmpu.org.ua/2013/11/kerchenski-zhurnalisty-zmusyly-misku-radu-skasuvaty-nezakonne-rishennya/>

⁶ Yanukovych signed the Law on transparency of media ownership <http://www.telekritika.ua/pravo/2013-07-25/83596>

respective media or news agency the central district election commissions may issue a warning which will be published by the CEC and commissions in the printed media, on the official website of the CEC and publicized by the said media or news agency.

The project aims to provide equal opportunities obliging distributors of outdoor advertising to ensure equal access and facilities for parties, and nominees to placement of campaign materials using outdoor advertising media.

The draft law no. 3577 “On Amending the Law of Ukraine “ On state support of mass media and social protection of journalists” aims to strengthen social protection of the personnel of the media, particularly by establishing an exhaustive list of occupations that are to be equated with journalists and which includes as follows: anchorpersons, reporters, columnists, editors and members of editorial offices and editorial boards, operators of photo, video, and installation equipment. The bill has to reconcile the discrepancy between the law and the classification of professions and strengthen social protection of operators equating them to creative workers, and not technical profession only. This is particularly important because the operators most often become the victims of violence at work.

The draft law no. 2122 “On Amendments to Certain Legislative Acts of Ukraine” introduces amendments to the Law on Television and Radio Broadcasting, Law on the Press and procedural codes, which imposes restrictions on “the support of claims by the arrest of accounts or property owned by media, which operate according to the Law of Ukraine “On Television and Radio” and the Law of Ukraine “About Printed Media (Press) in Ukraine “, ban or a general obligation to perform certain actions in carrying out information activities”.

The draft law no. 1257 “On Amendments to the Civil Code of Ukraine Intended to Remove the Term *negative information*” suggests deleting from the Article 277 of the Civil Code of Ukraine the provision stating that “the negative information disseminated about a person is considered to be unreliable if the person who spread it proves the opposite”. The authors emphasize that the recognition of the info as negative or positive depends on evaluation of the information by the person and not on the characteristics of the information itself. “By itself, the information is neutral and its “negativity” or “positivity” is a consequence of human perception,” stated the explanatory note. The adoption of the bill may alleviate the pressure on the media that publish critical materials on the activities of public authorities, local self-government and their officials.

The Cabinet suggests dropping⁷ provisions for determining the status and principles of the National Expert Commission on Public Ethics from the Law “On Protection of Public Morality”. The relevant draft law prepared by the Ministry of Justice “On Amending the Law of Ukraine “On Protection of Public Morality” (concerning the state supervision) was registered under no. 2142. According to Justice Minister Olexandr Lavrynovych, the bill was developed in accordance with the Plan of Implementation of the Decree of the President of Ukraine of December 9, 2010 “On the Optimization of the System of Central Government Executive Bodies” concerning the disbanding of the National Commission on Public Ethics.

Among the registered bills there are overtly reactionary ones. The draft law no. 3301 envisages the amendments to the Law of Ukraine “On Access to Public Information”, which can narrow the opportunities for citizens to get information per request.

⁷ The Cabinet brought up again the issue of disbanding the Commission on morals and submitted the relevant bill. <http://www.telekritika.ua/news/2013-01-31/78663>

The bill, in particular, implies that all information about an individual will be automatically regarded as confidential and may be spread either by the consent/request (as well as on the terms and conditions) of that person, or if such a possibility is expressly specified by law. Such a rule will complicate the already difficult access to important public information, particularly that relating to the activities of concrete officials.

The experts of the Institute of Media Law believe⁸ that the proposed amendments do not meet the basic democratic standards of freedom and maximum transparency of public information and may create additional barriers on the way to obtain it.

4. VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION

In March 2013, the court confirmed the sentence⁹ on Volodymyr Nikonenko in the case of graffiti in Sumy: one year of restraint of freedom under Part 2 of Article 296 of the Criminal Code (CC) of Ukraine (hooliganism). In his appeal Nikonenko argued that his actions were wrongly qualified by the court as hooliganism, as everything occurred during the night, in the absence of any persons, the alleged actions were not accompanied by shouts and foul language. All this negates the main characteristic of hooliganism: “gross violation of public order on the grounds of apparent disrespect for society accompanied by the most outrageous or extraordinary cynicism”. No natural or legal person claimed that against them a crime had been committed, there are no victims and there are no harmful effects in the case.

In Kharkiv the philharmonic canceled¹⁰ the scheduled concert in the framework of the festival “Art of Tolerance”. The major repairs were underway in the building of Philharmonic and the administration decided to take this concert to the Organ Hall located in the Dormition Cathedral, which is the property of the Kharkiv Eparchy of the Ukrainian Orthodox Church. When the eparchy heard that the Organ Hall would play jazz, it just banned the concert.

The Shevchenko District militia station in Kyiv brought an action under art. 161 of the Criminal Code of Ukraine¹¹ against the soloist of the Kyiv Opera Kateryna Abdullina, who had called Ukrainian schools “the schools for cattle” in her Facebook.

Article 161 of the Criminal Code of Ukraine under which the criminal charge was entered makes provision for liability for the “deliberate acts aimed at inciting national, racial or religious hostility, humiliation of national honor and dignity or offending the feelings of citizens because of their religious beliefs, as well as direct or indirect restriction of rights or granting direct or indirect privileges on grounds of race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, linguistic or other characteristics.” One must agree that it is doubtful whether Abdullina writing in the social networks about “the schools for cattle” wished (that is had a direct intent, which is specified by the article) to “incite or humiliate”. Despite the fact that we may like Ms. Abdullina or

⁸ The people’s deputies want to limit access to public information <http://medialaw.Kyiv.ua/news/2332/>

⁹ Sentence for Graffiti <http://khpg.org/index.php?id=1364800589>

¹⁰ Yevhen Zakharov: the cancellation of the concert “The Art of Tolerance” is nothing but obscurantism! <http://khpg.org/index.php?id=1379674832>

¹¹ An action was brought against Abdullina for “the schools for cattle” <http://maidanua.org/monitor/reports/view/464>

not, according to Art. 34 of the Constitution of Ukraine “everyone has the right to freedom of opinion and speech, and freedom of expression”. This right can be restricted only by law. And there is no law forbidding writing opinions in social networks, even, to put it mildly, not very wise opinions. Similar rules are contained in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 19 paragraph 3 of the International Covenant on Civil and Political Rights. We can disagree with the likes of expression and, in our turn, we have the right to our [very critical] opinion of the author of those statements. But obviously the criminal prosecution for statements in social networks and public interference in the freedom of expression is disproportionate.

The Artistic Arsenal is a national project; it was approved by the Decree of the President. At the invitation of the organizers of the exhibition “The Great and Majestic” at the Arsenal artist Volodymyr Kuznetsov proposed his work “Koliyivshchyna: The Last Judgment”. Exhibition curator Nataliya Zabolotna for several days was continuously present during the process of painting, but when the painting was finished, she personally covered the canvas with black paint, and the author was banned entry to Arsenal¹². This work had acute social and political meaning. Later one more picture was banned at the exhibition.

In protest against censorship in Artistic Arsenal a meeting was held, which was dispersed by militia; a process-verbal was executed about administrative violations concerning seven activists¹³.

In Mukachevo, all billboards with appeals to Yanukovych with the requirement to return the city community 24M blocked by the treasury were covered with paint¹⁴.

In Rivne Oblast, the billboards of oppositionist dedicated to the Day of Constitution were taken down¹⁵. Immediately after the appearance of billboards in different parts of Rivne Oblast the unknown persons started calling the owners and threatening them. “The demand was only one: remove your billboards. To some owners they said that in case of disagreement they would cut the billboards, to others they promised the night at the detention center,” reads the statement.

In Donetsk, the administrative record of evidence¹⁶ was composed under Article 173 of the Code of Ukraine on Administrative Offences (disorderly conduct) for the red and black flag on a football match. In Lutsk, the militia tried to take away red-black flags from the fans¹⁷. There is no law against coming to the stadium (and elsewhere) with the red and black flag. Therefore the violations were as follows: a) violation of the right to freedom of expression guaranteed by Article 34, part one, of the Constitution of Ukraine, b) the militia committed violation forbidden under Article 19, part one of the Constitution of Ukraine, namely extra-

¹² “The Last Judgment” censored in the Artistic Arsenal <http://maidanua.org/monitor/reports/view/420>

¹³ At least seven protesters in front of the Artistic Arsenal were detained by the police <http://khpg.org/index.php?id=1374858326>

¹⁴ In Mukachevo, all billboards with appeals to Yanukovych were covered with paint <http://maidanua.org/monitor/reports/view/400>

¹⁵ In Rivne Oblast, the billboards of oppositionist dedicated to the Day of Constitution were taken down <http://maidanua.org/monitor/reports/view/397>

¹⁶ A Kharkovite with red and black flag arrested at the stadium in Donetsk <http://maidanua.org/monitor/reports/view/493>

¹⁷ Police took away red and black flags from the fans during the match <http://maidanua.org/monitor/reports/view/471>

legal coercion (i. e., the person was unlawfully forced to do something that was not provided by law: not to show red and black flag which a man intended to do.)

In Kyiv, the militia apprehended¹⁸ citizen A. Ilchenko for his individual action (holding placard) in front of the Prosecutor General's Office. Thus the official reason of detention and drafting administrative protocols under article 185-1 CUAU was the judgment on the limitation of the right to peaceful assembly near the said building for an undetermined number of people. However, the absurdity of the situation is clear: any individual actions cannot be considered an assembly, but our appeal to the Main Administration of MIA of Ukraine in Kyiv about the need to officially explain militia officers the fundamental difference between peaceful assembly and individual action did not receive the proper response. The same negative response to our suggestions to publish the appropriate explanation we got from the Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations.

All these cases are dangerous, because they create the practice of impunity, which can be followed by other officials.

5. VIOLATIONS OF THE RIGHTS OF JOURNALISTS AND MEDIA

The authorities often resort to censorship in the form of the ban imposed on journalists access to public events and camerawork. Such cases most often occur in the province. However, in 2013 there were cases of direct censorship by the government.

In Mykolayiv, on the eve of the visit of the Deputy Minister the press office of the Ministry of Income and Dues wrote for journalists the right questions to ask and did not allow asking other questions¹⁹.

The Sessions of Kharkiv Oblast Rada are broadcast by the Oblast State TV and Radio Company OTB. On January 17 from 12:20 to 12:30 Igor Shvaika, people's deputy of Ukraine, addressed the session with keen criticism. It was a sharply critical speech which contained a request to abandon shale gas extraction on the oblast territory with detailed substantiation. Precisely at this very period of time instead of broadcasting from the session hall the audience saw advertising²⁰.

There were a lot of facts of arbitrary interference of militia officers with the work of journalists.

During the concert at the Yevropeyska Square in Kyiv a militia major unreasonably began demanding that the newsman²¹ of the Novyi Region publication to get off the fence thus interfering with his work.

¹⁸ In Kyiv, near the Prosecutor General's Office a Mykolayiv picketer was detained who protested against tyranny of law enforcers <http://novosti-n.mk.ua/news/read/55341.html>

¹⁹ Censorship in Mykolayiv: on the eve of the visit of the Deputy Minister the press office of the Ministry of Income and Dues wrote for journalists the right questions <http://maidanua.org/monitor/reports/view/395>

²⁰ The Kharkiv Oblast television censored the keen speech at the oblast rada session <http://maidanua.org/monitor/reports/view/345>

²¹ The Editorial Office of the News Agency *Poriad z Vamy* is concerned about the actions of militia officers who go beyond their powers <http://www.poryad.com/?p=21834>

In Odesa, the personnel of Prymorsky Recruiting Office tried to detain the reporter of the portal *Odesa. Comments* Andriy Kolisnychenko²² for his filming the protests on Pyrogovska Street.

In the urban-type community Vradiyivka, Mykolayiv Oblast, during the riots, the militia arrested five journalists²³ intending to get a comment from the former Chief of Vradiyivka Regional Department of the Militia Vitaly Synytskyi.

In Mykolayiv, a militiaman assaulted²⁴ Natalia Barbarosh, journalist for the online edition *Podrobnosti.mk.ua*, took away her camera and broke her phone. The militia detained the journalist for more than two hours without means of communication and without explaining what it was.

In Mykolayiv, the officers of the Mykolayiv Department of Organized Crime Control assaulted²⁵ the employees of online edition of *News-N* Andriy Prokopenko and Anatoly Onofriychuk when they tried to figure out why the militia blocked the building of trade-office center “Tekhnokontrakt.”

At the same time it's worth noting militia's systemic non-interference in violence against journalists, including the most resonant events on May 18 on the Maidan Nezalezhnosti in Kyiv, when journalists were beaten in sight of the militia²⁶.

There many reports about the actions of the authorities against journalists. The representatives of the media unions are raising an alarm²⁷ and say that the number of such cases has increased dramatically.

Deputy of the Luhansk Oblast Rada from the Party of Regions Arsen Klynchayev threatened²⁸ the Editor-in-Chief of the Site 0642.ua Yana Osadcha to deal shortly with her child and “imprecation” if she did not remove an uncomfortable article from the site.

Kotovsk City Rada Deputy, Odesa Oblast, Natalia Voitsekhovska threatened²⁹ journalist and writer Serhiy Levytanenko with reprisals.

Local Deputy of Fontanka Village Rada, Odesa Oblast, Bahrad Ehyzarian, member of the Party of Regions, filed to the militia an application³⁰ against the journalist for his report on the rural site (the militia found no corpus delicti).

²² In Odesa, the recruiting officers attacked a journalist while he was filming the protests <http://imi.org.ua/news/41864-v-odesi-spivrobitniki-viyskkomatu-napali-na-jurnalista-za-zyomku-aktsiji-protestu.html>

²³ In Vradiyivka five journalists were detained <http://imi.org.ua/news/41201-u-vradijivtsi-zatrimali-pyato-h-jurnalistiv.html>

²⁴ In Mykolayiv, a militiaman twisted the journalist's hand and broke her phone <http://imi.org.ua/news/41257-u-mikolaevi-militsioner-vikruchuvav-jurnalisttsi-ruku-i-rozbiv-telefon.html>

²⁵ In Mykolayiv two more journalists were injured by the police <http://imi.org.ua/news/41259-u-mikolaevi-sche-dvoe-jurnalistiv-postrajdali-vid-diy-militsiji.html>

²⁶ The youngsters have beaten to blood the journalist and photographer. Militia did not intervene <http://imi2.serhio.org/news/40794-molodiki-pobili-do-krovi-jurnalistku-ta-fotografa-militsiya-ne-vtruchalasya.html>

²⁷ Head of Media Union said in Brussels that Ukrainian journalists are treated in Ukraine as slaves <http://maidanua.org/2013/09/holova-media-profspilky-v-bryusseli-zayavyv-scho-do-ukrajinskyh-zhurnalistiv-stavlyatsya-v-ukrajini-yak-do-rabiv/>

²⁸ The deputy of the Luhansk Oblast Rada threatened the Editor-in-Chief http://lb.ua/news/2013/09/27/229646_regional_ugrozhaet_zhurnalistke.html

²⁹ The City Rada Deputy, Odesa Oblast, threatened the journalist <http://maidanua.org/monitor/reports/view/427>

³⁰ It is categorically prohibited to write about deputies, even if they behave like hooligans <http://maidanua.org/monitor/reports/view/411>

During the live coverage of the meeting³¹ against building in Kherson of a new shopping and entertainment complex and the location in a green area of a gas station director of the Information Agency “Tavriya News” Kyrylo Striemousov was attacked. When the reporter began asking the authorities “uncomfortable” questions, Head of Housing and Communal Services Department of the Executive Committee of Kherson City Rada Olexiy Rybakov took away the journalist’s ID card and tried to tear it.

Chernivtsi journalist Halyna Yeremitsa appealed to the militia³² about the pressure and threats of physical violence expressed by local official Serhiy Shekhter because of her publication in a newspaper.

The editor of the private newspaper “Persha Miska”, Starokostiantyniv (Khmelnitska Oblast), Iryna Rozhok-Kapranova made a statement³³ that Mayor Mykola Melnychuk encourages the founder of the newspaper to exert an impact on the editorial policy of independent newspaper.

In Uzhhorod, on the City Day, in Uzhhorod City Rada, the bodyguards of the Mayor and athletic young men beat the newsmen³⁴ and students (girls) and threatened to murder them. The militia under command of the deputy chief of public security militia of the Uzhhorod City Department of the MIA of Ukraine militia Lieutenant Colonel V. Hryhoryev instead of journalists and ordinary citizens protected bagmen of specific appearance dressed in sports suits.

The process of destruction of local broadcasters by bodies of power continues.

In the City of Kerch, the city authorities seek to totally destroy the independent TV&Radio Company “Bryz” and the site “Kerch.FM”³⁵.

In Chernivtsi, the authorities closed down the channel TVA³⁶.

In Kremenchuk the local authorities are trying to communalize the independent television channel “Vizyt”, the mayor speaks rudely to the journalists³⁷ and the authorities oust journalists from their press conferences³⁸.

It is worth noting the cases of reprisals against journalists who are fighting for their rights.

³¹ In Kherson a functionary assaulted the journalist <http://maidanua.org/monitor/reports/view/379>

³² In Chernivtsi an official threatens the journalist who wrote an article that he kept a Red Book lynx at home <http://imi.org.ua/news/41912-chinovnik-pogrojue-chernivetskiy-jurnalistsi-cherez-stattyu-pro-te-scho-vin-vdo-ma-trimae-chervonoknijnu-ris.html>

³³ The editor of the Starokostiantynivska newspaper said about the pressure from the Mayor <http://imi.org.ua/news/42029-redaktor-starokostyantynovskoji-gazeti-zayavila-pro-tisk-z-boku-mera-mista.html>

³⁴ In Uzhhorod City Rada, the bodyguards of the Mayor beat the newsmen. The militia defended the bagmen <http://imi.org.ua/news/41768-v-ujgorodskiy-miskradi-ohorona-mera-ta-molodiki-pobili-jurnalistiv-militsiya-zahis-chala-bratkiv.html>

³⁵ NMTUU claims that the Kerch authorities seek to totally destroy the Kerch TRC “Bryz” <http://maidanua.org/monitor/reports/view/436>

³⁶ Channel TVA has been out of the ether for a week now. The journalists are protesting, the Oblast State Administration “washes its hands”. <http://maidanua.org/monitor/reports/view/425>

³⁷ In Kremenchuk, the owner of the broadcaster “Vizyt” makes a statement about the raiding attempt <http://maidanua.org/monitor/reports/view/377>

³⁸ People’s Deputy from the Party of Regions expelled from his press conference a journalist of the Kremenchuk newspaper “Prohrama Plus” <http://maidanua.org/monitor/reports/view/361>

The editors of UNIAN³⁹ Olexandr Volynsky, Liubov Zhalovaha, Valentyna Romanenko, Roman Romaniuk and Head of the Department of Economics Tetiana Maydanovych were introduced to the order about transferring them to the newly created department of TV monitoring. Previously, these journalists publicly opposed the violation of professional standards in UNIAN. Journalists were locked in a room and held there for several hours, making them to affix their signatures that they are familiar with the order about their transfer to another department, which is located on the plant premises. The premises (corridors, toilets and other public places) are partially illuminated. In particular, the corridors, the way to the rest rooms and staircases are not illuminated. The suspended ceilings in the hallway directly outside the door of the rented office are partly dismantled, including hanging uninsulated wiring and other parts of communication equipment. The editors of the site UNIAN regarded this decision as persecution for opposing censorship and criticism of the administration of the agency. The unions (they are members of the IMTUU), including international ones, supported the journalists. For a long time the authorities refused to respond to the apparent violations, then under the pressure of journalists the actions were initiated. The State Inspectorate of Labor has found violations in the Private Company “UNIAN”⁴⁰. The case of illegal actions against the employees of UNIAN is in court now.

In Kharkiv Oblast, in Sakhnovshchynska newspaper “Kolos”⁴¹ the village and regional radas changed the founders and removed the personnel, which had co-owned the newspaper since 1995, and appointed acting Editor-in-Chief Halyna Parkhomenko an office holder at first and then fired her. According to journalists the aggravation of the conflict was caused by their attempts to conclude an agreement in accordance with the Law “On the procedure for coverage of the activities of the state authorities and local self-government in Ukraine by the media.”

6. THE COURT PRACTICE

The European Court of Human Rights announced on October 10, 2013 its judgment in the case *Delfi AS vs. Estonia*, no. 64569/09⁴². In it the Strasbourg Court acknowledged that calling the organization-applicant to civil and legal account for abusive comments left by its readers on its news portal cannot be considered a violation of freedom of expression guaranteed by Article 10 of the European Convention.

This decision will probably be used in judicial practice in Ukraine in cases like actions Olexandr Syvolapenko and Yevrotranshrup Ltd. against Yustinian Publishers and Private

³⁹ In the UNIAN the editors who previously informed about censorship “were transferred” to another department <http://imi.org.ua/news/41523-v-unian-redaktoriv-yaki-ranishe-zayavlyali-pro-tsenzuru-peremistili-v-inshiy-viddil.html>

⁴⁰ The State Inspectorate of Labor has found violations in the Private Company “UNIAN” <http://nmpu.org.ua/2013/11/derzhinspektsiya-z-pytan-pratsi-vyyavyla-porushennya-u-tov-unian/>

⁴¹ Kharkiv journalists about the increase of pressure on the media <http://imi.org.ua/news/40913-harkivski-jurnalisti-zayavlyayut-pro-zbilshennya-tisku-na-predstavnikiv-zmi.html>

⁴² ECtHR decided that the site owner can be held responsible for readers’ comments <http://khpg.org/index.php?id=1381445527>

Company *Ukrayinska Pravda*, which on February 14, 2013 was considered by the Kyiv Court of Appeals. In its decision the Court of Appeals ordered the owners of the sites Yustinian and *Ukrayinska Pravda* to publish a disclaimer of the information posted in the zone of free access, namely in commentaries⁴³.

On May 21, Dniprovsky District Court in Kyiv ruled in favor of *St Sophia Homes Co*. According to the court decision⁴⁴, the owner of the forum, which brings together residents of one of the capital's high risers, must pay the *St Sophia Homes Co*. UAH 14M.

During the year a significant number of court decisions were made that did not satisfy claims for substantial amounts of compensation for spreading false information by the media. In general, in the cases "authorities vs. journalists" 11 times the decisions were in favor of journalists and 5 times in favor of authorities. Six cases are still under consideration.

There were times when the authorized persons who filed lawsuits against journalists withdrew their civil complaints (usually after protests and high-profile campaigns in the media).

So, there was a significant case when the Lutsk City-Region Court on June 21, 2013 dismissed a complaint⁴⁵ of three Volyn militia employees to the tune of UAH 100 000 against the newspaper with the highest circulation in the region "Volyn-nova", its journalist and lawyer.

Kyiv Shevchenkyvskyi Court Judge Dmytro Maltsev dismissed the action brought by People's Deputy Vitaly Zhuravskyi against Zhytomyr and national media⁴⁶. Zhuravskyi sought to refute the information that he was the biggest violator of election laws in Zhytomyr.

On March 22, 2013, the Leninsky District Court of Sevastopol terminated the proceeding⁴⁷ in the case against Sevastopol *Novyi Region* News Agency correspondent Yanina Vaskovska, from which the Minister of Defense of Ukraine Pavlo Lebedev wanted to exact \$10,000 accusing her of involvement in the agency's publication that had damaged his reputation and caused mental suffering.

Volodymyr Martynenko, Chief of Dniprovsky District Militia Department of Kherson, called off his suit⁴⁸ against the editor of online edition *Khersonska Pravda* Taras Buzak intended to exact UAH 100,000 of moral losses caused by the publication of the news "Yesterday there was shooting on the corner of Perekopska and Chornomorska streets", which was published online on November 19, 2012.

⁴³ *Ukrayinska Pravda* was obliged to publish a disclaimer of info in comments on the site <http://khpg.org/index.php?id=1361382636>

⁴⁴ The Court wants to recover from the owner of the Kyiv online forum UAH 14M <http://watcher.com.ua/2013/05/23/sud-hoche-styahnuty-z-vlasnyka-kyiyivskoho-internet-forumu-14-mln-hrn/>

⁴⁵ Volyn militiamen lost the defamatory process to the newspaper and lawyer <http://khpg.org/index.php?id=1371992949>

⁴⁶ "Pershy Zhytomyrsky" won the case against People's Deputy Zhuravskyi: the deputy's claim was dismissed <http://www.1.zt.ua/themes/rizne/pershiy-zhitomirskiy-vigrav-sud-u-nardepa-zhuravskogo-pozov-deputata-zalishili-bez-zadovolennya.html>

⁴⁷ The Defense Minister changed his mind to sue the Crimean journalist. The court dismissed the case <http://olden.imi.org.ua/news/ministr-oboroni-peredumav-suditisyu-z-krimskoyu-zhurnalistkoyu-sud-zakriv-spravu>

⁴⁸ The Kherson militiaman, who claimed in court UAH 100,000 from a journalist, withdrew his claim <http://olden.imi.org.ua/news/khersonskii-militsioner-shcho-vimagav-u-sudi-vid-zhurnalista-100-tis-grn-vidklikav-svii-pozov>

On February 21, 2013 the Siverskodonetsky City Court, Luhansk Oblast, decided to terminate⁴⁹ proceeding against journalist and social activist Olexiy Svetikov because the claimant had abandoned the claim.

The court dismissed the complaint of the Secretary of Trostianets City Rada Alina Shatska against the newspaper *Novyny Trostianecchchyny: Tyzhden*⁵⁰. The official demanded the refutation not of facts, but of “incorrect assessment of the facts and use of information that is untrue and that offends her honor, dignity and reputation among the local community.”

There were instances when the government representatives won lawsuits against the media and journalists.

On June 20 the Central District Court of Simferopol partially satisfied the claim⁵¹ of the First Vice-Premier of the Crimea Pavlo Burlakov against the online edition of the *Argumenty Nedeli — Krym* and journalist, member of the Independent Media Trade Union of Ukraine Hanna Andriyevska. According to the court, the defendant in the case the Public Enterprise *Argumenty Nedeli — Krym* should remove from the site of the online edition the article “The Hostel as a shelter for the Crimean VIPs. History of Pavlo Burlakov” and also destroy existing working papers of the journalist containing confidential information about the First Vice-Premier. The court also ordered the Public Enterprise *Argumenty Nedeli — Krym* to pay the official UAH3000 in compensation for moral damages and to pay court costs in the amount of UAH573.50.

It is worth noting the legal proceedings *Zaporizhzhia Water Utility vs. Vasylenko* in the definitive judgment of which there is a formulation as follows⁵²: “To forbid the *Mediakompaniya “Slovo” LLC ... Vasylenko Iryna Andriyivna* (Chief Editor of “Subota Plus” — Ed.) ... Vasylenko Bohdan Yuriyovych (E-in-C, author of the publication — Ed.) to distribute in any way possible (including in conversations with anybody) false (according to court — Ed.) information.”

Until now the courts refuse⁵³ to re-qualify the cases about the attacks against journalists from Art. 296 of the Criminal Code of Ukraine (hooliganism) to Art. 171 (obstruction of journalistic activity).

7. PRACTICAL APPLICATION OF ARTICLE 171

According to the Prosecutor General’s Office of Ukraine⁵⁴, during the first six months of 2013, 117 criminal prosecutions were initiated for obstruction of journalists, 69 of which cases were closed, and only 3 were passed to the court. For the most part the proceedings

⁴⁹ He asked for a million but changed his mind <http://khpg.org/index.php?id=1361745269>

⁵⁰ The court dismissed the complaint of the Secretary of the City Rada demanding to refute the value judgments <http://irrp.org.ua/news/rpdi/2946-sud-vdmoviv-sekretaryu-mskradi-u-zadovolenn-pozovu-pro-sprostuvannya-oc-nochnih-sudzhnih.html>

⁵¹ The Vice-Premier of the Crimea won the lawsuit against the journalist; her colleagues are preparing an action <http://www.telekritika.ua/pravo/2013-06-20/82659>

⁵² Factory of absurd: the court forbade the journalist to talk about “Vodokanal” <http://ua.comments.ua/politics/204517-fabrika-absurdu-sud-zaboroniv.html>

⁵³ Closing the case about beating of the photojournalist Vitaliy Lazebnyk is a shame for the militia — NMTUU <http://www.telekritika.ua/pravo/2013-10-14/86698>

⁵⁴ The journalists’ rights are violated, but two-thirds of cases are being closed <http://www.poryad.com/?p=21303>

were instituted in Kyiv (13) and Donetsk (10). There were no such proceedings in Sumy, Ter-nopil, Chernivtsi, Chernihiv and Zhytomyr oblasts.

In 2013, due to protests, the Ukrainian journalists set a precedent for the punishment of attackers under Article 171 of the Criminal Code⁵⁵. This is a fit punishment for assailants who beat journalists Olga Snitsarchuk and Vlad Sodel in the center of Kyiv on May 18.

However, the chairman of the Independent Media Trade Union Yuri Lucanov maintains⁵⁶ that “it is the exception that proves the rule”.

Only after those exceptional circumstances of the case under Article 171 the accusation was laid against the person who attacked the Kherson journalists Olexandr Tarasov and Valeriy Myroniuk⁵⁷. Before that, at the request of journalists, the militia opened criminal proceedings and then closed them three times referring to the lack of evidence. Meanwhile, the incidents were recorded on video, which clearly show that the journalists were beaten and the law enforcers obstructed their work.

In April 2013, the Ministry of Internal Affairs of Ukraine circulated among its the written rules of behavior⁵⁸ “Interaction of militiamen with media”, which is an example of application of Article 171 of the Criminal Code of Ukraine, specifically: “The theoretical and practical commentary treats obstruction as unlawful creation of any obstacles, restrictions and prohibitions on the receipt, use, distribution, and storage of information by an individual journalist (journalists) or media”. However, the cases under Article 171 are still mostly initiated in order to temporarily reduce tension around the well-publicized case, and then they are either quietly hushed, or investigation continues for years.

8. RECOMMENDATIONS

1. The Verkhovna Rada of Ukraine should adopt the laws as follows:
 - no. 0944 on Amendments to the Law of Ukraine “On Advertising”,
 - no. 0947 “On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine “On Information” (in the new redaction) and the Law of Ukraine “On Access to Public Information”,
 - no. 1076 “On Public TV and Radio Broadcasting of Ukraine.”
 - no. 2600 “On reforming the printed media”,
 - no. 2142 “On Amending the Law of Ukraine “On Protection of Public Morality” (on state supervision)”;
 - no. 2829 on Amendments to the Law of Ukraine “On the National Council of Ukraine on Television and Radio Broadcasting”,

⁵⁵ The trial of Titushko. Last episode: Verdict http://video.telekritika.ua/show/podii/1631-sud_nad_titushkom_epizod_ostannij_virok_02.09.2013

⁵⁶ Head of the NMTUU told in Brussels about the slave working conditions of journalists in Ukraine <http://nmpu.org.ua/2013/09/lukanov-do-zhurnalistiv-v-ukrajini-stavlyatsya-yak-do-rabiv/>

⁵⁷ The case of the attack on journalists in Kherson was sent to court <http://nmpu.org.ua/2013/09/spravu-pro-napad-na-zhurnalistiv-u-hersoni-peredano-do-sudu/>

⁵⁸ The editorial office of the News Agency Poriad z Vamy is concerned about the actions of militiamen who go beyond their powers <http://www.poryad.com/?p=21834>

VII. FREEDOM OF EXPRESSION

— when adopting the Law of Ukraine “On freedom of assembly” (no. 2508a) it is necessary to include in the text that it does not apply to individual actions associated with the implementation of their right to freedom of expression.

2. The General Prosecutor’s Office of Ukraine should stop the continued practice of re-qualification into hooliganism or closing cases initiated under Article 171 of the Criminal Code of Ukraine.

3. The General Prosecutor’s Office of Ukraine should tighten control over the observance of the right to freedom of expression and journalists’ rights, thoroughly investigate every case of intervention of officials into the work of the media and advertising companies.

4. The Ministry of Internal Affairs of Ukraine should explain (publishing the appropriate explanation on the official website of the Ministry of Internal Affairs and in the printed media) the militia officers that any individual actions cannot be considered cannot be considered “peaceful assemblies” and, thus hindering such actions, calling to administrative account under art. 185-1 of the Code of Ukraine on Administrative Violations is unreasonable and unacceptable.

VIII. FREEDOM OF PEACEFUL GATHERINGS¹

1. INTRODUCTION

No substantial changes have been introduced to the legislative and normative basis regulating citizens' right to peaceful gatherings over the year 2013. The relevant legislation was described in our annual report for the year 2012².

The decision of the European Court for Human Rights on "*Varentsov vs. Ukraine*" case was passed in 2013³. The Court recognized that a structural problem dating back to the Soviet times and related specifically to the lack of respective regulations on freedom of gatherings was still persisted in Ukraine.

"The Court proposed that Ukraine immediately reforms its legislation and administrative practice to set up the requirements to organize and conduct peaceful manifestations and the grounds for their restrictions" — stipulated the Court.

Similar decision was passed in the case "*Shmushkovich vs. Ukraine*"⁴. In both decisions the ECHR pointed out the invalidity of the old Soviet legislation and need for legal guarantees of the peaceful gatherings in Ukraine.

The draft law no. 2450 "On Peaceful Gatherings" remained under Supreme Rada consideration till spring, when it has been removed from the agenda. No answer was provided to our official request for explanation, submitted to the profile committee of the Supreme Rada.

Meanwhile, the Supreme Rada registered two other draft laws "On Freedom of Peaceful Gatherings" no. 2508a and no. 2508a-1. The former was devised with the help of "For Freedom of Peaceful Gatherings" partnership⁵. The majority of provisions reflecting our stand⁶ on this draft law were taken into account in no. 2508a. The latter draft law is not essentially different from the former. While this report was being compiled, neither draft has been considered at the Supreme Rada hearings.

¹ Prepared by N. Zubar and O. Severyn. NGO "Maidan Monitoring" information center. See in detail <http://maidanua.org/monitor/page/index/1>

² Freedom of peaceful gatherings in Ukraine in 2012 <http://maidanua.org/2013/03/natalka-zubar-oleksandr-severyn-svoboda-myrnyh-zibran-v-ukrajini-v-2012/>

³ European Court for Human Rights appealed called Ukraine to provide legal regulations of freedom of peaceful gatherings <http://helsinki.org.ua/index.php?id=1365670748>

⁴ Case of *Shmushkovych v. Ukraine* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-128050>

⁵ "For Freedom of Peaceful Gatherings" partnership <http://piket.helsinki.org.ua/>

⁶ NGO "Maidan Monitoring" information. Legal stand on draft law no. 2508a On freedom of peaceful gatherings". <http://maidanua.org/2013/07/its-majdan-monitorynh-pravovi-pozytsiji-schodo-zakonoprojektu-2508-pro-svobodu-myrnyh-zibran/>

2. STATISTIC DATA

In early 2013 we carried out a survey⁷ covering the councils of 567 cities and urban settlements in Ukraine. We received feedback from 492 councils. According to the answers obtained, 16392 gatherings took place in 406 cities of Ukraine in 2012 (therefore, our assessment of the number of meetings as of 10-04-2012⁸ proved very accurate).

The answers revealed that in 2012:

Unlawful local “regulations” concerning peaceful gatherings were applied in 90 cities;

The authorities of 65 cities approached courts seeking the banning of peaceful gatherings;

In 199 the authorities were using the legal act of the non-existent totalitarian state of the USSR (i. e. the decree of the Presidium of the Supreme Council of the USSR no. 9306-XI of 28.07.88 «On procedure for organizing and conducting meetings, rallies, street manifestations and demonstrations in the USSR»). 205 city councils did not use this document. The rest avoided direct answer.

The authorities of 48 cities established the age-related restrictions on participation in peaceful gatherings.

In 86 not a single peaceful gathering was organized over the year.

In 12 cities the use of posters, banners, flags etc was prohibited.

The small towns with population about 10–100 thousands of residents proved most active in terms of peaceful gatherings. Activity was lesser in places where the court rulings banned rallies and meetings thus performing the role of demotivator.

The militia data on the number of “mass events” still does not correlate with the city councils’ data on the number of notifications concerning peaceful gatherings.

Over the year 2013 we registered 61 instances of most evident restrictions of peaceful gatherings on our interactive map. For the sake of comparison — 93 instances of this nature have been registered over the whole year of 2012. For the second year in a row the largest number of peaceful gatherings’ bans fall upon the month of July. However, the violations committed at the end of the year with respect to Yevromaidan in Kiev were not only more numerous, but also more brutal than before.

The majority of notifications on the peaceful gatherings’ bans in 2013 come from Kyiv.

3. RESTRICTION OF RIGHT TO PEACEFUL GATHERINGS BY THE LOCAL AUTHORITIES

3.1. Local normative acts regulating the procedure for organizing and conducting peaceful gatherings.

Our research established that 199 out of 567 city and settlement councils in Ukraine, including 12 (13 in the year 2012) municipal councils of the oblast’ centers of Ukraine (Vinnytsa, Dnipropetrovsk, Donetsk, Lugansk, Odessa, Sumy, Ternopil, Kharkiv, Kherson, Cher-

⁷ Maps of (lack) of freedom of peaceful gatherings in Ukraine <http://maidanua.org/2013/05/natalka-zubar-oleksandr-severyn-karty-nesvobody-myrnyh-zibran-v-ukrajini/>

⁸ So, how many peaceful gatherings occur in Ukraine? And what about “protest actions”? <http://maidanua.org/2012/04/skilky-zh-vse-taky-v-ukrajini-vidbuvajetsya-myrnyh-zibran-a-aktsij-protestu/>

kassy, Chernivtsy) are still using the Decree of the Presidium of the Supreme Council of the USSR no. 9306-XI of 28.07.88 «On procedure for organizing and conducting meetings, rallies, street manifestations and demonstrations in the USSR”).

Certain self-governance bodies justify the use of the said decree, referring to the letter of the Ministry of Justice of Ukraine of 16.11.09 no. 1823-0-1-09-18. Therefore we proposed the Ministry of Justice to renounce or to cancel the aforementioned letter officially. Unfortunately, our request has been disregarded.

Some local self-governance bodies advised that addressing the issues of peaceful gatherings they used the resolution of the Supreme Council of the Ukr.SSR “On urgent measures aimed at strengthening the legality and order in the republic” of 29.11.90, the paragraph 3 of which stipulated the need for special permission to carry out any peaceful gatherings “in the hours off work, days off and in the specially designated locations”.

In Pershotravensk (Dnipropetrovsk oblast’) local bodies of power used the said resolution in their decision of 2011 on adopting “The regulations concerning mass events”⁹. The provisions contained, among others, the following passage “mass violations of the work discipline, non-sanctioned rallies and demonstrations, picketing, desecration and defilement of the monuments and memorial sites dedicated to the October Revolution are among the negative factors affecting law and order and internal security of the state”.

So far an official list of the former USSR legal acts which are still in force under the Resolution of the Supreme Rada of Ukraine no. 1545-XII of 1991, which restrict the right of the Ukrainian citizens to be aware of their rights and obligations, are contrary to the fundamental principle of the legal determination, violate the right to information, lead to misunderstandings in administrative and court practices, has not been compiled. Our requests submitted to the Ministry of Justice and President of Ukraine were not answered, and no list is available to the public. In 2012 the Highest Administrative Court of Ukraine failed to consider the petition on recognizing the aforementioned Resolution invalid, so that a complaint on the violation of Article 6 of the European Court for Human Rights (“right to fair trial”) had to be filed.

3.2. Non-justified intervention of the local self-governance bodies

In early 2013, 90 settlements out of 492 oblast’ and rayon centers and oblast’ subordination cities (18%) were using local “by-laws” and “orders” passed by the local self-government bodies or their executive bodies with respect to organizing and conducting peaceful gatherings. The entire list can be seen on the map¹⁰.

Apart from conceptual illegality of the said documents addressed in detail in 2012 report, virtually all local acts and norms contain anticonstitutional provisions on the term of notification for the peaceful gatherings, anticonstitutional and illegal requirements towards organizers and participants, restrictions in terms of venues, time frames, age and number of the organizers, restrictions in the freedom of expression by way of banning the use of

⁹ In Pershotravensk labor discipline still needs protection from the demonstrators <http://maidanua.org/monitor/reports/view/365>

¹⁰ NGO “Maidan Monitoring”: where (and how) the prosecutor’s office defends the freedom of peaceful gatherings <http://maidanua.org/2013/09/majdan-monitorynh-yak-i-de-prokuratura-zahyschaje-svobodu-myrnyh-zibran/>

loudspeakers, posters, banners etc. In Berezhany (Ternopol oblast') a totally outrageous requirement was put forward: the meeting organizers were obliged to "make a contribution to a special fund"¹¹.

The local orders and procedures feature the following:

- Only the citizens of age 18 or older can participate in mass events, in the opinion of city councils of 48 administrative centers of Ukraine (age-based restrictions),
- Banners and slogans are to be approved by the executive committee — 12 city councils (restriction of the right of freedom of expression linked to the right to peaceful gatherings),
- At least three persons should be the organizers of peaceful gathering — 10 city councils (restrictions by number of participants),
- Ban on loudspeakers use — 9 city councils (restriction of the right of freedom of expression linked to the right to peaceful gatherings),
- Special "permission" for a meeting — 3 city councils (the council of Dzerzhinsk town required that "the copy of the decisions on allowing the meeting is sent to the local National Security branch and Ministry of Interior branches in Donetsk oblast' and the prosecutor's office"; the same request was formulated in Sverdlovsk as well),
- The restrictions are justified by alleged lack of "space". In Obukhiv specific size of the space to be used near official buildings, enterprises, institutions (in m) was established.

The local orders are used at least in 3 cities, where the meetings have not been held at all in 2012. In an urban settlement Rozivka (Zaporizhzhya oblast') with 3537 residents, no gatherings have been held since 2002, according to the city council data. The city council, meanwhile, designated the local airfield as the only place for public gatherings.¹²

3.3. Communications with the prosecutor's office with respect to banning local orders

In 2013 we suggested the Prosecutor General Office ensures the adequate response from the prosecutor's offices of the settlements, where local self-governments have exceeded their legal terms of reference and committed the violations of the right to peaceful gatherings.

Under the law, the prosecutor's office should respond to all requests. However, in practice the lack of such response has become a routine matter. The official data¹³ testify that the prosecutor's office provides responses to less than 2% of all public requests. In our case, though, only 9 municipal prosecutor's offices out of 90 (i. e. 10%) failed to provide response so far.

As of November 9, 2013 the current situation with respect to our communications with the prosecutor's offices concerning the restrictions of the right to peaceful gatherings can be summarized as follows:

¹¹ Peaceful gatherings. In Berezhany citizens have...to pay for exercising their constitutional right <http://maidanua.org/2013/04/myrni-zibrannya-u-berezhanah-za-realizatsiyu-konstytutsijnoho-prava-treba-platyty/>

¹² You may rally...at the airfield <http://maidanua.org/2013/03/mitynhuvaty-mozhna-na-aerodromi/>

¹³ The efficiency of the Prosecutor General office amounts to ... 1,9% <http://maidanua.org/static/news/2011/1312810727.html>

Order or provision invalidated	33
The prosecutor's office submitted a motion on banning	21
Exchange of correspondence goes on	19
Rejection received	8
No answer	9

The communications will continue till complete banning of all the local orders is achieved. It is posted in the live-time regime on Maidan site. On the average one banning requires three rounds of letters exchange with the prosecutor's office.

3.4. Supreme Rada reaction

Prolonged communications with the Supreme Rada resulted in the removal of the "valid" status defining the Decree of the Presidium of the Supreme Council of the USSR no. 9306-XI *"On the procedure of organizing and conducting meetings, rallies, street manifestations and demonstrations in the USSR"*.

The Supreme Rada staff advised that they shared our "concern with respect to the applicable legislation used by the local self-governance bodies in the issues of right to peaceful gatherings."¹⁴

4. COURT BANS OF PEACEFUL GATHERINGS

Under the data of the Uniform state register of the court decisions¹⁵ 266 court rulings restricting the right to peaceful gatherings have been passed over the 11 months of 2013. As compared to the year 2012, this number has decreased amounting to 313). Kharkiv oblast' still ranks the first as to the number of banning decisions (35); Kharkiv courts made 100% of their decisions in favor of the power bodies, just like before. Dnipropetrovsk oblast' (21 bans), the ARC (21 bans) and Kyiv (18 bans) rank respectively second and third.

In 2013 the Ukrainian courts satisfied 83% of the authorities' claims on the ban of peaceful gatherings, bringing the figures back to 2010 rate.

Year	% of the satisfied official claims
2010	83%
2011	89%
2012	88%
2013	83%

¹⁴ The Supreme Rada apparatus shares our concern, but without much zeal...<http://maidanua.org/2013/09/v-aparati-vru-podilyayut-sturbovanist-ale-ne-duzhe-aktyvno/>

¹⁵ The register of the administrative courts' rulings on peaceful gatherings' banning claims for 2013 <http://pravo.org.ua/component/content/article/163-maxwidth/2012-04-21-15-17-54/1311-reiestr-sudovykh-rishen-u-spravakh-pro-zaboronu-myrnykh-zibran-za-2013-rik.html>

In 2012 the local authorities of 65 administrative centers out of 492 filed the claims demanding banning of peaceful gatherings. The court decisions restricting the right to peaceful gatherings were passed exclusively in the locations where the local orders are in force.

This statistic shows the reverse correlation between the number of peaceful gatherings and the number of the claims filed by the authorities requesting restriction of the right to peaceful gatherings.

4.1. Administrative detentions under the article 185-1 of the Code of Administrative Infringements of Ukraine

In 2013 administrative detention was used against the peaceful gatherings' organizers.

On April 10, 2013 16 four laypersons and TVi channel journalists were detained in Novy Petrivtsy (aka Mezhygiryia — the place where Yanukovych's residence is located). The detainees wanted to check whether the flood quoted as a pretext for banning "Democratic Alliance" meeting had really occurred. (No flood was detected). Kyiv circuit administrative court on the basis of article 185-1 of the CAIU authorized administrative detention of Maxim Panov for the term of 7 days. Vasyl Hatsko and Andriy Bohdanovych had to pay administrative fines. On April 13, 2013¹⁷ the head of "Democratic Alliance" Vasyl Hatsko was arrested for 5 days for organizing "Mezhygiryia march".

On July 22, 2013¹⁸ the organizer of Vrdievka manifestation Vasyl Lyubarets was sentenced to 10 days in detention for alleged violation of the rules of peaceful gatherings. His file also contained the clause prohibiting "other individuals" to participate in the rallies.

Taking into account absence of relevant law regulating organization and carrying out of peaceful gatherings the use of article 185-1 of CAIU in the cases not involving the violations of the constitutional norm of the advance notification or peaceful nature of a gathering, is unjustified.

4.2. Grounds for court bans of peaceful gatherings

The new Note on studying and summarizing the practices of administrative courts with respect to the cases involving the realization of the right to peaceful gatherings over the years 2010 — 2011 (resolution of the Highest Administrative Court of Ukraine Plenum no. 6 of 21.05.12), which embraced some of our proposals from the last year, is definitely a positive development.

Paragraph 2 of the said Plenum resolution stipulated familiarization of the appealation and circuit administrative courts' judges with the Note; therefore, we conducted a survey which revealed that Kirovograd circuit administrative court had never received the note; Vinnitsa circuit administrative court and Kharkiv appealation administrative court refused

¹⁶ 7 days in custody for a meeting which never happened ! <http://maidanua.org/monitor/reports/view/375>

¹⁷ The organizer of Mezhygiryia protest detained for 5 days <http://maidanua.org/monitor/reports/view/376>

¹⁸ "Pluralism" in court: another judge condemned the organizer of Vrdievka march to detention <http://maidanua.org/monitor/reports/view/415>

to answer. Zhitomir, Ivano-Frankivsk, Ternopol and Cherkassy circuit administrative courts, Dnipropetrovsk and Odessa appealation administrative courts provided no information.

The court decisions contrary to legal stand of the Highest Administrative Court of Ukraine spelled out in the Note and to common sense, still can be registered. Sometimes the courts still apply the aforementioned "Decree of the Presidium of the Supreme Council of the USSR no. 9306-XI of 28.07.88».

Moreover, the decision of the Highest Administrative Court of Ukraine of 23.01.13 with respect to the claim filed by Kyiv state administration against the "Chernobyl Ukraina" Union" stipulates that the local self-governance bodies have the competence to establish the terms of the notifications about peaceful gatherings.

The ruling of Rivne circuit administrative court of April 16, 2013¹⁹ deserves a special attention among all 2013 court rulings. It reads as follows: "The organizers of the event failed to comply with the Decree of the Presidium of the Supreme Council of the USSR "On the procedure of organizing and conducting meetings, rallies, street manifestations and demonstrations in the USSR".

Dnipropetrovsk circuit administrative court on March 21, 2013 ²⁰ banned a picketing action near the oblast' prosecutor's office claiming that there was not enough space there. The court decision read: "There are no spaces near the prosecutor's office which would safely and without hindrance accommodate certain number of people".

The decision of Kyiv circuit administrative court²¹, banning peaceful gathering on April 10, 2013 at Novy Petrivtsy settlement, close to the President's residence, became a real masterpiece of the genre. The decision referred to the need of cleaning up the aftermath of the spring flooding at the meeting site and claimed that the action participants could infringe upon the villagers' rights, i. e. the right to have their village cleaned.

In November Kharkiv court restricted the right to peaceful gatherings²² supposedly with the aim of mitigating the spreading of contagious disease. Nevertheless, when a rally organized by the authorities was in order, the threat of contagious diseases suddenly disappeared and the decision was recalled. Since late November 2013 not a single rally has been banned in Kharkiv, while militia has diligently performed its duties of protecting peaceful gatherings in Yevromaidan.²³

On December 21, Rivne circuit administrative court banned a meeting which was to take place in front of Rivne oblast' state administration²⁴, justifying its action by an order dating back to the soviet era, claiming that the planned action would hinder the work of the administration staff.

¹⁹ Rivne residents were denied the right to picketing on the basis of a soviet decree <http://maidanua.org/monitor/reports/view/378>

²⁰ Picketing of Dnipropetrovsk prosecutor's office is not possible due to the lack of adequate venue <http://maidanua.org/monitor/reports/view/367>

²¹ The court banned road portest near the President's office <http://maidanua.org/monitor/reports/view/372>

²² The court banned a meeting on the basis of illegal decision made by city council in Kharkiv <http://maidanua.org/monitor/reports/view/506>

²³ Kharkiv Yevromaidan expressed its gratitude to militia for professional and appropriate protection of the public events <http://maidanua.org/2013/12/evromajdan-harkiv-podyakuvav-militsioneram-harkova-za-za-profesijnu-i-yakisnu-ohoronu-hromadskyh-zahodiv/>

²⁴ Rivne circuit administrative court banned a meeting on the basis of the USSR order <http://maidanua.org/monitor/reports/view/520>

4.3. Specific cases

The shameful practice of restricting the rights to peaceful gatherings not only for the specific events' organizers, but also for unidentified groups of individuals. (...and all other persons exercising their right to peaceful gatherings") by court rulings still persists. It contradicts nearly each and every principle of the administrative justice, violates the right of the "other persons" to know about the restrictions imposed on their rights and deprives them of the opportunity to protect these rights.

We asked the local self-governance bodies' officials in all oblast' centers, Kyiv and Sebastopol, whether they had recently filed any claims concerning the restriction of the right to peaceful gatherings for unidentified groups of individuals, (referred to as "all other persons", "other agents" etc.). All the documents are available here²⁵. 11 cases were registered in Dnipropetrovsk over the years 2010–2013 and two cases — in Odessa. Vinnitsa, Uzhgorod, Ivano-Frankivsk, Luts'k, Mykolaiv, Rivne, Kharkiv, Kherson, Cherkassy, Sebastopol reported unambiguously absence of such practices. Other cities failed to provide relevant answers.

As far as Kyiv is concerned, the municipal state administration was offered a question: "Had city council

(The executive committee of the city council) over the years 2010–2013 filed any claims concerning the restriction of the right to peaceful gatherings for unidentified groups of individuals ((referred to as "all other persons", "other agents" exercising their rights to peaceful gatherings etc.)? if so, how many claims had been filed?"

Kyiv municipal state administration first tried to evade confrontation and then insisted that all the claims concerned "specific individuals", although court rulings testify to the contrary.

On February 28, 2013 ²⁶ the circuit administrative court in Kyiv banned rallies in front of the Prosecutor General office for the term of one year. On June 13, 2013 ²⁷ the same court established restrictions in exercising the right to peaceful gatherings (picketing, marches, demonstrations, rallies, meetings and other types of peaceful gatherings) with respect to specific subjects in Luteranska and Bankivska streets in Kyiv.

On July 19, 2013 ²⁸ the court forbade "UDAR"'s people's deputy Serhiy Kaplin to organize and to hold any actions till the end of July. The court based its ruling on the fact that the celebrations of 1025th anniversary of Rus-Ukraine Christianization were scheduled for the dates in question.

On July 12, 2013 ²⁹ Ternopol' circuit administrative court banned all the actions dedicated to a Christian holiday.

²⁵ O. Severyn: "...and all other persons" <http://maidanua.org/2013/08/58393/>

²⁶ Rallies in front of the Prosecutor General office banned for the term of one year. <http://maidanua.org/monitor/reports/view/358>

²⁷ The circuit administrative court in Kyiv prohibited any meetings in Luteranska and Bankivska streets in Kyiv. <http://maidanua.org/monitor/reports/view/398>

²⁸ The circuit administrative court in Kyiv people's deputy Serhiy Kaplin to organize and to hold any actions till the end of July. <http://maidanua.org/monitor/reports/view/414>

²⁹ The court forbade Ternopol' residents the celebration of peter and Paul christsitan holiday <http://maidanua.org/monitor/reports/view/404>

On October 25, 2013³⁰ the circuit administrative court of Odessa oblast' on city council motion banned all the gatherings and similar actions in all the central areas of the city for two weeks.

The peaceful gatherings banned by the courts include not only the actions of protest, but even commemorative events, like memorial celebration in honor of Kruty heroes in Donetsk, a meeting commemorating the Crimean Tatars deportation, the Banner Day in Kharkiv, Independence Day in Odessa, marches celebrating UPA anniversary in Lviv.

4.4. Violations of the freedom of peaceful gathering during Yevromaidan

The public protests known as Yevromaidan, which started on November, 21, 2013 led to a number of arrests of their participants.

In late November three Yevromaidan organizers were sentenced to 5 days of administrative arrest³¹, while observers pointed out inadequacy of the court proceedings.

In Kiev the Resolution of the Kiev circuit administrative court of November 30, 2013³² became the grounds for arrest on the claim of Kiev city state administration. It prohibited any peaceful gatherings between December 1 and January 7 in the central part of Kiev. Between November 30 and December 3 53 criminal proceedings were started against the rally participants³³.

Yielding to international and internal the Supreme Rada hurriedly passed a poorly drafted law on the amnesty of peaceful gatherings' participants³⁴.

The court decisions on the banning of peaceful gatherings during Yevromaidan were passed in many cities, in particular, in Chernyhyv, Kharkiv, Lugansk, Cherkassy, Odessa, Dnipropetrovsk, Ternopol, Alchevsk, Chuguyev etc. However, they were not practically enforced anywhere but in Kiev. In Dnipropetrovsk the circuit appellate court even refuted the decision on gatherings' ban.³⁵

5. VIOLATION OF PEACEFUL GATHERINGS' FREEDOM COMMITTED BY THE MINISTRY OF INTERIOR BODIES

We asked the Ministry of Interior officials which normative acts sanction the operation of the snitches often present at the peaceful gatherings, taking pictures and video-footage of the participants, posters, banners and events.

³⁰ Rallies banned for two weeks in Odessa <http://maidanua.org/monitor/reports/view/482>

³¹ Two more Odessa Yevromaidan activists convicted by the court <http://maidanua.org/2013/11/zasudzheno-sche-dvoh-aktyvistiv-odeskoho-evromajdanu/>

³² The court satisfied Popov's claim and banned meetings in the center of Kiev!!! <http://maidanua.org/monitor/reports/view/508>

³³ "Inadequate power puts activists behind the bars to intimidate everyone and put an end to Maidan" — Zakharov <http://pohlyad.com/news/n/30993>

³⁴ The law on amnesty for Yevromaidan participants is not viable: the lawyers' opinion <http://vecherniy.kharkov.ua/news/86498/>

³⁵ On December 19 the local Yevromaidan activists will condemn the court ban on local peaceful gatherings in the Dnipropetrovsk oblast' appellate court <http://maidanua.org/monitor/reports/view/518>

We found out that the document³⁶ regulating militia operation during peaceful gatherings (or “mass events” as they are still referred to in militia parlance) is strictly confidential. Later the Ministry of Interior advised that, although not yet approved³⁷, the document is already marked “for official use only”.

We believe that a document justifying militia “preventive” or “restrictive” measures should be made public as a factor affecting the exercising of the right to peaceful gatherings. Keeping it secret or “for official use only” is per se a violation of right to information access and contradicts the principle of legal determination — an individual has the right to know about the consequences of certain behaviors within the context of interaction with law enforcement bodies during peaceful gatherings.

Anti-constitutional norms establishing 10-days’ term for advance notification about peaceful gatherings and some obscure “non-sanctioned” peaceful gatherings so far have not been removed from the Instructions of road and traffic internal troops, despite respective requests submitted to the Ministry of Interior.

5.1. “Isolated protests”

The problem of separating peaceful gatherings defined by Article 39 of the Constitution of Ukraine and the so-called “isolated protests”, i. e. the exercising of right to the freedom of expression and opinion by individuals, i. e. presence in public places with banners and posters, dissemination of information materials etc, has not been resolved neither in 2012, nor in 2013.

We asked Chief Directorate of the Ministry of Interior in Kyiv whether the information about³⁸ detention of citizen A. Ilchenko, who stood in front of the Prosecutor General office in Pechersk district (Kyiv) holding a poster, by the militiamen on July 11, 2013, was true, and if so, what legal substantiation was applied by the officials.

We got response to the effect that even one person can “gather”.³⁹ Militia detained one person and compiled a protocol for individual action on the basis of the court ruling banning gatherings, which is absurdity. The same opinion is shared by Mykolaiv militia⁴⁰.

5.2. Use of militia operatives in plain clothes

In our 2012 report we suggested among other recommendations: “The Supreme Rada of Ukraine should regulate the use of plain-clothes militia operatives for the protection of law and order during peaceful gatherings at the legislative level”.

³⁶ “Marked confidential” <http://maidanua.org/2013/05/maje-hryf/>

³⁷ O. Severyn: How militia got messed up with its own evidence (epistolary narration with illustrations) <http://maidanua.org/2013/10/oleksandr-severyn-yak-militsiya-zaplutalasya-u-vlasnyh-pokazah-epistolyarna-saha-z-kartynkamy/>

³⁸ A picketer from Nilokayev protesting from arbitrary actions of the law-enforcers, detained in Kyiv near prosecutor General office. <http://novosti-n.mk.ua/news/read/55341.html>

³⁹ Obvious, but unfathomable. “do not gather in groups of one!” <http://maidanua.org/2013/08/ochevydne-nejmovirne-po-odnomu-ne-zbyratysya/>

⁴⁰ Очевидне-неймовірне у Миколаєві: “по одному не збиратися!” <http://maidanua.org/2014/01/ochevydne-nejmovirne-u-mykolajevi-po-odnomu-ne-zbyratysya/>

This issue was addressed in 2013 both by deputies and by the non-governmental organizations. In 2013 two draft laws dealing with law enforcement officers' anonymity were submitted to the Supreme Rada.⁴¹

The draft law no. 3048 was devised in collaboration with the NGOs. It proposes special badges for law enforcers, displaying their full names, ranks and units. The militiamen shall not be allowed to hide or cover this badge.

The draft law no. 33110, registered by O. Bryhinets, proposes special identification marks on the helmets and backs of the law enforcers' uniforms.

5.3. Groundless stopping of peaceful gatherings and detention of their participants by the militia officials

Force is still used by militiamen against the rallies' participants. The largest number of such incidents is registered in Kyiv.

On March 18, 2013⁴² 3 participants of peaceful action in support of human rights activist Dmytro Groyzman, accused of disseminating pornography, were detained. Violence was used against the action participants by about 10 "Berkut" commandos.

On July 19, 2013⁴³ specialized "Berkut" unit dispersed a rally at Maidan with the use of force.

The new developments of the current year included the use of violence against journalists covering the meetings. Our partners' organization "Independent media Trade union of Ukraine"⁴⁴, stresses that brutal treatment of journalists by "Berkut" lamentably has become routine.

On July 18, while the picketers at Maidan, were chased away, the "Berkut" commandos used physical force against reporter Andriy Kovalyov, who was covering the event — he was pushed around; they tried to throw him off his feet, his microphone was torn away from him. The militiamen were aware that they were attacking journalist, as A. Kovlayov showed them his reporter's ID and introduced himself.⁴⁵

Later, when the demonstrators were forced to retreat towards Instytutska street, the "Berkut" commandos threw the journalists A. Kovalyov, O. Argat and D. Demyshev off their feet. A road and traffic unit sub-colonel was trying to prevent A.Kovalyov from taking video of the demonstrators' detention and pushing them into militia vans. He started kicking the reporter's video cam and tried to drag the journalist behind the militia lines.

None of the militia officials present did anything to prevent the illegal actions.

5.4. Militia non-interference into illegal actions during peaceful gatherings.

On May 18, during a rally in the city center "solidly built individuals" have beaten up the 5th Channel reporter Olha Snitsarchuk and journalist Vlad Sodel representing the "Kommer-sant" newspaper. Militia passively observed the beatings.

⁴¹ If unidentified, not guilty <http://www.radiosvoboda.org/content/article/25102017.html>

⁴² 3 persons detained at the Prosecutor General office protest action <http://maidanua.org/monitor/reports/view/366>

⁴³ "Berkut" dispersed a rally at Maidan <http://maidanua.org/monitor/reports/view/413>

⁴⁴ Independent media Trade union of Ukraine cautions militia against use of force against journalists after Odessa events <http://nmpu.org.ua/2013/10/nmpu-zasterihaje-militsiyu-vid-zastosuvannya-syly-po-vidnoshennyyu-do-zhurnalistiv/>

⁴⁵ Write to Yanukovych about abuse of journalists <http://www.blogs.telekritika.ua/?id=3334>

“The beating took place while the journalists performed their professional duties, with militia witnessing the incident without interfering” — says the joint statement of the journalists’ organization⁴⁶, — it looks like people wearing militia uniforms consciously allowed the felons to mug the journalists”. The journalists’ organizations stress that this disgraceful practice becomes traditional in Ukraine.

In Kharkiv, prior to and in the course of the opposition rally on April 12,⁴⁷ all public transportation (but for the underground) suddenly came to a halt. The city managers pretended they had no control over the situation. The opposition petition about the criminal act was not given any consideration, and no measures were taken to resolve the situation.

5.5. Use of force against the Yevromaidan participants

The participants of the peaceful gatherings which took place within the Yevromaidan framework were severely beaten more than once by “Berkut” commandos. Read more about it in section 2 addressing torture and cruel treatment.

“Maidan Monitoring” Information Center observers and analysts testified to the demonstrative nature of the use of force against participants of the peaceful gatherings⁴⁸ on November 30, 2013 at Independence Square in Kiev. The Ministry of Interior failed to provide explanation of “Berkut” actions⁴⁹ despite numerous requests sent to the Ministry by the time of the Report preparation.

We also sought explanation from the authorities⁵⁰ concerning the attack on the barricades in Kiev on the night of December 11. The correspondence analysis demonstrated complete inadequacy of the official response and led to the conclusion that the bodies of power are unwilling to justify their actions to anyone.

6. “SANCTIONED” AND “NON-SANCTIONED” MASS EVENTS

Mass media keep using the definitions of “sanctioned” or “permitted” meetings. Over the year 2013 these notions have become even more numerous in the media.

People are used to act on priming principle. (intention fixing phenomenon). It creates the certainty that peaceful gatherings are to be permitted by someone. The “Rating groups” survey⁵¹, in which 50% of the respondents answered that demonstrations without permits

⁴⁶ Come to the protest action against journalists’ mugging and support the petition on minister’s resignation <http://blogs.telekritika.ua/?id=3281>

⁴⁷ The opposition filed a complaint against blackage of public transportation in Kharkiv <http://maidanua.org/2013/04/opozytsiya-podala-zayavu-pro-zlochyn-schodo-blokuvannya-ruhu-hromadskoho-transportu-v-harkovi/>

⁴⁸ Maidan Monitoring” Information Center : the mugging of Maidan was a demonstration. <http://maidanua.org/2013/11/majdan-monitorynh-pobyttya-berkutom-majdanu-demonstratyvne/>

⁴⁹ The actions of “young berkuts” in Yevromaidan on the night of November 29–30 could not/would not be explained at Zakharchenko’s office <http://maidanua.org/2013/12/u-zaharchenka-ne-zmohlyne-zahotily-poyasnyty-diji-berkutyat-na-evromajdani-u-nich-z-29-ho-na-30-te-lystopada/>

⁵⁰ What actually happened in Maidan? The authorities so far cannot provide any explanation. <http://maidanua.org/2013/12/to-scho-tse-bulo-u-nich-11-ho-hrudnya-na-majdani-vlada-poky-ne-zdatna-poyasnyty/>

⁵¹ IRI Ukraine Survey: September 2013 <http://www.slideshare.net/Ratinggroup/iri-ukraine-augustseptember2013poll>

are unacceptable, while 34% consider them acceptable and 69% believe that “permitted” demonstrations are acceptable, support this conclusion.

The Constitution of Ukraine (Article 39) establishes “notification” and not “permit” principle for peaceful gatherings. Media monitoring revealed that direct official references to this principle are very scarce; on the other hand, it is quoted rather often by the peaceful gatherings’ organizers and participants, as well as by the journalists providing coverage of the events.

Even NGO members with background in law regularly confuse “notification” with the “permission” with respect to any action.

Our efforts to draw the attention of mass media editors using these notions uncovered the need to educate both journalists and proactive citizens. “Dzerkalo tyzhnya” [Mirror of the week — Ukr.] newspaper, in violation of the law “On public appeals” failed to respond to our call ⁵² to avoid legally incorrect definitions.

Divulgence of erroneous concepts about the obligatory permits for meetings is a serious demotivator for public participation in the peaceful gatherings.

7. RECOMMENDATIONS⁵³

1. In compliance with paragraph 3 of the Highest Administrative Court Plenum Resolution no. 6 of 21.05.12 concerning the draft resolution of the Highest Administrative Court Plenum “On administrative court procedure for consideration and passing decision with respect to exercising citizens’ rights to peaceful gatherings (meetings, rallies, marches, demonstrations etc)” we propose to provide the administrative courts with unambiguous clarification of the conceptual unacceptability of the use of Soviet “order”, locally established “procedures” and “provisions”, of restricting the exercising of rights to peaceful gatherings by unspecified groups of individuals. The uniform practice of applying relevant legislation shall be introduced in all courts with the goal of ensuring the freedom of peaceful gatherings. (In reply to our request HACU promised to pass this resolution in 2013).

2. The state executive service of Ukraine shall introduce amendments to the decree no. 66/2 of 21.12.2012 “On approval for reporting procedure under form no. 1 (for six months) “report on the operation of the state executive service bodies” and procedure for its preparation which ensures publicity of the information on the number of executive inquests and use of measures of enforced compliance with court decisions concerning the restrictions in the exercising of right to peaceful gatherings; the number of instances in which state agents involved the internal units operatives for executive action and number of the Ministry of Emergency Situations officials involved in executive action.

3. The Ministry of Interior shall remove the mark “for official use only” from the draft methodological recommendations “Organizational and legal background for the operation of interior bodies officials in preventing, revealing, registering, documenting and putting an end to illegal actions in the course of mass events” of 26.07.2011; make this document public.

⁵² “Dzerkalo tyzhnya” violates the law <http://maidanua.org/2013/04/dzerkalo-tyzhnya-porushnyk-zakonu/>

⁵³ Appeal to authorities with recommendations for amendments <http://maidan.org.ua/2012/06/majdan-monitorynh-prypynyty-systemni-porushennya-prava-na-myrni-zbory/>

VIII. FREEDOM OF PEACEFUL GATHERINGS

4. President of Ukraine, Cabinet of Ministers of Ukraine, and Ministry of Justice of Ukraine shall immediately address the task of compiling and making public the official list of the normative acts of the former USSR, which are still in force and affect individual and civil rights of the citizens.

5. The Supreme Rada shall invalidate the resolution of the Supreme Council of the Ukr.SSR “On urgent measures for the strengthening of legality and order in the republic” of 29.11.90 without delay.

6. The Ministry of Interior and the prosecutor’s offices shall immediately issue relevant clarification to the militia operatives on the unacceptability of detention and suing of citizens under article. 185-1 CAIU for individual protests.

7. The Ministry of Interior shall immediately introduce appropriate changes into the By-Laws of the traffic and road troops of militia of Ukraine (The Ministry of Interior order no. 404 of 28.07.94), removing the requirement of 10 days notification term of for advance notification on peaceful gatherings and the notion of «sanctioned” and “non-sanctioned” meetings.

8. Prosecutor General Office shall ensure the ubiquitous use of the law by all prosecutors’ offices while considering the matters of illegality of local normative acts concerning the organizing and conducting of peaceful gatherings; carry out respective monitoring; submit the motion on invalidating all these acts in the territory of Ukraine.

9. The Prosecutor’s General office should properly investigate the instances of using force against participants of the peaceful gatherings, publish the investigation results, penalize the culprits and ensure due compensation to the victims. Without these actions the restitution of public trust towards the law enforcement bodies is out of question. More details can be found here⁵⁴.

⁵⁴ Kharkiv Yevromaidan resolution on the occasion of Militia Day: <http://maidanua.org/2013/12/rezolyutsyya-harkovskoho-evromajdana-posvyaschennoho-dnyu-mylytsyy-evromajdan-harkiv/>

IX. FREEDOM OF ASSOCIATION

1. REVIEW

In 2013, the significant modifications in the legislation took effect; they improved the legal regulation of associations to an important degree, including social associations and charities. However, their implementation was not completed; the amendments to other laws in connection with the adoption of these laws were not developed and submitted to the parliament. As a result, there remain many inconsistencies, particularly in tax legislation, legislation on trade unions, etc., which slowed down the introduction of new legislation in administrative practice.

The new law “On public associations”², which the NGOs had been developing and promoting, came into effect as of January 1, 2013. In general, the new law on public associations meets European standards and practice of the European Court of Human Rights. It also tackles the problems identified in the judgment of the European Court of Human Rights *Koretsky and others vs. Ukraine*. Specifically, part 10 of article 12 of the new law clearly defines the grounds for refusal to register an association. Moreover, it contains no restrictions concerning the territory of the association, the possibility of the involvement of volunteers, and possibility to independently determine their activities.

It will be possible to fully assess it only early in 2014, when the generalized statistics will become available. However, in the meantime we can say that the number of refusals of registration has already been reduced by about a half (though most likely this is due to the introduction of procedures for the return of documents for revision, which officially (but in fact it did exist) did not exist before); the number of inspections of NGOs also dropped about five times, and the liquidation of associations juridically almost disappeared.

The implementation of the law goes a hard way, because it includes some new approaches to regulation that require additional explanation. There are also some problems related to unclear transitional provisions to this law.³

On September 10 People’s Deputy V. Sushkevych submitted to parliament a bill no. 3225 on amendments to the Law of Ukraine “On Public Associations” (on support of all-Ukrainian public associations)⁴. The project concerns the legal requirements regarding termination of the activities of NGOs, which function in the form of separate legal entities. The law requires

¹ Prepared by Volodymyr Yavorsky, member of the Board of UHHRU.

² See: <http://zakon2.rada.gov.ua/laws/show/4572-17>

³ See. e. g., “On the status of implementation of the Law of Ukraine “On public associations”, <http://civil-rada.in.ua/post/1421>; “The new “extermination” of the third sector in Ukraine”, <http://svsever.lg.ua/2013/03/novoe-po-boishhe-tretego-sektora-v-ukraine/>

⁴ See: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48234

that these centers go on functioning without the status of a legal person; otherwise it is necessary to register an association of such entities. According to the author of the project, the new law “impairs the condition of their further functioning, because it “destroys” the decades-old territorial structure of local centers of all-Ukrainian non-governmental organizations.” Then in his letter of explanation he argues: “For example, the all-Ukrainian organizations of veterans, invalids since the 90s of the twentieth century organized their territorial structures from an oblast down to a village or a district in a town. Some of the NGOs formed their territorial structures at the time of Soviets (former republican organizations of the all-Union NGOs). Today, the number of their local centers is about 1,500. Most of them have been registered with the status of a legal person.” Such position has the right to exist and is well grounded. It seems that with such rigid approach the state intervened in the autonomy of associations in the aspect of their own definition of the structure of their organizations. In point of fact, it will be difficult for the state to justify the need for compulsory liquidation of public associations that do not fulfill the requirements of the new law on the modifications of their structure, and such actions of the state can be regarded as a disproportionate interference with freedom of association.

The new law “On Charity and Charitable Organizations” came into force on February 3, 2013⁵. According to many experts, this law is in line with international standards on freedom of association, positive experience of regulation in other countries and is also a major step to improve the situation with freedom of association.

The regulation of political parties remains unchanged. To a large extent, the law on political parties does not meet international standards, but the parties have learned to get along with many of its provisions. However, in certain instances it leaves it to the government to exert pressure on parties, for example, in the case of changing party cell leader, expulsion from the party and so on. In previous annual reports on human rights, we have repeatedly described similar cases, although during 2013 we fixed none of them.

In general, the current environment is favorable for the establishment and activities of associations. There are no significant financial constraints on the reception of funds or expenditures.

In Ukraine, there remains responsibility for participating in unregistered public organizations. To solve this problem, people’s deputies V. Patskan, A. Shevchenko, B. Beniuk and I. Lutsenko submitted a bill no. 3661 of November 21, 2013 on amending the Code of Ukraine on Administrative Offences (about NGOs)⁶. However, it has not been considered by Parliament yet.

2. ESTABLISHMENT AND ACTIVITIES OF ASSOCIATIONS

Under the new law, the creation of public associations and charities has been greatly simplified. A lot of bureaucratic requirements of statutory documents and restrictions on the purpose of their activities and associations were x-ed out. However, it is difficult to say with some

⁵ See: <http://zakon2.rada.gov.ua/laws/show/5073-17>

⁶ See: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=49132

accuracy how these legislative changes have been implemented in administrative practice. Here is some general information on registration and failure to register the association.

General information about registration/refusal of registration of public associations⁷

	2011 ⁸	2012 ⁹	9 mos. 2013 ¹⁰	Total
<i>Registered</i>				
Public organizations	1887	1913	2475	46 286
Centers of all-Ukrainian and international NGOs	163	31	480	9858
Structural formations of political parties	1162	947	282	162 763
Political parties	15			201
Charitable institutions	579	558	41	6976
Offices of all-Ukrainian and international charitable institutions	11	14	—	528
Branches and offices of all-Ukrainian and international charitable institutions	29	42	—	502
<i>Legalization</i>				
Trade unions (independent)	80	84	38	1203
Associations of trade unions	1	—	1	281
Organizational units of all-Ukrainian trade unions	627	857	372	76 610
Organizational units of trade unions with some other status	69	91	20	3911
<i>Legalization through set-up notification:</i>				
• Public organizations	280	631	548	7297
• Centers of all-Ukrainian and international public organizations	724	783	314	9575
• Grassroot party organizations	2904	1748	651	119 289
• refusals of registration/legalization	764	710	330	
• refusal of registration (approval, taking note of) of changes	435	547	348	

In 2008–2009, the number of refusals of registration of NGOs was about 1,200 per year. But at the same time more organizations were recorded: about 3,000 per year, which is significantly more than for the period from 2011 to 2013.

⁷ According to the State Registration Service of Ukraine for different years: <http://www.drsu.gov.ua/show/1443>

⁸ <http://www.drsu.gov.ua/file/1854>

⁹ <http://www.drsu.gov.ua/file/10496>

¹⁰ <http://www.drsu.gov.ua/show/11918>

These data show that the number of refusals of registration of public associations has dropped dramatically. However, today there is no statistics on the number of documents returned as requiring improvement. Previously such return of documents was not required by law, although it was a common practice, and now the new law opens the opportunity and the Registration Service uses it quite often. Obviously, this is a kind of refusal to register. Therefore, it is necessary to specify that it is impossible to determine the final total of refusals and current data are rather relative.

It should be noted that the number of refusals of registration is still very high. The new law on associations has very narrowly defined grounds for refusal of registration. There are serious doubts that it is a question of 330 organizations the activities of which conflict with the Constitution of Ukraine and directly threaten its values. According to the registration service, the chief organizational difficulties are connected with determination of the name and founders of the organization. It appears that it is necessary to improve this procedure, as is clearly evident that the grounds for refusal of registration of the organization are interpreted in a fuzzy way. Especially when we remember that in fact the decision to refuse to register equates to a ban of the organization, because the participation in such organization entails administrative liability.

There is still a considerable discrepancy among data on the number of NGOs that provide the State Registration Service and the State Statistics Service. The latter as of 01.10.2013, indicated the presence of 76,575 NGOs, 29,463 trade unions and their associations, charitable organizations 14,729 and 19,194 political parties and party cells.¹¹ These figures are considerably higher than those by the registration service mentioned above.

During registration the entry into the Register of nonprofit organizations and assignment of non-profit status is an important step. This frees the organization from paying income tax. This status is granted by the State Tax Service on a point of order. In fact, it is a necessary additional step of registration because without it the association operates as a company and is greatly limited in financial activities. On September 11, 2012 the site of the State Tax Service of Ukraine published the Draft Resolution of the Ministry of Finance of Ukraine "On approval of the Regulations about the Register of non-profit institutions and organizations" specifying the reordering of assignment of the non-profit status to NGOs. Experts believed that this project could pose a threat to public organizations. In particular, it failed to clearly define the time frame for assignment of non-profit status to NGOs. On January 14, 2013 it was approved by the Ministry of Finance of Ukraine¹². However, the project underwent changes and did not contain significant drawbacks, though it did fail to specify the time limit for taking a decision on the application for registration as non-profit organizations that could potentially be a problem for the organization.

Another potential problem is the lack of changes to the Tax Code, a part on public associations. Prior to the adoption of the Law of Ukraine "On Public Associations" there was an active Law of Ukraine "On Public Associations", under which an association of citizens comprised two types of organizations: public organizations and political parties. The cur-

¹¹ The number of subjects in the Uniform State Register of Enterprises and Organizations of Ukraine by organizational and legal forms of economic management, [http://ukrstat.org/uk/edrpoy/ukr/Uniform EDRPU_2013/ks_opfg/ks_opfg_1013.htm](http://ukrstat.org/uk/edrpoy/ukr/Uniform%20EDRPU_2013/ks_opfg/ks_opfg_1013.htm).

¹² <http://zakon4.rada.gov.ua/laws/show/z0267-13>

rent law on public associations defines two distinct concepts: public organizations and public associations. Given this, the term “public organization” has been significantly narrowed, which from now on does not include the notion of “public association” as a union of public organizations.

However, the Tax Code operates exclusively with the term *public organization*. Therefore, in practice, the unions of public associations may run into problems with their inclusion in the Register of nonprofit institutions and organizations and ascribing to paragraph b) of article 157.1 of the Tax Code, although prior to the entry into force of the new law on public associations they did have such opportunity. It is vital for many of the non-profit association to lay a claim to this very aspect of non-profitableness because it allows them to receive donations and not to tax them and use them on socially important objectives under paragraph b) of article 157.1 of the Tax Code. The same are the problems with implementation of the first and second parts of article 154.1 of the Tax Code by the public unions of public organizations of disabled people.

To solve this problem, people’s deputy of Ukraine V. Patskan filed the bill no. 3695 of November 27, 2013 about amending the Tax Code of Ukraine (concerning NGOs)¹³. However, it has not yet been considered.

The problem is not in the clear differentiation by the registration service of public associations from religious organizations that undergo registration under another procedure and have a different legal status. In particular, the Registration Service in its statistics even separately shows that it has registered 414 non-governmental associations of religious orientation. It is not quite clear what is their actual distinction from religious organizations. This very fact caused a topical conflict in recent years.

The public organization “Association of believers of Ukrainian orthodox Greek-Catholic Church” was registered by the Order of the General Department of Justice in the Lviv Oblast no. 115-r dated 17.03.2011 and the certificate of registration of the association on 17.03.2011, no. 1545 was issued. The Governing Center “Patriarchal Curia” of Ukrainian Greek Catholic Church appealed this decision. The Lviv Regional Administrative Court on June 6, 2013¹⁴ adjudicated to dismiss the claim. However, the Lviv Administrative Court of Appeals on October 29, 2013 disaffirmed¹⁵ the court decision and decided to cancel the entry of the public organization “Association of believers of Ukrainian orthodox Greek-Catholic Church”. The Court found that the registration body failed to properly check the legality of the organization name. In particular, it didn’t take into account the availability of the Certificate of trademark and service no. 136637 “Ukrainian Greek Catholic Church”, cl. 41, 45 (organization of religious gatherings), which had been issued on 25.03.2011. The court also took into account that the activities of this organization leads to exacerbation of interfaith social and religious situation in the region, inciting religious hatred among citizens, which had been expounded in the relevant expert opinion of the Department of Religious Studies of the H.S.Skorovoda Institute of Philosophy of the NAS of Ukraine.

¹³ See: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=49192

¹⁴ <http://www.reyestr.court.gov.ua/Review/31847380>

¹⁵ <http://www.reyestr.court.gov.ua/Review/34840414>

It is really astonishing that neither the registration service nor the court considered the activities of the organization in the light of the law on religious organizations.

3. INSPECTIONS OF THE ACTIVITIES, TEMPORARY PROHIBITION OF SOME KINDS OF ACTIVITIES, AND LIQUIDATION OF PUBLIC ASSOCIATIONS

As it was already mentioned, the new legislation on associations had a positive impact on the situation with inspections of the associations by the registration service.

In 2009, over 9.3 ths inspections of associations were conducted (in 2008 more than 7.3 ths, in 2007 more than 6.5 mln) and 572 notifications were issued (730 in 2008, 550 in 2007). Obviously, the number of inspections kept increasing each year, but with the new law, their number decreased about five times. Accordingly, there are no notifications and virtually no claims to NGOs. It is also good that no public associations were liquidated during 2013.

Total of inspections, notifications and claims on liquidation of public associations¹⁶

	2011¹⁷	2012¹⁸	9 mos. of 2013¹⁹
Decisions to cancel the registration records	1 339	2 482	1 416
Number of inspections of associations (NGOs/charities/structural bodies of political parties) — acts of inspections	7 633	9 378	1 602
Notifications	419	320	—
Number of law suits and appeals to the prosecutor by the results of inspections of NGOs	54	49	1
Number of NGOs liquidated by the court by results of control of organs of justice	46	27	—

4. RECOMMENDATIONS

1. Ensure proper implementation of the provisions of the law “On Public Associations” and “On Charity and Charitable Organizations”. The Ministry of Justice needs to develop, submit to the Parliament and adopt the amendments of the legislation in connection with the adoption of these two laws.

¹⁶ According to the State Registration Service of Ukraine for different years: <http://www.drsu.gov.ua/show/1443>

¹⁷ <http://www.drsu.gov.ua/file/1854>

¹⁸ <http://www.drsu.gov.ua/file/10496>

¹⁹ <http://www.drsu.gov.ua/show/11918>

2. Remove Article 186-5 of the Administrative Code, which establishes the responsibility for heading or participating in the unregistered public associations.

3. State Registration Service should summarize filing of lawsuits on liquidation of political parties and public organizations and bring it into line with the requirements of article 11 of the European Convention on Human Rights, article 37 of the Constitution of Ukraine and practice of the European Court of Human Rights.

4. Higher Administrative Court of Ukraine should summarize jurisprudence on claims for liquidation (annulment of the certificate of registration) of political parties and NGOs.

5. Develop and adopt amendments to the Law of Ukraine "On political parties" to bring it into line with international standards ²⁰.

6. Registration Service of Ukraine shall include into its statistics the information on the number of returned documents for completion of registration, as well as information about registration of political parties, number of applications for cancellation of the registration of political parties and their removal from the register.

²⁰ See, *inter alia*, Guidelines for legal regulation of the activities of political parties, OSCE, <http://www.osce.org/ru/odihr/81988>

X. FREEDOM OF MOVEMENT AND CHOICE OF PLACE OF RESIDENCE¹

1. GENERAL OVERVIEW

Generally speaking the freedom of movement and free choice of place of residence is respected in Ukraine. Some problems, however, can be identified in this area.

Everyone can move freely around the country and choose one's place of residence. The problems arise at the times of large peaceful gatherings, because in the course of these events the authorities try to restrict citizens' participation in the meetings. Traditionally, different means are used: the transportation companies are threatened with revocation of their licenses if they bring participants to the meetings; the vehicles are stopped by the traffic and road units under false pretexts to impede their further progress etc. At the times of mass protests the most severe measures are used. Specifically, in late November and December during Euro-Maidan actions many instances of hampering the protesters' progress were registered.

The banning of restrictions concerning servicemen's travels abroad is among positive developments. On November 5, 2013 the Supreme Rada of Ukraine introduced changes to the Article 6 of the Law of Ukraine "On the procedure of exit from and entry to Ukraine for the Ukrainian citizens" which lifted the restrictions for the citizens of the draft age as far as their right to go abroad was concerned. Earlier that clause caused serious problems².

The European Court for Human Rights on January 10, 2013 passed a decision on the case "*Zarotchentsev vs. Ukraine*", (file no. 39327/06³), in which it found the violation of the Article 2, Protocol no. 4 of the Convention of Human Rights (the freedom of movement). The Court classified the restriction of the petitioner's freedom of movement as a disproportionate measure. He had been under the obligation not to leave the country for the investigation and consideration of his criminal case for approximately 9 years and 6 months. Earlier the court had passed many decisions of the similar nature.

Over the recent years the number of the aliens denied entry to Ukraine has decreased several times: in 2011 it amounted to 6365, in 2010 — to 17336, in 2009 — to 19773, and in 2008 — 24774. However, several denials for political reasons were registered this year as well.

Namely, on July 5, 2013 entry to Ukraine was denied a Russian national journalist Yu.Barabash. No substantial reasons for denial were offered. Prior to the incident he had

¹ Prepared by Volodymyr Yavorsky, member of the Board of UHHRU.

² See, e. g. Military commissariat and constitutional right to the freedom of movement. http://www.irs.in.ua/mv/2011/07/blog_96.

³ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115770>

been living in Ukraine for prolonged periods of time. The journalist believes that the sanctions were triggered by his critical statements against the authorities.⁴

On November 11, 2013 in Lviv airport the customs officials did not allow Norbert Neuhaus, ex vice mayor of a German city of Trier and the author of the book “Values of Christian Democracy” crossing the Ukrainian border, without giving any reason for their actions. Neuhaus came to Ukraine to take part in the training seminar. No substantiation was provided, but the members of the “Democratic alliance” opposition party, that invited Neuhaus, claimed that this denial was strictly politically motivated.⁵

The Russian opposition activist B. Nemtsov was not allowed to join Euro-Maidan on December 12. Neither grounds nor the term of banning have been given⁶. On December 13 Raik Opitz was prohibited from entering Ukraine for his alleged links with “funding of a terrorist organization and intelligence operations”. He was denied entry to Ukraine for 5 years. He had a permit for temporary residence in Ukraine valid till August 15, 2014 (issued on August 15, 2013), as well as an ID issued by the National Union of the Journalists of Ukraine on August 29 this year).⁷ On December 21 entry to Ukraine was denied a well-known Georgian businessman Georgiy Kikvadze, a senior executive of the Ukrainian agricultural company “Terra”. Earlier he worked in Ukraine dealing with investments. He is known to have openly supported Maidan. The border control officer referred to the decisions of the National Security Service of Ukraine as the grounds for the banning. Mass media have also informed that Kikvadze was on the list including 36 businessmen and professor from various universities. The list was comprised by the people’s deputy O. Tsaryov, who requested that NSS of Ukraine bans entry to Ukraine to these individuals as they represent a threat to the national security.⁸

Most severe restrictions of the freedom of movement for the persons under administrative arrest still represent a serious problem. The said persons need investigator’s approval for any trip outside their place of residence. The investigator can deny it without any explanation. It amounts to additional penalties imposed on a person. Even neighboring Belarus or Russia does not use such strict measures.

2. PERSONAL REGISTRATION AND IDENTIFICATION SYSTEM

In late 2012 the Law “On the uniform national demographic register and documents confirming Ukrainian citizenship, identifying a person or his/her special status” came in force. In fact it has been disregarded for the entire year of 2013. The governmental bodies kept is-

⁴ Russian national Barabash was denied entry to Ukraine for his criticism of Yanukovych’s regime. <http://uainfo.org/heading/public/162201-gromadyaninu-rf-barabashu-za-kritiku-rezhimu-yanukovicha-zaboronili-vyizd-na-teritoryu-ukrayini.html>

⁵ German ideologist of Christian democracy was banned from entering Ukraine <http://www.dem-alliance.org/news/v-ukrainu-ne-pustili-nimeckogo-ideologa-hristijanskoi-demokratii.html>. Text of decision available here: <https://www.facebook.com/photo.php?fbid=10152013480339510&set=pcb.10152013524599510&type=1&theater>

⁶ http://gazeta.ua/ru/articles/politics/_boris-nemcov-stal-personoj-non-grata-v-ukraine/531677

⁷ NSS of Ukraine denied entry to a German journalist and benefactor. // UP, December 13, 2013, 13:55, <http://www.pravda.com.ua/news/2013/12/13/7006705/>

⁸ Businessmen and academics denied entry to Ukraine // FT, December 22, 2013 4:04 pm, <http://www.ft.com/intl/cms/s/0/5e393938-6af2-11e3-8e33-00144feabdc0.html#axzz2oIMm7UAX/>

suings all the ID papers, including passports, in the old format and under the old procedure in defiance of the said law. In November 2013 the government allocated another 295.1 million UAH to set up the uniform national demographic register, so that overall amount of more than 700 million UAH (over 85 million USD) was spent in the course of the year. The State Migration Service announced that all the stages of the uniform national demographic register implementation could be completed by the end of 2016.

Let us remind that the main advocate of this law, former people's deputy and currently Deputy Head of the State Migration Service V.Hrytsak stated that after the law is passed Ukraine would be able to issue biometric passport as early as January 1, 2013⁹.

The system of public registration so far has not been reformed. Some portion of population lives without registration or not at the place of registration. In fact efficient and accurate database registering the citizens is non-existent.

The issuance of passports needed to go abroad remains one of the most crucial problems. Lack of precisely defined procedure spelled out by the law, alongside with the routine corruption inherent to the process¹⁰ make hostages of the citizens who either have to pay more than legal fees for their passports or fail to get them on time.

In early 2012 the "Democratic alliance" political party launched a campaign "STOP arbitrary operation in the passport offices"¹¹. The campaign targeted bribes paid for the issuance of a passport to travel abroad. As of today, the factual and legal fee for obtaining such a passport constitutes 170 UAH. The migration service in different regions imposes its own fees and additional papers not stipulated by the law. As a result the total fees for a passport increase to 300- 800 UAH. The campaign proved very successful, but was fiercely opposed by the officials and corrupt bureaucrats. Some bodies of power took the side of the public.

Thus, the Antimonopoly Committee of Ukraine recommended to the State Migration Service of Ukraine using the measures eliminating unwarranted payments for the passports to travel abroad. The Committee carried out its own investigation, which showed that in 2013 petitioners in the migration offices were served not by the migration service officials, but by the state company "Document". The receipts covered payments for the state company consultations, insurance and other non-obligatory payments. These actions can be qualified as violation of the Article 16 of the Law of Ukraine "On protection of economic competition".¹²

The prosecutor's office also took into account requests coming from public at large. Specifically, in February 2013 the prosecutor's office in Volyn' oblast' made public the information on illegal fees imposed by the migration service:

⁹ "Documentary proof" // "Kommersant Ukrainy" newspaper no. 188 (1678), 20.11.2012 <http://www.kommersant.ua/doc/2071202>

¹⁰ See, e. g. friendship with EDAPS worth billions // UP, March 13, 2013, <http://www.epravda.com.ua/publications/2013/03/13/365479/>; EDAPS patented "Ukraina" // <http://real-economy.com.ua/publication/22/36534.html>; Passport war // UP, June 26, 2013, <http://www.epravda.com.ua/publications/2013/06/26/382240/>; "Family" pushed EDAPS put of passport business // UP, July 24, 2013, 09:00, <http://www.epravda.com.ua/publications/2013/07/24/386615/>;

¹¹ See <https://www.facebook.com/STOPsvavilly?fref=ts>.

¹² ACU provided recommendations to the State Migration Service of Ukraine, 29.08.2013, <http://www.amc.gov.ua/amku/control/main/uk/publish/article/99218>; press-conference on violations of the law on economic competition protection <http://www.amc.gov.ua/amku/control/main/uk/publish/article/99288;jsessionid=58D9AC9128DE308ED41F126BBF7B0A9D.app4:1>

"In particular, applicants approaching the oblast' Department of the State Migration Service are given the list of bank accounts to pay allegedly obligatory fees for the passport needed for travels abroad. The list contains, among other fees, payments not stipulated by the law, i. e. 100 UAH for information services provided by Volyn' branch of "Document" company and 75 UAH for "VUSO" insurance company services. These fees are paid by the citizens under pressure from the migration service officials promoting economic operation of the said companies. Besides, the oblast' officials accept payments right on site, and not through the banks. To put an end to the violations and hold those in charge responsible respective prosecutor's office petition was submitted to the head of the Volyn' oblast' Department of the State Migration Service".¹³

In August 2013 the prosecutor's office of Odessa oblast' completed the inspection carried out following the information posted in mass media concerning the legality of fees established for the travel passports by the Chief Directorate of the State Migration Service of Ukraine. The inspection revealed that the migration service officials demanded fees not envisaged by the law. The law, in particular, unambiguously specifies the fee of 170 UAH for the issuance of the passport, while the citizens were obliged to pay between 300 and 800 UAH. On this factual basis the charges were lodged with the Uniform register of the pretrial inquest and criminal investigation was started in accordance with p.1, Article 364 of the Criminal Code of Ukraine (abuse of power or office).¹⁴

The Ombudsman, however, took the side of the State Migration Service of Ukraine.¹⁵

The court practices varied as well. The campaign activists condemned the denials of passport issuance on the grounds of refusal to pay additional fees in court. Zaporizhzhya circuit administrative court, for one, refuted one of such appeals by its decision on August 01, 2012. This decision was invalidated on February 5, 2013 by the ruling of Dnipropetrovsk court of appeals,¹⁶ which obliged the migration service to issue the passport. On June 5, 2013 the Highest Administrative Court of Ukraine¹⁷ supported the appeal court decision and obliged the migration service to accept the documents submitted for the issuance of the passport without additional fees. At the same time another applicant filed a similar complaint. On July 23, 2012 Zaporizhzhya circuit administrative court once again denied satisfaction of the complaint. On February 19, 2013 Dnipropetrovsk court of appeals cancelled this decision and satisfied the complaint. However, on September 17, 2013 the Highest Administrative Court of Ukraine composed of other judges ruled to the contrary¹⁸, cancelling the decision of the court of appeals and denied the satisfaction of the complaint. The decision was a real surprise, as it was passed on absolutely identical petitions, under the same cir-

¹³ http://www.vol.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=116160

¹⁴ http://www.od.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=126071

¹⁵ See. http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=2428%3A2013-02-27-14-38-51&catid=14%3A2010-12-07-14-44-26&Itemid=75; see also commentary by Ombudsman staff member M. Chaplyha https://www.facebook.com/m.chaplyga/posts/152509871575513?comment_id=332446¬if_t=comment_mention, also campaign activists. Democratic Alliance: Ombudsman defends passport mafia. <http://dem-alliance.org/news/demaljans-upovnovazhena-verhovnoi-radi-z-prav-lyudini-zahishaje-interesi-pasportnoi-mafii.html>.

¹⁶ <http://reyestr.court.gov.ua/Review/29311769>

¹⁷ <http://reyestr.court.gov.ua/Review/31988077>. Also see analysis of the court decision here: <http://jurliga.ligazakon.ua/news/2013/7/4/93909.htm>

¹⁸ <http://reyestr.court.gov.ua/Review/33639390>

cumstances and with the application of the same legal provisions. The Highest Administrative Court of Ukraine, nevertheless, arrived at totally different conclusions. This fact proves the lack of strictly defined regulations concerning passport issuance, opening the door to corruption and abuse.

However, on December 2013 the Supreme Court of Ukraine¹⁹ put the final stop in the matter. Considering the aforementioned decision of the Highest Administrative Court of Ukraine of June 5, 2013, it ruled that the decision should remain in force. The Supreme Court of Ukraine supported the plaintiff's claim and agreed that the documents should be accepted and considered without additional fees. I.e. the plaintiff had to pay just the official fee of 170 UAH. All the other dues are illegal. Under Article 2442 of the Code of Administrative justice all the bodies of power and courts must bring their practices into compliance with this decision.

Another problem is related to the fact that there is no national program addressing the needs of persons without IDs. The situation in the border regions of Odessa oblast', where many stateless persons reside using only their birth certificate as ID, is typical in this context. Providing free legal services to the public over the years 2011–2012, together with the bodies of justice, the Legal Centers have to deal predominantly with persons of Moldavian ethnicity residing in the border regions of Odessa oblast'. These persons come out with requests for legalization and obtaining of the valid IDs (over 100 petitions came from Kotovsky and Krasnooknyansky raions only). The majority of these people came to Ukraine in early 1990-s, have had their children and grandchildren here.²⁰ Here is one the stories:

*In 2011, during a field trip organized by Odessa oblast' "Committee of the Ukrainian Voters" Legal Center to the village of Stavrovo, Krasnooknyansky raion, three village residents, sisters Lyudmila (born in 1974), Olena (born in 1971) and Tetyana (born in 1987) applied for free legal assistance. The three women came from Modovva and have resided in Ukraine for about 20 years. However, they are not citizens of Ukraine, or of any other state. The only documents the sisters have are their birth certificates issued under the soviet regime in the Moldavian SSR. But the main concern for the women is the undocumented status of their children. The absence of the parents' documents gives grounds to deny the issuance of respective documents to the children. Between the three of them, the sisters have eight children, at the age between 2 and 14 years. The oldest children will finish secondary school in 2013 and need to get the secondary education certificate. The lawyers from the Legal Center of Odessa branch of the CUV helped the sisters to get a residence permit in Ukraine by the end of 2012. In January 2013 the Legal Center lawyers came to Stavrovo once more to provide full Ukrainian citizenship for the sisters. This event will be followed by the next complicated stage, i. e. obtaining the relevant documents for all the kids, the oldest of whom are already graduating.*²¹

The Roma people also face problems related to their IDs.

¹⁹ See court's decision: <http://dem-alliance.org/news/cud-ogolosiv-zdirnictvo-u-pasportnih-stolah-poza-zakonom.html>

²⁰ See in more detail here: "The issues of the Moldavians' legalization in the border regions of Odessa oblast' — monitoring results" Odessa branch of the Committee of Ukrainian voters http://pravo.prostir.ua/file.php?Monitoring_ua.doc; national program is proposed to address the legalization of the Ukrainian citizens of Moldavian ethnicity http://www.irf.ua/index.php?option=com_content&view=article&id=39821:2013-04-30-13-42-19&catid=20:news-law&Itemid=61

²¹ "Stateless persons: decades of illegal existence" http://www.irf.ua/index.php?option=com_contents&view=article&id=39224:2013-02-06-10-35-46&catid=20:news-law&Itemid=61

3. IDENTIFICATION AND REGISTRATION OF THE HOMELESS PEOPLE

Lack of efficient measures for counteracting homelessness remains a serious problem. The law passed last year considerably complicated the registration procedure for the homeless. As of today there is no official statistics as to the number of the homeless, although the international organizations have more than once stressed the need to have these data available. The registration allows for quicker integration of the homeless, as the opportunity to get an ID presents itself, and, therefore the homeless can have access to the social services and exercise their social and economic rights. For example, an unregistered person cannot register in an employment center and look for job with the help of the state.

According to expert evaluations, as of 2012 about 100 thousand children live and work in the streets.²² The data of the UN UNICEF Children's Fund published in 2011 the number of homeless children between 10 and 18 years in Ukraine amounts to approximately 150–160 thousand, although official statistics sustains that the number is about 12 thousand. Two thirds of the teenage respondents are not registered in any governmental agency. Two thirds of the children-respondents live in the streets without any permanent place of residence. 27% of the children live in the railroad stations, 19% — with the friends or acquaintances, 18% — in the abandoned buildings, 10% — with the people they hardly know, 8% — in the sewage canals and 1% — in the orphanages.²³

The total number of the homeless is not known.

On March 13 the Government passed a Resolution no. 162 "On approving main measures for counteracting homelessness till the year 2017"²⁴.

The Ministry of social policy sustains that the number of the respective institutions/facilities²⁵ has increased, constituting by 01.07.2013 187 (01.01.2013 — 108) units offering social services to the homeless and the ex-cons including:

- 99 (01.01.2013 — 90) communal institutions/facilities;
- 19 (01.01.2013 — 18) institutions/facilities set up by the non-governmental organizations;
- 49 (01.01.2013 — 46) NGOs offering various services (catering, social patrols, humanitarian aid etc.) to the targeted categories.

The following entities operate within the aforementioned institutions/facilities or independently:

- 85 (01.01.2013 — 75) homeless registration centers (branches), including 81 (01.01.2013 — 71) communal with two 2 local branches (Kyiv, Odessa oblast');
- 21 (01.01.2013 — 19) shelters (facilities) for overnight stay, including 19 (01.01.2013 — 18) communal, with 1 branch (Donetsk oblast');
- 13 (01.01.2013 — 13) homeless reintegration centers including 7 (01.01.2013 — 7) communal;
- 2 (01.01.2013 — 1) social hotels (branches), including 1 communal;

²² New UN report on "street children" http://www.unicef.org/ukraine/ukr/media_20463.html.

²³ UNICEF found in Ukraine 10 times more homeless teenagers than the official data claim, <http://tyzhden.ua/News/36520>.

²⁴ <http://zakon2.rada.gov.ua/laws/show/162-2013-%D0%BF>

²⁵ http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=AB325CD13D37D905B5617AC4F4DEC551.app9:1?art_id=153288&cat_id=34941

- 14 (01.01.2013 — 14) centers (branches) for the social adaptation of persons released from prison, including 3 (01.01.2013 — 3) communal;
- 12 (01.01.2013 — 12) communal specialized hostels (special facilities) for the senior citizens and disabled released from prison.

The data provided earlier, however, differ from those made public. Thus, on January 1, 2011 the ministry confirmed the operation of 135 (not 108 as stated above) entities providing social services to the homeless and persons released from prison. Other indicators also differ. E. g., 21 shelters offered an overnight stay (this number remained the same in 2013), 17 homeless reintegration centers (currently they are 13, although the official data sustained there were only 7).²⁶ This discrepancy gives solid ground for doubts as to the accuracy of the official figures. The data are obviously manipulated with to show an increase in the area, although no one knows what the reality is. Relatively insignificant number of the facilities at the nation-wide scale is also a reason for concern.

The essence of the matter is that all the facilities are supported either by the local budgets or private funds. Hence, the network development fully depends on the local authorities, while the ministry and the state in fact do not participate in the process. That is why these institutions are spread all over the country disproportionately. Sometimes they can be found in oblast' centers only, which decidedly is not enough. Naturally a homeless person would not travel one hundred or more kilometers an oblast' center; so many homeless are left without governmental assistance and the number of the homeless is increasing.

Over the first six months of 2013 the facilities for the homeless and persons released from prisons have granted services to 13.7 thousand clients. Specifically,

- The homeless registration centers provided services to 8.7 thousand clients, including assistance in recovery of the documents to more than 1.1 thousand persons, domicile registration — to 5.1 thousand persons ;
- Temporary shelters helped 4.2 thousand persons offering them 477 thousand social services;
- Institutions for the persons released from prison provided 461.5 thousand social services to 841 persons.

According to the data provided by the State Migration Service over the first six months of 2013 the centers/facilities have registered the domicile of 3.3 thousand homeless, including 169 persons released from prison; the place of stay of 3.1 thousand homeless. Besides, 619 persons were issued Ukrainian passports.

4. RECOMMENDATIONS

1. Finalizing the legal reform aimed at the registration of the place of residence, with due consideration to the best international practices²⁷ and Law of Ukraine on the freedom and movement and free choice of place of residence.

²⁶ http://www.mlsp.gov.ua/labour/control/uk/publish/article%3Bjsessionid=50F5FE873E858B1ADF61D37D6AC806DB?art_id=125067&cat_id=34941

²⁷ See, e. g. *Governing principles of the public registration*, OSCE, October 7, 2009, <http://www.osce.org/ru/odihr/39497?download=true>

2. Cancelling the procedure for temporary registration (this procedure is defined by the law on the freedom of movement and free choice of place of residence, but not applied in practical operation).

3. Considering the broadening of grounds for domicile registration (similar to provisions concerning the voters' register). Banning of the legal provisions stipulating the right to possess or use housing facilities on the basis of registration. Facilitating the procedure of waving the registration of private housing owners (at their request) if the valid contracts on lease are not in place. Severing the ties between the registration and the right to given premises in the public and communal housing. Viable registration system does not seem feasible without these measures, so that thousands of residents will be in fact living under addresses different from those registered.

4. Banning the curfew for minors introduced by the local authorities in defiance of Constitution, legislation and international law.

5. Introducing changes into the law "On administrative supervision" concerning restrictions of freedom of movement for the persons released from prison.

6. Putting an end to the Ministry of Interior practices of obstructing transportation of the peaceful gatherings' participants to the venues, thus illegally restricting their freedom of movement.

7. Devising national program aimed at reducing the number of people without IDs, specifically, the Roma and residents of border regions and stateless persons. The program should stipulate a simplified procedure for obtaining an ID.

XI. PROTECTION FROM DISCRIMINATION

The theme of discrimination, particularly the theme of opposition to discrimination very long remained outside the focus of attention and recognition of the governmental bodies of Ukraine: there was no single goal-oriented legislation, no statistics was collected, no governmental body responsible for the job and it was considered that the problem did not exist at all. The state reports on implementation of commitments concerning human rights, which Ukraine methodically, during many years, had been sending to various institutions (UN, Council of Europe, OSCE), contained a reference to Article 24 of the Constitution about resolution of the problem of discrimination of all vulnerable groups and general statements like *“Today Ukraine has the appropriate legal mechanisms for the prevention of racism, racial discrimination, intolerance and prejudices with regard to national or ethnic identity,”*² or *“The legislation of Ukraine guarantees the citizens equal rights and freedoms in relation to equality before the law regardless of race, sex, nationality, language, attitude to religion, social origin, beliefs, and social status. The equality of citizens before the law in all spheres of economic, social, political and cultural life is enshrined in Article 24 of the Constitution of Ukraine...”*³

In 2010, speaking at the European Conference of the Speakers of Parliaments (Limassol, Cyprus) Chairman of the Verkhovna Rada of Ukraine V. Lytvyn strongly condemned discrimination and said:

*“In Ukraine, quite effective mechanisms were implemented to protect the rights of citizens based on the principle of non-discrimination on extrajudicial and judicial basis. The effectiveness of the functioning of these mechanisms may be proved at least with the following fact. In the 12 years since the adoption of Ukraine’s commitments under the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has received over 20,000 applications from citizens of Ukraine, but among them there are no and were no complaints under Article 14 and Protocol no. 12.”*⁴

The ex-speaker made a mistake: over the years of practice, in ECHR, there was one successful case against Ukraine, when the applicants complained of the violation of Article 14⁵. It permits to easily conclude that the parliamentarians and government bodies not only fail

¹ This chapter was prepared by Iryna Fedorovych, Chairman of the Coordination Council of the Coalition for Opposition to Discrimination and Co-Coordinator of the No Borders Project.

² Translation from Russian into Ukrainian was done by the author; source: National report submitted in accordance with paragraph 15A of the annex to resolution 5/1 of the Council for Human Rights of the UN; the full report is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/127/18/PDF/G0812718.pdf?OpenElement>

³ Unofficial translation from Russian into Ukrainian; source: National Report (19-21 periodic report submitted in 2010) to the UN Committee on the Elimination of All Forms of Racial Discrimination; the full text is available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=398&Lang=en

⁴ The full text of the speech is available at <http://portal.rada.gov.ua/news/Novyny/Povidomlennya/31801.html>

⁵ The case in question is *Fedorchenko and Lozenko vs. Ukraine* (Application no. 387/03); the text of adjudication is available at http://search.ligazakon.ua/l_doc2.nsf/link1/SO000476.html

to understand the nature of the phenomenon of discrimination, but did not see the need of countermeasures as well, including the reform of the relevant legislation base.

The main problem of the absence of a clear legislative regulation and impossibility of direct application of Article 24 of the Constitution for many years consisted in the absence of legal definition of discrimination, its forms and liability for discrimination. Thus, the first attempt to legally define discrimination occurred in 2005, when Article 1 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" defined the notion of gender discrimination *as action or inaction expressing any distinction, exclusion or benefits on the basis of sex, if they are intended to limit or prevent the recognition, enjoyment or exercise on equal footing of human rights for women and men.*

Into another law that prohibits discrimination against a group of people "On the Principles of Social Protection of the Disabled in Ukraine" the concept of discrimination and reasonable adjustment was introduced only in 2011. Here the legislator decided not to re-invent the wheel and directly referred to Convention⁶ about disability rights: "The terms *"discrimination on the basis of disability", "reasonable adjustment" and "universal design" shall have the meaning provided in the Convention on the Rights of the Disabled"*⁷. Interestingly, since the ratification of the Convention until the amendments to the law two years passed. The said again demonstrates understanding of the urgency of combating discrimination in the eyes of Ukrainian officials and parliamentarians.

Understanding or rather recognition of the inevitability of development and adoption of a separate anti-discrimination bill reached Ukraine in 2010 only after the start of the process of rapprochement with the European Union when the clause on the development and adoption of anti-discrimination law was mentioned among the requirements of the Action Plan on liberalization of visa regime⁸: "The adoption of a comprehensive anti-discrimination legislation recommended by monitoring bodies of the United Nations and the Council of Europe in order to ensure effective protection against discrimination."

But here, Ukrainian officials decided to follow the path of least resistance and, instead of a special law that is clearly specified by the requirements of the Plan, started and developed the "Strategy to combat discrimination in Ukraine"⁹. According to Minister of Justice Olexandr Lavrynovych, the development of the document was due to the lack of a conceptual definition of public policy in the field of combating discrimination and lack in Ukraine of principles of public authorities in this field, as well as strategic goals, objectives and standards intended to ensure the realization of human rights, which would allow to increase the effectiveness of combating discrimination.

The NGOs and individual experts without any loss of time began criticizing this initiative and its content; the essential criticism read as follows: the strategy is not a law and therefore does not impose liability for discrimination, does not provide for specific powers of public

⁶ The official Ukrainian translation of the Convention is available at http://zakon1.rada.gov.ua/laws/show/995_g71

⁷ Article 2 of the Law "On the basis of social protection of disabled in Ukraine"; the full text is available at <http://zakon1.rada.gov.ua/laws/show/875-12>

⁸ Paragraph 2.4.3 "The rights of citizens, including the protection of minorities". The full text is available at http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art_id=244813273&cat_id=223280190&ctime=1324569897648

⁹ The full text is available at http://www.kmu.gov.ua/control/uk/publish/article?art_id=244963098&cat_id=244274160

authorities and does not include the list of such protected criteria as sexual orientation, gender identity, and age. On the other hand, the expert¹⁰ of the Ministry of Justice, which was the strategy developer, made the following comment on the said initiative:

“The strategy is based on general principles of law, on the Constitution. Unfortunately, the Ukrainian legislation does not define what discrimination is. Therefore, I like that the document just gives a broader understanding of what the government should do to realize human rights, as the Constitution specifies”. She said that the strategy is more like a “road map”, “direction sign” to the general approach to the state protection of people against discrimination, and not a law. Therefore, the debate about designation of specific in-groups of people will be possible when the bill will be developed and the purpose of the strategy is to concentrate public efforts on combat against discrimination, but not to protect selected in-groups of people: “Such selectivity will be discrimination inside out”¹¹

The strategy was published for public discussion; rather predictably, the majority of comments came in from religious organizations who objected to the need for protection against discrimination in general. However, the President did not sign the strategy. Probably, having not received confirmation from the European Commission that the strategy would be “credited” as the fulfillment of the corresponding point of the plan for visa liberalization, the Ukrainian government went directly over to the development of the bill, as required by numerous recommendations, NGOs and the aforementioned Plan. The bill developed by the Ministry of Justice was published for public discussion on April 2012, but a week later, without taking into account public criticism, it was registered in the Verkhovna Rada and very quickly approved in first reading. The experts of Ukrainian civil society, including the CAD¹², international experts and the Office of the Commissioner for Human Rights repeatedly paid attention to the low quality of the bill. Numerous comments and suggestions were sent to the specialized committee of the Verkhovna Rada. The committee even agreed to create a working group to discuss the bill, which met only once after the first reading. No proposals of the members of the working group were included in the text, which was approved at the second reading. The bill was also criticized by experts of the European Commission against Racism and Intolerance. The ombudsman referred the bill to the European Commission against Racism and Intolerance, but unfortunately, but the Verkhovna Rada Deputies voted the bill in second reading before the ECRI sent in its conclusions¹³.

In its opinion letter, among other things, the ECRI noted the following significant deficiencies of the law:

1. The list of grounds on which discrimination is prohibited also includes “other signs” that makes it incomplete. This is a positive aspect. However, it would be desirable to include additional attributes such as nationality, sexual orientation, gender identity. Such a move would give the judges the needed additional guidance.

¹⁰ The expert’s name was Ms. V. Lutkovska, who at the time (early 2012) was the authorized representative of the government at the European Court of Human Rights.

¹¹ Read more here <http://www.dw.de/стратегія-проти-дискримінації-український-уряд-забув-про-секс-меншини/a-15766620-1>

¹² Coalition against Discrimination in Ukraine is an association of NGOs; for more details see: www.antidi.org.ua.

¹³ Despite the fact that the VR Committee on Human Rights were notified beforehand that the expert opinion of ECRI was pending, as well as the Committee given the findings of the European Commission and Ukrainian experts.

2. It should be clearly stated that the term “law” in the second part of the Article applies to the entire system of substantive and procedural law. Such provisions were laid down in the rules that establish civil and administrative liability, as well as regulate civil and administrative process in other countries, members of the Council of Europe.

3. The bill fails to clearly express that it also applies to private-law relations (i. e. relations between individuals and legal entities that do not have the powers of authority), e. g. in residential relationships, employment and access to goods and services. This should be corrected (*see* paragraph 7 GPR no. 7).

In its turn, the Coalition for Combating Discrimination commenting on the bill drew attention of the Committee to the following shortcomings of the text:

- some debatable problems of definitions of direct and indirect discrimination, harassment and incitement to discrimination;
- incomplete list of protected characteristics, including the absence in it of such characteristics as “sexual orientation and gender identity”;
- lack of principle “transfer the burden of proof” in cases of discrimination;
- lack of a clear-cut mechanism for implementation of the law and imposing liability for discrimination.

The last comment in the opinion of both Ukrainian and international experts is a major problem of the Ukrainian anti-discrimination law, because the general definition of discrimination contained in the bill in its content actually repeats a part of disposition of article 161 of the Criminal Code of Ukraine, which the “direct or indirect restriction of rights or granting direct or indirect privileges on grounds of race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, linguistic or other characteristics” recognizes as a crime. Therefore, based on the substance of articles 61 and 62 of the Constitution of Ukraine, the persons who commit discrimination on any grounds (including all forms specified by the bill) may be held legally liable only in the framework of a criminal procedure. This situation not only deprives of the legal meaning some provisions of the anti-discrimination bill, including the right to challenge discriminatory behavior in court, as well as the role of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights in protection of individuals against discrimination, the right of NGOs to represent the victims of discrimination in court and in government bodies, etc., but also leads to the fact that all anti-discrimination law is stillborn in reality.

Almost immediately after the entry into force of the Law¹⁴ the Ukrainian government decided to reform it. Already in November 2012, the same developer, the Ministry of Justice began working on a package of amendments to the law. The situation, at least in the light of cooperation with civil society and taking into account the comments of interested parties, almost paralleled the previous one. Despite the numerous comments and suggestions (from the CDA, Commissioner, European Commission, ECRI), which were added to the text of the bill, the Ministry of Justice did not take into account almost anything, while focusing only on its own concept of necessary changes, and this time even without a formal declaration of open public debate passed the bill to the Cabinet of Ukraine, which subsequently registered

¹⁴ The Law came into force on October 5, 2012.

it in the Verkhovna Rada¹⁵ under number 2342. The explanatory note to the bill stated the following: *“The Bill of Ukraine “On Amendments to Legislative Acts of Ukraine on Prevention and Combating Discrimination in Ukraine” (hereinafter the bill) is designed to fulfill a number of instructions of the Cabinet of Ministers of Ukraine based on the results of the meetings of the Coordination Center for the implementation of the Action Plan on the liberalization by the EU of the visa regime for Ukraine. The project does not require public discussion.”*

The only legislative compromise admitted by the drafters was the inclusion of sexual orientation in the list of grounds on which discrimination is prohibited in the sphere of labor. Later this very fact became the formal reason why the bill no. 2342 was never put to the vote, even in the first reading, despite the fact that it was repeatedly included in the agenda and the fact that this bill was one of the last unfulfilled state obligations under the Action Plan on visa system liberalization. Instead, the bill was widely discussed by the public which was provoked by the statements of religious organizations and groups and supported by the deputies.

So Deputy of the Verkhovna Rada of Ukraine of the sixth convocation Pavlo Ungurian said that if the bill no. 2342 *“On the prevention and combating discrimination in Ukraine”* is adopted, then under the guise of combating discrimination any criticism and limitation of actions of sexual minorities will be prohibited and under the guise of “preventing discrimination” they will get unprecedented freedom of action and legal protection. Due to the vague interpretation of these concepts, after the adoption of the bill any person or church can be brought to administrative or criminal responsibility: for criticizing gay community, for opposing propaganda of their lifestyle, for refusing to employ and admit a gay person to a church or mission, for refusing to perform wedding ceremony, for refusing to allow any gay initiatives, etc. The judicial authorities will call it “indirect discrimination”, “complicity in discrimination”, “incitement to discrimination”, etc.

Deputy Olena Bondarenko of the Party of Regions adheres to the similar opinion, “this problem is in the fact that the homosexuals are permitted to persecute heterosexuals.”

According to the Movement “Love Against Homosexuality”¹⁶, which in the course of 2013 repeatedly held extensive public campaigns against the bill no. 2342, its main danger is in as follows:

- 2342 — destruction of freedom of speech and freedom of religion in Ukraine!
- 2342 — elimination of the presumption of innocence;
- 2342 — legalized homodictatorship!

There was no adequate response from the governmental authorities or from deputies in support of the need to pass the bill. The only official arguments in favor of 2342 concerned the need to fulfill obligations to the EU. In the information space only the voluntary group activists drew attention to the fact that the anti-discrimination legislation was needed to protect anyone who had become a victim of discrimination. However, neither politicians nor bureaucrats upheld such statements. After the summer vacations, with the approaching deadline of the Vilnius summit the new arguments emerged. Thus, at first Valeriya Lutkovska, the Verk-

¹⁵ In the Verkhovna Rada the bill no. 2342 “On Amendments to Legislative Acts of Ukraine on Prevention and Combating Discrimination in Ukraine” was registered on February 19, 2013.

¹⁶ For details of the LAH arguments see: <http://blogs.pravda.com.ua/authors/kukharchuk/51924532d447a/>

hova Rada Ombudsman made a statement¹⁷ that there occurred a need to ask Europe not to push for changes to anti-discrimination legislation. She said that the bill developed by the Ministry of Justice prohibited the discrimination based on sexual orientation, which, according to Ms. Commissioner, was controversial, therefore the Verkhovna Rada could not adopt it due to lack of understanding of this issue in the Ukrainian society. Subsequently, the similar statement¹⁸ was articulated by Valery Patskan, Chairman of the Verkhovna Rada Committee on Human Rights: "...today the Verkhovna Rada Committee on Human Rights together with the Ombudsman and representatives of other political parties will appeal to the European Union to eliminate this provision of the law on sexual minorities. Currently, the Ukrainian society is not ready to include into the law the concept 'sexual minorities'..."

Neither the relevant committee of the Verkhovna Rada, nor the Office of the Ombudsman conducted any public debate of the problem of discrimination or initiated open statements on the need of improvement of legislation; they failed to inform parliamentarians and citizens. Thus, in the information space a situation emerged when the authorities and religious organizations declared en-mass about absence of discrimination, while several organizations of the civil society and European experts inclined to work on the problem, study it and improve legislation.

The national institution on equality under the law was relevant now to the office of the Ombudsman of the Verkhovna Rada of Ukraine, and only in the fall of 2013 it began developing its own plan of action to prevent and combat discrimination. The strategy was developed, authorized and approved by the special order¹⁹; it will come into force in the early 2014. The overall concept was discussed with the members of the advisory council under the relevant department of the Office of the Ombudsman²⁰, while the special part (which after the authorization of the strategy by the order was excluded from the strategy and clearly should be included into the action plan intended to implement the strategy) needs completing and endorsement of the representatives of civil society which are working with different vulnerable groups. The Office itself defines the guidelines on its future policy as follows:

1. Compliance of the national legal framework and judicial practice on equality and non-discrimination with the international and European standards.
2. Efficiency of monitoring of adherence to legal standards of equality and non-discrimination in the work of government bodies and of private law entities.
3. Effectiveness of responses to individual or systemic discrimination and ensuring the restoration of the rights.
4. Effectiveness of the system of promotion of the principles of equality and non-discrimination through informing and raising awareness of this issue.

¹⁷ "I offer another option and submit to the European Commission the strategy of the development of the office (of the Ombudsman—I. F.) activities in the field of non-discrimination. If this strategy satisfies the European Commission, then we will talk about how we could implement the mechanisms incorporated in the bill (no. 2342 on amending the legislation concerning the prevention and combating discrimination in Ukraine—I. F.) now with the understanding of European standards in the field of non-discrimination, but without the controversial provisions..."; for more details see: <http://interfax.com.ua/news/political/166422.html>

¹⁸ The full text of the application is available at <http://eunews.unian.net/ukr/detail/198686>

¹⁹ For more details on the strategy of the Commissioner see: http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3255:-2014-2017-&catid=14:2010-12-07-14-44-26&Itemid=75

²⁰ Department of children's rights, non-discrimination and gender equality.

5. Operation of strategic national and international coalitions to promote the principles of equality and non-discrimination.

In broad outline, the strategy can be assessed as a necessary and important step of the office in finally fulfilling its role as a national institution designed to ensure equality; however, there is one important question whether currently the office has enough skills and resources for the implementation of large-scale and ambitious strategy. After all, a part of it currently requires not only close cooperation with civil society and minorities, but also a lot of resources.

On the eve of the summit in Vilnius, the European Commission published the report²¹ on the assessment of Ukraine's progress in meeting its commitments under APVL. Separately, the text emphasized the insufficient progress on improving anti-discrimination legislation. Taking into account the failure of implementation of several steps of the plan (other than discrimination there remains the unresolved problem of adoption of the law on corruption), Ukraine was not transferred to the second stage of the APVL. In this case the officials could use the problem of better protection against discrimination in their campaign against rapprochement with the EU after November 2013 and spread outright false and xenophobic information. Thus, Prime Minister of Ukraine Mykola Azarov made an exhibition of himself saying that "the opposition leaders tell tales that we will sign an agreement tomorrow and will go without visas travelling about Europe. Nothing of the sort. We still have to legalize same-sex marriages and adopt a law on the equality of sexual minorities"²²; there was no possibility to try and start a dialogue and search for opportunities or to vote for the bill no. 2342, or call back it and develop a new one by the end of 2013. The wording of the only ambiguous statement of Mr. Kliuyev²³ that allegedly "we managed to find a compromise on the issue of discrimination with the European Commission" was not officially interpreted; therefore, until now there is no official clue to the "new" compromise statement.

Returning to the analysis of shortcomings of the Law "On the Prevention and Combating Discrimination" and the Bill no. 2342, it is worth considering one point. The current law did not provide for amendments to legislation with a view of establishing liability for discrimination and thus put the matter under Article 161 of the CPU, which renders impossible its practical application. In its time, the Chief Scientific Department of the Verkhovna Rada in its commentary noted that the criminalization of discrimination by the Article 161 of the Criminal Code of Ukraine also demonstrates proper legislative confirmation of the principle of non-discrimination. On the contrary, this approach is inconsistent with the mandatory for Ukraine standards of human rights. Indeed, the norms of international law require that the responsibility for any offense is proportional and create conditions for the effective protection and restoration of the rights of the person(s) affected by the offense. Therefore, not every manifestation of discrimination can be considered a punishable act. At least because of the fact that criminal liability can be personal only; so if some form of discrimination is

²¹ The full English text is available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131115_3rd_progress_report_on_the_implementation_by_ukraine_of_the_apvl_en.pdf

²² See: <http://www.pravda.com.ua/news/2013/12/14/7006832/>

²³ See: <http://economics.unian.net/rus/news/182759-klyuev-rasskazal-cto-nujno-dlya-sleduyushchego-etapa-plana-po-uproscheniyu-vizovogo-rejima-s-es.html>

criminalized, people who, for example, were subjected to “institutional discrimination” find themselves deprived of effective means of legal assistance.

The case *Danilenkov and Others vs. Russia*²⁴ illustrates the inconsistencies of the current legislative consolidation of the principle of non-discrimination in the form of a part of disposition of article 161 of the Criminal Code of Ukraine with the international standards on the protection of human rights, in which the European Court of Human Rights subjected to withering criticism approach to the legal formulation of non-discrimination in Russian legislation, which at the time was identical to the current legislation in Ukraine. In this case, the Court ruled that the authorities of the Russian Federation had violated the applicants’ right to freedom from discrimination guaranteed by Article 14 of the European Convention in the context of art. 11 of the Convention (“Freedom of assembly and association”) as they failed to implement effective and efficient means of legal protection which the applicants could use to protect themselves against discrimination by their employer on the grounds of trade union membership.

This very defect of existing law is one of the reasons of its small legal usability during its existence. So in 2012–2013, in the Unified Court Registry we found only 7 cases about discrimination on grounds of disability. The Foundation for Support of Strategic Cases²⁵ on Discrimination²⁶ created by NGOs, members of the CAD, received in 2012–2013 only 10 applications for assistance to vulnerable groups and/or their attorneys. Among the supported cases four cases relate to people with disabilities, two cases of LGBT, and one case related to the HIV-infected person.

Another reason for the lack of appeals to the court with complaints about discrimination named by the human rights activists is the low awareness of the topic in general, inability to “see” the discrimination and ignorance of safeguards.

In another public opinion survey²⁷ conducted in 2012 the answers to the question “Are Ukrainians protected from discrimination on various grounds (disability, age, social status, gender, etc.)?” were as follows:

“Unprotected” — 68.3% of street respondents. 70.5% of respondents in the network also answered “no”.

“A person who differs from the majority (another race, gay or disabled) suffers oppression at all levels of social life.”

In the framework of the study “THE THOUGHTS AND OPINIONS OF THE POPULATION OF UKRAINE: September 2013” (Omnibus)²⁸ to the question: “Did you in the last year have to deal with cases of discrimination (infringing of the rights and interests of an individual through unequal treatment based on her/his nationality, sex, race, economic status, views, etc.)?” only 15% of respondents answered “yes”. To the second question, whether they know

²⁴ The case *Danylienkova and Others vs. Russia* (no. 67336/01) is available here.

²⁵ For further details on the activities of the Foundation see: <http://antidi.org.ua/ua/fond>

²⁶ For details about the Foundation see: <http://antidi.org.ua/ua/fond>

²⁷ The study was conducted by the Center of Information on Human Rights together with the project “Without Borders” with the support of UNDP; the results are available at <http://humanrights.com.ua/162>

²⁸ The study was conducted by the Kyiv International Institute of Sociology from September, 6 till 27, 2013. The fieldwork took place from 13 to 25 September 2013. The survey was conducted in 110 settlements (PSU) in all regions of Ukraine and the Crimea. As a result, field phase 2044 questionnaires were collected.

of the existence of a mechanism of protection against discrimination and specialized law, only 18.7% of respondents answered “yes”.

On the other hand, the public opinion survey with the help of the focus groups “Discrimination: views of different groups”²⁹ conducted by the Ukrainian Center for Independent Political Research in 2012 showed that the surveyed respondents were quite familiar with the topic of discrimination and noticed such cases in relation to themselves or their relatives. However, it should be noted that the study was conducted among respondents who considered themselves to be either vulnerable or well aware of the work of NGOs.

CONCLUSIONS

Ukraine lacks a systematic approach to combating discrimination. If civil society in recent years has been trying to build partnerships both within (creation of a coalition to combat discrimination, participation in advocacy activities, training of activists and representatives of vulnerable groups, development of the Foundation for Strategic Affairs, seeking opportunities to cooperate with the authorities), the government bodies haven’t shown an understanding of their role in the process and responsibility for the exposure of citizens to discrimination. The Office of the Verkhovna Rada Commissioner for Human Rights is the only institution that shows at least some interest in and openness to cooperation with the civil society. Thus, within jurisdiction of the Advisory Council under the department of children’s rights, gender and non-discrimination several discussions were held on the office guidelines, comments on the bill no. 2342 and recommendations of NGOs concerning the strategy of the Commissioner concerning control of discrimination for 2014–2017. In general, the ministries and local self-government do not demonstrate willingness to cooperate or respond with standard phrases such as “there is no discrimination in the state, but only isolated incidents”.

RECOMMENDATIONS

1. Reform the relevant legislation to end all forms of discrimination, namely with the obligatory participation of experts and representatives of civil society:
 - Develop comprehensive amendments to the anti-discrimination legislation, which will include a clear definition of discrimination, its interpretation and identification standards;
 - Include in legislation a comprehensive list of “protected characteristics”, including sexual orientation and gender identity as requiring unconditional protection;
 - Provide common standards and principles proving the availability of discrimination;
 - Review criminal, civil and administrative legislation regarding the availability of mechanisms of compulsory financial and moral compensation for damages caused to the victim.

²⁹ The full text of the study is available at http://www.ucipr.kiev.ua/userfiles/fg_report_discrimination2012.pdf

2. Such legislation should ensure the fulfillment of the duty of the State to undertake a positive step in the prevention of discrimination, compensation for damages caused because of discrimination and impose appropriate penalties for violations of anti-discrimination rules. Such sanctions should provide for compensation to the victims of discrimination.

3. Improve the institutional framework necessary for the effective implementation of anti-discrimination legislation and policy the functions of which shall include:

- Implementation of public policy;
- Monitoring and reporting to the public;
- Coordination of the activities of other actors;
- Participation in the investigation;
- Assistance to victims and compensation of damages.

4. The state should provide for the access to the courts to all victims of discrimination, including legal aid, for example, by the obligation of respective institution to render advice on these issues, giving NGOs the right to offer such help or represent people or groups in the government bodies and courts.

5. Carry out human rights training for police, prosecutors, judges and border guards, as well as create an effective procedure for reports on violations of equality and discrimination by police against Roma, members of other ethnic groups and the LGBT community; ensure the effective investigation of such complaints and bring the perpetrators to responsibility.

6. Take steps to stop rousing hatred (the use of hate speech), particularly in the statements of officials and politicians in the context of legislation development, ensuring of the human rights and fulfillment of obligations of European integration of Ukraine.

XII. RIGHTS OF CITIZENS TO FREE ELECTIONS AND PARTICIPATION IN REFERENDUMS: OVERVIEW¹

In our review last year we stated that the election of people's deputies of Ukraine in 2012 were held with violations of the standards of fair and democratic elections and were most problematic during the national elections since 2004. The law enforcement agencies showed utter helplessness in the course of violations that took place in constituency election committees during counting of the votes. After numerous reports of violations no proper investigation into the facts was carried out.

On the ground of our overview, we called on public authorities to carefully study the experience of elections in 2012, so that the shortcomings in the electoral process could be removed before the rerun and midterm elections of people's deputies of Ukraine, and the presidential election of 2015.

We believed that prior to the presidential elections in 2015 it would be advisable to codify electoral legislation and consider revision of the electoral system for parliamentary elections with allowance for the advice of the Council of Europe and the Venice Commission.

We approached the General Prosecutor's Office and the Ministry of Internal Affairs of Ukraine asking to consider measures aimed at bringing all perpetrators of violations of election laws to legal liability. We offered the President of Ukraine and the Cabinet of Ministers of Ukraine to consider prosecution of officials of the executive branch accountable for violations of election laws, including those involved in campaigning.

We believe that these measures could contribute to the successful practice of overcoming epidemic of violations of voters' rights. However, following the results of 2013 we are forced to conclude that our major requirements have not been implemented: no thorough investigation was conducted, the perpetrators were not brought to justice, and most recommendations were not taken into account.

Therefore the past year was a year of lost hopes and expectations. The problems hindering the right to free elections and referendums were not solved. 2013 added still more regular problems and obstacles.

¹ This overview was prepared by Kherson Oblast Organization of the Committee of Constituencies of Ukraine Dementiy Bielyi.

1. THE DEPUTIES HAVE NOT REVIVED THE RIGHTS OF UKRAINIANS TO CONDUCT LOCAL REFERENDUMS, AND THE COURTS GO ON BLOCKING NATIONWIDE REFERENDUMS

During 2013 the law on local referendum was not adopted and our citizens are, in fact, deprived of the right to solve the problems of their communities². In this regard the people's deputies of Ukraine only made resounding speeches³ and held roundtables but failed to solve the above issues.

There is a critical situation with the rights of citizens to participate in national referendums. The people's deputies failed to change the Law of Ukraine "On the National Referendum", which drew fair criticism. Moreover, for years the CEC kept refusing the citizens their right to participate in the organization and holding of national referendums. This year, the courts have joined the "actors" who actively interfered with the rights of citizens to referendums.

In the fall 2013, the CEC refused to register the initiative groups created in Kyiv, Donetsk, Odesa, Simferopol, Kharkiv, Chernihiv, Mykolayiv, Sumy, Dnipropetrovsk, Sevastopol, Kryvyi Rih, Vinnytsia, Kirovohrad, Zhytomyr, Kakhovka (Kherson Oblast), Luhansk, Odesa and Poltava in order to hold referendum on popular initiative⁴.

The reason for the refusal was that the Kyiv District Administrative Court banned the CEC members to attend all these meetings. This was done to ensure that the administrative claim of the European Party of Ukraine about recognition of the actions of the CEC illegal with respect to the acceptance and registration of the notice about holding the meeting of the citizens of Ukraine about holding referendum on popular initiative⁵.

The CEC in its regulations, on the basis of which it refused to register the initiative groups for holding referendums, relied on the provision of law that the presence of a representative of the Central Election committee at the meeting is required, but not possible because of the injunction. As a result of such judicial tightrope walking the citizens could not exercise their right to vote in the referendum.

2. THE DEPUTIES REFUSED TO APPOINT SPECIAL LOCAL ELECTIONS

The Ukrainians in Kyiv, Chernivtsi, Mykolayiv, Kherson, Cherkasy, Odesa, Henichesk and in many other cities, towns and villages, in fact, were denied the right to vote. Because of the political opposition in the Verkhovna Rada the people's deputies refused to go over the prob-

² See <http://portal.rada.gov.ua/news/Novyny/Povidomlennya/83948.html>

³ Koshulynskyy says that there is an urgent need to solve issues of local referendum — April 3, 2013 — UNIAN <http://www.unian.ua/politics/771642-koshulynskiy-kaje-scho-treba-terminovo-virishiti-pitannya-mistsevogo-referendumu.html>

⁴ The Ukrainian referendum by popular initiative had been planned to include one question: "Do you support Ukraine's joining the Customs Union of Belarus, Kazakhstan and the Russian Federation? Yes.No." See the texts of decisions: <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34705&what=0>, <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34881&what=0>, <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34815&what=0>, <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34794&what=0>, <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34794&what=0>, <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34776&what=0>, <http://www.cvk.gov.ua/pls/acts/ShowCard?id=34744&what=0>,

⁵ See the decision of the District Administrative Court of Kyiv of September 2, 2013 <http://www.reyestr.court.gov.ua/Review/33219515>, October 2, 2013 <http://www.reyestr.court.gov.ua/Review/33874143>, October 9, 2013 <http://www.reyestr.court.gov.ua/Review/33985114>, on November 7, 2013 <http://www.reyestr.court.gov.ua/Review/34683989>, on November 8, 2013 <http://www.reyestr.court.gov.ua/Review/34715237>, ruling of the Kyiv Administrative Court of Appeal of February 4, 2014 <http://www.reyestr.court.gov.ua/Review/37121647>

lem of calling early elections of chairpersons in the case of early termination of their powers. At the beginning of the year because of blocking the parliamentary rostrum the elections in 72 local communities the elections were not appointed for long time. Later the people's deputies simply did not vote for the resolution on appointment of elections. So, on October 22 the people's deputies did not support a number of resolutions to hold snap elections of 69 rural and 9 village chairpersons in connection with the early termination of their powers⁶.

On November 8 the people's deputies did not support the resolution on the appointment of special elections of 101 rural and 14 village chairpersons. The representatives of the opposition groups said that the factions Batkivshchyna, Udar and Svoboda will not participate in the vote on the draft resolution on some early local elections. Arguing their positions, they stated the selectivity of appointment of such elections, stressed the need to hold elections in all regions and cities where they had to be held. Head of the Communist Party faction P. Symonenko announced about its non-participation in voting⁷.

As of January 15, 2014, the Verkhovna Rada failed to take decisions on 173 draft resolutions to hold snap local elections, of which 151 resolutions to hold snap elections of some rural and village heads, 19 resolutions on the election of city mayors and 3 resolutions about appointment of elections of deputies of local radas⁸.

In the opinion of the Committee of Voters of Ukraine, due to the fact that the people's deputies had refused to make decisions on appointments of early elections the local self-government in these municipalities was "paralyzed"⁹.

3. TEMPORARY COMMISSION OF INQUIRY INTO VIOLATIONS OF THE ELECTIONS FAILED TO FULFILL ITS TASKS

One of the important tasks was to conduct a proper investigation into numerous allegations of violations of electoral rights of citizens during the election campaign in 2012.

To this end, on March 21, 2013 the Temporary Investigative Commission of the Verkhovna Rada of Ukraine to investigate the facts of revision of the will of the Ukrainian people in the parliamentary elections of 2012 was established. The main objectives of the commission were to be "the factual inquiry into the revision of the will of the Ukrainian people in the parliamentary elections of 2012 through juggling with results of outpouring of popular will, violations of electoral rights of the citizens of Ukraine by judges, law enforcement officials, other public authorities, and by the early unconstitutional termination of mandates of people's deputies of Ukraine Vlasenko S. V., Baloha P. I., Dombrovski O. H. due to the selective justice and the unconstitutional establishment of the fact of inability to determine the results of elections of deputies of Ukraine on October 28, 2012 in the single-mandate constituencies nos. 94, 132, 194, 197 and 223"¹⁰.

⁶ http://portal.rada.gov.ua/news/Novyny/Plenarni_zasidannya/84103.html access 09.01.2014

⁷ http://portal.rada.gov.ua/news/Novyny/Plenarni_zasidannya/85074.html access 09.01.2014

⁸ http://komsamovr.rada.gov.ua/komdbud/control/uk/publish/article?art_id=64231&cat_id=44731

⁹ Resolution of the IX Congress of the All-Ukrainian public organization "Committee of Voters of Ukraine" — November 1, 2013 <http://www.cvu.org.ua/nodes/view/type:news/slug:345>

¹⁰ See the text of this resolution : <http://zakon4.rada.gov.ua/laws/show/154-18>

The commission was actually blocked by the majority who did not attend its meetings. As a result, the report of the commission was not heard in the hall, and the Commission in early June was dissolved¹¹. Committee Chairman Arsen Avakov published the unofficial committee report online.

4. LAW ENFORCERS IGNORED PROPER INVESTIGATION INTO ALLEGATIONS OF VIOLATIONS

On the basis of the Unified State Register of Court Rulings only seven criminal cases was found concerning crimes against electoral rights and considered by our courts during 2013. Of these three criminal cases were closed. Two cases, in spite of investigator's attempts to close them, are still being adjudged. And only two cases were completed with passing a sentence¹².

In some cases, the Ministry of Internal Affairs conducts pre-trial investigation of criminal violations concerning the implementation of voting rights. However, these investigations bear signs of selectivity and are rather directed against political opponents of the current government. Thus, in July 2013 the Main Investigation Department of MIA of Ukraine based on the application of the people's deputies of Ukraine began preliminary inquiry into criminal proceedings on the grounds of criminal offenses provided for by article 158 of the Criminal Code of Ukraine concerning the facts of forgery of election documents by an unidentified member of the Election committee during the regular election of the people's deputies of Ukraine in single-mandate constituency no. 133 (Kyiv District of Odesa)¹³. This investigation was one of the arguments for the abolition of the Central Election committee Regulation on the registration of Igor Markov as a people's deputy. The results of the investigation of this criminal investigation are unknown. The relative information about this is absent in the Unified State Register of Court Rulings.

5. LOCAL ELECTIONS: THE SITUATION WITH RESPECT FOR THE RIGHTS OF VOTERS HAS NOT IMPROVED

In 2013, despite significant challenges with the appointment of special elections in some municipalities, local elections were held regularly. In particular, there were 212 early elections of urban, rural and village heads¹⁴ and about one hundred and fifty intermediate elections and reelections of deputies of local councils at various levels. It is noteworthy that tra-

¹¹ The commission became a thing of the past. The Rada refused to recognize the Report of the Verkhovna Rada Special Commission on Elections: Newspaper "Kommersant-Ukraina", no. 92 (1795), 06.06.2013 <http://www.kommersant.ua/doc/2205654>

¹² The sentences concerned violations of articles 157, 161 and 358 of the Criminal Code of Ukraine.

¹³ See : <http://www.reyestr.court.gov.ua/Review/33521250>

¹⁴ In particular, see information about the election results: http://static.rada.gov.ua/site/ukr/atuu/el2013/20130602_message.pdf, http://static.rada.gov.ua/site/ukr/atuu/el2013/20131512_message.pdf, http://static.rada.gov.ua/site/ukr/atuu/el2013/20131512_statistic.pdf

ditionally electoral rights violations on a massive scale occur only during the elections in some municipalities. That is, the source of disturbance is not an insufficient legal culture of the electoral process or the lack of tradition of democratic elections but a focused and organized action.

Let us zero in on the coverage of the situation with compliance with voting rights during the two election campaigns: early elections of Vasylkiv and Yalta city heads. These elections were held on June 2, 2013.

The Committee of Voters of Ukraine announced the breach in this election, which could affect the results. For example, in Vasylkiv *“the elections were not easy both during the voting and vote-counting we fixed some procedural violations. Attempt of ballot stuffing at two stations was stopped at some polling stations; the observers and journalists were removed from the premises of the polling station commission. But mostly the observers and the deputies were present at the stations,”* said Olexandr Chernenko, Head of the Electoral Committee of Ukraine (ECU), who was quoted by the “Interfax-Ukraine”.

In Yalta, the violations had signs of systemic falsifications. The ECU, in particular, informed that after 18.00 the turnout of electors increased unexpectedly; at polling stations the officials began ousting journalists and observers, bulletins were issued to unidentified persons, the members of the commission started tampering with the lists of electors. *“All this was classified as systemic signs of falsifications: throwing-in ballots. And confirmation was close at hand. At two polling stations (in Yalta and in Gaspra) the ECU observers recorded thick packs of ballots in the ballot boxes. Moreover, immediately after that at one of the stations the committee voted to remove the observer from the station,”* said Krysko, the ECU representative. According to ECU, the “anomalous” activity of electors was observed almost everywhere, indicating the widespread use of this technology. In addition, the similar cases of stuffing of the packs of ballots were documented at a number of stations by other members of the electoral process¹⁵.

As the representatives of the Opora stated, during election in Vasylkiv the observers documented *“the typical arsenal of tools and recorded violations that could indicate the organization of carousels, bribing of voters, ungrounded issuance of ballots to third parties, balloting instead of the elderly; there was a specific episode: the morning meeting of district election committees, which by law cannot be held earlier than one hour before the voting, took place mainly without observers and media. Or they were not admitted before 8 am, or the safe was not opened in the presence of the audience, so the integrity of the seals could not be established”*¹⁶.

Following the hearings, the claims against the Vasylkiv City Election Commission demanding to revoke resolution on the election of Mayor of Vasylkiv based on complaints of violations of the election law were rejected. Interestingly, one of the reasons for the refusal was that the plaintiffs did not provide evidence on appeal to the militia claiming a crime during the election process¹⁷.

¹⁵ The ECU informs about falsifications during elections in Vasylkiv and Yalta on June 3, 2013 http://www.bbc.co.uk/ukrainian/news/2013/06/130603_local_elections_ms.shtml

¹⁶ Olga Aivazovska. Attempted crime. Lessons of mayoral election in Vasylkiv — 2013 — 6 June <http://opora.ua.org/articles/3860-zamah-na-zlochyn-uroky-vyboriv-mera-vasylkova> Access 09/01/2014

¹⁷ See the court ruling <http://www.reyestr.court.gov.ua/Review/31697223> Access 09.01.2014

6. INTERMEDIATE ELECTIONS AND RE-ELECTIONS OF THE PEOPLE'S DEPUTIES IN SIX DISTRICTS

On July 7, 2013, the midterm elections of the people's deputy were held in the single-mandate constituency no. 224 (Sevastopol). According to ECU observers, they documented attempts to prevent the media from entering a polling station during voting and vote counting, presence at polling stations of persons who were not entitled to stay there (employees of the units of the Ministry of Emergency, unknown persons), violation of the counting procedure and rules of executing procès-verbaux of the election results at the polling stations.

Of special concern for ECU was the information campaign in the media intended to discredit public observation at midterm elections and in particular the fact that this campaign involved people's deputies of Ukraine and members of the Central Election committee¹⁸.

Holding repeat elections in five single-seat electoral districts became the central event (nos. 94, 132, 194, 197, 223).

Below we provide information on the most common violations that took place during the elections, and the main trends that influenced the results. It is the overview of materials prepared by independent observation conducted by Public Network Opora and the Committee of Voters of Ukraine during the re-election¹⁹:

6.1. Election committees

At the beginning of the review, we will note the role of election committees. According to Opora, the CEC properly provided for the main stages of the electoral process. The Commission took steps to improve procedures for the formation of divisional and district election committees taking into account the shortcomings of previous elections. The registration process was conducted in an orderly and politically impartial way. All in all, the divisional and district election committees with difficulties, but ensured the organization and conduct of the electoral process.

6.2. Effect of courts

The role of the court is increasing: it often substitutes both CEC and election committees, and voters themselves. This was particularly significant in the case of V. Romaniuk and O. Arseniuk.

¹⁸ Statement of the Committee of Voters of Ukraine concerning the assessment of the mid-term elections of people's deputy of Ukraine at the constituency no. 224 <http://cvu.org.ua/nodes/view/type:news/slug:206> Access 09.01.2014

¹⁹ Source: Interim report on the long-term observation of Opora during the mid-term parliamentary elections in 5 constituencies (December 13) <http://opora.ua.org/presentations/article/4271-promizhnyj-zvit-za-rezultatamy-dovgoterminovogo-sposterezhennja-opory-pid-chas-promizhnyh-vyboriv-narodnyh-deputativ-u-5-okrugah-13-grudnja> INTERIM REPORT on the results of public monitoring of parliamentary elections in five districts <http://opora.ua.org/vybory/article/4366-promizhnyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-za-vyboramy-do-parlamentu-v-5-okrugah> Conclusions of Cherkasy Oblast Organization of the Committee of Voters of Ukraine for the observation of re-election on December 15 in constituencies nos. 194 and 197. Access <http://cvu.org.ua/nodes/view/type:news/slug:170> 01/09/2014

on December 1, 2013, the Kyiv Appeal Administrative Court, despite the fact that the period of CEC inactivity appeal expired, declared unlawful and quashed the decision of the CEC of October 21, 2013 on the registration of people's deputy nominee Viktor Romaniuk²⁰. The Supreme Administrative Court of Ukraine on December 4 ordered CEC to cancel the registration of people's deputy nominee Viktor Romaniuk²¹. During the hearings, it was found that V.Romaniuk violated article 76 of the Constitution of Ukraine and article 9 of the Law of Ukraine "On elections of People's Deputies of Ukraine" concerning living in Ukraine over the past five years. Victor Romaniuk during the past year period — from December 15, 2012 to November 29, 2013 — stayed outside Ukraine for 309 days while at the time of registration of parliamentary candidates this time made 270 days. We should note that if Victor Romaniuk had not gone abroad, he would have been arrested in connection with the investigation conducted by the Ukrainian authorities against him²².

The contradictory character of the decision of the Kyiv Administrative Appellate Court of Ukraine consisted in the fact that the court actually failed to meet the time limit to appeal (defined in article 109 "On Elections of People's Deputies of Ukraine" and article 179 of the Code of Administrative Procedure of Ukraine) against the CEC decision.

The Opora in its report maintains that in the similar situation the same Kyiv Administrative Appellate Court dismissed the claim of self-nominated candidate Olexiy Arseniuk concerning the CEC omission to act on verification of registration data submitted by Batkivshchyna candidate Mykola Bulatetsky on the grounds of time limitation for challenging the relevant CEC Resolution²³.

6.3. Bribery of voters as a manifestation of electoral corruption became extremely widespread

Bribing voters is a crime under article 157 of the Criminal Code of Ukraine which requires from law enforcers to perform objective investigation of established facts. During the parliamentary rerun elections in five districts "the vote buying became and remains a key risk in free expression of popular will in the course of rerun elections of people's deputies of Ukraine," reads the Interim Report of the Public Network Opora. Bribery was reported in districts nos. 194 (Odesa), 223 (Kyiv), and 94 (downtown of Obukhiv Town, Kyiv Oblast).

Repeated instances of grafting voters in the interests of self-nominated candidate Mykhailo Poplavsky were revealed in the district no. 194. The complex of evidential facts collected by public observers and subjects of the election process provides documentary evidence of systematic unlawful acts in the form of bribery of voters in the constituency no. 194.

²⁰ <http://www.reyestr.court.gov.ua/Review/35694241>

²¹ <http://www.reyestr.court.gov.ua/Review/35793352>

²² The competitor of Zasukha fled abroad because of persecution. Ukrayinska Pravda, February 7, 2013 <http://www.pravda.com.ua/news/2013/02/7/6983088/> Zasukha's rival was arrested in Italy. Ukrayinska Pravda March 22, 2013 <http://www.pravda.com.ua/news/2013/03/22/6986234/>

²³ Olexiy Arseniuk, self-nominated in the constituency no. 194 in Cherkasy, member of the Party of Regions, filed suit in the CEC, which said that the application for registration of parliamentary candidate had been signed by First Deputy Head of All-Ukrainian Association Batkivshchyna Olexandr Turchynov and not by the party leader, that is it had not been signed by an authorized person and the candidate's autobiography contains no data that Mykola Bulatetsky in 1995-1997 lived in the U.S., also it contained no information on his career as director of several entities. Also, Mr. Arseniuk noticed that the biographical information submitted to CEC cannot be considered autobiographical in the sense of the Law of Ukraine "On Elections of People's Deputies of Ukraine".

These circumstances require decisive actions of law enforcers aimed at preventing vote-buying. All information about cases of election corruption the observers gave the law enforcing bodies, prosecutors and the CEC.

Here are some facts that are mentioned in the reports of the Opora observers and ECU.

6.3.1. Constituency no. 194 (Cherkasy)

On November 23, on the premises of public self-organization body Khimselysche located on 218 Rosa Luxemburg Str. The Opora activists recorded a briefing on bribery of voters for Mykhailo Poplavskiy. The very next day, on November 24, the activists recorded how the unknown persons were offering tenants on the 429 Gogol Str. to sell their votes in favor of Mykhailo Poplavsky. The terms of bribing voters included voter's filling out an unstandardized application and visiting an unofficial office, the address of which was indicated by the organizers of the bribery. Before the election the voter could get UAH 200 and after the election s/he was promised to get another UAH 150. Once and again the Opora observers recorded such cases, they documented video evidence and relevant statements to the police. In some cases, such vote buying was carried out openly. Candidate Mykhailo Poplavsky publicly denied bribing voters to his advantage.

6.3.2. Constituency no. 223 (Kyiv)

On November 28, the Opora activists were present at the meeting with the persons who introduced themselves as ones in charge of propaganda work for the advantage of self-nominated candidate Viktor Pylypyshyn.

Under the proposed scheme, the future "agitators" were offered to attract two hundred people in the hostel who were willing to vote for Victor Pylypyshyn. In addition, it was also necessary to find two people who would be eager to begin to attract their friends to the pyramid. The "agitators" were expected to compile lists of students with their names, surnames, first names, dates of birth, places of residence and phone numbers. The "agitators" had to offer the attracted voters UAH 200 USD before the election day and UAH 2000 within 7–10 days after election day.

6.3.3. Voting and counting of votes

During voting, counting and counting of votes the district election committees, according to estimates of Opora and ECU, largely implemented the statutory requirements and the minimum acceptable standards for the process. According to Chairman of the ECU Olexandr Chernenko, "the counting of votes at polling stations and district election committees passed without significant impairment. The efficient calculation showed that the problems that occurred in these districts a year ago have been fixed this year"²⁴.

The most common problem was unregulated by law presence and indirect pressure of bystanders on the work of election committees. In the constituency no. 94 such episodes oc-

²⁴ "Counting of votes and absence of manipulations by the committees in the constituencies legitimize the election results in five districts" — ECU Chairman comments about the end of counting of votes and drawing up of reports DEEC: <http://cvu.org.ua/nodes/view/type: news/slug: 163>

curred in 34% of district polling stations, in no. 223 — 16%, no. 197 — 11% and in no. 194 — 10% of polling stations.

The violation of the secrecy of the ballot became an equally common problem on the voting day, which was often documented by public observers. In particular, such cases were found in 17% of polling stations of the district no. 94, 16% of polling stations of the district no. 223, 11% of polling stations of the district no. 197 and 10% of polling stations of the district no. 194. The precedents of the organized transportation of voters, issuing ballots without showing a passport and photographing the ballots were widespread violations of the election day. In particular, the transportation of voters occurred in 8% of polling stations of the district no. 94, and photographing papers were recorded in 10% of polling stations of the district no. 223. In the opinion of the Committee of Voters, the transportation of voters is a form of illegal control of voting.

There was obstruction of observers. In the district no. 132 (downtown Pervomaisk) the Opora observers had to turn to the militia due to threats against them.

In the single-mandate constituency no. 94 the activists documented cases of obstruction to official observers and journalists. In particular, the commissioners of the DEC no. 320288 (urban village Hlevakha) decided to remove the Opora observer from the voting room. Shortly before this the observer recorded the attempt of one of the committee members to take away from the voting premises 100 blank voting bulletins.

By results of monitoring of the runoff elections the Public Network Opora and the Electoral Committee of Ukraine stated that only in two single-member constituencies [no. 223 (Kyiv) and no. 194 (Cherkasy)] *“the violations during the campaign, which were recorded by the observers and local journalists, had signs of large-scale and systematic bribery” and influenced the voting, which only documented “the result of unlawful actions”*²⁵.

Here is the estimate by Cherkasy Oblast Organization of the ECU of the results of monitoring: *“The runoff elections of People’s Deputies of Ukraine in the constituency no. 194 took place in conditions which did not comply with the principles and standards for democratic elections. Although the Central Election Commission has the legal basis to establish the outcome of the election in the constituency no. 194, the results have been skewed by the use of vote-buying during the campaign and violations on election day”*²⁶.

In other districts the public observers have not found such violations, which could be understood as stealing of elections²⁷.

7. CONCLUSIONS AND RECOMMENDATIONS

In 2013, the vast majority of recommendations for improving the situation of the rights of citizens to free elections and to participate in referendums that had been suggested civic activists and human rights advocates were not implemented.

The proper investigation into the facts of violations during the parliamentary elections in Ukraine in 2012 was not conducted. The individual investigations rather illustrate the

²⁵ <http://opora.ua.org/news/4376-pidsumky-golosuvannja>

²⁶ <http://cvu.org.ua/nodes/view/type:news/slug:170>

²⁷ <http://opora.ua.org/news/4376-pidsumky-golosuvannja>

selective application of justice against political opponents of the government than an attempt to restore justice and punish the perpetrators of massive violations of electoral rights. The system attempts to investigate were impeded. Therefore the job of the Temporary Committee of Inquiry of the Verkhovna Rada of Ukraine intended to investigate violations during the elections suffered a major setback.

The codification of electoral legislation was not carried out; the Law on Local Referendum depriving citizens of the right to solving local problems through referenda was not adopted. At the same time some issues can be resolved only through a referendum. Despite the efforts of the public, the law on an All-Ukrainian referendum was not amended. But the presence of the current legislation is not a guarantee for the rights of citizens. So, in the fall, because of court decisions, yet another initiative to hold public referendum was blocked.

Overall, 2013 was marked by several extremely important decisions, when the courts with their ambiguous solutions significantly corrected the expression of popular will and became a barrier to exercise their electoral rights.

The circumstances took a threatening turn in many municipalities in connection with the failure to appoint special elections of city, town and village heads where existing authorities were suspended.

The re-run of elections of people's deputies were in the limelight. The public observers make a special mention of the appropriate organization of the work of election committees and positive role of the CEC.

The elections were marred by widespread bribery of voters and illegal attempts to control the expression of the will during elections in constituencies nos. 194 and 223.

In our recommendations, we have to repeat at least the minimum of major requirements that were contained in last year's overview and are relevant today.

First of all, the persons found to have committed violations of the electoral legislation should be held legally responsible.

Prior to the 2015 presidential elections it is necessary to codify electoral legislation and consider revision of the electoral system for parliamentary elections taking into consideration the recommendations of the Council of Europe and the Venice Commission.

It is worth recommending the President of Ukraine and the Cabinet of Ministers of Ukraine:

- To consider the possibility of adopting within their competence measures to bring officials of the executive branch accountable for violations of election laws, including participation in campaign activities;
- To consider the possibility of adopting before the next elections of act(s) that will determine the standards for the activity of government officials and heads of other executive agencies busy with preparation of the elections.

The Prosecutor General's Office and the Ministry of Internal Affairs of Ukraine shall:

- Consider adopting within their competence measures aimed at bringing all perpetrators of violations of election legislation to legal liability;
- Publish information on the outcome of consideration of cases on administrative offenses and criminal cases by respective courts;
- Take measures to enhance the expertise, knowledge and skills of prosecutors and militia officers concerning election legislation, voting rights protection, response to violations and so on.

XIII. PROPERTY RIGHTS

1. GENERAL OVERVIEW

So far Ukraine has no adequate and feasible guarantees of the owners' rights. This situation can be accounted for by unreliable system of property rights registration, faulty urban development legislation and overall legal basis which regulates the realty issues.

Despite the steps, aimed at reforming the system of property rights registration and facilitation of the procedure for acquiring titles and deeds, initiated by the state, so far the system does not protect the owners' interests and does not provide full guarantees of the adherence to property rights. The bureaucratic component in the process is still very substantial, while public institutions are not ready for the changes that are in order. Besides, the closed nature of the title registries obviously does not contribute to the transparency in this area.

There are more problems related to the construction area. The rights of people investing into new construction and often becoming fraud victims are not protected at all.

The judicial bodies are losing their authority every year and cannot provide efficient guarantees of the property right. The violations of the property right, numerous as they are, cannot be addressed by the courts in timely fashion. The disastrous failure of the courts to enforce their decisions concerning the protection of the owners' rights aggravates the problem even further. The court guarantees of the property right are out of question as long as two thirds of court decisions are not served.

The long-term moratoria on sales of state property create unequal conditions for various owners and give companies that own a substantial portion of state property a chance to avoid responsibility.

In 2013 the issues concerning the moratorium on agricultural lands sales were not resolved either. The mechanism of property alienation for the public needs did not become clearer or fairer. So the violations of the rights of owners in this area continue.

Meanwhile, the law enforcement bodies often violated the property rights they were supposed to safeguard and protect. Moreover, often they became the instruments of exerting pressure and depriving the legitimate owners of their property.

2. GUARANTEES OF PROPERTY RIGHT

2.1. State registration of the titles and deeds for the real estate

Efficient and reliable system of real estate titles' registration is extremely important guarantee of peaceful ownership of one's property. In Ukraine the procedure is defined by

¹ Prepared by M. Shcherbatyuk, lawyer of UHHRU.

the Law “On state registration of proprietary interests to the real estate property and their restrictions”.

On January 1, 2013 the new procedure for state registration of the titles with respect to the real estate property and their restrictions came in force. In particular, the list of subjects authorized to do the registration was amended.

Since 01.01.2013 the competences of issuing real estate titles were transferred from the Technical Inventory Bureau to the State registration service and notary service. Now the Bureaus deal exclusively with technical inventories, which are obligatory only in special cases, while in general cases, i. e. alienation of the real estate (a building, an apartment etc.) is carried out upon the parties’ consent.

Alongside with that, the information and documentation concerning the real estate property and its owners is not clearly defined, thus opening the door for abuse and fraud, while the vacuum created by the lack of documents establishing the ownership, engenders the situation when several owners claim the same real estate objects.²

The proprietary interests in real property and their restrictions are registered by the State registration service and its local branches. This service is short of qualified staff, while available employees are unable of providing services of appropriate quality. Besides, the facilities where the branches operate do not meet either the requirements for this services or basic needs of the public. The facilities cannot accommodate large numbers of people; the information materials explaining the registration procedure are in short supply.³ Besides, the long lines to the Technical Inventory Bureaus, despite the declared facilitation of the registration procedure, are still there.⁴

Currently the State registration service deals with both primary and secondary registration of proprietary rights and their restrictions. Public and private notaries are now authorized to do the secondary registration when the title is passed to the new owner on the basis of contracts, testaments etc.

Meanwhile, the facilitation of the registration procedure increased the risks of scheming and manipulations involving dishonest notaries. As the notaries participate in the registration procedure notarizing property titles, they have an opportunity to notarize illegal contracts and to register the real property on the basis of these contracts. Unfortunately, so far such instances are numerous. Corruption is inherent to all state bodies and institutions; therefore, frauds in real property alienation become possible with the support of real property registration offices’ staff.

The changes in the registration procedure for the real property proprietary rights and their restrictions have become possible due to the creation of the State Registry of the real property, among other factors. This Register includes the database of the Uniform Registry of the bans on the real property alienation, State Registry of mortgages, State Registry of the movables, Registry of the titles to real property, which, in their turn, were liquidated. Never-

² New system for proprietary rights registration and their restrictions <http://pravotoday.in.ua/ua/press-centre/publications/pub-886/>

³ M. Azarov ordered to resolve the issues arising in real estate registration <http://www.azarov.ua/event/ukraina/Nikolaj-Azarov-poruchil-ustranit-problemi-voznikayushchie-pri-registratsii-nedvizhimosti.html>

⁴ Why new system for real estate registration does not work? <http://1tv.com.ua/ru/news/2013/02/10/34599>
http://www.epravda.com.ua/rus/publications/2013/04/23/372264/view_print/

theless, the State land cadastre, containing the information on land plots, still functions independently. It is noteworthy that both state registrars and public and private notaries have the access to the State registry of the proprietary rights to the real estate property.

The liquidation of the numerous registries is definitely a positive development. However, the inaccessibility of the Register data for both public at large and attorneys testifies to the fact that the official approaches to the issues of real property have not changed. This information is available only to the owners of the real estate property and persons authorized by the owners. It still remains inaccessible for public at large, providing the opportunities of various schemes for the felons, while citizens have no real means of protecting their rights.⁵

The closed nature of the register blocks market relations, because the openness of the information on property titles and deeds sets up the foundation for such relations — the economic potential of the assets, adequately evaluated in the market, is registered; private property is legalized and the liquidity of assets increases, setting up the basis for the development of social relation and capitalization of property.

In October 2013 the draft law addressing the openness of the Registry was submitted to the Supreme Rada. However, it has not been considered so far.

As compared to the former procedure of the registration of titles for the real estate property, the number of required documents was shortened; the Act of technical inventory is no longer needed as well as the excerpt from the Registry of property titles. Now this excerpt is prepared by the state registrar or notary in the process of registration of titles for the real estate property.

The elimination of the Act of technical inventory from the list of documents needed for the registration of titles for the real estate property is an ambiguous change. On the one hand, the technical inventory carried out by the monopolistic office, i. e. the Technical Inventory Bureau — significantly complicated the registration process. Due to the Bureau monopoly in this area corruption could flourish. The humongous lines at the Bureau entrance used to be routine, regardless of weather conditions. That is why the elimination of this rule significantly facilitated the registration of titles.

On the other hand, however, the technical inventory somehow prevented the uncontrolled development and re-planning.

The process of real property titles' registration remains complicated. The promised on-line registration does not work. Unlike many other countries, not necessarily European, Ukraine never got anywhere.

Although the registration term was reduced to 14 days, in practice it can be longer, if the application and documents are inaccurate or faulty. The unjustifiably long registration term is due, first of all, to the fact that the state is not ready to reduce this term significantly.

The procedure for issuing land titles deserves special attention. The primary registration of the land titles is conducted by the State registration service, while the documents are to be submitted to State land agency. First the land plot is registered in the State land cadastre, and then the land plot information is submitted to the State registration service, where the land title is issued. However, the documents confirming the property right (State act on

⁵ Real estate registry: where is the street, where is the house? http://www.epravda.com.ua/rus/publications/2013/04/23/372264/view_print/

the ownership right, State act on the permanent use of the land plot etc.) are issued by the State land agency. The secondary registration (e. g. for the sale or purchase of a land plot) is conducted by the State registration service or by notaries.

This complicated registration procedure for the land plots as well as parallel functioning of two registers does not help either in achieving transparency in this domain or in the exercising of the ownership rights with respect to the land plots. We were informed that due to the lack of efficient information exchange between the registry and the cadastre the citizens were unofficially denied the registration of the land titles.⁶

Generally speaking, in 2013 the procedure of state registration of real property titles and their restrictions became somewhat easier as opposed to earlier years, first of all, due to the elimination of numerous registration bodies and consolidation of various registries into one and only State Registry of the proprietary rights to the real property. The list of documents required for registration was cut down, while the registration terms were reduced.

The bureaucratic component of the procedure, nevertheless, remains an important factor despite the general simplification of the procedure. This fact is accounted for, among other things, by the mentality of the employees in charge of state registration, and by the lack of modern technical equipment in the state registration offices. Besides, the felonious schemes in dealings with real estate still are on the agenda.

In the meantime, a range of issues related directly to the exercising of property rights and to the attraction of foreign investments still has to be resolved. These latter are accurate indicators reflecting the actual situation regarding the adherence to property rights.

2.2. Guarantees for court protection of the property right

The cases of property rights violations are very common. Thus, the Uniform state registry of the court decisions contains hundreds of thousands cases related to property rights violations. The terms designated for the resolution of the cases are beyond reasonable, which affects the efficiency and relevance of defense.

Weakness and inefficiency of the court protection of the property rights in Ukraine were stressed also by the international experts in the course of preparation of the World Index of the supremacy of law, in which Ukraine is ranking tenth from the end. "The public institutions are inefficient as far as adherence to the laws goes (ranking 91st among the countries participating in the research and second from the end among the countries with income below average). The courts, although accessible, are inefficient and corrupt. The protection of property rights is weak" — specifies the Index.⁷ The study carried out by the Global Corruption Barometer 2013⁸, shows that the Ukrainian judicial system is one of the most corrupt in the world, alongside with Afghanistan, Azerbaijan and Moldova.

The terms for the consideration of cases related to property rights protection are not observed. Moreover, these terms are so much longer than they should be that the protection

⁶ Expert discussing the problems of the new system for proprietary rights registration <http://vkurse.ua/ua/business/novoy-sistemy-registracii-prav-na-nedvizhimost.html>

⁷ Rule of Law Index <http://worldjusticeproject.org/sites/default/files/wjproli2012-web.pdf>; <http://tyzhden.ua/News/84108>

⁸ <http://www.transparency.org/gcb2013/results>

in question becomes irrelevant. The courts commit procedural violations failing to satisfy the claim. In particular, in cases related to the protection of property rights the claimant often demands that the court prohibits the respondent to commit specific actions, e. g. to build a house (or other real property) on the disputed plot, to fell the trees, to put down a fence etc. These claims, however, in contempt of the procedural law, are ignored by the court. It constitutes the violation of the property rights and makes their further protection impossible, even if the case is resolved in favor of the claimant.

A claim containing the request to extort the real property from the illegal possession and to recognize the legal title on the property, and lasting for 7 years, is just one example of inefficiency of the court operation concerning property rights protection.⁹

The biased attitude of the courts often becomes an issue in judicial practice of property rights protection. For examples, when interests of a communal enterprises and a consumer clash, the judges, as a rule, will not pass a fair decision which would entail financial damages for the enterprise. The judge will not feel ashamed to ask the claimant “Are you aiming at ruining the company?” In fact it is a rudiment of totalitarian thinking. The European judicial practice, on the other hand, is aimed at ensuring the balance of the interests on the basis of the supremacy of law and restrictions imposed on the corporate and power bodies for the protection of the consumers’ rights.

2.3. Non-execution of the court decisions aimed at the protection of property

Analyzing practices of the European court and Ukrainian national courts one comes to a lamentable conclusion — the Ukrainian judicial system so far has not resolved the issues of non-compliance with or/and long-term non-enforcement of the court decisions.

The non-execution of court decisions concerning property protection has become threatening. Even the judges recognize the fact. The experts point at the bodies of authority as main violators that repeatedly fail to satisfy the legal demands of public.

Only every third court decision is served in Ukraine. The number of Ukrainians’ claims filed with the ECHR is increasing. The claimants complain of prevarications in the serving of the national courts decisions. Last year the Law “On the state guarantees of the enforcement of the court decisions” was passed, but by early 2013 almost three million of non-executed court decisions have accumulated in Ukraine. It is a symptom of the judicial system invalidity, which has been stressed by the Supreme Rada speaker, chief justices, Prosecutor General office and attorneys during the parliamentary hearings on May 22, 2013 in Kiev.¹⁰

Even the chief justice of the Constitutional Court A. Golovin complained of failure of bodies of power to serve almost one half of the decisions. He believes that this situation threatens observance of human rights and called the parliament to establish liability of public bodies and bureaucrats for non-compliance with court decisions. Golovin suggested the setting up of the parliamentary monitoring unit to follow up the serving of the Constitutional Court

⁹ If someone takes away your property, then someone benefits from it <http://helsinki.org.ua/index.php?id=1380104964>

¹⁰ On serving court decisions in Ukraine http://static.rada.gov.ua/zakon/new/par_sl/sl2205113.htm

decisions and identifying the legislative problems hindering the implementation of these decisions.

The chief justice of the Highest economic court V. Tat'kov believes that the essence of the problems is accounted for by the earlier decision to transfer the State office in charge of the court decisions' enforcement from the jurisdiction of the judicial branch of power. Now it falls under the jurisdiction of the executive branch being a structural subdivision of the Ministry of Justice. "The executive proceeding is the final stage of the court deliberations, which is possible only under control carried out by the judicial branch" — concluded Tat'kov.¹¹

The deputy minister of justice A. Sedov admitted the faults of the executive service operation. He explains them, among other causes, by the lack of funding assigned for this body. "The executors' and senior executors' operation is characterized by high level of responsibility and complexity, while their salaries remain at the level of the minimum wages" — Sedov stressed.

Many experts agree that large number of court decisions concerning the payment of salaries and social benefits cannot be served due to the absence of funding and scarce resources of the state budget.

The serving of the court decisions involving the bodies of power in Ukraine is much more problematic than serving of the decisions concerning private persons or companies. The efforts of the state to set up an efficient mechanism that would address the non-compliance with court decisions in which the state is a debtor, can be hardly described as successful. The procedure of implementing the Law of Ukraine "On the state guarantees of the execution of the court decisions" is inefficient and hardly viable.¹² In 2013 this mechanism did not cover significant number of court decisions in which state acted as respondent; only on September 19, 2013 this law was amended with the goal of broadening its purview.¹³

The situation with respect to the allocation of funds to make this mechanism work is even more dramatic. The Law of Ukraine "On the state budget of Ukraine for 2013" envisages the amount of 153 921 600 UAH in the state budget to guarantee the serving of the court decisions.

On the one hand, the allocation of this amount testifies to the possibility of assigning certain amount from the budget to cover the expenses for financial damages under a special budget program. However, by April 1, 2013 the Ukrainian courts have passed 2.2 million decisions on payment of pensions and social benefits to the claimants, which have been appealed in the courts of various instances, under which 7.2 billion UAH had to be paid.¹⁴ Obviously, several billion UAH are lacking to pay all the debts.

The draft law of Ukraine no. 3035 of July 29, 2013 was devised to address the due and fair payment to recompense arrears in pensions and social benefits established by the courts. However, the Highest administrative court in its conclusions of July 29, 2013 with respect to this draft law¹⁵ specified that its passing would not resolve the issue of non-execution or de-

¹¹ Non-execution of court decisions becomes routine in Ukraine <http://www.dw.de/невиконання-судових-рішень-стає-в-україні-буденністю/a-16830280>

¹² How a court decision with the state as a debtor should be served? <http://www.i-law.kiev.ua/?p=766>

¹³ Law on introducing changes into Ukrainian laws with respect to the execution of court decisions http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45896

¹⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47981

¹⁵ Conclusion of the Highest administrative court of 29.07.2013 http://vasu.gov.ua/ua/news_legislation.html?_m=publications&_t=rec&id=3030&fp=1&s=print

layed execution of the court decisions because of its declarative (and not really viable) nature due to the lack of appropriate financial support.

Therefore, the state budget of Ukraine does not provide for sufficient funds needed to ensure the payments guaranteed by the law, in particular, compensations, benefits, bonuses etc. Hence, the legislation failed to resolve the problem of non-execution or delayed execution of the court decisions due to the debtor's lack of funds.

Besides, the moratoria, and, specifically, the moratorium on the compulsory sales of the public property, the fuel and power enterprises, pipelines companies, "Ukrudprom", ship-building companies, are still in force. It is noteworthy that the ECHR in many decisions concerning non-compliance with court decisions in Ukraine made a notice that the violation of commitments taken by Ukraine with respect to fair trial and unimpeded possession of one's property, is accounted for by the existence of the aforementioned moratoria. Nevertheless the provisions on the banning of the moratoria are systematically removed from the draft laws attempting to resolve the issue of non-execution of the court decisions.

2.4. Problems related to the observance of the property right with respect to the new construction

The main obstacle for the exercising of the property rights in construction in Ukraine is poor quality of its normative and legal regulations and inadequate administering of the legislation in force.

The issue of attracting funds from physical entities in the course of multi-apartment buildings' construction has become a most crucial issue, as the lack of the investors' legal protection made exercising of their rights impossible, especially, in the cases of the so-called "frozen" construction.

As of today, investments in construction have become for many Ukrainians the one and only chance of resolving the housing problem. Relying on just the "word of honor" they invest their money into "hushed" new development. Naturally, some investors at the end of the day become the happy owners of their own housing, but many others get just a concrete box without water, gas or electricity.

The number of incomplete buildings in Ukraine is impressive. The "frozen" housing situation in Ukraine has not changed since the beginning of the crisis till present day. According to the data provided by the minister of regional development, construction, housing and communal services G.Temnik this number amounted to 15 733 unfinished buildings by July 1, 2013. 186.2 billion UAH are needed to complete the construction. Over 568 of the incomplete objects, according to the Chief Department of Statistics, are located in Kiev.¹⁶

According to the real estate market expert Ya. Tsukanov, "in the first quarter of 2013 the number of frozen construction projects for cottage villages in Kiev oblast' has increased by 7% as compared to the last year, amounting to 25%."¹⁷

Most interestingly, some developers still manage "to sell the air" to the individuals wishing to have their own housing and signing respective contracts, ignoring the fact that the

¹⁶ http://www.novostimira.com.ua/novyny_63744.html

¹⁷ 25% of cottage village construction has been "frozen" in Kiev oblast'. <http://ua.for-ua.com/economics/2013/04/23/083314.html>

courts have banned the construction of the said housing and court proceeding with respect to this construction still continue.

Let's look, for example, at "Ukrkagrobud" company, a developer of the "Skhidna Brama" residential complex. The economic court of Kiev as far back as 2012 passed a decision no. 5011-11/4098-2012 under which "Ukrkargo" Ltd and "Ukrkargobud" Ltd were obliged to demolish the unfinished construction and bring the land plot at the address 3, Svitla str., Darnitsa district, Kiev, back to its primary condition at their own cost.¹⁸ Apart from this decision and appeal filed against it by the developer, several other court proceedings were initiated with respect to this construction.¹⁹ The developer, notwithstanding, keeps selling the apartments till present day on its site, (<http://s-brama.kiev.ua/flats.html>) without ever mentioning all the aggravating circumstances.

Another problem the investors are often facing is the long-term construction. The developer "Ukrinvestbud" Ltd, postponing the commissioning of the "Mega city" complex at Kharkiv highway in Kiev, is a good example of the red tape. The construction started as far back as 2005 and was completed in December 2012.²⁰ The residents, however, still complain of impossibility of registering their titles in due order. Besides, the "Kievvodokanal" advised that a sewage collector is located right under the building, and has now become inaccessible due to the concrete parking above it.²¹

The courts are also facing the problem of separating investments' contracts from all the contracts regulating development relations.

Thus, a new claim no. 10113/10159/2012 was filed with a court by Claimant 1 against "Avers-city" Ltd Company, the developer of the "Kotsyubynsky" residential complex.

Claimant 1 in his claim demanded that the earlier sales and purchase contract is classified as fraudulent and should be invalidated, and that the money invested under the contract is returned to him. The Claimant complained that the construction has stopped at the foundation stage with no further development, while the developers avoid any contacts with him in any possible.

Claimant 1 believes that, although the controversial contract was described by the parties as preliminary contract, is an investment contract in its essence, because its contents and aim address the investment made into the housing construction, specifically into the object of sales. This fact is corroborated by the parties' obligation of signing the sales-purchase contract upon commissioning of the building to legalize the property right with respect to the aforementioned property, as well as by the parties' actions envisaging the down payment of 98.95%, with subsequent payment of 100% of the apartment cost.

Claimant stated that if the preliminary contract was entered into by the parties with an actual goal of Claimant's funding of the construction, then, in this case, the relations between parties are regulated by the rules of the legal act composed by them, i. e. by the rules to be applied to a contract on the investment into housing construction.

¹⁸ Uniform register of court decisions <http://www.reyestr.court.gov.ua/Review/25689443>

¹⁹ Uniform register of court decisions <http://www.reyestr.court.gov.ua/Review/28302646>

²⁰ Ten new construction projects with dubious reputation in Kiev http://ua.prostobank.ua/zhitlo_v_kredit/statti/desyat_novobudov_kieva_z_sumnivnoyu_reputatsieyu

²¹ Another scandal around new construction project at 19 Kharkiv highway http://www.vodokanal.kiev.ua/index.php?option=com_content&view=article&id=1026:-19&catid=24:-lr&Itemid=66

The Appellate court of Kiev oblast', however, was of different opinion. The judges' board agreed with the local court's decision, i. e. that there were no grounds to consider the preliminary contract a fraud devised to hide the investment contract, and, hence,, the court did not see any grounds for the reimbursement of the down-payment made at the time of signing of the preliminary contract by Claimant 1.

Therefore, Claimant 1 ended up without apartment and without money, as the renewal of construction is hardly possible, while the developer managed to come off clear.

The negative results analyzed above lead to a lamentable conclusion: the citizens investing into the housing construction have no legal protection at all and are running a serious risk of losing money without getting any housing. Giving out their money to the developer, the investors have absolutely no guarantees, apart from the developer's reputation, of enjoying the fruit of their investment.

The lack of guarantees for the investor, both with respect to the housing and to the invested money in case of developers' illegal actions or inertia, absence of mechanism allowing for obtaining some portion of unfinished construction in kind of for the completion of the construction in case of the developer's bankruptcy, lack of risk insurance for both the investor and the developer can be enumerated among the major problems. The provisions of the Law of Ukraine "On insurance" stipulate insurance for investments and financial risks, but do not provide any conditions for insurer's control over the operation of developer or any financial institution using money of physical or legal entities.

The only positive step in resolving the said problems is the effort made in the direction of improving the normative and legal basis of the guarantees of investors' rights in construction, e. g. the Law of Ukraine "On enhanced protection of the investors' rights in the course of investing into (financing) the housing construction"²², or other draft laws, which, under the information of the Ministry of regional development, construction and housing and communal services, are to amended.

3. RESTRICTIONS OF THE PROPERTY RIGHTS IMPOSED BY THE BODIES OF POWER

3.1. Buying out the land plots in private ownership for public use

No one in Ukraine is protected against the expropriation of land and premises sitting on this land. The procedure for land expropriation is regulated mainly by the Law of Ukraine "On alienation of land plots and other objects of real property located on them, which are in private ownership, for public use or for the reasons of public need" of 17.11.2009. (hereinafter the Law of Ukraine "On alienation...").

The Law reads that the land plots and objects of real property located on them, which are in private ownership of the physical and legal entities, can be alienated by force as exception only for the reasons of public need, with advanced and full reimbursement of their cost in due procedure established by the law.

²² On enhanced protection of the investors' rights in the course of investing into (financing) the housing construction <http://investhelp.com.ua/content/pro-zakhist-prav-%D1%96nvestor%D1%96v-zhitlovogo-bud%D1%96vnitstva>

In 2013 the order of private land plots' buying out was changed by the number of new legal acts. Thus, under the Law of Ukraine "On sea ports", which came in force this year, the land plots created artificially in the water areas adjacent to sea ports were classified as the lands of the water fund of Ukraine, so that the property right with respect to these plots and their use can be limited to the public need. The same law introduced the changes into the Law of Ukraine "On alienation..." According to these changes construction, capital renovations and maintenance of the ports can be the reason for the purchase of privately owned land plots by the state power bodies. The respective decision is made by the executive power bodies. Besides, the sea ports fall under the category of objects, the construction of which can justify the alienation of the land plots enforced by a court decision. It is noteworthy that respective decision can be made only if the alienation of the territory is required for the most efficient use of the land with due consideration to all the economic, technological, social and environmental factors.

Therefore, the list of the lands which can be alienated by force for the reasons of public need was broadened in 2013 under the Law of Ukraine "On alienation"...

Meanwhile, the changes addressing the definition of the public expediency and need allow for misinterpretation of the respective provisions of the Law and lead to the conflict situations. Taking into account critical remarks made by the experts in former years, the broadening of the sphere of the law application and inclusion of the sea ports into the list within the category of public use and need, can lead to the further deterioration of situation and abuse. Thus, some lawyers propose to use the mechanism of buying out the land plots for public use with the goal of getting around the moratorium on the sale of lands in agricultural use.²³ Special attention should be paid to the fact that this suggestion allows for the alienation of lands with valuable natural resources. It is especially important in the context of sharing the products between Ukraine and exploration companies dealing with extraction of shale gas and conflicts arising around this issue.²⁴ Specifically the issue of land plots alienation with the goal of shale gas extraction in Prykarpattia region is one of the most crucial for the local residents and local self-governments as far as the signing of the contract with "Chevron" company goes²⁵.

The conflicts involving land alienation for the construction of Euro-2012 facilities give grounds to suspect that such scenarios could repeat themselves in 2013. In late August the Cabinet of Ministers of Ukraine suggested the passing of the law on enforced alienation of land plots and infrastructure objects "for the reasons of public need to construct the objects envisaged by the State social target program of preparation to and conducting of the final basketball tournament of Europe-2015 in Ukraine".²⁶ It means that the issue of land alienation with the goal of constructing sports facilities will remain topical in the nearest future.

²³ How to buy agricultural land in Ukraine: several ways of getting around the ban, <http://realt.aviso.ua/uk/news?id=660c89f9-d72d-4f72-bf17-cc62183f483c>

²⁴ Agreement on shale gas exploration will be signed in September — minister http://gazeta.ua/articles/business/_ugodu-pro-vidobutok-slancevogo-gazu-v-ukrajini-pidpishut-u-veresni-ministr/513448

²⁵ M. Petrychuk, O. Dzesa : Ivano-Frankivsk oblast' council has not received the draft agreement on the distribution of products between the I«Chevron» company and the government yet. [http://www.galychyna.if.ua/index.php?id=single&tx_ttnews\[tt_news\]=22271&tx_ttnews\[backPid\]=24&cHash=3b352cad14](http://www.galychyna.if.ua/index.php?id=single&tx_ttnews[tt_news]=22271&tx_ttnews[backPid]=24&cHash=3b352cad14)

²⁶ For the Eurobasket -2015 Azrov and his clique suggests custom free import and forcible and alienation <http://tyzhden.ua/News/88093>

The issues of contention also arise with respect to construction of main power lines stipulated in the “Power strategy of Ukraine till the year 2030”. In 2013 the working groups to address the issue of the buy-outs of land plots for the construction were set up in several raions of Zhytomir oblast.²⁷

The amount of compensation to be paid for a given land plot is one of the major bones of contention. Under the law in force (Article 19 of the Law of Ukraine “On land evaluation”) the required assessment can be achieved by means of the following methods:

- Capitalization of the strictly operational or rent income from the use of the land plots;
- Comparison of the values of similar plots;
- Calculation of the costs of land improvements.

Noteworthy the use of this methodology often ends up in much lower costs of the purchase value of the real property, and usually does not ensure the coverage of the costs needed by a person to buy new residential premises and land plot. The problem of owners’ compensation for the expenses incurred in the course of property alienation remains most controversial.

The construction of the detour around the village of Rakoshino is a most demonstrative example of this situation. The data from the “Bulletin of the state purchase” show that the motorways unit in Transcarpathian oblast, following the tender results on August 27, 2013, signed an agreement with “Pivden’zakhidshlakhbud” company for the construction of the segment of the motorway Kiev-Chop at the cost of 67.23 million UAH. Looks like good news, but the highway was designed so that it goes through the land plots belonging to the villagers. According to the technical evaluation the trees should be uprooted, residential and other premises demolished, communication networks transferred etc. The villagers are offered 5 UAH per square meter for loss of their property and alienation of the land plots.²⁸

Obviously, this is a far cry from the market value, and, considering the fact that some villagers, alongside with land plots are deprived of their real property, it can be assumed that they are offered to give their property away without any compensation.

Naturally people were not happy with the quoted price and appealed to court to protect their rights. Their chances of winning the case, though, were very small, as the Law does not require from the authorities any reasons or arguments to justify the choice of a given plot or facility. Traditional practice shows that usually the court passes a decision on confiscation of the land plot and also establishes compensation — in terms of money or in kind — for the alienated property. The price established by the court would hardly differ from the one offered at the moment of land or facilities purchase.

The draft Law of Ukraine no. 2610 “On introducing changes into article 19 of the Law of Ukraine “On land evaluation” concerning the changes in methodology of expert monetary evaluation of a land plot” was developed and registered on March 21, 2013. This draft law is aimed at changing methodology of expert evaluation of the plots that should be bought out for the reasons of social need or necessity. It suggests the comparison of the prices of similar land plots as the method to use, as it supplies the price, closest to the market prices. If the amendments are accepted and used in the future, the issues of land plots purchases for the reasons of public need or necessity will probably become less acute.

²⁷ See Order of Olevsky raion state administration (Zhytomir oblast) no. 98 of 14.05.2013; Order of the head of Emilchynsky raion state administration (Zhytomir oblast) no. 88 of 29.04.2013

²⁸ To construct a detour the power is cheating Rakoshyno villagers out of their land offering 5 UAH per square m. http://www.szp.org.ua/vlada-vyduryuje-v-selyan-rakoshyna-zemlyu-na-ob_jiznu-po-5-ghrn-za—kvadrat.aspx

Another difficulty in the purchase of the real property objects for public needs is represented by the procedure of money transfers to compensate the lost property. Under p. 5, article 16 of the Law “preliminary compensation of the cost of land plot and other real property objects on that land in full in the terms of money is realized in the form of the deposit made by the executive power body or local-self-governance body that had made the decision on the alienation of the land plot, to the notary’s account under the order established by the law, in the area where the land plot and other real property objects are, or transfer of money to the bank account given by the owner of the said objects.

Therefore, following the decision on alienation of the land plot and other real property objects, the money should be deposited to the notary’s account, in the area where the land plot and other real property objects are, after which transaction no one cares whether the owner had been reimbursed for the alienated property, and whether he agrees to the amount he had been given. In fact, he is forced to forfeit his property to the bodies of executive power or local self-government.

The decision of Volyn’ circuit administrative court of March 19, 2013, in the case no. 2a/0370/2900/12.²⁹

The file shows that land plots of 1000 square m and 1955 square m, a house and perennial plants which have been growing on the land plot were alienated from Claimant 1 by the decision of Lviv Appellate administrative court and act of execution under the pretext of public need, i. e. for the construction (reconstruction) of the public use motorway Ustylug — Lutsk — Rivne, km 0+420 — km 3+600. The purchase price for the said objects was established at UAH 303 983. Despite the fact that Claimant 1 disagreed with the established price, the head of Volodymyr-Volynsky raion state administration passed resolution no. 467 “On making a deposit to the private notary’s account of Volodymyr-Volynsky raion notary district”, under which the department of finance and economy of the raion state administration made a deposit of UAH 303 983 to the private notary’s account to be delivered to Claimant 1.

Although Claimant 1 kept disputing the evaluation sum and never got her money back, the court disregarded this fact and classified the actions involving Claimant’s 1 forced eviction from the object located on the land plot as legal.

Conclusion: the property was alienated by force, and it would probably take Claimant 1 a very long time to receive her due compensation in full.

The analysis of the procedure for the alienation of the land plots and other real property objects sitting on them for the reasons of public need in Ukraine once again demonstrates the complexity of economic/legal mechanism of the extortion of property, i. e. of the land plots and other real property objects sitting on them. A cardinal adjustment in the procedure of buying out (alienation) of the land plots for the reasons of public need is in order. Most importantly, the problem should be addressed professionally and comprehensively, with due consideration of the whole range of the issues, which can arise in the course of extortion of the private property objects.

3.2. Moratorium on the sales of the agricultural lands

The moratorium (the banning of alienation and change of use of the agricultural land plots) restricting the rights of the land owners, stipulated by part one of article 90 of the

²⁹ Uniform register of court decisions <http://www.reyestr.court.gov.ua/Review/30172013>

Land Code of Ukraine and article 41 of the Constitution of Ukraine has been in force for over 12 years.

As a result, the land market is becoming more and more “shadowy”, corruption is on the rise, the agricultural land use is more and more monopolized by agro-holdings etc.

New laws prolonging the moratorium validity have been taken almost every year. Under the most recent Law of Ukraine “On introducing changes into the Land Code of Ukraine” of December 20, 2012, the moratorium on sales and purchases of the agricultural lands will remain in force till January 1, 2016. Despite the temporary nature of this provision it is obviously impossible to predict the date of its termination.

Authorities tried more than once to regulate the land market. First the moratorium was considered indispensable till the moment when appropriate legal regulation of the agricultural lands market would come in force. For many years draft laws “On land market” aimed at regulating legal relations with respect to land circulation in Ukraine have been considered by the Supreme Rada of Ukraine. Not a single law, however, was passed.

By the Law of Ukraine “On introducing changes into the Land Code of Ukraine” of December 20, 2012, the Supreme Rada decided to pass another law “On circulation of the agricultural lands”. On July 20, 2013 this draft law was submitted for the Supreme Rada consideration and had to become the finalizing point in the land reform. However, it caused a lot of controversy and discussions.

The norm cutting down the list of subjects legally competent to buy agricultural land plots turned out the most controversial. Under the draft law only the following entities can be the legal subjects of purchase: the state, territorial communities, National land bank and Ukrainian citizens. Foreigners, stateless persons, foreign countries, international governmental and non-governmental organizations were removed from the list of the entities entitled to purchase of land.

New requirements for the Ukrainian citizens willing to purchase the land were introduced. In particular, they should reside at least for three years in a settlement within 20 km radius from the land plot in question; be willing to carry on independent commercial agricultural production individually or with their families; have experience in farming or in commercial agricultural production and be registered as physical persons-entrepreneurs or members of a farming community.

These requirements open the door for big time corruption, as the law does not specify the notion of agricultural “experience”, how it can be proven and how long should one work in the independent agricultural production of goods for sale to be entitled to own a land plot. It is also unclear how one can prove or confirm one’s wish to conduct independent commercial agricultural production individually or with one’s family. And the last point — what did the legislator have in mind insisting on 3-years’ residence in a settlement? Is it about the registered domicile or actual place of residence?

The norm, restricting the acceptable size of a land plot to be purchased as property by a Ukrainian citizen — no more than 100 ha, — deserves special attention as well. The plot of this size is not enough for profitable commercial agricultural production. Noteworthy, these restrictions do not apply to the state, territorial communities, National land bank. The state, therefore, tries to buy land plots as big as possible and to monopolize its market position.

This conclusion comes from the draft law norm stipulating that in case of purchase of agricultural land plot in private ownership, the preferential right to its purchase at the first

exposition stage is given to the state, that realizes it through the relevant bodies of executive power, territorial communities, realizing this rights directly or through local self-governments, National land bank — in this order, under the Law. Only after the government forfeits its right the Ukrainian citizens is entitled to purchase the land plot.

This norm in fact restricts the owner's right to dispose of his property and obliges him to give out his agricultural land plot in "voluntary- enforced" procedure to the state, simultaneously depriving another citizen of the right to purchase this land.

The norm establishing the minimum lease term of 15 years of use of the agricultural land plots for the commercial agricultural production can be described as positive, as it contributes to the competitiveness and allows the manufacturers to use the land in a sustainable way, making long-term plans. However, even this, superficially good norm, needs further improvement. It should address specific situations when the lease can be terminated at earlier stage due to force-major conditions encountered by the owner.

The abovementioned arguments make it clear that the draft law still has to be amended and a well-justified approach to the agrarian reform is called for. Hopefully the most problematic issues will be resolved and the Law of Ukraine "On circulation of the agricultural lands" shall be passed at the end of the day.

Meanwhile, a draft law no. 2181a, "On introducing changes to some laws concerning the simplification of transfer of agricultural land plots into private ownership and use", which had to annul the moratorium for one legal entity only, i. e. the National land bank of Ukraine is submitted to the Supreme Rada from time to time. If this law is passed, for the next two years at least the Ukrainian owners would be capable of selling their land to the National land bank, which, consequently, will become monopolist in agrarian area. For the first time the Supreme Rada wanted to include this draft law into its agenda at the session of June 18, 2013, but not enough members voted for it. According to the Chief research expert directorate conclusion of June 14, 2013 this draft law should be rejected. Nevertheless, it was submitted again. The last deliberation on it occurred on October 10, 2013. Fortunately, the draft law no. 2181a was rejected by the committee members, but there no guarantees that a similar draft law won't be submitted once more to the Supreme Rada under a different title.

3.3. Violation of property rights by the Ministry of Interior bodies

The actions of the law enforcement officers in 2013 have caused numerous violations of property rights.

Some violations were related to illegal appropriation of property in the course of searches or other investigation actions. The examples of such violations include confiscation of 8 tons of scrap metal during a search in Crimea³⁰, illegal appropriation of the victim's credit card during search of his residence in Kiev³¹, confiscation of computer and office equipment (in scope much bigger than was stipulated by the relevant resolution) during the search con-

³⁰ In Crimea a militiaman who had stolen 8 tons of metal from the crime scene was convicted conditionally <http://www.sobytiya.info/news/13/35229>

³¹ In Kiev a looting major was let loose for three years. After that he can resume his service in militia. <http://my-time.net.ua/news/2013/10/2013-10-08-47.htm>

ducted in Ukrsotsbank³², illegal appropriation of goods and personal belongings of the staff of Kharkiv printing house³³, disappearance of about 100 thousand USD in Chernivtsy³⁴.

The instances of money appropriation by the militia officers at the crime scene are quite numerous, too. Thus, in Ternopil a militia official was charged with stealing 1000 UAH confiscated at the crime scene as material evidence³⁵. In Odessa militia officers returned the empty wallet to the victim of robbery, having earlier taken the money out of it.³⁶

We see, therefore, that the abuse of office by the law enforcers, i. e. the stealing of the citizens' property, is widely spread all over the Ukrainian territory. The most aggravating factor is that the culprits are not always brought to justice, thus intensifying the sense of impunity among the law enforcement staff and, potentially, leading to the further spreading of these violations.

Complicated relationship between the law enforcers and the owners of mobile coffee stands in Kiev deserves special attention. According to the members of the Association of the mobile coffee stands' owners, militia officials tow away the mobile coffee stands to hinder their operation. The company operating legally, with all the due permits believes that this situation is accounted for by its employees' reluctance to pay bribes in order to avoid militia inspections. Those who do pay the bribes have no problems even operating without required permits.³⁷

Besides, the militia officials seem to treat the small businesses' property as their own. The cases of confiscating kvas without any clarifications or protocol, have been registered both this and last year. In June 2013 a militia official stated, on top of everything, that kvas belonged to militia³⁸. Of course, these facts are not enough to draw the conclusion that militia "protects" certain mobile coffee stands, but they quite suffice to demonstrate the abuses committed by militia with respect to the owners of these businesses and the urgent need to put an end to this practice.

In many cases the militia officials tried to expropriate real property, using various methods to that end.

For example, in Kirovograd the militia precinct inspector forcibly evicted 100-year old veteran from his house. He used the owners' children's unpaid debts as official pretext for evictions, but the house was not mortgaged. The militia official was charged with exceeding his authority.³⁹

³² Ukrsotsbank declared that Donetsk militia had exceeded its authority <http://obkom.net.ua/news/2013-09-20/1925.shtml>

³³ How militia was looking for coffee in the printing house. Kharkiv businessmen tell the story of arbitrariness. <http://umdpl.info/index.php?id=1375422978>

³⁴ 100 thousand dollars disappeared after the search <http://umdpl.info/index.php?id=1375078135>

³⁵ A militia official took the money seized at the crime scene, <http://20minut.ua/Novyny-Ternopolya/Kryminal/10273939>

³⁶ An Odessa resident robbed in the mini-bus, was searched instead of getting compensation <http://www-reporter.com.ua/news/08p34p/>

³⁷ Why Kiev militia is fighting with coffee stands? <http://kiev.segodnya.ua/kpower/Pochemu-kievskaya-miliciya-voyuet-s-avtokofeynyami-461997.html>

³⁸ How sub colonel Babyak had stolen kvas, <http://ord-ua.com/2013/06/10/yak-pidpolkovnik-miliciyi-babyak-kvas-vkrav/?lpage=1>

³⁹ A militiaman threw a 100-year old veteran into the street and settled in his home "I was beaten and tied up. I screamed. VIDEO, source <http://censor.net.ua/v252721>

In Sudak a local law enforcer illegally appropriated a mini-pension with the help of a Crimean Tatars' family. On the petition of a mini-pension's owner the actions of a militiaman were qualified according to article 356 of the Criminal Code of Ukraine ("Arbitrary actions")⁴⁰.

Militiamen in Kerch chose another mode of operation, once they decided to get hold of real property. They filed a claim against the person residing in the departmental housing after his father, who also had been a militiaman, passed away, and held him in custody.⁴¹

Despite the fact that sometimes officials guilty of lawless actions are duly penalized, it seems that in general the law enforcers feel their complete impunity. For example, the owner of illegally confiscated car in Kamenets-Podilsky not only failed in his efforts to get it back, but also received an unambiguous response from the head of the local road and motor vehicles inspection: "You are a loser, so face the fact. No one will give you your car back"⁴². In this context one can conclude that due punishment of those guilty of illegal actions is rather an exception than the rule.

4. RECOMMENDATIONS

1. Setting up transparent and efficient system for the state registration of real property titles.
2. Improving the scope of protection of rights of the land plots' owners; setting up the mechanism to counteract forcible appropriation of lands; passing the laws that would regulate the basic aspects of land market operation.
3. Ensuring the efficient judicial protection of the owners rights; in particular, introducing measures to address the issues of non-serving of the national courts' decisions protecting property, including the further enhancement of judicial control over the serving of courts' decisions; putting an end to the moratorium on forcible sales of the state property. Also, ensuring immediate implementation of the Law of Ukraine "On state guarantees of the serving of the courts' decisions" with allocation of sufficient funds for its implementation.
4. Promoting transparency and simplification of the procedure of control over housing construction and ensuring protection of the investors' rights in this area.
5. Ensuring efficient legal regulation of the property rights for the co-owners of condominiums.
6. Improving legal regulation of the stake-holders' associations operation to eliminate the illegal seizing of enterprises and organizations in Ukraine, and to avoid corporative conflicts.
7. Providing regulations for the buying out of the land and facilitates for the reasons of public need in strict compliance with Constitution and international obligations undertaken by Ukraine.
8. Introducing measures counteracting the violations of property rights by the Ministry of Interior bodies.

⁴⁰ Militia investigates the arbitrary actions of its employee who evicted an owner of mini-pension <http://ikrim.net/2013/0806/064628.html>

⁴¹ In Kerch militiamen put a guy into the pre-trial detention center to get hold of his apartment, <http://umdpl.info/index.php?id=1372405427>

⁴² A Kiev resident was deprived of his "Mercedes" in Kamenets-Podilsky (Khmelnitsky oblast') by the officers of road and motor vehicles inspection <http://umdpl.info/index.php?id=1368420871>

XIV. SOCIAL AND ECONOMIC RIGHTS¹

1. GENERAL OVERVIEW

A social state is a type of state and organization of public life public aimed at promoting social values, ensuring due conditions for dignified life and free development of personality. A social state is, first of all, oriented at common welfare, both for the entire society and for its individual members. It must secure adherence to the principle of social justice. Practical implementation of the social state principles is possible due to well-grounded and efficient social policy.

Lamentably, Ukraine remains a far cry from the aforementioned standards. Despite the fact that our country is defined as a social state by the Constitution, its actual characteristics testify to the contrary. Poverty of the working population, low living standards, huge discrepancies between the life of the rich and the poor are indicators pointing at serious problems in the area of social and economic rights.

The majority of the problems calls for substantial long-term reforms, but so far political will and readiness for their implementation is evidently lacking.

For example, the changes in the structure and content of the “consumers’ basket” have been under discussion for over 10 years. This indicator serves as a bottom line in defining main characteristics of the social security, i. e. minimum cost of living, basic salary and pension. But the issue is still addressed only verbally. Moreover, the indicators deriving from the financial capacity of the state are still in use.

The quality of life of the Ukrainian citizens is also affected by the safety level of the food products and drinking water. Despite certain steps undertaken by the state in the respective legal field, so far the situation has not improved significantly.

Despite rhetorical declarations and allocation of certain budget funds, the affordability of housing in Ukraine remains very low. Inefficiency of the state policy in this area is obvious. Huge discrepancy between living standards and housing prices is still in place.

Besides, the social security system depends directly on availability of the budget financial resources. Considering the fact that over entire period of the Ukrainian independence only one budget happened to be non-deficit, one hardly can expect significant improvement in the social area in the foreseeable future. Moreover, even if certain steps are made in this direction, they lack systemic approach and more often than not are aimed at saving budget funds.

Absence of viable pension reform has been registered by everyone concerned — the government, the deputies, and, first and foremost, the public, i. e. the target group of the reform. The pension fund deficit is increasing; the second tier of accumulation has never been introduced within the pension system, incomparable sizes of pensions remain in place.

¹ Prepared by M. Shcherbatyuk, lawyer of UHHRU.

All this means that the protection of the senior citizens in Ukraine is rather weak and does not meet its goals.

2. RIGHT TO SUFFICIENT LIVING STANDARDS

2.1. Guarantees of the right to sufficient living

As of today, under official data the share of poor people in Ukraine constitutes between 15% and 25% of population.² The research carried out by an international company GFK, which analyzed potential expenditures in 2013 in 42 European countries, placed Ukraine among 9 less affluent European countries on the basis of the purchasing capacity of its citizens. Alongside with that, over three last years the size of the so-called middle class in Ukraine suffered reduction — while in 2008 respective factor amounted to 10%, currently it is twice less.

Ukraine is also characterized by a phenomenon of indigence among the working population. The 2013 budget failed to address the issues of budget salaries, unemployment benefits or shadow economy adequately.

As of August 2013, mean salary in Ukraine amounted to UAH 3304, being twice higher than an average pension. Half of the income earned by Ukrainian families is spent on food.

These figures, alongside with the reduction in life span and restricted access to high quality medical care and education unambiguously point to the fact that poor people abound in Ukraine. On the other hand, accurate evaluation with respect to the exact numbers of people affected and specific poverty characteristics does not seem an easy task.

Besides, the universal indicator — bare survival minimum — used to rank Ukraine in the world comprising both very poor and very rich countries, is different depending on the region.

For African countries it constitutes 1.25 USD per day; per European countries — 17 USD. For Central and Eastern Europe, where Ukraine belongs, it amounts to 5 USD per day. Using this indicator one would deduce that only 2% of the Ukrainians live below poverty line.

However, if the living minimum is used as bottom line, the portion of indigent population will amount to 9% — 15%, depending on whether income or expenses were used for calculation purposes.

The experts, nevertheless, claim that the traditional characteristics of poverty, i. e. malnutrition, lack of basic conveniences, belong in the past, especially as far as Ukraine is concerned. The notion of poverty has become relative in the modern world.

Relative poverty means lack of capacity to maintain the standards of living characteristic of a specific society in a given time period.

The experts also draw attention to the fact that the set of factors against which poverty is defined, differs from one country to another.

Starting 1960-s the concept of so-called “median income”, i. e. the average income earned by the majority of the population, has been used in Europe. Currently, after poorer countries

² http://www.bbc.co.uk/ukrainian/business/2013/08/130819_poverty_ukraine_az.shtml

from the post-soviet bloc have joined the EU, the notion of the “poor” is applied to the countries that do not exceed 60% of average income value.

If relative poverty index is calculated on the basis of this requirement, then the number of the poor in Ukraine will constitute 10–12%, — more or less the same rate as in France or Germany, although the absolute level of poverty will differ substantially, as the standards of living are completely different in Ukraine as compared to France or Germany.

It should be kept in mind, however, that the use of relative poverty index, so convenient for the highly developed countries, can lead to a distorted picture in poorer countries, like Ukraine, due, among other things, to huge stratification within the society.

On the other hand, the developing countries are well-known for a substantial role of the shadow economy, so that bare income comparison in this case would not work.

The rate of work remuneration is really very low in this country. Only Moldova ranks lower than Ukraine in Europe. But the Ukrainians get their income not from the salaries only. Besides, between 30% and 50% of the entire economy belongs to the shadow area. Therefore, we cannot rely on the official data for average salaries values while defining poverty rate.

The newest concept identifying poverty is a “deprivation” factor, when the poverty is assessed not by the resources of a family, but by the living conditions, or lack of benefits available to a family.

Using this indicator, the experts assessed the poverty rate in Ukraine at 25–26%.

This approach, although not allowing for the consolidation data for different countries, provides a more objective picture for any given country.

For Ukraine, the factors separating indigent walks of society from the affluent ones, would include access to the healthy mode of life, high quality food products, high quality of free medical care (instead of the care constitutionally guaranteed on paper only), good education, adequate living conditions, availability of job according to professional qualifications.

Other factors, such as access to pure drinking water and environmental conditions, acquire importance in assessing poverty rates. It is these factors and not only incomes and expenses values that decide upon the poverty level of a country and define the number of citizens living below the line of poverty.

On the other end of the evaluation we find subjective assessments, under which 65% of the Ukrainians define themselves as poor.

If we take into account only the absolute indicator, i. e. how many Ukrainians survive on less than 5 USD per day, Ukraine does not look that bad at all with respect to poverty.

On the other hand, if a person eats well, has a roof over his/her head and a job, but cannot afford a vehicle or vacation abroad, and, hence, considers him/herself poor, this perception does not seem to reflect the actual realities of the Ukrainian life.

Summing up, as varied as the factors for defining poverty are, they all testify to the fact that significant portion of the Ukrainian population lives below the poverty line.

The language of figures is tricky and can be expertly manipulated to achieve specific ends. The system of social protection in Ukraine is based, in particular, on the indicator of cost of living. Under the Law of Ukraine “On state social standards and state social guarantees” all the social guarantees should be equal or higher than the cost of living.

Under the Law of Ukraine “On the state budget of Ukraine for 2013” the cost of living in 2013 amounted to 1108 UAH.

It is noteworthy that the norms established by the Cabinet of Ministers of Ukraine as far back as in 2000 are significantly lower than the physiological needs, while the offered list of merchandise articles fails to satisfy the basic needs of a person. The food list does not meet the nutrition requirements for food consumption recommended by the Ukrainian scientific research institute for nutrition hygiene under the Ministry of Health. As far as other merchandise goes, the infants younger than one year are not taken into account at all, either with respect to food or clothing. One winter coat for two years is envisaged for a child between one and six, while one jacket with synthetic lining is stipulated for adult males for four years, and one winter coat for adult women — for eight years. The cost of living calculations need updating too. It means that consumer basket in Ukraine should be updated with due consideration of all the current consumer needs of the population.³ So far it has not been done.

Significantly, over the year 2013, despite all the official promises, the shameful practice of using the “guaranteed rate of the cost of living” in defining certain types of social protection, has been consistently applied. This indicator points out either reluctance or incapacity of the government to meet at least the minimum cost of living.

2.2. Quality and safety of food products

Currently the international community is concerned with the issues of the global food safety. The global food safety is in the focus of many debates at the international conferences. The world –wide tendency is to compare the strategic importance of food with the significance of financial resources and power/energy safety. The food safety of a country reflects the level of availability of healthy foods manufactured locally to the public. The norms for the food quality should be scientifically substantiated and prices should be affordable with due preservation and improvement of the living environment.⁴

Guaranteeing food safety in any given country is one of the key functions of the state, as the sustainable food production, its affordability and availability due to local manufacturing and import are possible only under the state control. Only the state can supervise the food resources, using support mechanisms for the food producers, regulating exports and customs and tariffs’ policies.⁵

The experts claim that the situation with respect to food safety has remained unsatisfactory over the year 2013, as the level of meat and fish consumption remains low, and the quality of these foods has not improved over 2013. The main requirement put forward by the bodies of control is avoiding food poisoning of the consumers, sticking to the standards of energy values (calories’ content) of the products and appropriate taste and aroma characteristics of the products. The manufacturers are able to compete not on the basis of the qual-

³ Interview with Yu. Kulyk, Head of the Ukrainian Trade Union Federation <http://www.psv.org.ua/arts/intervyu/view-1710.html>

⁴ The food safety of Ukraine is not possible without state regulation performed by AIC. <http://ua-ekonomist.com/216-prodovolcha-bezpeka-ukrayini-nemozhлива-bez-derzhavnogo-regulyuvannya-apk.html>

⁵ Overview of the food safety of Ukraine http://nash-rayon.dp.ua/index.php?option=com_content&view=article&id=28146&catid=336&Itemid=596

ity of the products, but by bringing down the production cost. So, adherence to the nutrition values characteristics (vitamins, micro- and macro-elements' content), use of natural ingredients with no supplements "identical to natural" or taste enhancers is a lesser problem as far as local manufacturers go. The food products delivered from other countries sometimes are not ecologically pure and contain preservatives and supplements banned in the countries of origin.

Considering the unsatisfactory situation with the food safety in the country and potential participation in EU Association, the authorities try to influence the quality and safety of food products manufactured locally and those brought into Ukraine from other countries at the legislative level. Thus, as of 2013, over 250 standards for global food safety have been brought into compliance with the European law requirements; the system of quality and safety control for food products has been introduced at 553 manufacturing facilities; as a result, over January-August 2013 the export of ready-to-use food products has increased as compared to the same period of the previous year by 7.9%. In 2012, respectively, the export increased by 67% as compared to 2009, which constituted over 1.4 billion USD.

In September 2013 the Government finalized the draft law addressing the system of food quality control (Hazard Analysis and Critical Control Point),⁶ under which the producers are obliged to keep a strict inventory of all the products bought and sold. The data are to be entered into a uniform database. The Criminal Code shall be amended by respective articles stipulating penalties for circulating poor quality foods entailing health hazards.

In its turn the Supreme Rada of Ukraine passed a law of Ukraine "On production and circulation of the organic agricultural produce and raw matter" on September 3, 2013. The law stipulates the introduction of the control system at every stage of the organic food production, as well as the procedure for inspection and certification of the production and processing. It is noteworthy that the share of the certified organic-production areas in the general volume of the agricultural lands of Ukraine amounts to only 0.7%.⁷

Over the year 2013 the working groups of the specialized ministries also discussed the Presidential Decree "On main principles of ensuring food safety of Ukraine" to come in force in 2014.⁸

Meanwhile, the disastrous condition of the small farms in Ukraine represents one of the most significant and decisive factors bearing upon the low quality of products manufactured in Ukraine. Obvious achievements in grain production and export, manufacturing of sunflower seed oil from local raw material (in these areas Ukraine ranks first among the world leaders) are intricately intertwined with complicated situation in the mass sector of the AIC. Although the state supports big business to a certain extent, subsidizing construction of big animal farms, hot-houses, storages for fruit and vegetable, small-scale production still prevails. Almost 4.5 million individual rural households, under the latest data, produce 70.1% of the total volume of milk and 45.9% of meat produced in the country. These farms survive due to the individual effort of the villagers, using technologies dating back to the 19th cen-

⁶ HACCP will regulate food quality in Ukraine <http://1kr.ua/news-9879.html>

⁷ Ukraine will become one of the world leaders in organic production <http://www.info-kmu.com.ua/2013-09-04-000000am/article/15902467.html>

⁸ Governmental measures counteracting potential threats to the food safety <http://www.dkrp.gov.ua/info/2368.htm>

ture. Nevertheless, they account for the lion's share of production in many agricultural sectors as well as for the social development of the rural territories which is possible only due to their hard labor. The livestock is kept in most primitive conditions. Cows are milked by hand, slaughtered and dissected right in the backyards. Then the meat goes to the processing facilities and to the markets — external as well as internal.

To meet the obligation undertaken by Ukraine prior to its' joining the WTO, the Supreme Rada in 2009 passed a law "On safety and quality of food products". In January 2010 the law came in force, but the whole range of its provisions and norms were continued till January 2015, as their implementation was not deemed feasible without refurbishment and modernization of the whole small-scale production. No funds designated for these activities were found in the state budget either in 2011 or in 2012. There is still no money. In less than 1.5 years the continuance term of the legal norms concerning the safety of food products comes to an end. And it means that sales and circulation of the unprocessed milk, locally produced cheeses and meat will be banned — with all the economic and social consequences attached to the banning. It is easy to assume that the proposals of another continuance will become the main instrument in addressing this issue. Another draft law allowing for it is already sitting in the Supreme Rada. The freezing of the law norms which call for permanent systemic work might alleviate the bureaucrats' burden, but won't move the process on.⁹

2.3. Ensuring appropriate water quality

The non-compliance of drinking water quality with the normative requirements in Ukraine has long since become one of the crucial issues related to the adequate life standards.

While in the countries of EU the water is tested against 70 indicators for potential content of hazardous substances, in the US — against 102 indicators, in Ukraine this list comprises only 30 indicators.

Thus, the research carried out during the flood of 2013 by the all-Ukrainian professional organization WaterNet, showed that the water drunk by Kyiv residents, the marginally acceptable concentration of manganese exceeded in 70% of all the samples, of aluminum — 52%, of chlorine — in 42% and of iron — in 8%. The all-Ukrainian organization "For citizens' right to environmental safety" carried out an independent study of the water in Dnipropetrovsk and Kherson. It showed that the content of iron and sulfites in the water was several times higher than marginally acceptable values. These substances can provoke the diseases of the liver and pancreas, stomach and nervous system.

The pollution of the ground waters by the industrial enterprises, unregulated use of mineral and organic fertilizers by the AIC should be named among the most important causes of poor water quality. The Ukrainian companies are not interested in installing treatment facilities. It is easier for them to pay either fines or bribes to the control bodies, than to invest into treatment technologies. 76% of all the untreated water discharges of the country are accounted for by the predominantly metallurgical industry of Donetsk, Lugansk, Dnipropetrovsk and Odessa oblast's.

⁹ Food safety... continued http://gazeta.dt.ua/business/prodovolcha-bezpeka-z-vidstrochkoju-_html

Second, the quality of water cleaning leaves much to be desired due to the obsolete condition of the sewage systems, 87% of which are in bad need of repair. The volumes of waste water entering the ground aquifer, used for the central water supply, do not diminish. 80% of the “life source” is taken by the Ukrainians from the rivers, the environmental condition of which is constantly deteriorating. While some time ago the water from Dnipro and Desna was classified as first category under international index, today it ranks third and calls for thorough treatment.

“Kyivodokanal” is still using the water conduits dating back to 1905 and even 1892 in the old districts of the capital. In other cities the pipelines are even worse. For example, in Donetsk oblast’ about 40% of the entire water pipelines networks is in the state of total disrepair. No high quality water can be delivered by rusty pipes.

Third, the drinking water lacks significant microelements, like J, Zn, Cu, and F, contributing to the emergence of endemic diseases.

The treatment technologies date back to the soviet era. While in the EU countries the largest portion of water is treated by ozone to get rid of both hazardous substances and bad odor, in Ukraine the water is detoxified the old way — with chlorine. The use of chlorine has its negative side effect, namely, it is difficult to calculate the right doze. If there is not enough, biological contamination can occur, if there is too much, the risk of emergence of cancerogenes causing the cancer cells growth at the time of boiling, increases.

Noteworthy, the 24 hours water supply has not been yet ensured in many regions of Ukraine. Thus, only 7 out of 28 oblast’s of the country have 24/7 water supply in 100%.

The connection between poor water quality in Ukraine and spreading of numerous infections (viral hepatitis A, stomach typhus, rotaviral infection etc.) as well as of non-contagious diseases (of the digestive tract, cardiovascular system, endocrine system etc), increase of morbidity as a whole, including oncological diseases was registered and pointed out not only by the Ukrainian experts. The Ministry of regional development, housing and communal economy of Ukraine recognized direct link between the water quality and morbidity rate in Ukraine in its national report on the drinking water quality, published in October 2013.¹⁰

The Ukrainian water, under the conclusion made by the Institute of colloid chemistry and water chemistry, as oppose to the European water, cannot be considered drinking water at all. It is technical water, sanitary-technical at best, which can be used for domestic purposes.

In June 2013 the President of Ukraine V. Yanukovych validated by his Decree the Decision of the Council of National Defense and Security “On the safety of water resources of the country and on providing population with high quality drinking water in the residential settlements of Ukraine”.

The decision stated that the situation with respect to water supply for the population as of 2013 has not changed for the better, while in some regions it even deteriorated. Therefore, a number of measures, aimed at legislative changes, approval of national standards for the drinking water and water strategy for Ukraine till 2025 have been improved.¹¹

¹⁰ National report on the drinking water quality and water supply in Ukraine <http://minregion.gov.ua/attachments/content-attachments/1782/..2012.pdf>

¹¹ Decree of the President of Ukraineno. 350/2013 <http://president.gov.ua/documents/15827.html>

However, practical organization and implementation of the set tasks remain the real problem. The programs are efficient but “steps are taken unsystematically, without noticeable progress for several budget periods” (from the report of the Accounting Chamber on the use of the budget funds allocated for the reconstruction and construction of the central water supply systems by the Ministry of the regional development and housing and communal economy).

2.4. Exercising of right to adequate housing

The analysis of Article 47 of the Constitution of Ukraine shows that all the citizens of Ukraine, the indigent included, are entitled to the governmental care with respect to housing instead of ruination and demolition of the whole districts and establishing high prices for a square meter of living space and outrageous mortgages interest rates.

The right to adequate housing is within the focus of cultural, social and economical rights duly addressed not only by the international bodies protecting human rights, but also by the UN Habitat Center.

The definition provided by the Global Strategy for housing points out that adequate shelter does not mean merely roof over one’s head. It embraces the whole set of living conditions ensuring non-interference into private life; sufficient living space; physical availability; due safety; guarantees of housing retention; stability and reliability of the available structures; appropriate lighting, heating and conditioning; appropriate basic infrastructure, i. e. water supply and sanitation; waste removal; due state of environment and factors affecting human health as well as appropriate and accessible location allowing commute to work and services; all these amenities should be affordable.

To evaluate the affordability of housing the world practice uses the indicator of housing price to income ratio, calculated as correlation between median cost of housing and median household income per year. The value of this indicator shows the number of years over which a family could save money to purchase a flat if all the income received is used to that end. In Kyiv this ratio amounts to 18.5¹², which signifies serious discrepancy between the cost of living and housing cost. The world practice sustains that the housing is affordable if the said ratio does not exceed three years.

Under the data of the Statistics Service of Ukraine average salary in Kyiv as of August 2013 constituted 3 335 UAH (approximately, 417 USD).¹³ The median cost of one square meter of housing space in Kyiv amounts to 1750 USD (approximately 14 000 UAH). Simple math plus aforementioned factors demonstrate that a person receiving average salary of 417 USD will need about 70 000 USD (about 560 000 UAH) to purchase a flat of about 40 square m. If the housing prices do not go up and the said person would save his/her whole salary for the flat than he/she would be able to purchase a one-room flat after 14 years of savings. Noteworthy, under Global House Price Index Q2 2013, published by Knight Frank company, Ukraine ranked 10th in the growth of housing prices. In 2013 only the housing cost in Ukraine

¹² http://www.numbeo.com/property-investment/gmaps_rankings.jsp?indexToShow=getAffordabilityIndex&year=2013

¹³ Average monthly fee by regions for 2013 http://ukrstat.org/uk/operativ/operativ2013/gdn/reg_zp_m/reg_zpm13_u.htm

increased by 10.9% as compared to 2012. Considering the tendency of prices' increase with salaries remaining at the same rate, the same person will need much more than 14 years, possibly –18-19 years, according to housing price to income ratio.

Obviously, the housing problem should be addressed immediately. Only lax credits, mortgages and special housing programs for the young can help. As of today, several programs, which, in bureaucrats' thinking, could help in enhancing the level of public well-being, have been introduced, targeting, first of all, people waiting in housing line and young families. Specifically, the State target social-economical program of construction (purchase) of affordable housing (30/70), program for reduction of mortgage rates to allow for affordable housing and State program guaranteeing housing for the young people for the years 2013–2017 are in place.

The "Affordable housing" program, for which the major share of budget funds has been allocated, gave rise to hopes of individual housing or living conditions' improvements among many citizens. But is the program really as affordable, reliable and long-term as it claims to be?

The "Affordable housing" program, (30/70) was launched in 2010. The essence of the program is that 30% of the new housing costs are covered by the state, while the remaining 70% are covered by the buyer. The program has no age restrictions but its potential beneficiaries must be in line for the housing. The Law of Ukraine "On State Budget of Ukraine for 2013" allocated 50.0 million UAH for the implementation of this program.

However, this implementation is hindered by a number of factors.

The first obstacle for the "Affordable housing" program (30/70) is predetermined by the fact that if the living space exceeds the envisaged norm (i. e. more than 21 square meter of total space per one family member plus additional 10.5 square m per family), or its cost exceeds the marginal cost, the difference will be paid by the buyer himself. The state does not cover the cost of the additional space. Meanwhile, the normative cost of 1 square m of affordable housing constitutes 7990 UAH for Kyiv and 6435 UAH for Kyiv oblast'. The detailed analysis of the list of the housing earmarked by the Ministry of regional development and construction of Ukraine, which can be found on the site of the State fund for the support of the housing construction for the young people shows that the smallest flat in Kyiv — 32.07 m — is to be found at no. 3, Miloslavskaya street, while the lowest price per m is 8750 UAH.¹⁴ It means that if a person who has no more than 21 square m of space to account for wants to buy the said flat, the governmental compensation will amount to approximately 50 000 UAH, while the rest of payment—about 230 000 UAH — will be covered by the said person. Hence, one may conclude that this housing is not really affordable for a person with average salary, let alone for people with minimum wages.

The financing cycle for the program is another issue. Thus, in 2012 the program funding ended in November, seriously affecting the public trust towards the program, as many families were left without due funding.

One can't discount the families on the housing waiting list. The State Committee for Statistics provides the data, according to which about 1 million 022 families and individuals are in line to get the housing. About 73.3 applicants have been on the waiting list for over

¹⁴ <http://www.molod-kredit.gov.ua/dostupne-zhitlo/4-kroki-dlya-otrimannya>

10 years. Under the most recent data only 7 thousand people got their apartments over the year. The number of households where the space per person is lesser than the established norm (13.65 square m.) constituted 6 million 878 thousand, which constitutes 40.5% of the total number.¹⁵ If the housing line progresses at the same pace the majority of applicants will never have a chance to enjoy the benefits of the program.

Another program in need of improvement is the program for reducing the mortgage rates (13/3), when the buyer is paying only 3% per year, while the state covers other 13% of the bank mortgage.

Significantly, partial compensation of the interest is achieved within the frame of the costs allocated to that end by the state budget for the respective year (though no guarantees of the said allocation are enforced). The Law of Ukraine "On State Budget of Ukraine for 2013" allocated 300. 0 million UAH for the Ministry of regional development to lower the mortgage costs for the benefit of the citizens in need of housing improvements although in 2012 the same program received 1 billion UAH. Obviously, the scope of funding shrunk, allegedly due to the fact that this program is not popular among Ukrainian citizens.

"Prior to launching the program in 2013, 1233 agreements at the total cost of 284 million UAH have been signed. But then the program lost its momentum: only about 900 mortgage agreements were signed for 6 months".¹⁶

The lack of incentives for participation in the program is accounted for by the fact that the program stipulates first down-payment at the amount of 25% of the total cost of housing, and individuals within the target category are not always capable of paying that much. Besides, the mortgage interest rate has not been accurately established. Despite the provision stipulating that the state is to compensate 13% of the mortgage, the borrower anyway enters into agreement with the bank at 16% of annual interest. Besides, if partial compensation is delayed the borrower undertakes to pay 16% of annual credit for service. So, as one can see, there no guarantees that the state will cover 13% of the mortgage and an average citizen, signing mortgage with the bank at 16% of annual interest runs the risk of not only never getting a flat but of being totally robbed of all his savings.

This program, however, has one decisive advantage as opposed to the "Affordable housing" program (30/70), namely, that living norms are calculated proceeding from the bottom-line of 40 square m of total space per individual or a family of two, plus 18 square m per each additional member, but not exceeding 76 square m or 94 square m in individual housing, which is twice as much as in the "Affordable housing" program (30/70).

However, the basic housing costs in this program are lower than in the "Affordable housing" program, i. e.:

- 7000 UAH per 1 square m — for Kyiv;
- 5000 UAH per 1 square m — for Kyiv oblast' cities, oblast' centers, Symferopol and Sebastopol;
- 4000 UAH per 1 square m — for other inhabited settlements.

According to the "Affordable housing" program (30/70) the difference in normative or established cost is covered by the buyer under the agreement conditions (signed by the bor-

¹⁵ <http://www.ukrstat.gov.ua/>

¹⁶ Housing unaffordable. State 3% mortgage introduced by Yanukovich failed. <http://nbnews.com.ua/ua/tema/96613/>

rower and the seller of the housing with the goal of construction (reconstruction) of the housing or of purchase of the incomplete housing) from his own funds without partial compensation of the interest.

Therefore, only persons with stable and official salaries are in a position to get and pay out the mortgage within the program.

The third program called to address the housing problems of the young families is the State program for providing housing for the young people over the years 2013–2017. This program envisages state support for the young families and individuals through the system of long-term beneficial tax credits for the housing construction, purchase of housing with the help of offering preferential loans, covered by the costs from the state budgets, establishing norms of 21 square m per person plus additional 10.5 square m per family or 20 square m per large families, young professionals working in the villages and rural areas under the work contract with companies and institutions.

In practice this program is underfunded and implemented poorly. Specifically, the State program for providing housing for the young people over the years 2013–2017 envisaged funding of 593.058 million UAH for the year 2013, while only 80 million UAH was assigned from the state budget.

It is this lack of due state funding of the program that made participation in it impossible for significant number of individuals who have no alternatives to acquire their housing.¹⁷

Summing up, one can conclude that all three governmental programs so far remain inaccessible for the low-income walks of society and need further improvement, funding and adjusting to the needs of the target category.

Some violations of right to adequate shelter in Ukraine have been registered as well. Illegal evictions have become rather common, while official counteraction often remains inefficient.

Here is just one example — the eviction of the teacher Nina Moskalenko.

A Kyiv teacher has been fighting against eviction from her own home. The story started in April 2012. Nota bene, the land plot in question is located in Pechersk hills and assessed at approximately 3 million USD. The woman is the owner of 2/3 of the house. The owner of another third is unknown. Nevertheless, this anonymous owner started sending requests to Moskalenko to sell him her property. The teacher refused, and then persons unknown to her started threatening her. On December 13, 2012 the teacher... was evicted by court ruling. ...On December 24, 2012 the prosecutor's office ordered 24-hours militia protection of Nina Moskalenko's house. On January 2013 Nina Moskalenko won the case against illegal raiders. On February 13, 2013 the Appellation Court restored the ruling on the teacher's eviction from her house in the city center. On April 22, 2013 the raiders occupied the house and threw the teacher's belongings out of it. Militia, though present at the scene, decided that the intervention into the conflict would be unwise.¹⁸

¹⁷ The young call for increase in funding of tax credits for the young <http://molod-kredit.gov.ua/news/molod-zaklikaie-uryad-zbilshiti-finansuvannya-pilgovogo-molodizhnogo-kredituvannya>

¹⁸ Nina Moskalenko: "had all the abused joined their efforts...We are so many" <http://www.day.kiev.ua/uk/article/tema-dnya-cuspilstvo/nina-moskalenko-yakbi-vsim-skrivdzhenim-zgurtuvatisya-nas-duzhe-bagato>. A teacher was evicted from her house in Kyiv center, with house entrance blocked with iron bars. <http://zik.ua/ua/news/2013/04/22/405442>

3. RIGHT TO SOCIAL PROTECTION

3.1. Social security and social protection system

The entitlement to social benefits in Ukraine is regulated by over 50 normative and legal acts, constantly changed and amended. This huge number of legal acts stipulates the broad range of social guarantees to be ensured by the state bodies and local self-governance bodies. The number of beneficiaries entitled to relief exceeds 13 million persons which correspond to about 29% of the entire Ukrainian population.¹⁹

Despite all the benefits, subsidies, compensations and other forms of social relief, the situation of the vulnerable categories of population remains completely unsatisfactory.

Superficially, the system of social protection in Ukraine is rather progressive, if not the most modern. The state seems to be aware of each and every citizen facing certain problems precluding him/her from leading normal purposeful life. The law provides for the social guarantees and mechanisms of their implementation.

In real life, however, the whole system of social protection in Ukraine is rather amorphous, while the respective law remains more declarative than operational. The system of social protection does not meet its targets, while the problems arising are not addressed and keep accumulating and aggravating. The experts estimate that due to the lack of efficiency in the social security system Ukraine is losing about 60 billion UAH annually.²⁰

The lack of efficiency in the social security system is partly accounted for by the absence of systemic approach to the issue. The state policy proceeds, mainly, from the Law of Ukraine "On state social standards and state social guarantees", which had to become the axis around which the whole system was set up. However, as mentioned earlier, it is merely declarative; in fact, the system of social protection remains unbalanced.

Specifically, the Law establishes the following guarantees:

- Minimum wages;
- Minimum age-related retirement benefits;
- Tax-exempt minimum individual income.

Besides, the Laws of Ukraine establish state guarantees aimed at social support of the entire population and specific categories:

- Appropriate living standards for the persons affected by the Chernobyl NPP disaster;
- Grants to the students of the vocational/technical schools and higher educational establishments;
- Indexation of the individual incomes to keep the due level of living and purchase capacity under the growing prices;
- Providing guaranteed scope of social-cultural, housing and communal, transportation, educational, health care, physical fitness and sports, commerce and public catering services;

¹⁹ Over 13 million citizens, i. e. about 29% of Ukrainian population, are entitled to social benefits. <http://jkg-portal.com.ua/ua/publication/one/koli-derzhava-splachuje-za-zhkg-32809>

²⁰ Killing benefits: due to the inefficient system of benefits Ukraine is losing up to 60 billion UAH annually. <http://news.finance.ua/ua/~1/2013/11/13/312836>

- Ensuring availability of specific articles and services to the categories of public in need of social support.

Alongside with these guarantees some social guarantees are offered to the members of certain professional categories, specifically, to servicemen, internal troops and national security, people's deputies etc. These benefits are spelled out in the Laws of Ukraine "On militia", "On Security service of Ukraine", "On social and legal protection of the servicemen and their families", "On the status of people's deputy of Ukraine".

Every year the state allocates significant amount of money to pay out these benefits. The fact that social guarantees are not embraced by the legislation does not mean that they are not needed. The state, unfortunately, is in no position to guarantee the due benefits to its servants, but, on the other hand, this category is hardly the one in need of social support.

Meanwhile, members of other walks of society really need that support, balancing at the edge of the social limbo. In this context profession-related social benefits become of secondary importance, as professionals, after all, have the permanent source of income and stay outside the risk zone.

Besides, professional perks can be regarded as corporative bonuses and fringe benefits for certain categories that could do without them, but, due to their exclusive status in a given moment of time, have specific immune status. Thus, according to the information posted by the Ministry of Finance of Ukraine in 2013 the funding of the prosecutor's office increased by 550.1 million UAH, i. e. by 20,7% as compared to 2012; of the national security service — by 179.2 million UAH, or 5.7%, Ministry of Interior — by 1490.5 million UAH, or 10.2%. ²¹

Lack of internal coordination and balance in the social legislation leads one to speculate on the lack of accurate and consistent state policy, uniform vision of development and improvement in this area.

Lamentably, when the map is inaccurate, progress is hardly possible while accidents are highly probable. Inefficient system of social protection will not improve on its own, without precise plan and means for its reforming. One can talk about the reforms incessantly, but without clearly defined program all the reforms are doomed to failure. In this sense uniform legislative approach to reforming is as important as navigation map for a ship — it is just the prerequisite of survival.

It is noteworthy that the system of social protection is not undergoing any reform not because of the lack of system legislation, but due to the lack of political will among the leaders in charge of social policy and social forces supporting these leaders.

The reforms in the system of social protection call for shock therapy, which will lead to deep discontent among public and reflect directly upon the popularity of a political force which would dare to undertake the step. That is why every government keeps postponing this issue till better times, dodging the responsibility. Meanwhile, the problems are piling up.

The efficiency rate of the system providing social protection to those who do not need it and denying it to those who do, deserves special attention.

It is no secret that the people's deputies of Ukraine enjoy a lot of perks. This situation, on the one hand, seems ridiculous, because, obviously, the people's deputies do not

²¹ http://www.minfin.gov.ua/control/uk/publish/article?art_id=358768&cat_id=326268

fall under the category in need of social support. On the other hand, the situation is rather dramatic, considering that millions of citizens live on a monthly income not exceeding one thousand UAH. Thus, according to data provided by “Freedom” radio the following funds have been allocated for the upkeep of the deputies: 17 million UAH for vacations, 36 million UAH for transportation, 12 million UAH for free rides in public transport and half-a- billion for the housing renovations. Another half a million goes to support the deputies of earlier convocations.²²

This example demonstrates clearly the inefficiency of the distribution of social benefits.

Alongside with unfair distribution of social benefits among various categories of citizens, the same inefficient distribution of resources can be registered among specific groups of population.

Namely, the status of persons disabled in the aftermath of Chernobyl disaster is granted to individuals that had never even lived in the affected zones, let alone participated in the liquidation of the disaster consequences. The real victims, in the meantime, have to fight in courts for their right to the state support. Same applies to the participants of the military operations.

The essence of the problem, though, lies not in the faulty legislative basis, but in the corrupt nature of the bureaucratic apparatus responsible for the social security.

That is why more and more proposals concerning targeted assistance can be heard. It will enable putting an end to uncontrolled benefits granted to those who are not entitled to them. In 2002 the Cabinet of Ministers of Ukraine has even passed a number of resolutions, aimed at introducing the system of targeted assistance (no.no. 253, 382, 383), but they were all cancelled in 2004 by the government, leaving the issue unresolved.

The governmental portal refers to an experiment to be carried out in Kyiv and Vinnytsya oblast’ in 2013–2014 dealing with establishing a uniform information environment in social area. The information was provided by the first vice Prime Minister S. Arbuzov. He referred to the Cabinet of Ministers’ Resolution of September 11 “On establishing a uniform information space in social area and ensuring exchange of information between the central bodies of executive power”. The resolution on introducing the national card developed on the basis of the National Bank of Ukraine technology was approved. After experiment is completed this practice will be disseminated all over Ukraine, permitting targeted assistance and also improvement in the services’ quality.²³

Nevertheless, the claim that targeted assistance is unambiguously better than the system of social benefits is open to discussion, because the most vulnerable categories will still be having hard time trying to get help from the state, while corruption and red tape will be still providing loopholes for targeted assistance for those who are not entitled to it.

At the same time the best practices of the other countries show that targeted financial assistance is more efficient than current system. At least, the expenses can be optimized and controlled. Naturally it would not eliminate the unfair distribution of social funds completely, but the efficiency of the system seems higher as compared to the benefits system.

²² http://www.newsru.ua/ukraine/20feb2013/lgotu_depytatov.html

²³ Targeted social assistance is making first steps in Ukraine http://www.kmu.gov.ua/control/uk/publish/article?art_id=246671998&cat_id=244276429

The system of social protection is further compromised by the fact that under the Ruling of the Constitutional Court of Ukraine of 26.12.2011 on the case no. 20-rp/2011 *de jure* and *de facto* the Cabinet of Ministers of Ukraine is regulating the procedure and the amount of social payments and assistance funded from the State budget of Ukraine in accordance with the available resources.

In other words, the amount of the social payments, benefits and compensations depends on the availability of funds in the state budget, which evidently does not help in improving social area. The Cabinet of Ministers decides the amount and the addressees of assistance at its own discretion despite existing legal guarantees. Therefore, once again we have to admit the declarative nature of the social legislation and state's obligations.

The analysis of the social protection law shows that no significant changes have taken place in this area over the year 2013, while the amendments introduced into the law earlier addressed the language and not the essence of the provisions.

Hence, one can conclude that in 2013 the state policy for social security did not change and hardly will change as it depends directly on financial capacity of the state budget. Considering the fact that over all the years of independence only one budget had no deficit, the improvements in social area can hardly be expected in the foreseeable future. Considering the fact that by October 2013 the budget sphere is still characterized by unpaid wages, payments of social subsidies, compensations and benefits are completely out of question.

3.2. Guarantees for social protection of the senior citizens

In 2012 the pension reform aimed at cutting down the state pension Fund deficit and balancing the state expenses for social benefits, specifically, pensions and incomes covering these expenses, was carried out.

Nevertheless, despite the reform the state Pension Fund deficit has increased three times as compared to the initial plan. The information provided by the Accounting Chamber indicates that the real state Pension Fund deficit in 2012 amounted to 27.2 billion UAH.²⁴ Even the Ministry of social policy of Ukraine had to admit the inefficiency of the pension reform. According to the minister of social policy N. Korolevska the increase of retirement age for women from 55 to 60 has led to nothing but negative consequences. The minister reminded that the fund deficit according to 2012 results comprised over 27.2 billion UAH. In 2013 the anticipated state Pension Fund deficit constituted 21.8 billion UAH. Considerable deficit is still registered due to the unviable reform.²⁵

The pension system currently in place is rather paradoxical in its nature: it combines high insurance rates with pretty low pensions. This system deprives a beneficiary of his/her legal income, destroying any incentives for diligent work.

It is noteworthy that the pension reform stipulates the increase of retirement age for women from 55 to 60 (with gradual annual 6-months' increases). The men will now retire at the age of 62. The required term of employment has been increased by ten years. Men

²⁴ Real Pension Fund deficit amounted to 27.2 billion UAH. — Accounting chamber. http://vgolos.com.ua/news/realnyy_defitsyt_pensiynogo_fondu_torik_sklav_272_mlrld_grn_ndash_rahunkova_palata_66259.html

²⁵ Korolevska admitted the failure of the pension reform <http://www.epravda.com.ua/news/2013/01/17/356717/>

have to be working for 35 years and women — for 30 years to be entitled to retirement benefits. The majority, anyway, will be entitled to minimum pension. As a result, the Ukrainians are now working more for lesser pensions. Moreover, they are contributing to their retirement plans more than any other pensioners in Europe, losing substantial portion of their incomes. Thus, the average amount of deductions from a Ukrainian's salary into the pension Fund amounts to 35%, while medium pension in 2013 amounted to 1470 UAH only.²⁶ The Swedes, for example, paying deduction at the amount of 18.5% of their wages into retirement fund, get pensions about 2000 USD per month.

Comparison of 2012 and 2013 indicators leads us to the conclusion that the medium amount of pension in 2013 increased by approximately 200 UAH. But taking into account the inflation and current rate of USD or Euro, the absolute increase does not mean anything as the real sum is decreasing.

Huge discrepancies in the pensions for different categories of population remain an acute problem for Ukraine. Thus, by late 2012 over 100 thousand people received minimum pension, i. e. less than 1000 UAH, while maximum pension was received by less than one thousand people.²⁷ On January 1, 2014 the new procedure of calculating pensions for public servants will come in force. Under it special titles and seniority will be taken into account while calculating pension amount at the last place of work according to the office held.²⁸ It can be assumed that public servants' pensions (which are already beyond the average) will be even higher.

The international expert organizations point out the problems related to the social protection of senior citizens in Ukraine. Thus, under the Global Age Watch index,²⁹ Ukraine ranks 66 among 91 countries as far as the quality of life of the retirees goes.

According to this index the well-being of the senior citizens in Ukraine amounts to 40.2% of the ideal value (100). The difference between this values and the country ranking first in the rating (Sweden — 89.9) constitutes 49.7%. Amazingly, even South Africa occupies higher position in the rating than Ukraine.

The rating shows that the state of health among our retirees is one of the worst in world — 77th position out of 91, while possibility of leading independent and self-sufficient life is virtually non-existent — 86th position out of 91. The index of employment and education among senior citizens is somewhat better — 25th position out of 91. The index of material satisfaction proves the best — 39th out of 91, which is no wonder, as many categories of the Ukrainian citizens — people's deputies, public servants, military-men, judges — receive pensions under special laws, envisaging pension amounts up to 90% of their salaries and one-time payments at the amount of up to 10 salaries at the moment of retirement. E. g., a people's deputy pension constitutes approximately 15 624 UAH, while a judge's pension

²⁶ Average pension in Ukraine amounts to 1470 UAH, June 26, 2013, New look <http://www.pohlyad.com/news/n/18270>

²⁷ Less than 1000 persons in Ukraine receives maximum pension, TVi http://tvi.ua/new/2012/11/19/maksimalnu_pensiyu_v_ukraini_otrimue_menshe_tisyachi_osib

²⁸ In 2014 public servants will get their pensions under the new procedure, Dzerkalo tyzhnya, http://dt.ua/ECONOMICS/u-2014-roci-derzhsluzhbovciv-otrimuvati-mut-pensiyi-za-novim-poryadkom-124091_.html

²⁹ Index measuring the well-being of the senior citizens taking into account the size of pensions, number of elderly people below the line of poverty, life expectancy over 60 and many other factors provided by the World Bank, WHO, WTO and UNESCO <http://www.helppage.org/global-agewatch/>

amounts to 7835 UAH. These discrepancies invalidate any indicators of the real incomes of the majority of Ukrainians.

The system of retirement benefits is seriously affected by rapid ageing of the Ukrainian population. Specifically, under the data provided by the Global Age Watch, the portion of the Ukrainian population over 60 constitutes 9 500 000, i. e. 21.1% of the entire population. According to the forecasts, by 2050 this share will amount to 32.1% of the entire population. Imbalance between the number of the working and retired population, between revenues and expenditures within the Pension fund is thus increasing.

The retirees with the target pension s, i. e. for disability or the loss of the breadwinner (accounting for much more than 21% of the entire population) deserve special attention. According to the Pension fund data, by the end of 2012 Ukraine had 13 639 739 pensioners, while the number of work force, under unofficial data constituted approximately 14million. Many entrepreneurs/businessmen get only partial pension or no pension at all. Same applies to individuals who deal in private farming on the small scale, rent land plots, property or housing, work on contracts or are self-employed. So, roughly, in Ukraine we have one pensioner per one working person. Besides, significant number of working population receives only minimum or slightly higher wages.

Under these circumstances even the highest deductions into the Pension fund would not ensure normal living standards for a retiree, let alone decent pensions.

To counteract the decrease in numbers of people of working age the expenses of Pension fund should grow annually. It means increasing dependence of the Pension fund upon state budget. As of today Ukraine is spending 16% of its GDP on pensions.³⁰ It is one of the highest rates in the world.

The essence of the pension reform was protecting indigent citizens from poverty and misery prior to introducing second stage, i. e. accumulation pension fund, to ensure “dignified old age”. Nevertheless, the aforementioned data show that so far the authorities failed in harmonizing the Pension fund budget. Currently Ukraine has only the first and the third tiers (non-governmental) of pension benefits, while the second has not been yet introduced. The Ukrainian pension system is unready to deal with the promised accumulation fund, so no one knows when it comes into being.

Noteworthy, the draft laws concerning the annulment of the main reform provisions have been repeatedly considered at the Supreme Rada meetings over 2013, but never passed due to the lack of the required number of votes.³¹ This fact is another proof of the problems in this area.

The analysis of the data for the years 2012–2013 allows arriving at the following conclusions:

- The high inflation rate led to the decrease, instead of the increase in the pensions' amounts;
- Pension fund deficit grew in 2012 constituting 27.2 billion UAH;
- Pension fund became even more dependent on the state budget;

³⁰ What will the increase of retirement age mean for Ukraine? *Вікы?* <http://www.u-e-p.eu/news/2013/august/chim-obernetsya-dlya-ukrani-pdvishennya.html>

³¹ Deputies once again refused to lower retirement age for women <http://www.epravda.com.ua/news/2013/04/17/371408/>

- Social deductions in Ukraine remain among the highest in the world;
- Ukraine ranks very low in world ratings with respect to the pensioners' quality of life.

The law regulating pensions remains inefficient and has a lot of gaps which allow for the violations of human rights and set up an ambience for inefficient management of Pension fund resources and make control over their use difficult.

Another specific problem arises when a person entitled to pension leaves Ukraine to reside permanently in a country which does not have an appropriate pension agreement with Ukraine. In defiance of 2009 ruling of the Constitutional Court of Ukraine on unconstitutional nature of the provisions regulating the payment of pensions to such individuals and the decisions of the European Court for Human Rights classifying this practice as discriminatory, (*Pichkur vs. Ukraine*) the state has not adopted any procedure enabling people to receive their due pension.

The Government admits the problem. The minister of social policy N. Korolevska pointed out that "it is unfair that a person cannot receive his/her well-deserved pension only due to the fact that he/she had for whatever reason to leave the country".³² In 2013 the Ministry of social policy devised another draft law addressing this problem,³³ but there are no guarantees that it will be considered and passed.

4. RECOMMENDATIONS

1. Reforming the social benefits system: dividing legal norms into those guaranteeing social and economic rights and those granting certain privileges based on specific office or merits;
2. Putting an end to the non-compliance with legal norms guaranteeing social and economic rights;
3. Ensuring full funding of the legislative guarantees of social and economic rights, banning practices of "manual steering" in establishing the scope of social assistance;
4. Amending the cost of living index, specifically, including the updated list of food products, merchandise and services; introducing new methods for calculating this index;
5. Rejecting the index of "minimum cost of living rate" which reduces minimum social guarantees declared by the law without any justification;
6. Improving procedures regulating the quality and safety of food and drinking water;
7. Introducing measures aimed at making housing more affordable; putting an end to unwarranted evictions and violation of right to adequate shelter for the vulnerable categories of society;
8. Ensuring due funding alongside with clear and efficient mechanisms for subsidized housing programs; setting up re-integration centers, hostels for homeless people;

³² Ministry of Social Policy devised the mechanism for paying pensions to all the citizens residing permanently abroad http://www.kmu.gov.ua/control/uk/publish/article?art_id=246705971&cat_id=244276429

³³ Pensioners residing abroad can receive their pensions <http://news.finance.ua/ua/~1/2013/09/26/309692>

XIV. SOCIAL AND ECONOMIC RIGHTS

9. Ensuring social protection for the vulnerable categories of society in the focus of growing tariffs for utilities; introducing clear and transparent system of housing and communal subsidies and assistance;

10. Eventually decreasing the share of direct public funding for the social needs and increasing the share paid by population due to the income growth, first of all, of wages, pensions, other types of social transfers;

11. Establishing direct link between social benefits and sources and mechanisms of their reimbursement to the service providers;

12. Introducing uniform approaches in establishing state budget expenditures for the reimbursement to the service providers

13. Implementing pension reform further by introducing legal provisions with respect to the accumulation tier of the system, creating favorable conditions to that end;

14. Ensuring the payment of pensions to the persons leaving Ukraine to reside permanently in a country which does not have appropriate pension agreement with Ukraine;

15. Avoiding discretionary increase in minimum pensions; introducing indexation procedure under which the increase will be tied to the index of consumer prices for the categories of population with different incomes;

16. Enhancing regulations and control over non-governmental pension funds with due consideration to the international practice and consultations;

17. Enforcing compliance with national courts' rulings' in the area of social assistance in the case where the state is respondent.

XV. RIGHT TO WORK

1. OVERVIEW

The right to work is recognized by international agreements as one of the basic socio-economic individual rights. The European Social Charter stipulates that the state undertakes to recognize one of its main goals and one of its most important responsibilities to achieve and maintain of a high and stable level of employment with a view to achieving full employment and effectively protect the employee's right to earn her/his living in an occupation freely entered upon.

Ukraine has committed itself to respect, protect and fulfill this right. At the same time, there are serious problems with fulfilling Ukraine's obligations.

In particular, despite the presence of a fairly large body of legislation governing this area, many of its provisions are declaratory. For quite some time the official unemployment rate does not reflect the real level and shows that the state has a distorted view of unemployment in Ukraine and, therefore, it is unable to secure the implementation of effective policies in employment.

The salary level offered by the public placement service is often very low and is below the survival level established for a person and her/his family, so many of these positions remain vacant. Still lower is the unemployment relief, which does not allow a temporarily jobless person to meet practical demands of life.

According to the European Social Charter "all employees have the right to an equitable remuneration, which will provide an adequate standard of living for themselves and their families". At the same time in Ukraine poverty of the working population is becoming ever more widespread: more than half of the population receives a salary much less than its average. In addition, a significant number of people are paid even less than the minimum level. Also this year, there remains the unresolved issue of providing decent wages for public sector employees.

The wage arrears is also an acute problem: in 2013 its size increased. The efforts of the government to combat this adversity remain ineffective giving no hope for improvement.

Occupational safety is essential to ensure the right to work. Even the official statistics on industrial accidents and occupational diseases in Ukraine shows that the number of cases exceeds the level of European statistics.

The number of Ukrainians traveling abroad surges annually and, consequently, the issue of protection of their rights is becoming more acute. However, Ukraine is in no hurry to ratify the necessary conventions of the International Labor Organization (ILO). Also, often the work of diplomatic institutions of Ukraine abroad responsible for legal assistance to migrants concerning protection their rights and freedoms was ineffective.

¹ Prepared by M. Shcherbatyuk, lawyer of UHHRU.

It is noteworthy that the actions of public bodies responsible for the protection of labor rights were not systematic and effective. In addition, the state has failed to create adequate conditions for trade unions to protect their rights. At the same time, the legal mechanisms that are designed to protect trade unions and trade union activists in particular remain ineffective.

2. GUARANTEEING EMPLOYMENT

Today two laws of Ukraine control the reduction of unemployment: “On Employment” and “On compulsory state social insurance against unemployment”. The said laws define the concept of unemployment and provide measures to overcome it. In order to control unemployment the State Employment Service was created.

According to official data of the State Statistics Committee of Ukraine² as of June 2013 the unemployment rate in Ukraine (using the method of ILO) makes 8% of the working economically active population, which is approximately 1,643,000.

However, according to information from the same source, the number of registered jobless as of September 2013 makes 1.5% of the working economically active population or 422,100 men. Moreover, beginning-of-year unemployment rate was 2%, so the figures indicate that the number of registered jobless in Ukraine decreased. But does this mean that the unemployment situation has improved?

According to the same State Statistics Service of Ukraine, as of September the number of people receiving state unemployment benefits makes 326,900, and the average amount of benefit is UAH 1,108, i. e. the subsistence level.

Consequently, not all jobless in Ukraine are registered with the State Employment Service. Thus, only a small portion of jobless get real government benefits. It should also be noted that the meager amount of assistance is not a motivating factor for the registration of unemployed in Ukraine.

There is an interesting statistics on the job placement of the registered unemployed. In September 2013 there were 49,300 of such individuals representing 9.6% of the registered unemployed.

The figures speak for themselves. The effectiveness of public policy in the sphere of employment is about 10% of the needs. And if we take into account the unemployment rate according to ILO methodology, the effectiveness of government measures to control unemployment will make approximately 2%.

It is difficult to take into account the state financial aid: it is often so meager that it might better be called a small moral compensation.

It should be noted that every worker officially employed pays insurance contributions for compulsory social insurance, which is used to form the budget of the Fund of Obligatory State Social Insurance of Ukraine covering the cases of unemployment.

In this case, the registered jobless person is entitled to receive state unemployment benefits no more than 360 days within 2 years.

² <http://www.ukrstat.gov.ua>

As can be seen from the above, the system of material assistance for unemployment in Ukraine can hardly be called fair.

It is also necessary to pay attention to the dynamics of employment over the last year. According to the ILO, as of December 2012 the unemployment rate in Ukraine amounted to 8.1% of the economically active working age population, which is approximately 1,656,600 men. The average unemployment benefit for the same period made UAH 1,027. Thus the unemployment situation in Ukraine during the first six months of 2013 remained almost unchanged.

So, at this point the state is not able to provide real assistance to the unemployed both in terms of financial support, and in terms of promoting employment and changing the specialty.

Obviously, it is worthwhile to change approaches to policy on employment. Perhaps we'd better at least shift the accent from fighting unemployment as a phenomenon to prevention of the emergence of unemployment. The effective economic policy and motivation of private initiative will encourage job creation.

The irreality and far-apart-from-life official statistics suggests that the domestic authorities always pay lip service to the issue of employment. A great number of Ukrainian workers abroad is the best indicator of the failure of ineffective policy of Ukraine in the field of employment for the whole period of independence.

It is easy to predict that in 2014, like in 2013, we shouldn't deem any improvements in the field of job placing. The necessary changes may include doing away with formal state regulations and drastically change the economic and tax policies. The phenomenon of unemployment cannot be overcome only through retroacting; it should be managed comprehensively and with the help of preventive actions in the first place.

3. ENSURING DECENT WORKING CONDITIONS

According to the European Social Charter "all workers have the right to a fair remuneration, which will provide an adequate standard of living for themselves and their families".

According to the Law of Ukraine "On State Budget of Ukraine for 2013" from January 1, 2013 the minimum wage makes UAH 1,147, and from December 1, 2013 it makes UAH 1,218. Although officially the minimum of subsistence is slightly below this amount, numerous experiments carried out by journalists prove that it is impossible to survive on that much money.

"I didn't include running costs for housing, for if I paid the monthly charge of UAH 520, or even half of the sum, I would live on bread and water. Oh my, I all but forgot my mileage. I had to take out the money from the sum put aside for food. For my modest budget, of course, I cannot afford paying UAH 2 and riding by shuttle-bus. I take a trolleybus as a cheaper transport. It means UAH 1.5 savings every day. Not much, but I can save a little toward the end of the month," writes journalist Yevheniya Somova, who conducted one of such experiments³. Even the strict austerity didn't permit her to survive for UAH 1147 a month. It should also be noted that this experiment was conducted in Volyn Oblast, while the level of prices, say, in Kyiv is higher on the average, so it is even harder to live on this money.

³ Experiment: journalist lived for a month for a minimum wage: <http://www.volynpost.com/news/15446-eksperyment-zhurnalistka-prozhyla-misiac-na-minimalnu-zarplatu>

The average salary in Ukraine is also not that impressive: in September 2013 the average salary in Ukraine amounted to UAH 3261, the lowest was in Ternopil Oblast UAH 2,312, the highest in Kyiv UAH 4,967⁴. But even the average salary in Kyiv is unlikely to falls within the definition of a decent wage.

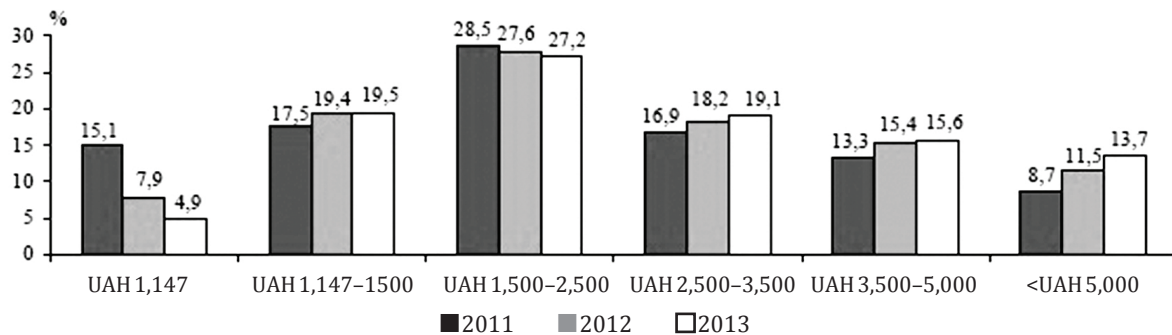


Fig. 1. Distribution of workers according to the level of wages in September⁵

Moreover, as the diagram of distribution of workers according to the level of wages shows, more than half of the population receives wages below UAH 2,500. In addition, the official statistics confirms that a sufficiently large population receives wages below the floor wage determined by the state.

It is also important to note that in 2013 in Ukraine the motivating role of wages continued to fall, and in the income of population continue to enhance the role of various social payments.

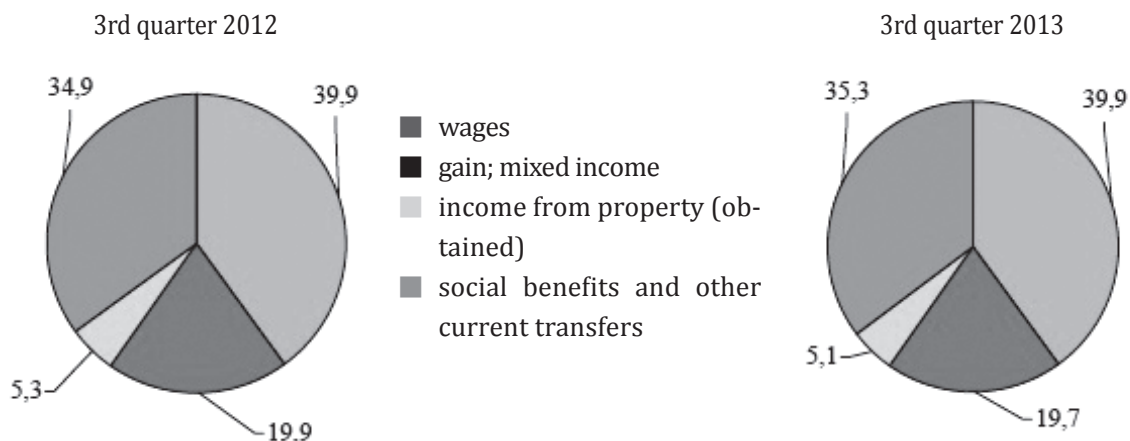


Fig. 2. Structure of income⁶

Figure 2 shows that in the structure of population's incomes in Ukraine the size of wage is below 40%, while social benefits constitute more than 35%.

⁴ Average salary by region in 2013, http://www.nibu.factor.ua/ukr/info/socposobiya/sred-zarp-reg/sred-zarp-reg_13/

⁵ State Statistics Committee of Ukraine <http://www.ukrstat.gov.ua/>

⁶ State Statistics Committee of Ukraine <http://www.ukrstat.gov.ua/>

During 2013 there was a pressing problem of determining the wages of public sector employees using the single scale of rates. In 2013, there remained the gap between the salaries according to the category for the workers of the first wage category at the level of UAH 852. This amount is not only lower than the minimum wage, but it is below the cost of living as well. At the same time, in order to comply with the laws in force, the Cabinet of Ministers of Ukraine on March 27, 2013 adopted the Regulation no. 197 determining the official rate of pay at the level of minimum wage or UAH 1,147. The salary based on the official rate of pay for workers of the first wage category is used only for calculating salary for employees of the sixth wage category and higher⁷.

At the beginning of 2013 it was suggested to set the baseline salary for the first wage category at the level of the minimum wage as of April 1; however, according to the letter of the Ministry of Social Policy of Ukraine of 01.29.2013 no. 959/0/14-13/13, "according to the information of the Ministry of Finance (letter dated 29.01.2013 no. 31-07240-03-5/2649), setting from April 1 salaries of the first wage category of the single tariff scale at the level of the minimum wage approved by the Law of Ukraine "On State Budget of Ukraine for 2013 ", would require additional expenditures from the state budget in excess of UAH 39bn.

The real sources of financing such expenditures are not available. The lack of additional resources to ensure the specified increase will lead to negative consequences such as unbalancing the budgets of all levels, emergence of arrears of wages, going on forced LWOPs or downsizing, etc., which will cause even more tension in society"⁸.

It should be noted that the issue of wages of public sector employees from 1 January 2013 was resolved only at the end of March, and therefore for almost three months the workers received wages at rates that were effective from December 1, 2012 (according to interpretation of the Ministry of Social Policy of Ukraine⁹) and then they had to get additional payment for the aforementioned period. Considering the overall budget deficit, this unresolved issue could be one of the reasons for the increase of debt for wages in the public sector.

According to Article 4 of the European Social Charter the right to a fair remuneration includes among others the right to higher wages for working outside regular hours. Today, in Ukraine, nobody fulfills the requirement of paying a dual rate for working outside regular hours. On a regular basis scheduled and unscheduled inspections are carried out (such as one recently conducted in Kharkiv)¹⁰, which solve the problems of a company, though they fail to solve systemic problems in ensuring adequate remuneration for working outside regular hours.

The above facts concern primarily regular personnel management, while in Ukraine there is a systemic problem of illegal employment and under-the-table payment of wages.

⁷ Single wage rates distribution for 2013: http://hrzone-ukraine.blogspot.com/2013/04/2013_14.html

⁸ Letter of the Ministry of Social Policy "On wages of public sector employees" from 29.01.2013 no. 959/0/14-13/13 <http://hrzone-ukraine.blogspot.com/2013/04/29012013-959014-1313.html>

⁹ About the payment of remuneration of labor in the branch in 2013: <http://triola.com.ua/TMPTarNet/TMP-TarNet.html>

¹⁰ In pursuance of the request of the State Labor Inspectorate the enterprise began complying with labor legislation: http://tdizppkharkiv.com/news/na_vikonannja_vimog_derzhavnogo_inspektora_praci_pidpriemstvo_pochalo_dotrimuvatisja_zakonodavstva_pro_pracju/2013-11-19-297

A person officially unemployed is more vulnerable; such employees are not subject to requirements of labor legislation in terms of providing for the minimum wage, paid vacation and sick leave, providing contributions to the pension fund and proper pension provision in the future. The problem of decent remuneration is closely related to the solution of the problem of the absence of proper regulation of personnel management.

Moreover, there is also the issue of timely payment of wages. According to article 115 of the Labor Code of Ukraine “Wages are paid to employees regularly on working days within the deadline set by collective agreement or regulation of the employer agreed with the elected body of the primary trade union organization or other authorized representative collective bodies (and in the absence of such authorities with representatives elected and empowered by the workforce), but at least twice a month at the interval of not more than sixteen days, and not later than seven days after the expiry of the period for which the payment is made”¹¹. A similar provision is also contained in Law of Ukraine “On labor” adopted on March 24, 1995¹².

Unfortunately, these provisions, although they were prescribed in the legislation, have not been fulfilled in full. In Ukraine there is an urgent problem of systematic non-payment or arrears. According to UNIAN, the arrears of wages in Ukraine as of October 1 amounted to UAH 1.02bn¹³.

According to the State Statistics Service of Ukraine, the wage delays range within UAH 890—1,100 mln per month. In the period from January to August, the highest level of debt was in March and reached 1,102.5 million, while the lowest level of debt was registered in January which made UAH 893.7 mln.

The amount of arrears of wages also varies depending on the oblast. The relatively low values were recorded in Chernivtsi, Rivne and Volyn oblasts. The highest level of debt with employers was registered in the Donetsk Oblast. In Kyiv, at the beginning of the year, the level of arrears of wages was UAH 1.4 mln, but in August it surged up to UAH 152.1 mln¹⁴.

Arrears of payments of wages increased by 4.1%¹⁵ in September, and the total of arrears from the beginning of the year rose by 14.6%¹⁶.

According to the UNIAN, the debts of economically active enterprises amount to 53.5%, while the debts of bankrupt enterprises reach 41.3% of total debt. The lowest level of debt is observed in the field of information and telecommunications which amounts to UAH 1.1 mln, while in the industry the arrears are the highest and reach UAH 463.4 mln¹⁷. The arrears of payments of wages also surged in transport, warehousing, healthcare and postal and courier services.

By and large the statistics show that the arrears of wages will continue surging at the close of year. The situation slightly improved in late summer, but the statistics for September

¹¹ Labor Code of Ukraine no. 322-VIII, December 10, 1971.

¹² Law of Ukraine “On remuneration of labor” no. 108/95-VR of March 24, 1995.

¹³ <http://economics.unian.net/rus/news/179125-v-ukraine-zadoljennost-po-zarplate-vyirosla-na-41.html>

¹⁴ http://ukrstat.org/uk/operativ/operativ2013/gdn/zvz/zvz2013_u.htm

¹⁵ <http://economics.unian.net/rus/news/179125-v-ukraine-zadoljennost-po-zarplate-vyirosla-na-41.html>

¹⁶ <http://kirovograd.comments.ua/news/2013/10/28/173111.html>

¹⁷ <http://www.unian.ua/news/592217-derjstat-v-ukrajini-skorotilasya-zaborgovanist-iz-zarplati.html>

indicated that the level of debt began to rise again. The highest level of non-payment occurred in the industry.

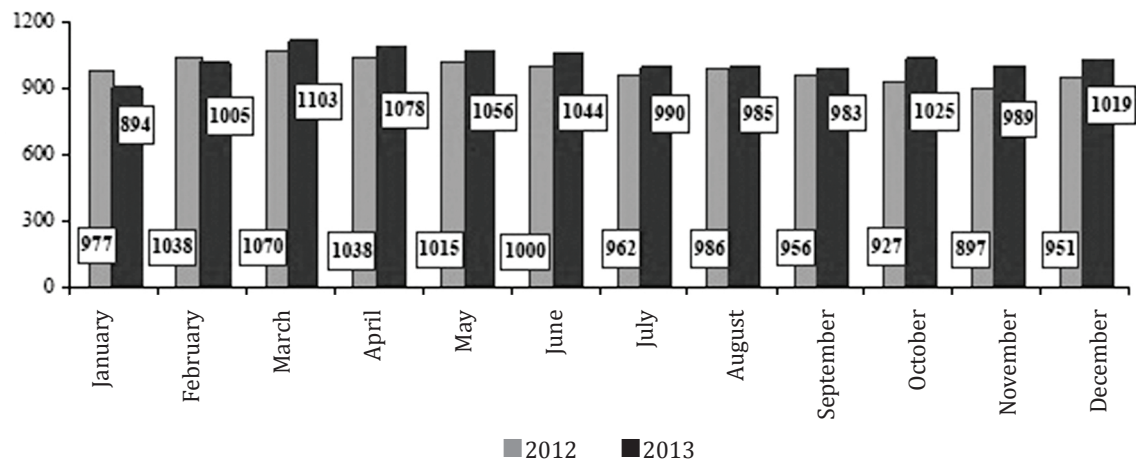


Fig. 3¹⁸. Dynamics of wages payable (as of the 1st each month, in mln UAH)

Interestingly, Prime Minister Mykola Azarov called the arrears of wages unacceptable and urged local authorities to strictly control the facts of these nonpayments¹⁹. At the same time, President of Ukraine Viktor Yanukovich instructed “Mykola Azarov, Anatoly Mohiliov (Chairman of the Council of Ministers of Crimea), all heads of oblast, Sevastopol and Kyiv city state administrations in the prescribed manner to take steps to settle arrears for compulsory state social insurance, as well as prevent the formation of such debts in the future. The deadline: December 20, 2013”²⁰. However, nobody knows the ways to pay off debts. In addition, we see that the authorities began to fret over wage arrears only at the end of the year, while during the year they did about nothing to pay off such indebtedness.

Moreover, Minister of Social Policy of Ukraine Nataliya Korolevska denies the very existence of any arrears of wages as of October 25, 2013²¹. But this past October 23, Prime Minister of Ukraine Mykola Azarov acknowledged in his speech that problems with the payment of wages and social benefits did exist. However he explained the problem not by the budgeted deficit, but by the ineffectiveness of local officials²². As a matter of fact the Ministry of Finance proposed to local authorities to find the money to pay off salaries on their own²³. What will the next steps to solve these problems be? In the meantime, there’s no answer whatsoever. At the same time the mounting wage arrears continue to surge.

¹⁸ State Statistics Committee of Ukraine <http://www.ukrstat.gov.ua/>

¹⁹ <http://news.chortkiv.net.ua/sumna-statystyka-po-zarplatah-v-ukrajini-zaborhovanist-roste-serednya-zarplata-zmenshujetsya/>

²⁰ http://uaonline.com.ua/novyny_77402.html

²¹ <http://finance.obozrevatel.com/business-and-finance/56821-korolevskaya-zadolzhennosti-po-zarplate-v-ukraine-net.htm>

²² <http://mignews.com.ua/ru/articles/147594.html>

²³ <http://www.theinsider.com.ua/rus/business/5280b8dc7bb52/>

4. JOB SAFETY GUARANTEES

According to the official figures, for the first 9 months of 2013 8409 industrial accidents occurred in Ukraine, which affected 8,670 people, including 1,200 dead²⁴. For comparison, in 2012–2013 in the United Kingdom of Great Britain and Northern Ireland as a result of industrial accidents only 113 people perished²⁵, 529 deaths in France in 2010²⁶, 557 fatal accidents in 2010 in Germany²⁷. Thus, the death rate from industrial accidents in Ukraine is much higher than in the leading EU countries, even without allowing for the difference in the number of working-age population.

67% of the accidents occurred due to organizational reasons of non-compliance with safety instructions, failure to comply with duties, violations of traffic safety (flights), and violation of technological process²⁸. The main events leading to accidents at work include: incidence of an injured in movement, action of moving and rotating parts of equipment, machinery, landslide, gob caving, and face fall²⁹. Most accidents happened at coal mining companies in the Donetsk Oblast³⁰.

Nevertheless, the above data reflect official picture only: the Fund receives information only for cases in which the victims were working legally and paying the required insurance fees. At the same time, many employees, despite hazardous conditions, often employ labor without proper legal registration of employment; therefore information about these accidents do not appear in official statistics.

Thus, the deaths of miners at bootleg mines are masked as ordinary accidents: “The corpse may be washed, horilka poured in the throat and the body thrown away on a heavy traffic highway. Also, bodies in dirty clothes may be left on bus stops near bootleg mines. In mining towns people tell about cases when miners were simply covered with soil in these mines when sudden inspections occurred.”³¹ At the same time, working at bootleg mines is more dangerous than at legal ones, and therefore leads to more accidents: “The problems with job safety exists on private and state mines, but the situation with bootleg mines is catastrophic. The tunnel is too narrow and too close to the surface, the soil is fragile and can easily collapse. In bootleg mines there are many professional miners who are well aware of the risks

²⁴ Insurance Fund for Industrial Accidents and Occupational Diseases of Ukraine, insurance analysis of accidents at work and occupational diseases for 9 months in 2013, <http://www.social.org.ua/view/3831>

²⁵ Statistics on fatal injuries in the workplace in Great Britain in 2013, <http://www.hse.gov.uk/statistics/pdf/fatalinjuries.pdf>

²⁶ INRS, Accidents du travail, <http://www.inrs.fr/accueil/accidents-maladies/accident-travail.html>

²⁷ Italy is top of European table for work-related deaths, <http://libcom.org/blog/italy-top-european-table-work-related-deaths-16012013>

²⁸ Analysis of insurance accidents at work and occupational diseases for the first quarter of 2013, <http://www.social.org.ua/view/3194>

²⁹ Ibid.

³⁰ Insurance Fund for Industrial Accidents and Occupational Diseases of Ukraine, insurance analysis of accidents at work and occupational diseases for 9 months in 2013, <http://www.social.org.ua/view/3831>

³¹ Death of illegal miners masked during accidents, 28.02.2013, http://gazeta.ua/articles/opinions-journal/_smert-pracivnikiv-nelegalnih-shaht-maskuyut-pid-neschasni-vipadki/484690

but ignore discipline. In legal mine colleagues will not allow to light a cigarette, because it may cause an explosion, while in the bootleg mines all miners smoke,” says one of the mine rescuers³². Over time the situation only gets worse as illegal coal mining method of survival of individual families has turned into a lucrative business subordinate to local criminal organizations.

There may be cases when on the legal industrial project occurs an accident, which is not officially reported. In September 2013, in Rivne, during construction work a man was traumatized. On the ground of this fact legal proceedings were instituted under art. 125 of the Criminal Code of Ukraine, but investigative actions were not carried out because, according to Ivan Onyshchuk, the Deputy Head of territorial administration of the State Committee of Ukraine on Industrial Security, Labor Protection and Mining Supervision in Rivne Oblast, “according to the legislation, the tragic incidents at the construction we must be reported by the business entity, that is, the employer of the person or organization, on whose territory the accident occurred. The designer of the construction works and the contractor was the private company “Remtekhbud” and the customer was Rivnerada Deputy Olexandr Babat. Up to now, they have failed to report the accident. [...] I spoke with the customer of this construction Babat. He said the victim was a stranger who just walked onto the construction site and had no relation to the building. There is currently no reason to say that this man worked without official registration and therefore his employers refuse to have anything to do with him.”[X]³³. Even if the victim did not really take part in constructing and came there illegally, the company somehow did not comply with the requirements of DBN A.3.2-2-2009, as paragraph 4.13 of this document provided that “during the building operations [...] the customer must identify one of the contractors responsible for the protection of labor at the project, which should [...] prevent admission of unauthorized persons to the construction site.”

In April 2013, the Law of Ukraine “On Approval of the National Social programs for improving safety, health, and environment in the years 2014–2018” was adopted, which envisaged a series of measures aimed at improving working conditions and bringing them closer to the EU standards. among other things the program the program includes as follows: bringing normative legal acts on labor protection in accordance with the requirements of international and European legislation, improvement of the state and public control over observance of labor safety, improvement of labor safety management, prevention of risks of occupational injuries, occupational diseases and accidents, raising the bar of culture of labor safety, introduction of economic incentives for the improvement of labor safety, etc. As a result of the implementation of the program on-the-job fatal injury rate in Ukraine before 2018 should fall to 430 accidents per year. Time will tell whether this initiative of the government will improve real situation with ensuring labor safety, or it will remain on paper.

³² Dug-out billions. Who controls the illegal coal business in the Donbas: <http://tyzhden.ua/Society/73562/PrintView>

³³ Why did an unknown person almost die at the construction controlled by the Rivnerada deputy?: <http://vse.rv.ua/zhittya/1378386367-chomu-na-budivnictvi-deputata-rivneradi-led-ne-zagynuv-nevidomiya.html>

5. STATE CONTROL OVER THE OBSERVANCE OF LABOR RIGHTS

The violations of labor rights have remained fairly common in Ukraine. Thus, according to sociological studies relied upon by the Minister of Social Policy of Ukraine, “over 40% of respondents have encountered violation of their labor rights and labor rights of their relatives. Unfortunately, many’s the time in Ukraine we come upon cases of non-payment of wages, failure to carry out its indexation, improper execution of employment documents and so on.

Also, the General Prosecutor of Ukraine confirms the fact that there are numerous facts of deliberate non-payment of wages by the managers of business entities. For example, the public prosecutor’s office of Novovolynsk, Volyn Oblast, revealed that employees of an enterprise deliberately didn’t pay UAH 2.85 mln (while inpayments exceeded UAH 7 mln.)³⁴.

Similarly, in the Kyiv Oblast, the officials of a limited liability company made an absolutely unfounded decision not to pay wages totaling UAH 6.7 mln. According to the audit conducted by the Irpin Prosecutor’s Office, the information about the above criminal offense was entered in the Unified Register of pre-trial investigations and materials were sent for pre-trial investigation to the MIA bodies. Such criminal proceedings were initiated by prosecutors in all oblasts.

One of the causes of violations by employers of the laws on wages consists in insufficient implementation of controlling powers of the inspection bodies in this field, including the State Inspection of Ukraine on labor, departments of the Ministry of Income and Charges of Ukraine and so on. The officials of local administrations and local authorities do not always take sufficient measures to ensure payment of wages on their relevant territories³⁵.

In addition, the Prosecutor General of Ukraine found violations of art. 259 of the Code of Labor Laws of Ukraine in the central executive bodies; the latter did nothing to provide adequate control over the observance of labor legislation at the enterprises under their jurisdiction which had wage arrears.

Given the above, we can come to the conclusion about the inefficient activity of the state concerning the protection of labor rights.

6. PROTECTION OF LABOR RIGHTS OF MIGRANT WORKERS

Today, the external labor migration of Ukrainian population is a reality of the 21st century, which touches on all facets of society, and therefore requires comprehensive study and adequate response of the nation through the formation and implementation of national migration policies.

The branch-wise and regional mass unemployment, depressed wages, and pensions are the primary ingredients that make a substantial part of Ukrainian citizens with higher edu-

³⁴ The office of public prosecutor protects the rights of citizens to timely receive their wages <http://www.fpsu.org.ua/napryamki-diyalnosti/virobnicha-politika-ta-kolektivno-dogovirne-regulyuvannya/1962-organi-prokuratury-na-zakhisti-prava-gromadyan-svochasno-otrimuvati-oplatu-pratsi>

³⁵ Ibid.

cation to leave the country in the hope to find a prestigious job and have a decent income abroad.

According to the data referred to in the report of the International Organization for Migration for 2013³⁶ there were 1.2 million migrant workers, or 3.4% of the population of respective age. Men prevailed among labor migrants; their share is 2/3 of the total number of labor migrants. The major recipient countries of our labor migrants are the Russian Federation (43%), Poland (14%), Italy (13%), and the Czech Republic (13%). Other recipient countries include Spain (5%), Hungary (2%), and Portugal (2%). It is important to note that although the above data are official, but nobody really knows the exact number of Ukrainian labor migrants working abroad. The complexity of calculating such data is related to the existence of two qualitatively different statuses of migrants: on the one hand, there is a legal limited labor migration; on the other hand, there is mass illegal labor migration. According to unofficial data, the total number of Ukrainian labor migrant workers, which includes legal and illegal migrant workers, estimates on the average from various sources from three to seven million people.

Uncontrollability of the migration process, lack of reliable information regarding the total number of Ukrainian migrants, who work abroad, makes it harder to assess the scale of labor migration and predict its effects. The position of a migrant worker on the labor market abroad, including her/his privileges, depends on her/his status: legal or illegal. The legal migrants have the broadest scope of rights, and their security is backed by the norms of international laws contained in bilateral or multilateral agreements concluded by Ukraine. The legal status of such persons is defined in the European Convention on the Legal Status of Migrant Workers (24.11.1977), Agreement on cooperation in labor migration and social protection of migrant workers (15.04.1994), Convention on the Legal Status of Migrant Workers and their families of the Commonwealth of Independent States (14.11.2008), as well as a number of bilateral agreements. In particular, to protect their rights these workers have the right to appeal to the courts and administrative agencies in the countries of employment, appeal to the ombudsman, appeal to the diplomatic and consular missions.

The legal status of illegal migrant workers is another problem. In fact, they do not have work permits, and hence cannot be subjects of labor relations, which makes it impossible to protect their labor rights legally. Hence, there is a situation where an employee may not appeal to the relevant authorities to protect her/his rights and has to put up with all violations committed by employers and intermediaries. In particular, Ukrainians face a number of problems abroad, related to:

- Illegal stay leading to social insecurity, dependence on employers and intermediaries, inhumane living and labor conditions, and trafficking in people;
- lack of social insurance; most of the “workers” are not eligible for any kind of social security, benefits, holidays and more;
- lack of information on peculiarities of labor and migration laws of the host country;
- double taxation of household income, which expresses itself in the fact that at first the Ukrainian pays tax while transferring funds from the host nation, then the com-

³⁶ http://iom.org.ua/en/pdf/Eng%20FF_F.pdf

mon taxes are paid by her/his family in Ukraine. There is also a separate tax on income charged by Ukrainian banks for the service;

— lack of favorable conditions for their return to Ukraine.

Protection of rights and legitimate interests of Ukrainian citizens working abroad is the responsibility of the state. The policy of labor migration regulation should be formed in two directions: on the one hand, raising wages in Ukraine and creating conditions for reducing the number of migrant workers, on the other hand, protecting the rights of citizens of Ukraine abroad.

Unfortunately, Ukraine has no labor migration policy, including long-term strategy and effective mechanisms that could fundamentally change the situation on the labor market.

For the protection of migrant workers, there is a number of tools that are available in the arsenal of the ILO, and in the first place in its conventions, including ILO Convention on migrant workers no. 97 (1949) and Convention on the abuses in the field of migration and on ensuring equal opportunities and equal treatment of migrant workers no. 143 (1975). There is also another important document in this area: the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).

The above-mentioned Conventions cover the entire process of protecting the rights of workers during their work. It is also important that the standard provisions of ILO Conventions apply to all workers, regardless of their status, qualifications and employment. In addition, article 8 of the Convention no. 143 provides that a worker, who has lost her/his job, cannot be deported from the country before the termination of the contract. If this plain rule is legalized, the labor migrant will get extra protection against the violation of her/his rights by the employer, who, abusing her/his office, understands that the employee is “ready for anything” so s/he wouldn’t be sacked, because the loss of job for migrant may affect her/his subsequent exile from the country.

Unfortunately, Ukraine is in no hurry to ratify the necessary conventions of the ILO. Ukraine’s accession to the above conventions can benefit both Ukrainian migrant workers, and the state. If the Verkhovna Rada of Ukraine adopted the law specifying the rights and obligations of Ukrainians traveling abroad for job placement, government guarantees, responsibilities of relevant agencies, their responsibility in the case of failure of the rights and freedoms of migrant workers, it would have been an important step in this direction. Currently, the Ministry of Social Policy of Ukraine is drafting a law “On labor migration abroad.” However, no one knows either in what redaction or when it will be taken.

Currently, the Verkhovna Rada of Ukraine only “recommends” to resolve the policy of labor migration abroad; particularly on 05.11.2013 entered into force the Resolution of the Verkhovna Rada of Ukraine “On the recommendations of the parliamentary hearings about “The Ukrainian labor migration: state, problems, and solutions” no. 680-18; however, no clear schedule of their implementation has been suggested.

Ukraine should take care of migrant workers, must also enhance efficiency of foreign diplomatic institutions of Ukraine rendering legal assistance to migrants, ensure protection of the rights and freedoms of Ukrainian citizens abroad, sign bilateral contracts and agreements, including the mutual recognition of the record of service, social and pension systems, avoidance of double taxation, as well as with the aim to reduce the scale of labor migration to increase competitiveness in the domestic labor market and establish favorable conditions for the return of migrant workers to Ukraine.

7. ENSURING OF THE RIGHTS OF TRADE UNIONS

Ukraine as a member of the ILO since 1954, having ratified ILO Conventions, assumed duty to maintain the principles and rights enshrined in the Charter and the Declaration of Philadelphia to ensure effective implementation of these documents, as well as to inform governing bodies of ILO about the measures taken for their application.

Analysis of the information of the member organizations of the Federation of Trade Unions of Ukraine indicates that these duties are performed not fully because the country does not comply with certain standards and ILO Conventions and national legislation is not properly adapted to international instruments. No proper measures are taken to carry out the recommendations of international bodies concerning the national reports on the implementation of conventions.

In particular, there are frequent gross violations of the right to freedom of association, which is one of the most important among the norms of international laws. According to the trade unions, the Ukrainian employers continuously and systematically violate ILO Conventions no. 87 on Freedom of Association and Protection of the Right to Organize and no. 135 on the protection of representatives and opportunities they are provided with. They give direct evidence of unlawful interference in the statutory activities of trade unions and their associations by government officials and employers, obstruction of trade union organizations, especially in the newly created legal entities, barring by employers the free visits of elected members of trade unions to the company where the members of their trade unions work. *"The activists and labor leaders, having created an independent trade union organization and started to demand compliance with Ukrainian and international legislation, often enter into an unequal battle with the government, capital, and even criminals. They often try to bribe trade-union members, threaten them with dismissal and intimidate them and their families. In such cases the trade-union members turn to militia, prosecutors, but the latter do not provide real protection of rights,"* Mykhailo Volynets, Chairman of the Confederation of Free Trade Unions of Ukraine. According to Andriy Bondarenko, Deputy Chairman of Vinnytsia Oblast Trade Union Organization of Workers, the trade union activists, who are fighting for better working conditions and decent wage, are illegally dismissed from work and are not allowed to enter the enterprises. *"The most active members undergo repressions: intimidation, threats, physical violence, and even placement in a psychiatric hospital,"* said Bondarenko.

The consequences of the struggle for decent work the workers may feel at the very outset of a trade union organization. Serhiy Stynka, Head of the Trade Union Organization of Employees of Izmail Commercial Seaport, said: *"When we set up an independent primary trade union organization, the administration immediately found an interesting method of "cooperation": the chief manager of the port ordered to transfer the main founders of the trade union organization "to a regular job" to another production site at the god-forsaken dock outside the city. Our new job assignment was cleaning debris from the mooring area."*³⁷

³⁷ In Ukraine, the trade union activists often become victims of reprisals committed by the employer <http://hel-sinki.org.ua/index.php?id=1381140428>

Similarly, with the creation of the primary trade union organization at “Novodruzhenska” mine of Lysychanskvuhillia Private Company the administration of the company began nagging its members. Head of the Trade Union Serhiy Marchenko, who himself and his family were seriously threatened with physical violence. Due to constant harassment ten union members failed to stand up to pressure and put in applications for withdrawal from it.

Another incident occurred this summer with the head of the newly formed independent trade union at the fund of social insurance against accidents at work and occupational diseases of Ukraine in Sverdlovsk. There the fund administration began actively sending to various government agencies requests for information, in which it called the legitimacy of the establishment of the trade union in question. With these actions it violates article 36 of the Constitution of Ukraine, which proclaims the right to freely choose and membership in professional unions³⁸.

Avoidance of certain employers’ organizations to conduct collective bargaining, conclusion of trade agreements, lack of mechanisms to encourage employers in Ukraine to conclude collective agreements and practice of bringing to book for failure of their provisions creates preconditions for breach of ILO Convention number 98 on the application of the right to association in trade unions and collective bargaining and the no. 154 on the promotion of collective bargaining.

After analyzing the information received from member organizations throughout the year, the Federation of Trade Unions of Ukraine maintains that there were facts of pressure on union leaders, heads and members of union committees in the discharge of their functions of protection of labor and social and economic rights of union members (1.6%), illegally discharged heads and activists of primary trade union organizations (13%), employers shied away from collective bargaining to conclude collective agreements (6.5%), most of the violations concerned the failure by employers to fulfill their obligations under the collective agreement regarding the transfer of withheld from wages union dues on account of the primary trade union organizations (60%), did not transfer money intended for cultural work, physical training and health improvement as required by law (3.2%). No information was provided on request of unions concerning working conditions and wages of employees, state of the observance of collective agreements (4.8%).

The most frequent violations of the rights of trade unions occur in the transport sector, housing and communal services, forestry, agriculture, construction, and in construction of vehicles and agricultural machinery.

Thus, the least possibilities to protect their labor rights have trade unions of transportation sector. *“In fact, because of the conflict of laws in Ukrainian legislation, these trade unions in Ukraine are even deprived of such effective tool to protect their rights as a strike,”* said Maksym Shcherbatiuk, Program Director of the Ukrainian Helsinki Human Rights Union. The same confirms Veniamin Tymoshenko, Head of the Trade Union of Flight Attendants of Aerosvit Co., which had often to deal with violations of labor rights. He personally won several cases

³⁸ Unprotected union: is it risky to defend workers’ rights ? http://smi.liga.net/articles/2013-10-22/11292939-nezakishchen_profsp_lki_chomu_nebezpechno_v_dstoyuvati_prava_trudyashchikh.htm

in court, but the situation has not improved yet. When workers announced their intention to strike, the court slapped a ban³⁹.

At the moment the case of Aerosvit Co. (Veniamin Vyacheslavovych Tymoshenko and others against Ukraine) is in the European Court of Human Rights, which can change the entire jurisprudence of Ukraine and enable the transportation sector to publicly express indignation at the actions of their employer. It should be noted that the International Organization "The European Trade Union Confederation" took part of Ukrainian aviators standing up for protection of the right to strike. They sent to Strasbourg a thorough analysis of international law governing the right to protest.

The Federation of Trade Unions of Ukraine is currently cooperating with the Ministry of Social Policy, territorial bodies of the State Inspection of Ukraine for Work, and Procuracy of Ukraine. During the year, with the help of governmental authorities, it became possible to resolve some conflicts and resolve existing violations of the rights of trade union organizations. Thus, in 2012, the Unified Register of violations of trade union rights filed 52 enterprises, where 62 violations were found. Of these, as of June 1, 2013, 37 violations were removed at 28 factories. But this is only half of the recorded violations⁴⁰. The human rights advocates maintain that the state still has not created the proper conditions for trade unions to protect their rights. The legal mechanisms designed to protect trade unions, and trade unionists in particular, remain ineffective.

8. RECOMMENDATIONS

It is advisable to:

1. Increase the size of unemployment benefits to the subsistence level, and make the necessary changes to legislation, which gives warranty on receiving this benefit at this level;
2. Reduce the high unemployment among the most vulnerable population, especially young persons, people approaching retirement age and people with disabilities;
3. Increase the share of wages in GDP and production costs;
4. Harmonize the minimum wage according to the requirements of the European Social Charter and implement effective indexation of income;
5. Ensure effective differentiation of wages in the public sector through the application of a single tariff, eliminate the practice of setting salary (wage rate and employee wage category in an amount lower than that specified by the law on labor remuneration);
6. Take measures to improve labor remuneration in the government bodies in order to improve the social protection of ordinary personnel, elimination of hidden wages masked as various prizes and bonuses, which are more dependent on loyalty to management, rather than on performance;

³⁹ The trade union activists in Ukraine are often victims of reprisals by their employers <http://helsinki.org.ua/index.php?id=1381140428>

⁴⁰ <http://www.fpsu.org.ua/napryamki-diyalnosti/pravovij-zakhist/1062-informatsiya-pro-porushennya-prav-profspilok-u-2012-rotsi>

XV. RIGHT TO WORK

7. Reduce the arrears of wages for employees in the public sector and take measures to reduce the debt in companies and organizations of all forms of ownership;

8. Improve the system of job safety in order to reduce occupational injuries and illnesses, including such measures as improving legislation in this area, as well as implementation of prevention programs;

9. Improve monitoring of compliance with standards and requirements in the field of job safety and ensure prompt and effective investigation of accidents;

10. Improve the state control over the observance of labor rights and establish of effective mechanisms for responding to these violations;

11. Conclude bilateral agreements on employment and social protection of migrant workers with the country where a significant number of our fellow citizens is employed and where such agreements have not been concluded;

12. Ratify international documents which enhance the protection of migrant workers in the field of employment and social protection;

13. Ensure strict observance of the rights of trade unions to promote the development of a strong and independent trade union movement.

XVI. THE RIGHT TO HEALTH CARE

1. URGENT NEED FOR A NEW MEDICAL REFORM

Despite the principles proclaimed by the Constitution of Ukraine and the international obligations of the state the health system Ukraine does not provide for the right of everyone to the highest attainable standard of physical and mental health and equal free access to quality health services.

To solve this problem, in 2011 the government launched an ambitious project of reforming the health care system in accordance with the program of the President of Ukraine “Ukraine for the people”, State Program of Economic and Social Development of Ukraine for 2010 and Program of Economic Reforms for 2010–2014 “Prosperous Society, Competitive Economy, and Effective State”.

The legislative basis for reform in the first stage was the adoption of the Law of Ukraine of 07.07.2011 no. 3612 “On the procedure for health system reform in Vinnytsia, Dnipropetrovsk, Donetsk, and Kyiv oblasts” (hereinafter — the Law “On the Procedure for...”) and the Law of Ukraine no. 3611 of 07.07.2011 “On Amendments to the Basic Laws of Ukraine on Health Care for the Improvement of Medical Care”.

But the reforms were implemented without identifying sources of funding, without reform plan clear for the public and health professionals which worsened the access to health services, especially in rural areas, and deteriorated their quality. The voluntaristic, “reformist” introduction of a family doctor plan replacing the current system of outpatient primary care; lack of sufficient sources of funding violated the years-long system of doctor- patient interaction. Hasty adoption and implementation of the Law “On urgent medical care” without substantial upgrading of equipment and fleet replacement, without sufficient funding, without allowing for the existing infrastructure of cities and towns ruined the system of first aid and urgent medical care. The economic reform program for 2010–2014 in the field of medicine has not reached the stated purpose and indeed failed.

2. DEMOGRAPHICS AND INFANT MORTALITY

As of December 1, 2013, the population of Ukraine amounted to 45,439.8 thousand. During January-November 2013 the population size decreased by 113.2 thousand people. However, in ten regions the population size increased².

¹ Prepared by Andriy Rokhansky, NGO “Institute for Legal Research and Strategies”. This section was supplemented after the resignation of the government of Azarov, but at the time when possible changes to the state budget of Ukraine were not introduced yet. Therefore it reflects the state of health care financing that existed at the end of January 2014.

² State Statistics Service of Ukraine. Report “Socio-economic situation of Ukraine in 2013”.

During this period, 140.7 thousand people died (in 2012 15.7 thousand less). The birth rate dropped from 11.5 to 11.1 births per 1,000 of existing population.

Between January and November 2013 in 10 regions the migration gain was registered, in 17 regions the size migration decreased. Throughout the country, the migration gain of 27.5 million people was registered.

Among those who arrived in Ukraine in January — November 2013, the immigrants from the CIS accounted for 58.2%, while the rest (41.8%) were from other countries. Among those who left Ukraine 39.6% went to the CIS and 60.4% to other countries.

At the age of 1 year 3693 children died. The mortality rate of children under 1 year of age decreased from 8.6 to 7.9 deaths per 1,000 births.

The main causes of death in children under 1 year of age were certain conditions arising in the perinatal period: congenital malformations, deformations and chromosomal abnormalities, external causes of death, neuropathy, respiratory diseases, and some infectious and parasitic diseases. There remain a significant proportion of infants whose cause of death was not established: 4.4%.

3. FINANCING OF HEALTH CARE

The item of expenses of the State 2014 Budget for the Ministry of Health of Ukraine makes UAH 10,083,900.7 thous, including the general fund expenses to the tune of UAH 8024 985.1 thous and special expenses to the tune of UAH 2,058,915.6 thous. This is 2.12% more than it was planned in the draft state budget for 2014, and 0.82% compared with the size of expenses item in 2013³.

The item of expenditures of the Ministry of Health of Ukraine includes staff costs which have increased by 2.46% compared with the draft 2014 budget (UAH 210,000 thous more) amounting to UAH 8,741,501.2 thous (20% more than in the last year's budget); the State Service of Ukraine on Medicinal Products in the amount of UAH 63,799.3 thou (45.3% below the expenses planned by state 2013 budget); the State Sanitary and Epidemiological Service in the amount of UAH 1,268,980.2 thous (less than 31.3% compared with the last year's budget).

The expenses of the State Service for Control of HIV/AIDS of and Other Socially Dangerous Diseases have doubled compared with the last year's budget. So, if last year they made UAH 4,157.8 thous, now according to the State 2014 Budget they amount to UAH 9,620.0 thous (more by 131.37% compared to the state budget for 2013).

The State 2014 Budget provides subvention to local budgets for partial reimbursement of the cost of medications to treat people with hypertension the total amount of which, like last year, makes UAH 191,636.3 thousand. The biggest subsidy for 2014 will go to Donetsk Oblast: UAH 18,357.6 thousand or UAH 54.1 thousand less than last year. The budget of Chernivtsi Oblast will get the least amount of UAH 3,796.7 thous or UAH 55.8 thousand more than this year. The municipal budgets of Kyiv and Sevastopol shall receive partial reimbursement

³ <http://www.apteka.ua/article/270776>

of the cost of medications to treat people with hypertension to the tune of UAH 11959.0 and UAH 1997.5 thous accordingly.

Comparing funding of power structures, judicial system and social and medical care for the population of Ukraine, the question arises whether the State 2014 Budget is socially-oriented which is constantly stated by the officials.

3.1. Lack of blended financing of the health care system through the introduction of national compulsory health insurance

On the face of it, the creation of national fund of compulsory medical insurance would improve funding for the healthcare industry in general. Over the past decade, the Verkhovna Rada of Ukraine received numerous projects regarding health insurance. But not all experts believe that there appear to be sufficient reasons at this time to implement this additional (or main) mechanism of funding. For example, the publication of the Institute for Economic Research and Policy Advice⁴ maintains that the postponement of the decision to introduce compulsory health insurance is the right step. From the point of view of the author, the main reasons are as follows.

Firstly, the health system is not ready for this: in the first instance, it would be expedient to go over to the system of payments for services (financing available infrastructure).

Secondly, we should begin with optimizing network structure (for which all regions should develop and adopt plans for optimization of institutions).

Thirdly, the level of payroll tax is already high. Accordingly, additional 3% payroll taxation would lead to even greater burden on wages and drive wages further into the shadows (while the government announced its intention to reduce the burden on the payroll).

Consequently, the more important task today is to increase the efficiency of the health system in terms of its structure and funding principles. It is necessary to pay more attention to the provision of health care at the primary level (which is one of the goals of health care reform), and preventive health care.

It is also worth noting that in due time the Constitutional Court⁵ failed to define the denotations of “medical aid” and “medical services”. It is worthwhile to finally differentiate these concepts now, which might help to develop voluntary (optional, not compulsory) medical insurance⁶.

3.2. Complaints from the public about the deteriorating access to health care due to the implementation of health reform in Ukraine

All complaints can be divided into those that are based on concern about the deterioration of the population access to health care, and those which have a real foundation.

The first type of complaints, for example, was established in the course of monitoring visit by the representatives of the Office of the Commissioner of the Verkhovna Rada of

⁴ <http://www.ier.com.ua/ua/publications/comments/?pid=3874>

⁵ Decision of the Constitutional Court of Ukraine of 29 May 2002 no. 10-rp/2002.

⁶ O. Betliy. “Health insurance: not yet”.

Ukraine on Human Rights following the applications of the citizens of one of the regions of Poltava Oblast, which found no evidence of decreasing number of existing treatment facilities: in fact, there were changes in the names of medical institutions, some branches were closed but in general, all key specialists remained in their jobs.

The second type of complaints that have objective grounds include numerous complaints from pilot regions of Ukraine, where reform was carried out.

The most impressive complaints are received from citizens' associations defending their right to medical care ("For our children", Dnipropetrovsk Oblast⁷).

Also there is also evidence of deterioration of access to medical care in Volyn Oblast⁸, Chernihiv Oblast⁹, Lutsk¹⁰, Kremenchuk¹¹ and other cities and oblasts.

On April 17 and May 22, 2013, the Kyiv City Rada established 27 medical institutions of a new type (19 centers of primary public health care and 8 consultative and diagnostic centers) as legal entities in another eight districts of the capital¹² in addition to Darnytsia and Dniprotsky district centers.

The officials see the results of their activities as follows.

Primary medical aid geographically close to the residents:

- 81 general practice outpatients' clinics opened;
- the doctor reachability radius diminished from 2-7 km to 0.5-0.7 km;
- the number of general practitioners increased.

Better quality and reachability of medical aid:

- Primary-period detection of tuberculosis patients increased by 6%
- The number of patients with neglected visual forms of cancer diminished by 25%.
- The number of lab tests Increase was 135 thousand higher (1.2%);
- Women's screening increased from 78.2% to 84.5%;
- The number of calls to the chronically ill and inappropriate calls fell by 4%.

And here is the opinion about "improving the quality and accessibility of medical aid" by cancer patients, who for their health condition require narcotic analgesics.

Here is a direct speech of the relative of the cancer patient which is suffering from acute pain syndrome and sought medical attention to be prescribed a scheme of analgesic therapy.

"It turns out that in Holosiyiv District of Kyiv the reform has been carried out already. The Holosiyiv District Central Outpatients' Hospital has become a non-profit municipal enterprise "Advisory and Diagnostic Center" of the Holosiyiv District, Kyiv (hereinafter CDC). Two centers of primary medical and sanitary aid were singled out.

⁷ <http://zadetey.org.ua/>

⁸ <http://volga.lutsk.ua/view/384/2/>

⁹ http://www.hvilya.com/news/komu_vpoperek_gorla_dilnichna_likarnja/2013-02-14-1885, http://www.gorod.cn.ua/news_43332.html

¹⁰ <http://zik.ua/ua/news/2013/03/27/400858>

¹¹ http://www.telegraf.in.ua/health/health-articles/2013/04/05/knec-polklnk-u-kremenchuc-pochalasya-medichna-reforma_10028734.html

¹² Course of Health Reform in Kyiv for the first half of 2013. <http://kievcity.gov.ua/news/9080.html>

At present, the procedure in this system is as follows:

1. The patient goes to the CDC oncologist.

In our case, the daughter came along with the documents and on their basis the oncologist put her mother on record. This happened before the reform, they refused to put her mother on the record referring to the fact that the patient was treated not at the place of registration (she was diagnosed in Israel and underwent palliative chemotherapy at a private clinic); “they made the daughter worried, but eventually put her mother on the record”.

2. With manifestation of the pain syndrome the CDC oncologist prescribes the symptomatic therapy, if necessary, with the use of narcotics (our patient also had a prescription dated October 14, 2013). When the pain intensified, a friend of the family (!) took the documents and went to see the district physician (family doctor), s/he said that s/he had experience with the tableted morphine and s/he did not know how to prescribe it, moreover s/he had no recipe forms.

3. Today I was told that the CDC oncologist only indicates in the prescription form that “the symptomatic therapy is indicated” and in what follows the CDC takes no part.

4. The medical officers say: “You need to go to the Center of primary medical and sanitary aid no. 2 (CPMSA) to the therapist to get a prescription. But currently they have no budgetary financing for this and therefore they cannot write out a recipe; so they’ll send you back to us, to the CDC, and the oncologist will write out a prescription as far as we still have money. So, you go straight to the oncologist and he will write out”. After many assurances that the oncologist did write out prescriptions and we will get one, I checked the doctor’s hours and sent for the daughter of the patient. We waited over an hour around the door which is a usual story at the outpatients’ clinic. At long last, the patient’s daughter came out telling that in fact the oncologist prescribes nothing, and we’d better call a therapist tomorrow to get her/him in. The entry in the medical card reads as follows: The condition is aggravating, hypoxia and pain syndrome increases; recommended: seeing the therapist to get prescription for doses”. Well, to be sure!

I stayed, because I wanted to sort it out myself and understand how the CPMSA and therapists work. No way. It was already almost 3pm.

The head of the department of internal diseases received patients until 13:00, our family doctor received patients until 11:00.

I asked whether the patient (given the seriousness of the condition) might be visited today by another therapist who is now carrying out house-to-house visits; they answered that only therapist assigned to this district was authorized to prescribe opiates; therefore it might be done the next day only.

And that meant more than 12 hours of suffering. The circle closed up: the next day the therapist will come and tell that s/he had no expertise to prescribe morphine tablets, s/he neither knew how to prescribe it, not he had prescription forms”.

3.3. Implementing health care reform causes opposition from the public and medical professionals in the pilot regions due to a bunch of objective and subjective factors

Implementation of the first phase of medical reform took place without sufficient legal and economic analysis that would serve the stated purposes: improvement of the quality of

medical aid, better accessibility of medical aid, and, as an expected result, improvement of health of population.

Creation of CPMSA took place without the development and approval of plans for network parameters optimizing on the level of regions and individual regions.

The negative effects that reflected the deterioration of the situation with the rights of patients in Ukraine:

1. Unconstitutional closure of medical institutions under the banner of “optimization” (illegitimate predominance of the norms of the Law of Ukraine “On the Procedure...”).

2. Reduced availability of SHC despite ideas to improve the accessibility by separation of the primary level of medical aid.

3. Reduced accessibility of the quality medical aid (secondary) for the rural population which means the most negative violation of patients’ access to care.

4. The destruction of the pediatric service, the place of which in the reform of the existing model has not been defined.

5. Existence on the same premises (where previously an outpatients’ clinic was) of two or more treatment facilities, such as TSPSMD and CDC.

6. Administrative ambiguity of medical institutions of the network, for example, one cannot get a sick-leave certificate or other medical documentation: in one and the same town you need to go for the seal to another building.

3.4. Information support for the reform remains low

There is no doubt that a rational optimization of the network of medical institutions is needed, but the process requires measured judgment by local administrations in the first place. None of the actual health care institutions, medical establishments should be closed; they can only be reorganized and/or reoriented to meet the needs of the population, as stated in the guidelines of the Ministry of Health of Ukraine “Modernizing the network of health facilities that provide primary medical aid”¹³.

Unfortunately, except for invoking the initiative of the President of Ukraine concerning the desire to improve the health of the nation, increase access to health care, the goal of reform “on the ground” is incomprehensible to most people and medical officers and so on. References to the rational use of money against the background of “corruption scandals”, existence of free medicine only in the perception of medical officers looks unconvincing. The population does not understand the difference between the old district doctor and the family doctor, which must first contact the CPMSA, then the CSD, and to get a medical certificate you have to go to a third place.

3.5. Persevering implementation of family physicians gives rise to doubt

The situation is complicated by the fact that the family doctors (formerly district doctors) are called for mainly by elderly, pensioners, or people of working age who need a medical certificate. In the event of illness, acute or chronic, the population turns to the secondary

¹³ http://www.moz.gov.ua/ua/portal/hsr_met_rec/

or tertiary level of medical aid which, given the existing system of paid for/free medicine, presents no impediments.

Therefore, the agreement between the local authorities¹⁴ and secondary medical aid institutions (hereinafter: the SMAI) to provide medical care for people without family doctor's referral during the transition period and the reluctance of SMAI doctors to admit patients without referrals relates to the most vulnerable strata: seniors, temporarily unemployed, and rural dwellers.

Thus, given the above facts, it was not at all studied the needs of the population in the institution of the family doctor, especially given the focus on high-tech modern medicine methods of diagnosis and treatment.

3.6. What kind of a doctor do we need? Personnel policy

Despite the fact that the top medical higher schools for many years kept preparing physicians in the specialty "General Practice, Family Medicine (GPFM)" all medical aid centers cannot be staffed with appropriate medical personnel. So from the very start of reform it was proposed to retrain doctors of other professions in the course of 6-month period by branch regulations. But in the opinion of many experts, based on international experience, it is impossible to adequately retrain appropriate family doctor (GPFM), especially taking into account the volume of required knowledge in many areas of medical science. And most importantly: during such retraining is impossible to obtain clinical experience (and, perhaps, theoretical as well) in pediatrics, while the family physician should also treat children in her/his district.

In order to ensure continuous professional training of medical practitioners in primary care according to the guidelines of Ministry of Health of Ukraine "Upgrading the network of health facilities that provide primary care" the oblast training or practical training centers will be set up. It would be advisable to organize such center at the "model" outpatients' clinic. In this center the scheduled short-term practical training for doctors and nurses in primary care would be held according to a range of issues and competence of the trainees. These trainings should be extended to all healthcare providers of primary medical aid. Where possible such practical training centers should be established both in the regional centers and cities of oblast subordination. The aim of these centers should be to facilitate the organization of short-term thematic on-job courses for health professionals of medical aid centers by providing premises and logistical resources needed for the implementation of the educational process by the educational institution or distance learning.

However, currently we have no information on the establishment of such centers.

3.7. Emergency medical aid does not perform its duties because it lacks funds for medicines and loses skilled health workers

As of January 1, 2013 the Law of Ukraine "On emergency medical care" entered into force.

In addition to the approved law the Cabinet of Ministers ruled "On the standards of arrival of emergency (ambulance) medical care crews on the scene" according to which the am-

¹⁴ Dnipropetrovsk and Vinnytsia oblasts, "Health Care Reform: Preliminary findings on the first stage of reform," Institute for Economic Research and Policy Consulting, Kyiv, 2013.

bulance car should arrive upon the scene 10 minutes after the call, and 20 minutes in rural areas. According to the document, the standards may be exceeded only by 10 minutes, and then only in the case of bad weather.

Moreover, from now on there will be effective criteria according to which the dispatcher receiving a call of the patient must determine whether it is an emergency call and immediately send him an emergency medical aid team (ambulance) or redirect the call to the relevant public health care institution of the primary medical and sanitary aid.

Thus, the brigade of special medical aid should be sent to patients who are in a state that is accompanied by fainting, seizures, sudden respiratory distress, sudden pain in the heart, blood vomiting, acute pain in the abdomen, external bleeding, signs of acute infectious diseases, severe mental disorders that threaten the life and health of the patient or other people. Also, the ambulance will go to the patient's with injuries, including those resulting from traffic accident, accident at work or a natural disaster. It will be sent to patients with hypothermia, heat stroke, electric or lightning shock, victims of animal bites. The ambulance will also attend pregnant women with advanced labor or any other breach of normal pregnancy.

The category of non-urgent calls now includes patients with abruptly increased body temperature with cough, running nose, sore throat, headache, dizziness and weakness observed, increased blood tension or pain syndrome in cancer patients. This same category comprises exacerbation of chronic diseases of the digestive system and hypertension. This call should be answered by a family or a district doctor. If this is not possible, the patient will have to wait an hour for an ambulance or go to the hospital by her/himself.

What are the negative consequences of this division between the emergency service and ambulance?

1. The dispatcher of the emergency service center Manager is to determine by ear what kind of help you need to provide on-call aid, which worsens the quality of medical aid, it becomes very subjective and results in the following paragraph.

2. The number of emergency crew rides goes down or even increases, as patients name over the phone symptoms of diseases belonging to the emergency category.

The emergency medical services in 2013 worked in total underfunding conditions, which are the main reason for reducing the number of brigades, poor technical state of vehicles, lack of modern medical equipment, medicine, communication facilities, and gas.

Practically the brigades missed their deadlines: urban traffic jams, lack of GPRS, absence of driveways to the buildings, absence of number plates on the houses; in rural areas it happened because of the poor road conditions.

Insufficient funding has caused:

1. The emergency crews had not the required set of medications.
2. The absence of proper medical equipment in cars: defibrillators, intubation equipment, and more.

These factors have worsened providing emergency assistance in general. Before reform there were the so-called line brigades (not very well equipped) and special brigades, which had the necessary equipment; after the reform there often remained empty cars with doctors and lack of medicines.

All of these factors and the deterioration of working conditions in general (insufficient equipment and accessories), “fines”¹⁵ for “spelling errors”, withdrawal of allowances for non-compliance with standard deadlines for coming to the patient), and lead to the loss of the skilled medical personnel¹⁶.

3.8. In connection with the “reform” some emergency medical aid centers work without the narcotic and psychotropic drugs

During the year the branch “Vyshhorod Station of Emergency Medical Aid”, which is located in Bucha, Kyiv Oblast, had no license to use narcotic drugs, psychotropic substances and precursors **prevents any emergency medical aid** to residents of the territory of service established by Order of the Ministry of Health no. 24 of 17.01.2005 “On approval of the protocols of medical aid in the specialty “Medical of emergency conditions”, including acute coronary syndrome, seizures, cardiac asthma and pulmonary edema, trauma and others. All listed emergency life-threatening conditions require immediate injection of narcotic or psychotropic medical preparations. Failure to provide qualified emergency medical assistance violates the inalienable right to life, as guaranteed by the Constitution of Ukraine, European Convention on Human Rights, UN conventions etc.

3.9. Destruction of preventive medicine on the factory floor

One of the problems covered by the medical reform is the low level of disease prevention.

In Ukraine, annually they record from 5 to 8 thousand occupational diseases and up to 10.5 thousand accidents at work.

The increase in occupational diseases is caused by exposure to harmful factors of working environment. Hazardous working conditions in enterprises due to deficiencies of engineering processes, neglect of hygienic standards, and non-use of personal protective equipment. In the coal industry, mechanical engineering, mineral resource industry, agricultural industry and non-state enterprises (farms) the number of objects that do not meet health standards ranges from 35.6% to 57.7%. In general, only 29.1% of Ukrainian facilities meet sanitary code. Rising levels of occupational diseases are also due to insufficient attention to compliance with applicable legislation and technological discipline, sharp reduction in funds for occupational safety, use of hazardous substances and process equipment without the proper certification and sanitary examination, and low industrial and personal hygienic purity¹⁷.

Over the past 20 years the country system of preventive medicine at work, which existed before, was destroyed, the number of physicians decreased by more than 10 times, number of aid stations at enterprises become less than in 1928, the quality of health care for working

¹⁵ <http://kiyany.obozrevatel.com/life/14673-sotrudnikov-kievskoj-pomoschi-oshtrafovali-za-orfograficheskie-oshibki.htm>

¹⁶ “Emergency aid: reform or Terror of medics”, http://innocentsukr.blogspot.com/2013/09/blog-post_7272.html.

¹⁷ <http://www.ukrstat.gov.ua/>

people deteriorated, prevention technologies controlling occupational diseases and illnesses are not implemented.

Gaps in prevention of occupational diseases have a negative effect not only on workers and their families, but on society as a whole. These entail economic losses due to decreased productivity and increased pressure on the social security system. It should be noted that the prevention of occupational diseases is much more effective and less costly than treatment and rehabilitation of victims. That is why we must take concrete steps to enhance the prevention of occupational diseases.

3.10. The need for urgent changes in the current legislation of Ukraine

We have repeatedly pointed out in our publications¹⁸ to the inconsistencies of many provisions of the law no. 3612 of 07.07.2011 “On the procedure of...” with the norms of the Constitution of Ukraine, Budget Code of Ukraine, Economic Code of Ukraine, Civil Code of Ukraine, Code of Ukraine on Labor, and Law of Ukraine “On Labor”.

But we must remind once more that with the purpose of enshrining strategies of reform in the field of health care on 07.07.2011 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Basic Laws of Ukraine on health care for the improvement of medical aid”. This law was gaining force on 1 January 2012, except for the fourth paragraph of clause 7 and clause 14 of section 1 of this Law, which will enter into force on January 1, 2015. It stipulates gradual modification in the successful practice of reforming the health-care industry in accordance with the Law “On the Procedure...”

The Law of Ukraine “Basic Laws of Ukraine on health care” (hereinafter: “Basic Laws...”) for its legal nature is a major industry statute, because the definiteness of its articles is an absolute need for the existence and development of health care system in Ukraine and ensuring of the rights of patients.

The greatest fact is that after amending the “Basic Laws...” the concept of primary, secondary and tertiary medical aid, which had been set out in art. 35 of the “old” “Basic Laws...” and a new kind of health care, i. e. palliative care, became blurred for areas of Ukraine, which were not covered by the experiment. This situation will change only from January 1, 2015, but by that time in the country there will be only an emergency medical care, as provided in Art. 35 of the current “Basic Laws...” despite the fact that art. 8 declares the right of every citizen to primary care, secondary (specialized) medical care, tertiary (highly specialized) medical care, palliative care and more.

3.11. Health care reform plan has not been completed

The Decree of the President of Ukraine “On the National Action Plan for 2013 to implement the program of economic reforms in 2010–2014 “The Prosperous Society, Competitive Economy, Effective State” no. 128 of 12.03.2013 had to promote the second stage of the health care reform, but it was not implemented in the key fundamental areas. On this basis, we believe that the termination of health reform is possible and will not worsen the provi-

¹⁸ “Human Rights in Health Care — 2011”, “Human Rights in Health Care — 2012”.

sion of medical aid as medical reform ceased of its own accord in 2013. These are the following items of the National Action Plan for 2013 that have not been fulfilled.

P. 22.3. Supply the missing parts of equipment for the establishment of primary health aid according to the material and technical equipment sheet in order to complete 100% of plan of equipping of primary medical aid establishments (December 2013).

P. 22.4. Coverage in the pilot regions by medical examination of 80 per cent of registered patients attached which is a positive trend in detection of visual forms of cancer in advanced stages and detection of TB cases in advanced stages (December 2013).

P. 22.5. Completion of implementation in pilot regions of the electronic registry of patients, as well as buying computer hardware and servers for its operation: input of 100% of the population in the pilot areas to the electronic registry of patients (October 2013).

P. 22.8. The conclusion in 2014 of contracts of public health service between medical aid centers and related budget owners: more efficient use of budget funds, valuation of health care cost provided under the contract allowing for its size and quality (December 2013).

P. 22.9. Evaluation of the effectiveness of draft on budgetary funds in the pilot regions following the analysis of performance of indicators of the budget program "Primary medical aid" (including payment of wage rises to medical professionals for the quality and amount of work) for the second six months of 2012 and first six months of 2013.

P. 22.12. Quarterly (April, July, October, and December) monitoring of the modernization of primary medical aid and preparation of relevant reports.

P. 22.13. Audit of the implementation of the electronic registry of patients and its efficiency in the pilot regions. Executor: Ministry of Health of Ukraine, preparation of the report (July 2013).

P. 24.2. Definition of health care establishments to create diversified hospitals of intensive care with departments of emergency (emergency) medical care in March 2013).

P. 24.3. Determination of resource support multidisciplinary intensive care hospitals with emergency departments: determination of the amount of financing of the listed hospitals and sources of funding (May 2013).

P. 24.11. Facilitation of the reallocation of budget funds by health care providers rendering secondary (specialized) medical aid through funding of health care expenditures according to two economic classification-of-expenditures codes.

P. 24.1. Approval according to the regulation of the Cabinet of Ministers of Ukraine dated October 24, 2012 no. 1113 "On approval of the creation of hospital districts in Vinnytsia, Dnipropetrovsk, Donetsk, and Kyiv oblasts" of outlines of the hospital districts and perspectives of health care establishments providing secondary (specialized) medical aid for the period until 2014.

3.11.1. Implementation of health care reform at the national level (except for the pilot regions).

Completion of the reorganization of primary medical care

P. 26.1. Modernization of the network of health care providers in primary care regions. Result: satisfaction of needs of the primary medical (medical and sanitary) aid centers in essential equipment (including motor vehicles) at the level of 50%. Deadline: December 2013.

P. 26.4. Facilitation of the reallocation of budget funds by health care establishments that provide primary medical aid through funding of health care expenditures according to two economic classification-of-expenditures codes.

3.12.2. Formation of a single medical space

P. 29.2. Placing for consideration of the Verkhovna Rada of Ukraine of the draft Law of Ukraine about the features of the activities of health care establishments. Executors: Prime Minister of Ukraine, Ministry of Health of Ukraine. Deadline: March 2013 (extended until November 2013).

P. 29.3. Placing for consideration of the Verkhovna Rada of Ukraine of the draft Law of Ukraine on Amendments to the Tax Code of Ukraine regarding the features of the taxation of health care establishments created as nonprofit public utility companies, as non-profit enterprises.

4. RECOMMENDATIONS

4.1. Verkhovna Rada of Ukraine shall

1. Amend art. 49 of the Constitution of Ukraine concerning the abolition of the provisions of health services free of charge.

2. Amend the Constitution of Ukraine introducing a point on ensuring provision of free emergency medical care and the list of free medical services for certain strata of the population defined by the legislation of Ukraine.

3. Legislate the sources of health care financing: budget, fund of compulsory medical insurance, and voluntary health insurance.

4. Cancel the Law of Ukraine of 07.07.2011 no. 3612 "On the procedure..."

5. Determine in the Law of Ukraine "Basic Law of Ukraine on Health Care" the concept of primary, secondary (specialized) and tertiary (highly specialized) medical care specified in art. 35 of the "old" "Basic Laws..." and palliative aid, a new type of medical care.

6. Anticipate financing of air ambulance by the State Budget of Ukraine.

4.2. Ministry of Health shall

7. Optimize the network of medical institutions taking into account the existing infrastructure in administrative-territorial units: state of the roads and public transport in the first place and also after consultations with the public on the basis of information about the feasibility of the changes proposed.

8. Assess in the pilot regions the effectiveness of drafts on budgetary funds following the results of the analysis of indicators of the budget program "Primary medical aid" (including the wage rises to medical professionals for the quality and amount of their work) during 2013.

9. Continue to gradually introduce the institute of family doctor taking into account international experience and terms of personnel training (up to 8 years).

10. Create regional training centers for continuous education of medical personnel for the centers of primary medical and sanitary aid.

11. Complete the set of components according to the sheet of material and technical equipment for the established Centers of primary medical and sanitary aid. Develop primary medical and sanitary aid centers based on their staffing with specially trained experts with appropriate qualifications. Complete staffing of primary health care centers in the pilot regions with district doctors and pediatricians only.

12. Increase the “transparency” of decision-making by the Ministry of Health and hold public discussions about normative legal instruments the adoption of which requires the use of such mechanism of implementation.

13. Create a system of medical and doctors’ self-rule, which will also a body controlling the activities of the Ministry of Health of Ukraine. To this end, develop new provisions relating to the powers of the Public Council of the Ministry of Health of Ukraine, which will provide for its participation in the preparation and adoption of departmental normative legal instruments.

14. Hold an international audit of the activities of the Ministry of Health of Ukraine and of the industry as a whole with the assistance of international experts and a plan for “real” reforms.

15. Extend the conversion of government-financed health establishments into the independent subjects of economic relations.

4.3. Public organizations shall

16. Conduct public hearings on the right to health realization with the participation of the representatives of the Ministry of Health.

17. Take up the work of the Public council at the Ministry of Health of Ukraine, oblast state administrations, local self-government authorities in order to prevent violations of the right to health.

18. Participate in the creation of the doctors’ self-government bodies like professional associations of lawyers.

19. Look into the problem of expediency of trade unions of doctors and the possibility of combining (merging) merging them with the doctors’ self-government bodies.

XVII. COURT PROTECTION OF THE RIGHT TO HEALTH CARE

*Analysis of the national courts' practices for 2013
with respect to the patients' rights protection*

Analyzing the national courts' practices on the basis of data found in the uniform state Register of the courts decisions (hereinafter — Register) we can summarize certain prevailing tendencies, manifested in the national courts' practices in 2013.

1. NUMBER OF CRIMINAL LAWSUITS AGAINST INDIVIDUALS GUILTY OF VIOLATING PATIENTS' RIGHTS STILL REMAINS INSIGNIFICANT

The data obtained from the Register show that no lawsuits have been filed against persons guilty of forcing people to become blood donors, illegal experiments on people, unprofessional performance of one's duties resulting in HIV or another incurable disease infection.

One verdict on the suit no. 225/337/13-κ² was passed under art. 134, p. 2 of the Criminal Code — illegal performance of abortion. The culprit — a person who had medical background but did not have an official license-certificate enabling her to provide help to the women who wished to end an undesired pregnancy, being aware that her actions are beyond her scope of competence as practicing gynecologist, in violation of the clinical protocol and without due medical documentation (i. e. the medical history for interrupted pregnancy), agreed to perform an abortion on the victim. However, on 10.01.2012, as her condition deteriorated, the victim was brought to a hospital in an ambulance, and had stayed there for about a month, with the diagnosis: incomplete medical abortion with post-hemorrhage anemia and complications of chronic metroendometritis. Unprofessionally performed procedure resulted in the destruction of the integrity of tissues and organs and their functions in the process of medical abortion with further development of complications which were classified as bodily injuries of medium gravity. The person guilty of the crime was sentenced to the penalty in the form of two years in prison without losing the right to hold certain offices or conduct certain types of activities. However, she was sentenced conditionally with the probation term of one year.

In another case the guilty party was accused of possessing neither special license nor adequate medical background while offering medical services that caused serious adverse consequences for the patient. The culprit did not have proper medical education required by the

¹ Prepared by N. Okhotnikova, legal expert of KHPG.

² <http://reyestr.court.gov.ua/Review/34537723>

uniform qualification standards, illegally providing medical care. Due to her negligence and lack of caution a young patient suffered bodily injuries, i. e. burn wounds, caused by “paraffin application”. The injuries on both buttocks were classified as those of medium gravity.³

A criminal lawsuit involved physicians charged under art. 139 of the CC of Ukraine — denial of medical assistance without solid justification to a sick person by medical worker who must, under existing rules, grant this assistance if he/she is aware that lack of thereof can lead to serious consequences for the patient. The denial resulted in the patient’s death due to intoxication caused by fibro-cavernous lung TB. Death occurred because patient had not been hospitalized on time.⁴

10 criminal lawsuits involved physicians charged under art. 140 of the CC — non-performance or improper performance of professional duties by pharmacists or medical workers as a result of their negligent or careless attitude. In the majority of cases (8 out of 10) patients’ death resulted from such actions or lack of thereof, while in two cases the patients lost an organ or its functions.

One of verdicts passed in the lawsuit filed under p. 1, art. 140 of CC of Ukraine acquitted the physician. (Case no. 2018/1-47/11). The court ruled that pretrial inquest bodies had failed to demonstrate — and court hearing failed to prove- that at the time of treatment the victim had conditions which would allow the defendant to assume that she had had any disorders that might have led to the clots formation, which had become the cause of her demise. Therefore, the defendant had adhered to all the requirements concerning the treatment of the victim, with the exception of certain lab analyses, the absence of which could not have influenced the development of the clots.⁵

In another lawsuit an oncologist was accused under the aforementioned article of the CC, of failing to diagnose the skin melanoma in due time, which had led to the death of the patient. Examining the patient with the pigmentation spot which had been injured and showed the signs of inflammation, the physician was inattentive and negligent in the performance of her duties, had not alerted the patient to the possibility of cancerous growth and metastasis, had not checked the condition of the patients’ lymph nodes and had not described the examination results in the patient’s medical history. She had not ordered the ultrasound test; neither had she referred the patient to the oblast’ cancer center for the biopsy test needed for correct diagnosis and removal of the growth.

The oncologist’s errors committed during the patient’s visit, including prescribing dimexide for the neoplasm, failure to refer him to a surgeon or cancer center to have the neck tumor removed, lack of cancer alertness during the patient’s follow-up visit, when the latter had complained of the enlarged lymph nodes in the neck area, failure to send him at that stage to cancer center for the diagnostic biopsy of the lymph nodes, prescribing alcohol applications and failure to register him for the follow-up contributed to the factors which deteriorated the patient’s condition. The patient’s death cause was defined as poly-organic failure caused by melanoma metastasis to the lymph nodes and internal organs⁶.

³ <http://reyestr.court.gov.ua/Review/33646797>

⁴ <http://reyestr.court.gov.ua/Review/35553482>

⁵ <http://reyestr.court.gov.ua/Review/35490714>

⁶ <http://reyestr.court.gov.ua/Review/29222785>

In another lawsuit (case no. 106/11825/2012) the guilty party, after the primary examination of the victim, had underestimated the seriousness of the injury factor (the patient had fallen from the 4th floor), the gravity of bodily injuries and general patient's condition. The broken ribs and pelvis bones were erroneously diagnosed by the defendant as "old injuries". Neurological disorders were erroneously diagnosed as brain vessels atherosclerosis. The physician failed to instruct medical staff to perform an urgent catheterization of the bladder, EKG, or to seek neurosurgeon's (neurologist's) consultation. Having underestimated the seriousness of the patient's condition the physician failed to take the necessary measures for the patient's treatment, namely, immediate transfer of the patient to the anti-shock or reanimation ward with infusion/transfusion therapy and other anti-shock treatments. Instead she sent a patient to an unnecessary x-ray, and involved transportation and moving of the patient might have aggravated the patient's condition. These actions were classified by the court under art. 140 of the CC of Ukraine — failure to perform or inadequate performance of their professional duties by pharmacists or medical workers as a result of negligent or careless attitude.⁷

2. CRIMINAL LAWSUITS AGAINST THE DEFENDANTS WHO ARE NOT MEDICAL WORKERS FOR THE VIOLATION OF THE RIGHT TO HEALTH CARE

Article 136 of the Criminal Code of Ukraine, envisaging criminal liability for failure to provide care for a person in a life-threatening condition, when such care could be provided, or for the failure to inform relevant persons or bodies of the person's condition, is of special interest. As to its application, 4 verdicts based on it were passed in 2013.

Peculiarity of this provision consists in the fact that the subjects of criminal proceedings are neither medical workers or officials legally responsible for providing medical care to the persons with life-threatening conditions, nor other persons obliged to provide such care to the said persons by virtue of legal and normative acts, or by civil legal agreement.

In other words, criminal law in fact expanded the scope of the patients' rights, making other citizens liable for providing medical care to the persons with life-threatening conditions, or at least for informing relevant persons or bodies.

In practical operation, however, this provision causes a lot of problems, especially, in its requirement that a person without any medical background should provide first aid to the victim, although such unprofessional actions might be not only useless, but even harmful for the victim.

The essence of the case no. 127/5859/13⁸ supports this statement most convincingly: criminal charges were brought against a person who provided first medical aid to his friend who had collapsed, and performed indirect heart massage by pressing on the victim's chest. The "rescuer" had no medical training to perform the said reanimation procedure. Unaware of possible consequences he started pressing on the victim's chest, meaning to do heart massage, but instead causing bodily injuries, i. e. breaking the victim's 6th and 7th ribs on the right

⁷ <http://reyestr.court.gov.ua/Review/29932190>

⁸ <http://reyestr.court.gov.ua/Review/32325422>

side. After these manipulations the defendant understood that the victim could die, and his aid should have consisted in calling the ambulance or taking the victim to the nearest hospital; he, nevertheless, failed to do either and left the victim unattended at the playground where this latter eventually died.

Another graphic example is represented by the court ruling in the case no. 2113/6099/12⁹ — in this case the passengers of the vehicle which had fallen into a canal in a motor accident were involved. The defendants being totally aware of the fact that the victim was in the canal, with strong current, failed to make sure that the victim was alive and to inform either road inspection officers or medical emergency service of the accident, although they had a chance to help the victim and to call respective services. They left the scene of the accident near the canal, letting the victim get drowned.

Two more verdicts have a lot of similarities: the defendants inflicted various bodily injuries on the victims and refused to provide the required first aid or to call for the ambulance.

Noteworthy, article 136 of the CC of Ukraine was applied by the court in all four cases only because the victims had died as a result of failure to provide the necessary first aid or to call for help although under pp. 1 and 2 of this article this circumstance is not stipulated. But it means that court will pass its ruling on someone's inertia only if it results in the fatal consequence, i. e. the victim's death.

3. LACK OF CONSISTENCY IN DEFINING THE SCOPE OF MORAL DAMAGES IN MEDICAL CASES

The largest sum of money exacted in 2013 for moral damages from a physician guilty of harming a patient, who, nevertheless, had remained alive, amounted to 70 thousand UAH. In this case the physician, ignoring his professional duties and acting negligently and carelessly, had performed an urgent surgery on the victim, removing her uterus without any grounds for that. The procedure had grave consequences for the woman.¹⁰ In another case the sum of moral damages amounted to 80 thousand UAH. The physician conducted an incomplete examination of a young patient; came up with wrong diagnosis ("Orchitis" instead of "Testicle twist") and ordered an outpatient therapy for a boy who needed immediate hospitalization. As a result necrosis of the testicle developed, followed by its subsequent removal.¹¹

The largest sum collected in moral damages for the death of a patient amounted to 100 thousand UAH. It was exacted from oblast' children's hospital for the benefit of the parents of a minor, who had died as a result of surgery performed in the clinic. Ignoring distinct counter-indications the doctors had made wrongly decided that the patient was ready for the surgical intervention.¹²

For civil claims the courts have totally different set of rules and standards. Thus, the largest sum in moral damages was collected in the case no. 2-58/11 for the claimant's benefit.

⁹ <http://reyestr.court.gov.ua/Review/28451360>

¹⁰ <http://reyestr.court.gov.ua/Review/34283938>

¹¹ <http://reyestr.court.gov.ua/Review/34414396>

¹² <http://reyestr.court.gov.ua/Review/29890469>

Physicians were guilty of procrastinating during delivery and after it. As a result the newborn developed an acute hypoxia of the brain, which affected its nervous system, leading to the baby's disability. The compensation of moral damages constituted 400 thousand UAH.¹³

At the same time in a civil claim no. 2/333/7/13 the court established moral damages for the claimant's mother's death caused by inadequate medical care at the amount of 35 thousand UAH¹⁴.

The case no. 2/745/7/2013 seemed interesting to us. The claim was submitted by a retired judge and his spouse requesting the reimbursement of treatment expenses and moral damages from raion clinic at the amount of 500 UAH to each claimant. The court satisfied the claim ordering the hospital to pay the said amount for moral damages in full to each claimant.¹⁵ We believe that, coming from a retired judge, well acquainted with the court practice in establishing moral damages, this claim was aimed rather at teaching the said hospital a lesson than at real reimbursement of moral damages to each claimant.

4. INCONSISTENT PRACTICE OF IDENTIFYING RESPONDENTS IN "MEDICAL" CASES

The practice of national courts still lacks a well-defined stand as to who can be considered "respondent" in the claims dealing with pecuniary and/or moral damages in "medical" cases, irrespective of legal norms in force.

Thus, under article 1167 of the Civil Code of Ukraine, moral damages inflicted upon physical or legal entity by illegal actions, decisions or inertia is reimbursed by the person who had caused it, if the person is found guilty.

Under article 1168 of the Civil Code of Ukraine moral damages caused by death of a physical person is reimbursed to his/her spouse, parents (including adoptive parents), children (including adopted children), as well as to the persons that constituted his/her family.

Article 1172 of the Civil Code of Ukraine runs that moral damages, inflicted by an employee of a legal entity while performing his/her professional duties, are reimbursed by the legal entity.

P. 8 of the Resolution of the Supreme Court of Ukraine Plenum of 31.03.1995 no. 4 "On court practice in the claims dealing with moral (non-pecuniary) damages" stipulates that moral (non-pecuniary) damages caused by an employee of a legal entity while performing his/her professional duties are the liability of the organization with which the said employee has labor relations, while this latter is regressively accountable to it (articles 130, 132–134 of Labor Code), unless stipulated otherwise by the special provisions.

These legal norms are adhered to by the courts in the majority of cases. For the case no. 225/337/13-κ¹⁶ the moral damages within the civil claim in the criminal process was defined at 16 thousand UAH and exacted from the hospital, in which the respondent worked, under article 1172 of the Civil Code of Ukraine, which stipulates that physical person or le-

¹³ <http://reyestr.court.gov.ua/Review/30416200>

¹⁴ <http://reyestr.court.gov.ua/Review/31202097>

¹⁵ <http://reyestr.court.gov.ua/Review/28598947>

¹⁶ <http://reyestr.court.gov.ua/Review/34537723>

gal entity reimburses the moral damages inflicted by an employee while performing his/her professional (working) duties.

Similarly, in compliance with the decision made on the case no. 754/5736/13 moral damages in the amount of 40 000 UAH were exacted from a hospital, in which the doctor brought to criminal liability in 2012, used to work, under article 140 of the Criminal Code of Ukraine. This person, having labor relations with the defendant and working as gynecologist-oncologist, had performed her professional duties inadequately due to her negligent and careless attitude — during the surgery she administered the toxic dose of lidocaine to the victim, causing the death of this latter.¹⁷

However, there are exceptions to the rule. For example, in the case no. 1121/3601/12 the amount of moral damages to be paid to the deceased patient's family established by the court constituted 5 thousand UAH and was exacted directly from the defendant — an oncologist, who had performed her duties unprofessionally causing the death of the victim — and not from the central raion clinic where she had worked at the time of the crime.¹⁸

Another scenario includes the civil lawsuits against a hospital as primary respondent and also direct involvement of the physician who has committed medical error and local council that manages the hospital's finances, as third parties. This was the course chosen by the court in the case no. 2/102/33/2013. By its ruling it collected pecuniary and moral damages to the patient's health caused by unprofessional actions of the hospital's dentist from the Central city hospital, treating the dentist as the third party in the civil process.¹⁹

5. AMBIGUOUS INTERPRETATION OF THE “MORAL DAMAGES” CONCEPT BY THE COURTS

Under p. 3 of the Resolution of the Supreme Court of Ukraine Plenum of 31.03.1995 no. 4 “On court practice in the claims dealing with moral (non-pecuniary) damages” (hereinafter — Plenum), the concept of moral damages implies the non-pecuniary losses suffered as a result of moral or physical suffering or other negative actions inflicted upon physical or legal entity by illegal actions or inaction of other persons. Under the law in force moral damages can include, in particular: degrading of honor, dignity, prestige, business reputation, moral sufferings related to the health deterioration, violation of property rights (including intellectual property), consumers' rights, other civil rights, unwarranted investigation and trial, ruination of normal life connections due to impossibility of further active public life, destruction of personal relationships and other negative consequences.

The sampling of the analyzed decisions and verdicts passed by the national courts in 2013 shows that usually the courts believe that only physical suffering and/or death of a patient can be regarded as the cause for moral damages.

However, there are some positive changes, as well. For example, ruling on the case no. 2/259/31/2013, the court arrived at the conclusion that moral damages equivalent to

¹⁷ <http://reyestr.court.gov.ua/Review/32434759>

¹⁸ <http://reyestr.court.gov.ua/Review/29222785>

¹⁹ <http://reyestr.court.gov.ua/Review/31905045>

the scope of mental suffering inflicted upon the claimant as a result of his unwarranted hospitalization in a psychiatric ward and his prolonged stay in the said ward, should be partially reimbursed, and established the reimbursement amount at 10 000 UAH²⁰.

**6. COURTS' REFERENCE TO THE CLINICAL PROTOCOLS
OF MEDICAL TREATMENT AS THE SOURCE OF THE LAW, DEFINING MECHANISMS
AND STANDARDS FOR THIS CARE, IS A POSITIVE SIGN**

For example, in the case no. 2/333/7/13 the court, considering the question whether the doctors had to order an obligatory MRI for a patient prior to her discharge, referred to the clinical protocol "Medical treatment of the patients with glial tumors of large brain hemispheres", approved by the Ministry of Health order no. 317 of 13.06.2008²¹. Besides, evaluating the evidence in its decision, the court refuted testimonies given by an expert witness, justifying its decision by the fact that his testimony was contrary to the provisions of the clinical protocol "Medical treatment of the patients with other specified immune-deficit disorders" approved by the Ministry of Health order no. 626 of 08.10.2007.

Passing a verdict in the case no. 1-кп/744/7/2013 the court also stressed the doctor's failure to adhere to the clinical protocol of neo-natal treatment of the newborns with the "newborns' jaundice" approved by the Ministry of Health order no. 255 of April 27, 2006²².

**7. PRACTICE OF THE EUROPEAN COURT
ON HUMAN RIGHTS RE PATIENTS' RIGHTS PROTECTION
IN THE CLAIMS AGAINST UKRAINE**

Analyzing European Court's on Human Rights decisions against Ukraine, passed in 2013, we identified the following tendencies.

1. The Court consistently points at Ukrainian power's failure to observe the patients' rights in the penitentiary facilities. Specifically, the Court took certain steps in investigating the inmates' deaths in detention centers.

In the case *Salakhov and Islyamova v. Ukraine* (petition no. 28005/08, decision of March 14, 2013) the Court raised an important issue of the standards for medical care in detention centers.

The Court underlined that in the former cases involving deaths in the places of custody with subsequent complaints of the families on the total absence or deficiency of medical care before the deaths (articles 2 and 3 of the Convention) the Court considered the complaints mainly, in the focus of article 2.

In the cases where applicants referred to both aforementioned provisions addressing the inadequate medical care available for them in the places of custody, but the fact of death

²⁰ <http://reyestr.court.gov.ua/Review/30481560>

²¹ <http://reyestr.court.gov.ua/Review/31202097>

²² <http://reyestr.court.gov.ua/Review/30776835>

was not present, the Court considered the complaint under article 3 of the Convention (see., e. g. *A. B. vs. Russia*, no. 1439/06, §114, decision of October 14, 2010).

This case, however, differs from the abovementioned cases. The Court notes that the first applicant, who received specialized treatment in a civil hospital, died within two weeks after the release. That's why it considered medical care available to the applicant in prison and in investigation isolation center, time frame and relevance of the care in the civil hospital after the applicant had been transferred there, in the focus of article 3 of the Convention. The Court separately considered the issue of cause and effect in the given circumstances and conditions of the applicant's death in the context of article 2 of the Convention.

The Court believes that detailed medical history reflecting regular medical check-ups and adequacy of the medical care, can refute the applicant's opinion concerning availability of medical care. Failure to provide official medical documents, on the other hand, puts in doubt availability of the necessary medical examinations of the applicant who is in custody. Proceeding from the fact that the government failed to submit the copies of the relevant medical documents, The Court arrived at the conclusion that the applicant had received no medical care needed for his deteriorating health, neither in prison nor in investigation isolation center, even keeping in mind the fact that he had concealed his HIV status from the officials in violation of article 3 of the Convention.

The Court pointed out that civil hospital is a public institution. Actions or inaction of its medical staff, therefore, can contribute to the liability of the respondent country under article 3.

The Court once again stressed that its task in the focus of article 2 of the Convention is not to pass decisions belonging exclusively to the competence of medical experts or to establish whether the applicant's disease was curable or not, and, respectively, whether his death could have been averted. Instead, its duty is to establish whether article 2 of the Convention was duly adhered to in order to save the applicant's life under existing circumstances.

Similarly, in the case *Barilo v. Ukraine* (petition no. 9607/06, final decision of August 16, 2013) a female applicant suspected of having committed felony at work, had disability of the 3rd group, suffered from diabetes and other chronic diseases. She needed insulin injections on the permanent basis, special diet and constant medical observation. These requirements could not be satisfied while she stayed in custody. Despite defense attorneys' protests, she was placed into Saki prison, where she had stayed for 10 days. In her own words, between February 12 and 16 of 2006 she had to administer insulin injections herself as the paramedic of the prison was on vacation leave and the ambulance refused to come to the prison. Right after her discharge the applicant was admitted to the city hospital of Yevpatoria where she was diagnosed with the diabetes in the grave form and suspicion of diabetic pre-coma (i. e. condition that precedes diabetic coma). Her health deteriorated significantly.

The Court found that the applicant was not given the due medical treatment while staying in custody, and that the conditions of her stay in Saki prison can be classified as inhuman and degrading for her dignity. Although the applicant had stayed there for 10 days only, her sufferings seriously aggravated her health, which had been bad enough already.

In the case *Vitkovskiy v. Ukraine* (petition no. 24938/06, decision of September 26, 2013) the Court also arrived at the conclusion that the applicant was not receiving needed medical care while staying in custody. Besides, the Court remarked that the government failed to prove that adequate medical care had been given to the applicant while he was kept in the

pre-trial isolation center and in prison. The government also failed to supply information on whether dietary needs of the applicant arising from his stomach disorder had been taken into account. The medical history of the applicant was destroyed, but this fact never absolved the state from the duty to give him the needed medical care while he was in custody.

2. The Court drew Ukraine's attention to the fact that under article 2 of the Convention it has both positive and negative duties with respect to the protection of life and health of persons within its jurisdiction.

In its decision in the case *Arskaya v. Ukraine* (petition no. 45076/05, decision of December 05, 2013), the Court reminded that part 1 of article 2 obliges the state not only to abstain from "conscious" taking of human life, but also to use due measures to protect the life and health of persons within its jurisdiction.

These principles also apply to public health. Aforementioned positive obligations, therefore, require that the state accepts the rules, obliging hospitals, both private and public, to use due measures to protect the life of their patients. They also require efficient independent judicial system, organized in such a way that persons, guilty of patients' deaths, both in private and public sector, can be charged and sued.

3. National courts still do not pay attention to the conclusions of the forensic examination of the applicants' or victims' health within the framework of the national criminal inquests. It can be explained by the fact that expert bodies doing the examination are not really independent from the law-enforcement system, so that corruption and joining of interests are quite common.

Thus, in the case *Barilo v. Ukraine* the Court pointed out that the state should guarantee the due health care and well-being for the detained persons, including medical treatment when needed. If the government decides to put a seriously sick person in custody and keep him/her there, then it should demonstrate a special concern for providing conditions warranted by specific needs of the disabled person.

The case file included the physician's opinion that the applicant needed hospitalization as far back as February 6, 2006. The insulin injections were prescribed correctly, but without due consideration to the calories' content of the food, and the dynamics was not controlled in the laboratory. The expert arrived at the conclusion that the applicant was not getting an adequate treatment between February 6 and 16, 2006. The conclusions of the ARC forensic Bureau, however, contradicted this opinion, stating that the applicant did not need hospitalization and that between February 6 and 16, 2006 the applicant was getting an adequate treatment.

The Court pointed at the contradiction between the conclusion supplied by the forensic department and the expert's separate opinion, which was not taken into account by the national courts.

4. The Court ruled that medical procedures can be administered only by the trained medical staff. Thus, in the case *Yuriy Volkov v. Ukraine* (petition no. 45872/06, decision of December 19, 2013), the Court sustained that the applicant's complaint did not address the fact of blood test specifically, but rather the fact that the medical procedure had been done by an investigator who had not possessed the required medical knowledge or skills. The Court pointed out that the Ukrainian law is quite explicit on the issue: the investigator might have ordered phlebotomy, but the procedure had to be done only by a qualified doctor. These facts

were enough to conclude that interference with the private life of the applicant was illegal under article 8 of the Convention.

Similarly to other cases, mentioned above, The Court, having arrived at this conclusion, pointed out that failure to provide the necessary medical care to the persons held within the penitentiary system, is a structural problem in Ukraine.

8. RECOMMENDATIONS

1. The state agents are recommended to adhere to the concept of combining positive and negative obligations of the state with respect to protection of life and health of persons within its jurisdiction, consisting in the established understanding that the state shall not only abstain from “conscious” taking of human life, but also use due measures to protect the life and health of persons within its jurisdiction, and to implement this concept in the law-enforcement bodies’ operation.

2. The administration of the non-liberty institutions should pay attention to the fact that failure to provide adequate medical care to the persons held within the penitentiary system, remains, in the opinion of the European Court for Human Rights, a structural problem, so far unsolved in Ukraine.

3. Taking into account the fact that the number of individuals guilty of “medical” crimes, remains stable and relatively small, the bodies in charge of pre-trial inquest are recommended to be more diligent in the investigation of such crimes, paying special attention to cause-and-effect between the actions or lack of thereof of the persons who had violated the right to medical care and socially harmful consequences, i. e. damages to life and health of people.

4. The national courts are recommended to refer in their rulings to the provisions of the Resolution of the Supreme Court of Ukraine Plenum of 31.03.1995 “On court practice in the claims dealing with moral (non-pecuniary) damages”, paying special attention to the Supreme Court’s of Ukraine interpretation of “moral damages”, which embraces not only damages, caused by physical injuries and/or death of the victim.

5. Court practices in “medical” cases should be systematized and published as a handbook enabling to formulate the principles of establishing what category of entities can be called defendants in these cases (physical person or a hospital with which the said person has labor relations).

6. The national courts should be aware of the obligation to refer in their decisions to the clinical protocols for medical treatment as the sources of law, defining mechanisms and standards for such treatment.

XVIII. RIGHTS OF PEOPLE WITH DISABILITIES¹

1. GENERAL INFORMATION

In Ukraine, according to the Ministry of Social Policy, as of January 1, 2013 the number of persons with disabilities was 2,788,226, or 6.1% of the total population, compared with 5.3% in 2006. Hence, the number of people with disabilities as of January 1, 2013 was 293.000 higher compared with the number of people with disabilities on the same date 2006 (Fig. 1).

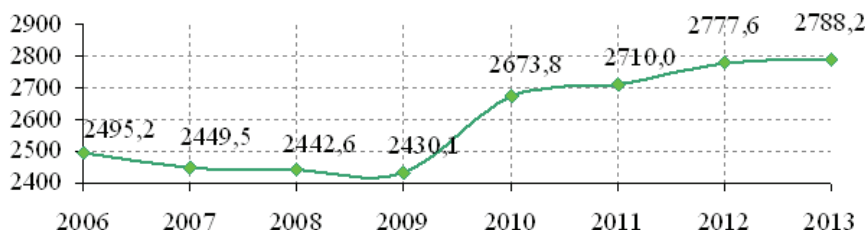


Fig. 1. Dynamics of the total number of people with disabilities in Ukraine at the beginning of 2006–2013, in ths (according to the Ministry of Social Policy)²

However, it should be noted that these figures do not reflect the real situation. The discrepancy of statistics is caused by the absence of continuous monitoring and imperfect data collection on the part of public authorities, as well as the reluctance of most people to get the status of “disability” because the bureaucratic system design and operation of medical evaluation boards. A number of medical diagnoses do not give the right to the status of disability: cancer, HIV, tuberculosis and so on³. The level of state protection of persons with disabilities is a reflection of the level of development of the society as a whole. It is the duty of the state to create conditions in society to ensure easy living environment for people with disabilities and other people with limited mobility.

The World report on disability among the main barriers that prevent disabled persons from feeling as other people enumerates as follows: inadequate measures, policies and standards, negative attitudes towards people with disabilities, lack of services and problems with their provision, insufficient funding; lack of unhindered environment; inadequate informa-

¹ Prepared by L. Baida, NADU, and M. Shcherbatiuk, UHHRU.

² National Report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

³ Alternative Report *The Lost Rights* to the UN Committee on the Rights of Persons with Disabilities, NADU, 2012.

tion and communication; lack of consultation and inclusion in social life; lack of experience and data.

For the purpose of recognition of equal rights of people with disabilities to full-fledged life in society, Ukraine, in December 2009, ratified the UN Convention on the Rights of Persons with Disabilities⁴ (hereinafter CRPD). In particular, Ukraine committed itself to respect human rights of this group of citizens. According to Article 9 of the CRPD, the states should take appropriate measures to create unhampered access to the physical environment, transportation, information and communication, as the participation of people with disabilities in social and meaningful processes is impossible without adequate access to necessary social facilities.

The main normative regulations that are intended to provide people with disabilities the right to a full-fledged life and create for people with limited mobility the barrier-free environment include the Law of Ukraine of 05.11.2009 no. 1704-VI "On building specifications", Law of Ukraine of 17.02.2011 no. 3038-VI "On regulation of urban planning", Law of Ukraine of 20.05.1999 no. 687-XIV "On architectural activity", Law of Ukraine of 21.03.1991 no. 875-XII "On basic principles of social protection of the disabled of Ukraine" SBN V. 2.2-17: 2006 "Buildings and constructions. Accessibility of buildings and facilities for people with limited mobility". Also, on July 29, 2009 the Cabinet of Ministers of Ukraine passed a Regulation no. 784 on action plan "Ukraine without Barriers" for creating unimpeded living environment for people with disabilities and other people with limited mobility for 2009–2015 and the Regulation of the Cabinet of Ministers Ukraine from 01.08.2012 no. 706 approved the State special-purpose program "National action plan for the implementation of the Convention on the Rights of Persons with Disabilities" for the period up to 2020.

In addition, the Verkhovna Rada of Ukraine registered the bill no. 3351 "On technical regulation of houses, buildings, structures, linear units of engineering and transport infrastructure and building products". Under the provisions of the bill, the buildings and structures as a whole or parts of them should be suitable for its intended use as required by applicable state building norms and regulations regarding safety of human life over the service life of buildings. Moreover, the buildings and structures should be designed and built taking into account their accessibility and use by persons with disabilities.

In addition to specific legislation, the rights of persons with disabilities are also dealt with in other laws, including the Civil Code of Ukraine, Laws of Ukraine "On the Election of the President of Ukraine", "On appeals by citizens" and so on.

However, the Convention on the Rights of Disabled Persons (hereinafter — the Convention), which upon ratification became part of the national legislation of Ukraine, is the most universal legal act in the field of human rights and disability in legislation of Ukraine.

⁴ When the Verkhovna Rada of Ukraine was ratifying the Convention, it used the title of the document in Russian (one of the official languages of the United Nations), therefore the word "person" was omitted from the title, which is in the English version of the "Convention on the Rights of Persons with Disabilities". Ukrainian language document title "The UN Convention on the Rights of Persons with Disabilities" — Alternative report "The Lost Rights" to the UN Committee on the Rights of Persons with Disabilities, NADU, 2012.

2. THE PROBLEM OF ARCHITECTURAL ACCESSIBILITY

In order to fully provide an independent way of life for people with disabilities, the government should create a barrier-free environment. Today, the architectural environment is not easily accessible, and in some cities of Ukraine completely inaccessible to people with disabilities, especially in the settlements with old housing stock and rural areas.

In this context it is important to note that the current legislation of Ukraine contains provisions on the need to ensure adaptation to the needs of persons with disabilities of information, buildings, roads, transportation and other objects of the physical environment.

It should be noted that in Ukraine there are no effective means of monitoring compliance with the laws relating to the creation of unhindered living environment for people with disabilities on the stage of design⁵.

Simplification of obtaining permits for construction of structures of I-III category of complexity (which makes 98% of the total construction of public buildings in the country) makes it impossible to monitor their construction and reconstruction. From designers and developers are not required to conduct examination and completion of project development.

According to the Law of Ukraine "On the Principles of Social Protection of the Disabled in Ukraine" planning and development of settlements, forming neighborhoods, designing, construction and reconstruction of the physical environment without adaptation for the use by the disabled are not allowed. Persons found guilty of violating the provisions of this Law bear prescribed by law financial, disciplinary, administrative or criminal responsibility (article 42).

Unfortunately, in Ukraine there are no laws that would regulate the implementation of NGO's control with participation of people with disabilities of all stages of creating barrier-free environment enumerated above.

The building specifications have solved at long last the problem of normative regulation of urban development projects allowing for the needs of persons with disability; however, the acute problem of adapting existing building stock is still there. The experience of recent years shows the facts of violations of the requirements of existing regulations during the reconstruction and re-equipment of existing projects, making irrational decisions related to the lack of practice of providing necessary conditions for people with disabilities or reluctance of some investors to tackle these problems, disregard of local authorities, and, sometimes, too formal approach. One of the reasons for hampering the creation of barrier-free environment is the absence of tolerance in the majority of the society towards people with disabilities, awareness of their problems and wants and the need to adopt appropriate measures⁶.

According to NGOs, in the presence of legal and normative acts on the accessibility one of the causes of the real inaccessibility is the lack of effective monitoring of compliance with these regulations and lack of understanding by the officials of social and economic benefits of implementation of the principles of accessibility and universal design.

⁵ National Report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

⁶ Ibid.

Moreover, in addressing issues of physical accessibility due attention is not paid to the safety of persons with disabilities in the provision of emergency evacuation.

In addition, NGOs have noted that the state does not take appropriate measures to influence private business concerning the creation of an accessible environment for people with disabilities. The banks, shops, hotels, movie theaters, sports facilities and canteens for the most part remain physically inaccessible⁷.

As for the judicial protection of the rights of persons with disabilities to ensure accessibility, it should be noted that in Ukraine there are only a few positive judicial results in these matters. However, some positive examples still occur. One such example is the case of Dmytro Zhary. So, on December 11, 2012 the Dnipropetrovsk Court of Appeal ruled an unprecedented decision for our country on the claim of Dmytro Zhary (citizen who moves on wheelchair) versus pharmacies that were not equipped with ramps and ordered the State Service of Pharmaceuticals to condition the issuance of licenses for pharmacies on their ensuring the rights of people with disabilities to live in the accessible physical environment. Dmytro Zhary went to court and obtained a ruling that can stop the shameful practice of building unusable ramps.

We may conclude that, despite the adoption in recent years by the central and local authorities of a number of measures aimed at ensuring accessibility for people with disabilities to residential and public premises, the environment and all types of public transport remain inaccessible for people with disabilities. There are still obstacles and barriers both inside and outside places of public accommodation. The sidewalks, curbs, pedestrian crossings, traffic stops, etc. are not suited for the free movement of people with disabilities. The elevators and intercoms in buildings are not equipped with a video or other devices for a deaf person to send a text message while communicating with a visitor or dispatcher.

3. THE PROBLEM OF ACCESSIBILITY OF THE COURTS

The Ukrainian courts are virtually inaccessible to people with limited mobility; such was the conclusion of the coordinators of the All-Ukrainian campaign “Justice without Barriers”, who published the results of monitoring of 72 courts in 16 Ukrainian oblasts⁸. Besides physical barriers, there are many meaningless rules and restrictions that make it difficult for the citizens to realize their right to a fair trial.

Over 50% of our fellow citizens experience movement complications. In other words, the issue of accessibility (architectural, information) relates to every other citizen of Ukraine. And there are no families which at least once in their life have not faced barriers in their path.

⁷ Alternative Report *The Lost Rights* to the UN Committee on the Rights of Persons with Disabilities, NADU, 2012.

⁸ The full version of the campaign “Justice without barriers” can be found here: <http://bit.ly/1b9RUwD>

The court must be accessible. This is not a cafe or a shop that one can always chose for her/his liking and purse.

So during the monitoring visits the obvious criteria for accessibility were checked: unobstructed entrance to the courthouse, free movement in the courthouse, simplicity of check-point system, free access of visitors to the WC unit and so on.

In particular, the results of monitoring 72 courts were as follows:

- in 19 courts there are no available items of information about the object;
- only 29 courts are equipped with ramps, but only 12 of them meet state building norms (SBN);
- 46 courts are equipped with frame metal detectors and turnstiles;
- 69 courthouses are not one-story structures, 65 of them have neither elevators nor moving platforms;
- a frequent occurrence in Ukrainian courts: too narrow doors, in 46 courts the doorway thresholds are above the standard height;
- too narrow hallways, often — with rapids and drops;
- the court clerical offices are inaccessible;
- 60 WC units are not marked and very often the access of visitors to these units is limited.

According to the co-coordinator of the campaign “Justice without Barriers”, coordinator of the projects of the Human Rights Center “Postup” Yuliya Krasilnikova, “from the outset of our campaign we expected to obtain such results. However, the monitoring of the accessibility of Ukrainian court produced not only quantitative results. Informing about the progress of our campaign, we have drawn attention to it of the media, the public, and, of course, personnel of courts and court administrations. We hope that the information pressure will affect those responsible for the organization of unimpeded access to the courts which will help to improve the situation”.

During the campaign “Justice without Barriers” other interesting facts came into view as well. Any photography is forbidden in most rooms of the court (but legally it is not regulated by any document).

Almost one-third of the establishments visited (23) has its own rules for admission of public to courtrooms. In particular, some courts prohibit jeanswear, with “the exposed parts of the body and without footwear”, “slippers”, “very dirty clothes”, clothes that do not befit the place, circus clothes, and theater or fancy dresses.

“The Constitution of Ukraine grants every person the right to apply to court to protect her/his constitutional rights and freedoms. However, it appears the courts decide on their own who is worthy to contact them... There are a number of limitations that may cause non-admission to the court. For example, one of Simferopol courts prohibits admission of people with carts and bicycles. Moreover, there are no formal exceptions for people who move in wheelchairs or for persons with prams.

“Accessibility is an instrument intended to implement the rights of citizens of Ukraine. If people are unable to get to the courthouse, it restricts their right to judicial protection and creates discrimination,” said Mykhailo Tarakhkalo, Director of Strategic Affairs of the Ukrainian Helsinki Human Rights Union (UHHRU).

4. THE PROBLEM OF AVAILABILITY OF TRANSPORT AND STREET INFRASTRUCTURE

Guaranteeing of accessibility not only of the environment but also of all forms of transport and transport infrastructure is an important condition for full integration of people with disabilities in social life.

In order to create appropriate conditions for the access of people with disabilities to the transport facilities, tourist infrastructure and postal services, which are subordinated to the Ministry of Infrastructure, the program for 2012–2016 has been developed, which identifies 296 measures realized by enterprises for their own account. 159 measures worth over UAH 9M have been realized by now.

During construction of new, reconstruction and capital repair of existing facilities and road transport infrastructure, postal services the executors take into account the new requirements of building norms and standards intended to meet the needs of persons with disabilities, in particular SBN B.2.2-17:2006 “Accessibility of buildings and facilities for people with limited mobility”, DBS-NB.2.2-31:2011 “Guidelines on construction of buildings and civil engineering elements of accessibility for persons with impaired vision and hearing”, DBS B.2.3-1–2008 “Transport facilities. Design, construction and operation of buildings and offices and industrial buildings of high-speed and super-high-speed rail transport”, GBS B.2.3-218-549:2011, “Transport facilities. Highways. Parkings and resting grounds and stopping places for cars. General requirements for designing”, GBS B.2.3-218-550:2011, “Transport facilities. Highways. Shuttle-bus stops. General requirements for designing” and so on⁹.

Certain improvements have been made by the state regarding accessibility for people with disabilities to rail, motor, and passenger motor transport.

Meanwhile, despite all official improvements, can anyone use the “end product”, i. e. accessible transport, infrastructure, service? According to expert of the National Assembly of Disabled of Ukraine L.Baida, s/he cannot.

According to L. Baida, the development and implementation of “accessible” transportation improves the lives of people, including people with disabilities. The term “accessible transportation” can be seen, firstly, as the accessibility of a vehicle and, secondly, as a transport infrastructure accommodated in accordance with the applicable standards and needs of people with disabilities and people with limited mobility (parking, entrances to the terminals, elevators and escalators, telephone booths, shops and canteens on the premises of transportation terminals, universal toilet cubicles, information in appropriate formats, etc.)¹⁰.

The accessibility in transport is regulated by the relevant standards and requirements. But...

⁹ National Report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

¹⁰ Good intentions of transport policy or availability Ukrainian-style http://blogs.lb.ua/larysa_bayda/232184_dobri_namiri_transportnoi_politiki.html

You may remember the saying: “The road to hell is paved with good intentions”. Something similar is happening now in formation and implementation of the policy of “accessible transport”.

Buying a railroad ticket for the same price as other passengers, people with disabilities traveling 8–10 hours and even more aboard the train cannot use the toilet and services like other passengers¹¹.

In Ukraine, according to official figures, there are in operation 19 cars for passengers with disabilities, and in each car there is only one adapted compartment with a toilet, while the quantity of potential users numbers hundreds of disabled. So, 19 people can use “accommodations” for humans. But what about all other passengers with disabilities? It’s anybody’s guess: humiliation of human dignity, overcoming many problems...

The developers of a new special passenger car have the best of intentions and emphasize that they take into account the needs of people with disabilities. Their enthusiasm goes overboard, but the idea and the product is a disaster for this group of population and other persons with limited mobility.

Designing such “special cars” that can never meet the needs of a significant number of people with disabilities we form our “inaccessible” future for many years ahead (the service life of a railroad car is 30–50 years).

Another example. Currently, the planners intend to produce/buy new subway cars with special areas for wheelchair-bound invalids. Good intentions, of course. But there is a question: “Who can use them if the entrance to the subway station and stations themselves are architecturally inaccessible?” And all problems with accessibility remain at the hands of the assistant station-master.

Promoting and providing “special services and adoption of special solutions” should be the exception, because they are “special” and therefore more expensive.

Now, let’s have a look at the theme of the new street-cars and trolley buses, which, according to the national target program on municipal electric until 2017, should appear soon on the streets of our cities.

Good intentions, of course. However, according to the financial part of this program, we see that from the very beginning the costs were built into transport, which is inaccessible to people with disabilities and people with limited mobility. So again, at the level of the state the planners design a policy of transport inaccessibility in our cities, which, having spent “double money”, we will have to fight with. But we are a rich country and we may be penny wise and pound foolish¹².

Given the above, we may conclude that the good intentions of decision makers and of those who adopt certain regulations often do not take into account the needs of all passengers: people with disabilities, parents with children, elderly and those traveling with heavy suitcases, our parents, wives, and children.

¹¹ Good intentions of transport policy or availability Ukrainian-style http://blogs.lb.ua/larysa_bayda/232184_dobri_namiri_transportnoi_politiki.html

¹² Good intentions of transport policy or availability Ukrainian-style http://blogs.lb.ua/larysa_bayda/232184_dobri_namiri_transportnoi_politiki.html

5. THE PROBLEM OF INFORMATION ACCESSIBILITY

Article 19 of the Convention on the Rights of Persons with Disabilities obliges the member state to help people with disabilities to live independently. Despite the fact that Ukraine has ratified the above-mentioned Convention, the state goes on systematically violating the rights of persons with disabilities to access information, which in its turn limits the scope of their free movement and mobility, and thus violates their right to independent lifestyle. The main violations include the absence of repeating aloud in public places of visual information or information written in Braille etc.

In particular, in all public places there must be visual information about the location of areas and services adapted for people with disabilities. This information should be presented in icons and symbols used in the international practice. The place of visual information in buildings should be adapted to the use by wheelchair-bound invalids. The warning information about approaching the barriers for visually handicapped people should be accompanied with changes in color and texture of the surface.

At the same time, the National Report on the Situation of Disabled People in Ukraine underlines that with respect to accessibility of information and communications for people with disabilities in Ukraine it should be noted that at present only a limited accessibility is to a certain extent provided for the persons with hearing impairment (the national legislation recognizes the finger sign language as a means of interpersonal communication and learning for people with hearing impairment and national TV newscast is accompanied by finger sign language).

The Internet is one of the most modern and popular media and communication technology today. The World Wide Web contains a variety of information on education, employment opportunities, health care services and more. Furthermore, the web sites are channels of public participation and building social networks. However, in Ukraine they are almost inaccessible to persons with disabilities¹³.

It should be noted that one of the factors that may contribute to the principle of accessibility is to conduct public examination of implementation of accessibility measures approved by the government. At least in the regions in which they had been realized they brought some results. As an example, we can tell about public examination in Rivne, which was conducted mainly by the Rivne oblast branch of "Successful Action Generation" in cooperation with other concerned NGOs of invalids in August-October 2013¹⁴.

6. FINANCING ACTIVITIES AIMED AT IMPLEMENTING THE RIGHTS OF PEOPLE WITH DISABILITIES

Another aspect of the rights of people with disabilities consists in funding activities aimed at implementing the rights of people with disabilities (including social, financial, medical, sanatorium-resort therapy) and removing obstacles to their implementation.

¹³ National report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

¹⁴ <http://netbaryerov.org.ua/rivnenska/1531-gromadska-ekspertiza>

The current legislation makes provisions for a system of social security for persons with disability. In particular, these people are paid pensions, and persons looking after them are paid for nursing jobs. In addition, people with disabilities are provided a variety of benefits, including the treatment, purchase of medicines, prosthetics and more.

However, like all socially disadvantaged groups in Ukraine, the people with disabilities often find themselves on the poverty line. Since spending on social services are funded on the basis of the financial possibilities of the budget, all pension payments and benefits are rather moral than material support from the State for people with disabilities.

According to the official website of the State Statistics Service of Ukraine, the average disability pension in Ukraine made UAH 1,360 in 2013¹⁵. Depending on the cause of disability, disability group, insurance, years of service and other factors the disability pension varies, but in a rather small range. Therefore, as of 2013, especially considering the specific needs, the people with disabilities in Ukraine were in an extremely difficult financial situation.

In order to improve the situation of people with disabilities, on August 1, 2012 the Cabinet of Ministers of Ukraine approved the State Program “National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities” for the period up to 2020.

The program states that for its funding the State Budget of Ukraine is planning to allocate UAH 14 bn. But then the same program specifies that funding for the program shall be defined more exactly while drafting the State Budget of Ukraine for the respective year and taking into account its cash flow.

It should also be noted that V. Sushkevich, Chairman of the Verkhovna Rada of Ukraine for Pensioners, Veterans and Disabled prepared proposals for the draft budget for 2014, which just concerned funding for the provisions for the rights of persons with disabilities. Unfortunately, most of these proposals were not taken into account indicating the lack of sufficient budget resources intended to ensure the rights of people with disabilities and not prioritize funding for this sector.

Given the general state of state funding of social needs in recent years, realizing the program will likely prove to be an elusive goal, and its specifications will be nothing but a usual declaration of noble intentions.

7. OBSERVANCE OF THE RIGHTS OF PERSONS WITH DISABILITIES

It is also worthwhile considering the state of observance of the rights of persons with disabilities. For example, due to their disabilities not all invalids can get to their own polling stations. The electoral laws (“On Elections of the President of Ukraine”, “On Elections of People’s Deputies of Ukraine” and “On the Election of Deputies of the Autonomous Republic of Crimea, local radas and village, town and city mayors”) do not contain any specific requirements for polling stations to grant their accessibility to people with disabilities.

¹⁵ <http://www.ukrstat.gov.ua>

Usually polling stations are located in schools, clubs and other public places. Under the current regulations, such public buildings should have ramps and other contrivances for people with disabilities, but in reality it is often not the case, as it is on paper, and not all such facilities are properly adapted for the disabled. This is the first barrier for the people with disabilities during the elections.

The National Report on the Situation of Disabled People in Ukraine indicates that the majority of visually handicapped people can to appear at the polling station. However, they have difficulty in moving around without help, and these difficulties are the greater, the greater is the degree of vision loss by an established group of disability. In particular, people with disabilities, the first group, have significant problems with moving independently, while persons with disabilities, the second and third groups, though within appropriate limitations, have much lesser problems. The equality of citizens before the law means their ability to perform appropriate actions on equal terms. Therefore the visually handicapped persons, whose health permits them to appear at the polling station, need to have possibility to overcome obstacles to their mobility.

In addition, problems can occur directly in the polling booth. While completing ballot paper and putting it into a ballot box a disabled person with low vision needs to be sure that the person helping her/him actually realizes her/his will. However, control of election commission officials during completing ballot paper and putting it into a ballot box is forbidden. Thus, the right to vote of persons with visual impairments may be realized only when the above actions are performed by an accredited representative. Thus, a visually handicapped person should choose her/his accredited representative by herself/himself and go with her him to the voting booth. However, the law does not expressly provide for such a possibility; in practice there are many cases when members of election commissions prevent persons with visual impairments to go to the voting booths together with their accompanying persons.

The election process is often accompanied by voters' appeal concerning certain actions or decisions of election commissions. The absence of voters in the electoral lists at the place of registration is an exemplary case. In such cases, a physically sound person runs into difficulties defending her/his rights. It's hard to imagine the difficulties with which persons with disabilities may encounter while complaining of malfunction of election commissions.

The legislation specifies a relatively short period of appeal against actions or decisions of election commissions: 22 hours. However, given the maladjustment of buildings, streets and transport for the needs of a person with a disability, it is almost impossible for such a person to independently defend her/his right to vote, let alone the right to be elected.

The legislation provides an opportunity for persons with disabilities to vote outside the polling station. In this case, members of the election committee must come to a person with a disability with the ballot box. However, in order to take advantage of this law, the invalid must first file an application to the election commission, which in its turn may be not that easy. Moreover, it is rather problematic for such a person with a disability to appeal against the decision of the election commission to turn down the application for such voting.

The electoral commission is expected to ensure equal participation of persons with disabilities in the electoral process, that is, they must have the same conditions as all voters, but in reality, of course, one should yield the way to people who cannot stand in line and provide appropriate assistance to those for whom it is difficult to independently perform the whole

procedure of obtaining a ballot paper and vote. The letter of the law requires not so independent voting as rather free individual choice which in special circumstances involves getting the needed help. This applies to blind voters who are unable to independently use Braille, because at this time there are problems with its use. Braille can be used only by those visually handicapped who have studied in schools for the blind or lost their sight at a young age. Pupils of the schools for dull-sighted and people who lost their sight in later life for the most part cannot use Braille. There might be a way out if the election legislation introduced for visually handicapped a special institute of authorized representatives, who should help such elector not only to receive a ballot paper, but also to acquaint her/him with the contents of this ballot paper and directly assist her/him to fill it out¹⁶.

It is also noteworthy that the presence of specific legislation to ensure the realization of voting rights of persons with disabilities is inadequate, especially when it comes to people with disabilities, visually handicapped and deaf persons. Thus, no legislative and normative acts provide for the introduction for the deaf persons of mandatory titration and translation in sign language (sign language translation) of election talks on television.

In the first place, the visually handicapped persons have no access to legislation and official notices regulating the conduct of elections, election information posted at election stations and addressed to all voters. Lack of equal access to this information impedes the expression of the free and conscious will of visually handicapped, which is contrary to the principles of equality of all citizens in the exercise of their voting rights¹⁷.

Thus, the electoral legislation of Ukraine does not take into account all the needs of people with disabilities. Despite the efforts of legislators to allow for the needs of these people, the realization by persons with disabilities of their right to elect and to be elected is extremely complicated.

8. LABOR RIGHTS OF PEOPLE WITH DISABILITIES

The labor rights of people with disabilities also need better protection. The Law of Ukraine "On the Principles of Social Protection of the Disabled" provides quota for disabled in enterprises at a rate of 4% of the authorized strength of workers, and if the number of employees is from 8 to 25 employees, at least one person with a disability must be on the staff.

However, today the issue of control over the surcharge and payment by employers of administrative and economic sanctions and penalties for non-fulfillment of employment rules is not legally settled. According to the Regulations of the Fund for Social Protection of Disabled Persons approved by the Ministry of Social Policy of 14 April 2011 no. 129, the Social Security Disability Fund has no more the authority to conduct inspections for compliance with the legislation on employment and employment of disabled persons, and the State Committee on Labor has no legally defined powers yet to control the calcu-

¹⁶ National report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc, Securing voting rights of citizens with visual impairments //Access : <http://www.just.gov.ua/content/303/>

¹⁷ National report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

lation and payment by employers of administrative sanctions and penalties for non-compliance with the norm¹⁸.

At the same time, the mandatory quota of persons with disabilities at businesses is easily bypassed by employers by creating positions for people with disabilities without access to their actual work. These positions exist only on paper, and such workers are paid a monthly sum of money as compensation. Thus, the wolves are sated and the ship intact. However, in this case the people with disabilities are not getting involved in work, and hence have no access to a full-fledged life.

This situation is quite clear. Employers are trying to save and have no problems with the law. For the employment of people with disabilities the employers need to create appropriate conditions, adapt existing production facilities and jobs entailing certain expenses which they are trying to avoid.

Consequently, the existing mechanism for implementing the human rights of the disabled cannot get them involved in the work and social life, and cannot make employers to employ people with disabilities. In this situation, it is worthwhile to quit forcing employers and start encouraging them to create jobs for people with disabilities.

Besides, it is also necessary to pay attention to the fact that in our country the existing barriers to free access to the labor market of deaf people who have technical and/or professional qualifications. Thus, the order of the Ministry of Health on May 21, 2007 no. 246 establishes health limits that restricts access to certain jobs or professions. Persons of some categories are not allowed, for example, to work in the shops and in industries that have industrial noise or vibration, as well as machines and mechanisms that have moving components. However, such limitations do not meet international standards. Due to the above limitations, the deaf persons with some special technical education cannot pursue their professions in metalworking, woodworking and other enterprises and have to feel content with jobs that require no qualifications (janitor, maid, packer, etc.). Hence, in order to ensure the right of deaf persons with special professional or technical education to pursue their professions, it is necessary to amend the above order of the Ministry of Health removing existing restrictions (under condition of establishing appropriate means and elimination of risks to life of this category of persons with disabilities in the relevant industries).

Also, it should be noted that in Ukraine the government does nearly nothing to develop for people with disabilities conditions for outwork. However, many disabled people prefer to work on such terms. The sociological survey of almost 3,000 thousand people with disabilities conducted in 2010 by the experts of the institute of industrial relations indicates that 54.3% of them think that the lack of flexible manufacturing systems in the labor market is a barrier to their integration into working life.

It should be observed that in Ukraine there are no official statistics on work performed away from the factory, office, etc., by which it has been commissioned. There are no data on the number of outworkers by category of employees (pensioners, people with disabilities, women, young persons, etc.). That is why today, in the Ukrainian market economy, it is impossible to analyze the output produced by outworkers with disabilities.

¹⁸ National report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

The Ukrainian legislation has no provisions encouraging domestic employers to start developing the use of outwork. Ukraine did not ratify the basic international instrument in this field: the ILO Convention no. 177 “On the Home Work” (1996). At the same time it is necessary to adopt an updated Regulation on Home Work which will regulate labor relations with this group of employees, organization and conditions of work, wages, vacations, social security and incentives to employers who use home-based work, and will include an indicative list of works recommended to perform at home¹⁹.

9. RIGHT TO EDUCATION

The Constitution, in art. 53, declares the right of everyone to education.

Guarantees of the right to education for all citizens of Ukraine, without exception, including persons with disabilities, are specified in such basic documents on education as the laws of Ukraine “On Education”, “The pre-school education”, “On General Secondary Education”, “On Vocational Education”, “On Higher education”, and “On Protection of Childhood”.

In addition to the above documents, the right to education directly for people with disabilities is stipulated in the special legislation on social protection and rehabilitation of people with disabilities: Laws of Ukraine “On the Principles of Social Protection of the Disabled in Ukraine” and “On the Rehabilitation of the Disabled in Ukraine”. Thus, we can state the fact that Ukrainian legislation recognizes the right of persons with disabilities to education on the basis of equal opportunities with other citizens.

The number of children with disabilities is 6.1% of the total number of people with disabilities. In Ukraine, every year, more than 18,000 children are recognized as disabled.

In recent years, the discussions are underway and steps are taken to implement inclusive education in the country where every child with a disability has the opportunity with other children to attend kindergarten, go to school, along with others to obtain high-quality secondary and higher education.

As of 2013, this project is being realized in 20 pilot educational institutions, which comprise 49 experimental groups. 178 children with special needs acquire knowledge in integrated education classes, on the basis of four institutes of postgraduate education, several problem-focused courses are also being realized. 393 teachers were trained according to the program “Attracting children with special needs”.

According to statistics, in 2012/2013 academic year, there were 380 special secondary schools, which taught 45,357 pupils with special educational needs, including 12,742 children with disabilities, including:

- 328 special boarding schools with enrollment of 39,682 students;
- 32 training and rehabilitation centers where 4,987 children with special needs caused by complex defects studied and received comprehensive rehabilitation services;
- 20 special schools with after-school daycare programs, where 688 children with developmental disabilities studied at place of their residence.

In addition, 5,675 of such children studied in 508 special classes in secondary schools.

¹⁹ National Report on the situation of disabled people in Ukraine mlsp.kmu.gov.ua/document/156474/st.doc

The regulatory framework focused on the implementation of inclusive education was gradually developed and improved. At present, the State established a new standard of primary education for children with special educational needs ensuring children (visually handicapped, impaired hearing, with speech disorders, with mental deficiency, mental retardation, cerebral palsy) equal opportunities for early remedial help and quality education (Regulation of the CMU on August 21, 2013 no. 607).

However, despite the revival of work on the implementation of inclusive education and some successes along the way, there are many obstacles to its successful development. The main negative factor is the lack of funding for inclusive education. There is no separate funding of education for children with special needs and it is not built into the budget. As a result, there emerges a problem of inadequate logistical support and staffing of secondary schools.

As of December 1, 2012 only 20.0% of the total number of educational establishments are accessible to children with disabilities. Full accessibility of educational institutions requires considerable financial backing.

One of the main problems in the education of children with disabilities is also a lack of consistency in the provision of educational and rehabilitation services at all levels of the educational process with mandatory psychological, educational, medical and physical rehabilitation. Today there is no classification of mental and physical disorders, which might specify with what impairments the children can go to an educational institution.

Realization of the right to education of children with disabilities in our country takes place mainly in boarding institutions: special pre-schools, boarding schools, rehabilitation centers, which inhibits personal development and restricts the circle of contacts of children. Consequently, a very small percentage of people with disabilities become students of universities, colleges, and schools.

In addition to objective factors, the integration of disabled children into society is complicated by unpreparedness of society to conform to them. There are numerous cases when children with disabilities are denied acceptance to the school because of prejudices of school headmasters. On the other hand, children with special needs often find overcaring, which in accordance with European standards is not a case of equality of conditions. At the same time, there remains a low level of public awareness about inclusive education system.

In rural areas, the inclusion of children with disabilities in preschool education is not up to the mark because of the almost total lack of targeted pre-school groups (compensating type).

To ensure the educational rights of children with disabilities (along with pre-school and secondary education) sector of vocational education is extremely important. Currently, the percentage of vocational school students with special educational needs is 1.4% of the total number of students. Teaching students with special educational needs in vocational schools is primarily performed in the general groups with other students. However, there are cases when such training is not possible. In such cases, special groups are created, for which curricula are developed with the increased term of training depending on the type and severity of the disease and the complexity of teaching material. In vocational schools with special groups for training young people with special educational needs there are equipped classrooms and training and production workshops that are supplied with manipulative, didactic, informational, illustrative materials and more.

It is worth noting the experience of cooperation of the Kyiv Interregional Higher School of Communication with the Ya. P. Batiuk Kyiv special comprehensive boarding school no. 5 for blind children. Thanks to the cooperation of these institutions two experimental programs in the profession “Computer Typist” were developed. Training is conducted on computers adapted to their specific use by students with visual impairments.

At the same time it should be noted that due to legislative grants of special benefits for disabled persons entering vocational schools and rising awareness by people with disabilities of the importance of their higher education, their number in Ukrainian establishments of higher education is growing. In 2007/2008 academic year 12 262 students with disabilities attended higher educational establishments of I-IV accreditation levels; in the 2012/2013 academic year their number was almost 1.5 times greater (18 825 students with disabilities). This represents 0.87% of the total number of students of establishments of higher education.

According to the Unified State Electronic Database on Education, in 2013 over 5.3 ths of invalids of 1st and 2nd groups and disabled children under 18 with no contraindications against chosen profession or 1.4% of all entrants went to the establishments of higher education of I-IV levels of accreditation.

10. RECOMMENDATIONS

1. Ensure implementation (including appropriate financial support) of the National Action Plan for the Implementation of the Convention on the Rights of Disabled Persons.

2. Develop and adopt amendments to the legislation intended to bring it into line with the requirements of the UN Convention on the Rights of Persons with Disabilities. There is a need for consolidation of practical mechanisms for implementing basic “standards” to protect rights of persons with disabilities.

3. In order to ensure effective access to health care for people with disabilities to accelerate the adoption of the Law of Ukraine “On Compulsory State Social Health Insurance”. Establish counseling for women with disabilities and families, which foster a disabled girl, on disability issues and reproductive health. Ensure the existence of architectural accessibility of these consultations taking into consideration problems of women with musculoskeletal diseases, visual and hearing impairments,

4. Changes are needed at the level of constitutional legislation of Ukraine, because the terms “equality” (exists in constitutional legislation) and “non-discrimination” concerning the disabled are not identical and differ in meaning.

5. The Ministry of Health should develop measures of, which provide for incentive mechanisms, including financial ones, concerning psychosocial rehabilitation approaches and treatment of persons with mental disorders.

6. Develop a system of inclusive education, including training of teachers, determine the sources and amounts of required state funding. Provide for publishing manuals for children with visual impairments, deaf, and mentally impaired. Take appropriate measures to employ persons with disabilities to work in the field of education.

7. To use the principles of accessibility, universal design, reasonable accommodation taking into account individual needs in schools.

8. Provide training and retraining of teaching staff concerning the matters of disability, inclusive education, support for children with disabilities, creation of barrier-free environment of educational institutions.

9. Introduction of a monitoring and evaluation system of implementing inclusive education; open these monitoring data to the public.

10. Involve civil society organizations of persons with disabilities in decision-making regarding the right to education.

11. Enforce legislation of Ukraine in drafting individual rehabilitation programs for every disabled person.

12. Develop an effective mechanism to ensure procurement to people with disabilities of rehabilitation equipment and medical supplies as well as monetary compensation procedure for independent purchase of such means. The effective mechanism should be based on the principles of targeting, feasibility, rationality, and efficiency.

13. Ensure persons with disabilities the right to work. In particular, to develop and implement an institute of professional assistant of the specialist with disabilities in carrying out her/his professional work in order to grant equal opportunities in the implementation of the right to employment.

14. Provide for deinstitutionalization and independent living in the community with comprehensive support for people with disabilities who require constant care and supervision, gradually reducing the number of boarding schools and developing a system of schools in the community to live with the support of 8-16 adult citizens with disabilities.

15. To gradually reform the system of guardianship and care of citizens with disabilities who do not understand the significance of their actions and their consequences, remove economic restrictions, including proprietary, political and other rights of these persons with disabilities, including those provided for in article 70 of the Constitution of Ukraine and article 32 of the Law of Ukraine "On the Principles of Social Protection of the Disabled in Ukraine".

16. Start implementing supported decision-making with the provision of qualified assistants for people with disabilities who do not understand the significance of their actions and the ensuing consequences.

17. To amend the existing legislation in accordance with the obligations under article 29 of the CRPD in order to eliminate discrimination and to create an environment where people with disabilities can fully participate in political and public life.

18. To monitor the implementation of existing legislation in order to grant non-discrimination of persons with disabilities in the electoral process.

19. To introduce the concept of universal design intended to provide people with disabilities access to all aspects of political and social life.

20. Ensure training of officials responsible for conducting elections and responsible for monitoring the polling stations for tackling disability issues, communicating with people of different nosology, equipment of polling stations, access to information, etc..

21. To amend the current legislation of Ukraine on gender equality in order to allow for the needs of persons with disabilities.

XVIII. RIGHTS OF PEOPLE WITH DISABILITIES

22. Implement public control over the situation of girls and women with mental and health disorders who stay in institutions of social guardianship.

23. Ensure creation of a system of protection against ill-treatment of women with disabilities who stay in mental institutions and other state closed establishments.

24. Ensure delivery of quality health care services for women with disabilities to meet individual needs in health care. To train personnel of medical facilities in the existing needs of women with disabilities and ethics of communication.

25. Promote a positive image of women with disabilities in the media.

26. Implement measures to actively employ women with disabilities in education, social policy, and health care.

27. Amend existing legislation to CRPD standards regarding the right of access to information for people with disabilities.

28. Introduce effective control over the implementation of existing legislation and art. 21 of the CRPD on the rights of persons with disabilities to have access to information.

29. Oblige the central and local government bodies to use, when communicating with people with disabilities, means and formats that facilitate information access and adapting information and information products on obtaining public services.

30. Take administrative and promotional steps through the mechanisms of dialogue and social responsibility for the dissemination of information by the private sector in the formats and methods accessible for people with disabilities.

31. Take measures to stimulate the development of the market of audio books, support publishing printed matter in Braille, support data adaptation using the method of “simplified reading” in the cultural and educational establishments.

32. With the participation of people with disabilities to establish standards for forms, criteria and time of titration and sign language translation of programs (information blocks, official information, children’s and youth programs, legal information and notices, and health care) for both public and commercial television broadcasters, take steps (including positive incentives) for adapting in electronic format and access to the paper editions for blind people.

33. Ensure the use of new technologies, improving the independence and autonomy of persons with disabilities in exercising their right to information.

34. Promote the implementation of the principles of universal design to new developments in information and communication technologies.

XIX. ENVIRONMENTAL RIGHTS

1. RIGHT TO SAFE ENVIRONMENT

Delayed information on environmental safety and lack of objectivity has become quite common over the recent years. Under these circumstances well-grounded conclusions on the adherence to the right to safe environment and adequate system of environmental policy to respond to environmental and technogenic hazards can hardly be expected.

The new facts proving that the governmental structures responsible for conducting environmental monitoring have lost control over the situation are constantly revealed. Thus an environmental organization “Zelenyi svit” sent a request to the Ministry of Environment concerning the disposal of the toxic component of the rocket “melange” fuel, 16 thousand tons of which are stored in the military bases located in different regions of Ukraine. It has been one of the most successful projects over the recent years, implemented with the help of OSCE coordinator for economic and environmental activity — optimistic information with respect to the removal of hazardous matter from the military bases sites has appeared more than once in the official publications and media.² The answer provided by the Ministry of Environment demonstrated that the chief department in charge of environmental issues does not possess reliable information on the implementation of this well-known project. “Zelenyi svit” had to submit more requests, including requests to the Ministry of Defense and local administrations, in order to obtain the needed information.³

The Ministry of Environment has lost control over situation at the regional level due to consistent ruination of the state environmental policy system, which has been going on over the recent years. The year 2013 was characterized by rapid deterioration in the system. Governmental decree adopted in response to the presidential administrative reform and one of the outlandish “deputy Miroshnichenko’s laws”⁴, on May 18 disbanded all the territorial subdivisions of the Ministry.⁵ Some of the former competences of the departments were delegated to the newly formed ecological departments under the oblast’ state administrations. In real life the newly formed departments have not become the heirs of the liquidated departments of the Ministry of Environment; many specialists have left;

¹ “Environmental rights” section was prepared by O. Stepanenko, board member of UHHRU, executive director of “Zelenyi svit”, head of “Helsinki initiative — XXI» group.

² <http://www.osce.org/uk/ukraine/70253>

³ Request for information from “Zelenyi svit” no. 06-11 of November 21, 2013 to the Minister of environment and natural resources of Ukraine O. Proskuryakov, <http://greenworld.in.ua/news/1393440198>

⁴ <http://zakon4.rada.gov.ua/laws/show/5456-17>

⁵ Resolution of the Cabinet of Ministers of March 13, 2013 no. 159 “On disbanding of territorial units of the Ministry of environment” — <http://zakon2.rada.gov.ua/laws/show/159-2013-%D0%BF>

the list of official positions does not include that of a specialist in charge of environmental policy.

It means that over a year an unprecedented loss of information, professional potential and experience, accumulated over the decades of environmental has occurred. According to the National environmental center of Ukraine⁶, this step became an apotheosis of alleged “improvement” in environmental policy, which can result in its total collapse.

The only sensible argument voiced by the advocates of the expanding administrative reform to the territorial subdivisions of the Ministry of Environment was the request for the INTEGRATION OF THE ENVIRONMENTAL POLICY into the operation of the local self-governments. In fact, the law on environmental policy strategy of Ukraine till 2020⁷ envisages the INTEGRATION of the strategy provisions into the regional programs of social-economic development and their inclusion into the regional action plans for the environmental protection. So what was the outcome of the reforming? How can one familiarize oneself with the aforementioned programs and plans? Over the year not a single oblast’ administration has published a report on the implementation of the environmental protection program in the official mass media; neither has it presented it at its plenary meeting, although it is its constitutional obligation (article 119). Not a SINGLE official portal of oblast’ state administrations offers a valid oblast’ environmental protection program or a draft for such program, or a project for a regional action plan, or call for public participation in the discussion over a draft project. The programs for social and economic development of the oblast’s (i. e. the available ones), this year, like in former years, do not reflect the characteristics of transition to the principles of sustainable development, which stipulates INTEGRATED evaluation of economic, social and ecological factors and anticipated outcomes of the strategic planning. On top of everything the Cabinet of Ministers⁸ liquidated the National council for sustainable development of Ukraine.

Almost no information on environmental issues dynamics, scope of use of natural resources, operation of the new environmental departments under oblast’ state administrations is available. For example, the official sites of Dnipropetrovsk⁹, Donetsk¹⁰, Kharkiv¹¹ and many other oblasts’ state administrations contained only information on procedural steps and contact data of the officials.

As the environmental policy has lost its priority position in the governmental operation the whole areas of the environmental protection activity have become frozen. Thus, the analytical review of natural reserves situation, prepared by renowned ecological organizations (NECU, “Ekologia.Pravo.Lyudyna” Foundation, “Pechenehy” etc.) pointed out that following a short period of time between 2008 and 2010, when the development of the nat-

⁶ <http://necu.org.ua/18-travnya-den-ekolohichnoho-trauru/>

⁷ Law of Ukraine “On main principles (strategy) of the state environmental policy of Ukraine till 2020” — <http://zakon2.rada.gov.ua/laws/show/2818-17>

⁸ Cabinet of Ministers of Ukraine Resolution of March 13, 2013 no. 180 “On liquidation of some consultative, advisory and other auxiliary bodies set up by the Cabinet of Ministers of Ukraine”

⁹ <http://www.adm.dp.ua/OBLADM/Obldp.nsf/b07122b559dbcb50c22572ba0052a791/3535a0ed18949900c2257b88005a5053?OpenDocument>

¹⁰ <http://donoda.gov.ua/?lang=ua&sec=02&iface=ODA&cmd=details&args=id:830>

¹¹ <http://kharkivoda.gov.ua/en/mainmenu/index/id/999>

ural reserves' territories has been on the rise, a dramatic decline in this area, dubbed "the ice age" started and still continues. As one of the outcomes of the land reform, the amount of territories with environmental potential and reserves in public property, decreased dramatically. The creation of the new national reserves is vehemently opposed at all levels. The documents for many newly created natural preserves are lost. The natural preserves are protected only by the NGOs, conscious scientists, and a few public servants who are still performing their duties by force of habit.¹² The consequences of the process for the environmental safety at the nationwide level, public health and exercising of environmental rights are unpredictable.

The neglect of environmental policy in Ukraine was noted by the international experts. Thus, according to the EPI, Environmental Performance Index, calculated in 2012 by the Yale Center for environmental law and policy together with Columbia University and World economic Forum, Ukraine ranked 102nd out of 132 countries of the world.¹³

The experts of the National institute of the strategic research under the President are certain that under the energy- and resource-consuming developmental structure in Ukraine the GDP resource consumption is 3-4 times higher than the respective mean value for Europe, which has a negative impact on environment and public health. Further development under this model can lead to the further decrease in efficiency of the use of nature and increase of the threat of large scope of environmental hazards.¹⁴

2. RIGHT OF ACCESS TO ENVIRONMENTAL INFORMATION

Over the year the Ministry of Environment has failed to make public the National report on the condition of the natural environment. The latest report which contained summarized information on environmental situation in Ukraine, appeared in 2011.¹⁵ Publications of information and analytical reviews on environmental situation stopped even earlier.¹⁶

The Ministry of Environment started posting results of state environmental inspections for the years 2009–2011 only when obliged to do so by the court decision on the claim of "Ekologia.Pravo.Lyudyna" NGO. After a year some information posted earlier was removed from the ministerial site in the course of its "updating"; the conclusions of the inspections have not been publicized since. Currently the results of the state environmental inspections are not available on the web-portal of the Ministry.¹⁷ Looks like fundamental provisions of

¹² http://epl.org.ua/uploads/media/EPL_17_18_for_web.pdf

¹³ <http://epi.yale.edu/epi2012/rankings> EPI — method of quantitative method and comparative analysis of the environmental policy of the world states, based on the goals of millennium declaration of 2000 and calculated on the basis of natural resources indicators, viability of ecosystems, environmental safety and environmental impacts on public health

¹⁴ "Analysis of tendencies and nature of changes in the Ukrainian natural environment within the context of European integration" Analytical note of the National institute of the strategic research– December 2013. — <http://www.niss.gov.ua/content/articles/files/Zminy2014-244f0.pdf>

¹⁵ <http://www.menr.gov.ua/index.php/dopovidi>

¹⁶ <http://www.menr.gov.ua/index.php/dopovidi/infooglyad>

¹⁷ <http://www.menr.gov.ua/index.php/reports/330-viddil-derzhavnoi-ekolohichnoi-ta-heolohichnoi-ekspertyzy>

the law “On environmental inspections” concerning the transparency of the said inspections are forgotten completely by the Ministry. What, if not corruptive interests, could cause such short memory?

The State Committee for Statistics of Ukraine also is lagging behind with its information.¹⁸ Its statistical bulletin “Ukrainian environment” was not published this year. Yearly report of the Ministry of Health on the public health of the Ukrainian population and sanitary/epidemiological situation in 2013 was not published either. No up-to-date information on the environmental factors’ impact on public health can be found on the official web-portals of the Ministry of Health and its offices, although the Ministry should monitor environmental situation within its terms of reference.¹⁹ The web-portal of the Ministry of Environment contains the information of natural environment and technogenic safety in 2012²⁰. Under the article 2 of the law “On the Prosecutor’s office” the Prosecutor General Office shared the information on rate of legality in the country for 2012 with the Supreme Rada,²¹ but the quality of this information was, as usual, rather poor.

3. RIGHT OF PARTICIPATION IN DECISION-MAKING ON THE ENVIRONMENTAL ISSUES

The protests against the irresponsible actions of power in the accelerated implementation of the projects related to the exploration of non-traditional gases (fracturing) without due assessment of the environmental impact of such projects. On September 22 the “Big anti-fracturing march” was held in Kharkiv. The activists collected signatures under the petition to the Supreme Rada, the Cabinet of Ministers of Ukraine, Kharkiv oblast’ council, in which they demanded the banning of the decision of oblast’ council of January 17 concerning the contract with “Shell” company on distribution of carbon hydrates extracted in “Yuzivska” field; the publicizing of the text of the contract with “Shell” and taking into account the recommendations made at the hearing of the parliamentary committee on environmental policy of July 4, etc.²²

Environmental NGOs kept criticizing the official stand of M.Azarov and the Supreme Rada with respect to the decision on the construction of units no. 3 i 4 of Khmelnytsky NPP without any heed of the public opinion. They pointed out, among other things, the further deepening of the power dependence on Russia, direct negative impacts, violation of the national law and international treaties, in particular, of Aarhus convention and ESPOO convention. The problems engendered by the construction of units no. 3 and 4 of Khmelnytsky NPP were formulated in a special analytical report prepared by NECU and “Eko klub” NGO.²³

¹⁸ <http://www.ukrstat.gov.ua/>

¹⁹ <http://www.dsesu.gov.ua/ua/sanepidsytuatsiya/sanepidsytuatsiia-v-ukraini>

²⁰ National report on the state of technogenic and natural safety in Ukraine in 2012– <http://www.ns.gov.ua/content/nasdopovid2012.html>

²¹ http://www.gp.gov.ua/ua/vlada.html?_m=publications&_t=rec&id=117906#

²² <http://www.zfront.org/harkiv-velika-antifrekingova-hoda/#more-11776>

²³ Analytical paper “Construction of units 3 and 4 at Khmelnytsky NPP: the Supreme Rada position”. <http://www.ecoclubrivne.org/files/XAEC3,4.pdf>.

The violations of the ESPOO convention provisions in the course of the construction of blocks no. 3 and 4 of Khmelnytsky NPP obviously are considered by the convention Committee on the implementation following a petition submitted by a Byelorussian NGO.²⁴ The consultations with the concerned parties to the ESPOO convention can help in enforcing their recommendations. Some observations can still be considered at the designing stage. At the same time, observations concerning the nuclear unit or chosen technology cannot be taken into account. Complete adherence to the convention requirements is not considered either, as the decision on location, design and construction was made as long ago as 2012, while the convention requests environmental assessment in the trans-boundary context and international consultations with public participation prior to any decision-making.²⁵

Noteworthy, the development of the “ecological democracy” is among the prerequisites in Ukraine’s signing of association agreement with the EU. An entire section of draft Agreement (no. 6) is dedicated to the environmental protection and sustainable development. In particular, article 366 of the Agreement stipulates permanent dialogue with public at large on the issues of environmental protection. Currently the experts from the Ukrainian NGOs have assessed the rate of public participation in environmental decision-making as “satisfactory” only — they believe that the Ukrainian citizens are involved in the process only sporadically²⁶.

4. RIGHT OF ACCESS TO JUSTICE WITH RESPECT TO ENVIRONMENTAL ISSUES

While the state systematically neglects its constitutional obligation, i.e. being the guarantor of environmental safety and ecological balance in the whole territory of Ukraine, the issue of court protection of the environmental rights becomes especially relevant. Despite a relatively small a number of the cases won in courts, non-governmental organizations could have boasted of a range of successful precedents over the past year.

Lviv appealation economic court passed a decision sustaining the decision of the first instance court on the claim of the EPL to “Sorensen and Haar” concerning access to the environmental information, having obliged the defendant to provide the claimant with the documents justifying the discharge of the polluting materials into the atmosphere.²⁷ So far it is one of the few court cases in Ukrainian practice, when the court obliged a private company polluting the environment to ensure access to information on the basis of the Law

²⁴ Information form submitted by non-governmental organization, Ecohome, of Belarus, to the Committee on 5 November 2012 regarding the construction of two nuclear reactors in Ukraine — <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>

²⁵ “How the adherence to the ESPOO provisions in the nuclear area in Ukraine can be achieved” Analytical note of the Resources and analysis center “Society and environment” http://www.rac.org.ua/fileadmin/user_upload/documents/ppapers/espoo_nuclear_web.pdf

²⁶ Evaluation of adjustment of environmental standards to the EU standards. Analytical note of the Resources and analysis center “Society and environment” within the framework of the project “Evaluation of environmental component of the bilateral cooperation between Ukraine and the EU”. <http://www.viche.info/journal/3937/>

²⁷ <http://reyestr.court.gov.ua/Review/28787762>

“On access to public information”. The Center for political and legal reforms in its rating of the most significant court decisions related to human rights protection quoted this success of the EPL²⁸.

Many natural protection non-governmental organizations have pointed out that M. Azarov’s government had never made public the results of the research studying environmental impacts of the implementation of the projects for exploration of non-traditional gases or provided the opportunity for public discussion in compliance with Aarhus convention provisions.²⁹ That is why on May 23, 2013 EPL approached the Circuit administrative court of Kiev filing the claim against the Cabinet of Ministers on restrictions of public access to the information concerning the distribution of the carbohydrates under the contract between Ukraine and “Shell” company.³⁰

The confrontation between human rights activists and Sebastopol city council, which had lasted for 6 years, ended with overwhelming victory in the highest administrative court of Ukraine on September 24, 2013. The contention point was the preservation of the grove of Stankevych pine trees listed in the Red Book. A businessman I. Kharchenko (the former head of the land use commission of the city council, and currently the head of the technical inventory bureau of Sebastopol) intended to raise a multi-storey residential building. M. Lytvynenko, the head of the Council of environmental NGOs in Sebastopol, was the claimant in the case. The Highest administrative court of Ukraine ruled that the city council had to terminate the contract with the businessman on the lease of land, obliging the said businessman to plant at least 50 Stankevych pine trees to replace the 5, which he had managed to cut down.³¹

Kiev ecological and cultural center and “Ekopravo-Kiev” won the case on banning the state registration of the toxic pesticide zinc phosphate and all its preparations both in the court of the first instance and in the appealation court.³² Another court victory was achieved by “Ekopravo-Kiev” attorney G. Levina. It became the final outcome of the two-years’ nationwide public campaign for banning of the zinc phosphide, coordinated by Kiev ecological and cultural center together with “Zelene maybutne” organization, “Pechenehy”, “Zelenei front”, Ukrainian society for birds’ protection, All-Ukrainian environmental league, Association of zoo-protection organizations of Ukraine.

To serve the court decision the Minister of environment O. Proskuryakov on December 5 signed an order to remove zinc phosphide from the state registration list.³³

²⁸ <http://pravo.org.ua/politiceformandconstitutionslaw/humanrights/1293-reitynh-sudovykh-rishen-2012-roku-naibilsh-znakovykh-dlia-zakhystu-prav-liudyny.html>

²⁹ <http://epl.org.ua/novini/anons/backPid/1/article/5256/>

³⁰ <http://epl.org.ua/novini/anons/backPid/6/article/5578/>

³¹ M. Lytvynenko: We won the case in the highest administrative court of Ukraine and save the grove of Red-book Stankevych pine trees — http://www.new-sebastopol.com/news/novosti_sevastopolya/

³² Resolution of the circuit administrative court of Kiev of 12.06.2013 and Decision of Kiev appealation administrative court of 24.09.2013 on case no. /6195/13-a

³³ Order no. 500 of 05.12.2013 “On cancelling the state registration of zinc phosphide pesticide and all its preparations” — http://vk.com/doc-58692743_250404081?dl=d79ef80d8c99827df5

**5. NORMATIVE AND LEGAL ACTS REGULATING ENVIRONMENTAL POLICY
AND ENVIRONMENTAL RIGHTS PROTECTION, REGISTERED
AND PASSED OVER THE YEAR 2013**

Over the year 2013 parliamentary activity aimed at environmental rights protection has been neither consistent nor active. On the other hand, the new acts restricting the rights were passed immediately.

Thus, in February deputies M. Tomenko and A. Avakov registered a draft law³⁴, regulating the procedure for the exploration of the shale gas to minimize the negative environmental impact. The draft law was positively assessed by the specialized committee, but it had not been submitted to the Supreme Rada till the end of the year. Meanwhile two transnational companies—"Chevron" and "Shell" are actively preparing to the non-traditional gas extraction by fracturing at Olesk and Yuzivka geological fields.

In September a draft law on amending existing laws on animals and vegetation protection was introduced. (no. 2503). It was also approved by the Committee³⁵, but not considered at the plenary meeting. More draft laws (no. 3236-1 and no. 3236-2) on changes to the administrative infringements Code specifying the increase in fines for polluting the environment were also introduced in September. In October a draft law no. 3362 on changes to the same Code authorizing the militia officials to compile protocols of violations alongside with the environmental inspectors was submitted. As of early 2014 the deliberations over these draft laws have not started yet.

The government registered with the Supreme Rada a draft law on introducing amendments to the laws on drinking water and water supply, allegedly aimed at the guaranteed safe drinking water supply for the population (2013). The draft law was not accepted unanimously by the environmental committee,³⁶ as its authors tried to legalize the practice of issuing licenses for temporary deviations from the established governmental standards for drinking water quality.

In January the Cabinet of Ministers adopted the concept of the national program for handling of waste.³⁷ In April the presidential decree ordered the actors in charge to submit the draft law on approving the said program to the Supreme Rada within one-month's period.³⁸ The experts from the institute of the strategic studies under the president classified this step as urgent.³⁹ The Ministry of Environment, doing its bit, prepared

³⁴ Draft law "On introducing changes into laws of Ukraine concerning environmental safety, prevention and elimination of the negative impact of the non-traditional carbohydrates exploration on environment with respect to the initial contracts and agreements on sharing of the final product" — http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45787

³⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=46020

³⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=2013&skl=8

³⁷ "Concept of the National program for the waste disposal for the years 2013-2020" — <http://zakon4.rada.gov.ua/laws/show/22-2013-%D1%80>

³⁸ Decree of the President of Ukraine no. 572/2013 "On the decision of the National Security and Defense of Ukraine of April 25, 2013 "On complex of measures for the improvement of environmental monitoring and state regulations for the waste disposal in Ukraine" - <http://www.president.gov.ua/documents/16145.html?PrintVersion>

³⁹ "Problems of state regulations for the waste disposal and possible solutions" Analytical note of the National institute for strategic research under the President of Ukraine — <http://www.niss.gov.ua/articles/1386/>

the draft law.⁴⁰ A month had passed and a year had passed — for the reasons unknown the law was never passed. Instead, the government, faking active operation which rather reminds us of stationary run, keeps telling tall stories about the implementation of European standards for waste handling in Ukraine, and claiming that it had adopted the concept of the national program as far back as October 2013 — just in case...⁴¹

The Cabinet of Ministers resolution containing an extended list of types of operation and objects representing a heightened environmental risk, which require obligatory state environmental inspection in line with article 13 of the law “On environmental inspections” is among positive steps taken by the government⁴². Another governmental document⁴³ has finally made possible the transfer of 53 thousand hectares of forestry lands to the entities in charge of the natural reserves. Another positive feature can be traced in the resolution defining standard lease agreement with respect to water reservoirs, i.e. that the lease does not restrict the right of public water use.⁴⁴ These isolated positive examples, however, are rather exceptional at the general background of the systematic ruination of the state environmental policy.

6. ASSESSMENT OF ADHERENCE TO THE INTERNATIONAL NATURAL PROTECTION AGREEMENTS

6.1. Aarhus convention

This year the Ministry of Environment made public the comprehensive national Report on the implementation of the Aarhus convention — in Russian.⁴⁵ The authors of the Report provide a long list of ungrounded reasons for Ukraine’s systematic failure to fulfill its obligations undertaken within the convention framework: complicated social and political situation, coming elections and change in the ministerial management. The Report does not provide any answers to the question why Ukraine still had not ratified the Protocol on the registries of the emissions and transfer of pollutants (Kiev protocol) and amendment of GMO to the Aarhus convention and time framework.

The recommendations of three latest meetings of the Aarhus convention parties, where Ukraine was defined as a party that fails to fulfill its obligations, were not fulfilled either — so, one can only anticipate the promised sanctions.

⁴⁰ <http://www.menr.gov.ua/index.php/normbaza/regulatory/554-proekty-rehuliatornykh-aktiv>

⁴¹ <http://www.info-kmu.com.ua/2013-10-03-000000am/article/16319193.html>

⁴² Resolution of the Cabinet of Ministers of Ukraine of August 28, 2013 no. 808 “On approval of the list of activities and objects represented heightened environmental hazard”.

⁴³ Resolution of the Cabinet of Ministers of Ukraine of 9.10.13 p. no. 796-p “On solving the issue of alienation and transfer of land plots to the natural reserves with the goal of their targeted use for the long-term use” — <http://zakon2.rada.gov.ua/laws/show/796-2013-%D1%80>

⁴⁴ Resolution of the Cabinet of Ministers of Ukraine of May 29, 2013 no. 420 “On approval of the Standard contract on the lease of water objects” — <http://zakon4.rada.gov.ua/laws/show/420-2013-%D0%BF>

⁴⁵ Consolidated national report of 2013 on the implementation of Aarhus convention in Ukraine <http://www.menr.gov.ua/index.php/public/discussion/1358-proekt-zvedennoho-natsionalnoho-zvitu-2013-roku-shchodovprovadzhennia-orkhuskoi-konventsii-v-ukraini>

Unfortunately the Ombudsman of the Supreme Rada of Ukraine does not pay due attention to the problems of the environmental rights. In his Annual report on the state of adherence to rights and freedoms ⁴⁶ he mentions that over a year number of citizens' complaints on violations of the right to safe environment has grown four times. However, no information as to the Ombudsman actions aimed at the protection of this right is available. Over the year 2013 only two postings referring to the environmental rights have appeared on his site. In the aforementioned Annual report the Ombudsman demonstrated lacking capacity to systemic vision of the problem and efficient management of the situation with respect to environmental rights.

It is well known that in 2012 an expert group on environmental rights was set up within the framework of the Advisory council under the Ombudsman. The group brought together representatives of ten public organizations. At the Advisory council meeting on December 21, 2012 the expert group presented the "Analytical note on Ukraine's adherence to the main international treaties on environmental rights: Aarhus convention and ESPOO convention"⁴⁷. The conclusions to this document contain 15 specific proposals on possible ways of Ombudsman involvement. According to the Ombudsman's response to the "Zelenyi svit" NGO request, none of these proposals has been realized in the course of the year.⁴⁸

6.2. ESPOO convention

In May another draft law on introducing changes into the law regulating the fulfillment of ESPOO convention provisions was registered in parliament.⁴⁹ The law proposes, a two-fold approach to innovations: on one hand, the revival of the state environmental inspection, destroyed in the previous years, and the introduction of the European procedures for the assessment of environmental impact, on the other. Over the year the draft law has been considered at the first reading. Some methods proposed by the authors are put in doubt by the experts.⁵⁰ The main problem, however, does not consist in legal or terminological detail. Obviously it is predetermined by the lack of political will among higher officials governing the state, their complete lack of understanding and reluctance to introduce the European standards and approaches to the evaluation of environmental impact. Under these circumstances environmental criteria of acceptability of any activity, potentially hazardous for the environment, remain outside the scope of interests of the decision-makers, while positive attitude of the officials is ensured through lobbying conducted by the financial and political groups concerned and by satisfying corruptive anticipations. By early January 2014 the long-anticipated law has not been passed.

⁴⁶ Annual report of the Ombudsman of Ukraine on adherence to the human rights and freedoms of citizens — http://ombudsman.gov.ua/images/stories/062013/Dopovid_062013.pdf

⁴⁷ <http://greenworld.in.ua/files/docs/1356299281.pdf>

⁴⁸ <http://greenworld.in.ua/news/1393496911>

⁴⁹ Draft law on introducing changes into the laws of Ukraine on implementation of convention provisions on the assessment of environmental impacts in the trans-boundary context— http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47080

⁵⁰ http://www.rac.org.ua/fileadmin/user_upload/documents/weekly_reviews/2013/2013_Sep_M.pdf

The protocol to ESPOO convention on strategic environmental assessment has not been ratified either⁵¹.

6.3. Framework UN convention on climate change

Like in the former years, the government has manifested its firm reluctance to undertake any obligations concerning the reduction of emission of green-house gases and to make efforts aimed at signing legally-binding post-Kioto agreement. The latest round of UN negotiations on climate change in Warsaw (COP19) did not result in significant progress on the key issues of emissions reduction. The meeting did not notice any active steps on the part of the Ukrainian delegation, aimed at acceleration of the signing of new agreement on climate. Ukrainian NGOS systematically criticize Ukrainian government for its inertia. The officially proclaimed goal of reducing the emissions by 20% by the year 2020 in fact will mean the increase in emissions of the green-house gas by 70% as opposed to current level. It signifies that Ukraine is planning to increase the emissions of the green-house gases, while other countries are trying to reduce their amounts.⁵²

6.4. Environmental safety issues in the focus of Ukraine chairing the OSCE

The relevance of the Ukrainian leadership in the OSCE was determined by the fact that the prolonged economic crisis has made the “green” economy a priority lever of economic growth and of overcoming a broad range of political, social and humanitarian problems. Besides, the due attention to the issues of environmental safety and environmental rights could become a viable factor in resolving an acute polemics between the EU countries and the Russian Federation as to what should become the first priority in the Organization operation: human rights or military/political collaboration and economy.

Unfortunately, the list of priorities of OSCE, presented by the Minister of the foreign affairs of Ukraine L. Kozhara, from the very beginning did not specify the issues of environmental safety as first priority. The environmental problems were ignored altogether in defining the ways of overcoming transnational threats. The OSCE priorities under Ukrainian chairing did not reflect modern concepts of sustainable development, which defines environmental safety, environmental protection and non-exhaustive use of natural resources as significant components of stability, security and development.

The concept of environmental rights was never mentioned over the year 2013 in the context of OSCE activity aimed at monitoring the adherence to human rights.

With all that in view we can conclude that Ukraine as the head of the OSCE failed to take into due account:

- Monaco declaration provisions and OSCE PA Resolution of July 5–9, 2012, which recommended OSCE as the leading international organization in the promotion of cooperation in the areas of economy, science, technologies, environmental protection and

⁵¹ http://zakon2.rada.gov.ua/laws/show/995_b99

⁵² http://climategroup.org.ua/?page_id=460

called the governments to regard economic/ environmental area of OSCE operation as one with the highest potential from the point of view of its long-term interests.

- Evaluation and proposals of the “Positioning document on the agenda of Ukraine chairmanship in OSCE”⁵³, compiled by several Ukrainian civil society organizations and independent analytical centers in 2012.

6.5. Implementation of the environmental component of the “Ukraine-EU association agenda”

No significant progress has been noted over the year in the practical implementation of the environmental component of the “Ukraine-EU association agenda for preparation and promotion of implementation of association agreement”.⁵⁴ Similarly to the last year idle declarations on devising various concepts, programs and plans within the framework of the said document were made in 2013. At the end of the day the government only managed to formulate general intentions on the institutional reforms for the implementation of the coming agreement by late 2012.⁵⁵ As to the real steps aimed at harmonizing legislation and sector policies with the EU standards, including environmental area and protection of human rights, they were left outside the scope of operation of higher state officials.

The process of “implementation” of the “Agenda” was being simulated from the moment of its coming in force in 2009, while the nationwide program of adjustment to the EU legislation has been allegedly in operation since its approval by the Parliament in 2004⁵⁶. The relevant fundamental plan for the adjustment of the environmental legislation in accordance with the EU directives was adopted by the Ministry of Environment only 9 years later, by late 2012⁵⁷. By early 2014 the majority items of the plan was not fulfilled.

The authors of the analytical report prepared within the framework of the project “Evaluation of the environmental component of the bilateral cooperation between Ukraine and EU” summarized the state of things as follows: *“the Ukrainian activities in this area are not systematic, but predominantly designing and orientation by their nature. For example, Ukraine never set up legal, organizational and institutional frame for the implementation of multi-faced tasks of the road-map for the Eastern cooperation; in fact there is no accountability of the central executive bodies with respect to this area of operation”*.

The wrapping up of Euro-integration process formally announced by the odious order of the Cabinet of Ministers,⁵⁸ once again testified to the lack of understanding in the higher echelons of power both of the need of Ukrainian integration into the European political, economic and legal space and of the guiding values and principles of the European community.

⁵³ <http://od.niss.gov.ua/articles/507/>

⁵⁴ http://zakon2.rada.gov.ua/laws/show/994_990

⁵⁵ Some issues of the institutional reform in the implementation of the future association agreement between Ukraine and the EU— <http://zakon4.rada.gov.ua/laws/show/767-2012-%D1%80>

⁵⁶ <http://zakon4.rada.gov.ua/laws/show/1629-15>

⁵⁷ Basic plan for harmonization of the environmental legislation of Ukraine with the EU (basic plan for approximation) approved by the Ministry of Environment order of 17.12.2012 no. 659 <http://www.menr.gov.ua/docs/normakty/Bazovyy%20plan%20adaptatsiyi%20%28Bazovyy%20plan%20aprksymatsii%CC%88%29.pdf>

⁵⁸ Resolution of the Cabinet of Ministers of Ukraine of 21.11.2013. “Entering into association agreement between Ukraine, on the one hand and the EU and European community on the nuclear energy and their member parties, on the other” — http://www.kmu.gov.ua/control/uk/publish/article?art_id=246864953&cat_id=244276429

Paradoxically, the aforementioned decision was made when the majority of Ukrainian experts' observations pointed out the expediency of further Euro-integration in almost all the areas of the state policy. For example, the analytical reports of the National institute for the social research, which is, by definition, the main institution to support the operation of the President of Ukraine contained persistent recommendations on the further development of cooperation with EU in the area of environmental protection, including: institutional reforms for the introduction and enforcement of the environmental legislation, distribution of competences of the environmental bodies at the national, regional and municipal levels, modernization of decision-making procedures and control over their realization, promotion of integration of environmental policy into the other areas of the state policy. According to their forecasts the real improvement of environmental situation in Ukraine can be possible only with the implementation of the positive expertise of the European countries in the optimization of the parameters of the use of natural resources by decreasing the volumes of exploration and immediate implementation of the European approaches and standards of the environmental safety.⁵⁹

The motives of the high officials for ignoring the recommendations of their own experts still remain unfathomable for us. But evidently the very secrecy of power decisions, pointless breach of Euro-integration plans and total neglect of the "vox populi" triggered an unprecedented wave of protests in the late 2013 and finally led to the most large-scale social and political crisis in the history of the independent Ukraine.

⁵⁹ "Analysis of tendencies and nature of changes in the Ukrainian environment in the context of the European integration" Analytical note of the national institute for strategic research — December 2013 — <http://www.niss.gov.ua/content/articles/files/Zminy2014-244f0.pdf>

XX. RIGHTS OF WOMEN AND GENDER EQUALITY

The events of November 2013 — February 2014 make one think about different concepts or rather reconsider them; they bring to life new civil and social movements and new issues and call for critical revision of the existing ones. This statement applies fully to the concept of the women's rights and gender equality. Social and demographic portrait of the protesters, compiled by the sociologists, shows that among people participating in Maydan 57.2% were male and 42.8% female. Youth activists constituted 38.0%. The level of education proved rather high — 62.7% of the respondents had higher education². The high rate of women's participation is accounted for by high rate of awareness and socially active position of women, as well as by the urgent need for changes, refusal to live under discrimination and lack of freedom.

It is often repeated that women's rights and human rights are one and the same. However, this fact is forgotten in everyday dealings and approaches. In 2013 Ukraine still held 64th position in the gender equality rating.³ Among others, the indicators compared equal opportunities for men's and women's participation in the economic development, access to education, health care, decision-making processes and management of public affairs.

As of today, 3 women hold ministerial office and 2 more are deputy ministers within the Cabinet of Ministers' structure. This is the largest representation of women in the government over the whole period of Ukrainian independence. 4 women head the Supreme Rada committees. Women are better represented in the state power bodies at the local level. They constitute 12% in the oblast' councils, 23% in the raion councils, 28% in the municipal councils and about 50% in the village and settlement councils. According to UNIAN data, women constitute over 78% in the public service, formed from the pool of the public servants of the lower levels. At the higher levels of public office the share of women is much lesser.

In March 2013 Ukraine received recommendations for the UN Council for human rights based on the results of the second round reports under UPR procedures, including those addressing the rights of women and gender equality. 2013 was the year of Ukraine's leadership in the OSCE. It terminated with brutal violations of human rights by the authorities.

¹ Prepared by K. Levchenko, «La Strada — Ukraine».

² The face of Euromaydan (social portrait of protesters) <http://infoflight.org.ua/content/oblichchya-ievromaydanu-socialniy-portret-uchasnikiv-protestiv>

³ <http://ua.korrespondent.net/ukraine/events/1619308-zhinoche-shchastya-ukrayina-zberegla-poziciyi-u-rejtingu-statevoyi-rivnosti>

**1. INSTITUTIONAL MECHANISM, LEGISLATIVE INITIATIVES AND NORMATIVE
AND REGULATORY PROVISIONS**

In 2013, after almost three years of temporizing, the State program for promotion of equal rights and opportunities for men and women till 2016 was adopted.⁴ The Program envisages all-embracing approach to the promotion of equal rights and opportunities for men and women in Ukraine. The Cabinet of Ministers decided to allocate only 5.897 million UAH for the implementation of the program. 1.3 million UAH should be allocated from the state budget and 1.8 million UAH — from the local budgets. The largest portion of funding is needed for the information and awareness-raising campaign among the employers, to facilitate the implementation of the European standards of equality in the labor sector (641 thousand UAH), organizing information campaigns covering equal sharing of the household chores and raising of children between men and women (874 thousand UAH). Also, the upgrading of the specialists in charge of promoting equal rights and opportunities for men and women (951 thousand UAH) is planned as well as the devising of mechanism for protection against gender-based discrimination and for measures of overcoming this discrimination (1,5 million UAH)⁵.

The lack of the State social target program for the promotion of gender equality and the implementation of the administrative reform in 2010 played destructive role in the enforcement of the Law of Ukraine “On promotion of equal rights and opportunities for men and women”. The institute of advisors on human rights and gender equality issues under executive bodies ceased to exist; relevant activities at the national and local levels were not coordinated; the cases of discrimination were not brought to light etc. The last meeting of inter-departmental coordination council took place in June 2010. The institutional mechanism became even weaker, as opposed to the former years, once the reform reached the raions. The changes to the by-laws of the Ministry of social policy, defining its functions in this area were introduced on 27.03.2013⁶.

Another significant problem is created by lack of academic, methodological and analytical support. The State institute for family and youth, State center of social services for family and youth ceased their operation. In fact the methodological support is currently provided by non-governmental and international organizations or various academic entities that do not specialize in the area under discussion. It is definitely not enough.

The inter-fractional association “Equal opportunities” under the Supreme Rada in 2013 split into two associations due to party affiliations of its members — one under the same name and another called “Equal rights”. The “Equal opportunities” association condemned at the political level any anti-gender statements made either by authorities or by representatives of political forces. Women-deputies from other fractions were driven predominantly by political expediency and their party interests, instead of women’s solidarity. Both groups prepared a number of draft laws to counteract women’s discrimination and stipulate gender

⁴ <http://zakon4.rada.gov.ua/laws/show/717-2013-%D0%BF>

⁵ <http://news.finance.ua/ua/~1/110/all/2013/10/14/310878>

⁶ Указ Президента України 27 березня 2013 року № 164/2013: <http://zakon4.rada.gov.ua/laws/show/164/2013>

equality. On October 16, 2013 the parliamentary hearings “Promotion of equal rights and opportunities for men and women. Problems and efficient way of their solving” were held.

In 2013 several legislative initiatives were put forward — some of them supporting women’s rights and implementation of gender equality and others, on the contrary, restricting these rights.

On January 1, 2013 the Law of Ukraine “On public employment” came in force. It contains certain provisions based on gender principles, guaranteeing work places and employment. This is the direct ban on stating candidates’ sex and age in potential employment ads, the expanding of the list of categories entitled to preferential treatment in hiring, reimbursement of the employers who pay uniform social tax for hiring less-competitive workers over one year; specifically this category covers single mothers and others. The Ministry of social policy also came up with a set of initiatives stipulating guarantees for working women and mothers; in particular, providing young mothers with opportunity of free training, upgrading or re-training in the course of 3-years’ maternity leave.

The Law “On introducing changes into some regulatory acts of Ukraine addressing the equality of rights for single mothers and single fathers” (of May 15, 2013)⁷. The Law introduced changes into the Housing code of the Ukrainian SSR, putting single parents in need of housing improvements, into the category eligible for first-priority housing. The changes also had to be introduced into the law of Ukraine “On public employment”, under which the single parents with children younger than 14 or disabled children, cannot compete at the job market. So they were placed under the category of citizens of working age in need of social protection and additional public guarantees in job search. In order to ensure equal treatment of men and women with respect to court protection, the raion, district and municipal courts are obliged to consider the disputes related to refusal of hiring single parents with children younger than 14.

In 2013 the state budget increased the amount of subsidies to be paid to the families with children or low-income families by 21% (i. e. from 33 billion last year as compared to 40 billion this year). The amount of one-time subsidy after birth of a child was increased by 7%. The amount of child-care subsidies to low-income families was increased by 7%.

In summer 2013 the Law of Ukraine “On introducing changes to the Law of Ukraine “On state social assistance to the children with disabilities and congenital defects” came in force.

The Supreme Rada of Ukraine passed a draft law on introducing changes to the certain legal acts regulating the elections legislation (no. 3396), in particular, requesting the defining of minimum ratio in men-women representation in the lists of candidates running for people’s deputies from a party in the nationwide election district. The document prepared for the second reading envisages amendment of article 8 of the Law of Ukraine “On political parties in Ukraine” with paragraph 10 reading that “the quotas defining minimum ratio of women and men in the lists of candidates running for people’s deputies from a party in the nationwide election district should not be lesser than 30% of total number of candidates on the election list”⁸. These changes launch an important legislative process aimed at enhanc-

⁷ http://www.kmu.gov.ua/control/uk/publish/article?art_id=246428224&cat_id=244276429

⁸ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48621

ing women's participation in the election process and in the decision-making, in line with the international standards on human rights and international recommendations. Meanwhile the experts from the Women's consortium of Ukraine sustain that adopted changes are not enough to ensure the increased women's participation in the elective bodies of the national and local levels, as no implementation mechanisms had been offered and the introduced changes had not been harmonized with other legislative acts regulating election process. No guidelines for balanced presence of candidates of both sexes on the lists or sanctions for non-compliance had been introduced.⁹

The people's deputies supported the draft law on adding the time spent on 3-years' maternity leave as part of the total work history. 333 people's deputies voted for the changes to article 7 of the Law of Ukraine "On compulsory social security for the temporary loss of ability to work and burial-related expenses".¹⁰ At the same time this law reduced a young women's competitiveness at the job market to zero, as the employer is obliged to pay social security in the amount of 17% of pregnancy-related payment from the social security fund. As a result, the young women applying for a job are coerced into signing a contract with the obligation not to become pregnant, or offered payment in a closed envelope to avoid the new "pregnancy tax"¹¹.

The deputy M. Rudkovsky proposed return to the former retirement age for women, i. e. 55 years, and introduction of changes into the pension-calculating procedures. These suggestions are reflected in the draft law no. 3380 of October 8, 2013. Women become eligible for pension upon reaching the age of 55 and having work record no less than 15 years. Besides, a proposal to decrease by 10 years the required number of years at work needed for minimum pension for men and women who had lost ability to work.¹²

The draft law proposing the introduction of an honorary title for "fathers raising many children" and other specific definitions into the Law of Ukraine "On state awards of Ukraine" was submitted by the people's deputies S. Kaltsev and O. Dudka (no. 2277a of June 10). Since 2004 till now the honorary title of "mother-heroine" has been granted to 115 thousand women.¹³

Another submitted draft law proposed an earlier retirement for women with children. In particular, women with one or more children, raising them till they reached the age of 16, will be eligible for early retirement — 2 years earlier for every child, under condition that they have work record not less than 20 years¹⁴.

Another draft for the Labor code, devised by the people's deputies O. Stoyan and Ya. Sukhy, according to expert evaluation can present risks for certain categories of population, women included. E. g. the head of the Free trade-unions confederation M. Volynets

⁹ http://wcu-network.org.ua/ua/network/news/ZHnochii_konsorcum_Ukraini_vvazhae_xho_zaproponovan_gendern_kvoti_v_spiskax_parti_bez_m

¹⁰ http://www.ukrinform.ua/ukr/news/nardepi_virishili_zarahovuvati_dekretnu_vidpustku_yak_trudoviy_stag_1884434

¹¹ http://wcu-network.org.ua/ua/possessing-equal-rights/news/Ukrainki_vzhe_vdchuli_pokraxennja_cherez_podatok_na_vagtnst, <http://berdichivnews.com.ua/news/63-groshi/1198-zvilnennya-vagitnih.html>

¹² http://wcu-network.org.ua/ua/possessing-equal-rights/news/U_VR_proponujut_vdnoviti_pensinii_vk_dlja_zhnok

¹³ <http://www.unn.com.ua/uk/news/1221115-v-ukrayini-mozhut-zyavitisya-pochesni-bagatoditni-batki>

¹⁴ <http://business.vesti.ua/16264-deputaty-reshili-zamanivat-zhenwin-v-roddom-rannimi-pensijami>

points out that under the current labor code single mothers with children younger than 15 can be fired only if an enterprise is liquidated. Under the new code they can be fired just like anyone else¹⁵.

In 2013 legal and public discussions around the abortion ban continued. This ban, if adopted, can lead to spread of corruption in the medical field, while the number of abortions will only increase. Therefore, the Supreme Rada Committee on legal support for law enforcement rejected the draft law no. 2646-1 banning abortions, proposed by the people's deputies O. Sych, R. Martsynkiv and R. Zenyk. The experts believe that legal abortions ban will lead to the rapid increase in criminally performed abortions, violent deaths of the newborns and growing number of orphans, thus deteriorating demographic crisis even further. The demographic situation can be improved not only by additional obstacles to the interruption of pregnancy (the issue that belongs to moral and ethical, but not legal sphere), but rather by introducing social and economic transformations aimed at life quality improvement in Ukraine. Meanwhile, a draft law enhancing responsibility for performance of illegal abortions has been registered.¹⁶

Initiative aimed at restricting abortions was condemned by the non-governmental organizations. The women's Consortium of Ukraine, in particular, points out that this initiative put forward by "Svoboda" association people's deputies, restricts women's rights to free and responsible decisions concerning the number of children and time periods between their births, the right to information, education and access to measures which allow them to exercise this right stipulated by the UN Convention on the liquidation of all forms of discrimination against women (p. 1, art. 16, ratified by Ukraine in 1981) and European convention on protection of human rights and fundamental freedoms.

The Supreme Rada invalidated the requirement concerning age restrictions for women seeking artificial fertilization. The parliament members rejected respective law which established maximum age for women seeking artificial fertilization — 51 years¹⁷.

The draft law no. 2028a, registered on May 16, 2013 proposed banning of advertisements with sexist connotation by introducing changes into the law "On advertising". The law "On promotion of equal rights for men and women" should be amended with definition of sexism as gender-based discrimination, manifested in dissemination of ideas highlighting the inferiority of one sex and superiority of another, underestimating or creating biased perceptions of one of sexes, stereotyping of notions concerning given sex group. The authors believe that passing of this law will allow expanding the concept of gender discrimination and excluding any manifestations of sexism in advertising.¹⁸

Information and counseling women's center and women's consortium of Ukraine over the year 2013 continued expert evaluations of the draft laws and regulatory acts submitted for the consideration and adoption by the Supreme Rada of Ukraine. The experts uncovered numerous violations of gender equality principle in these documents.

¹⁵ http://tvi.ua/new/2013/09/30/novyy_proekt_trudovoho_kodeksu_dyskryminuvatyne_zhinok_i_straykariv

¹⁶ http://wcu-network.org.ua/ua/possessing-equal-rights/news/ZHuravskii_Zaborona_legalnix_abortv_lishe_poglibit_demografchnu_krizu

¹⁷ <http://www.unn.com.ua/uk/news/1197370-nardepi-dozvolili-ukrayinkam-robiti-shtuchne-zaplidnennyanavit-pislya-51-roku>

¹⁸ <http://novosti.kr.ua/index.php/news/events/20134-iz-reklamy-mozhut-znyknuty-napivoholeni-divytsi>

**2. REALIZATION OF THE PRINCIPLE OF EQUAL RIGHTS AND OPPORTUNITIES FOR MEN
AND WOMEN IN EMPLOYMENT AREA**

Regardless of legally declared equality in remuneration, in real life women usually work at lower-paid positions. Specifically, under the data provided by the State Committee for Statistics, the average monthly wages of women constituted 2660 UAH in 2012, while men's salaries exceeded 3400 UAH. The experts state that over the entire history of independent Ukraine women's wages never exceeded 79% of men's wages.¹⁹ The average pension for women amounts to 1306.62 UAH or only 71.5% of men's pensions which constitute 1826.57 UAH. In some areas men are paid twice as much as women or even more. For example, an average salary of women in postal services and communications constitutes about 2300 UAH, while men in the same area get 3900 UAH monthly. Female teachers earn less than male teachers. Only 12% of women earn more than 4500 UAH, as opposed to 23.9% of working men. Altogether 43% of Ukrainian teachers earn less than 3000 UAH (while average salary in May 2013 constituted 3338 UAH.) Only 16% of teachers earn more than 4500 UAH²⁰.

Employment rate among women is 10% lower than among men. In the first quarter of 2013 the number of working men increased by 150 thousand, while the number of working women decreased by 106 thousand. Between January and July 2013 556 thousand jobless women were registered in the employment centers.²¹ The Ministry of social policy sustains that women constitute 55% of all unemployed.

Young women and women over 45 represent the most disadvantaged groups at the job market in Ukraine. Over 40% of respondents stated that their rights or the rights of their relatives were violated in the hiring process.²² The research conducted in 2013 by the "League of social workers" NGO confirmed that labor rights are violated rather often. Almost one third of women encountered rejection at the work place due to the birth of a child, pregnancy or need to care for a young child. 50% were forced to leave due to these factors. Additional breaks for breastfeeding of the infants are practically not allowed at the work places in Ukraine. 87% of young mothers return to work before the end of the three-years' maternity leave. 60% of young mothers have to return to work due to financial constraints in the family, while 34% want to maintain their professional skills. Taking these figures into account, the Ministry of social policy and State employment office jointly devised a package of initiatives to help mothers with young children. A year out of 3-years' leave can be claimed at any time till the child reaches the age of 8. Women can interrupt their maternity leave and use it later, for example, when a child is to get ready for school. The initiatives also include incentives for the employers that offer long-distance jobs to young mothers.

¹⁹ <http://news.finance.ua/ua/~1/2013/11/15/312999>

²⁰ http://wcu-network.org.ua/ua/possessing-equal-rights/news/V_Ukrain_zhnki-vikladach_otrimujut_menshu_zarplatu_anzh_cholovki

²¹ http://wcu-network.org.ua/ua/possessing-equal-rights/news/Zainjatst_ukrainskix_zhnok_na_10_nizhcha_za_cholovchu_-_Lazebna

²² <http://www.unn.com.ua/uk/news/1274957-naybilsh-vrazлива-kategoriya-na-rinku-pratsi-molodi-zhinki>

Annually 120 thousand young mothers return to work.²³ Up to 50 thousand women cannot do the same as they are discriminated by employers. The research demonstrates that 14% of 340 thousand women taking maternity leave cannot retain their prior position. The employers claim that these women cannot work full time at their prior positions and switch them to the lower paid part-time jobs. Others find it easier to let them go. Those who manage to get back find it difficult to be promoted, to pursue their career, thus increasing the gap between men's and women's salaries. The survey showed that more than one fourth of mothers were not fully aware of their rights. More than one fourth were denied flexible schedule at their work place.²⁴

The employers discriminating against potential employees in the hiring process (on the basis of age, sex etc.) are likely to be fined. "The Ministry of social policy devised a viable mechanism for holding faulty employers responsible for their failure to keep in line with the requirements towards job ads. After its adoption the Ministry of labor officials will have the necessary levers of influencing the violators" — stated Minister of social policy N.Korolevska. State labor inspection will be vested with authority to check the compliance with the requirements and, in cases of infringements, to penalize the employers responsible for the advertisement. These latter will have to pay fine of 11 470 UAH²⁵. The employment site reads: "according to the changes introducing to the law no. 5067-VI "On public employment" of 05.07.2012, starting January 1, 2013 the job ads shall not state the AGE of candidates or offer jobs for MEN or WOMEN only. The advertisements proposing work abroad should quote relevant license. The ads with stated age and sex of potential candidates and ads without reference to license will be removed."²⁶

While preparing this report the authors have found on employment site a lot of ads stating the sex of potential candidate. It means that the laws have not been enforced so far.

Respond till: 20.02.2014, visited by: 8

16.02.2014 — 21:29

Sauna administrator wanted. Women no older than 40 call: 0509152597

12.02.2014 — 18:32

A female worker with sewing skills is wanted for "pillows renovation".

Call: 380999109523, 3806734108826

10.02.2014 — 12:17

Home aid is needed, age: 35–45. Duties: cooking, cleaning, ironing. 5 adults live in the house. Working hours — 9 per day, 5–6 a week. Polish language a must. Board and meals. Wages: 9 zloty per hour. A town near Mińsk Mazowiecki Call: 0968379240, 0993356821

²³ http://www.ukrinform.ua/ukr/news/dekretnitsyam_nadavatimut_vaucheri_dlya_bezkoshtovnog_pidvishchennya_kvalifikatsiii_1862098

²⁴ <http://comments.ua/world/421448-ezhegodno-rabotu-posle-dekreta.html>

²⁵ <http://news.finance.ua/ua/~1/0/all/2013/08/27/307839>

²⁶ http://ankontr.if.ua/?page=board&p_id=62

Work from home. Looking for a girl or a woman to answer the phone calls. Communication skills. Knowledge of PC (Office programs) a must. Call: (068) 032-72-02, (099) 550-87-38 Tanya. Work from home. Ternopil.²⁷

Women are discriminated in the military too. The number of positions available for women in the army is limited and no vacancies are available. That is why the girls wanting to serve in the army are refused in the recruitment centers. "If you are lucky enough to have been born a man you have to be proving your real masculinity to the members of members of other half of mankind, who, luckily, have been born women, for the rest of your life. And what is the better way to do so, if not serve in the army under tough conditions" — deliberates I. Zakrevsky.²⁸

3. GENDER STEREOTYPES

Gender stereotypes concerning role and place of women are common in Ukrainian society. In 2013 Parliament speaker V. Rybak became (in)famous for his discriminatory utterances: — "Hit your own wife on the head!". Same applies to the patriarch of the Russian Orthodox Church Kyryl, who is certain that feminism is quite a dangerous phenomenon. He stated his position speaking to the delegation of all-Ukrainian public organization "Orthodox women's union". "Feminism draws a woman away from her major role, i. e. being wife and mother"; "the feminist ideology is focused not around family and children raising, but around different functions of women, often opposed to family values".²⁹

New social movements triggered by protests and Maydan led to the increase in women's activity. "Half of Maydan" movement, formation of a women's unit ("sotnya"), self-defense training for women, permanent women's counteraction to the violations of human rights and complications women face in their everyday life became women's response to the discrimination within the framework of nationalist movement.

4. VIOLATION OF MEN'S RIGHTS IN THE FAMILIES

Almost half a million children in Ukraine are growing up in the incomplete families, with only their father present. Recently the fathers taking care of their children were granted the same privileges as single mothers, specifically the right to preferential treatment in obtaining new housing. This right, however, remains a mere declaration, as no one is given new apartment in real life.³⁰

²⁷ <http://doshka.info/doska-11-31736.html>

²⁸ <http://transcarpatia.net/transcarpathia/social/15854-do-ukrayinskoyi-armyi-vdmovlyayutsya-bratizakarpatskih-zhnok.html>

²⁹ <http://tsn.ua/ukrayina/patriarh-kirilo-vvazhaye-feminizm-vidvolikannyam-zhinki-vid-yiyi-priznachennya-289965.htm>

³⁰ <http://fakty.ictv.ua/ua/index/read-news/id/1486968>

5. HEALTH CARE

Due to the on-going health care reform neither men nor women can receive high quality services in the medical area and, consequently, are denied the opportunity of exercising the rest of their rights. Our former reports stressed that women in rural areas and Roma women have almost no access to medical services; closing of first aid centers serving the villages deteriorated the situation with medical services for women³¹. No improvements occurred in 2013. Media report instances of death of mother and child due to negligence and medical errors of the physicians. In particular, it happened in Vinnytsya in July 2012, in Odessa in July 2012 and April 2013, in Donetsk oblast' in June 2013 and in Lviv — in October 2013³².

The issues of reproductive health need urgent attention as well. For one, the cases of male infertility are becoming more and more common in Ukraine. 15% of population cannot conceive, due to both male and female infertility. About 1 million couples in Ukraine do not have children. Statistical data show that over 70% of all cases are accounted for by female infertility, while the rest — by male infertility. Discrimination is manifested in the fact that while women have OBGYN out-patient clinics and family planning centers, men have no place to get advice. Over 4.5 thousand women yearly need special treatment under the state program. In Kiev at least 300 couples annually need supportive reproductive technologies, but "lamentably, the funding is not sufficient".³³

Gender differences in the causes of male and female morbidity are not taken into account in the health care programs. Men in Ukraine die from the external causes three times more often than women. About 70% of poisonings in Ukraine are those caused by alcohol, and deaths number from this cause is on the increase. Accidents, injuries and poisoning cause death of 40 thousand persons every year; about 70% of the deceased were in working age. According to the Ministry of health the gender differences in morbidity statistics are very significant — morbidity rate for males of 16–59 is almost three times higher than the same indicator for women, while the rate of death caused by external causes is almost 5 times higher among men.³⁴

6. GENDER EDUCATION

The content analysis of the gender-related courses in comparison with subject localization is a good indicator of the gender approach integration. The analysis shows that in gender-related courses social and cultural disciplines prevail — 25%, pedagogical disciplines — 22.4%, political sciences — 14.3%. 10.2% of total number of such courses are localized within the field of psychology, 8.7% — of philosophy, 2.6% — linguistics. Journalism,

³¹ <http://helsinki.org.ua/index.php?id=1362661718>

³² <http://tsn.ua/ukrayina/za-smert-porodilli-vinnicki-likari-distali-dogani.html>; <http://tsn.ua/ukrayina/nadonechchini-stali-vidomi-zhahlivi-podrobici-smerti-vagitnoyi-zhinki-i-ditini-u-pologovomu-budinku-316982.html>; <http://tsn.ua/ukrayina/u-yalti-rodichi-zvinuvachuyut-medikiv-u-smerti-porodilli-i-nemovlya-297577.html>; <http://tsn.ua/video/video-novini/likariv-zvinuvachuyut-v-smerti-zhinki-pid-chas-pologiv.html> ra ih.

³³ <http://health.unian.ua/country/852982-v-ukrajini-zrostayut-pokazniki-cholovichogo-bezplidnya.html>

³⁴ <http://ua.for-ua.com/ukraine/2013/05/16/152902.html>

economy, law and cultural studies are not represented sufficiently. Theoretical and methodological materials on gender-related topics have been published in 102 higher educational establishments, mostly in Donetsk and Kharkiv oblast's — 12 and 8 handbooks respectively. 12 education and research centers operated under the auspices of higher educational establishments in 9 regions and oblast's of Ukraine, i. e. A RC, Vinnytsya, Zhytomir, Transcarpathian, Zaporizhzhya. Luhansk, Sumy, Kharkiv oblast' and Kiev. So currently the academic knowledge of gender issues, aimed at exploring men and women as their subject, their role and characteristics of relations, is strictly systematized. The institutionalization of gender issues within the academic system contributes to their establishment as an area of scholarly research. The higher education institutions regularly conduct a competition of undergraduates' and postgraduates' essays on gender issues; the handbooks "Basics of gender theory" and "Gender and us" have been published; gender studies groups have been set up and are operating. The individual programs have been developed and implemented.

Public service of Ukraine as an executive power body with special status organizes and coordinates professional training for public servants and local self-governments officials. In 2014 the upgrading courses on equal rights for men and women will be introduced: the training will embrace over 1.5 thousand officials each year. Curricula and courses' calendar plans have been developed. Professional permanent and short-term seminars will include modules and topics covering promotion of gender equality. Public service developed training modules for the introduction of gender policy standards in public service and in the local self-governance bodies, which has been approved by the learned council of the National Academy for State Governance under the President of Ukraine.

In 2013 "Ukrainian women's foundation" and "La Strada — Ukraina" Center compiled and published a handbook on gender policy for Ukrainian public servants — "TOP 10 of gender policy". Members of Gender strategic platform, Committee of the Supreme Rada for human rights, ethnic minorities and inter-ethnic relations participated in this edition. 2000 copies of the handbook were printed.

7. PROTECTION AGAINST DISCRIMINATION

Over the years 2010–2011 "La Strada — Ukraina" Center has been monitoring strategic case in which Prime Minister of Ukraine faced the charges of gender discrimination. The court system of Ukraine, however, did not classify sexist statements of the Prime Minister as discriminatory. Sexist utterances of high Ukrainian officials are rather common, even regular. The decision was made to submit a complaint against systemic discriminatory statements with respect to women, made by high officials. In summer 2013 3 organizations — "La Strada — Ukraina" Center, Women's information and counseling center and Western Ukraine Center "Women's perspectives" — filed the complaint with the UN Committee on ending discrimination against women. The petitioners pointed out the systemic violations of articles 1, 2 (pp. b, c, d, e), 5 (a), 7 (b), 11 (b, c, d) and asked the Committee for due investigation in compliance with article 8 of the Facultative protocol to the UN convention on liquidation of all forms of discrimination against women.

8. MONITORING

“La Strada — Ukraina” Center keeps collecting and filing complaints on gender-based discrimination. The organization started this activity in 2012. Dozens of complaints on discrimination in advertising were sent to the center’s address *monitoring la-strada.org.ua*. The majority was sent in the form of complaints to the Expert board for consideration of facts of gender-based discrimination.³⁵ Traditionally twice a year “La Strada — Ukraina” Center and Women’s information and counseling center awards specific artifacts with “gender balance” prize: initiatives, actions, processes, TV programs and video-clips, studies promoting gender equality and social transformations aimed at full realization of equal opportunities’ principles. An “anti-award” “Poison of the season” is granted to those who promote, disseminate and support the obsolete gender stereotypes and sexist humiliating approaches.³⁶

The Expert Board for the consideration of facts of gender-based discrimination continued its operation under the Ministry of social policy. “La Strada — Ukraina” Center together with the Ministry of social policy, Kharkiv National University of Internal Affairs and Gender strategic platform prepared, edited and disseminated a publication “Organization and expertise of the Expert board for consideration of facts of gender-based discrimination”.³⁷

It is aimed at familiarizing the public with the mechanism of counteracting gender-based discrimination with the goal of its active use.

9. CONCLUSIONS

Lack of women’s representation in the decision-making process contradicts the principles of democratic development and manifests gender inequality in Ukraine. Job ads are full of sexist requirements. New restrictions are established for women’s employment; openly discriminatory normative documents are passed. Double burden carried by women who work both in social sector and in their own households has not been alleviated. The house-keeping chores are neither appreciated nor remunerated. Forced maternity leave is caused by lack of appropriate infrastructure of pre-school institutions and leads to women’s disqualification, decrease of their competitiveness in the job market, lack of awareness or knowledge with respect to their labor and social rights. Judicial and other mechanisms for the protection of women against discrimination are not viable. These issues should be kept in mind in the development of new state programs.

³⁵ Details of initiative and its outcomes can be found at gender digests: http://www.la-strada.org.ua/ucp_mod_library_showcategory_60.html, as well as on “La Strada — Ukraina” page on facebook: <https://www.facebook.com/media/set/?set=a.364818283595262.83952.269875056422919&type=3>

³⁶ More information here — <http://empedu.org.ua/node?page=1>

³⁷ Details of initiative and its outcomes can be found at gender digests: http://www.la-strada.org.ua/ucp_mod_library_showcategory_60.html, as well as on “La Strada — Ukraina” page on facebook: <https://www.facebook.com/media/set/?set=a.364818283595262.83952.269875056422919&type=3>

10. RECOMMENDATIONS

1. The mechanisms of balanced representation of men and women should be applied not only in the Supreme Rada, but also in the councils of all levels. The Supreme Rada should encourage further discussion on gender equality and support the draft laws 3411, 3411-1, 3411-2, their finalizing, public hearings on them, voting for the proposed norms.

2. Gender education from the pre-school age and gender education for the adults should be implemented.

3. New advisors on human rights and gender issues should be trained. Efficient system of permanent learning and upgrading of public servants at all levels should be introduced. The gender equality training should become compulsory for the judges.

4. Gender legal evaluation of the draft laws submitted by the deputies for the Supreme Rada considerations should be done. Persons responsible for it should be appointed from the Chief scientific-expert directorate. Ministry of justice of Ukraine should conduct the compulsory gender legal evaluation of the draft laws submitted to the Supreme Rada by the Cabinet of Ministers.

5. Subsidies and preferential treatment should be offered to the employers who create favorable conditions for professional integration.

6. Incentives and support should be given to the kindergartens of the new-type, allowing parents to work and care for their children.

7. Programs and plans should reflect the proposals of international organizations and UN conventions.

XXI. CHILDREN'S RIGHTS

1. GENERAL OVERVIEW

This section offers a general overview of children's rights observance in education, health care, right to recreation, health improvement and physical development, participation in the social life, protection from violence and cruel treatment, access to information and social services, as well as of institutional guarantees stipulated by public policy with respect to children's right protection, international cooperation etc. According to the conclusions of national and international experts and UN Committee on the Rights of the Child, the Ukrainian legislation addressing the rights of child still fails to meet the provisions of the international treaties, and, first of all, of the UN Convention on the Rights of the Child and its Facultative protocols. The state policy treats a child not as a subject of his/her rights, but only as an object of protection. Many legal norms with respect to the children's rights remain declarative; not all the children's rights stipulated by Constitution are supported by relevant laws. As a result, many problems arise at the level of laws' interpretation and formulation of the state policy in this area.

International cooperation plays significant role in the formation and implementation of the state policy concerning protection of children. In 2013 Ukraine headed the OSCE. The agreement with UN UNICEF Children's Fund was signed and now is being implemented. The Plan of Action "Ukraine — Council of Europe" for the years 2011–2014², approved in 2011, and launched in the second half of 2013, envisages the implementation of the project addressing protection of children's rights. The Ministry of Justice, the Ministry of Social Policy, the Ministry of Interior, Supreme Rada Ombudsman, local state administrations, Supreme Rada Committee for the families, young adults, sports and tourism, social services centers for families, children and young adults and NGOs are the main partners in the project. The goal of the project is promoting and strengthening the protection of human rights by preventing violence against children, including sexual exploitation and sexual abuse; promoting Guidelines on child-friendly justice³. All-Ukrainian network against commercial sexual exploita-

¹ The section is prepared by the experts of International women's rights Center "La Strada — Ukraina" K. Levchenko, N. Bochkor, M. Yevsyukova, L. Kovalchuk, M. Lehen'ka and V. Mudryk. The contributions from the NGOs: "Nadiya i zhytlo dla ditey" charity organization; "All-Ukrainian LZHVnetwork", "Shkola rivnykh mozhlyvostey" "A-Vesta", All-Ukrainian network for counteraction to commercial sexual exploitation of children, International ECPAT organization, developed within the framework of preparing public report on realization of "National Action plan on implementation in Ukraine of UN Convention on the rights of the child till 2016", realized together with UNICEF mission in Ukraine were used in the course of compiling this report.

² [http://coe.kiev.ua/uk/DPAInf\(2011\)17E%20Action%20Plan%20Ukraine.pdf](http://coe.kiev.ua/uk/DPAInf(2011)17E%20Action%20Plan%20Ukraine.pdf)

³ Anticipated results and main steps. The governmental consideration of UN and CE norms with respect to children's rights, and, specifically, CE Convention on children's protection from sexual exploitation and sexual corruption, on counteraction to human trafficking and cyber crimes has increased, alongside with intention of their viable implementation. Child's protection is becoming political priority. Actual National action plan and strategy. National

tion of children is functioning in Ukraine. The organization is the member of ECPAT International ("End child prostitution, child pornography and trafficking of children for sexual purposes"). Public organizations have partnerships with organizations in other countries working for the protection of children's rights. "La Strada — Ukraina" center is an associate member of the International network "Child HelpLine International".

On January 1, 2013 a nation-wide child help "hot line" started its operation under "La Strada — Ukraina" center. In the course of the year it has provided 18575 consultations, 92.9% of which were offered to children. 7.1% phone calls were made by the adults concerned about children-related issues, 58.4% calls came from girls, and 41.6% calls — from boys. This statistics from the child help "hot line" is, apart from the research in the area, the only source of information about the real needs of children and violations of their rights. The available database allows collecting, counting and analyzing the data in compliance with the international requirements and standards, defined by the International association of the "hot lines" for children. So, 21.2% of the calls address the relations with peers, about 16% deal with mental health issues(often related to the facts of mental violence), 12% — sex education, 8.2% — issues related to school and family, 5.3% — legal issues, 4.1% — bullying (persecution, threatening), 2.9% — violence and cruel treatment, 4% — discrimination of various types etc.

The nation-wide child help "hot line" is a powerful instrument providing information and consultations for the children. However, despite numerous appeals to the Ministry of Social Policy, "round tables" and consultations with NGOs and UNICEF Children's Fund in Ukraine, this initiative was not supported by the state that decided to set up its own "hot line" for children in 2014 (one of the projects suggested it should be formed on the basis of the Governmental call-center), demanding over 11 million UAH from the state budget for the launching of the project. The existing "hot line", which has the necessary experience, requires 5 times less in terms of funding. This fact demonstrates not only inefficiency in spending taxpayers' money, but also official attitude towards the institutions of civil society, discrepancy between words and deeds, characteristic of power bodies.

2. CHILDREN'S RIGHT TO PARTICIPATE IN DECISION-MAKING PROCESSES

In the current situation of social and political crisis, when fundamental human rights are brutally violated and children bear witness to these violations, the children's right to participate in the decision-making directly affecting them is completely neglected. Children's participation means an opportunity to influence the process, demand changes and change

legislation was harmonized with CE Convention on children's protection from sexual exploitation and sexual corruption (CETS no. 201). The best interests of the child are considered in administering justice, in compliance with Guidelines on child-friendly justice. Main areas of operation: awareness-raising campaigns; providing relevant information, knowledge and methods of preventing and counteracting sexual exploitation for parents, children and specialists; legal expertise; support in formulating and realization of National action plan; compiling of reports; comparative studies; analysis of outcomes and devising of training materials; ensuring required training; organizing study tours to share best practices; consultations in setting up child-friendly shelters for children-victims of sexual corruption; development and implementation of rehabilitation programs for children subjected to domestic violence; compiling data-base of children-victims of sexual exploitation and of potential offenders, with respective tools for maintenance and operation of these data-bases; developing standards for services for children.

in the process; it is the manifestation of involvement in the future destiny of the country, its citizens and humanity as a whole. Under the UN Convention on the Rights of the Child this participation is a moral and legal right of all the children; it is conscious, voluntary and cannot be forced upon a child.

Referring to the persons of 15–18 years of age we mean children and their participation in socially important events. And this is logical and “efficient form of socialization in the democratic society as well as an indicator of an active civil stand of the young generation and a specific factor of the personal development”⁴. Collaborating with the adults children sharpen their communication, skills of finding their way in the complex information space of modern times, learn to share responsibility for the decisions made. Meanwhile, the events which took place in Kiev in late November-early December of 2013, including bloody breaking up of the students’ peaceful demonstrations, revealed the government’s attitude to the young people, who had taken to the streets and squares to protest against the government’s refusal to sign the association agreement on European integration. There they had to face brutal violation of their rights, violence and cruelty. Children at home observed on TV the violence against other young citizens, right at the time of the international action “16 days without violence”, in which Ukraine participated.

Article 12 of the UN Convention on the Rights of the Child stipulates participation guaranteed by the state, of the children capable of formulating their opinions and the right to voice these opinions. The young people (persons between 15 and 25 years) “are the main human resource to develop positive social changes and technological innovations. Ideals, energy and broad vision of the young play central role in the process of progressive movement of the human communities”⁵. The experts’ and NGOs’ observations as well as the analysis of the calls received by the nation-wide child help “hot line” show that children’s point of view is not taken into account by the country leadership (ultimately, the adults’ opinion is disregarded as well). This state of things aggravated at the time of the social crisis. Inefficient information policy chosen by mass-media governed by power bodies creates the information vacuum which is hard to fill. Lack of reliable information interpreting Kiev events and reasons for peaceful confrontation at schools breeds social apathy and alienation of the young people from social activity, as well as the increased level of internal aggression manifested in relations with peers, within the families, schools, in the streets etc. Some teenagers identify themselves with “Berkut”, which, in their opinion “is given free hand by the power, to do as they please”, and copy their aggressive and violent behavior. Other kids, on the contrary, developed lack of confidence and increased anxiety level, as they are afraid that unwarranted violence can be used against them. Significant number of children started identifying themselves with Ukraine, developed interest to the national symbols, history of public action etc. This latter is a positive moment, considering that no earlier educational or patriotic events managed to kindle this interest.

⁴ N. Korpach. Specifics of children’s and youth’s participation in the social transformations: http://web.znu.edu.ua/herald/issues/2008/ped_2008_1/2008-26-06/korpach.pdf

⁵ http://dsmsu.gov.ua/media/2013/01/23/3/Dopovid_2012_s.pdf

Excerpts from the calls to the Nation-wide child help "hot line"

"Hi, I am "Berkut". Can I give you a good mugging?" — laughter. Several calls. Boys.

"What is Maydan about? Do you go to Maydan? Why are people standing there?" — A boy from Poltava oblast'.

"Is it true that militiamen are beating people in Maydan?" — a boy.

"Is it true that Maydan will last long?" — a boy.

"Is Maydan in Kiev? Are you attending?" — a boy and a girl.

3. LEGISLATIVE DEVELOPMENTS

The Ministry of Social Policy by its order no. 65 of 15.02.2013 set up an interdepartmental working group to analyze the recommendations received by Ukraine, based on the final conclusions of the European committee of the CE on social rights with respect to realization of p. 10 of article 7 "Right of children and teenagers to protection" of the European social charter (revised). The group united representatives from the Ministry of Justice, the Ministry of Social Policy, the Ministry of Interior, Supreme Rada Ombudsman for human rights, Ombudsman for children's rights, "La Strada — Ukraina" center. Over the period between February and November of 2013 the legal department of the Center, operating within the framework of the working group, elaborated and submitted recommendations on national legislation amendments for protection of children against sexual exploitation; attended 3 group meetings and a seminar on implementation of the provision of the European social charter (revised). The amended provisions were not formulated in 2013 as the state power and NGOs could not reconcile their positions. "La Strada — Ukraina" Center stand and recommendations were presented at the hearings of the Committee on social policy and labor "On implementation of the European social charter (revised) in Ukraine" which took place on November 20, 2013.

The expert working group for legislative amendments in the area of protection of children against trafficking, child pornography, child prostitution and sexual abuse resumed its operation in summer 2013. Cooperation with the deputies of Supreme Rada of the 7th convocation was established, specifically, with the Committee for human rights protection, ethnic minorities and inter-ethnic relations. With UNICEF support Ukrainian legislation was amended further, new draft law stipulating protection of children against sexual exploitation was devised and should be registered in 2014.

Starting November 3, 2013 the activity aimed at harmonizing national Ukrainian legislation with the provisions of Facultative protocol to the UN Convention on the Rights of the Child in the section related to children's trafficking, children's prostitution and pornography was resumed, with the help of UNICEF and "La Strada — Ukraina" Center. The project envisages legislation amendments and assessment of the enforcement of the Law of Ukraine "On the State Program "National Action Plan for the realization of the UN Convention on the Rights of the Child till 2016" as well as concluding observations of the UN Committee on the Rights of the Child with respect to Ukraine, based on results of the evaluation of its regular report for 2011.

4. CHILDREN'S RIGHT TO FAIR JUSTICE AND THE DEVELOPMENT OF JUVENILE JUSTICE

To ensure the uniform administering of the criminal procedural norms and to avoid ambiguous interpretation of the law in the course of criminal inquest involving minors the Highest specialized court of Ukraine for civil and criminal cases on July 18, 2013 issued a letter no. 223-1134/0/4-13⁶. The letter is accompanied by the Instruction on the order of submitting the report on the juvenile delinquent in the criminal inquest involving minors.

Under the Ministry of Education and Science order no. 176 of 21.02.2013 "On approving the action plan for prevention of infringements committed by children and cruel treatment of them" the educational institutions took some steps spelled out in p. 4.7 of the plan. However, these steps were sporadic, and only activists could organize respective events. In 2013 the preventive visiting of children, registered in the internal affairs bodies, in their homes, schools and work-places was planned. The individual preventive work, as well as putting an end to cruel treatment of these children had to be the goal of these visits. So far no report has been submitted.

Meanwhile, the members of the so-called "anti-juvenile" movements remain proactive, disseminating false information on the juvenile justice system and scaring Ukrainian population. No information campaign on the essence and advantages of the juvenile justice has been organized either by the Ministry of Justice or the Department for families and children under the Ministry of Social Policy in 2013. The information vacuum is filled only by sporadic actions organized by the human rights organizations or international institutions.

Thus, a Ukrainian-Canadian project "Reforming of the criminal justice system with respect to the minors in Ukraine" has been operating in Ukraine since 2010, actively assisting governmental bodies in the implementation of the child-friendly criminal justice system. The project contributes to the development of the legislation and policy in the criminal justice system with respect to minors. Regular training and upgrading of the professionals dealing with children in conflict with the law, specifically, of judges, militia staff, and penitentiary institutions' workers, social services specialists (i. e. services for children and social services centers for the families, children and young adults) are conducted within the framework of the project. The project also helps in devising and implementing of the models for dealing with juvenile delinquents at the local level, as well as initiatives aimed at more efficient crime prevention, based on the international standards of juvenile justice systems.⁷ In particular, a model of a visiting center for juvenile offenders is being set up. This model was first implemented in Melitopol by the workers of the local criminal-executive inspection and social services center for the families, children and young adults. After analyzing the pilot testing results State penitentiary service of Ukraine on August 28, 2013 passed an Order no. 488/OD-13 "On promoting the activities within the framework of the project "Reforming of the criminal justice system with respect to the minors in Ukraine" in which it recommended the creation of such centers in Ivano-Frankivsk (in 2013), Zaporizhzhya, Mariupol and Kiev (in 2014). A documentary "Children behind the bars" was created within the framework of the project. The program "Researcher" for the secondary school

⁶ <http://zakon2.rada.gov.ua/laws/show/v1134740-13>

⁷ <http://youthjustice.org.ua/about.html>

students was launched. It allows the students familiarizing themselves with basics of law-enforcement activity and scouting and is aimed at encouraging interaction between militia, students and other community members. The “Researcher” program is a part of a broader initiative aimed at improving collaboration between militia and educational institutions in order to prevent infringements.⁸ Pilot program started in Ivano-Frankivsk. This program meets directly the task of “enhancing preventive work to end crime among children” stated in the national action plan.

Besides, the all-Ukrainian “Volunteer” public center conducts preventive and correctional activities with children inside the penitentiary system.⁹ “Children’s rights in Ukraine” coalition conducted an above-mentioned monitoring of the observance of rights of children in remand.

Mass media divulged the information concerning law violations committed by the militiamen in the course of children’s detention and administrative custody. In particular, in some cases children were kept in a cell with adult felons. The sanitary norms were not observed with regards to children in custody.¹⁰

5. CHILDREN TRAFFICKING AND RIGHT TO FREEDOM FROM SEXUAL EXPLOITATION AND SEXUAL ABUSE

The issue of children’s trafficking remains relevant for Ukraine. It is addressed in detail in the respective section of the report.

The analysis of 2013 criminal cases addressing the protection of children from sexual exploitation and sexual abuse shows that investigators and judges lack appropriate knowledge in this domain, are not aware of international standards for protection of children, methodology of conducting the interviews etc. That is why these cases are not resolved and the majority of offenders go unpunished, while the level of protection of children remains low. In 2013 “La-Strada — Ukraina” continued providing secondary legal assistance to 7 children-victims of sexual exploitation perpetrated by individuals unknown to them, and of sexual, psychological and physical domestic violence. In one of the cases involving sexual exploitation of the children (production of children’s pornography) the court of the first instance passed a verdict, sentencing 3 men guilty of child corruption and production and dissemination of children’s pornography to three years in prison.

Since 2011 the Center has been monitoring the case of a young boy, sexually abused by his own father. The Center attorneys provide legal assistance in the criminal inquest. The inquest is conducted with a lot of procedural violations, which leads to temporizing and prevarications in ensuring boy’s protection against his father’s criminal actions. Referring to the provisions of the CE Convention on protection of children against sexual exploitation and sexual abuse, stipulating that if parents are involved in children’s sexual abuse, the state has

⁸ <http://youthjustice.org.ua/37-explorers-of-ivano-frankivsk.html>

⁹ http://www.volunteer.kiev.ua/pages/214-proflaktika_vl_ta_rizikovano_povednki_sered_nepovnoltnh_csho_perebuwayut_u_pentencarnj_sistem

¹⁰ <http://vinnitsaok.com.ua/na-vinnychchini-u-sizo-nepovnolitnih-utrymuvaly-razom-iz-doroslymy-167475.html>

the right to remove the potential perpetrator, the Center attorneys managed to provide secondary legal assistance in the claim of deprivation of parental rights. The court deliberations on the case still go on.

6. CHILDREN'S LABOR

In 2012 an Internet site "Job for the schoolchildren" (<http://teenjobs.com.ua/ua/>) started its operation. It offers the list of vacancies and CVs of children over 12. All the personal data and photos are accessible without parental consent. The children post their resumes, expressing their will to work at any jobs with average salaries of 30–50 UAH per day. The site also posts the children's complaints that they had not been paid the sum agreed upon. The NGOs, including "La Strada — Ukraina" Center, requested due inspection, which had been started by the law-enforcement bodies. However, as of November 2013 the site was still active, with children offering their services and employers offering available jobs.

7. EDUCATION, INCLUDING PRE-SCHOOL AND EXTRACURRICULAR ACTIVITIES

Child's right to education is reflected in articles 28 and 29 of the UN Convention on the Rights of Child, under which the state is responsible for providing free and compulsory primary education, for promoting child's development; ensuring availability of higher education, relevant information, studying materials etc. In its concluding observations the UN Committee for the rights of the child expressed its concern with the fact that reduction in numbers of the children of school age in the entire population leads to the reduction in number of educational institutions, especially in rural areas, and also complicates accessibility of education for the children residing in the rural areas, Roma children and children with special needs. The Committee specifically pointed out the decrease in the number of preschool institutions, so that currently only 61% of children at pre-school age attend them. The Committee also stressed inadequate funding of education.

Over the first half of the year 2013 the Ombudsman for the rights of the child received the information from almost all the regions of Ukraine on the reduction of number of students, closing or threat of closing of over 30 institutions of extracurricular studies. The Ministry of Finance of Ukraine issued a letter no. 31-05030-10-5/2514 of January 2013, containing a range of proposals, realization of which can lead to mass closing of schools for children aesthetic education, reduction in number of children attending extracurricular educational institutions. These proposals were made public through mass media and caused rather negative public response.

Assessment of extracurricular education in Ukraine seems a most difficult task. As of today accurate data reflecting the situation in the extracurricular network, e. g. the number of children attending the institutions, is missing. Each ministry (of education and science, of culture, of the young adults and sports) has its own departmental statistics, while summarized nationwide data reflecting main tendencies in this area are not available. The information on how many children go in for extracurricular activities offered by private entrepreneurs

outside extracurricular centers is also missing. The situation with extracurricular education varies depending on the region. By early 2013 the share of children covered by extracurricular education varied from 28.1% in Transcarpathian oblast' to 92.7% in Kiev oblast'. This difference is accounted for, first of all, by the flaws in the system of funding of extracurricular educational institutions. Under the Budget Code of Ukraine expenses for the maintenance of extracurricular educational centers should be covered by some portion of local budgets' revenues, not taken into account in the calculations of inter-budgetary transfers.

Creating equal conditions for the children's rights protection means equal treatment of all children irrespective of what school they go to. According to the report of the Ombudsman for the rights of the child, the system of operation of the educational institutions, especially of boarding schools, is built on concealing the cases of child abuse and mutual cover-ups. Special attention should be paid to this problem in the future.

The National trainers' network has largely contributed to the legal education of children, having organized 3285 events for 103 689 students in 2013. The topics chosen for discussion included counteracting human trafficking — 35%, fight against violence — 20%, children's rights protection — 17%, men's and women's rights — 13% and others¹¹. In 2013 an international campaign "Two little girls" aimed at protecting children from human trafficking, was launched in Ukraine.¹²

The year 2013 was declared the year of children's creativity¹³. According to the report of the Ombudsman for the rights of the child¹⁴, on March 7, 2013 the Head of the State made public new social initiatives "Children — the future of Ukraine"¹⁵, in which he identified the priority areas of local and central bodies' operation aimed at creating favorable conditions for comprehensive development of each and every child. Notwithstanding, no additional target funds for the modernization, development or opening of the new extracurricular centers have been allocated by the government. The problem is that a lot of interest study groups, especially with high quality of coaching and high level of popularity, not only require certain fees, but become a serious financial burden for the parents.

"Dance classes in a dance group operating in a Kiev school cost over 400 UAH a month. The lessons are interesting, the coach is a professional. She prepared the group for the participation in the competitions and festivals. But, under Ukrainian tradition, each kid's appearance in an act of a competition or festival program costs 100 UAH, and this tariff likely does not depend on the number of children appearing in a given act. So we want our child to participate, but every time we consider whether she should appear in one or two dances, because it is becoming pretty costly. It goes without saying that all the travel expenses are covered by us. Same applies to stage costumes. We have no complaints against the group coach; quite on the contrary, we respect her and are grateful to her. But what kind of extra-school activities are these,

¹¹ Detailed reports can be found on "La Strada — Ukraina" site in the "Reports" section " — www.la-strada.org.ua

¹² Ukrainian version of the movie is available here: <http://www.youtube.com/watch?v=qTtMWtXhS1g>.

¹³ Presidential Decree of December 28, 2012 <http://zakon4.rada.gov.ua/laws/show/756/2012>

¹⁴ Ombudsman on the children's rights report for the period of the first six months of 2013. <http://www.president.gov.ua/news/29367.html>

¹⁵ http://www.president.gov.ua/docs/initiative_11.pdf

if one has to pay one third of one's monthly living cost? Why these expenses are not included into the consumer's basket?"

"School has introduced the system of payments for learning through the charity funds. The payment is compulsory. And we are talking about public school! Everyone knows [the truth] about the funds, but refusal to pay can lead to the child's expulsion from school".

From the call to the "La Strada — Ukraina" hot line

8. INCLUSIVE EDUCATION

The access of children with limited capacities to education still remains a problem. As of today, about 2 thousand pre-school educational establishments serve the children with special needs in Ukraine. They operate mainly as compensatory and combined institutions (sanatoria, specialized schools) where alongside with learning children can get adjustment and rehabilitation services. It is noteworthy, however, that disabled children are not served properly in the rural areas due to almost complete absence of specialized preschool facilities (i. e. of compensatory type).¹⁶ The studies of the inclusive education in Ukraine have shown that currently only 11% of the Ukrainian schools are partially fit for "special" students. Even lesser portion of the learning facilities meets the safety norms and allow for unrestricted getting around — they lack the required ramps, elevators, special hygiene rooms, doors, furniture and lighting.¹⁷

Under statistical data, 58 586 children with special needs attended comprehensive secondary schools in 2012/2013 school year. The relevant provision of the National plan of action for the implementation of the UN Convention on the Rights of the Child concerning inclusive education does not receive full state funding.¹⁸ Meanwhile, under the new social initiatives proposed by the President of Ukraine V. Yanukovych, stipulating providing handbooks, including those in Braille alphabet, for the children with impaired vision, additional 10 million UAH had to be allocated from the state budget of Ukraine in 2013. No measures for children's rights protection are stipulated by the National plan of action for the implementation of the UN Convention on the Rights of the Child for 2014. Hence, the tasks addressing inclusive education expansion were not fully realized. The parents who had not rejected their afflicted children are denied the right to have their child attending the "regular" schools or kindergartens, thus forcing them to send their children to the special boarding-type institutions.

Certain positive changes became possible due to the funding provided by donors. The Canadian-Ukrainian project "Inclusive education for children with special needs in Ukraine"¹⁹ (5 million Canadian dollars) allowed to devise legal base for the inclusive education and to

¹⁶ <http://mlsp.kmu.gov.ua/document/156474/st.doc>

¹⁷ Study on inclusive education in Ukraine p. 21 <http://timo.com.ua/node/10b=040>

¹⁸ Study on inclusive education in Ukraine was conducted between June 2011 and 2012 by "European research association (ERA) together with research NGO InMind, "Democratic initiatives of the youth" and "Alisa" NGO with financial support from "Renaissance" foundation, p.15. <http://timo.com.ua/node/10040>

¹⁹ <http://www.education-inclusive.com/ircs/>

organize two resource centers for inclusive education in Lviv and Crimea regions, to publish methodological handbooks. The Centers position themselves as state and public entities, ruled by the Board representing all the stakeholders — schools, boarding-type facilities, medical professionals, administration, although the majority of votes, i.e. over 50% belongs to parents and individuals with special needs. The Center can help parents in locating and accessing the available support to satisfy social, psychological, physical and communicative needs of their child; provide information resources for the teachers, service providers and parents; assist in parents — state interaction.

The “Renaissance” foundation funded hundreds of trainings for the education professionals, devising of inclusive education curricula for kindergartens and primary schools. As a result, the Ministry of Education and Science passed an order no. 1034 of 23.07.2013 “On approval of measures for the implementation of inclusive education in the pre-school and secondary educational establishments till the year 2015”, which stipulates the summarizing of the prior expertise in the area, the beginning of training for the teachers and introducing the systematic consultations and explanations for education professionals, parents and public at large with respect to right to education for children with special needs.²⁰

9. THE CHILD'S RIGHT TO HEALTH IMPROVEMENT AND RECREATION

The valid Law of Ukraine “On health improvement and recreation for children” spells out main principles of the state policy with respect to the children's health improvement and recreation; competencies of the executive bodies and local self-governments; legal, financial and organizational principles for setting up and operation of the facilities for health improvement and recreation for children; rights, duties and responsibilities of all the players involved. The Directive of the Cabinet of Ministers of Ukraine no. 2056-p November 3, 2010 approved the Concept of the State target social program for health improvement and recreation for children till 2015, which was invalidated with Directive of the Cabinet of Ministers of Ukraine no. 549-p of May 15, 2013, which approved the Concept of the State target social program for health improvement and recreation for children and development of network of facilities for children's health improvement and recreation for the period till 2017.

Conducted analysis of the certification of the children's facilities for health improvement and recreation demonstrated that their inadequate material and technical condition prevents them from meeting modern requirements and providing high quality services for children for health improvement. Therefore, these facilities are gradually shut down. The state properties like “Artek international children' center” and “Moloda gvardia” Ukrainian children's center” and their infrastructure need renovations with enhancement of resources' use efficiency, and modernizations in line with the requirements of educational, training, cultural programs and projects under implementation. As of today practically no new facilities for children's health improvement and recreation are being built, while existing institutions are not renovated and therefore cannot operate properly. There are no relevant facilities where

²⁰ <http://zakon2.rada.gov.ua/laws/show/v1034729-13>

children of 4 to 6 years of age, unable to care for themselves, can be accompanied by their parents or legal guardians; the same is true of the children with special needs.

On April 3, 2013 Parliamentary hearings on the issues of health improvement and recreation for children and youth were held²¹. According to the quoted figures, the number of children's institutions constituted 17 973, including 784 health improvement facilities and 17 189 recreation facilities operated over the season of 2012, with 11 facilities having resumed their operation. The State registry for the children's facilities of health improvement and recreation was compiled and updated. As of January 1, 2013 the registry comprised 568 children's institutions, including: 112 public enterprises, 131 communal enterprises and 325 private facilities. At the same time, it should be stressed that this registry still needs finalizing. Summarily, about 1.8 billion UAH was spent for children's health improvement in 2012, money coming both from the local budgets and extra-budget funds; over 2.8 million children enjoyed health improvement programs and organized recreation, which makes up for 68.9% of the entire population of school-age children in Ukraine. The Supreme Rada resolution no. 678-VII of November 5, 2013 approved the Recommendations of the Parliamentary hearings.

It is easy to calculate that expenses per child amounted to a bit more than 640 UAH per year. The negative dynamics of decrease in number of in-patient children's preventive care institutions and inappropriate use of facilities were registered.

10. A CHILD'S RIGHT TO SPORTS

The state power bodies passed a number of regulatory and legal documents aimed at promoting physical development of children and young adults. In particular, The Presidential Decree no. 344/2013 "On National strategy for the development of education in Ukraine till the year 2021"²² addressed the issues of physical development. In particular, lack of comprehensive system of moral, physical and spiritual upbringing and children's and youth's socialization were pointed out as an acute problem which needs to be dealt with in the nearest future. The priority tasks have been set: increasing the scope of physical training in the secondary schools by introducing more PT lessons, disseminating mass sports and physical culture promotion in the extracurricular activities; renovations of physical training facilities for individual and mass sports (expanding the network of sport groups, sections and clubs with guaranteed funding, staffing and material-technical support); introducing innovative approaches to physical training of children and young adults, including valeology component at all stages of training and upbringing of children with different psychical and learning abilities.

In 2013 the Cabinet of Ministers of Ukraine devised the draft law "On National social program for the development of physical culture and sports for the years 2013–2017"²³, and submitted it to the Supreme Rada. The draft law was accepted in the first reading on Septem-

²¹ The Supreme Rada resolution no. 678-VII of November 5, 2013.

²² <http://www.president.gov.ua/documents/15828.html>

²³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=2629&skl=8

ber 5, 2013. The majority of measures spelled out in the programs and documents, however, remain mere declarations.

**11. A CHILD'S RIGHT TO HEALTH CARE. MEASURES AIMED AT CREATING SAFE
AND FAVORABLE ENVIRONMENT FOR THE CHILDREN'S DEVELOPMENT,
PRESERVATION OF THEIR HEALTH AND LIFE**

The State Committee for Statistics of Ukraine provides the following data for January-June 2013²⁴ — 1546 babies were still-born, which is 60 stillbirths less as compared to the same period of 2012. 1993 infants die before reaching the age of 1. The mortality rate among infants younger than 1 year decreased from 8.6% to 7.8% per 1000 live births. Specific pre-natal conditions, inborn developmental flaws, misformations and chromosome anomalies, external causes, infections and parasite-caused diseases, nervous system and respiratory system afflictions, circulation diseases were among main reasons of mortality among infants during their first year of life. The cause of death was not established for significant number of newborns — 4.6%.

The major health care problems include lack of high-quality examination of a child with following objective diagnosis; serious lacks in material and technical base in health care facilities; lack of due care for children with special needs etc. In 2013 the access to medical services for children in the rural areas remained restricted; while many people still could not afford medical services (the free services are insufficient or missing). Ombudsman for children's rights in Ukraine pointed out in his report for January-June 2013 that the results of inspection had demonstrated inadequate level of children's medical facilities' material and technical base and soft medical supplies²⁵.

The state reports underline that compulsory preventive check-up for children below 18 is conducted in children's outpatient clinics with their parents or legal representatives present. Health care institutions introduce measure of counteracting iodine deficit, other preventive measures. Ministry of Health of Ukraine in 2012 developed Conceptual foundations for the complex system of assistance to children suffering from rare diseases in Ukraine. They were approved by the Ministerial order no. 574 of 30.07.2012. Nevertheless, the Ombudsman for children's rights points out in his report for January-June 2013 that Presidential Instructions no. 1-1/2338, issued on August 30, 2012, concerning the measures for providing full-scope assistance to the children with juvenile rheumatoid arthritis and mucopolisaccharidose in 2013, remain unfulfilled.²⁶ Over the first half of 2013 more than 30 petitions from the parents of children suffering from rare diseases, juvenile rheumatoid arthritis and mucopolisaccharidose in particular, were submitted to the Ombudsman for children's rights²⁷. The system of care for children with cancer and rare diseases in Ukraine requires not only

²⁴ <http://www.ukrcensus.gov.ua/>

²⁵ <http://www.president.gov.ua/news/29367.html>

²⁶ Ibid.

²⁷ Ibid.

100% funding, but also a range of consistent measures for the development of child oncology, which so far are being introduced very slowly²⁸.

"My child, a boy of 5, is sick. Yesterday he developed a fever of 40 °C. We called for an ambulance, but were told no one would come, because we live in a remote settlement and they do not have enough fuel to reach us".

"My child called for an ambulance when she had an appendicitis attack. She was told that it was just a practical joke on her part and no one reacted to it. When I came home from work my child was barely alive and suffering from severe pain. How can a health care institution be penalized for such neglect?"

"I live in a rural area. My child, a girl of 3, is very sick. She has flue with high fever. I do not have a car to take her to the hospital. I called for an ambulance but was told that they would not come because "the road is covered with snow". They suggested I treat my girl at home, myself. How am I supposed to treat her? Do they want my child to die?"

*From the calls to the National children's "hot line"
under "La Strada — Ukraina" Center*

The measures planned by the Cabinet of Ministers within the framework of the national action plan for 2013 (and the same applies to previous years as well) do not include immunization, although this issue becomes more and more relevant. The parents ignore the importance of immunizations and refuse to have their children vaccinated; sometimes the needed vaccines are not available in Ukraine for six months in a row.

In 2011–2012 the publication of "Recommendations for parents with respect to preserving their children's health" was planned, but not a single brochure dealt with immunization (vaccination) of a child. All the vaccines have to be licensed and undergo laboratory checks in the State expert center. The private clinics and doctors' offices offer costly vaccines (Infantrix Gexa, Infantrix LPV etc), which are less allergenic, but with shelf-life limited to 10 years. AKDS vaccine, manufactured in Kharkiv is, under the experts assessments, reliable, durable (life warranty), but can cause serious allergic reaction at the time of second and third vaccination. According to vaccination calendar, 10 are obligatory (TB, hepatitis B, whooping cough, diphtheria, tetanus, poliomyelitis, measles, rubella, epidemic parotitis, hemophilic infection). The vaccines are purchased by the Ministry of Health; they are all certified and vaccination is free. 7 more vaccinations are recommended against the following infections: chicken pox, hepatitis A, rothoviral pneumococcus infection, human papilloma. These vaccines are purchased by the patients.²⁹ Rothoviral vaccines needed for infants within 6 months after birth, in 2013 could not be found even in the private clinics in Ukraine, the parents informed. Manufacturers from any country or distributors should submit their proposals for tender to the Ministry of Health, thus opening the door for corruption. The medical workers are obliged to purchase vaccines manufactured by certain companies, at increased prices. Meanwhile, the children without vaccinations will not be admitted to the pre-school

²⁸ <http://www.president.gov.ua/news/29367.html>

²⁹ Vaccination: do we have a choice? <http://corruptua.org/2013/10/shheplennya-chi-ye-pravo-viboru>

institutions. This regulation gives rise to another form of corruption — the parents are buying vaccination certificates. Each certificate costs 50–150 UAH³⁰.

12. RECOMMENDATIONS

12.1. The Supreme Rada of Ukraine should

1. Ensure adequate State budget funding to provide medication, rehabilitation services and preventive care aimed at strengthening of the immune system for the children with special needs and serious diseases.

2. Amend the legislation addressing education needs, in particular, the laws of Ukraine “On education” and “On comprehensive secondary education” with the clause on compulsory information concerning the rights of the child, prevention of crimes against children and highlighting their consequences, on risks of sexual exploitation and sexual corruption; on means of self-defense in accordance with children’s abilities depending on their age.

3. Spell out the concept of “children’s prostitution” in the Law of Ukraine “On protection of childhood”.

4. Prepare changes and amendments to the Criminal procedural code of Ukraine with respect to: compulsory participation of a psychologist at all the stage of court proceedings involving children; free legal assistance to children who became victims or witnesses in a case and need help for the protection of their rights; obligation of the pre-trial inquest body to reveal the information concerning potential threat to the child’s safety if there is evidence that the child had become a victim to a crime, and to protect the child till he/she is classified as victim, irrespective of whether a petition or claim concerning the child’s safety was filed by the child himself or by another party; immediate serving of the materials containing the information of the crime perpetrated against the child to the investigation department, and, for the period of investigation, to ensure adequate protective measures for the child if needed; special section in the Criminal procedural code of Ukraine regulating procedural steps that would meet the best interest of the child who had become a victim.

5. Ratify the Hague Convention on the child’s protection and cooperation in respect of intercountry adoptions.

12.2. The Cabinet of Ministers of Ukraine and central executive bodies should

6. Elaborate the measures aimed at treating child pathologies, currently not treated in Ukraine; define an efficient mechanism for the required treatment of children in the medical facilities abroad and have them added to the Action plan of the Cabinet of Ministers.

7. Devise the measures aimed at ensuring equal access of all women irrespective of their place of residence and social status to high quality OB-GYN services, creating conditions for safe deliveries, and have them added to the Action plan of the Cabinet of Ministers.

³⁰ From the parents’ calls to the National children’s “hot line”.

8. The Ministry of Health of Ukraine should introduce additional measures for timely purchases and supply of medical preparations needed for children suffering from oncological and onco-hematological diseases; meet the need for the storage of these medications in public and private health care facilities, in accordance with requirements spelled out in the Presidential Decree no. 312 of June 1, 2013.

9. Use efficient measures for registering of the relevant medical drugs in Ukraine to ensure timely and uninterrupted supply of the needed medications for sick children.

10. Launch the nationwide information campaign on juvenile justice system for the Ukrainian population.

11. Develop the mechanism of involving children in the decision-making process addressing the issues of childhood and children's rights protection, including the mechanism of taking children's opinions on the children's related issues into account.

12. Develop and submit to the Verkh Rada of Ukraine the draft law aimed at harmonizing the Ukrainian legislation with the clauses of the CE Convention on children's protection from sexual exploitation and sexual abuse. In particular, devise the provisions for complex prevention of children's prostitution and children's pornography; establish criminal liability for corrupting children by means of information/communication technologies, introduce correction programs for individuals committing sexual crimes against children, rehabilitation of children who became victims of sexual exploitation and sexual abuse

13. Launch broad awareness-raising campaign among Ukrainian population to address the adoptions' confidentiality issues and amend the program of support for the adoptive parents with the information related to the confidentiality of adoptions.

14. Conduct broad information campaigns on children's rights; support the operation of the "hot line" addressing children's rights.

15. Carry out the audit of the children's protection system, including, in particular, analysis of causes and scope of children's stay in the boarding schools, reasons for children ending up in them, assessment of needs for social services for children and families within communities.

16. Proceeding from the audit results and outcomes of the pilot models for social services for children and families, tested in Makariv raion, Kiev oblast' and Dnipropetrovsk raion, Dnipropetrovsk oblast' develop a new state target program (or introduce amendments to existing Action Plan) stipulating closing or transforming of the existing boarding-type schools by way of returning children to the families or putting them in foster care; setting up family-oriented social services for children and families within communities, taking into consideration the needs of the said communities; training for professionals so that they could provide high-quality social services for children and families, in line with the new model of services providing; ensuring state budget funding of the new social services for children and families within communities, family-oriented upbringing, specifically, by allocating the resources which will become available after the closing of boarding-type institutions. Involve broad range of specialized NGOs into the process.

17. Conduct a monitoring of the use of child's labor in the shadowy and informal areas of economy or in the private households. Publicize respective statistics. Provide assistance for the children whose labor had been exploited.

12.3. The Supreme Court of Ukraine should

18. Prepare the new resolution of the Supreme Court Plenum on administering the law on responsibility for sexual crimes against children.

12.4. Oblast', municipal and raion state administrations, local self-governance bodies should

19. Compile an inventory of material and technical equipment in the children's hospitals and wards, in compliance with the Ministry of Health order no. 140 of March 10, 2011 "On inventory of material and technical equipment in the health care facilities". The results of the inventory shall be reported at the collegiate meetings with subsequent identification of priority needs in funding and material and technical base of health care facilities providing care for children, medical devices, equipment, furniture, functional beds according to the inventory list.

20. The ARC Council of Ministers, oblast', Kiev and Sebastopol municipal state administrations should ensure social support to every family with seriously afflicted child, in accordance with the requirements of the National strategy for prevention of social orphanhood for the period till 2020, approved by the Presidential Decree no. 609 of October 22, 2012.

21. Create specialized centers for social-psychological rehabilitation of children-victims of sexual exploitation and sexual abuse.

22. Continue the setting up of the "green rooms" for questioning of children-victims of sexual exploitation and sexual abuse, in the course of the criminal inquest.

23. Ensure observance of children's rights to education in the rural areas, with respect to Roma children, introduce inclusive education. Prevent illegal closing of secondary education institutions.

24. Guarantee adequate funding and public information on the issues of inclusive education.

12.5. NGOs and international organizations, donors, scientific and research centers should

25. Define the concept of "sexual maturity" age in Ukraine, and spell out respective age of consent to sexual intercourse in Ukraine.

26. Develop efficient set of methods for monitoring children's rights violation in the comprehensive educational and boarding-type institutions and ensure viable mechanism of bringing officials guilty of violations to justice.

27. Introduce the system of monitoring of institutional facilities in order to protect rights of children staying in them.

XXII. GENDER DISCRIMINATION AND VIOLENCE AGAINST WOMEN

Gender discrimination and violence against women are manifested in many ways in Ukraine: domestic violence, rape, physical assault, stalking, sexual harassment etc. Domestic violence and rape have reached epidemic rate in Ukraine.

Domestic violence represents a serious problem in Ukraine. The national system of collecting and processing of the information on domestic violence is non-existent. The internal statistics provided by the Ministry of social policy and Ministry of interior uses multiple sources and does not make distinction between various types of violence, i. e. physical, economic, sexual and psychological. The number of domestic violence cases is not decreasing. Every hour at least 15 women are subject to domestic violence.² According to available statistics, 68% of women in Ukraine are subject to cruelty in the family. They suffer from domestic violence more often than from robberies, rapes or motor accidents altogether. 35–50% of women that end up in the hospitals with bodily injuries are the victims of domestic violence³.

Here are the figures characterizing the scope of domestic violence in Ukraine in 2013:

- Reports on facts of violence — 160 730 persons.
- Registered — 88 162 individuals including:
 - Men — 79 986;
 - Women — 77 908;
 - Children — 757.
- Registered total — 93 422.
- Official warning issued to 89 168 persons.
- Administrative charges lodged on the request of 108 467 persons:
 - District inspector sued 106 144 individuals.
 - 3714 persons referred to correction programs.
 - Protection orders — 6161 individuals.

In Rivne oblast', for example, 3800 individuals are on the preventive list for committing domestic violence, including 3572 men, 217 women and 11 minors⁴. In Kharkiv 2512 complaints involving domestic violence were filed with law enforcement bodies over the

¹ Prepared by K. Levchenko, M. Yevsyukova, O. Kalashnyk, M. Lehen'ka, «La Strada — Ukraine».

² <http://tsn.ua/ukrayina/schogodini-15-ukrayinok-strazhdayut-vid-katuvan-ta-poboyiv-u-sim-yah-315896.html>

³ http://wcu-network.org.ua/ua/possessing-equal-rights/news/Mukachvsk_pravooxoronc_tezh_proti_nasilstva_v_smi

⁴ http://wcu-network.org.ua/ua/possessing-equal-rights/news/Kudi_na_Rvnenxhin_zvernutisja_zhnkam_xho_poterpajut_vd_domashnogo_nasil

9 months of 2013. 500 of those were repeated felonies.⁵ Children are the main victims of domestic violence, and they are well-known for replicating behaviors.⁶

Inefficiency of law is one of the causes for the spreading of this phenomenon.

The victims of domestic violence face double discrimination and double violation of their rights as, having suffered from violence, they then encounter total indifference on the part of state authorities and law enforcement bodies as they file complaints and petitions trying to protect their rights. In particular, over the 9 months of 2013 the hot line “La Strada — Ukraina” Center received 225 complaints on lack of action on behalf of militia, state and local self-governance bodies.

We are talking not only about the faults of the Law of Ukraine “On preventing domestic violence”, but also about the new Criminal procedural code of Ukraine that had narrowed the competence of the district militia inspectors in handling the complaints on domestic violence, and also referred the non-grave crimes and crimes of medium gravity committed within the family to the private incrimination competence. It means that the state will step up to protect a woman only after she is dead or seriously mutilated.

In February 2013 the Department of Children and Young Adults under the Ministry of social policy of Ukraine proceeded to set up a working group for the improvement of legislation preventing domestic violence. The group discussed the draft law “On preventing and combating domestic violence”; in summer 2013 it was significantly amended in compliance with observations made by academic-expert Directorate of the Supreme Rada of Ukraine and independent experts (the new version is to be submitted to replace the earlier draft law). The inter-departmental working group also discussed the implementation of correction programs for the persons guilty of domestic violence, approval of the uniform program by the Ministry of social policy, i. e. developing the bottom-line standards for social services offered to people who have become victims of domestic violence. The Department for families and children under the Ministry of social policy of Ukraine started the introducing of changes in the procedure of reporting cruelty against children or real threat of it etc. The experts from the Bureau of democratic institutes and human rights under the OSCE, presenting the expert conclusion to the draft law no. 2539, specifically stressed the need for precise definition of the terms of references between various official bodies in preventing and counteracting domestic violence; collection and dissemination of statistical data on domestic violence; possibility of state funding for the NGOs addressing the issues of preventing and counteracting domestic violence; and increase of responsibility for committing acts of domestic violence.⁷

The rapes also fall under the category of private cases. It is also a most crucial problem for Ukrainian society and women specifically. Over the period between the years 2009–2011 7 thousand rape complaints were submitted to the internal affairs bodies. Only two thousand criminal cases were filed with subsequent investigation. By the beginning of 2012 the courts had 232 unresolved rape cases. Even the cases which are filed with the militia offices are not handled properly. The majority of victims, therefore, prefer to keep silent instead of

⁵ http://wcu-network.org.ua/ua/possessing-equal-rights/news/U_Xarkov_zavershilasja_akcja_«16_dnv_proti_nasilstva»

⁶ http://www.volynnews.com/news/city/nasylstvo_u_lutskykh_simyakh_zareyestrovano_272_vypadky/

⁷ <http://www.uapravo.org/text.php?id=1650>

approaching official or law enforcement bodies, being afraid of their assailants, militia officials and public ostracism. As a result, they get no help at all.

Primary and secondary help to women-victims of domestic violence is not provided appropriately. It is mostly offered by the non-governmental organizations. Thus, in 2013 “La Strada — Ukraina” Center provided social assistance and monitoring of the cases related to violence against women and children: 9 cases of domestic violence and children’s rights’ protection; 2 cases of domestic violence against Ukrainian citizens abroad (in Macedonia and Palestine); 1 case against Uzbekistan citizen who suffered from domestic violence in Montenegro (the case started in late 2012). Among the types of assistance offered by the Center were psychological, social and pedagogical, economic, legal, information services, search for people abroad and assistance in their return to Ukraine; help in establishing/renewing contacts with families, temporary placements in shelters, legal support and court representation etc. Assistance was granted due to sponsors’ funding and charity donations. The state did not contribute a penny.

In April 2013 the results of monitoring of institutions and facilities for the victims of domestic violence were made public as a part of social program “Let’s say NO to domestic violence” launched by AVON. The monitoring revealed a lot of faults in their operation. 51 institutions were monitored. The main problem is that although centers offering support to the people in complicated situations exist in oblast’s, they are not specialized: the ex-convicts released from prisons, orphans and a woman with a child chased out of home by her husband end up under the same roof. The specialized centers are to be set up by the local authorities. The existing centers are not enough, their number and quality fail to meet the standards established by the Council of Europe.

The National hot line to counteract human trafficking and National hot line to counteract domestic violence and protect children’s rights have been reformed in late 2012. As a result, on January 1, 2013 the National hot line to counteract human trafficking, domestic violence and gender discrimination and the National hot line for children started their operation under “La Strada — Ukraina” Center. In 2013 7 036 calls were made to the National hot line, including 92.3% on the issues of domestic violence and gender discrimination and 7.7% — on issues of human trafficking. 69.7% calls were made by women, 30.3% — by men. 66. 6% of consultations referred to information, 19.7% — to legal issues, 12.2% — to psychological issues, 15% consultations were given by the invited experts. 1288 on-line consultations were provided. In November 2013 weekly consultations on the Internet (via Skype) were introduced. 11 consultations have already been conducted.

27.4% consultations addressed domestic violence; 5.4% covered emergency situations. 11.7% consultations concerned psychological issues, 10.3% — to personal relations, 15.1% — divorce and related issues, 3.2% — consultations involving social help.

The site www.ostanovimnasilie.org.ua, managed by “La Strada — Ukraina” Center specialists has been in operation for over 2 years. Actually it is the first client-oriented site in Ukraine aimed at assisting women that had experienced domestic violence. There one could find information related to domestic violence, possible ways of resolving the issue, names and addresses of services and offices providing help to the victims of domestic violence. It is also possible to seek counseling from “La Strada — Ukraina” Center psychologists, either on-line, or by calling the number of the National hot line for prevention of domestic violence — 0 800 500 335 or 386.

A handbook "Social and corrective work with individuals guilty of committing domestic violence" (in two volumes) was published in 2013. The academic/methodological edition addresses the issues of social and corrective work with individuals guilty of committing domestic violence, methods of organizing and conducting this work. In Kharkiv and Donetsk the training seminars for the social services employees were conducted with the use of this handbook. 85 persons participated in the training.

Another manual, "Domestic violence: current problems and ways of their solving" has also been issued within the framework of realization of the joint project "Enhancement of legal capacity of women-victims of domestic violence", which has been implemented by three NGOs in Kiev, Kherson and Volyn' oblasts' with "Renaissance" foundation support.⁸

The funding of the NGOs operation, aimed at preventing domestic violence domestic violence and rendering assistance to the victims of it on the basis of social order and purchase of social services, still remains unsatisfactory. The responsibility for prevarications rests with the Ministry of social policy, which has to develop and approve the internal by-laws in line with the laws in force.

The efficient operation of the NGOs, aimed at realization of the bylaws' provisions and various services to the public needs substantial funding, which is hardly available at the current stage of development of the civil society and social responsibility on the part of business structures. Therefore financial support offered by the governmental structures can become a serious incentive for the strengthening of the civil society structures and also move forward the social services market in Ukraine. The following normative and legal acts regulating the possibility of funding for the NGOs include the Law of Ukraine "On public organizations", articles 22 and 23; the Law of Ukraine "On social services", art. 1.7; the Law of Ukraine "On introducing changes to the Budget code of Ukraine" no. 5428-VI [5]; Presidential Decree no. 32/2012 of 25.01.2012 "Support for the development of the civil society in Ukraine"; Presidential Decree no. 212/2012 of March 24, 2012 "On the state policy strategy for the development of civil society in Ukraine"; Cabinet of Ministers' Resolution of October 12, 2011 no. 1049; Cabinet of Ministers' Resolution of April 29, 2013 no. 324 "On approving the procedure for the social order funded from the budget". On October 16, 2012 the Supreme Rada of Ukraine passed the Law of Ukraine "On introducing changes to the Budget code of Ukraine". no. 5428-VI, introducing, in particular, changes to the articles 87 and 91 of the Budget code, expanding the list of public associations. The new norms of the Budget code promote the involvement of the NGOs in the implementation of the social, humanitarian, environmental and cultural projects with the budget funding. The Cabinet of Ministers' Resolution no. 324 of April 29, 2013 "On approving the procedure for the social order funded from the budget" was passed. This procedure, in line with the Law of Ukraine "On social services" defines the mechanism of formulating, realization and funding of the social order on social services provided by the non-governmental entities, funded from the budget, as well as the procedure for organizing and conducting bidding for this funding. The local budgets are supposed to provide the necessary funds.

⁸ http://www.ukrinform.ua/ukr/news/anons_1885049

From the legal stand the situation demonstrates total inertia of the state bodies in this area, and as a result — lack of opportunities to ensure financial governmental support for the NGOs implementing important social programs for the benefit of the Ukrainian citizens.

RECOMMENDATIONS

1. Conducting a large-scope nationwide campaign on dissemination of the provisions and principles of the CE Convention no. 210 on preventing and combating violence against women and domestic violence.

2. Preparing for ratification and ratifying CE Convention no. 210 on preventing and combating violence against women and domestic violence.

3. Finalizing and adopting the Law of Ukraine “On preventing domestic violence”. Offering efficient mechanism of assistance and protection for the victims of domestic violence and allocating funds for this activity.

4. Conducting research on the impact of the new Criminal procedural code on the militia competences, specifically, with reference to the district inspectors, in the activities, aimed at preventing domestic violence. Proposing and introducing relevant changes.

5. The Ministry of social policy should develop internal normative documents regulating adequate funding for NGOs operations in the area of preventing domestic violence, granting assistance to the victims on the basis of the social order and purchase of the social services.

6. Revising the activities and interaction of the all the subjects involved in the process of preventing domestic violence — from the district inspector, physician and school teacher to the social worker.

7. Devising methods and training specialists for the comprehensive work with the families known for domestic violence: with the victim, the perpetrator and the child, when applicable.

8. More active implementation of the corrective programs for the perpetrators.

XXIII. HUMAN TRAFFICKING AND VIOLATION OF HUMAN RIGHTS

1. GENERAL OVERVIEW. STATISTICS. TENDENCIES

Trafficking remains a serious problem for Ukraine. Comparing analytical reports of the last 3–4 years and available data for 2013 we can draw conclusions on current developments and major tendencies in this area. Russia, Poland, Czech Republic and Turkey are among the main countries of destination for Ukrainians. Meanwhile Ukraine itself is becoming one of the destination countries (labor exploitation in agriculture and construction). This exploitation is escalating, both abroad and in Ukraine. Among the victims of human trafficking the percentage of males has been increasing (according to the International Organization for Migration (IOM) this figure amounted to 23% in 2009, 36% in 2010, 43% in 2011, 56% in 2012 and 51% in the 9 months of 2013). The number of minors among the victims remains high. Many cases show mixed forms of human trafficking. The number of foreign nationals among human trafficking victims (from Moldova, Uzbekistan, Kazakhstan, Pakistan etc.) is growing.

The results of research exploring the level of human trafficking awareness in Ukraine (September-October 2013, sampling of 2500 respondents within the range of 14–65 years in the ARC, Dnipropetrovsk, Lviv, Mykolaiv, Ternopil, Kharkiv oblasts') show that the number of people aware of human trafficking issues in their areas has grown (9% as opposed to 7% in 2011). 59% are certain that they cannot become the victims of human trafficking (2011 — 70%). The research showed increased awareness of the existence of “hot lines” preventing human trafficking, international and non-governmental organizations, and role of the local state administrations.

2. INTERNATIONAL CONTEXT OF COUNTERACTION TO HUMAN TRAFFICKING

2013 has become a year of active international operations aimed at counteracting human trafficking. Ukraine either initiated or participated in the events. It was a year of Ukraine's presiding in the OSCE, where Ukrainian government had pointed out fight against human trafficking as one of the priority areas.²

¹ Prepared by K. Levchenko, «La Strada — Ukraine».

² See, in particular: http://www.kmu.gov.ua/control/uk/publish/article?art_id=245972106&cat_id=244276429; <http://mfa.gov.ua/ua/press-center/comments/358-rezulytati-golovuvannya-ukrajini-v-obse-u-pershomu-pivrichchi-2013-roku>; http://www.kmu.gov.ua/control/uk/publish/article?art_id=246420166&cat_id=244276429

2013 has also become a year of the first round in the monitoring of Ukraine's fulfilling the provisions of the CE Convention no. 197 on the measures for action against trafficking in human beings (GRETA). On February 1, 2013, in compliance with GRETA procedure Ukrainian government will receive a questionnaire³ to be filled out prior to June 1, 2013. Public organizations in Ukraine have also provided their alternative answers to the questions, in compliance with GRETA procedure⁴. GRETA monitoring visit to Ukraine is planned for October 21–25, 2013. In March 2014 GRETA will review the preliminary report on Ukraine, which has to be finally approved at the summer session of 2014, upon receiving adequate clarifications and answers from the government with subsequent approval and publication by the Committee of the Parties to the Convention.

In 2013 Ukraine reported the implementation of the provisions of the International Covenant on economic, social and cultural rights. Non-governmental organizations and "La Strada — Ukraina" Center prepared an alternative report covering the issues of non-discrimination, equality between men and women, violence against women, including domestic violence, uprooting of slavery⁵.

In 2013 the preparatory work on the eighth National report as well as on the shadow reports concerning the implementation of the provisions of the UN Convention on the elimination of all forms of discrimination against women has started. The report will be submitted to the UN Committee for elimination of all forms of discrimination against women in the first half of 2014. Non-governmental organizations and experts participating in the Gender strategic platform started preparing shadow report. The Convention (art. 6) calls its participating countries to use all the available measures, including the legislative ones, to stop all types of women trafficking and use of women prostitution⁶. When governmental delegation was defending the sixth and seventh combined report in 2010, about 30% of the questions posed by the committee members were related to the issues of human trafficking and gender violence. The Final recommendations contain specific proposals on the improvement of state policy with respect to protection of women-victims of human trafficking and to fighting the criminals.⁷ The information on the fulfillment of the suggested proposals should be included into the eighth report.

"Ukraine — Council of Europe: plan of action for 2011–2014"⁸, approved in 2011, stipulates the implementation of the project 1.3.3 — "Formation of the mechanism of the immedi-

³ English version of the questionnaire can be found on GRETA site: http://www.coe.int/t/dghl/monitoring/trafficking/Source/GRETA_2010_1_rev3_en.pdf. Ukrainian translation: Naukovo-prakychnyi analis vidpovidnosti ukrainskoho zankonodavstva polozhennyam Konventsii Rady Yevropy pro zakhody shchodo protydyi torhivli lud'my: collection of studies/group of authors, edited by O. Bandurka, K. Levchenko, O. Litvinova. — Kh. "Prava lyudyny" publishing house, 2011. — 244 p.

⁴ http://la-strada.org.ua/ucp_mod_library_view_289.html

⁵ http://www.la-strada.org.ua/ucp_mod_library_view_280.html

⁶ http://zakon4.rada.gov.ua/laws/show/995_207

⁷ Concluding recommendations of the UN Committee on elimination of all forms of discrimination against women, Ukraine. — session 45, January 18 — February 5, 2010. — CEDAW/C/UKR/CO/7. Concluding observations note negative aspects of the policy, namely, (1) direct causes leading to human trafficking are not resolved; (2) funding for the shelters is not sufficient, (3) on the whole, resources allocated for the action against human trafficking are inadequate, (4) the scope of international cooperation to hold the culprits responsible is insufficient. Text of the document can be found here: http://gender.at.ua/_ld/0/82_CEDAW_C_UKR_CO_.pdf

⁸ [http://coe.kiev.ua/uk/DPAInf\(2011\)17E%20Action%20Plan%20Ukraine.pdf](http://coe.kiev.ua/uk/DPAInf(2011)17E%20Action%20Plan%20Ukraine.pdf)

ate response to the problems of people facing complicated life situations, including prevention of home violence, human trafficking and gender discrimination by way of setting up an all-Ukrainian “intellectual” line of quick response”. According to Action plan, 1 billion Euros are needed for its implementation. By November 2013 it has not been launched yet. Another “Project for counteracting human trafficking in Ukraine” was also planned (2.2.6) It should have lasted for 30 months, and its cost amounted to 1.5 million Euros, but due to the lack of funding by November 2013 it has not been started yet⁹.

In 2013 “La Strada — Ukraina” Center disagreed with the conclusions on Ukraine for 2012, formulated in the annual report of the US State Department¹⁰ with respect to human trafficking in various countries of world (published in June 2013), claiming that they lacked objectivity.¹¹ Ukraine ended up on the so-called “observation list”, having thus deteriorated its position as compared to 2011 (second group of countries), although in 2012 legislative basis enabling practical implementation of the provisions of the Law of Ukraine “On counteraction to human trafficking” was approved.¹²

In March 2013 Ukrainian government received recommendations from the countries-members of the UN Human Rights Council, based on the results of the second round of reporting within the frame of the Universal periodic Review (UPR)¹³. Among other things rec-

⁹ Information on project 2.2.6. Principal partners — Ministry of interior, Ministry of social policy, Ministry of justice, courts and prosecutor’s general office, Supreme Rada of Ukraine, Social services centers and NGOs. Project task — promoting ratification and full implementation of EC Convention on counteracting human trafficking (CETS no. 197) as efficient means of human trafficking prevention, prosecution of traffickers and protection of victims; establishing legal procedures and mechanisms for timely assistance to the human trafficking victims. Expected results and main areas of operation: 1. Prevention of human trafficking, criminal prosecution of traffickers and protection of victims in compliance with the EC Convention on counteracting human trafficking; 2. Increased potential of key institutions participating in the counteraction to human trafficking; 3. Improved skills in the use of standards in counteracting human trafficking. Judges, prosecutors and other officials undergo training on the implementation of the EC Convention on counteracting human trafficking EC Convention on counteracting human trafficking; 4. Assistance is granted in setting up shelters and help phone lines; 5. Consultations in the development of plans and preparation of awareness raising campaigns are available; 6. Seminars, trainings and conferences on prevention and counteraction to human trafficking are carried out; 7. Material and technical support for the law enforcement bodies fighting cyber crime and human trafficking is enhanced; 8. Visiting competent divisions of the foreign law enforcement bodies to familiarize with the best practices in identifying and stopping instances of human trafficking, exchanging information on related crimes, organizing joint events on their uncovering and banning; 9. Recommendations on current issues of documenting, revealing and investigating facts of human trafficking are devised (See.: [http://coe.kiev.ua/uk/DPAInf\(2011\)17E%20Action%20Plan%20Ukraine.pdf](http://coe.kiev.ua/uk/DPAInf(2011)17E%20Action%20Plan%20Ukraine.pdf)).

¹⁰ http://photos.state.gov/libraries/ukraine/895/pdf/UKRAINE_TIP_report_2013_ukr.pdf

¹¹ Link to our open appeal re: US Department of State report and interview — http://la-strada.org.ua/ucp_mod_news_list_show_361.html; http://la-strada.org.ua/ucp_mod_news_list_show_354.html; <http://www.kommersant.ua/doc/2216319>; <http://www.kommersant.ua/doc/2322512>

¹² See: <http://zakon2.rada.gov.ua/laws/show/29-2012-%D0%BF>; <http://zakon1.rada.gov.ua/laws/show/417-2012-%D0%BF>; <http://zakon2.rada.gov.ua/laws/show/303-2012-%D0%BF>; <http://zakon2.rada.gov.ua/laws/show/350-2012-%D0%BF>; <http://zakon1.rada.gov.ua/laws/show/783-2012-%D0%BF>; <http://zakon2.rada.gov.ua/laws/show/660-2012-%D0%BF>

¹³ Governmental report can be found here: http://www.minjust.gov.ua/upr/upr_project_dopovid.html. Reporting date — October 2012. NGOs in accordance with UPR recommendations prepared their reports and submitted them, including reports on counteracting human trafficking. The issues related to human trafficking are reflected in the report of the NGO coalition for gender equality, counteracting human trafficking and domestic violence. (http://www.la-strada.org.ua/ucp_mod_library_view_190.html). “La Strada” international association together with “La Strada — Ukraina” also submitted a separate report on counteracting human trafficking (http://www.la-strada.org.ua/ucp_mod_library_view_191.html), while the international organization ECPAT prepared report on fighting commercial sexual exploitation of children covering the issues of counteracting children trafficking (http://www.la-strada.org.ua/ucp_mod_library_view_192.html).

ommendations addressed the issues of human trafficking prevention and assistance to its victims.¹⁴ Over the year 2013 NGOs have been actively lobbying the formation of the working groups in charge of implementation of the said UPR recommendations. First practical steps were taken in October 2013.¹⁵

3. GOVERNMENTAL MEASURES AIMED AT COUNTERACTING HUMAN TRAFFICKING

To make counteraction to human trafficking more efficient, the Law “On counteraction to human trafficking” was passed in 2011¹⁶. It was described in the former reports and academic papers.¹⁷ Practical implementation of this law and supportive normative and legal acts started in late 2012 and early 2013. In 2013 the National social targeted program for counteracting human trafficking, covering time period till 2015, was launched; the process of granting the status and one-time financial assistance to the victims of human trafficking has started. On July 30, 2013 the Ministry of social policy issued an order no. 458 establishing the standards for the social services to the victims of human trafficking. They include standards concerning social integration and reintegration for adults and children — victims of human trafficking and services for social prevention of human trafficking¹⁸.

In summer 2013 methodological recommendation on rendering social services to the individuals — victims of human trafficking¹⁹ and a training program for experts in these services were developed.²⁰ These documents were compiled and approved under p. 55 — “Improvement of system of counteracting human trafficking” of the National plan of action for 2013 with respect to the implementation of the Program for economic reforms for the years “Affluent society, competitive economy, efficient state”, approved by the Presidential Decree no. 128 of 03.2013²¹. Noteworthy, the conclusions on the expediency of methodologi-

¹⁴ Recommendations on the results of the second round: http://www.minjust.gov.ua/upr/Response_of_Ukraine_ukr4.pdf

¹⁵ Ministry of justice of Ukraine, order no. 163/7 of 26.02.2013 on setting up a working group for the implementation of the UPR recommendations to Ukraine with respect to the observance of human rights and freedoms in Ukraine: http://www.minjust.gov.ua/upr/2013-02-26_163_7.pdf. The addendum contains a list of the working group members.

¹⁶ Law of Ukraine “On counteraction to human trafficking”. — <http://zakon4.rada.gov.ua/laws/show/3739-17>.

¹⁷ Theoretical/practical commentary to the Law of Ukraine “On counteracting human trafficking”./Ed. By Om-Bandurka, K. Levchenko, O, Litvinova — “Ukraina” agency, 2013 — 182 p.

¹⁸ On establishing standards for social services provided to human trafficking victims. Order of the Ministry of social policy of Ukraine no. 458 of July 30, 2013 [On-line resource]. — Link: <http://zakon2.rada.gov.ua/laws/show/z1327-13/print1378904528418679>

¹⁹ Order of the Ministry of social policy of Ukraine no. 432 of 19.07.2013 “On approving methodological recommendations on providing social services to human trafficking victims.” http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=CAA374A844BAFC292704EC70BA9FD057.vapp16:1?art_id=153435&cat_id=150191

²⁰ Order of the Ministry of social policy of Ukraine no. 508 of August 16, 2013 “On approving the Program of training for the specialists in social services provided to human trafficking victims”: http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=CAA374A844BAFC292704EC70BA9FD057.vapp16:1?art_id=153800&cat_id=150191

²¹ National action plan 2013 for the implementation of the economic reforms Program for the years 2010–2014 “Affluent society, competitive economy, efficient state” — Decree of the President of Ukraine no. 128 of 12.03.2013. [On-line resource]. — Link: <http://www.president.gov.ua/ru/documents/15521.html>

cal recommendations and training programs were formulated in 2011–2012 and reflected in the monitoring reports. These examples demonstrate the importance of monitoring and its practical results.

In 2013 results of monitoring conducted in the facilities providing assistance for the victims of home violence and human trafficking in June–September 2012 were published.²² They highlighted the difficulties of access to services for the victims of human trafficking (age-based restrictions — the clients should be no older than 35; registration as the necessary condition of eligibility for help in the centers etc). So, as in the previous years, there is urgent need for introducing changes into a number of Cabinet of Ministers resolutions in force addressing the organizing of assistance to the victims of human trafficking, especially the resolutions including standard by-laws for the centers of social-psychological help to adults and the centers of social-psychological rehabilitation for children. These recommendations have been formulated by the experts over the recent years, but so the state has paid no heed to them. The difficulties related to identifying the victims of human trafficking among the clients of the centers (individuals facing complicated circumstances) have been revealed.

Assistance to the victims of human trafficking, despite a number of normative and legal acts which have been passed remains a problematic area of the state policy. The absolute majority of persons that have been certified reject any legal or psychological help, seeking only material assistance. The difficulties include: 1. Lack of information among the individuals eligible for the status of the victim of human trafficking as to what facilities and structures to approach for help. 2. Low professional qualifications of the local employees in charge of the identification of human trafficking victims. 3. Lack of knowledge of legislative basis regulating prevention of human trafficking. 4. Insufficient capacity to provide the whole range of services needed by the victims of human trafficking.

The State target social program of counteracting human trafficking adopted for the period till 2015 (Resolution of the Cabinet of Ministers of Ukraine no. 350 of 21.03.2012) does not help either, as it contains no reference to the funding needed for the provision of services, i. e. help to the human trafficking victims in the specialized facilities. Meanwhile, the experience of implementing the mechanism of referring the victims the human trafficking to the said facilities in the pilot oblasts', demonstrated that appropriate trainings and work-shops for the specialists working in these facilities helped in identifying the victims of human trafficking, thus increasing the number of the clients.

The issue of providing assistance to the foreign nationals remains crucial, as well as their protection and care during their stay in Ukraine that was mentioned in the former reports.

The Ministry of social policy was appointed the national coordinator in counteracting human trafficking in 2012²³. The amendments to the Ministry by-laws defining its functions in this area were introduced on 27.03.2013²⁴. The next stage of the administrative reform at the oblast' level consisted in transferring the functions of counteracting human traffick-

²² http://la-strada.org.ua/ucp_mod_library_view_292.html

²³ Resolution of the Cabinet of Ministers of Ukraine no. 29 of January 18, 2012 . RE: national coordinator for counteracting human trafficking: <http://zakon4.rada.gov.ua/laws/show/29-2012-%D0%BF>

²⁴ Decree of the President of Ukraine no. 164/2013 of March 27, 2013: <http://zakon4.rada.gov.ua/laws/show/164/2013>

ing to the different subdivisions — those of social security, education and science, family and young adults. Thus, the vertical of power was disrupted. Besides, the staff of the new subdivision lacks experience in this area, which fact leads to negative consequences, like inability to identify the human trafficking victims or to prepare paperwork needed to establish the status of human trafficking victim etc. The ARC in particular is encountering a lot of problems. The transformations within the Ministry of social policy are still going on: the participation of the Department for gender issues and children health care, under which the office of counteracting human trafficking operates, has not been defined. Operation in the area of counteracting human trafficking had to be coordinated via inter-department coordination council dealing with the matters of family, gender equality, demographic development and counteraction against human trafficking. In 2013 (as well as in 2011 and 2012) the council remained idle. The low level of coordination or its absence is registered at the oblast' level in almost all the regions of Ukraine.

L. Polulyakh from "A-Vesta" NGO (Vinnytsya oblast') opines that "assessing the scope of implementation of the state policy for counteracting human trafficking, human trafficking one should note that the majority of professionals responsible for this implementation relate to these activities only indirectly. The experience of conducting the educational events for many years leads us to the conclusion that very often professionals are not aware of the meaning of basic concepts (i. e. *human trafficking*, *country of destination*, *victims of human trafficking* etc), have a limited knowledge of legislative base etc. Counteracting human trafficking human trafficking is not priority issue for the overwhelming majority of departments. International and local NGOs have undertaken the task of upgrading the professional level of specialists"²⁵. They organized the training for oblast', raion and local employees on how to implement the provisions of the adopted documents in practical activity. In the course of 2013 such trainings were conducted by "La Strada — Ukraina" Center for raion and oblast' staff in Cherkassy and Chernigov oblasts'. Training seminars on the implementation of standards were organized for the specialists in Kharkiv, Lugansk, Lviv, Vinnytsya, Khmelnytsky, Kherson, Odessa, Poltava and Donetsk oblasts' and in the city of Kiev. Over 500 employees participated in the trainings. The Office of the Coordinator of OSCE projects in Ukraine and IOM mission in Ukraine together with the NGOs organized similar trainings in other oblasts'. They were positively assessed by the participants. However, these trainings are not systematical, as they are not included into the curricula for upgrading of the public servants. That is why so far the scope and schedule of these trainings depend on donors' assistance and funds.

The reorganization within the structure of the Ministry of Interior of Ukraine caused serious criticism on behalf of both NGOs and international organizations. In the course of reorganization the Department fighting the crimes involving human trafficking was liquidated, which step had negative impact on the law-enforcement activity in this area and affected the indicators of the resolved crimes involving human trafficking in 2010–2012 as compared to the former indicators. In 2013 the Department was restored within the Ministry of Interior structure, but both qualified staff and time have been wasted.

²⁵ Monitoring of the state policy in the area of counteracting human trafficking: 2013. — K.: "Ukraina" publishing house, 2013, . http://la-strada.org.ua/ucp_mod_news_list_show_418.html

Thus, during 11 months of 2013, according to the Ministry of interior data 137 criminal actions, punishable under article 149 of the CCU, have been registered, including 26 in Kharkiv oblast', 24 — in Chernigov oblast', 12 — in the ARC, 9 — in Dnipropetrovsk and 9 — Odessa oblast', 8 — in Kiev, 7 — in Donetsk oblast'. The crimes of this nature have not been registered at all in Lviv and Khmelnytsky oblast'; 1 case was registered in Volyn', Lugansk, Plotava, Rivne and Kherson oblast'. These figures by no means reflect the actual scope of the problem. For the sake of comparison, in 2004 269 crimes of this nature were registered, in 2005 — 415, in 2006 — 376, in 2007 — 359, in 2008 — 322. Over the 6 months of 2011 126 cases were resolved (in 2010 — 337), while over the 6 months of 2012 this indicator amounted to 109.

4. MONITORING ACTIVITY

In 2013 the joint visits of Ministry of social policy and other bodies of central executive power representatives, OSCE projects' Coordinator in Ukraine, IOM, "La Strada — Ukraina" Center and NGOs to oblasts' continued. Their goal was monitoring of the current stage in the implementation of the state program of counteracting human trafficking at oblast' level. The visiting schedule was as follows: The ARC — 25–27.09, Vinnytsya — 30.09–02.10, Donetsk — Lugansk — 15–19.07., Lviv — Transcarpathian obl. — 27–31.05, Kherson — Mykolaiv — 23–26.04, Odessa — 27–29.03, Kharkiv — 16.05, Chernivtsy — Khmelnytsky — 01–05.07. Recommendations based on the visits' results were made public at the inter-disciplinary round tables.

Monitoring conducted by a group of independent experts — NGOs representatives from Kiev, Vinnytsya, Kharkiv, Odessa, Volyn' oblasts and the ARC in collaboration with Criminological Association of Ukraine and specialists from Kharkiv National university of the internal affairs of Ukraine resulted in **"Monitoring of the implementation of the state policy for counteracting human trafficking:2013"** publication, that offers the overview of the current problems and recommendations for their solving.²⁶

Together with the Ministry of social policy Criminological Association of Ukraine and Kharkiv national university of the internal affairs of Ukraine "La Strada — Ukraina" Center compiled an information bulletin on the implementation of the Law of Ukraine **"On counter-action to human trafficking" and state target program for counteracting human trafficking for the period till 2015**²⁷. This publication can serve as practical handbook in the development and implementation of the state policy in the area of counteracting human trafficking, providing assistance to the human trafficking victims, conducting efficient monitoring at all stages of its implementation.

In 2013 the **academic and practical commentary to the law of Ukraine "On counteraction to human trafficking"** was completed.²⁸ This publication contains a collection of essays analyzing the aforementioned law, explains organizational and legal principles for

²⁶ http://la-strada.org.ua/ucp_mod_news_list_show_418.html

²⁷ http://www.la-strada.org.ua/ucp_mod_library_view_285.html

²⁸ http://www.la-strada.org.ua/ucp_mod_library_view_284.html

counteracting human trafficking, main tendencies of the state policy and foundations of the international cooperation in this area, competences of the executive bodies, procedure for granting appropriate status to the victims of human trafficking etc.

5. STANDARDIZATION OF SERVICES IN THE AREA OF COUNTERACTING HUMAN TRAFFICKING

In 2013 a long-lasting process of lobbying the approval of standards for counteracting human trafficking came to a successful end.

The Ministry of social policy by its order no. 458 of 30.07.2013 established three standards: Standard for services in social prevention of human trafficking, Standard for services in social integration and reintegration of human trafficking victims and Standard for services in social integration and reintegration of children who had become victims of human trafficking.

Standardization is an important step in ensuring the right to due social protection, establishing the scope of basic services required by human trafficking victims and members of the risk groups, regulating these services at the governmental level, ensuring their accessibility and high quality. Social standards for services to victims of human trafficking cover the areas of prevention, rehabilitation, mechanism for interaction between departments in providing assistance, need for upgrading of the staff, obligatory documents, indicators etc. Here are the major characteristic features of the standards: 1) The standards apply to all the services' providers regardless of the forms of ownership. 2) NGOs are defined as the entities providing services in compliance with the standards. 3) The standards set up the bottom line, which means they are to be adhered to in full scope and without exceptions. 4) The standards apply to all the recipients of the services — Ukrainian citizens, foreign nationals, stateless persons. 5) The standards spell out the content, forms, methods and principles of the operation. 6) The standards contain clauses related to the protection and security of the services' recipients. 7) The standards stress the need for research with due consideration of the interests of target groups or specific recipients of the services. 8) The standards stress the need to protect the personal data of the recipients of the services, under the law of Ukraine "On protection of the personal data", and confidentiality of information with respect to the recipients of the services or their legal representatives. 9) The standards spell out in detail the general requirements towards the professional qualifications of the staff providing services. 10) The standards envisage regular upgrading for the staff providing services (at least 1 course in 3 years). 11) The standards specify material and technical equipment for the facilities where services are granted. 12) The standards envisage regular evaluation of the services' efficiency and monitoring of the adherence to the standards (both internal and external). 13) Each of the standards includes both qualitative and quantitative indicators reflecting the quality of services. Although in general standards can be assessed positively, monitoring shows that they fail to cover such important issues as services for protection of victims-witness in criminal proceedings; normative of funding for the services; instruments for assessment of efficiency of social services and their staff; programs of dealing with the victims; lists of required documentation and reports; establishment of scope and areas of

professional training for the staff involved in the services. The detailed analysis of the standardization process with respect to the social services will be carried out after the necessary experience is accumulated and the standards are tested in the social services and responsible bodies operation in 2014.

6. PREVENTIVE ACTIVITY

Was conducted mainly by the NGOs and international organizations. Awareness-raising campaign was planned by the Ministry of social policy within the framework of the State program for counteracting human trafficking. As of the end of December 2013 no information on its launching has been published yet. National trainers' network organized 3285 events for 103 689 participants²⁹. In 2013 the campaign "Two little girls" was also launched in Ukraine. "Two little girls" is a 3-minutes long educational animation movie, which triggered an information campaign preventing human trafficking with the goal of sexual exploitation. It started in the countries of Eastern Europe in 2009. Ukraine became the 14th country taking part in the campaign.³⁰

7. DIFFICULTIES IN OBTAINING THE STATUS OF HUMAN TRAFFICKING VICTIM

The number of people, who have applied for the status of the human trafficking victim and have been granted it, is growing on the monthly basis. (It amounted to 47 persons as of 10.10.2013. Almost half of all petitioners were male). More than 20 persons were denied the status. One person obtained the status filing a claim against the Ministry of social policy of Ukraine. New claims are to be lodged, demonstrating systemic problems in this area.

Over the year 2013 the legal department of the Center has reviewed 53 petitions referring to the human trafficking, violation of children's rights, domestic violence and discrimination. The majority of these petitions contained accusations of sexual violence against children, human trafficking and domestic violence.

The case of the petitioner K. She applied for the status of the human trafficking victim, but was denied it. Under the current procedure, raion department for the families and young adults compiled a package of documents, needed to establish a person's status as human trafficking victim and submitted it to the Ministry of social policy of Ukraine. In its letter no. 560/0/14-13/56, of 07.03.2013, signed by the deputy Minister of social policy L. Drozdova, the Ministry advised that K. was denied the status of human trafficking victim. The petitioner herself never received a written response. The Ministry of social policy justified their denial by alleged lack of evidence confirming sexual exploitation: "The conclusion to the letter says that the fact of recruitment with the goal of sexual exploitation has been established, but not the fact of sexual exploitation per se". The petitioner's K. story supposedly confirmed

²⁹ www.la-strada.org.ua

³⁰ You can learn more from the site http://la-strada.org.ua/ucp_mod_news_list_show_411.html. Ukrainian version is available on <http://www.youtube.com/watch?v=qTtMWtXhS1g>

that she had been recruited for sexual services, but the fact of exploitation has not been established. Criminal proceedings under article 149 of CCU were initiated and K. was recognized a human trafficking victim. This case most convincingly illustrates the ignorance of public servants, responsible for establishing the status of human trafficking victims, with respect to the Ukrainian law covering counteraction to human trafficking.

As the court claim indicated, taking into account the complexity of a specific crime of human trafficking, the full criminal responsibility is established under article 16 of CCU, even if the crime is found incomplete in the course of the inquest³¹. Therefore, the petitioner K. had suffered as a result of human trafficking and thus is eligible for the status of the human trafficking victim. In its ruling court supported the expert conclusion provided by “La Strada — Ukraina” specialists, namely, that the Ministry of social policy interpreted the submitted information incorrectly; in particular, the established fact of recruitment under article 149 of CCU and the Law of Ukraine “On counteraction to human trafficking” constitutes an inalienable component of human trafficking crime. This definition is confirmed by the Resolution on classifying a person as human trafficking victim. So the provisions of p. 14 of the Procedure were violated, and the Ministry of social policy unlawfully denied K. the status of human trafficking victim.

Why very few persons seeking the status of human trafficking victim are prepared to defend their right to it in court? One of the reasons is that, as was mentioned earlier, the decision of the central executive body denying the status should be appealed within 30 days following it. Taking into account the fact that the victim is served it almost a week later, while the lawyers need some time to study the documents and prepare the appeal, and the victim should understand the proceedings and have an attorney ready to help her, it becomes clear that 30 days are definitely not enough. Besides, more training courses are called for. The human trafficking victims are very reluctant to approach the relevant bodies in order to obtain the status. They do not want to waste their time and nerve cells in red tape. They are also afraid that their confidential information can be divulged (especially, when sexual exploitation is involved).

The professionals responsible for identification of human trafficking victims often do not have sufficient knowledge or skills. Thus, as of 01.10.2013 not a single person in Volyn’ oblast’ had been officially identified as human trafficking victim or applied for resctive status. Meanwhile such persons (about thirty of them) have been identified by an NGO “Volyn’ski perspektyvy”. All these people get help within the framework of reintegration program run by IOM Office in Ukraine. About 25 victims are now at the stage of reflections and consider the possibility of approaching official bodies with respective petitions on establishing their status as human trafficking victims³².

Besides, the main burden of work with human trafficking victims rests with raion social services centers for families, children and young adults and not with central social services

³¹ According to the Law of Ukraine “On counteraction to human trafficking” entering into illegal agreement the object of which is a person, i. e. recruitment, transference, hiding, giving or accepting a person with the goal of exploitation, including sexual, with the use of cheating, blackmail, lying, vulnerable situation or material or other dependence of a person, with the use of violence or its threat, abuse of office or material or other dependence on another person is qualified by art. 149 of CCU as felonious actions.

³² Monitoring of the state policy in the area of counteracting human trafficking: 2013. — K.: “Ukraina” publishing house, 2013. http://la-strada.org.ua/ucp_mod_news_list_show_418.html

centers for families, children and young adults. These former remain outside the raion state administrations' structure. This situation entails difficulties in coordination and procedure of establishing the status and preparing the relevant paperwork needed to grant the status. Normative and regulatory documents also provide no guidance for procedure of establishing human trafficking victim status, if the person in question lives in the cities of oblast' significance, where raion state administrations are not present. E. g. in the ARC these administrations are absent in Yalta, Sudak, Alushta, Feodosia, because between the years 1957 and 1991 these areas of the ARC were known as "Big Yalta", "Big Sudak", "Big Alushta", "Big Feodosia", while the administrative unit of "raion" was annulled without any replacement by alternative unit of territorial and administrative division.

8. RECOMMENDATIONS

1. Disseminating the information on the order and procedure of establishing the status of human trafficking victim in the institutions which can be approached by aforementioned persons (hospitals, outpatient clinics, employment centers, social services for families, children and young adults, centers for social protection of population, departments of internal affairs etc.).

2. Conducting training for public servants from raion, city and oblast' state administrations responsible for the procedures of granting status of human trafficking victims. It should be included into staff upgrading and training plans.

3. Allocating funds from the state and local budgets for regular training of the professionals responsible for the procedures of granting status of human trafficking victims, as well as for the personnel of the centers of social-psychological support and social-psychological rehabilitation of children with the goal of increasing the efficiency of the process of identification of human trafficking victims and practical implementation of the standards for providing social services to the human trafficking victims.

4. Carrying out regular monitoring of the use of standards to ensure the improvement in the system of social services provided to the human trafficking victims and preventive activity.

5. Ensuring the uniformity and coordination of the paperwork used by the social services for the families, children and young adults (individual rehabilitation plans for human trafficking victims and social support plans for persons who found themselves in complicated situations) to avoid the duplication of services.

6. Introducing changes into the resolutions of the Cabinet of Ministers of Ukraine regulating the operation of the facilities providing services to the human trafficking victims.

7. Introducing relevant changes into the procedure for the establishment of human trafficking victim status, i. e. the words "by local state administration" should be followed by "and if it is not set up, by the respective local self-government body".

XXIV. RIGHTS OF IMMIGRANTS

1. NORMATIVE LEGAL REGULATION OF IMMIGRATION IN 2013

The normative legal base engineering on immigration issues in Ukraine in 2013, as compared with 2012, slowed down significantly: in 2012 32 significant national and departmental regulations in this field, including seven laws of Ukraine and ten resolutions of the Cabinet of Ministers (CM) were adopted; the same for nine months in 2013 made only 9 (including three CM Resolutions). Such reduction of legislative activity and obvious unweighed and unsystematic approach to implementing certain normative documents upset the balance in immigration legislation that affected the level of protection of foreigners against possible harassment. In the context of this report, it is appropriate to give examples of unsuccessful norm-setting experiments and more successful attempts to legally improve the model relationship “immigrant-nation”.

1.1. Resolution of the Cabinet of Ministers of 13.03.2013 no. 185

“On Certain Issues of the Law of Ukraine

“On Unified State Demographic Register and documents proving citizenship of Ukraine, personal identity or her/his special status”

The distinctive feature of 2013 became the legal chaos that occurred in Ukraine while tackling such important issue for everyone as issuing passports. This state of affairs was due not so much to failures in management of migration service as irresponsibility and short-sightedness of the government working to create the Unified State Demographic Register and introduction of new samples of documents identifying a person or her/his special status. In 2013, the immigrants ran into it to the maximum degree possible.

On 03.11.2013 the State Migration Service (SMS) issued the order no. 48 “On approval of informational and technological cards of rendering administrative services by SMS”, which defines the grounds and procedures for processing immigrants’ passport documents: temporary and permanent residence permits, identity card for stateless person traveling abroad, certificate and travel document for a refugee, identity card of a person, which requires additional protection.

However, within a day after the entry into force of the SMS Order no. 48–2013, the government passed the Resolution of the Cabinet of Ministers of 13.03.2013 no. 185 “Some aspects of the Law of Ukraine “On Unified State Demographic Register and documents certifying the citizenship of Ukraine, identifying a person or her/his special status”, which introduced fundamentally new samples of these documents and radically changed the order of execution

¹ Prepared by Volodymyr Batchayev, Association of Ukrainian Monitors on Human Rights.

of some of them. Moreover, the innovations specified by the Resolution were not simultaneously described in detail in other normative legal acts, including departmental ones, which immediately led to inconsistencies and contradictions in their terms.

Thus, the CM Resolution no. 185–2013 canceled the “Procedure of processing, manufacturing and issuing a permanent residence and a temporary residence permit and technical description of the forms” (approved by CM Resolution no. 251 dated 28.03.2012); these very permits are the most common and important for every immigrant documents that, on the one hand, confirm the identity and legal status of a foreigner and, on the other hand, give her/him the possibility to freely enter Ukraine or leave its territory. In return they were supposed to make provisions and issue certificates for immigrants of the latest form, but because of the lack of necessary equipment and new forms the territorial bodies of migration service proved to be unequal to the difficulties and went on issuing to foreigners officially canceled permits. This legal irrationality took grotesque forms, because while issuing to immigrants actually invalid certificates for permanent and temporary residence the migration service personnel had to follow the rules of the null and void Resolution of the Cabinet no. 251–2012 and regulations of SMS departmental order no. 48–2013, which also had not been adapted to this coup in the legislation unexpected by migration service. It became obvious that the government implemented these normative legal innovations without prior approval by the MIA and SMS, without simultaneously adapting to changes of the entire array of orders and instructions of these authorities, without clarifying their readiness to implement these changes.

On 06.12.2013 the validity of the scandalous CM Resolution no. 185–2013 was stopped; however, the very precedent of existence in the legislative framework of Ukraine of the normative legal act of the state, which had been in force only for three months, led to confusion in issuing passport documents and forced the SMS employees to work outside the legal framework which became a striking illustration of the presence in Ukraine of lobbying by influential business groups of their interests in the government, when the financial ambitions of certain commercial structures explicitly rise above the needs of the large groups of population, and business conflicts, rather than human rights, cause changes in legislation.

1.2. Order of the SMS of Ukraine dated 11.03.2013 no. 48 “*On approval of informational and technological cards of rendering administrative services by the SMS*”

The domestic legislation treats some procedures of the issuance of permits and documents for immigrants for their stay in Ukraine as rendering them administrative services by an authorized body: SMS. The author believes that this is an important positive factor, since in this case the rights of immigrants as consumers using administrative services under the extra protection of the Law of Ukraine “On Administrative Services” (no. 5203-VI of 06.09.2012). The provisions of the said Law display relatively high standards of client servicing and, in contrast to departmental regulations of MIA, establish additional requirements for the SMS to ensure the legality of paper work and issuing permits and passport documents to foreigners. However, in Ukraine the field of administrative services remains one of the most corrupt and bureaucratic and its normative formalization shows unsystematic character, numerous legal loopholes and conflicts and existence of provisions that, to some

extent, legitimize violations of the interests of an individual in the process of obtaining one or another service from a unit of government.

The situation in the SMS is no exception: this state body currently is not able to fully meet the needs of consumers and strictly put into practice the declared legal principles of rendering administrative services, i. e. the rule of law, justice, convenience, accessibility and transparency. For immigrants the problem is further complicated by the fact that being in an unfamiliar country and not knowing its laws they are unable to effectively protect their rights and interests while drawing up documents for stay in Ukraine in the SMS.

Curiously enough, presently ***the domestic legislation neither classifies nor approves with the normative legal act at the state level all spectrums of administrative services for registration of immigrants' passport documents***. According to the Resolution of the Cabinet of Ministers of 04.06.2007 no. 795 "On approval of the List of paid-for services provided by the units of the Ministry of Internal Affairs and the State Migration Service and the schedule of prices", the SMS is empowered to grant immigrants only four types of administrative services: official registration and issuance of permits for immigration in Ukraine, official registration and issuance of permit for permanent residence in Ukraine, official registration and issuance of a temporary residence permit in Ukraine, official registration of extension of stay on the territory of Ukraine. However, in practice, the SMS provides a much greater range of services relevant to immigrants concerning these issues, in particular considering the petition of aliens for citizenship of Ukraine, issues identity cards for stateless persons for travelling abroad, has to perform official registration of ICs and refugees' travel documents, identity card and travel documents to persons who have been granted additional protection. Attention is drawn to the fact that at the national level they approved only the list of paid-for administrative services rendered by the SMS, while no legal act of national level ever listed free services to which it is advisable to include services of delivery of documents to refugees and persons granted extra protection,.

In their turn, the isolated departmental regulations and policy papers of SMS only deepen in Ukraine the crisis of legal regulation of the issuance of passport documents

Article 8 of the Law of Ukraine "On Administrative Services" ordered executive agencies to develop information and technology cards for each administrative service that they provide. These cards should ensure transparency of state authority in rendering services to citizens, fully inform about the reasons, timing, cost and procedure for obtaining services and simultaneously set the sequence of the actions of a functionary rendering service.

On 03.11.2013 the SMS issued order no. 48 "On approval of informational and technological cards of administrative services rendered by the SMS", which currently regulates the territorial units of this service, including establishing the terms, timing and procedure for issuance of documents confirming immigrant's status and permitting to reside in the state. The analysis of this order shows that the migration service has failed to develop a thorough and client-oriented normative regulation: ***the resulting SMS order no. 48-2013 is rather controversial from the standpoint of law and inconvenient in practical use document*** that in no way contributes to the protection of the rights of immigrants as consumers of services.

It should be noted that ***the order has not been registered with the Ministry of Justice of Ukraine*** in accordance with the "Regulations on the state registration of normative legal acts of ministries and other executive bodies" (approved by the Cabinet of Ministers of

Ukraine on 28.12.1992 no. 731), although its content is directly related to rights, freedoms and individual human interests. As of 06.01.2013 the order was not entered in the base of normative legal acts on the website of the Verkhovna Rada of Ukraine and was published only on the official website of the SMS².

Unclear is also the fact that the list of administrative services compiled by the SMS through the approval of information and technology cards by departmental order no. 48-2013 is cardinally different from the list of services specified by the Regulation of the CM of Ukraine no. 795-2007. The SMS approved cards granting immigrants services for official registration and issuance of permanent and temporary residence permits ignoring at the same time the need to develop two other cards provided for by legislation concerning the most popular services for immigrant: permit for immigration and official registration of extension of stay in Ukraine. Currently, the SMS bodies actively render such services to foreigners, but due to lack of information and technology cards on them neither an immigrant, nor receiving party can establish on the spot the legality of actions of the officials and legitimacy of their claims.

At the same time, having not fulfilled legal requirements to develop cards for services specified by the "List of paid-for services provided by the departments of the Ministry of Internal Affairs and the State Migration Service" (Resolution of the Cabinet of Ministers no. 795-2007), ***the SMS by its Order no. 48 -2013 marked as administrative and developed information and technology cards on a number of services rendering of which was not provided for by the above List***, in particular:

- Processing and issuance of certificate of a stateless person for travelling abroad or exchange of the certificate.
- Processing and issuance of refugee's travel document.
- Processing and issuance of the travel document of the person who has been provided additional protection.
- Processing and issuance of refugee certificate.
- Processing and issuance of identity cards for persons needing additional protection.

The intention of SMS, in the absence of the state-level normative legal act, to treat as administrative document and by its own order independently regulate the procedure for the provision of these services to immigrants deserve approval, as there, of course, exists a need for detailed procedures for obtaining these documents. However, it is obvious that such standard-setting initiative of the SMS does not improve the haphazard legal framework for the provision of administrative services, as they are rather controversial from the standpoint of law: paragraph 7 of article 11 of the Law of Ukraine "On Administrative Services" specifies that "the subject of administrative services cannot provide other paid services which are not provided for by the law on administrative services fee (administration fee) for their provision".

Approved by SMS Order no. 48-2013, the information and technology cards from the standpoint of the rights of immigrants became an apparent step backwards, even compared to previous imperfect "Standards of rendering administrative services" (adopted by order of the MIA of 02.02.2012 no. 84 and abolished in March, 2013). The overall analysis of the con-

² <http://SMSu.gov.ua/images/files/nakaz-SMS-48.pdf>

tent of the cards shows a superficial fulfillment by SMS of the provisions of the Regulation of the Cabinet of Ministers of Ukraine of 30.01.2013 no. 44 "On approval of requirements for the preparation of technological cards of administrative services" and "Information card sample form of administrative services" recommended by the Ministry of Economic Development and Trade of Ukraine; the requirements set for data content of the card specified in the above documents were satisfied but formally.

First, the very fact that ***the Migration Service has refused to retain in the cards a number of important procedures directly related to the interests of immigrants while receiving and reviewing their applications*** thrusts itself forward. Now ***the cards do not make SMS officials to include in an itemized record of the alien's documents and hand her/him a copy of this description***, which complicates the ability to protect immigrant's rights in the event of appeal of the official's decision.

Paragraph 5 of Article 10 of the law "On Administrative Services" emphasizes that *"the administrative service is considered rendered from the moment of its receipt by the subject of recourse in person or the moment of sending by mail (registered mail with return receipt requested) a letter about the availability of such service to the subject of appeal"*. Ignoring this requirement of the legislation, ***neither information nor technology cards of SMS require informing in writing of alien about the possibility (impossibility) of receiving the service of official processing of documents*** by sending a formal notice. Unlike the abolished standards, the preparation and sending of such notice is not the responsibility of the migration service officials; it is specified in paragraph 15 of information cards *"Ways to get response (result) by the consumer of services": "In person"*. Such ***unnecessarily brief and generalized formulations are typical for other items of the cards***.

It is worth noting that "The standards of administrative services" annulled in March 2013 enabled an immigrant and receiving natural or legal entity an opportunity to review both the regulations governing the issuance of the required document and with the sequence of actions of a foreigner and SMS official at all stages of processing. In its turn, the introduced information and technological cards actually split the familiarization procedure for an immigrant into two parts with a smaller amount of information: the ***information card*** acquaints with the legal requirements regarding the terms and conditions of service provision, grounds for refusal to grant it, size and sequence of payment etc. and ***technological card*** describes in stages only the actions of an official in the provision of administrative service and mechanism of appeal of the adopted decision. In this way neither the information nor the technological card detail ***the structure and sequence of the actions of the foreigner***, which certainly complicates the process of communication with officials and does not ensure the fulfillment of the requirements of Article 6 "On Administrative Services", which emphasizes the need of creating at the service centers of conditions under which the citizens receive the information *"in an amount sufficient to obtain administrative services without assistance"*.

Moreover, under Article 8 of the above law, only informational card are to be published by posting in places of reception of citizens while the technological cards are not covered by this requirement, as a result of which they actually become unavailable to foreigners. Taking into account that information on ways to appeal actions of SMS officials is contained in technological cards only one can argue that the ***immigrant has no direct access to information as a sequence of actions of the official who receives and handles his appeal*** (because it cannot assess the extent of legality of the actions of this official) and information about the

order of submitting appeals. It is noteworthy that the section “*Appeal*” of the technological cards does not contain a full and thorough explanations on ways to appeal denial of issuance of documents to an immigrant; the majority of cards do not even mention the possibility of an appeal against the actions of an official to the management of the SMS of Ukraine. Such settlement of the procedure of information is clearly contrary to the provisions of Article 4 of the Law “*On Administrative Services*”, which specifies principles of state policy in the service openness, transparency and accessibility of information on the procedure they received.

The conditions for obtaining a certificate of a stateless person to travel abroad, a temporary or permanent residence permit specified in the cards require that the immigrant submits a copy of identification number certificate issued by the tax authority. However, this situation obviously disregards paragraph 7 of Article 9 of the Law “*On Administrative Services*”, which reads: “*the entity providing administrative services may not require from the appellant documents or information in the possession of the subject of administrative services or in the possession of public bodies and authorities*”.

In violation of paragraph 6 of “Requirements for the preparation of technological cards of administrative service” (approved by the CMU no. 44–2013) ***the technological cards of SMS do not describe the stage of administrative interaction of the migration service officials interact with the units of information and analytical support of MIA*** in conducting verification about immigrant’s criminal background, which is one of the conditions of receiving by them of certain types of documents. This uncertainty leads to the fact that very often the personnel of migration services demand that foreigners or their receiving parties personally register in militia and submit together with other documents “*certificate of clean record*” which also brutally violates the requirement of the said Article 9 of the Law “*On Administrative Services*”.

It is also noteworthy that the SMS, while adopting information cards, ***failed to implement for their local bodies and units the standard schedule of administrative services***. As a result, many local SMS bodies ignore the provisions of Article 6 of the Law “*On Administrative Services*”, which requires that officials establish reception hours for at least 6 hrs. on Saturdays.

1.3. Resolution of the CMU of 27.05.2013 no. 437 “*Problems if issue, prolongation and revocation of permits for the employment of foreigners and stateless persons*”

The normative regulation of the employment of immigrants is one of the most important and yet challenging tasks of legislative adjustment of processes in the field of immigration. Ideally, the balanced and timely updated legal norms should equally ensure compliance with the interests of both the state, private businesses and immigrants.

Signing of the Law of Ukraine “*On Employment*” on 05.07.2012 necessitated changes in the procedure of employment of foreigners in Ukraine in connection with which the Resolution no. 437–2013 of the CMU approved “*The procedure of issuance, prolongation and revocation of permission to employ foreigners and stateless persons*”. It may be noted that the newly adopted document failed to fundamentally change the traditional domestic policy of controlling cross-border labor migration; it goes on requiring compliance with the main principle: “*an alien may be employed only in the absence of local citizens of Ukraine who are capable and*

willing to perform this very type of work". In practice, this amounts to screening of foreigners when considering applications for the use of their work to rule out the swift growth of the number of legal immigrant workers and reduce their impact on the labor market.

However, compared to the previous procedure, the innovations of the CMU Regulation no. 437–2013 to a certain degree increased the level of protection of the rights and interests of labor immigrants making a number of positive changes to simplify for employers procedures of migrants' employment. In particular:

- it contains provisions for the possibility of issuing a permit for the employment of foreigners in relation to which a decision was made on registration of documents for resolving the recognition of an individual a refugee or person who needs extra protection;
- the employer is required to pay legal fees (UAH 4,588) for a permit to employ a foreigner after the foreigners employment center makes a positive decision on the possibility of job placement. This terminated unclear and dubious practices forcing the employer to pay not for the permit, but for the processing of submitted documents when the centers of employment did not register these documents for consideration without the payment receipt and when in the case of refusal to grant permission to a foreigner to work in Ukraine the money were not paid back to the employer;
- the list of documents that employers have to submit to the employment center in order to get a permit to employ a foreigner has been halved;
- the list of documents to be submitted for prolongation of a permit has been reduced considerably;
- the employment center official has to accept the documents on a checklist, give the employer a copy of this checklist marking the date and registration number of accepted documents and within one business day to verify them for compliance with existing requirements. At the same time the officials cannot require to provide any documents other than those specified in the checklist;
- the decision-taking time for employment center to grant or deny a permit for the employment of a foreigner has been cut from 30 to 15 days;
- the conditions of informing and transparency of such decisions have been improved. The decision about the possibility (impossibility) of permit for the employment of the alien not later than during three working days after the decision has been made is to be sent to the employer and posted on the web-site of the employment center;
- the procedure for issuance of a duplicate permit instead of one lost or damaged has been provided for;
- a shortened and liberalized list of grounds for refusal to issue a permit to the employer for employment of foreigners has been compiled. The updated Procedure contains no more the previous possibility of refusal due to *"changes in the labor market in the country (region), which withdraws the need for the employment of foreigners"*; the ambiguous wording of this formulation made it possible to refuse employment of foreigners under false pretenses. Another positive trait is the cancellation of request to refuse processing of permit documents needed for the employment of a foreigner, if *"the previous refusal to issue IM-1 visa to a foreigner or revocation of prior permit took place less than a year before"*;

- provisions for the conduct of deportation from Ukraine of the immigrant permit for employment of which was canceled due to absence from work has been annulled.

However, despite more loyal points concerning foreigners, the norms of CMU Regulation no. 437–2013 *“Problems of issuance, prolongation and revocation of permit for the employment of foreign nationals and stateless persons”* are primarily focused on the interests of enterprises, institutions and organizations that employ foreigners. Having significantly simplified the relations of these entities with the government on issuance of permits for employment of foreigners, the government gave the go-by to changes of “employer-labor immigrant” relations. The Regulation of the CMU no. 437–2013 determined the procedure of legalization of employment of foreigners in Ukraine, which offered no reliable safeguards against losses caused by the employer, when not only the deliberate actions of the latter, but her/his elementary negligence in preparing documents or making payments made an immigrant to forfeit her/his right to work in Ukraine. For example, there may be such grounds for refusal to grant permission for the employment of a foreigner or repeal of previously adopted positive decision as *“inadequacy of documents submitted by the **employer**”, “violations by the **employer** of the terms for filing documents,” “unreliable data in the documents filed by the **employer**”, “failure to make payment by the **employer** within 30 days”, “failure by the **employer** to submit a copy of labor contract”* and so on.

Another noteworthy point is that the Regulation of the CMU no. 437–2013 does not accentuate any more the duty of the employer to provide appropriate conditions for immigrant and remuneration of labor. The acting *“Procedure of issuance, prolongation and revocation of a permit for the employment of foreign nationals and stateless persons”* adopted in 2013, as opposed to the previous redaction of 2009, contains a provision stating that the contract of employment of a foreigner may not provide labor conditions worse and remuneration of labor less than for the citizens of Ukraine who perform similar work.

One of the innovations offered by the Regulation of the CMU no. 437–2013 is the inclusion in the list of required documents for obtaining permit *“the certificate issued by the medical and preventive treatment facility stating that the person is not suffering from chronic alcoholism, toxicomania, drug abuse or other infectious diseases according to the list approved by the Ministry of Health”*. However, in practice, this procedure of medical examination of an immigrant has not been determined yet.

From an interview with citizen of Armenia G.

“I have been working in Ukraine by labor permit for more than four years now. The firm’s management is pleased with me, I also like my job. This year we applied for prolongation of the permit and we were told that the procedure had changed, and therefore I need to submit medical certificates that I am not an alcoholic, not a drug addict, I have neither TB nor transmittable diseases. They gave no appointment cards to doctors, but only explained that to get first two certificates I had to visit the drug-abuse clinic, while nobody knew where to get a certificate about absence of contagious diseases. I went to the doctor in a general hospital and he laughed and said that it was no concern of his and sent me to the venereologist. He also wondered at it and said that there were a lot of contagious diseases starting from the flu to more serious ones. Also nobody knows what text should be in the certificate. In short, once again I need to waste my time, nerves, and extra money. It would be good if they issue appointment cards to a certain medical facility pointing out that the certificate is required for employment in Ukraine.”

2. THE SMS ACTIVITY IN THE CONTEXT OF THE RIGHTS OF FOREIGNERS

2013 became a year of answers to the question: “How will the SMS work?” because in 2013 came to an end the final transformation of Citizenship, Immigration and Registration of Persons Service of the MIA into the State Migration Service, which, after all, was conferred on all powers determined by legislation. However, due to the nature of SMS format approved by the government, it is impossible to position the Ukrainian migration service as a civilian one and completely independent of the militia. “*Regulations on the State Migration Service of Ukraine*” (approved by the Decree of the President of Ukraine from 04.06.2011, no. 405/ 2011) reads: “*The SMS is a central executive body, whose activities are governed and coordinated by the Cabinet of Ministers of Ukraine through the **Minister of Internal Affairs of Ukraine.***” Currently, the SMS staying under a kind of “patronage” by MIA must be guided in its activities by the orders of the Ministry of Internal Affairs and fulfill instructions of the Minister of Internal Affairs, who directs and co-ordinates its work: puts forward candidates for the posts of SMS chiefs, approves working schedule and monitors its fulfillment, decide on structural reorganization etc. It is clear that such accountability of the State Migration Service to the MIA, the paramilitary structure with specific priorities distinguished from the priorities of civilian agencies cannot but affect the operation of the SMS and management decisions of its leadership.

However, even under such circumstances, the replacement of MIA by SMS as a tool to implement the revised and liberalized immigration laws predictably led to a decrease in the level of violation of human rights and freedoms of immigrants during the efforts of Ukraine to counteract uncontrolled migration. The official statistics of the results of traditional for the law enforcement agencies indices of performance of coercion and punishment used against foreigners suggests that during 2013 the attitude of the migration service towards immigrants was much more appropriate and humane than the traditional MIA tactics of total supervision of foreigners and punitive principles of working with them during the all-Ukrainian targeted operations “Migrant”, “Foreigner”, “Illegal immigrant” and so on.

Table 1. Comparing the results of MIA and SMS of Ukraine in counteracting uncontrolled migration in 2008 — 2013³

	MIA				SMS
	2008	2009	2010	2011	2013
Illegal migrants detected	14,876	14,310	14,478	13,298	1,386
Adopted decisions on expulsion from Ukraine	14,334	13,824	14,096	13,030	945
Adopted decisions on forced expulsions from Ukraine	2,495	2,299	1,972	1,784	46
Brought to administrative responsibility under article 203 of the AOC for violation of rules of stay in Ukraine	57,780	56,287	60,131	55,219	11,339
Term of stay in Ukraine cut short	10,687	8,993	7,993	5,961	221
Ban on entry	13,561	13,604	13,387	10,490	247

³ The statistics from the reporting forms of the Citizenship, Immigration and Registration of Persons Service of the Ministry of Internal Affairs of Ukraine and data the letter of the SMS Ukraine from 30.10.2013 no. 724z (response to an information request).

This impressive drop by the dozens of the militia “achievements” in their fight against uncontrolled immigration in no way should be regarded as evidence of the ineffectiveness of the SMS work to prevent illegal stay of foreigners in Ukraine. On the contrary, according to the author, these figures more realistically reflect this segment of the migration situation in the country and show that, compared with the chiefs of the Ministry of Internal Affairs, in 2013 the management of migration service proved to be less prone to artificial raising of the rate of department’s performance by continuously encouraging subordinates to achieve these parameters at any cost, even by ignoring the rights and freedoms of immigrants. It is worthy of attention that the termination of the “play of forces” and “display of force” against foreigners had no negative impact on the crime situation in Ukraine; what is more it led to the opposite effect: against the background of more loyal treatment of immigrants by the SMS in 2013 there was a slump of statistics of criminal offenses committed by foreigners.

Table 2. Comparison of the total number of counted crimes (criminal offenses) of the number of crimes committed by immigrants in 2008–2013⁴

	2008	2009	2010	2011	2012	2013 (9mos)
Registered crimes (criminal offenses registered since 2013)	384,424	434,678	500,902	515,833	433,655 (as of 20.11.2012)	535,299
incl. those committed by foreign nationals	3,023	2,998	3,524	4,228	3,776 (as of 20.11.2012)	1,249
Crimes (criminal offenses) committed by foreigners against the total of crimes (criminal offenses), in p.c.	0.8%	0.7%	0.7%	0.8%	0.9%	0.2%

In this way the year 2013 showed that the thesis “*without strict measures of control, enforcement and penalties on immigrants the countries would get bogged down in foreign crime*”, which militia kept thrusting on the public for a decade or so, is false, and the MIA greatly exaggerated the level of security threat to Ukraine from Immigration foreigners, probably guided by their own departmental interests.

However, it is quite possible that the changes for the better in the mode of operation of the SMS with immigrants were due to subjective factors only (tolerance for foreigners after Euro–2012, personal positions of SMS chiefs, etc.). The potential threat to the rights and freedoms of foreigners constitutes the implementation at the end of 2012 of legislative regulation excessively empowering the immigration service to resort to coercion and punishment. It can be argued that presently in Ukraine the practice, dubious from the point of view of human rights, has been renewed permitting to resolve conflicts between an immigrant and the state not in court but by the decision of one of the participants of the conflict, i. e. the SMS, which has received much more power now than the Ukrainian militia in the past.

The Law of Ukraine no. 5459-VI dated 16.10.2012 amended Article 222 of the *Code of Ukraine on Administrative Offences* under which the right to impose administrative penalties

⁴ Data from the letter of the Ministry of Internal Affairs of Ukraine of 15.10.2013 no. 16/2-227zi (response to the information request).

on foreigners and on natural or legal persons receiving them (article 203, articles 204, 205, 206 CAO) was devolved from the court bodies on the chiefs of departments of the migration service. Therefore the officials of SMS units now can make decisions on their own about throwing the book at the immigrants. The competence of the judicial bodies the legislators have limited to making decisions on forced expulsion of an immigrant from Ukraine, which is based on appropriate action of the SMS.

This state of affairs is a real threat to the rights of immigrants, as the migration service has legislative opportunities to return to the repressive model of relations with foreigners, typical of MIA, at any time now. Practice shows that abuses by officials of the SMS are inevitable.

However, today a different direction in protecting the rights of immigrants gains a priority. Alongside of the powers the SMS has inherited a wide range of unsolved issues related to the traditionally high level of corruption and bureaucracy inherent in the units of the Citizenship, Immigration and Registration of Persons Service of MIA of Ukraine. It is clear that these manifestations of bureaucratic arbitrariness will affect not only immigrants, but citizens of Ukraine as well, but the foreigners intending in one way or another to officially legalize their stay in Ukraine can be considered to be the most vulnerable categories among the clients of the SMS units. Unfamiliar legislation, poor Ukrainian language skills, unfamiliarity with existing methods in Ukraine concerning appeal actions against officials and an elementary lack of practical skills in dealing with public officials evoke in immigrants confusion and disbelief in the possibility to defend on their own their rights if they are ignored by the personnel of the SMS.

On every hand we come across the violation of the rights of foreigners at the stage of processing of various permits and documents that give them the opportunity to stay in Ukraine on legal grounds, during prolongation of their stay in Ukraine and issuance of temporary or permanent residence permits. In the first section of this text we pointed to some normative and legal reasons for this situation, but more often than not the violation of the rights of foreigners are not caused by shortcomings of legislation, but by the “human factor”: incompetence, neglect of duties or outright corrupt intentions of the SMS officials. The unreasonable refusal to accept documents for consideration, violations of the terms of decision-making, demanding compensation for a positive decision, refusal to provide necessary information, rudeness and arrogance in communication are the most common violations of the rights of migrants and their receiving parties in Ukraine discussed on Internet forums which is the most evident proof of the acuteness of the problem. Here is a typical example.

“I helped my colleague from Azerbaijan to process a temporary residence permit for his wife (also from Azerbaijan). Grounds: he has a temporary residence permit in connection with employment in Ukraine. We submitted all required documents together with notarized translations of passports and marriage certificate. The officials ordered us to arrive in two weeks to the Oblast Department of SMS (they explained that we would gain time). We came as they said, but they told us that they’d declined the documents and sent them back to the district department. We ask for what reason. The official answer: “The package of documents is not full: there is no copy of the marriage certificate.” We said that we’d submitted everything including the certificate; otherwise they would not have accepted the documents. The official answered: “I’ve got no idea and stop distracting me from my work.” We suggested: “Just wait, we made several copies of translation of the marriage certificate for future use and we can bring a copy here in no

time." The female employee shouted at us: "You didn't get the message? The documents were turned down. Out with you and start from the scratch." We went to the district department and asked: "How so? We did submit you a copy of the marriage certificate!" And the clerk calmly answered: "If you had submitted it, it would have been in place." I said: "But you officially accepted our documents; therefore, there were all necessary certificates" and she answered: "How would I know? You might promise to bring a copy of the marriage certificate later." But that's not the point. We said: "Well, here's a copy of the marriage certificate, and please issue residence permission to his wife," and in response we hear (sic!): "Her registration expires in two days, and we have no right to prolong it. She would rather leave Ukraine and come back in a few months. By that time and the required residence permit will be ready." I was eager to reach their bosses, but my colleague was afraid these vain efforts would bring a lot of trouble because the aliens depend upon immigration service personnel which would haunt them later. In short, I left the office, and he settled everything for a "modest fee". As I understood it, the certificate was ready exactly in two weeks all the same, but they didn't bother his wife because of the delayed registration. The former Visa and Registration for Foreigners Office turned into the SMS, but in fact nothing has changed: the same people and the same old order.

I've got a question now: how to insure oneself against such trouble? Should we record with a sort of camcorder to record the transfer of documents to SMS inspectors, like they make records at wedding ceremonies? Or else we'd better ask them to sign copies of documents, though they will refuse. And whom to complain to about such willfulness? To the office of a public prosecutor? Court? But if we wrote a complaint against the migration service, due to procrastinations with the consideration procedure the wife of my comrade could be deported because of the end of registration. And, in general, it's a shame for the country."

However, the prevalence of cases of violation of the rights of foreign nationals in the departments of SMS is caused not only by the flaws in legislation or the poor quality of personnel training. The SMS using the powers granted to it to form businesses legitimized and rendered organizational support for its own business corporation or State Enterprise of SMS "Document", which acts as immigrants-paid unnecessary mediator between immigrants and officials of the migration service.

The Public Enterprise "Document" was established under the Ministry of Internal Affairs of Ukraine in order to "ensure state-of-the-art conditions of service for the population of Ukraine, foreigners and stateless persons" (quoted after the official website of the SMS). In 2011, the Public Enterprise "Document" was placed under the SMS pursuant to the Regulation of the CM of 15.06.2011 no. 538 "On the transfer of integral property complexes of the public enterprises under the management of the State Migration Service" and the joint order of the MIA and the SMS of 21.07.2011 no. 467/36 "On the transfer of integral property complex of the Public Enterprise "Document" under the management of the State Migration Service."

Despite the officially declared corporate objective of the Public Enterprise "Document" as "rendering more comfortable services for the citizens by the units of SMS" the priority and often the only focus of the company remains the imposition on clients, including immigrants, a wide range of "voluntarily purchased" services of processing and issuance of documents. It should be noted that the services Public Enterprise "Document" are considered complementary, therefore the fact of turning to a specific company does not release an immigrant from having to pay for the services of migration service: the foreigner purchases the service of migration service and services of Public Enterprise "Document", which kind of gives pro-

fessional advice, issues forms and helps foreigners to fill them out. In fact, the Public Enterprise "Document", as a rule, does not render such services due to lack of appropriate premises, technical equipment and lack of trained staff.

The national legislation treats the registration of immigrants' documents for their stay in Ukraine as the process of obtaining administrative services by the foreigners and the service-rendering subject, or SMS, supporting the activity of the Public Enterprise "Document" massively violates the rights of immigrants as recipients of administrative services. Arguably, if the SMS strictly implements all provisions of the Law of Ukraine "On Administrative Services", the foreigners will have no need to turn to the Public Enterprise "Document". The very existence of the company in its present form is an indicator of the formal attitude of the management of the Migration Service to the provisions of article 2 of the Law "On Administrative Services", which emphasizes that the subject of administrative services shall create conditions for recipients of services "sufficient to obtain administrative services without outside assistance". Presently the activities of the regional subsidiaries of the Public Enterprise "Document" are quite contrary to the principles laid down in articles 6 and 9 of the Law of Ukraine "On administrative services" for advising immigrants as recipients of administrative services in the field of processing documents for their stay in Ukraine is a direct obligation of the personnel of SMS; the stands on the premises of the SMS must feature exhaustive list of required documents and samples of their completion while forms and reference and information materials on the administrative service should be issued free of charge to visitors. However, neither SMS nor employees of the State Enterprise "Document" are interested in compliance with these legislative requirements, because well-being depends on the volume of funds received from visitors.

The management of the State Enterprise "Document" enabled its personnel to render immigrants "Information and consulting services concerning immigration and passport issues." However, "The list of consolidated tariffs of the State Enterprise "Document" does not specify at least one particular type of such advisory assistance to foreigners stating only that the "advice on the requirements of normative legal documents" may be offered. In this case, the cost of advice makes UAH 25 (UAH 30 until 30.07.2013), although it is evident that advices concerning different areas of migration services differ significantly in terms of complexity and hours which may and should alter the price of an advice. The consultant giving an immigrant expert advice is expected to have practical acquaintance with foreign languages, as well as excellent knowledge of all sizable database of numerous normative legal acts that regulate the relationship between an immigrant and the authorities, not only with the SMS. In its turn, the State Enterprise "Document" is a commercial structure that does not impose such requirements for qualification of personnel, which basically cannot offer quality consulting services. Consulting of foreigners in the State Enterprise "Document" is nothing but profanation because they can offer advice only about the location of offices, cost of services for immigrants and provide samples of filling out required documents, although this type of information to all interested persons should be provided free of charge and with unimpeded access.

The management of SMS obscured the activity of the State Enterprise "Document", which was rather questionable from the standpoint of legality, used to officially proclaim the main principle of offering services by the said agency consisting in giving service at the request of citizens only, and the order of the SMS from 28.09.2011 no. 76 "On regulation of paid ser-

vices rendered by the State enterprise "Document" made the State Enterprise "Document" "by all means to inform applicants that the services of the State Enterprise "Document" are not administrative (government) and they may be sought on a voluntary basis only" (paragraph 2.3. of the order). However, the foreigners and their receiving parties in Ukraine complain with indignation that the SMS officials in one way or another with a certain degree of persistence encourage immigrants to apply to the State Enterprise "Document" for obtaining unnecessary counseling or mediation services concerning processing of documentation. Moreover, the personnel of territorial units of the SMS create induced conditions under which the rejection of proposals to use "voluntarily purchased" services of the State Enterprise "Document" leads to intentional delays in the adoption and consideration of documents submitted by an immigrant, while individuals who agree to pay the company are offered services bypassing the existing lines under the inventive wording "enhanced comfort service".

There is also the issue of price-list the Public Enterprise "Document" offers the foreigners for above "forced-voluntary" service. The same order dated 28.09.2011 no. 76 insists on *"adjusting the price of services provided by The State Enterprise "Document" in accordance with the actual costs associated with the services rendered"* (paragraph 2.4. of the order). However, the response of the State Enterprise "Document" was rather peculiar: the company by its order no. 54/1 of 18.07.2012 adopted "The joint tariff for services concerning passport/visa documents processing" valid until July 30, 2013. Under no circumstances the said pricelist can be recognized as economically sound and tied to the cost of the offered services: the price for the services of the State Enterprise "Document" was several times higher than the cost of similar administrative services provided to immigrants by the migration service. For example, for prolongation of stay in Ukraine the foreigner was offered to transfer UAH 150–350 to the State Enterprise "Document" in addition to the already paid UAH 44.85 for the service of migration agency for the alleged representation by the enterprise of the interests of immigrants in the unit of the SMS. Such amounts are clearly disproportionate to the cost of time and manpower, since in practice the processing of immigrant's prolongation of stay in Ukraine is nothing but a stamp in his national passport.

On 30.07.2013 by its Order no. 89 the State Enterprise "Document" adopted for its regional bodies the new "Pricelist for services of immigration and passport character" dropping a number of the most obvious pseudo-services, but leaving other services the cost of which was not economically sound. Thus, "information and advisory aid" rendered by the State Enterprise "Document" will cost additional UAH 120 to foreigners for prolongation of stay in Ukraine (the cost of SMS services is UAH 44.85), for processing permanent or temporary residence permit (cost of SMS services is UAH 52.49), for processing of documents for obtaining citizenship of Ukraine (SMS provides these services free of charge).

It should be noted that immigrants staying in a foreign country usually consider employees of the commercial structure "Document" public officials and official representatives of the Ukrainian state (after all, the offices of this enterprise often are located directly on the premises of the migration service), so without hesitation and appeal they fulfill all requirements articulated by the State Enterprise "Document".

"Yesterday we furnished documents to Chernivtsi Visa-and-Registration-for-Foreigners Office for a residence permit for the husband for family reunification. We paid UAH 245, but we hadn't about us the sum to cover "insurance" and they said we could pay upon receipt of permit. The cost of insuring makes UAH 500, but there is another strange point: in addition to these

*UAH 500, we have to pay another UAH 400 for the "expulsion" which was written on a piece of paper that we were given. The total of UAH 900 to be paid plus UAH 245 already paid makes UAH 1,145. What does the clause about "expulsion" mean and where is it specified? Nobody could explain anything on the spot (everyone was very busy). Maybe somebody knows something, because for me, as for many others, UAH 400 do not lie around in the road"*⁵.

It is clear that this is questionable from the standpoint of human rights business, when a commercial enterprise with the help of government officials charge the immigrants eager to reside in Ukraine additional levies, could not exist without the help of the top management of SMS, with the acquiescence of which the rights and legitimate interests of immigrants are violated in order to ensure growing financial needs of the department.

3. ACTIVITY OF MIA IN THE CONTEXT OF THE RIGHTS OF IMMIGRANTS

The transition of function of monitoring the immigrants' stay in the country from MIA to the migration service has influenced the kind of violation of human rights of foreign nationals by the militia. Such reorientation has significantly reduced the possibility of law enforcers to pressure immigrants during steps intended to ensure compliance with the law on the legal status of foreigners, but, however, it has failed to protect the latter from other forms of militia arbitrariness: extortion, unwarranted checks of passport documents, arbitrary detention, calling to administrative liability for false motives and so on. From these traditional for national militia abuses suffer both citizens of Ukraine and immigrants through ignorance of their rights and freedoms, disbelief in the possibility of effective protection of their interests by legal means and reluctance to oppose armed officials in a foreign country and they easily become a target of illegal actions of law enforcers.

*"Somebody has uploaded to the Internet site the video shot in the Moscow District of Kharkiv. It shows how several patrolmen surrounded an African. Young people, who have witnessed the situation, tried to find out why the militia was picking on a foreigner. However, that was all there was to it: the patrolmen on the video refused to identify themselves, although their uniform with the label "Militia" on their backs made it possible to establish where they worked. The guys tried to call the militia station, but the officer on duty slammed down the receiver. According to this African guy, the patrolmen committed a despicable act trying to cash in on the foreigner. "He demanded money, but I refused," the dark-skinned young man spread his arms. However, the patrolman didn't give a damn about being exposed. "Under this article, I could dash off kind arrest report incriminating this African," he mysteriously blurted out."*⁶

Equally important is the problem of violations of the rights of foreigners by the militia at various stages of criminal proceedings. The Ukrainian legislation, including the Criminal Procedure Code, guarantees immigrants equality with the citizens of Ukraine before the law. It is clear that the investigation of crimes committed by foreigners as well as committed against them has certain peculiarities and requires relatively high skill of militia officers, understanding of the principles of immigration legislation, more hours and attention while

⁵ <http://forum.chemodan.ua/index.php?showtopic=56902&st=140>

⁶ <http://kp.ua/daily/120313/383757/>

working with documents, official involvement of interpreters in procedural actions and so on. However, quite often the law enforcers try and simplify their operations and reduce the solution of specific problems in the criminal proceedings to basic disregard for the rights and interests of foreigners.

“Despite the fact that Nigerians do not speak either Ukrainian or Russian, during initial state of the evidence at the Leninsky district militia department of the City of Luhansk, suspect O. and witness E. were not provided with qualified interpreters. Citizen A. maintains that he poorly understood the meaning of questions asked and his answers on the record do not correspond to the explanations he actually gave. During the trial it was found that materials of the case contain no information about individuals and qualification of translators involved during the preliminary investigation. In this case the suspect A. claimed that he was pressured to sign incomprehensible record of investigative actions written in Russian. During the trial Interview the officer of the investigative division confirmed that he conducted a number of investigatory actions without the suspect’s lawyer but he failed to document the legality of his actions. Also, it can be assumed that in the absence of a qualified interpreter during medical examination numerous bruises received by citizen O. in an attack on him were not documented. According to the words of the latter, the medical examiner completely ignored his complaints about the state of his health.”⁷

4. RIGHTS OF REFUGEES AND PERSONS IN NEED OF ADDITIONAL OR TEMPORARY PROTECTION

In 2013, the Law of Ukraine “On refugees and persons in need of additional or temporary protection” remained unchanged, but from the time of its adoption in 2011, the human rights community kept repeatedly pointing out: it is impossible to recognize the above normative legal act perfect and one that guarantees the aforementioned categories of immigrants possibility to realize in Ukraine their right to legal and dignified existence.

At one time the said act was seen as a progressive one; together with this, the experts pointed to the need for its specific revision primarily to revise controversial provisions that did not comply with the general orientation of liberal law. However, during the years 2012–2013 these changes were not made and now the law continues to contain contradictory provisions concerning the interests of immigrant, including:

- sets unreasonably short 5-day period both for filing an immigrant’s application for an intention to obtain refugee status or a person in need of protection, and for filing appeal against the decision to refuse to grant it;
- has no clearly prescribed rules on the prohibition of expulsion or forced return of immigrants who applied for refugee status or a person in need of protection, but the final decision in respect of which had not adopted yet;
- allows the removal passport documents for “storage” from immigrants who applied for recognition as refugee or person who needs protection,;

⁷ <http://hr-activists.net/news/khronologiya-sobytii-po-delu-olaolu-sunkanmi-femi>

- refuses immigrant to obtain protection if before arrival in Ukraine he “had had stayed in a safe third country” (the vagueness of the term “stayed” creates conditions for its various interpretations);
- does not clearly define mandatory participation of an interpreter in procedures important for immigrant, such as issuing him a written notice of refusal to accept an application for refugee status (by a person who needs protection) during immigrant’s reading fixed with the signature of the order of appeal. This approach converts the specified procedures into bureaucratic formality: the foreigner may not understand what kind of document and for what purpose s/he signed;
- anticipating the need for fingerprinting of immigrants-asylum seekers and persons in need of protection it does not explain how to use this DB and does not establish safeguards to protect the rights of foreigners to privacy;
- does not establish binding review by an immigrant-signer of the decision to refuse to recognize or refuse to process documents for recognition of his refugee status or person in need of protection: the migration service can simply send an alien a written notice about the decision.

The positive normative innovations in 2013 include the resolution of the Cabinet of Ministers of Ukraine of 27.05.2013 no. 437 “*The issuing, prolongation and revocation of a permit for the employment of foreign nationals and stateless persons*”, which details the procedure for employment of persons who have been allowed to submit documents to address the issue of recognition them as refugees or persons in need of extra protection, as well as the order of the Ministry of Education and Science of Ukraine of 07.05.2013 no. 488 “*On approval of Procedure of education and training in the state and municipal primary, secondary and vocational educational establishments of children of persons from foreign nationals and stateless persons who have been granted temporary protection in Ukraine*”, which regulates the enrollment of children of this category of immigrants in schools in the manner and on the basis of documents stipulated for the citizens of Ukraine.

However, only the fact of the adoption by the state of normative legal acts, even the most liberal in their attitudes to refugees and persons in need of protection, cannot be regarded as an indicator of achieving the appropriate level of respect for immigrants’ rights and freedoms. The rules of law aimed at solving a particular problem are implemented in real life by authorized officials of the relevant agency; very often the final result or effectiveness of the law depends on their personal understanding of the nature and significance of the problem, as well as position of the agency. The positive changes in the normative legal framework failed to significantly reduce the traditionally high level of bias in official treatment of asylum seekers; the official statistics show that at present the problems of immigrants do not bother the SMS while the potential of humanity laid down in the Law of Ukraine “*On refugees and persons in need of additional or temporary protection*” in 2013 was not realized: out of 703 immigrants, who had filed applications for the status of refugee or person in need of extra protection, within nine months of 2013 only 148 were settled positively (63 acquired refugee status and 85 got the status of a person in need of extra protection). Allegedly significant (compared to the previous year) growth to 21.1% in the number of positive decisions cannot be regarded as a signal of significant improvement, because it caused a significant decrease in the growth of the total number of immigrants’ applications and the actual number of foreigners, whom Ukraine granted protection, remains about the same.

Table 3. Total of immigrants' appeals for obtaining protection from Ukraine vs. the number of positive solutions⁸

	2010	2011	2012	2013 (9 mos.)
Number of immigrants who applied for refugee status or a person in need of extra protection	1500	890	1860	703
Number of immigrants who obtained such status	135	133	152	148
Favorable decisions on applications, in p. c.	9%	14.9%	8.2%	21.1%

The integrated reasoning of our legislation emphasizes the importance of loyalty to the immigrants, who were forced to come to Ukraine, and empowers the officials of the migration service to make decisions about the possibility of leaving immigrant in Ukraine to their discretion guided by their personal level of legal awareness and understanding of the orientation of the rules of law. The subjective and biased attitude of SMS employees to an immigrant or her/his country of origin may occur at any stage of the procedure for obtaining the status of the refugee or a person in need of protection; such attitude becomes apparent in the excessively detailed interview, biased evaluation of the reliability of the information provided by an alien, ungrounded request to provide additional documentation, delaying a final decision and so on.

The lack of transparency in decision-making, absence of clear and understandable official arguments while refusing to grant an immigrant the desired protection led to widespread practice of reference to the court by the aliens for protection of their interests in court. Appeal against actions and decisions of the officials in the courts became an integral part of the procedure for considering applications for granting immigrants the status of a refugee or a person in need of protection.

It should be noted that the Plenum of the Supreme Administrative Court of Ukraine by its Decision of 25.06.2009 no. 1 *"On judicial practice of considering disputes regarding refugee status, expulsion of an alien or a stateless person from Ukraine and disputes relating to the stay of foreigners and stateless persons in Ukraine"* (in redaction adopted on 16.03.2012) identified several important principles of application of the law in considering such applications, including as follows:

1. Due to certain circumstances in some cases an immigrant cannot provide documents proving the existence of conditions for his recognition as refugee or person in need of protection, but this does not constitute grounds for finding the absence of the said conditions. Confirmation of the validity of fear of persecution can be obtained both from a person seeking protection in Ukraine, and independent of her/him from a variety of reliable sources of information, such as the UN Security Council resolutions, instructions of the Ministry of Foreign Affairs of Ukraine, information of the Office of the UN High Commissioner for Refugees, other international, governmental and non-governmental organizations, from the media, etc.

⁸ UNIAN news agency data (<http://www.unian.net/news/592525-glava-uvkb-oon-v-ukraine-v-ukraine-bejenets-ne-izbavlyatsya-ot-svoih-problem-a-naoborot-poluchaet-novyie.html>) and data from the letter of SMS of Ukraine of 30.10.2013 no. 724z (response to information request).

Failure to provide documentary evidence of oral statements should not be a hindrance in making statements or making objective decisions on granting refugee status and persons in need of additional or temporary protection, if such statements are consistent with the known facts overall credibility of which is sufficient.

2. Article 5 of the Law of Ukraine "On refugees and persons in need of extra or temporary protection" does not impose penalties for delayed filing immigrant's applications for refugee status. In such cases, the offender may be only fined under articles 203 and 204-1 of the Code of Ukraine on Administrative Offences. Rejection of an application for recognition as a refugee or person in need of extra protection is contrary to the protection of fundamental rights under the Convention relating to the Status of Refugees of 1951 (article 33 "Non-deportation of refugees") and the Convention on Human Rights and Fundamental Freedoms, 1950. The violation by an immigrant of her/his statutory duties to apply without delay to the migration service for her/his recognition as refugee or person in need of protection should not make grounds for refusal to accept it, it may only be taken into account during consideration.

The law does not require immigrant to substantiate her/his statements, because in dealing with such cases the decision to refuse the recognition of the status of refugee or person in need of extra protection on grounds of invalidity of the application is not permitted.

3. The law vests refugees and persons in need of additional protection or those, who have been granted temporary protection, with the right of family reunification. Refusal to reunite a family cannot be based solely on the absence of documents confirming the fact of family ties; in the case where an immigrant cannot provide official proof of family ties with members of her/his family other evidence may be taken into account and assessed in accordance with the laws of Ukraine. It is important that the right to family reunification occurs regardless of when this family relationship began, i. e. before or after the arrival of the immigrant to Ukraine. A refugee or person in need of extra protection, depending on his religion or belief, the circle of family members, according to his ideas, may be greater than those specified by the legislation of Ukraine. Therefore, taking into account all circumstances of the case, sometimes there is a need to allow for such family relationships, and people who are in such relationship with a refugee may be regarded as members of her/his family.

4. Sound fear of persecution is a priority criterion for determining a refugee. S/he may be afraid not only on the basis of her/his personal bitter experience of a refugee, but also on the basis of experience of other people (family, friends, and other members of racial or social group). Anxiety can exist regardless of who is the subject of persecution, i. e. public authorities or not, that is persecution may be the result of activity of people who are not controlled by the government agencies and from which the state cannot defend. The situation of a well-founded fear of persecution may arise both during staying of immigrants in their country of origin, and during their stay in Ukraine.

5. Accusing immigrant by a foreign authority or when the immigrant is the subject of an extradition request should not be automatically considered as grounds for excluding immigrants from the procedure for obtaining refugee status or for deprivation of the already received refugee status; it is necessary to take into account the compliance of the relevant country with the international standards of criminal justice.

Noting favorable for immigrants overall direction of said provisions we must indicate that in 2013 the Regulation did not significantly change the situation with the protection of their rights as the document explains practical application of the relevant rules of law, but

only when the immigrants refer to administrative court appealing the decision announced by the migration service on refusal to grant the status of a refugee or a person in need of protection. In their turn, the SMS officials, according to official statistics, in making such a decision do not deem necessary to apply the provisions of Regulation.

The authorities should recognize that Ukraine, despite the renewal of immigration legislation, in 2013 our country did not become a safe haven for foreigners forced to leave their homes, while the quite liberal mechanism for obtaining immigrant status and desired assistance from state defined by normative regulatory acts is faltering or does not work at all. Such is the assessment of Ukraine's attitude to the problems of refugees or persons in need of protection made by the immigrants themselves, as well as representatives of UNHCR and numerous public experts.

"Several Russian citizens, who have turned to the Ukrainian authorities for obtaining the refugee status, are calling for strict observance of their rights in Ukraine. Their statement reads as follows:

"We, the citizens of Russia forced to stay in Ukraine require strict adherence to the Geneva Convention on the rights of refugees and asylum seekers; strict observance of our rights as people who are asylum seekers in Ukraine; end discriminatory policies on the citizens of Russia and Belarus that are asylum seekers in Ukraine." The authors of the statement also claim that the Ukrainian migration authority does not issue passports taken in its charge, and because of that the asylum seekers cannot receive money, rent a house and so on.

*Presently several Russian citizens, who have left their country because of fear of becoming persons involved in the "Bolotnoye Case", seek asylum in Ukraine. "Ukraine does not adhere to the Geneva Convention "On the Status of Refugees," maintain the authors of the statement"*⁹.

5. RECOMMENDATIONS

1. Countermand the order of SMS dated 11.03.2013 no. 48 *"On approval of informational and technological cards about rendering administrative services by the SMS"* as a prerequisite for violation of the rights of immigrants and inconsistent with the requirements of the law of Ukraine *"On Administrative Services"*. Develop new departmental normative legal act which shall not only clearly regulate the procedure and detail all stages of the procedure for obtaining permits and documents of immigrants, but also shall provide regulatory safeguards against violations of the rights and freedoms of foreigners as recipients of administrative services.

2. Amend the normative legal acts regulating the functioning of the State Enterprise SMS "Document" and its price-formation policy in order to bring the activities of the commercial structure into line with the laws of Ukraine *"On Administrative Service"*, *"On Legal Status of Foreigners and Stateless Persons"*. In order to prevent corruption, the targeted normative acts shall remove all state employees of migration service from backing the activities of the State Enterprise "Document".

⁹ <http://www.radiosvoboda.org/content/article/24999245.html>

3. Get scientists and public experts involved in legal assessment of regulations giving direction to the processes of entry, stay and social protection of immigrants in Ukraine in terms of determining the contradictions in their positions and establish compliance with generally accepted norms of international law. Design amendments to the relevant legislation and initiate their implementation.

4. Reduce the amount of statutory authority of the SMS regarding punishment of foreigners; in particular, its right to make decision to ban entry of immigrants into Ukraine and decision on administrative liability for violating the law on the legal status of aliens (article 203, articles 204, 205, 206 of the Code of Ukraine on Administrative Offences) and turn it over to the competence of the court.

5. With a special legislative document to make the SMS personnel to increase the level of confidence in the information that asylum seekers in Ukraine inform about themselves and about their existing grounds for the status of refugee or person in need of protection. Oblige SMS decision-makers to take into account the position of the Plenum of the Supreme Administrative Court of Ukraine as set out in the Regulation of 25.06.2009 no. 1 *“On judicial practice of adjudication regarding refugee status, deportation of an alien or a stateless person from Ukraine and disputes related to the stay of foreigners and stateless persons in Ukraine”* (in redaction adopted on 16.03.2012).

XXV. THE RIGHTS OF THE SERVICEMEN¹

1. GENERAL PROVISIONS

In 2013 certain changes reflecting the new laws and regulations coming in force, the amendments to the existing normative acts and the provisions concerning the order of the Ukrainian military service have been introduced within the framework of the current developments in the Ukrainian Armed Forces and other military units.

Besides, the reform of the system ensuring law and order within the Armed Forces of Ukraine and other military formation is going on. It touches upon, first of all, the reforming of the military prosecutor's bodies, which are to be totally eliminated in the future. Also by the end of 2012 a conceptually novel Criminal Procedural Code of Ukraine, covering the military issues, among other things, has come into force.

Nevertheless, the organization and functioning of the "law-enforcement bodies" and the adherence to the rights and freedoms of the servicemen remained pretty much the same over this year. The whole body of obsolete normative acts also remains unchanged; the funding of the national Armed Forces leaves much to be desired; the programs aimed at security and defense reform are not being implemented due to the obscure mode of thinking among numerous officials in charge of reforming process and everyday functioning of the army units. Ukrainian army lamentably is facing systemic problems which manifest themselves differently every year, but are not addressed conceptually by the state.

In order to resolve the systemic army problems, to define the strategy of its development, the state has to adopt respective target programs.

Specifically, on September 2, 2013 the Presidential Decree no. 479/2013 "On the decision of the Council for National Security and Defense of Ukraine of September 2, 2013 "On State Complex Program for reforming and developing of the Ukrainian Armed Forces for the period till 2017" approved the said state program. It is attached to the Presidential Decree, but bears the seal of the "complete confidentiality". Therefore the text is not available on the official Supreme Rada site.

So far the Law of Ukraine "On the number of the Ukrainian Armed Forces for the year 2013" has not been passed. The number of the Ukrainian Armed Forces is currently defined by the Law of Ukraine "On the number of the Ukrainian Armed Forces for the year 2012" of September 20, 2011. This law established the number of the Ukrainian Armed Forces as of December 31, 2012 within the limits of 184 000 persons, including up to 139 000 servicemen. However, the ongoing process of the Armed Forces reduction is gaining momentum. "Under the new military reform in Ukraine a large reduction in the Ukrainian Armed Forces

¹ The chapter was prepared by the assistant professor of the state and law chair, law department of V. Karazin Kharkiv National University Ye. Hryhorenko.

is in order. Thus, by the year 2017 the total number of the Ukrainian army will amount to 70 000 persons. The downsizing will be carried out in several stages. By the year 2015 only 105 000 out of 144 thousand servicemen will remain in the army, and eventually this number will diminish by another 25 000”².

2. DIGNITY

The practicing of the supremacy of law in a legal state urgently calls for the review of the whole body of the military legislation in force, to ensure the necessary conditions for the safeguarding of the servicemen dignity, regardless of the domain of their service, deployment and office or any other factors (gender, education, background, religious affiliation etc.). And it is not just about the decent social standards, but about all the aspects of everyday life and interaction between the servicemen at the time of service and off it, as well as about the enhancement of the military profession prestige.

As of today, the dignity of any person is recognized as the highest value at the constitutional level (Article 5 of the Fundamental Law of Ukraine). At the same time, neither Constitution, nor legislation in force is offering any viable guarantees or reliable implementation mechanisms. The Ukrainian Armed Forces’ Statutes in charge of all the aspects of the servicemen life and operation do not address the issue of dignity as an important guideline in the military/army relations. This problem is most acute from the point of view of numerous violations of the soldiers’ rights and freedoms, including the infringements on their dignity. This attitude has been in place for a long time and was officially supported as the unalienable component of the “burdens and privations of the military service”.

In fact, the problem currently results from the commanders’ dodging their functional duties in various areas of the military service, and, first of all, delegating some categories of the servicemen the excessive authority with respect to other soldiers’ “upbringing”. The consequences often manifested themselves in the illegal physical and mental pressure, resulting in various traumas, injuries, both physical and mental, and subsequent negative attitude to the military service, demoralizing effect on the soldiers’ personality, affecting not only the term of service, but also the further life after the discharge from the army. Sometimes these “educational methods” were transferred by the former soldiers on their surrounding environment (family, public service, including law enforcement bodies etc.) Besides, such incidents distort a person’s perception of the human dignity.

No doubt, some military commanders who, in due course, have been subjected to such “schooling”, regarded this mode of behavior as natural and even positive. But officially the situation can be changed only at the legal level by way of rigid bans and additional guarantees. The Criminal Code is not supposed, under the circumstances, to introduce new penalties for new types of crimes. The point is to offer a comprehensive approach within the framework of military legislation and service instructions in force, which would ensure the legal regulation of the military duty relations focused at the humane approach to the military

² Who will stay in the army after a big cut-down? // <http://wartime.org.ua/1609-hto-zalishitsya-sluzhiti-pslyavelikogo-skorochnya.html>

service regardless of the type of service, official duties, rank, deployment and other factors, as well as at protecting the human dignity at all levels.

This issue should be addressed without fail considering that under the Article 4 of the Armed Forces of Ukraine Statute, not only the duties, but also the everyday life of the servicemen is regulated by the said Statute. In other words, the regulatory impact of the legislation encompassing not only the duties, but also the everyday life of the servicemen, should be based to the maximum extent on the humane, civilized and well-grounded principles.

The Article 11 of the part 7 of the said Statute quotes the duty of each serviceman to safeguard the military fame of the Armed Forces of Ukraine and his own unit, honor and dignity of the Ukrainian military. Evidently, the reference to the honor and dignity is plainly declarative, without any substantiation or protection mechanisms; it also addresses predominantly the military glory of the Armed Forces of Ukraine and not the dignity of the individual servicemen.

In practical operation the instances have been registered when the commanders (leaders) in their efforts to bring up the soldiers in the spirit of due respect towards the Armed Forces' achievements or one's own unit merits and to make them perform their military duties efficiently acted wrong, humiliating the servicemen unable of performing certain duties due to physical or mental limitations or the lack of the appropriate skills. In this case not only the dignity of a soldier humiliated in front of his comrades suffers, but his personality and psyche is negatively affected as well.

Besides, part 8 of the same Article of the Statute establishes that every serviceman shall respect military and warfare traditions, assist other servicemen in the dangerous situations, preventing them from committing illegal actions, respect honor and dignity of every person. This norm obviously leaves much to be desired and is formulated with the only goal of prioritizing the aforementioned social values.

In this focus Article 49 of the said Statute seems more specific. It says that the servicemen shall always set an example of high level of culture, modesty and restraint, safeguard the military honor, one's own and others' dignity; they should always keep in mind that their behavior reflects upon the Armed Forces of Ukraine as a whole.

We believe that the issues of personal dignity are most relevant both with respect to the whole country and the Armed Forces of Ukraine specifically, due to the long-lived practice of ignoring and neglecting human values. Currently the issue should be addressed at the new governmental and social level, starting with the upbringing of the children in the families, preschool establishments, schools and other educational institutions.

As far as the army is concerned, this issue should be in the focus of special attention due to the traditional characteristics of the army service — its closed environment, lack of outside control, rigid subordination system, lack of relevant mechanisms of counteracting illegal or even criminal orders, low level of social protection, persistent negative traditions which flourish within the close spaces of the barracks, broad discretion granted to the commanders, the obsolete, uncoordinated and archaic military law and regulations, lack of viable mechanisms of appeals available to the servicemen with respect to the defense of their rights and freedoms, as well as some other peculiarities which cannot be ignored in implementing the policy of humanizing of the military/army relations.

The issues of social protection are the most important beyond any doubt. The manning of the Armed Forces' units with efficient personnel, high quality performance of the functional duties by the servicemen, their motivation will depend on them. Besides, the recess of the professionally trained military personnel will be curbed. On the other hand, however, these issues are of lesser importance for the formation of the personality of a serviceman than the issue of the personal dignity.

3. DEMILITARIZATION AND MODERNIZATION OF THE MILITARY AND LAW-ENFORCEMENT AREA

The process of reorganizing the military prosecutors' offices into the offices overseeing the enforcement of the laws in the military area came to an end in 2013. It started in August 2012. The investigators and prosecutors ceased to be the servicemen, acquiring the status of the classical "clerical staff" of the prosecutors' offices. The process in place is the continuation of the liquidation of the court martial. It is called upon, on the one hand, to demilitarize the law-enforcement segment of the Armed Forces of Ukraine and other military units, and to set up the necessary conditions ensuring further independence of the said structures, on the other. The underlying concept of the reform in this sector is saving money used for the upkeep of these bodies, while expediency of their existence is still under debate, leading sometimes to controversy.

Meanwhile it is noteworthy that the investigators and the prosecutors within the military system should have a better understanding of the complicated and convoluted military law, of the peculiarities and specific characteristics of the military service, appropriate (or inappropriate) military traditions. Besides, the experience of numerous countries, including the developed and the democratic ones, testifies to the fact that both military prosecutors' offices and court martial can operate efficiently. All these arguments are to be taken into consideration beyond any doubt.

Acceptance by the servicemen of the controllers who are also within the military system is another argument in favor of the prosecutors' offices. However, the level of acceptance does not define the quality of the monitoring. Besides, sometimes, the military prosecutors are not accepted and are even hindered in the performance of their professional duties. It happens when a prosecutor's rank is much lower than the rank of the official under control. In these cases the deprivation of the prosecutors of their military ranks could even contribute to the efficiency and objectivity of their operation, instead of affecting it negatively.

Besides, the demilitarization process in our country has become irreversible. By the end of 2013 the state promised to define the status of the prosecutors' offices supervising the adherence to the military laws by passing the Law of Ukraine "On the prosecutor's office", which does not stipulate any specialized prosecutor's offices at all. It means that by mid 2014 122 specialized prosecutor's offices are to be liquidated (those in charge of military legislation, transportation, environmental). They will be replaced by the structure of the prosecutor's office consisting of three tiers: 1) The General office, 2) regional and 3) local offices.

However, the modernization of the said bodies cannot ensure the due impact on ensuring and protecting the rights and freedoms of the servicemen just by the virtue of the prosecutor's ranks and units of operation. The change will occur due to the way of their organization, focus at the appropriate performance of the job duties, quality of personnel training. All these goals can be achieved only with the due political will of the state.

The new Criminal Procedural Code of Ukraine which had introduced changes into certain obsolete military laws deserves special attention as well. One of the positive developments is the introduction of changes into paragraph 17, article 67 of the Interior Service of the Armed Forces of Ukraine by the Law of Ukraine "On Changes to some legal acts of Ukraine with respect to the adoption of the new Criminal Procedural Code of Ukraine". These changes stipulate that a regiment commander can be deprived of authority to press criminal charges and launch an investigation against a felonious serviceman; instead, in case of criminal violation, he must make the fact known to the pre-trial inquest unit.

Part 4, Article 85 of the Disciplinary Statute of the Armed Forces of Ukraine, under which the commander can no longer "apply the measures stipulated by the Criminal Procedural Code of Ukraine Criminal Procedural Code of Ukraine", but has to inform the pre-trial inquest unit in writing in case of the violation committed by a serviceman and bearing the evidence of criminal act, has also been changed respectively.

Meanwhile, the structure of these regulations remained unchanged, i. e. the commander remains responsible for the legal education within his regiment and for the maintenance of the military discipline, and, therefore, it would be against his best interests to let the pre-trial inquest bodies know about the perpetrated violation. Doubtless, the criminal liability for the felony still remains the same. The only difference consists in the fact that under part 3, Article 45 of the Disciplinary Statute of the Armed Forces of Ukraine, (version of April 13, 2012) the commanders are held liable for failing to report an alleged criminal violation. Therefore, the practice of hiding certain felonies can still persist.

The new Criminal Procedural Code of Ukraine as well as the Law of Ukraine "On Changes to some legal acts of Ukraine with respect to the adoption of the new Criminal Procedural Code of Ukraine" strips not only the commanders, but also the military law enforcement service of the Armed Forces of Ukraine of the authority to act as the inquest bodies. This latter body is also deprived of its former authority to investigate crimes and other infringements occurring in the Armed Forces of Ukraine.

The new rules of investigation established by Article 216 should be named among the novelties introduced by the new Criminal Procedural Code of Ukraine. However, under p. 1 of the Interim provisions of the Criminal Procedural Code of Ukraine, the competencies with respect to the pre-trial investigation of the criminal violations are fulfilled by the investigation bodies of the prosecutor's offices according to the investigators' authority defined by the Code, before the provisions of part one (concerning the pretrial investigation of the crimes covered by articles 402–421, 423–435 of the Criminal Code of Ukraine) and part four, Article 216 of the Code come in force.

After the provisions of part one (concerning the pretrial investigation of the crimes covered by articles 402–421, 423–435 of the Criminal Code of Ukraine) and part four, Article 216 of the Code are enacted the materials of the criminal inquest carried out by the investigation bodies of the prosecutor's office are to be submitted by the said bodies to the respective bodies of the pretrial investigation authorized by this Code. It means that in the future the pre-

trial investigation will be conducted exclusively by the respective bodies under the Ministry of Interior and investigation bodies of the state investigation bureau.

The changes within the system of the preventive measures are noteworthy as well. Thus, under part 1, Article 176 of the Criminal Procedural Code of Ukraine 1) personal cognizance, 2) personal bail, 3) personal pledge, 4) home detention and 5) custody are considered to be preventive measures. Obviously, the preventive measure of commander's supervision within a military unit is absent from the list. It was established in line with the Criminal Procedural Code no longer in force and envisaged the use of steps stipulated by the Statutes of the Armed Forces of Ukraine, aimed at due behavior and appearance of the suspect or the accused on the summons of the investigator, prosecutor or court. The command of a military unit shall inform the respective body in writing.

Evidently the said article fails in pointing out the main goals of the preventive measures (avoiding the obstruction of justice, putting an end to criminal activities). Therefore, one can arrive at the conclusion that the commanders' supervision has not always been efficient as a preventive measure. There are examples of practices when superiors in command, having their own agenda in a case, would overlook the violation of the procedural norms for this measure, thus nullifying the purpose of its use. Specifically, a serviceman charged with committing a crime might be outside his military unit and, with the help of an attorney, try to meet the victims (civilians) and influence them in a lawless way. Such cases were numerous.

Analysis of the norms of the Criminal Procedural Code leads one to the conclusion that the amendments introduced in the area of military matters are aimed, first and foremost, at the removal of legal regulation of the said issues. The Code disregards the specific characteristics addressed by its predecessor. Summing up, it is noteworthy that the criminal procedure reform addressing military issues among others is an ongoing process, although some obsolete provisions within the military legislation would preclude the novelties from being implemented.

Therefore, the review of the military legislation in force is in order, specifically of the Statute of the Interior Service and Disciplinary Statute of the Armed Forces of Ukraine. It must ensure the due reporting of the criminal felonies committed by the servicemen and prevent the hiding of these illegal actions. It can be achieved by introducing legal norms which would not penalize a commander for the committed and uncovered criminal act within his unit, apart from the situations when the said felony was a direct derivative of his inertia.

4. UNIVERSAL CONSCRIPTION OR CONTRACT ARMY

The Armed Forces of Ukraine and other military formations play a significant role in the life of the state and society, in particular, with respect to the adherence to the individual and civil rights of citizens. First of all, a considerable number of the citizens do their military service within the frame of this state mechanism. Besides the operation of the said bodies can have a substantial impact on the rights and freedoms of lay persons having nothing to do with any law-enforcement bodies. This phenomenon manifests itself in various scenarios, and, specifically, in crisis situations. One of the crucial issues, though, is the fact that Ukraini-

an citizens are recruited to serve in these structures in total disregard of their desire (or lack of thereof) to do so.

This state of things has politicized the issue of conscription tremendously. That is why political elite pretty often has been using it to gain additional political bonuses.

According to the Ministry of Defense of Ukraine the last universal conscription to the Armed Forces of Ukraine shall take place in the fall of 2013, while in 2014 the last servicemen who have served on the mandatory basis will be discharged. By the year 2017 the reform of the National Army shall be completed, with the total transition to the contractual basis of army service. After all the stages of the state reforming program with respect to the Armed Forces of Ukraine and their development over the years 2013–2017 are implemented, the army will become completely contractual.³

Meanwhile, the Decree of the President of Ukraine of November 9, 2012, no. 635/2012 “On the terms of enlistment of the Ukrainian citizens for the mandatory army service and the discharge of the servicemen in 2013”, in compliance with p. 17, part 1, Article 106 of the Constitution of Ukraine and under the Law of Ukraine “On military duty and army service” the due conscription to the Ukrainian army was announced for April-May and October-November.

In its turn, the Cabinet of Ministers of Ukraine on September 4, 2013, passed an order no. 671-p “On approval of number of Ukrainian citizens to be conscripted, the volume of conscription-related expenditures in October-November 2013”, establishing the number of 10800 person in total, including 5000 for the Armed Forces of Ukraine, 4800 for the interior units of the Ministry of Interior, and 1000 for the State Specialized Transportation Service. Nevertheless, the Armed Forces of Ukraine and public at large are not one hundred percent ready for this radical step, first of all, due to the very limited time-frame assigned for the transition. Besides, substantial allocations are needed for the competitive job market for the contracted servicemen. In the USA, for example the banning of the mandatory service took place over a course of several years, between 1920 and 1940, so that the whole reform implementation lasted for about 20 years.

Some military experts sustain that the transition to the completely contractual army by the year 2015 is an entirely political decision. They do not see any obstacles in banning the mandatory conscription to the Armed Forces of Ukraine. It is the other law-enforcement agencies, specifically the military units of the Ministry of Interior that will face the problems due to this decision, as they are also formed by means of conscription. In this context it is essential not to confuse the notions of professional and contractual army. Banning the conscription is not a big deal. But contractual relations will not ensure the functioning of the professional army per se. The state should make a significant effort to ensure the operation of a really efficient, mobile and professional army. Considering the political aspects of the issue and its resonance among the Ukrainian public, it can be expected that the mandatory conscription, at least to the Armed Forces of Ukraine, will be banned prior to the presidential elections. Probably it will create the new problems for the Armed Forces.⁴

³ The agency clarified that the terms of the transition to the professional army have been moved again. <http://tsn.ua/ukrayina/u-minoboroni-zaspokoyili-ciyei-oseni-prizov-do-armiyi-bude-ostannim-296552.html>

⁴ Army conscription can be banned prior to the Presidential elections // http://razumkov.org.ua/ukr/article.php?news_id=1059

The Secretary of the National Security and Defense Council of Ukraine, while commenting upon the Decree of the President of Ukraine “On the State comprehensive program for the reforming and development of the Armed Forces of Ukraine till 2017”, stated that the army reform has been launched in Ukraine already. He specified that the Decree validated the decision of the National Security and Defense Council of Ukraine of September 2, 2013, by which the said program was approved. He also stressed that the main goal of the reform is the enhancement of the efficiency of the Armed Forces of Ukraine. Not only the numbers are to be harmonized and contractual basis of service introduced, but the whole system of command should be reorganized. In his words, the President of Ukraine by his decree has approved the new military-administrative division of the territory of our country, consistent with the provisions of the army reform Program. He clarified that Ukraine has been divided into three areas with the three respective sets of governing bodies.

The Secretary underlined that the reform tasks encompass significant boost in the national army and servicemen profession prestige. It will be achieved, first of all, due to significant increases in servicemen remuneration and improvement in their living conditions. Due attention will be paid to technical modernization and equipment of the Armed Forces of Ukraine with the state-of-the-art arming.

At the same time the Secretary stressed that the speed and efficiency of the reform will depend on the adequate funding. “Despite the world economic constraints which cannot but affect the Ukrainian economy, the President of Ukraine ordered the government to follow the chosen course of action without failure. We must improve the battle-worthiness of the Armed Forces of Ukraine dramatically” — stressed A. Klyuev. He also advised that the main budget lines for 2014, bearing on the operation of national security and defense structures, are being devised.⁵

The Concept is aimed at creating battle-worthy, mobile, well-trained and equipped professional Armed Forces, capable of quick response to real and potential threats to the national security in the military area, of efficient curbing and terminating (localizing, neutralizing) armed conflicts at their early stages, preventing them from developing into the large-scale aggressions and capable of participating in the international endeavors in safeguarding peace and security.

The Armed Forces of Ukraine reform is to be implemented in two stages. The first stage shall cover main reforming steps, especially the optimizing of the Armed Forces’ size and predictable manning of the Armed Forces units and formations; taking away the Armed Forces’ inappropriate functions and releasing the excessive assets; organization of the military units; increase in the social guarantees for the servicemen and social protection for the persons discharged from the army. The second stage envisages building up the capacity of the Armed Forces to provide timely response in case of the border conflict threat, enhancing the operative capacity to counteract armed aggression; total transfer to the contractual Armed Forces; bringing the indicators of technical equipment, financial remuneration and training of the servicemen into compliance with the respective indicators in the leading European countries.

⁵ A. Klyuev: the implementation of the Armed Forces of Ukraine Reform Program has started. <http://www.rnbo.gov.ua/news/1504.html>

It is noteworthy that total transfer to the contractual Armed Forces is planned for the second stage of the Armed Forces reform, i. e., under the Constitution, by the year 2015, which gives grounds for deliberations on excessively politicized nature of the issue.

The Concept under discussion has to set up appropriate incentives for army service, including increased wages, opportunities to refrain from military service at one's will, and total transition to the contractual basis. Appropriate conditions should be guaranteed for the professional soldiers and sergeants. The whole order of military life should be changed by introducing appropriate amendments to the Armed Forces' Statutes, other regulatory documents and by ensuring appropriate social and everyday living conditions for the servicemen under the contract. In order to enhance the quality of manning and to avoid misjudgment in recruiting the candidates an intensive preliminary training course (three months long) will be offered to the candidates. The decision with respect to the contract will be made on the basis of the training results. The preferential treatment of the servicemen willing to get their education while serving under the contract is being considered)⁶.

Another issue within the focus of the Ministry of Defense high officials' interest is the development of incentives for the best representatives of the Ukrainian youth to do their military service under contract. A number of tangible measures have been implemented already; their effect should become evident in the nearest future. First of all, the wages for the men serving in the Navy, Air Forces, paratroops of High Mobility and Specialized Units have been doubled. Due to this measure the soldiers won't be recruited mandatorily to the aforementioned military units. Meanwhile the increase of wages for other categories of the servicemen is not yet feasible. That is why the decision was made to achieve this increase by stages, 20% per quarter, between April 1, 2013 and July 1, 2014. At the end of the day the wages should be doubled. The current salary fund constitutes 6654.2 million UAH, which allows the payment of the said amount in full. Therefore, as early as October this year a commander of the land troops brigade will get approximately 5700 UAH, a battalion commander — 5000 UAH, a company commander — 4500 UAH, and a platoon commander — over 3300 UAH.

The government plans other measures for the enhancement of incentives, alongside with the wages increase. The improvement of the social package for the contractual servicemen, covering free higher education, free choice of the service destination at the time of the first contract, due conditions for the service and leisure (fixed duty hours, 5-days working week, free travel around Ukraine on holidays and weekends), housing provisions etc., is under consideration.

5. RECOMMENDATIONS

1. Devising a comprehensive approach based on the military legislation in force and service instructions, ensuring legal regulation of the military service relations, with due consideration to the humanitarian aspects of service regardless of its type, rank and duty of a serviceman, deployment and other factors, and to the personal dignity at the highest level.

⁶ <http://www.mil.gov.ua/files/reform/Buklet.pdf>

2. Reviewing the applicable military legislation, and, specifically, the Statute of the interior Service and Disciplinary Statute of the Armed Forces of Ukraine with the goal of empowering the commanders to report the cases of criminal violations committed by the servicemen and preventing the cases of hiding up the said illegal occurrences. Due legal norms protecting a commander against penalties for the criminal violations uncovered in his units are in order (apart from the cases when the said violation resulted directly from his inaction).

3. Applying efficient measures for stage-by-stage transition to the contractual basis of the military service. The whole process shall be depoliticized to the maximum extent, providing instead realistic, economic, scientific and information background for the feasible transition to the contractual army with due battle-worthiness of each unit, Armed Forces and all military formations.

XXVI. RIGHTS OF PRISONERS

1. GENERAL OVERVIEW

As of November 1, 2013, 129 941 persons were held in custody in 82 facilities (181 in 2012) under the State Penitentiary Service of Ukraine (hereinafter — SPSU), which is 21 196 persons less than last year.

22 690 prisoners were held in 26 pretrial isolation centers (hereinafter — PTIC) and 6 correctional facilities with the functions of the pretrial isolation centers (hereinafter — CF) (which is 10 526 persons less than last year), including 1890 persons at the stage of the pretrial inquest (1753 persons less than last year), 9472 persons at the stage of court investigation (6887 persons less than last year), 142 criminal executive facilities, 106 284 persons in 142 criminal prisons (10 359 persons less than last year), including 9 facilities with minimum security where 5959 males were held (785 persons less than last year), 923 male inmates — in 4 facilities with minimum security and facilities with alleviated conditions, 5 778 female inmates in 14 correctional facilities (411 persons less than last year), 34 108 persons in 35 facilities with medium security regime for the first time convicts (2898 persons less than last year); 39 923 persons in 41 facilities with medium security regime for the repeated felons (3769 persons less than last year), 4347 — in 9 facilities with maximum security (7 persons less than last year), 4922 persons in the correctional centers (another center was added, with general number 475 persons less than last year), 2743 persons in 6 specialized treatment facilities, 2264 persons in the treatment centers under PIC and CF (the total number did not change since last year), 967 persons in 7 correctional facilities for minors (311 persons less than last year). Among the convicts 12 thousand were condemned to more than 10 years of incarceration; 1866 serve life term (their number has grown by 64 persons since 2012 p); 564 persons are held in custody centers set up under CF and PIC.

As compared to the last year the total number of the persons in custody has decreased by 21 196. We believe that this ominous dynamics reflects, first of all, the steps taken by the state towards humanization of the penitentiary system in compliance with the new Criminal Code of Ukraine in force. The courts are passing fewer decisions on keeping people in custody at the stage of the pretrial inquests as a preventive measure. The courts also consider the measures alternative to incarceration when passing decisions on the criminal offenses of minor and medium gravity. Due to this dynamics the number of inmates in the facilities of minimum and medium security is decreasing while the number of the convicts in the facilities with maximum security remains unchanged. Despite this positive dynamics the issues of the protection of rights of the prisoners staying in the PTIC for more than

¹ Prepared by V. Chovhan and A. Didenko, KHPG.

a year without appropriate court decision remain crucial. The criminal inquest is carried out on the basis of the procedural law of 1960; torture and cruel treatment are still registered in certain PTICs as well as denial of medical care, and unavailability of dubious court decisions' reviews.

2. LEGISLATION

Over the year 2013 the legislation regulating the administration of penalties has changed more dramatically than over any given historic period in the development of the national incarceration law. The process was so intense that scholars and practicing lawyers, human rights activists did not have time to analyze the whole body of the law, which definitely will become the focus for future discussions.

The process was obviously related directly to the requirements of the Ukraine-EU Association agenda.² However, the number of the legal/normative acts and their amendments did not improve their quality, but, on the contrary, more often than not, deteriorated inefficient national legislation regulating the rights of people held in custody in PTIC and CF.

In brief the results of the law-making activities are presented in the Information "On the implementation of the Ukraine-EU Association agenda"³; it reads, specifically that "in order to bring the conditions of incarceration into compliance with the European standards, the Ministry of Justice has approved 43 orders (*between 2013 and the publication of the information — author's note.*)...". By 09.12.2013 the number of orders increased to 48, and the SPSU claimed they have been prepared by the service⁴. Noteworthy, the majority of the orders in fact either deteriorated the convicts' situation or did not change it at all. Many novelties were qualified by the specialists as "departmental plagiarism" meaning that the old orders of the State Department on implementation of penitentiary measures were given new letterheads of the Ministry of Justice and amended with few insignificant changes⁵.

The situation was even worse when the Ministry of Justice really introduced changes to the acts passed by the penitentiary department,⁶ e. g. the Internal Regulations for the PTIC.⁷ The Regulations adopted without public discussion contain large body of norms aimed, first of all, at facilitating the operation of the PTIC officials, while the rights of the inmates are violated.⁸

² http://www.kmu.gov.ua/control/uk/publish/article%3fart_id=223286414&cat_id=223280190

³ [http://www.kmu.gov.ua/document/246660125/Information_on_EU-Ukraine_AAImplementation_2013_\(Ukr\).doc](http://www.kmu.gov.ua/document/246660125/Information_on_EU-Ukraine_AAImplementation_2013_(Ukr).doc)

⁴ <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/699785>

⁵ The last year report already addressed the imitation of law-making process by the Ministry of Justice: <http://helsinki.org.ua/index.php?id=1362663498>

⁶ The last year report contained the reprimands and recommendations to the Ministry of Justice as to its deficient and unsatisfactory norm-making activity, contrary to the human rights standards

⁷ <http://zakon2.rada.gov.ua/laws/show/z0445-13/print1380096754591927>

⁸ See the criticism of the document in more detail: <http://ukrprison.org.ua/expert/1365497506>

The Regulations reflect the philosophy of maximum restrictions in the inmates' access to information, so that no information on a criminal case would reach them. Other unjustified restrictions, i. e. on keeping articles and materials which were earlier allowed, opens the door for corruption schemes in the PTIC by "legalizing" these restrictions for additional fees. It is noteworthy that the Regulations were really modernized — they banned all the possible communication channels and electronic media which have appeared in Ukrainian markets over the recent years. Specifically the use of TV, radio, audio and video devices, video tapes, CD and DVD, multiplication devices and equipment; computers, game consoles and detachable devices, portable video games, accumulators and chargers etc. are banned. On top of everything, this act contains a lot of legal errors.

That is why it was severely criticized by the academics, specifically, by the scholars from the V. Stashys criminal research institute, human rights activists and organizations that approached the Ombudsman, the Ministry of Justice, and the Prosecutor's General office with the open letter demanding its invalidation. However, not a single entity provided an answer⁹.

Currently the draft new Internal Regulations for CF has been prepared, once again without any prior public hearing¹⁰. Although this document is considered a "Bible" which should guide the whole operation of CF and the life of its inmates, no one wants to discuss it with public at large. Meanwhile the criminal prosecution experts are very negative in their assessment of the novelties introduced by this normative act.

It should be also mentioned that the Ombudsman Office managed to organize one meeting to discuss this document together with SPSU leaders. Our specialists prepared their notes and recommendations with respect to the major flaws contained in the Regulations, but their majority was rejected at once without any substantiation or explanation. Later the same experts devised direct comments to the Regulations' norms contrary to the specific provisions of the European prison regulations and Reports of the European Committee on preventing tortures and inhuman and degrading treatment or punishment (CPT). Several months later SPSU offered no incentives to continue the dialogue, so that one can conclude that the draft Regulations would be adopted without any consideration of public opinion. Besides, the requirements concerning the construction norms for the penitentiary facilities were eliminated from the Regulations currently in force. According to our information it should be approved by a separate departmental act, which, despite its importance in the light of adherence to human rights (visiting conditions, accommodations etc.), is not yet available to the public, and, probably, will not be discussed openly.

The practice of "fake" public discussion on the normative and legal acts, introduced by SPSU, deserves special attention. Thus, according to public consultations List,¹¹ many normative and legal acts had to be discussed publicly, although, as far as we know, some acts were not even posted at the departmental sites for the discussion. Reluctance to involve public at large in the law-making process is characteristic of other bodies of power as well,

⁹ <http://kvp.in.ua/?p=11&cpage=1>; <http://helsinki.org.ua/index.php?id=1368422849>; <http://www.civicua.org/news/view.html?q=2007122>

¹⁰ <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/678075>

¹¹ <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/660592>

e. g. the Presidential Administration which completely rejected the proposal of introducing changes into the Pardon Provisions initiated by “Donetsk Memorial”¹².

In 2013 The Cabinet of Ministers of Ukraine adopted the State target program for the re-forming of the State criminal prosecution service for the years 2013–2017 (the Program)¹³, which could have become most important and instrumental in introducing positive changes ensuring the rights of the prisoners. Its potential, however, was reduced to minimum due to the irrational allocation of funds needed for the implementation of the measures which would ensure the priority of human rights.¹⁴

According to the program’s Passport, 6011.73 million UAH, i. e. over 6 billion UAH, or 1.6% of the intended revenue of the State Budget for 2013, was allocated for the Program implementation.

One third of funding should have been used to design and construct penitentiary facilities outside central areas of Lviv, Odessa and Kherson. (2051.7 million UAH). The task addressed by this measure is described in the program as “The improvement of the conditions in which the inmates are kept, transfer from the stay in the facilities of the barrack type to block (cell) accommodations with the increased area per capita by way of technical refurbishment and reconstruction of the CF, construction and reconstruction of the existing PTIC” and envisages the entire funding of 2802.07 million UAH, including the aforementioned 2051. 7 million UAH. The problem of overcrowded PTIC and colonies currently ranks second,¹⁵ and respective allocations should be used to introduce the most desirable block system of the inmates’ upkeep within the criminal execution service.

The scope of the funding planned for the “modernization of the engineering and technical means of security and surveillance, implementation of modern technologies with the goal of creating a multi-tired system of the centralized security and video-monitoring, automatic information and telecommunication systems within the SPSU” constitutes 1107.01 million UAH, while only 123.96 million UAH are stipulated for the “improvement of catering for the convicts and persons in custody, the system of food purchase, bare necessities, and communal and everyday use equipment”, and 400.52 million UAH — for the modernization of the engineering infrastructure (such important areas as heating, water supply, sanitation etc), while the enhancement of the penitentiary service efficiency, without incarceration (including the setting up of the probation service) envisages sum total of 0. 64 million UAH.

The situation looks even more dramatic if one considers the amounts of money allocated for the health care for the persons in custody and improvement of health care services. These issues were the matter of serious concern within the CE institutions and priority tasks for the Ukraine-EU association agenda. This amount constituted 179.57 million UAH or about 1/33 of the entire program scope and only 1/4 of the amount to be spent on modernization of the CF system.

¹² <http://ukrprison.org.ua/articles/1375073466>

¹³ <http://zakon4.rada.gov.ua/laws/show/345-2013-%D0%BF/print1378734200935557>

¹⁴ <http://zakon4.rada.gov.ua/laws/file/text/16/f399511n75.doc>

¹⁵ <http://ukrprison.org.ua/news/1379448904>

The amount of money to be spent on modernization of the CF system and the improvement of the professional training for the individuals condemned to prison terms and restriction of freedom constitutes 730.48 million UAH (with only 18.93 allocated for vocational training of the inmates). These figures once again justify the concern expressed in the last year report with respect to the “economic priorities” characteristic of the penitentiary department in its dealings with subordinate entities and the goal of obtaining profits from the prisoners’ work instead of providing them with skills and knowledge useful for their reintegration in the society.¹⁶ The changes introduced to the Law of Ukraine “On the State criminal executive service” at the end of 2012, under which the CF

The transformation of production units from “the enterprises engaged in non-commercial economic activity without goal of obtaining profit, to ensure professional and technical training of the convicts and their engagement in work operation...” (p. 1 art. 13 of the Law) into the “enterprises involved in economic activities and professional and technical training of the convicts” manifests the same tendency. The goal of the changes is obvious and contrary to the rule no. 8 of the European prison rules¹⁷, which stipulates that “although obtaining financial profit from the operation of the enterprises in the correctional facilities can be useful from the point of view of enhancing standards and quality and expediency of the professional training, the interests of the prisoners should not be subject to this goal”.

Ukrainian experts also voice other critical concerns. According to the aforementioned Passport, the Program envisages the attraction of funds not only from the state budget, but also from other sources “not prohibited by the law”, specifically, 2129.7 million UAH, i. e. more than 1/3 of the Program funding. Most probably, these funds will come from the investors who would use them in the CF production process; therefore, the labor of the convicts will most probably be used to the maximum and at the minimum wages to recover these costs.

On 05.09.2013 the Law of Ukraine “On introducing changes into the Criminal Executive Code of Ukraine on the order and conditions of serving prison terms”. This Law is rather declarative and progressive in language only, introducing in fact just formal changes¹⁸. The experts assess the Law as regressive due to its restrictive nature with respect to the human rights. A renowned expert in the criminal execution law V.Badyra states that while “earlier the code contained 11 restrictions for the persons serving their term in prison, now there are 24 restrictions”¹⁹.

The primary goal of the new law was ensuring the right to use cell phones for the convicts in the CF of minimum security level and social rehabilitation centers. However, at the time of the first reading in parliament this amendment was rejected. During the first days after the law was passed the journalists made a lot of public claims to the effect that chang-

¹⁶ The last year report contained a note on unacceptability of CF transfer to self-sufficiency regime at the cost of the inmates’ work. Also, recently the experts of the “Renaissance” IF arrived at the similar conclusions in their report on implementing the requirements compulsory for the Agreement on association with EU: http://www.irf.ua/files/ukr/programs/euro/report_ua_eu_18.6.2013.pdf

¹⁷ http://zakon2.rada.gov.ua/laws/show/994_032/print1380103375378991

¹⁸ The passing of the draft law was introduced as pro-European changes in mass media, despite its real nature, e. g.: <http://www.unian.ua/news/593591-rada-priynyala-evrozakon-pro-pomyakshennya-umov-dlya-zasudzenih.html>; <http://intv.ua/important/65037-deputati-posluhali-yevropu-gumanzuvali-umovi-zasudzhenim.html>

¹⁹ <http://ua.racurs.ua/363-progresyvnyy-zakon-pogirshyv-stanovysche-ukrayinskyh-v-yazniv>

es have been introduced, in defiance of the actual state of things. The convicts are still approaching Kharkiv human rights group asking whether they can use the cell phones in the correctional facilities. The human rights activist Ye. Zakrevska made an apt comment to the effect that “the cell phones will not become scarce in the prisons. For certain fees they will be given to the inmates so that these latter could use them with silent and paid-for approval of the administration”.²⁰

The passed law once again confirmed the ban on the meetings with attorneys and other persons while staying in the disciplinary isolation cell. The convicts will be deprived of any visits apart from the attorney’s visits, while in quarantine or diagnostic ward. The list of persons entitled to long-term visits with the convicts serving their term (and short-term visits for those serving life term) will be limited to the nearest family (spouses, parents, adoptive parents, siblings, grandparents, grandchildren), which is an absolutely unjustified restriction, from the point of view of both Convention on protection of rights and fundamental freedoms and practices of the European Court for Human Rights. The new automatic (without any assessment of individual risks and needs) restrictions of the rights of convicts under disciplinary proceedings, i. e. stay in the disciplinary isolation cell or in the facility of the cell type to the telephone talks, which can be allowed only by the colony warden with the educational goal or under extraordinary circumstances (death or serious sickness of a family member etc).

On October 10, 2013 the draft Law of Ukraine “On probation” was passed in the first reading. It was devised by the SPSU and failed to take into account the experts’ recommendations aimed at transforming the criminal — executive inspection into the probation service. It does not embrace the classical characteristics of probation typical of the countries where this institution is well-developed. For example, it does not stipulate the preparation of the reports, based on the risks and needs assessment, and justifying early probation release of the persons serving their term in prison. The draft does not stipulate any assistance to the probation clients, especially those discharged from the places of incarceration, although combining supervision and assistance to the persons in questions is one of the main probation characteristics.²¹ The idea of public participation in the probation programs, which has been successfully operating and achieved positive results in the UK, is practically reduced to zero in the draft.

Besides, the Chief expert research department of the Supreme Rada of Ukraine apparatus concluded that the draft contained a lot of terminological discrepancies with respect to the legislation in force. The concept of applying probation measures to both suspects and defendants also seems dubious. Neither suspects nor defendants cannot be considered guilty of felony and, therefore, needing “supervisory” or “social education” measures.²² By the way, the funding assigned for probation, as was mentioned before, constitutes an insignificant portion within the Target program for the reforming of criminal executive service — 0.64 million UAH. The specialist, therefore, are concerned that

²⁰ <http://www.pravda.com.ua/articles/2013/10/8/6999504/>

²¹ Hamai K. Probation Across the World: Comparative Study. — London: Routledge, 1995. — P. 3.

²² <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=45499&pf35401=252138>

the introduction of probation in fact will amount to nothing but renaming of the criminal executive inspections.

The specialized units under the SPSU deserve special attention. Their operation has been long criticized by the human rights organizations. Under the pressure from public the decision on state registration of the order regulating their operation in the past was cancelled, and the order in question was removed from the State registry of the normative/legal acts on 14.01.2008. Nevertheless, the penitentiary department has been using the said units without any legal justification till 03.07.2013, when finally the respective order no. 1325/5 was passed by the Ministry of Justice²³. Despite generally positive nature of the aforementioned act regulating the operation of the potentially dangerous unit, it still contains rudimentary norms, which led, among other things, to the cancellation of its registration. For example, the functions, performance of which falls under the competences of the CF staff still are regarded as the units 'prerogative: searches of the residential and production zones, personal belongings of the inmates etc. (p. 3.7); ensuring law and order, adherence to the procedure of serving the term in CF and PTIC and adjacent territory under the law and other normative and regulatory acts; (p. 3.9). In fact, the world practice testifies that specialized units can and should be used only in the emergency situations of mass actions disrupting work in the facilities, group sedition on the part of the inmates, hostages taking and other emergency situations.²⁴ Meanwhile, the current version justifies everyday use of these units "to maintain order" and intimidate the prisoners with the goal of establishing army discipline, which is unacceptable as far as normal relations between the staff and the inmates go, according to the CPT recommendations for Ukraine of 2012. This practice, however, persists.

It is noteworthy that the order no. 1325/5 failed to reflect two major CPT recommendations of the same year: the entire operation of the unit should be video-taped (the order establishes that video is to be used only to "document illegal actions of the convicts, persons in custody and other individuals", i. e. not the commandos' actions); each member of the unit in the course of special operation should wear a badge enabling his identification and appeal of his illegal actions in the future, if need arises.

All these faults beyond any doubt contributed to the horrendous events that occurred in 2007 and included mass beatings of the prisoners in Izyaslav colony, which were classified by the ruling of the European Court on "*Karabet et al. vs. Ukraine*" (2013)²⁵ as the violation of their Convention rights not to be subjected to torture. Characteristically, this ruling did not ban the practice of systematic use of the said unit; moreover the officers in charge of this bloody operation not only were not dismissed, but are holding higher offices within SPSU till present day.

One of the routine aspects of the CF everyday life is the organization of the educational and psychological work with the inmates. It reflects the "educational" component of the national policy with respect to the penitentiary system. It still prevails in the ideol-

²³ <http://zakon4.rada.gov.ua/laws/show/z1133-13/print1378734200935557>

²⁴ Relevant recommendation was formulated in the last year report, but, despite its transparent nature, it was not taken into account in the Provisions. It can mean that: a) the SPSU did not familiarize itself with report or 6) the SPSU failed to take public recommendation into account in the law-making process.

²⁵ <http://www.khpg.org/index.php?id=1361282500>

ogy of the incarceration department as the goal of correction, *inter alia*, inherited by the Ukrainian criminal law from the soviet times. This approach has been severely criticized by a renowned scholar A. Stepanyuk and his followers for its impracticality and incapability of being useful to the society at large^{26, 27}. Personal reform still remains the main goal of the punishment under the CC of Ukraine, which in the end of the day contributes not only to the embellishment of the real state of things in the correctional facilities but also creates a lot of practical problems for their staff in defining the level of reform required for the early release on probation, replacement of punishment with the milder one etc. As a result the practices of penalties are not defined leading to the violation of the inmates' rights. (In our operation we come across the ungrounded rejections of these incentives on everyday basis).

Nevertheless, this obsolete and biased policy still remains in place and is widely used. On 04.11.2013 the Ministry of Justice approved the Order no. 2300/5 "On organizing social, educational and psychological work with the convicts"²⁸, which replaced the earlier similar act of the State Department "On approving the provisions regulating the operation of social-educational and psychological service of the correctional facilities" no. 33 of 17.03.2000. The very availability of the Order (instead of just its fragment, which was the case earlier) is a positive development. But the act itself cannot bring any positive changes into the practical operation.

No tangible changes are envisaged in the operation of the social and psychological service. For the reasons unknown the order did not approve a special provision on the methodological and educational council of CF, so it is not to be found in the act. The heads of the said service, however, are still entitled to consultations, methodological and practical assistance granted by the council in the education of the inmates. On the other hand, a new clause regulating the operation of the organizations set up by the prisoners themselves was added. The special document regulating the operation of these organizations is a requirement of the CC of Ukraine. So far it was not met, causing the criticism on behalf of the experts.²⁹ The analysis of the document, however, shows that its norms are rather declarative, unrealistic and hardly feasible in practice. Its implementation will lead to further overloading of the social and psychological service staff (and of the convicts working together with the CF administration), who have a lot of work already, as the main goal of the said service is "voluntary-compulsory" associations of the convicts, based on common interests, for the resolution of the everyday problems through self-governance. It would be more relevant for the soviet era pioneer camps than for addressing routine problems of the CF, its staff and inmates.

The order in fact banished the psychological service as a separate unit. Now it will constitute a part of the social-psychological service, with no substantial changes involved. The policy of lowering the standards of psychological support in the CF is another reason for concern. Earlier only a person with higher psychological or pedagogical education could be

²⁶ A. Stepanyuk. The essence of penalty enforcement // — Kh.: Folio, 1999. — 256 p.

²⁷ <http://archive.nbuv.gov.ua/e-journals/Chaau/2013-1/13yisvvp.pdf>

²⁸ <http://zakon4.rada.gov.ua/laws/show/z1863-13/print1378734200935557>

²⁹ http://archive.nbuv.gov.ua/e-journals/prtup/2012_1/yakovec.pdf

hired as psychologist, while now this responsible position, which requires deep knowledge of psychology and pedagogical sciences, is available to anyone with incomplete education of the junior specialist.

The deterioration of standards is accounted for not only by the staffing problems, but by the financial issues as well. Characteristically, under the Order the psychologist is entitled only to an office, while earlier he/she was also entitled to office equipment, i. e. computer, audio and video devices, psychology manuals. The lack of regulations with respect to the room of psychological relaxation is another proof of rigid economy regime in providing psychological support. (Earlier the requirements stipulated that the room had to be equipped with color TV set, video and audio tape recorder, acoustic system with quadro-effect, projector with relaxation slides etc). Anyway, the psychologists' operation has been long regarded as the SPSU burden, so in practice it amounts to filling out the required paperwork. In total disregard of the world trends, the national psychological service has never been a priority for the penitentiary system; therefore it is neither respected nor trusted either by inmates or staff. The aforementioned lowering of standards, however, was the last drop in questioning its importance for the mental health of the inmates and staff, their relationship, addressing the issues that arise and creating favorable psychological climate in a facility.

There is hardly any explanation for the fact that the section of the diary of individual work with the inmates reflecting the improvements/reforming of behavior, (most important for decision-making with respect to the use of incentives, e. g. early discharge) under the new Order contains a clause "attitude to the jobs performed, self-service and facility improvements" instead of "attitude to work". The new diary format reflecting work with minors envisages only attitude to studies. It is contrary to the requirements of CC and CEC of Ukraine, because an early release, for one, should be based on the behavior assessment and attitude to work, and not only self-service and improvements in the facility. (p. 2 art. 81 CC of Ukraine), while for the minors the criteria include behavior and attitude both to work and studies, and not to studies only (p. 2 art. 107 CC of Ukraine). Currently these indicators formally are not included into the overall assessment of improvement in defiance of the highest legal act — CC of Ukraine. Interestingly, the ethnicity of a person will no longer be specified in the diary — it will be replaced by citizenship, a most welcome innovation. However, the log reflecting the work with the inmates still has this line alongside with "citizenship" line.

02.07.2013 the Ministry of Justice adopted another document, important for the functioning of the CF and the adherence to the convicts' rights — the Order no. 1304/5 "On approving the Instruction concerning the supervision of correspondence (letter writing) of the persons in custody and PTIC" which replaced the former Order of the SPSU no. 13 of 25.01.2006. Despite numerous faults of the norms contained in the former order, their failure to ensure confidentiality and efficiency of appeals, they have been transferred to the new order without any changes.

One of the bones of contention in the said document is the compulsory censorship of correspondence (with the exception of specific subjects). The CEC of Ukraine, as opposed to the old Correction and Labor Code of Ukraine supposedly banned the censorship replacing it with "review" (art. 113 CEC of Ukraine). By definition this review means search for the forbidden items and not reading of one's letters. Nevertheless the Order in question still

retains the norm stipulating that “letters (*that contain — author*) the data which cannot be divulged, are not sent to the addressee, nor returned to the convicts or individuals in custody, but confiscated”. It means that a) CF administration is obliged to reveal this information by reading the letters; b) any information can be lawfully classified as “the data which cannot be divulged” at the administration’s discretion, thus opening the door to all sorts of local abuse. As a result, “unwelcome” letters simply won’t be sent out of the CF or delivered to the addressee.

The practice also shows, as will be demonstrated below, that often there is no proof of sending out the letters containing the information on illegal actions of the CF staff. Noteworthy the SPSU expressed its readiness to address the problem, even with the involvement of international experts³⁰. We are aware of the fact that the report prepared by the CE expert James Murdoch contains a lot of remarks which should be addressed by the SPSU. That is why we find the development, discussion and normative and practical implementation of the concept of the correspondence “immunity” most topical at the current stage. The social workers and Ukrposhta should be involved in the process as current perustration of letters creates more problems for human rights and safety of the convicts and society instead of resolving them.

Meanwhile some positive developments in the deputies’ law-making related to the penitentiary system can be traced. For example, passing of the law no. 3200 of 05.09.2013, submitted by the people’s deputies I. Lutsenko, A. Kozhemyakin and P. Petrenko will be instrumental in resolving many problems faced by the prisoners,³¹ specifically, their pensions, holding convicts in custody, visits and other gaps in the criminal-executive legislation in force.

The implementation of the norms or international law as a part of the national law is another matter. Our study showed lack of professionalism, coordination and efficiency in the measures aimed at the enforcement of the ECHR decisions with respect to violation of the prisoners’ rights within SPSU system and by the official in charge of the ECHR decisions.³² Hence many decisions are not enforced or are implemented only partially, while the problems identified by the court persist.

The same conclusion applies to the implementation of the recommendations formulated in the earlier and current CPT reports following the CPT delegations’ visits to Ukraine³³, which, according to the international law fall under the category of the “soft law”, and, although formally not obligatory, often become the main points of reference for the ECHR decisions against Ukraine and also a matter of concern for the Committee of Ministers of the CE.

The visit in December 2012 to Ukraine became an unprecedented event in the whole history of the Committee’s existence (almost 25 years of visits to 47 countries — members of the CE). The visit results were published in the public statement. This Committee’s competence is envisaged by the part 2, article 10 of the European convention against torture, inhu-

³⁰ <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/692366;jsessionid=ACA7F167D0EE817CE70799E74474FF7B>

³¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48169

³² <http://khpg.org/index.php?id=1370666586>

³³ <http://khpg.org/index.php?id=1379842217>

man or degrading treatment or punishment in cases when the national authorities refused to cooperate or to improve the situation taking into account Committee's recommendations.

Over the whole period of its existence, the Committee had made only four public statements (Ukraine being the fourth country with respect to which the statement was made). It is, however, the first country to be publicly reprimanded for its failure to collaborate for the improvement of situation in the penitentiary institutions. Our country is really an exception in this sense, as usually the Committee is very cautious addressing the issues of torture in the penitentiary institutions. More often such reprimands are made with reference to militia and its departments. The Report, however, describes and highlights the tortures in the correctional facilities. CPT pointed out that the treatment of inmates held in Oleksiivka CF no. 25 and Stryzhava CF no. 81 is tantamount to the torture. The finding of a row and bats, wrapped in paper and plastic and used to beat the inmates in Stryzhava CF no. 81, was an unprecedented occasion for the Committee delegation.

The Report also revealed a whole range of systemic problems inherent for the national criminal-executive system. The conditions in the prisons, torture, unacceptable treatment of the inmates by the staff, corruption, the situation of male and female prisoners serving life sentence, unsatisfactory fulfillment of the job duties by the personnel are the issues that gave grounds for the Committee's concern. Another matter of concern is the suspicion that the penitentiary department won't be able to interpret the Committee's recommendations correctly for their own use,³⁴ which fact, naturally, can affect the efficiency of their implementation.³⁵ The negligence of the SPSU and Ukrainian authorities as a whole is also confirmed by very superficial and insubstantial response to the Committee's Report.³⁶

3. TORTURE AND CRUEL TREATMENT IN THE CORRECTIONAL FACILITIES

The SPSU system still remains closed for public at large and for the journalists. Its closed nature provides incentives for the systematic violations of human rights. The inmates have no way of informing the prosecutor's office of the violation of their rights, although the procedure is spelled out in the law. Even if such information reaches the prosecutor's office, this latter often does not respond adequately to the instances of violations committed by the administration. The culprits continue to hold important offices and to commit new crimes. The people who dare to complain are subjected to torture, while new criminal cases against them are cooked up under the article 391 of the CC of Ukraine (malicious non-compliance with CF administration requests).

The practice of denying the attorney a meeting with the client is used by the SPSU administration in cases when the violation of human rights is obvious. An attorney can register certain violations (e. g. marks of bodily injuries) and provide legal assistance to a client

³⁴ The fact is that the SPSU translation available on CPT site at first was not to be published and bore the seal of the "internal use only".

³⁵ See Report analysis in more detail at: <http://www.khpg.org/index.php?id=1379843571>

³⁶ <http://www.cpt.coe.int/documents/ukr/2013-24-inf-ukr.pdf>

in putting together a complaint to the prosecutor's office, entailing legal qualification of the staff actions. Here is a typical example:

On August 19, 2013 about 7.00 pm a man called on the hot line of the UNHCHR, reporting that his life and health were threatened, as well as life and health of 15 other persons. He said he would agree to any public intervention, including the divulging of information and the names of the convicts if it can save their lives. The inmates of CF no. 81 I. Chepel, S. Muratov, P. Kopetsky, O. Antonovsky, R. Zverev, O. Kozak, V. Zamelyuk, Sh. Kosovan, V. Bovko and some other prisoners who refused to give their names are, according to them, in a most dire situation. The next day an attorney Natalya Gurkovska arrived in the correctional facility to meet her clients, but was denied entrance and visit without any grounds. On the same day the attorney submitted a claim of the criminal offense to the prosecutor's office. On August 27, 2013 the attorney N. Gurkovska once again came to the Stryzhava CF no. 81 with the goal of providing legal assistance to the convicts who had complained to the human rights organization and submitted a written motion to the first deputy of the colony warden S. Lysak. This latter in contempt of the law, abusing his official status, denied the attorney performance of her professional duties. The inmates were denied their right to legal assistance. On November 1, 2013 Vinnytsya circuit administrative court satisfied the attorney's claim and ordered the colony administration to let the attorney meet her clients. A criminal claim was filed against one of the petitioners for inciting the inmates to counteract the facility administration operation.

The European Committee for prevention of torture in its report following the visit to Ukraine in December 2012³⁷ pointed out that cruel treatment of the inmates in Oleksiivka CF no. 25 had become an inalienable function of maintaining order and counteracting prison subculture. The colony staff is using specially selected groups of prisoners to ensure docile behavior of other inmates since their first days of incarceration. The respondents complained of cruel treatment which can be classified as torture.

V. Bordun, DOB 1957, complained to KHPG that he had been subjected to torture in Oleksiivka CF after he, availing himself of the opportunity to leave the premises, made public the facts of human rights violations taking place in the CF. ("Naked truth or an inside look at Kharkiv colony" ORD site, 21.06.2011). Despite KHPG requests not to send V. Bordun back to the CF no. 25 to serve the rest of his sentence due to the conflict situation, he was brought back. Criminal proceedings were started against V. Bordun, with final verdict of 3 years of imprisonment. Currently he was serving 15-years term and had only 75 more days in prison prior to his release. Such actions of CF no. 25 administration can be classified unambiguously as revenge for his complaint.

We have been receiving the information on the violation of the inmates' rights in the CF no. 25 for many years — through the persons who have been discharged or moved to other CF under the SPSU. Besides V. Bordun's testimony, there is testimony of other inmates. During press-conference in UNIAN IA on 04.10.2013 the ex-convicts openly named the warden Khyrny and his deputy Popov as the organizers and perpetrators of the torture. Popov does it in person, while Khyrny uses his authority to incite other inmates subordinate to him as warden ("the boss").

We sent a request for information to the Prosecutor's General office to learn about the status of criminal proceedings no. 42012220090000028-27-012 of December 12, 2012 un-

³⁷ <http://khpg.org/index.php?id=1379842217>

der article 365 p. 2, mentioned by the convict V. Bordun in relation to the torture he was subjected to. He became the victim of torture for his refusal to report on other inmates. The ECHR decision in the case *"Savenko vs. Ukraine"* makes reference to a similar case. The administration of Temnivka CF no. 100 was trying to persuade S. Savenko to report any illegal activity of the other inmates. He refused. When the officials ran short of arguments, they resorted to torture. As a result, Savenko lost conscience and suffered a number of bodily injuries registered by the medical expert. Savenko's attempts to complain of the administration's actions brought no response. He was forced to say that the injuries were self-inflicted. But later, in court, he confessed that he had been forced to refute his own testimony and also showed the conclusion written by the expert with 37 years of professional experience to the effect that Savenko was by no means capable of inflicting the injuries himself.

4. ABOUT 10% OF VERDICTS CAUSE REASONABLE DOUBT AS TO THEIR FAIRNESS

KHPG has collected a number of cases which give grounds for serious doubts as to the validity of the verdict. Specifically it can be argued that individuals accused of homicide in fact did not kill their victims. The courts of higher instances have recalled the sentences passed by the internal courts in more than ten cases. The general scenario is as follows: the accused is subjected to torture so that he would confess to murder. If he manages to prove the violation of the article 3 of the European convention against torture and violation of the right to fair trial (i. e. obtaining evidence by unacceptable means) in the ECHR, then, in compliance with the court's decision, the verdict based on illegally obtained evidence should be reversed. And this is what happens. The homicide investigation should start all over again. Blessed St. Augustin noticed as early as 4th century AD that the state without due and fair trial is not a state, but a pack of criminals. This statement remains most topical today.

On November 15, 2012 the European Court for Human Rights passed its decision in the case *"Zamferesco vs. Ukraine"* (claim no. 30075/06). The Court found a violation of the article 3 of the Convention (cruel treatment in the militia precinct), violation of pp. 1 and 3(c) of the article 6 of the Convention (absence of legal aid starting with first interrogation) and violation of p.1 of the article 6 of the Convention (the use of evidence obtained by cruel treatment with the goal of condemning the claimant). Let us remind that V. B. Zamferesco was sentenced to life term for double homicide. The charges in the case are based on the confession obtained by torture and psychological pressure imposed by militia officers. In court the defendant refuted his own testimony, but the court was implacable. The decision of the ECHR reads: "In this case the claimant was threatened with death. The threats were accompanied by beatings causing physical pain. This psychological and physical pressure was used to make him confess to the crimes".

O. Rafalsky has been serving life sentence for 12 years. The fact of torture used against Rafalsky and other suspects in the case to make them confess to serial killings is obvious. Despite the Verbal Note sent to the Ukrainian government as far back as 2009 by the UNHCHR, resolutions of two parliamentary Committees (for counteracting corruption and legislative support of human rights protection) the correspondence with the prosecutor's office and courts is going on; the courts now and then invalidate the resolutions denying criminal pro-

ceeding against the official torturers, while Rafalsky is still anticipating favorable decision of the ECHR.

V. Panasenکو is serving life sentence for attempted murder of the “Shuvar” market director in 2006, during which a child died. The charges brought against the accused were based exclusively on the testimony of mentally sick person, who named first one perpetrator, then — in a written statement — another one, and, finally, Panasenکو, as third potential killer. On top of everything that person refuted his own testimony when testifying in court and named “a real culprit”, in his own words. Let us remind that on May 15, 2012 the European Court made a decision in the case “*Kaverzin vs. Ukraine*”, pointing out that lack of prosecutor’s efficient investigation of the reported tortures is a systemic violation of article 3 of the Convention with respect to the procedural action.

I. Nechyporuk spent almost 8 years behind the bars, having been convicted for a crime he did not commit. According to the EUHR, his own 5 confessions, obtained with the help of beatings and torture, constituted the only evidence used in the case³⁸. Another suspect was also accused of felony — O. Motsny, who also confessed after being tortured. The case was reviewed following the ECHR decision and I. Nechyporuk was acquitted. Now he is free, but Motsny, who did not complain to the European Court, is still serving his term on the same charges. Unfortunately, no one but Motsny himself can act under the circumstances. When, following the ECHR decision, the Nechyporuk case was revised by the Supreme Court, one of the judges expressed an opinion that Motsny’s verdict should be reversed as well. Lamentably, this judge was not supported by the others.

Ukraine has established an infamous record — it has more prisoners serving life sentence than Russia. As of today, their number in this country amounts to 1845, while in Russian Federation they have 1841 prisoners serving life term, while the total number of prisoners in Ukraine amounts approximately to 140 thousand as opposed to over 800 thousand in Russia. These figures are accounted for, among other things, by complicated pardon procedure and inefficient mechanism for its application, specifically, lack of conditional release (parole) mechanism with respect to prisoners sentenced for life. The expediency of such mechanism is spelled out in the Recommendations of the Cabinet of Ministers of CE (Recommendation Rec(2003)22 on conditional release (parole)): “In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.” It is also noteworthy that under this Recommendation the conditional release (parole) does not include amnesty or pardon (Rec(2003)22-Appendix par. 1). The legislation in force clearly violates p. 12 of the CE Resolution (76) 2 on the treatment of long-term prisoners on 17 February 1976 (at the 254th meeting of the Ministers’ Deputies), which enumerates the requirements to be met for the regular review of life sentences, including the obligatory review after 8–14 years of incarceration. Under the current law pardon for such prisoners can be considered only after 20 years of imprisonment, while regular review is not stipulated at all, except on their own motions. Besides, under the decision of Big Chamber of the ECHR in *Vinter and Others*

³⁸ <http://helsinki.org.ua/index.php?id=1303464835&w=%CD%E5%F7%E8%EF%EE%F0%F3%EA>

v. the UK³⁹, passed this year, the lack of “real perspective of release” for the prisoners serving life term is a violation of article 3 of the European Convention on protection of rights and fundamental freedoms.

Ukraine also lacks the procedure for correcting court errors. The analysis of the Supreme Court of Ukraine practices and of the respective procedural law leads one to the following conclusions. The competences vested in the Supreme Court of Ukraine attempt to combine the control over norms with court protection in the criminal cases by means of court rulings’ revision. However, the legal levers available to the Supreme Court are not enough for the exercising of the said competences. The use of the means with subjective components (arbitrary application of the norms of material law) and the institute of cases’ submission to the SC substantially complicated practical exercising of public right to court protection and decreased its efficiency. Removing some of the SC competences (i. e. the use of procedural law norms and some portion of material law norms) is contrary to logic and the principles of legal determination and constitutional status of the SC. These developments made the SC competences “partial”, while the use of authority to revise the procedural law norms led to incapacity in fulfilling the competences the SC enjoys as judicial entity. Therefore, the essence of the SC competences does not fully agree with its constitutional status and rights of public to court protection guaranteed by the Constitution of Ukraine.

Considering all these facts, the authority of the SC of Ukraine should be restituted to the status it had prior to 2010 reform. The Supreme Court itself should define the boundaries of its competences. It means that the law should be changed, restituting the exclusive proceedings which existed prior to 2010 and vesting respective competences in the SC.

5. RIGHT TO CORRESPONDENCE

On December 1, 2012 V. Kolesnikov, sentenced to 10 years in prison for a homicide, was transferred from CF no. 38 (Lugansk oblast’) to psycho-neurological ward of the oblast’ hospital under Lugansk investigation isolation center. The transfer was the result of the dry hunger strike announced by the prisoner as a mean of protest against administration which has detained his cassation appeal, which, according to him, he could not send out for the whole term of his stay in PTIC: *“I, Kolesnikov Vladimir Fedorovich, refuse to undergo medical treatment as I do not consider myself sick. Refusal to eat is an extreme measure in my attempts to have a Cassation Court hearing”*. A client of KHPG V. Nechyporenko held in custody in Sumy PTIC went on hunger strike because the letters he received from the ECHR were not delivered to him; his power of attorney was not sent out and he was subject to forced treatment.

The prisoners often complain that the staff of the SPSU facilities often hinder their correspondence, especially, when it contains the prisoners’ complaints referring to administrations’ actions or lack of thereof. How letters are currently sent out from the SPSU facilities? A prisoner held in PTIC or any other SPSU facility hands in his correspondence directly to a staff member. If a prisoner is in re-socialization or rehabilitation ward, he can put his let-

³⁹ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122664>

ters into a special box. In both cases the prisoner is unable to prove either the fact of sending a letter or the date when it was done.

On September 18, 2013 an Ombudsman meeting with experts addressing the issues of convicts' and prisoners' rights to correspondence, took place in the Ombudsman office. The stake-holders from the public and non-governmental organizations (Ombudsman's representatives, HR organizations, SPSU, Ministry of Justice, Prosecutor's General office) participated in it. The discussion concerned the technical aspects of registering the correspondence. We believe that the managers of some SPSU institutions are aware of the importance of this issue and register the correspondence. On November 7, 2013 the monitoring group visited the only correctional facility for people with disabilities in Ukraine — Sofiivka CF no. 45 in Dnipropetrovsk oblast'. It was a training tour, at the end of the course "Monitoring of the adherence to human rights in the places of incarceration" carried out within the framework of the program "Understanding human rights" supported by the Swiss Embassy in Ukraine. The facility warden V. Khalavka informed the group that in order to avoid any complaints that the correspondence had not been sent out or had been delayed a CF operative in charge meets the inmates on the weekly basis. A prisoner would come to a meeting and hand in his letter in the sealed envelope personally. The official makes a respective entry in the log and gives a prisoner the registration number. This practice is worth disseminating in other colonies as well as a temporary solution to the problem involving prisoners' right to unimpeded correspondence.

6. RECOMMENDATIONS

6.1. The Supreme Rada of Ukraine should

1. Approve the draft law no. 3200 of 05.09.2013 submitted by the people's deputies I. Lutsenko, A. Kozhemyakin and P. Petrenko.
2. Introduce substantial amendments of the draft Law of Ukraine "On probation".
3. Pass the law on the changes to the CC of Ukraine with respect to the mechanism of conditional release (parole), for the individuals serving life sentence, in compliance with the CE recommendations.
4. With the goal of ensuring the right to fair trial improve the procedure for the review of verdicts which have come in force in cases when the European Court for Human Rights passes a decision on procedural violations during pretrial inquest.
5. Finalize the process of SPSU transference to the Ministry of Justice jurisdiction, in compliance with ПАПЄ Resolution no. 1466 (2005).
6. Introduce changes into the current law on pardon of the prisoners serving life sentence and develop a mechanism for their early conditional release (parole) (this recommendation is also addressed to the President of Ukraine, whose decree regulates the procedure for granting pardon).
7. Define in the procedural law of various branches of the judicial system the procedure for the direct participation of the individuals in custody in the court hearings, in accordance with the decision of the Constitutional Court of Ukraine on the petition of A. Troyan of 12.04.2012, no. 9-rp/2012.

6.2. The Cabinet of Ministers of Ukraine

8. Should redistribute the funds within the State target program for the reforming of the criminal-executive service for the years 2013–2017, taking into account human rights and not safety or CF profit considerations as priorities

6.3. The Ministry of Justice of Ukraine should (these recommendations apply to the SPSU as well)

9. Put an end to the accelerated and inefficient law-making activity, ensure public discussion on the draft normative acts related to human rights and due consideration of the experts' recommendations with respect to these acts.

10. Ban the Regulations on internal order (Order of 18.03.2013 no. 460/5) and develop the new regulations taking into account the recommendations prepared by experts.

11. Carry out broad and sufficiently long-term public discussion on the Regulations on internal order in correctional facilities, taking into account the registered violations of the human rights' standards in this document.

12. Review and change the contents of the Order no. 2300/5 "On organization of the social-educational and psychological work with the convicts" taking into consideration relevant remarks.

13. Review and change the contents of the Order no. 1325/5 of 03.07. 2013 "On approving provisions on territorial (interregional) paramilitary unit of the State criminal-executive service of Ukraine".

14. Launch the discussion followed by the implementation of the concept of the correspondence "immunity" both in the normative acts and in practice, with potential involvement of social services or Ukrposhta.

15. Review the norms regulating permitted belongings of the convicts in accordance with the international norms and recommendations spelled out in the last year report.

6.4. The State penitentiary Service of Ukraine and other responsible bodies should

16. Change the priorities in the economic operation of their subordinate enterprises, aimed at getting profits; take into consideration the requirements of the European prison rules concerning the goals of production in the penitentiary institutions.

17. Meet the requirements spelled out in the reports of the European Committee against torture and inhuman or degrading treatment or punishment and take into account all the critical remarks made with respect to the potential collaboration.

18. Analyze in greater detail and implement all the requirements formulated by the Committee during the visit to Ukraine in 2012.

19. Develop the normative act regulating the enforcement of the ECHR decisions and CPT recommendations at the level of SPSU, territorial bodies and individual subordinate facilities.

20. Set up a special subdivision under SPSU, in charge of the enforcement of the ECHR decisions and CPT recommendations.

21. Enhance responsiveness and quality of the departmental law-making activity, aimed at the implementation of the aforementioned decisions and recommendations with broad public participation.

22. Ensure free access to the information and respective documents reflecting the enforcement of the ECHR decisions and CPT recommendations on SPSU site.

23. Dismiss the employees guilty of violations of the European Convention for human rights and basic freedoms protection, in compliance with ECHR decision in the case *"Karabet et Al. vs. Ukraine"*.

24. Compile the reports on implementation of the recommendations and provisions stipulated by the international standards, with justification of non-compliance with certain requirements and obstacles on the way of implementation; the reports should be accessible to public at large.

25. Ban the practice of formal public discussions on the draft normative acts; introduce the practice of targeted requests sent to the stake-holders to seek their proposals and ensure transparency.

26. Conduct complex analysis of the criminal and criminal-executive legislation in force and practice of the application of the law in compliance with the international standards.

27. Invalidate provisions of the current SPSU normative and legal acts which violate human rights.

28. Together with major human rights organizations develop and implement the mechanisms and procedures for efficient and timely response to the reported violations of human rights in the correctional facilities.

29. Improve mechanisms and procedures for visits allowed in the correctional facilities under the Facultative Protocol to the UN Convention against torture.

30. Implement viable system of appeals and complaints; ban the practice of penalizing the convicts for their attempts to appeal the administration actions.

31. Set up an exhaustive list of regime violations entailing disciplinary action.

32. Verify all the instances of corruption among the staff; provide public evaluation of the proven cases of corruption.

33. Introduce research programs and project including those developed by the NGOs addressing the prisoners' rights and functioning of the criminal-executive system as a whole.

34. Improve public information concerning the operation of the bodies and facilities of the penitentiary system.

35. Transfer the health care services within the SPSU under the auspices of the Ministry of Health.

36. Guarantee confidential meetings with the lawyer within the SPSU system.

37. Review the provisions of the state policy Concept for the reforming of the state criminal-executive service of Ukraine addressing the priorities of self-sufficiency of the correctional facilities as a component of the convicts' involvement in the socially useful work.

38. Review the conditions of the prisoners' incarceration in the disciplinary isolation cells of the CF and bring them into compliance with the requirements of the European Committee against torture, inhuman or degrading treatment or punishment, with respective reports to the Ukrainian government.

39. Departments and facilities of the penitentiary system should actively involve observation committees and non-governmental organizations in providing assistance to the former convicts in their adjustment and resolving of various problems.

40. Replace completely the administration of the Oleksiivka correctional facility no. 25 of Kharkiv oblast' SPSU department.

CONTENTS

FROM THE EDITORS	3
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Part I. CIVIL ASSESSMENT OF GOVERNMENT POLICY IN THE AREA OF HUMAN RIGHTS

HUMAN RIGHTS SITUATION IN UKRAINE IN 2014: OVERVIEW	7
---	---

POLITICAL PERSECUTIONS	13
------------------------------	----

The case of Yuri Kosarev, advocate of wage workers.....	15
Case of “Vasylkiv terrorists” Igor Mosiychuk, Serhiy Bevza, and Volodymyr Shpara	18
Case of “Industrial spies” Olexiy Rud, Serhiy Chychotka, and Volodymyr Chumakov.....	20
Case of the participant of Linguistic Maidan Vitaly Hruzynov	21
Case of Vitaly Prymenko.....	21
Case of stencillers with the “Shot-through Yanukovych”: Volodymyr Nykonenko, Olexandr Kirnos	22
Case of Brovary Park defenders: Mykola Smirnov, Ruslan Tkachenko, Oleg Shevchuk.....	23
Case of the peaceful protesters near Mezhyhirya	25
Case of the organizer of “Vradyivka procession” Vasyl Liubarets	25
Case of the protesters against illegitimate Kyiv City Rada	25
Case of Rayisa Radchenko.....	26
Case of the “Bankova prisoners”	27

SECURITY SERVICE OF UKRAINE AND HUMAN RIGHTS (SOME ASPECTS)	29
---	----

Some general problems	29
SSU activities relating to human rights	31
Information security	35
Control of terrorism	38

MINISTRY OF INTERNAL AFFAIRS OF UKRAINE AND HUMAN RIGHTS	41
--	----

Abandonment of reformation	41
Militarized model of activity.....	42
Opacity of financial activities	44
Unaccountability to civil society	45

Corruption among the personnel of the bodies of MIA	46
Uzhhorod “titushky” beat journalists in the building of the City Rada.....	48
“The “titushky” have brutally beaten the activists of “Batkivshchyna” and “Svoboda”: the militia did not even try to detain them	49
Recommendations	50
 UKRAINIAN CONSTITUTIONAL PROCESS IN 2013: HOPE VS. REAL POSSIBILITIES.....	52
Common approaches	52
Preamble and principles of the constitutional order	55
The rights, freedoms, and duty.....	57
Academic freedom	59
Direct democracy	62
Parliament (Verkhovna Rada of Ukraine)	63
President of Ukraine	64
The Cabinet of Ministers of Ukraine, other executive bodies.....	65
Judicial authority, office of public prosecutor	66
Territorial division, Autonomous Republic of Crimea, local self-government	67
The Constitutional Court of Ukraine	67
P. S.....	68

Part II. THE OBSERVANCE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I. RIGHT TO LIFE	71
1. Public administration of protection of life of individuals under state control	71
2. Official violence by the agents of the state	75
3. Public package intended to protect life.....	78
4. Duty of the state to guarantee effective investigation of deprivation of life	82
5. Disappearance of persons	84
6. Recommendations	84
 II. PROTECTION FROM TORTURE AND OTHER BRUTAL TREATMENT	86
1. Cases of brutal treatment in 2013.....	87
1.1. The use of force against peaceful demonstrators.....	87
1.2. Beating of detainees	89
1.3. Beating a person in custody in an investigative isolation ward	90
1.4. Beating of detainees and prisoners in penal institutions	90
1.5. Beating of journalists.....	92
2. Legislation.....	92
3. The “anti-terrorist” unit	95
4. Investigations by the bodies of Procuracy	96
5. Practice of national courts.....	97
5.1. Judicial practice of bringing law enforcers to book	97
6. The European Court practice	99
7. On national preventive mechanism	102
8. Recommendations	103

III. RIGHT TO LIBERTY AND SECURITY	105
1. Control of detainees in the new Criminal Procedure Code	105
2. Judgment of the European Court of Human Rights against Ukraine on the violation of article 5 of the Convention on Human Rights and Fundamental Freedoms	108
2.1. Arbitrary arrest and taking into custody	108
2.2. The use of deprivation of freedom for an illegitimate purpose	109
2.3. Unregistered detention	110
2.4. Imposition of administrative arrest as an administrative penalty	110
2.5. Illegal arraignment of the participants of the Yevromaidan	110
2.6. Unfounded extension of detention	111
2.7. The absence of the detainee when considering detention	113
2.8. Violation of the right to review without delay of the lawfulness of the detention.....	113
2.9. Violations of the right to compensation for the victim of unlawful arrest or keeping in custody	113
2.10. Implementation of the CPC (2012) concerning the right to freedom.....	114
2.11. Some results of the introduction of the new CPC.....	115
2.12. Keeping in custody with the aim to extradite an offender. Retrial in the course of extradition procedure.....	116
3. Recommendations.....	118
IV. RIGHT TO FAIR TRIAL: NON-CRIMINAL ASPECTS.....	119
1. Constitutional stage of the judiciary reform.....	119
2. Judges' self-governance: serving the interests of the political power	120
3. The Supreme Court: control established	121
4. Access to justice	123
5. Selection of judges and their responsibilities.....	124
6. Politically steered justice.....	125
7. Recommendations.....	126
V. THE RIGHT TO PRIVACY.....	128
1. Secret search, surveillance, video cameras in public places, and phone-tapping	128
2. Protection of personal data and identificatory documents	131
3. Bodily aspect of the right to privacy.....	138
4. Recommendations.....	141
VI. FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION	143
1. Overview	143
2. Freedom to profess religion or belief.....	145
2.1. Establishment and operation of religious organizations.....	145
2.2. Organization and conduct of peaceful religious meetings	150
2.3. Rights of foreigners and stateless persons	151
2.4. Social and charitable activities of religious organizations.....	152
3. State and religious organizations: the principle of separation and neutrality	153

4. The right of parents to religious education of children and the principle of the neutrality of the state.....	155
5. Alternative Service.....	158
6. Recommendations.....	159
VII. FREEDOM OF EXPRESSION	161
1. Statistical data.....	161
2. Overview	161
3. Freedom of speech and legislative initiatives	162
4. Violation of the right to freedom of expression	164
5. Violations of the rights of journalists and media.....	166
6. The court practice	169
7. Practical application of Article 171.....	171
8. Recommendations.....	172
VIII. FREEDOM OF PEACEFUL GATHERINGS.....	174
1. Introduction.....	174
2. Statistic data.....	175
3. Restriction of right to peaceful gatherings by the local authorities	175
3.1. Local normative acts regulating the procedure for organizing and conducting peaceful gatherings.	175
3.2. Non-justified intervention of the local self-governance bodies.....	176
3.3. Communications with the prosecutor's office with respect to banning local orders	177
3.4. Supreme Rada reaction	178
4. Court bans of peaceful gatherings	178
4.1. Administrative detentions under the article 185-1 of the Code of Administrative Infringements of Ukraine.....	179
4.2. Grounds for court bans of peaceful gatherings	179
4.3. Specific cases	181
4.4. Violations of the freedom of peaceful gathering during Yevromaidan	182
5. Violation of peaceful gatherings' freedom committed by the Ministry of Interior bodies.....	182
5.1. "Isolated protests"	183
5.2. Use of militia operatives in plain clothes	183
5.3. Groundless stopping of peaceful gatherings and detention of their participants by the militia officials.....	184
5.4. Militia non-interference into illegal actions during peaceful gatherings.....	184
5.5. Use of force against the Yevromaidan participants.....	185
6. "Sanctioned" and "non-sanctioned" mass events.....	185
7. Recommendations	186
IX. FREEDOM OF ASSOCIATION	188
1. Review	188
2. Establishment and activities of associations	189
3. Inspections of the activities, temporary prohibition of some kinds of activities, and liquidation of public associations.....	193
4. Recommendations.....	193

X. FREEDOM OF MOVEMENT AND CHOICE OF PLACE OF RESIDENCE	195
1. General overview	195
2. Personal registration and identification system	196
3. Identification and registration of the homeless people	200
4. Recommendations	201
XI. PROTECTION FROM DISCRIMINATION	203
Conclusions	211
Recommendations	211
XII. RIGHTS OF CITIZENS TO FREE ELECTIONS AND PARTICIPATION IN REFERENDUMS: OVERVIEW	213
1. The deputies have not revived the rights of Ukrainians to conduct local referendums, and the courts go on blocking nation wide referendums	213
2. The deputies refused to appoint special local elections	214
3. Temporary Commission of Inquiry into violations of the elections failed to fulfill its tasks	215
4. Law enforcers ignored proper investigation into allegations of violations	216
5. Local elections: the situation with respect for the rights of voters has not improved	216
6. Intermediate elections and re-elections of the people's deputies in six districts	218
6.1. Election committees	218
6.2. Effect of courts	218
6.3. Bribery of voters as a manifestation of electoral corruption became extremely widespread	219
7. Conclusions and recommendations	221
XIII. PROPERTY RIGHTS	223
1. General overview	223
2. Guarantees of property right	223
2.1. State registration of the titles and deeds for the real estate	223
2.2. Guarantees for court protection of the property right	226
2.3. Non-execution of the court decisions aimed at the protection of property	227
2.4. Problems related to the observance of the property right with respect to the new construction	229
3. Restrictions of the property rights imposed by the bodies of power	231
3.1. Buying out the land plots in private ownership for public use	231
3.2. Moratorium on the sales of the agricultural lands	234
3.3. Violation of property rights by the Ministry of Interior bodies	236
4. Recommendations	238
XIV. SOCIAL AND ECONOMIC RIGHTS	239
1. General overview	239
2. Right to sufficient living standards	240
2.1. Guarantees of the right to sufficient living	240
2.2. Quality and safety of food products	242

2.3. Ensuring appropriate water quality.....	244
2.4. Exercising of right to adequate housing.....	246
3. Right to social protection	250
3.1. Social security and social protection system.....	250
3.2. Guarantees for social protection of the senior citizens.....	253
4. Recommendations	256
 XV. RIGHT TO WORK.....	258
1. Overview	258
2. Guaranteeing employment	259
3. Ensuring decent working conditions.....	260
4. Job safety guarantees.....	265
5. State control over the observance of labor rights	267
6. Protection of labor rights of migrant workers.....	267
7. Ensuring of the rights of trade unions	270
8. Recommendations.....	272
 XVI. THE RIGHT TO HEALTH CARE	274
1. Urgent need for a new medical reform.....	274
2. Demographics and infant mortality.....	274
3. Financing of Health Care	275
3.1. Lack of blended financing of the health care system through the introduction of national compulsory health insurance	276
3.2. Complaints from the public about the deteriorating access to health care due to the implementation of health reform in Ukraine.....	276
3.3. Implementing health care reform causes opposition from the public and medical professionals in the pilot regions due to a bunch of objective and subjective factors.....	278
3.4. Information support for the reform remains low.....	279
3.5. Persevering implementation of family physicians gives rise to doubt	279
3.6. What kind of a doctor do we need? Personnel policy.....	280
3.7. Emergency medical aid does not perform its duties because it lacks funds for medicine sand loses skilled health workers	280
3.8. In connection with the “reform” some emergency medical aid centers work without the narcotic and psychotropic drugs	282
3.9. Destruction of preventive medicine on the factory floor	282
3.10. The need for urgent changes in the current legislation of Ukraine.....	283
3.11. Health care reform plan has not been completed	283
4. Recommendations	285
4.1. Verkhovna Rada of Ukraine shall	285
4.2. Ministry of Health shall	285
4.3. Public organizations shall	286
 XVII. COURT PROTECTION OF THE RIGHT TO HEALTH CARE.....	287
1. Number of criminal lawsuits against individuals guilty of violating patients’ rights still remains insignificant	287

2. Criminal lawsuits against the defendants who are not medical workers for the violation of the right to health care	289
3. Lack of consistency in defining the scope of moral damages in medical cases	290
4. Inconsistent practice of identifying respondents in “medical” cases	291
5. Ambiguous interpretation of the “moral damages” concept by the courts	292
6. Courts’ reference to the clinical protocols of medical treatment as the source of the law, defining mechanisms and standards for this care, is a positive sign	293
7. Practice of the European court on Human Rights re patients’ rights protection in the claims against Ukraine	293
8. Recommendations	296
 XVIII. RIGHTS OF PEOPLE WITH DISABILITIES	297
1. General information	297
2. The problem of architectural accessibility	299
3. The problem of accessibility of the courts	300
4. The problem of availability of transport and street infrastructure.....	302
5. The problem of information accessibility.....	304
6. Financing activities aimed at implementing the rights of people with disabilities	304
7. Observance of the rights of persons with disabilities.....	305
8. Labor rights of people with disabilities.....	307
9. Right to education	309
10. Recommendations.....	311
 XIX. ENVIRONMENTAL RIGHTS.....	314
1. Right to safe environment.....	314
2. Right of access to environmental information	316
3. Right of participation in decision-making on the environmental issues.....	317
4. Right of access to justice with respect to environmental issues	318
5. Normative and legal acts regulating environmental policy and environmental rights protection, registered and passed over the year 2013	320
6. Assessment of adherence to the international natural protection agreements	321
6.1. Aarhus convention	321
6.2. ESPOO convention	322
6.3. Framework UN convention on climate change.....	323
6.4. Environmental safety issues in the focus of Ukraine chairing the OSCE.....	323
6.5. Implementation of the environmental component of the “Ukraine-EU association agenda”	324
 XX. RIGHTS OF WOMEN AND GENDER EQUALITY	326
1. Institutional mechanism, legislative initiatives and normative and regulatory provisions.....	327
2. Realization of the principle of equal rights and opportunities for men and women in employment area	331
3. Gender stereotypes.....	333

4. Violation of men's rights in the families.....	333
5. Health care	334
6. Gender education	334
7. Protection against discrimination	335
8. Monitoring.....	336
9. Conclusions.....	336
10. Recommendations	337
 XXI. CHILDREN'S RIGHTS.....	 338
1. General overview.....	338
2. Children's right to participate in decision-making processes.....	339
3. Legislative developments.....	341
4. Children's right to fair justice and the development of juvenile justice.....	342
5. Children trafficking and right to freedom from sexual exploitation and sexual abuse	343
6. Children's labor	344
7. Education, including pre-school and extracurricular activities	344
8. Inclusive education.....	346
9. The child's right to health improvement and recreation	347
10. A child's right to sports.....	348
11. A child's right to health care. Measures aimed at creating safe and favorable environment for the children's development, preservation of their health and life	349
12. Recommendations	351
12.1. The Supreme Rada of Ukraine should	351
12.2. The Cabinet of Ministers of Ukraine and central executive bodies should.....	351
12.3. The Supreme Court of Ukraine should	353
12.4. Oblast', municipal and raion state administrations, local self-governance bodies should.....	353
12.5. NGOs and international organizations, donors, scientific and research centers should	353
 XXII. GENDER DISCRIMINATION AND VIOLENCE AGAINST WOMEN	 354
Recommendations.....	358
 XXIII. HUMAN TRAFFICKING AND VIOLATION OF HUMAN RIGHTS.....	 359
1. General overview. Statistics. Tendencies.....	359
2. International context of counteraction to human trafficking.....	359
3. Governmental measures aimed at counteracting human trafficking	362
4. Monitoring activity.....	365
5. Standardization of services in the area of counteracting human trafficking.....	366
6. Preventive activity.....	367
7. Difficulties in obtaining the status of human trafficking victim	367
8. Recommendations.....	369

XXIV. RIGHTS OF IMMIGRANTS.....	370
1. Normative legal regulation of immigration in 2013.....	370
1.1. Resolution of the Cabinet of Ministers of 13.03.2013 no. 185 “On Certain Issues of the Law of Ukraine “On Unified State Demographic Register and documents proving citizenship of Ukraine, personal identity or her/his special status”	370
1.2. Order of the SMS of Ukraine dated 11.03.2013 no. 48 “On approval of informational and technological cards of rendering administrative services by the SMS”	371
1.3. Resolution of the CMU of 27.05.2013 no. 437 “Problems if issue, prolongation and revocation of permits for the employment of foreigners and stateless persons”	375
2. The SMS activity in the context of the rights of foreigners.....	378
3. Activity of MIA in the context of the rights of immigrants.....	384
4. Rights of refugees and persons in need of additional or temporary protection.....	385
5. Recommendations.....	389
XXV. THE RIGHTS OF THE SERVICEMEN	391
1. General provisions	391
2. Dignity	392
3. Demilitarization and modernization of the military and law-enforcement area	394
4. Universal conscription or contract army	396
5. Recommendations.....	399
XXVI. RIGHTS OF PRISONERS	401
1. General overview	401
2. Legislation	402
3. Torture and cruel treatment in the correctional facilities	411
4. About 10% of verdicts cause reasonable doubt as to their fairness.....	413
5. Right to correspondence.....	415
6. Recommendations.....	416
6.1. The Supreme Rada of Ukraine should	416
6.2. The Cabinet of Ministers of Ukraine.....	417
6.3. The Ministry of Justice of Ukraine should (these recommendations apply to the SPSU as well)	417
6.4. The State penitentiary Service of Ukraine and other responsible bodies should	417

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