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# **HUMAN RIGHTS IN UKRAINE – 2014**



**HUMAN RIGHTS  
ORGANISATIONS  
REPORT**

UKRAINIAN HELSINKI HUMAN RIGHTS UNION  
KHARKIV  
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This book considers the human rights situation in Ukraine during 2014, 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 2014. 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, Oleh Martynenko*

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*Part I*

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





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# **HUMAN RIGHTS IN UKRAINE**

## **FROM MARCH THROUGH NOVEMBER 2014:**

### **MAIN TRENDS<sup>1</sup>**

#### **OVERVIEW**

The incompatibility of domestic policy with the interests of Ukrainians resulted in open confrontation with the government after giving up of integration with the United Europe, which initially was going off peacefully, but after the use of force by the government and killing of peaceful protesters it turned into an armed clash. The Ukrainian people without prior arrangement exercised its natural right, nowhere provided for by the Ukrainian legislation, specifically the right to revolt against a political regime that had seized power using it only for its own enrichment and subjecting all its opponents to repression in flagrant violation of human rights and fundamental freedoms. Once again the Ukrainians demonstrated that for many of them freedom, justice, honor and dignity were more valuable than their own life. These events were called in Ukraine and in the world “the revolution of dignity”.

The spirit of Maidan, the desire for changes largely determined the actions of the new administration, which was formed after the victory and, no doubt, had a positive intention to reform the country, particularly in the field of human rights. However, the occupation of the Crimea by Russian troops, artificially organized separatist movements in the East, which gradually turned into an armed aggression, and full-scale military conflict with Russian Federation in the Donetsk and Luhansk Oblasts relegated human rights issues to the background. At the best, their solution was postponed to future peacetime, at worst, the changes in legislation and practice, which with some exceptions were observed also aggravated the current state of implementation of human rights and fundamental freedoms.

In general, we can state that the new administration often neglected the supremacy of Law and violated the Constitution guided by political expediency. In the first days after the victory these violations could be justified: the revolution always breaks the old legal system and creates a new one. The rapid actions were required to establish the state manageability. According to the Constitution, in the absence of the President, the head of the Verkhovna Rada of Ukraine executing his duties cannot appoint the ministers of defense, foreign affairs, the head of the SSU, dismiss and appoint the heads of oblast state administrations, nominate the Prime Minister for election and so on. However, it was impossible to leave the country without bodies of power, and those actions were indispensable. But nobody can play fast and

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<sup>1</sup> Prepared by Yevhen Zakharov, Director of KHPPG.

loose with the Constitution and laws for the sake of political expediency! Nevertheless just this took place.

The Law of Ukraine “On the renewal of certain provisions of the Constitution of Ukraine” adopted on February 21 violated the Constitution. Article 85 of the active Constitution of Ukraine (valid at the time of adoption of this Act), which contained a list of parliamentary authority did not provide for any opportunity for “renewal of <...> the Constitution of Ukraine” by a single parliamentary vote. According to Art. 85 of the Basic Law, the full powers of the Verkhovna Rada of Ukraine (in terms of possible amendments to the Basic Law) include “...introduction of amendments to the Constitution of Ukraine within the limits and in compliance with the procedure stipulated in Title XIII of this Constitution”. It is obvious that this procedure is exceptional in its procedural parameters, lengthy and complex.

In addition, as stated in Art. 5 of the Constitution of Ukraine, “the right to determine and change the constitutional order in Ukraine shall belong exclusively to the people and shall not be usurped by the State, its bodies, or officials.” The latter, as the formal logic and common sense suggests, meaning that all changes to the Constitution comprising or substantially affecting the elements of the constitutional order of Ukraine should be approved **only** by the people at a national referendum.

This provision underlined in his time by Bohdan Futey should be considered universally binding. Strictly speaking, the above circumstances are sufficient for the Constitutional Court, under any other conditions, to disagree with the adoption of the constitutional reform on December 8, 2004 by purely parliamentary vote. In addition, the constitutional bill No. 2222-IV was voted by Parliament in a package with the ordinary bill and enactment of the Verkhovna Rada of Ukraine, which led to a legally unacceptable backward administration, i. e. a state where the texts of ordinary laws and regulations directly affected the character of the Constitution of Ukraine. It seems that only a low level of legal culture in Ukraine allowed discussing the topic of “betrayal” of the Constitutional Court of Ukraine and violation in this case of their oath by the judges of Constitutional Court.

The Parliament began to step in for the judicial power. It was inappropriate to dismiss the judges of the Constitutional Court who voted in September 2010 for the abolition of the Law on amendments to the Constitution; it was inappropriate to instruct the Office of the Prosecutor General of Ukraine to open criminal investigation into the illegal adoption of anti-constitutional decision, according to the opinion of 307 People’s Deputies! The Parliament acted illegally having assumed the powers of the High Council of Justice (HCJ).

The parliament was also unauthoritative to discharge political prisoners (with the exception of Tymoshenko), since only a court of Law is entitled to adjudicate on such a matter having reviewed the case. The Parliament could return all the powers to the Supreme Court, which it had prior to 2010, and provide a mechanism to review such cases in extraordinary proceedings, for example, at the request of the Ukrainian Parliament Commissioner for Human Rights. Instead, the Verkhovna Rada passed a Law on individual amnesty — a dubious legal construction! — to justify its actions.

Later we also observed repeated violations of the Constitution and the supremacy-of-Law principle, disregard for the judicial power and desire to manage it based on political expediency. As a result we have to conclude that the constitutional law has been distorted and the legal system has become misbalanced. The only way out is the adoption of a new



constitution and further review on its basis of ordinary legislation and, consequently, practice. The developers of a new constitutional project should focus not on cosmetic amendments, but on radical change of the Constitution of Ukraine. It has to be based on powerful state, responsible government and rule of law. However, so far the constitutional reform has slowed down. The amendments to the Constitution proposed by the President were lame and were not even considered by the Parliament.

No other crucial reforms in the area of human rights—judicial, criminal justice, education, etc. — actually have come to a standstill. The only exception was the adoption of the new Law on Public Prosecution. The probation bill, prepared for the second reading, which needs to be adopted, is making no headway. The draft Code of criminal offenses has been waiting for a long time now. Its entry into force would have immediately lightened the workload of investigators who are up to the eyes in work now. But there is a drag on it for some reason. The Act on Restoration of Confidence in the judiciary has failed to replace court chairmen, 87% of them have become second termers under this Law, but this time it has been carried out in a “democratic way”. The abortive reforms in other areas (pension, medical and others) need to restart the process of real reforms.

In late March and early April, four incompatible lustration bills were submitted for consideration of the parliament; moreover, the Parliament obviously does not want to pass such a law. later the bill “On lustration of power” was submitted, which was an attempt to combine four previous bills; however; it seemed to reflect a populist approach and certain of its provisions were contrary to the recommendations of the Council of Europe, European Court of Human Rights for lustration cases and principles of international law. In particular, it specifies the layoffs of *all* officers and employees, which is ill-founded, and many of its procedures give rise to systemic violations of human rights<sup>2</sup>. Nevertheless, on August 14 it was accepted in the first reading. More than 400 comments were submitted, but the bill was voted “for” as a whole on September 16, while the people’s deputies did not have the text of the bill, which was passed through force of the streets! It remained unknown whether the comments were taken into account and which ones specifically. The text of the Law was uploaded to the Verkhovna Rada Portal only on September 26. These actions in Ukraine simply tend to destroy parliamentarianism as such. Nevertheless, the President signed it into law.

The bills are being worked out intending to make fight against separatism more effective, such Laws “On preventive detention”, “On Amendments to the Criminal Code of Ukraine (about strengthening of accountability for crimes against national security of Ukraine)”, on suppression of separatism, on introduction of special pre-trial inquiry routine in the area of ATO and others, although all of them violate the Constitution and international human rights standards. For example, according to the first bill the bodies of internal affairs and security service are entitled without actually opening the criminal proceedings to hold a person in custody for 30 days. Meanwhile the detainee will not be covered by the norms of Criminal Procedure Code of Ukraine, her/his status will not be clearly defined, s/he will not be protected by the package of rights designed to protect persons against who fall under such preventive measure as “detention”. The detainee also may not change her/his condition

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<sup>2</sup> For detailed coverage see: <http://khpg.org/index.php?id=1407914802>

under the provisions of the Criminal Procedure Code of Ukraine concerning the change of preventive measure, because the “preventive detention” will not be considered a preventive measure. The second bill contains an unreasonable rejection of the principle of limitation for criminal responsibility for a number of crimes against basics of national security, as well as new maximum size of 12 years in prison for the lower limit of criminal punishment. These laws will certainly be amended sooner or later.

It should be observed that the adoption of progressive amendments to the Criminal Executive Code contributed to the openness of penal institutions: now the right to freely visits there are granted to People’s Deputies, their assistants and doctors and journalists accompanying them. These changes have also improved the possibility of telephone communication of prisoners with their families and allowed long meetings for the life-term prisoners.

There emerged a new domestic problem of internally displaced persons (IDPs) from Crimea and Donbas. As a result of the occupation of the Crimea and military aggression in the Donbas area large groups of local residents were forced to leave their homes fleeing political persecution and violence for their support of the Unity of Ukraine. In June, large groups of inhabitants of Slovyansk, Kramatorsk, Horlivka and other cities located in the area of escalated armed conflict moved to Kharkiv, Kyiv, Dnipropetrovsk and other areas trying to escape the hostilities. In July and August the great migration set in from the cities of Luhansk Oblast where hostilities raged. The state was not ready for new challenges; numerous volunteers and local authorities were loaded with all the work and care for the IDPs. The bill prepared by the public “On IDPs in Ukraine” and endorsed by international and domestic experts was turned down by the Parliament and instead on June 19 much more simple Law was approved that solved only the registration problem of IDPs and was not aimed at solving all their problems. Under public pressure, later the President vetoed the bill. The public in cooperation with authorities and international organizations prepared a new bill, but it was adopted only 20 October and signed by the President on November 22. The registration of IDPs is conducted thoroughly badly; particularly the returnees to the liberated territories remain not accounted for. Approximately half of IDPs are not registered at all. As of December 5, there were 513,998 registered IDPs.

In general, we must admit that, despite the many mistakes the new administration managed to overcome during the period from February 22 to 30 November the political and economic crisis, re-create combat-ready armed forces and security agencies, create and train volunteer territorial defense battalions, which together with the National Guard and special forces of the Ministry of Internal Affairs rescued the country, to prevent geographical expansion of the conflict with Russia beyond the Donbas area, successfully hold off-year presidential elections on 25 May and early parliamentary elections on 26 October. The cooperation of government and municipal administrations with the public became more successful and effective. The volunteer activity has developed significantly and showed the best examples of social solidarity. However, the military conflict that absorbs all efforts and money, inertia of the political system, corruption in government and local agencies, and absence of reforms hamper the development of the country that has not far departed from the oligarchic regime of Yanukovich, on account of which there remain numerous threats to human rights and fundamental freedoms.

### RESPECT FOR INDIVIDUAL RIGHTS

The use of force, to which the defenders of Maidan in Kyiv had to resort, the death of a large number of people, the general excitement and euphoria of the first days after the revolution, a large number of weapons in the hands of people led to a big slump in immunity against violence. These days the armed men demanded to carry out their orders exclusively, there were uncontrolled mass inspection of documents, arson of houses, prevailing mob law, poles and corridors of disgrace, persecution of families of known *regionals*<sup>3</sup>, sometimes the crowd just beat up people without any reason. The militia also was disoriented and inactive. The members of artificially organized separatist movements in the Donbas and Kharkiv began to carry out coercive actions, but much more violent and imitating corridors of disgrace and giving Euromaidan supporters merciless beatings. As was mentioned above, leaders of the self-proclaimed DPR and LPR made it a running practice to persecute at first pro-Ukrainian public figures, and then just anyone who did not like them or disagreed with their actions. As it later turned out, the people who daily had been disappearing without a trace were either shot and killed or held in the basements of public buildings belonging to the Security Service, the Ministry of Internal Affairs and others captured by separatists in Slovyansk, Luhansk, Donetsk, Horlivka and other cities. For their release the abductors demanded a ransom: either a sum of money, or a car, or any other property. Overall we know about more than 400 cases of enforced disappearances, all victims were listed, although the list is still incomplete in reality. The everyday looting, searches, forced requisition of cars and other property became a routine matter.

The detainees were kept in terrible conditions, often without electricity, without walk, on the unaccommodated premises; they were very poorly fed, and did not get medical aid. They were tortured, and some of them were beaten to death, such as deputy of Horlivka City Rada Volodymyr Rybak whose body was found in the Kazennyi Torets River near the urban village of Raihorodok, Donetsk Oblast, on April 22 with signs of torture and ripped stomach. There was also found another man in the same condition that was identified later as 19-year-old student Yuri Popravko. Rybak was abducted on April 17 for trying to take down the flag of the DPR and to raise the national flag on the building of Horlivka Administration.

The captured Ukrainian Law enforcers and defense officers were awfully tortured, beaten, and humiliated by separatists.

This led to a similar response of Ukrainian Law enforcers and defense officers, especially of some voluntary battalions such as “Aidar” (most complains concerned the soldiers of this battalion of the Ministry of Defense), “Azov”, “Dnipro-1”, and “Donbas”. Some of the men believed that they could treat the prisoners like the separatists did. As a result, we have documented cases of torture of captive separatists (even with fatal outcome), kidnapping followed by ransom demand, capture of cars, and looting because the soldiers believed that it was dictated by the laws of war. The security officers arrested people who looked suspicious;

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<sup>3</sup> In spoken language regional means “member of the Party of Regions” (translator’s note).

the use of violence against them became a daily practice. The prosecutor's office did not investigate these crimes<sup>4</sup>.

However, it was possible to observe the growth of hatred towards separatists, rejoicing on the occasion of killing of militants, and sharing in social networks of photos of their corpses. The rising level of public violence created the basis for justification in public conscience of the facts of torture and other kinds of violence which naturally affected the practice of public authorities. With the implicit acquiescence of the public, the Law enforcers exhibited brutality towards detainees who were accused of separatism and terrorism, as evidenced by numerous documented facts of beatings and even torture of detainees.

The right to life in the Donetsk and Luhansk oblasts has become illusory. The militants killed people (for example in Brianka Town, Luhansk Oblast four students were shot and killed just because they greeted one another "Glory to Ukraine!" – "Glory to the heroes!" Two of them died on the spot, two were hospitalized in serious condition). The exact death toll is unknown, but it is talked about hundreds of dead persons. Many civilians lose their life as a result of heavy artillery fire, and it is extremely difficult to determine which of parties in the war is responsible for shelling, although much evidence is pointing to the fact of pin-point shelling of residential neighborhood carried out by militants. According to human rights activists, only in Luhansk 348 civilians were killed, which is not the full statistics.

### **RESPECT FOR POLITICAL RIGHTS AND FREEDOMS**

The state of political rights was completely different depending on the region: in the Autonomous Republic of Crimea, Sevastopol, Donetsk and Luhansk oblasts the political freedom in general was virtually abolished, while in other regions it was enjoyed almost without restrictions. Therefore, these regions should be considered separately.

After the occupation of the Crimea chasing set in for all social activists who tried to publicly declare pro-Ukrainian position and disagreed with the actions of the new Crimean leadership and occupants from the Russian Federation. Some of the activists were arrested and accused of fictional criminal offenses; for example, the famous producer Oleg Sentsov was arrested on May 11 on suspicion of terrorism. Most pro-Ukrainian public figures had to escape from political persecution and move to mainland Ukraine. Once and again the journalists were assaulted.

The referendum on the status of the Crimea held on March 16 was not recognized as legitimate. It was conducted with numerous violations of electoral rights. According to official data, for the reunification of the Crimea with Russia as a subject of the Russian Federation 96.77% voted in the Crimea (turnout 83%) and 95.6% of residents of Sevastopol (89.5% turnout). However, according to the report of the Council on Human Rights and Development of Civil Society under the President of the RF "Problems of Crimean Residents" released on April 21<sup>5</sup>, the overwhelming majority of residents of Sevastopol (turnout at 50-80%) voted

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<sup>4</sup> It should be noted that the command tried to establish discipline in voluntary battalions of MIA, several dozen soldiers were dismissed for misconduct, and gradually the situation changed for the better.

<sup>5</sup> The authors are members of the Council Alexei Bobrov, Svetlana Gannushkina and Olga Tseitlina, Lawyer, network "Migration & Law".

for joining Russia, while in the Crimea, according to various sources, 50–60% of the electorate voted for accession to Russia at a total turnout of 30–50%. Moreover, the Crimean residents voted not so much for joining Russia, as for termination, as they maintained, of “outrageous breach of all limits by corruption and villainous domination by Donetsk henchmen” while the residents of Sevastopol did vote for joining Russia.

For the first time in all years of independence the Crimean Tatars were unable to hold rally on May 18 in memory of victims of deportation of the Crimean Tatar people marking the 70th anniversary of deportation. In general, it can be concluded that the Crimean Tatars were subject to political pressure to make them reject their ethnic and religious identity. In the early days of the occupation more than three thousand Crimean Tatars moved to mainland Ukraine (mainly to Lviv) rightly fearing political persecutions due to their membership in non-traditional sects of Islam.

In Donbas, the displays of pro-Ukrainian position also became a pretext for political persecution which led to migration of large number of Ukrainian Donbas activists and journalists to other regions of Ukraine, while those who remained became victims of political persecution. Even the membership in parties like *Batkivshchyna* and *All-Ukrainian Union Svoboda* called forth arbitrary arrests and detention as hostages in outrageous conditions. There were cases of arrests of persons who had expressed their own assessment of the actions of DPR and LPR in social networks. The exact number of detainees is unknown, but it can be argued that their number totaled at least 400 prisoners. The membership in election commissions during the presidential elections in Ukraine on 25 May also incurred a risk of becoming the object of political persecution: the separatists smashed up ballot stations, destructed property, beat judges of elections and abducted separate committee heads intending to prevent the election. As a result, in the Donetsk oblast only 15.37% and in the Luhansk oblast 8.94% of voters were able to participate in the elections. The referendum held on May 11 in Donbas under conditions of opposition of DPR and LPR, on the one part, and the Ukrainian authorities on the other, looked rather like a farce than free expression of popular will. The election was successful only in some areas at some polling stations, and the results were rigged.

In other 23 regions of Ukraine the level of political freedom after the victory of the revolution of dignity was rather high. The political discussions might well be inflammatory, but all political forces were able to express their views despite the fact that the state began criminal prosecutions for acts of separatism in public speeches and media. So far, no trial has taken place; therefore it is difficult to say to what extent the state intervention in such cases is proportionate. The overall high level of political activity significantly decreased in the East. In the east and south, especially in Kharkiv and Odesa, the peaceful assemblies sometimes turned into fights and even armed conflicts. According to our observations, such events were almost always deliberately provoked and looked like prepared-in-advance special operations, such as events in Odesa in early May. It should be noted that with the deepening military conflict in Donbas the public events became more aggressive, and animosity among political opponents intensified. The peaceful gatherings became tenser and they were accompanied by clashes of protesters with militia and mutual accusations of violating public order, abuse of power or inactivity. The absence of a Law on freedom of assembly has become even more pronounced.

The election of the President of Ukraine, despite the difficult situation in the country, passed without serious violations of voting rights and election observers recognized the election as free and fair.

Over this period of time the legislation on political rights underwent little changes, although these changes are necessary because they have to normalize political life in accordance with the current political situation, which may become explosive and lead to a new Maidan.

### **OBSERVANCE OF CIVIL RIGHTS AND LIBERTIES**

The situation with the observance of civil liberties is fundamentally different in the Crimea and Donbas, on the one hand, and in the other regions of the country, on the other.

On the whole, the freedom of expression in Crimea is roughly in the same situation as in Russia. A few pro-Ukrainian media or media that tried to freely express themselves mostly ceased to exist, in particular, the popular “Chornomorka” was shut down. On the peninsula all Ukrainian channels were turned off and only Russian TV channels were broadcasted. There remains the only broadcaster that allows free discussions: the ATR Crimean TV Channel; but it is under constant pressure from the new government of Crimea, including the coverage of the leaders of the Crimean Tatars. There are also several online sites that attempt to provide accurate information and independent comments. But they are working under constant threat of repressions.

The freedom of religion in the Crimea is threatened: there were repeated actions targeted at Islam and Orthodox Church of Kyiv Patriarchate, the number of acts of vandalism were performed against the buildings of these denominations.

The situation in the Donbas, in the region controlled by the DPR and LPR, in particular, in Donetsk and Luhansk is even worse. Here the civil liberties—the free flows of public opinion, freedom of assembly, association, etc.—were actually suppressed. The journalists, who had turned down the propositions to work for propaganda media of LPR and DPR, were forced to leave the Donbas, but they try to support their local Internet resources from outside or start up new projects.

Both in the Crimea and Donbas the journalists are exposed to assaults, threats, beatings, damage of appliances and more.

In other regions of the country the persecutions for the expression of opinions have been stopped, the pressure exerted on journalists has disappeared, and they feel free. However it should be noted that the free journalism as a phenomenon is a sort of rarity in Ukrainian information space, as it was in the past as well. The majority of journalists are working like propagandists and not like reporters. This is partly due to the extremely intensive anti-Ukrainian propaganda in Russia, where the Russian media constantly distort information, manipulate public conscience and just blatantly lie. In Ukraine, there are also many such media that present the facts selectively in order to manipulate readers' consciousness. Therefore Ukrainian journalists and media as a whole try not to report negative facts which might be used by opponents for information war against Ukraine. For this reason, the freedom of information is also limited: in the time of military conflict the

state limits the coverage of events which generates numerous fakes the Internet and social networks.

It is very important to consolidate achievements of the revolution in this field at the legislative level to evade mistakes of 2005–2006.

### **OBSERVANCE OF THE RIGHT TO EQUAL RIGHTS; OUTBURST OF XENOPHOBIA AND INTOLERANCE**

There remain the most serious problems with indirect ageism and level-of-health discrimination. Traditionally there is a wide-spread hidden discrimination against the Roma and LGBT community. As a result, all Roma were forced to flee from Donbas because the militants of LPR and DPR pledged to exterminate them.

A new issue of discrimination based on citizenship has emerged recently: it concerns Crimean citizens who do not want to obtain Russian citizenship and want to remain citizens of Ukraine. By Russian legislation these citizens are subjected to restrictions concerning official positions in government and municipal authorities. However, in the Crimea the people fear that without Russian citizenship they will not be permitted to work in public institutions. Moreover, the residents of the Crimea, who give up Russian citizenship, will not be eligible for Russian pensions, salaries, and social benefits. only one month term starting from April 1 was granted for refusal of Russian citizenship and confirmation of Ukrainian citizenship; initially the officials opened only three offices for application taking (Simferopol, Bakhchisarai, Bilohorsk), where it could be done, but at the end of April there were eight offices already. As a result, many residents of the Crimea were not able to exercise their right to choose citizenship.

Despite the high level of inter-ethnic and inter-religious tolerance, which is a tradition in Ukraine, the existing problems in this area have deteriorated due to the aggressive policy of the leaders of the Russian state. The relationships between ethnic Russians and ethnic Ukrainians became more complicated, especially in the Crimea.

In the Crimea, the condition of ethnic Ukrainians and Crimean Tatars has seriously deteriorated. The ethnic Ukrainians became the object of persecution for their use of Ukrainian language and Ukrainian symbols, they are forced to hide their identity because of the threat of violence and harassment, including political, because for the new Crimean authorities belonging to the Ukrainian minority automatically implies support for the unity of Ukraine and its territorial integrity. The Ukrainian language has almost completely disappeared from the information space on the peninsula. The question is about closing down schools with Ukrainian language of instruction.

The Crimean Tatars are also in a dangerous position as they suffer from threats and physical assaults. The Crimean Tatars are forced to obtain Russian citizenship, but they think that if they agree they can stumble across the problems of land and property ownership, access to education and employment. Some Crimean Tatars belong to religious groups that are considered illegal in Russian Federation and therefore they justifiably fear persecution on political grounds. As a result, more than three thousand Crimean Tatars left the peninsula, mostly going to Lviv.

In the east, there was an increase of intolerance, display of hostility and hate crimes against people of Ukrainian identity that used Ukrainian symbols. In particular, it became apparent in destruction of cars with Ukrainian symbols. The Maidan activists were labeled as “Banderivets”, “Nazis” and “fascists”. This is a direct consequence of total misinformation and lies which are mass produced by Russian media. To prevent further growth of intolerance it is very important to debunk these baseless allegations about manifestations of nationalism, fascism and extremism by Ukrainians and Ukrainian authorities in general, so that they do not spread in the world.

### **RIGHTS OF SERVICEPERSONS**

The absence of adequate legal qualification of the conflict in the Donetsk and Luhansk oblasts, the understandable reluctance to abandon the term “anti-terrorist operation” and to call this operation a military conflict and impose martial law gave rise to serious violations of rights of participants in these events. The KhHRPG is holding an inquiry into many cases where according to the documents the servicemen are away on military business or registered at some military unit, and therefore cannot prove their participation in hostilities, get an injury certificate (they get only a certificate of treatment for a specific disease without naming an injury as the cause) and others. There were arguable instances of imputation of a desertion when as a result of being under fire of multiple rocket launchers Grad from Russian territory had to save their life and leave their combat position. It is necessary to look for and find legal framework that would reflect the real state of current military conflict determining the legal status of the participants.

### **OBSERVANCE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS**

The realization of social and economic rights of Ukrainians in the period under review was a big problem: in the country devastated by the regime of Yanukovych the financial and economic crisis set in; it was exacerbated by the need of the off-budget means for creating combat-ready forces and conduct of operations. However, the government managed to fulfill its basic responsibilities to ensure social and economic rights and avoid default and collapse of the economy.

The problems concerning this category of rights are still there. The quality of life continues to decrease and indexes of relative and structural poverty are going up. The subsistence level, i.e. the basic indicator for the whole social security system, has not been reflecting the real minimum of human needs for many years now, because it ignores many vital spending instances and is based on a product mix, non-food products and services, which has long been obsolete. Moreover, in order to determine the certain types of social security the officials go on using the index of guaranteed subsistence level, which shows the inability of the state to grant today the level below the minimum standard of living.

Things look black with this category of rights in areas of Donbas controlled by the DPR and LPR. The salaries, pensions, etc. are not paid at all, in many areas there is no supply of



water, gas and electricity. The state of prisoners in correctional facilities is catastrophic: they are simply starving.

After the revolution of dignity there is a noticeable improvement in the efforts of the government to administer the cultural sphere. Thus, the Ministry of Foreign Affairs and the Ministry of Culture and trying to show in the European capitals the best examples of Ukrainian modern art by initiating artistic tours of Ukrainian performers abroad, organizing exhibitions and more. Maybe, for the first time in Ukraine there are signs of cultural policy. Although, undoubtedly, the difficult socio-economic situation in the country significantly hampers the efforts.

### **OBSERVANCE OF LAWS ON HUMAN RIGHTS PROTECTION**

Unfortunately, the enforcement of laws relating to human rights in the period under review became very complicated. The state refused to fulfill its obligations to people even if they were confirmed by court decisions. There remain many valid legal norms regulating social guarantees, although their realization now depends on available budget funds backing the guarantees and the Cabinet of Ministers determines the amount and targeting of social assistance based on the available resources. This practice was confirmed in 2013 by two decisions of the Constitutional Court and has not changed ever since. The claims for failure to comply with laws on social security are not receivable in courts and old instructions not to execute past judgments are still valid. In terms of current military situation it is very difficult to implement these provisions on social security. To be honest, it would be advisable in this situation to distinguish the social security benefits which can be cancelled and cancel the relevant rules of Law (such as, for example, children-of-war benefits) from socio-economic rights, which should be observed in the case of relatively weak social groups. But will the new administration dare to take such unpopular steps, or it will not?

### **THE EFFECTIVENESS OF STATE AGENCIES AND SPECIALIZED TARGETING PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

Overall, the situation remained as it was in 2010–2013: the crisis of state institutions aimed at protecting human rights, especially Law enforcement agencies and the courts, was aggravating. The enforcement of judgments, in particular, decisions of international bodies, remains a big problem. In this regard the state has not gone very far from the time of Yanukovich. The positive potential of the Criminal Procedure Code is not used properly, in fact, the militia learned to circumvent its provisions, which, according to them, keep them from their work.

There remains a significant problem of inefficiency of investigation of allegations of torture and ill-treatment by the staff of the bodies of internal affairs and penal system, or due to their inaction, acquiescence or connivance. The public prosecutor's office is extremely ineffective performing its function of thorough, prompt and impartial investigation into these

allegations. The cases of illegal use of force during the events on the Maidan in the capital on November 30, December 1, December 11 and mass murder on February 18–20 are not properly investigated yet. The kidnappings, beatings of Maidan activists in March and April in Kharkiv, Donetsk, Luhansk and other crimes, torture and murder of civilians and POWs, other crimes against their life and health, crimes related to violation of property rights have not been investigated.

The commission by separatists of heinous crimes in Donetsk and Luhansk Oblasts, which did not exist in the past in Ukraine—enforced disappearance for political reasons, out-of-court executions, arbitrary arrests and torture of hostages, capture of administrative buildings, etc. — took place by omission or acquiescence, or, worse, aid of local Law enforcers, bodies of SSU and public prosecutor’s office. Unfortunately, rather than to uphold human rights, Law enforcement agencies were often subjects of these disorders.

During this period the work of the Ombudsman was rather positive. The Secretariat of the Commissioner of the Verkhovna Rada of Ukraine continued implementation of national preventive mechanisms under the Optional Protocol to the UN Convention against torture; this mechanism gradually affects the staff’s treatment of persons held in custody. The Commissioner sought to protect those who were suffering from the actions of the separatists, in particular, she was actively involved in evacuation of orphanages out of the zone of counterterrorist operations, participated in the liberation POWs, denied lies of Russian propaganda and so on.

Was it possible to restore the violated rights in court? The experience of human rights advocacy provides many examples where the presence of a strong and well-founded legal position, professional representation of interests in court, consistency and patience a person ultimately has a better chance to defend her/his rights even despite corrupt and dependent judiciary. The information space is full of stories that tell about such incidents. However, the layer of human rights violations and unfair judgments is rather thick; therefore these successful cases get lost in it and go unnoticed by most people, and the dominant view is that it is useless to go to court.

## **PROPOSALS**

The vast majority of human rights violations took place, among other things, due to the lack of serious constraints and mechanisms of control in the government and absence of legislative support for protection of fundamental rights and freedoms.

Therefore it is necessary, against all odds, to immediately initiate reforms to protect human rights and fundamental freedoms, in particular, to take the following steps.

1. Draft a new constitution and adjust sections on the principles of the constitutional order, human rights and fundamental freedoms, elections and referendums in accordance with international standards; insert into it the section “Civil Society”; recognize the jurisdiction of the International Criminal Court.

2. To implement reform of the criminal justice system based on the concept adopted in April 2008, including:

- To reform the Public Prosecutor’s office;

- To adopt the draft Code of criminal offenses, simultaneously change the Criminal Code and the Administrative Offences Code;
- To radically reform the militia based on respect for human rights, rule of Law, demilitarization, de-politicization and decentralization, increased accountability and transparency, close cooperation with the public and local communities, and professional training of personnel;
- To reform the Security Service and other special services;
- To reform the State Penitentiary Service, to adopt a Law on probation prepared for the second reading;
- To go on with the creation and implementation of juvenile justice.

3. To ensure effective public control over Law enforcement, in particular through the public councils, mandatory consultations with the public on these issues, annual public reporting of Security Service, Ministry of Internal Affairs and other Law enforcement agencies on observance of human rights in their activities, which should include the following information: on investigation and search operations that restrict human rights (secret searches, wiretapping and other communications control, etc.), on the number of arrests, other lawful operative and investigative activities, number of criminal proceedings and number of persons who were informed of arousing suspicion of committing crimes etc. , to create independent body (mechanism) for an effective investigation into allegations of torture by militia and State Penitentiary Service officers, provide for legislative support of re-examination by the Supreme Court of Ukraine of criminal cases for which there are reasonable doubts about the legality of sentences.

4. To finalize judicial reform ensuring the independence and accountability of judges and implementation of court decisions by the state.

5. To expand the scope of provision by the state of free legal aid and transfer the function of representing the interests of the citizen from the public prosecution office to the free legal aid system.

6. In the domain of electoral right and referendum:

- To adopt Election Code;
- To replace the existing parliamentary election system with a proportional system with open regional voting lists;
- To amend the legislation and remove restrictions for participation of political parties in the elections, in particular the restrictions concerning the time of foundation of the party;
- To lower the passing-to-parliament down to 3% of the vote;
- To adopt a new Law on national and local referendums and other forms of direct democracy, such as to provide that the authorities always consider draft decisions supported by a certain number of citizens;
- To stipulate effective recall procedure for mayor and deputies of Local Radas;
- To establish administrative responsibility of the people's deputies in the form of public works for voting not with her/his personal card.

7. In the domain of the freedom of association:

- To cancel administrative responsibility for the activities of unregistered public associations (art. 186-5 of the Administrative Offences Code);

- To revise the tax legislation in order to provide preferences for non-profit organizations to raise funds from individuals and legal entities to carry out important social and non-profit activities.
8. In the domain of freedom of assembly:
- To cancel permitting procedure for peaceful assemblies of religious organizations (part 5 art. 21 of the Law on freedom of conscience and religious organizations);
  - To develop and adopt a separate Law “On freedom of peaceful assembly” to define the duties of the authorities during the peaceful assembly;
  - To generalize the court practice restricting freedom of peaceful assembly in accordance with Article 39 of the Constitution of Ukraine and Article 11 of the European Convention on Human Rights;
  - To annul articles 185-1 and 185-2 of the Administrative Offences Code.
9. In the domain of freedom of expression the following steps should be taken:
- To create public television and radio under the Law on the basis of the UT-1 and National Radio Company of Ukraine with guarantees of editorial independence in accordance with international standards;
  - To legally prohibit the creation of state-run media and determine the procedure of privatization of all public media through their privatization by groups, sale or liquidation;
  - To bring into line with international standards and against each other the Laws “On Information”, “On Access to Public Information”, “On Personal Data Protection” and others, and then to harmonize all information legislation with these basic laws;
  - To take off the books the Law “On Protection of Public Morality”;
  - To take off the books the Law “On State Support of Mass Media and Social Protection of Journalists”;
  - To cancel authorization procedure for state registration of the print media;
  - To liquidate the State Committee for Radio and Television.
10. In the domain of social and economic rights it is necessary:
- To divide welfare payments into those identified as the realization of socio-economic rights and those resulting from occupation of certain posts or certain privileges;
  - To legally determine that benefits, which were awarded according to occupied positions or a privilege may be limited depending on the economic situation in the country;
  - To forbid to cut or not to provide finance implementation of socio-economic rights (e.g. dedicated funds for poor, vulnerable strata of the population, people with disabilities, etc.);
  - To concentrate social policy on targeted assistance to those who need it;
  - To include NGOs on the basis of equal partnership into the provision of social services.
11. In the domain of human rights the necessary steps are as follows:
- To develop and adopt a new Labor Code, the concept of which should not set the interests of the employer above the interests of the workers;

- To change the practice of business privatization without direct involvement of employees in the privatization process and without substantial property sharing by the personnel;
- To ensure the equal rights of all trade unions in the system of control over the administration of enterprises, in the development and adoption of collective agreements; to institute appropriate administrative and criminal penalties for refusal of registration and discrimination against independent unions.
- To ensure disclosure of tax reports of the deputies in Verkhovna Rada, city and oblast radas, mayors and officials belonging to the 1–3 categories of civil servants.

12. To abrogate the Law “On the Unified State Demographic Register and documents proving the citizenship of Ukraine, identity or her/his special status” and stop funding pursuant to this Act; develop new laws on the documents that identify a person and define a new procedure for registration of citizens domiciliary.

13. To conduct a real reform of property rights registration with open real estate registers, land cadaster, etc.

14. To amend the legislation intended to combat all forms of discrimination.

15. To develop and adopt a Law “On mandatory medical insurance” and implement this system in Ukraine.

16. To grant the openness and transparency of the health system by monitoring the quality and transparency of tenders for technical equipment and drugs with participation of the public.

17. To implement reforms aimed at carrying out pilot and quasi-pilot judgments of the European Court of Human Rights on Ukraine.

18. To ensure hard-and-fast execution of decisions of the UN Committee for Human Rights, UN Committee Against Torture, UN Committee on the Elimination of All Forms of Discrimination Against Women and other UN committees the terms of reference of which cover individual complaints.

19. To ratify the 3<sup>rd</sup> Additional Protocol of the UN Convention on the Rights of the Child that creates opportunities for children to submit individual complaints.

20. To ratify the UN Convention on Enforced Disappearance.

21. To combine the branch state archives of the Security Service of Ukraine, Ministry of Internal Affairs and others created before December 1, 1991 into the Archive of National Memory and include it into the system of archival institutions of Ukraine and provide access to these archives on the basis of a special Law.

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# **EUROMAIDAN EVENTS AND HUMAN RIGHTS**

## **CAUSES OF EUROMAIDAN PROTEST MOVEMENT**

After V. Yanukovich has been elected the President of Ukraine in February 2010, the ruling upper circles promptly started building a centralised power vertical. Reinforcement of the authoritarian rule was accompanied with deterioration of the social and economic situation and increase in the citizens' impoverishment. It led to loss of trust to the main governmental institutions, dissatisfaction and protests of people against the background of unprecedented corruption.

It was no coincidence that the following year human rights defence organisations observed commencement of systematic governmental attacks against the rights and fundamental liberties<sup>2</sup> as well as return of the dishonourable practice of political repressions<sup>3</sup> whose victims were oppositional politicians, journalists, human rights defenders, civil activists, and active youth.

Increasing influence of Russia onto the most important Ukrainian governmental decisions should be emphasised. Several months before Euromaidan Russia had applied various methods to suspend the European integration process, including the so called "trade wars". People's deputies from the ruling Party of Regions submitted into the Ukrainian parliament the draft laws which were equivalent to the Russian ones and aimed at restricting fundamental rights and liberties, in particular, the draft anti-extremism law. That was why the unexpected governmental decision dated November 21, 2013 to "suspend" the process of signing the Association Agreement between Ukraine and the European Union which was supposed to be concluded at the end of November 2013 was perceived as rejection from European integration and start of movement towards the Customs Union.

## **DESCRIPTION OF THE PROTESTERS REPRESSION SYSTEM ORGANISED BY THE GOVERNMENT**

During the entire period of Euromaidan from November 2013 to February 2014 the protesters were repressed by the authoritarian rule of President of Ukraine V. Yanukovich by various means. Murders were the most merciless of them, but they also included numerous

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<sup>1</sup> The Section has been prepared by O. Matviichuk, chairman of the board of the Centre for Civil Liberties.

<sup>2</sup> <http://helsinki.org.ua/index.php?r=1.4.1.7>

<sup>3</sup> <http://helsinki.org.ua/index.php?r=1.4.1.8>

cases of property destruction, beating, tortures<sup>4</sup>, kidnapping<sup>5</sup>, illegal arrests<sup>6</sup>, driver's license revocation<sup>7</sup>, commencement of framed-up administrative and criminal proceedings<sup>8</sup>, custodial placement etc.<sup>9</sup>. Repressions also comprised different governmental actions aimed at restricting freedom of speech and mass media, spreading unauthentic information for the purpose of bringing discredit on the protests, regular bans of peaceful meetings in different regions, illegal application of force by law enforcement bodies.

These crimes resulted in at least 114 people being murdered, 94 of whom were Euromaidan activists, imprisonment of at least several hundreds of people, physical injuries of more than a thousand of activists. 27 protesters are still missing<sup>10</sup>. Numerous cases of illegal detention and arrests of people, kidnapping of protesters, tortures and harsh treatment by the law enforcement bodies and affiliated criminal groups were recorded. Those crimes were systematic, well organised and committed within a short period of time. They are evidence by a wide range of video and photo materials showing attacks against peaceful protesters, which confirms criminals' awareness of their total impunity.

In the aggregate, all these crimes were a part of the large-scale and systematic governmental attack against peaceful civil people aimed at scaring people and suppress peaceful protests. That was conscious governmental policy carried out by the authoritarian rule for three months at the substantial territory of the country by means of representatives of various state bodies and criminal groups affiliated with the law enforcement bodies. Actually, repression of Euromaidan was the climax of the repressive system destroying any views different from the pro-governmental one which had been built in the previous years.

The target object of large-scale and systematic attacks were civilians. Crimes were not aimed at randomly selected people; there was a consecutive campaign of repressing actual and supposed protesters in Kyiv and regions. It is worth saying that protesters were of different age, sex, profession, financial standing, social background, place of residence, regional beliefs, ideological views etc. Yet, all of them were united by an actual or attributed support of the protest movement and disagreement with the authoritarian rule headed by V. Yanukovich.

Therefore, any person who, in opinion of the governmental representatives, participated in or supported Euromaidan (donated money, brought things and medicines, helped the injured, provided legal assistance etc.) could be attacked. Thus, the attack was clearly aimed at the group of citizens on grounds of their political views which, in that case, constituted disagreement with the activity of the authoritarian rule.

It should be noted that during the entire period of the protest governmental representatives kept trying to provoke protesters for illegal violent acts which were often

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<sup>4</sup> <https://www.youtube.com/watch?v=-NvkVMD0dQQ>

<sup>5</sup> <http://www.pravda.com.ua/news/2014/01/25/7011307/>

<sup>6</sup> <https://www.youtube.com/watch?v=btovlwlp-uM>

<sup>7</sup> <https://www.youtube.com/watch?v=n0DDxOyfjbE>

<sup>8</sup> <https://www.youtube.com/watch?v=XMBD0pLMz80>

<sup>9</sup> <https://www.youtube.com/watch?v=vIpt67TToal>

<sup>10</sup> <http://euromaidansos.org/uk/znykli>

engineered by law enforcement officers themselves<sup>11</sup>. In most cases such provocations failed. Euromaidan leaders and activists themselves kept emphasising the peaceful nature of the protests and condemned violence.

The political decision to suppress the protest movement taken by the ex-government of the state is confirmed by coordination of criminal acts among different governmental bodies, collective mobilisation of law enforcement bodies and their affiliated criminal groups as well as a variety of forms and methods applied for attacking. Moreover, it is demonstrated by the lack attempts of authorities to prevent crimes from being committed.

In addition to using law enforcement bodies and the judicial system to repress protesters, the government created, organised, supported, and financed paramilitary groups (so called “titushky”) for the purpose of scaring and attacking protesters, destroying their property and provoking them<sup>12</sup>.

As opposed to the protest movement, the government created so called “antimaidans”. The main meeting to support the current authoritarian rule in Kyiv was actually held in the governmental quarter next to the walls of Verkhovna Rada of Ukraine and guarded by the law enforcement bodies<sup>13</sup>. Antimaidan was obviously an artificial event coordinated by governmental structures<sup>14</sup> — same-type military tents, mobile kitchen trailers, statements of many participants about payment for their presence, centralised transfer of people to Antimaidan. The protesters held flags of the pro-governmental Party of Regions and the Communist Party of Ukraine. Despite evidently illegal actions of these protesters, such as destruction of Mariinskyi Park, consumption of alcohol drinks in public places, hooliganism, etc., law enforcement officers never tried to cease their illegal actions<sup>15</sup>.

Individual attention shall be drawn to the information campaign organised by the government to bring discredit on the peaceful protest and held on government-controlled television channels and printed mass media. In order to justify violence, speeches of the highest officials of the country and official statements of governmental bodies contained used negative connotations to define the protest and its participants. In particular, Prime-Minister M. Azarov claimed that seizure of the buildings at Maidan was carried out by extremist groups<sup>16</sup>, and Minister of Internal Affairs V. Zakharchenko often called protesters extremists<sup>17</sup>, radicals<sup>18</sup>. The respective rhetoric was typical of statements of the main pro-governmental party<sup>19</sup>.

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<sup>11</sup> [http://24tv.ua/home/showSingleNews.do?yevromaydan\\_voyuye\\_z\\_provokatorami\\_yakih\\_pidozryuyut\\_u\\_zvyazkah\\_z\\_militsiyeyu&objectId=395633](http://24tv.ua/home/showSingleNews.do?yevromaydan_voyuye_z_provokatorami_yakih_pidozryuyut_u_zvyazkah_z_militsiyeyu&objectId=395633)

<sup>12</sup> <https://www.youtube.com/watch?v=HRtBJNYwUIw>

<sup>13</sup> <http://comments.ua/politics/446331-antimaydan-snova-obzhivaetsya.html>

<sup>14</sup> <http://news.bigmir.net/ukraine/789029-Uchastnikam-Antimajdana-platjat-po-400-griven---SMI>

<sup>15</sup> <https://www.youtube.com/watch?v=9e0Ivn91Atw>

<sup>16</sup> <http://job-sbu.org/na-evromaydane-oruduyut-ekstremistyi-vlast-rezko-izmenila-tonalnost-39325.html>

<sup>17</sup> <http://baltija.eu/news/read/35910>

<sup>18</sup> <https://www.youtube.com/watch?v=OMDAhx-m7Bw>

<sup>19</sup> <https://www.youtube.com/watch?v=RL8IU3TQeYA>



**DISCRIMINATION DECISIONS OF THE STATE AIMED  
AT SUPPRESSING THE PROTESTS**

The governmental policy aimed at suppressing the peaceful protest can also be traced at the level of governmental decisions taken at that period of time. The first law on amnesty was passed on December 19, 2013 in order to release people who had been illegally detained and beaten on December 01. Yet, its provisions also allowed discharging the law enforcement officers from criminal liability for the illegal violent acts they had committed.

The so called “dictatorship laws”<sup>20</sup> dated January 16 contained the provisions which introduced criminal liability for slander and extremism<sup>21</sup>, depriving journalists of an opportunity to criticise the government, banned movement of motor columns, restricting opportunities to hold peaceful Automaidan campaigns, established new conditions for receiving the license to provide access to the Internet, introduced the notion of “an international agent”, in fact creating tools to restrict activity of and dissolve any non-governmental organisation.

The law on amnesty dated January 29, 2014 was called “the law on hostages”. It stipulated that illegally detained and affected activists were to be released only from the day following publication of the statement of the Prosecutor General of Ukraine on participants of mass campaigns actually vacating streets and administrative buildings on the official web-site. The law also stated that if such actions were not performed within 15 days after it had come into effect, the opportunity to release the detained protesters would be lost.

Travesty of justice was widely used as a tool to ban peaceful meetings in Kyiv and regions. According to the Unified State Register of Court Decisions, during the period from November 30, 2013 til February 22, 2014 county administrative courts banned (or otherwise restricted) at least 77 peaceful meetings all over Ukraine. In comparison with the equivalent period of time it can be concluded that the amount of judicial restraints increased more than three times.

**MAIN EVENTS IN KYIV IN THE COURSE OF EUROMAIDAN**

On November 21, 2013 at approximately 10:00 p.m. the first spontaneous campaign organised by means of social media started in Kyiv at Maidan Nezalezhnosti. The campaign participants demanded the government to cancel its decision and sign the Association Agreement at the EU summit in Vilnius.

After November 21, 2013 termless peaceful meetings started all over Ukraine to support European integration, so called local “Euromaidans”, accompanied by meetings of the Ukrainian diaspora in many countries.

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<sup>20</sup> <http://www.radiosvoboda.org/media/video/25233811.html>

<sup>21</sup> <http://www.telekritika.ua/profesija/2014-01-21/89591>

### Dispersing Maidan on November 30

A few days before commencement of the meeting of the OSCE Ministerial Council in Kyiv, in the night from November 29 to November 30, 2013 the law enforcement bodies dispersed the “Students’ Maidan”, the termless peaceful meeting in support of European integration. According to the official version, it was explained by the need to clear the square for the New Year tree to be installed. It happened at approximately 04:00 a.m. when there were few people left at the square (according to different estimates, from 200 to 400 people), mostly youth and students, some of whom were sleeping. During the forceful disperse of the peaceful meeting the militia demonstratively applied excessive violence and special operational gear. The people who were not even resisting were beaten regardless of their age and sex, beaten with truncheons, legs, and chased for about 600 meters up to St. Michael’s Cathedral where the beaten protesters could hide<sup>22</sup>.

As a result of the disperse, 34 people were detained, administrative protocols were drawn regarding 29 of them, and only pursuant to the official data 71 people, three of whom were journalists, were provided with medical aid. According to Reuters Agency, their operator and photographer were also affected by the spontaneous and illegal actions of the militia<sup>23</sup>.

In the morning on November 30, 2013 people started voluntarily gathering in the square next to St. Michael’s Cathedral. Being one of the most powerful non-governmental initiatives, Euromaidan SOS, commenced its operation for the purpose of providing free legal assistance to protesters<sup>24</sup>.

### Events on December 01 in Bankova Street

The people were outraged with the violent disperse of the Students’ Maidan and started the mass peaceful protest campaign on December 1, 2013 in Kyiv. The amount of protesters reached 500 thousand people according to different estimates. They occupied the central part of Kyiv: Maidan, adjacent streets, roads, and stopped to hold the peaceful protest.

Approximately two thousand protesters went up to Bankova Street. There was power struggle initiated by the group of 20-60 people in semi-military clothes with covered faces who were trying to use the road grader to break the guarding chain consisting of 150 conscript soldiers of internal military forces in order to get to the Presidential Administration<sup>25</sup>. Those unknown people turned out to be armed with the chain, fittings, fires, incendiary mixture, and tear gas. Majority of protesters (more than 800–1500 people) there did not participate in the power struggle. Moreover, a part of them created a live chain to protect young soldiers<sup>26</sup>. The public activist O. Solontai, cultural figure O. Polozhynskiyi and future president P. Poroshenko did their best to stop the road grader and called people to avoid provocations. All that time combatants of the special police force “Berkut” were standing

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<sup>22</sup> <https://www.youtube.com/watch?v=FMdk1D1ktBw>

<sup>23</sup> <https://www.youtube.com/watch?v=6NeJfnvbFHE> [https://www.youtube.com/watch?v=P6\\_XDSBgKvc](https://www.youtube.com/watch?v=P6_XDSBgKvc)

<sup>24</sup> <https://www.facebook.com/EvromaidanSOS?pnref=lhc>

<sup>25</sup> <http://www.pravda.com.ua/articles/2013/12/1/7003664/>

<sup>26</sup> <https://www.youtube.com/watch?v=9dI2HYBfgXY> <https://www.youtube.com/watch?v=vv5jFjwyoJU>

behind the backs of the soldiers in a distance. Everybody present was shocked with the fact that the law enforcement officers made no attempts to stop the attackers.

The special police force “Berkut” and internal military forces suddenly started attacking<sup>27</sup> and violently beating<sup>28</sup> everybody indiscriminately<sup>29</sup>, including accidental passers-by and journalists<sup>30</sup> who had been taken into a tight circle. Then nine accidental people were detained and beaten on the ground for several hours in the internal yard<sup>31</sup>, which was video-recorded<sup>32</sup>. Those very people known as “Bankova prisoners” were later accused of having organised mass riots and taken into custody for two months within the framework of the criminal proceedings commenced against them.

After that the termless protest campaign started in Kyiv with traditional weekly people’s assemblies on Sundays attended by from several hundred thousand up to one million people. One more efficient form of non-violent protest, the informal Automaidan movement, was created at the same period of time.

### **Attempt to Disperse Maidan in the Night from December 10 to December 11**

In the night from December 10 to December 11 the internal military forces and special police force “Berkut” made one more attempt to disperse Maidan forcefully, having blocked the exit from the central metro stations. They kept pressing and beating protesters, most of whom did not even resist, with truncheons until the early morning. Law enforcement officers pulled out people from the crowd and escorted them behind the line of attack where they were randomly beaten by the special police force “Berkut”. Disperse of Maidan was prevented owing to 50 thousand people who spontaneously started coming to the square at night by all possible means of transport. According to the official data, at least 49 people, including 11 law enforcement officers, were injured as a result of the special police force attack.

After the attempt to disperse Euromaidan had failed, the government initiated negotiations with the oppositional leaders, wrongly assuming that they were the ones coordinating the protest. Those negotiations resulted in passing the so called law on amnesty as of December 19, 2013.

### **Events on December 19-22 in Hrushevskoho Street**

On January 16, 2014 the parliament passed the so called “dictatorship” laws which de facto criminalised any forms of peaceful protests in breach of the established voting procedure<sup>33</sup>. Moreover, the second law on amnesty whose provisions covered not only the protesters, but

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<sup>27</sup> <https://www.youtube.com/watch?v=pSf3Nbycy08>

<sup>28</sup> <https://www.youtube.com/watch?v=3Qll2bKC8OI>

<sup>29</sup> [https://www.youtube.com/watch?v=IaWCh\\_pQcHs](https://www.youtube.com/watch?v=IaWCh_pQcHs)

<sup>30</sup> <https://www.youtube.com/watch?v=V7MFPzLMH7E>

<sup>31</sup> <http://tsn.ua/politika/berkut-po-zviryachomu-biv-zatrimanih-pid-ap-na-kolina-merzota-revolyuciya-s-ka-video-323166.html>

<sup>32</sup> <https://www.youtube.com/watch?v=IuaJK1fUcxY>

<sup>33</sup> <http://www.cvu.com.ua/ua/view.php?id=861>

also the law enforcement officers that had applied illegal violence to Euromaidan protesters was passed.

In the morning on January 19 another multi-thousand People's Assembly was held at Maidan. The participants demanded to cancel the dictatorship laws dated January 16. Some people went towards the parliament building along Hrushevskoho Street. There, right next to the entrance to the Dynamo stadium peaceful protesters faced the road blocked with trucks and buses by the special police force "Berkut" and soldiers of internal military forces.

At about 03:00 p.m. on January 19 clashes started.<sup>34</sup> Many protesters were wounded and injured, the bus of "Berkut" was set on fire, and the combatants of this special police force were showered with stones and petards. The special police force applied operational gear, tear gas and even water canon although the temperature was  $-8^{\circ}\text{C}$ <sup>35</sup>.

While attacking, the combatants of the special police force "Berkut" were violently beating all the protesters, even the ones who were not participating in the clashes<sup>36</sup>, but had not managed to retreat. They kept demonstratively beating the people who were lying on the ground, including the ones who had climbed the arc next to the stadium entrance, in front of thousands of people. They pushed one of them, who was not even moving, from the height of more than 10 m<sup>37</sup>. According to the official data only, medical aid was provided to at least 24 people injured as a result of the clashes, three of them being taken to hospital. At the same time, the overwhelming majority of protesters was afraid to go to medical institutions due to the threat of arrest, and went to volunteer mobile hospitals and medical aid posts. All the protesters who had been arrested on that and the following days were accused of having organised mass riots and opposed to the law enforcement officers without regard to the fact whether they did oppose.

On January 22 there were first victims who died of firearms applied by the unknown legal enforcement officers: twenty-year-old Serhii Nihoian<sup>38</sup> died of bullet wounds shot at his neck and head. Also, the citizen of Belarus, Mykhailo Zhyznevskiy died, being wounded right into the heart<sup>39</sup>. In the course of the attack Roman Senyk was wounded into the lungs, and his arm was later dismembered. The man died in hospital unconscious on January 25<sup>40</sup>.

On January 19–22 at least 42 journalists were injured with traumatic weapons and special operational gear<sup>41</sup>. Taking into consideration the nature of wounds: into eyes and heads, law enforcement officers aimed fire at the people in orange vests and hard hats with the writing "Press"<sup>42</sup>. Besides, approximately 30 medical workers were injured: "Berkut"

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<sup>34</sup> <http://www.pravda.com.ua/articles/2014/01/19/7008810/>

<sup>35</sup> <https://www.youtube.com/watch?v=eSsFlogHSbs>

<sup>36</sup> <https://www.youtube.com/watch?v=9wdjljs8Y44;> <https://www.youtube.com/watch?v=v1nzz05Vbfg>

<sup>37</sup> <https://www.youtube.com/watch?v=I4uUPRAywrE>

<sup>38</sup> [https://www.youtube.com/watch?v=0WxJKfN\\_d1M](https://www.youtube.com/watch?v=0WxJKfN_d1M)

<sup>39</sup> [http://censor.net.ua/resonance/269229/pochemu\\_ya\\_uveren\\_cho\\_lyudeyi\\_na\\_barrikadah\\_ubil\\_berkut](http://censor.net.ua/resonance/269229/pochemu_ya_uveren_cho_lyudeyi_na_barrikadah_ubil_berkut)

<sup>40</sup> <https://www.youtube.com/watch?v=vAu8lKEHbqM>

<sup>41</sup> <http://imi.org.ua/analytics/42777-spisok-postrajdalih-jurnalistiv-pid-chas-sutichok-19-20-sichnya-ono-vlyuetsya.html>

<sup>42</sup> [https://www.youtube.com/watch?v=KkuH9PK\\_ICY](https://www.youtube.com/watch?v=KkuH9PK_ICY)

destroyed the medical aid post established in the Parliamentary Library in Hrushevskoho Street. After that journalists refused to wear vests with the writing “Press”, and the Red Cross published a statement on impermissibility of applying weapons against medical workers with the respective marking<sup>43</sup>.

The events in Hrushevskoho Street caused incredible public reaction and activated protest movement in different regions of Ukraine. As of January 27, 2014 unarmed protesters had occupied 11 regional state administrations, in five regions their attempts had resulted in people being beaten and dispersed, and in four other regions mass protest campaigns had been held.

During that period criminal groups called “titushky” which coordinated their activity with the law enforcement bodies got active in Kyiv<sup>44</sup>. They injured people in different districts of the city, destroyed cars and organised provocations. As the law enforcement bodies had refused to perform their duties and protect public order, ordinary people assumed an obligation to patrol the city.

In the course of one of such raids the group of Automaidan participants that had been called to protect the hospital from “titushky” got into the trap of the special police force “Berkut”. The law enforcement officers pulled the people out from cars, beat them violently regardless of their age and sex, and destroyed their vehicles. They kept beating the detained protesters in the bus, and some of them were driven to the park, made to kneel, undressed in freezing temperatures, and tortured. Then all the detained protesters were accused of having organised mass riots and opposed to the law enforcement bodies<sup>45</sup>. The Automaidan protesters were taken into custody for two months selected as a preventive measure by the court<sup>46</sup>.

Lots of actual or supposed protesters were illegally arrested in Kyiv and regions. They were often detained by the people out of uniform or “titushky”. Some people were kidnapped from hospitals, some — on their way home from Maidan or near their workplace. In the overwhelming majority of cases families were not informed of the protesters being taken to the district militia departments, and the lawyer’s access to their defendants was often restricted.

During all these winter months, despite low temperatures, Maidan Nezalezhnosti and adjacent territories were constantly attended by several tens of thousands of people whereas some thousands just lived there in the open air or in the buildings occupied by the protesters. On some days, in particular, at the weekend the amount of the protesters reached a million of people. At that time the so called “law on hostages” dated January 29, 2014 was taken. It stipulated that the detained protesters could be released only in exchange for vacating the streets and administrative building, i. e. actual termination of the protest.

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<sup>43</sup> <http://www.redcross.org.ua/modules/news/index.php?id=1012>

<sup>44</sup> <http://ua.comments.ua/life/216353-spokiynu-nich-maydanu-zatmarili-titushki.html>  
[http://ukr.lb.ua/news/2014/02/21/256450\\_pod\\_vidom\\_titushek\\_deystvuyut\\_opera.html](http://ukr.lb.ua/news/2014/02/21/256450_pod_vidom_titushek_deystvuyut_opera.html)

<sup>45</sup> <http://www.pravda.com.ua/news/2014/01/25/7011247>

<sup>46</sup> [https://www.youtube.com/watch?v=F\\_y2fwWwyrU](https://www.youtube.com/watch?v=F_y2fwWwyrU) <https://www.youtube.com/watch?v=QMDPSOdtoos>  
<https://www.youtube.com/watch?v=N4jzRk2OCX0>

### Events of February 18

On this day, February 18, the parliament was supposed to vote for returning to the Constitution of Ukraine in the version of 2004, so in the morning the part of protesters peacefully went to the parliament only to be stopped by the cordon of the law enforcement officers. New clashes started upon militia provocations. The law enforcement bodies attacked tore down the barricades and commenced forceful assault on Maidan. They threw cocktail bombs at Maidan and set several tents on fire.

The central metro stations were closed, and vehicles were forbidden to drive to the city centre for the purpose of isolating protesters at Maidan. At the same time, the single television channel (5 Channel) which did not support the government was turned off, and movement of all kinds of transport, including private vehicles, from regions to Kyiv was restricted. Law enforcement officers were supported by paramilitary criminal groups (“titushky”) that were finishing off the people lying on the ground<sup>47</sup>. Protesters set the tyres on fire and started throwing cocktail bombs in response to stop law enforcement bodies and prevent them from shooting people from rooftops.

### ATTACK AGAINST MAIDAN IN THE NIGHT FROM FEBRUARY 18 TO FEBRUARY 19 AND SETTING THE TRADE UNIONS BUILDING ON FIRE

Euromaidan was under attack all the night from February 18 to February 19. Two armoured vehicles, one of which was stopped in Khreshchatyk, were going to be used to destroy the barricades whereas water cannons were applied to disperse protesters and extinguish burning tyres. Yet, being burnt to ashes, Maidan survived.

In the night from February 18 to February 19 the Trade Unions Building, which was used for providing maintenance supplies to Euromaidan, was set on fire. In particular, there was a hospital for ambulatory treatment of protesters. Combatants of the special police force “Alpha” broke into the building from the top floors, and the fire started<sup>48</sup>. At least two protesters burnt to death<sup>49</sup>.

On February 19 the Head of the Security Service of Ukraine, O. Akymenko announced commencement of the anti-terrorist operation and issue of firearms<sup>50</sup>. On February 20, 2014 the Minister of Internal Affairs, V. Zakharchenko signed the decree on issuing combat weapons to the militiamen<sup>51</sup>. At the same time some law enforcement officers started to leave their positions without authorisation, refusing to apply weapons against unarmed people.

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<sup>47</sup> [https://www.youtube.com/watch?v=9hYvM\\_alc4Y](https://www.youtube.com/watch?v=9hYvM_alc4Y); <https://www.youtube.com/watch?v=3rQARCBNaWs>  
<https://www.youtube.com/watch?v=6jplruDVyqk>

<sup>48</sup> [http://www.moskal.in.ua/?category=news&news\\_id=1099](http://www.moskal.in.ua/?category=news&news_id=1099)

<sup>49</sup> [http://espreso.tv/news/2014/05/15/moskal\\_nazvav\\_lyudey\\_yaki\\_shturmuvaly\\_budynok\\_profspilok\\_pid\\_chas\\_zachystky\\_maydanu](http://espreso.tv/news/2014/05/15/moskal_nazvav_lyudey_yaki_shturmuvaly_budynok_profspilok_pid_chas_zachystky_maydanu)

<sup>50</sup> [https://www.youtube.com/watch?v=z\\_fiBUBxI2s](https://www.youtube.com/watch?v=z_fiBUBxI2s)

<sup>51</sup> <https://www.youtube.com/watch?v=OMDAhx-m7Bw>

### Mass Shooting at Maidan on February 20

At night on February 20 transit militia men blocked entrance of transport into the centre of Kyiv. In the morning combatants of the special police force “Berkut” started throwing cocktail bombs at the building of the conservatory where the new medical aid post of Maidan was located. Clashes commenced. Law enforcement officers started shooting from firearms<sup>52</sup>. The injured and killed protesters, including the ones trying to provide medical aid to the injured, were brought from the October Palace and Instytutska Street<sup>53</sup>.

At the same time it was said that the trains ceased to go in the western direction due to the supposed disruption of the railroad bed. Journalists recorded sharpshooters in different administrative buildings in the governmental quarter<sup>54</sup>. The sharpshooters wearing black clothes with yellow stripes on their sleeves started shooting<sup>55</sup> at unarmed protesters, which was recorded in numerous videos<sup>56</sup>. In the late afternoon the work of metro in the city centre was resumed. At the same time in Dnipropetrovsk the people lay onto the railways and prevented the train with troopers from going to Kyiv. At 10:20 p.m. the parliament forbade the Special Forces to carry out the so called “anti-terrorist operation” at the territory of the country.

All the night from February 20 to February 21 the negotiations were held with participation of Yanukovych, opposition leaders and representatives of the European Union and Russia. On February 21 the opposition leaders and the President of Ukraine signed the agreement on resolving the crisis in Ukraine, but the protesters decisively rejected the agreement conditions offered by the opposition leaders and demanded resignation of the President. It was announced on February 22 that V. Yanukovych had escaped from Kyiv. Later he was found at the territory of Russia.

### REPRESSING “LOCAL EUROMAIDANS” IN REGIONS

In 15 administrative territories of Ukraine out of 27 peaceful protests were of mass nature, in particular, in the Regions of Vinnytsia, Dnipropetrovsk, Donetsk, Zhytomyr, Zaporizhzhia, Luhansk, Lviv, Odesa, Poltava, Sumy, Ternopil, Kharkiv, Cherkasy, and the City of Kyiv. In majority of these regions the authorities attempted to forcefully suppress the peaceful protest by both legal and illegal means. Some protesters in the regions were injured, beaten and tortured. Some of them were arrested and accused of having organised mass riots and opposed to the law enforcement officers, and the preventive measures later selected by courts included wearing a tracking device, home arrest, two-month custody etc.

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<sup>52</sup> Video footage “114V200214” (see Roadmap Evidence #51)

<sup>53</sup> [http://texty.org.ua/mod/datavis/apps/em\\_time/](http://texty.org.ua/mod/datavis/apps/em_time/)

<sup>54</sup> <https://www.youtube.com/watch?v=CvtP7mgHsMY>; <https://www.youtube.com/watch?v=gqISuBI1tZI>  
<https://www.youtube.com/watch?v=IsE7IYVa5kk/>

<sup>55</sup> <https://www.youtube.com/watch?v=17ZN5BLLawc>

<sup>56</sup> <https://www.youtube.com/watch?v=T6IbEIBhb8o>

The entire range of possible tools of the state system was used to fight the protesters: travesty of justice banning to hold protest campaigns, discrimination decisions of local authorities aimed at Euromaidan participants, officials' illegal actions, including beating, tortures, illegal detention etc.

One of the examples was violent beating of peaceful protesters in Dnipropetrovsk on January 26, 2014<sup>57</sup>. The protesters at the meeting which was attended by at least five thousand people were attacked by the law enforcement officers and "titushky". The protesters were beaten with rubber truncheons and thrown to the grounds where they were finished off. Dozens of protesters were wounded from traumatic weapons. Several dozens of people, including ordinary passers-by who were believed to look like protesters by the law enforcement officers and "titushky", were detained. The people with video cameras were also detained on purpose.

On January 24, 2014 during the protest campaign in Cherkasy approximately 47 people, at least five of whom were of minor age, were detained. People were beaten although they did not oppose to being detained. The children's parents were not informed of their detention, and the lawyers' access to their defendants was restricted. Also, the law enforcement officers detained the people who did not participate in the protest and were just passing by, including student Vladyslav Kompaniets<sup>58</sup>. Despite the fact that the young man had been disabled since childhood and needed strict compliance with the special dietary regime, the court took a decision to select a preventive measure in the form of two-month custody.

The organisers of local Euromaidans were individually repressed in the regions, in particular, by means of framed-up criminal cases. Thus, criminal proceedings were opened against local deputies and public activists in Lutsk on grounds of the fact that Viktor Yanukovich's portrait had been standing upside down during the meeting. On December 17, 2013 the court selected the preventive measure in the form of the home arrest for the activist of Lutsk Euromaidan, Maiia Moskvych<sup>59</sup>. The same applied to the activists from Kalush for having burnt the portrait of Viktor Yanukovich: the criminal case was opened for hooliganism.

On December 31, 2013 the law enforcement officers stopped an activist of Donetsk Euromaidan, Yevhen Nasadiuk in the street and pulled him into the car for being interrogated in connection with being suspected of child sexual abuse. The activist of Kharkiv Euromaidan, Oleksandr Chyzov found himself in the similar situation when on January 4, 2014 he was violently detained by five people out of uniform right in the street and taken to the district militia department. The activist was accused of porno-peddling<sup>60</sup>.

There were numerous cases of violence against organisers and leaders of local Euromaidans. Thus, in December 24, 2013 in the very centre of Kharkiv two unknown people attacked one of the co-organisers of Kharkiv Euromaidan, Dmytro Pylypets<sup>61</sup>. In the course of the attack he was knifed four times.

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<sup>57</sup> <http://www.newsru.ua/data/video/4138.html>

<sup>58</sup> [http://www.bbc.co.uk/ukrainian/news/2014/01/140125\\_cherkasy\\_conveyer\\_courts](http://www.bbc.co.uk/ukrainian/news/2014/01/140125_cherkasy_conveyer_courts)

<sup>59</sup> <https://www.youtube.com/watch?v=4-3TzRrwmQs>

<sup>60</sup> <http://www.pravda.com.ua/news/2014/01/4/7009032/>

<sup>61</sup> <http://www.youtube.com/watch?v=teQ0Pi-gwv4>



In addition to Kyiv<sup>62</sup>, peaceful protesters were killed in the western, central and south-eastern parts of Ukraine, in particular, in the Cities of Khmelnytskyi, Lviv, Regions of Cherkasy and Zaporizhzhia. In the aggregate, eight people were killed out of Kyiv.

### CONCLUSIONS

The protest movement of Euromaidan was grounded on the values of freedom and human honour, so the protest can be described as one of the largest human rights defence movements at the entire territory of new independent countries which were formed after dissolution of the Soviet Union. The slogan “Human Rights Above All” was first chanted next to the court building at the beginning of December 2013 when the protesters accused of crimes, so called “prisoners of Bankova” were brought there. That is why the protest movement was later called the Revolution of Dignity.

Euromaidan was organised by ordinary people of different age, sex, profession, financial standing, social background, place of residence, regional beliefs, ideological views etc. The amount of protesters reached approximately two million people, according to different estimates. The protest infrastructure was provided for by about five million people who established various self-organised volunteer initiatives and helped the injured, provided protesters with the necessary things and food, free legal assistance and organised free transportation from regions to Kyiv etc.

The peaceful protest movement covered the entire country, and local Euromaidans were held in different communities. Protests were of mass nature in the Regions of Vinnytsia, Dnipropetrovsk, Donetsk, Zhytomyr, Zaporizhzhia, Luhansk, Lviv, Odesa, Poltava, Sumy, Ternopil, Kharkiv, and Cherkasy. The one-person protest of the citizen of Smila who spent many days standing at the only square of the town with the poster “Maidan! I am with you” has become well known<sup>63</sup>.

The entire range of pressure tools was gradually used by the authoritarian rule to scare the peaceful protesters and suppress the peaceful protest: destruction of property, beating, kidnapping, illegal detention, commencement of framed-up administrative and criminal cases, custodial placement etc. Understanding ineffectiveness of their actions, the government attempted to forcefully disperse Maidan and massively shoot unarmed people.

President of Ukraine Viktor Yanukovich and his Administration, the highest officials, heads of law enforcement bodies and special police forces and judges are responsible for large-scale and systematic attacks and crimes committed in their context. In addition, the government organised, supported and financed paramilitary groups to scare and attack protesters, destroy their property and provoke them.

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<sup>62</sup> <https://www.youtube.com/watch?v=mqeuYRsF2eI>

<sup>63</sup> <http://life.pravda.com.ua/society/2013/12/17/146059/>

## **RECOMMENDATIONS**

1. For Verkhovna Rada of Ukraine — to immediately pass the resolution No. 1312 dated 09.12.2014 “On Ukraine Accepting Jurisdiction of the International Criminal Court Regarding the Situation that Has Arisen as a Result of the Armed Aggression of the Russian Federation against Ukraine since February 27, 2014 and Committing International Crimes at the Territory of Ukraine”. Before that — to amend clause 1 thereof and stipulate the term of this resort as of February 23, 2014 until direct ratification of the Rome Statute by Ukraine.

2. For Verkhovna Rada of Ukraine — to pass the draft law No. 1788 dated 16.01.2015 which provides for adding the following provision to article 124 of the Constitution of Ukraine: “Ukraine may accept jurisdiction of the International Criminal Court on conditions of the Rome Statute of the International Criminal Court”.

3. For the Verkhovna Rada of Ukraine — to amend section 20 of the Criminal Code of Ukraine “Crimes against Peace, Human Security and International Legal Order” for the purpose of bringing its provisions with into compliance with the provisions of the international criminal law.

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# SITUATION IN AR CRIMEA AND HUMAN RIGHTS<sup>1</sup>

## ABBREVIATIONS

**ARC** — The Autonomous Republic of Crimea.

**SC ARC** — The Supreme Council of Crimea.

**SCU** — The Supreme Council of Ukraine.

**DPSU** — The State Border Guard Service of Ukraine.

**ECHR** — The European Convention on Human Rights.

**EU** — The European Union.

**ECtHR** — The European Court of Human Rights.

**ICCPR** — The International Covenant on Civil and Political Rights.

**NBU** — The National Bank of Ukraine.

**RNBO** — The National Security and Defense Council of Ukraine.

**RF** — The Russian Federation.

**FL** — Federal Law.

**FCL No. 6** — Federal Constitutional Law of the RF as of March 21, 2014 No. 6-FCL “On Crimea’s entrance into the *Russian Federation* and the *formation of new entities in the country* — the *Republic of Crimea and Sevastopol, city of federal significance*.”

## CRIMEA: OCCUPATION – GENERAL OVERVIEW

According to the Art. 133, 134 of the Constitution of Ukraine, Crimea and Sevastopol are an integral part of Ukraine. According to the Memorandum on Security Assurances in Connection with Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (signed by Ukraine, RF, the United Kingdom of Great Britain and Northern Ireland and the United States of America), the states signatories have reaffirmed their commitment to refrain from the threat by means of force or its use against the territorial integrity or political independence of Ukraine.

On February 23–28, 2014, was held the operation of the RF to seize airports and public authorities in Sevastopol and the ARC, blocking and capture of Ukrainian military units, as well as establishing checkpoints on land routes between Crimea and mainland Ukraine. In order to provide the visibility of the legitimacy of the occupancy of Crimea, the self-

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<sup>1</sup> The Chapter was prepared by D. Svyrydova, a UHHRU lawyer, S. Zets, an attorney, UHHRU expert, M. Vasin, executive director of The Institute for Religious Freedom. The authors express their gratitude in preparation of this chapter to such experts: Dmytro Vovk, Vitalii Gren, Olexander Zaets, Yurii Reshetnikov, Olexandr Sagan, as well as to the The Institute for Religious Freedom and to the H. S. Skovoroda Institute of Philosophy of the National Academy of Sciences of Ukraine.

proclaimed authorities of the Crimean power with the support of the Russian military men conducted an illegal referendum. The self-proclaimed President of the Council of Ministers of the ARC has announced the temporary reassignment of the Peninsula uniformed services and military equipment of the “self-defense” troops. Such actions of the RF in accordance with international law, can be qualified as an act of aggression (*United Nations General Assembly Resolution “Definition of Aggression”*).

On March 17, 2014 the SC ARC adopts the Resolution on the independence of Crimea and declaration of an independent, sovereign state — the Republic of Crimea. On March 18, 2014 was signed the Treaty between the RF and the Republic of Crimea about adoption to the Russian Federation of the Republic of Crimea and formation of the new constituent entities.

Since March 2014, Russia begins active “integration” of Crimea: automatically recognizes all Crimean citizens as citizens of the RF, changes the computation of time, currency, introduces the validity of legislation of the Russian Federation, which is in comparison with Ukrainian oppressive and limiting human rights in different spheres of life. In addition, the occupation authorities have adopted a number of laws and other legal acts, which resulted in significant deterioration and violation of human rights and freedoms in Crimea. These include, for example:

- Resolution of the SC ARC “On approval of the People’s Militia of Crimea” as of 03.11.2014 , Law of the ARC “On the People’s Volunteer Corps — People’s Militia of Crimea” as of 06.11.2014. The paramilitary units that were involved in the seizure of the peninsula, seizure of property, involved in kidnappings and murders, dispersal of peaceful assemblies and obstruction of journalistic activities, were legalized.
- ARC Law No. 47-LRC “On the peculiarities of the repurchase of the property in the Republic of Crimea” as of 08.08.2014, which actually disguises raider seizures of private property.
- The decision of the SC ARC “On combating the spread of extremism in Crimea” from March 11, 2014, and Federal Law of the RF No. 91- FL “On the application of the provisions of the Criminal Code of the Russian Federation and the Criminal-Procedural Code of the Russian Federation on the territories of the Republic of Crimea and the city with federal status Sevastopol” as of May 5, 2014. According to it, the possibility of bringing to criminal responsibility for the acts committed in Crimea and the city of Sevastopol till March 18, 2014 was established. After that the mass arrests, criminal prosecution of the pro-Ukrainian activists and leaders of the Crimean Tatar community in Crimea were initiated.

On March 27, 2014 the UN General Assembly supported the resolution, the text of which the inviolability of territorial integrity of Ukraine is recognized, and the held referendum as so that can not be the basis for changing the status of the ARC or of Sevastopol. 100 UN member states voted in favour of the respectful resolution.

On April 15, 2014, the Law of Ukraine “On securing the rights and freedoms of citizens and legal regime on the temporarily occupied territory of Ukraine” was adopted. The notion and mode of the temporarily occupied territories — the AR of Crimea and Sevastopol was determined. Under the law “... responsibility for the violations, determined by the Constitution and the laws of Ukraine rights and freedoms of a person and a citizen in the temporarily occupied territory remains with the Russian Federation as the occupier country in accordance with the norms and principles of the international law.”

**CRIMEA: VIOLATION OF THE ARTICLES 5 AND 7 OF THE ECHR ON THE OCCUPIED TERRITORY.  
QUESTION OF THE REVIEW OF THE LEGALITY OF DETENTION**

According to Art. 7 of the ECHR, no one shall be recognized guilty of any criminal offense on the grounds of any act or omission to act, which, at the time it was committed, did not constitute a criminal offense under the national or international law. There can also be implied no heavier penalty than the one applicable at the time the criminal offense.

According to Articles 64–67 of the *Convention relative to the Protection of Civilian Persons in Time of War* (Geneva, August 12, 1949), criminal laws of the occupied territory shall remain in force, except for the cases, when its effect is canceled or suspended by the occupation state if this legislation poses a threat to the security of the occupation state or the occupation is an obstacle to implementation of the Convention... The occupying state, however, may extend on the population of the occupied territory the validity of the provisions that are necessary for the fulfillment of the obligations imposed on it under this Convention, the maintenance of the effective territory management, provision of security of the occupation state, contingent and property of the occupation forces and administration, as well as sites and communication lines they use. The provisions on criminal liability, adopted by the occupying state, can take effect only after they are published and brought to the notice of the population in their native language. These regulations shall not be applied retroactively. The courts should act only in accordance with those statutory provisions that were in force prior to the date of the commission of the offence and which comply with the general principles of law, in particular the principle of the consistency of penalty and offense.

According to the FL “On the application of the provisions of the Criminal Code of the RF and the Criminal- Procedural Code of the RF on the territories of the Republic of Crimea and the city with federal status Sevastopol” as of 29.04.2014, criminality and punishment for acts committed on the territory of the Republic of Crimea and Sevastopol before March 18, 2014, are determined on the basis of the criminal laws of the RF. Turn for the worse is at this not allowed.

According to Art. 12 of the Criminal Code of the RF, foreign citizens and stateless persons who do not live permanently in the RF and committed crimes outside the RF, shall be criminally liable under this Code in cases if the crime is directed against the interests of the RF or a citizen of the RF, or a stateless person permanently resident in RF, as well as in cases stipulated by the international treaty of the RF, if foreign citizens and stateless persons not residing permanently on the territory of the RF have not been convicted in a foreign country and charged with criminal offenses on the territory of the RF.

As a matter of practice, all criminal offenses, cases according to which were in the proceedings of the investigation authorities and the courts of Ukraine, located on the territory of the ARC and in Sevastopol, werereclassified in accordance with the legislation of the RF. Further consideration of these cases was continued in accordance with the laws of Russia. Accurate statistics of such cases is absent. However, in practice they were recorded as the cases of cessation of criminal prosecution with reference to Art. 12 of the Criminal Code of the RF, as well as the adoption of judgments against the mentioned provisions of the law.

The mentioned circumstances give reasons to believe that the authorities of the RF have violated the guarantees of Art. 7 of the ECHR. Moreover, in this context arises the question

about the justness of keeping a person in custody. According to Art. 5 of the Convention one of the grounds for holding a person in custody is a reasonable suspicion that the person have committed an offense. Besides, each person in custody has the right to check the legality of his detention and his release if such detention was unlawful.

Based on the provisions of Art. 5 of the ECHR in conjunction with the provisions of Art. 7 of the Convention, the authorities of the RF were required to immediately review the justness of the detention of persons, to whom such a preventive measure was chosen in accordance with the laws of Ukraine. However, for a long period after the announcement of Crimea as a part of the RF, no action to review the reasonableness of the detention was used. Prosecutors and judges were in confused state because of the sharp change of the legislation. In addition, there are cases of continued detention of persons for whom such measures expired, as defined by the legislation of Ukraine.

### **CRIMEA: THE RIGHT TO A FAIR TRIAL**

According to Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone is entitled to a fair and public hearing of his case ... by an independent and impartial court, established by law. By virtue of Art. 54 of the Convention relative to the Protection of Civilian Persons in Time of War, occupation state is forbidden to change the status of public officials or judges in the occupied territories or use against them any coercive measures if they refrained from performing their duties for reasons of conscience.

According to Art. 9 of the FCL No. 6 "On adoption to the *Russian Federation of the new subjects of the Republic of Crimea and the city of federal significance Sevastopol*", to administer justice in transition period were authorized the judges appointed to their positions prior to the occupation and who were working in Ukrainian courts in the occupied territory at the time of adoption of this law. Their status was defined as "citizens who substitute judges". The condition of admission to the administration of justice was acquiring the citizenship of the RF, passing of the Ukraine's citizen Passport to Russian authorities as well as submitting the Russian authorities the application for secession from the citizenship of Ukraine. Renunciation of the judges from the citizenship of Ukraine in accordance with the legislation of Ukraine did not occur.

Term of the administration of justice by the "citizens who replace judges" was determined "before creation on the respective territory of the RF courts". This period, during which the justice on the territorium of the AR Crimea and in Sevastopol was performed by the "judges" in that status, continued from April 1 to December 26, 2014.

While the law guaranteed to the "citizens who replace the positions of judges" preferential right to fill the positions of judge in the courts of the RF, created in the occupied territory, but the procedure of formation of federal judges did not foresee any guarantees and, conversely, stimulated competition from the side of both — the existing federal judges, and other RF citizens.

According to the interview of M. Tymoshev, head of the *High Qualification Collegium of Judges in Crimea and Sevastopol*, the appointment of 462 judges is planned. At this, according to the results of the first stage of selection of judges, the vacancies were filled by 70%,

“citizens who replace judges” in transition period constitute in this number a little more than half (~ 56%). In his interview M. Tymoshev also noted the high level of competition and informed about the selection criteria. In particular, he said that “much attention was paid to the analysis of professional relations and regular, first of all family relationships with others to identify potential conflict of interest...”. Practice shows that as compromising information was also classified the presence of family relationships with the citizens of Ukraine who live in mainland Ukraine.

During the mentioned period the judges were completely devoid of guarantees of independence. The courts delivered decisions in civil and criminal cases in the name of the RF, all judicial acts were verified by the seal of the courts of Ukraine and also other attributes of the courts of Ukraine were used.

Justice in accordance with the procedural law of the RF continued to perform also judicial proceedings, the existence of which is not provided by the legislation of the RF (for instance, such as economic and administrative courts). This led to the fact that, for example, the District Administrative Court of Sevastopol under the provisions of the Civil-Procedural Code of the RF made the decision in the name of the RF and verified it with the seal of the court of Ukraine.

There were cases of direct interference of the Russian authorities in the courts activities. For example, the head of the Sevastopol commercial court of appeal V. M. Koval on the personal order of the Governor of Sevastopol S. Menyaylo was prohibited to enter the courthouse from May 2014, and the court management was entrusted to another person.

Since March 2014, the courts situated on the territory of the AR Crimea and city of Sevastopol stopped directing materials of the civil, criminal and administrative proceedings for judicial review of decisions to higher courts located in mainland Ukraine. This created barriers for review of the earlier adopted decisions by the courts of cassation, as well as for review of judicial decisions in connection with the decision by the ECHR.

As a result of such actions of the Russian authorities was undermined independence of the judicial independence of Crimea. In particular, the authorities of judges appointed in accordance with the laws of Ukraine were suddenly stopped, and the status of judges was undefined. Waiting for possible appointment for the position of the judge and non-transparency of the procedure pushed the applicants to demonstrate maximal loyalty to the authorities of the RF. And at this the actual forms of justice based on the mixture of jurisdictions, deprive the court of the signs of the “court established under the law”.

According to the Main principles relating to the independence of the judiciary authorities adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985), the term of office of judges, their independence, security, adequate remuneration, conditions of service, retirement age should be properly guaranteed by law; judges, appointed or elected, have a guaranteed term of office until compulsory retirement or end of term, where it is appointed; the judges may be temporarily suspended or removed from office only on the grounds of their inability to perform their duties or behavior that makes them unsuitable for the occupied position.

In view of the above mentioned, legal acts adopted in the indicated period in Crimea and Sevastopol, have dubious legal force, and the parties can not rely on the recognition of these legal judgements anywhere outside of the Crimean peninsula.

**CRIMEA: VIOLATION OF THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE.  
VIOLATION OF THE REGULAR LIFESTYLE**

As a result of occupation of the Crimean peninsula changes entered in all aspects of life — money turnover, legislation, recordkeeping, rules of providing health and social services, which in their scope led to confusion of the citizen and violations of their social relations and negatively affected the personal lives of the vast majority of them. Thus, due to the forced shutdown in August and September of 2014 of operation of the telephone operators on the Crimean peninsula were broken the contacts of the Crimean citizens as with each other, so their contacts with inhabitants of the mainland Ukraine.

*On August 5, 2014, on the territorium of Crimea and Sevastopol providing of mobile services of the operator "MTS-Ukraine" was stopped because of the seizure by the representatives of the Crimean authorities of the company's buildings and equipment. The frequencies that were previously used by the company "MTS-Ukraine" yet for the 6<sup>th</sup> of August were given to the Russian operator "K-Telecom" (brand "Win Mobile"). A few days later "K-Telecom" renewed for the subscribers of "MTS-Ukraine" (except for Sevastopol) the so-called "technical roaming", but by this time most of the inhabitants of Crimea have transferred to the services of another Russian mobile operator, that is why most of the contacts were lost. In addition, prices for calls to mobile phones of other operators increased by approximately 4 times — from 65–75 kopecks/min. to 3 UAH/min., which in result made the use of "MTS-Ukraine" inappropriate. Similar processes have taken place with the operators "Kyivstar" (11.08.14.) and "Life" (19.09.14), which owned 42.7% and 14.7% of the market of mobile services respectively.*

On September 25, 2014, JSC "Ukrtelecom" stopped providing services of stationary phones in Sevastopol. Instead of this operator, the company "Sevastopol Telecom" started providing such services. However, this has also led to the increase in the cost of calls to the phones of Ukrainian mobile operators and stationary phones on the mainland because the calls are billed as international.

There are recorded violations by the RF authorities of the inviolability of homes on the territory of the ARC and Sevastopol. Thus, on November 7, 2014, the representatives of the Crimean authorities and the Ministry of Defense illegally seized two service apartments in Simferopol and two — in Sevastopol, which belonged to Ukrainian Navy officers, who were forced to leave the Crimean peninsula after the occupation in March 2014. The locks in the apartments were broken, the door opened and sealed. Following these the flats were occupied by the Russian military officers. Representatives of the Ministry of Defence of the RF told Ukrainian officers via neighbors that they must take all their belongings from the flats before 1<sup>st</sup> of December 2014. Such actions and requirements are substantiated by the fact that the Ministry of Defence made a decision to occupy the apartments of the Ukrainian officers by Russian military officers. In addition to the mentioned cases of requirements to free their homes, such requests have also become several Ukrainian army soldiers.



**RESTRICTIONS OF THE FREEDOM OF EXPRESSION OF OPINION  
AND FREEDOM OF PEACEFUL ASSEMBLIES**

The occupation of the Crimean peninsula was accompanied by, firstly, full simultaneous full change of the legal framework for the legislation of the RF, which has brought deterioration and restrictions of freedom of speech, freedom of expression of opinion, freedom of peaceful assemblies and more. And secondly — by systematic repressions through criminal and administrative prosecution of activists and pro-Ukrainian population.

Since 2014, Russia has considerably complicated and worsened the legislation concerning the freedom of expression of views, migration which currently poses a danger for Crimean citizens. Thus, to the legislation of the RF was introduced the mandatory reporting by the citizens of the existence of their second citizenship<sup>2</sup>, obligatory for Crimean citizens from January 1, 2016 under the threat of criminal liability<sup>3</sup>. After this all Crimeans, which were registered in Crimea for the period of occupation, will have to report the occupation authorities of the existence of Ukrainian citizenship. If citizens give notice on dual citizenship after the announced term or indicate incomplete or obviously inaccurate data, they will face administrative responsibility — a fine from 500 to 1,000 rubles.

Particular threat to the freedom of thought is poses by regulatory requirements concerning the counterwork towards extremist activities, which introduce the notion of extremist materials<sup>4</sup>. In Crimea began its work the Center for Combating Extremism, which actually deals with prosecution of citizens who express disagreement with the new government. Under the pretext of fighting extremism, the occupation authorities in Crimea prosecutes also pro-Ukrainian representatives of religious organizations.

On March 15, 2014, Greek Catholic priest Mykola Kvych was illegally arrested by the Crimean authorities directly in the Ukrainian Greek Catholic parish of the Dormition of the Mother of God in Sevastopol, and the arrest was accompanied by the deliberate violation of the religious shrines of the temple, illegal arrest with physical violence, wrongful search of the priest's private accommodation, his illegal interrogation for 8 hours with elements of torture, discrimination on the grounds of religion and language (prohibition of use of the Ukrainian language) and false accusations of extremism with the prospect of sentencing to 15 years' imprisonment<sup>5</sup>. For these reasons, in the evening of March 16, the priest Mykola Kvych was forced to leave Crimea because there was a real threat to his health and life because of his priestly activity and belonging to the Ukrainian Greek-Catholic Church. Through this kind of threat priests of the UGCC from Yalta, Yevpatoria, Kerch, Simferopol also had to take their families away to a safe place outside the Crimea during the first half of March 2014.

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<sup>2</sup> FL of the RF as of 04.06.2014 No. 142 "On Introduction of Amendments the Art. 6 and 30 of the Federal Law "On Citizenship of the Russian Federation and separate legistalive acts of the Russian Federation".

<sup>3</sup> Art. 330.2 of the CC of the RF — punishment in the form of the penalty up to 200 rubles or in the amount of the annual income of the sentenced, or up to 400 hours of compulsory labour.

<sup>4</sup> FL of the RF as of 25.07.2002 No. 114-Ф3 "On Combating Extremist Activity".

<sup>5</sup> Priest Mykola Kvych: "I was accused in sponsoring the Naval Forces of Ukraine":  
[http://news.ugcc.ua/interview/otets\\_mikola\\_kvich\\_mene\\_zvinuvatili\\_v\\_tomu\\_shcho\\_ya\\_sponsoruyu\\_v%D1%96yskovomorsk%D1%96\\_sili\\_ukraini\\_69688.html](http://news.ugcc.ua/interview/otets_mikola_kvich_mene_zvinuvatili_v_tomu_shcho_ya_sponsoruyu_v%D1%96yskovomorsk%D1%96_sili_ukraini_69688.html)

*Crimean authorities decided to raise the rent for the premises on Sevastopolska street in the city of Simferopol, in which the Cathedral of St. Equal-to-the-Apostles Vladimir and Princess Olga of the Ukrainian Orthodox Church (Kiev Patriarchate). As a result, the main cathedral of Kiev Patriarchate in Crimea is under threat of closure due to excessive for believers rent, which, according to Archbishop Clement, has increased by 600 thousand times<sup>6</sup>.*

On the territorium of Crimea took place a series of searches in mosques, medreses and private homes of muslims, during which security forces searched for the so-called extremist literature, including using the fact that recently this literature was not extremist in Ukrainian Crimea.

On June 24, in the village Kolchugino, Simferopol region, armed masked men broke into the building of medrese under the Spiritual Administration of Muslims of Crimea (DUMK), who conducted search, seized several computers and arrested the deputy director of the medrese Ayder Osmanov. At the time of the raid in the religious educational establishment there were 13 students and two teachers. The press-secretary of the DUMK Aider Adzhymambetov reported that the armed people — were employees of the Russian Special Task Unit “Berkut”. He said the search was conducted by the Russian “Center for Combating Extremism” and during all the previous days in Crimea took place a fierce informational preparation for the search of “extremists”<sup>7</sup>.

At the same time, the authorities practically do not react to the facts of the attacks of the unknown people on religious buildings of the Crimeans. Thus, on June 1, 2014 at 8:00 AM in the village Perevalne of Simferopol district a group of armed bandits in the form of Russian Cossacks broke the door and illegally entered the premises of the Church of the Protection of the Blessed Virgin of the UOC (KP) and destroyed Orthodox relics. On June 13, in the village Luhove of Simferopol region the unknown set afire the mosque “Chukurcha-Dzhami”. According to the Russian Interior Ministry, the arson occurred around 5:00 AM due to the hit of several “Molotov cocktails”. As a result the facade of the mosque was damaged. It is noted that close to the fence attackers painted nazi swastika and the date of the arson<sup>8</sup>.

A separate problem was the Russian occupying authority’s requirement for mandatory re-registration of all religious organizations in Crimea under the Russian law till January 1, 2015. In particular, the existing provisions of the Federal Law of the RF as of 05.05.2014, No. 124-FL that include the following discriminatory restrictions, violating the rights of believers to collective confession of faith:

1. Re-registration of religious organizations under Russian legislation is possible only under fulfillment of one of two conditions:

- 1) entry into the existing in Russia centralized religious organization of the relevant religious confession; or

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<sup>6</sup> This is mentioned in the address of the archbishop of Simferopol and Crimea Klyment (secular name Kushch Pavlo Mykolayovytych), published on the official website of the Kyiv Patriarchate: <http://www.cerkva.info/uk/news/churchasociety/4949-arkhiepklyment-zaiava.html>

<sup>7</sup> In Crimea armed people seized medrese: <http://atn.ua/proisshestviya/v-krymu-vooruzhennyye-lyudi-zahvatili-medrese>.

<sup>8</sup> Video of the raid on the church UOC (KP) in village Perevalne: <http://inforesist.org/video-kak-proisxodil-zavat-xrama-v-perevalnom/>; Report by the agency QHA “Crimean News” and evidences of the imam of the mosque “Chukurcha-Dzhami” Muhammed Islamov: <https://www.youtube.com/watch?v=Mr4ta0HociY>

- 2) passing of the state religious examination in the order prescribed by the order of the Ministry of Justice of Russia dated 18.02.2009 No. 53 “On State Religious Expertise”.
2. Religious organizations of Crimea must submit for registration a new edition of its statute, which must meet all the requirements of Russian legislation.
3. Besides, in accordance with the requirements of the Ministry of Justice of Russia, while re-registering of the local and centralized religious organizations must be provided the original document of the current statute of the religious organization registered in accordance with Ukrainian legislation, and a document confirming its registration as a legal entity (for review with the following return to the applicant). Such requirement is not foreseen by the legislation of Russia that gives grounds to see in this hidden risks for believers and religious communities.
4. According to the Federal Law as of 09.26.1997, No.125-FL, only citizens of Russia may establish a religious organization with legal status. Therefore, this requirement makes believing Crimean residents to take Russian citizenship, and in case of resignation — they are actually deprived of their right of association in a religious organization with legal person capacity.
5. There emerged a threat for the preservation of property rights and realization of property rights on cult places of worship and other property of religious communities that have not re-registered for the reasons of:
  - 1) not joining the existing in Russia centralized religious organization;
  - 2) not-passing the state religion expertise;
  - 3) non-compliance with the new version of the statute of the requirements of Russian legislation;
  - 4) refusal of the believers to acquire the nationality of the RF.
6. Contrary to the legislation of Ukraine, which does not impose any conditions for the activity of religious communities not being a legal entity, Federal Law of the RF as of 26.09.1997, No. 125-FL requires the founders to actually pass a full procedure of creation a religious community, even for activities without status of a legal entity. Obviously, this requirement is correlated with the restriction of state registration of independent religious groups that exist less than 15 years, making impossible the activity of the community without becoming a part of one of Russian religious centers.

Thus, application on the territory of the AR Crimea of the Russian legislation in the sphere of freedom of conscience and activity of religious organizations limits and restricts the content of the rights and freedoms of citizens of Ukraine in comparison with the laws of Ukraine. Therefore, we can expect that the problems in the coming years will be the subject for review in the European Court of Human Rights.

On July 21, 2014, was adopted No. 274-FL “On Amendments to Article 280.1 of the Criminal Code of the Russian Federation”, which established the responsibility for “public calls for the carrying out of actions directed at violation of the territorial integrity of the Russian Federation”. Under this provision, a person can be sentenced to up to four years in prison, and in case if the calls are distributed through the mass media or the Internet — up to five years. In other words, the RF intends to strictly punish all for any statements concerning the belonging to one or another territory. For instance, to criminal responsibility can be brought journalists for materials, in which Crimea is seen as part of Ukraine, and — ordinary citizens for statements like “Crimea is Ukraine” or graphic expressions of such opinion published

in social networks. Such position is contrary to the international law norms and limits the freedom of expression of the views of citizens, including on the situation of occupation and accession of Crimea by Russia.

Because of persecution and pressure of the occupation government was forced to leave Crimea a well-known pro-Ukrainian activist and blogger L. Bogutska. The latter has constantly expressed through the media and the network Facebook her position regarding the rejection of occupation of Crimea, describing the difficulties of the Crimean peninsula residents since the occupation by the RF, expressing her dissatisfaction with the actions of the Russian authorities and condemning the actions of the RF aimed at support of the terrorist organizations "DNR" and "LNR" in eastern Ukraine.

*In September 2014, in the house of L. Bohutska was conducted search and was seized her personal property, including computers, phone and other information media. Then L. Bohutska was taken to the "Center for Combating Extremism", where she was shown statements in which people complained that she was fueling ethnic hatred, and her actions have the signs of extremism. In this period she was under psychological pressure, in particular, the law enforcement officials informed her that on the basis of her public statements she can be suspected of extremist activities and inciting ethnic hatred.*

A number of amendments to the Russian legislation were introduced and several regulations in Crimea concerning the significant restriction of the freedom of assembly adopted, which can not be interpreted as appropriate in a democratic society. So, on 21.07.14, in the RF was passed a law No. 258-FL "On Amendments to Certain Legislative Acts of the RF in Terms of Improving the Legislation on Public Events", which established criminal responsibility for repeated violations of the order or conducting of public events. On October 4, 2014, was passed the law No. 292-FL "On Amendments to Art. 9 of the Federal Law "On Meetings, Rallies, Demonstrations, Marches and Pickets", according to which a public event now can not begin before 07.00 AM and end later than 22.00 of the current day, local time, except for public events devoted to memorable dates of Russia etc.

There was adopted the law of the ARC No. 56-LRC "On Ensuring of the Conditions for Realization of the Right of Russian Citizens to Hold Meetings, Rallies, Demonstrations and Pickets in the Republic of Crimea" from 08.21.14, which substantially restricts the freedom of assembly in Crimea, namely obliges to provide notice in writing directly to the local authority within a period not earlier than 15 and no later than 10 days before the public event.

On November 12, 2014, was issued the Order of the Council of Ministers of Crimea No. 452 "On the Approval of the List of Places for Public Events in the Republic of Crimea", which defines the places for peaceful gatherings. For example, in Simferopol it is allowed to conduct peaceful assemblies only in four places. Besides, there are no grounds for banning the conducting of peaceful assemblies in other parts of the city.

Systematic and mass character bear the restrictions and prohibitions for conduct of peaceful gatherings. For example, on May 16, 2014, the self-proclaimed head of Crimea issued a decree that prohibited peaceful gatherings in Crimea until June 6, which was used on May 18 concerning the conducting of the mourning ceremonies to mark the 70<sup>th</sup> anniversary of

the deportation of the Crimean Tatars. On August 25, 2014, the police officers in Sevastopol banned the organization “Defend Sevastopol” to hold the anti-corruption demonstration on Nakhimov Square. On December 2, 2014, the occupation authorities refused the Central Election Commission of Kurultai in conduct of the Crimean Tatar meeting dedicated to the International Human Rights Day. Prosecution Service of Crimea deputy issued to the deputy head of the Crimean Tatar Mejlis A. Chyhozu (07.12.14) and the head of the CF “Fund “Crimea” R. Shevkiyev (10.12.14 ) warning about the inadmissibility of unauthorized meetings and on liability in case of violation of the warning.

On May 3, 2014, in Crimea there was massive peaceful gathering in support of the leader of the Crimean Tatar people, MP of Ukraine M. Dzhemilev, who was banned by the authorities of the RF to enter Crimea. Despite the peaceful nature of the event, more than 100 protesters were brought to administrative responsibility and fined for the amount of 10 to 40 thousand rubles, including — for disobeying police (19.3 of the Administrative Offences Code of the RF). These measures, taken after a public event, were the interference with the right to freedom of assemblies, which was not necessary in a democratic society. Since autumn of 2014 began the criminal prosecution of the participants of this peaceful assembly (R. Abdurakhmanov, T. Smedlyayev, E. Ebulisov and other).

On August 24, 2014 employees of State Inspection of Traffic detained Victor Nehanov, a pro-Ukrainian meeting organizer in Sevastopol city. The real reason for the stop, search of his vehicle, seizure of personal property, and drawing up protocol on administrative offense (under the article 20.2 of the Code on the Administrative Offenses of the RF) was that on the Independence Day of Ukraine, carrying the national flag of Ukraine and wearing scarf in the colors of the national flag of Ukraine, he laid flowers to pedestal where once had stood a monument to Hetman Sagaydachny. As a result of threats of criminal prosecution V. Nehanov was forced to leave Crimea.

Establishment of repressive legislation, criminal responsibility for “calls” to separatism”, systematic violations of the right to peaceful assembly and targeted harassment of pro-Ukrainian activists by the police and so-called “Crimean self-defense” are not only a gross violation of international law, but also a public pressure against dissenters in Crimea, attempts to destroy civil society and intimidate people who do not agree with the occupation of the peninsula.

### **CRIMEA: THE PROHIBITION OF DISCRIMINATION**

Resolution of the Council of National Bank of Ukraine No. 699 of November 3, 2014 “On the application of certain norms of currency legislation during the regime of temporary occupation of the territory of the free economic zone “Crimea” provides for that persons registered/permanently residing on the territory of the free economic zone “Crimea” are treated as non-residents (for investment purposes such persons are treated as foreign investors).

Resolution as of 16.12.2014 No. 810 amended the noted provision, under which the natural person who is internally displaced person and who received a certificate as required by the legislation of Ukraine confirming their residence in mainland Ukraine, is a resident of

Ukraine. According to the legislation of Ukraine obtaining this certificate does not require proof of any circumstances, but its validity is 6 months.

The use of the term “non-resident” in itself led to stigmatization of respective group of population and development of a negative attitude to such persons. In particular, the citizens J.P. and M.M., both of whom have registered residence on the territory of Crimea, and work in the city of Kyiv in a commercial bank and an archival institution respectively, complained that their superiors were considering the issue of their dismissal because, according to their superiors, their subsequent employment required a work permit. This situation is a prime example of stigmatization.

Due to the isolation of the group of citizens as “subjects of Crimea” and giving them a non-resident status these persons faced a number of real limitations in access to banking services.

For example, PJSC “BM Bank” in November 2014 returned payer money that was to be deposited to the account belonging to the so-called “subject of Crimea”. Later bank released this blocked account. But after the publication of the NBU Resolution No.810 of 16.12.14 bank blocked again another account of the same person. PJSC “UkrSibbank” also blocked a bank account of a citizen, on which she kept all her savings and who had registered residence in Crimea. The blocked account was released only after the submission of a certificate of her registration as a person who had moved from the temporarily occupied territory of Ukraine. In December 2014 PJSC Raiffeisen Bank “Aval” refused to open an account for a “subject of Crimea” as a resident, but offered to open a current account with a non-resident account statut.

When considering complaints of the citizens on the mentioned limitations of their rights by commercial banks, the NBU didn't find in the actions of commercial banks law violations.

Banking institutions differently execute regulations of the NBU Resolution in the part relating to accounts opened before its publication. Thus, for example, PJSC Raiffeisen Bank “Aval” in case of submission of the certificate of registration of a person who has moved from the temporarily occupied territory of Ukraine, changes status of a current account without closing it. However PJSC BM Bank interprets the resolution as one that requires a bank to close previously opened bank accounts even in case of a submission by a citizen of the certificate of registration of a person who has moved from the temporarily occupied territory of Ukraine, and in the latter case for continuation of provision of services demands signing a new contract and opening a new account.

According to the NBU Resolution (with amendments) among the “subjects of Crimea” five groups of persons are distinguished to who established limitations are applied differently or are not applied at all:

- Citizens of Ukraine that are registered and permanently reside in Crimea and do not have an IDP certificate — they are practically denied the opportunity to use banking services, but they in fact do not require them;
- Citizens of Ukraine whose residence is registered in Crimea, but who left temporarily occupied territory after March 16, 2014 — these persons have the opportunity to get an IDP certificate, and thus to restore resident status for the next 6 months;
- Citizens of Ukraine whose residence is registered in Crimea, but who have been living for a long time in mainland Ukraine, and who left temporarily occupied territory

before 16 March 2014 — these persons are deprived of opportunity to get an IDP certificate, and generally cannot restore resident status for the next 6 months;

- Citizens of Ukraine whose residence is registered in Crimea, but who occasionally travel to mainland Ukraine without an intention to leave temporarily occupied territory (i. e., who are not IDPs) — they are denied access to banking services;
- Citizens of Ukraine whose residence is registered in mainland Ukraine, but who have been living for a long time in Crimea and do not intend to leave temporarily occupied territory. The number of such citizens who proved in court that they had been living for a long time in Crimea without a registration of residence, according to various sources, is more than 15 thousand people (including the city of Sevastopol).

Citizens registered in Crimea and LLC “Audit Firm “Lex-Service, Ltd” with the support of the Strategic Litigations Fund of UHHRU challenged the noted NBU Resolution, since setting for the “subjects of Crimea” limitations on access to banking services that are not envisaged for citizens of Ukraine who have registered residence in other regions of Ukraine is a discrimination on the basis of residence. This standpoint was supported by the Ukrainian Parliament Commissioner for Human Rights who in December 2014 opened the proceedings and decided on the presence of a representative during consideration of this case. According to the information available in the Unified State Register of Court Decisions about 6 similar claims were filed, which are being considered by the court now.

### **CRIMEA: THE PROTECTION OF PROPERTY RIGHTS**

According to Art. 1 of Protocol 1 of the Convention, any natural or legal person is entitled to the peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and on the conditions provided for by the legislation and general principles of international law. According to Art. 46 of the Convention on the Laws and Customs of War on Land (IV Hague Convention), family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated. According to Art. 56 of IV Hague Convention, the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

In violation of these norms actions of Russian occupants led to massive violations of property rights on the peninsula. Since the beginning of the occupation under the disguise of so-called “nationalization” the state property of Ukraine was seized on the peninsula, decisions on the “nationalization” of businesses, property, land, educational institutions, monuments, etc. were made. This occurred without the consent of the Ukrainian authorities and compensation for damages.

Private property also falls within the “nationalization” on massive scale. The Law of the Republic of Crimea “On specifics of buy-out of property in the Republic of Crimea”

and amendments to it were adopted, under which the government of Crimea would be able to buy out historic monuments and cultural heritage sites that were privately owned; objects that were declared socially meaningful to Crimea. The law provides for the property owner to be informed of an approved decision on buy-out through the media. Law does not provide for the possibility of appeal of such decision to authority. Representatives of the occupation authorities announced that the law would allow them to use its provisions to former state or municipal buildings that had earlier gone into private ownership. In most cases, seizure of property is held with the participation of legalized paramilitary formations of "Crimean self-defense". According to the "New York Times", in 10 months after the occupation of Crimea, according to estimations of owners and lawyers, owners were deprived of real estate and other assets worth over 1 billion US dollars.

Among the examples of "nationalization" of private property are the property of CJSC "Yalta Film Studio"; property of PJSC "Krymgaz"; granaries with harvest of LLC "Agrotrade" and of the organization of veterans and disabled "Dobrobut"; property of PJSC "Krymhlib"; property of private health care institutions; sanatorium "Aivazovsky"; ship repair facility "Sevastopol Marine Plant" and others.

*When seizing property of one of the private clinics, self-proclaimed Chairman of the Council of Ministers of Crimea Aksyonov "expressed confidence that all clinic's equipment was purchased, and some equipment was received within the charitable help", from which we can conclude that the government of the peninsula will evade equivalent compensation of the value of the property, which is forcibly removed from the owners. In the case of CJSC "Yalta Film Studio" property, Crimean authorities announced that they would pay 100 thousand dollars to former owners. The owner of the studio filed a suit, seeking to invalidate the decision of the Crimean government on forced nationalization of his property, and claims that he invested in the film studio's development tens of millions of dollars.*

Seizure of property takes place also under the disguise of debt collection. The RF court bailiffs in Crimea make lists of arrested property for debt collection of entities in favor of PJSC CB "Privatbank" Without the consent of the latter and the debtors, the property is actually sold to the occupying state. There are also cases of seizure and confiscation of property owned by citizens, at the suit of the State Tax Inspection (of Ukraine). However it is possible to say with certainty about the absence in the Federal Service of Court Bailiffs of Crimea of applications to its address for an enforcement of a court decision from a plaintiff (a government body of Ukraine). On the other hand, acute questions arise on the non-compliance with the court decisions held by the courts before the occupation (for example, in which debtors are state authorities of Ukraine on the Crimean peninsula).

Many problems in the sector of property rights are caused by the actual dual jurisdiction in matters of registration of property rights. It is confirmed by the following examples and facts.

According to the Law of Ukraine "On the ensuring of rights and freedoms and legal regime on the temporarily occupied territory of Ukraine" acquisition and termination of ownership right to immovable property located in Crimea is carried out in accordance with the laws of Ukraine in mainland Ukraine. Thus, all contracts on property, which are made in Crimea during the occupation, are recognized invalid in Ukraine.



In Sevastopol there was conducted a reregistration of small-sized vessels belonging to residents of Sevastopol in the register of the RF. At the demand of the occupation authorities owner should submit an application for exclusion of a vessel from the Register of Ships of Ukraine to the body that conducted a state registration of small-sized vessel or to the higher-ranking organization of the RF. In case of absence of permit issued by the competent authorities of Ukraine or refusal of expulsion from the Register of Ships of Ukraine, vessel's certificate (another document) issued in Ukraine is removed and transferred to the Office of the Safety of People on Water Bodies of the MES of Russia. Thus, the owners are actually deprived of rights and entitling documents.

State Council of the Republic of Crimea adopted the Law "On settlement of debt (overpayment) established by taxpayers registered on the territory of the Republic of Crimea" from December 24, 2014. According to the provisions of the law, the Revenue Service of the Republic of Crimea until 31.12.14 forms the accounting information about taxpayers that were not reregistered in accordance with the legislation of Russian Federation and did not apply for reregistration as of December 29, 2014, are in arrears on payments to the budget, formed in the transition period.

In case of application of this law in practice many people who were registered as entrepreneurs in Crimea can become victims of violations. Throughout the period after 16.03.14 there has been no possibility in Crimea to cancel the registration as an entrepreneur for those who were registered as entrepreneurs under the laws of Ukraine. In addition, many entrepreneurs have moved to mainland Ukraine. However, according to this law, all of them can be additionally charged arrears in respect of taxes and levies. Procedure and body for charging are established. In fact, the law is retroactive, letting to charge and collect arrears that had been made before adoption of this law by entrepreneurs who as well might not conduct business and were not registered as entrepreneurs under the laws of the RF.

Violation of property rights by the occupation authorities is often politically motivated and "punitive" in nature. Thus, systematic pressure has been put on charity organization "Fund "Crimea". The Fund's activities have been connected with the Mejlis of the Crimean Tatar People for many years. In September 2014 there was made an assault on the building of the Fund (it was if not the last building in Crimea, where the flag of Ukraine was placed) by unidentified armed persons wearing masks with the purpose of removing the flag. Despite an appeal to the police on this fact, investigation of the fact of damage of the Fund's property is not conducted.

On September 16, 2014, the Fund's premises was searched, whereby literature, computers, documents, USB drives, hard drives, money were seized. Owners were returned nothing but money. As a part of the court case initiated by Prosecutor General's Office of Crimea there were also seized assets and accounts of the Fund and the Fund itself and its chairman were inflicted administrative punishment in the form of fines (about 400 thousand and 4 million rubles). In addition, the State Committee for Cultural Heritage of Republic of Crimea appealed to the Economic Court of Crimea with claims to remove from ownership of the CO "Fund "Crimea" premises in the city of Simferopol on 2 Schmidt Str. (building, where the Mejlis is situated) with subsequent sale at public auction. Thus the Fund's activity was completely blocked. It was forcibly evicted from the building owned by the Fund and deprived of the right to use the premises.

### CRIMEA: FREEDOM OF MOVEMENT

According to the provisions of Art.49 of Convention Relative to the Protection of Civilian Persons in Time of War of 12.08.1949, individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. The occupation of the Crimean peninsula led to serious systematic violations of these norms of international law.

Since May 2014 the occupation authorities adopted several decisions to ban entry into the territory of the RF for a period of five years (practically a ban on entry into Crimea) for the citizens of Ukraine Crimean Tatars that resided permanently with families in Crimea, had dwelling there, property, conducted professional and public activities:

- April 22, 2014, Mustafa Dzhemilev, People's Deputy of Ukraine — the ban according to paragraph 1 of Art. 27 of the FL "On the procedure for exit from the Russian Federation and entry into the Russian Federation for a period of 5 (five) years up to April 19, 2019".
- July 5, 2014, Refat Chubarov, Chairman of the Mejlis of the Crimean Tatar People — notification of the ban contained a reference to the FL "On the procedure for exit from the Russian Federation and entry into the Russian Federation" No. 114 from 18.07.96. R. Chubarov was not handed a reasoned decision on the entry ban.
- August 10, 2014, Ismet Yuksel, general coordinator of information agency "Crimean news" QHA, Advisor to the Chairman of Mejlis of the Crimean Tatar People — was informed of the ban in Russian, which I. Yuksel cannot speak. The decision on the ban was made by the FSB of the RF according to subparagraph 1 of paragraph 1 of Art. 27 of the FL from 15.08.96 No. 114-FL "On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation". Text of a reasoned decision on the entry ban was not provided.

Thus, the main leaders of the Crimean Tatars were banned entry to the territory of Crimea. Occupation authorities, practically using departure of specified persons from Crimea, performed their actual exile (deportation) from the peninsula. The deportation of the specified persons was not implemented in accordance with the law, did not pursue a legitimate aim in the democratic society, and exceeded the bounds necessary to achieve this goal. Actions taken by the occupying authorities in its severity and the gravity of its consequences are obviously a disproportionate measure of government intervention in private and family life of individuals. Public social position, open resistance to the occupation of Crimea and national status of M. Dzhemilev, R. Chubarov and I. Yuksel indicate a politically motivated decision. Ban on entry of specified citizens into Crimea causes impossibility to reunite and live with their families, is interference in private life, leads to violations of labor rights, right to freedom of expression, freedom of residence and movement. The cases of violation of rights of R. Chubarov and I. Yuksel are supported by the Strategic Litigations Fund of UHHRU.

Actual border demarcation between the Crimean peninsula and mainland Ukraine, controlled by the RF is a serious obstacle to the realization of freedom of movement for citizens of Ukraine who live in Crimea and the rest of Ukraine. The citizens of Ukraine and

foreigners in Crimea have no consular protection. Systematic problems and difficulties regarding freedom of movement arise for the following categories of persons:

- Citizens of Ukraine who live in Crimea and are unable to renew photos in Ukrainian passports after reaching 25 and 45 years due to absence of Ukrainian authorities on the Crimean peninsula. Russian border guards recognize such passports as invalid and improper documents for exit.
- Citizens of Ukraine who have lost/damaged Ukrainian passport in Crimea and due to absence of Ukrainian authorities on the peninsula cannot renew it. Without obtaining Russian passport they cannot leave Crimea.
- Children aged 14 to 16, who do not have possibility to obtain Ukrainian passport before reaching 16 years (according to Ukrainian law), are at risk to become “travel banned”. Russian legislation provides for a person to obtain a passport upon reaching 14 years.
- Citizens of Ukraine, who had no permanent residence registration (“propyska”) in Crimea, but permanently lived there before the occupation. Specified persons actually got status of foreigners, are limited in period of stay on the peninsula by Russian authorities, and cannot exercise a number of rights. When leaving Crimea they can be held administratively liable for violations of the stay in Russia and exiled. There are reported mass appeals of such citizens to the courts in Crimea to establish the fact of their permanent residence in the Crimea before the occupation and the right to permanent residence there in the future. Not all such reasonable appeals to the court were satisfied.

The facts of denial of entry to the territory of Crimea by the workers of DPS of the RF are systematic. Citizens are often being got off the train, held without explanation in the building of railway station, further “preventive talks” are being conducted or passports of citizens are being held for a long time for a special verification.

Control points of entry and exit to/from the occupied territory were established on the border with the Crimean peninsula after the occupation of Crimea, which are controlled by DPSU. For the crossing of these points of entry and exit to/from Crimea Ukrainian citizens need to have documents confirming the identity and citizenship of Ukraine (Law of Ukraine “On guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine”). Any certificates, invitations or other written confirmation of the purpose of travel are not provided for by law. However, numerous complaints of citizens against the workers of DPSU are reported, namely:

- 1) highly thorough search of personal belongings;
- 2) extortion of money for crossing the administrative border with Crimea;
- 3) getting off the train and sending back to Crimea without passing a written decision and without the possibility of its appeal;
- 4) demanding documents confirming the purpose of travel or other documents;
- 5) search and destruction of invalid Russian passports, issued in Crimea.

At the end of December 2014 RNBO of Ukraine decided upon a prohibition of passenger travels to the temporarily occupied territory. Following this decision bus and railway services were indefinitely terminated. Although such decision didn’t provide for a complete ban on crossing checkpoints with the occupied territory and did not lead to the state interference in freedom of movement, the decision itself was not published and brought to the public.

**CRIMEA: FORCED CITIZENSHIP. LEGAL FACTS AND DOCUMENTS ISSUED  
FOR THEIR CONFIRMATION ON THE OCCUPIED TERRITORIES**

**Forced citizenship**

According to the State Statistics Service of Ukraine, about 2 million 350 thousand people lived in the ARC and Sevastopol city as of January 1, 2013. According to the FCL No. 6 all citizens of Ukraine who permanently resided and were registered in Crimea were automatically recognized citizens of Russia. This led to the actual establishment of dual citizenship for residents of Crimea from the perspective of the occupying state. At the same time legislation of the RF provides for the possibility of criminal prosecution for the hiding of the fact of possessing second citizenship.

The occupying state did not provide for that the decisions upon gaining Russian citizenship by Crimeans could be reviewed in administrative or judicial proceedings in accordance with domestic law and were voluntary. One could avoid “automatic citizenship” by personally submitting an application for volition to retain Ukrainian citizenship up to April 18, 2014 in 4 locations throughout Crimea, standing out in common queues with those willing to obtain Russian passport. Since mid-April 2014 a few more locations for renunciation from Russian citizenship were opened in Crimea (whereupon according to the FMS of the RF there were about 250 locations for acceptance of documents for obtaining Russian passport). Deadline for submitting such applications actually lasted for about two weeks. According to the Head of Regional Administration of FMS of the RF in Crimea, 3,500 people in total used this opportunity. Cases are reported when those willing to submit such application failed to make it in time. In addition, persons who were out of the country, the sick, the aged, etc. could not do it. Following the submission of the renunciation application citizens of Ukraine actually got the status of foreigners in the Crimea for the RF, which might result in limitation of the duration of their stay in Crimea, exile and ban on entry.

Having Russian passport is an obligatory condition for enjoyment of a significant number of rights by residents of Crimea — obtaining all kinds of social benefits, obtaining driver’s license, vehicle registration, employment in certain positions (civil service, public institutions), obtaining land, right to obtain free of charge ownership of squatted land plot, free health care, complicated reregistration of property and others. Thus, a system is created that forces Crimeans to recognize themselves as Russian citizens.

4228 orphaned children and children under guardianship or trusteeship of government found themselves in a particularly vulnerable position (as of 01.08.14). Since the administration of all institutions of Crimea collaborated with the authorities of the RF, children were actually deprived of the right to choose citizenship.

Persons who permanently resided in Crimea, but did not have registration (“propyska”) there present a separate category. Such persons became foreigners in Crimea who have to establish to satisfaction of court the fact of their permanent residence in Crimea in order to obtain residence permit or Russian passport. However appeals to the courts involving financial costs and necessity of proving do not guarantee obtaining Russian citizenship or residence permit.

The government of the RF uses the fact of “automatic citizenship” for the criminal prosecution of pro-Ukrainian activists. The most famous examples are cases of Oleg Sentsov

and Olexander Kolchenko, who were arrested and taken out to Moscow, where they are held in pretrial detention facility. Both are citizens of Ukraine, at the time of occupation living in Crimea. They did not take any actions to obtain Russian citizenship and do not admit the fact of gaining this citizenship. However, the prosecution against them is conducted as against Russian citizens; Ukrainian consul is not allowed to visit them.

European Convention on Citizenship of 06.11.1997, ratified by the RF and Ukraine, defines “citizenship” as a legal bond between the individual and the State without specifying the ethnic origin of the individual. Whereupon according to the position of the International Court of Justice of UN in one of the judgments (in the Nottebohm case), citizenship is considered as a legal bond between the State and the citizen, based on a social fact of real ties, interests and feelings, along with the presence of reciprocal rights and obligations. Therefore the “automatic” obtainment of Russian citizenship by citizens of Ukraine in Crimea cannot be recognized legitimate, since the domestic procedures of the RF for its obtainment are inconsistent with the applicable international conventions, international customary law and principles of the right to citizenship, which are generally recognized.

#### **Legal facts and documents issued for their confirmation on the occupied territories**

According to Art. 9 of Law of Ukraine “On guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine”, any act (decision, document) issued by the authorities and/or persons of the second paragraph of this Article is invalid and does not create legal consequences. The specified provision is the result of the unlawfulness of actions and non-recognition of authorities and officials acting on behalf of the occupying state in the ARC and city of Sevastopol. Thus, citizens of Ukraine in Crimea are deprived of possibility to register marriages, births, deaths and obtain other documents of Ukrainian sample. And documents issued by the occupying state are invalid for Ukraine. Therefore citizens face difficulties in exercising their rights in mainland Ukraine. Specified problem will “gain momentum” over time.

*Solution of the specified issue must be found with account of international practice. Thus, for example, in the conclusions made by the International Court of Justice of UN in the advisory opinion of June 21, 1971 on Namibia it is stated:”125. In general, non-recognition of territory by the Government of South Africa should not result in depriving the people of Namibia of any advantages derived from international cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to such acts as, for example, the registration of births, deaths and marriages. However, such acts may be invalidated if the consequences of their performance may cause harm to persons residing on the territory”.*

Ukraine legally recognized fact of the temporary occupation (and therefore effective control) of Crimean peninsula by Russia and responsibility of the RF for violations of the rights and freedoms of a man and citizen on the temporarily occupied territory provided for by the Constitution and Laws of Ukraine. Thus, the question of registration and establishment

of legal facts (births, deaths, powers of attorney, marriages) on the occupied territories must be settled by Ukraine taking into account necessity to prevent possible harming and violation of rights of residents of Crimea. That is, non-recognition by Ukraine of such documents or legal facts that they establish could result in serious violations of rights of its citizens who are staying on the occupied territory.

### **RECOMMENDATIONS**

1. For the President of Ukraine, Ukrainian Parliament Commissioner for Human Rights to send constitutional recommendation to the Constitutional Court of Ukraine on the constitutionality of certain provisions of Ukraine and the Law of Ukraine in general "On the creation of the free economic zone "Crimea" and on the peculiarities of conducting economic activity on temporarily occupied territory of Ukraine". To amend accordingly the Law of Ukraine of 12 August 2014 No.1636-VII "On the creation of the free economic zone "Crimea" and on the peculiarities of conducting economic activity on temporarily occupied territory of Ukraine".

2. For the Cabinet of Ministers of Ukraine and the State Border Guard Service of Ukraine to settle the question of crossing administrative border with the temporary occupied territory of the peninsula of Crimea by citizens of Ukraine and foreigners (approval of the Procedure for entry into the temporary occupied territory and exit from it). As well as the Procedure for taking and form of a decision and Procedure for filing an appeal against a denial of crossing the administrative border with the temporarily occupied territory of Crimea.

3. For the Supreme Council of Ukraine to define the status of persons (Law of Ukraine "On the rights and freedoms of internally displaced persons") — citizens of Ukraine who resided for a long time on the territory of Crimea as of the date of March 18, 2014, but did not have registration on the peninsula, as such that is equivalent to the status of "internally displaced person".

4. To repeal the Resolution of the National Bank of Ukraine as of November 3, 2014 No. 699 "On the application of certain norms of currency legislation during the regime of temporary occupation of the territory of the free economic zone "Crimea".

5. For the Ministry of Justice to draft and make respective amendments to the legislative and regulatory acts of Ukraine to settle the issue of recognition of the facts that occur on the occupied territory (marriages, births, deaths, etc.) and are certified by documents issued by the authorities on the occupied territories of the Crimean peninsula.

6. For the Cabinet of Ministers of Ukraine, Presidential Administration of Ukraine and the relevant ministries, with public participation, to develop and consistently implement a national strategy of actions for protection and restoration of the rights and freedoms of citizens of Ukraine who permanently reside on the temporarily occupied territory or temporarily involuntary moved from it.

7. For the Cabinet of Ministers of Ukraine and the Ministry of Foreign Affairs to take the necessary steps for creating and arranging of continuous work of official international mission for monitoring of observance of human rights on the temporarily occupied territory of the Crimean peninsula.

8. For the Cabinet of Ministers of Ukraine to ensure development and implementation of mechanisms of support by national communities of Ukraine of respective national minorities on the occupied peninsula that are exposed to harassment by the occupation authorities of the Crimean peninsula.

9. For the Cabinet of Ministers of Ukraine to assign the Ministry of Justice of Ukraine together with the Ministry of Culture of Ukraine to develop a strategy for the protection and restoration of violated rights to freedom of conscience and religion on the temporarily occupied territory of Crimea. The strategy should include practical measures and recommendations for the citizens and religious organizations on the methodology for documenting violations and inflicted damage, preparation of applications to international institutions and monitoring missions, preparation of claims to the European Court of Human Rights.

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# ASSESSING THE DEVELOPMENTS IN THE ATO AREA FROM A HUMAN RIGHTS PERSPECTIVE

## INTRODUCTION TO THE HISTORY OF THE ARMED CONFLICT IN DONBAS

Barely two weeks passed after the mass shooting of unarmed protesters of Euromaidan in the very centre of Kyiv and escape of members of the authoritarian regime, when Ukraine faced new challenges. Russian Federation started occupation of Crimea with the help of its army, which it attempted to legalize on March 15, 2014 by holding pseudo-referendum “at gun point.” Taking advantage of temporary disorganization of public institutions, the Russian Federation annexed a part of Ukrainian territory.

It was planned to repeat a similar scenario in eastern and southern Ukraine, where in March-April 2014 different armed groups were created actively under support of the Russian Federation. The basis of such formations was paramilitary criminal gangs called “titushky” that were used by the previous regime to suppress peaceful protests. With the help of local authorities, they violently dispersed rallies being held by people in favour of Ukraine’s unity, beat participants of peaceful campaigns, regardless of their age and sex, with batons and reinforcing wires, threw stun grenades, smoke bombs, used tear gas and cold guns. As a result of one of these attacks during the peaceful campaign on March 13, 2014, a 22-year-old student Dmytro Cherniavskiy died from stab wounds. At that time, the main symbols of “Anti-maidan” rallies artificially organized by the authorities except “George ribbons” were the flags of Russian Federation<sup>2</sup>.

Initially, relatively small in numbers, these groups received significant personnel, military, technical and financial assistance from Russia and with the assistance of local elites of the former authoritarian regime, they began building up a system of total terror and violence against civilians in order to establish control over the region. It is important to note that some organized militias led by citizens of the Russian Federation, in particular, Ihor Hirkin (aka “Strelkov”)<sup>3</sup>, Ihor Bezler (aka “Bies”)<sup>4</sup> and others. Usual tactics was the seizure of administrative buildings, beatings, enforced disappearances, tortures, extrajudicial killings, forced alienation of private property, looting of banks and commercial companies and more. The first wave of evacuation from the region was launched, with

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<sup>1</sup> This Section has been prepared by O. Matviychuk, the Chairman of the NGO “Center for civil liberties”.

<sup>2</sup> [http://www.ostro.org/blogs/mariya\\_oliynik/160050/](http://www.ostro.org/blogs/mariya_oliynik/160050/)

<sup>3</sup> <http://www.unian.ua/politics/912519-sbu-rozkrila-osobu-strelkova-igor-vsevolodovich-girkin-1970-rn-propisaniy-u-moskvi.html>

<sup>4</sup> <http://ua.korrespondent.net/ukraine/politics/3351029-sbu-oholosyla-v-rozshuk-dyversanta-ihoria-bezlera>



the majority of people being the representatives of civil society — human rights activists, community leaders, journalists, local MPs, leaders of student youth and others.

It is important to note that pro-separatist sentiments in the Crimea<sup>5</sup> and in the East<sup>6</sup> were largely formed via the system of Russian propaganda, which described participants of Euromaidan as “Nazi” and intimidated residents of the region with “bloody junta” that would “exterminate the Russian-speaking population.” The activities of the Russian media were in fact an integral part of military operations.

The “Crimean scenario” was disrupted due to the involvement of security and the armed forces, which resulted in the beginning of de jure the “anti-terrorist operation”<sup>7</sup> and de facto — “undeclared war” with Russia<sup>8</sup>, as after the real threat of complete destruction of illegal armed groups in the Donbas, in August 2014 the Russian Federation openly introduced regular troops into the territory of Ukraine<sup>9</sup>, which caused tragedies in Ilovaisk and brutal shooting of “peace corridor”, which the Ukrainian military used to withdraw its forces<sup>10</sup>.

In spring and summer 2014, the Ukrainian parliament, trying to eliminate existing gaps in the legislation, adopted a number of laws and bills that clearly run contrary to the national legislation and international human rights standards. In particular, the bill No. 4310a grants police officers the right to use physical force without warning, special means and weapons in the area of ATO implementation; bill No. 4312a provides for “preventive” detention up to 30 days of persons involved in terrorist activities without any court decision; bill No. 4311a allows the prosecutor to authorize independently, without a court ruling, the arrest of a person for up to 3 days, as well as to search, have access to goods and documents, etc. and bill No. 4453a “On sanctions” that restricts the activities of media and other information entities. In accordance with the explanatory notes to the regulatory acts, the authors justify the adoption of such laws by the necessity to ensure effective performance of tasks by the public authorities for “neutralizing terrorists during the ATO implementation.”

However, in defiance of the decision of the National Security and Defence Council dated November 4, 2014 which was approved by the Decree of the President of Ukraine dated November 14, 2014 the Government did not send a statement on behalf of Ukraine to the Secretary General of the Council of Europe regarding undertaking by Ukraine of measures in certain territories in the area of anti-terrorist operation in Donetsk and Luhansk regions in view of a public danger threatening the life of the nation that derogate from Ukraine’s obligations under the European Convention on Human Rights<sup>11</sup>. Such an appeal would have provided the state with legitimate grounds for restricting human rights and freedoms in the territory of ATO to the extent required by the exigencies of the situation.

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<sup>5</sup> <http://news.bigmir.net/ukraine/800265--Fashizm-ne-projdet---agitacija-za-referendum-v-Krymu>

<sup>6</sup> <http://glavred.info/politika/novaya-strashilka-rossii-na-vostok-ukrainy-napravili-amerikancev-276356.html>

<sup>7</sup> <http://ua.comments.ua/politics/227818-turchinov-zayaviv-pro-pochatok-masshtabnoi.html>

<sup>8</sup> [http://zik.ua/ua/news/2014/05/03/tusk\\_rosiya\\_vede\\_z\\_ukrainoyu\\_neogoloshenu\\_vinyu\\_484696](http://zik.ua/ua/news/2014/05/03/tusk_rosiya_vede_z_ukrainoyu_neogoloshenu_vinyu_484696)

<sup>9</sup> [http://vgolos.com.ua/news/zatrymani\\_pid\\_ilovayskom\\_rosiyski\\_desantnyky\\_zdaly\\_svoih\\_kerivnykiv\\_156004.html](http://vgolos.com.ua/news/zatrymani_pid_ilovayskom_rosiyski_desantnyky_zdaly_svoih_kerivnykiv_156004.html)

<sup>10</sup> <http://strichka.com/item/13512933>

<sup>11</sup> <http://www.president.gov.ua/documents/18445.html>

In order to stop the armed conflict, the OSCE has initiated negotiations. Tripartite Liaison Group was established consisting of the representatives of Ukraine, the Russian Federation and the OSCE. Following the consultations the group representatives signed the Protocol on joint actions dated September 5, 2014<sup>12</sup>. The important provision of the Protocol was the assurance of immediate discontinuation to using weapons by the conflict parties. However, organized armed groups, called Luhansk and Donetsk People's Republics repeatedly violated the terms of the Protocol<sup>13</sup>. Immediately after the publication of the text of the document, their "officials" declared that they were not the signatories to the document<sup>14</sup>. According to official information of the Assistant Secretary-General for Human Rights, at least 9 people were killed during the so-called "cease-fire"<sup>15</sup>.

On-going full-scale military operations in the Donbas, repression of civil society, terror and violence against civilians led to mass evacuations. According to the data published by Assistant Secretary General for Human Rights as of mid-December 2014, over 1.1 million people have left the Donbas area, 54,280 of which remained in Ukraine, 567,956 people crossed the borders of other countries, including the Russian Federation, 240,095 of which have applied for refugee status<sup>16</sup>.

As of the beginning of 2015, the number of people killed during the armed conflict in the East of Ukraine exceeded 5 thousand people<sup>17</sup>, based on the official data only.

### **NATURE OF THE ARMED CONFLICT IN THE DONBAS**

The Russian Federation continues to deny its involvement in the armed conflict, referring to "civil war" and "war of Kyiv against its own people" that is raging in Ukraine<sup>18</sup>. To explain the presence of the Russian regular army in eastern Ukraine, there is used quite a muddled justification: "the mentioned military did participate in the patrolling of the part of the Russian-Ukrainian border, crossed it, probably accidentally, in the area without the appropriate markings and infrastructure"<sup>19</sup>. This occurs despite the fact that Russian soldiers have actually been detained in the territory of the Donbas in a combat zone about 15 kilometres deep from the border<sup>20</sup>.

Justifying its presence in the Donbas with the help of illegal "humanitarian intervention", the Russian Federation under the guise of "humanitarian convoys" and in violation of the procedures of the International Committee of the Red Cross, has been transporting military

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<sup>12</sup> <http://www.unian.ua/politics/959986-obse-opublikovala-minskiy-protokol-dokument.html>

<sup>13</sup> [http://news.liga.net/ua/video/politics/4198059-z\\_yavilosya\\_v\\_deo\\_obstr\\_lu\\_boyovikami\\_aeroportu\\_donetsk.htm](http://news.liga.net/ua/video/politics/4198059-z_yavilosya_v_deo_obstr_lu_boyovikami_aeroportu_donetsk.htm)

<sup>14</sup> <http://www.unian.net/politics/984492-boeviki-dnr-i-lnr-ne-schitayut-sebya-uchastnikami-mirnogo-protokola.html>

<sup>15</sup> <http://www.pohlyad.com/news/n/65058>

<sup>16</sup> <http://www.radiosvoboda.org/content/article/26744734.html>

<sup>17</sup> <http://ukrainian.voanews.com/content/un-death-toll-in-ukraine/2610650.html>

<sup>18</sup> <http://www.kp.ru/daily/26275/3152889/>

<sup>19</sup> <http://grani.ru/Politics/World/Europe/Ukraine/m.232367.html>

<sup>20</sup> <https://www.youtube.com/watch?v=cjJlfzYTPgk>

equipment and ammunition<sup>21</sup>. A common practice was transportation through the Russian-Ukrainian border of military equipment that is referred to as the equipment without marking and license plates in the report of the Special Monitoring Mission of the OSCE<sup>22</sup>. Additionally, Ukrainian positions on the border are regularly shelled from the Russian territory by using multiple rocket launcher system “Grad”, the facts that were proved on numerous videos made by residents of the Russian village Hukovo<sup>23</sup>.

Thus, the present armed conflict is of international nature, which, according to Reuters, was recognized not in public by the International Committee of the Red Cross<sup>24</sup>. However, the efforts of Russian diplomacy at the international level and aggressive Russian propaganda in different countries are aiming to present the developments in Ukraine as an internal international conflict through the use of local agents, the so-called Luhansk and Donetsk People’s Republics.

Firstly, it should be noted that the Luhansk and Donetsk People’s Republics are rather artificial conglomerates of various organized armed groups that often fight with each other for the sphere of influence<sup>25</sup>.

Secondly, these armed groups are organized terrorists organizations because they have chosen violence and terror against civilians for establishing control over the region as the primary method of warfare<sup>26</sup>.

Thirdly, the organized armed groups are so-called asteroid groups<sup>27</sup>, local agents of the Russian Federation, as their existence is possible owing to the power of this state — financial, political, technological, military aid, etc. — and they are not independent in making decisions. Their position in the international arena is represented by the Russian Federation, which is also a member of the Minsk talks<sup>28</sup>. At the same time, Russia is eliminating the leaders of those organized armed groups that go beyond its control<sup>29</sup>.

Fourth, contrary to the image of “militias, fighting with fascists junta” that was disseminated by the Russian propaganda, it should be noted that national and radical neo-Nazi organizations of the Russian Federation are actively engaged on the side of organized armed groups, including hundreds of militants of the Black Hundreds, Russian National Unity (including leadership of the neo-Nazi organization), the Eurasian Youth Union, “Another Russia”, supporters of anti-Semitic neo-heathen Conceptual party “Unity” (The concept of public security “Dead Water”) and so on<sup>30</sup>.

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<sup>21</sup> <http://www.unian.ua/society/1010021-u-somomu-rosiyskomu-gumkonvoji-buli-tilki-boepripasi-loda.html>

<sup>22</sup> <http://podrobnosti.ua/podrobnosti/2014/11/09/1002025.html>

<sup>23</sup> <http://news.bigmir.net/ukraine/831118-Rossijanin-snjal-video-obstrela-Ukrainy---Gradami---s-rossijskoj-territorii>

<sup>24</sup> <http://www.reuters.com/article/2014/07/22/us-ukraine-crisis-warcrimes-idUSKBN0FR0V920140722>

<sup>25</sup> <http://www.pravda.com.ua/rus/news/2014/07/1/7030653/>

<sup>26</sup> <http://www.unian.ua/politics/918854-gpu-viznala-terroristichnimi-organizatsiyami-samoproholosheni-dnr-ta-lnr.html>

<sup>27</sup> <http://gtmarket.ru/laboratory/publicdoc/2007/782>

<sup>28</sup> <http://ua.krymr.com/archive/news-uk/20141201/16928/16928.html?id=26761041>

<sup>29</sup> <http://hvylya.net/news/exclusive/podrobnosti-zachistki-gruppyi-betmena-unichtozhennoy-rossiyskimi-spetssluzhbami.html>

<sup>30</sup> <http://eajc.org/page18/news45696.html>

Taking into account mentioned above, it can be argued that the Russian Federation has effectively been controlling the areas in the DNR and LNR in the Donbas and is responsible for all violations of human rights and international humanitarian law in these areas.

In its resolution, the European Parliament on January 15, 2015 found that the so-called DNR/LNR have applied terrorist methods of operations, and stated that Russia has been raging an undeclared war in the territory of Ukraine. Thus, in Clause 5 it is stated that Russia is raging “an undeclared hybrid war against Ukraine, which includes information war with elements of cyber-warfare, the use of regular and irregular forces, propaganda, energy blackmail, economic pressure, diplomatic and political destabilization”; separately, it is emphasized that these actions are in violation of international law and pose a serious challenge to the security situation in Europe<sup>31</sup>.

#### **DESCRIBING THE SITUATION IN THE ATO FROM THE PERSPECTIVE OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW**

Organized armed groups have introduced in areas under their control a system-based and large-scale terror against civilians in order to establish control over the region. Beating, abduction, hostage taking, torture, extrajudicial killings, forced alienation of private property and other have become a common practice. They started a systematic persecution of explicit or alleged supporters of Ukraine’s state sovereignty based on different motives — political views, religious beliefs, language, belonging to the civil service in case of failure to side with combatants. Consistency and magnitude of these acts indicate the existence of a deliberate terror policy, planning and organization of violence.

Organized armed groups deliberately violate the rules of international humanitarian law. Intentional policy aimed at committing massive war crimes of different forms, has been confirmed by its organized manner, frequency and inability to commit such crimes by accident. It is also evidenced by exemplary demonstrative commitment of some war crimes, defiance of any “laws of war”, such as: a parade of prisoners in Donetsk<sup>32</sup>, the order not to take Ukrainian military prisoners in captivity<sup>33</sup>, mining of transport vehicles owned by civilians to make explosions at Ukrainian checkpoints, etc.<sup>34</sup>

Human rights organizations, including monitoring visits of UHHRU, have constantly documented cases of using civilians as human shields, mining civilian objects, shelling at peace corridors, transforming civilians into military targets, deliberate attacks on civilian objects, murder and torture of Ukrainian servicemen and so on.

Security Service of Ukraine has published a map of international crimes<sup>35</sup>, which enables to learn, in particular, about the system of functioning detention centres of

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<sup>31</sup> <http://www.eurointegration.com.ua/articles/2015/01/15/7029681/>

<sup>32</sup> <https://www.youtube.com/watch?v=P-EzdyyHQRA>

<sup>33</sup> <http://www.memo.ru/d/223351.html>

<sup>34</sup> <https://www.facebook.com/csomvd/posts/670952783013038>

<sup>35</sup> <http://ssu.kmu.gov.ua/sbu/doccatalog/document?id=132298>

Ukrainian hostages (information is confirmed by testimonies of local residents, the results of interrogations of detained militants and satellite images)<sup>36</sup>.

It should be emphasized that in the territories that are controlled by the organized militias, there is no legal protection whatsoever. They do not apply domestic law of Ukraine, nor international law. Members of organized armed groups are guided usually by oral commands of their leadership and have broad discretion to make independent decisions regarding property, health and life of civilians. There are no human rights institutions there. The so-called “ombudsmen” of the DNR or LNR are engaged in an exchange of prisoners of war<sup>37</sup>. “People’s courts” and death penalties<sup>38</sup> are taking place in the “republics”<sup>39</sup>.

An important issue is the violations of human rights and international humanitarian law by the Ukrainian units fighting in the ATO area. For example, Amnesty International has documented cases of mass abuses by individual soldiers of volunteer battalions, including kidnapping, illegal detention, abuse, theft, extortion<sup>40</sup>. Human Rights Watch accuses the Ukrainian government forces of violation of international humanitarian law, including the use of cluster munitions<sup>41</sup>. All these facts in each case require effective investigation and confirmation of their commitment — those responsible must be brought to justice. It should be noted that when demonstrating additional efforts, the relevant government agencies agree to open criminal proceedings<sup>42</sup>. The result of one of these proceedings was disbanding of patrol police battalion “Shakhtarsk” due to prevalence among soldiers of the battalion of looting practices<sup>43</sup>. At the same time, based on a number of criteria, it is hardly possible to conclude that such investigations are effective.

Although the number of violations committed by the Ukrainian military forces is much lower than the number of offenses committed by organized militias of the DNR/ LNR, this trend is quite alarming. Human rights are not measured in percentage and require absolute protection regardless of the individual offender. The persistence of such crimes in the territories controlled by Ukrainian government forces<sup>44</sup> evidences the failure of the government to solve systemic problems that facilitate their commitment, and stop this shameful practice.

Taking into account the subject of this report, the author will focus on those violations covered by international standards of human rights and international humanitarian law, in particular, on gross violations committed within an organized system of terror against civilians who are explicit or alleged supporters of state sovereignty.

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<sup>36</sup> <http://www.unian.ua/politics/992025-sbu-pokazala-kartu-zlochiviv-proti-lyudyanosti-skoenih-boyo-vikami-na-donbasi.html>

<sup>37</sup> [http://espreso.tv/news/2015/01/10/terorysty\\_quotdnrquot\\_anonsuvaly\\_mozhlyvyy\\_obmin\\_polonenymy](http://espreso.tv/news/2015/01/10/terorysty_quotdnrquot_anonsuvaly_mozhlyvyy_obmin_polonenymy)

<sup>38</sup> <http://vikna.if.ua/news/category/ua/2014/10/31/24396/view>

<sup>39</sup> <http://amnesty.org.ua/nws/separatisti-v-ukrayini-pogrozhuuyut-pro/>

<sup>40</sup> <http://amnesty.org.ua/materiali/human-rights-in-ukraine/zlovzhivannya-ta-voyenni-zlochiviv-z-boku-d/>

<sup>41</sup> <http://www.hrw.org/ru/news/2014/10/20/ukraina-shirokoe-primenenie-kassetnykh-boepripasov>

<sup>42</sup> <http://ua.korrespondent.net/ukraine/3436082-ukraina-hotova-dovesty-scho-nikoly-ne-vykorystovuvala-kasetni-bomby>

<sup>43</sup> [http://www.ukrinform.ua/ukr/news/spetsbatalyon\\_shahtarsk\\_rozformovano\\_za\\_maroderstvo\\_\\_avakov\\_1982056](http://www.ukrinform.ua/ukr/news/spetsbatalyon_shahtarsk_rozformovano_za_maroderstvo__avakov_1982056)

<sup>44</sup> <http://gazeta.zn.ua/internal/zachistka-stanicy-.html>

### CREATION OF SYSTEM OF VIOLENCE AND TERROR AGAINST CIVILIANS

Organized armed groups declared as “enemies of the people”<sup>45</sup> and began persecuting a wide range of civilians who are explicit or alleged supporters of Ukraine’s sovereignty. The victims of these actions were primarily representatives of civil society — human rights activists, journalists, members of peaceful campaigns for Ukraine’s unity, community members, volunteers, priests, local MPs, civil servants and others. Civilians may be automatically identified as supporters of state sovereignty on the following grounds:

- political beliefs: human rights activists, journalists, community leaders, members of the opposition parties standing against the former authoritarian regime, etc.<sup>46</sup>
- religious beliefs: the priests and parishioners of various faiths different from the Ukrainian Orthodox Church of Moscow Patriarchate;<sup>47</sup>
- language: people who speak Ukrainian;<sup>48</sup>
- positions held: officials, law enforcement officers, local MPs in case of their refusal to obey the authority of the DNR/LNR.<sup>49</sup>

One of the first victims of persecution was a deputy Volodymyr Rybak from the city Horlovka, who was kidnapped by unknown on April 17, 2014 after attempts to put back the national flag on the building of the regional administration (the abduction recorded on video). The bodies of Volodymyr Rybak and 19-year old student Yuriy Popravko revealing signs of cruel torture were found on April 21 in the inflow of Northern Donets River near the town of Sloviansk. The official cause of death: combined body injury as a result of torture, followed by sinking of the victims who were unconscious but still alive. Security Service of Ukraine released phone records, according to which the murder of Volodymyr Rybak was committed with the involvement of a group of so-called “Strelok” that is active in the Donetsk region, and a citizen of the Russian Federation, Colonel of Main Intelligence Directorate Ihor Bezlier. According to these records, on April 17, 2014 Bezlier (aka “Bies”) issued a command to the self-proclaimed police chief of Horlovka city regarding neutralization of Rybak. At the same time, Bezlier gave instructions to a member of his group, the Russian serviceman, to kidnap Volodymyr Rybak, put him in the car and deliver to the appointed place, where measures of physical restraint were applied to him<sup>50</sup>.

People held in captive undergo severe torture, beating, cutting of body parts, ignition, electrical current etc. The case of 52-year-old resident of Yasynuvata Iryna Dovhan has got a considerable publicity abroad due to the fact that the photo of Iryna near pillory in Donetsk was published by New York Times. She was kidnapped from the yard near her

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<sup>45</sup> [http://society.lb.ua/accidents/2014/06/13/269654\\_rukovodstvo\\_dnr\\_reshilo\\_iskat.html](http://society.lb.ua/accidents/2014/06/13/269654_rukovodstvo_dnr_reshilo_iskat.html)

<sup>46</sup> <http://life.pravda.com.ua/person/2014/12/3/185193/>

<sup>47</sup> [http://24tv.ua/news/showNews.do?u\\_slovyansku\\_znayshli\\_mogilu\\_zakatovanih\\_teroristami\\_svyashhenikov\\_mvs&objectId=464212](http://24tv.ua/news/showNews.do?u_slovyansku_znayshli_mogilu_zakatovanih_teroristami_svyashhenikov_mvs&objectId=464212)

<sup>48</sup> <http://tsn.ua/politika/na-luganschini-boyoviki-vbili-dvoh-cholovikiv-za-patriotichne-privitannya-vo-svoboda-348919.html>

<sup>49</sup> <http://crime.in.ua/news/20140809/kazn-prokurora>

<sup>50</sup> <http://nbnews.com.ua/ua/news/119533/>

own house by the militants of “Vostok” battalion. Iryna told the scenes of her detention, which were not fixed by the camera:

*“I was beaten, mocked, they shot near my ears with a gun and threatened to rape me sadistically, telling how it will happen... He asked me to come to the ward bars, opened the grate and insisted that I stood still, he ran and hit me in the chest with his foot. I flew to the wall and in ten minutes could not breathe properly. It was their entertainment... Especially scary was when they brought a man by a phone call. I have not seen him, but he was beaten, and he cried. I cried, crawling on the floor and praying that I was just shot.”<sup>51</sup>*

In general, any person who is actively involved in carrying out the activities that are not controlled by the armed organized groups such as social volunteering may become a victim of persecution. The policy of the organized militias aims at suppressing any form of public activity beyond their control. Therefore, the victims of violent kidnapping and hostage taking were the volunteers who helped civilians in the Donbas.

For example, on September 29, the director Vasyl Kovalenko was kidnapped from the pension “Biriusa” near the village Bezimene of Novoazovsky region. Armed men with DNR symbolic in the SUV “offered” the director “a ride with them” in his own car, accompanied by their vehicle. On October 1, 2014 Vasyl Kovalenko’s private car was spotted to be used without license plate by the organized armed groups. It is worth noting that in last months the director of the pension voluntarily provided shelter for the displaced people from the area where the anti-terrorist operation was implemented. The pension could accommodate more than 250 people<sup>52</sup>. A similar motive for abduction has been determined in the case of human rights activist, a lawyer Oleksandr Kudinov who independently evacuated hundreds of people from the ATO area and negotiated for the release of civilian hostages regardless of their political views<sup>53</sup>.

To deal with the “enemies of people”, the organized armed groups used the practice of “execution lists” during examinations at the checkpoints<sup>54</sup>. In July 2014, they sent letters to Ukrainian journalists with a warning that they are the enemies of “Russian World” and “write lies about the Donbas according to the dictation of decadent West.” There was published a preliminary list of 15 journalists who were said to be discovered and killed whatever place they were<sup>55</sup>. Overall, more than a few dozens of journalists were taken hostage during 2014<sup>56</sup>. Some of them were offered to shoot scenes for the propaganda of Russian TV channels in exchange for their release<sup>57</sup>.

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<sup>51</sup> [http://www.bbc.co.uk/ukrainian/politics/2014/09/140901\\_donbas\\_dovgan\\_ie\\_yg](http://www.bbc.co.uk/ukrainian/politics/2014/09/140901_donbas_dovgan_ie_yg)

<sup>52</sup> [http://donbasssos.org/post\\_20141011\\_01\\_uk/](http://donbasssos.org/post_20141011_01_uk/)

<sup>53</sup> <http://www.telekritika.ua/profesija/2014-09-30/98666>

<sup>54</sup> <http://tsn.ua/ukrayina/motoroshne-pravosuddya-boyovikiv-smertniy-virok-za-tri-dni-ta-rozstril-invalidiv-374729.html>

<sup>55</sup> [http://24tv.ua/news/showNews.do?teroristi\\_pogrozhuuyut\\_fizichno\\_znishhiti\\_15\\_ukrayinskih\\_zhurnalistiv\\_spisok&objectId=463239](http://24tv.ua/news/showNews.do?teroristi_pogrozhuuyut_fizichno_znishhiti_15_ukrayinskih_zhurnalistiv_spisok&objectId=463239)

<sup>56</sup> <http://imi.org.ua/barametr/>

<sup>57</sup> [http://www.telekritika.ua/profesija/2014-10-07/98949?theme\\_page=70&](http://www.telekritika.ua/profesija/2014-10-07/98949?theme_page=70&)

*In this way, in the territories under control of the organized armed groups a system of mass kidnappings and tortures of civilians was set up. Thus, in May 2014, Hugh Williamson, the director of Human Rights Watch Europe and Central Asia, said: "militia with the help of beating and kidnapping make it clear to everyone that those who do not support them should keep silent or go away. These formations commit arbitrary actions being under no control."<sup>58</sup>*

Later self-proclaimed Luhansk and Donetsk People's Republics established special units according to the Soviet example, bearing the same name — the NKVD<sup>59</sup> and SMERSH. The employees of these units have been preparing "executions lists", kidnapping activists and their families, torturing and shooting people<sup>60</sup>.

In extremely difficult situation in the areas controlled by the organized militias are vulnerable groups, including ethnic minorities, religious communities, representatives of LGBT community, HIV-positive people and prisoners. The prisoners of the colony No. 52 in Yenakievo reported that after escape of six prisoners, they were not given bread any more. About two weeks earlier, the AIDS prisoner died in the health centre because he could not get treatment<sup>61</sup>.

## CONCLUSIONS

1. A hybrid war is raging in Ukraine. It was launched by the Russian Federation that is using for this purpose its local agents, illegal armed groups and regular Russian army. The continuing armed conflict is an international one, despite being always described by the Russian propaganda as the internal conflict.

2. Organized armed groups that form the so-called Luhansk and Donetsk People's Republics apply terror against civilians as the primary method of warfare. With this regard, common practices in the territories under their control are assault, enforced disappearance, torture, extrajudicial killings and forced alienation of private property owned by civilians.

3. The organized armed forces systematically and consciously and with undisguised disdain violate the norms of international humanitarian law: using the civilian population as a living shield, laying mines in civilian objects, shelling the peace corridors, transforming civilians into military targets, intentionally attacking civilian objects, murdering and torturing Ukrainian POWs, etc.

4. There were recorded cases of human rights and international humanitarian law violations by the Ukrainian government forces in the territories liberated from the militants. When exerting additional efforts, investigations are launched with regard to such crimes, while in most cases they can hardly be described as effective.

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<sup>58</sup> <http://www.hrw.org/ru/news/2014/05/27/ukraina-proizvol-opolchentsev-na-vostoke>

<sup>59</sup> <http://www.svoboda.org/content/transcript/26691749.html>

<sup>60</sup> <https://vk.com/club75481560>

<sup>61</sup> <http://www.radiosvoboda.org/content/article/26612124.html>



## RECOMMENDATIONS

1. The Verkhovna Rada of Ukraine should urgently adopt a resolution No. 1312 dated 09.12.2014 "On recognition by Ukraine of jurisdiction of the International Criminal Court on the situation that has developed as a result of the on-going armed aggression starting from February 27, 2014 of the Russian Federation against Ukraine and the commitment of international crimes in the territory of Ukraine." To clarify clause 1 of this resolution and to provide for the validity of the appeal from February 23, 2014 until the immediate ratification of the Rome Statute by Ukraine.

2. The Verkhovna Rada of Ukraine should adopt a bill No.1788 dated 16.01.2015 that provides for supplementing the Article 124 of the Constitution of Ukraine with the following provisions: "Ukraine may recognize the jurisdiction of the International Criminal Court under the terms of the Rome Statute of the International Criminal Court."

3. Security Service of Ukraine together with the Ministry of Defence, General Prosecutor's Office, Military Prosecutor's Office, Ministry of Internal Affairs, Ministry of Justice, Ministry of Foreign Affairs should establish a coordination group to organize the collection and recording of evidence of committing crimes against humanity and war crimes, and coordinate such activities for preparation of materials for submittal to the International Criminal Court on commitment in Ukraine of crimes against humanity and war crimes by the organized armed groups controlled by the Russian Federation.

4. The Ministry of Justice in cooperation with the Ministry of Foreign Affairs should immediately send a statement on behalf of Ukraine to the Secretary General of the Council of Europe on undertaking by Ukraine of measures in certain territories in the area of anti-terrorist operation implementation in Donetsk and Luhansk regions due to the public danger threatening the life of the nation that derogate from Ukraine's commitments under the European Convention on Human Rights.

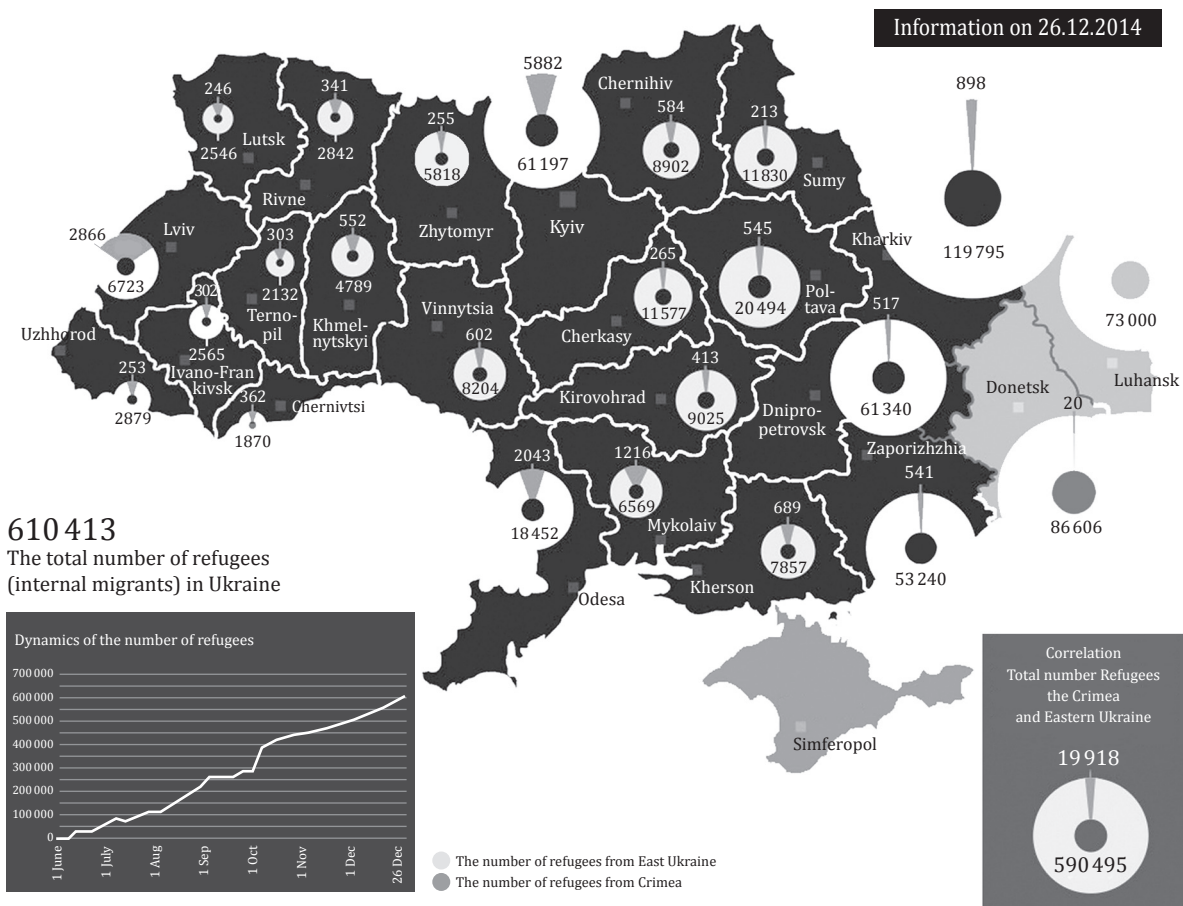
5. The Ministry of Justice in cooperation with the Ministry of Foreign Affairs should develop a plan of measures to protect the interests of the state and its citizens at international level with involvement of the Security Service of Ukraine, Ministry of Defence, the General Prosecutor's Office, Military Prosecutor's Office, Ministry of Internal Affairs, National Security and Defence Council, the Presidential Administration, members of parliament, scientific community and civil representatives, in particular, to recognize the DNR and LNR as terrorist organizations at the international level, prepare a lawsuit against Russia in the International Court of Justice, relevant cases in the European Court of Human Rights, etc.

6. The Cabinet of Ministers should create a coordination group of representatives of the Security Service of Ukraine, Ministry of Defence, the General Prosecutor's Office, Military Prosecutor's Office, Ministry of Internal Affairs, National Security and Defence Council, the Presidential Administration, the Secretariat of the Ombudsman, that will be tasked with carrying out control over compliance with the laws in the area of ATO implementation and responding to reports of illegal actions by state representatives.

# PROTECTION OF RIGHTS OF INTERNALLY DISPLACED PERSONS<sup>1</sup>

In 2014, Ukraine witnessed the most considerable internal displacement in Europe since the Second World War. According to the data of the United Nations High Commissioner for Refugees as of the end of December in 2014, over 610,000 internally displaced persons (IDP) were registered in Ukraine. However, the experts estimate that due to the fact that not everybody has been registered, a real amount of displaced persons exceeds one million.

The State turned out to be not ready for new challenges, so most of the problems associated with IDP lie on volunteers.



<sup>1</sup> Prepared by Borys Zakharov, the Ukrainian Helsinki Human Rights Union.

According to the Guiding Principles on Internal Displacement, internally displaced persons are individuals or groups of people who have been forced to flee or to leave their homes or places of residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized state border.

In Ukraine internal displacement started since February 2014 as a result of occupation of the Autonomous Republic of Crimea and Sevastopol by the Russian Federation. Internal displacement is caused by the following factors:

1. Political repressions.
2. Abuse of human rights and fundamental freedoms.
3. Desire of people to continue living in Ukraine and non-recognition of annexation.
4. Economic consequences of annexation.

During the occupation and further annexation, persecution of the activists who supported the Euromaidan, spoke out against the annexation and disagreed with actions of the new Crimean government and Russian occupants began in Crimea. Some of them were arrested and accused of fictitious crimes. For example, Oleg Sentsov, a famous filmmaker, was arrested on the 11th of May on suspicion of terrorism and taken to Moscow. Most pro-Ukrainian activists were forced to escape political repressions to the mainland Ukraine.

In Crimea, involuntary disappearances, political murders and tortures of Crimean Tatars and Ukrainian activists were observed. Mostly, the Crimean Tatar Group representatives were persecuted. Following the Stalinism traditions, occupation authorities decided to force the Crimean Tatars to leave their historical homeland. Mustafa Djemilev, Refat Chubarov and a famous public activist Ismet Uksel, the leaders of the Crimean Tatars, were prohibited from entering Crimea. The building of the Mejlis of the Crimean Tatar was expropriated. Fabricated criminal and administrative cases were instituted against activists; unfair penalties were imposed on legal entities. Culture related organizations announce ban on public cultural events of the Crimean Tatars. Widespread discrimination and violation of the rights of the Crimean Tatars, conditions impossible for life and work in the Crimea — this is all about “latent” deportation of the Crimean Tatars organized by the occupation authorities.

In Crimea, the situation with the repressed freedom of convictions is even worse than in Russia. Few pro-Ukrainian media or those that tried to freely express their point of view, were liquidated; for example, a popular TV-channel “Chornomorka” was closed. All Ukrainian channels ceased broadcasting in the territory of the peninsula, and only Russian channels are on-line. Only one broadcasting company allowing free discussions was left — the Crimean Tatar ATR. However, it is also under constant pressure. Freedom of religion is also under pressure in Crimea. There were numerous actions against Muslims, the Orthodox Church of Kyiv Patriarchate and the Greek Catholic Church. There is a dramatic increase in acts of vandalism. Some churches were taken away from the Kyiv Patriarchate. The act of solidarity of the Crimean Tatars who permitted to conduct Orthodox service in the mosque has to be mentioned. The rights of Catholics and Protestants are also restricted. Priests of these churches are denied visas; their residence certificates are not extended.

Other civil freedoms and political rights are also violated by the new authorities. Freedom of meetings and association, freedom of movement are strictly limited, ownership rights are violated.

Thus, by the end of March 2014, the number of registered IDPs reached 3,600 persons, and the current number of the migrants from Crimea is more than 5,000 persons.

Since April 2014, due to massive unrests inspired by Russia, the first internally displaced persons from Donetsk and Luhansk appeared. During the escalation of armed conflict, IDPs flow from the area of the so-called anti-terrorist operation (ATO) was constantly increasing. Internal displacement from the ATO area has the following reasons:

1. Threat to life and health through indiscriminate firing (including heavy artillery).
2. Destruction of buildings as a result of shelling.
3. Massive abuse of human rights and fundamental freedoms.
4. Savage persecution of disagreeing people by rebels.
5. The catastrophic social and economic situation in uncontrolled territories of Ukraine, especially after the suspension of state funding of these areas and termination of payment of all state social benefits.

There is no other rule except rule of force in the territory controlled by rebels. All fundamental rights and freedoms are abused at every turn.

Violation of the right to life: the rebels shoot people without charge or trial. Sometimes the so-called “people’s courts” are organized without the right to defense, where the tortured victim is represented as a criminal, and people vote for the death penalty by show of hands. Civilians are being killed by shelling. The terrorists hiding behind civilians are shelling positions of the Ukrainian artillery located near residential buildings, schools, hospitals. In addition, there are the proved facts of shelling of residential areas by terrorists disguised as Ukrainian soldiers. Still, there is no conclusive evidence that people die from terrorist attacks only. We can only state the fact that the Ukrainian forces do not shoot at civilians deliberately, unlike the rebels.

We do not know the exact number of the people killed. According to the UN, about 6,000 people were killed during the conflict in the Eastern Ukraine. More than 1,700 people are missing. About 15 thousand are wounded. In fact, the number of the dead is much higher.

According to the SSU, about 500 Ukrainian soldiers and civilians are in the dungeons of terrorists. This number also appears to be lower than the real one. According to human rights organizations, the number of hostages is about 900. The state cannot afford to extend considerably a list of civilians because it will provoke terrorists to take more hostages for exchange and ransom payment. Hostages are subjected to terrible torture, after which many people lost their lives and many of them became disabled. Women hostages are not only tortured, but also raped; this is a routine practice of rebels.

Cases of torture, abductions and extortion by the Ukrainian forces are also fixed, but the government responds to these crimes, the prosecution initiated a number of criminal proceedings based on the facts.

Violation of the civil and political rights in the territories occupied by terrorists does not even have to be mentioned. A person may be killed or taken to the dungeon for Ukrainian symbols or any incautious word.

The situation in the field of social and economic rights is close to a humanitarian catastrophe. Many disputes have been triggered by the Decree of the President of Ukraine which in fact sets the economic blockade of the areas controlled by terrorists. The reason for adoption of this Decree is inability to carry out economic activities in these areas.

All this caused massive internal displacement and the flow of refugees to Russia and other countries.

In March 2014, the UN Secretary-General Mr. Ban Ki-moon said that Ukraine had to adopt immediately a law on the status of internally displaced persons so that the international community could provide humanitarian aid to Ukraine. The state did not hurry with the development of legislation on IDPs, but representatives of civil society understood that this problem was very urgent, internally displaced persons were in need of immediate assistance, and that their number would only grow and they would move not only from Crimea, but also from other regions of Ukraine, where a hybrid war of Russia against Ukraine already lasted at that time. At that time, the number has not yet reached hundreds of thousands of migrants from Donbas, but it was clear what Ukraine could expect. Therefore, the law about internally displaced persons had to be adopted immediately. That was admitted by several organizations, including IC "Maidan Monitoring" and Kharkiv Human Rights Group.

Kharkiv Human Rights Group (KHRG) has developed a draft law "On Forced Displaced Persons" which was published on the website of KHRG on April 15, 2014: <http://www.khpg.org/index.php?id=1397592025>. After that for two months this draft law was discussed with UNHCR, Office of the Commissioner for Human Rights, representatives of NGOs, volunteers and, of course, with the displaced people, as well as with politicians and people's deputies. During the discussion the draft was improved. It was approved by international and national experts and drew attention of the civil society which demanded a prompt adoption of the law on forced displaced persons in the wording effective as of the moment. As a result, people's deputy Sergii Sobolev developed his own draft on the basis of that one. It was submitted to the Verkhovna Rada under No. 4998 in cooperation with Volodymyr Aryev. Most of the provisions contained in the draft of KHRG were moved to the Sobolev's draft, and even though assistance to migrants was significantly reduced, the Sobolev's draft, in opinion of experts, was consistent with international standards and was improved in principle.

However, on June 18, when the representatives of the civil society and international organizations came to the meeting of the Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations, they were presented with absolutely different draft which everybody, including the representatives of the Presidential Administration, saw for the first time. The draft was quickly discussed without considering opinion of society and international organizations. The following day the draft "On Legal Status of Persons Forced to Leave the Residence as a Result of Temporary Occupation of the Autonomous Republic of Crimea and the City of Sevastopol and Circumstances of Antiterroristic Operations on the Territory of Ukraine" was submitted to the parliament under No. 4998-1. At the same day it was adopted as a whole with significant breach of parliamentary rules. Such haste can be explained by its extraordinary relevance, but, unfortunately, it generally does not solve the problems of forcedly displaced persons. Public discussion of the draft did not take place; the UNHCR recommendations on key provisions of the law were disregarded. The law contains a number of serious drawbacks.

The law applied to internally displaced persons from Crimea, the city of Sevastopol and ATO area only. It means that in case of forced migration, for example, as a result of the attack outside the ATO area, this law does not apply to migrants from the territory. In this sense, the law was short-sighted.

The memorandum states that adoption of the draft law does not require additional expenditures from the State Budget of Ukraine. It means that the legislators do not want to take care of the internally displaced persons and that they perhaps want international organizations, charities and the Ukrainian public to take care of them.

Art. 3, part 13 of the Law actually placed the burden of proof of resettlement circumstances on IDPs and violated the principle of presumption of innocence, as a person had to prove that he/she was not a criminal. The principle stated in this article would strongly complicate procedure for obtaining an internally displaced person card and would create “risks of corruption offenses” and the ground for massive denials in obtaining the card, because following this logic, the State Migration Service (SMS) has to request the Ministry of Internal Affairs and the Security Service of Ukraine to verify the identity of the person claiming the status of internally displaced person, which endangers the life, health and property of such persons, because the requests are forwarded to the relevant authorities in the territory where migrants came from and, therefore, could fall into the hands of terrorists.

According to this law, SMS had to take care of internally displaced persons. This reflects the philosophy of the law: it is more important for the state to keep records and monitor the migration of internally displaced people than to assist them. If the main purpose of the law is to help people who are in difficult social situation due to migration, then the Ministry of Social Policy should take care of them.

The drawbacks of the law and threats to human rights and fundamental freedoms go beyond the above mentioned arguments. In general, the adopted law <http://www.khpg.org/index.php?id=1403431328> did not attain the aim of providing effective assistance to internally displaced persons.

Human rights organizations, IDP organizations and volunteers addressed the President to veto this law. Taking public opinion into consideration, the President vetoed the law on July 2, 2014. It should be mentioned that it was the first veto of Petro Poroshenko as the president.

As a result, a work group was formed in the Administration of the President of Ukraine to develop a new draft law, which group was composed of representatives of NGOs, as well as consultants from UNHCR and OSCE. The public in cooperation with authorities and international organizations produced a new draft within July that attained certain compromise between expectations of civil society and the abilities of the State.

After this the Administration of the President provoked a delay in submission of this draft to the Parliament where it was examined too long by various bodies. During this time another draft law was presented by Yurii Miroshnychenko, a former member of the Party of Regions, representative of V. Yanukovich in the Parliament. His draft had similar drawbacks with the law adopted by the VH on June 19; although it contained a number of positive provisions, but also had a terminology that did not meet international standards. The rules provide 14 days for presentation of an alternative draft law. Since the Administration of the President had no time to prepare a draft law to represent it to the Parliament on behalf of the President, this draft upon agreement with the development team was presented by a group of people’s deputies under No. 4490a-1. It was supported by the Parliament Committee for Human Rights and put on the agenda of September 16, 2014. The main speaker was Valerii Patskan.

Because of the passion provoked by the law “On Lustration”, the draft law on IDPs was not discussed on September 16. NGOs have organized a powerful advocacy campaign to support the draft. The situation was complicated by the fact that parliamentary elections were announced, the election campaign began and the Parliament decided to work only 2 days during the campaign, on September 16 and October 14.

Public organizations submitted petitions to Turchynov, the Head of the Verkhovna Rada, so that he would include the draft law in the agenda for a special session on October 7 and another session on October 14. International organizations also urged the Parliament to adopt this draft law immediately.

Markus Jaeger, Deputy Special Representative of the Secretary General of the Council of Europe, underlined the necessity to adopt the draft No. 4490a-1 as soon as possible. The representatives of other international organizations made similar statements. It was stressed that the law would assist in accumulating international assistance for Ukraine to resolve IDPs problems.

Jose Manuel Barroso, President of the European Commission, addressed the President of Ukraine Petro Poroshenko with a letter concerning necessity of the adoption of the Law on Rights and Freedoms of IDPs.

The opinion of the Government and people’s deputies concerning delay in legislative regulation of the rights of IDPs surprised representatives of international organizations and NGOs. Usually, the states faced with the problem of internal displacement try to declare the problem as loud as possible and even to exaggerate the number of IDPs, to adopt quickly a law and other regulations in order to get the assistance from international organizations as quick as possible. In Ukraine the situation is different: the authorities did not pay much attention to the issue, laws and regulations were not adopted, and the number of IDPs was downgraded.

Finally, due to the efforts of many organizations, public activists and certain people’s deputies, the Verkhovna Rada adopted the Law “On Provision of Rights and Freedoms of Internally Displaced Persons” at an extraordinary session, on the last working day of the Parliament, on October 20, 2014.

The Law adopted by the Verkhovna Rada was signed by the President only in a month, on November 19, 2014 and came into effect after its publication on November 22. The President failed to observe the term of 15 days provided by the Constitution, although he himself stressed the draft as a priority. The delay in signing of the law was caused by reluctance of the Ministry of Finance and the Ministry of Social Policy to execute the law as amended.

According to this law, registration shall be conducted through an application to the department of the Local State Administration of Social Security. At the same day a migrant shall be issued a certificate of internally displaced person. Unlike other draft laws, migrants do not have to prove anything (neither the specific reasons for the forced movement, nor that he/she is not a terrorist and criminal). A certificate shall be issued automatically when an identity verification document is presented. Along with an application, a declaration is filled in (on the model of security declarations at the entrance to some other country or obtaining visas) in which the migrant declares that he/she did not commit crimes, and describes his/her particular needs in any form. A certificate shall be valid for 6 months; its term may be extended at the request of the migrant.

Then the new residence registration is entered into the certificate in the State Migration Service. In this case, previous residence registration remains in the passport. Thus, migrants from Crimea and Eastern Ukraine will not be persecuted because of new registration in case of visiting the territories occupied and controlled by terrorists. This is especially important for migrants from Crimea who visit their small homeland.

After receiving this certificate, the migrant shall have the same rights as other citizens have. For the purposes of ensuring the rights of migrants to employment, pensions, compulsory state social insurance, social services, education and business, the law provides simplified procedures for benefits and pensions, social assistance, unemployment registration, employment, continuing education and registration or re-registration of companies, legal entities and individuals. The law also provides for target oriented assistance programs for migrants adopted by the Cabinet of Ministers of Ukraine.

The law contains provisions concerning other rights and interests of migrants, in particular, the provision of free temporary accommodation (subject to payment of utility costs) within six months of the date of registration of the internally displaced person; this term may be extended for large families, the disabled and the elderly; assistance in transportation of movable property; assistance in return to the previous domicile; free travel to return to their abandoned domicile by all kinds of public transport if the circumstances which caused such move stopped existing; right to receive loans for the purchase of land, acquisition and construction of housing; right to receive humanitarian and charitable assistance, etc.

Unlike the previous drafts, the adopted law is not mere a declaration. It provides for funding of migrants from special fund, and opened the way for international and domestic charitable and humanitarian assistance.

At the same time, the Law “On Provision of Rights and Freedoms of Internally Displaced Persons” still has a number of drawbacks. It is a compromise between expectations of civil society and government request. The Law does not cover the rights of foreign citizens and stateless persons, registration and delivery of social services relating to the registration of residence, which creates a number of serious inconveniences for IDPs and even restricts their rights because of imperfect administrative practice. Some provisions of the law written in the summer cannot be performed due to dynamic situation in the ATO area. For example, the provision on termination of employment by providing “notarized written statement on termination of employment by the employee with confirmation that this statement is sent by the said citizen to the employer by registered mail” is not applied because Ukrposhta ceased operating in the areas controlled by separatists.

Even before adoption of the Law on October 1, 2014 two CMU decrees for IDPs had been adopted: the Decree of CMU No. 505 “On Monthly Targeted Assistance to Persons who Move from Temporarily Occupied Territory of Ukraine and Districts of the Antiterrorist Operation to Cover Living Expenses, including Housing and Facilities” and the Decree of CMU No. 509 “On Account of Persons who Move from Temporarily Occupied Territories of Ukraine and Districts of the Antiterrorist Operation”.

According to the Decree No. 505 the Government allocated USD 510 million to the Ministry of Social Policy to provide monthly targeted assistance to IDPs. Financial aid is intended for a family and paid to one of its members, subject to a written agreement of optional form on cash benefits to this person from other family members in the following amounts: for disabled persons (pensioners, children, other disabled persons) — UAH 884 per person



(family member); for persons with normal physical opportunities — UAH 442 per person (family member). However, a general amount of assistance for one family shall not exceed UAH 2,400. This provision resulted in discrimination of large families.

Targeted assistance to IDPs in the said amount certainly makes life of IDPs easier, but does not solve most problems, including the problem of housing. Housing rent in the cities where you can find a job is much more expensive.

According to the Decree No. 509 registration procedure is not clearly determined. The concept of “internally displaced persons” is undefined. In practice, IDPs faced many challenges during registration, as indicated by human rights organizations that provide legal assistance to IDPs:

1. Massive denials for IDPs due to improper indication of the territory of internal displacement. Migrants from certain areas of the antiterrorist operation (ATO), “settlements controlled by the Ukrainian government” (e.g. Debaltsevo, Popasna, Avdiyivka, Kurakhovo etc.) are denied a registration. This is despite the fact that in these and other towns, houses and infrastructure were destroyed due to extensive shelling.

2. Refusal of registration of internally displaced persons who do not have in the passport of the citizen of Ukraine the mark that at the time their registered place of residence is in the areas of ATO.

3. Requirements to give additional documents not provided by the Decrees of CMU No. 505 and No. 509, such as certificates of PVCs, confirming the residence, lease contract etc.

4. Additional obstacles in receiving targeted assistance. People are queuing to the Departments of Social Services waiting for cards indicating dates of registration. In December 2014, such cards were issued in the Regions of Kharkiv and Donetsk for March 2015.

5. In some Departments of Social Services persons who are married, but moved without family are denied in registration until the other spouse moves in, arguing that only a family is eligible to receive support.

6. The problem of determining the appropriate department of labor and social services authorized to keep records of internally displaced persons and provide targeted assistance to migrants.

7. Schedules of departments of social services are not unified, and it is almost impossible to learn in advance working hours of these departments, because this information is usually not available on the web-sites of local administrations. This causes a lot of inconvenience for migrants, especially in rural areas, when people have to travel tens of kilometers to the district center town to find out the information about procedure for targeted assistance.

After adoption of the Law the Government had to develop regulations within three months and to bring its regulations on IDPs in compliance with the law, but by the end of the year no document was issued.

On November 7, the Government adopted Decree No. 595 “Certain Issues of Financing of Budget Institutions, Social Benefits and Financial Support for Some Enterprises and Organizations of Donetsk and Luhansk Regions”. According to this Decree, benefits for persons who move from the temporarily occupied territory of Ukraine and districts of the antiterrorist operation, acceptance of applications for the transfer of pension cases, pensions, payment of funeral benefits, short-received pensions from persons whose place of residence is registered in the districts of antiterrorist operations shall be paid according

to place of residence of such persons according to the procedure approved by the Decree of the Cabinet of Ministers of Ukraine dated October 01, 2014 No. 509, as evidenced by a certificate a copy of which is retained by the Pension Fund of Ukraine. This Decree complicates lives of IDPs who cannot receive pensions and other payments for months due to delay in registration of IDPs.

Attention should also be drawn to the discrimination of IDPs from Crimea and the city of Sevastopol due to the Decree No. 699, according to which Crimeans are recognized as non-residents and are deprived of possibility to use banking services on equal basis with citizens of Ukraine. This Decree is the result of the Law "On Creation of a Free Economic Zone "Crimea" and the Specific Features of Economic Activity in the Temporarily Occupied Territory of Ukraine" dated August 12, 2014.

But for the solidarity of the Ukrainian society and work of volunteers, the Ukrainian state would have failed to resolve the problem of such massive internal displacement, which would have led to a humanitarian disaster. Volunteerism, solidarity and mutual aid became widespread. According to the Fund "Democratic Initiatives" and KIIS, the army and the migrants received aid from 77% of the population of Ukraine.

After formation of the parliament coalition and appointment of a new Cabinet of Ministers, synergy in cooperation of central governmental bodies, including the Ministry of Social Policy and NGOs in the field of protection of rights of IDPs, is growing. Regular meetings of representatives of NGOs and central governmental bodies take place in the Ministry of Social Policy.

The biggest problems faced by IDPs are as follows:

1. Evacuation from the conflict zone. Lack of transport, including specialized one. Buses come under terrorist shelling; some buses are not allowed to leave the territories controlled by separatists.

2. Lack of capacity for transit temporary settlement. For example, station "Kharkiv" takes 300 people per day. Hotels for transit migrants provide rooms only for women with children under 14, 40–50 persons are accommodated in hostels at the expenses of volunteers, and other people are accommodated in luxury waiting rooms at the station.

3. Psychological injuries. Internally Displaced Persons are under stress due to shelling, destruction of houses, threatens to life and health, death of relatives.

4. Housing. Internally Displaced Persons are accommodated in a private sector. Most of them are invited by relatives, friends and volunteers. A great number of migrants stayed in the areas of close settlement, especially in summer sanatoriums not suitable for living in winter.

5. Employment. Many people cannot get an official job without documents.

6. Repayment of pensions and social benefits and financial aid from the state. Sometimes the lines to be registered in eastern Ukraine are stretching for several months. People do not have money and can only rely on charity and humanitarian assistance.

7. Medical assistance. Access of IDPs to free medical services is often associated with registration and registration of residence. There is also a problem of neglecting IDPs in the course of distribution by the state of vital medicines for patients who need them (e.g. hemodialysis).

8. Discrimination and hate language. Internally Displaced Persons are discriminated on the basis of residence. This is due to the drawbacks of the abovementioned regulations and

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enforcement practices. It often happens that collective guilt principle applies to IDPs; they are accused of collaboration with separatists by both locals and some politicians.

In general it can be concluded that the state does not duly perform its obligations regarding provision of the rights of IDPs, both in law and in practice.

### RECOMMENDATIONS

1. For the Verkhovna Rada of Ukraine: To amend the Law “On Provision of the Rights and Freedoms of Internally Displaced Persons”. In particular, to clarify the concept of the internally displaced person and extend the list of persons entitled to such legal status by including stateless persons and foreign citizens who are legally entitled to live in Ukraine on an equal basis with the citizens of Ukraine; extension of the law to citizens of Ukraine who lived, but were not registered in the territory of internal displacement; to simplify procedure for accounting IDPs by extending the list of documents that may be filed for registration; to clarify the powers of governmental bodies concerning registration of residence of the internally displaced person. To amend legislative acts as provided for in the transitional provisions.

2. For the Cabinet of Ministers of Ukraine: To amend the Decrees of the CMU No. 505, 509 and 595, taking into consideration the proposals of human rights organizations. To remove discriminatory provisions, to remove the factor connecting benefits to registration of IDPs. To bring the Decrees in compliance with the Law “On Provision of Rights and Freedoms of Internally Displaced Persons”.

3. For the National Bank of Ukraine: To cancel Decree No. 699.

4. For the Ministry of Social Policy: To develop clear guidelines for local departments according to the Law, to unify administrative practice and to eliminate the reported violations of the rights of IDPs.

5. For the State Migration Service: To develop simplified procedures for registration of the place of residence/stay and to unify the work of its departments.

6. For other governmental bodies and bodies of local self-government: To develop regulations and procedures on ensuring the rights of IDPs in accordance with their powers and provisions of the Law.

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# UKRAINIAN CONSTITUTIONAL PROCESS IN 2014<sup>1</sup>

Ukrainian constitutional process in 2014 began a series of constitutional transformations aimed at legal regulation of the new political reality that had emerged as a result of the revolutionary events under the title **Euromaidan**.

The juridical means of constitutional transformation include primarily such documents as the Law of Ukraine “On revalidation of certain provisions of the Constitution of Ukraine” of February 21, 2014; Resolution of the Verkhovna Rada of Ukraine “On the text of the Constitution of Ukraine in redaction of June 28, 1996 with amendments and supplements introduced by the laws of Ukraine of 8 December 2004 No. 2222-IV, February 1, 2011 No. 2952- VI, September 19, 2013 No. 586-VII”; Resolution of the Verkhovna Rada of Ukraine “On the dissociation of the President of Ukraine from fulfillment of constitutional powers and appointment of early presidential elections in Ukraine” dated February 22, 2014; Resolution of the Verkhovna Rada of Ukraine “On vesting the Head of the Verkhovna Rada of Ukraine with the duties of the President of Ukraine in accordance with Article 112 of the Constitution of Ukraine” of February 23, 2014.

Subsequently, the constitutional process was extended by an official act of submission to the Verkhovna Rada of Ukraine by President of Ukraine Poroshenko of the bill “On Amendments to the Constitution of Ukraine (concerning the authority of state bodies and agencies of local self-government)” No. 4178 of 26 June 2014. It is advisable to consider these legal steps in chronological order.

## LAW OF UKRAINE “ON REVALIDATION OF CERTAIN PROVISIONS OF THE CONSTITUTION OF UKRAINE”

The very title of the Law “On revalidation of certain provisions of the Constitution of Ukraine” dated February 21, 2014 is the first thing to consider at firsthand view of it. In particular, the phrase “revalidation of the Constitution...” is functionally loaded in the wrong direction.

In fact, Article 85, which contains the list of the main plenary powers of the Parliament, of the Constitution of Ukraine valid at the time of adoption of this Law does not provide for “revalidation <...> of the Constitution of Ukraine” by a single parliamentary vote for the bill. As stated in Article 85 of the Basic Law, the Verkhovna Rada (in terms of possible

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<sup>1</sup> Vsevolod Rechytskyi, constitutional expert, KHPG.

modifications of the Constitution) is empowered to introduce “amendments to the Constitution of Ukraine within the limits and by the procedure envisaged by Chapter XIII of this Constitution.”

In addition, as stated in Art. 5 of the Constitution of Ukraine, “the right to determine and change the constitutional order in Ukraine belongs *exclusively* (emphasis is mine—*V. R.*) to the people and shall not be usurped by the State, its bodies or officials.” The latter, as the common sense suggests, means that if the changes to the Constitution of Ukraine infringe on elements of the constitutional system, they should be approved *exclusively* by the people, that is by a national referendum without any (except for the institutional one) participation of the state in its conduct.

Since the change of the form of government in the country is both the change of an element of the constitutional order, Ukraine’s transition from the model of presidential republic to the model of parliamentary republic should have been carried out only by direct assent of Ukrainian people. Simply put, according to the Constitution the national referendum only can introduce a parliamentary republic in Ukraine.

This thesis is to be read fundamental in any circumstances. As a legal factor, it was valid since the initial adoption of the Constitution of Ukraine on June 28, 1996 and remains in force today. This fact alone would suffice for the Constitutional Court *to disagree* with the constitutional (political) reform in 2004. As you know, the infamous reform was voted in package with an ordinary law and Resolution of the Verkhovna Rada, which led to the reverse control effect when the content of current regulations directly affected the content of the Constitution of Ukraine. In general, only a mediocre level of expert culture in Ukraine still allows supporting the legal topic of “betrayal” of the Constitutional Court of Ukraine.

However, it is essentially more serious. According to the sociological survey, the population of Ukraine continuously supports the preservation of one-man rule of the president elected by the people. This situation corresponds to Ukrainian *normative code* as a set of fundamental principles and norms that permeate the activity of the domestic political civilization as its organic mold, repetitive design.

The disposition of Ukrainians to Hetmanate may be seen in not only the *With Fire and Sword* by H. Sienkiewicz, but in the *Constitution* of Pylyp Orlyk in 1710, *History of the Rus* by H. Konyskyi, and race for power by P. Skoropadskyi in the early twentieth century. On the contrary, the fact that the parliamentary republic is little-suited for Ukraine can be illustrated by the Central Rada headed by M. Hrushevskyi, Directorate headed by S. Petliura, and the rule of President V. Yushchenko. The Ukrainian parliamentary republic remains a situational fragile entity. As a long-term strategy, it shows only its ineffectiveness. The opposition basis for denying the Ukrainian parliamentarism included in its time such factors as the well-known disposition of Ukrainians to Haidamachchyna (O. Shulgin), rule of otamans (D. Skoropadskyi), which shows the dominance of political “Eros” over “Logos” (I. Lysiak-Rudnytskyi).

Overall, the return of Ukraine to the model of a parliamentary republic in 2004 looked not only unconstitutional, but also illegitimate, unjustified in terms of the needs of the political culture of our people.

**RESOLUTION OF THE VERKHOVNA RADA OF UKRAINE  
“ON THE TEXT OF THE CONSTITUTION OF UKRAINE IN REDACTION OF JUNE 28, 1996  
WITH AMENDMENTS AND SUPPLEMENTS...”**

If the Law of Ukraine “On revalidation of certain provisions of the Constitution of Ukraine” dated February 21, 2014 actually duplicated the content of the Laws of Ukraine of 8 December 2004 No. 2222-IV, of 1 February 2011 No. 2952-VI and of 19 September 2013 No. 586-VII, then the resolution became a kind of collection of additional transitional provisions of this Law.

As stated above, the Law of Ukraine “On revalidation of certain provisions of the Constitution of Ukraine” cannot be considered constitutional by its content and procedure of entry into force. In turn, the Verkhovna Rada Resolution “On the text of the Constitution of Ukraine...” does not withstand legal scrutiny.

The resolution manipulates fragments from different contexts, arguments that only reinforces doubts as to its legitimacy. In particular, it argues that “the statutory powers of the Verkhovna Rada of Ukraine undoubtedly render impossible for any other government bodies or officers to commit *any* (emphasis is mine — *V.R.*) act intended to change constitutional norms.” However, in reality such acts are possible, because the Constitution of Ukraine can be modified or its new redaction can be approved by a national referendum, the organization of which requires activity undertaken by public authorities (including the President) outside the parliamentary structures as well.

Moreover, the resolution affirms that “the provisions of the Law of Ukraine “On Amendments to the Constitution of Ukraine” dated December 8, 2004 became an integral part of the Constitution of Ukraine, and the law has exhausted its function.” With this purpose in mind the Resolution refers to the ruling of the Constitutional Court of Ukraine on February 5, 2008 No. 6-y/2008 containing the appropriate wording. However, the relevant decision means only that ***the Constitutional Court of Ukraine cannot be addressed with proposals to examine the constitutionality of the current Basic Law as a whole and its individual fragments.*** Such verification the Court may execute only in relation to bills amending the Basic Law of Ukraine.

The politicians and journalists are slow to take in such legal arguments, but that does not mean that the latter do not exist or that they lose their strength. Neither based on outside proposal, nor on its own initiative the Constitutional Court of Ukraine may question the constitutionality of the current formal constitutional text.

Otherwise, we would but admit that the Court is not *under*, but *above* the Basic Law of Ukraine, which in a state of law is unacceptable. Therefore, we can undertake to express that the Constitutional Court ***cannot check the legality (compliance with the Basic Law) any legally valid constitutional content.*** However, this rule does not mean that the Constitutional Court of Ukraine cannot verify on appropriate representation the *legitimacy* of the Constitution of Ukraine or its individual fragments.

In jural state, the legitimacy of enactments is ensured by scrupulous observance of procedures for their adoption and implementation. Especially important is the legal procedural form when making the constitution a strategic regulator of domestic political life in the long term. Depending on the procedure of its adoption, the constitutions may be

divided into rigid, flexible and mixed. The “rigid” constitutions proceed from the obvious awareness of the fact that the political elites strongly desire to change constitutional texts. To counter this desire the constitution are made “invariable”.

Such considerations are important for the proper understanding of the action logic of the Constitutional Court of Ukraine on abrogation of constitutional reform in 2010. It seems that for the average citizen the Decision of the Constitutional Court of Ukraine on September 30, 2010 No. 20-rp/2010 in the case of compliance with the procedure for amending the Constitution of Ukraine will always mean “the abolition of parliamentary republic in Ukraine.” However, in a strictly legal sense, this decision was only the recognition of *illegitimacy* (abuse of procedure) of the relevant constitutional text. The proper procedure is a legal guarantee of adequate transition of popular will into the constitutional sense, transformation of popular will into law. If the procedure is abused, we may get, instead of popular will, the will of the state apparatus. This very distortion of the will took place on December 8, 2004 in the assembly hall of the Verkhovna Rada. Moreover, for correct understanding of the juridical meaning of events we should also take into account the following arguments: First, the Constitution was changed in the time of actual emergency. The deputies were in exalted mental mode, which is not suitable for making fateful decisions; second, the voting on constitutional amendments was carried out in package with ordinary legal texts that actually affected the determination of important parameter of the constitutional system of the country.

As stated above, changing the form of government under Article 5 of the Basic Law of Ukraine is changing its constitutional system that can be done only by Ukrainian people through a referendum; third, the latest version of the bill on amendments to the Constitution of Ukraine was not submitted for review to the Constitutional Court of Ukraine.

The critics of abrogation by the Constitutional Court in 2010 of political reform insist that the Court have allegedly challenged the terms of reference of the Verkhovna Rada of Ukraine instead of presenting the matter of abrogation of the reform to parliament. However, this argument is legally incorrect. The Verkhovna Rada is not empowered to make decisions about the legitimacy of its own normative acts. The opposite would be contrary to the principles of separation of powers in Ukraine.

In addition, there was nothing prohibiting returning to parliamentary republic in Ukraine after the Decision of the Constitutional Court on September 30, 2010. Only the national referendum should have been held on this issue. Since this had not been done, Ukraine got another infringement of art. 5 of the Constitution of Ukraine in the form of the Decree of the Verkhovna Rada of Ukraine “On the text of the Constitution of Ukraine...” on February 22, 2014.

In general, the procedural aspects of the constitutional transformations in Ukraine, made in early 2014, show that the Ukrainian elite is just on the threshold of mastering the organic constitutional culture. The Ukrainian state represented by the leaders is still only vaguely aware of the essence of the rule of law.

Resolution of the Verkhovna Rada of Ukraine “On the dissociation of the President of Ukraine from fulfillment of constitutional powers and appointment of early presidential elections in Ukraine”; Resolution of the Verkhovna Rada of Ukraine “On vesting the Chairman of the Verkhovna Rada of Ukraine with function of the President of Ukraine in accordance with Article 112 of the Constitution of Ukraine.”

The Resolution Parliament “On dissociation of the President...” from February 22, 2014 was based on the recognition of the fact that President of Ukraine Viktor Yanukovich illegally dissociated from his constitutional powers which endangered the controllability of the state, territorial integrity and sovereignty of Ukraine, rights and freedoms of its citizens. Being aware of this and proceeding from the paramount necessity, the Verkhovna Rada of Ukraine decided: “The fact is hereby established that the President of Ukraine Viktor Yanukovich in an unconstitutional manner has dissociated from the exercise of constitutional powers and is one who does not fulfill his duties.”

On this basis, in accordance with paragraph 7 of the part one of art. 85 of the Constitution of Ukraine the Parliament scheduled the date of early presidential elections in Ukraine for May 25, 2014. In turn, based on the decision of the Verkhovna Rada “On vesting the Chairman of the Verkhovna Rada of Ukraine with function of the President of Ukraine...” approved on February 23, 2014 Speaker O. Turchynov was vested with function of the Acting President of Ukraine in accordance with Article 112 of the Constitution of Ukraine. The first and second decisions of the parliament entered into effect from the date of adoption on 22 and 23 February 2014, respectively.

To achieve this, we used the reference to Art. 112 of the Basic Law of Ukraine as a **parliamentary republic**, that is, in the version “restored” by the Law of Ukraine “On revalidation of certain provisions of the Constitution of Ukraine” dated February 21, 2014. At the same time art. 6 of the Law stipulated that it shall enter into force **on the day following the day of its publication**. Given the fact that the law was officially published in the *Holos Ukrayiny* only on March 1, 2014, in the *Oficiyny Visnyk Ukrayiny* on March 11, 2014, and in the *Vidomosti Verkhovnoyi Rady Ukrayiny* (No. 19) on March 14, 2014 the logical conclusion is that during the period from February 23 to March 2, 2014 Olexandr Turchynov served as President of Ukraine contrary to the norms of the Basic Law. According to the Constitution of Ukraine in force at the time only Prime Minister could execute restricted powers of the Acting President of Ukraine in this period could.

The escape of the President of Ukraine from Kyiv and his leaving his post in a time of emergency led to the de-legitimization of his power. Therefore, the Ukrainian parliament had to use the analogy of law. Because the Basic Law made no provisions for such actions as “escape” or “leaving his post by the President”.

Therefore, the Ukrainian government faces the problem: maybe the best way out during transition is not mutilated constitutional but adopted ad hoc emergency legislation. The latter might have the form of the acts of the “Committee for National Salvation”, “Maidan Rada” and so on. However, the authorities gave preference to the “quasi-constitutional” instrument to overcome problems. No wonder, this decision was and remains extremely vulnerable to criticism.

During the same period, some moral and ethical aspects emerged in the constitutional process in Ukraine. In particular, whether the escape of the President of Ukraine from Kyiv should be considered a “dissociation”? In particular, on March 12, 2014 at the session of the Verkhovna Rada of Ukraine on the rule of law and justice Euromaidan spokesperson S.Shchetinin said that the escape of Yanukovich from the revolt in the capital should not be considered a “dissociation” but overthrow of his government by rebellious people.

It is not easy to treat this fact within the categorical framework of the Constitution of Ukraine. However, the formal Ukrainian constitutionalism should not be confused with



organic Ukrainian constitutionalism. It is common knowledge that not every basic law n point of fact can be considered constitutional. Only a law prioritizing (versus state) protection of the interests of civil society can be called real constitution. In the first place, the organic constitution defends not public order but civil liberties. Therefore, it is not a booster, but the strategic *limiter* of state power. The purpose of the constitution is social progress rather than state-apparatus and bureaucratic discipline. The organic constitution is the guardian of liberty, market, human rights and freedoms. To this end, it establishes the separation of powers, representative government, mechanism of checks and balances and maximizes the freedom of speech.

In this sense, all known modifications of Ukrainian Basic Law can be considered only partial equivalent to organic constitutional model. For example, pursuant to Article 5 of the Constitution 1996 (as a negative perspective) the usurpation of popular sovereignty by the state, its agencies or officials has not logical continuation in the form of the right of Ukrainian people to opposition to dictatorship, civil disobedience or democratic uprising.

The complementary-to-government mechanism of impeachment of the President is also a major drawback of the current constitutional text. On the basis of Art. 105 of the Constitution, the President retains the full powers until the final (third) vote to remove him from office. Until this point, he completely retains the possibility of using to his own advantage Security Service, Foreign Ministry and Armed Forces of Ukraine.

Even formally charged by the Parliament (second phase of impeachment) the President continues to hold his powers. Moreover, the 75% vote of the constitutional composition of parliament as required by the Basic Law for the removal of the President from office is a requisite that renders impeachment unrealistic. It is generally known that even after the death of dozens of people from the bullets of snipers and desertion of V. Yanukovich from Bankova Street, only 73% of the votes of the Verkhovna Rada were in favor of condemning his behavior.

Meanwhile, the history of Euromaidan 2014 fits perfectly into the model of rebellion against tyranny stipulated by laws and constitutions of countries like USA, UK, Germany, Greece, Estonia, Lithuania and others. If we were to analyze the Euromaidan activity based on the approach of the Constitution of Ukraine, the picture would have been substantially different. The motive force of history in this case would have been not people, but ... leaders of opposition factions. Instead of popular overthrow of the dictatorship, there is a “dissociation” of the President from constructive dialogue with the opposition.

### PRELIMINARY FINDINGS AND RESERVATIONS

1. From the legal point of view, the return of the Verkhovna Rada of Ukraine after winning Euromaidan to the Constitution in redaction of 2004 was conducted in violation of the procedures set forth in Section XIII of the Constitution of Ukraine. Therefore, the post-revolutionary law and order would be better called an extraordinary legal regime.

2. In order to understand the logic of decisions of the Constitutional Court of Ukraine regarding any transformations of the Basic Law it is important to distinguish between

justification by the Court of legality/illegality, on the one hand, and the legitimacy/illegitimacy, on the other hand, of any constitutional changes or amendments. In the first case, the decision of the Constitutional Court may apply to bills only; in the second case, the legal procedural form inevitably becomes the subject of control, the failure of which may result in actual “dying out” of constitutional matter after the fact.

3. The attempts of the General Prosecutor to express official suspicion to the constitutional judges for their decision-making that are not subject to appeal should be considered as infringement of the principle of legality. The resemblance of the legal position of judges and political preferences of the President is not a crime as such. The decision of the judges who are in tune with the political course of the President cannot be considered corrupt automatically. The attempt of the General Prosecutor’s Office to become an arbitrator in relation to the Constitutional Court is like an intention to eat a patty, which is larger than the stomach. In general, the work of constitutional judges threatened by the official announcement of suspicions completely ruins the independence and impartiality of the Court.

4. The revocation of authority of President of Ukraine Viktor Yanukovich by the Parliament in circumstances of 2014 is justified in terms of the canons of constitutionalism. However, his “dissociation” is politically and legally wrong concept. Yanukovich left his post as a result of the democratic uprising. The logic of the constitutional process in Ukraine should correspond to the logic of events that actually took place. People conducted the revolt against tyranny therefore the Euromaidan cannot be equated with the usurpation of state power. The people cannot be subjects of usurpation of what belongs to it from the beginning.

5. The current Constitution of Ukraine cannot yet be considered an effective limiter of state power. It does not recognize as the highest social value the category of *freedom of people* and is focused more on public order than on guarantees of the rights and freedoms of man and citizen. Therefore, it remains stagnatory in its essence. Stimulating not so much social progress but bureaucratic order and discipline, the Basic Law significantly stifles creative potential of Ukraine. With this in mind, the new government should focus not on tactical amendments, but on *changing vector* of constitutional evolution in Ukraine. It should be based on a strong state, responsible government and rule of law. Remembering H. Spenser’s guidelines, we can say that the Constitution of Ukraine should not ask for more, at the same time it should not be allowed to do less.

#### CONTINUATION OF THE CONSTITUTIONAL PROCESS INITIATED BY PETRO POROSHENKO

Later the Ukrainian constitutional process 2014 came under the influence of presidential initiatives. In particular, on June 26, 2014 the President submitted to the Verkhovna Rada the draft Law of Ukraine “On Amendments to the Constitution of Ukraine (concerning the authority of the state agencies and local self-government)” No. 4178a. The project was registered with the 4<sup>th</sup> Session of the VII convocation. The bill was initiated by a number of Verkhovna Rada committees led by the Committee on making of the state, regional policy and local self-government. Already on July 2, 2014, the bill was sent on behalf of the President of Ukraine to Venice Commission (the European Commission for Democracy through Law).

The presidential project highlighted the modification of the legal relationship of the head of Ukrainian state with parliament, government and local self-government bodies. In particular, the project of constitutional amendments stipulated as follows (*see* the updated draft redaction of Art. 83 of the Constitution): “the parliamentary coalition in the Verkhovna Rada of Ukraine in accordance with the Constitution of Ukraine submits proposals to the President of Ukraine on the candidacy of Prime Minister of Ukraine and in accordance with the Constitution of Ukraine makes proposals to the Prime Minister of Ukraine on nominations to the Cabinet of Ministers of Ukraine”.

However, as before, “the parliamentary coalition in the Verkhovna Rada of Ukraine is formed within thirty days from the date of the opening of the first meeting of the Verkhovna Rada of Ukraine held after regular or special elections to the Verkhovna Rada of Ukraine or within thirty days after the termination of the coalition in the Verkhovna Rada of Ukraine.”

According to the draft, the parliamentary coalition still had to act in the Parliament of Ukraine on a regular basis. That is, for the umpteenth time since December 2004, it remained unclear why there should be (be revived) parliamentary coalition when the Cabinet of Ministers is fully formed. Indeed, according to Article 80 of the current Constitution (on the proposals of Poroshenko it was left in the old redaction), the people’s deputies of Ukraine irrespective of their sympathies and antipathies remain free and shall not be held legally liable for the results of voting or for statements made in the parliament and in its bodies.

Moreover, even *within the framework of the procedure of the formation of the new government* the members of parliamentary coalition remain legally unguided. In fact, ever since 1996, Article 80 of the Basic Law has not provided for any exceptions to its application. Therefore, the only justification for the existence of permanent existence of parliamentary coalition remained its participation in the formation or filling the vacancies in the Cabinet of Ministers of Ukraine. However, if the government is fully staffed, further customary existence of the coalition, as this was illogically prompted by the amendments to the Constitution, loses its juridical meaning. There remains but a limited actuality of some moral and ethical aspects of its presence in the parliamentary system.

On the other hand, as stipulated in Art. 90 of P. Poroshenko’s draft, “The President of Ukraine may terminate ahead of time the powers of the Verkhovna Rada of Ukraine if: 1) within thirty days in a row the parliamentary coalition is not formed in the Verkhovna Rada of Ukraine in accordance with Article 83 of this Constitution.” Formally, this meant that at first the parliament and later the government could be dissolved through the exit of certain critical mass of people’s deputies from the coalition. For example, if the coalition consists of 226 people’s deputies, the breakaway of even one of them will make this critical mass.

It also meant that if within 30 days in a row the Verkhovna Rada of Ukraine fails to restore the compulsory minimum membership in the parliamentary coalition (226 members), its further existence becomes dependent on the political will of the President. It shall depend only on the President whether he will terminate before the appointed time the parliamentary powers or continue to maintain status quo. We can assume that if the President had been the candidate of opposition political forces that constitute a minority in Parliament, then he would have got a lever that could throw into confusion the parliament even in the absence of real government crisis.

The draft of amendments to the Constitution required the presence of coalition in Parliament even when the formation or reformatting of the government is not an order of the day. Then a question is bound to arise: if the coalition must exist outside of government formation, what is the point in it? One might expect that the coalition would support government bills. But, strictly speaking, based on other articles of the Constitution the people's deputies in this regard remained completely free. In the same way the opposition also remained free in its political preferences.

If the President for his political views had been close to a parliamentary majority, then the requirement of the existence of coalition would have become a tool for an opposition to blackmail the President. This potentially endangers the stability of the constitutional order. In the terms of minor strategy, this procedure also does not promote political stability in everyday life.

If the quantitative composition of the coalition is only a minimally necessary, the draining away of the people's deputies may result in serious impairment of domestic political superstructure. For example, if the President were opposed to the *small minority coalition* (in quantitative terms), he might not withstand the temptation to dissolve the parliament within 30 days after any coalition collapse. In the case when a *small majority* coalition were politically close to the President, the opposition would try and persuade the people's deputies to quit it. In this case, the political blackmail might be less effective, because, according to the amendments, the President may, but is not obliged to dissolve parliament because of situational collapse of the coalition ranks.

Anyway, the idea of a permanent coalition promoted by the President's draft did not look constructive. It would be better to empower the President to dissolve parliament only if the latter fails to form or staff a government within 30 days. Moreover, it remained unclear how to establish the presence or absence of coalition without a vote of its members "for" or "against" candidates for the posts of ministers or prime minister?

According to art. 85 of the draft, the Parliament had to consent to the President's appointment of the Chairman of the Security Service of Ukraine, Head of the State Bureau of Investigation, and Prosecutor General of Ukraine. In this case, the Parliament could later dismiss the Prosecutor General. Other officials on this list had to be dismissed by the President. Given that the Parliament had to appoint the Prime Minister on submission by the President of Ukraine, which, in turn, had to choose a candidate following "the suggestion of the parliamentary coalition in the Verkhovna Rada of Ukraine", it becomes clear that there was no weakening of the power of the president according to the model declared by the constitution.

In its turn, although the candidates for the post of the Minister of Foreign Affairs and Minister of Defense had to be appointed (according to the draft) by Verkhovna Rada of Ukraine on submission of the Prime Minister, the formal submission had to *get approval* of the President. Without the participation of the Parliament the President had to appoint and dismiss the Head of the Foreign Intelligence Service of Ukraine.

The said list should also include the duty of the President to appoint (without the submission of the Cabinet of Ministers) and dismiss all representatives of the president in the areas and regions of Ukraine. Obviously, it was not about the weakening of the executive chain of governance.

The President was empowered to terminate powers of the Verkhovna Rada of the Autonomous Republic of Crimea, as well as any agency of local self-government, if the Constitutional Court of Ukraine established that any of them had violated the Constitution by a decisions (even only one).

The President might easily terminate the powers of the representative body of the Autonomous Republic of Crimea or any local body of self-government with the support of the Constitutional Court. At the same time, the President had not only to appoint six judges of the Constitutional Court, but reserved the right to dismiss them at any time. This pattern of relationship of the President and the Constitutional Court undermined the principle of independence of the judges of the Constitutional Court and made it extremely vulnerable to the interference of local self-government.

According to the draft of constitutional amendments, the President looked to the Ukrainian society not so much as an intellectual, political authority and leader of the nation, but rather as the commander, member of the top brass, modern hetman. But if so, then how would the civil component of the president's understanding of the functions of the constitution and constitutionalism look like?

At the political level Poroshenko has repeatedly declared his commitment to strengthening democratic principles in governance, idea of decentralization of power, clear separation of public affairs, on the one hand, and affairs of civil society, on the other. The president has repeatedly stressed on the need to pay more public attention and render support to the regions negating the feasibility of federalism in Ukraine.

The Ukrainian state has long required to devote more attention to the provinces at the strategic level. On the other hand, the mere declaration of regional interests, modernization of only *local* network structures of self-government would not suffice. The regions of Ukraine should be constitutionally backed at the highest level of *governance* (parliamentary, governmental).

If the idea of a federal Ukraine is unacceptable for the President, but he tends to strengthen the constitutional guarantees of regional interests, Ukraine wouldn't do without the two-chamber parliament. It is common knowledge that two-chamber parliaments are a characteristic feature not only of federal countries. They successfully function in many unitary countries. The parliaments of France, Spain, Italy, Poland, Netherlands, Croatia, Japan and so on are two-chamber. This kind of design provides for reliable representation of the provinces combining supra-party senatorial conservatism with the common sense of the lower house.

As for the president's idea of modernization of Ukrainian self-government, this issue did not receive adequate detailed legal elaboration. First, according to the project, the local governments would receive not strengthening but weakening of their influence upon the state through the presidential representatives. If now an oblast or regional Rada may depose heads of local state administrations by two thirds of their votes, there would be no such threat for representatives of the president. Second, the representatives of the president would lose the *collegiate style* in relations with the executive branch, which is now enjoyed by the heads of state administrations due to their appointment by the President *on the advice of the Cabinet of Ministers*.

Under the project, the local representatives of the President would have to become "clean" creatures of the head of the state. That is, they would have so much to perform

representative functions of the central and state interests as extraordinary personal messengers (commissioners) of the head of Ukrainian state.

Potentially it threatened with strengthening of the infamous “dualism” in the executive branch. It should be recognized that the executive dual governance in Ukraine has already become both systematic and structural. Suffice it to mention the competition of political ambitions of Prime Minister Yuliya Tymoshenko and President Viktor Yushchenko at the domestic level. The latter even forbade the heads of state administrations to come to Kyiv to participate in governmental arrangements or consultations with the Prime Minister. No less evident was the conflict between the National Security and Defense Council of Ukraine and the Cabinet of Ministers as a reflection of executive dualism.

If the Ukrainian president expected to personify the power of executive branch, it obliged him to work in unison with the government. If he wanted to be more a symbol of national cohesion, then his powers (according to the project) looked to be overburdened with the specifics. taking into account the list of proposed powers in the project, the President meant to be something much more than just a symbol of the nation endowed with representative functions. In any case, the constitutional mechanism of checks and balances in relation to the President obtained special meaning and content.

As for the improvement of the administrative-territorial structure of Ukraine and modernization of self-government system, in the presidential project they looked rather superficial. It remained unclear why the presidential bill, while recognizing the possibility of communities in villages, towns and cities (even cities millionaires), refused to see them at the oblast and regional levels. For the community is a substantive embodiment of political integration of people (sense of togetherness, feeling of mutual help) at the local level. If the sense of togetherness emerges in a given territory and gets fixed, the local communities may strike root. If there are public authorities of oblast and regional level in Ukraine, it may mean that in the oblasts and regions there are corresponding togetherness of population and collective identity.

Therefore, one variant of the constitutional reform of the President could be an approach by which the Constitution would recognize the existence of communities at the village, settlement, town, regional and oblast levels. Who dares today to deny the fact that the population of Luhansk and Donetsk oblasts represent an enclave of exclusive tension and content?

If you take a more spacious approach to the Presidential constitutional project, it may be seen as a set of legal *tactical* means intended to achieving strategic public goals, objectives. So almost immediately after reading it arises the question: can such steps really bring about fundamental and positive changes in Ukraine? In fact, positive changes can be made only with the help of adequate quality means.

today The Ukrainian constitutionalism is expected to implement effective common rules of the game guaranteed by renewed judiciary. This might lead to economic liberalization and market expansion in Ukraine, prompt recognition and reward of gifted persons, easing and speeding up of all social transactions (not just business ones), overcoming of hypocrisy and demagogy in ensuring human rights and freedoms. The Constitution list of highest social values also needs revision.

Today the Ukrainian law enforcers and armed forces not only protect and secure, but really defend the independence, sovereignty and territorial integrity of Ukraine. Every day

they sacrifice their lives and health for this. Therefore it is now evident that the highest social value in Ukraine is not life and health of human beings (Art. 3 of the Basic Law) but freedom and liberty of Ukrainian people. Unfortunately, the constitutional initiatives of P. Poroshenko contained nothing about the matter.

As you know, on October 27, 2014, the Venice Commission published its opinion about the project of constitutional amendments of P.Poroshenko in English. While acknowledging some positive traits of the document, the Commission noted in general that the proposed novels contribute not to weakening but to strengthening of the constitutional positions of the President with respect to the executive branch and local self-government. It also considers a significant drawback the non-transparent and closed-to-public-examination procedure of design of the document. Perhaps, it is because of this criticism the bill was officially revoked by the President on November 27, 2014.

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## **MINISTRY OF INTERNAL AFFAIRS OF UKRAINE AND HUMAN RIGHTS**

At the beginning of 2014, by exercising powers of the executive authority, the internal affairs agencies of Ukraine, in obedience to the political will of the country's leaders, performed the function of large-scale repressions towards the Ukrainian citizens, which was practically forgotten since the times of the USSR.

Thus, chiefs of the IAA (Internal Affairs Agencies) units were issuing unlawful orders for arrests of the Euromaidan supporters, organized the militia's groundless and unlawful use of physical force and impact munitions towards the protesters. Nevertheless, criminal proceedings, which have become publicly known, came to nothing more than a few isolated cases regarding three Berkut officers and two militia chiefs in Cherkasy and Zaporizhzhia regions.<sup>2</sup> It was only in November, 2014, that the Public Prosecution Office of the City of Kyiv and Kyiv Region took judicial proceedings in 10 cases on illegal acts of the SAI (State Automobile Inspectorate) officers, who prevented Automaidan activists from rally to Mezhyhirya on 29.12.2013.

After February, 2014, new leaders at the MIA (Ministry of Internal Affairs) partially managed to resume the militia's focus on protection of rights and freedoms of our citizens. Although the total number of offences committed by law enforcement officers after the Euromaidan has significantly reduced, the facts of cruel treatment still continue to take place. Thus, on August 14 the militia officers were detaining citizen A. Tumytskyi for over seven hours within the premises of Obolonskyi District Department of Internal Affairs of the City of Kyiv, trying to conceal this fact from his lawyer. Then, they let the detainee go with no explanations or excuses whatsoever.<sup>3</sup>

On June 29, officers of Kosiv District Department in Ivano-Frankivsk region, having stopped a car, applied disproportionate force and impact munitions to passenger D. Boichuk, due to which the latter suffered from brain concussion and renal hematomas.<sup>4</sup>

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<sup>1</sup> Prepared by O. Martynenko, Centre of Law Enforcement Activities Research.

<sup>2</sup> Trial of former Berkut officers suspected of the Maidan shootings postponed // [http://24tv.ua/home/showSingleNews.do?sud\\_nad\\_eksberkutivtsyami\\_yakih\\_pidozryuyut\\_u\\_rozstrilah\\_namaydani\\_perenesli&objectId=511400](http://24tv.ua/home/showSingleNews.do?sud_nad_eksberkutivtsyami_yakih_pidozryuyut_u_rozstrilah_namaydani_perenesli&objectId=511400); Ex-Chief of Cherkasy regional militia department declared as a suspect // <http://procherk.info/news/7-cherkassy/24642-kolishnomu-nachalniku-cherkaskoyi-oblasnoyi-militsiyi-ogolosheno-pro-pidozru>; Deputy Chief of Militia District Department in Zaporizhzhia will be brought to court for beating protesters in February // <http://112.ua/kriminal/zamnachalnika-rayotdela-milicii-v-zaporozhe-budut-sudit-za-izbienie-mitinguyu-schih-v-fevrale-97234.html>

<sup>3</sup> Employees of Oblonskyi District Department of Internal Affairs of the City of Kyiv kidnapped a man and by applying physical force tried to make him give false confessions // <http://roadcontrol.org.ua/node/2309>

<sup>4</sup> Ivano-Frankivsk militia officers mutilated an Afghan War veteran. MIA claims they acted in compliance with the law // <http://roadcontrol.org.ua/node/2277>



As evidenced by inspections materials, the practice of illegal arrests has not changed in a number of regions. Thus, in November, 2014, the Public Prosecution Office of Kharkiv Region detected the cases of concealing from records the facts of arrests of at least 50 citizens with no relevant minutes executed with regards thereto. Such facts were detected in one third of Kharkiv militia offices pursuant to results of inspection of five city district departments and four districts of the region (Balakliya, Blyzniuky, Pervomaisk, Lozova districts). The Public Prosecution Office also established numerous facts when citizens were arrested for commitment of acts, for which the arrest as an impact measure may not be applied in accordance with the effective legislation. The detected facts constituted grounds for disciplinary punishment of 11 employees of the IAA of various levels.<sup>5</sup>

In December, 2014, employees of the Ombudsman Office established numerous violations of citizens' rights as practiced by IAA units in the city of Bila Tserkva (Kyiv region). Namely, the following facts were established:

- unlawful arrests with no resolution of the investigating judge;
- concealing facts of the militia officers' applying physical force and impact munitions to citizens;
- failure on the part of the management of temporary detention facility of the public prosecution office to inform about facts of detecting bodily injuries on the detainees;
- manipulations with the actual time of bringing a person to the city department of internal affairs or with circumstances of the arrest, thereby facilitating violation of the statutory procedural time limits<sup>6</sup>.

Actions of the militia personnel during public order maintenance still raise much concern. Although the MIA has taken measures on renovation of the patrol unit, the concerts of Ani Lorak in Odesa (August) and Kyiv (November) have demonstrated that the militia is not ready yet to adequately and legally react to the provocative acts of protesters.<sup>7</sup>

Non-professional and biased actions of the Odesa militia on 02.05.2014 during football fans' attack by armed provocateurs also resulted in dramatic consequences leading to mass skirmishes, death of 48 persons and injuries of yet over 125 participants of the event.<sup>8</sup> None the less resonant appeared to be actions of law enforcement officers in Kharkiv on 22.06.2014 during the Euromaidan People's Viche (assembly), when Hryfon special police officers made a few attempts to disperse the spontaneous peaceful assembly and inflicted bodily injuries of different severity levels to the assembly participants.<sup>9</sup> Against the background of

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<sup>5</sup> 19 militia officers and border guards held liable for violation of rights of administrative detainees // <http://sud.ua/news/2014/11/10/70058-za-naryshenie-prav-adminzaderzhannikh-k-otvetstvennosti-privlecheno-19-militsionerov-i-pogranichnikov>

<sup>6</sup> Violations of human rights and freedoms detected in the activities of law enforcement bodies of Kyiv region // <http://www.ombudsman.gov.ua/ua/all-news/all-activity/191214-ss-viyavleno-porushennya-prav-i-svobod-lyudini-v-diyalnosti-pravoohoronni/>

<sup>7</sup> <http://www.telekritika.ua/profesija/2014-08-05/96625>;

[http://gazeta.ua/ru/articles/culture-newspaper/\\_izza-koncerta-ani-lorak-v-kieve-proizoshla-draka/596178](http://gazeta.ua/ru/articles/culture-newspaper/_izza-koncerta-ani-lorak-v-kieve-proizoshla-draka/596178)

<sup>8</sup> Death toll rose to 48 after riots in Odesa // <http://tyzhden.ua/News/109536>

<sup>9</sup> Injured and arrested reported during clashes between the Euromaidan and militia in Kharkiv // [http://censor.net.ua/photo\\_news/291079/v\\_harkove\\_proizoshli\\_stolknoveniya\\_evromayidana\\_s\\_militsieyi\\_est\\_postradavshie\\_i\\_zaderjannye\\_fotoreportajvideo](http://censor.net.ua/photo_news/291079/v_harkove_proizoshli_stolknoveniya_evromayidana_s_militsieyi_est_postradavshie_i_zaderjannye_fotoreportajvideo)

the mentioned events, actions of the militia officers on public order maintenance during the dismantlement of tents on the Maidan (Independence Square) on August 8 appear to be an isolated instance of coordinated actions aimed at prevention of conflicts and avoidance of force-applying scenario.<sup>10</sup>

Instances of criminal offences committed by law enforcement officers still continue to take place. Thus, in Kyiv region, a former district militia inspector was given a 1.5 year sentence under article 125, part 2, and article 126, part 1 of the Criminal Code of Ukraine for beating a resident of Borodianka village while off-duty in a night club and inflicting the latter with slight bodily injuries.<sup>11</sup>

*On the night of June 28/29, 2014, in one of villages in Ternopil region three militia officers forced an underage girl into a Skoda Octavia car marked as the Road Patrol Service (RPS) vehicle. Having driven off not far from the village, the men pulled her out of the car and raped close to the forest strip. The Public Prosecution Office of Ternopil Region initiated criminal proceedings under article 152, part 3 of the CC of Ukraine against the three officers of one of the militia district departments.<sup>12</sup>*

In November 2014, in Poltava region a bill of indictment was filed to the court against 2 militia officers (national security service, criminal investigation department) for plunder and extortion in the amount of USD 120,000.00 as well as private property arson.<sup>13</sup>

The issue of corruption as a major factor of human rights violation in activities of the IAA is still urgent even in the stress conditions of the country's interior life. SAI units are the first to come into focus of the society due to numerous evidences of the existing corruption schemes. For instance, mass media made available open appeals of SAI officers in the city of Uman regarding the system of maletolts established by the department management.<sup>14</sup> *Dorozhnyi Kontrol (Road Control)* activists informed of illegal tariffs being charged to obtain senior positions at the SAI on the regional level. Results of their investigation show that such tariffs in Dnipropetrovsk, Ivano-Frankivsk, Kyiv, Mykolayiv and Poltava regions range between UAH 500 and 800 thousand. Also, according to this very scheme, militia officers will need to pay UAH 8-10 thousand to be appointed as a regular SAI inspector. Every inspector thus appointed has to deliver UAH 300-500 after each duty on the route.<sup>15</sup>

Plundering of budgetary funds is openly reported by both — officers of regional divisions and leaders of the MIA of Ukraine. For example, in October 2014 militia officers of Mariupol filed an official request with the authorities to open an investigation in response to the fact of embezzlement of nearly UAH 100 thousand by the Chief of Zhovtnevyi District

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<sup>10</sup> A. Fedchenko. Night on the Maidan: expecting an assault and a "surprise" from law enforcement officers // <http://kp.ua/politics/465062-noch-na-maidane-ozhydanye-shturma-y-suirpryz-ot-sylovykov>

<sup>11</sup> Ex-militia officer condemned to 1.5 year sentence for beating a man in Kyiv region // <http://112.ua/kriminal/v-kievskoy-obl-eks-milicioner-osuzhden-na-1-5-goda-ogranicheniya-svobody-za-izbienie-cheloveka-100796.html>

<sup>12</sup> In Ternopil region three militia officers raped a 15-year-old girl // <http://www.0352.ua/news/565996>

<sup>13</sup> In Poltava region 2 militia officers are brought to trial for plunder, arson and extortion // <http://112.ua/kriminal/v-poltavskoy-obl-za-ograblenie-podzhog-i-vymogatelstvo-budut-sudit-2-h-milicinerov-145751.html>

<sup>14</sup> Uman SAI employees ask to fire a briber (appeal) // <http://progolovne.ck.ua/archives/112433>

<sup>15</sup> Position of Kyiv SAI Chief sold for UAH 800 thousand // <http://roadcontrol.org.ua/node/2295>

Department, and in December Minister of the MIA informed about exposure in 17 regional centres of facts of illegal privatisation of official housings for the amount of UAH 40 million.<sup>16</sup> High level of corruption incidence in the IAA caused picketing the building of the Cabinet of Ministers in December 2014 by members of the militia trade union, which gathered over 1,000 representatives from different regions.<sup>17</sup>

One of the main challenges in the area of observance of human rights and freedoms consists in participation of the MIA of Ukraine in the Anti-Terrorist Operation (ATO). On the one hand, for the first time in a long period, the MIA leaders faced the problem where they have to ensure the legality of actions of its personnel subject to long-lasting circumstances of an armed conflict. On the other hand, formation of volunteer battalions of riot police patrol service as well as volunteer battalions of operational designation of the National Guard of the MIA require large-scale enforcement of rights of soldiers of these units associated with the existing problems on logistic support of the MIA.

The first portion of the said problems became quite notable after disclosure in July 2014 of facts of large-scale nonfulfillment of duties and betrayal of national interests on part of the Donetsk militia officers. According to results of internal inspections, the MIA at first fired 585 militia officers noting that, as preliminary estimated, only 20–25% of militia officers in the liberated settlements may proceed with their duty since the MIA has no claims against them. Others are for good reason suspected in assisting separatists and oath-breaking.<sup>18</sup> A little later, in October, 15 thousand militia officers of Donetsk and Luhansk regions were made to leave the rows of MIA because of their oath-breaking and staying in the terrorists-controlled territories in disregard of the orders issued.<sup>19</sup>

At the same time, there has been the problem of laws observation among the ATO soldiers, when the Minister of MIA was forced to disband the special designation battalion of Shakhtarsk after 50 out of 700 of its soldiers were accused of looting.<sup>20</sup> During 2014 the society also learnt about the evidences of citizens with respect to violations of their rights by fighters of volunteer battalions relating to unlawful arrests, cruel treatment, extortion and robberies.<sup>21</sup> Monitoring visits by human rights organizations also confirm soldiers of certain battalions being involved in kidnapping and involuntary confinement of people for ransom.

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<sup>16</sup> Mariupol militia officers complain — Chief takes away their salaries // <http://roadcontrol.org.ua/node/2354>;

Former Chief of Militia Department of Kyiv Region bought a 3.2 million apartment // <http://v7v7v7.com/2014/12/01/ehks-nachalnik-milicii-kievshhiny-kupil/>

<sup>17</sup> Zaporizhzhia militia veterans saw by the MIA walls “disgrace in the best traditions of Yanukovych” // <http://iz.com.ua/zaporoje/59503-zaporozhskie-veterany-milicii-uvideli-vozle-sten-mvd-pozorische-v-luchshih-tradiciyah-yanukovicha.html>

<sup>18</sup> 585 militia officers of Donetsk region fired // <http://mvs.gov.ua/mvs/control/main/uk/publish/article/1101126>;

MIA accuses over half of the Donbas militia personnel of betrayal // <http://comments.ua/politics/480648-mvd-obvinyaet-predatelstve-bolee.html>

<sup>19</sup> MIA fired 15 thousand traitors in Donbas // <http://www.pravda.com.ua/news/2014/10/16/7041022>

<sup>20</sup> Avakov disbanded Shakhtarsk battalion for looting // <http://www.pravda.com.ua/news/2014/10/17/7041055/>

<sup>21</sup> Video goes online showing the detention and beating by Dnipro battalion of separatists’ accomplice // <http://112.ua/obshchestvo/v-seti-poyavilos-video-zaderzhaniya-i-izbieniya-batalonom-dnepr-posobnika-separatistov-98644.html>

In Kyiv, personnel of the Azov battalion have been involved in several cases of unlawful actions caused by a conflict between the political forces and commercial structures.<sup>22</sup>

It must be admitted that there is a positive aspect in that the MIA, regardless of all the mentioned difficulties, far back in April 2014 declared the course of fundamental change of the institution activities by establishing the Expert Board for Reformation and supporting the pilot experiment of militia reformation in Lviv region. Within 7 working groups, the experiment united 90 specialists in the sphere of education and state administration, IAA employees, activists of public organizations and non-governmental experts. Despite its incomplete results, the experiment initiated the change of assessment criteria of the IAA activities, implementation of community policing and procedures for selection of senior management using the polygraph. In October, in the city of Khmelnytskyi the next experiment was launched aimed at consolidation of the militia patrol service and SAI to strengthen their servicing capacity.

On October 22, 2014, a rather extraordinary event took place: for the first time in the last 18 years the government approved the package of proposals on the MIA reformation. But what was more notable in this situation is the fact of approving the Strategy for Development of the Internal Affairs Agencies elaborated by the human rights advocates as the major program document. However, it took almost a month for citizens to see this document. This was caused by hair-trigger reaction of the old regime militia lobby multiplied by conservatism of a bureaucratic governmental mechanism.<sup>23</sup>

The said Strategy focused on the main underlying principles of modern European police studies — depoliticization, rule of law, decentralization, demilitarization, transparent operation and accountability to the society.

The Strategy sets forth a series of conceptually new ideas. First of all, this is formation of the MIA as a civil and open home office coordinating activities of its services enjoying the status of central executive bodies. This means that the services are seen independent to the extent, when they may dispose of their own budget and conduct their own personnel policy. And the Minister as a civilian shall not be entitled to perform direct management of any of these services and shall not interfere with their activities, except for emergencies. The national police in this model shall have neither leading nor predominant position. Independence of law enforcement units also provides for a whole new structure — municipal police as well as introduction of several alternative models thereof depending on the region's specific features.

Civil nature of the ministry will be accompanied by renunciation of military attributes, a system of pseudo-military ranks as, for example, Colonel-General of the Militia, and removal of all military units from the MIA. The National Guard and the Border Guard Service will be no exceptions; they will be deprived of their military status too, and will be transformed into paramilitary structures.

Also, Ukrainians might be interested in innovations of the Strategy directly guaranteeing the inviolability of their rights when communicating with the police as well as the efficient control over the legality of actions by the MIA personnel. From the point of view of the

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<sup>22</sup> MIA's Azov: new extremists? // <http://tema.in.ua/article/8648.html>

<sup>23</sup> MIA of the European standard: strategy of reformative changes // <http://www.pravda.com.ua/columns/2014/12/15/7052035/>

Strategy, it is considered to be completely natural that the society must be at all times engaged in investigations, for example, in investigations of cruel treatment at the police offices. None the less natural is that damages inflicted by non-professional and illegal actions of law enforcement officers must be reimbursed not only by the persons at fault but also at the cost of the budget of that body where offenders in a uniform served their duty. The idea of public control equalling to the state control is the cross-cutting theme of the Strategy. It is implemented everywhere: in the society's membership in certification commissions for selection to the MIA senior positions, in the citizens' presence at examinations of candidates for the position, in a separate direction of the MIA departmental policy called *community policing* (activities focused on needs of the communities), and in the assessment mechanism of the MIA activities on the whole.

The rights of the MIA personnel have not been left on the side-lines too: the Strategy stipulates the system of changes in social and financial support of law enforcement officers as well as the transparency of personnel procedures, gender equality in the course of professional career, closing the door on manipulating conduct of the subordinates on part of dishonest seniors.

However, most of public attention has been drawn to the idea of cardinal restructuring of the MIA and future police, since this provides for "disappearance" of a whole range of services — SAI, transit and veterinary police, units for fighting organized and economic crime, illegal drug trafficking, security services. It is expected that most functions and personnel of the said services will be assigned to the jurisdiction of other ministries. This will enable to optimize the police structure and gradually arrange for 70% of policemen to fall within the two most important services — patrol service and service of district officers.

The process of reform implementation, indeed, remains highly debatable but not only and not so much due to the lack of financing. The core for all the problematic issues might be whether the country and its society are ready to welcome real reforms, since it is clear that the MIA reform can be effective only as part of changes in the whole sphere of criminal justice. Thus, the MIA's efforts to set up the new operation system appear to be rather difficult nowadays. However, as compared to those tasks arising when building a new system of the MIA relations with public prosecution offices and judicial system, the problems of inner functioning seem to be quite an everyday matter.

## RECOMMENDATIONS

1. To the Presidential Administration and the Cabinet of Ministers of Ukraine, to ensure coordination of reformation processes in the sphere of criminal justice with consideration of the specific features and competence of judicial bodies, public prosecution offices and internal affairs agencies.

2. To the Ukrainian Parliament, to commence the development of legislative initiatives regarding the optimal model of the MIA military units engagement in the circumstances of an armed conflict, emergencies, ATO, with simultaneous development of social protection system for the MIA personnel.

3. To the Ukrainian Government, to consider the possibility of legislative recognition of the system of public monitoring of the IAA activities with a wider involvement of the society and non-governmental organizations in the work of advisory and consulting bodies of the MIA, expert and interim working groups, without limitation to the existing forms.

4. To the Ukrainian Government, to improve the mechanism of government statistics in order to establish separate statistical accounting of crimes with elements of tortures, stipulated in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to periodically publish such statistical data on a mandatory basis.

5. To the Ukrainian Government, to regulate the legal framework and mechanisms for rendering administrative services by departments of the MIA of Ukraine, providing for their transparency, protection against monopoly or corruption risks, and a well-defined system of quality standards for services and control over their provision.

6. To the MIA of Ukraine, to arrange the process of transparent implementation of reformation principles with engagement of all the parties concerned — national institutions of civil society, international expert environment, legislative branch.

7. To the MIA of Ukraine, in statutory terms to improve the procedure of internal investigations at the citizens' complaints in order to guarantee the fullest protection of right of the aggrieved for fair and efficient consideration. At the same time, the following must be ensured:

- the claimant's rightful participation in the internal investigation at his/her request (examination of the investigation files and their assessment, attending interrogations of those involved in the investigation, the possibility of providing additional materials at any stage of the investigation etc.);
- the claimant's right to engage a lawyer or other specialist in the sphere of law as well as human rights advocates or independent experts into the internal investigation;
- the possibility to suspend an IAA employee from work for the time of an internal investigation (to allow for credibility of the investigation);
- implementation of measures on protection of the claimant and other persons involved in the internal investigation against pressure on part of the militia officers.

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*Part II*

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







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# I. RIGHT TO LIFE, PROTECTION FROM TORTURE

## 1. USE OF VIOLENCE BY GOVERNMENT AGENTS

### 1.1. Human rights violations by Ukrainian Ministry of Internal Affairs employees

2014 was marked with massive and shocking violations by government agents of human rights to life and defence from violent treatment, which Ukraine has never suffered over the years of independence.

18–20 February 2014 appeared to be the most dramatic days of “Dignity Revolution”, because the security forces used weapons against the unarmed EuroMaidan protesters.<sup>2</sup> To that point flash bang grenades, non-lethal pump-action rifles, tear gas and water cannons had been used<sup>3</sup>. But on 18 February special task group “Berkut” appeared to be armed with assault rifles and supported with two BTRs,<sup>4</sup> and on 20 February 2014 snipers, positioned on the roofs of hotels “Kozatskyi” and “Ukraine”, opened fire for effect.<sup>5</sup> The House of Trade Unions was set on fire and destroyed, which took lives of 50 people.<sup>6</sup>

According to the report of the Maidan Medical Service coordinator Olha Bohomolets, hundreds of people were badly wounded,<sup>7</sup> 15 people were killed on Instytutska Street, 22 people — on M. Hrushevskiyi Street. 5 more people died during Maidan barricade assault. The Ministry of Internal Affairs, on his part, reported, that seven soldiers died and more than 270 were wounded.<sup>8</sup> The scale of such unreasonable, disproportional force application in complicated conditions of social conflict raises a natural question regarding the need of qualifying the authority actions as a crime against humanity with no limitation period.

One more unprecedented human rights abuse took place in Odessa on 2 May 2014 during the conflict between FC “Chornomorets” and FC “Metalist” fans on the one side and pro-Russian activists on another side. Considering that it was a pre-planned provocation of pro-Russian separatists, armed with sticks, non-lethal weapons and firearms, it resulted in

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<sup>1</sup> Prepared by lawyer Mykhailo Tarakhkalo, УГСПЛ.

<sup>2</sup> <https://www.youtube.com/watch?v=T61bE1Bhb8o&list=TLaPoqGHaZCTGIqfKIXunblu6owEQZrkUz>;  
<https://www.youtube.com/watch?v=yBNwwKGlibA> and <https://www.youtube.com/watch?v=yCzIIFAsGk4>

<sup>3</sup> <http://www.radiosvoboda.org/content/article/25267612.html>;  
<http://www.pravda.com.ua/news/2014/02/18/7014190/?attempt=1>;  
<http://ua.interfax.com.ua/news/general/190555.html>;  
[http://zik.ua/ua/news/2014/02/18/proty\\_aktyvistiv\\_zastosuvaly\\_vodometry\\_461837](http://zik.ua/ua/news/2014/02/18/proty_aktyvistiv_zastosuvaly_vodometry_461837)

<sup>4</sup> [http://espresso.tv/new/2014/02/18/bilya\\_banku\\_khreschatyk\\_dva\\_btr\\_y\\_kulemet\\_na\\_trynozi\\_berkut\\_ozbro\\_yuyetsya\\_kalashnykovymy](http://espresso.tv/new/2014/02/18/bilya_banku_khreschatyk_dva_btr_y_kulemet_na_trynozi_berkut_ozbro_yuyetsya_kalashnykovymy)

<sup>5</sup> [http://espresso.tv/new/2014/02/18/khronika\\_myrnoho\\_nastupu\\_maydanu\\_na\\_verkhovnu\\_radu](http://espresso.tv/new/2014/02/18/khronika_myrnoho_nastupu_maydanu_na_verkhovnu_radu)

<sup>6</sup> <http://fakty.ictv.ua/ua/index/read-news/id/1504619>

<sup>7</sup> <http://www.radiosvoboda.org/content/article/25268723.html>

<sup>8</sup> Ibid.

mutual violence and setting House of Trade Unions on fire, where 38 people died. And the policemen, in fact, supported extremist abusers. Eyewitness testimonies and video materials point undeniably at facts of such a criminal cooperation, when provokers were hiding behind the police shields, firing at the crowd from behind the policemen backs. So, the Internal Affairs employees, instead of keeping public order, were directly supporting the slaughter, and the top echelon of Odessa Police Department is under full responsibility for the bloody results of those events — 46 people dead, 214 wounded, 88 of them hospitalised and 3 died in the hospital.<sup>9</sup>

The problem of Internal Affairs employees' violence against the apprehended, suspected and other persons under their control is still urgent.

*Thus, V. Horanin, the EuroMaidan activist, apprehended on 21 March 2014 in Kyiv on suspicion of organising murder of three SAI officials (State Automobile Inspection), was put to torture in presence of the investigator. "...They were trying to bring me down to my knees. But, as I had been refusing to kneel down, they began beating me again. I lost my consciousness again. When later I asked for some medical aid — there had been blood running from my ear for several hours — they brought in a woman, who just wiped out the blood and said it was the medical aid", — he remembers. In the court sessions hall Vladislav demonstrated the beating traces on his body. He was conveyed to the court from the hospital, since he had been determined to have a closed craniocerebral injury. Besides the knocked out teeth, there is a need for ear operation.<sup>10</sup>*

The problem is also deepened by imperfection of the court practices, as the facts of violent treatment gain no objective assessment. Thus, the judicial board of Kharkiv Court of Appeal has generally pardoned the Kharkiv policemen, convicted for 6 years of imprisonment for creating a criminal formation, fraud activities and torture. Moreover, they were allowed to return to their law enforcement work. The judgement was based on the fact, that their crimes had never involved life and health threatening violence. However, the very judges admitted the fact of tortures, which seemingly are not considered as health threatening actions<sup>11</sup>.

Such a judgement of the Court of Appeal contradicts the international law standards, particularly the European Court of Human Rights practice, stating in the case of *Savin v. Ukraine* (2012), that if a state representative is accused of crimes, involving torture or ill-treatment, the criminal cases and sentences must have no limitation period, and amnesty or pardon are not permitted<sup>12</sup>.

Let us recall, that in 2014 the European Court of Human Rights ascertained the breach of Article 2 of the European Convention in two cases against Ukraine and Article 3 — in 11 cases.

*One of those is the case of Dzhulai v. Ukraine (2014), in which the applicant complained he had been ill-treated by police officers and claimed that his admission of guilt in a crime had been made under the physical pressure. The applicant described the police treatment in details: severe beating during his arrest in Kyiv and later in the police department in Pyriatyn, where*

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<sup>9</sup> <http://helsinki.org.ua/index.php?id=1399274764>

<sup>10</sup> <http://tyzhden.ua/Society/106111>

<sup>11</sup> <http://helsinki.org.ua/index.php?id=1408623207>

<sup>12</sup> <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109130>

*he had been hit on his head with a book, put on a gas mask with cigarette smoke puffing inside of it, and all of that while continuous severe beating. After some time the applicant, not being able to bear such a treatment, had to confess to the crime. The European Court has admitted in this case the breach of Article 3 of Convention in its procedural aspect, as well as the presence of ill-treatment in relation to provisions of the Article, stating, that government authorities must not treat the arrested in abusive way in order to obtain confessions<sup>13</sup>.*

### 1.2. Human rights violation in the penitentiary service facilities of Ukraine

Human rights organisations continue receiving information about human rights violations in the system of the State Penitentiary Service facility of Ukraine (SPSU). Particularly, there are incidents of beating prisoners in the penitentiary facilities by employees of those facilities. Thus, on November 25, during the regular monitoring visit of the group, consisting of Ihor Klus, the assistant of the member of parliament Oleh Lukashuk, and also Vasyl Melnytchuk and Andrii Didenko, the journalists of the News Bulletin “Prava Liudyny” (“Human Rights”) of Kharkiv Human Rights Group to Zamkova Corrective Colony No. 58 mass complaints from the convicted were put on record. The main claim, present in all of the complaints, is the appeal against the actions of the facility executives, causing the abuse of basic human rights and becoming apparent in beating, psychological torture, honour and dignity humiliation. The convicted told that their complaints on personnel actions (or inaction) had never been sent further, so they had been bound to resort to such an extreme protest action as hunger strike. Some of the convicted had crippled themselves as a mark of the protest, which was put on record as well.<sup>14</sup>

On 12 November 2014 at Berdychiv Corrective Colony No. 70 the similar conflict situation — protests of convicted, discontented with personnel actions — resulted in mass beating of convicted by soldiers of the special SPSU unit and associate detachments of personnel from different facilities<sup>15</sup>. On 13 November the Commissioner of the Verkhovna Rada of Ukraine on Human Rights had already launched a proceeding in response to that, and also sent an appeal to the Prosecutor General of Ukraine with a request to take any necessary actions in order to conduct an unbiased investigation in response to cases of causing physical injuries to the convicted.

At the same time the Commissioner directed the attention of the Prosecutor General to the fact, that the European Court had already passed several resolutions regarding Ukraine in the cases with actual circumstances, similar to the situation, which had occurred at Berdychiv Corrective Colony No. 70 (*Davydov and others v. Ukraine, Karabet and others v. Ukraine*)<sup>16</sup>. According to the mentioned ECHR resolutions, in case if the investigation of an incident of convicted being beaten is not conducted properly, the guilty are not identified and brought

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<sup>13</sup> <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-142076>

<sup>14</sup> <http://www.khpg.org/index.php?id=1417179591>

<sup>15</sup> <http://www.khpg.org/index.php?id=1417179591>; <http://khpg.org/index.php?id=1416571036>

<sup>16</sup> [http://www.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4153:70&catid=14:2010-12-07-14-44-26&Itemid=75](http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4153:70&catid=14:2010-12-07-14-44-26&Itemid=75)

to responsibility, there will be the ground for new conviction of Ukraine as the abuser of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>17</sup>

### 1.3. Human rights violation in ATO (Antiterrorist operation) area

There are incidents of disappearance and death of the civilians, their torture both by the militants and by Ukrainian enforcements in ATO area. During the research mission in September-October 2014 Amnesty International experts has recorded deaths of more than 20 civilians in result of firing and bombardments in eastern cities of Ukraine: Donetsk, Avdiivka, Debaltseve. Most of the deaths in residential districts were results of indiscriminate fire by offenders using weapons with low accuracy, which didn't allow to differentiate between civilian and military targets. The research of the Organisation presents convincing proofs that in those districts the separatist forces had been firing and the Ukrainian governmental forces, in their turn, fired back. At least once the governmental forces had placed the artillery station in the residential district. Both sides of the conflict bear the responsibility for the established practice of conducting indiscriminate fire attacks in densely populated settlements<sup>18</sup>.

Amnesty International has also recorded dozens of cases of abuse, committed, probably, by the Aidar Battalion members in Novoaidar Rayon, Starobelsk, Severodonetsk, Lysychansk and Shchastia at the end of July — end of August. As a rule, the soldiers abducted local men, often businessmen or farmers, accusing them of collaboration with the separatists and holding them in improvised prisons to let them later go or be conveyed to the Security Service (SSU). Almost in all cases, recorded by Amnesty International, victims were beaten at the moment of abduction and/or during the inquiries. They had either to pay some ransom for their freedom or their property, including money, cars, mobile phones and other valuables, was taken by the soldiers of the battalion.

*Thus, on 25 August, at about 16:00 near the TV tower not far from Starobilsk, Aidar soldiers abducted Yevhen (the name is changed), a 31-year old local businessman. Yevhen told the Amnesty International, that the three men in masks, which had arrived in a black VAZ, approached him, when he stopped near the abandoned petrol station. They searched his car, confiscated UAH 30,000, that had been found there, and accused Yevhen of separatism. He told: "They put a mask onto my head and had been driving for about 20 minutes. They brought me to a place looking like a garage, and begun interrogating me, demanding to confess in separatism. They interrogated me three times. Every time they used to hit me on my kidneys with gunstocks and other blunt objects, maybe with a blunt end of an axe. They threatened me to take me to the fields and execute me there. In 24 hours they came again and told me, that I was arrested by the Aidar Battalion, but from now I would be in the hands of Alfa (SSU special task group), but I saw, that they were the same people. Yevhen said, that finally the abductors asked him, how much he was ready to pay for his freedom. When Yevhen told, that they had taken everything he had, then released him. He went to the police, but was not able to recover his taken property — the car, the money, two mobile phones and golden accessories.*

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<sup>17</sup> <http://khpg.org/index.php?id=1416571036>

<sup>18</sup> <http://amnesty.org.ua/nws/obidvi-storoni-konfliktu-vidpovidalni-za-napadi-nevibirkovogo-harakteru-u-shidnij-ukrayini/>

The evidence, received from the Amnesty International, indicates that the soldiers of the Aidar Battalion, who are de jure acting under command of ATO regional united headquarters, are de facto acting without supervision and control, and local police departments are either not willing or not capable of responding to their abusive actions. Some of the abuses, committed by the Aidar Battalion soldiers, may be considered as war crimes, and those guilty must be brought to responsibility according to the national and international law<sup>19</sup>.

### 1.4. Human rights violation in AR Crimea

According to the report of the Crimean Human Rights Field Mission, since March 2014 incidents of disappearance have been regularly recorded in the Crimea. There is evidence of enforced nature of disappearance of at least 5 persons.

One of the high profile cases is the abduction and later murder of Reshat Ametov, a Crimean Tatar, apprehended by unidentified people in camouflage in the central square of Simferopol on 3 March 2014. In 10 days his body with traces of violence was found in Sunychne village of Bilohirskyi Rayon. The cause of death was the penetrating knife stab into the eye. At the beginning of April the Investigative Department of the Investigative Committee of the Russian Federation in “Republic of Crimea” initiated a criminal case under the article 105, section 1 of the Criminal Code — “homicide”. Besides that, on 22 October 2014, according to the demands of sections 1 and 4 of article 214 of CPC of Ukraine (Criminal Procedural Code), “the records of the criminal offence” were registered in the Unified Register of Pre-Trial Investigations with prior legal assessment under article 115, section 1 of CC of Ukraine (intentional homicide). Up to date both investigations are still in process.

The serious problem of this range of incidents could be the possible participation of so called “Crimean Local Defence”, which has gained the status of “citizens at arms/people’s guard”. Since the reports of their involvement in abductions are quite widespread, and the guilty still haven’t been found and brought to responsibility, an opinion is spreading among the Crimean population, that the government is either directly involved in those crimes or covering them up.

The situation is complicated by the Crimean government, suggesting the relief of criminal and administrative liability for “citizens at arms” of the Crimea, recognizing their actions as “committed in the state of extreme necessity”, and in addition to that, the extension of the relief up to 1 January 2015, including actions, yet uncommitted. The appropriate proposed law has been introduced in the State Duma of the Russian Federation by the State Council of the Crimea<sup>20</sup>.

## 2. PROTECTION OF INDIVIDUALS, PLACED UNDER THE STATE CONTROL

The government is responsible for life and health of people, placed under the state control, e. g. in institutions of confinement or temporary detention, armed forces, public hospitals, compulsory medical treatment facilities, etc.

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<sup>19</sup> <http://amnesty.org.ua/materiali/human-rights-in-ukraine/zlovzhivannya-ta-voyenni-zlochiny-z-boku-d/>

<sup>20</sup> [http://www.ombudsman.gov.ua/images/stories/11\\_kpm.pdf](http://www.ombudsman.gov.ua/images/stories/11_kpm.pdf)

One of the biggest problems of penitentiary system establishments is keeping prisoners in overcrowded cells with unsanitary conditions. Very often natural and artificial light is inadequate, the ventilation is poor or absent, the cells are cold, too damp, the walls are moulded, there are problems with water supply, especially with hot water.

The buildings of the penitentiary system establishments and the interior of the cells have already reached their operation limits long time ago, and now are in very bad conditions and needing complex repairs.

While keeping individuals in colonies and remand prisons (SIZO) the standards of usable area per person are breached. Besides, the national standards of usable area, determined by Ukrainian law, are not corresponding to minimal standards of the European Committee on the Prevention of Torture and Cruel Treatment (CPT).

However, it should be noted, that in result of the vast amnesty in 2014 the number of prisoners has considerably decreased. According to the data, that Donetsk Memorial received from SPSU, the number of convicted, who has come within the purview of this law, reached 34791 people, including 22315 people, convicted to confinement. Among convicted to confinement there were 16624 people released under the amnesty. As a result of the amnesty, the quantity index of prisoners per 100,000 persons in Ukraine in September has decreased to 217, though at the beginning of 2014 it was represented by 279. The amnesty 2014 came to an end on 19 July 2014. The attempts of applying amnesty to the convicted, residing on the territory of the Crimea (roughly estimated, that is at least 500 people), have been unsuccessful.<sup>21</sup>

The major problem is the violation of human right to life at institutions of confinement or temporary detention (TCC — Temporary Containment Cells, remand prisons, custodial facilities, etc.). Terrible life conditions, almost absent or inefficient medical treatment both cause death of prisoners.

There are incidents of keeping together consumptive and healthy people in the same cell.

Another problem is improper food supply, especially during conveying of suspected (accused) to the court.

Employees of the Secretariat of the Commissioner on Human Rights and representatives of social organizations the Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL) and the Association of Independent Monitors inspected in November 2014 the conditions of transportation of the convicted and prisoners in special Ukrzaliznytsia carriages and came to a conclusion, that, considering the transport conditions, any convoy of people in special carriages may be qualified as cruel and humiliating treatment.<sup>22</sup>

As for medical treatment in institutions of confinement, it is insufficient and of low quality. Sometimes it isn't delivered at all. That leads to the grave consequences for those residing in institutions of confinement.

Equipment of medical wings is out of date, not to the national and international standards, the buildings need repairs. The penitentiary system establishments are ill-provided with medical supplies and specialists.

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<sup>21</sup> <http://ukrprison.org.ua/news/1410599793>

<sup>22</sup> [http://www.ombudsman.gov.ua/index.php?option=com\\_content&view=article&id=4145:2014-11-13-10-52-39&catid=235:2013-03-12-12-33-02&Itemid=235](http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4145:2014-11-13-10-52-39&catid=235:2013-03-12-12-33-02&Itemid=235)

Such current situation is caused by improper workflow arrangement of corresponding subsections of the custodial facilities, lack of funding and also by the fact, that it is rarely possible for prisoners to receive treatment in facilities of the Ministry of Healthcare of Ukraine.

Absent or insufficient medical treatment in institutions of confinement affects the death rate in the institutions of confinement.

According to the information of human rights organization Donetsk Memorial, at the beginning of July there were 5813 HIV-positive people on dispensary control in the institutions of confinement, including 832 in remand prisons. 3620 people were treated from tuberculosis, including 362 in remand prisons. Within half a year 456 people died in the penitentiary system establishments (10.3 deaths per 1,000 prisoners if calculated per year, in 2013 the index was 7.2, in 2003 — 4.3), including 69 people, who died in remand prisons. During this period there were 30 suicides (0.68 incidents per 1,000 prisoners if calculated per year, in 2013 it was 0.66, in 2003 — 0.21), including 5 suicides in remand prisons<sup>23</sup>.

According to the data of the State Penitentiary Service of Ukraine, as of 1 November 2014, 681 convicted and placed in detention died in the SPSU facilities, including 106 people — in remand prisons. 4118 people are registered as HIV-positive, 2001 — received antiretroviral therapy (ART), 2970 — were on dispensary control with tuberculosis, among them 336 people — in remand prisons.<sup>24</sup>

The current situation in colonies of Donetsk Oblast and Luhansk Oblast is complicated. Establishments, situated on the territory not under the control of Ukrainian forces, are greatly difficult, though possible, to supply with food. However, the situation may change because of the adoption of the decree of the President on 15 November, ordering the withdrawal of all budget-funded entities from the non-controlled territory<sup>25</sup>.

Unfortunately, the situation in MIS facilities (the Ministry of Internal Affairs of Ukraine) is of the same sort: breach of usable area standards, unsanitary conditions, untimely and low-quality feeding, lack of constant access to running, fresh and hot water, insufficient cells lighting, low-quality ventilation, out of date equipment, inadequate medical treatment, etc.

The problem of improper confinement conditions in the penitentiary system establishments is a complex one, needing the fastest solution, as it leads, among other things, to spreading of various diseases and, as a result, to the death of the confined.

### **2.1. Concerning the situation in ATO area**

There are 28 facilities, subordinate to the SPSU, keeping 15,000 prisoners, on the territory of Donetsk Oblast and Luhansk Oblast. Most of those facilities, including Donets and Luhansk remand prisons, are situated on the territories under the terrorist control. But for some reason neither the Ministry of Justice nor SPSU brings up the question of prisoners evacuation. We constantly receive the information from the prisoners about awful conditions. The bread stocks are over. Prisoners have water gruel once a day. Militants do not let them out from

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<sup>23</sup> <http://ukrprison.org.ua/statistics/1409938063>

<sup>24</sup> <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/753486>

<sup>25</sup> <http://ukrprison.org.ua/news/1417070408>

the colonies and do not let government representatives pass onto colony territories. The colonies are exposed to firing. Thus, on 06/09/14 several missiles hit the territory of colony No. 23 in Donetsk Oblast. For the present, it is unknown if there are any injured there, though some of the bombardments have already resulted in the death of prisoners. And the longer the prisoners will be located in the area of combat operations, the higher are the chances for endangering their lives. The government just has no right to stay aside of those events.<sup>26</sup>

## 2.2. The European Court practice

The European Court has already passed several resolutions regarding Ukraine in cases, in which the appellants complained about bad confinement conditions in institutions of confinement. Thus, in the cases of *Andrii Yakovenko v. Ukraine* (application No. 63727/11, decision on 13 March 2014), *Danylov v. Ukraine* (application No. 2585/06, decision on 13 March 2014) and *Zinchenko v. Ukraine* (application No. 63763/11, decision on 13 March 2014) The European Court identified the breach of Article 3 of the Convention, particularly in relation to bad confinement conditions in remand prisons, and noted in its decisions, that the government was obliged to provide the proper conditions of prisoners confinement in remand prisons<sup>27</sup>.

In Yakovenko's case the European Court has also noted, that the government was obliged to provide proper transportation conditions for the convicted. The applicant of this case was transported as a convicted from Sokyrnianska (Chernivtsi Oblast) to Torezka Corrective Colony (Donetsk Oblast) by train: the prison compartments were suited for 4–6 people, but actually contained more than 11 people, there was lack of fresh air, the temperature in summer exceeded 30 °C, it was difficult to breathe, the guards convoyed the convicted to the toilet once in 4 hours and stayed there with them, etc. The transportations of the applicant took two month in total. The European Court came to the conclusion, that it is necessary to admit the applicant transportation conditions inhumane and degrading according to Article 3 of the Convention.

In the case of *Oleksandr Volodymyrovych Smyrnov v. Ukraine* (application No. 69350/11, decision on 13 March 2014) the European Court has ascertained the abuse of Article 3 of the Convention in relation to bad confinement conditions in Slovyanoserbaska Corrective Colony No. 60 (Luhansk Oblast) and has noted, that the government was obliged to provide the proper conditions of prisoners confinement in the colony<sup>28</sup>.

Besides, there are problems with the delivery of adequate medical treatment in public hospitals. On 16 January 2014 the European Court of Human Rights adopted the judgement in the case of *Fuklev v. Ukraine* (application No. 6318/03).

*The case concerns to the death of a woman, who had been admitted to the gynaecology ward of Kherson Regional Clinical Hospital with a diagnosed metrofibroma. She underwent*

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<sup>26</sup> <http://khpg.org/index.php?id=1414747927>

<sup>27</sup> <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82987>;  
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141625>;  
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141633>

<sup>28</sup> <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141635>



*the operation, but her condition rapidly deteriorated because of post-operative peritonitis. She died in the hospital. The autopsy confirmed that the death was caused by post-operative peritonitis, complicated by sepsis. The Regional Healthcare Department Commission studied the circumstances of the incident and found that the medical staff of the hospital had not been guilty in the death of the applicant's wife. The hospital commission also came to the conclusion, that the death of the applicant's wife had been inevitable. The Ministry of Healthcare Commission for investigation of treatment circumstances of applicant's wife, created following his complaint, revealed, that the patient had not been properly prepared for the operation, had been operated on urgently, and also the diagnostics and the treatment had been improper. This conclusion was taken into consideration by the Health Department of the Kherson Region State Administration and resulted in directing the medical staff to special advanced training courses to evaluate their qualifications, and head of the ward had been reprimanded, which was insufficient in appellant's opinion. On 30 November, 2001 the Health Department informed the applicant that improper treatment of his wife was revealed during the investigation. A criminal case was initiated over the fact of death. It was repeatedly suspended, but the decisions of the investigation authority were cancelled by the higher authorities. The final case judgement has never been made.*

The European Court has noted in judgement, adopted on this case, that there is a need of creation of such a legal system that will allow proper investigation of incidents, concerning the death of patients during their treatments both in public and private medical institutions. And, upon the existence of the guilty in death of the patient, the government must find and punish them. This principle concerns not only to the criminal prosecution, but also to the administrative and disciplinary law areas. Person offended or relatives of the dead should feel protected by the governmental legal safeguards, such as an opportunity to file a civil action for damages payment. The European Court has noted, that the provisions of Article 2 of the Convention are not possible to implement, until the protection, provided by the national law, exists only on paper, as it has to function effectively in practice, what has not been achieved in the case in question.

The European Court also has noted, that the demand of effective investigation includes, in particular, the "thoroughness", which means, that the authorities must always make serious attempts to reveal, what happened, and should not rely on hasty or ill-founded conclusions to close their investigation as soon as possible. They must take all reasonable steps available to them to secure the evidence concerning the incident. In this case the decisions of refusal to institute criminal proceedings were twice dismissed by the higher authorities. In total, the investigation of the death of applicant's wife had been in process for 6 years and 2 months. Such a long-standing investigation, according to the Court, is groundless in relation to Article 13 of the Convention<sup>29</sup>.

### **2.3. The duty of the State to provide the effective investigation**

#### **2.3.1. General situation**

The duty of the State to conduct the effective investigation provides the official investigation in the cases, when the person was put to death or makes not an unfounded

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<sup>29</sup> <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140009>

claim of undergoing the torture or other kinds of abusive treatment, especially on the part of government agents. Such an investigation must be conducted by independent and unprejudiced authority, taking all reasonable steps to secure the evidence concerning the incident.

But, not always the investigations are conducted properly, especially in those cases, when government authorities are suspected in committing the crime.

It should be noted, that according to the provisions of CPC, it is possible to launch an investigation and start collecting evidence concerning the incident with only entering the information on the crime into the Unified Register of Pre-Trial Investigations (further — URPTI).

Thus, there are no obstacles for launching the investigation without a delay. Moreover, CPC contains no grounds for refusal of entering the information into URPTI, and lack of action by investigation authority or untimely entering of the information on the crime into URPTI may be appealed against, examined by the investigation judge within 72 hours.

This procedure is effective and allows launching the investigation without a delay, which, in its turn, prevents the loss of important evidence concerning the incident.

However, despite this provision, there are certain cases of refusal of registering information in URPTI.

Indeed, there are plenty obviously groundless crime applications, which bare no need of being entered into URPTI<sup>30</sup>, still in the court practice there are multiple examples of refusal of registering crime applications, if they need additional examination by the investigating authorities. The refusal of registering applications on abusive actions of law enforcement agents are of the most concern in this context<sup>31</sup>.

It should be noted separately, that CPC contains a demand to create a new investigation authority by 2017 — the State Bureau of Investigation, which will take away the investigation function from the prosecution office and specialize in investigating crimes, committed by high officials and law enforcement agents.

Creation of such an institution aims at overcoming the conflict of interests of the prosecution office, which nowadays supervises the investigation and represents the prosecution during crime proceeding, in which the person undergone violent treatment (causing death, leading to suicide) is suspected, and at the same time directly investigates the lethal incidents caused by violent treatment, which significantly affects the quality of such investigation.

Moreover, up to date, the prosecution office has no own operating team and during the crime investigation is forced to use services of operating teams of other law enforcement institutions, including MIA, which in many cases puts the independence and neutrality of the investigation in question.

And with creation of SBI — the proper investigation authority — this problem will disappear.

Still there is an issue of sharing the information on the course of investigation with the public and interested persons. Unfortunately, sharing the information is often held in

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<sup>30</sup> <http://www.reyestr.court.gov.ua/Review/37049845>

<sup>31</sup> <http://www.reyestr.court.gov.ua/Review/37812578>

generalized statements and with great delays, interested persons are often groundlessly deprived of the opportunity to receive copies of investigation materials.

It is a common practice, when victims of violent treatment and relatives of the dead are not conferred a victim status in proper time, which in turn prevents their timely access to the investigation materials.

It should be noted separately, that up to date the national law does not provide the opportunity for the offended to receive the gratuitous legal aid. Gratuitous Legal Aid Act prescribes step-by-step provision of such aid for disadvantaged social groups. Full value provision of the aid is prescribed only starting from 1 January 2015.

One more problem is still the quality of investigations both of lethal incidents and violent treatment. This problem is complex and connected both with technical equipment and direct competence of investigation institution agents, as well as with their interest in conducting the investigation.

Though some steps are taken to increase the quality of investigations, there is no effective complex programme, that includes formation of national registers (fingerprints, DNA, etc.), increase of expertise quality, quality of investigative procedures, recurrent advanced training of law enforcement system employees, etc.

The positive move in this area is the governmental approval of the Concept and the Strategy of Reformation of MIA. But there is still serious concern about the efficiency of fulfilment of that concept.

Also, the quality of investigations is affected by corruption within the law enforcement system. And although there is an active national anti-corruption programme for 2011 — 2015, it may be noted, that such a programme is not effective enough for overcoming the corruption.

So, that is a common situation, when the investigation authority refuses to conduct effective investigation. Especially often it happens in cases of violent treatment and homicide by law enforcement employee, abusive treatment and lethal outcomes at hospitals, in the result of traffic accidents, at institutions of confinement, etc.

Later the decisions on the discontinuation of the case are cancelled by the courts, but more often it has no influence on the investigation effectiveness.

It should be noted separately, that the National Anti-corruption Bureau of Ukraine Act, adopted on 14 October 2014, provides the formation of special investigation authority in area of anti-corruption effort.

In 2014 (as of 1 January 2014) the European Court adopted six judgements in total on violation of Articles 2 and 3 of the European Convention for the Protection of Human Rights, ascertaining improper investigations of lethal cases and violent treatment.

These are the following: *Danilov v. Ukraine* on 13 June 2014; *Velerii Fuklev v. Ukraine* on 16 January 2014; *Dzhulai v. Ukraine* on 3 July 2013; *Rudiak v. Ukraine* on 4 September 2014, *Hordiienko v. Ukraine* on 16 October 2014, *Adnaralov v. Ukraine* on 27 November 2013.<sup>32</sup>

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<sup>32</sup> More details of the mentioned judgements can be found on the official web site of the European Court.

In those judgements, among other things, the European Court has noted, that:

- The decision to refuse to conduct the investigation had been based mostly on the testimonies of the involved officers. The investigation authorities had made no efforts to verify those testimonies and version of the offended;
- The investigation had not met criteria of independence, as the prosecutor, when adopting the judgement, had based his position on the conclusions of internal investigation, conducted by the police authority, whose officials had been accused by the offended;
- Many of the necessary actions had either never been taken or conducted with a considerable delay, thus had been untimely;
- There had been a great number of flaws in the investigation, pointed out by the national authority, but they had not been emended in time;
- During the investigation there had been lasting periods of complete absence of investigative procedures;
- The inquiries had been too long and had led to no final decision on this case;
- Other.

Thus, considering the judgement of the European Court, it is possible to come to the conclusion, that there is a steady tendency of ineffective investigation of lethal incidents and violent treatment. At that, the government authorities do not carry out any effective activities for the improvement of the situation.

### **2.3.2. ATO area**

The separate issue to point out is ineffective investigation of lethal incidents and violent treatment in ATO area.

Those are the incidents concerning deaths of civilians during the military conflict, prisoners and apprehended treatment both by the self-proclaimed LPR (Lugansk People's Republic) and DPR (Donetsk People's Republic) and by the Ukrainian government, enforced disappearance of individuals in the ATO area, etc.

Unfortunately, it is necessary to state, that though the interested persons appeal to the law enforcement institutions on the mentioned categories of incidents, the criminal proceedings are launched and conducted, some investigative procedures are held, but any effective system of organisation and conduction of such investigations is not present.

And though from the start of ATO the situation has improved a little, today the coordination of different operating teams, conducting the investigation (MIA, SSU, the Prosecution Office, etc.), is still too low. It is frequent, that for a long time such teams cannot decide, who is in charge of conducting the investigation, and as a result the investigation is either not conducted at all or launched with a considerable delay.

Lack of effective workflow with applications on crimes in ATO area leads to overload of some investigation teams, created in the peaceful period considering they would work with far less case load.

There is no an effective system of investigation quality control that would allow the necessary minimum of investigative and operative procedures to be conducted under specific categories of incidents and their conduction control.

The operating teams, conducting investigations, are not receiving necessary training concerning the specific character of work under the circumstances of military operations, since in such circumstances the immediate evidence fixation is the guarantee of the success of further investigation, and such fixation is conducted during the bombardments and other military operations.

The negative factor in this situation is also the nationwide problem of the function duplication between the operating and investigating teams, when there is a need to involve both operative agent and the investigator in evidence fixation process.

The mentioned flaws result in frequent impossibility to reveal actions of which side caused the death of people, who is involved in cruel treatment of captives, who is to blame for the forced disappearances, etc.

And even if the suspected in those crimes are revealed, often there are no operative actions taken in order to find them and arrest.

As the examples of such incidents may be the cases of Irma Crat, Pavlo Yurov, Denys Gryshchuk, Ihor Opria and others, who were delivered from captivity in Slovyansk. Where, up to date, the list of suspected in cruel treatment is still not full, and most of those suspected are not put on the national and international wanted lists.

The similar situation persists in cases of prisoners of war, who are delivered from captivity; in most cases the law enforcement authorities question them within the criminal proceedings only formally, without any attempts to reveal the causes and the guilty of their imprisonment, as well as the responsible for cruel treatment and illegal detention. Those persons are not put on the wanted list in context of the criminal proceedings, etc.

It should be noted separately, that there is no effective investigation system of crimes, of which Ukrainian military are accused. Similar applications, in some cases, are investigated formally, not by the special investigating authorities, but by ordinary local police units, who even have no possibility to conduct a proper interrogation of the involved.

The positive move in this aspect was the adoption of Alteration of Prosecutor's Offices Act Concerning the Formation of Military Prosecutor's Offices Act on 14 August 2014, according to which within the system of prosecution institutions, specialised prosecutor's offices are formed, aimed to investigate military crimes.

*As the examples of such cases may be the case of Oleksandr Minchenok, who disappeared on 21 July 2014 in Starobelsk, Luhansk Oblast. The Starobelsk local police department launched the investigation over the fact of disappearance. Later on, during the MDU inspection it was revealed, the Mr. Minchenok was apprehended by servicemen of the MIA National Guard and one of MDU military units. In their explanations the servicemen indicated, that they had let Mr. Minchenok go not far from Starobelsk without documents and money. Since then he has never been seen.*

*But, in spite of the fact, that the National Guard is MIA unit and that there are special military prosecutor's offices acting in Ukraine, the investigation on the incident is still conducted by the local MIA department.*

The major issue of the ATO area cases is almost absolute lack of informing public and offended on the course of investigation and efforts made by the government to find the guilty and bring them to responsibility.

### 2.3.3. ARC

The situation of investigation of lethal incidents and violent treatment in ARC needs separate description.

Since the mentioned territory is in fact under the RF jurisdiction, the applications on mentioned crimes are investigated by corresponding law enforcement authorities of RF. In such a way, all the problems and flaws of investigation system of RF are also present in the investigations, conducted in ARC.

Without paying much attention to those flaws, it still should be noted, that after the institution of actual control over ARC territory by RF, the enforced disappearances and murders of Crimean Tatars by unidentified persons became the common thing.<sup>33</sup>

In most cases the mentioned crimes are investigated formally and law enforcement authorities of RF almost never reveal and bring the guilty to responsibility. As the examples of such incidents may be the cases of Reshat Ametov, the Ukrainian Naval Forces major Stanislav Karachevskiy, 16-years old Marko Ivaniuk.<sup>34</sup>

In this context it is necessary to state, that the Ukrainian law enforcement authorities conduct hardly any systematic investigations on the mentioned crimes. And though the applications on those crimes are registered, the investigations are conducted formally.

### 2.3.4. Euromaidan

Also there is still a problem of investigating incidents of mass beatings and murders, that took place at the end of 2013 — beginning of 2014 at Euromaidan in Kyiv and regional Euromaidans, as well as of further events in Odessa, Kharkiv, Luhansk, Donetsk and other.

It should be noted, that in the mentioned cases there were serious delays at the very beginning of investigative procedures, and this considerably lowered the chances to reveal the guilty and bring them to responsibility. Actually, in many cases there were no investigative procedures at all.

Since in most cases the suspected turned out to be government agents, including law enforcement agents of various ranks, who were acting, according to the most common version, on instructions of the highest authority of the state, the investigation institutions were not interested in bringing guilty to responsibility, especially on the primary stage of the investigation.

Moreover, considering the massive and unprecedented character of the events, law enforcement authorities were not ready to work with such a big amount of cases simultaneously, which in some sense led to paralysis of crime investigation system.

In this context it is necessary to note, that no organisational changes were made in time in order to manage the situation.

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<sup>33</sup> <http://ru.krymr.com/content/article/26622879.html>;  
<http://www.newsru.com/russia/14oct2014/tatary.html>;  
[http://news.liga.net/news/politics/3752837-sovet\\_es\\_osuzhdaet\\_presledovaniya\\_krymskikh\\_tatar\\_v\\_krymu.htm](http://news.liga.net/news/politics/3752837-sovet_es_osuzhdaet_presledovaniya_krymskikh_tatar_v_krymu.htm);  
[http://www.bbc.co.uk/russian/international/2014/08/140807\\_crimea\\_tatars\\_disappeared](http://www.bbc.co.uk/russian/international/2014/08/140807_crimea_tatars_disappeared)

<sup>34</sup> See Crimean Human Rights Field Mission "Overview of Current Situation in the Crimea" for October 2014.

However, even after the shift of power in the state and repeated declarations of the highest authorities, proclaiming, that the mentioned cases will be investigated in time and in a qualitative manner, there are still no systematic steps made in those directions.

Most of those cases have not been proceeded to the court yet, the investigation is facing the problem with the suspect identification, etc.

Until today a great number of witnesses have not been questioned yet, the government authorities have actually stopped any actions aimed at search and questioning of witnesses and victims, having declared the necessity of witnesses and victims to come to the investigator and give testimonies.

Many of the offended are not informed on the course of investigation in any way. There are single cases of claims applied in proper time, regarding the beating by the law enforcement agents, such claims had been registered, but the investigative procedures were launched only after the second application with a request to inform on the course of investigation, etc.

### 2.3.5. Disappearance of persons

Ukraine has not signed the UNO International Convention for the Protection of All Persons from Enforced Disappearance. The convention entered into force on 23 January 2010, 30 days after the number of participants had reached twenty. As of 5 December 2014 there are 43 countries, that have validated the Convention.<sup>35</sup>

## 3. RECOMMENDATIONS

1. To establish effective mechanisms of investigation of lethal incidents and violent treatment, especially those caused by actions of law enforcement agents, specifically:

- To develop detailed instructions with fixed range of investigative procedures, which have to be conducted in every case in order to enable investigation authority to put the discontinuation of the case in question. If the investigators refuse groundlessly to keep to those instructions, they should be removed from their duties and brought to disciplinary responsibility;
- To train (retrain) employees of investigation institutions regularly in order to increase the quality of their investigative actions;
- To reform the structure of law enforcement, minimizing the amount of tasks and functions, that are duplicated by different teams and institutions, decreasing the work load of specific agents by means of the reduction of their secondary functions and duties (it is important to achieve that in practice), finishing off the practice of overtime assignments without granting additional days off, establishing the effective system of wages;
- To improve the material and technical equipment of law enforcement institutions;
- To increase the expertise quality;

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<sup>35</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en)

- To form the national registers of information on suspected persons or convicted for crimes (fingerprints registers, DNA, etc.).
- 2. To create the effective system of crime prevention. In this context, among other things, it is necessary to increase effectiveness of cooperation between beat officers and local inhabitants.
- 3. To apply in practise the system of inevitable responsibility for every incident of groundless violence on the part of the law enforcement agents.
- 4. To create the effective system of control of weapons use and storage by the law enforcement agents. The decision to permit the use of weapons should be based on thorough analysis of agent's personality. To create the effective system of responsibility of heads of the law enforcement departments, who permit their subordinates to use weapons without the analysis of their personalities or if the approach to the analysis was simply formal.
- 5. To create the effective system of control over the psychological condition of the agents, and remove them from their duties basing on the decision of the psychologist.
- 6. To hold the systematic trainings and instruction for the law enforcement agents, who are engaged in special operations on crime suspected apprehension.
- 7. To create a new system of remand prisons outside the cities. To improve the material and technical conditions in institutions of confinement according to recommendations of the European Committee on the Prevention of Torture.
- 8. To create the effective system of delivery of adequate medical treatment in institutions of confinement.
- 9. To implement reforms in the healthcare sphere according to recommendations of the specialists in order to prevent increase of death rates of population, including child and infant death.
- 10. To increase the technical standards of road safety and to create the system of inevitable responsibility, including the responsibility of the controlling authorities.
- 11. To sign and verify the International Convention for the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006. (Resolution of the General Assembly of the UNO A/RES/61/177).
- 12. To create special department for investigation of mass and resonance incidents, and also specially trained teams for evidence fixation and further investigation under the circumstances of military operations.
- 13. To simplify the procedure of collection and fixation evidence that will be further taken to the court (decrease the amount of formal documentation that person conducting the investigation has to fill in, and that are of no use in further revealing the guilt of the suspected).



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## **II. LEGAL GROUNDS FOR AND THE PRACTICE OF DETAINING A PERSON**

### **1. STATISTICS OF DETENTIONS AND DETENTIONS IN CUSTODY**

After the adoption of the Code of Criminal Procedure of Ukraine in 2012, the grounds for detaining a suspect by an authorized officer without a warrant have come into compliance with the Constitution of Ukraine. The suspect may be detained while committing a crime or attempting to commit it, and if immediately after the crime a witness or set of obvious signs indicate that this person has just committed a crime (Part 1 Art. 208 of CCP of Ukraine).

According to the European Court of Human Rights (ECHR), the moment of detention is an important aspect of the legal regulation of the detention procedure. Art. 209 of the CCP of Ukraine determines it as follows: "An individual is considered to be detained if he/she, with the use of force or through obedience to the order, has to stay next to the authorized official or in the premises specified by the authorized official".

A positive practical result of validity of the CCP in 2012 is a considerable reduction of official detentions on suspicion of committing a crime. According to the High Specialized Court of Ukraine for Civil and Criminal Cases (HSCU), in 2011, the courts reviewed 45,700 detention motions and 39,700 or 87 % of them were overruled. In 2013 investigative judges of general jurisdiction courts examined 21,200 detentions and 17,800 or nearly 84 % were overruled as well<sup>2</sup> (according to the data of the Supreme Court of Ukraine (SCU) 20,900 motions; 17,800 and 85.1 %).<sup>3</sup> At the same time, according to the Prosecutor General's Office of Ukraine (GP) during this period 17,373 detention motions were submitted, including 16,620 in criminal proceedings of the Interior.<sup>4</sup>

At the same time according to the Main Investigation Department (MID) of MIAU, investigative bodies of internal affairs detained suspects while committing crimes without a decree from an investigating judge as provided for in Art. 208 of the CCP of Ukraine (detention by an authorized official): in 2013 — 13,916 people, during the first six months of 2014 — 6,364 people.

It strikes the eye that there is an obvious discrepancy between the data of the MID of MIAU and court statistics on the number of petitions filed in the courts regarding custody because detentions made by authorized officers of the Interior constitute the lion's share

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<sup>1</sup> Section is prepared by Tokarev G. (Kharkiv Human Rights Protection Group) in cooperation with Atshenko O. (Kharkiv Human Rights Protection Group).

<sup>2</sup> [http://sc.gov.ua/ua/sudova\\_statistika.html](http://sc.gov.ua/ua/sudova_statistika.html)

<sup>3</sup> [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(documents\)/264C5A022472BB31C2257D1900315B8D](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/264C5A022472BB31C2257D1900315B8D)

<sup>4</sup> [http://www.gp.gov.ua/ua/stst2011.html?dir\\_id=110140&c=edit&c=fo](http://www.gp.gov.ua/ua/stst2011.html?dir_id=110140&c=edit&c=fo)

of all detainees. However, the information on the total number of suspect detentions is not available on the official websites of Internal Affairs of Ukraine or the GP Ukraine.

According to the HSCU, during the first six months of 2014 the investigating judges of the courts examined 10,500 (10,300 — according to the SCU<sup>5</sup>) petitions on remaining in custody. Among them 8,500 or 81.7 % (82.9 %) were satisfied.<sup>6</sup> At the same time, according to the Prosecutor General's Office of Ukraine, during this period 8,830 detention motions were submitted, including 8,449 in criminal proceedings of the Interior.<sup>7</sup>

According to the GP Ukraine, for the entire 12 months of 2014 pre-trial investigation bodies submitted to the investigating judges 18,149 applications for remaining in custody, including 16,633 applications in criminal proceedings of the Interior.<sup>8</sup>

Thus, the number of applications (submissions) on the most rigorous preventive measure gradually decreased by approximately 2.5 times after the CPC of Ukraine entered into force in 2012. It should be noted that in some way the statistics of 2014 have been affected by the lack of data from the Autonomous Republic of Crimea.

Accordingly, from January 1<sup>st</sup> 2011 through January 1<sup>st</sup> 2014, the total number of people held in institutions of the State Penitentiary Service of Ukraine decreased from 157,866 to 127,830.<sup>9</sup>

In addition to the obvious wrong numbers, the information provided by the MIAU also contains remarks that “the statistical reports regarding the number of applications for permission to detain a suspect, an accused for the purpose of its participation in consideration of a request for a preventive measure in custody as provided for Art. 188 of the CCP of Ukraine (Petition for permission to detain for the purpose of presence) in the courts as well as persons detained on suspicion of committing a crime by the authorized officials of the Interior on the grounds of a decree of an investigating judge, in accordance with Art. 191 of the CCP of Ukraine (Acts of authorized officers after detention on the grounds of a decree of an investigating judge of the court on permission to detain) are not provided by the Ministry of Internal Affairs”.

The situation with the data of the GP of Ukraine is even stranger. Table 7 “Detention of suspects, choice of preventive measure” of the Report on the work of pre-trial investigative bodies (form No. 1-SL) for the 12 months of 2014,<sup>10</sup> is available on the web-site of the Prosecutor General's Office of Ukraine and contains the line “Detention of a person according to the procedure provided for in Art. 207, 208 of the CPC of Ukraine”. Consequently, while preparing statistical reports, law enforcement authorities do not differentiate between so-called “legal” detentions by unauthorized persons as provided by Art. 207 of the CCP of Ukraine and detentions without a decree of an investigating judge by authorized persons.

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<sup>5</sup> [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(documents\)/AD1EE0C42897A486C2257DAC00276002](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/AD1EE0C42897A486C2257DAC00276002)

<sup>6</sup> [http://sc.gov.ua/ua/sudova\\_statistika.html](http://sc.gov.ua/ua/sudova_statistika.html)

<sup>7</sup> [http://www.gp.gov.ua/ua/stst2011.html?dir\\_id=111479&libid=100820&c=edit&c=fo](http://www.gp.gov.ua/ua/stst2011.html?dir_id=111479&libid=100820&c=edit&c=fo) Report of Prosecutor (Form No. P) for 6 months of 2014 Table 12 Application for remand in custody was submitted to court.

<sup>8</sup> [http://www.gp.gov.ua/ua/stst2011.html?dir\\_id=111479&libid=100820&c=edit&c=fo](http://www.gp.gov.ua/ua/stst2011.html?dir_id=111479&libid=100820&c=edit&c=fo) Report of Prosecutor (Form No. P) for 12 months of 2014 Table 12 Application for remand in custody was submitted to court.

<sup>9</sup> <http://ukrprison.org.ua/statistics/1409938063>

<sup>10</sup> [http://www.gp.gov.ua/ua/stst2011.html?dir\\_id=111480&libid=100820&c=edit&c=fo](http://www.gp.gov.ua/ua/stst2011.html?dir_id=111480&libid=100820&c=edit&c=fo)

**2. VIOLATIONS OF THE LAW WHEN DETAINING SUSPECTS  
IN THE PROCESS OF COMMITTING CRIMES**

Despite the positive changes in the legislative regulation on detention, the practice of detentions by law enforcement authorities has not changed considerably and now such violations of the law as unacknowledged detention, delay in registration of detention, detention under a false pretext remain typical violations during detention.

In most cases, the protocol of detention is still to be drawn up by investigators, although employees of other departments, as a rule it is an operational department, are engaged in real detention. This situation leads to mistakes in the record of time and place of detention, as well as in the data on the authorized officers who made the detention. Thus, the time a person spends from the moment of his/her actual detention to the moment he/she is brought to judge increases.

Detention of persons by pre-trial investigation bodies who are considered to be “invited” or are “visitors” with the appropriate entries in books is still in practice. In such cases, if the protocol of detention was not drawn up and a detainee was allowed to leave the premise of the law enforcement bodies where he/she was taken, from a legal point of view a detention did not take place.

In all these cases, an actually detained person without the official status of “suspects” was deprived of an opportunity to use the relevant procedural rights.

The UN Committee against Torture stated on the practice of non-recognized detention or detention with delay of its registration what is considered proper activity for Ukrainian law enforcement bodies (see below *“Recommendations of the UN Committee against Torture”*).

The existence of a serious problem detention practice is proven by the fact that information on such cases is not registered in the Unified Register of pre-trial investigations of criminal offenses related, directly or indirectly, to illegal detention:

- Known illegal detentions, booking, arrest or detention in custody (Art. 371 of the CC of Ukraine) — 0;
- Evidence given under compulsion (Art. 373 of the CC) — 0;
- Violation of the right to a defence (Art. 374 CC) — 0.<sup>11</sup>

Despite the great differences between the data of judicial statistics and the reporting data of the GP of Ukraine on the number of requests for detention on the basis of MID of MIAU there is every reason to state that the number of detentions of people suspected of committing a crime by authorized officers without a ruling from an investigating judge constitutes the majority of the total number of detainees during criminal proceedings.

At the same time pursuant to Paragraph 1 of Art. 208 of the CCP of Ukraine an authorized official has the right to detain a person without a warrant only in the following cases:

- The person was caught upon committing a criminal offense or making an attempt to commit it;

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<sup>11</sup> [http://www.gp.gov.ua/ua/stst2011.html?dir\\_id=111482&libid=100820&c=edit&c=fo](http://www.gp.gov.ua/ua/stst2011.html?dir_id=111482&libid=100820&c=edit&c=fo)

“The Consolidated Report on Criminal Offenses (Form No. 1) for the period of January — December of 2014 Section 4. Registered by Internal Affairs Bodies Table 4.1. Crimes against justice.

- If immediately after the crime was committed, an eye-witness, including the victim, or a group of obvious signs on the body, clothes or the scene indicates that this individual has just committed a crime.

Thus, pursuant to the provisions of Art. 29 of the Constitution of Ukraine the Code of Criminal Procedure of Ukraine authorizes respective officials to detain people without a court's decision only if there is an urgent necessity to prevent or stop a crime or immediately after a crime was committed.

Practice shows us that the number of cases where a person was caught red-handed or attempting to commit a crime or immediately after a crime was committed constitutes a small part of the total number of crimes committed. According to the available data<sup>12</sup> in practice there is a difference in the interpretation of the terms "immediately after a crime was committed" and "but just committed a crime" which gives an opportunity for authorized officials to justify their actions relating to detaining persons suspected in its commitment more than a day after the crime was committed without a ruling from an investigating judge (court).

Thus, the majority of detainees suspected of a crime are detained without grounds provided by law.

### **3. PRACTICE OF LAW ON DETENTION IN CUSTODY AND EXTENSION OF ITS ACTION**

In most cases, the courts (investigating judges) justify the detention of a person in custody as follows. They use a declaration of intern to cite the relevant provisions of §1 of Section 18 of the CCP of Ukraine, which are to be applied to choose a preventive measure and refer to the legal position of the ECHR or cite its decision on required grounds for application of this preventive measure without reference to a specific case that is considered. Then a judge (court) shall recite the risks stated in Art. 177 of the CCP of Ukraine (escape, destroy of evidences, repetition of crimes and other) and other circumstances which are to be taken into consideration while choosing a preventive measure.

So, instead of stating the exact circumstances that became grounds for the court (the investigating judge) to choose a preventive measure, in particular, detention, and the exact evidence confirming these circumstances, the ruling states what the Court (the investigating judge) should do in order to reasonably use this measure.

Usually courts (investigating judges) do not justify the conclusion about the necessity of detention by circumstances of the case, including evidence of the existence of certain risks, do not evaluate the circumstances to be considered when choosing a preventive measure, including the significance of available evidences of criminal offense and the circumstances that characterize a person, including their health. In many cases, the later circumstances are stated in the judgment without specifying the exact data taken into account by the court,

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<sup>12</sup> <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>  
An annual report of the Human Rights Commissioner of the Verkhovna Rada of Ukraine on observance of human rights and freedoms for 2014, p. 456.

## II. LEGAL GROUNDS FOR AND THE PRACTICE OF DETAINING A PERSON

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such as: “The gravity of the committed crimes, age of the suspect, their health, family and financial status, type of activity, place of residence and others are taken into account”.<sup>13</sup>

The only factor that is always taken into account when choosing detention is the severity of the potential sentence for a person. This can be explained by the fact that there are minimal “thresholds” of punishment that threatens the person for a crime to use the preventive measure of detention (2 Art. 183 of CCP of Ukraine).

Pursuant to Paragraph 1 and 2 of Art. 194 of the CCP of Ukraine an investigating judge (court) cannot grant a motion of preventive measure in custody, if a prosecutor failed to prove the existence of the following circumstances:

- 1) Reasonable suspicion;
- 2) Grounds to believe in the existence of at least one of the risks;
- 3) Insufficiency of less strict preventive measures.

Should any (reasonable) suspicion exist, the prosecutor is to provide the investigating judge with the respective evidence, if only because in this case it is necessary to draw up a respective service document, a notification of suspicion. As for the other two circumstances, as a rule they are not proven by the prosecutor, but it does not prevent the court (investigating judge) to take a decision on custody.

The ruling on detention in custody or extension of the terms of detention in custody often contains the opinion of the ECHR that the risk of concealment of the accused cannot be evaluated only on the grounds of the gravity of a potential sentence. However, in most cases the investigating judge provides no evidence of the existence of a risk that give grounds for pre-trial detention, due to their absence in a request to the investigator and prosecutor and in his/her oral explanations during consideration of the request by the investigating judge.

And now we have a paradoxical situation when the judge(s), referring in its decisions to the legal position of the ECHR, formally comply with Par. 5 of Article 9 of the CCP of Ukraine on the ECHR practice when applying the criminal procedure law of Ukraine, but in fact they adopt these decisions contrary to the practice of the ECHR, such as: “As the term of the ruling on extending the term of detention of the accused ends on January 3<sup>rd</sup> 2015, the court considers it appropriate and necessary to continue the detention of PERSON\_1.

Detention of the accused, PERSON\_1, in custody fully complies with the purpose for which this preventive measure is used, given the public interest, which, taking into account the presumption of innocence, justifies derogation from the principle of respect for individual freedom and does not contradicts the practice of the European Court of Human Rights and the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, the legal opinions stated in Par. 35 of the ECHR judgment in the case “*Letellier v. France*”.<sup>14</sup>

At the end of 2014, the High Specialized Court of Ukraine for Civil and Criminal Cases (HSCU) heard and discussed information on case analysis of the use of procedural law concerning the choice of and extension of the term of detention by first-instance and appeal

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<sup>13</sup> <http://reyestr.court.gov.ua/Review/41347776>

<sup>14</sup> <http://www.reyestr.court.gov.ua/Review/42078623>

courts and issued a ruling (hereinafter-Analysis) by which it instructs to prepare a letter for practical use by appeal courts on the basis of the mentioned analytics.<sup>15</sup>

According to judicial statistics, as of July 1<sup>st</sup>, 2014, detention centres held 2,868 prisoners during more than 6 months who were attached to the courts, including 6 months to 1 year — 1,403 persons, from 1 year to 2 years — 807 persons, more than 2 years — 658 persons.

This analytics proves that the courts do not fully meet the requirements of the CCP as for periodic quality control over the need to use these measures, and the quality and validity of assessment materials that are the basis for their application. Typical violations of the CCP and legal opinions of the ECHR are:

1. Due to a lack of petitions during preliminary court hearings the first-instance courts extend the term of detention in custody without any reasons stated in a ruling by mentioning about it only in an operative part of the ruling that violates Art. 18 of the CCP “Preventive measures, detention of a person” and the practice of the ECHR which prohibits “automatic” extension of the term of detention in custody. In this regard, referring to the case “Kharchenko v.Ukraine” (decision as of February 10<sup>th</sup>, 2011) the Declaration contains the opinion that during preliminary court hearings the court is authorized to raise before the parties the issue of extending the term of detention in custody in the event of a lack of petitions from the parties. In any case, the court is not entitled to resolve this issue without complying with the proper hearing procedure and motivation of the adopted decision as long detention in custody without stating the respective grounds in the court’s decision is inconsistent with the principle of defence against abuse of power provided by Paragraph 1 of Art. 5 of the Convention.

2. Absence of the exact expiry of the ruling on extending the detention which in the event of failure to extend the term of detention, in particular, due to a delay in submitting the motion becomes an obstacle for release of the person from jail due to expiry of the ruling.

3. Violations while deciding on detention as a preventive measure and extending the detention, such as exceeding the maximum term of the detention due to incorrect calculation of the period of detention, especially when the month has more than 30 days, or as a result of calculating the period of the new ruling on the date of termination of the previous ruling.

4. Unreasonable ruling of the courts to extend the detention of the suspect, the accused in custody, which is one of the most frequent violations of human rights recognized by the ECHR in cases against Ukraine. In this regard the Plenum of the Supreme Court of Ukraine noted that this request must provide the circumstances indicating that the claimed risk is not lower or new risks justifying the detention appear. In many cases, courts rely solely on the legal qualification of the committed crime provided by the prosecution, which is insufficient for making a legal judgment. A court shall take into consideration the circumstances provided by Art. 178 of the CCP to evaluate the risks which together with the grounds stipulated by Art. 177 of the CCP may be general grounds to extend a detention term:

- Non-examination of the possibility of preventive measures alternative to detention, including bail is a violation of the requirements of Par. 3 of Part 1 of Art. 194 CCP of Ukraine and the position of the ECHR;

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<sup>15</sup> [http://sc.gov.ua/ua/postanovi\\_za\\_2014\\_rik.html](http://sc.gov.ua/ua/postanovi_za_2014_rik.html), On analysis of use of procedural law concerning choice of and extension of term of detention by first-instance and appeal courts, Ruling of the Plenum of the Supreme Court No. 14 as of 19 December 2014.

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- “Collective” consideration of a request for extending detention, contrary to Part. 4 of Art. 184 of the CCP that the relevant request is submitted separately for each person;
- A lack of reasoning in its decision is a violation of both the general principles of criminal proceedings and Art. 5 of the Convention and the practice of the ECHR. In such cases, the court makes a decision on the continued detention during its periodic review procedure, refers only to the Article 331 of the CCP and in the operative part of the ruling indicates the extended period of detention without justification of risk in criminal proceedings and the need for further use of detention.

5. Limitation of motion on detention, the continued detention with only a list of legislative (standard) grounds for its application without proving their existence and validity of a particular person is a violation of Par. 4 of Art. 5 of the Convention that was recognized in the case *“Kharchenko v. Ukraine”*. In this regard the Plenum of the Supreme Court of Ukraine reasserted the need to follow the approach of the ECHR that after the expiry of the period even reasonable suspicion of a crime cannot be the only justification for the detention of the suspect, accused, and therefore if the request for detention or extension of the term of detention in custody is satisfied the court shall clearly state in its ruling other grounds or risks provided by Par. 1 of Art. 177 of the CCP.

6. Courts do not relate the feasibility of further detention in custody to what action should be carried out to complete the procedure in the ruling on extension of the detention. Generally, the court is limited to pointing out that the term of preventive measure expires, and the proceedings under these terms cannot be complete. This exact motivation of the relevant ruling does not often contain reasons that prevent from termination of proceedings and how it is related to the risk of causing further detention. In many cases, the court does not specify the risks specifically defined in the CCP that continue to exist, but is limited by pointing out that “while making a decision on a preventive measure the investigator and the prosecutor stated the risks justifying the detention did not reduce”; “the risks set out in the decision of the investigating judge persist during the preliminary investigation”; “The court does not have data on risk reduction under Art. 177 of the CCP, detention ends and the proceedings could not be completed before the end of detention, the purpose and reason of detention in custody by the investigating judge in the ruling that at the time of the preparatory court hearing is not abolished, and there are no new reason to use detention”, “ending the term of detention, so it is necessary to continue” and so on. It should be noted that this motivation is similar for all decisions, so there is no reduction of the risks under Art. 177 of the CCP in connection with the termination of certain legal proceedings in the framework of the court hearing.

7. In many cases, the courts do not take into consideration specific diseases the person suffers from during a hearing on a motion on detention and extension of the term of detention when it is impossible to provide necessary medical assistance under custodial circumstances.

8. In many cases, courts refuse the request for changing custody with another preventive measure without careful motivation of the arguments against such an application. In this regard the Plenum of the Supreme Court of Ukraine states that when considering requests to change the preventive measure of detention in criminal proceedings when such preventive measure is used for a long time ..., the court is entitled to take into account the actual term of

detention for making a legal decision. At that Plenum of the Supreme Court of Ukraine refers to the legal opinion of the ECHR as of January 12<sup>th</sup>, 2012 in the case *“Todorov v. Ukraine”*, according to which:

*“only substantial reasons are to be given for the purpose of the continued detention, the gravity of the crime, complexity of the case and gravity of the accusation cannot be considered as sufficient grounds for detaining a person in custody for quite a long term”*.<sup>16</sup>

However, there are cases when considering an application of detention in custody, judges (investigative judge) meet all the requirements of procedural law and make justified judgments pointing out that the prosecutor did not prove insufficiency of softer measures to prevent the risks specified in the request for custody, and this happened even in the criminal proceedings of serious crimes:

*“The prosecutor has proven the circumstances provided by Par. 1, 2 P. 1 of Art. 194 of the CCP of Ukraine, namely, existence of the grounded suspicion of crime PERSON\_5 and sufficient grounds to consider that there is the risk provided by Art. 177 of this Code, in particular, that PERSON\_5 may illegally affect the victim or witnesses. However the prosecutor did not prove the circumstance provided by Par. 3 P. 1 of Art. 194 of the CCP of Ukraine — insufficiency of softer measure to prevent the risk(s) provided in the motion.*

*Thus, taking into consideration that detention in custody is an exclusive preventive measure, PERSON\_5 is reasonably suspected of committing a crime of special gravity, previously unconvicted with good characteristics according to the place of residence, lives with parents, but may illegally affected the victim or the witness that excludes other softer preventive measures to avoid the risk(s) provided in the motion, the court concluded to refuse to satisfy the motion on detention for failure of evidence of the circumstances provided by Par. 3 P. 1 of Art. 194 of the CCP of Ukraine. The statement of the prosecutor that PERSON\_5 is suspected of committing a crime of special gravity for which the punishment is envisaged of imprisonment for a term of over ten years is not an absolute demand for the court to use detention in custody in respect to the suspect”*.<sup>17</sup>

One of the examples of the ECHR concerning detention in custody is a refusal of the court to satisfy a motion on changing house arrest to detention:

*“...when making a decision on a preventive measure for the accused the court must take into consideration not only the provisions stated in the CCP, but the requirements of Paragraphs 3 and 4 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights according to which restricting the right to freedom and personal security may take place in the cases provided by law as established. At that, the risk of the accused of fleeing from justice cannot be evaluated only on the basis of the severity of a potential sentence, and it is necessary to take into account the respective facts which may prove such a risk or a low level of such a risk which cannot be the grounds for detention.*

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<sup>16</sup> [http://sc.gov.ua/ua/postanovi\\_za\\_2014\\_rik.html](http://sc.gov.ua/ua/postanovi_za_2014_rik.html), On analysis of using procedural law concerning the choice of and extension of the term of detention by first-instance and appeal courts, Ruling of the Plenum of the Supreme Court No. 14 as of December 19<sup>th</sup>, 2014

<sup>17</sup> <http://www.reyestr.court.gov.ua/Review/40905694>



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*In fact, the reasons for the motion come only to reference the single ground for changing a preventive measure as the risk of the accused of fleeing due to the severity of a potential sentence...*

*The prosecutor did not prove the existence of the suspicion that PERSON\_2 hides from the court, may conceal, change or make a false document, i.e. there is a risk that the accused will commit and is already committing the actions provided by Art. 177 of the CCP of Ukraine.*

*Under such circumstances the court made a conclusion to deny the motion”<sup>18</sup>*

There are also cases of carefully justifying the decision on refusing to extend the term of detention, for example:

*“According to the practice of the European Court of Human Rights, the expediency of extension of the term of detention in custody during the pre-trial investigation and trial is based on the presumption of the fact that the effective investigation and trial of the case reduce the risks which are grounds for detain the person in an early stage. Accordingly, each next extension of the term of detention in custody is to contain a detailed justification of the remaining risks and their analysis as grounds for further affection of the right to freedom (judgment Yeloyev v. Ukraine, Feldman v. Ukraine).*

*Thus, with time, as soon as the reasonable suspicion discontinues to be the grounds for detention, pre-trial bodies or the prosecutor must give other reasons for extending the detention in custody. In addition, such grounds must be clearly stated.*

*The Court shall take into consideration only the gravity of the committed crime, though it is crucial for evaluating the risk in court, but it cannot be a sufficient ground for legalizing detention in custody. ... the Court found that he has a full-time job..., where he has good characteristics, he has a daughter..., who does not work as she is on leave to attend to a child up to the age of three years.*

*During the hearing the prosecutor failed to prove that no other softer preventive measures can be used to prevent the risks provided by Art. 177 of the CCP of Ukraine and ensure the proper behaviour of the accused.*

*Under such circumstances, taking into consideration that... has been in custody for a long time,... the court concludes that the detention of the accused in custody is necessary and house arrest will be enough to ensure his proper behaviour.<sup>19</sup>*

The analysis of court decisions on preventive measures discovers a trend that court ruling deny the request of the prosecution for detention in custody or extending detention in custody or those which granted a motion of the defence team in less restrictive preventive measure is much more reasonable than the one which provides detention as a preventive measure.

According to Paragraph 2 of Art. 206 of the CPC of Ukraine, whenever a investigating judge receives information from any sources whatsoever, which provides grounds for a reasonable suspicion that within the court’s territorial jurisdiction, there is a person who has been deprived of liberty without a valid court’s decision, such a judge is required to issue a ruling by which to order any public authority or official in whose custody the

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<sup>18</sup> <http://reyestr.court.gov.ua/Review/38140564>

<sup>19</sup> <http://www.reyestr.court.gov.ua/Review/40085108>

person is kept, to immediately bring this person to the investigating judge in view of verifying grounds for deprivation of liberty. At that, pursuant to Paragraph 3 of Art. 206 of the CCP of Ukraine the investigating judge shall release the person deprived of liberty from custody unless the public authority or official that keeps such person in custody presents a valid court's decision, or proves the existence of any other legal grounds for deprivation of liberty. As the analytics of the HSCU proves, if the investigating judge miscalculates the term of expiry of a ruling on detention, such a person's continuance to be detained after the expiry of the term of detention, and an appeal from such unlawful deprivation of liberty as provided of Art. 206 of the CCP Ukraine remain unsatisfied.

#### **4. JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS AGAINST UKRAINE UNDER ARTICLE 5 OF THE CONVENTION**

##### **4.1. Wrongful detentions and detentions in custody**

In the case *Rudenko v. Ukraine*, application No. 50268/08, judgment as of April 17<sup>th</sup>, 2014 the applicant complained about his illegal one month pre-trial detention without any court's decision after sending a letter of accusation in his respect. In its judgment in the case, the Court referred to its previous judgments in respect of similar cases against Ukraine and recognized violations of Articles 5 §1 (c) of the Convention.

In the case *Livada v. Ukraine*, application No. 21262/06, judgment as of June 26<sup>th</sup>, 2014 the Court recognized once again violation of Article 5 §1 of the Convention expressed by administrative arrest for the purposes of criminal proceedings as arbitrary detention as a result of which the applicant was detained in custody for 10 days without a proper decision from the competent body (court). At that, the Court failed to deem as considerable the argument of the Government that during detention the applicant was not interrogated about the circumstances of the criminal case.

In the case *Volyanyk v. Ukraine*, application No. 7554/10, judgment as of October 2<sup>nd</sup>, 2014 the Court recognized violations of Articles 5 §1 (c) of the Convention because the court's decision about preventive measures for the applicant as detention in custody did not contain any reasons justifying the necessity in detention of the applicant. In addition, the decision did not specify the exact period of time during which the applicant could be detained.

In the case *Chanyev v. Ukraine*, application No. 46193/13, judgment as of October 9<sup>th</sup>, 2014 the Court recognized violations of Articles 5 §1 (c) of the Convention which took place during the operation of the CCP (2012) in respect of the case concerning the issues of legality of detention of the applicant for two months on the basis of the investigating judge's decision on preventive measures. In particular, the Court stressed that: "the new Code of Criminal Procedure of Ukraine... does not regulate in a clear and precise manner the detention of the accused between the completion of the pre-trial investigation and the beginning of the trial. Thus, as in the present case, Article 331 §3 of the Code provides that the trial court has a period of two months to decide on the continued detention of the accused even where the previous detention order issued by the investigating judge has already expired. ... existing

legislative framework allows the continued detention of the accused without a judicial decision for a period of up to two months, and that those provisions were applied in the case of the applicant...”

In the case *Khomullo v. Ukraine*, application No. 47593/10, judgment as of November 27<sup>th</sup>, 2014 the Court recognized violations of Articles 5 §1 (c) of the Convention in connection with illegal detention of the applicant for the purposes of extradition to Russia in the absence of a special law which would regulate the procedure of detention of persons for the purposes of extradition (violation of requirement concerning “quality of law” led to arbitrary detention).

In the case *Kushnir v. Ukraine*, application No. 42184/09, judgment as of December 11<sup>th</sup>, 2014 the Court recognized violations of Articles 5 §1 (c) of the Convention when the applicant was detained without any decision and this detention was registered the next day with a delay of about 19 hours.

### **4.2. Illegal placement in a psychiatric institution**

In the above mentioned *case of Rudenko*, the Court discovered violations of Articles 5 §1 (e) relating to involuntary medical treatment of the applicant in a psychiatric hospital without reasonable grounds, in particular, the inability of the applicant to consult independent medical experts for psychological examination in order to prove or disprove mental disorder which requires obligatory hospital treatment in a psychiatric hospital.

In the case *Akopyan v. Ukraine*, application No. 12317/06, judgment as of June 5<sup>th</sup>, 2014) the Court declared illegal the placement of the applicant to a psychiatric hospital due to the absence by that time of a clearly judicial procedure provided by law to resolve the issue concerning the legality of such placement. In addition, the Court stressed that the circumstances in which the applicant was deprived of the opportunity to attend a periodic medical examination during her stay in the psychiatric hospital also constituted an element of violation of Art. 5 §1 (e) of the Convention.

### **4.3. Long-term detention in custody**

In the above-mentioned decisions of *Rudenko* and *Livada* the Court recognized violations of Art. 5 §3 of the Convention taking into account the long-term of detention of the applicants in custody in the pre-trial detention centres pending the decision of the court.

The Court found the same violations in the following cases (*Buglov v. Ukraine*, application No. 28825/02, judgment as of July 10<sup>th</sup>, 2014) and (*Osakovskiy v. Ukraine*, application No. 13406/06, judgment as of July 17<sup>th</sup>, 2014).

In general, among 99 judgments of the Court concerning Art. 5 of the Convention, 36 of them deal with violations 5 §3 of long-term detention in custody without reasonable grounds for extending such preventive measures. Therefore, generalizing the judicial practice of the ECHR one may conclude that violation of the right to release within reasonable term is systematic in the state.

#### **4.4. Violation of the right to review the legality of detention during a reasonable term**

The Court found constant violations of Art. 5, §4 concerning Ukraine in connection with the absence of proper judicial review of the legality of detention. Among 6 judgments taken on grounds of Art. 5 of the Convention the Court found violations concerning Art. 5, §4 of the Convention in half of them.

In the case of Anatoliy Rudenko, the Court recognized that the Ukrainian legislation which was valid as of the time of detention of the applicant (August–September 2007) did not require the national courts to explain the necessity to choose detention as a preventive measure as well as the frequency of consideration of motions on the continued detention in custody is determined by the date of next court hearing. Thus, the Court found the violations of Art. 5, §4 of the Convention.

In the above-mentioned case of Osakovskiy, the Court recognized violations of Art. 5, §4 of the Convention on the grounds that the national courts which heard the applicant's motion on changing the preventive measure refused him on its face without a proper examination of his own circumstances.

In the case of Khomullo, the applicant complained that he was deprived of the opportunity to have a judicial review of the legality of his detention in the reasonable term within his detention in custody on the wait for extradition. He also stated that the national courts ignored his arguments concerning the absence of any considerable documents about his detention as the Russian Government did not send a request for extradition within a long period of time.

The Court justified its judgment by its conclusions on Art. 5, §1 of the Convention concerning the absence of legal provisions that are to regulate the procedure of detention on the wait of the extradition until adoption of the changes to the Code of Criminal Procedure as of June 17<sup>th</sup>, 2010. The Court also stated that the applicant was detained for the purposes of extradition in accordance with the amended provisions of the CCP according to which his detention was reconsidered three times, but every time he was refused in deliberation. As none of the mentioned decrees contains any arguments of the applicant the Court recognized violations of Art. 5, §1 of the Convention due to the absence of a proper judicial review of the legality of detention in custody.

#### **5. VIOLATION OF THE RIGHT TO FREEDOM DURING AN EXTRADITION PROCEDURE**

Even after the extradition procedure was regulated with the provisions of the CCP of Ukraine, there are cases of specific violation of right to freedom during such procedures.

According to Paragraph 10 of Art. 584 of the CCP of Ukraine the term of detention in custody during extradition arrest cannot exceed twelve months, at that according to Paragraph 6 of Art. 584 of the CCP of Ukraine it is calculated from the moment of detention by this Code i. e. Paragraph 2 of Art. 197, in case if detention took place earlier than detention in custody. But investigating judges do not take into consideration these provisions of the law, and they calculate the term of extradition arrest as of adoption of the ruling on extradition arrest. So, it is a violation of right to freedom.

### 6. RECOMMENDATIONS OF THE UN COMMITTEE AGAINST TORTURE

In Paragraph 2 of the Concluding observations on the sixth periodic report of Ukraine (hereinafter — Concluding observations) the UN Committee against Torture specified as follows:

*“Insufficient legal safeguards were brought to the attention of the State party in the past as detained persons do not enjoy in practice all the fundamental legal safeguards from the very outset of deprivation of liberty, in particular in police detention and temporary holding centres, such as being informed of and understanding their rights, access to an independent doctor, to a lawyer and the right to inform a relative or person of their choice...”<sup>20</sup>*

Taking into consideration that in most cases persons suspected of a crime are detained without judicial authorization, unacknowledged detention or detention with a delay in registration remains one of the main problems of law enforcement authorities and it is a main condition for all other violations of the rights of detainee’s.

Due to this situation concerning respect of the law during detention of persons the UN Committee against Torture recommended to create an unified national register of detention which would contain real data about detention, including extradition, and the exact date, time and place of detention from the very deprivation of liberty, not from the moment of drawing up of the protocol of detention.<sup>21</sup>

### 7. ADMINISTRATIVE DETENTION AND “DELIVERY” OF A PERSON

The legislation of Ukraine still contains the procedure of administrative detention, and the so-called “delivery of the offender” provided by the Code of Ukraine on Administrative Offenses during time of the USSR, which is a forced delivery for the appropriate law enforcement authority.

By their nature, they are a form of detention, because this situation falls within the definition of “detention” for Art. 209 of the CCP Ukraine, where a person due to force or respect of the order has to be close to an authorized officer or in the premises determined by that person. It complies with the approach of the European Court that considers it as de-facto detention.<sup>22</sup> Several versions of legal terminology for the same actual action — detention — create opportunities for abuse in detention.

In particular, in case of the administrative detention of a person for the purpose of prosecution for a criminal offense, such person is not entitled to exercise rights under the CCP Ukraine for a criminal suspect.

The UN Committee against Torture stated this issue in its concluding observations, which expressed concern about the continued use of administrative detention for various purposes of a criminal investigation under the Code of Administrative Offenses in which

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<sup>20</sup> [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UKR/CAT\\_C\\_UKR\\_CO\\_6\\_18892\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UKR/CAT_C_UKR_CO_6_18892_E.pdf)

<sup>21</sup> Ibid.

<sup>22</sup> *Osypenko v. Ukraine* application No. 4634/04, judgement as of 09/11/2010, §49.

the detainee is deprived of procedural safeguards such as the right to appeal of such imprisonment. In this regard the UN Committee against Torture recommended Ukraine to reduce a number of administrative detentions and their terms and provide all principle procedural guarantees.<sup>23</sup>

In 2014 the ECHR recognized again violation of Art. 5 of the Convention in the case *Livada v. Ukraine* due to administrative arrest for the purposes of criminal investigation (see Paragraph 3 of this Section).

#### **8. CHANGES TO THE CCP AND OTHER LEGISLATIVE ACTS TO THE EXTENT CONCERNING POWERS TO DETAIN PERSONS**

In connection with the events in the eastern Ukraine in 2014 criminal and criminal procedural legislation as well as anti-terrorism legislation were amended.

In July of 2014 before the entry of Art. 176 of the CCP of Ukraine into force, according to which the persons suspected of (accused of) committing crimes against Ukraine (Art. 109–114-1 CC of Ukraine), and also crimes of terrorism, creation of illegal paramilitary or armed groups or attacks of high-risk facilities for environment (Art. 258–258-5, 260, 261 of the CCP of Ukraine) cannot be put under the following preventive measures: personal commitment, personal warranty, home arrest bail. Thus, these persons can be put under the only preventive measure — custody. This “automatic” use of the severest preventive measure without justification of obvious risks and consideration of the specific circumstances of a person does not comply with the practice of the ECHR.

In August 2014 a new Article 15-1 of the Law No. 1630-VII added the Law of Ukraine “On Fight Against Terrorism” that gives powers for preventive detention of the persons who are reasonably suspected of terroristic activity for the term of 72 hours, but no less than 30 days, in the district of long-term antiterrorist operation. Such detentions are carried out on the basis of the reasoned decision of Chief of the Central Administration of the Security Service of Ukraine or the Chief of the Central Administration of the Ministry of Internal Affairs of Ukraine in the Autonomous Republic of Crimea, in the relevant region, cities of Kyiv and Sevastopol with consent of the prosecutor and without ruling of the investigating judge, the court. At this, a copy of the decision on preventive detention should immediately be sent to the investigating judge, a court of competent jurisdiction with a petition on proper preventive measures in respect of the person.

Along with the introduction of so-called “preventive detention” the Law No. 1630-VII of the CCP of Ukraine was supplemented by a new Section IX “The special rules of pre-trial investigation in war or a state of emergency in the area of anti-terrorist operation.” In fact, these rules grant powers to the prosecutor which according to general rules are the powers of the investigating judge, including choice of detention in custody for the term up to 30 days for the persons who are suspected of committing the crimes provided by articles 109–114-1, 258–258-5, 260–263-1, 294, 348, 349, 377–379, 437–444 of the Criminal Code of Ukraine.

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<sup>23</sup> [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UKR/CAT\\_C\\_UKR\\_CO\\_6\\_18892\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UKR/CAT_C_UKR_CO_6_18892_E.pdf)

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According to Art. 165 of the CCP of Ukraine such powers are given to the prosecutor “in case of failure to exercise obligations by the investigating judge in timely manner”.

Even if it is supposed that there is the urgent need to detain a person, including the case of absence of the grounds for his detention without ruling of the investigating judge provided by P. 1 Art. 208 of the CCP of Ukraine, as well as immediate choice of a preventive measure, the situation where the investigating judge cannot perform its functions for such a long period (up to 30 days) is clearly unrealistic.

Anyway, such detention procedure and detention in custody do not guarantee against violations of the right to freedom and personal security (Art. 29 of the Constitution of Ukraine), which according to Article 64 of the Constitution of Ukraine cannot be restricted even in the case of emergency or war.

### 9. DETENTION OF PEOPLE WHO PARTICIPATED IN THE STREET PROTESTS OF JANUARY-FEBRUARY 2014

During “the revolution of dignity” the participants of the street protests against the regime of V. Yanukovich were repeatedly and illegally detained across Ukraine, in particular: in the City of Kyiv — January 19<sup>th</sup>, 2014, in the City of Dnipropetrovsk — January 26<sup>th</sup>, 2014<sup>24</sup>, in Donetsk — February 13<sup>th</sup>, 2014<sup>25</sup>, January 26<sup>th</sup>, 2014 — in the City of Zaporizhzhia<sup>26</sup>, February 19<sup>th</sup> 2014 — in the City of Kharkiv<sup>27</sup> and other cities<sup>28</sup>.

On January 21<sup>st</sup>, 2014 the Verkhovna Rada of Ukraine adopted the Law “On Prevention of Prosecution and Punishment of the Persons in connection with the Events that Took Place during Peaceful Meetings and the Annulment of Certain Acts of Legislation of Ukraine”<sup>29</sup>, on the basis of which:

- Persons who were participants of massive street protests which started on November 21<sup>st</sup>, 2013 were released from criminal responsibility for actions of criminal nature provided by the Articles 109, 112, 113, 121, 122, 125, 128, 129, 146, 147, 151-1, 161, 162, 170, 174, 182, 185, 186, 187, 189, 194, 195, 196, 197-1, 231, 236, 239, 241, 255, 256, 257, 258, 258-1, 258-2, 258-3, 258-4, 258-5, 259, 260, 261, 264, 267, 270, 270-1, 277, 279, 280, 286, 289, 291, 293, 294, 295, 296, 304, 325, 335, 336, 337, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 355, 356, 376, 377, 382, 386, 396, 436 of CC of Ukraine relating to participation in massive street protests which started on November 21<sup>st</sup>, 2013 and the respective criminal cases were closed;
- Persons convicted of such crimes were released from penalty;
- Persons who were participants of massive street protests were released from administrative responsibility for any administrative infringements provided by the

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<sup>24</sup> <http://www.pravda.com.ua/news/2014/01/26/7011388/>

<sup>25</sup> <http://www.mukachevo.net/>

<sup>26</sup> [http://ukr.lb.ua/news/2014/01/26/253228\\_titushki\\_otlavlivayut\\_tsentre.html](http://ukr.lb.ua/news/2014/01/26/253228_titushki_otlavlivayut_tsentre.html)

<sup>27</sup> <http://www.pravda.com.ua/articles/2014/02/19/7014642/>

<sup>28</sup> <http://slovoprosivity.org/pdf/2014/slovo2014-05.pdf>

<sup>29</sup> <http://zakon4.rada.gov.ua/laws/show/743-18>

Administrative Offenses Code of Ukraine relating to massive street protests and committed within the period from November 21<sup>st</sup>, 2013 until the entry of this Law into force.

## **10. ILLEGAL DETENTION OF PERSONS IN EASTERN UKRAINE**

Violation of right to freedom in the region of the Anti-Terrorist Operation (ATO) in the east of Ukraine is of peculiar attention.

According to the data provided by Irina Geratshenko, the Commissioner of the President for Peaceful Settlement Conflict in Donbas, in October of 2014 about 2,800 people were captured or went missing on the territory of the Regions of Donetsk and Luhansk.<sup>30</sup>

Pursuant to the information of international human rights organizations Human Rights Watch the armed supporters of the DPR and the LPR took several hundreds of civilians. Among the prisoners one can find predominately the people suspected of disloyalty to terrorists, these are activists, supporters of the Ukrainian authorities and religious activists. Only in August in eastern Ukraine the organization recorded 20 episodes of capture of citizens by rebels, 12 of which were interrogated.<sup>31</sup>

The main difficulty of establishing the exact number of people who were illegally deprived of their liberty lies in the fact that most of these people disappeared during the fighting, and that's why there is no any information as to whether they were taken prisoner or killed. In addition, illegal armed groups of the self-proclaimed Donetsk and Luhansk people's republics that keep participants of the ATO as prisoners do not always inform the exact number of the prisoners and from time to time they refuse to communicate with the representatives of the Ukrainian authorities for the purposes of negotiations on exchange of captives.

In addition, a part of the prisoners of war were illegally taken to the Russian Federation, and they are kept on its territory that was officially proved during the meeting of the representatives of Ukraine, Russia and the terroristic organizations in Minsk on December 16<sup>th</sup>, 2014<sup>32</sup> and before the other meeting that took place on February 11<sup>th</sup>, 2015.<sup>33</sup>

The illustrative case is the case of the Ukrainian service woman Nadiia Savchenko who was prisoned by the terrorists and taken illegally to the territory of the Russian Federation where she is held in the pre-trial detention centre being accused of the fabricated criminal case concerning murder of the Russian journalists committed by her on the territory of the Luhansk region.<sup>34</sup> At that the Government of the Russian Federation infringed the universal rules of the international human rights law, international legal obligations in accordance with the Vienna Convention on Consular Relations of 1963 and the provisions of the Consular

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<sup>30</sup> <http://www.pravda.com.ua/news/2014/10/22/7041651/?attempt=1>

<sup>31</sup> [http://ukr.lb.ua/news/2014/09/02/277971\\_human\\_right\\_watch\\_rasskazala.html](http://ukr.lb.ua/news/2014/09/02/277971_human_right_watch_rasskazala.html)

<sup>32</sup> <http://coe.mfa.gov.ua/ua/press-center/news/33089-minsyka-zustrich-dosyagnuto-domovlenisty-propripinennya-vognyu-zvilynennya-vsih-zaruchnikiv-ta-nezakonno-zatrimanih>

<sup>33</sup> <http://news.liga.net/articles/politics/4347956-rossiya-trebuat-vykup-za-plennykh-itogi-nedeli-v-zone-ato.htm>

<sup>34</sup> <http://tsn.ua/politika/lotchicya-savchenko-rozpovila-yak-yiyi-z-mishkom-na-golovi-vivezli-na-teritoriyu-rosiyi-359411.html>



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Convention between Ukraine and the Russian Federation of 1994 as the consular of Ukraine had the opportunity to communicate with Nadiia only after intervention of the international community.<sup>35</sup>

Since December of 2014 Nadia Savchenko is on a hunger strike, her health has broken down, but according to the Office of the Prosecutor General of the Russian Federation so far there are no reasons to release her from the pre-trial detention centre.<sup>36</sup> At the meeting of the UN Security Council the representatives of the USA and Great Britain required immediate release of Nadia Savchenko from custody giving as a reason that Russia has broken the Minsk agreements concerning relief of all prisoners and also due to decline in her health, but this requirement was brushed aside by the representatives of the Russian delegation.<sup>37</sup>

In addition to capturing persons directly involved in the ATO, there were numerous violations of the rights to freedom and personal security of civilians on the part of terrorists of so-called DPR and LPR. According to mass-media, including foreign ones, the terrorists kept not only prisoners of war in the basements of the former administration buildings, but civilians as well. There are several kinds of hostages: prisoners of war, political prisoners and hostages for ransom. From time to time the rebels capture even their own supporters for disciplinary infringements which are not clearly defined.<sup>38</sup>

In many cases detention goes to intimidation, extermination, torture or even murder of prisoners and hostages.

In many cases relatives of the persons captured by the terrorists seek independently for the ways of deliberation of close persons by transfer of ransom.<sup>39</sup> Thus, public bodies do not always take required measures to deliberate the persons kept by the terrorists of DPR and LPR.

### 11. RECOMMENDATIONS

1. Oblige the pre-trial investigation bodies and/or public prosecution to record separately the number of detainees:

- On the ground of a ruling of the investigating judge for the purpose of delivery (Art. 190 CCP of Ukraine);
- The lawful arrest (Art. 207 of the CCP of Ukraine);
- By an authorized official decisions without a ruling of the investigating judge (Art. 208 of CCP of Ukraine);
- Administrative detentions.

2. Define as one of the priorities of the General Prosecutor of Ukraine of supervision of compliance with the law when detaining persons suspected of a crime, particularly those

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<sup>35</sup> <http://tsn.ua/ukrayina/ukrayina-vimagaye-zvilniti-lotchicyu-savchenko-bez-zhodnih-peredumov-359434.html>

<sup>36</sup> [http://espreso.tv/news/2015/04/01/rosiyski\\_prokurory\\_ne\\_vvazhayut\\_savchenko\\_khvoroyu\\_i\\_zalyshat\\_u\\_sizo](http://espreso.tv/news/2015/04/01/rosiyski_prokurory_ne_vvazhayut_savchenko_khvoroyu_i_zalyshat_u_sizo)

<sup>37</sup> <http://www.dw.de/a-18301235>

<sup>38</sup> <http://one-europe.info/stories-from-hell-hostages-of-donetsk-people-s-republic>

<sup>39</sup> *Ibid.*

who are detained without ruling of the investigating judge at the initiative of bringing the guilty officials to criminal liability under Art. 371 of the Criminal Code of Ukraine.

3. Control the provisions of the CCP of Ukraine concerning the detention of suspects, as well as consideration of the practice of the European Court on a preventive measure of detention and extension of detention.

4. The Supreme Court of Ukraine present legal positions concerning the provisions of national law and the practice of the European Court during detention and preventive measures, and the application of criminal law, which provides liability for crimes related to the severest violations of human rights during prosecution (Art. 371–375 of the Criminal Code of Ukraine).

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## **III. RIGHT TO FREE ACCESS TO PUBLIC INFORMATION**

One may emphasize three elements in the issue of protection of the right to access public information which complicates or even makes it impossible to execute this right, thus, to control state authorities; these are disadvantages of the legislation, practice of passive access to public information as well as active access via requests to the information provider as far as available public information.

### **1. DISADVANTAGES OF LEGISLATION**

Basically, as soon as the Law of Ukraine “On Access to Public Information” (hereinafter — Law) came into force on May 9<sup>th</sup>, 2011 an issue on its coordination with a great number of other regulatory documents was raised. It was caused by the fact that an issue of delivery of information or access to information available to public bodies and local authorities relating to the areas which were governed by other laws and codes, and in 2011 as of adoption of the Law “On Access to Public Information” the legislation relating to this area was not harmonized.

As long ago as 2012, the draft registered under No. 10455 was prepared and submitted to the Verkhovna Rada of Ukraine, which was re-registered later and submitted to the new Verkhovna Rada of Ukraine under the number 0947.

In March 2014, over 50 acts of law were amended in order to bring it into line with the Law “On Access to Public Information” (Law No. 1170-VII as of 27.03.2014<sup>2</sup>).

These amendments were adopted to resolve a great number of issues relating to the application of the Law, for example, determination of the number of subjects who are providers of public information by making amendments to special laws, adoption of the norm on publication of drafts of the local authorities within less than 20 working days, as an exceptional cases, approximation of definitions with the provisions of the Law “On protection of personal data” etc.

At the same time, the practice of application of this law proved the insufficiency of such changes, and the necessity to draft a new version of the Law “On Access to Public Information” became evident as there still were some unresolved issues which were difficult or even impossible to resolve by introducing amendments to other laws, and which require modification of the Law itself. These are issues that require the correction of some defects in the Law itself.

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<sup>1</sup> Prepared by Olexandr Pavlichenko and Dementii Bilyi, KHPG.

<sup>2</sup> <http://zakon4.rada.gov.ua/laws/show/1170-vii>

Such defects are certain unspecific definitions (a term “public information”, “manager of information” and a number of subjects covered with this term, definition “insider information”), definition of the submission procedure; Paragraph 13 of Art. 19 states that “an inquiry may be submitted orally, in writing or another manner (by mail, fax, e-mail) at the discretion of the demanding person. But at the same time, sending a request by mail and fax is a written form of submission that requires an obligatory signature on an inquiry document is also a defect which led to program legal proceedings and a refusal to grant access to the information stated in the Resolution of the Central Election Commission No. 23 as of February 7<sup>th</sup>, 2013<sup>3</sup> and requires respective correction(s).

One of the most difficult challenging issues for enforcement is the requirement stipulated in Paragraph 2 of Art. 6 of the Law “On Access to Public Information”, the so called “threefold test” that was transformed and taken from Article 10 of the European Convention on Human Rights as part of the preparation for adoption of the Law. According to the results of the training, workshops of officials of the public and local authorities held by the network of non-governmental organizations “For transparency of public authorities” in cooperation with the Kharkiv Human Rights Protection Group in 2014 this threefold test is not used and it is almost impossible to execute it for an ordinary clerk responsible for giving answers to request for public information.

As Paragraph 2 of Art. 10 of the European Convention on Human Rights is an instrument of judges of the European Court of Human Rights the threefold test stipulated in Paragraph 2 of Art. 6 of the Law “On Access of Public Information” is subject to judicial rather than bureaucratic discretion, thus, it may be used in courts, but not at the executive level which was confirmed by foreign experts who learned of the Ukrainian practice of this law’s application.

Creating an efficient institute to control the correct application of the provisions of this Law is of the most important issues ensuring the Law “On Access to Public Information”. In October of 2014, the Prosecutor General’s Office of Ukraine was deprived of the powers to control observance of the norms of the Law “On Access to Public Information”, thus, at this point of time there is no real effective control mechanism such as an institute of information commissioner with powers, professional qualifications, prestige and independence.

This is an urgent problem for modern Ukraine and there is a need to elaborate the changes to the legislation on access to public information to provide and enshrine in legislation such independent professional mechanism of law observance control.

## **2. PASSIVE ACCESS TO PUBLIC INFORMATION**

In December of 2014, the Institute of Regional Press Development published a transparency rating of 55 web-sites of the central bodies of the executive powers (CBEP) pursuant to the results of the verification conducted by this institute in 2014. According to the methods used by the Institute of Regional Press Development for the web-sites of CBEP

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<sup>3</sup> <http://www.cvk.gov.ua/pls/acts/ShowCard?id=33832&what=0>

in 2011–2014 the general index of information transparency **increased by 13.16 points** and now amounts to **53.76%**.<sup>4</sup>

The studies of transparency of web-sites of the central bodies of the executive power by a network of non-governmental organizations “For transparency of the state bodies” in cooperation with the Kharkiv Human Rights Protection Group in 2014 also prove that a level of fullness is changing for the better. For example, at the beginning of 2014 an official web-site of the Kherson State Regional Administration had indexes of access to passive information at a level of 78%, when in January of 2015 it was about 95%.

This is a common trend for web-sites of other regions, namely, Kirovograd, Sumy, where, as the monitors of the network stated that by means of using the unified matrix of fullness all information that is to be available according to the requirements of Art. 15 of the Law of Ukraine “On Access to Public Information” is available on all web-sites, namely, the state bodies of the region of Sumy and Kirovograd.

But one cannot consider an issue of public information availability at the web-sites settled: an analysis of the contents and updating of information prove that the issue of passive access (essentially, via web-sites) remains a problem for a considerable number of state bodies.

The reasons for such difficulties with passive access are based on a lack of culture of working with information, necessary skills for working with the Internet, poor technical assistance and different (non-uniform) standards of working with Internet. The problem of improper fullness of information is especially evident while making an analysis of the web-sites of the district departments of the state bodies and local authorities in the regions.

According to the monitoring results, 14% of the authorities in the districts, namely in the region of Kherson, do not have their own web-site or a web-page on the web-site of the superior authority.

During the monitoring an important issue was found, which is the lack of a unified standard of the web-sites registration. Thus, for example, official web-sites of the state bodies of the region of Kherson are registered in different domain zones: .org, .com, org.ua, com.ua, in.ua, ks.ua, Kherson.ua. In practical terms it means that doubts in authenticity of the web-site of the respective state body may appear and, accordingly, in the information available on this web-site. For example, at some point the State Ecological Inspection in the region of Kherson had two web-sites at two different addresses<sup>5</sup>. Accordingly, there is a need for a gradual transition of the web-sites of official state bodies to an “official” domain gov.ua.

The monitoring of passive access to information at the web-sites of the district state administration discovered an unsatisfactory level of quality of fullness of the web-sites with official information. After examining the contents of the web sites it became clear that, firstly, Part 2 of Art. 15 is systematically infringed, i. e. the date of updating is not indicated, and in some cases even the date of publication, or this date is reasonably doubted. Thus, at the web-site of the Holoprystanska District State Administration of the region of Kherson most of the information for 2014 (drafts of the resolutions, reports etc.) was dated by 2012.

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<sup>4</sup> <http://irrp.org.ua/rating-2014.html>

<sup>5</sup> <http://ekologia.ks.ua/> (available on December 21st, 2013) and <http://ecoinspekcia.ks.ua/>

One more important remark is that the texts of the resolutions of the management (the head) of a district state administration is published more or less regularly from the moment of enforcement of the Law on Access to Public Information, but all previous information for 2011 or 2012 is almost absent from the web-sites.

For example, in the region of Sumy 23 of 48 items of obligatory information to be posted on web-sites weren't published on half or even more of the web-sites of District State Administrations. The most "problematic" in terms of availability of information are such items as draft resolutions to be discussed and contact addresses for communication and receipt of active information, including the e-mail address of the head of a body and his/her deputies.

### **3. ACTIVE ACCESS TO PUBLIC INFORMATION**

The request for public information and the efficiency of its response is an index of active access to information which is at the disposal of the managers. Requesting is the fastest and most convenient option for individuals who want to receive information, to achieve such a goal, however, practice shows that a rather large number of situations have become systemic when a requester is rejected in response to your request.

One of the most common reasons for refusal is reference to the fact that a document or the requested information contains personal data (respectively, confidential information). Provided that sometimes it is a reference to the Decision of the Constitutional Court in the case of the Zhashkiv District Council of the region of Cherkassy concerning the official interpretation of the provisions of Part 1 of Art. 32, Part 2 and 3 of Art. 34 of the Constitution of Ukraine.<sup>6</sup>

Unfortunately, in practice, managers of information manipulate a reference to this decision of the Constitutional Court because of oblique language and definitions contained in the provisions of the Law "On Access to Public Information" regarding confidential information and opportunities to provide the information containing personal data.

Another specific group of issues owes to the fact that the "insider information" includes, among others, documents that define the term incorrectly. First of all, it deals with the documents "For Official Use Only". In practice, these documents contain information that is similar to secret information, and such information is usually contained in other documents which are defined in Paragraphs 1 and 2 of Part 1 of Art. 9 of the Law. Thus, the definition of "insider information" is not clearly stated in Art. 9 of the law and is subject to adaptation and proper language. The information determined as "insider" requires a label (which, in practice, often is not respected) — Paragraph 2 of Art. 9 of the Law contains a requirement that "documents containing information that is "insider information" assigned a label "For Official Use Only", but in practice this rule is not respected and therefore needs to be adjusted.

It is important to mention about the right to access public information in a judicial proceeding. By 2014 the good law practice concerning ensuring the right of access to

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<sup>6</sup> <http://zakon4.rada.gov.ua/laws/show/v002p710-12>

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information by courts, primarily by administrative courts, has not been fixed yet. According to the results of the work of the network of NGOs “For Transparency of Public Authorities” cooperation with lawyers of the Kharkiv Human Rights Protection Group in 2013–2014 courts, as a rule, did not provide the right of applicants for socially significant information, such particularly as information on tariffs for services for residential premises or copies of statements on resignation from People’s Deputies of Ukraine. This proves the need for proper responsibility of the judges for ensuring the needs of society in an open government and the right to public information.

#### 4. RECOMMENDATIONS

1. Amend the Law “On Access to Public Information”, which eliminates disadvantages in the application of the law and provides for the establishment of an effective mechanism to monitor compliance with the regulations.

2. Ensure standard representation of public information on the web-sites of managers of public information (including navigation on the web-site) that will enable easy search and access to relevant documents.

3. Ensure transition of the web-sites of official state bodies to “official” domain gov.ua.

4. Update regularly and fully the information on the web-sites, timely publish draft resolutions to be discussed.

5. Provide clear language for the categories of “confidential” and “insider information” and provide clear mechanisms to overcome improper restrictions on access to such information.

6. Ensure proper training of judges and their approach corresponding to European standards to the right to access the information.

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## **IV. RIGHT TO A FAIR TRIAL: OTHER ASPECTS**

The year 2014 has become the year of great expectations of quality changes in law proceedings, restoration of independent court and trust to judicial power which became a tool for achieving political goals and enhancement of power usurpation during Yanukovich's regime. After victorious Revolution of Dignity, attempts have been made to cleanse judicial authorities from political and corruption influences, enhance its independence and carry out screening of judicial establishment, as well as bring former regime servants to justice. But, in spite of great social demand, the new government has failed to perform a complex judicial reform despite the initiatives demonstrated by expert environment; the former government representatives have shown the intention to preserve their control over the courts, and the judges themselves strongly resisted to any attempts to perform judicial staff screening.

### **1. PARLIAMENTARY INFLUENCE UPON COURTS**

After rolling back the Constitution to its pre-2004 version and restoration of the parliamentary presidential system, the Verkhovna Rada decided to get back its influence upon courts as there was no trust to the then staff of the High Council of Justice and the High Qualification Commission of Judges. On February 23, 2014, the Parliament adopted the Law "On Amendments to Certain Laws of Ukraine on Individual Matters of Judicial System and Status of Judges"<sup>2</sup>, according to which it undertook significant authority to resolve personnel matters in the judicial system. The right to appoint presiding judges and their deputies was delegated from the High Council of Justice to the Verkhovna Rada, although the Constitution does not provide any such authority to any of the specified agencies. Besides, vast powers regarding personnel matters were granted to the parliamentary committee on rule of law and justice. Just like before the 2010 reform, the committee started preliminary consideration of matters regarding election of judges and their dismissal, before submitting these matters to the debating chamber of the Verkhovna Rada. Moreover, the law established that the High Council of Justice may approve decisions on matters within its competence only at presence of preliminary opinions of the respective committee which shall be mandatory. The authors of this law were the member deputies of the specified parliamentary committee who were in opposition at that time and clearly expected to get a major vote in this. But, after the formation of the new government and transition of several deputies to new positions, the majority vote in the committee was obtained by the representatives of former leading party with its

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<sup>1</sup> Section prepared by: Roman Kuibida, Tetiana Ruda, Political and Legal Reforms Center.

<sup>2</sup> Law of Ukraine "On Amendments to Certain Laws of Ukraine on Individual Matters of Judicial System and Status of Judges" No. 769-VII of February 23, 2014. // <http://zakon4.rada.gov.ua/laws/show/769-18>



permanent head S. Kivalov. Practically, the law hardly worked because the High Qualification Commission of Judges and the High Council of Justice terminated their activity in April 2014, and vacant presiding judge positions in courts were once again filled by boards of judges of the given courts.

### 2. ATTEMPT TO ENHANCE JUDICIAL POWER INDEPENDENCE

On April 8, the Verkhovna Rada adopted the Law “On Renewal of Trust to Judicial Power in Ukraine”<sup>3</sup>, aimed at enhancement of judge independence. The Law guaranteed the society liability of judges involved in obvious violations of human rights during Yanukovych’s regime; the Law also ruined the administrative vertical line of hierarchy in the judicial system, establishing opportunities for judges to overcome negative consequences of administrative and political influence exerted upon them.

With the adoption of this Law, all presiding judges and their deputies have lost their positions (although they still remained judges), and the judge personnel of each court have obtained a possibility to elect new presiding judges at judge meetings. Also, the term of occupying an administrative position has been cut to one year, but no more than two years in a row. Meanwhile, legislators failed to provide preventive measures which would prevent former presiding judges and their deputies from taking back their former positions. So, according to the results of elections which had taken place under new rules, the presiding chairs were once again occupied by the same persons who had occupied them in the times of previous government in about 80% of courts. To keep their positions, former presiding judges and their deputies often used the all too familiar “dirty technologies” — bribery, damaging ballot papers, pressure upon judges. Also, in many courts no alternative candidates were suggested as judges were afraid of negative consequences in case of losing to former presiding judges. In certain courts, former presiding judges took advantage of inactivity of the judge team, and in some other courts they used the fact that a large number of judges were obliged to the presiding judge for their positions in the given court. The script of electing the same people as presiding judges was disrupted only in superior specialized courts under pressure from the community. Thus, the new Law demonstrated judges’ inability and non-readiness to stand for their own independence.

One of the important provisions of the Law is termination of authorities of all members of the High Council of Justice and the High Qualification Commission of Judges (except for those who are members by position) who were directly or indirectly elected and appointed by former government. Both these agencies play a key role in forming judiciary manpower and bringing judges to justice. The Law established that the staff of these agencies had to be formed anew, at that a ban to hold respective positions by persons, who had been occupying them as of the moment this Law entered into force, was imposed.

It should be noted that the previous government, along with the old members of the High Qualification Commission of Judges and the High Council of Justice had taken to various

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<sup>3</sup> Law of Ukraine “On Renewal of Trust to Judicial Power in Ukraine” No. 1188-VII of April 8, 2014. // <http://zakon4.rada.gov.ua/laws/show/1188-18>.

manipulations aimed at leveling the changes and preserving their influence upon the courts via these institutions which are so important for judicial power. For instance, on March 20, a draft law was registered in the Parliament which withdraws restrictions on membership in the High Qualification Commission of Judges and the High Council of Justice, as established by the Law "On Renewal of Trust to Judicial Power in Ukraine"<sup>4</sup>. If adopted, this draft law could bring back people with doubtful reputation to the High Qualification Commission of Judges and the High Council of Justice.

Other methods were also used to resume operation of the High Qualification Commission of Judges and the High Council of Justice with its old personnel list. For example, "screened" members of the High Qualification Commission of Judges attempted to get back through courts<sup>5</sup>. Also, the staff of the High Qualification Commission of Judges tried to "legitimize" themselves by establishing a public scientific and advisory council which included not only respected scientists but also people of questionable integrity<sup>6</sup>.

Another problematic situation came about the composition of the High Council of Justice. People's deputies chose to ignore the resolution on appointment of new members to the High Council of Justice by their quota. The judge convention managed to elect members of the High Council of Justice only in September. The decision to appoint new members of the specified agency by quotas of the President (at that time, acting President O. Turchynov), the convention of advocates and representatives of higher schools of law and scientific institutions were successfully appealed against in courts by the Parliament members concerned<sup>7</sup>. It was the decision of the conference of prosecutor's office employees regarding appointment of the High Council of Justice members by their quota which actually did not become a subject of court proceedings. Thus, the formation of the High Council of Justice staff as of the end of 2014 has not been completed, and a number of appointments to this agency have been blocked in court. Until this agency is formed under the new law, nobody can be appointed to or dismissed from a position of a judge.

The newly-staffed High Qualification Commission of Judges began working only in the end of 2014. It resolved to reconsider all decisions, made by the previous illegitimate staff which was adopted after its authorities had been terminated by law. Unfortunately, in the majority of cases all deadlines for imposing disciplinary penalties upon the judges have expired.

The Parliament did next to nothing to reform the system of disciplinary liability of judges. The remarks laid out in the resolution of the European Court of Human Rights in

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<sup>4</sup> Draft Law "On Amendments to Certain Legislative Acts of Ukraine" (on membership in the High Council of Justice and the High Qualification Commission of Judges of Ukraine) No. 4915 of May 20, 2014 // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50966](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50966)

<sup>5</sup> L. Shutko. "High Qualification Commission of Judges Ways above Law?" // <http://www.pravda.com.ua/columns/2014/09/1/7036215/>

<sup>6</sup> A public scientific and advisory council attached to the Commission was established // <http://www.vkksu.gov.ua/ua/news/pri-komisii-stvoreno-gromadsku-naukovo-konsultativnu-radu/>

<sup>7</sup> L. Shutko. "Struggle for High Council of Justice: First Casualties" // <http://ua.racurs.ua/548-vyscha-rada-yustytcii-bogoslovska-vlasenko-kivalov-sud-reforma;>

S. Berko. "Judicial Power: Allergic to Reforms" // <http://www.pravda.com.ua/columns/2014/10/15/7040816>

#### IV. RIGHT TO A FAIR TRIAL: OTHER ASPECTS

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the case "*Oleksandr Volkov v. Ukraine*" were left unnoticed<sup>8</sup>. Although, it is worth mentioning that on May 7, 2014, the draft Law "On Amendments to Certain Legislative Acts of Ukraine (on Improvement of Measures to Renew Trust to Judicial Power)"<sup>9</sup> was registered in the Verkhovna Rada, which stipulated reformation of the system of disciplinary liability of judges in accordance with the European standards. Thus, the draft law suggested withdrawal of disciplinary cases and cases on dismissal of those members of the High Qualification Commission of Judges and the High Council of Justice who performed screening of judges, from the resolution procedure; instead of one reprimand, a wider range of disciplinary sanctions was stipulated which would meet the principle of proportion; terms of limitation were determined for dismissal for oath breaking; the High Council of Justice was guaranteed a personnel in which the majority would be judges appointed by the judge convention (the President, the Parliament, assemblies of advocates and representatives of higher schools of law, the All-Ukrainian Conference of Prosecutor's Office Employees shall appoint a part of the High Council of Justice members among those judges nominated by the judge convention). Also, a "screening mechanism" was envisaged for the presiding judges who stayed from the regime of Yanukovych. Such persons shall not be nominated for administrative positions for the following three years. So, the adoption of this draft law would enable the establishment of a fair and just procedure to punish judges which would conform to the European standards of independence, and also would prevent the violator judges from returning to their positions on formal basis only. Still, the Parliament never got down to considering this draft law before the October elections.

### 3. NEW FORMAT OF JUDICIAL SELF-GOVERNMENT

The Law "On Renewal of Trust to Judicial Power in Ukraine" has had a certain achievement: it resulted in changes to the system of judicial self-government. The convention of judges of Ukraine and the Council of Judges of Ukraine stopped being institutes of political influence upon judges and turned into truly representative agencies after obtaining a possibility to be formed based on considerations of proportional representation of judges. For example, the convention of judges is formed in proportion of one representative per twenty judges. This means over 400 representatives instead of 96, as it was before. The new Council of Judges consists of 40 members now (as compared to only 11 previously). It includes judges proportionally from all levels and specializations. Earlier, the Venice Commission was criticizing the situation when 6 thousand judges of general jurisdiction courts were represented by only a third in these agencies, while the other two thirds were the representatives of about 2 thousand judges of economic and administrative courts.

Another important aspect is the fact that the presiding judges and their deputies are deprived of the option to act as representatives at the convention of judges and members

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<sup>8</sup> Resolution of the European Court of Human Rights regarding the case "*Oleksandr Volkov v. Ukraine*" of January 9, 2013 // <http://www.minjust.gov.ua/file/26531>.

<sup>9</sup> Draft Law "On Amendments to Certain Legislative Acts of Ukraine (on Improvement of Measures to Renew Trust to Judicial Power)" No. 4829 of May 7, 2014 // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50851](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50851).

of the Board of Judges. Before, the judicial self-governing agencies had mostly featured the presiding judges, and that was why the judicial self-governing agencies reflected and protected the interests not so much of the judicial manpower as the interests of presiding judges.

At the same time, it should be noted that the new law not only failed to simplify the system of judicial self-governing agencies by preserving conferences and councils of general jurisdiction and specialized courts, but made them even more complicated. The norms regulating the procedure of formation of the judicial convention turned out to be extremely contradictory and inconsequent, thus it was not possible to avoid election of representatives to the convention of judges “from the top”, i.e. by the conferences of judges held in Kyiv; filtration of local court representatives at the conferences by courts of appeal also failed.

#### **4. JUDICIAL POWER CLEANSING**

The Law “On Renewal of Trust to Judicial Power in Ukraine” envisaged establishment of the Temporary Special Commission on Inspection of General Jurisdiction Court Judges attached to the Verkhovna Rada of Ukraine, to inspect judges involved in prohibiting peaceful assemblies and repressions against their participants. The Commission held a number of sessions considering cases of judges. A lot of judges under investigation failed to attend the session claiming health problems on the day of Commission session. The Commission members complained about the difficulties in investigating the cases since some judges, in an attempt to avoid liability, took to destroying case papers, threatening and other manipulations to prevent access to cases on prohibition of peaceful assemblies<sup>10</sup>. Still, it did not stop the Commission from adopting a number of opinions on oath breaking by judges, which were later forwarded to the High Council of Justice. According to law, the latter has to consider these opinions and make a final decision within no more than 3 months. But, given that the High Council of Justice failed to start operating in 2014, there are concerns that the violator judges would remain unpunished. Yet more concerns were fueled by withdrawal of two members from the Commission who were elected by the Plenary Session of the Supreme Court (one member withdrew on his own free will, the other acquired authorities of the High Qualification Commission of Judges member). This resulted in loss of full power by the Commission.

On October 16, 2014, the Law “On Government Cleansing”<sup>11</sup> entered into force, which also concerned judges. According to its provisions, the judges who passed judgments in cases on administrative violations and criminal cases against peaceful assembly participants who were later released from such liability based on three laws “on amnesty”, shall be subject to dismissal from their positions. Former members of the High Qualification Commission of

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<sup>10</sup> *Markiian Halabala*. “Judges who tried Maidan activists burn cases and pressure Temporary Special Commission”. // <http://www.radiosvoboda.org/content/article/26628385.html>;

*Lesia Shutko*. “Judge Counteractions to Screening: Terrorizing and Blocking” // <http://www.pravda.com.ua/columns/2014/10/17/7041076/>.

<sup>11</sup> Law of Ukraine “On Government Cleansing” No. 1682-VII of September 16, 2014 // <http://zakon4.rada.gov.ua/laws/show/1682-18>.

Judges and the High Council of Justice shall also lose their positions and shall not be able to work in the public sector for the nearest 10 years. Besides, the law stipulated inspection of their property declarations (previously these declarations were normally stored in courts). According to the results of such inspection, a presentation can be submitted to the High Council of Justice on dismissal of such judge.

The law was criticized by the Venice Commission, particularly, because for one and the same judges the legislator had established two mutually exclusive mechanisms of authority termination — dismissal based on inspection results, and screening due to the very fact of making certain decisions. The Ukrainian government has undertaken to revise the Law “On Government Cleansing” taking into account the remarks of the Venice Commission.

#### 5. PROBLEM FACED BY THE CONSTITUTIONAL COURT

During Yanukovich presidency, the Constitutional Court became his reliable ally and was always used for legalizing resolutions necessary for the government yet doubtful from the point of view of the Constitution. After Yanukovich’s escape, on February 24, the Verkhovna Rada approved the resolution “On Reaction upon Facts of Oath Break by Judges of the Constitutional Court of Ukraine”<sup>12</sup>. By this document, the people’s deputies recognized violations of the main principles of the Constitution by the Court when it had adopted resolution on return to the Constitution wording of 1996, which resulted in the change of constitutional regime. Meanwhile, the Parliament dismissed judges of the Constitutional Court, who had voted for the respective decision, for oath break, and appointed new competent persons. The same measures were offered to the President and the convention of judges regarding respective judges of the Constitutional Court elected by their quotas. It should be mentioned that neither the then acting head of state, nor the current President fulfilled the given recommendation. The convention of judges also omitted consideration of this important matter, although it did approve the procedure of appointment and dismissal of the Constitutional Court judges by their quotas.

At the same time, two judges dismissed by the Parliament appealed to the Supreme Administrative Court on their rehabilitation, and the court awarded the judgment in their favor<sup>13</sup>. To tell the truth, in December 2014, the Supreme Court acknowledged dismissal of one of these judges legitimate. Yet, the majority of judges in the Constitutional Court continue to include judges controlled by former political authorities or “time-server” judges. An interesting fact: since June 2014, the Constitutional Court has not approved any decision on the merits.

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<sup>12</sup> Resolution of the Verkhovna Rada of Ukraine “On Reaction upon Facts of Oath Break by Judges of the Constitutional Court” No. 775-18 of February 24, 2014 // <http://zakon2.rada.gov.ua/laws/show/775-18>

<sup>13</sup> The judge of the Constitutional court who had been dismissed for oath breaking was allowed to work // <http://www.pravda.com.ua/news/2014/06/26/7030179/>;  
Resolution of the Supreme Administrative Court of Ukraine: Former Constitutional Court Judge Ovcharenko in Office Again? // [http://protokol.com.ua/ua/rishennya\\_vishchogo\\_administrativnogo\\_sudu\\_ukraini\\_kolishniy\\_suddya\\_ks\\_ovcharenko\\_v\\_a\\_znovu\\_pri\\_posadi/](http://protokol.com.ua/ua/rishennya_vishchogo_administrativnogo_sudu_ukraini_kolishniy_suddya_ks_ovcharenko_v_a_znovu_pri_posadi/)

## 6. JUSTICE PROBLEMS IN OCCUPIED TERRITORIES AND ATO ZONE

After the annexation of Crimea by Russia in March 2014, over 15 thousand cases pending in the courts of the peninsula practically froze due to the impossibility to administer justice<sup>14</sup>. To resolve the problem in any way at all, the Verkhovna Rada adopted the Law “On Guaranteeing Rights and Freedoms of Citizens and Legal Regime on Temporarily Occupied Territory of Ukraine”<sup>15</sup> on April 15, which changed territorial jurisdiction of respective cases and stipulated their consideration in the courts of Kyiv. Still, legislators failed to envisage any mechanisms to implement this law in practice. There is still no example of a successful venue change for the case. The only more or less efficient way to hear a case for a person concerned is to file it directly to a court in Kyiv when the case can be resolved within the procedural mechanism of resuming lost court proceedings. At the same time, even on condition of case resolution, a problem of enforcing such court decision arises.

In reality, the Crimean courts never stopped operating in practice, but continued to administer justice only a week after Russia had acknowledged occupation of the Ukrainian peninsula, although based on legislation of the Russian Federation. The judges who wanted to keep their office were forced to get Russian citizenship.

In July 2014, the Russian Parliament adopted a series of laws which established a judicial system in Crimea analogous to the one of Russia — with general jurisdiction courts, military courts and courts of arbitration. Their formation is to be completed within a year. Since then, the Higher Judges’ Qualification Board of the Russian Federation has been recruiting judges to these courts. A lot of Crimean judges are rejected when applying for recommendation and nomination to judge positions, especially those whose relatives work at Ukrainian state agencies. They are replaced by judges from other regions of Russia.

With the intensification of combat activities in the territories of Luhansk and Donetsk Regions, the problems concerning judicial protection affected these regions as well. Despite the fact that “judicial” agencies of the so-called “Donetsk and Luhansk People’s Republics” (hereinafter referred to as DPR and LPR) are practically absent, they have their own “police” and “prosecutor’s office” operating there. It is known that court premises inventory has been started in DPR. The “Supreme Court of DPR” website has been launched in a test mode, but, judging from its content, the court is not working. Even then, the court has “a presiding judge” who previously was “acting General Exec of DPR” and before that had worked as criminal investigator of the Investigation Committee of the Russian Federation. The website even has some phone numbers, previously used by the Court of Appeal of Donetsk Region. The content includes draft law texts concerning the judicial system.

There is no escaping the impression that the DPR wants to implement the same judicial system as in the Russian Federation, as they plan to establish general jurisdiction courts and courts of arbitration. On November 20, 2014, a note was posted on the website of the

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<sup>14</sup> Justice collapse in Crimea, but courts do not rush forwarding Ukrainian cases to mainland // <http://tsn.ua/ukrayina/u-krimu-pravosudniy-kolaps-ale-sudi-ne-pospishayut-peredavati-ukrayinski-spravi-na-materik-349408>

<sup>15</sup> Law of Ukraine “On Guaranteeing Rights and Freedoms of Citizens and Legal Regime on Temporarily Occupied Territory of Ukraine” No.1207-VII of April 15, 2014 // <http://zakon4.rada.gov.ua/laws/show/1207-18>

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“Supreme Court of DPR” in question stating that military field courts would be working in some regions of the militant-occupied territory.

The LPR did not even get anywhere near establishing courts in 2014. Instead, there is a video posted on the Internet showing the so-called “popular court” where the militants perform quasi-judicial hearing, read out the sentence convicting a person accused of rape to military execution, and those present in the courtroom vote by show of hands and approve the sentence.

On August 12, 2014, the Ukrainian Parliament adopted the Law “On Administering Justice and Criminal Proceedings due to Conduction of Antiterrorist Operation”<sup>16</sup>, which also changed territorial jurisdiction of cases considered in the ATO zone. According to the law, the State Court Administration is commissioned with making a list of courts located in the ATO zone where justice administration is impossible, and sending them to presiding judges of superior specialized courts for change of territorial jurisdiction.

Starting from September 2, 2014, 58 courts located in the occupied territory of Donetsk and Luhansk Regions or in the war fighting areas terminated case hearings officially. Presiding judges of three supreme courts changed territorial jurisdiction of these courts and authorized them to forward cases to respective court agencies in the territories controlled by Ukraine. It should be mentioned that case forwarding has not occurred from the majority of courts in practice, as the vehicles transporting them were stopped at the checkpoints of the so-called DPR and LPR, and case materials were confiscated by militants.

Meanwhile, judges and court employees who stayed in the occupied territory were left unemployed although some of them moved to the territory controlled by Ukrainian authorities. To dismiss the matters on transfer of judges and court employees (which is not a few persons), President Petro Poroshenko changed the place of location of the courts by his decree dated November 12, 2014. Thus, 7 largest courts have been moved to the Ukrainian territory from the ATO zone.

So, the economic court of Donetsk Region, Donetsk Economic Court of Appeal and the economic court of Luhansk Region were transferred to Kharkiv. The Court of Appeal of Luhansk Region and Luhansk District Administrative Court were transferred to Severodonetsk, Donetsk District Administrative Court moved to Slovyansk, and Donetsk Administrative Court of Appeal moved to Kramatorsk. On November 26, 2014, three more district courts resumed operation.

At the same time, it is impossible to completely resolve the judicial protection problems in the occupied territories without restoration of state sovereignty of Ukraine in the respective cities and regions.

#### 7. RECOMMENDATIONS

1. To eliminate double mechanism for punishment of judges established by the Laws “On Renewal of Trust to Judicial Power in Ukraine” and “On Government Cleansing”. Preference should be given to the mechanism envisaging establishment of individual guilt of judges in

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<sup>16</sup> Law of Ukraine “On Administration of Justice and Criminal Proceedings due to Conduction of Antiterrorist Operations” No. 1632-VII of August 12, 2014 // <http://zakon4.rada.gov.ua/laws/show/1632-18>.

adopting self-willed decisions according to the results of respective inspections. At the same time, activities of the Temporary Special Commission on Judge Screening and the High Council of Justice must be resumed by filling their vacancies. Still, to avoid selective punishment, the principle of inspection by application should be replaced with the mechanism of mandatory screening of each judge who approved respective court decisions.

2. For successful judicial reform in Ukraine which would meet the European standards, it is expedient to take into account the opinion of the Venice Commission on the Law “On the Judicial System and the Status of Judges” of 2010. Amendments to the legislation on the judicial system and the status of judges shall envisage the following:

- Withdrawal of the Verkhovna Rada and the President from the process of transfer of judges;
- Improvement of mechanisms of selection and liability of judges to enhance their independence and liability;
- Simplification and enhancement of judges’ self-government, namely through their participation in the budget formation process;
- Improvement of availability of justice through changes to the procedural laws.

These provisions are embodied in the new wording of the Law “On the Judicial System and the Status of Judges” elaborated by the joint working group of the Ministry of Justice and public initiative “Reanimation Reform Package”. This draft law takes into account over 40 recommendations of the Council of Europe agencies<sup>17</sup>, including complete fulfillment of the decision made by the European Court of Human Rights in the “*Oleksandr Volkov v. Ukraine*” case. Considering other recommendations is possible only after amendments are made to the Constitution. In December 2014, it was filed to the new parliament by people’s deputies O. Syroid, O. Sotnyk, A. Zhurzhii, L. Yemets and I. Krulko<sup>18</sup>.

3. Reformation of the Constitution in the sphere of justice shall envisage the following changes:

- transition to a three-branch judicial system, with complete separation from the system of general jurisdiction courts and the system of administrative courts;
- complete withdrawal of the political agencies from the formation of judicial manpower, delegation of these authorities to the Supreme Council of Justice;
- establishment of a new independent agency — the Supreme Council of Justice (to replace the current High Council of Justice, the High Qualification Commission of Judges and the Council of Judges of Ukraine) where the majority of members are judges elected by judges, and the remaining part consists of community representatives;
- renewal of judicial manpower in whole or at least in the higher instance courts.

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<sup>17</sup> List of recommendations of the Council of Europe on judicial reform and prosecutor’s office reform in Ukraine // <http://pravo.org.ua/2010-03-07-18-06-07/lawreforms/1583-kodeks-rekomendatsii-rady-yevropy-shchodo-sudovoi-reformy-i-reformy-prokuratury-v-ukraini.html>

<sup>18</sup> Draft Law on amendments to the Law of Ukraine “On the Judicial System and the Status of Judges” regarding improvement of principles of organization and operation of judicial power according to the European standards 1497 of 17.12.2014 // [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=52976](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52976).



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## V. FREEDOM OF ASSOCIATION

### 1. GENERAL REVIEW

Although the significant changes to the legislation have entered into force in 2013 and they substantially improved the regulation of public associations and charity organizations, their implementation has not been completed by the end of 2014 yet. The amendments to other laws related to the adoption of these laws have not been developed and submitted to parliament. This is the reason there are so many inconsistencies, particularly in the tax laws, laws concerning trade unions, etc., which have slowed down the implementation of the new legislation to administrative practice.

In addition, there are many problems in the implementation practice of the new legislation, since the officials who provide registration, often try to apply the old methods to the new law, ignoring its basic principles. This explains a rather large number of documents returned for revision or big amounts of refusals to register public associations. Implementation of the law does not go easy, because it contains some new approaches to the regulation that require additional interpretation.

During Euromaidan, on January 16, 2014, amendments to the Law on Public Associations were adopted in order to limit the freedom of association. In particular, the concept of “foreign agent”<sup>2</sup> was spread, the rights of which were limited, and responsibility of organizations for extremist activities was established. These changes have been criticized by human rights<sup>3</sup> and international organizations because of violation of human rights. They were abolished on January, 28 and later in February after the regime change<sup>4</sup>, so they did not take effect fully.

On the 5<sup>th</sup> of July the changes to the Law “On Public Associations”<sup>5</sup> (concerning support of activity of Ukrainian national citizen associations) came into force. Changes concern previous law requirements regarding the termination of the activities of public associations’ chapters, which exist in the form of separate legal entities. The law required such a chapter not to be a legal entity or the association to be registered as an association of legal entities. It seems that using such a strict approach the state intervened in the autonomy of associations as to their own definition of their structure. In fact, it would be hard to the state to justify the

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<sup>1</sup> Prepared by Volodymyr Yavorskyi, Board member of the Ukrainian Helsinki Human Rights Union.

<sup>2</sup> <http://zakon2.rada.gov.ua/laws/show/721-18/paran364#n364>

<sup>3</sup> See, for example one publication among many:

<http://tsn.ua/blogi/themes/law/zakoni-16-sichnya-scho-voni-zminyat-dlya-kozhnogo-ukrayincy-330702.html>

<sup>4</sup> <http://zakon2.rada.gov.ua/laws/show/767-18/page>;

<http://zakon2.rada.gov.ua/laws/show/732-18/paran6#n6>

<sup>5</sup> <http://zakon2.rada.gov.ua/laws/show/1593-18/paran2#n2>

need of compulsory liquidation of associations that do not fulfill the requirements of the new law as to the change of the structure and the following state's activities can be regarded as disproportionate interference with freedom of association. That's why these changes may only be welcomed.

The regulation of political parties remains unchanged. The law on political parties mostly does not meet international standards, but the parties learn to get along with many of its provisions. In some cases, this enables authorities to implement pressure to parties, for example in case of change of party organization leader, the exclusion of a person from party members and other situations. We have repeatedly described similar cases in previous annual reports on human rights, although in 2014 we did not observe them.

Generally, advantageous environment for the establishment and activities of associations is kept. There are no significant financial restrictions on receiving or spending funds. Terms of associations' registration have improved significantly.

In late 2013 — early 2014, the Ukrainian Center for Independent Political Research conducted a monitoring of the new law on associations<sup>6</sup>. As a result of the polling of the representatives of public associations, 79% of which addressed on the matter of registration of new public association (with legal entity status), 11% noted changes as to the constituent documents and 10% submitted documents as to the changes in governing bodies, the following results were received:

- 38% of the representatives of public associations that participated in the polling noted that they did not face difficulties while preparing documents and during their filing;
- Among those who have experienced difficulties, 64% noted that it was difficult to prepare a Statute that would meet the requirements of the law, 28% reported difficulty in preparing other documents, 32% faced incomprehensibility of the filing order, 8% noted other difficulties;
- 88% of respondents noted that the process of registration procedures was successfully completed. 10% faced the fact that their documents were sent back for revision, 2% faced the difficulties when the documents they submitted were left without consideration;
- the most common obstacles of successful registration, according to respondents' answers, were the following: the Statute did not comply with other laws (57%); the documents were filed not in full (28%); errors and inaccuracies in other documents (15%).

The responsibility for participation in an unregistered public association still exists in Ukraine. The Parliament of the VII calling refused to consider the law draft aimed at liquidation of such responsibility, and this project has not been registered in the new parliament yet<sup>7</sup>.

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<sup>6</sup> See details here:

<http://www.ucipr.org.ua/publications/anons-umovi-diialnosti-gromadskikh-obednan-realizatciia-zakonu-ukraiini-pro-gromadski-obednannia-ta-regionalnikh-program-rozvitku-gromadianskogo-suspilstva-u-2013-rotci-avtori-m-v-latciba-a-o-shimchuk-a-o-krasnosilska/lang/www.transparency.org>

<sup>7</sup> It is available here: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=49132](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=49132)

## 2. CREATING AND OPERATION OF ASSOCIATIONS

Creating associations and charity organizations was significantly simplified under the new law. Many bureaucratic requirements for statutory documents and restrictions on the establishment of goals and activities of associations were eliminated.

The registration terms were significantly reduced, too. Earlier the registration of the new organization took at least a month, but according to the law the new organization should be registered within 7 days. Although these terms are violated in half of the cases, in general they are much smaller.

An important innovation is that if the documents were improperly filed, the representative of the public association gets legal opinion on the results of the examination. This conclusion is given once, that means that if a public association eliminates all these drawbacks mentioned in conclusion, the registering authority should register a public association. This option prevents speculation on the part of officials and multiple returns of the documents.

The most “appealing” drawback is lingering the terms of processing of documents submitted by postal mail. Practically, it looks like this: public association sends documents and representatives of registration bodies take them from the post office with delay. This “delay” can take about several weeks or even months.<sup>8</sup>

The new law established a comprehensive list of documents for registration of a new public association or amendments to the existing one. However, there are disadvantages while registering public association: the list of documents certifying the ownership structure of the founders is not defined. It is not known whether the statute of the legal entity- founder of the public association is enough or whether it is necessary to add an extract from the Companies House Register.<sup>9</sup>

The Register of the Public Organizations was created for the first time. It made the list of public organizations and public unions<sup>10</sup>. The register contains information about the activities of associations, founders, governing bodies and contact information. However, there are several disadvantages that make it impossible to obtain the available information about the association. In particular, the search parameters limit the amount of found information on associations to 500 entries, the search is not configured to search look associations by the year of formation/registration, there is no search criteria for the presence of legal status of a public association. It is also worth noting that some areas have problems while exchanging data between registers of public associations and Companies House registers when entering information on changing the location of public associations and changes in the governing bodies.<sup>11</sup>

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<sup>8</sup> See “The Law “On Public Associations”. A year of work” // <http://www.ucipr.kiev.ua/publications/zakon-pro-gromadski-obednannia-rik-roboti>

<sup>9</sup> Ibid.

<sup>10</sup> <http://rgo.informjust.ua>

<sup>11</sup> See “The Law “On Public Associations”. A year of work” // <http://www.ucipr.kiev.ua/publications/zakon-pro-gromadski-obednannia-rik-roboti>

District Administrative Court of Kyiv on June 27, 2014 granted the petition of the PA "Road Control Ukraine" to Sviatoshynskiyi district administration of justice in Kiev<sup>12</sup>. The resolution in the form of an order on the registration of public association by the Svyatoshynskiyi district Department of Justice in Kiev was adopted on December 25, 2013. Thus, information on the registration of public association was to be added by the registrar to the Register of associations no later than on December 26, 2013. However, this was not done. The court found the omission of the registrar unlawful.

Many disputes arise about the names of the associations.

Kyiv Administrative Court of Appeals on May 22, 2014 dismissed the appeal of public association "Ukrainian Aviation Association" AOPA-Ukraine<sup>13</sup>. It appealed the actions of Solomianskyi district administration of justice in Kyiv on registration of the PA "AOPA". The Court found that "the plaintiff's reference that legal entity name — PA "AOPA Ukraine" is identical and is similar to its name — public association "Ukrainian Aviation Association "AOPA-Ukraine", that violates its rights is unreasonable because the presence of identical letters in the proper name do not suggest the complexity of identification of the organizations, as they have a different status and different full name". This solution is rather strange because of the obvious, in our opinion, coincidence of the names of the two organizations.

Here is some general information on registration and refusal to register associations.

*General Information  
of the registration/refusal to register associations<sup>14</sup>*

	2011 <sup>15</sup>	2012 <sup>16</sup>	9 months of 2013 <sup>17</sup>	9 months of 2014 <sup>17</sup>	General quantity
<i>Registered</i>					
Public organisations	1887	1913	2475	3070	46915
<i>Legalized</i>					
Trade unions (independent)	80	84	38	76	1606
Associations of trade unions	1	-	1	398	281
Organizational units of nationwide trade unions	627	857	372	246	700 602
Organizational units of another status	69	91	20	28	7 151

<sup>12</sup> <http://www.reyestr.court.gov.ua/Review/39700311>

<sup>13</sup> <http://www.reyestr.court.gov.ua/Review/39142047>

<sup>14</sup> According to the data of State Registration Service of Ukraine for different years:  
<http://www.drso.gov.ua/show/1443>

<sup>15</sup> <http://www.drso.gov.ua/file/1854>

<sup>16</sup> <http://www.drso.gov.ua/file/10496>

<sup>17</sup> <http://www.drso.gov.ua/show/11918>

<sup>18</sup> <http://www.drso.gov.ua/show/13558>

#### IV. RIGHT TO A FAIR TRIAL: OTHER ASPECTS

<i>Legalized by notification of establishing</i>					
Public organizations	280	631	548	757	6800
Refusals to register/legalise	764	710	330	390	
Refusals to register changes (approval, consideration)	435	547	348	342	

In 2008–2009, the number of refusals in the registration of public associations was about 1200 per year. But at that time much more organizations were registered about 3000 per year, which is significantly more than the period from 2011 to 2013.

These data shows that number of refusals in the registration of public associations significantly reduced. However, now there is no statistics on the number of documents returned for revision. Earlier this return of the documents was not required by law, although it was common practice, and now the new law provided the opportunity and Registration Service uses it quite often. Obviously, this affects the cases of refusal of registration to some extent. Therefore, it is worth mentioning that the total amount of refusals can not be determined and this statistic is quite relative.

It should be noted that the number of refusals to register a public association is still very high. The new Law on associations defined grounds for refusal of registration very narrowly. There are serious doubts that we are talking about 342 organizations, the activities of which contradict the constitution of Ukraine and directly threaten its values. According to the estimates of the registration service most problems the organizations have concern indication of the name and defining the founders of organizations. It seems that it is necessary to improve this procedure because it is obvious that the interpretation of the grounds for refusing to register the organization are far too broad. Especially concerning the fact that the decision to refuse registration is equivalent to the ban for the organization, since participation in such an organization entails administrative responsibility.

The introduction of the organization to the Register of non-profit organizations provide it with non-profit status is an important step during registration. It frees the organization from paying income tax. This status is granted individually by the State Tax Service according to the separate procedure. In fact, it is a necessary additional step of registration since without it a public association acts as a company and may commit very limited financial activities.

The lack of changes to the Tax Code of the associations is also a potential problems. Prior to the adoption of the Law of Ukraine “On Public Associations” the Law of Ukraine “On Associations of citizens” was in force, under which associations of citizens defined two types of associations — public associations (PA) and political parties. The current law on public associations defines two distinct concepts: PA and civil organizations. Taking this into account, the concept of “civil organization” has significantly narrowed – it no longer includes the concept of “social union” as a community organization.

However, the Tax Code operates only the term “Public Association”. Thus union associations may experience problems with their inclusion them to the Register of non-profit institutions and organizations and the inclusion to the paragraph b) of Article 157.1. Though they had the opportunity before the entry into force of the new law on associations. It is vital for many non-profit association to have such a status because it allows them to receive donations and not to tax them and use them for socially important objectives set the

clause B) of the Article 157.1 of the Tax Code. Similarly, there is a problem while applying parts one and two of the Article 154.1 of the Tax Code by the civil unions that employ disabled people.

The Law “On Public Associations” provides a possibility for public associations to conduct business without the purpose of profit. That means that a legal mechanism that allows public organizations, for example, to have paid trainings and use obtained funds for authorized purposes of the organization was created. The distribution of the proceeds among the members of the organization in this case is impossible. However, in practice PAs fall into a dilemma: whether to keep charitable status or to conduct business, since the actual changes to the tax code were not made and in the case PA is doing business the tax authorities exclude such an organization from the registry of non-profit organizations.

The problem is unclear practice of the registration service as to the delimitation of public associations and religious organizations that are registered by another procedure and have a different legal status.

### **3. INSPECTIONS OF OPERATION, TEMPORARY PROHIBITION OF ACTIVITIES AND LIQUIDATION OF PUBLIC ASSOCIATIONS**

The processes aimed to eliminate unions, that were accused of separatism became the most resonant. This year there a lot of such stories, due to events in the Crimea and the war in the east.

These attempts to eliminate associations that are listed below show the activity of the Registration Service and does not include a similar activity of the prosecutors and tax authorities.

#### *General Information of the Registration Service<sup>19</sup>*

	<b>2011<sup>20</sup></b>	<b>2012<sup>21</sup></b>	<b>9 months of 2013<sup>22</sup></b>	<b>6 months of 2014<sup>23</sup></b>
Number of law suits and appeals to the prosecution based on the results of the public organizations’ audit	54	49	1	3
Number of public organizations’, liquidated by a court decision based on the results of justice bodies’ control.	46	27	-	26

In July 2014 the Ministry of Justice addressed the court to ban the Communist Party of Ukraine (CPU) for unconstitutional activities<sup>24</sup>. The decision of the District Administrative Court of Kyiv as of July 11, 2014 opened the proceedings in the administrative case

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<sup>19</sup> According to the data of State Registration Service of Ukraine for different years.

<sup>20</sup> <http://www.drsu.gov.ua/file/1854>

<sup>21</sup> <http://www.drsu.gov.ua/file/10496>

<sup>22</sup> <http://www.drsu.gov.ua/show/11918>

<sup>23</sup> <http://www.drsu.gov.ua/show/13558>

<sup>24</sup> See the text of the claim here: <http://www.istpravda.com.ua/articles/2014/07/9/143697/>

No. 826/9751/14 and for preliminary hearing for 22 October 2014. The decision of the District Administrative Court of Kyiv on July 24, 2014 attracted to the case as third parties that do not claim independent demands on the subject of the dispute on the side of the plaintiffs the Security Service of Ukraine, All-Ukrainian Union "Freedom", Radical Party of Ole Liashko, PA "Will-Community-Cossacks", Ukrainian republican Party. However, on November 5, 2014 the court suspended the proceedings in the case before the entry into force of judicial decisions in the cases:

- 1) No. 826/13088/14 on the suit of the Communist Party of Ukraine to the Cabinet of Ministers of Ukraine of invalidation and cancellation of the paragraph 1, subparagraph 1 of paragraph 3 of the Regulation on State Registration Service of Ukraine approved by Resolution as of July 2, 2014 No. 219, in certain parts;
- 2) No. 826/13089/14 on the suit of the Communist Party of Ukraine to the Cabinet of Ministers of Ukraine of invalidation and cancellation of certain clauses of the Statute of the Ministry of Justice of Ukraine approved by the Cabinet of Ministers of Ukraine as of July 2, 2014 No. 228;
- 3) No. 800/390/14 on the suit of the Communist Party of Ukraine to the President of Ukraine on the abolition of the Regulation on State Registration Service of Ukraine approved by the Decree of the President of Ukraine on April 6, 2011 No. 401.

It's quite ironic and apparently it was done with the intent to delay the process. CPU filed three virtually identical lawsuits that challenged the authority of the Ministry of Justice and Registration Service to sue on its liquidation. The claims were filed after the lawsuit on its liquidation was filed. And this manipulation with the law was successful.

In the first case the same District Administrative Court on the same day took a decision<sup>25</sup>, which completely dismissed the claim of the CPU. On December 12 an appeal proceedings was opened according to the claim filed by the CPU and as at the mid January 2015 the appeal was not still considered.

In the second case on October 15, 2014 the court ruled that the CPU was fully rejected of the claim<sup>26</sup>. On November 18 the appeal of CPU was rejected<sup>27</sup>. The appeal was filed again, but it is was not considered.

In the third case, the Supreme Administrative Court of Ukraine on September 30, 2014 dismissed the claim of the CPU<sup>28</sup>. This decision may be appealed to the Supreme Court of Ukraine, which is known to consider the cases for a long period of time.

At the same time MPs from the Communist Party appealed to the Constitutional Court of Ukraine to interpret provisions which define the grounds for the dissolution of political parties. However, on September 22 CCU refused<sup>29</sup> to initiate constitutional proceedings because deputies did not specify the specific provisions that are unclear and require interpretation<sup>30</sup>.

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<sup>25</sup> <http://www.reyestr.court.gov.ua/Review/41436798>

<sup>26</sup> <http://www.reyestr.court.gov.ua/Review/40949465>

<sup>27</sup> <http://www.reyestr.court.gov.ua/Review/41517157>

<sup>28</sup> <http://www.reyestr.court.gov.ua/Review/41392020>

<sup>29</sup> The claim to the CCU is available here: <http://www.ccu.gov.ua/doccatalog/document?id=252493>

<sup>30</sup> The resolution of the CCU is available here: <http://www.ccu.gov.ua/doccatalog/document?id=253970>

Obviously, litigation in these three cases will drag on for a long time. Also, later it may a long time to proceed with the case on the elimination of CPU.

On May, 13 the District Administrative Court of Ukraine upheld the claim of the Ministry of Justice of Ukraine on the Prohibition of Political Party “Russian block.”<sup>31</sup> On June, 17 the Court dismissed the appeal of the party<sup>32</sup>. On July, 8 the Supreme Administrative Court opens cassation proceedings based on the appeal of the party, but refused to suspend execution of the decision to eliminate the party<sup>33</sup>. According to the Unified State Register of Court Rulings this cassation appeal has not yet been reviewed. The court had proved circumstances of the calls for actions of seizing power in Crimea by the defendant — a political party “Russian block” and recognized the implementation of such appeals as the creation of formation, which helped to seize power.

On April 30, 2014, the District Administrative Court of Kyiv banned political party “Russian Block”<sup>34</sup>. The Court noted that the actions of Aksenov S., as a leader of the party “Russian Block “ were supported by the party, because on the official website of the political party “Russian Block” there was information that highlights the actions of the party “Russian Block” and its leader — Aksenov S., aimed at eliminating the independence of Ukraine, the constitutional order by force, violation of the sovereignty and territorial integrity of Ukraine, the illegal seizure of state power, propaganda of war, violence, incitement of ethnic, racial or religious hatred, attacks on health. On September, 4 the Court dismissed the appeal and the decision of the party<sup>35</sup> came into force.

In general the given decisions on the liquidation of the political parties are quite reasonable and responsible, concerning human rights standards, in our opinion. You could even say that the government spends too cautious policy on associations that oppose the basic constitutional principles, and only in exceptional cases it appealed to file a lawsuit to ban activities.

The Tax Service of Ukraine and its local offices under subparagraph 16.1.3 paragraph 16.1 of the Article 16 of the Tax Code of Ukraine each year submit lots of claims for the elimination of hundreds of PAs through failure to provide tax reports. In particular, pursuant to the paragraph 2 of the Article 38 of the Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs” the basis for the court decision to terminate the legal entity that is not related to the bankruptcy of a legal person, in particular, for the failure, the authorities state Tax Service tax returns, documents, financial statements in accordance with the law. Litigation of the local courts is quite different and contradictory. However, the opinion of the Supreme Administrative Court is unambiguous. The law on associations sets out an exhaustive list of grounds for liquidation of the public association, which does not include failure to submit tax reports<sup>36</sup>. Nevertheless, for many years the courts get hundreds of respective claims from the tax authorities.

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<sup>31</sup> <http://www.reyestr.court.gov.ua/Review/38722605>

<sup>32</sup> <http://www.reyestr.court.gov.ua/Review/39270466>

<sup>33</sup> <http://www.reyestr.court.gov.ua/Review/39721498>

<sup>34</sup> <http://www.reyestr.court.gov.ua/Review/38550801>

<sup>35</sup> <http://www.reyestr.court.gov.ua/Review/40430979>

<sup>36</sup> See, for example, the decision of the Supreme Administrative Court of Ukraine as of March 20, 2014, <http://www.reyestr.court.gov.ua/Review/37968419>



**4. RECOMMENDATIONS**

1. To ensure proper implementation of rules of laws “On Public Associations” and “On charity and charitable organizations.” The Ministry of Justice must ensure the development, introduction to Parliament and the amendment of the law in connection with the provisions of the two laws.

2. To remove Article 186-5 of the Administrative Code, which establishes the responsibility for leading or participating in unregistered public organizations.

3. To amend the Law of Ukraine “On Public Associations”, which includes the list of rights of PAs provided under the Article 21 of this law, the right to represent and protect the rights of its members and other persons at their request, initiate actions on public interests.

4. The State Registration Service should summarize filing lawsuits to eliminate political parties and civil organizations and to bring it in line with the Article 11 of the European Convention on Human Rights, Article 37 of the Constitution of Ukraine and the practice of the European Court of Human Rights.

5. The Supreme Administrative Court of Ukraine should summarize jurisprudence on claims for liquidation (cancellation of the certificate of registration) of political parties and civil organizations.

6. To develop and adopt amendments to the Law of Ukraine “On political parties” to bring it into line with international standards<sup>37</sup>.

7. To amend the Internal Revenue Code of Ukraine and to enable the public associations to conduct business according to the Law “On Public Associations” and at the same time keep charitable status.

8. Introduce a legal entity form “social union” to the State classifier of Ukraine, classification of legal forms of management control 002: 2004, approved by the State Committee of Ukraine for Technical Regulation and Consumer Policy as of 28 May 2004, No. 97.

9. To develop and submit to the Cabinet of Ministers of Ukraine a draft bill to amend the Laws of Ukraine “On Public Associations” and “On State Registration of Legal Entities and Individual Entrepreneurs” to ensure registration of PA and their inclusion in the Register of the nonprofit organizations and institutions on the basis of a single window.

10. To amend paragraph 2 of Article 50 of the Code of Administrative Procedure of Ukraine, which includes the associations without legal entity to the list of plaintiffs in an administrative case.

11. To amend the Civil Procedural Code of Ukraine and the Code of Administrative Procedure of Ukraine concerning representation and to identify the relevant documents that can certify the representation.

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<sup>37</sup> See, for example, Guidelines for the legal regulation of political parties, the OSCE, <http://www.osce.org/ru/odihr/81988>

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## VI. RIGHT TO PRIVACY<sup>1</sup>

The right to privacy (or otherwise inviolability of private and family life) in Ukraine is protected at constitutional level. In particular, Article 32 of the Constitution of Ukraine stipulates, “Nobody shall be subject to intrusion in his/her private and family life, except for cases stipulated by the Constitution of Ukraine”. Along with this, individual components of the right to privacy are specified in detail in the special Constitution articles: protection of inviolability of home — Article 30 of the Constitution of Ukraine, privacy of correspondence, telephone conversations, telegraph and other correspondence — Article 31 of the Constitution of Ukraine, prohibition of collecting, storage, use and disclosure of confidential information about a person without his/her permission — Article 32 of the Constitution of Ukraine, prohibition to subject a person without his/her free will to medical, scientific or other research — Article 28 of the Constitution of Ukraine. Further detailing is envisaged in the Civil Code of Ukraine and the Criminal Code of Ukraine. Still, application of law sometimes contradicts constitutional requirements in practice.

### 1. SECRET SEARCH, EXTERNAL SURVEILLANCE, VIDEO CAMERAS IN PUBLIC PLACES, TELEPHONE TAPPING

On February 3, 2014, the Ministry of Justice of Ukraine registered the Resolution of the National Commission for the State Regulation of Communications and Informatization (NCSRCC), approved on December 10, 2013, which adopted the Rules for Carrying Out Activities in the Sphere of Telecommunication (activities to provide Internet access services)<sup>2</sup>[http://helsinki.org.ua/index.php?id=1398046972-\\_ftn10](http://helsinki.org.ua/index.php?id=1398046972-_ftn10). The draft rules were discussed between the Internet providers and their associations. The Internet Association of Ukraine spoke against introduction of these Rules as, in their opinion, these Rules contradict the Law of Ukraine “On Telecommunication” which tells to set uniform Rules for carrying out activities in the telecommunication sphere, instead of separate rules which will regulate providing of Internet access services. They assert that the Rules do not take into account technological, legal and organizational peculiarities of rendering Internet access services and, in violation of the Law of Ukraine “On Telecommunication”, distort the notion of a telecommunications operator and apply technological requirements, appropriate for telecommunication operators, to the Internet providers and other business entities in the telecommunication sphere. For instance, they have been obliged to install technical means necessary for competent agencies to perform investigative and search measures, within

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<sup>1</sup> Prepared by Ruslan Topolevski, SIM Center for Legal and Political Research.

<sup>2</sup> <http://zakon3.rada.gov.ua/laws/show/z0207-14>

their telecommunication networks at their own expense. In the opinion of the Internet Association of Ukraine, these measures were intended to establish illegal instruments of additional regulatory pressure upon the Internet providers.<sup>3</sup> In response to the application of the Internet Association of Ukraine, the NCSRCC sent a letter in which it refused to consider any remarks from the Internet Association of Ukraine, referring to conformity of these rules with the current legislation<sup>4</sup>.

The matter of operation of video cameras in public places as a part of the crime exposure system still remains unsettled. First of all, it concerns the desire of the heads of the internal affairs agencies to install as many cameras as possible, connecting them in a unified system with the help of a centralized control point.

For now, 24 video cameras have been installed in Lviv<sup>5</sup>, 34 in Chernivtsi (70 across the region)<sup>6</sup>, 140 in Kyiv, 42 in Zaporizhzhia, and 1726 cameras all across Ukraine for policing purposes<sup>7</sup>. Within the frameworks of reformation of the Ministry of Internal Affairs, intensive use of traffic enforcement cameras is expected.<sup>8</sup>

In August 2014, the Minister of Internal Affairs A. Avakov signed the order under which all checkpoints around the ATO zone were to be equipped with video cameras to register all transport vehicles and their passengers leaving the ATO zone.<sup>9</sup> Along with this, no legislative requirements regarding the procedure of storage of such records and access to them have still been spelt out<sup>10</sup>.

According to the European standards<sup>11</sup>, video surveillance can be performed, but it shall conform to the following requirements: zones of surveillance shall be systematically marked; an independent agency shall be established at the national level for independent control regarding surveillance application, as well as storage and use of information about a person.

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<sup>3</sup> Application of the Internet Association of Ukraine on adoption of Rules for Internet access service rendering // <http://reklamaster.com/articles/id/46399/index.html>

<sup>4</sup> Letter No. 97 of 29.05.2014 by NCSRCC concerning the decision of NCSRCC "On Approval of Rules for Carrying Out Activities in the Sphere of Telecommunication (activities to provide Internet access services)" // <http://www.inau.org.ua/download.php?b37f90a0b5826b9e0be6192da077d062>

<sup>5</sup> LOTSMAN system launched at municipal police administration in Lviv // [http://zik.com.ua/ua/news/2014/07/18/u\\_miskomu\\_upravlinni\\_militsii\\_lvova\\_zapratsyuvava\\_systema\\_lotsman\\_507155](http://zik.com.ua/ua/news/2014/07/18/u_miskomu_upravlinni_militsii_lvova_zapratsyuvava_systema_lotsman_507155)

<sup>6</sup> 70 video cameras spy upon people in Chernivtsi region // [http://vidido.ua/index.php/pogliad/article/u\\_chernivec\\_kii\\_oblasti\\_za\\_ljud\\_mi\\_stezhit\\_70\\_videokamer/](http://vidido.ua/index.php/pogliad/article/u_chernivec_kii_oblasti_za_ljud_mi_stezhit_70_videokamer/)

<sup>7</sup> Eye of Omniscience // <http://realgazeta.com.ua/всевидящее-око/>

<sup>8</sup> *Yevgen Zakharov*: Evidence in Maidan Snipers' Case Destroyed! // <http://pravda.if.ua/news-67230.html>

<sup>9</sup> All checkpoints around ATO zone to be equipped with video cameras — Ministry of Internal Affairs // <http://www.unian.ua/politics/951165-usi-blokposti-po-perimetru-zoni-ato-obladnayut-videokamerami-mvs.html>

<sup>10</sup> For instance, in France access to stationary video camera records are strictly regulated. Records are kept for 30 days, and then destroyed, except for cases when a crime occurs. Then, to assist law enforcement agencies, records are kept without term limitations and issued upon first inquiry by court or investigating agencies (<http://realgazeta.com.ua/всевидящее-око>).

<sup>11</sup> 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)

The matter of clarifying regulation of trade by technical data collection means is yet to be resolved.

Article 359 of the Criminal Code of Ukraine establishes liability for illegal purchase, sale or use of special technical means for data collection, but there is no possibility to define what those means are. Thus, we have a situation of legal uncertainty when a person cannot envisage whether his/her actions are subject to criminal responsibility or not. In modern practices, to determine this, an expert opinion is necessary.<sup>12</sup>

There was information that within the two years of active application of this Article by the Security Service of Ukraine, about three thousand persons had become “spies” (and had criminal cases initiated, investigated or pending in court against them) — for purchase of key ring charms, pens and watches with built-in cameras in various online shops. Thereby, public activists appealed to the deputies of the Verkhovna Rada of Ukraine with a request to revise the text of the law<sup>13</sup>.

Telephone tapping of citizens by power agency representatives is still a topical problem, considering decoded phone conversations obtained by journalists or posting the records directly on the Internet. Also, one time it was popular with the governmental agencies to register citizens present at a certain place by using mobile phone numbers, and then texting them on their future bringing to responsibility for violation of “dictatorship laws” of January 16, 2014.

At the same time, Corporate Administration and Control Manager of MTS Ukraine, O. Prozhyval'skyi, stated that text messages saying to avoid participation in Maidan riots had been sent not by communication operators, but by pirate base stations possibly installed by special services which had tapped into the networks and had more powerful signal than stationary stations.<sup>14</sup>

In January 2014, mobile communication operators received an inquiry about persons who had blocked buses carrying Berkut soldiers near the Sviatoshyn court of the City of Kyiv, requesting mobile phone numbers of all persons who had been near the court building at the moment of the event. The mobile operators fulfilled the request<sup>15</sup>.

Nevertheless, the problem of communication channel interception due to Crimea occupation and ATO performance has become especially urgent.

In the beginning of April, the Security Service of Ukraine detected nonstandard commands originating from Russian switchboards in the MTS network operation in Crimea. Former Head of NCSRCC Petro Yatsuk stated that this might have allowed collection of data about location of Ukrainian subscribers, phone numbers of their interlocutors, as well as redirection of calls through the Russian Federation<sup>16</sup>, and that his department had proof of usage of

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<sup>12</sup> <http://helsinki.org.ua/index.php?id=1398046972>

<sup>13</sup> Ukrainians pleading people's deputies to abolish liability for “spy key rings” // <http://vesti-ukr.com/kyiv/39485-ukraincy-prosjat-nardepov-otmenit-statju-o-shpionskih-brelukah>

<sup>14</sup> <http://www.5.ua/ukrajina/suspilstvo/item/386963-predstavnik-mts-rozpoviv-yakim-chinom-spetssluzhbi-proslukhovuyut-abonentiv>

<sup>15</sup> <http://fakty.ua/182721-chtoby-izbezhhat-slezhki-pri-pomocshi-telefona-vyklyuchite-apparat-i-vynte-akkumulyator---eksperty>

<sup>16</sup> <http://www.capital.ua/ru/publication/31163-mts-vstretilas-s-byvshim-glavoy-nkrsi-v-sude?issue=416#ixz3KepnM2hk>;  
<http://ain.ua/2014/06/06/527393>

MTS with the purposes of tapping in favor of Russian special services. Respectively, NCSRCC made a decision on violation of licensing terms by the mobile operator<sup>17</sup>, intending to make a decision on repeated violation later, which allowed withdrawal of license from the company. The new complement of NCSRCC (instead of suddenly dismissed old one) allowed time till December to eliminate deficiencies and install protection from external tapping into the network<sup>18</sup>. MTS filed a court appeal against the specified decisions and statements.

On July 10, 2014, speaking live on Channel 5, people's deputy from "UDAR" party Serhii Kaplin stated that all phones of Ukrainian soldiers were being wired by respective Russian services. He also stated that MTS and Kyivstar were completely wired by the Kremlin, and all phones possessed by soldiers were wired by respective services. In his statement, he referred to the fact that this was the official information of respective security sphere agency administrators. At the same time, MTS Ukraine and Kyivstar denied possibility of such situation.<sup>19</sup>

### 2. PERSONAL DATA PROTECTION AND IDENTIFICATION DOCUMENTS

To be noted that today the identification number issued to the State Tax Administration remains the primary electronic classifier underlying collection and processing of personal data of Ukrainian citizens by state power agencies.

The sphere of its application is far beyond the purpose for which it was introduced by the law, which is tax accounting. Without an ID code a person cannot get official employment, obtain access to social security, exercise rights to education, receive scholarship or unemployment allowance, receive a subsidy, open a bank account, register a business entity etc. State power agencies practically began consciously violating the Law of Ukraine on the uniform register of natural persons-tax payers and started using the tax ID number for other purposes not specified by the Law.

Personal data protection is fulfilled on the basis of the Law of Ukraine "On Personal Data Protection" of June 1, 2010<sup>20</sup> which regulates relations concerning personal data protection during their processing.

The law was amended on March 27, 2014<sup>21</sup> and May 13, 2014<sup>22</sup>; at that, while the first amendments were caused by adoption of the Law of Ukraine "On Information" and the Law of Ukraine "On Access to Public Information", the latter amendments referred to changes in the activity of the Representative of the Verkhovna Rada on Human Rights. The latter also began to control the sphere of personal data protection as well as elimination of certain

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<sup>17</sup> <http://www.newsru.ua/ukraine/11jul2014/mtskievstar.html>

<sup>18</sup> <http://www.capital.ua/ru/publication/31163-mts-vstretilas-s-byvshim-glavoy-nkrsi-v-sude?issue=416#ixz z3KepnM2hk>

<sup>19</sup> <http://www.newsru.ua/ukraine/11jul2014/mtskievstar.html>

<sup>20</sup> <http://zakon1.rada.gov.ua/laws/show/2297-17>

<sup>21</sup> <http://zakon1.rada.gov.ua/laws/show/1170-18/paran333#n333>

<sup>22</sup> <http://zakon1.rada.gov.ua/laws/show/1262-18/paran13#n13>

deficiencies, for instance, return of erroneously deleted definition of a personal consent on personal data processing back into the text of the law.

On May 7, 2014, the Cabinet of Ministers of Ukraine issued Ordinance No. 152 “On Approval of Template, Technical Description and Procedure of Execution, Issue, Exchange, Sending, Withdrawal, Return to State, Destruction of Foreign Passport of Citizens of Ukraine with Contactless Electronic Media, Its Temporary Detention and Confiscation”<sup>23</sup>, as amended and supplemented on 23.07.2014 by Resolution of the Cabinet of Ministers of Ukraine No. 288<sup>24</sup>. This Resolution drew the line in the longstanding struggle with the EDAPS Company to decide who shall be issuing foreign passports to the citizens of Ukraine.

Such passport shall be equipped with a contactless electronic medium conforming to the ISO/IEC 14443A standard on record and reading of data and ICAO requirements for electronic documents. According to the above-mentioned Procedure, a citizen shall have the right to receive a passport with a contactless electronic medium. It is envisaged separately that a person can obtain a foreign passport without such medium or refuse to have any data recorded on such medium due to religious beliefs. A foreign passport shall be valid for 10 years, and for persons under the age of 16 — for 4 years.

On July 22, 2014, amendments were made<sup>25</sup> to the Law of Ukraine “On Uniform State Demographic Register and Documents Confirming Citizenship of Ukraine, ID Documents or Documents Confirming a Person’s Special Status”<sup>26</sup>. These amendments stipulate inclusion of digital fingerprints by consent of the person concerned (for foreign passports of citizen of Ukraine, diplomatic passports of Ukraine, service passport of Ukraine, ID card of sailormen, crew member ID, foreign ID card of persons without citizenship or refugee travel document)”. Along with this, it was envisaged that digital fingerprints would be withdrawn from the Register and destroyed after recording them on a contactless electronic medium.

Reviewers have fixed cases where applicants were informed to pay additional fees in addition to those stipulated by the laws when applying for an old foreign passport version. For instance, it was suggested to pay a fee to the State Enterprise “Document” of the State Migration Service for consultation services, although nothing was said about them being optional if you rejected these services. Thus it is necessary to stress upon the need to prevent such schemes when elaborating procedure for a new foreign passports issuance.

Despite the availability of legislation on personal data protection, state power agencies often ignore them in practice, naming various bases as an excuse.

As it was informed earlier, in the beginning of October 2014, the Ministry of Internal Affairs yet again has offered the Ministry of Infrastructure to exercise control over personal data of Urkzaliznytsia (Ukrainian Railroads) passengers from “trouble regions” — Donetsk, Luhansk and the Autonomous Republic of Crimea. Just like at previous attempts, the Ministry of Internal Affairs wanted to adopt the experience of Russia and Belarus in its operations and enter data from travel documents of all passengers to a specialized informational and search system “Rozshuk-Magistral” (Search Main Line). The system would automatically correlate

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<sup>23</sup> <http://zakon3.rada.gov.ua/laws/show/152-2014-п>

<sup>24</sup> Ibid.

<sup>25</sup> <http://zakon4.rada.gov.ua/laws/show/1601-18/paran2#n2>

<sup>26</sup> <http://zakon4.rada.gov.ua/laws/show/5492-17/>

the data to the information on persons being on the wanted list, although there is a real risk that these data would become available to “third parties”<sup>27</sup>. As Ukrzaliznytsia says, so far information about passengers will be shown only in tickets and shall not be entered to a database<sup>28</sup>.

According to the information provided by sufferers who insisted on leaving their notifications anonymous, in 2014 there was a practice where police employees collected an individual’s sensitive personal data (information about political convictions, religious beliefs, sexual orientation, participation in the substitution therapy programs etc.)

On January 1, 2014, the Law of Ukraine No. 383-VII “On Amendments to Certain Legislative Acts of Ukraine on Improvement of Personal Data Protection System” of July 3, 2013, which stipulated replacement of personal data base registration with a procedure of notification of the Verkhovna Rada Representative on Human Rights by personal data owners about personal data processing which is especially risky for rights and freedoms of personal data owners. Thus, registration of personal data bases in the State Register of Personal Data Bases was terminated from January 1, 2014. Accordingly, it was envisaged that the Verkhovna Rada Representative on Human Rights would be forwarded all personal data bases and applications on their registration which had been filed before this Law entered into force. On January 10, 2014, the Information Center State Enterprise of the Ministry of Justice of Ukraine forwarded the data bases from this Register to the Verkhovna Rada Representative on Human Rights.<sup>29</sup>

From January 1, 2014, based on the Law of Ukraine No. 224-VII “On Amendments to Certain Legislative Acts of Ukraine on Implementation of State Anticorruption Policy) of May 14, 2013, the Ministry of Justice of Ukraine disclosed information from the Uniform State Register of persons who committed corruption-related violations, on its official website. A free round the clock access is provided to the information about persons brought to responsibility for corruption-related violations, against whom respective judgments have been delivered and legally enforced by courts, as well as to the information about disciplinary penalties imposed for corruption-related violations<sup>30</sup>.

In March 2014, the Verkhovna Rada of Ukraine refused to open the State Register of Property Rights to Real Estate. The draft law<sup>31</sup> stipulated disclosure of information on real estate owners and history of real estate operations: purchase and sale, inheritance, mortgage, prohibitions of alienation, encumbrances. The draft law also envisaged that “the data contained in the State Register of Rights regarding state registration of rights and their encumbrances were public and open to general use, except for information with restricted access”. The extract from the register was supposed to be issued “on the basis of a request

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<sup>27</sup> M. Scherbatiuk. Police wants to spy on Ukrzaliznytsia passengers // <http://tsn.ua/blogi/themes/law/miliciya-hoche-stezhiti-za-pasazhirami-ukrzaliznici-373828.html>

<sup>28</sup> Ukrzaliznytsia fulfilled requirements of order by State Service of Ukraine on Personal Data Protection // <http://zpd.gov.ua/dszpd/uk/publish/article/64463>

<sup>29</sup> Registration in State Register of Personal Data Bases is terminated // <http://www.informjust.ua/content/document/1035>

<sup>30</sup> Information from the Uniform State Register of persons who committed corruption-related violations // <http://corrupt.informjust.ua>

<sup>31</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=48589](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=48589)

by any natural person or legal entity". The people's deputies also refused to forward the respective draft law for elaboration.<sup>32</sup>

It is clear that such information is of great importance for the society, at that, public interests dominate over personal interests. Thus, disclosure of such information through adoption of a respective law remains a social priority.

Another problem is handling of state registers containing personal data of various types, by the Ukrainian state.

For instance, we are still witnessing an incredible situation when a person can receive information about himself/herself from the state registers for a fee only, moreover, fees may vary depending on a register, although their maintenance is fulfilled at the expense of public funds, and it is obligation of the state to provide a person with the information collected about him/her. For a long time, the Information Center State Enterprise (or otherwise — State Information Center of the Ministry of Justice) was the administrator of registers managed by the Ministry of Justice. Along with this, the actual owners of software created at the expense of public funds were "Art-Master" and "3-T" companies who had received royalties from the state for many years as payment for using their software. Based on these facts, criminal proceedings were initiated. Still, as stated by Andrii Bohdan, a former Government Representative on Anticorruption Policy (2010–2011, 2013–2014), criminal cases concerning the State Information Center of the Ministry of Justice were terminated, and this corrupt scheme had all the chances to survive.<sup>33</sup>

### 3. BODILY ASPECT OF RIGHT TO PRIVACY

Such coercive medical procedures as centralized vaccination of children still remain a subject to much debate in the mass media, first of all, due to the quality of vaccines purchased by the Ministry of Health Care. Thereby, some parents reject vaccinations while doctors issue warnings on epidemic threats. Starting from May 2014, newborn children were not BCG vaccinated all over Ukraine due to the prohibition of the Ministry of Health Care as there were certain licensing problems, but starting from November 2014, the Ministry allowed these vaccinations considering their expiration date, and vaccinations were resumed including for those children who had not been vaccinated earlier<sup>34</sup>. As temporary acting Minister of Health care Vasyl Lazoryshynets said, the vaccine stock unblocked for further use would be enough for six months.<sup>35</sup> Just because this sphere is extremely sensitive, vaccine procurements

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<sup>32</sup> Verkhovna Rada refused to open Real Estate Register // <http://www.pravda.com.ua/news/2014/03/25/7020254/>

<sup>33</sup> Yuliia Lavrysiuk. Andrei Bohdan: Yegor Sobolev knew it all when he went to "Volia" — who Derevianko is and where he got the money from // <http://obozrevatel.com/politics/50197-andrej-bogdan-egor-sobolev-vse-znal-kogda-shel-v-volyu-i-kto-takoj-derevyanko-i-otkuda-u-nego-dengi.htm>

<sup>34</sup> Children's tuberculosis vaccination resumed in Kharkiv // <http://www.city.kharkov.ua/uk/news/u-kharkovi-pochali-prisheplyuvati-ditey-vid-tuberkulozu-26031.html>

<sup>35</sup> Ukraine got a 6-month BCG vaccine stocks // [http://www.ukrinform.ua/ukr/news/ukraiina\\_na\\_pivroku\\_zabezpechena\\_vaktsinoyu\\_btsg\\_1989932](http://www.ukrinform.ua/ukr/news/ukraiina_na_pivroku_zabezpechena_vaktsinoyu_btsg_1989932)



should be arranged in such a way as to dismiss all further questions both regarding vaccine quality and its cost.

Besides, two more questions remain relevant:

- 1) the current procedure for involuntary placement in a psychiatric hospital does not protect a person from arbitrary actions;
- 2) the sphere of organ transplantation and donation is still poorly regulated, namely in the part of social protection of donors.

#### 4. RIGHT TO PRIVACY IN THE AUTONOMOUS REPUBLIC OF CRIMEA

In May 2014, mass searches of the Crimean Tatars dwellings were carried out in the Autonomous Republic of Crimea on suspicion of terrorism.<sup>36</sup>

Later, similar searches with violation of due procedures occurred repetitively. In June 2014, in the village of Kolchugino of Simferopol Region, persons claiming to be Federal Security Service employees broke into the building of the Islamic madrasah and made a search there<sup>37</sup>. As informed by the deputy head of Majlis Aider Adjimambetov, the search lasted for 4 to 5 hours, in particular, personal children's items were searched; later those who performed the search removed several computers and took the senior teacher with them<sup>38</sup>. Also, another search was carried out in the house of a Crimean Tatar family from the same village.<sup>39</sup>

Reviewers tie these searches into intimidation of the Crimean Tatars to ensure their loyalty to the new government.

The situation of passports certifying the citizenship of Ukraine is yet another significant problem. There were reports about cases when passports had been confiscated from persons suspected of pro-Ukrainian convictions and further destroyed right before the so-called "referendum of March 16". Similarly, there were some reports about cases of refusals of the Russian government representatives to let Ukrainian passport holders pass through the checkpoints to mainland Ukraine: the mentioned representatives crossed pages in passports and demanded holders obtain a Russian passport. Yet, attempts to confirm or deny such reports based on other sources failed.

Another identification matter is adoption of legislation by the Russian Federation which forced all Crimea residents to take Russian citizenship. Moreover, the conditions to refuse such forced citizenship were extremely complicated and hard to fulfill. On January 1, 2015, the "transition period" when both Russian and partially Ukrainian legislative norms continued to be effective shall end. After expiration of that period, the Crimeans who have no

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<sup>36</sup> Mass searches in Tatars houses in Crimea. Law enforcement officers visited Dzhemiliev // <http://www.pravda.com.ua/news/2014/05/15/7025463/>

<sup>37</sup> Armed people seized madrasah in Crimea // <http://www.unian.ua/politics/932292-u-krimu-ozbroeni-lyudi-zahopili-medrese.html>

<sup>38</sup> Details disclosed on Crimean Tatar school seizing near Simferopol // <http://www.hromadske.tv/society/stali-vidomi-podrobitsi-zakhoplennya-krimskotatars/>

<sup>39</sup> Armed people seized madrasah in Crimea // <http://www.unian.ua/politics/932292-u-krimu-ozbroeni-lyudi-zahopili-medrese.html>

Russian passport or a residence permit would allegedly be allowed to stay on the territory of the peninsula for no more than 90 days. It is quite possible that a lot of opportunities, such as employment, obtainment of an ID number, free medical care and education services, would be inaccessible for the Crimean people who have no residence permit or a Russian passport.<sup>40</sup>

Special attention should be given to adoption of the law by the Russian Federation which requires reporting a multiple citizenship. At the same time, experts say that application of this law in Crimea against the citizens of Ukraine would be complicated as Ukraine would provide no information to the Russian Federation on such citizenship.<sup>41</sup>

We believe that it is expedient for Ukraine to adjudge such citizenship acquisition legally void in the future and not to acknowledge Russian citizenship held by persons who have been forced to receive such citizenship in Crimea.

## **5. RECOMMENDATIONS**

1. To stop using ID codes (tax payer ID) for the purposes other than those envisaged by the law as well as to stop using a phrase “personal number” which is not stipulated by any law.

2. To introduce amendments to the Law of Ukraine “On Uniform State Demographic Register” to reduce the list of documents stipulating registration of biometric data, leaving only a foreign passport in the list, and liquidating the Unified State Demographic Register in the form stipulated in the law.

3. To introduce amendments to laws, providing for disclosure of an annual report containing depersonalized data on intercepting information from communication channels in the process of private investigation measures.

4. The Ministry of Internal Affairs shall stop unsubstantiated gathering of sensitive personal data (information on political convictions, religious beliefs, sexual orientation, participation in substitution therapy programs etc.).

5. To adopt laws and regulations protecting rights of patients, namely in the part of coercive medical procedures and protection of confidential information about health condition.

6. To introduce amendments to the legislation and legal practice to eliminate contradiction between mandatory children vaccination requirements and the right to education for children whose parents consciously refuse to immunize their children, especially when they have medical conditions which are contraindicative to routine immunization.

7. To regulate video surveillance in public places including but not limited to CCTV footage, including requirements for storage and deletion of records.

8. To regulate video surveillance concerning convicts in such a way as to keep the balance between safety requirements and human dignity.

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<sup>40</sup> *O. Skrypnyk*. Crimeans speaking against annexation are forced to take Russian citizenship // <http://ua.krymr.com/content/article/26601593.html>

<sup>41</sup> *A. Shamanska*. Russian law on double citizenship not effective in Crimea // <http://www.radiosvoboda.org/content/article/25432785.html>

## VI. RIGHT TO PRIVACY

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9. To create mechanisms which would prevent abuse of power when procuring vaccines.

10. To exclude information regarding constitutional applications from the list of information of the Constitutional Court of Ukraine intended for official use and marked as such, due to special social interest of the given information and the fact that such information is created within the frameworks of state power agencies activity.

11. To clarify the list of special technical means designed to obtain information in such a way so that a common citizen could independently decide which of them is allowed or prohibited, and update such list according to the level of new technology development.

12. To set a single foreign passport application fee specifying in particular that no additional fees shall be further charged.

13. To adopt the Law which would make access to the State Register of Property Rights to Real Estate more open, considering its social importance.

14. To standardize the system for a person to obtain information about himself/herself from the state registers, cancelling all fees for obtaining information about oneself.

15. To bring the procedure of collecting personal data on parents of school students for the Uniform State Electronic Data Base on Educational Matters (EDEBO) in line with the Law of Ukraine "On Personal Data Protection".

16. To amend the Rules for Carrying out Activities in the Sphere of Telecommunication (activities to provide Internet access services) taking into account the opinions of dedicated public organizations.

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## VII. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

### 1. OVERALL OVERVIEW

The beginning of 2014 characterized with tendencies to worsening of religious freedom level and attempts of state's activity control increase of religious organizations with the purpose of limitation of their participating in social and political life of country. However after Revolution of Dignity and change of country's government the positive changes took place in the field of state confessional relations in combination with appearance of the new threats for the religious world and religious freedom. An exception to a national context became only those territories of Ukraine, which in the conditions of social and political crisis became the objects of aggression on the part of Russia and the scene of the fighting with gaging of the Russian troops and weapon, Autonomous Republic of Crimea and part of the Donetsk and Lugansk regions, where other fundamental rights and freedoms generally accepted in the democratic world except for freedom of thought, conscience and religion, stopped actually to be provided.

Since March 2014 the religious pursuits on the eastern Ukrainian cities controlled by pro-Russian separatists assumed terrible proportions and forms as a murder and torture of religious figures and believers, military gains of cult and other buildings (temples, prayer houses, monasteries, social centers and all that) and the use of their by militia fighters as the fire positions. All Christian societies and religious figures became at risk of life and health except the Ukrainian Orthodox Church (Moscow patriarch) and some other.

At the same time the military aggression of Russia in Crimea with its subsequent annexion entailed the complicated legal affairs related to impossibility of activity on the peninsula of religious organizations registered according to the legislation of Ukraine. Russian power officially put forward the demands to reregistrate the religious societies in Crimea in accordance with the requirements of legislation of the Russian Federation, to integrate them into the Russian religious centers and to submit all legal entities under jurisdiction of the Russian right.

As at the beginning of 2014 the amount of religious organizations in Ukraine attained 37209, of which 35646 religious societies are registered and 1653 are acting without creation of legal entity. The network of religious organizations in comparison with a previous year increased insignificantly — of 0,5 % (of 214 religious organizations),

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<sup>1</sup> The Section was prepared by Max Vasin, executive director of Institute for Religious Freedom. A Gratitude in preparation of this section to such experts: Dmitry Vovk, Vitaly Gren', Alexander Zaec', George Reshetnikov, Alexander Sagan, and to such organizations: Institute for Religious Freedom, Institute of Philosophy named after G. S. Skovoroda of the National Academy of Sciences of Ukraine.

that almost equals an amount which the number of unregistered religious societies diminished to<sup>2</sup>.

In Ukraine 89 centers of religious associations and 295 diocesan administrations, bishopric, dioceses and others have been registered, which present about 50 confessional directions in the obedience to the state statistics<sup>3</sup>. 369 missions, 83 fraternities, 206 spiritual educational establishments, 13104 Sunday schools are active. In the 500 monasteries the monastic vow are carried out by 6917 monks. In obedience to official statistics for today 32456 priesthoods take care of religious businesses that on 1143 more than last year, from which the foreigners are 760 persons.

In the conditions when the majority of Ukrainians consider themselves Christians as to the sociological questioning, the religious situation in Ukraine characterizes by absence of dominant church. Over the years of the state's independence the multi-religion established as a sign of variety of religions, cultures and languages in the Ukrainian society. This fact is a positive factor in the assurance process of conscience and religious freedom, and also counteraction of the separate displays of discrimination, on religious grounds.

Depending on a region the support of the considerable part of the local population is used by different churches and religious organizations. At the same time there are cases of more loyal attitude toward some confessions and preconceived attitude toward other on the part of separate representatives of the local agency of State power and local government authority. To a certain extent the reason for this is that the representatives of the top state's guidance public identified themselves earlier with one of confessions, ignoring at that the principle of state's urbanity or neutrality in relation to all religious organizations, the observance of which would be helpful in the conditions of the Ukrainian multi-religious society. The conception of state confessional relations of Ukraine more expressly explains the constitutional principle of state's and church's separation, but this project was dismissive of already over 10 years without the proper attention of the Verkhovna Rada and Government regardless of its approval by All Ukrainian Council of Churches and religious organizations<sup>4</sup>.

During 2014 there were about 30 draft of a bills related to the questions of activity of religious organizations, freedom of thought and religion under consideration of the parliament. However swingeing majority of these projects have been not considered even in the first reading, although quite a number of them gained support of religious community and would substantially improve the legislation of Ukraine in the field of state confessional relations. Consequently, with the electing of Verkhovna Rada of Ukraine of VIII convocation all these legislative intentions have been acknowledged declined and a newly elected deputy corps will be working in this sphere from scratch.

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<sup>2</sup> Statistics — The year 2013 was unfavorable for the development of churches and religious activities:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1407:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1407:1&catid=34:ua&Itemid=61&lang=uk)

<sup>3</sup> Report of the network of churches and religious organizations in Ukraine No. 167 dated 01.01.2014 (Form 1) approved by the Ministry of Culture of Ukraine from 03.19.2014:  
<http://risu.org.ua/ua/index/resources/statistics/ukr2014/55893/>

<sup>4</sup> The concept of state confessional relations in Ukraine (draft) // Magazine "National security and defense." — No. 8 (92). — K., 2007: [http://www.razumkov.org.ua/ukr/files/category\\_journal/NSD92\\_ukr.pdf](http://www.razumkov.org.ua/ukr/files/category_journal/NSD92_ukr.pdf)

Developed by the Institute for Legislative Forecast and Legal Expertise refined by Centre of Razumkov with participation of representatives of religious organizations, experts and parliamentarians.

## 2. FREEDOM TO MANIFEST THE RELIGION AND FAITH

As it was registered in the reports of rights activists over the past years, freedom of religion can be adequately realized by citizens of all religions in Ukraine. Notwithstanding that Law of Ukraine «About the freedom of conscience and religious organizations» needs the perfection and bringing to correspondence with the necessities of modern public relations, on his basis the favourable terms were formed for development and annual growth of religious organizations network. However the absence of national policy in the field of freedom of religion, effective system of state agencies in matters of religions and legislative recognition of democratic model of state mutual relations and religious organizations instead of the soviet totalitarian vision of church's role in the public life, result in complications of religion freedom realization, especially at local level.

To the most positive changes of 2014 the experts determine the constitutionalization of a Church as a real, but not conditional institute of civil society during the events of Maydan in winter of 2013–2014 years<sup>5</sup>. The social and political position expressed by different churches and religious organizations in the first time so contrasted with the state's official position. It creates not only opportunities for feeling the churches of own subjectivity, which is not based on a closeness to the state institutes but also fastens objectively urbanity which is a pre-condition of religious freedom in multi-religious society and a component of supremacy of the law.

The position of churches and religious organizations in presentation of objective information about freedom of thoughts, consciences and religions, character of interreligious and multicultural relations, linguistic situation in Ukraine was also active at the international level. It was especially important, when the separative movements in Crimea and Donbass accompanied with military aggression of Russia began to be warranted by Russian MASS-MEDIA allegedly by oppressions of Russian, culture and Moscow orthodoxy presented in Ukraine. For the search of ways of reconciliation, understanding and deescalation of religious intolerance in Donbass the delegation of the All-Ukrainian Council of Churches and religious organizations took part in interreligious round-table in Oslo (Norway), where a dialog was held with the religious figures of Russia<sup>6</sup>. Before then the similar dialog of leaders of the Ukrainian and Russian evangelic churches was held in Jerusalem (Israel).

### 2.1. Organization and holding of religious peaceful meetings

The attempts to strengthen the government control of religious organizations activity were first public engaged in the letter of the Ministry for Culture of Ukraine to the chapter of Ukrainian Greek-Catholic Church from 03.01.2014<sup>7</sup>. The ministry declared that the religious activity of priests during the peaceful protests on Maydan of Independence in

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<sup>5</sup> Collection "Maydan and Church. Chronicle of events and expert analysis":  
<http://tomainstytut.org/news/prezentaciya-knigi-majdan-i-cerkva>

<sup>6</sup> Meeting in Oslo: dialogue instead of propaganda: <http://mvasin.org.ua/2014/10/9167>

<sup>7</sup> Ministry of Culture considers the prayer and religious rites of Church on Euromaydan as law violation:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1318:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1318:1&catid=34:ua&Itemid=61&lang=uk)

Kiev was carried out with “violation of requirements of legislation of Ukraine about the right of conscience and religious organizations”. By that it was meant the requirements of antiquated norm of part 5 Article 21 of the Law about the necessity of procurement of permits by local authority 10 days before the desired date of public peaceful action of religious character.

Such position of the Ministry for Culture as a specially authorized central organ of executive power in the field of religion was not only incompetent taking into consideration that the priests carried out the important peace-support mission during the peaceful protests on Maydan preventing violence and bloodshed but also nonlegal<sup>8</sup>. At first the priests satisfied the religious necessities of their participants during the actions of protest or came forward as participants of protests, however they didn't hold their own activities. Secondly the norm of authorization-based procedure of public peaceful meetings of religious character contradicts the position of the provision of Article 39 of Constitutions of Ukraine which enshrined the notification procedure of their organization.

It is an evident example that the resonance corrections to the Law of Ukraine “Freedom of conscience and religion organizations” (including the ch. 5 Article 21) have been accepted in October though they did not carry in itself substantial threats at first sight however have been used afterwards by the mode of Yanukovych against religious organizations<sup>9</sup>. In such a way the initiatives as to the exception of this antiquated norm from text of the Law obtain more actuality that have been offered in the draft bills No. 508a and No. 508a-1 «Freedom of peaceful meetings» which have been not considered by the Verkhovna Rada of VII convocation.

Moreover at the highest point of the protests on Kyiv Square the resonance “dictatorial acts” with gross violations of procedure have been adopted by ex-pro-government majority in parliament on the 16<sup>th</sup> of January 2014. In particular the Law No. 721-VII contained the rider to the Article 5 of Law of Ukraine “Freedom of conscience and religion organizations” of such content: “Extremist activity by religious organization is forbidden”<sup>10</sup>. Obviously that introduction of such prohibition in the conditions of absence of extremism concept definition and sanctions for such activity in the legislative field of Ukraine testified to intent of the mode of Yanukovych to use this norm as an instrument of pressure and active voice limitation of religious organizations in social and political life of country. On the 28<sup>th</sup> of January under public pressure the noted laws have been acknowledged such as lost force<sup>11</sup>.

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<sup>8</sup> Expert: the position of the Ministry of Culture as to UGCC has significant incompletes in legal terms:  
[http://risu.org.ua/ua/index/expert\\_thought/comments/54913/](http://risu.org.ua/ua/index/expert_thought/comments/54913/)

<sup>9</sup> An open letter of social organizations and activists to the President of Ukraine Viktor Yanukovych for necessity of law prohibition No. 10221 to avoid restrictions of religious freedom in Ukraine:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1140:1&catid=50:zv&Itemid=78&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1140:1&catid=50:zv&Itemid=78&lang=uk)

<sup>10</sup> Law of Ukraine “On Amendments to the Law of Ukraine” On the Judicial System and Status of Judges “and procedural laws on additional measures to protect the safety of citizens” dated 16.01.2014, No. 721-VII:  
<http://zakon4.rada.gov.ua/laws/show/721-18>

<sup>11</sup> Law of Ukraine “On the Repeal of Certain Laws of Ukraine” dated 01.28.2014, No. 732-VII:  
<http://zakon4.rada.gov.ua/laws/show/732-18>

## 2.2. Religious tolerance and parachurch conflicts

The annexation of Crimea, active situation on the east of Ukraine on ideological grounds of religious geopolitical “Russia’s space” and with participation of battalion “Russian Orthodox Army” and also the absence of timely response to it on the part of authorities of Russian Orthodox Church and Ukrainian Orthodox Church changed the public opinion of Ukrainians. Society sharp negatively looked the aggressive actions of Russian power and religious grounds used by separatists on the East of Ukraine for explanation the pursuits of Christians of other confessions which not belong to the Moscow patriarchy. For some politicians, local businessmen, public activists and priests the patriotism increasing among Ukrainian society gave a reason for realization of intentions as to change of canonical jurisdiction of Orthodox societies of Ukrainian Orthodox Church MP in different regions of Ukraine with the purpose of their passing to the canonical submission of Ukrainian Orthodox Church KP.

Although according to the Article 8 of the Law of Ukraine “Freedom of conscience and religion organizations” the state acknowledges a right of religious community for free changing of subordination in canonical and practical arrangements by any religious center (management) working in Ukraine and outside, an anxiety is caused by the facts of application of political, economic or religious pressure in the processes of transition of Orthodox communities from one confessional jurisdiction in other. Similar incidents have been observed earlier in the time of different governments and presidents but this year their amount substantially increased amid a difficult social and political situation.

Appearance of new or blowing of old hot conflict points in the Inter-Orthodox relations sometimes accompanied by the captures of temples, pressure and intimidation of believers, by limitation of possibilities for public worship of Ukrainian Orthodox Church MP in a number of regions of Ukraine. According to the data of Chancellor of Ukrainian Orthodox Church MP metropolitan Anthony: “10 temples are occupied for today”. It was temples in Rivne, Volyn, Ternopil and Lviv regions<sup>12</sup>. In turn the press secretary of Ukrainian Orthodox Church MP Archbishop Yevstratiy marked: “Gossips of various kinds about Kyiv patriarchy have been broadcasting, aggressive operations are allegedly conducted against Moscow patriarchy, and allegedly someone plans to take temples. It’s not true. If the society wants to pull out of Moscow patriarchy and join Kyiv, nobody has a right to limit it”<sup>13</sup>. These facts testify the threat of sharpening of parachurch confrontation, which Ukraine experienced in the first half of 90th of the 20th century.

In many instances such confrontation takes place by actual self-removal from office of government authorities and local government bodies, and frequently — by actual instigation to such confrontation on the part of local government bodies. In response, the prime minister of Ukraine Arseniy Yatsenyuk on results of meeting with the members of All-Ukrainian Council of Churches and Religious Organization ordered to the leaders of Ministry of Internal

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<sup>12</sup> Chancellor of the Ukrainian Orthodox Church Metropolitan Anthony: We hear open calls for aggression against the canonical Orthodoxy:

<http://news.church.ua/2014/10/13/upravlyayushhij-delami-upc-mitropolit-antonij-my-slyshim-neprikrytye-prizyvyy-k-agressii-v-adres-kanonicheskogo-pravoslaviya/>

<sup>13</sup> Lord Yevstratiy about unity of Churches and the hand of Moscow:

<http://www.cerkva.info/uk/news/visti/5802-vysokyval.html>



Affairs, Ministry of Culture, Kyiv municipal and regional state administrations “instantly to take measures aimed at preventing the intensifying of interchurch relations, including the capture of cult building”<sup>14</sup>.

One of positive examples of minimization and resolution of intra-Orthodox conflicts can be given the signing on the 13th of November 2014 of Memorandum about United Ukraine and United Ukrainian Orthodoxy Church between the local leaders of Ukrainian Orthodox Church MP, Ukrainian Orthodox Church KP, Ukrainian Greek Catholic Church and Ukrainian Autocephalous Orthodox Church. It was a case in the document that “all orthodoxy churches of the Rivne region condemn an incitement of religious strives and captures of the Orthodox temples by one confession to other” and “does not deny the religious will expression of habitants of Rivne as to confession according to the law of Ukraine” Freedom of conscience and religious organizations”<sup>15</sup>.

It is possible also to estimate positively the creation in Ministry of Culture of Ukraine the Working group specialized on questions of settlement of actual interchurch conflicts. This group entered the representatives of Ukrainian Orthodox Church MP and Ukrainian Orthodox Church KP, specialists-officials and experts.

In general this situation testifies that the national policy in Ukraine is not enough in the field of state-confessional relations and effective system of religion state authorities which serve to prevent an escalation such as interchurch conflicts, take operative reacting measure with involvement of law enforcement agencies and all-round study such conflict situations before registering changes in the charters of religious communities that decided to change their canonical subordination.

### 2.3. Status of legal entity for religious organizations

The Law of Ukraine “Freedom of Conscience and Religious Organizations” does not oblige the religious communities to register as a legal entity, allowing actions without notifying authorities of his creation. At the same time till now still remains actual the question of registration procedure inconsistency of statutes (regulations) of religious organizations as required by Article 14 of the framework Law and their state registration procedure as legal entities with follow data entering in the Unified State Register of the Law of Ukraine “Law of Ukraine “On State Registration of Legal Entities and Individual Entrepreneurs “. These two procedures are in no way interconnected in the legislation of Ukraine. Therefore as received still remains several thousand religious organizations acting with a legal status but have been not state registered and have not filed your personal data in the Unified State Register. In 2012–2013 the Ministry of Justice in conjunction with the All-Ukrainian Council of Churches and Religious Organizations and the Institute for Religious Freedom developed a draft bill aimed at procedures simplifying by religious organizations the separate legal

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<sup>14</sup> Yatsenyuk entrusted to the ministers to cooperate with the churches more actively in the social sphere:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1471:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1471:1&catid=34:ua&Itemid=61&lang=uk)

<sup>15</sup> Historic event in region Rivne: the various confessions have signed a Memorandum of Ukrainian local church. Moscow Patriarchate condemned the Russian aggression:  
[http://www.rivnepost.rv.ua/lenta\\_msgshow.php?id=56002](http://www.rivnepost.rv.ua/lenta_msgshow.php?id=56002)

identity by means of introducing the principle of “single window” according to sample of social organization registration. However this legislative initiative has not been submitted to the government and the Verkhovna Rada<sup>16</sup>.

There are local aspects for registration of statutes (regulations) of religious communities. For many years remains the problem with the registration of religious communities in Kiev. For unknown reasons structural subdivision of the Kyiv City State Administration requires from the founders of the religious community to indicate in the title the affiliation to a specific area of the city. In the future this kind of territorial restrictions in the titles of a religious community will cause difficulties in relationships with other authorities and legal entities.

From time to time update the discussion about the reasonability of granting the status of a legal entity for the most religious association not a religious center (management) as today. However the positions of the leading religious organizations and experts in that regard are different. The refusal appeal cases in registration of religious organizations demonstrate disproportionate the state’s intervention in religious freedom, when an administrative and judicial practice based on the fact that the registration of religious organizations made dependent on the decision of the state institutions, has a certain doctrine (beliefs) a religious character or not. This is due to the fact that the authorities in order to prevent registration of pseudo-religious organizations prefer very complicate the registration procedure, while ignoring the need for constant monitoring of the activities of registered religious organizations for timely response in case of violations of the law.

As a striking example to optimization necessity of public authorities activity may serve the registration of religious community “Bozhychi” by Culture Department of Cherkasy Regional Administration in May 2014. The social activists have found shortly that this community is not only filed false information about their religious affiliation, but for a long time has been carrying occult activity harmful for the health of the citizens and rendering charged services. In this manner the system of state bodies of religious affairs need of reforming, including quality improving of officials training and the proper number of specialists and professionals, recovering of regional structure of the state body on religious affairs and building relationships with the central office.

### **3. SOCIAL AND CHARITABLE ACTIVITY OF RELIGIOUS ORGANIZATIONS**

Social and charitable activities activation of religious organizations to meet the needs of victims during the protests on the Maydan, internally displaced persons from the Crimea and eastern of Ukraine, support the Armed Forces of Ukraine and humanitarian assistance to the residents of separatist-controlled territories of Donbass exacerbated preexisting problems of statutory regulation of charitable cause and humanitarian aid<sup>17</sup>.

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<sup>16</sup> The Ministry of Justice agreed with the proposals of the Ukrainian Council of Churches as concerns:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1076:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1076:1&catid=34:ua&Itemid=61&lang=uk)

<sup>17</sup> The Government complicated the import of humanitarian assistance to Ukraine in particular to the churches:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1198:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1198:1&catid=34:ua&Itemid=61&lang=uk)

The elimination of the end of 2012 the Commission for Humanitarian Aid under the Cabinet of Ministers of Ukraine on behalf of the Ministry of Social Policy of Ukraine, according to religious organizations, significantly complicated the process of customs clearance of humanitarian supplies and created corruption factors. Difficulties arise also in documenting the facts of humanitarian aid distribution, the personification of the recipients of humanitarian aid and the requirements to act as fiscal agents for them in certain cases.

As measures of operational designation by order No. 102 of Prime Minister of Ukraine from the 13<sup>th</sup> of October, 2014 on the Ministry of Social Policy was imposed the task “to take urgent measures to accelerate the clearance of humanitarian aid received by religious organizations for further distribution in the areas of ATO and among temporary displaced persons“. At the same time it was entrusted for the State Emergency Service in partnership with the Ministry of Social Policy “to establish effective cooperation with religious organizations on issues related to social facilitation of temporary displaced persons”.<sup>18</sup>

In addition the conditions inequality of religious organizations activity the legislative rules was lead when the parliament lead in the hands of local authorities the questions about tax rate reduction or utility tariffs instead of universal rule adopting.

As an example, in accordance with paragraph 265.4.2 of the Tax Code of Ukraine the local councils may establish additional benefits for the newly imposed tax on residential properties owned by religious organizations. However at the time, when the Kyiv City Council in the decision dated on the 03<sup>th</sup> of July 2014 rejected all religious organizations in any relieving taxation on residential property (seminaries hostels, monasteries, etc.), the City Council of Mukachevo of Zakarpattia region in the decision of 26.12. 2013 No. 1018 approved a list of 4 religious organizations — diocese, meeting house, convent and monastery of the Roman Catholic Church and monastery of Ukrainian Orthodox Church (MP), which were exempted from property tax. At the same time Bogoduhiv town council of Kharkiv region in the decision of 01.31.2014 No. 1752-V decided to release all religious organizations fully from this taxpaying. Thus in some towns and villages the religious organizations can use decrease of burden of taxation or utility tariffs and in others are obliged to pay on a par with commercial entities. Violation of equality of religious organizations can be considered the cases local authorities set tax or tariff discounts only for certain religious organizations and not for everyone.

### 4. ALTERNATIVE (NON-MILITARY) SERVICE

The mobilization of reservists citizens beginning in March 2014 for the first time in the history of Ukraine showed the absence of legal mechanism for constitutional guarantee ensuring about the replacement the military duty through the alternative (non-military) service if its implementation contradict to the religious beliefs of a citizen (ch. 4, Art. 35 of the Constitution). In the article 23 of the Law of Ukraine “On mobilization training and

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<sup>18</sup> Yatsenyuk entrusted to the the ministers to cooperate more actively with the churches in the social sphere:  
[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1471:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1471:1&catid=34:ua&Itemid=61&lang=uk)

mobilization” are defined the categories of reservists persons not eligible for army draft according to mobilization. Among them are listed “other reservists citizens or certain categories of citizens in cases prescribed by law.” However, in practice the General Staff of the Ministry of Defense of Ukraine and the military commissariats considered that to such cases do not belong those provided by the Law of Ukraine “On alternative (non-military) service”<sup>19</sup>.

Consequently during 2014 took place the cases of induction into military service under mobilization of such categories of religious citizens who:

- 1) did previously an alternative (non-military) service, had to be stroked off from the military registration and dispensed with a call-up for military training in accordance with Article 24 of the Law of Ukraine “On alternative (non-military) service”;
- 2) received religious beliefs after forced military service, belong to the acting religious organizations in accordance with the legislation of Ukraine, faith which does not allow to use of a weapon, and put an application for exemption from military service within 7 days in accordance with Part. 2 of Article 9 of the Law of Ukraine “On alternative (non-military) service”;
- 3) are the priests, who served in one of the registered religious organizations despite of the norm of release from their military service in the Article 30 of the Law of Ukraine “Concerning Military Duty and Military Service”.

The representatives of the Ministry of Defense, Ministry of Justice, Ministry of Culture and the military commissariats agreed with the impossibility position of applying the Law of Ukraine “On alternative (non-military) service” even on the principle of analogy of law. State officials distinguished call-up for the mobilization and military training, although the mobilization call-up in most cases lies in the direction of conscript for military exercises with next sending them to the military service.

As a result the practice of constitutional rights violation of religious citizens to alternative (non-military) service in conditions when the defense emergency in Ukraine has not been announced, explained by government and military command as a lack of legislative regulation of this issue in terms of mobilization. In this case the Ministry of Culture of Ukraine said that the work on the legislative solution to this issue “to be implemented after the stabilization of the social-political situation in Ukraine”<sup>20</sup>.

## **5. ACTIVITIES OF CHAPLAINS IN THE ARMED FORCES OF UKRAINE**

On the 2th of July 2014 the Cabinet of Ministers of Ukraine issued the directive No. 677-p about the military clergy service establishment (Capellan service) in the Armed Forces, National Guard and the State Border Guard Service of Ukraine. Relevant provisions were assigned to be developed by Ministry of Defense, Ministry of Internal Affairs and Administration of the State Border Guard Service of Ukraine. This government initiative is

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<sup>19</sup> It is stated in the letter to the General Staff of the Ministry of Defense of Ukraine dated 08.07.2014 No. 322/2/6735 in response to the appeal of “Institute for Religious Freedom.”

<sup>20</sup> It is stated in the letter to the Ministry of Culture of Ukraine dated 11.08.2014 No. 2567/18/13-14 in response to the appeal of the Council of Evangelical Protestant Churches of Ukraine.

a step toward the normative regulation of activities that have been carrying out by chaplains on a voluntary basis over the years by means of implementation of positive world experience to meet the religious needs of the military men. It is assumed that the priests, who have been offered and successfully qualified by religious organizations, will have been employed with conclusion of respective employment agreements in the Armed Forces, National Guard and the State Border Service and will belong to the personnel of these military units. The initiative to develop the Capellan service provision took over the Ministry of Defence of Ukraine, attracted to the relevant working group the representatives of interested churches and religious organizations, the National Guard and the experts from the Institute for Religious Freedom.

On the 29th of August the Council for Pastoral Care of the Ministry of Defense of Ukraine, consisting of representatives of seven churches and religious organizations, approved the worked out draft of Regulation on military clergy service (chaplains) in the Armed Forces of Ukraine. It is expected that this Regulation will be approved by the Ministry of Defense of Ukraine after necessary departmental approvals. The main task of military chaplains will be pastoral care guarantee of soldiers and reservists of the Armed Forces, National Guard and the State Border Service. According to the approximate calculations of pastoral care for military men of Armed Forces of Ukraine they need up to 180 military priests (chaplains), whom they plan to conclude the employment contracts with. Also the draft of Regulation envisages the involvement of freelance priests to meet the religious needs of the military men.<sup>21</sup>

According to experts, on the one hand, the religious needs of military men (especially those that are in the area of ATO) can be covered by assigning a chaplain in appropriate division. On the other hand, the lack of a strong secular tradition in Ukraine creates the risk of rights infringement of those military men who find themselves in a religious minority or even religiously indifferent. In particular we are talking about the threat of pressure on such persons on the part of the commander's staff (a similar case was considered by the Strasbourg Court in the case "Larissis and others against Greece," 1998) or abuses on the part of chaplains. Therefore the government bodies and interested religious organizations should control peculiarities of constitution of the Capellan service in Ukraine for purposes the military commands and chaplains to be committed to the prohibition principles of proselytism, respect to religious or atheistic beliefs of each military men, voluntary guarantee of pastoral care declared in the draft of Regulation.

It seems to be expedient also the activities settlement of chaplains in different spheres of social life (military units, places of confinement, health care facilities) by adopting a separate law or amending of existing legislation. This is due to the fact that the legislative framework for adopting of bylaws or departmental regulations is sufficient for several questions as to functioning of Capellan service. In this context is useful the work draft bill No. 3143 "On Amendments to Certain Legislative Acts of Ukraine" (regarding the introduction of the

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<sup>21</sup> Council of the Ministry of Defense has approved the Regulation on the Capellan service in the Armed Forces of Ukraine:

[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1458:1&catid=34:ua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1458:1&catid=34:ua&Itemid=61&lang=uk)

Institution of Clergy (Chaplains) for military, law enforcement), which have not been reached the Verkhovna Rada of VII convocation.

## **6. RELIGIOUS EDUCATIONAL INSTITUTIONS AND RELIGIOUS EDUCATION**

On the 1th of July 2014 the Parliament adopted a new version of the Law of Ukraine "On Higher Education", which changed the attitude towards the role of religious organizations in the educational process, leaving behind the Soviet atheistic approaches<sup>22</sup>. Opportunity to the state recognition of diplomas of higher religious schools solves the problem of equalizing the social rights of their students, alumni, researchers and academic staff. The Article 3 of the Law provides an opportunity for religious organizations to participate in higher education provision relating to the functioning of the higher religious schools. In the matter of higher religious schools management the Articles 13, 42, 44 of the Law logically refer to the features provided by the Law of Ukraine "On Freedom of Conscience and Religious Organizations."

Innovations are the provisions of the Article 24 of the new law version providing the licensing possibility of higher religious educational institutions that wish to register their own issued diplomas of higher education in United State Electronic Database of Education. In this case the highest religious schools being ready to issue the higher national diplomas gained the right to be accredited according to the educational program. Final and transitional provisions of the Law on Higher Education have been equated to the nationally recognized documents Diploma of Higher Education, Degree level and Academic ranks of teachers (teaching and research and teaching staff) and members of the Dissertation Council issued by the highest religious educational institutions, which educational programs in the specialty "Theology" have been licensed and accredited according to national procedure. There is an opportunity of creation and activity of postgraduate studies, doctoral studies, of own Dissertation Council in subject area "Theology".

The law provides that with the participation of representatives of religious organizations will be adopted new regulations and normative legal acts for the legal and institutional support of these innovations. Such changes can really be considered as a breakthrough in the field of legislative regulation of theological education and science in Ukraine, the functioning of religious schools and state recognition of diplomas of their graduates. At the same time the Verkhovna Rada of VII convocation disregarded the draft bill No. 2051 on granting to religious organizations the right for establishing of educational and other institutions of state educational standards, despite his support of the All-Ukrainian Council of Churches and religious organizations. Existing legislation, on the one hand, discriminates in fact the religious organizations as compared to other legal entities (public associations, charitable organizations, commercial organizations) which have such a right. On the other hand there is no legal mechanism for the implementation of freedom of parents guaranteed by international documents to ensure the religious and moral education of their children in conformity with

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<sup>22</sup> Law of Ukraine "On Higher Education" dated on 01.07.2014, No.1556-VII:  
<http://zakon4.rada.gov.ua/laws/show/1556-18/print1390213931836990>

their own convictions, particularly in religious schools and preschools, which activities are widespread in the democratic countries of Europe of<sup>23</sup>.

## 7. RECOMMENDATIONS

1. For the Cabinet of Ministers to instruct the Ministry of Justice of Ukraine together with the Ministry of Culture of Ukraine to develop a strategy to protect and restore infringed rights for freedom of conscience and religion on the temporarily occupied territory of the Autonomous Republic of Crimea and in the zone of ATO in East Ukraine, which should include practical measures and recommendations for the Ukrainian citizens and religious organizations on the methodology of violations and inflicted harm documenting, statements execution in international institutions and monitoring missions, lawsuits preparation in the European Court of Human Rights.

2. For the Verkhovna Rada of Ukraine to adopt the draft Concept of state-confessional relations in Ukraine as a law approved by the All-Ukrainian Council of Churches and Religious Organizations.

3. For the Cabinet of Ministers to instruct the specialized ministries with the assistance of the All-Ukrainian Council of Churches and religious organizations to develop and prepare for consideration by the Verkhovna Rada a draft bill on such legislative changes:

- 1) of the simplification of status obtaining of a legal entity to religious organizations by implementation the principle of “single window”;
- 2) of replacement of the anticonstitutional provisions of the Regulations h. 5 Article 21 of the Law of Ukraine “Freedom of Conscience and Religious Organizations” relative the requirements for obtaining permits for the organization of peaceful religious meetings 10 days before requested date on the provisions which will consistent with the Article 39 of the Constitution of Ukraine and general practice of peaceful meetings, other institutions of civil society;
- 3) of reduction the list of regulatory bodies defined in the Article 29 of the Law of Ukraine “Freedom of Conscience and Religious Organizations” and entrusting to the central executive body specialized in religion, the Council Ministers of Crimea and regional, Kyiv and Sevastopol city state administration and local governments with the state monitor compliance of legislation on freedom of conscience and religious organizations.

4. For the Cabinet of Ministers of Ukraine to reform the system of state bodies of Religious Affairs, which should include the restoration of the central executive body for Religious and Ethnic Affairs and its regional structure, building cooperation between regional offices and the central office of this body as well as quality level improving of officials training and adequate number of specialists and professionals. In this case it is appropriate to extend the competence of the central executive body of Religious Affairs

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<sup>23</sup> International Covenant on Civil and Political Rights. International UN document dated on 16.12.1966: [http://zakon1.rada.gov.ua/laws/show/995\\_043](http://zakon1.rada.gov.ua/laws/show/995_043)

to make decisions on the recognition the relative goods as humanitarian assistance being received by religious organizations within its social and charitable activities.

5. For the local governments to comply with such approach in legislation that would provide the equal conditions for all the activities of religious organizations without granting preferences to certain confessions, in particular by deciding on the establishment of lower tax rates and utility tariffs.

6. For the Cabinet of Ministers to instruct the Ministry of Culture of Ukraine together with the Ministry of Defense of Ukraine with the assistance of the All-Ukrainian Council of Churches and religious organizations to develop and prepare for consideration by the Verkhovna Rada a draft bill on the right of citizens of Ukraine for the replacement the military conscription on alternative (non-military) service under conditions of mobilization/or position if its implementation contradicts religious or other beliefs of a citizen.

7. For the Cabinet of Ministers to instruct the Ministry of Defense, Ministry of Internal Affairs and Administration of the State Border Guard Service of Ukraine with the assistance of the All-Ukrainian Council of Churches and religious organizations to develop and prepare for consideration by the Verkhovna Rada a draft bill on the introduction of the Institution of Military Clergy (Capellan service) in military and law enforcement.



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## VIII. PROTECTION AGAINST DISCRIMINATION

The conclusions of the report for 2013 already mentioned that “the state lacks a systematic approach to counteraction against discrimination.” The civil society has already begun to build partnerships for systematic work to tackle the discrimination problems<sup>2</sup>, however the public authorities are still trying to deny the existence of the problem of discrimination and refute their role in preventing it, as well as personal responsibility for the vulnerability of citizens. The only institution that not only declares but also conducts systematic work in this direction and is open to cooperation with civil society is the office of the Ukrainian Verkhovna Rada Commissioner for Human Rights.

Also in the last year’s report we noted that in general the development of anti-discrimination law and further practical progress in this area is due, first of all, to the desire of the state to meet its obligations to the European Union, in particular, due its efforts to bring closer visa-free regime. However, this powerful stimulus also makes the realization of commitments to ensure legal and practical implementation of the principle of equality and non-discrimination a matter of form; currently the government does not recognize the very existence of the discrimination issue and extent of its spread.

In its third periodic report on the fulfillment by Ukraine of the Plan of Actions on Visa Liberalization (PAVL) at the end of 2013, the European Commission named among the obstacles on the way to the second phase of the plan<sup>3</sup> the shortcomings of anti-discrimination law and the need for further strengthening it. In view of the blocking by the Verkhovna Rada deputies of the bill No. 2342 on amendments to the Law of Ukraine “On Prevention and Counteraction Against Discrimination in Ukraine” during 2013 and subsequent developments in Ukraine, the bill was eventually technically withdrawn from consideration as one that failed the first reading. The publicly proclaimed reason, for which the majority of deputies refused to vote for the bill No. 2342, was the inclusion of sexual orientation into the list of protected characteristics provided for in the Labor Code of Ukraine. Despite the demands of the European Commission, Council of Europe, national experts and social urgency of the issue, the deputies could not overcome their own homophobia and vote for this bill. On the contrary, trying to justify their inaction, denying the need to develop legislation on protection against discrimination for all vulnerable groups, the politicians resorted to outright manipulation of public opinion. Thus, former Prime Minister Mykola Azarov said:

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<sup>1</sup> This section has been prepared by Iryna Fedorovych, Chairman of the Coordination Council of the Coalition to combat discrimination and co-coordinator of the Project “Without Borders” of the NGO Center “Social Action”.

<sup>2</sup> For example, creation of the Coalition Against Discrimination in Ukraine; more on CAD see: <http://antidi.org.ua/ua/>

<sup>3</sup> For English text see: [http://europa.eu/rapid/press-release\\_IP-13-1085\\_en.htm](http://europa.eu/rapid/press-release_IP-13-1085_en.htm)

*“The opposition leaders are telling us tales that we will sign an Association Agreement with the EU and the next day we will travel without visas to Europe. Nothing of the kind. We must fulfill a number of conditions: legalize gay marriages, adopt a law on equality of sexual minorities...”*

The requirements of the EU to Ukraine under PAVL did not include any changes of the Family Code that would allow same-sex marriages. The former prime minister, trying to justify his own inaction, once again publicly denied the universality of the principle of equality of rights, which does not depend on whether the protected characteristic is directly mentioned by the law or not. Another important point in this situation, when politicians openly resort to justifying restrictions on the rights of a group, is the fact of legitimizing the inequality of the group by ordinary citizens, which only deepens the problem of intolerance and xenophobia in the Ukrainian society.

Thus, the new version of the bill<sup>4</sup> on amendments to the Law of Ukraine “On Prevention and Counteraction against discrimination in Ukraine” developed in March 2014 by the Ministry of Justice contained no references to sexual orientation among protected characteristics which, according to the experts, was primarily due to attempts to please the deputies and contribute to its fastest adoption in formal compliance with the demands of the EU. Trying to go over to the second phase of PAVL the government again ignored the need for consultation with civil society. The Coalition for Counteraction Against Discrimination (CCAD) after registration of the bill No. 4581, having analyzed the proposed amendments, emphasized the following:

*“The amendments to a number of laws of Ukraine proposed by the bill need refinements and improvements. The CCAD has to note that the previous recommendations of the Council of Europe, EU and Ukrainian experts on expansion of the list of protected attributes cannot be limited to the inclusion of such features as “citizenship” only. The CCAD insists that the list of protected attributes must be not only open, but also based on the social realities; the list should be optimal and also include explicit prohibition of discrimination on grounds such as “sexual orientation” and “gender identity” because the LGBT in Ukraine is one of the most marginalized communities in need of protection and recognition of its equal rights.*

*The valuable addition to the new bill is the expansion of the forms of discrimination and adding in of the “declared intention of discrimination” and “complicity in discrimination,” but the wording of these provisions and the absence of the proposed amendments to the Criminal Code of Ukraine and the Code of Ukraine of Administrative Offences can lead to difficulties in their practical application.*

*The proposed extension of duties of the Ukrainian Parliament Commissioner for Human Rights, on the one hand, indicate a desire to increase powers of this institution, on the other hand, these amendments are not feasible without changes to the budget and without making secretariat more professional. Extending the functions of the Commissioner under which s/he “makes proposals to improve legislation on preventing and counteraction against discrimination and termination of use of positive actions” requires further clarification, because the procedure for making and consideration of proposals remains unclear, especially taking into account that the Commissioner has no right of legislative initiative.*

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<sup>4</sup> This is the bill No. 4581 developed by the Ministry of Justice and submitted by the Cabinet of Ministers to the Verkhovna Rada on March 27, 2014; for the text of the bill and accompanying cover letter see: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50\\_439](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50_439)

## VIII. PROTECTION AGAINST DISCRIMINATION

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*Taking into account the position of some deputies and parties, we insist that the exclusion from the bill of the proposed amendment to Article 60 of the CPC of Ukraine would reduce the security level of the plaintiffs and complicate the work of the courts. The proposed norm does not interfere with the observance of “presumption of innocence” as is erroneously believed by some deputies. It is important to distinguish between civil and criminal proceedings. Moreover, the principle of allocation and transfer of the burden of proof is one of the basic principles that the European Court of Human Rights applies in its practice in cases of discrimination, and practice and decisions of which are binding on Ukraine.*

*We emphasize that the changes in the context of improving anti-discrimination legislation should be applied not only to the core law but to criminal, civil and other codes as well, which, unfortunately, can no longer be done with the existing bill, but should remain a task for the Verkhovna Rada for the future.”<sup>5</sup>*

Although the formal public discussion of the bill No. 4581 did not take place, the coordination of efforts and discussion of common approach to the most important and fundamental changes to the law, mechanisms of joint promotion took place at the level of co-working of the office of the Parliament Commissioner for Human Rights, Coalition Against Discrimination and the Verkhovna Rada Committee on Human Rights. Therefore some important amendments to the wording of the bill were made through the office of the Commissioner between the first and second readings.

The bill No. 4581 adopted on May 13, 2014 amended the anti-discrimination legislation. The definition of forms of discrimination was improved and expanded, the positive actions, mechanism of their implementation and monitoring of realization were determined, the powers of the office of the Commissioner for Human Rights of the Verkhovna Rada were expanded, and the principle of shifting the burden of proof was added to the Code of Civil Procedure. Other issues remain unsettled because the law does not provide for the necessity to establish state policy or strategy for the prevention of discrimination, does not solve all procedural problems of its application and does not mention all protected groups.

After the amendments took effect, in the fourth periodic report on the implementation of PDLR, confirming Ukraine’s transition to the second phase of the Plan, the European Commission, making mention of the changes, also stressed the need for further improvement of the law and careful monitoring of its execution<sup>6</sup>.

Another positive example was the clarification letter of the Superior Specialized Court of Ukraine for Examination of Civil and Criminal Cases “On granting proper equality of labor rights in disputes arising in the area of labor relations” published on May 7, 2014; on the one hand, the Ukrainian experts in anti-discrimination law was appraised it as an attempt to avoid direct references to sexual orientation in the Law and, on the other hand, as the first guide for national courts. So the letter of Superior Specialized Court of Ukraine for Examination of Civil and Criminal Cases underlines the following:

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<sup>5</sup> See the full text <http://antidi.org.ua/ua/activity/application/280-zvernennya-kpd-shchodo-zakonoproektu-4581>

<sup>6</sup> For the full text of the fourth report see [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/fourth\\_report\\_on\\_the\\_implementation\\_by\\_ukraine\\_of\\_the\\_action\\_plan\\_on\\_visa\\_liberalisation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/fourth_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf)

*“...while examining industrial disputes, the courts should take into account that the list of indications, for which the law stipulates no privileges or restrictions on the implementation of labor rights, is not exhaustive. In particular, it is unacceptable to violate labor rights equality not only based on the indications referred to in part 2 of the art. 24 of the Constitution of Ukraine, art. 2<sup>1</sup> of the Labor Code of Ukraine, paragraph 2 part 1, art. 1 of the Law, but also on the basis of age, skin color, and other physical characteristics (weight, height, speech defects, defects of the face), marital status, sexual orientation and so on.”*

Of course, the clarification of the Superior Specialized Court of Ukraine for Examination of Civil and Criminal Cases does not replace the need of legislative extension of the list of protected indications and does not cover all aspects of life, where the discrimination on the basis of “sexual orientation” should be prohibited. However, this letter clarifies for the judges how broad should be their interpretation of the open list of indications which is an important step towards the establishment of appropriate judicial practice. It is also important to note that in its analysis the Superior Specialized Court of Ukraine for Examination of Civil and Criminal Cases refers not only to the international instruments, which currently are mandatory for Ukraine, but also to those that we virtually recognize as the fundamental aim of our European dreams: the Charter of Fundamental Rights of the EU and EU Directive No. 2000/78/EU on establishing a general framework for equal treatment of industrial relations and employment which specifically prohibit direct or indirect discrimination based on religion or confession, disability, age or sexual orientation in the areas covered by this Directive.

Another legislative initiative implemented in 2014 included the amendments to Article 161 of the Criminal Code of Ukraine, namely the extension of the list of protected indications by adding of such indication as “disability”<sup>7</sup>. The authors of the initiative focused only on the formal extension of the list of indications regardless of evaluating of the effectiveness of the previous application of Art. 161 of the Criminal Code of Ukraine and the question of the “adequate punishment”. The inefficacy of art. 161 was always the main issue which the experts stressed once and again while analyzing art. 161 and militia practices regarding the statements about certain forms of discrimination, including violent crimes. Indeed, in order to bring charges of discrimination, it is necessary to prove the motive and intent of the offender. At the same time in the world practice the issue of the “motive” of discrimination is not important, because the perpetrator might not want to discriminate anyone or be not at all aware of this phenomenon. For example, the public monitoring 2013 showed the widespread problem of inaccessibility of Ukrainian courts for persons with disabilities. Already in 2014, the client of Foundation for Strategic Affairs of the CCAD, wheelchair-bound invalid, trying to take legal action regarding the inaccessibility of an establishment of public catering failed to get into the court registry because of the inaccessibility of the building. The algorithm stipulated by art. 161 of the Criminal Code of Ukraine in this case is totally ineffective, because if an applicant files an application to the militia about the “direct restriction of his right to a fair trial because of a disability,” it might be extremely difficult for the investigator to prove the court’s motive for intentional non-providing of an approach ramp.

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<sup>7</sup> The text of amendments to art. 161 see <http://zakon4.rada.gov.ua/laws/show/1519-18>

## VIII. PROTECTION AGAINST DISCRIMINATION

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Other important issues of protection against discrimination of certain vulnerable groups were also neglected by the state. Thus, despite an active public discussion in March 2014 of the necessity of amending the Law of Ukraine “On national minorities in Ukraine”<sup>8</sup> and recommendations of international bodies; no specific proposals were paced for consideration of the Verkhovna Rada. The only response was the creation of the position<sup>9</sup> of the Government Commissioner for ethnic national policy. With no powers of legislative initiative, the Commissioner was initially designed to become a kind of a bridge for coordinated action among public authorities and to carry out supervisory and advisory activity.

*According to the regulations about the Government Commissioner for ethnic national policy, the competence of the Government Commissioner for ethnic national policy includes as follows:*

- 1) *study the state and trends of international relations, national ethnic national policy, including protecting the rights of minorities and indigenous peoples;*
- 2) *development and submission to the Cabinet of Ministers of Ukraine:*
  - *proposals to improve the state ethnic national policy, particularly on the protection of national minorities and indigenous peoples, as well as to prevent ethnic conflicts, discrimination on racial, ethnic, linguistic and religious grounds;*
  - *proposals to improve the work of the executive bodies intended to prevent at the early stages the transformation of escalating ethnic tensions into open conflicts;*
  - *information and analytical materials on national ethnic policy, state of interethnic relations, protection of national minorities and indigenous peoples, as well as proposals to address weaknesses in the relevant areas;*
  - *proposals to establish international cooperation with organizations implementing international programs in ethno-national domain;*
- 3) *provide for the interoperability of the Cabinet of Ministers of Ukraine with the executive authorities and civil society, including the temporarily occupied territory of Ukraine, in order to protect the ethnic rights of citizens of Ukraine of all nationalities, harmonization of international relations, preservation and development of ethnic, cultural, linguistic and religious identity of ethnic communities and preservation of interethnic unity and harmony in Ukrainian society;*
- 4) *information and analytical support of executive authorities regarding Ukraine’s international commitments in the field of ethnic national policy, protection of national minorities and indigenous peoples;*
- 5) *promote international cooperation on the protection of national minorities and indigenous peoples;*
- 6) *informing the Ministry of Culture of facts of violation of rights of national minorities and indigenous peoples;*
- 7) *examination of the facts and circumstances that led to tension in international relations, violation of rights of national minorities and indigenous peoples;*
- 8) *participate in drafting laws and other legal acts, including state ethno-national programs and measures to protect and promote the rights of national minorities and indigenous peoples, preservation and development of their national identity;*

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<sup>8</sup> The Law of Ukraine “On National Minorities” 1992 is and declarative does not meet today’s realities and needs significant changes; see the full text here <http://zakon4.rada.gov.ua/laws/show/2494-12>

<sup>9</sup> The Regulation of the Cabinet of Ministers No. 164 dated June 4, 2014; see: <http://zakon4.rada.gov.ua/laws/show/164-2014-%D0%BF>

- 9) *formation of tolerance, preservation of ethnic unity and harmony in Ukrainian society, prevention of incitement of ethnic, racial or religious hatred, xenophobia and manifestations of discrimination, intolerance to ethnic and national communities and their representatives;*
- 10) *informing the public in Ukraine and abroad about his activities.*
6. *Government Commissioner has the right to:*
  - 1) *set up expert and working groups convened meetings, hold meetings and other events on matters within his competence;*
  - 2) *involve specialists of executive bodies, enterprises, institutions and organizations (as agreed with their heads) to consider matters within his competence;*
  - 3) *sit on the boards of ministries and other central and local executive bodies when considering matters within his competence;*
  - 4) *address in accordance with established order requests to public bodies and local bodies of self-government and get from them materials and information necessary to carry out his tasks;*
  - 5) *in the prescribed manner to participate in the bilateral governmental commissions and their Ukrainian units on the issues of protection of national minorities and in preparation of periodic state reports of Ukraine concerning the implementation of international agreements on ethnic national policy and protection of national minorities.*
7. *the Government Commissioner has the right to participate in an advisory capacity in meetings of the Cabinet of Ministers of Ukraine when considering matters within his competence.*
8. *the Government Commissioner coordinates his activities with the Ministry of Culture.*
9. *the Cabinet of Ministers of Ukraine.*
10. *The Government Commissioner has a letter-head with the name of his office and address.*

Appointed to this position H. Druzenko characterizes his work as follows:

*“There was a simple reason to create the position. After the Revolution of Dignity the representatives of ethnic minorities demanded restoration of a ministry or other central body, which would supervise national minorities. The government was not inclined to create a separate department: it had neither money, nor resources. Accordingly, my position is a compromise between the pressure of ethnic communities and desire of the government to take a step towards them, but without appropriate agency...*

*There exists a problem of dual power or rather dispersion of powers in my field. On the one hand, according to the regulations about the Ministry of Culture, it remains a special executive authority in the field of interethnic relations and protection of minorities' rights.*

*However, the Government Commissioner has almost no instruments to influence political decisions. This is despite the fact that the creation of my post caused a lot of expectations of representatives of national communities. But then it became clear that the financial and resource issues are detached from me, I can neither manage adoption of legal acts nor influence them, I have no right to develop draft legal acts and submit them to the Cabinet; moreover, the ministerial projects are never sent down to me for endorsement.”<sup>10</sup>*

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<sup>10</sup> From the interview for Hlavkom on September 8, 2014; for the full text see: <http://glavcom.ua/articles/22274.html>

Adopted in April 2013 the Strategy of protection and integration into Ukrainian society of the Roma minority up to 2020 and the attached Action Plan adopted in late 2013 was the only document which could be regarded as an example of positive action, if not for declarative character of both documents, non-conformity with minimum standard for positive action design, lack of clear indicators measuring success and overall “Soviet” approach to settling document. Neither strategy nor plan received budgetary financing for their implementation.

This exhausted the state steps aimed at practical implementation of the Law of Ukraine “On Prevention and Counteraction Against Discrimination in Ukraine”. Ignoring the comments of civil society and the expectations of the European Commission, the state did not get down to work on public policy, program or strategy of preventing and counteraction against discrimination. There were neither explanations or initiatives of the central executive bodies (CEB) about implementation of certain provisions of the Law, or local administration of government powers. Therefore, evaluating preliminary awareness of the representatives of state and agencies and local self-government bodies as to the existence of the Law, individual provisions and understanding of their responsibility, the coaches of the training program<sup>11</sup> in the framework of the project “Achieving Equality: joint approach to improve the status of equality and non-discrimination”<sup>12</sup> noted that:

- Government officials and representatives of local authorities have a relatively low level of understanding of the phenomenon of discrimination;
- In each region the dialogue with the government officials began with a denial of existence of the problem of discrimination in this very oblast/region;
- No CEB offered any clarification to its structural units about the procedure and specific implementation of the provisions of the Law of Ukraine “On Prevention and Counteraction Against Discrimination in Ukraine”;
- Participants of the training program unanimously noticed the need for a centralized program/policy design on preventing and counteraction against discrimination.

This example shows that the government officials do not understand the need for local initiatives and their inability to implement local or regional programs in any area without adequate order of the respective ministry.

The only system documents in this area include the approved “Strategy for prevention and counteraction against discrimination in Ukraine in 2014–2017 years”<sup>13</sup> and Action Plan for 2014 developed by the office of the Verkhovna Rada Commissioner for Human Rights in close cooperation with the institutions of the civil society in December 2013.

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<sup>11</sup> The coaches of the training program for representatives of state agencies and bodies of local self-government included Iyeligulushvili M., Ponomariov S. and Fedorovych I. The trainings were held in five cities of Ukraine: Vinnytsia, Kherson, Uzhhorod, Zhytomyr and Dnipropetrovsk; for more on the training program see:

<http://noborders.org.ua/pro-nas/novyny/zaproshujemo-na-navchalni-zahody/>

<sup>12</sup> See more details: <http://antidi.org.ua/ua/activity/projects/300-dosiagnennia-rivnosti-uchasnytskyi-pidkhid-do-stanovlennia-rivnosti-ta-nedyskryminatsii-v-ukraini>

<sup>13</sup> See the full text of the Strategy: <http://www.ombudsman.gov.ua/images/stories/strategic%20plan.pdf>

On the basis of the analysis of the current judicial practice and individual appeals of the citizens related to inequality and discrimination the state of affairs is as follows:

- low level of understanding by Ukrainians of their rights, their inability to objectively assess violations and demand the restoration of their rights;
- public mistrust towards the judicial system and reluctance to file complaints to court for violation of their rights;
- lack of understanding by judges of the essence, purpose and specificity of anti-discrimination legislation;
- non-application of art. 60 of the Civil Procedural Code of Ukraine about transfer of the burden of proof on the defendant if the plaintiff submits evidence proving that the discrimination took place;
- inaccessibility of most courts for persons with disabilities<sup>14</sup>;
- predominant use of judicial mechanism to protect the rights of only one protected group — persons with disabilities.

At the same time, the above conclusions show the urgent need for the state and civil society to focus on the following objectives:

- Development and adoption of a national document that would define strategic goals and objectives of the state in the sphere of counteraction against discrimination and specific program documents at the level of CEB and local self-government bodies to create clear guidelines on the effective exercise of their powers stipulated under the Law “On Prevention and Counteraction Against Discrimination in Ukraine”;
- wage a broad information campaign on the spread of discrimination in every sphere of public life with a clear focus on specific examples of various vulnerable groups;
- More active involvement of organizations of civil society and representatives of vulnerable groups in the development of state / regional programs to prevent discrimination and assessing the state’s performance in this area;
- Analysis and simulation of individual cases for the formation of the practice of law, including identification of problematic issues of relief at law and finding ways to address them;
- Training of judges in the use of anti-discrimination legislation, including the explanation of the standard trial as formulated by the ECHR;
- Preparation of clarification of the specific application of anti-discrimination legislation for the courts.

In addition to the above points, it is worthwhile considering following problematic trend. In 2014, Ukraine lost the second action<sup>15</sup> in the European Court of Human Rights, where the applicant brought up the problem of discrimination (Pichkur vs. Ukraine)<sup>16</sup>. The applicant complained that he was deprived of his retirement pension based on his place of residence — he lived in the City of Bremen (Germany) — but he had Ukrainian citizenship and a pension that he had while living in Ukraine. Taking into account the fact that Mr. Pichkur was not the

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<sup>14</sup> According to the inspection of the accessibility of courts conducted in 2013; for more details see: <http://helsinki.org.ua/index.php?id=1385205425>

<sup>15</sup> The first case where the Applicants stated the violation by the state of art. 14 of ECHR was Fedorchenko & Lozenko vs. Ukraine in 2012; for the court ruling in Ukrainian see: [http://zakon4.rada.gov.ua/laws/show/974\\_933](http://zakon4.rada.gov.ua/laws/show/974_933)

<sup>16</sup> For details of the case see: <http://helsinki.org.ua/index.php?id=1398255443>



only pensioner who lives abroad and wants to receive his pension, this particular problem also requires a legal settlement, because in the absence of its solution a number of individual complaints to the ECHR may follow.

### CONCLUSIONS

Summarizing the above, it should be noted that the main barrier to effective practical implementation of the Law “On Prevention and Counteraction Against Discrimination in Ukraine” is the unwillingness of the government to stop hiding the problem of discrimination and to get down to systematic work on its prevention. The legislation created a space for many activities such as early detection of individual violations and timely systemic prevention of discrimination. The lack of government policy in this area, the inability of central government agencies to work together among themselves and with civil society to solve problems only tend to aggravate the problem. Last year there was no initiative aimed at the development and implementation of affirmative action, for example, although not all measures for the prevention of discrimination or rather equalization of opportunities for vulnerable groups in need of additional funding, and so on.

### RECOMMENDATIONS

1. To conduct comprehensive reform of the relevant branch of legislation to prevent all forms of discrimination with obligatory participation of experts and representatives of civil society:

- To include into the legislation indication of health status, sexual orientation and gender identity as “protected characteristics” in need of legal fixing;
- To establish administrative responsibility for violation of the provisions of the Law of Ukraine “On Prevention and Counteraction Against Discrimination in Ukraine”;
- To revise the relevant branches of legislation for the establishment of contradictions in existing laws and anti-discrimination legislation;
- To do revision of the existing regulatory framework to identify provisions that result in indirect discrimination;
- To overhaul the provisions of art. 161 of the Criminal Code of Ukraine providing penalties for discrimination unrelated to the use of violence within the Civil Code and the Code of Ukraine on Administrative Offences;
- To develop clear and step by step instructions for the bodies of the Ministry of Internal Affairs of Ukraine.

2. To map out a national strategy to prevent discrimination and a step by step action plan of implementation of such strategy involving civil society experts. It may follow the pattern of the strategy developed by the office of the Commissioner. The strategy and action plan should cover all aspects of life, clearly defining responsibilities of state and local self-government bodies, have realistic and measurable goals, including a mechanism for evaluating the effectiveness of implementation.

3. To provide for systematic training of civil servants, local self-government officials, law enforcers and judiciary in compliance with and implementation of the Law of Ukraine “On Prevention and Counteraction Against Discrimination”.

4. To work out an effective procedure for dealing with reports on discrimination and violation of equal rights by the law enforcers regarding the Roma population and members of other ethnic groups and LGBT providing effective mechanisms for investigation of such complaints and bring those responsible to justice.

5. To make arrangements to stop rousing hatred (the use of hate speech and spread of false information), in particular in the statements of officials and politicians in the context of legislation development, ensuring human rights and implementation of the European integration commitments of Ukraine.

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# **IX. REVIEW OF THE OBSERVANCE OF THE RIGHT TO FREE ELECTIONS AND RIGHT TO PARTICIPATE IN REFERENDUMS IN 2014<sup>1</sup>**

## **1. SUMMARY**

Elections in Ukraine in 2014 were held in difficult conditions: the AR of Crimea, Sevastopol city, part of Donetsk and Luhansk oblasts had been occupied by Russian forces and illegal military formations, which resulted in the impossibility of holding elections on these territories. Accordingly, some citizens were altogether deprived of possibility to exercise their electoral rights. In some raions of Luhansk and Donetsk oblasts election campaigns took place against the background of armed hostilities, in the atmosphere of violence and intimidation.

Also, we faced simulation of elections and referendums on the part of the administrations of occupied territories, during which international electoral standards and regular practices in electoral matters and referendums, principles of the supremacy of law and the legislation of Ukraine were ignored.

Throughout the rest of the territory of Ukraine for the first time in recent years, elections were held without systemic undue influence on the electoral process on the part of the authorities. Number of violations of electoral rights of the citizens decreased significantly. Their character changed. Some of the violations can be attributed to the low level of political culture of the subjects of election process, rapidity of the process of early elections and legislative gaps.

In 2014 we have witnessed the progress in solving those problems in the observance of electoral rights that have not been resolved for many years. The human rights community can put on the agenda new objectives for improving the situation with the observance of electoral rights, particularly in penal institutions.

Complete disregard for the rights of citizens to participate in referendums became disappointing tradition: in Ukraine a Law on Local Referendum has not been adopted this year again and all initiatives of citizens to organize an All-Ukrainian referendum were blocked atn the level of the Central Election Commission.

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<sup>1</sup> Review is prepared by Dementiy Bely on the basis of reports of observers of All-Ukrainian NGO CVU, OPORA, ENEMO, OSCE Mission and according to the reports by members of UHHRU.

## 2. INTRODUCTION

In the state two national election campaigns and over four hundred local elections of different levels were held:

- Early presidential election in Ukraine on May 25, 2014;
- Early parliamentary elections in Ukraine on October 26, 2014;
- About two hundred and twenty early local elections on May 25, 2014, including Kiev, Odessa, Mykolaiv, Kherson, Cherkasy, Chernivtsi, Sumy and other cities/towns/localities of the country, where their conduct was hampered by the previous authorities, and holding of which became possible after the Revolution;
- About two hundred early local elections of different levels during September-December 2014, including 5 elections of mayors of cities of oblast subordination, 4 elections of mayors of cities of raion subordination, 158 elections of heads of villages and urban-type settlements.

On the occupied territories illegal military formations held in 2014 several so-called “referendums” and “elections”, namely:

- All-Crimean “referendum” on March 16, 2014;
- “Referendums” in support of the state independence of the so-called Luhansk and Donetsk “People’s Republics”, which were held on May 11, 2014;
- “Elections” of the “head” and “State Soviet” of “DPR” “and “elections” of the “head” and “State Soviets” of “LPR” on November 2, 2014.

In addition, on the territory of the AR of Crimea, which had been occupied by Russia, on September, 14 and December, 7 were held the elections of deputies of the “State Soviet” and deputies of representative bodies of all municipalities in the “Republic of Crimea”.

## 3. REVIEW OF THE IMPLEMENTATION OF THE LAST YEAR’S PUBLIC DEMANDS TO CHANGE THE SITUATION WITH THE OBSERVANCE OF THE RIGHTS OF VOTERS

It is to be recalled that in 2013 the vast majority of recommendations for improvement of the situation with the observance of citizens’ rights to free elections and to participate in referendums made by civic activists and human rights defenders was not implemented. In 2014 we see some positive changes, but many problems have remained unsolved.

Proper systemic investigation of the facts of violations during the parliamentary elections in Ukraine in 2012 has never been conducted.

The electoral legislation has not been codified. People’s representatives confined themselves only to amending the laws on certain types of elections. Often these changes were made on an on-going basis in response to problems that were arising in the course of the election process.

The Law on Local Referendum has not been adopted, which deprives citizens of the right to solve local problems through holding referendums. The Law on National Referendum has not been amended.

So far the performance standards of members of government and heads of other executive bodies for the preparation and conduct of elections have not been developed. However, interference in the election process on the part of senior government officials and other office-holders almost has not been recorded this year either.

The Ministry of Internal Affairs of Ukraine conducted systemic training of the law enforcement officers on the electoral law, protection of electoral rights, response to violations and others.

### 3.1. Presidential Elections

The 2014 presidential election was conducted transparently, fairly and democratically overall. Major problems in the organization of election process took place only in Donetsk and Luhansk oblasts, where the majority of electoral districts failed to create conditions for the work of election commissions and voting. In the Autonomous Republic of Crimea elections were not held at all.

**The electoral legislation.** The 2014 presidential election was held on the basis of a significantly amended law. From February to May 2014 the Law on Election of the President of Ukraine was amended seven times. Last changes to it were made on May 20, 2014, which was only a few days before election day. This clearly contradicts the international standards for stability of the electoral right, but the legislative amendments were necessary and were perceived with understanding by the public. Overall amended electoral legislation helped to improve legal regulation of the presidential election.

**Administrative bodies of the election process** operated mainly impartially and followed legislative requirements. Although there were cases of violations in their work, they didn't occur on regular basis. These violations were caused mainly by frequent personnel rotations in the district and precinct election commissions, short term of election campaigning, participation in the elections of a large number of "technical" candidates, issues of material and technical and of financial support.

Thus, on average nationwide composition of the district election commissions (hereinafter — DECs) was changed by more than 40%. In the composition of the majority of precinct election commissions (hereinafter — PECs) percentage of personnel rotations amounted to 30-50% and more. Constant personnel rotations of DECs and PECs weakened to some extent their role in the proper organization of election process. We note that constant rotations were a problem during early parliamentary elections in October 2014 as well.

One of the problems of organization of the election was understaffing of PECs due to the fact that not all presidential candidates submitted to PECs nominations of their representatives. DECs even failed in some cases to form minimum necessary membership of PECs (12 members) within a statutory period. Parliament has solved this problem by amending the electoral law that reduced the minimum PEC membership to 9 persons. As a result, PECs of large precincts, which were formed with the minimum quantitative membership, in some cases failed to ensure proper organization of voting on May 25, 2014.

**Major problems of early presidential election** should include ensuring of security of voters and commission members in the area of anti-terrorist operation (ATO), the problems of material and technical and of financial support of election commissions, insufficient level

of transparency in the nomination of candidates and election campaign financing. Changing of voting location without changing of election address proved to be rather complicated procedure.

In many regions the question of changing of voting location without changing of election address was solved by the officials of the State Voter Register maintenance bodies (SVR) at their sole discretion. Sometimes officials demanded submission of additional documents or additional attestation of submitted documents that became an obstacle in the implementation of voting rights.

**At the stage of nomination and registration of candidates** for President of Ukraine twenty three candidates out of forty-six were denied registration. The grounds for refusal included among others such formal reasons as exceeding the cutoff wordage of autobiography or election program, failure to submit certain documents in electronic form, discrepancy of size of photographs of a candidate to statutory requirements and more.

Eleven candidates who were denied registration challenged these decisions in court. All decisions of the CEC were upheld<sup>2</sup>. We believe that for the future it is necessary to enable possibility of correction of errors in documents.

Electoral monetary pledge for candidate registration in the amount of 2.5 million hryvnias in the opinion of observers is too high and effectively limits the possibility of realization of the right to be elected President of Ukraine.

**Violations recorded by observers** differed significantly from the practice of previous elections. Thus, representatives of OPORA stated in their report that during the elections in 2010–2012 the most systematic violations were abuse of administrative resources and vote bribery. In 2014 they were the disregard of campaigning rules and obstruction of the electoral process. While the first common violation appeared as a result of candidates' abuses and didn't have considerable influence on the election returns, the second one was directly related to confrontations in Donetsk and Luhansk oblasts.<sup>3</sup>

According to the CVU observers destruction or damage of outdoor political advertising by unidentified persons was significantly widespread. "Victims" of this activity were M. Dobkin (in most regions of the state), O. Liashko (in the south of Ukraine and in some regions of West and Centre), somewhat less — Tihipko, Poroshenko and other candidates. Billboards of these candidates were poured over with paint, sketched over, written over with obscenities.

During May 2014 the CVU registered cases of attacks on electioneers and some candidates for President of Ukraine, damaging of campaign tents. However, such cases were isolated in nature. In general, the magnitude of violations of statutory requirements of campaigning during the 2014 presidential election was noticeably much lower than during the previous election campaigns.

**Election day.** In the vast majority of polling stations in Donetsk and Luhansk oblasts voting was disrupted, and the election itself in these regions was accompanied by attacks of armed groups of separatists, intimidation of voters and members of commissions, hostage-

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<sup>2</sup> Final Report of Mission of Observing the Early Presidential Elections in Ukraine conducted by OSCE/ODIHR — P. 18 <http://www.osce.org/uk/odihr/elections/ukraine/120961?download=true>

<sup>3</sup> FINAL REPORT on Results of Civic Observation Conducted by OPORA during 2014 Early Presidential Election in Ukraine Source:

<http://oporaua.org/vybory/vybory-prezydenta-2014/article/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhenja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku>

taking, destruction of election documentation. The difficult situation in these regions led to the low voting turnout. For example, in the territorial election district No. 49 voted only about 19% of voters included in the voter lists in the open polling stations, in the territorial election district No. 50 — about 17% of voters, in the territorial election district No. 58 — about 16% of voters.

In other regions of the state voting and vote counting were carried out in compliance with the electoral statutory requirements. Significant violations of procedure of determination of vote returns during the presidential election weren't registered.

### 3.2. Local Elections

The previous government in 2012–2013 artificially hindered holding of the early elections of mayors of some oblast centers. As a result of political confrontation the Verkhovna Rada ceased setting early elections in all populated localities altogether. Only at the end of February 2014 MPs scheduled all local elections.

**The situation on the occupied territories.** In connection with the occupation of the Crimea and sudden destabilization of the situation in the Far East of the country, in the Autonomous Republic of Crimea and in some local communities of Donetsk and Luhansk oblasts elections were not held. Sometimes these elections were canceled in a rather brutal manner by members of the illegal military formations.<sup>4</sup>

On October 26 situation partly repeated: early local elections in Luhansk and Donetsk oblasts, which were scheduled for that day, failed to be held on the part of local communities because of the armed hostilities and constant shelling.<sup>5</sup>

#### **The Work of Territorial Election Commissions and Election Management.**

The main problem faced by the organizers of local elections was the lack or insufficiency of financial and of material and technical support. As CVU observers stated in their final report, “holding of local elections under the conditions of difficult economic situation in the state and late transfer of budget funds to relevant commissions complicated the work of election commissions and negatively affected the preparations for the elections in general.”<sup>6</sup>

Another problem of the electoral process was low level of preparation of members of territorial election commissions (hereinafter TEC). In some cases, the CEC was forced to cancel some illegal decisions or even to dissolve TECs, as it happened on May 15, 2014 with the decision by the Kyiv Municipal Election Commission on deregistration of Ivan Saliy and

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<sup>4</sup> See in particular the following reports: The Militants Seized Rovenky City Electoral Commission // TVi May 20, 2014 [http://tvi.ua/new/2014/05/20/u\\_rovenkakh\\_boyovyky\\_zakhopyly\\_vyborchkom](http://tvi.ua/new/2014/05/20/u_rovenkakh_boyovyky_zakhopyly_vyborchkom), Luhansk Separatists “Banned” Elections and Appealed to the UN to Recognize the “Republic” — // Tyzhden.UA — May 19, 2014 — <http://tyzhden.ua/News/110207>, In Antratsyt Mayoral Elections will not be Held // “Today in Alchevsk” — May 20, 2014 <http://tial.org.ua/2014/05/20/5445.html>, Elections are not Held in Antratsyt, Lysychansk and Sievierodonetsk// Donbass News — May 25, 2014 <http://novosti.dn.ua/details/225792/>

<sup>5</sup> *Kyhtenko*: Elections in Donbass Passed without Incidents// Dialog — October 27, 2014 — [http://www.dialog.ua/news/24926\\_1414361136](http://www.dialog.ua/news/24926_1414361136)

<sup>6</sup> Conclusions Based on the Results of Observation Conducted by All-Ukrainian NGO CVU of the Election Campaign of Local Elections to Take Place on May 25, 2014 Source: [cvu.org.ua/nodes/view/type:news/slug:25-201412212](http://cvu.org.ua/nodes/view/type:news/slug:25-201412212)

Lesia Orobets<sup>7</sup> and on June 4, 2014 with the dissolution of the Cherkasy municipal election commission.<sup>8</sup>

The above-named problems led to a number of other problems, including access of voters to information about parliamentary and mayoral candidates.

**Registration of candidates.** Some municipal election commissions denied applicants for mayoral candidates on the basis of small or formal inconsistencies of documents. Thus, Odessa Election Commission refused to register four self-nominated candidates for the position of Mayor of Odessa on the basis of among others unsigned income declaration, submission of declaration filled in not with one's own hand but containing printed information and more.<sup>9</sup> However, these incidents were not widespread.

**Despite the different course of the election campaigns, some violations were typical.** These were numerous cases of using "black PR", violation of the rules of campaigning, damage of election materials of opponents, indirect bribery. In particular, numerous cases of bribery were mentioned in the statements of observers of OPORA and CVU from Kyiv, Cherkasy, Odessa and other cities.<sup>10</sup>

In some cities there were detected other kinds of violations according to observers' estimates. Thus, CVU representatives in Odessa published mass-scale facts of intimidation of members of election commissions by unidentified persons.<sup>11</sup>

Overall, these elections were characterized by a high level of competition and the lack of systematic violations on the part of the government.

### 3.3. Parliamentary Elections

Amendments to the electoral law were fragmentary and served as a prompt response to arising problems. For example, on October 14, 2014 the Verkhovna Rada in response to numerous reports of indirect voter bribery and other violations that were being recorded by observers approved amendments to the Criminal Code to strengthen liability for violations of electoral rights of the citizens. The effectiveness of these provisions needs to be further studied. It is just known that as of October 23 according to official data of the Ministry of Internal Affairs of Ukraine there were opened 227 criminal proceedings on cases related to

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<sup>7</sup> CEC Resolution of May 15, 2014 No. 594 On the Repeal of Regulations of Kyiv Municipal Election Commission of May 13, 2014 No. 2372 and No. 2373 Source: <http://zakon0.rada.gov.ua/laws/show/v0594359-14>

<sup>8</sup> CEC Resolution of June 4, 2014 No. 768 "On Some Issues of Cherkasy Municipal Election Commission of Cherkasy oblast" <http://www.cvk.gov.ua/pls/acts/ShowCard?id=37799&what=0>

<sup>9</sup> Report of OPORA Based on the Results of Observation of Early Elections of Mayor of Odessa (May 2014) Source: <http://opora.org.ua/vybory/zvity/article/5492-zvit-za-rezultatamy-sposterezhennja-za-pozachergovymy-vyboramy-odeskogo-miskogo-golovy-traven-2014-roku>

<sup>10</sup> See reports of All-Ukrainian NGO CVU and OPORA following below listed links:  
<http://cvu.org.ua/nodes/view/type:news/slug:25-2014-23-19-2014>  
<http://opora.org.ua/vybory/zvity/article/5799-zvit-za-rezultatamy-sposterezhennja-za-pozachergovymy-vyboramy-cherkaskogo-miskogo-golovy-traven-2014-roku>  
<http://opora.org.ua/vybory/zvity/article/5492-zvit-za-rezultatamy-sposterezhennja-za-pozachergovymy-vyboramy-odeskogo-miskogo-golovy-traven-2014-roku>

<sup>11</sup> Report of a Long-term Observation of Early Local Elections to Take Place on May 25, 2014 Conducted by All-Ukrainian NGO CVU from April 23 to May 19, 2014 Source: <http://cvu.org.ua/nodes/view/type:news/slug:25-2014-23-19-2014>



the elections, of which 32 cases were related to the infliction of bodily injuries on candidates, electioneers, staff members of election headquarters.<sup>12</sup>

**Registration of candidates.** Problems detected by observers include among others unequal application of the law in the registration of parliamentary candidates. As a result, 640 persons out of more than 7000 applicants were denied registration<sup>13</sup>. Often the reasons were formal, such as inaccuracy of some wordings in the documents submitted to the CEC, exceeding of number of printed characters in the biographies and more. Later 49 candidates successfully challenged the CEC decisions in court and were eventually registered. But due to the delaying of the registration process, the candidates, in the opinion of CVU, were forced to campaign during less than 10 days, which put them on unequal terms with opponents.<sup>14</sup>

### **Problems of Voting of Displaced Persons and Military Personnel.**

One of the challenges of the election was providing with the possibility to participate in voting to displaced persons, voters from occupied regions of Ukraine and military personnel. On October 7 CEC approved simplified procedure for changing a temporary voting location, trying to solve the problems of these groups of voters. Overall across the country the procedure of temporary change of voting location was used by about 190 thousand of voters, including almost 25 thousand militaries, 3,6 thousand voters from the Crimean peninsula<sup>15</sup> and about 32,8 thousand voters from Donetsk and Luhansk oblasts.

Thus, the majority of voters from among displaced persons and residents of the occupied territories did not use this voting procedure.

Also, lawmakers did not allow military personnel, who are on contract, to vote with the availability of military cards, and not passports<sup>16</sup>. As a result, part of military personnel, who took part in the ATO or were in the military units far from home, could not vote even in cases when their names were included in the voter list.

There were other problems. For instance, CVU observers registered, particularly in Dnipropetrovsk and Zaporizhzhia oblasts, the problem of not including military personnel in voter lists in the locations of military units because military commissariats were late to submit relevant information to SVR maintenance bodies.

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<sup>12</sup> The Interim Report Based on the Results of Observation Conducted by OPORA of 2014 Early Parliamentary Elections in Ukraine (October) Source:

<http://oporaua.org/en/news/6912-promizhnyj-zvit-za-rezultatamy-sposterezhennja-opory-za-pozachergo-vymy-vyboramy-narodnyh-deputativ-ukrajiny-2014-roku-zhovten>

<sup>13</sup> Statement of Preliminary Findings and Results. Early Parliamentary Elections in Ukraine on October 26, 2014 — International Observation Mission Composed of Representatives of the OSCE Office for Democratic Institutions and Human Rights, the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly, Kyiv, October 27, 2014 — P. 9 (hereinafter — Statement of Preliminary Findings and Results of the OSCE).

<sup>14</sup> Report No. 3 Based on the Results of Long-term Observation Conducted by All-Ukrainian NGO CVU. As of from 4 to October 23, 2014 <http://cvu.org.ua/nodes/view/type:news/slug:zvt-3-za-rezultatami-dovgostrokovogo-sposterezhennya-za-perod-z-4-po-23-zhovtnya-2014-r>

<sup>15</sup> The total number of voters registered on the Crimean peninsula as of 21 October was amounted to 1,799,918 persons.

<sup>16</sup> CVU: Part of the Military Personnel will not Be Able to Vote — the official site of All-Ukrainian NGO CVU. Address: [cvu.org.ua](http://cvu.org.ua)

**Electoral campaign as free and competitive process.** All organizations and missions which performed monitoring in the country marked reducing of influence of administrative resources, increasing of free competition in elections and progress in terms of access of citizens to information. Systematic interference of the officials in the election process was not registered. Issues of voter bribery and unfair campaigning continued to be relevant.<sup>17</sup>

There were registered isolated cases of violence targeted at candidates, electioneers and their campaign events.

In some oblasts certain candidates were subjected to so-called “people’s lustration”: they were thrown into dumpsters or were subjected to other forms of humiliation. Mostly these were people connected with the previous government, including MPs, who voted on January 16 for the laws restricting democratic freedoms.

**Participation of national minorities.** The military aggression of Russia and the occupation of part of the territory of our country negatively affected the observance of the rights of national minorities in the parliamentary elections: it was not possible to organize voting on the territories where lives over half of the 14 million population that considers Russian their mother tongue, and on the most of the territories densely populated by Crimean Tatars.

Due to the fact that during early elections the boundaries of electoral districts were not changed, there was no exercising of amendments to the electoral law made in 2013, which were directed towards consideration of recommendations for taking into account the ethnic component during establishment of boundaries of electoral districts. As a result, in Zakarpattia oblast there were complaints from the Hungarian minority about the impossibility to elect a deputy from their community by the majority system.

Voting day and vote counting were peaceful, without major violations that could affect the election returns. International observers generally gave high marks to this stage of elections. Thus, the European Network of Election Monitoring (ENEMO) said in its statement that voting was transparent, efficient, in accordance with international standards.<sup>18</sup>

The DEC tabulation process was held with tension. Conflicts and confrontations of parliamentary candidates led to inhibition of the tabulation process in five electoral districts (No.No. 49, 59 (Donetsk oblast), 132 (Mykolaiv oblast), 140 (Odessa oblast), 182 (Kherson oblast).<sup>19</sup>

**The system of consideration of electoral disputes requires improvement.** Most of the complaints or allegations, according to CVU’s estimate, were not considered on formal grounds (missed deadlines, wrongly submitted complaint/suit, inaccurate form or content

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<sup>17</sup> The Interim Report Based on the Results of Observation Conducted by OPORA of 2014 Early Parliamentary Elections in Ukraine (October) Source:

<http://oporaua.org/news/6912-promizhnyj-zvit-za-rezultatamy-sposterezhenja-opory-za-pozachergovymy-vyboramy-narodnyh-deputativ-ukrajiny-2014-roku-zhovten>

<sup>18</sup> The Elections to the Parliament were Transparent, Generally in Compliance with International Standards — ENEMO — Interfax — Ukraine, October 2, 2014 Source of information:

<http://interfax.com.ua/news/general/231189.html>

<sup>19</sup> Conflicts and problems in single-member districts as of October 31 <http://oporaua.org/vybory/pozachergovi-vybory-do-verhovnoji-rady-2014/article/7347-konflikty-ta-problemy-v-odnomandatnyh-okrugah-standom-na-31-zhovtnja-infografika>

of complaint/suit and others). Less than half are considered on the merits. At average about 10% of complaints or suits are complied with, which is quite a low indicator.<sup>20</sup>

**Problems of voting in penal institutions.** Representatives of OPORA, having studied voting returns of prisoners, suggest widespread use of constraint, administrative resources and distortion of results of expression of free will at the polling stations located in penal institutions. In particular, in Vinnitsa, Kharkiv, Luhansk and Kirovohrad oblasts voters' support of the ruling party (in this case "Petro Poroshenko Block") in the penal system institutions is in several times higher than support in the region in general.<sup>21</sup>

#### 4. PSEUDO ELECTIONS AND PSEUDO REFERENDUMS

On the occupied territories of Ukraine — Crimea and part of Luhansk and Donetsk oblasts in 2014 were held three so-called "referendums" and "elections" that answered neither national legislation nor any international standards.

Council of Europe Commission for Democracy through Law (Venice Commission) assessed one such "referendum" held in Crimea: it is compatible neither with international standards, nor with the Constitution of Ukraine.<sup>22</sup> Firstly, change on the territorial integrity can be resolved only by an All-Ukrainian referendum. The Verkhovna Rada of AR of Crimea had no authority to declare holding of such a referendum. Secondly, in the course of its holding there was no adherence to the main democratic standards set by the Venice Commission Code of Good Practice on Referendums. Among the violations there were also named the massive presence of armed men and members of the military in the Crimea; very short period of referendum (only ten days); reasonable doubts about the neutrality of the local authorities, the threat of freedom of speech, manipulation of the wording of the question that was put to a referendum.

Similar estimates can be fully redirected towards other "referendums" and "elections" held on the territory of raions of Donetsk and Luhansk oblasts that were seized by illegal armed formations and Russian military men: inconsistency with the national legislation, major violation and complete disregard for international standards.

##### 4.1. The Situation of Referendums

The rights of citizens to holding an All-Ukrainian referendum have been ignored in Ukraine for several years running. Year of 2014 was no exception. In 2014 the CEC refused to register initiative groups on holding two All-Ukrainian referendums on popular initiative.

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<sup>20</sup> Report on Monitoring the Consideration of Electoral Disputes Prepared as Part of the Project with Support of the Council of Europe. Source: <http://cvu.org.ua/nodes/view/type:news/slug:poperedny-zvt-rozglyad-viborchih-sporv-v-ukraini>

<sup>21</sup> Evhen Vasylenko Voting Returns in Penal Institutions. OPORA official site. Source: <http://oporaua.org/vybory/pozachergovi-vybory-do-verhovnoji-rady-2014/article/7341-rezultaty-golosuvannja-u-penitenciarnyh-zakladah>

<sup>22</sup> Findings can be seen here: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e)

Thus, on June 12 the CEC in its Resolution No. 784 refused to register the initiative group on holding an All-Ukrainian referendum on popular initiative on the basis of errors in the submitted documents.<sup>23</sup>

On September 15 the CEC in its Resolution No. 951 refused to register the initiative group on holding another All-Ukrainian referendum on popular initiative. The reason for refusal was the absence of the CEC representative at the citizens' meeting on initiating an All-Ukrainian referendum for the court banned the CEC to send its representative to this meeting.<sup>24</sup>

## **5. RECOMMENDATIONS**

1. For the Verkhovna Rada to accelerate the unification of the different types of elections by adopting the Electoral Code.

2. Additionally to regulate ensuring of electoral rights of citizens of Ukraine residing on the temporarily occupied territories in order to expand practical opportunities to participate in voting.

3. To leave practice of simultaneous conduct of early elections of different levels. This will facilitate a good organization of the electoral process.

4. To establish an effective system of monitoring of shadow expenses in the electoral process.

5. For the increase of the CEC independence level to include in its composition also civic experts on electoral rights.

6. To take into account the demands of national minorities in order to ensure their representation in the Rada.

7. The procedure for training of candidates for the election commissions should be determined by law.

8. To set limits on the recall of members of election commissions by subjects of nomination and clearly state in the law grounds for recall.

9. Size of the electoral monetary pledge at the presidential election in Ukraine should be reduced.

10. The number of commission members appointed on each level must meet the actual needs of the management of election process, and not be determined by unpredictable number of submissions received from candidates.

11. Consideration should be given to possibility of eliminating of the requirement for a minimum period of residence abroad for candidates.

12. To adopt a Law on Local Referendum.

13. To amend the Law on All-Ukrainian Referendum following public demands and recommendations of international organizations.

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<sup>23</sup> <http://www.cvk.gov.ua/pls/acts/ShowCard?id=37825&what=0>

<sup>24</sup> <http://www.cvk.gov.ua/pls/acts/ShowCard?id=38411&what=0>

## **IX. REVIEW OF THE OBSERVANCE OF THE RIGHT TO FREE ELECTIONS AND RIGHT TO PARTICIPATE IN REFERENDUMS IN 2014**

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14. For the Ministry of Internal Affairs of Ukraine, Prosecutor General's Office of Ukraine to establish long-term programs of capacity building of law enforcement officers in electoral matters.

15. To conduct proper systemic investigation into violations during the parliamentary elections in Ukraine in 2012 and during the elections in 2014.

16. For the CEC together with interested organizations to analyze level of fitness of PEC premises for voters with special needs, and take (together with local authorities) measures aimed at addressing the identified problems.

17. To start a public debate on the situation of "non-free" voting in penal institutions.

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## X. PROPERTY RIGHT

### 1. GENERAL OVERVIEW

Inviolability of the property right and inadmissibility of its unlawful forfeit is one of the manifestations of the constitutional principle of the supremacy of law. Level of the state's civilization largely depends on the degree of observance of property rights and possibility of their protection, since the phenomenon of property influences on every sphere of social and personal life. For this reason every state endeavours to adjust property relations to the major benefit of all parties, legally securing the importance of the observance and protection of the property right, as it is done in the Constitution and laws of Ukraine, for instance. However it must be admitted that Ukraine encountered systematical and long-term problems residing in the state's respect to this right, some of which Ukraine tried to resolve in 2014.

First and foremost one may note actions of the country towards the improvement of the system of the state registration of rights to immovable property, in particular towards the property registers and improvement of procedural aspects of the registration of immovable property. However as of today it is yet difficult to speak of the establishment of the effective system as well as of optimal duration of property registration.

Judicial protection of the right to peaceful ownership of property seems to be more complicated issue. By Ukrainian tradition the effective judicial protection or "not protection" of property is more often a tool of political or other kind of pressure rather than means for everyone to protect their right, which outlines a rather big amount of work for the state in the area of a fair trial of cases concerning property.

There are also considerable problems with a direct execution of court rulings, protecting property, since only 30% of the rulings of the Ukrainian courts are executed. It's especially acute for the rulings which refer to the state as a debtor, of which a great number of cases against Ukraine in The European Court of Human Rights additionally testifies. The problem of non-compliance with court decisions is amplified by the existence of various moratoriums on recovery of property from debtors, which belong to a certain sphere or to state-owned property.

Problems which have remain unsolved this year include problem of forcible withdrawal of land property by the reason of social necessity as well as issues concerning ensuring the right to peaceful ownership of property by the owners of land parcels. Besides, the existence of moratorium on purchase and sale of agricultural land continues to be an essential hazard to ensuring and protection of this right.

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<sup>1</sup> Prepared by M. Shcherbatyuk (UHHRU).

2. GUARANTEES OF PROPERTY RIGHT.

2.1. State registration of rights to immovable property

Over two years passed since on January 1, 2013 a new procedure for state registration of rights to immovable property and land came into force, according to which the power to register these rights were transferred from the Bureau of Technical Inventory (BTI) and offices of the State Agency for Land Resources of Ukraine to the State Registration Service of Ukraine and its local divisions. Information on all objects of immovable property was gathered in the State Register of Property Rights.

The changes concerning the system of registration of the rights to immovable property contributed to the upgrade of Ukraine's rating, in particular according to the World Bank's Doing Business rating Ukraine moved from 148th place in 2013 to the 97th place in 2014 in the world on this indicator.<sup>2</sup>

Table 1. Procedures for registration of property rights to immovable property in 2014<sup>3</sup>

Country	Place in the world rating in 2014	Number of procedures	Number of registration days	Costs, % of property value
Georgia	1 (1)	1	2	0,05% (90 USD, 1 working day)
Belarus	3 (3)	2	10	0,03% (50 USD, 2 working day)
Armenia	5 (4)	3	7	0,10%
Lithuania	6 (5)	3	2	0,80% (1,6%, 1 working day)
Kyrgyzstan	9 (11)	4	6	0,30% (145 USD, 1 working day)
Azerbaijan	13 (9)	4	11	0,50%
Estonia	15 (14)	3	18	0,50%
Russian Federation	17 (46)	4	22	0,10%
Kazakhstan	18 (28)	4	23	0,10%
Moldova	19 (16)	5	6	0,90%
Latvia	33 (31)	5	18	2,00%
Ukraine	97 (148)	8	45	1,90%
<b>Europe and Central Asia</b>		6	26	2,80%

<sup>2</sup> <http://www.doingbusiness.org/data/exploreeconomies/ukraine/registering-property>

<sup>3</sup> How not to lose property right behind registration procedures:  
[http://pravovakrayina.org.ua//partner\\_news/як-за-процедурами-реєстрації-не-загуб/](http://pravovakrayina.org.ua//partner_news/як-за-процедурами-реєстрації-не-загуб/)

The World Bank estimates that the number of registration procedures in Ukraine has decreased from 10 to 8, their average duration — from 69 to 45 days, and registration costs — from 3.7% to 1.9% of the value of immovable property.

However, despite significant changes in specified — not full — quality indicators of immovable property registration, Ukraine managed to exceed the average indicators of Europe and Central Asia region only in the cost of registration procedures. Ukraine remains so far an outsider among post-Soviet countries which do not cease conducting significant reforms in this area.

Concerning the year of 2014, reforming of the entire system was slow and not as stable as it was reported by the Ministry of Justice. For the purpose of another procedure improvement on February 12, 2014 the Cabinet of Ministers of Ukraine changed the requirements for the state registration of rights to immovable property.<sup>4</sup> The main innovation was the alternative by submitting documents for the state registration of rights. In addition to a direct appeal by an applicant, there was introduced a possibility to send notarized documents to the State Registration Service by mail or courier.

Finally the problem of state registration of rights with the issuance of the certificate of title to immovable property instead of lost, damaged or deformed certificates or state certificates of land ownership, issued by the competent authorities before 1 January 2013, was settled. Previously this procedure had not been provided for whatsoever. Houses built in the Soviet Union are provided with the state registration of right to state and communal ownership of property on the objects of immovable property. In addition, an access to registers, which functioned up to 1 January 2013, is opened: in case if there are no data on registration in the State Register of Rights to Immovable Property. Also among innovations one should mention simultaneous registration of property rights and proprietary rights, derived from property right, on the basis of a single application for the state registration of rights, which can be submitted both by owner and legal successor (previously two different applications were submitted).<sup>5</sup>

But at the same time it should be noted that although these innovations might somehow simplify the registration of immovable property, they still won't solve the most important problem — the duration of registration. If allow sending applications by mail, the issue of queues is removed, but the problem of the velocity of registration activities is not solved. Furthermore, sometimes when a registrar finds himself in an unusual situation, not knowing how to proceed, he denies performing actions without specifying the reasons of what he finds wrong with the documents<sup>6</sup>.

Most experts estimate these changes as positive but not as revolutionary, pointing out that greater part of new rules is technical, such that clarify and elaborate on certain processes.

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<sup>4</sup> Resolution No. 868 "On approval of the Procedure for the State Registration of Rights to Immovable Property and their Encumbrances and the Procedure for Obtaining Extracts from the State Register of Property Rights on Immovable Property".

<sup>5</sup> To register immovable property as of the new year will be easier but longer — legal expert <http://www.radiosvoboda.org/content/article/25218520.html>

<sup>6</sup> A new procedure for state registration of rights to immovable property: pros and cons: <http://ua.racurs.ua/429-novyj-poryadok-derjreistraciyi-prav-na-neruhome-mayno-plusy-i-minusy>



It is also noted that there are other not very positive aspects. According to the established procedure in order to register property rights one could go in many cases to a notary and not to a state registrar. Technically a notary can move the old registration into the new register, in particular for the purposes of attestation by a notary of an agreement with such property. According to the new procedure, a notary may also register property right to the object that was registered before but only if a notary simultaneously registers derivative right, that is implying that the agreement is actually executed. Officially registration of rights executed by a state registrar should be cheaper and faster than by a private notary. If to look at the actual situation, the registrars simply could not cope with the work; there were long queues, rejections, and misunderstanding with the documents, which were to be submitted, and so on. It is impossible to eliminate corruption component either. Notary is little more expensive but more reliable. Now it is being fought against. Perhaps it complies with the spirit of the law, but on the other hand, it will make life harder for the market and will somewhat monopolize the position of the State Registration Service of Ukraine.<sup>7</sup>

In the process of adopting of the new procedure it was also not taken into account that for the registration of property rights to object under construction the new procedure requires the mandatory submission of a construction permit. With that there remains an unsolved situation where property right to such object is registered not by a developer, but by the person who bought it from the developer, but had never received a building permit.

To this day there remains the problem of registration of property rights to main and industrial pipelines (including gas distribution networks), roads, electricity networks, main heating networks, communication networks, railways. One of the reasons for this problem is that the order of the Ministry of Justice says that gas pipelines are immovable property, and therefore have to be registered under the Law of Ukraine “On the State Registration of Propriety Rights to Immovable Property and Their Encumbrances”<sup>8</sup>. Similar problems also arise when considering the status of the types of assets like roads, electricity and heat networks, communication networks, railways.

However, the state registration of rights to pipelines, roads, electricity networks, main heating networks, communication networks, railways is problematic and almost impossible. One reason is that the pipeline facilities are usually situated on the territory of a street, several streets, town, between towns.

In addition, it is often impossible to determine indisputably, whether movable or immovable property is a gas distribution network consisting of various elements in relation of their connection to the ground, particularly if some parts of the compound thing, which are the gas distribution networks, might be referred with significant precautions to immovable, others under any circumstances are movable.

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<sup>7</sup> A new procedure for state registration of rights to immovable property: pros and cons:  
<http://ua.racurs.ua/429-novyj-poryadok-derzeistraciyi-prav-na-neruhome-mayno-plusy-i-minusy>

<sup>8</sup> Order of the Ministry of Justice of Ukraine “On Approval of Methodological Recommendations of Definition of Immovable Property Located on Land Parcels, the Title to Which is Subject to State Registration.” on April 14, 2009 No. 660/5.

In addition to this problem, there is another, equally painful, concerning various linear objects. The problem is that now other people's land parcels under such facilities are used without any legal basis. This applies both to those facilities which are connected to the ground on the territory of other people's land parcels, as well as those that do not have such connection (for instance, power lines that pass over other people's land parcels, if their towers are situated outside those land parcels).<sup>9</sup>

It should also be noted that the problem of the incompetence of registrars remains. Trite, but illustrative example is when a person who received the State Certificate on Land Ownership, failed to conduct state registration of property rights to this land parcel because the registration service made a mistake when entering this person's data to the State Centre of the Land Cadastre.<sup>10</sup>

The important question in the context of ensuring the right to peaceful ownership of property is the functioning of the State Register of Rights to Immovable Property. For a long time experts have noted the importance of the open access to this register. Only on October 14, 2014 the Verkhovna Rada of Ukraine has made an important step towards this by adopting as it stands the Law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Definition of Final Beneficiaries of Legal Entities and Public Figures." The new law establishes not only the duty of disclosure of information about people who have a decisive influence over the management or operation of the company by all legal entities, but also requires the opening of the State Register of Rights to Immovable Property and Their Encumbrances.

Thus, with the law's entry into force, any person or entity can obtain information on specific immovable property electronically through the State Registration Service's official website or through written submissions. However, only government representatives can at once obtain information on all registered rights of a certain person ("search by the subject of right").<sup>11</sup>

## **2.2. The guarantees of judicial protection of property rights**

Judicial protection of owners' rights from any undue interference is one of the most important tasks of the state. Analysis of the performance of the economic courts in the last two years shows that in the year of 2013 the trend to reduce the number of appeals to the economic courts with claims for protection of property right was interrupted. Instead, the tendency to reduce the number of full or partial satisfaction of claims of this category's cases remains.

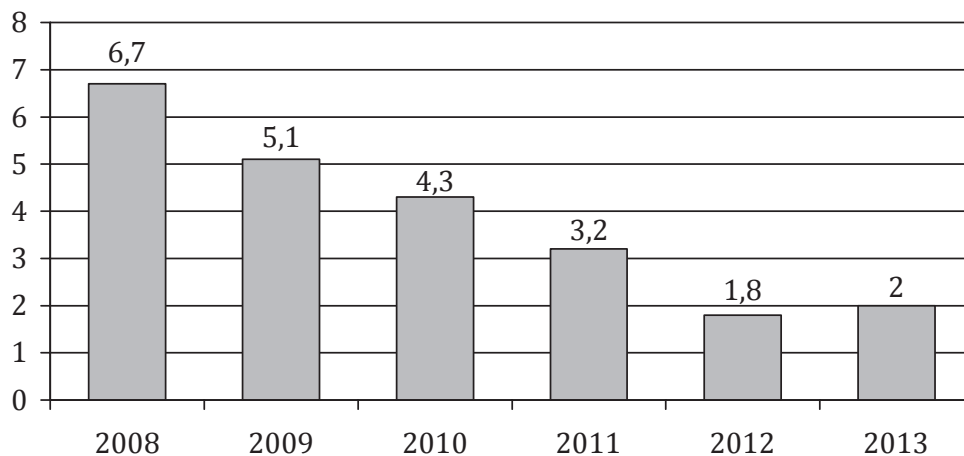
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<sup>9</sup> Opinion on the Draft Law of Ukraine "On Amendments to Article 1 of the Law of Ukraine "On the State Registration of Property Rights to Immovable Property and Their Restrictions" (Reg. No. 3895 as of 16.01.2014) <http://www.commerciallaw.com.ua/uk/lawvys/lawinua/322-vysnovok-shchodo-proektu-zakonu-ukrajiny-lpro-vnesennja-zmin-do-statti-1-zakonu-ukrajiny-qpro-derzhavnu-rejestraciju-rechovyh-prav-na-neruhome-majno-ta-jih-obmezenq-rejestr-3895-vid-16012014r>

<sup>10</sup> Decision of Chortkiv District Court of Ternopil region as of June 3, 2014 // Single State Register of Court Judgments <http://reyestr.court.gov.ua/Review/39049203>

<sup>11</sup> People's deputies opened the State Register of Immovable Property <http://www.medialaw.kiev.ua/news/media/2760/>

## X. PROPERTY RIGHT



*The dynamics of economic courts hearing cases related to the protection of property right (thous.)*

In 2013 economic courts heard 2000 cases related to property right. As a result of their proceedings only 49% of the claims were fully or partially satisfied (in 2012 — 64.6%, in 2011 — 71.8%).

The grounds for filing lawsuits in this category in 2013 were:

- The recognition of property rights (1200), of which 51.3%; were recognized as justified fully or partially;
- Recovery of property from other person's illegal possession (300), of which 52.2%; were recognized as justified fully or partially;
- Removal of obstacles to using property (300), of which 46.3%; were recognized as justified fully or partially.

It should be noted that the Ukrainian legislation provides a great number of means of property right protection. However, many of them are not clearly regulated, which leads to controversial issues and contradictions in their application, by the judiciary in particular.<sup>12</sup>

Also protection of property rights is complicated by the courts' violation of reasonable case review duration. An analysis of data provided by the courts shows that the main causes of violation of reasonable case review duration is the default of appearance of the parties and their representatives to the court hearings, and a long duration of the forensic examination. There is also an unfounded satisfaction of petitions submitted by the parties without adequate justification.<sup>13</sup>

<sup>12</sup> Judicial protection of property rights in economic relations [http://zib.com.ua/ua/99686-yak\\_zdiysnyuetsya\\_sudoviy\\_zahist\\_prava\\_vlasnosti\\_u\\_sferi\\_eko.html](http://zib.com.ua/ua/99686-yak_zdiysnyuetsya_sudoviy_zahist_prava_vlasnosti_u_sferi_eko.html)

<sup>13</sup> When a year is not enough [http://zib.com.ua/ua/print/71394-priznachennya\\_ekspertizi\\_ne\\_mozhe\\_stavati\\_privodom\\_dlya\\_proc.html](http://zib.com.ua/ua/print/71394-priznachennya_ekspertizi_ne_mozhe_stavati_privodom_dlya_proc.html)

*Civil litigation. Failure to meet reasonable deadlines for*

Region	Number of cases in the proceedings of local general courts for the period more than 1 year	Number of cases under consideration in appeals instances for the period of more than 4 months
AR Crimea	39	40
Vinnitsia region	215	8
Volyn region	15	8
Dnipropetrovsk region	1490	197
Donetsk region	113	0
Zhitomir region	387	31
Zakarpattia region	247	83
Zaporizhzhia region	266	49
Ivano-Frankivsk region	429	15
Kyiv region	172	24
Kirovohrad region	30	28
Luhansk region	562	15
Lviv region	1201	97
Mykolaiv region	134	9
Odessa region	1386	131
Poltava region	45	13
Rivne region	107	3
Sumy region	66	3
Ternopil region	34	2
Kharkiv region	560	77
Kherson region	9	15
Khmelnysky region	87	13
Cherkasy Region	189	33
Chernivtsi region	12	7
Kyiv	845	188
Sevastopol	148	21
<b>Collectively</b>	<b>8889</b>	<b>1129</b>

### 3. FAILURE TO COMPLY WITH PROPERTY PROTECTING COURT DECISIONS

Execution of a court decision is an integral part of the right to a fair trial, and the correct application by courts of procedural legislation relating to enforcement of court decisions is crucial in view of compliance in particular with the right to peaceful enjoyment of one's *property*.

At the same time, non-enforcement in Ukraine of court decisions that protect property has unfortunately become a national tradition. It is especially true for decisions by means of which the funds are collected from the state budget. The procedure of execution of judicial acts is usually delayed for years.

Compulsory execution of court decisions is carried out by the State Executive Service (SES), a central executive body, activities of which are ruled by the Ministry of Justice. The culture of submission to a court decision is in Ukraine rather low. Even government agencies and their officials appeal after loss of the case an obviously fair decision until the last resort and deviate strongly from its implementation<sup>14</sup>. Needless to say that most decisions on funds recovery, debtor's obligations to perform certain actions or refrain from their execution are carried out compulsory.

Given these factors, the average annual load on one such state enforcement officer is several thousand proceedings.

In one proceeding a state enforcement officer may produce a number of resolutions, direct payment demand to banks servicing the debtor, detect movable and immovable property, distraint and *withdraw it*, involve an estimator for its evaluation, transfer it for realization, conduct markdowns.

Salary of a state enforcement officer makes about 2 thousand UAH. Provided that, he may be processing enforcement proceedings for recovery of millionth, and at the Department of compulsory execution of judgements — billionth amounts of funds. Whether they will be recovered depends on the efficiency and conscience of this state enforcement officer.

The law "On Enforcement Proceedings" provides a state enforcement officer executive with discretionary powers, which are the basis for corruption. It suits neither business nor citizens who can not get the recovery, acknowledged to them by the court decision, during the years.

Recovery statistics shows that the work of the executive service agencies is extremely inefficient. Thus, in 2013, in the agencies of the State Executive Service were under proceeding more than 8 million cases for the amount of 440 billion UAH. The average percentage of recovery is only 4% or 20 billion UAH<sup>15</sup>.

It should be mentioned that the state as a debtor by the court decision behaves not better than a private debtor. Therefore, the number of complaints to the European Court of Human Rights concerning unsatisfied judgments is steadily growing.

Ukraine holds the third place in the number of applications under consideration of the European Court of Human Rights. As of 31 December 2013 at the European Court were 13, 284 applications filed against Ukraine, representing 13.3% of the total number of applications before the Court. The biggest number of applications against Ukraine, for which in 2013 decisions on the merits were made, deal with the systemic problem of non-fulfilment (prolonged non-enforcement of the national courts' decisions)<sup>16</sup>.

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<sup>14</sup> Sworn law enforcement officers for implementation of judgments:  
[http://www.epravda.com.ua/columns/2014/06/16/465344/view\\_print/](http://www.epravda.com.ua/columns/2014/06/16/465344/view_print/)

<sup>15</sup> Ibid.

<sup>16</sup> Ukraine holds the third place in the number of applications to the European Court of Human Rights:  
<http://dt.ua/UKRAINE/ukrayina-posidaye-tretye-misce-za-kilkisty-zayav-do-yespl-136815.html>

One of the examples of such case is the case “Industrialexport” JSC, in which at the moment of resolution by the European Court of its decision the state Ukraine did not fulfill its obligations to the applicant during 17 years — by the decision of the International Commercial Arbitration Court and 7 years — by the decision of the Kyiv Commercial Court. And the reason of their non-fulfilment the state structures name the lack of budget funds. This is a standard excuse in the process of implementation of court decisions, in which the debtor is the State.<sup>17</sup>

Another example is the case of S. H. Kyrychenko, in which the right to ownership of millions of hryvnia was violated and already for more than 10 years the decision of the Ukrainian court has not been executed. It should be noted here, that even the decision of the European Court of Human Rights in this case did not change the situation concerning the execution of this decision of the national court.<sup>18</sup>

Many cases in the European Court deal with the problem of non-fulfilment of the decisions of the Ukrainian courts regarding social cases related to the fact that the state does not fulfil its obligation to provide legal guarantees for social and economic rights.

To solve this problem, the Verkhovna Rada of Ukraine already on the 5<sup>th</sup> June, 2012 adopted the Law “On *State Guarantees on Court Decisions Enforcement*.” Later, on the 19<sup>th</sup> of September 2013, the Verkhovna Rada by means of the Law No. 583-VII supplemented the Section II “*Final and Transitional Provisions*” of this Law. But, as human rights defenders noted in the Annual reports “Human Rights in Ukraine”<sup>19</sup>, these government actions did not fundamentally solve the problem because they contained numerous flaws and did not consider important aspects of court decisions implementation.

On September 3d, 2014, the Cabinet of Ministers of Ukraine made the next attempt to change the situation for better. Yes, the Resolution approving the Procedure for repayment according to the decisions of the court, the implementation of which is guaranteed by the state, was adopted.

Minister of Justice of Ukraine P. Petrenko stated regarding this Resolution that the Government has taken a principle stand to make payments on all obligations under the court decisions. This refers to 2 million Ukrainians, who had the relevant rights to benefits and have received the relevant court decisions, which were not performed for many years.<sup>20</sup>

According to this Regulation, all citizens who have in hand court decisions, should address the SES bodies to be included to the appropriate register. “After the formation of the registers within the resources available in the state budget, we will pay people money, which they are entitled to receive by law,”- admitted the Minister of Justice of Ukraine.<sup>21</sup>

Despite some positive from this step and solution of some procedural problems, there are substantial doubts concerning the reality of implementation of these promises, so as the

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<sup>17</sup> Recovery through Strasbourg [http://zib.com.ua/ua/98916-yak\\_borotysya\\_z\\_nevikonannyam\\_sudovih\\_rishen\\_v\\_ukraini.html](http://zib.com.ua/ua/98916-yak_borotysya_z_nevikonannyam_sudovih_rishen_v_ukraini.html)

<sup>18</sup> Case of *S. H. Kyrychenko v. Ukraine* <http://www.ipu.ho.ua/>

<sup>19</sup> Annual reports “Human Rights in Ukraine” <http://helsinki.org.ua/index.php?r=1.4.1.10>

<sup>20</sup> Normalized non-fulfilment [http://zib.com.ua/ua/99261-pislya\\_zvirki\\_sudovih\\_rishen\\_uryad\\_rozrahuetsya\\_z\\_pilgovikam.html](http://zib.com.ua/ua/99261-pislya_zvirki_sudovih_rishen_uryad_rozrahuetsya_z_pilgovikam.html)

<sup>21</sup> Normalized non-fulfilment [http://zib.com.ua/ua/99261-pislya\\_zvirki\\_sudovih\\_rishen\\_uryad\\_rozrahuetsya\\_z\\_pilgovikam.html](http://zib.com.ua/ua/99261-pislya_zvirki_sudovih_rishen_uryad_rozrahuetsya_z_pilgovikam.html)

sufficient financial resources to be allocated for these purposes are yet not spelled out in the budget. And if this key problem will not be solved, then the court decisions will remain not executed and will for years be in the relevant register.

A significant negative result in respect of the enforcement of the right to peaceful enjoyment of your property is the presence in Ukraine of moratoria on recovery against property. Thus, the state has extended the moratorium on the bankruptcy proceedings of the fuel-and-energy sector companies, which that was introduced already 23.06.2005 for the period only until 31<sup>st</sup> of December 2006, but has been repeatedly renewed. Application of this moratorium prevents charge of debts of the insolvent debtor in bankruptcy proceedings, and instead, allows the general public on the basis of industry sector (“fuel and energy complex”), legally avoid paying debts on their obligations, paying taxes, distort competitive environment that adversely influenced the execution level of contracts in Ukraine, level of protection of the rights of creditors, impairs the investment attractiveness of the domestic economy and creates enormous corruption risks”<sup>22</sup>.

Each time earlier when a decision concerning the extension of the moratorium was taken by the Verkhovna Rada, MPs demanded that the government provided a list of these companies. And the government has never provided such list of the Verkhovna Rada. Therefore, the said moratorium worked in the shadowy and manual mode, so to speak, “for insiders.”

The existence of this and other moratoria set by the legislator — is one of the reasons of the low efficiency of recovery of debts of insolvent debtors. In the light of this, Ukraine has not got the awaited improvement of the indicator figures “Insolvency settlement” in the annual study by the World Bank “Doing Business 2014” (took with this indicator place number 162) and even worsened its position by 5 points (last year there was an increase of 1 point). The deterioration of the rating was due to decrease of the recoverability rate (cents on the dollar) — the amount of compensation to the creditor in 2014 is 8.2 (in 2013 — 8.7).<sup>23</sup>

## 4. ACTIVITIES OF AUTHORITIES REGARDING THE LIMITATION OF PROPERTY RIGHTS

### 4.1. Seizure of private property for public use

The problem of buying-out of land plots in private property for public use remains unsolved, and it is related to unclear notions defined in the Law “On *alienation of land and other items of immovable property located thereon, which are privately owned for public needs or social necessity*” and assessment of the property to be recovered.

Also in 2014 the problem of appropriation of property for military purposes gained special importance. Thus, a large number of companies in Ukraine faced with requirements to provide on demand of military commissariats cars on the basis of the

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<sup>22</sup> UBA supports rejection of moratorium on initiation of bankruptcy cases of the fuel-and-energy sector companies <http://www.uba.ua/ukr/news/2972/>

<sup>23</sup> UBA supports rejection of moratorium on initiation of bankruptcy cases of the fuel-and-energy sector companies <http://www.uba.ua/ukr/news/2972/>

law “On mobilization preparation and mobilization.” This law defines the obligations of the companies regarding the mobilization training and mobilization. In particular, companies are required to provide in the course of mobilization buildings, facilities, transportation and other supplies and logistical means to the Armed Forces of Ukraine and other military formations, Operational-rescue Service of civil protection in accordance with mobilization plans, followed by the compensation of their value in the legally prescribed manner.

But the order of compensation has not been approved. As for the order of execution of military-transport obligation, such procedure exists. Regulations on military-transport obligation were approved long ago by the Resolution of Cabinet of Ministers of Ukraine No. 1921 as of 28.12.2000. The Regulation is valid today and extends to enterprises of all types of property. Moreover, annex 1 to the Regulation defines basic requirements for vehicles intended for transfer to military formations in the period of mobilization and wartime. In what condition they must be returned to their owners, as well as the obligation to return them — is not defined by the Regulation. What documents must be issued for acceptance and transfer of vehicles, who is obliged to sign them — these are now the questions without answers.

The most striking fact is the fact that neither the Law nor the Regulation, nor other normative act does not define the state’s obligation to return the due to mobilization transferred property of private persons. If the state wants to return it, then it will return it. If not — sorry. But they did not forget about the responsibility, to which the article 210-1 of the Code of Ukraine on Administrative Offenses is dedicated.<sup>24</sup>

In fact, this situation shows the attitude of the state to respect of private property right and calls into question the validity of provisions relating to refund of the property seized for public use.

#### **4.2. Allocation of land plots for the intended purpose**

The existing administrative procedure for establishing and changing the purpose of land plots does not entitle the owner of a land plot freely use and dispose such plot to meet different needs and implement the guaranteed by the Constitution of Ukraine right to own land. Among the obstacles to the implementation of subjective land rights may be distinguished, first, the designated purpose of the plot, which is indicated in the document of title not in accordance with the categories of land, and according to its functional purpose, which is established by the Classification of kinds of designated purpose of land, legitimacy of which, to put it lightly, is doubtful.<sup>25</sup> Defined in this way designated purpose of the land plot significantly reduces the possibilities of the owner, placing him into the framework of the clearly defined, narrow purpose of use. Thus, for example, obtaining into ownership of a land plot for construction and maintenance of a residential building within the residential and public buildings land creates significant barriers to the owner to use it for commercial

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<sup>24</sup> Mobilization: to give or not to give? On provision (failure to provide) of cars on demand of a military commissariat <http://law-center.com.ua/ua/novyny/comments-ua/auto-mobilization-ua>

<sup>25</sup> On approval of the Classification of kinds of designated purpose of land: Decree of the *State Committee on Land Resources* as of July, 23, 2010 No. 548 // Official Journal of Ukraine. — 2010. — No. 85 (15.11.2010). — p. 3006.



purposes within the same category of land. In addition, the procedure of change of the designated purpose defined by the Land Code of Ukraine, suggests a complicated procedure, similar to the procedure for acquiring of the land ownership. In particular, similar to the procedure of obtaining of free land, recognized by the ch. 6–10 of the Art. 118 of the Land Code of Ukraine, the procedure of change the designated purpose involves development and approval of such project, taking the decision on its approval and, on this basis, production of the new document of title for the land plot, which limits the ability of the owner for free and mobile decision-taking concerning the procedure of the use of the land plot. The problem in this case is the mere fact of going through the cumbersome and time-consuming procedure in case of absence of the normative restrictions concerning the use of the land plot for different needs.<sup>26</sup>

### **4.3. Transfer of land plots to private ownership with violation of the norms of the Land Code of Ukraine**

Analyzing judicial practice, one should pay attention to judicial decisions, by means of which the state acts on the right of private ownership of a land plot is determined to be void due to receiving by the owners of such plots with violation of the norms of the applicable law.<sup>27</sup> Examples can be precedents of acknowledgement of the state acts for the right of ownership on land plots issued on the basis of illegal decisions of city councils (transfer of communal ownership land to private ownership) as invalid.<sup>28</sup> Similar situation occurred when according to the decision of the Kyiv City Council land, owned by territorial community of Kyiv, was given to private ownership. The project of the decision on transfer to the ownership of the land was not prepared by the Central Administration on Land Resources of the Kyiv City Council and was not directed to the Kyiv City Council for consideration, which indicates that the relevant decision was taken with violation of the by the Land Code of Ukraine established procedures. In 2014 the Court of Appeal in Kyiv declared the decision of the Kyiv City Council as illegal and recognized the right of ownership of the disputed land plot to belong to the territorial community Kyiv.<sup>29</sup> Unfortunately, the practice of transferring of land plots to private ownership with violation of the legally established requirements are very common nowadays. Moreover, not always the evidence of such violations is found out by authorized bodies and appealed in a judicial procedure. Sometimes even appealing to court does not guarantee protection of violated rights in the sphere of land legal arrangements, and the

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<sup>26</sup> *Kostiashkin I.* Legal support of social function during the allocation of land for the intended purpose [http://papers.univ.kiev.ua/jurydychni\\_nauky/articles/The\\_changing\\_nature\\_of\\_scientific\\_knowledge\\_under\\_the\\_influence\\_of\\_the\\_scientific\\_method\\_in\\_modern\\_19702.pdf](http://papers.univ.kiev.ua/jurydychni_nauky/articles/The_changing_nature_of_scientific_knowledge_under_the_influence_of_the_scientific_method_in_modern_19702.pdf)

<sup>27</sup> See “Forgery of the decision of the session on illegal transfer of land to private ownership” <http://golosukraine.com/publication/prigodi/za-i-poza-zakonom/32484-pidrobili-rishennya-sesiyi-pro-nezakonnu-peredachu/#.VEUbfmsWSo> “In the Carpathian National Nature Park was illegally privatized 1 hectare of land” <http://galka.if.ua/u-karpatskomu-natsionalnomu-prirodnomu-parku-nezakonno-privatizovali-1-gektar-zemli/>

<sup>28</sup> Decision of the Starosambirskyi district court of Lviv region as of July 29, 2014 // <http://reyestr.court.gov.ua/Review/40209797>

<sup>29</sup> Decision of the Kyiv Court of Appeal as of February 26, 2014 // <http://www.reyestr.court.gov.ua/Review/37370933>

parties can obtain legitimate solutions only after addressing a complaint to an appeals or cassation instance.

#### 4.4. Moratorium on sale of farmland

In 2014, the effect the moratorium on sale of agricultural land continued. In addition, in July of 2014 the working group of The *State Agency for Land Resources of Ukraine* voiced a proposal to ban the sale of agricultural land and determine the minimum lease term of the land at least 10 years. As the Chairman The *State Agency for Land Resources of Ukraine* admitted, “complete ban of the sale of agricultural land, legislative recognition of roads and legal mechanisms for further development of relationship of agricultural land-use and establishing of the minimum lease term for agricultural land will lay solid foundation for sustainable development of land relations”.<sup>30</sup>

However, it should be noted that the effect of the ban on alienation and change of the purpose of agricultural land limits the rights of land owners, which are guaranteed by the Constitution of Ukraine (Art. 41) and the Land Code of Ukraine (Ch. 1, Art. 90). Moreover, restriction or even loss of access by owners to use their land plots in many cases actually means depriving the owner of the greater part of the benefits that the exercise of the ownership right would bring him. Exactly this might occur, for example, when a person has only a small area of agricultural land area that is economically unviable to use for the intended purpose. The average size of land plot (share) in Ukraine is 4 hectares. At the same time, for example, according to the data of the scientists of the Institute of Agricultural Economics, the optimal size of, for example, farms of grain and grain-beet areas is defined at the level of 300–400 hectares, and if the size of the farm is 55 hectares of animal industry would be unprofitable there. One can argue about the certain size of the economically viable farm, but that this size is bigger than 4 ha is certain.

Similar situation will be in the case when a person because of his elderly age (the majority of owners of land plots (shares) are pensioners) is incapable of handling agricultural land by himself. In such cases, the prohibition to sell a plot of land means that the owner cannot get a normal economic effect from his property — the land plot. We should point out that under the current conditions the lease of the land plot cannot compensate for losses from the inability to sell the land, because rent rates are scanty. For example, according to official data of the State Committee on Land Resources of Ukraine, during the first quarter of 2009 were concluded 4559.3 thousand agreements for lease of a land plot (share), majority of which — 3099.6 thousand (68%) with the amount of lease payments from 1.5% to 3%.

Let's compare the number 1.5–3.0% with the banks' interest rates on term deposits of individuals: according to the Agency “Thomson Reuters” (used by the National Bank of Ukraine), for deposits in national currency for one year as of 16.06.2012 they constitute 16.61 % (of course, for the time the moratorium there were twice as high rates). The main reason for the meager rates for the lease of agricultural land is precisely the

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<sup>30</sup> The *State Agency for Land Resources of Ukraine* proposes to ban the sale of farmland forever // <http://www.5.ua/ukrajina/ekonomika/item/388660-derzhzemahentstvo-proponuie-nazavzhdy-zaboro-nyty-prodazh-zemel-silskohospodarskoho-pryznachennia>

moratorium on alienation of agricultural land. Thus, the establishing of the moratorium resulted in causing to owners of agricultural land considerable material damage, which, in principle, is possible to calculate and prove. But, the most important thing is still that the moratorium dilutes the very essence of ownership right, allowing not alone the disposal of, but generally getting a normal economic effect from a land plot (land part (share)).<sup>31</sup>

Despite the fact that the moratorium was introduced with the aim of consolidation of agricultural lands in the hands of their owners and thus guarantee the use of this category of land only for the intended purpose, but de facto the moratorium contributed to the prosperity of various schemes of its bypass, shadowing of land market. It should be noted that in 80% of the cases the participants of the farmland market bypass the moratorium by means of entirely legal methods that can be traced from the analysis of the land laws. In particular, today there exist such ways of alienation of agricultural land as inheritance, exchange, withdrawal for public use, land plot lease agreement, power of attorney, perpetual lease agreement, mortgage, sale of a land plot in parts.<sup>32</sup>

Consequently, for today the effect of the moratorium on alienation of agricultural land is virtually meaningless, since such prohibition usually only harms the land and land shares owners and also holds back the development of the agricultural sector in general.<sup>33</sup>

## 5. RECOMMENDATIONS

1. Create a transparent and efficient system of state registration of *immovable property rights*.

2. Improve the protection of rights of landowners, create mechanisms for combating forced seizure of these lands, adopt acts of legislation for regulation of the fundamental aspects of land market.

3. Ensure existence of effective judicial protection of landowners rights and, in particular, implement measures to solve the problem of non-fulfilment of the national courts decisions concerning property protection, including improvement of judicial control over the execution of court decisions, as well as stop the moratoria regarding the forced sale of state enterprises assets. Moreover, to ensure the quickest possible implementation of the regulations of the Law of Ukraine "On State Guarantees on Court Decisions Enforcement" and allocation of sufficient financial resources for its implementation.

4. Improve the system of monitoring of compliance with the law during the procedure of privatization of land plots and foster the transparency of such procedures.

5. Gradually dismiss the moratorium on alienation and change of purposive appointment of agricultural plots of land. Promote the adoption of the Law "On the Land Market."

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<sup>31</sup> Moratorium — no! <http://www.amm.org.ua/moratoriyuni>

<sup>32</sup> Seven ways to buy land legally <http://www.interlegal.com.ua/corporate/?p=1204>

<sup>33</sup> Moratorium — no! <http://www.amm.org.ua/moratoriyuni>

6. Improve the mechanism for change of the purpose of land plots and establish clear criteria for definition of possibilities or restrictions of use of a land plot.

7. Promote transparency and simplification of procedures for housing construction, and ensure the rights of investors in this sphere.

8. Regulate the problem of land and houses appropriation according to social necessity in strict accordance with the Constitution and international commitments assumed by Ukraine.

9. Take steps to prevent violations of property rights on the part of the Internal Affairs Agencies.

10. Improve the procedure of compensation in respect of property provided by the Armed Forces of Ukraine during mobilization.

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# XI. SOCIO-ECONOMIC RIGHTS<sup>1</sup>

## 1. GENERAL OVERVIEW

2014 is surely one of the most difficult years of independence for Ukraine and citizens. The situation with observance of human rights, including social security is extremely difficult in conditions of revolutionary changes and war in the East.

Given this situation, the problem of poverty just got a new urgency and unfortunately, the government was not ready to accept new challenges. The government “freezed” the sizes of the minimum standards in 2014, increasing of prices led to further impoverishment of the population. In addition the incomes difference of rich and poor people remain deepening.

It should be noted that the cost of living as a base parameter of the whole social security system hasn't been reflecting the actual minimum human needs for many years, since it ignores many costs vital for a human, based on a set of food, non-food goods and services, having long been long obsoleted. In addition, to determine the size of certain types of social security, the rate for guaranteeing the minimum subsistence level continues to be applied, reflects the inability of the state to perform even less than the minimum standard of living.

Despite some efforts by the State this year arised significant problems with social protection of internally displaced persons, as well as military personnel and other persons involved in the ATO. In legislative manner the substantial changes which would affect the social security condition, did not happen, although the reforming of social security remains a highly actual issue.

There are also no special progresses in ensuring of housing access. It is clear that the main focus of the state is aimed this year to solving the housing problems of settlers and soldiers. At the same time there is no saying that the state actions in this area are effective, especially there is no to say about any system changes to ensure the right to affordable housing.

Also the significant changes have not occurred as to problem of effectiveness of pension system, causing the negative aspects of the pension reform, which felt the majority of the citizens, continue existing. It is obvious that the government hasn't solved some systemic problems in this area, since its main task was trivial ensuring the payment of pensions.

Among the positive changes it can be specified only the adoption of a long-awaited law on ensuring food quality, though it is half-measures, as it has no developed mechanisms of applying and does not provide for measures to ensure water quality.

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<sup>1</sup> Prepared by M. Shcherbatyuk (UHHRU)

## 2. RIGHT TO ADEQUATE STANDARD OF LIVING

### 2.1. Assurance of the right to adequate standard of living

Pace of developments in the financial and economic sphere of Ukraine in 2014 does not give causes for optimism, because the depreciation of the hryvnia, increasing of fuel prices and cost of defense create conditions for growth of needs scales among socially disadvantaged groups.

Despite the fact that the income of 60% of the population remain stable, over the past 5 years the feeling of poverty among the population have been increased from 53 to 65%<sup>2</sup>. In particular, for the period of 9 months of 2013, about half of the poor population has been living in extreme poverty (47.0%), so there are total equivalent expenses below 938 hryvnia per a person per month. The coefficient of poverty depth criterion was 21.9%, in absolute (criterion of the minimum subsistence level) — 20.9% with using of related costs and 18.3% — with incomes<sup>3</sup> using.

The main reasons for poverty growth in Ukraine are in particular growth of unemployment level, low salary and pension level, wage and social benefits arrears, the lack of a developed system of risk life insurance and targeted social assistance. It should be noted also the increase of inequality in redistribution of wealth between different social groups. Thus, according to the magazine «Forbes», in the rating of billionaires in 2014 taken the lead 9 Ukrainian, their income estimated at 26,6 billion Dollars<sup>4</sup>. In turn, the constant and unlimited enrichment of a very narrow segment of society is inevitably reflected on the deterioration of the financial situation of general population<sup>5</sup>.

Since 2011 in Ukraine has been realizing the State targeted social program of poverty reduction and prevention in the period up to 2015. The program aims to reduce the number of poor people among various social groups by means of: promoting employment and labor market development; improvement of mechanism of wages and social dialogue as a major factor for enabling decent work; development of social insurance system; improvement of pension system; reforming of social security system and all that<sup>6</sup>. However, due to the extremely poor performance of the tasks provided by the Program, the level of poverty in Ukraine remains quite a serious and urgent problem.

It should be paid also attention to the issue of compliance with minimum social standards in the field of personal income. The basic state standards in the field of population income is a living wage, which is calculated such social protection on, as minimum wage; minimum pension according to age with monetary support; minimum size of unemployment benefits;

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<sup>2</sup> Unemployment level in Europa is great heiber, as in Ukraine — Expert <http://portal.lviv.ua/news/2014/04/28/161828.html>

<sup>3</sup> Monitoring of situation in social sphere in Ukraine of April 2014 [http://cpsr.org.ua/index.php?option=com\\_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24](http://cpsr.org.ua/index.php?option=com_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24)

<sup>4</sup> 9 Ukrainians entered the rating of billionaires 2014 <http://forbes.ua/ua/business/1366517-9-ukrayinciv-uvijshli-do-rejtingu-milyarderiv-2014>

<sup>5</sup> Some improvement problems of social protection system in Ukraine [http://eprints.oa.edu.ua/1580/1/topishkonp8\\_17012013.pdf](http://eprints.oa.edu.ua/1580/1/topishkonp8_17012013.pdf)

<sup>6</sup> The state target social program of poverty reduction and prevention in the period of 2015// <http://zakon2.rada.gov.ua/laws/show/1057-2011-%D0%BF>

child care allowance for children aged under 3 years; funeral grant and all that. In 2014 the cost of living was set below the actual size of the subsistence minimum in December 2013. Also the size of minimum wage has been left at the level of even lower than the actual size of it in 2013 that allows us to call 2014 the year of extreme savings.

Despite that minimum wages is the state social guarantee, its legally defined level is insufficient to provide extended labor reactivation, since it does not take into account the family (the cost for the care and raising children) and tax components (contributions for obligatory state social insurance and tax on income of physical persons)<sup>7</sup>. The minimum wage since the 1<sup>st</sup> of January 2014 is set at 1218 hryvnia, what makes 38.7% of the average wage for the previous year (3148 hryvnia), and in dollars USA (\$1/7.99 hryvnia), allowed to spend on average almost \$4.9 per day per one person in January (threshold amount — \$5.0 dollars USA by purchasing power parity per day).

The trades unions insist that the minimum wage size should not be less than 45% of the average for the previous period (3265 UAH in 2013), that is — 1470 UAH. The International Labour Organization and members of the European Parliament believe that it should not be less than 60% of the average wage.

Also in Ukraine it continues to be used not even the cost of living to calculate many social benefits, and the rate of guaranteed living wage, which is only a certain part of a minimum guarantee. Thus, for the employable persons it makes 21%, and for children — 85% of the subsistence minimum. Use of this indicator shows the state failure to provide even the minimum level of legal guarantees of social and economic rights.

We should also dwell on the question of war in Donbas. In conditions of permanent warfare on the large territory of Donbass millions of citizens were cut off from the state aid. The citizens of occupied territories in Luhansk and Donetsk regions have been remaining without salaries and pensions in terms of people killing, destruction of buildings and infrastructure, stop of industrial enterprises, paralysis of government during the last half a year. Objective obstacles in the implementation of social security in time of war resulted in conditions of a humanitarian catastrophe in eastern regions.

The occupation of the Crimea by the Russian Federation and the war in Donbass led to the large number of internally displaced persons. As of October 2014 the United Nations gives a figure of more than 400,000 forced internally displaced persons in Ukraine. This is only the official data, the real number of internally displaced persons is unknown, but clearly exceeds the said value many times. A great number of immigrants require the implementation of a set of measures by the state — provision of housing, certain payments, provision of job vacancies, places in kindergartens and schools and the like. The rapid pace of developments showed that the state was not prepared for such a script. The migrants are actually forced to solve their problems on their own. Even in those matters where the state requires a basic assistance, the displaced people face the notorious bureaucracy. That is the state does not only help its citizens being the victims of war, and often simply defeat in the way. This situation is simply a flagrant violation of human rights in Ukraine and once again demonstrates the urgent need to reform the social security system.

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<sup>7</sup> Social justice assurance <http://www.psv.org.ua/arts/Spetcvipusk/view-1443.html>

## 2.2. Quality and food safety assurance

One of the main problems in the field of quality and food safety assurance is the lack of an effective system of food security, which would control a product from a supplier of raw products to the sale place of finished product.

In Ukraine for the control of food safety are responsible four bodies: — The Ministry of Health of Ukraine (State Sanitary and Epidemiological Service of Ukraine); — Ministry of Agrarian Policy and Food (State Veterinary and Phytosanitary Service of Ukraine); — Ministry of Economic Development (State Inspection of Consumer Rights Protection of Ukraine); — Ministry of Environment (State Environmental Inspection).

At the same time any of the above mentioned bodies does not totally guarantee the safety of the product, since they are controlling only certain fields of production without providing the control in whole section “from field to table”.

Now Ukrainian enterprises have only two control points. The first is checking of raw material according to the indicators provided by the state. The second is checking of finished product before sending it for sale. In production there is no control<sup>8</sup>.

One of the problem examples related to food quality can be given the situation with import of fish products in Ukraine. What we buy and consume as fish can contain toxic substances, outdated drugs, and harmful artificial colourants of red colors (E102, E121, E124, E129). For example a herring can be colored as a salmon indicating on the package natural dyes (curcumin or red beet), but used synthetic<sup>9</sup>.

The signing of the Association Agreement with the EU has set the task before the state to change the situation in the sphere of state control over the food quality and safety. An important step in this direction was adoption of the Law on the Safety and Quality of Food Products in July 2014, which provides for introduction of Hazard Analysis and Critical Control Points System for controlling the critical points in the production for food security. It allows prevention of health hazardous product manufacture throughout the production process.

The law provides for clarification of terminology, clarifying types of offenses and adequateness of measure of punishment, formation of single supervisory authority in the field of food safety, cancel of approval documents and procedures that are not available in the European Union, implementation of European control mechanism of GMO, in particular with regard to the registration of GMO sources, and not the products derived from them.

It should be noted that other important changes in legislation aimed at improving the quality control and food safety. In particular, those reflected in:

- Draft Law on animal identification (“On Amendments to Certain Legislative Acts of Ukraine concerning the identification and registration of animals”);
- Draft Law on state control in the field of food safety (“On state control in the field of safety and quality of food and feed, animal welfare”);
- Draft Law “On food”;
- Draft Law on by-products of animal origin (“On the by-products of animal origin unappropriated for human consumption”)<sup>10</sup>.

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<sup>8</sup> Safety food <http://www.euointegration.com.ua/files/4/e/4e344a6-ec-harchi-pr2.pdf>

<sup>9</sup> On our tables can be qualitative and not expensive fish <http://www.golos.com.ua/Article.aspx?id=357289>

<sup>10</sup> It is offered to adopt 5 laws in Ukraine that will make products safety <http://4vlada.com/ukraine/36086>



In addition, we must understand that to make the necessary legislative changes — this is only a particular important step, but more importantly is the implementation of the provisions of the law in practice.

### 2.3. Assurance of adequate water quality

Analysis of studies of water quality in many areas of Ukraine indicates a deterioration of water compared to previous years. The percentage of chemical indicators exceedence is increasing every year.

*Thus, in accordance with the Program of State of Surface Water Monitoring the laboratory of water and soil monitoring of the Lviv hydrogeological-reclamation expedition conducted in 2014 the control of surface water quality in the 17 observation points, 11 water bodies in Lviv region. Based on these results, it was found that the water quality of the rivers of Lviv region does not conform to waters fishery, except one river, what is invariably associated with using of water resources for the creation of survival facilities.*

The problems with the quality and safety of water resources in Ukraine are confirmed also by other studies held by the Central Geophysical Observatory<sup>11</sup>, Kyiv Sanitary and Epidemiological Station<sup>12</sup>, the State Water Resources Agency of Ukraine “Zhytomyr Regional management of water resources”<sup>13</sup> and the Dnieper basin authority of water resources<sup>14</sup>. Violations of water quality were found by procuracy of Volovets district, which conducted the control in Svalyava Interdistrict Office of the Head Office of the State Sanitary and Epidemiological Station in Zakarpattia region<sup>15</sup>

The general condition of the surface water resources in a region is adversely affected by a number of factors: discharge into water bodies untreated and inadequately treated wastewater utilities, agriculture and industry, pollution of surface waters by mining enterprises, unsystematic and uncontrolled use of chemicals in agriculture, lack of water protection zones and coastal strips on water bodies failure to comply with sanitary conditions of rural households and disorder of municipal landfills in settlements<sup>16</sup>.

It should be noted that the legislation of Ukraine has 54 State Standards DSTU and 27 GOST, which are directly or indirectly related to the quality of drinking water. However,

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<sup>11</sup> About environmental pollution in Kiev and Kiev region in September 2014 [http://cgo.org.ua/index.php?fn=k\\_zabrud&f=kyiv&p=1](http://cgo.org.ua/index.php?fn=k_zabrud&f=kyiv&p=1)

<sup>12</sup> It is forbidden swimming in all beaches in Kiev // <http://kiev-ukr.segodnya.ua/kpeople/v-kieve-iz-za-gryaznoy-vody-zapretili-kupanie-na-vseh-plyazhah-543577.html>

<sup>13</sup> Water quality in Novgorod-Volynskiy got better, but is not yet «normal» // <http://zhitomir-online.com/2014/10/17/yakist-vody-v-novogradi-volynskomu-pokraschylasya-ale-sche-ne-normalna.html>

<sup>14</sup> <http://dbuwr.com.ua/upravlinnya-vodnimi-resursami/monitoring-yakosti-vodi/685-stan-vod-protyagom-grudnya-2013-r-sichnya-2014-r.html>

<sup>15</sup> In Volovechchyna prosecution office demands to remove infringements of sanitation norms in the area of potable water and water supply //

<http://transkarpatia.net/transcarpathia/social/36519-na-volovechchin-prokuratura-vimagaye-usunuti-porushennya-santarnih-norm-u-sfer-pitnoyi-vodi-ta-pitnogo-vodopostachannya.html>

<sup>16</sup> Monitoring <http://oblwodgosp.gov.ua/monitoring-0>

these standards do not meet the requirements in force in the European Union, in particular, Council Directive 98/83 / EC “On the quality of water intended for human consumption.” Now checking the quality of drinking water in Ukraine is carried out on 28 indicators. At the same time there are over a hundred indicators in the European Union<sup>17</sup>.

That is why there are some priorities directions of activities among the state environmental, health and economic bodies: the creation of conditions for stimulation of introduction of low-water and water-saving technologies; strengthening of management support efforts of entrepreneurs to establish domestic water purification equipment, speeding up the process of renovation, improvement, replacement of equipment in utilities; increasing of control over the discharge of polluted waters and viewing of sanctions for violation of sanitary legislation; revision of the regulatory requirements for wastewater discharges; increasing control over the use of herbicides by business entities in agriculture. For the organization of planning, financing and control over all activities related to improving the quality of drinking water, it is proposed to appoint a chief coordinator with significant powers. Only providing a clear organization, financing and strict public control over water use can achieve significant improvements in the preservation of quality of water resources, and consequently the health of the people<sup>18</sup>.

#### **2.4. Assurance of The right to adequate housing**

The International treaties which Ukraine joined determine the basic standards of the right to adequate housing. The right to adequate housing is a part of the right to an adequate standard of living, and includes the following rights and freedoms: protection against forced eviction and unauthorized damage or destruction of a person’s home; the right to be free from unwarranted intrusion into the home, private and family life; the right to choose the place of residence, to determine where a person want live and freedom of movement; security of residence; restitution of housing, land and property; equal and non-discriminatory access to adequate housing; participation in decision-making on issues related to housing at the national and local levels; the right to housing that meets the minimum criteria of sufficiency (security of residence, availability of services, materials, facilities and infrastructure, affordability, availability of housing accommodation, physical accessibility, location, value in terms of culture).

The problem of affordable housing is an important issue in Ukraine, as a great number of people can not buy a house because of too high prices. Thus, the average salary in Ukraine as of September 2014 was 3481 UAH<sup>19</sup> (about 267.7 dollars USA), the average price per 1 sq. m. of living area not in the central areas of cities of Ukraine as of October 2014 is 883.64 dollars USA (about 11,487 UAH<sup>20</sup>). To purchase a one-room apartment, for example, 40 square meters not in the center of city at the average price, a person needs to raise about 35

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<sup>17</sup> How do we know, what we are drinking?  
[http://life.pravda.com.ua/columns/2014/08/17/177910/view\\_print/](http://life.pravda.com.ua/columns/2014/08/17/177910/view_print/)

<sup>18</sup> Water quality in Ukraine — one of causes of malignant neoplasms <http://uapress.info/ru/news/show/4155>

<sup>19</sup> State Statistics Committee data <http://www.ukrstat.gov.ua/>

<sup>20</sup> [http://www.numbeo.com/cost-of-living/country\\_result.jsp?country=Ukraine](http://www.numbeo.com/cost-of-living/country_result.jsp?country=Ukraine)

345.6 dollars USA. If you count, it turns out that in 11 years people can save money for an apartment, if he set aside all his salary.

Following the procedure of UN-Habitat was introduced the formula for calculating of housing affordability index<sup>21</sup>. In Ukraine it makes 16.72<sup>22</sup>. This index reflects the ratio of the median price of a residential unit (this is the price, which is 50% lower itself, and 50% higher for itself) with a median of annual income of the family. Namely, what number of years a family will be able to save money for an apartment, if it set aside all of its income for its purchase. Index 16.72 is certainly not consistent with the concept of affordable housing in Ukraine. Last year it was 15.52<sup>23</sup>. In the United States it is 2.41, Sweden — 9.62, Netherlands — 6.54, Poland — 11.05.

Of course, housing affordability depends on economic factors. At the same time the government should take measures aimed at establishing the prices affordable for people, promotion for housing affordability, homelessness prevention and its reduction. Article 47 of the Constitution of Ukraine also states:

“The State shall create conditions under which every citizen will have the opportunity to build housing, buy it into acquisition, or to rent.”

The general condition of the surface water resources in the region is adversely affected by a number of factors: discharge into water bodies untreated and inadequately treated wastewater utilities, agriculture and industry, pollution of surface waters by mining enterprises, unsystematic and uncontrolled use of chemicals in agriculture, lack of water protection zones and coastal strips on water bodies, nonobservance of sanitary conditions of rural households and disorder of municipal landfills in the settlements.

With regard to public housing programs, there are the following options to purchase housing at the moment:

1. Receipt of soft loan for building or purchase of housing is settled by the Law of Ukraine “On the promotion of the social becoming and development of young people” in 2013. The soft loan is granted at the rate of 21 square meters per a person in the family, but the loan amount is calculated based on the laid-down cost of a square meter according to the data of the State Committee for Construction. As of October 2014, for example, this amount was 5042 in hryvnia, and as we have previously established, the average cost of a square meter of an apartment at the market — 11,487 hryvnia. Thus, provided loan can cover only less half of the total value of property or the cost of its building.

Disappointing fact is that the soft loan program is almost not available<sup>24</sup> at the moment, as in I half of 2014 due to the difficult economic situation in the country the allocations were directed only to cover the unpaid financial obligations under the contracts for soft loans provision have been signed in 2013, and partial loan interest rate compensation of commercial banks.

2. The program of cost reducing of mortgage loans is approved by the Cabinet of Ministers of Ukraine No. 343 from 25.04.2012. It provides assistance from the state in form of payment

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<sup>21</sup> [http://ww2.unhabitat.org/programmes/guo/guo\\_guide.asp#ind3](http://ww2.unhabitat.org/programmes/guo/guo_guide.asp#ind3)

<sup>22</sup> [http://www.numbeo.com/property-investment/rankings\\_by\\_country.jsp](http://www.numbeo.com/property-investment/rankings_by_country.jsp)

<sup>23</sup> [http://www.numbeo.com/property-investment/rankings\\_by\\_country.jsp?title=2013](http://www.numbeo.com/property-investment/rankings_by_country.jsp?title=2013)

<sup>24</sup> Financing of subsidized housing for young people is hindering through the lack of funds of the state <http://www.ac-rada.gov.ua/control/main/uk/publish/article/16744255>

for major part of the bank loan for construction or purchase of housing. Thus, a citizen has to pay only 3 per cent per annum, the rest compensates the state. For this program in 2014 it was allocated 340 million UAH that exceeds on 40 million last year. It should be noted that the program is not very popular, because the banks set their own rules for loan repayment. The problem for the citizens remains the inability to repay the amount within the time specified by the bank, or the lack of funds at all.

3. The state program "Affordable Housing" has been suspended in April 2014 because of termination of funding<sup>25</sup>, which provides payment of 30 percent of the normative square cost of affordable housing by the state, and a citizen contributes to your current account opened in an authorized bank the funds in the amount of 70 percent of the construction cost (purchase) of affordable housing.

Thus, only program of cost reducing of mortgage loans is only available. However, in 2014 it has been used only by 170 families<sup>26</sup>. In such a manner a little number of people succeeded to get from the state any assistance for housing purchase this year.

The Constitution states: "Citizens being in need of social protection provided for housing by the state and local governments free of charge or for a reasonable fee for them in accordance with the law." At present the waiting list for free housing contains approximately 808,000 families and singles<sup>27</sup>. Last year 6,000 families received new housing. If we assume that each year 6,000 apartments will be issued, the last in the list would get a flat in about 134 years.

The same situation is with the housing provision for the citizens being victims of the Chernobyl disaster. Among such people were 19,580 people<sup>28</sup> in line for an apartment as of January 2014. 12,625 of them have been waiting in line 10 or more years. In 2013 only 344 obtained a flat from almost 20 000. The Accounting Chamber acknowledged that the current system of housing providing for citizens being victims of the Chernobyl disaster is inefficient<sup>29</sup>, including the lack of the target program and proper regulation of a question of defining the circle of persons entitled to an extraordinary provision of housing as the members of Chernobyl family led to the fact that their number is not reducing.

A significant number of Ukrainian citizens rent housing because they can not afford to buy it in the property. The right of availability to rent housing is constitutional. The average rent price of one-room apartment in the center of a city in Ukraine as of November 2014 is 257.07 dollars USA<sup>30</sup>. This is about 3342 UAH, while the average salary of the citizens is 3481 UAH in Ukraine. It is obvious that a citizen with average salary can not rent an apartment on his own, not to mention the life level in case of renting a flat by him.

If we talk about such violations as illegal evictions, there are the most cases of eviction children in Ukraine in 2014. So, in a family that had been deprived of parental rights, the

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<sup>25</sup> The programmes of affordable housing «70/30» cut off funding in Ukraine <http://economics.unian.net/realstate/903806-v-ukraine-prekratili-finansirovanie-programmyi-dostupnogo-jilya-70-30.html>

<sup>26</sup> <http://www.molod-kredit.gov.ua/cms/zdeshevlennya-ipoteki/statistika-zi.html>

<sup>27</sup> [http://ukrstat.org/operativ/operativ2007/zf/zf\\_r/2006\\_r.htm](http://ukrstat.org/operativ/operativ2007/zf/zf_r/2006_r.htm)

<sup>28</sup> [http://ukrstat.org/uk/druk/publicat/kat\\_u/publposl\\_u.htm](http://ukrstat.org/uk/druk/publicat/kat_u/publposl_u.htm)

<sup>29</sup> The problems in the system of housing assurance of Chernobyl victims has been remainig <http://www.ac-rada.gov.ua/control/main/uk/publish/article/16743232>

<sup>30</sup> [http://www.numbeo.com/cost-of-living/country\\_result.jsp?country=Ukraine](http://www.numbeo.com/cost-of-living/country_result.jsp?country=Ukraine)

parents were illegally trying to sell a house in which their children<sup>31</sup> were registered. In another family mother has written out a daughter from her apartment<sup>32</sup>, deliberately concealing the fact of termination of parental rights. Actually, these violations have been made by other individuals, not the state, and in both cases the prosecutor's office thrown weight behind the children.

With regard to violations of the right to adequate housing by the state, that is, its own structures, so a number of violations of children's rights in housing sphere was detected in Rivne<sup>33</sup>, which were committed by parents, surrogate parents, guardianship authorities, heads of boarding schools due to improper execution of their responsibilities to monitor the property safety, which belongs to the children and timely registration of inheritance. In Kharkov have been illegally issued certificates<sup>34</sup> of ownership for an apartment, which are living two families with little children according to the warrant in. At this moment are in progress the legal proceedings on the claim of one of the families on the recognition of property rights to third parties on housing invalid.

Fairly widespread fact was eviction due to inability to pay the debts on loan to the bank, especially of families with small children or large families. An example is the number of families in Rivne region and in Cherkassy<sup>35 36 37 38</sup>. To protect such families which have no effective access to another property, usually become community activists and others who do not represent the state.

A significant obstacle for solving the problem of affordable housing assurance is the rapid aging of housing and this is due to objective reasons — speed of construction of a new housing dramatically slowed, capital expenditures from the state budget for repair and reconstruction of housing repeatedly decreased. Reconstruction and repair volumes constitute only 30% of needs<sup>39</sup>. Unfortunately, today you can find single cases of violations of the right to affordable housing, they occur by exceeding the time for construction of residential buildings, as well as in cases when such buildings will not put into operation at all. For example, a similar situation was described in the judgment of the district court Darnitsky in Kiev. The plaintiff have concluded the contract with a construction company, mortgage center and the State Fund for Youth Housing Assistance and partially paid the cost of future apartment, however, despite the parties' agreement on the estimated date of

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<sup>31</sup> Parents were illegally trying to sell a flat in the center of a city, in which their two little children were registered //

[http://kievlast.com.ua/news/roditeli\\_hoteli\\_lishit\\_dvuh\\_maloletnih\\_detej\\_kvartiri\\_v\\_centre\\_stolici.html](http://kievlast.com.ua/news/roditeli_hoteli_lishit_dvuh_maloletnih_detej_kvartiri_v_centre_stolici.html)

<sup>32</sup> Mother has written out a daughter from her apartment <http://www.objectiv.tv/160914/103299.html>

<sup>33</sup> Abuse of housing rights of children was detected in Rivne <http://charivne.info/news/U-Rivnomu-viyavleno-porushennya-zhitlovikh-prav-ditey>

<sup>34</sup> Two families with two little children have been illegally evicting from the flat in Kharkiv <http://atn.ua/obshchestvo/v-harkove-dve-semi-s-maloletnimi-detmi-nezakonno-vyselyayut-iz-kvartir>

<sup>35</sup> Community activists in Rivne didn't allow once again to expel the Naumchuks due to failure to pay the currency credit by them <http://4vlada.com/photonews/1028>

<sup>36</sup> Bank intends to leave dishouse a little child in Rivne <http://vse.rv.ua/news/1401953773-u-rivnomu-bank-hoche-zalishiti-bez-dahu-malolitnyu-ditinu.html>

<sup>37</sup> Family of 7 persons can be dishouse in Rivne <http://rtb.rv.ua/company/tele/video/6168/>

<sup>38</sup> Family with 3 little children have been evicting from their own flat (foto, video) <http://kropyva.ck.ua/content/s-myu-z-troma-nepovnoletni-mi-d-tmi-viselyayut-z-vlasno-dom-vki-foto-v-deo>

<sup>39</sup> Legal aspects of solving of housing problem in Ukraine [http://www.zgia.zp.ua/gazeta/VISNIK\\_34\\_14.pdf](http://www.zgia.zp.ua/gazeta/VISNIK_34_14.pdf)

setting the construction object into operation in the III quarter of 2011, the object was not put into operation even in 2014<sup>40</sup>.

### **3. RIGHT TO SOCIAL PROTECTION**

#### **3.1. The system of social protection and security**

Among the main problems in the field of social protection of Ukrainian population it can be said the following questions require immediate solutions:

- Extremely rapid cost growth of services, including those that provide health care, education, culture, does not match their quality;
- Ineffectiveness of budget management of available financial resources as the main managers and individual social institutions;
- “Manual” management of government the social security sizes, establishing the size of these payments depending on the financial capacity of the state;
- Lack of funds for financing activities in the field of social protection.

To solve these and other issues at the national level the state should ensure the implementation of active measures such as social assistance, which is to help people being in a difficult situations to be saved from poverty and not to be left behind society. In turn, passive measures are also important that provide social insurance, treatment and prevention of disease, increasing levels of education and skills, which are aimed at preventing situations that threaten human well-being.

In general, social protection and social security are the most expenditure category of the State Budget of Ukraine, the volume aheads of health, education and economic activity costs. During 2009–2011 the amount of annual expenditure on social protection and social security averaged 61456,37 mil. UAH or 28.6% of the total expenditures of the State Budget of Ukraine. When carrying out the analysis of expenditure on social protection and social security of the state budget in absolute terms we can observe its growth. The volume of expenditures of the State Budget of Ukraine on social protection was 63540,2 mil.UAH that is greater by 12022,6 mil.UAH compared with 2009, but less on 5771,17 mil.UAH than in 2010. However, despite the considerable amount of social expenditures, the quality of social services and other social protection measures in Ukraine has been still remainig relatively low compared with other countries<sup>41</sup>. Social needs of the most vulnerable groups are not being met adequately, since the size of social benefits in 2014 can not be considered as sufficient to ensure those needs<sup>42</sup>.

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<sup>40</sup> Legal decision of Darnytsia District Court in Kiev from the 8th of July, 2014 // The State Adjudication Record <http://reyestr.court.gov.ua/Review/39775556>

<sup>41</sup> Present state and developing problem of social protection system of population in Ukraine <http://webcache.googleusercontent.com/search?q=cache:eFsEocOIYLkJ:mino.esrae.ru/pdf/2012/1%2520Sp/690.doc+&cd=3&hl=uk&ct=clnk&gl=ua>

<sup>42</sup> In accordance with the Law of Ukraine “On State Budget of Ukraine for 2014” the level of a living wage (guaranteed minimum) for the assistance assessment in accordance with the Law of Ukraine “On state social assistance to needy families” in percentage correlation to the cost of living for basic social and demographic groups of population

In order to enhance the effectiveness of the social assistance system, the main direction of its reforming should be, in particular, the transition from social benefits to the system of targeted social assistance that would help to support those people who really need it, as well as significant savings of public funds. Social benefits proved to be ineffective for today, because the significant part of their beneficiaries is persons being far from poverty. In addition, there is an inequality between citizens to exercise the right to benefits, because the significant part of beneficiaries is unable to exercise physically their right.

At the same time, sadly, but the state is focusing on other pressing and critical problems than improving the level of social protection. Despite the fact that now all forces in the country are aimed at meeting the needs of ATO, we should not close our eyes to the problems in the social sphere. The neglecting such a sensitive sphere as social security can lead to the appearance of the “inner front.” It is clear that the problems have been accumulating in the country two decades and at the same time to solve the problems in a short time will failed. However, it must be started now to solve the existing problems in the complex, taking into account possible pace of developments tomorrow. If newly elected authorities will continue to put the most pressing issues on the long finger, it is likely that it will not hold out for a long time. As of today, despite poverty and difficulties, people are willing to tolerate some time to live better in the future. But this credit of trust should be used by authorities efficiently and as soon as possible.

### **3.2. Housing and communal benefits and subsidies as part of social protection**

Sensitive blow against all socially vulnerable people caused an increase of utility prices. Cold and hot water, electricity and heating, all these utilities benefits raised so much so that they overlap the modest incomes of the people.

Constant price growth for natural gas does not give cause for optimism. The so-called gas war between Ukraine and Russia, IMF demands to bring the prices for gas for citizens to market levels led to the already described increase of utility prices. In addition, as a result of the war in Donbass coal mining has practically ceased, which led to a deficit in the domestic market.

According to the State Statistics Service of Ukraine, in January–August 2014 the subsidies for reimbursement for housing and communal services have been assigned for 589 thousand families. The total amount of subsidies assigned in January-August 2014 was 55,3 mil. UAH. Average size of a subsidy per family is 75.2 UAH.

At the same time the debt of population for housing and communal services amounted to 11 179,8 mil. UAH at the end of August. The average debt term of population for all services was 3.8 months.

As we see, the picture is not very encouraging. The increase of rate of inflation leads to increase of welfare expenditures. Given the difficult situation with the implementation of the

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is: for able-bodied persons — 21 percent, for children — 85 percent, for people with disabilities — 100 percent according to the corresponding subsistence level.

[http://cpsr.org.ua/index.php?option=com\\_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24#\\_ftn2](http://cpsr.org.ua/index.php?option=com_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24#_ftn2)

state budget of Ukraine to cover all the social costs in 2014, it would be extremely difficult, if ever possible.

### 3.3. Social Security of participants of the anti-terrorist operation

It is also worth to mention the Social Security of participants of the anti-terrorist operations. According to the current legislation of Ukraine, a wide range of benefits and a variety of social welfare are provided for the participants in military operations. The most part of the year 2014 it could be observed a strange situation, when the decision as to provision of corresponding status<sup>43</sup> for participants in military operations has been delayed in every possible way. This was done intentionally or due to bureaucracy — it's hard to say. But in any case, sufficiently large stratum of people is formed today in Ukraine that will qualify for proper social security in the future. In addition, a great number of families lost their breadwinners and also claims to certain benefits. Obviously, the situation of social security in the coming years will only become more complicated and without timely “surgery” can get out of control.

### 3.4. Social security protection of senior citizens

A lot of social problems remain after repeated social reforming in Ukraine. One of the most poignant is the pension provision. The current pension system of Ukraine is not able to protect the senior citizens from poverty. The lack of a pension culture, social justice, reliable financial mechanisms for providing of funds for decline of life are the characteristics of the national pension system.

The existing pension insurance system does not perform properly its main task, since the size of pensions does not mostly allow maintaining the minimum level of activity. It can be marked the following main problems of the pension system in Ukraine at the present stage: the low level of pensions of the majority of person who attained pension age; unbalanced budget of Pension Fund.

The pensions for the majority of people remain miserable; the funds contributed to their payment are huge on a national scale, and their sum is increasing with incompatible opportunities for economy and tempo every year. The main factor of poor functioning of the pension system is complicated demographic situation and the negative prospects for its development; macroeconomic situation in the country (inflation, unemployment, economic crises, etc.); significant “shadowing” of payments to employees<sup>44</sup>.

Also among the weaknesses being unsettled by law should be mentioned:

- imbalances remain in the pension system, stipulated of preservation of special pension schemes (on professional grounds) for certain categories of citizens who have other (than common) terms of pensions;

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<sup>43</sup> Why do not work benefits for participants of ATO? <http://www.i-law.kiev.ua//чому-не-працюють-пільги-учасникам-ато/>

<sup>44</sup> The problems of pension system in Ukraine [http://papers.univ.kiev.ua/vijskovo\\_specialni\\_nauky/articles/The\\_problems\\_of\\_the\\_pension\\_system\\_in\\_Ukraine\\_and\\_the\\_ways\\_of\\_its\\_improvement\\_18255.pdf](http://papers.univ.kiev.ua/vijskovo_specialni_nauky/articles/The_problems_of_the_pension_system_in_Ukraine_and_the_ways_of_its_improvement_18255.pdf)



- the final funding sources delineation of pensions is not reached;
- in spite of the measures that have been undertaken in connection with the revision of the Unified Rate Schedule and the minimum wage size, about the third of working people pays insurance contributions from the wages not above the minimum of its size, while certain categories of persons enjoy the benefits to pay insurance premiums;
- the size of pension duties for employers remains extremely high (33.2% — for employers and 2.5% — for employees), which also critically restrains the growth of legal wages, and consequently the base of charging of insurance contributions.

In general, it should be noted that in general the solidarity pension system, taking into account the demographic situation in Ukraine is not able to provide the current level of pension replacement of lost earnings and the optimal differentiation of pensions without budgetary support.

Thus, the number of contributors to pension insurance makes 15,2 mil. people, and the number of pensioners — 13,8 mil. That is ordinary contributor finances 90.8% of average pension, and in some regions — and more, whereby the share of pension expenditures in gross domestic product exceeds 15%. While the government increased some social standards for certain categories of citizens since the 24th of April 2014, but these surcharges remain scanty miserable because of existing inflation level<sup>45</sup>.

The solving this problem requires changes in the solidarity pension system and the introduction of a financial defined contributions, taking into account the features of the transition period, which are as follows:

- preserving and enhancing the principles of insurance for those who remain in the PAYG pension system (13 800 000 of current retirees and working people, who will not have a sufficient period for the formation of pension savings and will not be members of the obligate financial defined contributions system);
- combination of the use of PAYG pension system and financial defined contributions system for persons who have a sufficient period for the formation of pension savings in obligate financial defined contributions system;
- increasing of pension payments in the total amount by the mandatory pension savings for individuals who will begin their work after the introduction of the II level of pension system;
- development of non-state pension provision.

It should be noted that the adoption of the Law “On the introduction of a financial defined contributions of obligate state pension insurance” is a fundamental prerequisite for the formation of the II level of pension system, and the implementation of the law would ensure organizational and technical readiness for its functioning. While the law has not been adopted, the “Concept of further realization of pension reform,” which defines the introduction terms of financial defined contributions system, namely in the years 2014–2017 at the second stage of the pension reform.

There is no doubt that the introduction of financial defined contributions system of compulsory state pension insurance would create an opportunity for increasing the overall size of pension benefits by obtaining investment income and would strengthen the

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<sup>45</sup> Changes in pension legislation // <http://zhytomyrschyna.zt.ua/statti/dovidkove-biuro/1927-zminy-u-pensiinomu-zakonodavstvi.html>

dependence of pension size from the labor contribution of a person, and consequently, the interest of citizens in the payment of pension contributions. Equally important is the fact that financial defined contributions system would inherit the funds recorded on a personal pension account, by relatives of an insured person in case of his premature death, and would provide payment risks distribution of low pensions sizes between the first and second level of the pension system and thus would insure the future retirees from the negative demographic trends and fluctuations of the economic development of the state.

The third component of the system of non-state pension provision is based on the principles of voluntary participation of citizens, employers and their associations in the formation of pension savings in order to obtain the citizens of pension payments, which will be in addition to the pensions of the first and second component.

This level in accordance with Ukrainian legislation (Law of Ukraine “On private pension provision”), can be created in the form of voluntary non-state pension provision according to the pension schemes with defined contributions. Such a system will make non-state pension funds (open, corporate and professional), banks and insurance companies. Namely the system of non-state pension provision is an alternative solution of the problems arising as a result of the pension reform.

But despite the fact that the market of non-state pension insurance is extremely advanced, it is developing rather slowly. The main reasons of this phenomenon are the low income of population and mistrust in the financial sector.

So, with the introduction in Ukraine the new pension system it should be focused on reforming of PAYG pension system (first level), establishment of obligate financial defined contributions (second level) and development of a voluntary financial defined contributions (third level).

The content of reforming the pension system consists, on the one hand, in ensuring the basic principles of social equality, the same for all protection from poverty in middle age, gradual increase of pension sizes in accordance with state social guarantees, and on the other — in the elimination of social differences, benefits and privileges. Under these conditions the pension system will be able to provide the necessary condition for all old people who have worked.

#### **4. RECOMMENDATIONS**

1. To reform the system of social benefits assurance: to implement the separation of legal rules to those that guarantee social and economic rights, and those that provide certain privileges in connection with encumbering of post or defined merits.

2. To stop the practice of legal provisions that guarantee the implementation of socio-economic rights.

3. To provide full funding of legislative guarantees enshrined in the law for observance of social and economic rights, to stop the practice of “manual control” in determining the amount of social benefits.

## XI. SOCIO-ECONOMIC RIGHTS

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4. To improve the calculation of cost of living, in particular, to adopt a new set of food and non-food range of products and services, to establish a new method of calculating this indicator.

5. To refuse using the indicator “assurance level of living wage,” which unnecessarily reduces the minimum social guarantees, which are declared in the legislation.

6. To implement the procedures to regulate the quality of food, as well as the safety and quality of drinking water.

7. To take measures for ensuring the affordability of housing, to prevent unjustified eviction from housing (especially vulnerable groups), violation of rights of access to housing of vulnerable groups.

8. To ensure adequate funding, clear and effective mechanisms for implementation of the program of social housing assurance, as well as developing a network of reunification centers, social accommodations for homeless people;

9. To improve the work to ensure social protection for vulnerable social groups in connection with the increase of tariffs for housing and communal services, in particular, the functioning of a transparent and effective system of housing and utility incentives and subsidies.

10. To reduce gradually the share of direct government funding of social needs and to increase the share of funding from the population based on the increase of income, especially wages, pensions and other forms of social transfers.

11. To provide a rigid connection between provided social benefits and the sources and mechanisms of costs compensation to their suppliers;

12. To introduce the unified approaches to determining the size of the state budget for reimbursement to providers of beneficial service.

13. To continue reforming the pension system through the introduction of legislative provisions on the funded level of the system, to create the preconditions for this.

14. To resolve the issue of pensions payment for persons who are leaving for permanent residence abroad to the countries whom no international agreements have been concluded in terms of pensions with.

15. To avoid a discrete increase of the minimum pension; to make an indexation rule, according to which the pension increase will be tied to the consumer price index, calculated for social groups with different incomes.

16. To provide an implementation guarantee of the decisions of national courts relating to the payment of social benefits, where the defendant is a state.

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## **XII. RIGHT TO LABOUR<sup>1</sup>**

### **1. OVERVIEW**

The right to labour lodged to the group of social-economic rights is one of fundamental human right that allows access opportunity to the sources of satisfying the requirements of themselves and their families, personal fulfillment and self-expression. Since independence In Ukraine there were serious problems with the provision of this right, because the actions of the state in this direction have mainly situational character and not been able to solve problems that have been accumulated for a long time in the field of labor rights. The situation became strained with new challenges of 2014, which in the first place should include a large number of internally displaced persons who lost their jobs and stable salaries to. Significant remain the problems to ensure decent working conditions in the first place — in the public sector. The salary continues to occupy not the main place in the structure of Ukrainian revenues, and its minimum level does not allow talking about the fact that it makes it possible to cover even the minimum requirements. The problems related to with salary arrears are worsening. The problems in compliance with the right on safe working conditions remain acute, taking into account the outdated list of occupational diseases and especially — the constant practice of unofficial employment.

In spite of long-standing needs to strengthen the protection of all categories of migrant employees, Ukraine until now has not ratified the necessary international conventions in this sphere, not mentioning the ineffective government actions towards protecting the rights of this category of employees. The government policies remain also ineffective regarding activity of trade unions; as a result, they do not play an effective defender of labor rights.

### **2. EMPLOYMENT**

The International Labour Organization (ILO) predicted that in the next five years the ranks of the unemployed people would increase to 3 million in the year, if some economic cataclysms not happen. Unfortunately, Ukraine is not aside of those global trends, so the number of unemployed is growing. Also this is facilitated by the difficult economic situation in Ukraine and the presence of large numbers of internally displaced persons from the occupied territories.

According to the latest data released by the State statistics service of Ukraine the unemployment rate of population aged 15–70 years, defined by the methodology of the International Labour Organization in Ukraine, grew up on average 7.6% with in the first

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<sup>1</sup> Prepared by M. Shcherbatyuk (UHHRU)

half of 2013 to 8.6% in the first half of the year 2014 of economically active population<sup>2</sup>. The problem of youth unemployment gain particular actuality for today. Only the universities are producing annually more than 500 000 professionals who can't find a job. According to the International Labour Organization youth unemployment reached a record of 12.7% in 2012. In Ukraine the youth unemployment rate is 11%, which is above the national average (7.5%).

One importance sign of employment questions is increasing of frequent recourse to the Government "hot line", which also helps to solve issues of employment. Analysis of calls to the hotline in the 2013–2014 show that the number of calls of citizens for help in searching of job, employment, information on the functioning of the employment centers increased in 2014. Many of those who sought help in finding work, were released because of staffing reduction, changes in the Organization of production and suchlike.

If talking about unemployment assistance, its minimum rate increased from 76.9% to 80% of the minimum subsistence level in 2014, but was only 544 UAH that does not meet even the minimum needs of the person and is the lowest of the minimum standards established by the State.

Among major problems are the problems of the employment of the disadvantaged or under-protected persons: those who served their sentences and were released from prison due to lack of efficient mechanisms of resocialization in our State; single mothers who could not find a job with flexible working time for reasons of child care; invalids and suchlike.

Among the new problems is mass exodus of Lugansk and Donetsk regions without the documents needed to obtain the status of unemployed. For that matter the State amended the legislation to resolve this difficult situation. In 2014 also arose the problem with persons who migrated from the temporarily occupied territory of Crimea and left work, but do not have the employment record or other documents confirming periods of employment. Only at the end of August 2014 it was simplified the registration<sup>3</sup> procedures and these people have been registered as unemployed on the basis of available documents. Unemployment benefit will be paid at the minimum rate (UAH 554 mentioned above) before obtaining of documents and information on periods of employment, salaries (income) and qualifying period.

Also some employment features of health care employees, which are moving from the ATO, in the absence of certain documents required for employment. In this case the State determined that the information could be used from automated data base of medical, pharmaceutical and scientific-pedagogical employees, functioning in the field of health care (letter of the Ministry of Health of Ukraine dated on 20.08.2014 No. 11-02/10-09-65/24419 and the joint letter of the Ministry of Social Policy and the Ministry of Health of Ukraine dated on 30.09.2014 No. 11143/0/4/026, No. 11.02-13/23/28325).

The growth of unemployment among the population was raised in recent times, in particular, by internal political reforms. For example, the adoption of the new Tax Code contributed to restricting the rights of small businesses to pay the single tax and labor

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<sup>2</sup> State Statistics Service // [http://www.dcz.gov.ua/control/uk/publish/article?showHidden=1&art\\_id=230309&cat\\_id=173564&ctime=1333367142883](http://www.dcz.gov.ua/control/uk/publish/article?showHidden=1&art_id=230309&cat_id=173564&ctime=1333367142883)

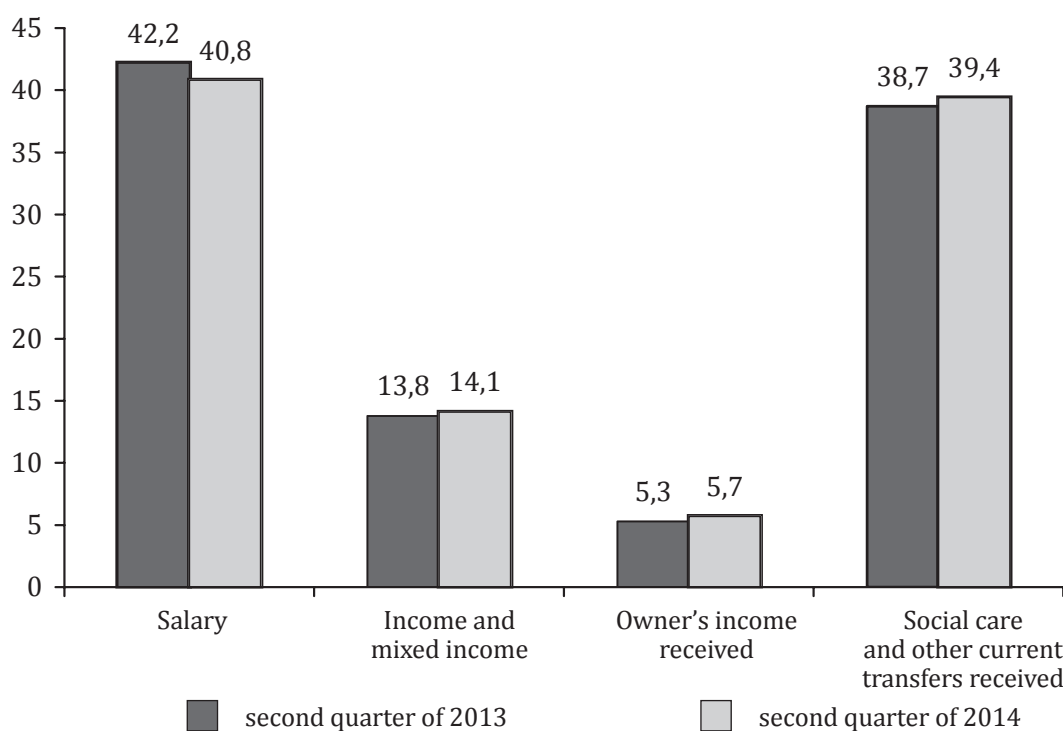
<sup>3</sup> The government allowed to the emigrators to be registered in the employment center at the place of temporary residence, and not only at place of residence — Resolution <http://ua.interfax.com.ua/news/general/222045.html>

recruitment. The new pension reform deprived the working pensioners the incentives to work and contributed to their partial leakage from the labor market. The consequents of unemployed number rising and exit of working pensioners from the market will certainly have a negative impact on this reform in the future. The labor market situation will become even more serious, because it will be filled up with people whom have been extended the working-age on the one hand. On the other — with youth, this is ready to enter the labor market and constantly suffers from the lack of job opportunities. Therefore, the load on one free workplace in the near future will be growing. If the government does not take measures to improve the quality of employment, the output of the crisis will be delayed, as the majority of the employable population will choose not the part-time low- salary employment, but an unemployment benefits and additional alternative part-time work.

As a conclusion it can be noted that the problems of unemployment and employment in Ukraine are enough and they stably exist. Moreover, solving one problem (employment of persons from the occupied territories), other problems are going by the wayside (employment of single mothers, the resocialization of persons who have served their sentences).

### 3. ASSURANCE OF DECENT WORKING CONDITIONS

First of all we should mention that salaries continue to occupy only 40% of the income, while 60% make pensions, stipends and social allowances. This is an anxious because the population earns only 40%, residue — pensions, stipends and social allowances<sup>4</sup>



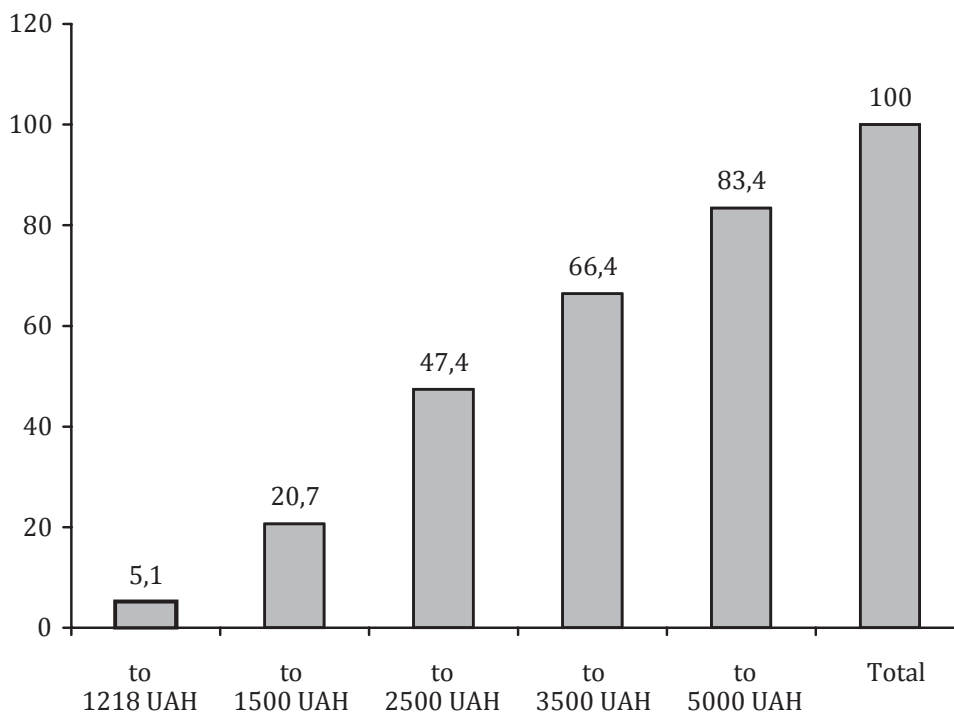
<sup>4</sup> State statistic committee: Ukrainian income consist 60% of social payments <http://economics.unian.ua/soc/877514-derjstat-dohodi-ukrajintsiv-na-60-skladayutsya-z-sotsviplat.html>

## XII. RIGHT TO LABOUR

### *Earnings profile of population in Ukraine*

To ensure decent working conditions, it is important to note that the cost of living in 2014 was set below the actual rate of the factual living salary in December of 2013. Also, the minimum salary left at the level of even smaller than the actual rate of it in 2013. In general, the minimum salary can not be considered economically justifiable. Despite the fact that minimal salaries are the state social guarantee, its legislative level is insufficient for providing extended restitution of labor power, since it does not take into account the family (the living costs and and child-rearing expenses) and tax components (premiums for obligatory state social insurance and individual income tax)<sup>55</sup>. Since the 1<sup>st</sup> January 2014 the minimum salary was set at \$ 1,218 UAH that makes up 38.7% of the average salary for the previous year (3148 UAH.), in US dollars (\$ 1 / 7.99 USD.) It allowed spending in January \$ 4.9 per day on average per one person (threshold — \$ 5.0 US by purchasing power parity per day). The trade unions are insisting the minimum salary should not be less than 45% of the average for the previous period (3265 UAH in 2013), that is — 1470 UAH. The International Labour Organization believe that it should not be less than 60% of the average monthly salary.

However, almost half of the population receives a salary up to 2500 UAH. That shows the inequality of salary distribution of citizens, when majority of citizens gain an income which do not allow for ensuring of adequate living conditions.



*The distribution of employees number  
by salary rate accounted for June 2014 (cumulatively)*

<sup>5</sup> Ensuring of social justice <http://www.psv.org.ua/arts/Spetcvipusk/view-1443.html>

In addition, even far from everyone employee can get the minimum salaries. Despite the legal prohibition of salaries payment at the rate less than the minimum salary, according to the State Statistics Committee, from 9524.1 thousand full-time employees have worked 50% and more of working hours, 0,480,000 people (5.0%) had a charge of less than the appropriate minimum level<sup>6</sup> as of December 2013.

Unsolved problems remain the payment for labor of state employees, which is associated with impaired functioning of the Unified salary tariff system being used to determine the salary rate. It should be noted that unified salary tariff system is also important for salaries accounting of state employees, as the multiplication table — for calculations in mathematics. Each position belongs to a particular category. And for each category there is also fixed salary rate. It is precisely a ground for

Salaries accounting for each state employees. All depends on the lowest level of the salary tariff system — the first category salary. All calculations of the higher categories are made by multiplying it by a specific tariff rate. And in accordance with legislation (Article 6 of the Law “On Salary” and Article 96 of the Labour Code), the salary rate of the first tariff level exceed the minimum salary rate statutorily prescribed.”

But the real situation is other. The government voted that this salary is tied not to the minimum salary, but to the amount of 852 USD. And in spite of some suits being prosecuted on the recognition illegal of this decision, the situation remains without changes<sup>7</sup>.

The Ministry of Finance and the Ministry of Social Policy noted that this rule concern only the production sector enterprises, and the implementation of law provisions for all is too expensive for the State: “Determining the salary rate for an employee of the first tariff category on the minimum salary level in 2014... requires additional labor costs for the state employees in the amount of more than 51 billion USD..., non-inflationary sources of its covering are absent”<sup>8</sup>.

Accordingly, in the Law “On the State Budget of Ukraine for 2014” this year has not been settled the correspondence salary law of the first tariff category of the minimum salary.

A difficult situation with salaries is getting more complicated by common cases of salary arrears<sup>9</sup>.

The chairman of Federation of Trade Unions of Ukraine G. Osovy noted that such shameful phenomenon as salary arrears has not been overcoming a long time, which total amount increased by 1.8 times on the 1<sup>st</sup> of September 2014 and has reached 1 billion 424 million UAH, and the number of employees who do not get salary in time has doubled. Practically it is equal to the average statistical region of Ukraine, where the employees do not get salary at all.

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<sup>6</sup> Monitoring of situation in the social sphere in Ukraine for April 2014 [http://cpsr.org.ua/index.php?option=com\\_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24#\\_ftn2](http://cpsr.org.ua/index.php?option=com_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24#_ftn2)

<sup>7</sup> In salary tariff system, or Why high school teacher is being at law with the Cabinet of Ministry <http://gazeta.dt.ua/EDUCATION/u-tenetah-tarifnoyi-sitki-.html>

<sup>8</sup> Ibid.

<sup>9</sup> Monitoring the situation in the social sphere in Ukraine for April 2014 // [http://cpsr.org.ua/index.php?option=com\\_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24#\\_ftn2](http://cpsr.org.ua/index.php?option=com_content&view=article&id=392:-2014-&catid=17:2010-06-10-20-44-31&Itemid=24#_ftn2)



## XII. RIGHT TO LABOUR

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According to the data of trade union activists, the employers have violated the right only in the first half year more than 700 000 times, “which is twice as much in all the year 2013”<sup>10</sup>.

*As an example of the situation with debts can be given the situation of OJSC “Lviv Coal Company”. According to the information of Confederation of Free Trade Unions of Ukraine, the company had arrears in salaries at the enterprise, which exceeded of 10 million UAH with the necessary charges. At the same time the numerous appeals of trade union of this enterprise did not yield any results other than audits of the trade union organization itself.*

Unfortunately, the employers avoid often liability for unpayment of salary in Ukraine, as the situation with ex-employees of the company-bankrupt “Aerosvit” demonstrates, which even the government agencies do not help to solve the reimbursement of salary arrears<sup>11</sup>.

This situation shows how necessary is the legislative definition of additional state guarantees for employees in case of insolvency of an employer. And here it should be noted that the failure of the Law of Ukraine “On Protection of monetary claims of employees in case of bankruptcy of an employer”, the draft of which has been developing since 2004, is one of the reasons that makes it impossible to solve the debt redemption of salaries to employees of bankrupt enterprises<sup>12</sup>.

### 4. GUARANTEEING OF LABOR SAFETY

The Article 43 of Constitution of Ukraine: “Everyone has a right to proper, safe and healthy working conditions, salary not below of established by law.”

Having joined the International Covenant on Economic, Social and Cultural Rights in 1966, Ukraine recognized the right of everyone to just and favorable conditions of work, including working conditions that meet safety and hygiene requirements. In addition Ukraine ratified the International Labour Organization Convention so committed itself to develop and improve a national policy in occupational safety and health, to develop a national system of occupational safety and health, to carry out a national program on occupational safety and health<sup>13</sup>.

According to the data of Social Industrial Accident and Diseases Insurance in Ukraine 3736 victims of industrial accident have been registered in the I half of the year 2014 (of which 241 — deadly). On the one hand, comparing with the data for the same reporting period in 2013 the figure of injuries decreased by 14.3%, and fatal injury by 0.8%. On the other hand, failure to comply with regulations on labor protection was the cause of injury

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<sup>10</sup> In Ukraine have doubled salary arrears // [http://tvi.ua/new/2014/10/07/v\\_ukrayini\\_zrosla\\_vdvichi\\_zaborhovanist\\_po\\_zarplatam](http://tvi.ua/new/2014/10/07/v_ukrayini_zrosla_vdvichi_zaborhovanist_po_zarplatam)

<sup>11</sup> The state does not solve the question of debt redemption from a salary of ex-employee of “Aerosvit” — trade union <http://ua.interfax.com.ua/news/general/227563.html>

<sup>12</sup> Draft Law of Ukraine “On Protection of monetary claims of employees in case of bankruptcy of an employer” // [http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=D92672F77403F3BC99EBEB94FB6F097F?art\\_id=94597&cat\\_id=46445](http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=D92672F77403F3BC99EBEB94FB6F097F?art_id=94597&cat_id=46445)

<sup>13</sup> International Labour Organization Conventions ratified by Ukraine // <http://dpu.gov.ua/Lists/internationalcooperation/DispForm.aspx?ID=9>

in 57% of cases<sup>14</sup>. Thus the deficiencies of the liability system for violation of occupational safety regulation of both employees and employers resulting in the majority of cases of injury in the workplace.

For I half of the year 2014 about 100 000 violations of labor safety legislation has been detected by insurance experts in labor safety, as noted S.Tarovik, head of the organization of preventive measures and insurance expertise of Social Industrial Accident and Diseases Insurance in Ukraine<sup>15</sup>. However, not only the employers are ignoring the instructions for safety, but also the employees themselves. So, on the 27<sup>th</sup> of January 2014 young man died being failed from the 9th floor in Sevastopol. It turned out that the citizen was not an employee of the construction company, and it has been working as an assistant<sup>16</sup>. Another incident occurred in February in Khartsyzk when several people have been taken to a hospital with burns and poisoning, they confessed that they have been working illegally at the mine, which is officially closed. After accident the person expecting for a compensation, but the management of the mine did not recognize the fact of labor relations with these victims<sup>17</sup>.

According to research of one of the Internet portals related to employment today every fifth office employee gets salary in an "envelope" that is, is working unofficial<sup>18</sup>. Thus, they deliberately release an employer from an obligation to ensure proper working conditions and compromise themselves for occupational disease or injury without the possibility of obtaining a compensation and guarantees from the government. Meanwhile, about 12 000 people a year have been injured or have occupational diseases due to neglect of safety rules and are not able to receive their financial aid, according to information of deputy director of Federation of Trade Unions of Ukraine S. Ukrainets<sup>19</sup>. Thus, the system deficiencies of bringing to responsibility for labor safety rules violation and imperfection of the system of labor relations is resulting in a significant number of violations of right to labor safety.

Director of the company where they have been working, have already been brought to criminally responsible for the deaths of three employees due to negligence or improper safety three years ago<sup>20</sup>. The facts of accident detecting are widespread. For example, a citizen in Volyn was seeking legal redress in court after he was being injured in the workplace 10 years ago, but he has received a certificate that he was injured on the way home. A man does not

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<sup>14</sup> Analysis of insurance of industrial accidents and occupational diseases for the I half of the year 2014 // <http://www.social.org.ua/view/4544>

<sup>15</sup> Komsomolskaya Pravda, "Do you have accidents? And do not have!" // <http://kp.ua/economics/472584-au-vas-neschastnye-sluchay-byly-y-ne-budut>

<sup>16</sup> During construction working in Sevastopol died a stone setter // <http://gazeta.sebastopol.ua/2014/01/29/na-strojke-v-sevastopole-pogib-kamenschik>

<sup>17</sup> Miners in Khartsyzk died illegally mining coal in one closed mine. Guide hides the truth // <http://www.ostro.org/donetsk/society/articles/437909/>

<sup>18</sup> Every third employee Ukrainian receives a salary in an envelope — Correspondent // <http://korrespondent.net/business/career/3287257-kazhdyi-tretyi-rabotauischiy-ukraynets-poluchaet-zarplatu-v-konverte-korrespondent>

<sup>19</sup> Every third employee Ukrainian receives a salary in an envelope — Correspondent // <http://korrespondent.net/business/career/3287257-kazhdyi-tretyi-rabotauischiy-ukraynets-poluchaet-zarplatu-v-konverte-korrespondent>

<sup>20</sup> In Rivne region industrial accidents remain dissembled, <http://ntn.ua/uk/video/news/2014/10/29/15882>

argue with an employer, but his health was worse every year because of the injury and he decided to go to the court to establish the fact of injury in the workplace<sup>21</sup>.

The employers neglect also labor safety in cases of overloaded employees. Despite official established eight-hour shift, majority of citizens are working in fact more than 8 hours. Thus, according to the results of a sociological survey, one in three people in Ukraine is working regularly on weekends. The studies show that the higher the position of an employee, than more he is working — about 9, 10 hours per day. In 75% of cases the employees are working above the norm on their own volition for the purpose of career development, and the employers not restrict them in their choice<sup>22</sup> Meanwhile, «American Journal of Industrial Medicine» has published the results of long-term studies the impact of irregular working hours on human health. The studies have shown that the more hours a person is working a week, the higher is probability that he will be down with coronary heart disease<sup>23</sup>.

Guarantees for occupational diseases that may arise, are no less important. World statistics is showing that 2 020 000 people per year are dead from occupational diseases, than is much more than from accidents — 320 000<sup>24</sup>. In Ukraine 2665 occupational diseases have been registered in according to the data of Fund for the I half of the year 2014. However, because of significant number of employees being worked unofficial and this figure can not be considered objective in small business. Thus the mentioned examples confirmed that the state control on the following of labor safety instructions is not effective in many cases. The second issue is the current list of occupational diseases. Resolution of the Cabinet of Ministers of Ukraine “On Approval of the list of occupational diseases” has been taken on the 8<sup>th</sup> of November 2000. For 14 years the list has been not updated. In this time a lot of trends in diseases have been found by Ukrainian and international scholars, developing in representatives of various professions. So, the International Labour Organization included in the list of occupational diseases mental disorder and behavior, post-traumatic stress disorder in 2010. Belgium, Germany, Grenada, Egypt, Canada, China, India, Italy, Mexico, United Kingdom of Great Britain and Northern Ireland are updating their lists by means of International Labour Organization<sup>25</sup>. In Ukraine the lists narrowed and outdated range of diseases established by the law is leading to the problems associating with recognition of occupational disease.

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<sup>21</sup> In Volyn an accident has been investigating by State Committee for Industrial Safety, Labour Protection and Mining Supervision 10 years ago // <http://prombezpeka.com/2014/11/na-volyni-derzhgirpromnagljad-rozsliduje-neshhasnyj-vypadok-10-richnoi-davnyny/#sthash.uustHHL4.dpuf>

<sup>22</sup> 87% of Ukrainians are working above quota // <http://finance.bigmir.net/career/44273-87--ukraincev-rabotajut-sverh-normy>

<sup>23</sup> Scientists have discovered what the consequences for health causes irregular work schedule // <http://www.apteka.ua/article/306750-prevention-of-occupational-diseases>

<sup>24</sup> Occupational diseases prevention // [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/publication/wcms\\_211589.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_211589.pdf)

<sup>25</sup> Ibid.

## 5. LABOR RIGHTS SAVETY OF MIGRANT EMPLOYEES

According to official statistics there were more than 52 million people in Ukraine in 1993. Thus is leaving officially circa 45 500 000 people far in Ukraine. In such a way population has decreased at 6 500 000 people in 20 years. Not least of all the population of Ukraine is reducing due to migration.

More guest employees from Ukraine are working in neighboring countries — Russia and Poland, besides a large number of Ukrainian left for work searching in Italy, the Czech Republic, Spain, Portugal and other European countries.

Generally the migrant employees from Ukraine are in the worst position compared with the local population abroad. It concerns both the salary level and labor rights. Considerable number of Ukrainian employees is working officially, but a large number of migrant employees is working unofficially, and as a result have various oppressions of their rights.

It should be noted that despite the presence of some of ratified international conventions relating to the rights of migrant employees, Ukraine could not adopt such important international instruments such as the Convention of the International Labour Organization (ILO) No. 97 dated 07.01.1949 “On Migrant Employees“ and Convention ILO number No. 143 dated 24.06.1975 “On Migration Abuse and the Promotion of migrant employees equal opportunities and equal treatment”. These Conventions are especially for protecting the rights of migrant employers being not officially registered.

There are also the problems with accounting of the migrant employees, so that the State Statistics Service and the State Migration Service of Ukraine are using other figures than international and public organizations. At that the data is always significantly different. These differences are partly explained by different criteria of processes evaluating, various methods of working and tasks. However without exaggeration it can be said without prejudice that there are millions of labor migrants from Ukraine all over the world.

On this evidence is at least irresponsible position of Ukraine concerning the ratification of the Convention. True is the rights safety of migrant employees at the international level executing also at the level of bilateral interstate agreements. However similiar agreements having been signed recently by Ukraine can be counted on the fingers of one hand.

The policy of our State in relation to foreign Ukrainian heritage is still unclear as in previous years. Ukrainians have been waiting for passports at consulates for six months, but it do not give them an opportunity to obtain official employment abroad. There is a risk that more than 700 000 Ukrainian employees will be in a difficult situation in the Russian Federation because of an Association agreement with the EU. About wide-spread discrimination against ethnic minorities in employment settings in the Russian Federation said Ministry of Foreign Affairs in Ukraine<sup>26</sup>.

In accordance with Article 92 of the Constitution of Ukraine the regulation bases of migration processes are determined exclusively by the laws of Ukraine. For providing a wide integrated approach to safety the rights of Ukrainian migrant employees must be adopted a law that will fully settle the legal status of citizens employed abroad.

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<sup>26</sup> Comment of Ministry of Foreign Affairs in Ukraine concerning rights violations of the national minorities in the Russian Federation <http://mfa.gov.ua/ua/press-center/comments/879-komentar-mzs-ukrajini-shhodo-porusheny-prav-nacionalnyih-menshin-v-rf>

At the press conference in Kiev in 2013 it was announced the need in adopting the Law of Ukraine “On external labor migration” in text of the recommendations made by the organizations of foreign Ukrainians before the parliamentary hearings on labor migration, in which it has to be assigned the status of Ukrainian labor migrants and members of their families, social-economic, educational, cultural and other guarantees for them. At the end of 2014 the Law of Ukraine “On external labor migration” is still being in draft form.

For a balanced approach to the management of labor migration requires also the development of national migration policies and a plan of concrete actions in practice. The migration policy can be effective only under condition of actions coordination. It should taking into account the interests of all participants of the migration process: state, employers and employees of the host country, migrant employees and members of their families. An important element of migration policy should be: monitoring and studying of migration situation not only of their own regions of country and the world at large; the existence of mechanisms of interstate dialogue and cooperation between the states on mutual employment of foreign residents.

For the rights defense of migrant employees and their families have to be developed the effective management tools of labor migration processes in a modern globalized world, common approaches and strategies, coordination and mobilization of human resources. We need to develop legislation based on human rights, the recognition of international labor standards, humanity of laws and the promotion of interethnic respect, that is a guarantee of social peace and democracy<sup>27</sup>.

### 6. ASSURANCE OF TRADE UNIONS RIGHTS

The monitoring being held by the Federation of Trade Unions of Ukraine<sup>28</sup> constitutes a violation of trade unions rights, in particular the continuing violations of International Labour Organization conventions number No. 87 On freedom of association and right defense on organisation, No. 98 On principles operation of the right on organisation and conducting of collective negotiations, No. 135 On right defense of representatives and opportunities being available to them, No. 154 On the promotion to the collective negotiations, of Article 36 of the Constitution of Ukraine, of the Law of Ukraine “On Trade Unions, their Rights and Guarantees” based on which the trade unions and their associations are independently organizing its statutory activities, holding meetings, conferences, conventions, electing free their representatives, forming a program of actions.

One of the main violations of trade union rights in 2014 was putting pressure on the leaders and members of trade unions, the employers’ evasion of conducting of collective negotiations to conclude collective agreements. A large number of violations concerning the failure of employers obligations under collective agreements, as well as a violation of the right to strike.

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<sup>27</sup> [http://www.lj.kherson.ua/2014/pravo01/part\\_1/61.pdf](http://www.lj.kherson.ua/2014/pravo01/part_1/61.pdf)

<sup>28</sup> <http://expert.fpsu.org.ua/pravovim-inspektoram/109-informatsiya-pro-porushennya-prav-profspilok-u-2013-rotsi>

*One example of pressure on union leaders is a matter of Sir G.Orobeyko. In this matter, according to the data of Confederation of Free Trade Unions of Ukraine, the free trade union of medical employees of Ukraine (FTUME) applied in many different instances for help regarding reinstatement of chairman of the primary trade union organization Public Institution of health safety "Regional Hospital — Center for Emergency Medical Aid and Disaster Medicine" of Kharkov state region organisation, a doctor of emergency medical aid Orobeyko Anna Sergeevna, who was denied in transferring to the new organization — Public health institution "Center for Emergency Medical Aid and Disaster Medicine".*

*Director of the above mentioned public institutions Sir Zabashta Viktor Fedorovych motivated the refusal in transferring of Sir Orobeyko S. to the new organization that she is bad and the most irresponsible employee. But the matter was that Anna is a person with active citizenship, can not be indifferent to violations of working conditions by medical employees and is a person, who is in an attempt in her activity to increase providing of emergency medical treatment to residents of the city of Kharkiv.*

*Sir Orobeyko S. together with Free Trade Union of Medical Employees of Ukraine widely highlighted the shortcomings and failures that have occurred in the ambulance service during the so-called reforming of the healthcare industry, as evidenced by its numerous appeals to both the local executive, management of hospital where he is working, and also to the All-Ukrainian trade unions. And, accordingly, there is reason to evaluate these actions of the administration of the Center as a way of impacting on trade union activist.*

The similar examples are the situation with the deliberate obstruction of trade union activities to the head of the Primary trade union "Independent Trade Union of employees in the private joint-stock company "Imperial Tobacco Production Ukraine" Stanevich E. M. consisting in his non-admission to the territory of the enterprise and the workplaces of members of the primary trade union<sup>29</sup> and also an employee of "Our Ryaba" O.Chaykovskiy by creation and registration of the primary trade union at this enterprise<sup>30</sup>.

There were a lot of cases when the employers have refrained from conducting of collective negotiations to conclude collective agreements. In particular, according to the data of Confederation of Independent Trade Unions of Ukraine, such problems arisen in the Donetsk National University and OJSC "National Depository of Ukraine".

The problems with assurance of trade unions rights to strike, particularly in sphere where one of the major violations of employees is in the transport sector and housing and communal services are still remaining. There is still conflict of law between the Law "On transport" and legislation on uncollective labor disputes.

It should be noted that on the 2<sup>nd</sup> of October 2014 the European Court of Human Rights on these issues was decided in the case of former employees of the company "Aerosvit" ("*Tymoshenko and others v. Ukraine*"), according which the Court declared an injunction against striking in violation of Article 11 of the Convention to<sup>31</sup>.

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<sup>29</sup> <http://bryhynets.com/index.php?nma=depros&fla=stat&nums=797>

<sup>30</sup> «Our Ryaba "deals with independent trade union activists? <http://ilikenews.com/article/nasha-ryaba-rozpravlyaietsya-z-aktivistami-nezalezhnih-profspilok#sthash.SRTGNG3R.dpuf>

<sup>31</sup> Former employees of Aerosvit won the European Court in Ukraine // <http://ua.korrespondent.net/business/companies/3426787-kolyshni-spivrobotnyky-aerosvitu-vyhralyevropeiskyi-sud-v-ukrainy>

## XII. RIGHT TO LABOUR

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It is important to be noted that the State has not still proved the trade union activities with adequate conditions, their rights defense. The legal mechanisms being obliged to protect the trade unions and trade activists in particular, remain ineffective.

### 7. RECOMMENDATIONS

1. To increase the amount of unemployment benefits to the subsistence level size, and also making necessary changes to the legislation, which would determine the warranties of benefits getting at this level.

2. To take measures to reduce unemployment among the most vulnerable groups, especially young people, people of preretirement age, persons with disabilities, temporary displaced persons.

3. To increase the share of salary in GDP and production costs.

4. To harmonize the minimum salary in accordance with the requirements of the European Social Charter, as well as to introduce an effective mechanism of indexation of income.

5. To ensure the effective implementation and differentiation of costs of labour in public sector for using of Unified salary tariff system, to eliminate the practice of salary setting (regular rate of pay) of an employee of the first salary category at the rate of below a level established by law.

6. To take measures to improve payments for salary by government authority with purpose to improve social safety for employees, to eliminate the hidden salary system established by assigning different premiums and additional payments, being dependent more on loyalty to the leadership than on production.

7. To reduce the arrears of pay to the employees in the public sector, as well as to take measures aimed at arrears reducing at the enterprises and organizations of all forms of ownership.

8. To improve the labor safety system in order to reduce occupational accidents and diseases, including by improving the legislation in this area, as well as the implementation of prevention programs.

9. To improve the monitoring of compliance with the standards and requirements in the field of labor and health safety; to ensure prompt and effective investigation of injury cases.

10. To improve state control over observance of labor rights, creation of effective mechanisms for responding to these violations.

11. To conclude bilateral agreements in the field of employment and social protection of migrant employees with countries where is a significant number of our compatriots with purpose of employment and who are still not having such agreement.

12. To ratify necessary international instruments enhancing the of migrant employees safety in the shere of employment and social protection.

13. To ensure strict compliance with rights of trade union, to promote the development of strong independent trade union movement.

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## **XIII. OBSERVANCE OF HUMAN RIGHTS IN THE HEALTH SECTOR**

Year 2014 passed in the anticipation of reforms. Health system had also been waiting for reforms, but the year ended only with the announcements of changes and deterioration of the observance of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The reason for the situation lies in the political arena in the first place: the part of the state of Ukraine de facto came under the jurisdiction of another state of the AR of Crimea, and in the area of ATO up to 4 million people were left without proper care on the part of the state.

Another important factor of the deterioration of the human rights observance situation in the health sector is the economic indicators of the state, which affected the price rise for medical goods and services. In the first place it concerns the rise of prices for medications and for different product groups, including local production or imports — by sample estimates from 1.6 to 3.2 times. One should also take into account the increase in utility prices and prices for other expenses of healthcare institutions (transportation, rent), which also lead to rising costs of medical services.

All these processes are taking place against the background of frozen incomes, especially in public sector. Rise in the US dollar from 8.00 to 20.00 hryvnias, to which the formation of prices in the medicine sector is also pegged, made it impossible to start scheduled treatment as well of those residents of Ukraine, who belong to conventional middle class. Income of the majority of pensioners and people receiving social assistance from the state does not allow them to buy vital medications.

The State of Ukraine not only exercises no control over the formation of prices for essential medications, despite the statements of some officials, but also stimulates the rising of prices for medicines. On April 1, 2014 came into force norm of the Law of Ukraine “On prevention of financial disaster and creation of conditions for economic growth in Ukraine”, which set the level of VAT on medicines in the amount of 7%. Press service of “Weekly Pharmacy” in its publication drew attention to the fact that the introduction of this tax would not affect the profitability of pharmaceutical business given that VAT was paid by the final consumer.<sup>2</sup>

During 2014 havoc was made in the system of tendering procurement of medications that were supposed to provide treatment at public expense in hospitals. As of October 1, 2014 medications to the value only of 88 million hryvnias were purchased after countrywide national programs.

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<sup>1</sup> Section prepared by A. Rohansky, NGO “Institute for Legal Research and Strategies”.

<sup>2</sup> <http://www.apteka.ua/article/285937>.



Only at the beginning of November 2014 the situation began to improve: “As of today<sup>3</sup> tender procedures to the value of 1 billion 415 million hryvnias have been accepted. In the procurement procedure there are 722 million hryvnias out of 2 billion 160 million hryvnias, which are provisioned for these purposes in the State Budget. At the same time, biddings to the value of 37 million hryvnias are currently blocked at the Anti-Monopoly Committee. This is due to a large number of complaints — 42, while in 2012 there were 4 such complaints, in 2013 — no complaints. Biddings are blocked on purpose”, — said Minister of Health at interim V.Lazoryshynets<sup>4</sup>.

As is known, onset of disease and need for its treatment do not depend on time that is on the moment when officials can finally hold tenders. What will happen to those people who were sick before November 2014? Hence ambivalent feelings are created by the report in the Government portal website: “Currently, drugs have already been sent to the field. Only during this week medicines worth 158.8 million hryvnias have been delivered to the regions. These medicines are for children with chronic viral hepatitis, immunobiological medicines and medicines for antiretroviral therapy”<sup>5</sup>.

Monitoring of the rights of vulnerable groups of the population, conducted by public and human rights organizations, has established the following systemic problems that occurred in 2014:

1. Violation of the rights of clients of the substitution maintenance therapy (hereinafter — SMT) in the Autonomous Republic of Crimea and in the ATO area.
2. Violation of the rights of people living with AIDS in the ATO area.
3. Violation of the rights of palliative care patients, including rights of seriously ill children.
4. The emergence of new vulnerable groups:
  - a) People who temporarily left their permanent residence<sup>6</sup>;
  - b) Victims of the combat activities in the ATO area.

#### 1. NATIONAL STRATEGY IN THE FIELD OF HUMAN RIGHTS

Building of new health care system should be based on the universal principles of human rights observance which are recognized in the international instruments ratified by Ukraine, that is why the President of Ukraine on October 15, 2014 adopted the decree No. 811/2014 «On the Development of a National Strategy in the Field of Human Rights” aimed at improvement of legal and institutional framework, the creation of an effective mechanism for comprehensive ensuring of rights and freedoms of man and citizen in Ukraine<sup>7</sup>.

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<sup>3</sup> November 10, 2014.

<sup>4</sup> [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=247736712&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=247736712&cat_id=244276429)

<sup>5</sup> Ibid.

<sup>6</sup> Violations of the rights of the latter two groups at the time of the section drafting are being monitored.

<sup>7</sup> In the first place, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter (revised). National legislation which ensures human rights in healthcare sector, is primarily based on the Constitution of Ukraine, Laws of Ukraine,

According to the instruction of the Prime Minister, on November 24, 2014 on the order of the Ministry of Justice No. 245/7 there was formed a Working Group on the Draft of the National Strategy in the Field of Human Rights, consisting of representatives of all interested government authorities, civil society, international organizations, the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.

On November 24, 2014 the first extended meeting of the Working Group took place, during which the draft of the Strategy was discussed and there were formed thematic subgroups for the preparation of the relevant sections of the Strategy:

- Civil liberties and political rights.
- Social and economic rights.
- Other rights.
- New challenges.
- Mechanisms of the observance, restoration and implementation of human rights in Ukraine.

Expert Group on Medical Reform of the Advisory Board of the Ukrainian Parliament Commissioner for Human Rights (hereinafter — the Expert Group) also participated in the development of the National Strategy, in particular the section “Ensuring the right to health protection.”

The Expert Group, considering it necessary to implement the regulations of the International Covenant on Economic, Social and Cultural Rights<sup>8</sup>, namely the right of everyone to the highest attainable standard of physical and mental health (art. 12), offered the following version of the National Strategy section on human rights:

**“13. Ensuring the right to health protection<sup>9</sup>**

*By public health Ukraine ranks one of the last in the European region.*

*The strategic goal*

*Implementation of the right to the highest attainable standard of physical and mental health.*

*Expected results:*

1. *Measures have been taken to prevent the violation of the right to life due to lack of medical services in the healthcare system, with account of economic development of the state.*
2. *Ensuring the right of resistance to torture, inhuman and degrading treatment or punishment, caused by violation of access to certain types of medical services, including palliative care.*
3. *Guaranteed access to hospitals, medical goods and services that meet the worked out standards and clinical protocols for vulnerable social groups.*

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including the leading role played by the Law of Ukraine “Fundamentals of Legislation of Ukraine on Healthcare”, resolutions of the Cabinet of Ministers of Ukraine, departmental regulatory legal acts. For details see: Human Rights in Healthcare Sector: Practical Guide/Under the scientific editorship of I. Senyuta. — Lviv: Publishing house LOBF “Medicine and Law”, 2012.

<sup>8</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR). Resolution 2200A [XXI] UN General Assembly, December 16, 1966 — <http://www2.ohchr.org/english/law/cescr.htm>.

<sup>9</sup> <http://hro.org.ua/suggestions/proekt-stanom-na-12-grudnya-2014-roku>

4. *Development of healthcare system took place on the ground of principles of bioethics (informed consent, confidentiality) and with account of the needs of minorities, communities, vulnerable groups.*

5. *Establishment of the quality control system of medical services, medicines and medical goods based on the achievements of evidence-based medicine."*

The offered edition allows solving a number of issues:

1. For the first time in Ukraine's legislation the concept of "the highest attainable standard of physical and mental health" will be used, as it is stated by the International Covenant on Economic, Social and Cultural Rights.

2. The right to life and the right to protection from torture will be considered as rights which are also ensured by the healthcare system of the state.

3. Establishment of canons of law for implementation of the principles of quality and acceptability of health services in terms of ethics, taking into consideration the needs of individuals, minorities and communities, vulnerable social groups.

## 2. REFORMING OF THE HEALTHCARE SYSTEM

In late 2014 the Strategic Advisory Group on Healthcare Reforms in Ukraine (hereinafter—SAG)<sup>10</sup> published the draft of National Strategy for Building of the New Healthcare System in Ukraine for the Period of 2015–2025<sup>11</sup>. According to the head of the secretariat of SAG O. Stefanyshyna<sup>12</sup>, organizational chart of SAG activities is based on the performance of 4 main objectives.

**Objective 1:** Analytical review of existing materials with the purpose of accumulation of information for strategy development and detailed reform plan:

- Public policy in the healthcare sector, according to the sector blocks, including recent documents from the pilot regions;
- National healthcare data based on the official reports and independent assessments and surveys;
- Review and assessment of relevant initiatives on public health and reinforcement of the healthcare system;
- Analysis and evaluation of current national and local epidemiological, economic, political and legal factors in the healthcare sector.

**Objective 2.** Development of accurate guidelines for the building of a new healthcare system, including the patterns of provision of services and legal and regulatory framework:

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<sup>10</sup> A joint initiative of civil society, the Government of Ukraine and the International Fund "Renaissance" (MoH decree No. 522 of 07.24.2014) on providing consultative assistance to the Government on sector reform strategies, optimal utilization of foreign aid, efforts of donors

<sup>11</sup> <http://www.apteka.ua/article/315522>

<sup>12</sup> <http://www.umj.com.ua/article/78382/dano-start-roboti-strategichnoi-doradchoi-grupi-z-pitan-reformuvannya-sistemi-oxoroni-zdorov-ya-ukraini>

- Ensuring provision of healthcare and public health services, available to the entire population;
- Ensuring the highest possible quality of medical help to the population;
- Ensuring provision of healthcare services based on need and absence of refusals to provide healthcare services due to financial inability of citizens;
- Introduction of the system of ensuring of the effective use of resources for addressing the medical needs of the population;
- Development of effective criteria for making decisions about future investments and restructuring;
- Development of a mechanism for sustainable funding and management of healthcare sector.

**Objective 3.** Preparation of specific components of the National Strategy for Building of the New Healthcare System in Ukraine: leadership/management; financing; provision of services; human resources; medical products; vaccines and technologies; information.

**Objective 4.** Development of proposals of “roadmap” for the implementation of the National Strategy for Building of the New Healthcare System, with the description of mechanisms, tools and time frame for the specified purposes; period of implementation and budget; results and criteria for monitoring; responsible parties.

The objectives of healthcare reform of Ukraine can be grouped into four action points:

- Encouragement of personal responsibility of the citizens for their own health.
- Ensuring of free choice of service providers.
- Creating a business friendly environment in the healthcare market.
- Providing targeted assistance to the most disadvantaged segments of the population.

Given that the objectives of the human rights community, from our point of view, could be:

1. Monitoring of the observance by the state of the principle of non-recourse<sup>13</sup>, i. e. preventing deterioration of the national healthcare system condition.
2. The current analysis of the compliance of announced reforms with the principles of international law and active legislation of Ukraine.
3. Monitoring of a principle of transparency of decision-making about sector reforms.

In our opinion, the most important is the first stage of the action plan, as on the feasibility of its execution depends the success of the reform in general. Among the first steps of reform the following ones can be specified:

1. *Constitutionality of reform.* Article 49 of the Constitution of Ukraine should be amended. Without these amendments any reform would be fictitious and limited to cosmetic changes and “optimization”.

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<sup>13</sup> Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 85 (2003).

2. *Public trust and popularity of reform.* The concept of providing emergency benefits to low-income and chronically ill and guaranteed level of free medical care should be developed.

3. *Expanding funding sources of the sector.* A consistent mechanism designed to attract donor support must be created, as well as a mechanism for taking urgent, coordinated actions at the national level involving all available resources.

4. *Optimization of public spending on the sector.* National Agency for Healthcare Financing should be founded, which would be responsible for the purchase of medical services, and perform a supervisory function for procurement of pharmaceuticals in the country.

5. *Improving legal and regulatory framework.* For example, MoH decree No. 11 of January 21, 2010 “On Approval of the Procedure for Circulation of Narcotic Drugs, Psychotropic Substances and Precursors in Healthcare Institutions of Ukraine” should be repealed as one that does not meet the resolution of the Cabinet of Ministers of Ukraine of May 13, 2013 “On Approval of the Procedure of Acquisition, Transportation, Storage, Leave, Use and Destruction of Narcotic Drugs, Psychotropic Substances and Precursors in Healthcare Institutions.”

Separately, the question of restructuring of the ambulance arises, that can only be resolved with the introduction of changes to the overall healthcare system. In our opinion, it is extremely important priority task with regard to the following factors:

- In the near future the increase of budgetary financing for the healthcare system is not expected.
- Additional sources of the sector financing, which include charitable foundations, insurance companies, donor support, direct (illegal) payments from patients for medical services — partly cover sector financing shortage, including adjusting to real living wage real incomes of medical workers, partly restore diagnostic and therapeutic equipment, but do not contribute to the restoration of key assets, and most importantly — do not ensure guaranteed equal access to quality modern standardized medical services to greater part of the population.
- Emergency medicine serves as a “social doctor” — provides medical care to all segments of society without regard to property or social status.
- Emergency medicine provides medical care in the most difficult moments for the people: road traffic accidents, fires, natural disasters.
- Emergency medicine in 2014 began to serve as the link of evacuation in military medicine.

Given the above factors the level of financing and provision of emergency medicine should be reviewed and the limited financial resources should be directed to the development of rapid, emergency medical care and disaster medicine.

### 3. START OF REFORMS

On December 24, 2014 at the Ministry of Health of Ukraine a working meeting took place at which the action plan of implementation of the Action Program of the Cabinet of Ministers of Ukraine and the Coalition Agreement in 2015 was discussed. In particular, experts discussed the mechanism for speedy transfer of the part of the state procurement

of medicines and vaccines to international organizations. For this purpose amendments to the Law of Ukraine “On Public Procurement” and the Budget Code of Ukraine were worked out and prepared for the consideration of the Cabinet of Ministers of Ukraine and the Parliament of Ukraine. According to V.Lazoryshynets obligatory approval requires the MoH order for the implementation of the resolution of the Cabinet of Ministers of Ukraine of July 4, 2012 No. 603 “On Peculiarities of Execution of Framework Agreements” in order to provide a mechanism for the procurement of vaccines and medicines through international organizations directly from manufacturers. Agreements between the Ministry of Health of Ukraine and the World Health Organization, United Nations Children’s Fund “UNICEF” will be amended in the part of implementation of cooperation for the procurement of medications and medical devices. Making direct long-term contracts with the manufacturers of medications is planned in order to ensure future continuity of the treatment process after government programs<sup>14</sup>.

#### **4. RECOMMENDATIONS**

1. To implement to the National Strategy for Human Rights and national legislation the provisions of the International Covenant on Economic, Social and Cultural Rights.

2. To begin the implementation of medical reform with amendments to the art. 49 of the Constitution of Ukraine. To cancel the provision of the free medical care and the prohibition of reducing the existing network of medical institutions. To define in the Constitution the right of everyone to the highest attainable standard of physical and mental health as it is interpreted by the UN Committee on Economic, Social and Cultural Rights.

3. To develop a concept of providing the emergency benefits for medications to low-income and chronically ill. To introduce state regulation of prices for medicines, taking into account the experience of the Pilot Project for Introduction of State Regulation of Prices for Medicines for Treatment of People with Hypertension (the resolution of the Cabinet of Ministers of Ukraine of 25.04.2012 No. 340).

4. To optimize public procurement and release it from corruption risks. To accomplish this requires:

- a) Parliament to adopt amendments to the Law of Ukraine “On Public Procurement” and the Budget Code of Ukraine with the purpose of implementing the transfer mechanism of procurement of medicines and vaccines to international organizations.
- b) To issue MoH order for the implementation of the resolution of the Cabinet of Ministers of Ukraine of July 4, 2012 No. 603 “On Peculiarities of Execution of Framework Agreements” in order to provide a mechanism for the procurement of vaccines and medicines through international organizations directly from manufacturers.

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<sup>14</sup> <http://www.umj.com.ua/article/83064/u-moz-ukraini-obgovorili-plan-roboti-na-2015-rik>

### XIII. OBSERVANCE OF HUMAN RIGHTS IN THE HEALTH SECTOR

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5. To extend the improvement of the legal and regulatory framework, particularly:
  - To repeal the resolution of the Cabinet of Ministers of Ukraine No. 776 of September 18, 2013 “On Approval of the Concept of Development of System of Financial Provision in the Healthcare Sector.”
  - To repeal the decree No. 33 of February 23, 2000 “On Staff Standards and Typical Staffs of the Healthcare Institutions.”
  - To repeal the MoH decree No. 11 of January 21, 2010 “On Approval of the Procedure for Circulation of Narcotic Drugs, Psychotropic Substances and Precursors in Healthcare Institutions of Ukraine.”
6. Among priority measures to make provision for the development of the system of emergency medical care and disaster medicine.
  7. To review the expediency of state compulsory social health insurance as a primary stage of healthcare reform.
  8. To conduct an independent audit of the Ministry of Health with the assistance of international organizations.

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## **XIV. THE OBSERVANCE OF THE RIGHT TO HEALTH OF VULNERABLE GROUP REPRESENTATIVES<sup>1</sup>**

### **1. VIOLATION OF THE RIGHTS OF PEOPLE, WHO PARTICIPATE IN THE SUBSTITUTION MAINTENANCE THERAPY PROGRAM**

From March 2014 the supply of medicines for substitution maintenance therapy (hereinafter — “SMT”) to AR of Crimea has been interrupted due to the annexation of the peninsula and blocking of roads to it. As known, SMT and medicines used in it are forbidden in the Russian Federation, so they can be delivered just from the mainland Ukraine. Every batch of drugs, which SMT medicines relate to, should be accompanied by the Ukrainian armed militia officer and this became impossible in a current situation.

The process of adopting SMT in Crimea had lasted 9 years; about 800 drug user patients everyday received appropriate treatment in the local health facilities in Simferopol, Sevastopol, Yalta, Yevpatoria, Feodosia, Kerch and other towns. By the time the supply ban started, there was left only a few days reserve of medicines used in SMT, namely methadone and buprenorphine. The situation in the City of Sevastopol was the most difficult; the dosage of medicines for patients has been forcedly titrated down.

The refusal in STM as the result of closing the program is regarded by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan E. Mñdez as inhumane treatment and, possibly, drug users torturing (A/HRC/10/44, Corr. 1 para. 57). The World Health Organization considers the interruption of SMT as the one of the forms of inhumane treatment too. The closing of SMT program contravenes the Article 2 Part 2 of the International Covenant on Economic, Social and Cultural Rights that emphasizes the duty of the State to prevent any discrimination (in this case it refers to the discrimination on the basis of chronic opioid addiction).

Despite the appeal of the representatives of non-governmental organizations and 229 patients to the government bodies of Ukraine, AR of Crimea, the Russian Federation, in May 20, 2014 SMT program was completely shut down in the Crimea by the authorities of the Russian Federation.

*SMT patient Oksana (35 years old) had to leave her home in Simferopol the next day after forced closing of substitution therapy by Russian authorities in May. Today she is receiving the treatment in one of the Kyiv’s hospitals and doesn’t hold her emotions: “If I had stayed in the Crimea without medicines, I would probably have died already. I’m a disabled person, I have already had a stroke earlier and I do know what it means to be left without therapy and care*

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<sup>1</sup> The part was prepared by A. Rokhanskyi, NGO “Institute of Legal Research and Strategies”.



*even for a few days. Today in the Crimea the former patients, who were unable to leave, are in a terrible state, some are no longer in this world and the other decided to commit a suicide.”<sup>2</sup>*

There was only one opportunity to continue providing medical treatment to the clients of SMT program: in May 2014 the International HIV/AIDS Alliance in Ukraine with the financial support of the International Renaissance Foundation proposed the help to those SMT patients, who were ready to move out from the peninsula to the mainland Ukraine to extend treatment if patients were planning to come for the permanent residence or undergo a full course of detoxification and adapt to further life without medicines. Throughout the existence of the project (till the end of August 2014) every patient, who have asked for help, have been provided with money for relocation, temporary accommodation and food for the period of the therapy. This initiative also included the provision of integrated services. In such a way if it is necessary the patients had the opportunity to receive both medical services (SMT, etc.), legal and other help such as assistance in reinstatement, registration, employment, etc. at the expense of existing social services for displaced persons from the Crimea supported by the state.

In June 2014 thanks to the humanitarian project that the International HIV/AIDS Alliance in Ukraine served, the specialized health facilities in Kyiv, Dnipropetrovsk, Sumy and Kirovohrad the course of SMT treatment for 80 patients was provided: 57 patients from the Crimea and 23 from the Region of Donetsk.

In May of 2014 the State Service of Ukraine on Drugs Control appealed to the Council of Europe to help overcoming the shortage of medicines that arose as a result of the annexation of the Crimea and armed conflict in the east of the country.

In response to this appeal the expert team from the Pompidou Group, a multidisciplinary structure of the Council of Europe in the development of the policy in the field of fighting against drug addiction in member states of CE, visited Dnipropetrovsk on 15–22 of May.

This group consisted of four doctors from Norway, Switzerland, Poland and Slovenia. “During the mission we consulted patients from Crimea and eastern Ukraine, who were transferred to other regions, and who were deprived of the opportunity to receive necessary course of treatment at their place of residence. The rights of these patients were violated. We visited Dnipropetrovsk — the city located near problem regions. We saw there about 20 former drug user patients, who faced with other violations besides the refusal in substitution maintenance therapy. In disregard for the medical confidentiality their employers were informed about the situation this people were in. “Clearly that this patients lost their work, — said Robert Teltzrow, the member of Pompidou Group. — They didn’t feel well because the treatment had to be interrupted as these medicines (methadone and buprenorphine) are forbidden in the Russian Federation by law. For this reason some patients were arrested on charges of using forbidden substances. The patients became criminals in a night!”<sup>3</sup>

According to the reports of the Pompidou Group more than 775 Crimeans received the methadone therapy. But, considering that they had to interrupt the course of treatment, many of them got hooked on heroin again: “Immediately after the illegal annexation of the Crimea the Russian legislation became in effective there. This means that patients cannot continue

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<sup>2</sup> The International HIV/AIDS Alliance.

<sup>3</sup> <http://www.europalibera.org/content/article/25401302.html>

with this treatment course there and have to move to places, where they can continue the started therapy.”<sup>4</sup>

*“About 30 patients have already died in Crimea; only in Simferopol we have lost 5–6 my fellows in misfortune!” — reported the SMT patient from the Crimea during the International Drug Policy Conference on September 12, 2014<sup>5</sup>.*

It is absolutely clear that the problem of supply of medicines used in SMT covers the ATO zone in the Regions of Donetsk and Luhansk. But the supply of medicines in this case cannot be imposed on volunteers because the circulation of these medicines is limited and they cannot be bought in a pharmacy and brought to patients.

On December 17, 2014 295 SMT program patients addressed the President of Ukraine with a request to help in providing the supply of medicines used in SMT to the ATO zone. In particular, the request stated: they will run out of Ednok medicine on December 15, 2014, Methadone — on March, 2015.

*The request included the following lines: “If you deprive us the medicines now... we all automatically will be in the position of a ‘suicider’, who has nothing to lose. And when choosing between slow and painful death (only few of us can go through withdrawals and recurrence of all concomitant diseases) and returning to criminal environment, to the street, and as a result to prison, the majority of us will prefer to commit a suicide, which patients now often mention in their talks.”*

The problem of providing a drug medicines supply to the ATO zone has been discussed during the meeting of the National Council on tuberculosis and HIV/AIDS chaired by Vice Prime Minister of Ukraine on October 28, 2014. Further certain working meetings and consultations were held under the aegis of the State Service of Ukraine on Social Diseases, also involving international humanitarian organizations. However all efforts to solve the problem didn’t led to the positive result. Quite the opposite, the situation became even more serious at the end of 2014 and the responsible governmental authorities still haven’t decided on their position referring to so-called ambiguity of legislation and different obstacles resulting from current law.<sup>6</sup>

### **1.1. Recommendations for the Government of Ukraine**

1. To issue relevant instructions to the Ministry of Health of Ukraine, Security Service of Ukraine, Ministry of Internal Affairs of Ukraine, the State Emergency Service of Ukraine, the State Service of Ukraine for Drugs Control, the Ministry of Defence of Ukraine and other responsible governmental authorities to efficiently work through, together with the International Committee of the Red Cross, of the accepted mechanism and practical solution to the problem of unimpeded supply of humanitarian medicines, including drug ones, which

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<sup>4</sup> Ibid.

<sup>5</sup> Watch the film “The First Crimean Victims” <https://www.youtube.com/watch?v=G9zhiLK5AGY>

<sup>6</sup> The Appeal of International HIV/AIDS Alliance to the Prime Minister of Ukraine dated 19.12.2014.

are used in SMT programs, to the health facilities on the territories beyond the control of Ukrainian authorities.

2. To impose on the Ministry of Health of Ukraine a duty to ensure provision of all necessary medicines (via repartition of medicines between the regions) to all SMT patients, who can move to the territory under control of Ukrainian authorities.<sup>7</sup>

## **2. THE RIGHTS OF THE PEOPLE BELONGING TO LGBT-COMMUNITY IN THE FIELD OF HEALTH**

The UN Human Rights Committee considered the 7<sup>th</sup> periodic report, presented by Ukraine (CCPR/C/UKR/7), on its 3002<sup>nd</sup> meeting (CCPR/C/ SR.3002) on July 23, 2013 and made the following observations:

The Committee is concerned about reports about discrimination, hate rhetoric and acts of violence against lesbian, gay, bisexual and transgender (LGBT), and acts of violation of their rights to freedom of expression and freedom of assembly. It is also concerned about reports that according to Order of the Ministry of Health of Ukraine as of February 3, 2011 No. 60 "On Improvement of Medical Assistance to Persons Needing Change (Correction) of Sex", the transsexuals must undergo obligatory hospitalization to psychiatric institution for up to 45 days and obligatory corrective surgical intervention in the manner prescribed by the responsible Commission as one of the preconditions of legal recognition of their sex.

Human rights organizations totally agree with the recommendations of UN Committee about the necessity to give an update on the Order No. 60 of the Ministry of Health of Ukraine and other laws and regulations to ensure that:

- 1) Obligatory hospitalization of persons who need change (correction) of sex to psychiatric institution for up to 45 days is replaced with a less invasive measure;
- 2) All medical treatment is carried out in the best interests of an individual with his/her agreement, and is limited only by necessary medical procedures in accordance with his/her wish, actual medical needs and situation;
- 3) Any abusive or disproportionate requirements for legal recognition of sex reassignment should be cancelled.

## **3. THE RIGHTS OF THE PEOPLE WHO NEED PALLIATIVE CARE**

According to the WHO's definition the palliative medical care is an approach that helps to improve the quality of patients' life (children and adults) as well as lives of their families that faced the problems associated with life-threatening illness, through prevention and relief of suffering by means of early identification, detailed assessment, treatment of pain and other physical problems, psychosocial and spiritual assistance [6]. The palliative care is based on the principle of respect to the patient's decisions and is aimed at provision of practical

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<sup>7</sup> Recommendations are presented by the International HIV/AIDS Alliance.

support to the members of their families during the illness and in the case of patient's death to overcome the grief because of losing a loved one.

The Committee on Economic, Social and Cultural Rights in General Observation No.14, noted that *"... states are under the obligation to respect the right to health by refraining from taking measures to close or limit equal access ... to preventive, curative and palliative health services."*

According to WHO's estimates annually about 20 million of people around the world need palliative medical care at the end of life. The same numbers of people need palliative care in the last year of life. So, the total number of people who need palliative care is about 40 millions. It is estimated that of 20 million people, who need palliative medical care at the end of life, 80% live in countries with low and middle level of income; about 67 % are the aged people and about 6% — children.

Palliative care for children should be included in the process of uninterrupted provision of medical care for children with life-threatening illnesses as a part of the national health systems. There is a need for development of strategic connection between the provision of palliative care and the program of prevention, early diagnosis and treatment of such illnesses.

There are some difficulties in the process of palliative medical care provision: in Ukraine, as well as in many other countries, the health policy is developed without appropriate consideration of palliative care need; in most of the cases relevant scientific work or professional training are not conducted at all or conducted insufficiently; complicated access to narcotic analgesics. The recent study about the state of practice in provision of palliative medical care in 234 countries and regions shows that such type of care is properly integrated into the health care system only in 20 of them; in 42% of cases the services for palliative medical care are available, and in 32% of cases the access to such services is provided only for small part of the population. About 80% of the world population does not have appropriate access to the medicines used in provision of palliative care. Unfortunately the list of medicines used in provision of palliative care is not approved in Ukraine.<sup>8</sup>

The palliative care in Ukraine refers to the field of medical care and is regulated by the Order of the Ministry of Health of Ukraine "On Organization of the Palliative Care in Ukraine" No. 41 dated 21.01.2013 and Articles 35-4 of the Fundamental Principles of the Health Care Legislation of Ukraine effective as of 01.01.2015 according to the Law of Ukraine "On Amendments to the Basic Legislation of Ukraine on Healthcare Regarding the Improvement of Medical Care Provision". The palliative care is a social service (in accordance to the collective Order of the Ministry of Social Policy and the Ministry of Health of Ukraine of Ukraine No. 317/353 dated 23.05.2014 "On Approval of the Cooperation between Subjects during the Provision of Palliative Care Social Service at Home for the Terminally Ill People").

This division of competencies between two Ministries leads to difficulties in organization of a complete palliative care complex for patients.

Special aspects of palliative care for children are not reflected in the regulatory documents at all in spite of the recurrent problems in this field:

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<sup>8</sup>[http://healthrights.org.ua/fileadmin/user\\_upload/pdf/paliatuvka.pdf](http://healthrights.org.ua/fileadmin/user_upload/pdf/paliatuvka.pdf)

1. Definitions, principles, fundamentals of palliative care for children in Ukraine are not defined at the level of legislation.
2. In this regard, in the modern health care system of Ukraine there is no place, where children, who can be called “palliative”, would be able to stay.
3. But they stay in an infant orphanage without palliative unit.
4. If there is a suspicion that their life is over, these children are transferred to hospitals with an intensive care unit.
5. In intensive care units terminally ill children can stay for weeks, perhaps months. Often relatives are not allowed to visit them.
6. At the last moments of life, all such children can see is a hospital. They are separated from their parents.
7. There are no palliative wards in oncology units, so children whose condition is getting worse, having threat to their life, stay with other patients. Or watch “the effect of window on the door, which is closed with a sheet” — small patients understand that their friend dies there.
8. On Ukrainian pharmaceutical market there are no registered children’s dosage forms of analgesics, including opioid analgesics.

#### 4. VIOLATION OF THE RIGHTS OF PALLIATIVE CARE PATIENTS

Despite of the significant changes in the legislation of Ukraine<sup>9</sup> concerning narcotic pain medications, in 2014 human rights activists documented serious violations of the rights of palliative care patients.

It should be noted that mental peculiarities of relatives of the seriously ill people and weaknesses of legal consciousness lead to deep latency of violation of the palliative care patients rights’.

Thus, during the whole 2014 only five relatives of palliative care patients appealed to the human rights activists with typical problems: all related to access to opioid narcotic analgesics.

The geography of appeals was as follows: two appeals from Kyiv, two appeals from Zakarpattya, Tyachiv and Mukachevo Districts, one appeal from the Region of Cherkasy, the Town of Vatutino. The treatment of patients in Tyachiv District (Region of Zakarpattya) and Holosiivskyi District (City of Kyiv), were the absolutely the same.

The plot of appeals was typical: a chronically ill person has expressive pain syndrome, patient received specific treatment and now is at home, alone with his pain and suffering. Outpatient department or pharmacy at place of patient’s residence refuses to put on (or grant) effective pain relief according to standards set by the Ministry of Health of Ukraine.

The reasons for refusal by the medical treatment facility are the following:

1. “We do not know if there is pain or not.”
2. “Patient will be a drug addict after appointment, so let him take nalbuphine, or in extreme cases we prescribe tramadol an hour before death.”

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<sup>9</sup> “Human Rights in the Field of Health Care — 2013”.

3. "We cannot prescribe morphine. Is there morphine in tablets? But it is a very strong drug, tramadol is better."

4. "How do you prescribe tramadol? — Oh, 1 pill three times a day. — And what is the dosage of tramadol in one pill? -- I do not know, 1 pill three times."

5. "We prescribe 1 morphine pill for a night. — And why the instruction says every four hours? — We are the medical officers, we know better."

6. "We do not have prescription form  $\Phi$ -3"

7. "There is no stock of morphine in tablets in pharmacy. Where will you get it?"

8. "At one prescription form  $\Phi$ -3 only 10 tablets of morphine can be prescribed."

9. "I do not prescribe morphine, it is prescribed by commission on reasonableness of prescription," — said a family doctor.

10. "Are you registered in the Cancer Registry? No? So we do not have the right to prescribe pain treatment."

11. A family doctor said to the patient — the disabled person of the 1<sup>st</sup> group: "Come yourself to take prescription, yeah I do nothing but bring you prescriptions. — Can't you come yourself? I cannot give it to your drug addict nurse."

All the above mentioned refusals are contrary to current legislation and violate the right of a palliative care patient to dignity and protection from inhuman treatment.

There were two training centres for palliative care in Ukraine: in Ivano-Frankivsk and Kharkiv, also non-governmental organizations held travelling seminars for medical workers aimed at explaining new amendments to legislation of Ukraine and new procedure for narcotic analgesics' prescription in the health care facilities. There is a feedback during the training meetings and it confirms the worthiest fears about abundance of the abovementioned treatments of doctors to the terminally ill patients. Therefore, the presumption of deep latency of violation of palliative care patients' rights is absolutely reasonable.

*Z., who is suffering from difficult oncology disease and is a palliative patient by the state of his health, has taken two courses of chemotherapy in Lisod Clinic, the City of Kyiv. In December 2014 he was discharged to continue treatment at the place of his residence to the next prescribed course of the chemotherapy.*

*In the last discharge he was recommended to extend, among other things, the course of palliative care that was implemented in Lisod Clinic with the use of injectable morphine.*

*Arriving to the Town of Vatutine, the patient and his father visited a district doctor of polyclinic department of the 2nd City Hospital of the Town of Vatutine. Taking into account the condition of the patient (expressive pain syndrome), recommendations from Lisod Clinic (to continue the course of pain treatment using morphine), a district doctor prescribed palliative care on an outpatient basis using morphine tablets: 1 tablet 10 mg — 4–5 times a day, about what made an entry in out-patient card and wrote out a prescription for the appropriate form  $\Phi$ -3 with the note "For cancer patients". The prescription was meant for 10 days and 40 pills 10 mg of morphine (1 pill 4 times a day) were to be given.*

*Father of patient Z. came to the only pharmacy in the town which releases drugs; it is licensed to turnover of drugs. But the manager of pharmacy refused to give 10 daily doses of morphine according to the prescription (40 pill, as was stipulated in the prescription), referring to some sort of instructions that it is prohibited to release more than 10 pills of morphine to patients despite of the diagnosis and doctor's prescriptions.*

*Z's father received 10 pills of morphine that was enough for his son to control the pain for 2 days, including the day of receiving the prescription. He had bought these medications at his own expense. Under this scheme, the father must attend the clinic every other day, must lose time for the prescription and way to the pharmacy. This time is essential to provide care to the seriously ill son.*

*The intervention of the representatives of the Office of the Ombudsman of Ukraine helped palliative patient Z. to reinstate his right to receive essential medicines.*

### 5. RECOMMENDATIONS<sup>10</sup>

As a result of the analysis of the literature, regulations and documents, electronic resources studied, that contain information on palliative care for children, we consider the prospects of palliative care development are as follows:

1. The development and implementation at the national level of the measures aimed at inclusion of palliative medical care in a continuous process of provision of medical services to patients with life-threatening illness at all levels of the health system by establishing a national concept, with special emphasis on services of primary health care and on assistance in the organization of palliative care at the local level.

2. The creation of a content of palliative care for children and its inclusion in the curriculum of secondary and higher medical education for training of personnel and improvement of their skills.

3. The creation of a contemporary legal and regulatory framework for the implementation of palliative care for children in terms of reforming the healthcare industry.

4. The creation of interagency group to develop research activity in the field of palliative care for children, including the development of standards, legal documents and models for this type of services.

5. The development of communication standards and ethical aspects of provision of palliative care for children. The involvement of local communities in the development and implementation of policies and programs.

6. Ensuring appropriate access of children who need palliative care to medicines recommended by WHO.

7. Ensuring provision of all components of palliative care (medical, psychological, spiritual and social) for children and their families by trained specialists.

8. Information and awareness-raising work on the question of provision of palliative medical care, achievement of comprehensive coverage of children, who need palliative care, taking steps to improve the quality and safety of palliative care with the support of local communities.

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<sup>10</sup> Recommendations about the development of palliative care for children were prepared by A. Pen'kov, R. Marabyan, O. Riha.

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## **XV. VIOLATIONS OF RIGHTS OF DISABLED PERSONS<sup>1</sup>**

### **1. GENERAL OBSERVATIONS**

According to official statistics, as of January 1, 2013, there were 2,788,226 disabled persons in Ukraine<sup>2</sup>. In the absence of official statistics on the distribution of persons by nosologies, the number of adult and underage persons with disabilities in the general population of Ukraine almost doubled from 1.6 million in 1991 to 2.8 million in 2014 and reached 6.1%. Out of 168,000 of disabled children (2.1% of all children), there are 74,000 girls and 94,000 boys.

The poor quality and inaccessibility of proper medical care, population aging, environmental pollution, increasing number of congenital disorders and chronic diseases, occupational diseases and industrial accidents, traffic accidents, military conflicts, nutrition, abuse of smoking, alcohol and drugs, psychotropic substances make an incomplete list of factors affecting the rising number of people who will have a disability and will need protection of rights. Due to the military conflict in eastern Ukraine as of November 6, 2014, the Ministry of Healthcare provided preliminary information on primary disability among the participants of the antiterrorist operation. Therefore, 578 persons were examined and 185 were registered as disabled persons. The latter will need additional legal assistance and protection of rights.

Following the ratification by Ukraine of the Convention on the Rights of Persons with Disabilities<sup>3</sup>, the state undertook to support, protect and exercise rights of persons with disabilities. Unfortunately, the state reports “On the situation of persons with disabilities” (2013), “Unimpeded access of persons with disabilities to the objects of social, transport infrastructure and communications” (2012), “Education of persons with disabilities in Ukraine” (2012) do not fully show the real situation with observance of human rights of disabled persons after the ratification of this international agreement. Therefore, the NGOs of disabled persons continue to monitor the situation and influence on decision-making concerning the rights of disabled persons in various spheres of life: education, health service, rehabilitation, employment, observance of voting rights, etc.

The government goes on to fail to include the disabled persons in policy-making in a given branch of activities. Thus, the report of the state on the implementation of the UN

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<sup>1</sup> Author: Maxym Shcherbatiuk (UHHRU).

<sup>2</sup> These data do not reflect the real situation. Alternative Report to the UN Committee on the Rights of Persons with Disabilities, National Assembly of Disabled Persons of Ukraine 2012. — The author’s note. The NGOs believe that one of the reasons of inadequate statistics on the number of persons with disabilities may result from the functioning of the state data collection system, which is imperfect and ignores international approaches.

<sup>3</sup> Ratified by Verkhovna Rada of Ukraine in 2009.



## XV. VIOLATIONS OF RIGHTS OF DISABLED PERSONS

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Convention on the Elimination of All Forms of Discrimination against Women in Ukraine<sup>4</sup>, despite observations of the Committee, does not contain information about this group of women. In view of this situation, the National Assembly of the Disabled Persons of Ukraine has undertaken the preparation of Alternative report on the implementation of government commitments concerning women and girls with disabilities. Also in fall 2015, the UN Committee on the Rights of Persons with Disabilities will hear the Alternative report on the implementation of the UN Convention on the Rights of Persons with Disabilities, which was prepared and sent by NGOs in 2012.

Having signed the Association Agreement between Ukraine and the European Union and having made for the European integration, our state has assumed certain commitments concerning implementation of standards of human rights of disabled persons in the domain of health service, education, employment, services, etc.

But, according to NGOs of disabled persons, today there remain major barriers to exercise the rights of disabled persons: inadequate legislation and its declarative nature, lack of understanding of approaches to disability issues; negative public attitudes and existing stereotypes; lack of access to quality services and problem with their provision; lack of unimpeded environment and transport; inadequate information and communication; lack of consultation and inclusion in public life; lack of statistics, and so on.

One example of lack of understanding of disability issues and discrimination is the Bill registered in the Verkhovna Rada of Ukraine of 11.12.2014 "On amending certain laws of Ukraine intended to improve the social protection of disabled people in Ukraine" (reg. No. 1400) in which the section of definition of disability "as a measure of loss of opportunities for social integration" shows the author's ignorance of the UN Convention on the Rights of Persons with Disabilities and the International classification of functioning, disability and health (WHO). The author also suggests amending Article 18-1 of the Law and organizing specialized public registration of employable disabled persons at the State employment center.

According to Article 27 of the UN Convention on the Rights of Persons with Disabilities "The member states recognize the right of disabled persons to work on an equal basis with others; this includes the right to the opportunity to gain his living by work freely chosen by the disabled person himself or which he freely accepted in a context where the labor market and working environment are open, inclusive and accessible to disabled persons." The author's amendment to this article of the Bill, according to NGOs, constitutes *discrimination on grounds of disability in relation to employment issues*. An employee with a disability is primarily a specialist with appropriate education, knowledge and experience, which needs a special working environment. We cannot allow creating special and even more public lists of disabled persons able to work which are open to employers. Today in Ukraine, a disabled person is entitled to get an unemployment status and related social benefits on the level with other citizens of Ukraine.

Thus, despite some positive developments, the systematic violations in Ukraine of the rights of disabled persons continue: the existing legislative provisions on non-discrimination on the basis of disability in practice do not work; legislation is declarative;

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<sup>4</sup> The Report of the State on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women in Ukraine, 2014.

the existing standards on accessibility need to be improved (architectural, transportation, and information accessibility); the disability factors are not always taken into account in making policy and government programs at national and regional levels; there is no reliable statistics and information.

## **2. “UNIVERSAL DESIGN” AND “ACCESSIBILITY” IN UKRAINE**

The “Universal design” and “accessibility” as key terms in the ratified UN Convention on the Rights of Persons with Disabilities mean, respectively, “the design of products, environments, programs and services intended to make them as usable by all people without the need for adaptation or specialized design” and an equal access to the physical environment, transportation, information and communications, including information and communications technologies and systems, and to other facilities and services that are open or rendered to the public both in urban and rural areas<sup>5</sup>.

So we see that in this case not only disabled persons are at issue, but 18,100,000 so-called limited mobility citizens as well: pregnant mothers (1.5% of the population), parents with baby buggies (1.5%), most of old age pensioners (14 million in total), more than 2 million pre-school children, and people with temporary disabilities (1.5%). In addition, 35% of people aged 60–70 have some sort of disability due to age-related changes, and after 80 years every second person<sup>6</sup>.

In Ukraine, these principles have not been generally adopted yet due to the large number of executors<sup>7</sup> (over 20) and slow implementation of the “National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities” with 2020 deadline<sup>8</sup>. However, among the realized projects there are airport “Boryspil “(Terminal D), Taras Shevchenko Museum in Kyiv. The Platinum Bank and Oshchadbank are trying to make their offices accessible to all, which is an example for other commercial institutions<sup>9</sup>. December 31, 2014 is the deadline for the two-year program “Promoting integration policy and services for disabled persons in Ukraine” fulfilled jointly with UNDP, UNICEF, WHO and ILO (budget: \$365 600)<sup>10</sup>. It is intended to facilitate the application of standards of accessibility and universal design ensuring the involvement and participation of disabled persons, such as assistance to overcome existing barriers that hamper or limit equal access to services and facilities for the public. This international project was designed to

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<sup>5</sup> Convention on the Rights of Persons with Disabilities [http://zakon2.rada.gov.ua/laws/show/995\\_g71](http://zakon2.rada.gov.ua/laws/show/995_g71)

<sup>6</sup> ATO actualization. Are Ukrainian cities for all or for selected individuals only?

<sup>7</sup> Ibid.

<sup>8</sup> The resolution of the Cabinet of Ministers On adoption of the state special-purpose program “National Action Plan of Implementation of the Convention on the Rights of Persons with Disabilities” for the period up to 2020 // <http://zakon1.rada.gov.ua/laws/show/706-2012-%D0%BF/page>

<sup>9</sup> Universal Design: the buildings are expected to be comfortable for the end-user <http://www.ua.undp.org/content/ukraine/uk/home/presscenter/articles/2014/09/23/-html>

<sup>10</sup> Promoting integration policy and services for disabled persons in Ukraine [http://www.ua.undp.org/content/ukraine/uk/home/operations/projects/poverty\\_reduction/project\\_sample112](http://www.ua.undp.org/content/ukraine/uk/home/operations/projects/poverty_reduction/project_sample112)

facilitate the implementation of Articles 4, 9, 23, 25, 26, 27 of the Convention on the Rights of Disabled Persons<sup>11</sup>.

During 2014, the Ukrainian legislation was also expected to undergo changes, including planned improvements of eight legal acts. One of the most important laws that had been modified was the Law of Ukraine “On Standardization”. The innovations of the new redaction adopted on June 5 make it possible that from now on, according to Article 17, the developers of national standards and codes of the established practice intended to implement the rights of disabled persons and freedoms of man and citizen will take into account the needs of people and/or apply the principles of reasonable accommodation and universal design<sup>12</sup>.

However, due to the slow implementation of all this, Ukraine has significant differences in the standards with other countries. For example, under the concept of “universal design” entrance to the building must be at zero level (so-called “barrierless entrance”)<sup>13</sup>. However, in Ukraine, on September 23, 2014 the State building norm V.2.2-15-2005 (hereinafter–SBN) specified that the level of the floor of the premises at the entrance to the building should be higher than the sidewalk level in front of the building **at least by 15 cm**. However, the provisions of this standard are inaccurate and often ignored. In particular, according to paragraph 2.13., the apartment house entrance doors should lead to up to 1.4 m passage. According to the same paragraph, the entrance door to the house shall be equipped with combination locks, locks talkies, etc. without indication of the height of installation. The thresholds should be below 2.5 cm. The most of the listed is still rare to see.

Another active SBN V.2.2-9-99 indicates that the entrance to the building should be higher than the sidewalk level in front of the building at least by 15 cm.

In this context, the availability of premises for disabled persons is supported by legal penalties applicable in the absence of such access. So, art. 96 of the Code of Ukraine on Administrative Offences provides penalty for violation of the law during the planning and development of the territory reaching from 900 to 1000 times the personal income<sup>14</sup>.

Article 2 of the Law of Ukraine “On Liability for Violations in Urban Planning” also provides for penalties for failing to create unobstructive living environment for disabled persons and other people with limited mobility ranging from 18 to 90 minimum monthly wages<sup>15</sup>.

However, even despite these measures, in Ukraine, only 4% of the buildings can be considered accessible, indicating the failure of the owners of buildings or balance keepers to fulfill their duties making ramps, additional elevators and other accessibility facilities<sup>16</sup>.

According to the State Judicial Administration of Ukraine, as of January 1, 2014, only 24.5% of all buildings of the courts of Ukraine have ramps that meet V.2.2. SBN-17:2006.

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<sup>11</sup> Universal Design helps millions of people <http://netbaryerov.org.ua/kyiv/1579-universalnij-dizajn-dopomogti-miljonam-lyudej>

<sup>12</sup> The Law of Ukraine “On Standardization” <http://zakon4.rada.gov.ua/laws/show/1315-18/page>

<sup>13</sup> <http://www.slideshare.net/undpukraine/ss-39520867>

<sup>14</sup> Code of Ukraine on Administrative Offences <http://zakon4.rada.gov.ua/laws/show/80731-10>

<sup>15</sup> Law of Ukraine “On Liability for Violations in Urban Planning” <http://zakon4.rada.gov.ua/laws/show/208/94-%D0%B2%D1%80>

<sup>16</sup> Ministry of Regions considered the problem of ensuring accessibility of buildings <http://www.minregion.gov.ua/news/v-minreigoni-obgovorili-problemi-zabezpechennya-dostupnosti-budivel-869501/>

This is 11% more than on January 1, 2013, but it shows all the same the violation of the right of access to infrastructure, and the right of access to justice<sup>17</sup>.

The State Agency for pensioners and veterans monitored the accessibility of buildings and premises of the territorial and local Pension Fund, State Employment Service, State Inspectorate of Labor, Social Insurance Fund against Temporary Disability, Insurance Fund against industrial accidents and occupational diseases, Social Security Fund for protection of disabled persons and social security institutions that are under control of Social Policy Ministry. As of July 1, 2014, out of the total number of buildings (7264) only 4335 (59.7% of the total) buildings in social domain were fully accessible. 2697 (37.1%) buildings were partially accessible, 232 (3.2%) buildings were inaccessible<sup>18</sup>.

One of the indicators of accessibility is the possibility to travel without obstacles for the disabled persons. In this context, it is worth noting the service of Ukrzaliznytsia, which in January-October 2014 transported in special cars for disabled persons 1554 passengers with disabilities<sup>19</sup>.

At the regional level, we can give an example from the experience of Kyiv. Thus, during ten months in 2014 the local branch of the transport service for persons with abnormalities of the musculoskeletal system transported 77 802 disabled persons who move in wheelchairs, on crutches or using sticks and with III, IV or V group of locomotor activity<sup>20</sup>.

As of November 2014 there were 979 units of rolling stock with low floors adapted for persons with limited physical abilities and women with baby-buggies serviced the routes of urban public land transport under the public utility company Kyivpastrans. Moreover, 609 units of rolling stock were equipped with ramps. Nineteen trolleybuses and seven streetcars were equipped with external systems of notification about the arrival of rolling stock to the stop for passengers with impaired vision<sup>21</sup>.

Another criterion for the feasibility of “accessibility” may be the possibility for disabled persons to participate in social and political life. The use of such information became particularly important following the adoption on 16.11.2011 of the Recommendations of the Committee of Ministers of the Council of Europe on the participation of disabled persons in political and public life and its Annexes. The purpose of this international instrument is to achieve full equality of participation in elections and representation of all members of society in the governing bodies to ensure that the diversity of positions and needs was taken into account in national, regional and local legislation and policy development in member states<sup>22</sup>.

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<sup>17</sup> Information on the activities of the State Judicial Administration of Ukraine in 2012–2013 and the first quarter of 2014, [https://court.gov.ua/userfiles/file/DSA/SCA\\_Zvit.pdf](https://court.gov.ua/userfiles/file/DSA/SCA_Zvit.pdf), S. 36

<sup>18</sup> The accessibility of buildings is an indicator of care about disabled persons <http://netbaryerov.org.ua/kyiv/1609-dostupnist-budivel-pokaznik-turboti-pro-invalidiv>

<sup>19</sup> During 10 months the Ukrzaliznytsia transported in special cars for disabled persons 1.500 passengers with disabilities <http://economics.unian.ua/transport/1011869-ukrzalznitsya-za-10-misyatsiv-perevezla-v-spets-vaqonah-15-tis-invalidiv.html>

<sup>20</sup> <http://svyat.kievcity.gov.ua/content/vidlennya-transportnogo-obslugovuvannya-invalidiv-z-porushen-nyam-opornoruhovogo-aparatu.html>

<sup>21</sup> It will be easier now for disabled persons and mothers with baby-buggies to use urban transport <http://kiev-ukr.segodnya.ua/ktransport/invalidam-i-mamam-s-kolyaskami-stanet-legche-polzovatsya-kiievskim-transportom-567238.html>

<sup>22</sup> Recommendations of the Committee of Ministers of the Council of Europe (2011) for 14 Member States on the participation of persons with disabilities in political and public life

The 2014 elections in Ukraine were a striking confirmation of failure of these Recommendations. The major causes of low activity of disabled persons in the electoral process included the maladjustment of streets and places of public consumption to the needs of people with locomotion problems<sup>23</sup>, absence of special tactile features for the blind, inadaptability of separate polling stations for self-dependent voting of disabled people<sup>24</sup> and unavailability of information on candidates for the people with visual and hearing impairment. For example, monitoring of polling stations in Vinnytsia Oblast showed that only about 12 of them could be called accessible or partially accessible to disabled persons. As a result, less than 12% of voters with locomotion problems could get to the polling stations without hindrance<sup>25</sup>.

In general, if we analyze the laws, programs and structures of measures intended to protect the rights of disabled persons, we find that they more often than not fail to meet the requirements of international laws in the domain of human rights and contain no effective and real plans actions and instructions for their implementation<sup>26</sup>.

### 3. THE RIGHT TO WORK

According to Art. 19 of the Law of Ukraine “On the basics of social protection of disabled people in Ukraine”, in the state a quota stipulated for employment of disabled persons shall make 4% of workplaces<sup>27</sup>. Therefore, one of the biggest problems in this area is that often the presence of disabled persons employed in enterprises is only imitated when they are but part-timers getting 1/4 or 1/3 of minimum pay<sup>28</sup>. One reason for this situation is the unprofitableness for the employer to equip workplaces especially for such people. Therefore, the employers have also learned how to avoid paying money to the budget for uncreated jobs for disabled persons.

There is also the issue of the first job: many companies prefer to see the disabled persons to be highly qualified specialists with experience, and they are not in a hurry to employ the beginners.

It is worth understanding that the source of most manipulations is in the lack of clear and consistent criteria for deciding on benefits and loans. The situation might be tackled with by regular monitoring and evaluation of the dynamics of jobs for disabled persons, actual amount of their wages, list of direct spending for job creation for disabled persons and others.

The situation may be also improved through replacement of penalties by employers' mandatory contributions to the Fund for Social Protection of Disabled Persons. Under such

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<sup>23</sup> “Your voice–your future”: monitoring polling stations.

<sup>24</sup> The needs of disabled persons are not accounted for in the elections to come.

<sup>25</sup> “Your voice–your future”: monitoring polling stations.

<sup>26</sup> Ensuring equality and non-discrimination of disabled persons in Ukraine.

<sup>27</sup> The Law of Ukraine “On the basics of social protection of disabled people in Ukraine” // <http://zakon2.rada.gov.ua/laws/show/875-12>

<sup>28</sup> On-the-books employment of disabled persons.

conditions, the state might have guaranteed resources to create jobs for disabled persons without litigation with employers. According to experts, this solution could boost the income of the Fund to the tune of \$60 to \$100 MM. Simultaneously these simple steps may bring up the share of employment of disabled persons by 140 000 which is about the ILO standard<sup>29</sup>.

One way to detect violations of the rights of people with special needs to work is the appropriate inspection by state inspectors for functioning of enterprises, institutions, organizations and individuals that use hired labor and their annual reports on the number of employed disabled persons.

*For example, during the first six months of 2014 the territorial labor inspectorates inspected 6,000 of such entities and found that 2,100 employers violated legislation on employment and job placement of disabled persons. The inspections found 2,900 offences against Article 19 of the Law of Ukraine "On the basics of social protection of disabled people in Ukraine". In particular 700 employers were brought out (eight or more employed persons) who were not registered with the offices of the Fund for Social Protection of Disabled Persons, 1,100 employers who failed to submit reports on employment and job placement of disabled persons, 1,100 employers who failed to fulfill quotas for employment of disabled persons<sup>30</sup>.*

Unfortunately, the analysis of the Law on the Protection of Disabled Persons leads to the conclusion that the obligation of the company for employment for disabled persons is still not accompanied by its duty to choose and employ disabled persons to jobs created. In fact, it is the responsibility of the employment agencies listed in Article 18 of this Law.

By studying the job placement of disabled persons, the NGO *Nezlamnist* monitored compliance of public bodies with the laws of Ukraine in this domain. It was found that the State Labor Inspectorate of Ukraine in 2013 and the first six months of 2014 did not conduct any routine check of compliance with the Law of Ukraine "On the basics of social protection of disabled people in Ukraine" in central executive bodies. The do-nothingism of the authorized executive bodies regarding normative regulation of the above problem resulted in failure of almost all central executive bodies to fulfill the norm of employment of disabled persons. As a result the disabled persons cannot fully participate in public management that, firstly, is a violation of their constitutional rights, and secondly, demonstrates once again the failure to fulfill Recommendation of the Council of Europe.

So, the inspection has established the following (in parentheses we indicate the percentage of the average accountable number of employed disabled persons to the average accountable number of full-time employees): Ministry of Ecology and Natural Resources of Ukraine — 5 persons (1.46%); Ministry of Economic Development and Trade of Ukraine — 34 persons (1.04%); Ministry of Infrastructure of Ukraine — 9 persons (0.39%); Ministry of Culture of Ukraine—8 persons (0%); Ministry of Defense of Ukraine — 6 persons (2.9%); Ministry of Healthcare of Ukraine — 3 persons (2.83%); Ministry of Regional Development, Construction, Housing and Communal Service of Ukraine — 4 persons (2.85%); Ministry of Social Policy of Ukraine — 5 persons (2.83%); Ministry of Justice of Ukraine — 12 persons (2.16%).

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<sup>29</sup> On-the-books employment of disabled persons.

<sup>30</sup> Employment and job placement of disabled persons // <http://dpu.gov.ua/Lists/news/DispForm.aspx?ID=480>

Some government agencies have failed to file reports on employment and job placement of disabled persons<sup>31</sup>.

In Ukraine, the government is not likely to develop outwork possibilities for disabled persons; there is no information on businesses using outwork, number of outworkers and more. The work of outworkers in Ukraine is regulated by the Bylaw on the labor conditions of outworkers approved by Goskomtrud USSR and Secretariat of the All-Union Central Council of Trade Unions on 29 September 1981 No. 275/11-99.

In Ukraine, the most vulnerable of all categories of disabled persons are disabled due to mental illnesses and mental retardation. As of the beginning of 2012, the mental health care institutions registered 1,164,000 People with mental and behavioral disorders, or 2,561 per 100,000 of population.

It should be noted that in Ukraine the public is steeped in prejudice about the possibility of integration of this category of disabled persons into society, and especially into the practical work.

According to the State Typical Program of Rehabilitation of Disabled Persons approved by the Cabinet of Ministers of Ukraine on 08.12.2006 No. 1686, the disabled persons with mental illnesses and mental retardation are provided professional rehabilitation services that include career counseling, professional screening, proficiency training (retraining and skills upgrade), labor rehabilitation in terms of adaptation and job creation accounting for the special needs of disabled persons and rational job placement.

Analyzing the guarantees of the rights of disabled persons to work in Ukraine, it should be noted that in the year under review the Ukrainian human rights activists implemented rating of the best-rated companies that adhere to anti-discrimination standards "Corporate Equality Index 2014". Its purpose is to encourage businesses to accelerate the implementation of the policy of equality at the workplace. In fact, based on the association agreement with the EU, in the course of four years the businesses are expected to establish procedures to prevent and combat discrimination at the workplace. The study was conducted during the first six months, but the results have not been published yet<sup>32</sup>.

### 4. RIGHT TO EDUCATION

One of the basic constitutional rights of citizens with disabilities proclaimed by the state is the right to education. Art. 53 of the Constitution reads that "The State shall ensure accessible and free pre-school, complete general secondary, vocational and higher education at the state and communal educational establishments; the development of pre-school, complete general secondary, extra-curricular, vocational, higher and post-graduate education, various forms of study; the provision of state scholarships and privileges to pupils and students."

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<sup>31</sup> The NGO Nezlamnist monitored compliance of ministries and other central executive bodies with the laws of Ukraine on the Principles of Social Protection of Disabled Persons concerning the fulfillment of the regulation of employment of disabled persons <http://nezlamnist.org.ua/nevs%201%2016.07.2014.html>

<sup>32</sup> Which company will go to the top of tolerance rating? <http://getup.ligazakon.ua/hto-z-ukrayinskogo-biznesu-ocholit-rejting-tolerantnosti/>

The laws of Ukraine “On Preschool Education”, “On Education”, “On Vocational Training”, “On Higher Education”, “On the basics of social protection of disabled persons in Ukraine” confirm the right of disabled persons and establishes state guarantees to education at the level appropriate to their skills and abilities, desires and interests based on medical indications and contraindications for the next labor activity<sup>33</sup>.

In Ukraine, the inclusive education is on the go; it is based on the right to equal access to quality education according to place of residence of all children, including those with disabilities. The concept of inclusive education is one of the main democratic ideas: all children are important and active members of society. In 2009, Ukraine ratified the UN Convention on the Rights of Persons with Disabilities recognizing by this that inclusive education is not only providing the best learning environment for children with disabilities, but also helps to eliminate barriers and break stereotypes: “The Inclusive education is a comprehensive process ensuring equal access to quality education for children with special educational needs by organizing their education in secondary schools through the use of student-centered teaching methods with account for individual characteristics of training and learning of these children”<sup>34</sup>.

On June 5, 2014, the Verkhovna Rada adopted the Law “On Amendments to Certain Legislative Acts of Ukraine on inclusive education management.” The first innovation dealt with art. 12 of the Law of Ukraine “On Preschool Education”. From now on, in the preschool institutions the special and inclusive groups for education and training of children with special educational needs can be created in order to meet the educational and social needs as well as organization of correctional and developmental work.

Due to the second innovation, in all types of preschools, realizing the rights of children to pre-school education, the special needs of each child during training and education, including children with special educational needs in accordance with the principles of inclusive education will be taken into account.

The deputies also amended the Law “On General Secondary Education”, according to which the children with special educational needs going to special and inclusive classes of secondary schools are provided hot meals free of charge throughout the period of study in comprehensive secondary schools. The law takes effect from 1 January 2015<sup>35</sup>. Based on these amendments to the legislation, the Ministry of Education is to initiate the development of normative legal acts and methodology of inclusive teaching in preschools in 2914<sup>36</sup>.

The legal aspects of introduction of the newest type of training in secondary schools were settled earlier. Due to this, more than 2.500 children with special educational needs began training in inclusive classrooms of the schools in the 2013/2014 academic year. In order to help children, now the personnel lists of secondary schools included such positions

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<sup>33</sup> Ensuring rights to education for disability persons <http://www.personal-plus.net/307/4424.html>

<sup>34</sup> Inclusive education concept [http://www.mon.gov.ua/files/normative/newstmp/2010/05\\_10/912.zip](http://www.mon.gov.ua/files/normative/newstmp/2010/05_10/912.zip)

<sup>35</sup> Poroshenko signed into law on management of inclusive education, see more details on the site of UNIAN // <http://health.unian.ua/country/933575-poroshenko-pidpisav-zakon-schodo-organizatsiji-inklyuzivnogo-navchannya.html>

<sup>36</sup> On parliament hearings “Education, health care and social welfare services for children with impairment of psychophysical development: problems and ways to tackle them” on June 4, 2014.



as teacher's assistants, due to which over 660 assistants began working in inclusive classrooms.

However, despite the significant progress in this area, there remains a number of substantive problems to be addressed. First, the content of laws and regulations is not always promptly and properly brought home to the principals and teachers of educational institutions. Both managers and administrators of these institutions are personally liable for the fact that the most kindergartens and schools are not ready to admit a child with special needs.

Sometimes, in the pursuit of results, some officials and people's deputies, not understanding the essence of the concept of inclusive education, are trying to emend legislation introducing discriminatory elements. For example, the people's deputies suggest amending the draft law "On Amendments to the Law of Ukraine "On Education" concerning the access of persons with special needs to educational services" with extension of art. 3 and introduction of the new term "*person with special needs, including disabilities, person who has significant deviations from normal physical and mental development...*" which in essence is contrary to basic international documents and recommendations of UNESCO.

Another problem is the outstanding issue involving inclusive education of children with various functional disorders. According to the Vidrodzhennia Fund, over 50% of children with disabilities go to special boarding schools. Abroad only 3-4% of children with the most severe disabilities go to such schools. Others go to ordinary public schools and stay at home with their families<sup>37</sup>. 4.500 children with impairments of musculoskeletal system are usually instructed at home on the individual basis because of architectural inaccessibility of educational institutions and lack of teacher's assistants and accompanying persons.

There remains a large number of children with mental retardation (20%) who are instructed individually, though they could study in classes along with healthy pupils of the same age<sup>38</sup>.

Third, the local authorities controlling the preschool, secondary and extracurricular education make no necessary efforts to create appropriate conditions for education of children with special educational needs. This is due to inadequate funding, lack of interest of local authorities in providing adequate logistical and educational base for the institutions managing inclusive classes or groups<sup>39</sup>.

Fourth, the issue of pay rise to teaching staff for working with children with special needs in inclusive classrooms needs urgent settling; otherwise, the experienced teachers will not go to work in inclusive classrooms.

Fifth, the authorities do not get NGOs involved in the work<sup>40</sup>.

During the 2014 external independent evaluation, the specific needs of children with disabilities were taken into consideration. The persons with disorders that could be an

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<sup>37</sup> Where do children with disabilities study?

<sup>38</sup> On parliament hearings "Education, health care and social welfare services for children with impairment of psychophysical development: problems and ways to tackle them" on June 4, 2014.

<sup>39</sup> Ensuring the right to education to children with special needs by the way of inclusive training // <http://mon.gov.ua/ua/pr-viddil/2866/1409065276/>

<sup>40</sup> Ensuring the right to education to children with special needs by the way of inclusive training // <http://mon.gov.ua/ua/pr-viddil/2866/1409065276/>

obstacle for taking an exam during registration, among other documents, filed conclusions of health care institutions on the need of creation special conditions for external independent evaluation. The commissions of regional centers for regulation of evaluation of the quality of education decided to register 254 persons in this category (24 less than in 2013), including 59 with limited mobility (22 less than in 2013), 97 with impairment of hearing (8 less than in 2013). Due to the inability to create special conditions of external independent evaluation, eight persons were denied registration (20 less than in 2013)<sup>41</sup>.

On July 1, 2014, the new redaction of the Law of Ukraine “On Higher Education” was adopted<sup>42</sup>. The document specifies that the educational establishments must create and ensure equal access to higher education, including the provision for people with special educational needs of special education and rehabilitation support and free access to the infrastructure of higher educational establishments taking into account limitations caused by health status.

According to the Law of Ukraine “On the basics of social protection of disabled people in Ukraine”, the persons with disabilities are entitled to priority acceptance as students of higher educational establishments. In 2014, this right was granted to disabled persons, group III, and children from low-income families in which parents were disabled persons. Nobody is allowed now to break a ban on sequence changes in the list of entrants: if an orphan entrant and contest winner receive equal grades, the former shall be placed higher on the list of entrants<sup>43</sup>.

## **5. REHABILITATION OF DISABLED PERSONS**

Under the Constitution of Ukraine, the Law of Ukraine “On the Rehabilitation of the Persons with Disabilities in Ukraine” defines the basic principles of creating legal, social and economic, and organizational conditions for elimination or compensation for limitations of living circumstances caused by health problems with persistent disorder of body functions, working system of support for physical, mental and social well-being of disabled persons, and aid in achievement of social and financial independence.

The rehabilitation of disabled persons includes medical, psychological, educational, physical, occupational and labor measures intended to assist persons in recovery of and compensation for impaired or lost functions of the organism<sup>44</sup>.

In Ukraine, the disabled persons are provided with prosthetic appliances and orthopedic products according to the provisions of Art. 38 of the Law of Ukraine “On the basics of social protection of disabled people in Ukraine”. In particular, this article specifies that the disabled persons and disabled children be provided with such free services or services on favorable terms as welfare and health care, technical and other means of rehabilitation (means of

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<sup>41</sup> Official report on external independent evaluation of the progress in studies of university entrants in 2014.

<sup>42</sup> The Law of Ukraine “On Higher Education” <http://zakon4.rada.gov.ua/laws/show/1556-18>

<sup>43</sup> The Ministry of Justice has signed the Terms of entering the higher educational establishments of Ukraine in 2014 // <http://zno.osvita.net/News.aspx?newsID=1125>

<sup>44</sup> The main principles of creation of conditions for rehabilitation of the persons with disabilities in Ukraine // <http://www.minjust.gov.ua/8522>

transportation, prosthetic products, appliances designed to compensate for impairing of hearing and speaking, mobile phones for written communication, etc.) on the basis of individual rehabilitation program.

The Law of Ukraine “On the Rehabilitation of the Persons with Disabilities in Ukraine” contains a list of technical and other means of rehabilitation of disabled persons and categories of persons covered by the provisions of this law.

In particular, Art. 26 stipulates that the state guarantees the development and production of technical and other means of rehabilitation and procurement of special vehicles, medical products, and supplying them to persons with disabilities and children with disabilities for social adaptation, facilitation of working and living conditions, communication of persons with disabilities and children with disabilities, and dissemination of information about such products.

As of September 1, 2014, the number of people who are on the list of recipients of technical and other means of rehabilitation makes 526.700, including 33.100 disabled children. Of these, with allowance for the rated resource of the means of rehabilitation, the number of people who need rehabilitation equipment in 2014 makes 257.200, including 24.400 disabled children. These indicators leave out the needs of people affected by ATO.

The access to rehabilitation facilities is currently violated with respect to many disabled persons. Thus, under the law, the disabled persons get welfare and health care services free or on easy terms, technical and other means of rehabilitation, medical products based on individual rehabilitation program, and cars based on medical opinion. However, according to the Committee on pensioners, veterans and disabled persons, the State Budget 2014 allocated 568.4 MM, which is 57.7% of the needed sum to ensure budget spending on the program for the provision of certain categories of the population of Ukraine with technical and other means of rehabilitation. In Zaporizhzhia, for example, in recent years, the supply of technical and other means of rehabilitation of disabled persons makes 60% of the demand. Persons, whose rehabilitation equipment is broken, often face problems such as long-term repair and need to collect many documents.

Getting transport free of charge is a complicated issue; according to the press service of the Government Commissioner for the Rights of Disabled Persons, as of January 1, 2014, 78,492 disabled persons queued up for a free or privilege-price car. In 2014, the special fund of the state budget was expected to allot 2.12 MM while requirements made 5 bn. In 2014, the position of the Government Commissioner for the Rights of Disabled Persons was liquidated.

The rehabilitation of persons injured in the area of ATO needs particular attention, because these issues are within cognizance of the Ministry of Defense, Ministry of Internal Affairs and the Security Service of Ukraine, State Border Guard Service of Ukraine, State Management of Affairs and Ministry of Healthcare. The issue of medicamental rehabilitation complicated by the absence of the departments of physical rehabilitation and specialized personnel, as well as the absence of effective psychological rehabilitation in the most healthcare establishments.

Special attention should be paid to disabled persons who remained in the area ATO or had to leave it. According to the Ministry of Social Policy, as of October 2014 more than 1,500 casualties of ATO needed prosthetics while as of November 6 the Ministry of Healthcare acknowledged only 185 disabled persons.

## **6. THE RIGHTS OF PEOPLE WITH MAIDAN-RELATED DISABILITIES**

One of the most urgent issues in 2014 is to ensure the rights of people who were registered as disabled persons during the Revolution of Dignity. Many people received severe injuries in the clashes on the Nezalezhnist Square, on Hrushevsky and Instytutska streets, in the Mariyinsky Park and so on. These people deserve a priority implementation of their rights, as well as their protection, in case of need.

Unfortunately, many of those, who were registered as disabled persons during these events, face the same problems as other disabled persons: they run into difficulties obtaining a disability group, prosthetics, rehabilitation, and more.

Fortunately, the organizations of volunteers help to tackle many problems of disabled persons after the Maidan and ATO in Ukraine. However, this sort of effective mass activity cannot exist forever; therefore, it is necessary to change the situation with ensuring of the rights of disabled persons in the state today.

## **7. HELPING PEOPLE WITH DISABILITIES, WHO ARE LIVING IN ATO ZONE**

In 2014, all public and private organizations faced the new kind of services: the need to help disabled persons in the area of ATO.

As early as in 2012 the National Assembly of Disabled Persons supported by NGOs prepared and sent a report to the UN Committee on the Rights of Persons with Disabilities, which emphasized the need to take measures to ensure the protection and safety of disabled persons in situations of risk, including armed conflicts, humanitarian situations.

The report stated<sup>45</sup> that the current legislation on assisting disabled persons in emergency anthropogenic, natural, humanitarian situations does not satisfy all requirements of the Convention and international human rights treaties. The new programs, legislative initiatives were designed after the ratification of the Convention on the Rights of Persons with Disabilities<sup>46</sup> and they do not address the problems of this group of citizens, so their solution is not given due attention.

In December 2012, by the Presidential Decree No. 726/2012 the Ministry of Ukraine was reorganized into the State Emergency Service of Ukraine, which is subordinate to the Ministry of Defense<sup>47</sup>. However, the National Report on anthropogenic and natural security of Ukraine, 2011, stated that over 80% of machinery and equipment used by the units of the Operation Rescue Service of Civil Defense had been operated during 20–30 and more years

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<sup>45</sup> The lost rights. The alternative report of NGOs on the implementation of the UN Convention on the Rights of Persons with Disabilities, NADPU, Kyiv, 2012

<sup>46</sup> About the title of the document: The Convention on the Rights of Persons with Disabilities. The document was translated into Ukrainian and ratified by the Verkhovna Rada of Ukraine. The title of the document in Ukrainian was as follows: Конвенція про права інвалідів. The English term "Persons with disabilities" was rendered as "інваліди" (the author's note).

<sup>47</sup> <http://www.president.gov.ua/documents/15236.html>

and were morally and physically obsolete at the time. There were no special equipment to rescue people from the high-rise buildings<sup>48</sup>.

The National target-oriented program of protection of population and territories against emergency anthropogenic situations and natural disasters for 2013–2017<sup>49</sup>, which provides for immediate measures to protect the population and territories against emergency situations, ignores the needs of disabled persons.

The NGOs in their alternative report expressed concern that besides the obsolete machinery and equipment, lack of complex implementation of preventive measures; shortcomings of legal provisions for tackling security issues concerning the disabled persons and other people with limited mobility, the situation is further complicated by the existence of architectural and transport barriers and lack of training system intended to assist disabled persons during emergencies. *This means that the disabled persons can remain outside assistance during evacuation and disaster relief, and this assistance will be provided “to the best of one’s ability”.* Unfortunately, the current situation in the Luhansk and Donetsk oblasts has confirmed the findings of public organizations.

According to statistics, in the Donetsk Oblast there are 237,185 disabled persons (including 20,425 disabled persons of group 1, 1,602 disabled children), in Luhansk Oblast 102,668 people (including 9,920 disabled persons of group 1, 721 disabled children).

At present, the existing regulations relating to issues of public notification about situations of risk and evacuation do not contain provisions that would take into account specific needs of disabled persons. For example, there are no instructions:

- That people staying in nursing homes, hospitals, penitentiary institutions shall be evacuated in the first instance;
- Who and how in areas with risk situation shall support single or lonely disabled persons with impairment of vision, hearing, musculoskeletal system, mental disorders and elderly people;
- In which way the persons with impairment of hearing shall be informed about the special period, emergency etc.
- How a disabled person with impairment of vision and musculoskeletal system can go to a safe area or immediately get to a bomb shelter and others at the time of alarm signal.

Due to the activities of volunteers and NGOs evacuated 93,000 persons with disabilities from the area of ATO<sup>50</sup>. There were many difficulties not only with transportation in the combat zones, but in the far-away areas as well. These problems include as follows: finding of architecturally accessible habitat, accessible transport, wholesome food, treatment, living conditions; it was not easy to ensure social, juridical, legal, psychological and other assistance as well.

No group of population in eastern Ukraine is protected against devastating effects of hostilities, but the real vulnerability of a group depends on its socio-economic status, access to resources for assistance. For disabled persons who are denied access to

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<sup>48</sup> National Report on anthropogenic and natural security of Ukraine, 2011. P. 357, §14 // <http://www.mns.gov.ua/content/nasdopovid2011.html>

<sup>49</sup> <http://zakon4.rada.gov.ua/laws/show/4909-17>

<sup>50</sup> The Program “Let us rescue together!” <http://sos.naiu.org.ua/>

evacuation services and support (no alerts, information in accessible formats, architectural inaccessibility of air-raid shelters, hiding places, feeding stations) this is an additional source of severe suffering.

The officials in charge of evacuation from the zone of ATO often overlook the disabled persons and the elderly, the latter are abandoned to their fate. The reason for this is the lack of clear interagency cooperation, coordination and evacuation plan, and the impossibility of unimpeded access of disabled persons to organizations that provide assistance and facilities of transport and social infrastructure.

*Bringing disabled persons away from the zone of ATO, the volunteers met with instances that the hospital refused to hospitalize disabled people because they needed long-term care. Accompanying mother with her blind son, who had to receive hemodialysis therapy, for two days, the volunteers could not find a hospital, which could put them in ward<sup>51</sup>.*

The problems<sup>52</sup> related to the provision of assistance to disabled persons in the area of ATO may be divided into three groups:

**Organization of leaving for a safe area:**

- Lack of information about the possibility of departure. There were cases of false information (nobody knew who organized evacuation, what was the destination). Therefore, people were afraid to phone;
- Want or lack of money and transport to travel from the place of residence to the station;
- Inability to get to the railroad station on her/his own because of a serious health condition, lack of transport or safety of transportation;
- No train tickets, no special cars for transportation of persons with severe disorders of the musculoskeletal system.

**Placement of IDP with disabilities and creation of appropriate conditions:**

- The lack of information on free places suitable for temporary placement of citizens with disabilities;
- The lack of state financial, material and technical support of institutions that carry out resettlement of IDP and food supply;
- The existence of barriers in the physical environment inhabited by temporarily resettled disabled persons (lack of access to sanitary rooms, places for food taking and accommodation of wheelchair-bound invalids);
- Failure to provide timely medical and psychological care, poor supply of medicaments, technical and other means of rehabilitation, health aids.

**Job placement and employment of disabled persons, timely payment of pensions and public assistance:**

- Lack of interagency coordination on job placement of disabled persons, lack of jobs in places of temporary residence;

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<sup>51</sup> The All-Ukrainian Public Organization “National Assembly of the Persons with Disabilities of Ukraine”.

<sup>52</sup> The conclusions of the All-Ukrainian Public Organization “National Assembly of the Persons with Disabilities of Ukraine” while working in the area of ATO.

## XV. VIOLATIONS OF RIGHTS OF DISABLED PERSONS

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By virtue of their increased vulnerability, the PWDs are likely to suffer much more from disruptions in the operation of infrastructure and support services. When resources are scarce, the disabled persons are more likely to be discriminated. The plight of women with disabilities is extremely hard.

1,500 disabled persons were employed by 31 enterprises of public organizations of disabled persons, including Ukrainian Society for the Blind and Ukrainian Society for the Deaf who had government assistance in the form of tax concessions in Donetsk and Luhansk oblasts. In summer, the Luhansk production-and-training enterprise was completely plundered and process equipment was taken away. Fifteen enterprises located in the territory controlled by terrorist organizations were brought to a stop. As a result, hundreds of employees with disabilities lost their jobs and livelihood.

In December 2014, the situation of disabled persons who have remained in the area of ATO is difficult due to lack of medical supplies, rehabilitation facilities, food, medical care and so on.

*“Hemodialysis is not available now and will not be available in the foreseeable future. At present, the equipment for this procedure is in operable condition, but due to the lack of stable supply of associated medications and dialysis columns does not permit to invite patients to the hospital. In case of emergency, the hospital can conduct resuscitation, but nothing more, i.e. the people should be sent to other regions for hemodialysis.” (Application letter to the National Assembly of Persons with Disabilities of Ukraine).*

On December 1, 2014, the President of Ukraine signed a Decree on introduction of the office of the Representative of the Rights of Disabled Persons and Decree of December 3, 2014 appointing to this position V.M. Sushkevych, President of the National Committee of Sports for the Disabled Persons of Ukraine and Head of the Ukrainian public association “National Assembly of Persons with Disabilities of Ukraine”.

There is hope that in the end this institution will improve the execution of rights of disabled persons in Ukraine. However, we should not forget that the execution of human rights in Ukraine, and in particular the rights of disabled persons, primarily depends on the attitude of society and every citizen to these issues.

## 8. RECOMMENDATIONS

1. To ensure implementation (including appropriate financial support) of the National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities.

2. To develop and adopt amendments to the legislation on health, education, rehabilitation, and job placement in order to bring it into line with the requirements of the UN Convention on the Rights of Persons with Disabilities.

3. To analyze current international financial assistance for the restoration of Luhansk and Donetsk oblasts to prevent the use of funds for creation of architectural and other barriers within facilities and services.

4. To bring off the adoption of the Law of Ukraine “On Compulsory State Social Medical Insurance” in order to ensure effective access to health care for disabled persons.

5. There is a need to amend the constitutional legislation of Ukraine, because the term “equality” (there is such term in constitutional legislation) and “non-discrimination” in relation to the disabled persons are not identical and differ significantly in content.

6. The government healthcare programs in the developmental stage should make provisions for quality services for disabled persons according to WHO recommendations.

7. The licensing for medical facilities should include such terms as the accessibility, reasonable accommodations, and universal design. To revise existing licenses and revoke licenses if the building of the institution and its premises are not designed for unimpeded access for disabled persons and other people with limited mobility.

8. To analyze state building norms, standards for health care institutions and bring them into line with European standards. To amend and supplement the SBN V.2.2-10-2001 “Buildings and constructions. Health care establishments”.

9. To promote accessibility, universal design, reasonable accommodation in all spheres of life.

10. To develop inclusive education system, identify the sources and amounts of required state funding. To take the necessary steps to employ disabled persons in the sphere of education.

11. To ensure special training and re-training of teaching staff as regards disability, inclusive education, attending children with disabilities, creating a barrier-free environment at educational establishments.

12. To involve civil society organizations of disabled persons in decision-making regarding the implementation of the right to education, medicine, rehabilitation, independent living.

13. To ensure the needs of disabled persons when carrying out health reform.

14. To enforce the Law of Ukraine on drafting individual rehabilitation programs for every person with disability.

15. To develop an effective mechanism to supply disabled persons with rehabilitation equipment and medicines, and compensation procedure for independent provision with such means which should be based on the principles of targeting, feasibility, rationality and efficiency.

16. To ensure the right to employment and job placement of disabled persons. To implement the system of sustained employment.

17. To ensure deinstitutionalization and independent living in the community with complex support for citizens with disabilities who require constant care and supervision, gradually reducing the number of nursing homes and developing a system of houses in the community accommodations for 8–16 adult citizens with disabilities.

18. The gradual reform of the system of care and tutelage of citizens with disabilities who do not understand the significance of their actions and their consequences, remove economic restrictions, including property, political and other rights of these disabled persons, including those under art. 70 of the Constitution of Ukraine and art. 32 of the Law of Ukraine “On the basics of social protection of disabled people in Ukraine”.

19. To start the introduction of sustained decision-making with involvement of qualified assistants for disabled persons who do not understand the significance of their actions and their consequences.



## XV. VIOLATIONS OF RIGHTS OF DISABLED PERSONS

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20. To enforce current legislation obligations under Art. 29 CRPD to eliminate discrimination and create an environment where the disabled persons can fully participate in political and public life.

21. To ensure monitoring of the implementation of existing legislation for the purpose of non-discrimination of disabled persons in the electoral process.

22. To ensure training of officials responsible for conducting the elections and those responsible for monitoring polling stations, disability issues, communication with people of different nosology, equipment for polling stations, access to information and more.

23. To amend the current legislation of Ukraine on gender equality in order to provide for the needs of disabled persons.

24. To prepare a state report on the implementation and ensuring of the rights of women with disabilities in Ukraine and their integration into society, involving public organizations of disabled persons in its preparation.

25. To ensure quality health care for women with disabilities to meet individual needs in health care. To train the health care personnel to provide for the needs of women with disabilities and ethics of communication.

26. To implement measures intended to actively employ women with disabilities in education, social policy, and health care.

27. To amend the existing legislation in conformity with CRPD standards regarding the right of access to information for disabled persons and effective monitoring of its execution.

28. To oblige the central and local governments to use for communication with disabled persons ways and formats that facilitate access to information adapting information products and information about public services.

29. To take administrative and promotional steps through mechanisms of dialogue and social responsibility for dissemination of information intended for private sector using formats and methods accessible for disabled persons.

30. To ensure the use of new technologies to promote independence and autonomy of disabled persons in exercising their right to information.

31. To ensure effective psychological, medical, and physical rehabilitation of the ATO participants.

32. To ensure conditions for the education and employment of persons with ATO-related disabilities.

33. To ensure the use of new technologies to enhance the independence of disabled persons.

34. To ensure protection and safety of disabled persons in situations of risk and humanitarian emergencies in accordance with art. 11 of the Convention on the Rights of Persons with Disabilities.

35. To strengthen responsibility for failure to obey art. 9 "Accessibility" of UN Convention on the Rights of Persons with Disabilities and Misuse of Funds to Ensure Accessibility.

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## **XVI. CHILDREN'S RIGHTS**

Previous reports have covered the situation of children's rights observance in such spheres as education, health care, rights to rest, leisure and physical development, participation in public life, protection against cruel treatment and violence, access to social services etc. Certainly, all previous conclusions and recommendations are still topical even today.

However, since the outbreak of hostilities in the territory of Donetsk and Luhansk regions leading to a large number of victims among civilians and Ukrainian military men, Ukraine has faced yet another problem — thousands of forcibly displaced persons from these regions started to move to other regions of Ukraine. This phenomenon caused new social and economic threats. That is why this problem is the main focus of this report.

According to data of the UNHCR as of November 28, 2014, there are 490,046 of internally displaced persons in Ukraine. Most of them concentrate in the following regions:

- Kharkiv region — 117,188 persons (24%);
- Donetsk region — 72,887 persons (14.8%);
- Zaporizhzhia region — 48,527 persons (9.9%);
- Dnipropetrovsk region — 41,922 persons (8.5%);
- City of Kyiv — 39,047 persons (8%);
- Luhansk region — 30,120 persons (6.1%);
- Odesa region — 19,783 persons (4%);
- Kyiv region — 16,971 persons (3.5%);
- Poltava region — 15,373 persons (3.1%).

### **2. PROTECTION OF RIGHTS OF CHILDREN WHO ARE IN NEED OF PROTECTION BY THE STATE DUE TO THE ARMED CONFLICT**

Anxious moods, fears and disappointment are spreading in the society. In view of a difficult social and political situation there have been few purposeful or concerted actions on part of the government institutions. In such situation, the most vulnerable are families with children, citizens (including children) with special needs, elderly people — both those who were forced to leave their places of residence and those who stayed in cities and villages in the action area of the Anti-Terrorist Operation (ATO).

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<sup>1</sup> The section is prepared by specialists of the La Strada — Ukraine IWRC: K. A. Borozdina; O. A. Kalashnyk; L. H. Kovalchuk, Cand. Sc. (Education); K. B. Levchenko, Doctor of Law; M. M. Lehenka; L. B. Mahdiuk; V. V. Mudrik.

The report also employs the materials of Monitoring report of non-governmental organizations with respect to fulfilment in 2010–2013 of the national action plans on implementation of the Law of Ukraine “On the national program “The national action plan for implementation of the UN Convention on the Rights of the Child” for the period until 2016”, namely the materials authored by A. M. Beh, N. P. Bochkor, M. V. Yevsiukova.

## XVI. CHILDREN'S RIGHTS

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There are over 8 million children living in Ukraine. As of the start of 2014, residential care facilities in all jurisdictions had over 90 thousand children being raised within its premises including nearly 14 thousand of orphaned children and those deprived of parental care. At the beginning of the ATO, social care institutions and orphanages of Donetsk and Luhansk regions homed 2.8 thousand children (1.6 thousand children in Donetsk region and 1.2 thousand in Luhansk region). In 25 facilities and institutions of the AR of Crimea and the city of Sevastopol there were 588 orphans and children deprived of parental care.

Over the period of the ATO, over 1,500 children living in residential care facilities located directly in the ATO area left the hazardous zone. However, we cannot say with assurance that all children have been evacuated from the said territory, since every day there are more and more children getting deprived of parental care.

At present, for the internally displaced persons it is utterly important to receive timely and full information regarding protection of their rights guaranteed by the Constitution of Ukraine: starting from the right to employment or education and up to the right of receiving any social benefits.

The most effective instrument in this area is the National hotline on prevention of domestic violence, human trafficking and gender-based discrimination as well as the National hotline for Children, which operate on the basis of the La Strada — Ukraine International Women's Rights Centre. So far, over the period from March to November 2014, the national hotlines received 524 calls directly from the internally displaced persons or those who planned to move somewhere safer within Ukraine and 2,615 calls from residents of those regions where majority of citizens from Donetsk and Luhansk regions now live.

Up till now, there is no solution to the issue of protection of housing and property rights of orphans and children deprived of parental care who are registered in the AR of Crimea but temporarily moved to the other regions of Ukraine. Unfortunately, the effective legislation of Ukraine stipulates that such children may be housed only in the places of their origin. Apart from that, it is fair to expect that under such circumstances the number of families with children as well as children in difficult life circumstances and, therefore, in the situation of social orphanhood, will continue to grow. As a result, we can expect escalation of child homelessness and neglect as well as a spike in the number of orphaned children and children deprived of parental care. That is why we must adjust the effective legal and regulatory framework on placing orphans into family-type care facilities and providing services to families with children in difficult life circumstances, to the existing wartime circumstances.

At the UNICEF initiative, an express assessment of social and psychological condition of children was conducted in four cities of Donetsk region<sup>2</sup>, which was aimed at determining the impact of the current crisis on the life of children and their families by gathering information on the child stress level and its primary causes, compensation mechanisms as well as the ability of local community representatives to help such children.

The express assessment showed that:

- every fifth respondent child aged 13–18 years has the anxiety level exceeding the norm;

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<sup>2</sup> [http://www.unicef.org/ukraine/ukr/Rapid\\_Psychosocial\\_Assesment\\_of\\_Children\\_in\\_Donetsk\\_Oblast\\_ua.pdf](http://www.unicef.org/ukraine/ukr/Rapid_Psychosocial_Assesment_of_Children_in_Donetsk_Oblast_ua.pdf)

- children aged 3–6 years demonstrated a much higher level of fear of blood or sudden harsh sounds as compared to the norm. Besides, boys had a higher level of fear of death and girls — of fear of pain as compared to the norm for their age.
- every sixth child aged 7–12 years and every fourth child aged 13–18 years showed an increased level of social stress as compared to the norm.

By the results of this assessment, recommendations were given to the Government of Ukraine as well as to the international and national non-governmental organizations.

### **3. LEGISLATION ON PROTECTION OF CHILDREN'S RIGHTS**

By considering a child as an object for protection rather than a holder of his or her own rights, the state policy leads to the merely declarative nature of the Ukrainian legislation on children's rights, due to which far not all of the children's rights stipulated in the Convention on the Rights of the Child are supported by the relevant laws. The state lacks a systematic approach where a child's opinion would be considered at all levels of social life. The principle of the best interests of the child forms the basis for the state policy only in the sphere of childhood protection and family relations regulation. The state policy is not aimed at active countermeasures against discrimination of vulnerable and marginal groups, primarily, in their access to education or medical services. State programs and plans on children's rights are financed rather by the "left-over principle" than through allocation of a fixed share from the total budget, which would be spent on their implementation.

Even though in 2011 the Concept for Development of Criminal Justice regarding the Underage in Ukraine<sup>3</sup> and the action plan for its implementation were approved, no ombudsman institute on children's rights has been established till today as well as no juvenile justice as a comprehensive legal system for the underage has been implemented<sup>4</sup>. National legislation does not fully correspond to the needs and problems of children, as regards, first of all, to the general approach of state policy to guaranteeing children's rights when a child is not seen as a holder of its own rights but only as a person to be protected. Many legislation provisions regarding children's rights remain purely declarative, and far not all children's rights stipulated in the Convention of the Rights of the Child are supported by proper laws. For example, there is no way to implement the child's right to participate in making decisions directly related to such child. Besides, today a new category of children should be singled out — children affected by occupation of the Ukrainian territories and the ATO. Inferiority of the legal and regulatory framework in Ukraine in the sphere of protecting children from sexual abuse impedes the efficient and comprehensive protection of children from getting them involved in prostitution and other forms of sexual abuse.

Starting from 2013, certain state-run targeted programs are implemented in Ukraine, which are aimed at counteracting violence and cruel treatment of children. For example, in 2013 the Cabinet of Ministers of Ukraine approved the National Targeted Social Program for Family Support up till 2016. The objective of this Program is to set a value orientation

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<sup>3</sup> <http://zakon4.rada.gov.ua/laws/show/597/2011>

<sup>4</sup> <http://zakon2.rada.gov.ua/laws/show/1039-2011-%D1%80>

for people where having a family and children will be a priority, as well as to increase the efficiency of supporting families in difficult life circumstances. Before 2016, the Ministry of Social Policy together with the Ministry of Internal Affairs plans on bringing the national legislation into compliance with the Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence. However, financing of the said measures is insufficient. For example, 1,605.2 thousand hryvnias budgeted by the Ministry of Social Policy for outdoor poster campaign on prevention of domestic violence have never been allocated.

Also, in 2012, by the Order of the President of Ukraine a certain strategy for prevention of social orphanhood for the period of up till 2020 was approved. Thus, the act stipulates the change of a focus area from combating the consequences of difficult life circumstances to preventing the families from getting into such circumstances. Before 2019, it is planned to introduce new social technologies aimed at early detection of families with children in difficult life circumstances and cultivation of responsible parenthood.

During 2011–2014, the La Strada — Ukraine Centre supported by UNICEF in Ukraine developed a series of draft laws which were laid before the Verkhovna Rada (No. 9540<sup>5</sup>, No.7390<sup>6</sup>, 7391<sup>7</sup>, 9135<sup>8</sup>, 9136<sup>9</sup>, 4099a<sup>10</sup>). Later, several round-table conferences were organized to introduce these draft laws and discuss them with a wide range of experts as well as to align positions regarding counteraction to child prostitution at the legislative level. Ukrainian MPs confirmed their intention to support these legislative initiatives, however, regardless of the conducted work, the said draft laws *have not been considered by the parliament*.

The mentioned draft laws related to the issue of the age of puberty, the fact of which is currently determined by the forensic test, and practice of the courts indicates a rather unspecified age of 14-16 years as the age of puberty. Within the framework of the abovementioned draft laws, it was suggested to make amendments to article 155 of the CC of Ukraine (sexual relations with a person under the age of puberty) with respect to determining the minimum age of consent, which would deliver from the necessity of doing a mandatory forensic test to establish the puberty of a victim less than 16 years of age. Also, the draft law suggests keeping the provision which prescribes expert opinion if needed to establish the puberty of a person over 16 years of age if there are any doubts regarding puberty of such child. Lack of understanding of this problem on part of the MPs as well as low political will with respect to protection of children's rights add substantial complexity to the process of legislators' approving the relevant amendments.

The anti-terrorist operation in Eastern Ukraine also requires improvement of legislation in the sphere of protection of children's rights.

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<sup>5</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=41965](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=41965)

<sup>6</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=39070](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=39070)

<sup>7</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=39071](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=39071)

<sup>8</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=41109](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=41109)

<sup>9</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=41110](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=41110)

<sup>10</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=51366](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51366)

In April 2014 the National Hotline Service for Children received a call from a mother of four underage children regarding mobilization of her husband due to which her family was left without a breadwinner since the woman was on her childcare leave. The La Strada — Ukraine Centre initiated making amendments to the Law of Ukraine “On mobilization training and mobilization”<sup>11</sup> for promoting the protection of children’s rights in the period of mobilization preparation and mobilization. This law was signed by the President of Ukraine on August 12, 2014. From then on, all males subject to military service who are in charge of three or more children under the age of 18, as well as females who are in charge of children under the age of 18 may not be called to military service under mobilization. Besides, those women and me, who independently raise children under the age of 18 or are in charge of disabled children of I or II disability groups, are also relieved from military service until their children attain 23 years of age. Such citizens may be called to military service if they consent thereto and only at the place of their residence. In addition, females who are in charge of children under 18 years are subject to exemption from military service in a particular period if they wish to discontinue their service.

Also, in order to promote the protection of rights of children who reside or resided in the areas of anti-terrorist operation, the following has been approved:

- Law of Ukraine “On ensuring rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine”<sup>12</sup>;
- Law of Ukraine “On ensuring rights and freedoms of internally displaced persons”<sup>13</sup>;
- Procedure for granting a monthly targeted aid to persons moving from the temporarily occupied territory of Ukraine and action areas of the anti-terrorist operation to cover living expenses, including payment for housing and public utility services”<sup>14</sup>;
- Procedure for registration of persons moving from the temporarily occupied territory of Ukraine and action areas of the anti-terrorist operation<sup>15</sup>;
- Interim Procedure for financing the state-budget institutions, payment of social allowances and granting financial aid to certain enterprises and organizations of Donetsk and Luhansk regions<sup>16</sup>;
- amendments to resolutions of the Cabinet of Ministers of Ukraine No. 57 dated January 27, 1995 and No. 1251 dated December 21, 2005 on strengthening control over departure beyond the territory of Ukraine of orphaned children and children deprived of parental care under the age of 16 residing in the action areas of the anti-terrorist operation<sup>17</sup>;
- amendments to resolution of the Cabinet of Ministers of Ukraine No.866 dated September 24, 2008 on peculiarities of activities of the guardianship authorities with

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<sup>11</sup> <http://zakon2.rada.gov.ua/laws/show/3543-12>

<sup>12</sup> <http://zakon3.rada.gov.ua/laws/show/1207-18>

<sup>13</sup> <http://zakon4.rada.gov.ua/laws/show/1706-18>

<sup>14</sup> <http://zakon0.rada.gov.ua/laws/show/505-2014-%D0%BF>

<sup>15</sup> <http://zakon2.rada.gov.ua/laws/show/509-2014-%D0%BF>

<sup>16</sup> <http://zakon2.rada.gov.ua/laws/show/595-2014-%D0%BF>

<sup>17</sup> <http://zakon4.rada.gov.ua/laws/show/534-2014-%D0%BF>

respect to protection of rights of children displaced from the temporarily occupied territory or action areas of the anti-terrorist operation<sup>18</sup>.

#### 4. COORDINATION OF ACTIVITIES OF GOVERNMENT AUTHORITIES

Destruction of the institutional mechanism of children's rights protection due to the administrative reform is a real challenge to the stability of policy and programs aimed at the children's benefit. The administrative reform hurt the sphere of children's rights leading to new problems and challenges as well as to the need of enhancing activities of governmental authorities and improving the national policy on childhood protection. This tendency could be observed in 2014 too.

Today there is no statutory provision regarding the number of staff of childcare services (due to adoption in 2012 of the Law of Ukraine "On amendments of certain legislative acts of Ukraine regarding activities of the Ministry of Agrarian Policy and Food of Ukraine, the Ministry of Social Policy of Ukraine, and other central governmental bodies, the activities of which are directed and coordinated by the relevant ministers"<sup>19</sup>).

Reformation of the MIA of Ukraine also led to liquidation of the Department of Criminal Militia for the Children-Related Matters and to establishing instead two weak and little-related subdepartments in different departments — for prevention of offences and for criminal detection. Wholesale redundancy also took place at the local level of the IAA, including at the cost of such services. After some time, in view of the criticism on part of the public and international organizations, a separate Department of Criminal Militia for the Children-Related Matters was established.

Besides, the State Department for Supervision over Labour Legislation Observance was also liquidated<sup>20</sup>. At the same time, the on-going process of reorganization and transfer of functions to other authorities took place; however, we can say that no coordination of work regarding the legislative control of child labour and avoidance of its exploitation is taking place.

The system for protection of children's rights in Ukraine still remains uncoordinated. Responsibility for children is distributed among different ministries and agencies, cooperation between them being of little efficiency, sometimes even no cooperation between them at all. The coordinating body which shapes children-related policy and ensures its implementation is the Ministry of Social Policy.

In conditions of reformation of local government and territorial organization of power in Ukraine, which was commenced with the approval by the Cabinet of Ministers of Ukraine of resolution No. 333-p dated April 1, 2014 on delineation of powers between the executive and local authorities by the principle of decentralization of power, it is important to maintain the stability of functioning of structural subdivisions of regional, district, city/town state

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<sup>18</sup> <http://zakon1.rada.gov.ua/laws/show/624-2014-%D0%BF/paran2#n2>

<sup>19</sup> <http://zakon1.rada.gov.ua/laws/show/5462-17>

<sup>20</sup> Resolution of the Cabinet of Ministers of Ukraine No. 346 dated March 28, 2011 "On liquidation of governmental bodies": <http://zakon2.rada.gov.ua/laws/show/346-2011-%D0%BF>

administrations which are entitled to implement measures on protection of the children's rights, and namely that of childcare services and centres of social services for family, children and youth.

In 2012 a new institute of social work specialists was established in Ukraine. This enabled to introduce a conceptually new approach to solving problems of the Ukrainian families in difficult life circumstances. As of the beginning of 2014, the number of such families amounted to 12 thousand persons. However, after escalation of the political situation, the government passed a resolution on reduction of expenses from the state budget for maintenance of such specialists, which, as a matter of fact, levelled all previous achievements: over 140 thousand families raising almost 300 thousand children, who have been supervised by specialists on a case management basis, will not be able to receive the relevant social services since the employees resource of centres of social services for family, children and youth is insufficient for covering such a large number of clients. This step caused increase in the number of children who are granted the status of children deprived of parental care; increase in the number of children placed in residential care facilities at the parents' request; increase in homelessness and neglect.

In view of the above, it is clear that Ukraine must proactively implement the policy of high priority child care, which would be based on: prevention of social orphanhood; introduction of new technologies of social work; raising social significance of a family etc. In this context, it is important to activate cooperation between the governmental authorities and the non-governmental sector in social and legal protection of children and families with children in difficult life circumstances.

It should be noted that during 2014 there was only one meeting of the Interagency Committee for Childhood Protection though the Regulations stipulate that meetings of such Committee must take place at least once in three months. At the same time, taking into consideration the fact that Ukraine has faced cardinal new problems related to internal displacement of persons and the necessity of taking measures on protection of people's rights, especially those of children who opted to stay in the area of armed conflict, it would be reasonable to consider this question at the level of Interagency Committee for Childhood Protection in particular.

There is also much concern about situation with the function of policy on families and prevention of domestic violence. Before the administrative reform of 2011, the said functions had been falling within the competence of departments for family, youth and sport, which are currently not specified in the Reference list of structural subdivisions of regional, Kyiv/Sevastopol city, district, district in the city of Kyiv/Sevastopol state administrations. At present, functions of these departments have been assigned in random manner to different structural subdivisions, and in some regions there are no responsible authorities for implementation of family policy at all. This makes it impossible to ensure high quality implementation of the family policy either at the central or at the regional level.

Herewith, the system of central executive bodies responsible for formation and implementation of the state policy in the family matters and in the sphere of domestic violence prevention still has the Ministry of Social Policy of Ukraine in its structure. The



order of the Ministry of Social Policy No.741 dated 26.11.2012<sup>21</sup> approved Recommended practices for development of provisions on social security structural subdivisions of local state administrations, pursuant to which the Social Security Department of regional, Kyiv/Sevastopol city state administrations shall ensure implementation in the relevant territory of powers stipulated by the legislation of Ukraine in the sphere of improving the condition of families and preventing domestic violence.

## **5. NATIONAL ACTION PLAN ON IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD**

The effective legislation on protection of children' rights needs a comprehensive revision since the whole Ukrainian legislation is oriented at protection of rights only in peacetime.

Taking into account results of the Monitoring report of non-governmental organizations with respect to fulfilment in 2010–2013 of the national action plans on implementation of the Law of Ukraine “On the state program “The national action plan for implementation of the UN Convention on the Rights of the Child” for the period until 2016” regarding the state’s having no clear vision of the reform of system of protecting children and supporting families with children, the Cabinet of Ministers of Ukraine must develop a long-term state program which would be based on thorough analysis of the situation and would be aimed at achieving strategic priorities in reformation of child protection system with consideration of problems of internally displaced persons and families with children staying in the occupied territories and the ATO action areas.

As noted in the monitoring results, “the analysis has shown that the process of developing annual action plans was in itself inefficiently conducted. Thus, substantial portion of important tasks, performance of which constituted an objective necessity and which had been even performed, was not included into such plans<sup>22</sup>. From our point of view, such situation is due to insufficient coordination of activities between different central executive authorities, lack of attention to development of the program measures, certain formalism, as well as to the fact that there is no strategic planning whatsoever”. National plans are developed on an annual basis in order to implement provisions of the UN Convention on the Rights of the Child, but, at the same time, significant portion of the Convention articles and provisions have never been reflected in the Program or plans. Besides, the formulated measures do not always comply with the set objectives.

As of 01.11.2014, the Government approved no such action plan for 2014. This is primarily due to escalation of the political situation in Ukraine and frequent changes of the leaders in the central executive authorities. However, this year the draft state budget allocates only 222.1 million hryvnias for fulfilment of the action plan, which is 17% less than in 2013.

In view of the current financial and economic crisis in Ukraine, the mere possibility of financing measures aimed at protection of children’s rights is rather positive. But substantial

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<sup>21</sup> [http://www.mlsp.gov.ua/labour/control/uk/publish/article?art\\_id=161172&cat\\_id=161045](http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=161172&cat_id=161045)

<sup>22</sup> This relates to sections “International cooperation”, “Liquidation of child trafficking” and others.

cutback on financing bears certain risks. For example, now a large number of children that have been in the ATO action area for some time will need psychological support. Unfortunately, there are no qualified specialists in Ukraine, who would work with such children, nor there are any programs for their rehabilitation. Also, today none of the governmental institutions disposes of the accurate data on the number of such children or on their needs. Therefore, starting from 2014, the annual action plans for implementation of the “National program “The national action plan for implementation of the UN Convention on the Rights of the Child” for the period until 2016” must contain an issue regarding protection of children’s rights in the circumstances of emergencies, namely in the circumstances of the anti-terrorist operation.

## **6. BEST INTERESTS OF THE CHILD**

The issue of considering the best interests of the child when planning the state policy and programs is still pending.

The Law of Ukraine “On childhood protection”<sup>23</sup> emphasizes that children are objects but not subjects of protection. The same tendency may be observed in legislation on the whole. Moreover, no comprehensive analysis of the state policy and programs is carried out with respect to observing the best interests of the child as well as assessment of impact that such actions have on children. No proper coordination of activities is ensured between the relevant ministries and agencies on protection of children’s rights, dissipation of the allocated budget funds is tolerated.

It must be noted that the Expert Board for Children’s Rights Observance at the Representative of the Commissioner for Children’s Rights Observance, Non-Discrimination and Gender Equality as well as the Public Council at the Ministry of Social Policy of Ukraine<sup>24</sup> have no members under 18 years of age and no members representing any children organizations, which evidences that no children are involved into the decision-making process and the process of state policy development<sup>25</sup>.

The principle of consideration of the child’s opinion neither is included into the Law of Ukraine “On education”<sup>26</sup>, which stipulates that “pupils, students, education workers may establish within the educational institutions the original centres of public organizations that they are members of”. And as reported by the Ministry of Education and Science of Ukraine, there are self-governance bodies formed by school and university students functioning in the country.<sup>27</sup>

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<sup>23</sup> <http://zakon1.rada.gov.ua/laws/show/2402-14>

<sup>24</sup> [http://www.mlsp.gov.ua/labour/control/uk/publish/article?art\\_id=145002&cat\\_id=98186](http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=145002&cat_id=98186)

<sup>25</sup> Monitoring report of non-governmental organizations with respect to fulfilment in 2010–2013 of the national action plans on implementation of the Law of Ukraine “On the state program “The national action plan for implementation of the UN Convention on the Rights of the Child” for the period until 2016” [Electronic resource]. — Access mode [http://www.la-strada.org.ua/ucp\\_mod\\_library\\_showcategory\\_34.html](http://www.la-strada.org.ua/ucp_mod_library_showcategory_34.html)

<sup>26</sup> <http://zakon2.rada.gov.ua/laws/show/1060-12>

<sup>27</sup> Letter of the Ministry of Education and Science of Ukraine to the La Strada — Ukraine Centre No. 1/11-12370 dated 04.08.14

However, students' self-governance and children's public organizations may not be considered as identical notions. Even more so, today in Ukraine there is a whole range of proactive public organizations, either local or nationwide, which deal with protection of children's rights and awareness-building by the peer-to-peer principle as well as with formation of social policy as, for example, Zhytomyr City Children's Public Organization "**Vse Robymo Sami**" ("**All by ourselves**")<sup>28</sup>. But the state action plans do not contain any provisions aimed at support or development of children's organizations<sup>29</sup>.

### 7. RECOMMENDATIONS

1. In view of the current complicated social and political situation in Ukraine as well as forecast of 10% increase in the number of orphans and children deprived of parental care due to the ATO, the following vectors of the state's activities must be seen as the most urgent:

- preparation of specialists for treating consequences of the post-traumatic stress disorder of the internally displaced persons;
- introduction of methodologies for working with families whose members died during the ATO as well as with families and children who will come back to their places of permanent residence after the ATO completion;
- regulation of the issue of social benefits payment to families with children;
- adaptation of the legislation on protection of rights of orphaned children and children deprived of parental care with consideration of the temporary occupation of the AR of Crimea and the city of Sevastopol and the ATO areas;
- engagement of international experts experienced in working with persons residing in battle zones to development of methodologies and programs;
- creating proper conditions for children and families with children from among the internally displaced persons willing to return to the places of their permanent residence, including repairs and reconstruction of institutions, buildings and apartments ruined during the ATO;
- holding advocacy campaigns in the Eastern regions of Ukraine for the adoption and foster placement of orphans and children deprived of parental care;
- high quality preparation of candidates for guardians, caregivers, adopting parents, raising parents, and further case management of such families;

2. When planning the work on prevention of social orphanhood in Donetsk and Luhansk regions it is important to consider the possibility of increase in the number of homeless and neglected children. This may be caused by the increase in the number of parents, who, due to social and economic problems in the regions, will not be able to duly perform their duties. In order to mitigate this, it is necessary to introduce programs for rehabilitation and adaptation

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<sup>28</sup> <http://vserobsam.at.ua>

<sup>29</sup> Monitoring report of non-governmental organizations with respect to fulfilment in 2010–2013 of the national action plans on implementation of the Law of Ukraine "On the state program "National action plan on implementation of the UN Convention on the Rights of the Child" for the period until 2016" [Electronic resource]. — Access mode [http://www.la-strada.org.ua/ucp\\_mod\\_library\\_showcategory\\_34.html](http://www.la-strada.org.ua/ucp_mod_library_showcategory_34.html)

of families in difficult life circumstances, where there is a risk of the child's removal. Prime importance must be also attributed to ensuring employment for parents as well as the relevant benefits and welfare payments (if eligible or introduction of the new ones).

3. Priority areas of work on integration and reintegration of the forcibly displaced persons among orphans, children deprived of parental care, families with children in difficult life circumstances, must be as follows:

- enhancing work on social orphanhood prevention;
- ensuring family-like upbringing for orphans and children deprived of parental care;
- ensuring protection of housing rights of orphans and children deprived of parental care;
- introduction of high quality services for families with children in difficult life circumstances aimed at restoration of the parental potential;
- encouraging families who moved from the temporarily occupied territory of Ukraine and the anti-terrorist operation action areas, to return to places of their permanent residence after the ATO completion.

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# **XVII. RIGHTS OF FOREIGNERS AND STATELESS PERSONS IN UKRAINE**

## **1. LEGISLATIVE DRAFTING AND REGULATORY ENFORCEMENT IN 2014**

Due to the Revolution of Dignity, occupation of the AR of Crimea by the Russian Federation and the anti-terrorist operation (ATO) in Donetsk and Luhansk regions the process of legislative drafting in migration sphere, which became substantially slower during the last year<sup>2</sup>, in 2014 almost came to a halt.

However, regardless of the state's priority in migration sphere reasonably consisting in resolution of urgent problems of hundreds of thousands of the internally displaced persons who moved from the temporarily occupied territories and districts of the ATO, on May 13, 2014 the Law of Ukraine was adopted "On amendments to article 1 of the Law of Ukraine "On refugees and persons in need of subsidiary or temporary protection" No. 1251-VII with effect from May 30, 2014.

To a certain extent, this Law extends the list of grounds for granting subsidiary or temporary protection to foreigners and stateless persons (SPs) in the territory of Ukraine as compared to the previous version of article 1 of the Law of Ukraine "On refugees and persons in need of subsidiary or temporary protection". It also eliminates certain inherent contradictions that were present in the previous version of this article.

Thus, with effect from May 30, 2014, in accordance with subclauses 4 and 13, article 1 of the Law of Ukraine "On refugees and persons in need of subsidiary or temporary protection", a foreigner or a stateless person requesting protection in Ukraine must be given this "subsidiary protection" if such person "is not a refugee as defined in the UN 1951 Convention relating to the Status of Refugees or 1967 Protocol and this Law, but needs protection, since such person was forced to come to Ukraine and stay in Ukraine due to danger to life, safety or freedom in the country of their descent or due to fear of death penalty or execution of verdict of death penalty or tortures, inhuman or degrading treatment or punishment *or widely-spread violence in situations of international or internal armed conflict or repeated violations of human rights, and cannot or does not want to return to such country due to the said fears*".

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<sup>1</sup> The report is prepared by the All-Ukrainian Charitable Foundation "The Right to Protection".

<sup>2</sup> The report of Human Rights in Ukraine for 2013 is in the public domain of the UHHRU official website at the link: <http://helsinki.org.ua/index.php?id=1398062575>

Besides, the Law of Ukraine “On amendments to article 1 of the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection” No. 1251-VII removes restriction regarding provision of temporary protection to asylum seekers by geographical criteria (subclauses 14 and 21, article 1 of the Law “On refugees and persons in need of subsidiary or temporary protection”). These amendments are aimed at harmonization of national legislation with provisions of article 2(f) and article 17 of the Directive 2011/95/EU of the European Parliament and of the Council on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

At the same time, the precedents of application by national executive and judicial bodies of subclauses 4 and 13, article 1 of the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection” in 2014 demonstrated certain difficulties in interpretation of the term “inhuman or degrading treatment or punishment” by authorities of the State Migration Service (SMS) and domestic courts, since the national legislation provides no definition for this term.

It must be noted that, unfortunately, the SMS of Ukraine ceased publishing statistical data regarding the number of persons who seek protection in Ukraine as well as persons recognized as refugees or subject to subsidiary protection, which is a violation of legislative requirements on access to public information. However, precedents of human rights groups in conjunction with the UNHCR evidence that percentage of immigrants from Syria who received this or that form of international protection in Ukraine during 2014, is substantially higher as compared to the previous years’ figures. Increase in the number of persons who are granted protection in the territory of Ukraine due to the evident risks of persecution or cruel treatment in the countries of their descent, including due to the relevant changes introduced in 2014, by all means, is a positive tendency demonstrating improvement of the national refuge system.

Under the pressure of requirements of Action Action Plan on Liberalization of EU Visa Regime for Ukraine, in the I half of 2014 legislators made a series of some other amendments to the national legislation.

Thus, at the Government’s initiative, on April 17, 2014, the Verkhovna Rada approved the Law “On amendments to the Laws of Ukraine “On fundamental principles of social protection of homeless persons and neglected children” and “On employment of population” No. 1221-VII, which cancels the requirement of charging a fee for issuance to potential employers of refuge seekers of a special permit for use of their labour.

Also, by its resolution No. 121 dated March 19, 2014, the Cabinet of Ministers approved the new Procedure for providing medical aid to foreigners and stateless persons permanently residing or temporarily staying in the territory of Ukraine, thus consolidating a free access to urgent medical aid for foreigners.

The Law of Ukraine “On amendments to the Law of Ukraine “On legal status of foreigners and stateless persons” regarding eligibility of stay of foreigners and stateless persons in the territory of Ukraine” No. 1539-VII dated June 19, 2014 somewhat extended the range of foreigners and SPs eligible for obtaining temporary permit for residence in Ukraine by including thereto professional athletes as well as those foreigners and SPs who do not need a work permit.

**2. MAJOR PROBLEMS REGARDING THE RIGHTS OF FOREIGNERS  
AND SPS IN UKRAINE**

Article 8 of ECHR does not only establish the obligation for the Convention Member States to not deport foreigners and stateless persons whose deportation shall constitute inadequate interference with their family or even private life<sup>3</sup> but also stipulates that refusal to document a person (to grant the right of residence in the territory of the Convention Member State), who may not be deported from the territory of the ECHR Member State and by virtue of the Convention provisions (regardless of requirements of the national legislation) is entitled to stay in the territory of such country, is in itself the Convention-prohibited inadequate interference of the state with the person's right to respect of their privacy<sup>4</sup>.

In other words, ECHR established the following principle: "if you can't deport a foreigner, then document his or her right to reside on your territory". This means that ECHR makes intolerable the existence of so called "stranded migrants".

However, the effective national legislation does not dispose of any proper instruments for regulation of status of such persons. Today, in Ukraine there are many foreigners and SPS, most of whom immigrated from the Russian Federation and who may not be deported from the territory of Ukraine due to certain objective reasons, including due to close family or personal relations with Ukraine, but at the same time they cannot obtain a permit for legal stay/residence in the territory of Ukraine.

Due to flaws of the national legislation, these people, on the one hand, are deprived of access to realization of necessities of their lives (registering marriages, giving birth to children, purchasing real estate, buying a train ticket) or the possibility of regulating their legal status in the territory of Ukraine, and on the other hand, they disappear from radars of the public tranquillity control authorities. This problem is highly topical for persons who due to conflict of laws related to collapse of the USSR appeared to be in a stateless situation.

Also, it is not infrequent that a person *de jure* is not a SP but, for example, due to their parents' violation of legislative provisions on citizenship of the country of descent *de facto* is a SP, since such person may not be protected by the country of descent due to lack of documents certifying their relation to the country of descent, and cannot hope for obtaining them in the future, since without an identification document the person will not be able to visit the country of descent. The said persons often do not also have any money for going to the country of their descent and staying there for the time required for establishing their citizenship.

Another legal instrument intended for documentation of the right to stay in Ukraine for foreigners and SPS who cannot be expelled from the territory of Ukraine, consists in

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<sup>3</sup> See inter alia decision of the ECHR: dated August 02, 2001 in the case of *Boultif v. Switzerland*, application No. 54273/00; dated June 23, 2008 in the case of *Maslov v. Austria*, application No. 1638/03, dated September 02, 2012 in the case of *Kaushal and Others v. Bulgaria*, application No. 1537/08; dated February 15, 2011 in the case of *Geleri v. Romania*, application No. 33118/05.

<sup>4</sup> See inter alia decision of the ECHR: dated January 15, 2007 in the case of *Sisojeva and others v. Lithuania*, application No. 60654/00; dated June 26, 2012 in the case of *Kuric and Others v. Slovenia*, application No. 26828/06.

the right of obtaining by persons, whose expulsion prior to expiration of the time limit for detention at the Point of Temporary Stay for Foreigners (PTSF) was impossible, of a permit for temporary stay in the territory of Ukraine for the period of up to 1 year, which is stipulated by part 17, article 4 of the Law of Ukraine “On legal status of foreigners and stateless persons”. However, this instrument may not be regarded as an adequate approach to regulation of the “stranded migrants” issue if for no other reason than detention of foreigners at PTSF as an instrument for ensuring their expulsion contradicts requirements of Article 5 of the ECHR.

In compliance with requirements of Article 8 of the ECHR regarding documentation of foreigners and stateless persons, who cannot be deported, including due to close family or personal relations with the Convention Member State, legislation of the European countries provides for the so-called “humanitarian status” or “discretionary leave” as it is called in the UK.

However, the Ukrainian legislation does not provide for such special status, and thus damages the lives of people and their families who often happened to be in such a difficult situation not by choice; this also constitutes grounds for Ukraine’s violation of its conventional duties, removes such people from the field of vision of the law enforcement authorities as well as excludes their incomes from the legal economic turnover. Besides, the Law of Ukraine “On the status of foreigners and stateless persons”, the Law of Ukraine “On citizenship of Ukraine” and bylaws approved for their implementation, in fact, do not stipulate any procedure for establishing the SP status.

A certificate of stateless person to travel abroad, which is stipulated in clause 7 of the Regulations on SP certificate to travel abroad approved by resolution of the Cabinet of Ministers of Ukraine No. 610 dated August 07, 1995, may be executed only for those SPs, who are eligible to stay in Ukraine, which practically means that such person must have some identification documents. Since SPs have no citizenship or nationality, they *a priori* cannot have any up-to-date documents confirming their identity. If one is fortunate, one may still have a birth certificate which does not give any lawful grounds for staying in the territory of Ukraine.

Thus, SPs who by the twist of fate happened to be in the territory of Ukraine are trapped inside a vicious circle: they do not have any identification documents, therefore, they are not eligible for staying in the territory of Ukraine, consequently, they cannot be recognized as SPs in Ukraine.

International legislation in the SPs matters effective in Ukraine consists of the UN 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Both Conventions came into effect in Ukraine in June, 2013. According to provisions of article 33 of the Convention relating to the Status of Stateless Persons, the Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. Namely, they must do everything they can to accelerate procedures of naturalization and possible reduction of the associated charges and costs. However, these provisions of article 33 of the said Convention have never been implemented in Ukraine.



### 3. ARREST AND IMPRISONMENT OF FOREIGNERS AND SPS

The Law of Ukraine “On the status of foreigners and stateless persons” and the bylaws approved for its implementation provide for no measures of enforcing decisions on the forced expulsion, which would be an alternative to the detention and confinement in the points of temporary stay for foreigners and SPS. Thus, the case law is limited to legislative compulsion to automatically confine a foreigner for the period of up to 12 months for the purpose of their expulsion from the territory of Ukraine regardless of the personal circumstances of such person, him or her having a family in the territory of Ukraine etc.

And this is in conflict with article 5 of the ECHR<sup>5</sup> as well as article 29 of the Constitution of Ukraine stipulating that liberty and security of person is a special value and that no one shall be deprived of his liberty otherwise than by a substantiated court decision. Given there is no law-provided choice, the arrest procedure of such persons is an automatic measure deprived of any guarantees.

This also contradicts provisions of article 15 of the Directive 2008/115/EU<sup>6</sup> stating that the Member States can keep in detention a third-country national in order to prepare the return of the latter unless other sufficient but less coercive measures can be applied effectively in a specific case. Similarly, the principle 6.1 contained in the Twenty major principles regarding the compulsive return dated May 04, 2005 stipulates that a person may be detained for further removal if such a removal process complies with the procedure established by law and in case when after thorough examination of the necessity of such detention in each individual case the authorities of the receiving country came to the conclusion that the decision on removal may not be efficiently ensured by applying measures unrelated to imprisonment, such as supervision and control system, caution bail etc.

Moreover, the imprisonment method itself does not comply with the Constitution of Ukraine. Thus, article 29 of the Constitution states that a person may be imprisoned pursuant to a court decision only. However, a person is arrested and detained pursuant to the administrative decision of the migration authority since according to legislation courts have no competence in this matter<sup>7</sup>.

Another issue of concern is that there is no legislative procedure for reconsideration of lawfulness or duration of the persons’ detention. Thus, persons are detained for 12 months

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<sup>5</sup> See decision of the ECHR dated April 04, 2000 in the case of *Vitold Litva v. Poland*, application No. 26629/95 and decision of the ECHR dated April 05, 2011 in the case of *Rahimi v. Greece*, application No. 8867/08: “Detention of a person is such a serious measure [of imprisonment] that can only be justified in the situation, when other, less severe measures were considered and recognized as insufficient for protection of individual or social interests, which could want for such person to be imprisoned. It is necessary that imprisonment is applied not only in accordance with the national legislation but also in view of guarantees of article 5 of the Convention”.

<sup>6</sup> See Directive 200/15/EU dated December 16, 2008 “On general standards and procedures to be applied in Member States for returning third-country nationals”.

<sup>7</sup> See informational letter of the Higher Administrative Court of Ukraine dated July 16, 2013 under No. 986/12/13-13 “...since the legislation does not establish the right of public bodies to appeal to court with a request to arrest a foreigner or a stateless person, and the administrative court has no competence to resolve such matters, then in case of filing such action the administrative court shall in accordance with clause 1, part 1, article 109 of the Code of Administrative Court Procedure of Ukraine refuse to open proceedings in the administrative case or in accordance with clause 1, part 1, article 157 of the Code of Administrative Court Procedure of Ukraine — close proceedings in such case”.

and have no right for reconsideration of lawfulness of their detention, which directly violates part 4, article 5 of the ECHR<sup>8</sup>.

In the context of detaining third-country nationals or stateless persons there is a problem of legal vacuum with respect to detention at the border checkpoints of persons who were not admitted to the territory of Ukraine.

The Ukrainian legislation has never had nor currently has the required procedural guarantees of ensuring the major human rights with respect to that category of persons who were banned to enter the territory of Ukraine, and does not regulate the legal status of those who were detained in order to prevent an unauthorized entry.

The only article of legislation mentioning such persons is part 2, article 14 of the Law of Ukraine “On the legal status of foreigners and stateless persons”, which stipulates the following: “In case of unlawful crossing of the state border of Ukraine outside points of entry at the state border of Ukraine, foreigners and stateless persons shall be detained, and in case their violation of the Ukrainian legislation does not provide for criminal liability, they shall be returned to the country of their previous stay in accordance with the established procedure”.

However, the said provision does not regulate the procedure for detention of such persons, place of their detention, guarantees of rights of such persons, maximum term of their detention etc. Therefore, there is a gap in the legislation in this respect.

At the same time, their detention is not consolidated in any procedure whatsoever, and according to precedents a person is detained without execution of any documents or approval of any decisions, which means that such detention at the point of entry is arbitrary and illegal in the context of part 1, article 5 of the ECHR<sup>9</sup>.

#### **4. RIGHTS OF ASYLUM SEEKERS**

There is a certain conflict between provisions of clause 3, part 1, article 1 of the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection”, according to which the certificate of protection request in Ukraine (Certificate) is a document certifying lawfulness of a person’s stay in the territory of Ukraine in the period commencing from the moment of the person’s filing a proper application to be qualified as a refugee or person in need of subsidiary protection (Application), *and remains valid to exercise rights and fulfil obligations stipulated in this Law and other laws of Ukraine* till the final determination of status of such person or his or her departure from the territory of Ukraine, and provisions of part 1, article 13 of the Law of Ukraine “On the Unified State Demographic Register and documents certifying the Ukrainian citizenship, identity of a person or their special

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<sup>8</sup> See decision of the ECHR dated October 28, 2010 in the case of *Molodorych v. Ukraine*: “Possibility of initiating the procedure on revision of lawfulness of detention must be granted soon after the person is detained and, if necessary, in a reasonable period of time thereafter”.

<sup>9</sup> See §95 of decision of the ECHR dated February 12, 2009 in the case of *Nolan and K. v. Russia*, application No. 2512/04, and §45 of decision of the ECHR dated November 27, 2003 in the case of *Shamsa v. Poland*, applications No. 45355/99 and 45357/99.

status”, which sets forth an exhaustive list of identification documents with no Certificate mentioned therein.

At the same time, account must be taken of the existing practice of the SMS bodies of Ukraine, which take away the national passport of an asylum seeker when accepting his Application, and this single procedure entails a series of complications: after filing an Application, it will be difficult for a person to get it back during its validity term, for example, for the purposes to register vital statistics acts; and after expiration of the national passport’s validity term, an asylum seeker cannot renew its validity at the embassy of the country of their descent; *de facto* a person with asylum seeker status is deprived of the opportunity to fully exercise his rights.

Besides, the Law stipulates an illogical and upfront bureaucratic procedure for the Certificate issuance and renewal of its validity term. Thus, for example, in case of denial to accept his Application, an asylum seeker will obtain the Certificate only in case of him appealing such denial. First of all, far not all asylum seekers (particularly those who cannot speak either Ukrainian or Russian) understand the very possibility of filing an appeal against such denial. Secondly, the denial may be appealed only within 5 days; an asylum seeker obtains only the notification of denial to grant protection but not the order of a local body of the SMS of Ukraine on such denial; during these 5 days an asylum seeker must find a lawyer who will help him execute and lodge an administrative action, in fact, having no clue about the reason of such denial.

Further on, the validity term of the Certificate will be renewed for the period of appeal provided that an asylum seeker presented evidences of the judicial consideration of the case (writs of summons, court resolutions or rulings, appeals of cassation appeals with evidences of their submission to the court), at the same time, the evidences of participation of employees of this very SMS body in the court sessions, and also the information they have about the case status. Besides, the validity term of the Certificate is prolonged for only 1 month, which is obviously not enough for judicial consideration of the case and, thus, an asylum seeker must appear before the local SMS body every month in order to prolong their Certificate.

At the same time, for example, Department for Refugees Affairs of the Main Department of the SMS of Ukraine in the City of Kyiv (where asylum seekers file their applications, their cases are kept on file, interviews are held, Certificates are issued and prolonged) and the Main Department of the SMS of Ukraine itself (where a seal is kept, which must affixed onto all documents — notifications, copies of orders and, the most important, inscription about the Certificate prolongation) are located at a different address, and that is why asylum seekers often have to wait for 1-2 days to have their Certificates renewed and living all this time with no documents whatsoever.

In case the Application is approved, an asylum seeker is issued the Certificate with a validity period of 1 month, during which a decision must be made regarding either approval or denial to execute documents under his Application. If in future the SMS body approves an order on denial in execution of documents, a refuge seeker will also have the right to appeal it during 5 days following the same procedure with the above described flaws. In case the decision is approved on execution of documents, an asylum seeker will have his Certificate renewed on a monthly basis, while in actual practice the procedure of documents execution and approval of decision on recognizing a person as a refugee or person in need of subsidiary protection, or decision on denial thereof, takes from 6 months up to 1 year. This

means that *de facto* an asylum seeker is forced to appeal to the SMS body every two months with a request to renew his Certificate.

Another issue of concern is integration of asylum seekers into life of the receiving country. Thus, the effective national legislation, regardless of the fact that asylum seekers constitute a particularly vulnerable category of population who need special social protection not only does not provide for no social assistance on part of the state but actually deprives them of access to legal employment which could allow asylum seekers to independently support at least their basic needs and even make a contribution into development of the Ukrainian economy through payment of taxes by limiting their access to the labour market with the requirement of employer's obtaining a permit to use foreign labour.

Besides, it is practically impossible for asylum seekers to obtain an identification code which is required for carrying out any economic activities in the territory of Ukraine since, as it was already emphasized above, the Certificate with which all asylum seekers are documented in Ukraine, is not recognized as an identification document, therefore, it cannot constitute grounds for issuance of the identification code, while passport documents are handed in to the relevant local SMS bodies for the whole period of consideration of their status, and the national legislation provides for no possibility to issue asylum seekers their passports even for the purpose of obtaining an identification code or registration documents etc. As it was specified above, most time while their applications are under consideration asylum seekers in Ukraine have in possession only one document which is valid for a month only<sup>10</sup>.

At the same time, in order to employ an asylum seeker and to legally obtain the necessary permit, an employer must at least 15 days prior to applying for a permit to use labour of foreigners and stateless persons, submit to the local body of the State Employment Service information about the labour demand (vacancies), pursuant to which such body shall facilitate in employment of the Ukrainian citizens. Upon the employer's filing an application for a relevant permit, some time must pass for it to be executed which taking into consideration the certificate's validity term of 1 month, makes it practically impossible to legally employ asylum seekers.

Besides the abovementioned problems, there is also another significant problem related to the Certificate as well as to the refugee certificate and certificate of a person in need of subsidiary protection.

Provisions of part 1, article 6 of the Law of Ukraine "On the freedom of movement and free choice of the place of residence in Ukraine" oblige asylum seekers as well as the recognized refugees to register at the new address within 10 days from change of the place of residence in accordance with the procedure established by law. The problem is that according to provisions of part 2, article 6 of this Law such persons will have to submit documents confirming their right to reside in certain housing facilities. In reality, such persons are forced to rent dwelling concluding no relevant agreements, not to mention the dwelling's owner giving their consent to registration of a foreigner at their premises. If an asylum seeker or refugee has underage children or the prospect for their appearance, the dwelling's owner

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<sup>10</sup> See Order of the MIA of Ukraine No. 649 dated September 07, 2011 "On approval of Rules for consideration of requests and execution of documents required for resolution of the issue of recognizing a person as a refugee or as a person in need of subsidiary protection, loss and deprivation of the status of a refugee and subsidiary protection, and annulment of decision on recognizing a person as a refugee or as a person in need of subsidiary protection".

will in no way give his consent to registration of their place of residence in order to avoid the risk of application of provisions of the Law of Ukraine “On childhood protection”, which guarantee the child’s right to housing.

Thus, it is an artificially created situation that the majority of asylum seekers or even recognized refugees cannot register their place of residence due to excessive bureaucratization of the general procedure and biased attitude of lessors, which results in foreigners bearing administrative liability under article 203 of the Administrative Offences Code of Ukraine.

At the same time, provisions of clause 2.4. “Freedom of movement within the territory of Ukraine” of Block 4 “External relations and fundamental rights” of the Action plan on liberalization of visa regime between Ukraine and the EU require revision of legislative and regulatory principles for implementing procedures of registering and deregistering citizens of Ukraine, foreigners and stateless persons who are eligible to stay in the territory of Ukraine, in order to avoid unreasonable restrictions or obligations with respect to their freedom of movement within the territory of Ukraine, namely with respect to conditions of legal residence without registration of place of residence or measures used in the case when a person failed to comply with the registration requirements, and also with respect to liability of persons renting a dwelling.

Another problem is non-compliance of practices of the SMS bodies with provisions of article 14 of the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection”, according to which a refugee status gives a person the same rights and obligations as the Ukrainian citizens have as well as the right of permanent residence in Ukraine, and also with provisions of part 11, article 10 of the said law stipulating that a refugee certificate is issued once in 5 years and provisions of clause 7 of the Regulations on a refugee certificate approved by Resolution of the CM of Ukraine No. 202 dated March 14, 2012, according to which the certificate is issued by a local body for the period of five years. In reality, the SMS bodies unlawfully make recognized refugees renew their certificates every year.

From our point of view, one-year validity term of the refugee certificate stipulated in the previous statutory instruments as well as the five-year validity term are both unsubstantiated and prejudiced since a passport of the citizen of Ukraine has only logically relevant peculiarities of unlimited validity term — pasting photographs at the age of 25 and 45.

## 5. CONCLUSIONS

To bring the national legislation and case law to compliance with the international standards, Ukraine must immediately take the following measures for protection of rights of foreigners and SPs:

1. Make amendments to the Law of Ukraine “On the status of refugees and stateless persons” by supplementing it with provisions on the special “humanitarian status” of those foreigners and SPs who stay in the territory of Ukraine though ineligibly but due to their having a firm relation with Ukraine or impossibility of their deportation to the country of their descent provided there are no grounds for recognizing them as refugees or persons in need of subsidiary or temporary protection in order to document their stay in the territory of Ukraine for protection of their rights as well as for the efficient state control.

2. Make amendments to the Law of Ukraine “On citizenship of Ukraine” regarding admittance to the Ukrainian citizenship of SPs who have been residing in the territory of Ukraine for more than 1 calendar year under simplified procedure by allowing SPs to confirm their residence in the territory of Ukraine by any means they have at their disposal, including but not limited to: testimony of witnesses, certificates from enterprises, institutions or organisations of all forms of ownership, non-governmental organisations, payment documents etc.

3. Through relevant statutory instruments regulate the procedure for recognition of the SP status;

4. Through relevant statutory instruments regulate the procedure, terms and conditions for detention and imprisonment of foreigners and SPs for the purpose of their removal with due consideration of requirements of special legislation regarding asylum seekers in Ukraine.

5. Provide for application to foreigners and SPs detained for the purpose of their removal of measures for enforcement of decisions on removal other than the measure of imprisonment.

6. Introduce a procedure for periodical reconsideration of decisions on detention and imprisonment of foreigners and SPs for their removal.

7. Through the relevant statutory instruments regulate the procedure, terms and conditions of detention and imprisonment of foreigners and SPs who were not admitted to the territory of Ukraine.

8. Through the relevant statutory instruments regulate the procedure and terms of transferring by the State Border Guard Service of Ukraine of those foreigners and SPs who were not admitted to the territory of Ukraine but who declared about their seeking international protection in Ukraine and expressed the intention to file a relevant application to the local body of the SMS of Ukraine.

9. Include the certificate of requesting protection in Ukraine to the list of identification documents, which is set forth in part 1, article 13 of the Law of Ukraine “On the Unified State Demographic Register and documents certifying the Ukrainian citizenship, identity of a person or their special status”. Establish the certificate’s validity term of 6 months with the possibility of its prolongation for the same period.

10. Cancel the requirement where an employer is required to obtain a permit to employ asylum seekers in Ukraine.

11. Exclude from the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection” such stages of consideration of applications as denial to accept applications for recognition of refugee status or person in need of subsidiary protection and the denial to execute documents based on application for recognition of refugee status or person in need of subsidiary protection. Applications for recognition of refugee status must be automatically accepted and pursuant to it all the required documents must be executed for approval of a lawful and substantiated decision on recognition of refugee status or person in need of subsidiary protection or on denial in such recognition.

12. Cancel administrative liability under article 203 of the Administrative Offences Code of Ukraine for failure to register or late registration of the place of residence in the territory of Ukraine. Make amendments to the Law of Ukraine “On freedom of movement and free choice of a place of residence in Ukraine” with respect to declarative nature of registration of

## XVII. RIGHTS OF FOREIGNERS AND STATELESS PERSONS IN UKRAINE

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the place of residence (according to oral information provided by holder of the identification document) by excluding the obligation to submit documents certifying the right to use a dwelling and, at the same time, excluding from the effective national legislation all relations of registration of the place of residence to property rights, at least for asylum seekers and recognized refugees.

13. Make amendments to the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection” and the relevant bylaws approved for implementation of its provisions regarding a five-year validity term of the refugee certificate by making such validity period unlimited as it is with passport of the citizen of Ukraine on condition of pasting photographs at the age of 25 and 45.

14. Make amendments to the Law of Ukraine «On free-of-charge legal assistance” and introduce provision of free-of-charge legal assistance to asylum seekers in Ukraine and the recognized refugees with effect from January 01, 2015. At the same time, make amendments to qualification requirements for employees of departments of the SMS of Ukraine for refugees’ affairs by adding the mandatory requirement of speaking foreign languages, first of all, English and French as languages of international communication.

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## **XVIII. THE RIGHTS OF SERVICEPERSONS<sup>1</sup>**

### **1. COMMONLY ENCOUNTERED PROBLEMS**

In contrast to the previous year, in 2014 the military sphere underwent significant changes, both in theoretical terms and in practice. It is, above all, the creation of new public institutions for the protection of the interests of the state, defense, national security (such as the National Guard of Ukraine, military procuracy, interagency working group to study possible ways to protect the interests of the state in addressing the issue of succession on external debt and FSU assets, State Service of Ukraine for war veterans and members of the antiterrorist operation, Committee on sanctions against those who support and finance terrorism in Ukraine, etc.) and liquidation of the old ones (for example, the Council of experts on Ukrainian-Russian relations, Committee on militia reform, etc.), emending and adding addendums to the basic legal acts in the military sphere (e. g., the changes were introduced into the Law of Ukraine “On military duty and military service”, “On mobilization training and mobilization”, “On the status of war veterans, guarantees of their social protection”, “On social and legal protection of servicepersons and their families” and others) pertaining to military and adoption of new legislative acts (such as the Laws of Ukraine “On the National Guard of Ukraine”, “On lustration of power”, “On temporary measures for the period of anti-terrorist operation”, Decree of the President of Ukraine “On partial mobilization” etc.), which radically changes military service in our country. Today, more than ever, the whole range of problems in the military domain needs emending, discussing and making recommendations relative to the current state of the military sphere and ways of further legal regulation.

It is significant to note the decision to restore reorganized military procuracy concerning which the draft is underway of procuracies personnel who inspected the observance of law in the military sphere. If necessary, the Prosecutor General of Ukraine may create specialized procuracies exercising the rights of oblast, city, regional and inter-regional procuracies. The current legislation stipulates that under exceptional circumstances in certain administrative and territorial units the functions of the public prosecution bodies may be entrusted to military procuracies, the formation and liquidation as well as determination of status, competence and base staffing of which are carried out by the Prosecutor General of Ukraine. The Decree of the President of Ukraine of September 22, 2014 has now approved 12 posts in the Main Military Prosecutor’s Office, 13 positions in the regional military prosecutor’s office and 14 positions in the garrison military procuracy.

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<sup>1</sup> This section has been prepared by Associate Professor of Public Law Chair of the Law Faculty of V. N. Karazin Kharkiv National University Yevhen Hryhorenko.



It should be noted that today the question of whether the return of Ukraine to the functioning of military procuracies is a positive step forward requiring careful analysis and study of the advantages and disadvantages of functioning of such institutions.

Simultaneously, the public activity in the sphere of financial, moral, material and other support of Ukrainian troops is on the way up. Thus, the official website of the Ministry of Defense of Ukraine informs that as of October 29, 2014 in the course of the action "Support Ukrainian Army" the accounts of the Ministry of Defense of Ukraine received as an aid to the Armed Forces of Ukraine from legal persons and individuals 150,707 MM. Of this amount, 139,093 MM are transfers for logistics, the rest for medical support of the Armed Forces of Ukraine. With calls to a single mobile number "565" in support of the Ukrainian army 36,659 MM were transferred (all for logistic support of the Armed Forces of Ukraine). In addition, the accounts of the Ministry of Defense received \$154,700, €77,800, Kč5,300, C\$450, SFr.140, and zł11,500. The total in UAH equivalent makes 3,137,100.

As amended in 2014, the military service in Ukraine is divided into regular military service; mobilization draft in times of crisis; contract-based service of privates; contract-based service of NCOs; military service (study) of cadets of higher military schools and higher educational establishments that comprise military institutes, faculties of military training, chairs of military training, departments of military training; contract-based service of officers and military service of drafted officers.

It should be noted that in 2013 the Law of Ukraine "On the Strength of the Armed Forces of Ukraine for 2013" was not adopted. Today there is no such law. The adoption of a similar law in 2014 is not at issue. However, the emergency in Ukraine urgently needs not only tackling immediate wants of the Armed Forces of Ukraine and other military formations, but also carrying out comprehensive much delayed reform of the defense sector. Legally there is a crying need for comprehensive reform of current inconsistent and outdated legislation in this area.

At the same time there are also positive legislative initiatives including the new Procedure of assignment of the combatant status to participants of the anti-terrorist operations approved by the Cabinet of Ministers of Ukraine on August 20, 2014 no. 413. In accordance with it the combatant status is assigned not only to the personnel of the Armed Forces of Ukraine and law enforcers, but also to employees of enterprises, establishments and organizations involved in the counterterrorist operation.

In previous reports on the rights of servicepersons we repeatedly drew attention to the need to improve combat skills, training and professional level of soldiers considering it as an important means of granting their constitutional rights. Since independence, the servicepersons of the Armed Forces of Ukraine had experience mainly of participation in international peacekeeping operations, which was not enough. The ATO combat operations have demonstrated that the lack of military exercises of proper quality and quantity in peacetime led to significant casualties during the combat operations. According to the National Security and Defense Council, as of November 11, 2014 in the area of ATO there were 1,052 KIA and 4,049 wounded. About 400 and more people were reported missing, 399 stayed in captivity. The right to enjoy the benefits was granted to 1,762 members of the families of fallen ATO participants.

This gave rise to pickets placed by mothers and wives of ATO soldiers demanding, rotation of servicepersons and cessation of hostilities in general. There were even instances

of thoroughfare blockade intended to draw attention of the authorities. The question is that there occurred information leakage about violations of the rights of military personnel, including poor logistics, problems with weapons, fuel, military equipment and even the lack of proper food and warm clothing in the ATO combat area. The misbalanced logistics supplies enough materials only to a part of combat troops, and undersupply even basic things to another. This gross violation of the constitutional principle of equality leads to serious consequences. No doubt, this is a result of diversity of the sources of military supplies (state logistic support, volunteer organizations, businesses, etc.). However, the state has no right to leave any soldier without proper provisions and social protection (p. 5, art. 17 of the Constitution of Ukraine).

These difficulties called forth the decision of the National Security and Defense Council of Ukraine "On urgent measures to ensure national safety" of 4 November 2014, which was entered into force by the Decree of the President of Ukraine 880/2014. The said decision determined a set of measures, including revision of the norms of clothing allowance and provisioning of military personnel based on real needs identified during the ATO; increase of combat readiness of the units and formations of the Armed Forces of Ukraine and National Guard of Ukraine; search, delivery and identification of bodies of soldiers and law enforcers killed in action.

The foregoing suggests that the measures listed so far had not been taken at all or taken completely inappropriately. This allows to conclude that the Armed Forces and other military formations, as well as the state apparatus in general were not ready for such trial, which was reflected in the violations of rights of the servicepersons that took place during the ATO, including the right to life.

## **2. SOCIAL PROTECTION OF SERVICEPERSONS**

The state social protection of servicepersons mainly affects the process of proper military service and performance of duties. If social guarantees established by law for the military are not provided, it is a violation of their constitutional rights and freedoms. If previous years were characterized by outdated laws and inadequate financing of the Armed Forces of Ukraine, in 2014, the government bodies adopted a long list of legal acts in the field of social protection, which, unfortunately, are flawed to a certain extent, and some of them are like a sort of profanation of social protection of servicepersons.

The Decree of the Cabinet of Ministers of Ukraine "On some issues of provision of housing for servicepersons and their families" from September 23, 2014 ordered to allocate major procuring entities 5,089,230 for the purchase of housing for the families of fallen soldiers who took part in anti-terrorist operations, law enforcement at the state border, repulsion of armed assaults against objects protected by servicepersons, liberation of captured objects or prevention of attempted forcible seizure of weapons, combat and other equipment and servicepersons who had spine injuries or lost their limbs during implementation of these measures, including: Vinnytsia Oblast State Administration 214,500; Volyn Oblast State Administration 493,400; Dnipropetrovsk Oblast State Administration 214,500; Zhytomyr Oblast State Administration 461,200; Zaporizhia Oblast Administration 461,200; Kyiv

Regional State Administration 466,540; Kirovohrad Oblast State Administration 493,400; Luhansk Oblast Administration 493,400; Lviv Regional State Administration 954,530; Poltava Oblast State Administration 311,030; Sumy Oblast State Administration 525,530.

However, given the realities of today, the allocation of budget funds in the amount of 5,089,230 for the purchase of housing is not only too small and insufficient amount, but nothing could be purchased for these remains from the beginning. In no way such funding can be called implementation of social protection.

The same Decree obliges the Ministry of Defense and Administration of the State Border Service to allot 73,102,000 for completion in 2014 of capital development and reconstruction of the projects of housing and communal facilities with a high degree of readiness to provide housing for military personnel in the ratio as follows: Ministry of Defense 41,600,000; State Border Service 31,502,000.

Earlier the Cabinet of Ministers of Ukraine approved the Resolution "On the procedure and conditions for payment of one-time financial assistance in case of dismissal of the servicepersons drafted according to the mobilization orders" of 17 September 2014, which stipulated that military personnel drafted according to the mobilization orders and dismissed from the service after the demobilization order (except for regular soldiers) had to be paid a lump sum allowance of 4% of monthly salary for each full calendar month of service, but not less than 25 % of monthly pay. The material assistance is paid to the servicepersons for the period of conscription on mobilization orders from the draft date without regard to the period of prior military service, where they were in the time of peace, except for those who in the case of demobilization in peacetime have not yet accrued right to get material assistance.

Carrying out the order, the amount of aid was calculated on the basis of the Resolution of the Cabinet of Ministers of Ukraine dated 17 July 1992 "On the procedure of calculating years of service, admission and payment of pensions and financial assistance to officers, warrant officers, midshipmen, career soldiers and contractual servicepersons, commanders and rank-and-file personnel of the bodies of internal affairs and their families." However, all at once the Government of Ukraine set limits on the implementation of these provisions stipulating that assistance is not paid if the servicepersons were discharged from military service for incompetency, deprivation of rank, and in connection with a guilty verdict, which has come into force.

According to the official rate of pay to commissioned staff and according to personnel arrangements in territorial subunits, establishments, institutions and organizations of the State Service for Special Communications and Information Protection of Ukraine and commissioned staff of the State Service for Special Communications and Information Protection of Ukraine according to type personnel arrangements the following official rates of pay were established: chief of the territorial subunit, establishment, institution, organization — 1,990; chief of the department or communication center — 1,400–1,600; chief of the sector (department) or liaison office — 1,350–1,400; senior engineer, officer, information security specialist, other professionals — 1,000–1,100; engineer, officer, information security specialist, other professionals — 800–900.

The norm that military personnel who temporarily left military units preserving jobs by place of service, the benefit payment is not terminated in the event of going on leave with pay for the time spent on leave; treatment for the treatment time (for the period when they were

paid allowance) and during release from duty due to illness; going on detachment, including, camp, courses, training, or as member of the unit for the period of a business trip may be considered a kind of social protection of servicepersons.

The fee is paid to the servicepersons during the special period (for the period when they are paid allowance) when they are evacuated due to injuries, hospitalized due to illness and therefore excluded from the lists of personnel of military units. In such cases, the pay is kept until the day of taking up the duties while assuming a new office to which s/he was appointed after the end of treatment (or until the day of being deleted from the list of personnel in connection with discharge from military service); captured or taken hostage and interned in a neutral state or are missing.

The Order of the Administration of State Guard of Ukraine approved procedure for payment of recompense for direct participation in anti-terrorist operations of military personnel of the Administration of State Guard of Ukraine dated September 19, 2014. This recompense is paid to servicepersons who was directly involved in anti-terrorist operations, ensured law and order on the state border, repelled attacks against guarded objectives, freeing these objectives in case of capture or attempted forcible seizure of weapons, combat and other equipment, as well as for the time spent in hospital for the treatment of injuries (concussion, traumas, mutilation) received during participation in these operations and activities since May 1, 2014.

The compensation makes 100% of monthly salary, but not less than 3,000 per month. The daily sum is determined by dividing the amount of monthly salary (but not less than 3,000) by the number of calendar days in the month. If during the period of participation in anti-terrorist operations or in-patient treatment the allowance of the serviceperson of the Administration, rank payments and additional remuneration undergo changes the allowance is determined on the basis of new sizes for each type of financial support from the date of introduction of changes.

Although during the last year the social welfare services to troops underwent serious changes, but such changes rather quantitative, and not qualitative. It should also be noted that a significant number of adopted normative legal acts in the field of social security of servicepersons fail to meet the standard of living today and they are not commensurate to the efforts (moral, spiritual, mental, psychological, physical) of servicepersons defending their homeland.

### **3. THE PROBLEM OF CORRUPTION IN THE ARMED FORCES OF UKRAINE**

The legal and organizational principles of the functioning of the system intended to prevent corruption in Ukraine, the content and application of preventive anti-corruption mechanisms, rules for mitigation of corruption offenses are regulated by the Law of Ukraine "On Prevention of Corruption" of 14 October 2014. The lawmaker extends the application of the law to cover military officials of the Armed Forces of Ukraine and other legal military units, except for military conscripts.

Another positive development includes the extension of legislative regulation to cover special verification of information submitted personally by individuals who apply for filling

responsible or particularly responsible position and posts with high corruption risk the list of which is approved by the National Agency. This special control has certain restrictions concerning citizens. It does not concern: drafted officer cadres, draftees mobilized for a special period, and draftees supposed to fill posts according to the war-time manning table.

According to the Ministry of Defense<sup>2</sup>, The measures for prevention and detection of corruption are carried out taking into account the socio-political situation in Ukraine and objectives of the Armed Forces of Ukraine during the special period. To make efficient use of charitable funds and property, which are received by the military units, the arrival records and permitted use are timely controlled. The supervision is executed of the elimination of corruption schemes identified by the analysis of anti-corruption activities of the Ministry of Defense of Ukraine in the field of alienation and selling of military equipment, procurement of goods, works and services for public funds, disposal of rocket fuel and rockets and ammunition, supply of fuels and lubricants and boiler fuel to the Armed Forces of Ukraine, equipment supply and leasehold.

During the first six months of 2014, the results of audits of military representatives of the Ministry of Defense of Ukraine on the state of conservation of assets and management of public property were analyzed. The control measures revealed a number of corruption factors (existing schemes) in the areas of procurement and maintenance of weapons and military equipment, ammunition disposal and processing of products containing precious metals; the proposals to minimize them were designed.

In January 2014 the questions of possible corruption in bath-and-laundry service of the Armed Forces of Ukraine were looked into. The prevention of possible infliction of losses to the economic interests of the Ministry of Defense of Ukraine worth more than 2.3 million took place.

Pursuant to the Resolution of the Cabinet of Ministers from September 4, 2013 "On prevention and detection of corruption" the subunits (persons responsible) were created to carry out the prevention and detection of corruption in the Defense Ministry Ukraine and the General Headquarters of the Armed Forces of Ukraine, as well as enterprises under the Ministry of Defense. In January 2014, the personnel of such subunits was instructed at the meeting and provided with a set of training materials. The inspection was performed in the central office of the Ministry of Defense to control timely submission of declaration of property, income, expenses and financial obligations for the previous year.

In March 2014, an organizational meeting was held on drafting the order of the Ministry of Defense "On establishing a system for organizing and coordinating the work on preventing and combating corruption in the Ministry of Defense of Ukraine." At a meeting of the Governmental Committee on Defense, Military-Industrial Complex and Law Enforcement on May 8, 2014 the committeemen reviewed the draft regulation of the Cabinet of Ministers of Ukraine "On the formation of a working group for preparation of proposals concerning the Concept of reform of the law enforcement agencies."

In January and February 2014, the national course on training professionals in the field of preventing and combating corruption and courses on professional development and further training were taught at the National University of Defense of Ukraine with participation of

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<sup>2</sup> Prevention of Corruption // <http://www.mil.gov.ua/diyalnist/zapobigannya-proyavam-korupczii/>

the UK Ministry of Defense and representatives of international organization “Transparency International” in the format of the Action Plan “Partnership for Peace “Open Government”. An expert analysis of legislation in the field of the fight against corruption and draft legal acts of the Ministry of Defense Ukraine to identify rules that might contribute to or facilitate the commission of corruption offenses.

The set of measures for special control of persons claiming for filling positions related to the public function was developed.

Ten reports about administrative corruption offenses committed by the officials of the Ministry of Defense of Ukraine and the Armed Forces of Ukraine were taken to court during the reporting period. Eight officials were made accountable (punished by a fine) for managerial offences. During 2014, the information about 148 criminal corruption offences committed by the officials of the Ministry of Defense of Ukraine and the Armed Forces of Ukraine were entered into the Unified register of pre-trial investigations.

The bulk of criminal corruption offenses committed for mercenary motives fell under the article as follows:

- Article 410 of the Criminal Code of Ukraine “Stealing, appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special engineering, or abuse of office, by a military serviceman” — 67;
- Article 366 of the Criminal Code of Ukraine “Forgery in office” — 32.

As a result of inspections conducted by the units for corruption control of the Law and Order Service 203 notices of infringement and notices of criminal offenses were taken to the pre-trial investigation agencies; out of this number eighty notices were entered into the Unified Register of pre-trial investigations and criminal proceedings were initiated.

During elimination of causes and conditions that had led to the commission of administrative corruption offenses by the military and civilian employees of the Armed Forces of Ukraine the units for corruption control of the Law and Order Service carried out a range of measures to prevent their manifestations, namely in the first six months of 2014:

- To eliminate the causes and conditions that contribute to the violation of laws, under paragraph 17 of Article 7 of the Law of Ukraine “On Military Law and Order Service of the Armed Forces of Ukraine” 189 recommendations were brought forward to commanders of military units (chiefs), officials of businesses and institutions;
- Took part in 32 checkups of command and control agencies, military units, (establishments and institutions) of the Armed Forces of Ukraine concerning the compliance with legislation on preventing and combating corruption and organized 581 prevention activities (lectures, discussions, briefings, consultations regarding the practice of anti-corruption legislation) in military units, organized seminars while visiting military garrisons.

The disciplinary charges were brought against 223 officers.

Solving the problem of corruption is a priority for the Ukrainian society at the present stage of development. Indeed, according to the research data, the corruption was among the reasons that led to mass protests in Ukraine in late 2013 — early 2014. According to the results of the study of Global Corruption Barometer conducted by the international organization Transparency International in 2013, 36% of Ukrainian were ready to take to the streets to protest against corruption. According to the public opinion polling conducted

by the International Foundation for Electoral Systems (IFES) in late 2013, the corruption was at the top of the list of the biggest popular problems and caused particular concern in 47% of the population. According to the Corruption Perceptions Index published by Transparency International, the Ukrainians believe their country is one of the most corrupt in the world; in 2012 and 2013 the state was ranked 144 out of 176 countries included into the study.

#### **4. RECOMMENDATIONS**

1. Monitor the level of effectiveness of the military procuracies. Identify the strengths and weaknesses of their operation taking into account previous experience of this structure.
2. Identify the basic concepts related to the antiterrorist operation and introduce them into law. Bring normative legal acts relating to regulation of the antiterrorist operation in accordance with the Law of Ukraine "On Combating Terrorism".
3. Change public attitude to the problems of social security of servicepersons strengthening their decision at the legislative level.
4. Strictly control the elimination of corruption, improve social significance of military service by comprehensive measures which should be permanent.

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## **XIX. PRISONERS' RIGHTS**

### **1. SOME GENERAL DATA**

79 750 people<sup>2</sup> have served a sentence in 177 institutions related to the management of the State Penitentiary Service of Ukraine (SPSU) as of December 1, 2014. At that 16 501 persons are serving a sentence in 23 pre-detention centers and 8 penitentiary facilities with function of a pre-detention center, 1991 persons of them at the stage of prejudicial inquiry, 5928 persons of judicial examination (before sentencing), 62 794 persons in 140 penitentiaries, 3820 people in 9 colonies of maximum security level; 24 766 people in 40 colonies of medium security level for repeatedly convicted persons; 18 469 persons in 34 colonies of medium security level for the first time convicted person; 2421 persons in 9 colonies of minimum security level with general incarceration conditions for man; 598 persons in 4 colonies of minimum security level with lite incarceration conditions for men; 29 525 persons in 14 colonies for women; 1456 persons in 6 specialized hospitals; 1726 persons in hospitals of juvenile correctional facilities and pre-detention centers; 2507 persons in 24 correctional centers; 455 persons in 6 juvenile correctional facilities (for minors). Among convicted persons 395 are serving a sentence by way of arrest in 59 jails at penal institutions (36) and pre-trial detention centers (23); 1777 people are serving a sentence by way of life imprisonment. There is a tendency of reducing the number of prisoners per 100 thousand of the population<sup>3</sup> that deserves a positive assessment.

### **2. LEGISLATION**

The main event of the year was adoption of the reform changes in the Penal Execution Code of Ukraine<sup>4</sup> as a separate law, which need the human rights organizations<sup>5</sup> has repeatedly insisted on. The regulation of criminal and penal relations has been significantly improved in the context of human rights, that immediately caused attempts of “rewriting the law” by

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<sup>1</sup> The section have been prepared by V. Chovgan and A. Didenko.

<sup>2</sup> The above mentioned statistics do not include persons serving a sentence in institutions of the Autonomous Republic of Crimea.

<sup>3</sup> Details: <http://ukrprison.org.ua/news/1413267624>

<sup>4</sup> Law of Ukraine “On Amendments to the Penal Code of Ukraine concerning the adaptation of the legal status of a convict in accordance with European standards”.

<sup>5</sup> It is also need to specially focus on and welcome the fact that the main advocate of the bill became Office of the Ombudsman.



National Offender Management Service with the aid of bylaws, as well as with preparation of a kind of “counter-project” of changes in Penal Code of Ukraine<sup>6</sup>.

The principal change became the approach to the definition of prisoner labor related to their subjective right, according to the Article 26 of the European Prison Rules. If previously it was stated that the prisoners ... “have to work in places and jobs determined by the prison administration”, now prisoners “have the right to work” in such work places. This change demonstrates the final retreat of legislation from the Soviet corrective labor philosophy that consisted in direction of prisons activities to profit obtaining using the forced labor of prisoners.

Minimum amount being entered to an account regardless of all deductions was changed, from 15% to 25%. (Part 2 of Art. 120 Penal Code of Ukraine). The payroll deductions should no longer be sent to cover the cost of clothing, underwear, shoes, as it was before, but only for household and other rendered services. The order of pension registration for convicted persons (ch. 1–3 Art. 122 of the Code) has been settled — now work time while serving a sentences is directly included in the length of work (ch. 4, Art. 122 of the Code) and does not require a separate payment of premiums by convicted persons after their release, that was an unrealistic condition of the previous rules. From May till October 2014 the right to issue a pension has been exercised so far by 170 convicts<sup>7</sup>.

It was extended a list of correspondence being not subject to review — now the correspondence with the courts refers to him (Art. 4, Art. 113 Penal Code of Ukraine). The definition of fulfilling of legal administrative requirements by convicted persons was changed. Instead of this they have to meet the requirements of colony personnel established by legislation (ch. 1, art. 9, ch. 3 art. 107)<sup>8</sup>. According to the human rights advocates the previous edition has been a source of tension and conflict in the institutions, because the prison staff abused it due blur category<sup>9</sup>. However, the former definition relatively the convicted persons to the restriction of liberty are still remaining and also being a component of foundation for application of the measures of physical coercion, special tools and weapons (ch. 4 art. 59 and ch. 1, art. 106 of the Code). So now there are some terminological inconsistencies requiring correction.

The article relating to transfer of convicted persons before deprivation of liberty has been significantly changed. Earlier the mitigation of incarceration conditions within the institution could be based on the fact that a convicted person “is entering the path of reformation”, now convicted persons have been “transferring” (ch. 1, Art. 101), that is more imperative requirement concerning the transfer of convicts.

However discretionary powers for evaluation “to enter/not enter the path of reformation” remains for the administration. Positive is specifying the characteristics of persons being not liable to transfer to the social rehabilitation section. Previously they were convicted

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<sup>6</sup> The project itself and its criticism see Chovgan V.O. Reforming of the penitentiary legislation in light of international standards (comments and suggestions) / Kharkiv LLC “PUBLISHING HUMAN RIGHTS”, 2014. — P. 28–82. (The publication is available on the library website of Kharkiv Advocacy: <http://library.khpg.org>), as well as see documents on website of SPSU: <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/741849>

<sup>7</sup> <http://ukrprison.org.ua/news/1418552399>

<sup>8</sup> Constitution of Ukraine has always requirement, which bears a similarity with actual definition (art.).

<sup>9</sup> <http://ukrprison.org.ua/index.php?id=1404107637>

persons, who were maliciously violating the requirements of the regime, and now — the persons having beforehand rescinded or not paid penalties in accordance with the law listed in ch. 1 Art. 2. 101 Penal Code of Ukraine). Also new is that now persons being convicted of crimes related to trafficking in narcotic drugs, psychotropic substances, their analogues and precursors are liable to transfer to this section.

The number of publications is expanded, is allowed for convicts to carry: no more than ten books, and the number of newspapers and magazines are not limited (ch. 3 Art. 109). Previously the limit was not more than a ten books and magazines. In accordance with the amendments is prohibited unreasonable forced interruption of sleep of convicts at night, including specially for checking of convicts (ch. 5, Art. 8). Significant changes suffered the rules relating to public control over the rights observance of the convicts.

And long-awaited major change is the right for longstanding meetings for convicts.<sup>10</sup>

According to the information of A. Bukalova only 169 life sentenced convicts of 1800 received longstanding meetings during May and October that is, less than 10%. But any meeting has been received by convicts from Penal Colony Zamkova No. 58, Predetention Center Kyiv, Predetention Center Odessa. According to the statements of Penal Center, because of absence of statements from the convicts. However, according to the activist, there are reports that they refuse some life convicts to grant longstanding meetings due to lack of space for their conducting<sup>11</sup>.

At the same time the relatives of persons being sentenced to life imprisonment complain on round-the-clock video monitoring in the room of longstanding meetings, according to relatives and convicted persons is a violation of their right to privacy.

The most “courageous” and controversial is to entrench the rights of all convicts to use mobile phones and the Internet (ch. 1, Art. 107), which caused serious frictions in the process of its implementation. But it is not allowed for convicted persons to carry most portable personal computers, mobile phones and related accessories. In other words there is a right, but there isn’t an opportunity for its implementation.

Despite the uniqueness of the Law on the right to use Internet and mobile communications, the head of SPSU adopted the restrictive ordinance No. 2/1/2-12/h on 08.05.2014, according to which access to mobile communications should only be allowed in case of absence of payphone or landline phone in the institution.

Given the fact that such devices there are practically in all institutions, the right to use mobile phones is now completely leveled. In addition, on 10.20.2014 was passed the order “On approval of the Procedure of allowing for convicts using Internet”, which maximum limits the right of prisoners to use Internet. It states that the list of web resources to which access is available for convicts, will be approved by the commission consisting of the head of the institution and the heads of structural divisions of the institution (Art. 2.1). Such a rule caused several adverse effects.

Firstly, complete discretion in the places and the difference between the possibilities of access to the different sites in different penal institutions that will actually constitute the principle of equality violation of convicts, enshrined in Article 5 of Penal Code of Ukraine.

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<sup>10</sup> See. analysis in detail: <http://www.khpg.org/index.php?id=1400441733>

<sup>11</sup> <http://ukrprison.org.ua/news/1418552399>

Secondly, the maximum restriction of the right to use Internet, because instead of approved type of comprehensive law regulation (which, incidentally, should be applied to convicts taking into account that they are subject to the Article 19 of the Constitution of Ukraine), which specifies that “is allowed everything which is not forbidden”, specially-allowed type of regulation is applied to convicted persons, that is, the principle of “allowed only what is expressly provided by law.”

An additional limitation is the norm of the paragraph. 2.2 of the Order, which determines that access is prohibited for convicted persons not only to certain web resources, but also to social networks and electronic mail. This prohibits the use of Internet as a mean of written communication that don't conduce the building of positive contacts with outside world. Although, taking into account the complexity of the innovations implementation of Penal Code the administration of the State Penitentiary Service of Ukraine could use long-term experience of Norway, which is practicing scanner-firewalls for secure internet content<sup>12</sup>.

Despite the fact that the Internal regulations include a phone and computer to prohibited items for storage, the right to have the necessary devices and accessories obtained person being sentenced to imprisonment (art. 59), as well as the convicted persons of social rehabilitation (art. 99). In this case, the latter have the right to carry only laptops, but not mobile phones.

Since the mechanism of right realization of convicted persons to use mobile phones remained unregulated, in practice it regularly raises a number of abuses by law enforcement officials in the form of establishing of additional restrictions. The main argument is the lack of the right to own portable phones and computers<sup>13</sup>.

*For example, the Sumy Regional Administrative Court refers to it in its judgment of 17.09.2014, refusing a convict the right to use a mobile phone with accordance to the latest changes in mobile communication in Penal Code of Ukraine<sup>14</sup>. Similar is the reaction of the prosecutor's office, which on the complaints concerning the failure of possibilities to use mobile communication refers to the fact that mobile phones are prohibited items<sup>15</sup>.*

It is worth to note that the Code remains the norm oriented to work as a legal obligation. Article 133 of the Penal Code of Ukraine states that “the worst violator of the established order of serving the sentence is a convicted person who fails to meet the legal

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<sup>12</sup> <http://www.theguardian.com/society/2008/nov/14/norway-prison-erwin-james>

Firewall from the English, literally “wall of fire” — a device or set of devices configured to permit, deny, encrypt, passed through a proxy all computer traffic between different security areas according to a set of rules and other criteria. We are talking about the possibility of the administration of prisons to determine the list of websites, words, texts, which access would be blocked automatically to. In addition this approach would ensure an opportunity of uniform application of the law to all convicted prisoners and observance of the principle of equality, which will be violated as we mentioned.

<sup>13</sup> Father of native penitentiary (at that time correctional labor law) N. A. Struchkov expressed a thought very accurate and appropriate to the situation: “we cannot allow a person to formally had some rights, but in fact could not use them, we cannot allow a citizen had some responsibilities, but could not carry them out, because it contradicts the “spirit of socialist rule of law” ( N. A. Struchkov Course of corrective labor law. Problems of the general part. — M.: jurid. literature., 1984. — 182 pp., Natashev A. E., N. A. Struchkov Basic theory of corrective labor law. — M., 1967. — p. 121.)

<sup>14</sup> <http://www.reyestr.court.gov.ua/Review/40619485>

<sup>15</sup> It is worth to note that in some prisons to ensure the rights of convicts for phone calls the ordinary landline and mobile phones are sometimes used.

requirements of administration, unreasonably refuses working (at least three times during the year) [...]” However this rule can be interpreted now two-way. The first variant — it is referred to self-service activities, improvement of the colonies, and such improvement are obligatory for the convicts (ch. 3 Art. 107 of the Code). The second variant — it is referred to production work in the institution. In this case it can be assumed that the refusal convicted person of work will always be justified, given that a rule was adopted which clearly entrenches the labor as a subjective right, and so he (she) can use it or refrain from using of his/her own free choice. This interpretation, however, does not exclude the abuse of outlined norm as a tool for labor enforcement, ignoring the changes in the Code. Moreover the Regulation on the State Penitentiary Service of Ukraine<sup>16</sup> in sec. 4. 27 determines that SPSU organizes the engagement of convicted persons to socially useful paid labor. All these defects need to be eliminated in order to adjust all labor rules of the convicts as their subjective right.

It seems that the most appropriate and so that is able to prevent abuses and to ensure the labor rights of convicts is the conclusion with them a common employment contract. SPSU should implement a reform in order to attract convicts to perform labor contract. Also taking into account the priority of attraction SPSU the convicts to socially useful work and new job creation it seems to be necessary to use foreign experience in this field<sup>17</sup>. For example, it would be appropriate to allow the convicts to create their own company to work “for themselves” with conclusion of individual service contracts that can be performed in the conditions of imprisonment, while from their income would be carried out the necessary tax deductions, as well as contributions of civil suits and municipal services within the established limits.

Article 93 of Penal Code of Ukraine remains problematic, previously stated that a convict is serving his sentence in one penal or juvenile correctional colony, as a rule, within one administrative-territorial unit in accordance with his place of residence before conviction. Now it is “within the administrative-territorial unit in accordance with his accommodation before conviction or the place of residence of convict’s relatives (highlighted by the author).” In genera the positive direction of the norm in this case may lead to abuse due to lack of guidance on choice opportunity between the service of sentence in a territorial-administrative unit at place of residence or at place of residence of relatives, wherefore the choice will be left to the administration.

Among the general defects of regulation SPSU should be indicated the termination of the state target program of reforming of the State Penitentiary Service for 2013–2017 in accordance with regulation of the Cabinet of Ministers No. 71 of March 5, 2014 “Some issues of optimizing the state grant programs and national projects, budget savings and repeal of certain acts of the Cabinet of Ministers of Ukraine<sup>18</sup>”. A separate block is the question of possibility to premature releasing the convicts having been sentenced to life imprisonment

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<sup>16</sup> <http://zakon4.rada.gov.ua/laws/show/225-2014-%D0%BF>

<sup>17</sup> [http://kvs.gov.ua/Dost\\_public/Propozicii\\_2015.pdf](http://kvs.gov.ua/Dost_public/Propozicii_2015.pdf)

<sup>18</sup> <http://ukrprison.org.ua/expert/1397146062>

life imprisonment, which legislative regulation is delayed, despite the relevant bill developed in 2014.<sup>19</sup>

It is required the improvement mechanisms of public discussion that SPSU introduced by development of regulatory acts<sup>20</sup> in 2014. For example, SPSU adopted decree “On procedure approval of delivery of health care for prisoners» No. 1348/5/572 without regard to any comment expressed by the Kharkiv Human Rights Group related to non-compliance of certain acts to the purposes of protection of human rights and certain international standards<sup>21</sup>.

The draft of the new Internal work order rules of penal institutions expects its adoption; the Internal work order rules of pretrial detention centres having been introduced last year<sup>22</sup>, are not been changed and sharply criticized by community. Is being developed The draft of order “On approval of legal acts regarding the use of technical means of surveillance and control in the penal institutions of convicted persons and persons being taken in charge” that requires significant improvement in consideration of privacy right observance as it provides an almost unlimited video monitoring.

The changes remain actual being expected the Order No. 1325/5 of the paramilitary unit of State Penal Service of Ukraine (Special Forces) in order to exclude from it the norms provoking serious collective conflicts in prisons. Thus, the Order does not reflect two main recommendations of Committee for Prevention of Torture in 2012: all actions of division must be fully recorded division on the form); every soldier during a special operation should have a sign that would be given the opportunity to identify it in the future n case of necessity to appeal his illegal actions. Among other things, the lack of perception of these recommendations resulted in the next scandal with excessive use of force by a special unit in Berdichev EC No. 70<sup>23</sup> in 2014.

On the 2 July 2014 the Cabinet of Ministers of Ukraine adopted a resolution “On approval of regulation of the State Penitentiary Service of Ukraine<sup>24</sup>”, which will increase the role of the

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<sup>19</sup> *Didenko A., Chovgan V.* Life imprisonment: European standards and Ukrainian practice. Ed. 2 Corr. and add. / Ed. E.Y. Zakharov. — Kharkiv: Human Rights, 2014. — 316 p. (Available on the link: <http://library.khpg.org/files/docs/1409320826.pdf>)

<sup>20</sup> It should be noted that an announcement appear in a special section of the site SPSU without notice on the home page. It doesn't promote transparency and proper public involvement to the process and has to be corrected in the future. We are consider appropriate not only to publish a separate announcement on the website of Department, but also the implementation of its distribution to the email addresses of public organizations working in the penitentiary system, because SPSU should be interested in their involvement in the first place.

<sup>21</sup> See *Chovgan V.* Reforming of legislation that regulate health care of convicts, in the observance of human rights in the penitentiary system of Ukraine / K. A. Artukhov, A. P. Gel, M. V. Romanov, V. A. Chovgan, I. S. Yakovets; edited by E. Y. Zakharov. — Kharkiv LLC “Publisher human rights” in 2014. — p. 213–228 (publication is available on the website of library of Kharkiv Human Rights Group: <http://library.khpg.org>); Aschenko A. M., Chevgan V. A. Ukrainian penitentiary legislation in light of the standards of the UN Committee against Torture and the Council of Europe / A. N. Aschenko, V. A. Chevgan; foreword. M. M. Gnatovskogo; under general. ed. E. Y. Zakharova. — Kharkiv: Human Rights in 2014. — p. 72–88 (available at the link: <http://library.khpg.org/files/docs/1413663568.pdf>)

<sup>22</sup> See last year's report: [http://helsinki.org.ua/index.php?id=1398062996#\\_ftnref9](http://helsinki.org.ua/index.php?id=1398062996#_ftnref9); For details see the report of the Donetsk Memorial: <http://ukrprison.org.ua/publication/1410110906>

<sup>23</sup> See video of joint press conference of Kharkiv Human Rights Group and a representative of SPSU: <http://www.khpg.org/index.php?id=1416566453>

<sup>24</sup> <http://zakon4.rada.gov.ua/laws/show/225-2014-%D0%BF>

Ministry of Justice to coordinate Service<sup>25</sup>. In particular, the appointment rules of chairman and his deputies SPSU are changed; it is prescribed that the annual work plan of SPSU should be approved by the Ministry of Justice, not just in agreement with him, as it was before. Also the structure approval of the territorial government SPSU, authorities and institutions is carried out in coordination with the Ministry of Justice.

Separate question is the implementation of international standards in national legislation, since the process of implementation of decisions ECtHR is inefficient as due to the fault of SPSU and also Government attorney for ECtHR. Thus, the execution of the decision in the case “against Ukraine Ohrimenko” indicates the need for changing the legislation of handcuffs using, as well as the detention order of convicts in medical institutions.

Inter alia because of the failure of previous decisions *Sergei Volosyuk v. Ukraine* and *Belyaev and Degtar v. Ukraine* it was found a violation of the privacy right of convicted person in case of *Vintman v. Ukraine*<sup>26</sup>, because the existing verification procedure of correspondence contradicts the requirement of restrictions proportionality as national legislation essentially provides for a systematic, without additional justification, censor of incoming and outgoing correspondence of convicts and persons being under arrest<sup>27</sup>.

As, for example, case decision of *Vorobyov v. Ukraine*<sup>28</sup>, which Ukraine was convicted of a violation of Article 34 of the Convention, was a logical consequence of defiance previous Court’s decisions with similar problematic that demonstrated the disadvantages of laws and practices according to which it is difficult are or impossible for convicts to access their personal documents and make copies of them<sup>29</sup>.

These cases of systematic defiance of decisions of ECtHR indicate the expediency of establishing a separate entity SPSU that would be responsible for the proper implementation of the decisions of international organizations<sup>30</sup>. Such a body is required and given the huge array of outstanding recommendations of the Committee of Ministers of the Council of Europe and the European Committee for Prevention of Torture and the UN Committee against Torture.

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<sup>25</sup> In previous reports of human rights organizations it has repeatedly called attention to the need for further resubordination of the prison department to the Ministry of Justice, as required by international organizations, which members is our State.

<sup>26</sup> <http://www.khpg.org/ru/pda/index.php?id=1415653612>

<sup>27</sup> More about the violation of the Convention by existing order of “viewing” of convicts’ correspondence see: Chovgan V. A. The right to written correspondence in the publication of Observance of Human Rights in the Penitentiary System of Ukraine (cit. above). — p. 257–266 (publication is available on the library website of Kharkiv Human Rights Group: <http://library.khpg.org>)

<sup>28</sup> <http://www.khpg.org/index.php?id=1415654102>

<sup>29</sup> Namely refusal of prison administration to provide copies of documents, required by the Court, became the cause of a violation of article 34 of the Convention in decision “*Ustyantsev v. stolen*” (3299/05), in case of “*Vasily Ivashchenko v. Ukraine*” (760/03), according to which the convict was refused to receive copies due to the fact, that he had the right to carry only his sentence (the corresponding norm, by the way, is enshrined today in the Internal regulations of penal institutions and requires changes, as we pointed out in the project analysis of the Internal regulations of penal institutions). In the decision *Naydyon v. Ukraine* (*Naydyon v. Ukraine*) the Court made it clear counterbalance to the government’s argument that he had no obligation to make copies, the Art. 34 of the Convention places on States-Parties a positive obligation not to interfere with exercitation of rights of individual petition, in particular; to give the applicants a copy of the documents being necessary for the proper consideration of their applications.

<sup>30</sup> [http://helsinki.org.ua/index.php?id=1398062996#\\_ftn34](http://helsinki.org.ua/index.php?id=1398062996#_ftn34)

### 3. RIGHTS OF CONVICTS ON THE OCCUPIED TERRITORIES

#### 3.1. Occupied Crimea

There are four places that actually turned out to be occupied owing to occupation of territory by Russian Federation on the territory of Crimea. This is the Kerch penal center No. 139 for 30 convicts, the Kerch penal colony of minimum security level number No. 126, is designed to hold 710 convicts and the Simferopol penal colony of medium security level No. 102 for 1470 convicts and the Simferopol pretrial detention center, designed for 1700 arrested people. The total amount of citizens of Ukraine, which turned out to be invalid to make decisions relating the constrained resettlement to the territory of mainland Ukraine, is about 3910 people. On the 15<sup>th</sup> of April 2014 the Verkhovna Rada of Ukraine passed the Law "On enforcement of rights and freedom of citizens and legal order on the temporarily occupied territory of Ukraine" (hereafter the Law). The law contains provisions that regulate the jurisdiction of criminal proceedings initiated on the territory of Crimea. Persons remaining in custody on the territory of Crimea, which investigation on, contrary to the law, is not transmitted to the competent authorities of Ukraine and continuing by unauthorized investigators in accordance with Russian law, have all the perspectives in the international judicial instances to restore their rights violated as a result of illegal actions of the representatives of Russian Federation. It primarily concerns the persons remaining in custody unlawful, and according to our survey about 200 people covered by the amnesty law in 2014. It is recognized that the persons found themselves in such a situation should apply to the appropriate law court of Ukrainian, receive decisions for their own benefit, and in case if these decisions will not be fulfilled by the occupation authorities of the Crimea — to apply further to protect their rights in international institutions

In addition the law enforcement of the Crimea massively resorted to illegal actions, forcing persons in custody to receive Russian citizenship in order of extending to them the criminal law of the Russian Federation. In this regard the Commissioner for Human Rights of the Verkhovna Rada has received more than 400 complaints of such persons for assistance in transferring to serve their sentences in mainland Ukraine<sup>31</sup>.

#### 3.2. Occupied territories of Lugansk and Donetsk regions: tens of thousands of hostages

There are 36 penal institutions in Donetsk and Lugansk regions (25% of the total number of institutions SPSU), 29 of which located in areas of possible military clashes or territory not controlled by Ukraine.

What is the fate of about 15 000 Ukrainian citizens having become hostages of the armed conflict unleashed by the Russian Federation? Will they forcibly be taken into the ranks of the self-proclaimed "DNR/LNR"? Will they receive a weapon and be demanded to war with their own folk? Will they be forced to dig trenches, to carry out the dirty work and shoot for disobedience? For example, the self-proclaimed DNR adopted its "Penal Code" that provides

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<sup>31</sup> <http://zakon2.rada.gov.ua/laws/show/1246-vii>; Human rights on the occupied territory of the Crimea // <http://www.khpg.org/index.php?id=1404910099>

a death penalty. On the 22<sup>th</sup> of August it became known about seizure of prison in Donetsk by the separatists, the threat to execute all sentenced to life imprisonment and enforcement to join their ranks. On the 24<sup>th</sup> of July 2014 the spokesman for the National Security Council Information Centre reported that the militants in Gorlovka who had large losses of manpower, have released 150 convicts from a local colony, armed them and used to intimidate the local population and to resist to forces of ATO.

On the 10<sup>th</sup> of August 100 prisoners broke away in the evening from the penal colony No. 124 of Donetsk after its shelling. Only 34 people came back. Majority of them is now among the civilian population. It is possible that they join the ranks of the fighters. However, with five shells hit the territory of the colony one convict was killed, five got wounds of moderately severity. Also two prison officers were injured. At the end of August the Penal colony in Makeevka No. 32 was damaged, two convicts were dead, and 8 more were injured. It failed to save life of two of them in the hospital. In the morning they died from his injuries.

In this situation, unfortunately, because of the poor performance of the central office SPSU were evacuated only convicted of female Chervonopartyzansk penal colony (No. 68) in the Luhansk region for the entire period of ATO. At the same time the public reception of the Kharkiv Human Rights Group received disturbing reports from convicted persons from occupied territory (direct speech):

“In the colony 19 we have a long only one cabbage, in 38 and 36 some grain was delivered”. “In 57 they did not feed for two weeks. They came in the chevrons of Russian Special Forces. Around are standing their position. Food is not delivered. We were thrown and any is evacuates. Do you know how creepy to sit in the chamber on the first or second floor, where the shells are torn, broken rubble on the parade ground?! Terrorists were shooting, than they taken away two convicts. The administration removed then the chevrons and became to demonstrate the prisoners. A little more, and we will die of hunger, we want eating very much. We were told that we were evacuated on papers and there was not personal affairs there, they were taken in Mariupol, and then to Kiev. Mail does not work. The infirmary hadn't medicines already for two months. In the colony remains of about 600 convicts, 138 of them in the chambers were sentenced to life imprisonment and the rest are on the open area”.

“ The convicted A. of Yenakievo penal colony No. 52 of maximum security of Donetsk region: “... in the morning we haven't get feed — tea, a piece of bread, dinner — water, on the second- porridge without fat. Any has dating a long time and does not receive the food brought from outside, it is difficult to get us. 15 minutes ago it was bombed, you know, how terribly is when you cannot even hide in the shelter while bombing?! Two days we have no water, light appears intermittently”.

Alexander Gatiatulin, a spokesman for the All-Ukrainian Network of PLWH, notes that only thanks to the efforts of volunteers medicine is delivered for the patients with HIV-AIDS in prisons on the occupied territories, “Me and my colleagues in war conditions acutely aware, how important is to delivery of necessary drugs in time. In Lugansk region prisons are provided with drugs for the next six months. In Donetsk region such volume of drugs it has to be delivered”.

“Together with other dangerous of prisoners came also hunger in Donetsk. “Because the funding of penal institutions fulfills through the State Treasury, which working is stopped in connection with the fighting in a certain area of Donetsk and Luhansk regions. Therefore, the administration of these institutions cannot get money to buy food and feed the convicts,



- said the head of the human rights organization “Donetsk Memorial” Alexander Bukalov.
- Amount of these problems is growing daily, and in some colonies, and situation with food in some colonies is closer to the critical point. “Severe was the problem of food lack in Yenakiyevo penal colony (No. 52).

#### 4. RECOMMENDATIONS

1. To the Verkhovna Rada of Ukraine:
  - to adopt the draft law “On Amendments to Certain Legislative Acts of Ukraine regarding the application of penalty of life imprisonment» No. 1218, which introduce a mechanism of parole of persons sentenced to life imprisonment, as required relevant standards of the Council of Europe;
  - to improve the procedure for the revision of sentences entered into force, in the case of decision deliverance on procedural irregularities of the ECtHR by conducting of preliminary investigation to ensure the right to a fair trial;
  - to complete the submission process SPSU to the Ministry of Justice, as mentioned in the PACE resolution number 1466 (2005);
  - to determine by procedural legislation of various justicement branches the order of proceedings of direct participation in court sitting of persons serving a sentence in custody as an judicial restraint, as appropriate, taking into account the decision of the Constitutional Court of Ukraine on the submission of a citizen of Troyan A.P. from 12.04.2012 No. 9-rp/2012;
  - to take in further working the bills prepared by the Kharkiv Human Rights Group to amend the Penal Code of Ukraine and the Law of Ukraine “On remanding into custody” to bring these laws into conformity with standards of the Council of Europe.
2. To the Cabinet of Ministers of Ukraine — to resume the State program of reforming the State Penitentiary Service for 2013–2017.
3. To the Ministry of Justice:
  - to conduct a comprehensive analysis of the current penitentiary legislation and its implementation in accordance with international standards;
  - to review the provisions of the Concept of the state policy in the field of reforming of the State Penal Service of Ukraine concerning the priorities of self dependence of penal institutions, as part of the involvement policy of convicts in socially useful work;
  - to stop the practice of poor rulemaking, by introducing the practice of public discussion of draft regulations relating to human rights, taking into account the public comments;
  - to adopt the draft of amendments to the Internal regulations of the prisons (Order of 18.03.2013 No. 460/5) based on the comments of experts;
  - to amend the draft of Internal regulations of the corrective labour institution and to take into account the comments of experts regarding violations of human rights standards by this document;

- to improve the orders of Ministry of Justice “On approval of medical care organization for convicts” and “On approval of organization access to the Internet for convicts”; Order of State Penitentiary Service No. 1325/5 from 03.07.2013 “On approval of the territorial (interregional) paramilitary of State Penal Service of Ukraine” with taking into account the recommendations of international and national institutions;
  - to improve the draft of order “On approval of legal acts on the use of technical means of surveillance and control of convicted persons and persons taken into custody” to meet the requirements of right to privacy in the context of international standards;
  - to review the rules of goods maintenance for convicts in order to bring them into line with international standards and taking into account the comments of last year’s reports of expert organizations;
  - to regulate the organization of service of sentence on the occupied territories and territories of ATO (including the issue of extending the punishment, parole and other procedural aspects, issues of employment of employees Penal Service of Ukraine et al.);
4. To the State Penitentiary Service of Ukraine:
- to change the priority policy of business activities of enterprises controlled by institutions with a view to receipt of profit and to take into account the requirements of the European Prison Rules regarding reintegration priorities of penitentiary production;
  - to resolve the conclusion an employment contract with the prisoners, as well as the opportunity to organize working for the convicts “at their charges” subject to payment of compulsory contributions;
  - to develop a sublegislative normative act for regulation of implementation of ECtHR decisions and recommendations of the Committee for Prevention of Torture at the level of State Penal Service, territorial authorities, as well as at the level of individual institutions subordinated to it;
  - to create separate units in State Penal Service, which would be responsible for the proper implementation of the decisions of the ECtHR, European Committee for Prevention of Torture recommendations and other international standards;
  - to raise efficiency and quality of departmental rulemaking with broad involvement of the public;
  - to provide free access to the website of State Penal Service to all information and documents in which it is contained, to implement the recommendations and decisions of the ECtHR European Committee for Prevention of Torture;
  - to stop the practice of formal discussion of normative act drafts with the public, but to start the procedure of writing appeals to relevant and interested non-governmental organizations for provision of appropriate proposals with their following full consideration;
  - to implement an effective system of complaints presentation and investigation, to stop the practice of punishing the convicted person for attempts to appeal the actions of the administration institutions;
  - to fix an exhaustive list of violations of the regime, for which the disciplinary divisions are applied with division of their severity level and the maximum possible measure of punishment for the violation of each type of severity;

## XIX. PRISONERS' RIGHTS

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- to reassign the medical services of State Penal Service to the Ministry of Health;
- to provide the institutions of the State Penal Service with confidential meeting with a lawyer;
- to ensure the effective implementation of the right to legal assistance for prisoners in accordance with the Law of Ukraine “On legal assistance”, to enable the effective participation of a defender in examination of disciplinary penalties, worsening of detention and parole of convicted persons, as well as in preparation for such reviewing;
- to change norms and practices to review the correspondence of convicts, as well as the classification of prisoners in accordance with the requirements of decision ECtHR “*Vintman v. Ukraine*”;
- to contribute to clear normative regulatory of claims jurisdiction which the convicts use applying to the national courts as required by the decision ECtHR “*Vintman v. Ukraine*”;
- to cancel the order No. 2/1/2-12/h on the use of mobile phones in penal institutions;
- to regulate the mechanism of using Internet and mobile phones by convicts in compliance with provisions of national legislation and departmental normative acts.

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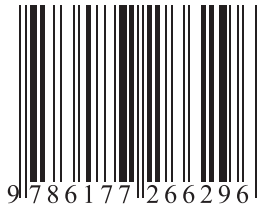
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*Наукове видання*

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