**HUMAN RIGHTS IN UKRAINE IN 2015: KEY TRENDS[[1]](#footnote-1)**

**Overview**

The issue of observance of human rights has currently acquired political and even geopolitical importance. Actions of individual politicians or political forces, both in Ukraine and abroad, should be assessed from the point of view of whether they promote human rights or, alternatively, violate or pose a threat to them. These assessments by human rights activists inevitably become political. However, unlike political parties, human rights organisations do not set themselves the task of achieving power and implementing their political agendas. Their mission is to enhance respect for human rights, improve conditions for their exercise, protect human rights against threats of violation, protect the victims of human rights violations, remedy such violations, if possible, or at least to minimise their consequences, and to seek redress for the damage inflicted.

Any assessment of state or social processes and trends from the above angle is inseparable from judging their motivation to increase the freedom of people and to move away from post-totalitarian paternalistic state. Ukraine is capable of competing with much larger paternalistic Russia only when it ceases to be paternalistic itself. Also critical is the ability of self-discipline, of overcoming provincialism and inadequate education, – only then stable and responsible authorities and appropriate governance may be established. The issue of observance of human rights is, in fact, the issue of the availability of professional and efficient public control over the actions of the state: either it hinders people from having free command of their own destiny and is aimed at preventing or at least alleviating human suffering, or is indifferent to them. No matter what we are talking about – mobilisation, assistance to internally displaced persons, queues at the delimitation line – the answer to this question, like a litmus test, separates the trend of moving away from the post-Soviet state and transforming into a nation dominated by European values from the conservative trend of preserving Soviet-era rudiments.

In this context, the National Strategy in the Field of Human Rights, as approved by Presidential Decree 501/2015 of 25 August 2015, appears to be too declarative and eclectic. It fails to cover the overall state’s human rights policy, to identify the above antagonistic trends, and merely considers the development of individual rights and freedoms, disregarding such aspects of importance for consolidation of human rights as the system of constitutional protection of human rights and fundamental freedoms; Ukraine’s participation in international jurisdictions; development of judicial and non-judicial mechanisms of human rights protection; development of public control, both parliamentary and non-parliamentary, over the observance and protection of human rights; human rights in the system of criminal justice, etc. Large gaps remain in the consideration of individual rights and freedoms. For example, the right of ownership is not considered at all (!), although, in term of significance, it should occupy the centre of the Strategy’s attention, since its implementation and protection are the key to this country’s development; environmental rights, so crucial for this country, have been forgotten; the right to privacy has been reduced to mere protection of personal data, but where are the privacy of communication, which is violated every single moment, or other varieties of privacy? The Strategy lacks internal logic: it has lumped together the rights of three generations, which are different in nature and therefore should be considered separately and according to different ranges of requirements.

The Action Plan for the Strategy Implementation Until 2020, as approved by Order 1393-r issued by the Cabinet of Ministers on 23 November 2015, remedies some shortcomings of the Strategy. It is designed more logically and realistically, however, it certainly cannot provide for the planning of actions to address the issues not mentioned in the Strategy. Its pluses include the planning of joint activities by the government, international expert organisations and non-governmental human rights organisations.

Nevertheless, despite the critical comments above, it should be noted that the introduction of the Strategy and the Action Plan constitutes a big step forward compared to the 2010-2013 period, when we pointed out at the lack of state policy in the field of human rights, and the 2005-2009 period, when we described this policy as haphazard, inefficient and chaotic. The quality of the Strategy and the Action Plan reflects the level of knowledge in the field of human rights, awareness and understanding of human rights issues and of fundamental freedoms by the government authorities and civil society organisations, the level of their potential in respect of human rights, which, hopefully, would grow with the implementation of the Strategy and the Action Plan.

The year of 2015 was just as difficult for Ukraine as the year before. Like in 2014, three different realities associated with human rights existed in Ukraine: in the occupied Crimea, in the part of Donbas controlled by the self-proclaimed DPR and LPR, and in the rest of the country. The occupation of Ukraine’s territories and the armed conflict in its south-east have become one of the main sources of systematic and large-scale violations of human rights and fundamental freedoms and, in general, a deterrent to Ukraine’s advance in the spirit of ideas of the Revolution of Dignity.

The continuing occupation of the Crimea, the resulting violations of human rights and the desire of the Crimean Tatar people to oppose the occupation authorities’ policy aimed at depriving them of their ethnic and religious identity, the situation with human rights in the occupied territories of the Donetsk and Luhansk Oblasts are addressed in the separate sections of the Report.

**New human rights violations**

The occupation of Crimea and the military conflict in Donbas brought about the greatest migration in Europe since the Second World War. In 2015, this migration intensified even more. As of 28 December 2015, according to the Ministry of Social Policy, more than 1.66 million internally displaced persons were registered in Ukraine. According to various estimates, approximately 0.5 million displaced persons were not registered with government authorities. The observance of the rights of displaced persons is reviewed in a separate section of the Report.

Extraordinary human rights violations appeared in Ukraine in 2014 and became even more widespread in 2015, such as summary executions, forced disappearances, arbitrary arrests and detention beyond any legal procedures, tortures, war crimes. According to the mission of the Office of the UN High Commissioner for Human Rights, by the end of October 2015, about 8,000 people were killed and more than 17,000 injured as a result of the armed conflict. The number of people shot without trial or missing is unknown; according to various estimates, it ranges between 750 and 1,200 victims, however, verification of these data is not yet possible. It is also impossible to tell the exact number of military and civilian prisoners. As of 1 October 2015, according to the Security Service of Ukraine (SBU), 2,763 persons kept in places of confinement by the self-proclaimed DPR and LPR were liberated. On 16 January 2016, the SBU’s press service informed that it had been possible to free 2,998 people from captivity, while another 131 people are still held prisoners, and difficult negotiations for their release continue.

There are many reports of prisoners being tortured during arrest and detention. These actions included elements of crime against humanity. Unfortunately, government authorities failed to document these crimes or even interview the freed persons. These functions were taken up by civil human rights organisations, primarily Ukrainian Helsinki Human Rights Union and Kharkiv Human Rights Group, whose lawyers sent to the European Court of Human Rights hundreds of reports of unlawful arrests and detention and torture of prisoners of war and civilian hostages. A monitoring study to document such facts, conducted by the ‘Justice for Peace in Donbas’ Coalition of Civil Associations Organizations and Initiatives in close cooperation with the parliamentary Commissioner for Human Rights, has revealed such pervasive violations of fundamental human rights and international humanitarian law that require the implementation of international mechanisms of human rights protection in various jurisdictions, as well as further research. A formalised survey of 165 victims of violations has indicated the need for a much more extensive questioning, subsequent data collection and documentation of human rights violations in the conflict zone, along with regular inspections of places of detention located in it. If the research of the collected data were to be extrapolated over the entire body of detainees, it would mean that 87% of POWs and 50% of civilians had been subjected to torture. The number of places of detention in the self-proclaimed DPR and LPR was significantly higher than reported by the authorities: researchers identified 41 such places in DPR and 38 in LNB, most of which were completely unsuitable for keeping detainees. Certain places of detention may be described as torturing by confinement conditions.

The issue of compensation to the families of those killed in the shelling or to the wounded, as well as compensation for the property, mostly residential, lost or damaged by the shelling, is highly relevant for tens of thousands of civilians affected by the armed conflict in the Donetsk and Luhansk Oblasts. The State should develop and implement such mechanisms as soon as possible.

**Prospects of conflict resolution in the south-east of Ukraine**

Fragile peace relies on the Minsk agreements (although it would be difficult to regard as an agreement a document that was not signed by the first persons of the State or ratified by the Parliament) that a part of the Ukrainian society cannot agree to and does not believe in. The position of the countries that represent the EU in the Normandy format is well known: there is nothing but the Minsk agreements. Should Ukraine refuse to comply with them, it would be left alone with its opponent, bereft of European support. Peace is important above else. Therefore, they must be complied with, despite any warnings or hardships.

On 30 December, in a telephone conversation, Presidents of Ukraine, Russia, France, and the German Chancellor extended the Minsk agreements through 2016. Regrettably, our European partners are unwilling to face the realities. Namely, it would be quite futile to demand from Ukraine any unilateral implementation of the Minsk agreements, if the Russian side fails to abide by them. Moreover, Ukraine is unable to comply with the Minsk agreements simply because it is impeded by Russia.[[2]](#footnote-2)

It is no coincidence that Alexander Hug, Principal Deputy Chief Monitor of the OSCE Special Monitoring Mission to Ukraine, stressed at a press conference held in Kyiv on 31 December, that it would be advisable to sign a new agreement in 2016 between the parties to the conflict in the east of Ukraine in order to settle any issues that remain unresolved. ‘It is clear enough what we should do: it would be sufficient to spell out any existing problems in an agreement and then to sign it,’ said Hug.

He reminded that, during 2015, violations of ceasefire, use of weapons banned under the Minsk agreements, obstruction of freedom of movement for the mission’s observers, as well as difficulties faced by civilian population in crossing the delimitation line were registered.

Of the items listed by Hug, only the last one may be blamed both on Ukraine and Russia, while the rest should lie at Russia’s door.

However, Mr Hug was far from enumerating all the provisions of the Minsk agreements violated by Russia.

Clause 7: Provide safe access, delivery, storage and distribution of humanitarian aid to the needy, based on an international mechanism. No humanitarian aid from the State has ever been delivered to the DPR/LPR.

Clause 6: Provide release and exchange of all hostages and illegally held persons, based on the principle of ‘all for all’. This process has to end – at the latest – on the fifth day after the pullout of heavy weapons. This provision also remains unfulfilled. As previously mentioned, by the end of 2015, 131 hostages and POWs were held in captivity, however, these data cannot be verified. The release and exchange process is completely restricted to the public and has been monopolised by the Security Service of Ukraine, allegedly for reasons of secrecy. It is yet unknown who exactly decides on the exchange.

It has been known, however, that the SBU had to establish the so-called ‘exchange pool’. People are accused of ‘separatism’ under Article 110 of the Criminal Code, or of any other crime, following which, a written consent to an exchange (sometimes even during court hearings) is obtained, criminal proceedings are terminated, and detainees are held in custody by the SBU elsewhere, until the exchange takes place. This abominable practice is completely beyond the law, but, in Ukraine, they have to resort to it in order to free hostages and POWs.

This exchange has been suspended recently: Russia made a requirement that amnesty should come first, and then – the exchange. This is the matter of Ukraine’s compliance with Clause 5 of the Minsk agreements: Provide pardon and amnesty by way of enacting a law that forbids persecution and punishment of persons in relation to events that took place in particular districts of Donetsk and Luhansk Oblasts of Ukraine. But how can one pardon those who have killed and tortured, kidnapped, robbed and mocked?! This looks even more hideous in the context of more than 400 criminal proceedings instigated by the Office of the Chief Military Prosecutor against Ukrainians for war crimes that, on closer inspection, are nothing of the kind, since most of these proceedings are associated with illegal possession of arms and ammunition.

The amnesty of this sort would only encourage the criminals’ impunity, inviting them to commit more crimes. Justice and fairness cannot be traded for peace, because it would bring neither peace nor justice – the military conflict will resume.

Nevertheless, our European partners talk about the need for approval by the Verkhovna Rada of the law on the immunity of those who are to be elected this February to the bodies of local self-government in the LPR and DPR. Once again, the possibility is ignored that murderers or torturers may be elected.

However, Clause 5 does not provide for a complete and unconditional amnesty. Therefore, the law on amnesty should list those articles of the Criminal Code, under which amnesty shall not apply to respective crimes, first of all, to crimes against humanity and war crimes. This law should apply not only to the LPR/DPR militants, but also to Ukrainian servicemen and volunteers. Such amnesty would be acceptable and may actually help to overcome the conflict.

Roman Romanov (Renaissance International Foundation) has made quite an appropriate suggestion that assistance should be requested from the European Union in the investigation of crimes against humanity and war crimes committed during the military conflict in Ukraine, since Ukraine has no experience of conducting such investigations, and that a dedicated chamber be set up in the Supreme Court of Ukraine to consider international crimes, in which foreign judges could participate (the latter should be given regard to in the amendments to the Constitution associated with judicial proceedings; see the section on the right to a fair trial).

Clauses 9, 11, 12: Restoration of complete control over the state border by the Ukrainian Government across the entire conflict area, which has to start on the first day after the local elections have been held on the basis of the Law of Ukraine and constitutional reform. However, it is difficult to believe that local elections could be held under the Ukrainian law, monitored by observers in accordance with the OSCE standards of free, honest and fair elections. This is because the laws on elections, which can only make one laugh nervously, have already been created in the DPR and LPR. The Ukrainian Parliament should not be expected to adopt constitutional amendments of dubious quality, which might provide for a special status of the Donetsk and Luhansk Oblasts.

It is as if these provisions of the Minsk agreements were designed on purpose, assuming that nothing would ever be fulfilled. Meanwhile, attempts to find, within a short period from 25 January to 3 February, 300 votes required to approve decentralisation amendments to the Constitution, would only split the parliamentary majority and provoke a severe internal political crisis, much to the aggressor’s joy.

Therefore, new mechanisms and procedures to overcome the conflict and preserve peace must be proposed. In particular, a balanced amnesty law should be adopted, and international mechanisms for the investigation and prosecution of international crimes should be incorporated into the Minsk agreements. Informing the Western world about violations of the Minsk agreements by Russia and its artificially created DPR and LPR is also of major importance.

**State of human rights in other regions of Ukraine**

The situation with human rights was mosaic. In many ways it is much better than in 2010-2013: a substantially higher level of political freedom, freedom of speech and freedom of the media, freedom of assembly and associations. However, the level of violence in society is higher than before, as a direct consequence of the military conflict in Donbas. Compared to 2014, crime, especially domestic, increased, particularly in the east of the country. People steal even from cellars: food, canned or glassed goods. This is the evidence of the poverty endured by wide sections of the population as a result of this nation’s very complicated socioeconomic situation caused by high daily military expenditures and the heavy legacy of the country looted under the Yanukovych regime. Prices for all groups of goods and services have increased, the real income of people has dropped significantly, and the number of people below the poverty line has grown.

Mutual suspicions and accusations were building up in the political field. Meanwhile, all political forces are guided by political expediency and neglect law, while many people, both in the government and in the general public, maintain a false impression that complex problems can be solved in a simple manner, i.e. through the use of force and coercion. This is a very bad error that may entail extremely grave consequences. In particular, the events that took place near the Parliament on 31 August were a manifestation of this error. However, leaders of the State must accept some responsibility for what happened. Had they behaved differently, it may never have happened. When dubious – in the eyes of individuals who defended the country – solutions are approved, events like this are bound to happen. People who stopped separatist plague at the risk of their lives deserve to have the amendments to the Constitution discussed, their logic explained, and arguments given in favour of the special status for the Donetsk and Luhansk Oblasts. One cannot act in secret, without explaining anything. Until a draft law on decentralisation amendments to the Constitution appeared on the Parliament’s website, not all members of the Constitutional Commission had even seen it. A dialogue between the authorities and the public is essential nowadays; people have to be respected, everything must be talked over with them.

At the same time, one should not take one’s cues from those who scream betrayal, insist on the impeachment or early elections, – much to the delight of the aggressor whose only wish is that everyone in Ukraine quarrelled with everyone else. All political forces must be sober-minded, avoid provocative actions or attempts to break someone down.

The situation with the right to protection from torture and abuse and the right to freedom and personal inviolability has generally improved. A study conducted in 2015, as part of the Kharkiv Human Rights Group project, by the Kharkiv Institute of Social Research across five regions of Ukraine not affected by the armed conflict showed a significant decrease in the number of cases of unlawful violence by police officers. The estimated number of such violations over the year, compared to 2011 – the year of the previous study, fell more than twice from 980 thousand (604.4 thousand during arrest) to 409 thousand (157.3 thousand during arrest). Similarly, the estimated number of victims of torture decreased from 113 thousand to almost 63 thousand in the same year. However, these numbers are still very high.

At the same time, experts note that fewer cases of unlawful violence should not be credited to the Ministry of Internal Affairs, since no systemic changes have yet occurred in the Ministry’s criminal investigative bodies. Factors that contributed to a decrease in unlawful violence by police included institutional changes: operation of a new Criminal Procedure Code and the development of a free legal aid system. The requirement for a permission to arrest to be granted by an investigating judge led to a drop in the number of arrests and, accordingly, to fewer instances of police malpractice during such arrests. Another effectual provision of the new Criminal Procedure Code turned out to be the exclusion of illegally collected evidence by courts. The ability to access free legal advice centres and the right to counsel during interrogation became major safeguards against unlawful violence. An important role is also played by the post-Maidan concerns about potential repercussions of unlawful actions: public attention to actions by the police; the rise of social networks; the conflict in the east, the emergence of people with combat experience have all become a certain deterrent to the use of unlawful violence.

Torture and abuse in penal institutions remained a problem, with the situation being particularly bad in Berdychiv Penal Colony 70, Berdyansk Penal Colony 77, Kharkiv Penal Colonies 25 and 100, and Izyaslav Penal Colony 58. Despite documenting these facts, thanks to an opportunity to visit the above institutions and to cooperate with the parliamentary Commissioner for Human Rights, appealing to the prosecutor’s office has been futile: as before, this authority performs extremely poorly its supervisory functions over compliance with the law at penal establishments. Consequently, the impunity of personnel at correctional colonies is even more strengthened. This situation vividly demonstrates the need to reform prosecution authorities and the penitentiary system.

The manner in which the sixth wave of mobilisation was carried out in certain communities, for example, in Kharkiv, was not only unacceptable in a democratic country, but also potentially discrediting for the Ukrainian State in the eyes of the civilised world. Policemen and plainclothes persons who introduced themselves as police officers detained young people in the streets, markets, underground railway stations, educational establishments during the period of External Independent Testing or university graduation under various pretexts, such as establishing the person’s identity due to his/her resemblance to a suspect in crime, etc. Such detention was not processed formally. Detainees were first brought to police stations and then taken to military registration and enlistment offices, or, much more often, following the arrest, they were moved directly to the Kharkiv Oblast Military Registration and Enlistment Office’s depot at 205 Kotlova St. There, draft notices were filled out and served (in the absence of ID documents, notices were filled with the information provided orally by the detainees themselves). No one was released at the depot, and the detainees were then taken to a military unit to serve. Their families were not informed.

It should be noted that the medical board at the depot was a mere formality, – everyone was found able for duty. Parents told later that papers evidencing unfitness of their sons for military service had been ignored, and sick boys had been forced to serve. But why would the army need sick people?! Obviously, university students cannot be drafted before they have graduated. People cannot be detained for no good reason, such detention may qualify as kidnapping. It is wrong to violate, in such a flagrant manner, the law on military draft and to turn the Oblast Military Registration and Enlistment Office’s depot into a place of confinement, since none of the boys brought there could leave the place or were even given the opportunity to see their family. They were fed haphazardly and were always hungry, forced to make do with what their parents had been able to pass through the depot checkpoint and dividing it all among themselves, like in prison.

The military cite the following reasons for these actions: the legislation, under which draft notices must be filled out and served, their counterfoils – signed by the conscripts who would subsequently be summoned to military registration and enlistment offices, offers a lot of opportunities for draft evasion, and, therefore, resorting to such actions was necessary, since the situation with mobilisation plans in Kharkiv looked very bad. One has to perform his constitutional duties and defend the country against the aggressor.

This barbaric manner in which mobilisation plans are implemented are a disgrace to the army, the law enforcement officers, and the State as a whole. The military conflict in the country’s south-east encourages the Ukrainian authorities to rally the population that should be interested in providing its best support to the State and the army. All Ukrainians should split into two parts: those who protect the country from the aggressor and those who help the aggressor. But would anybody want to support a state that violates human rights so grossly and acts not unlike the aggressor itself (remember the exact same raids carried out in Russia to send soldiers to the second Chechen war)? Nothing more harmful to Ukraine could ever be imagined, much to the delight of the Russian propaganda that does not even have to lie in this case. And the worst thing is that such practice – an obvious vestige of the Soviet way of thinking and acting – is regarded as completely acceptable by a large part of the Ukrainian bureaucracy.

The same vestige can be seen in the indifference to a long-drawn transfer of pensioners in Shchastya from the occupied Luhansk to Severodonetsk, when pensioners in Shchastya had not been paid their pensions for eight months. A similar story occurred in Myronovske and Luhanske urban-type settlements and in Svitlodarsk that had been subordinated to Debaltsevo and, upon its surrender in February 2015, were to be transferred into subordination to Artemivsk (now Bakhmut). As a result, all public sector employees had not been paid wages from January to August, and in this communities real hunger had set in, which we saw with our own eyes when we brought foodstuffs there. Our women just wept when they saw hungry people fight for bread in Myronovske. After intervention in September by the Kharkiv Human Rights Group, the problem was solved and the entire arrears were paid.

And take, for example, the extremely long queues at the delimitation line crossings! These queues had no access to water or WCs, until portable toilets have been installed by the International Red Cross. This qualifies as inhuman treatment in the sense of Article 3 of the European Convention. It looks as if these queues have been created on purpose.

When government agencies behave in such a manner, it is small wonder that the Donbas population is extremely critical of the Ukrainian State.

The list of such examples of a purely Soviet spirit can go on and on. But there are also positive examples, such as the launch of public broadcasting, creation of a new police force and reforms initiated in the police and the Ministry of Internal Affairs, making property registers of the Ministry of Justice available to the public, transition to the electronic system of public procurement, adoption of a new law on civil service, launch of the National Anti-Corruption Bureau staffed almost entirely through competitive selection with the participation of the public, recent introduction of the 3G mobile communications technology, and start of the e-document flow implementation.

**Reforms and human rights**

The examples given above illustrate the point made in the beginning that the struggle for human rights is an attempt to get rid of the vestigial Soviet practices, to clear consciousness of the Soviet and post-totalitarian clichés and to turn the state machinery in the direction of real attention to human rights and fundamental freedoms. A key factor in this fight are institutional changes in all spheres, which are the primary proof of reforms.

The accumulated experience offers an opportunity to formulate necessary conditions, without which reforms cannot succeed.

First, a vision of reform should be developed, i.e. a document of strategic nature, which would clearly define the purpose, principles, objectives of the reform, the work that has to be done to achieve these objectives, target results and progress indicators, as well as an action plan to implement this strategy. It is desirable that these documents should be discussed by the expert community and approved by the government.

Second, any system should be reformed by a new dynamic team that has the political will for change and sufficient authority to do this. The system is incapable of reforming itself and would generally resist any changes. Both political will and authority are required to overcome this resistance. To achieve success, reformers would need courage and will have to outpace through continuous, fast, non-stop action. If changes are slow, the system will easily adapt to them and will be able to counter them.

Third, the reform team should comprise both public officers and civil society activists who have the necessary knowledge and experience to be professionally equal with public officers. People have to be kept informed of the progress of reforms by means of various communication tools, especially TV, radio broadcasts and social networks, to generate feedback from the public and to rely on its support. Without such support, even seemingly appropriate changes are doomed to fail.

Fourth, tools should be made available to identify middle-tier employees within the system who are reform-oriented, along with the procedures that would offer a chance for such ‘rare birds’ to join the reform team.

Fifth, pilot projects have to be carried out as necessary to test the key ideas of the reform strategy, to determine the cost of these changes and to prepare their implementation across the country. Sometimes this argument is opposed on the grounds that, under Article 19 of the Constitution, government authorities, bodies of local self-government and their officials must act only on the basis, within the powers and in a manner stipulated by the Constitution and laws of Ukraine. Nevertheless, this should not be an obstacle to the development of a special legislation to validate the proposed changes in a separate pilot region and to incorporate them subsequently into the law, subject to successful results. Pilot projects provide an opportunity to assess the cost of the reforms and to determine the extent of financing for their implementation. As a rule, they can be carried out without any additional budget allocations.

Sixth, after all the action plan tasks have been achieved within the available budget, additional funding would be required to implement reforms. Lack of funding may undermine all efforts at reform.

In our observations, the modest success achieved in 2015 was completely due to the fulfilment of the above conditions. Alternatively, the absence of strategic vision and a new team, the lack of political will have so far resulted in a failure to change the judiciary and the prosecution authorities.

Summing up, it should be noted that the experience gained in 2015 and the current course of events give grounds for cautious optimism as to this country’s progress in 2016. Many people are determined to change the country, the interaction between the State and the public improves, and the old Soviet-era practices face increasing public condemnation.

1. Prepared by Yevgen Zakharov, Director, Kharkiv Human Rights Group. [↑](#footnote-ref-1)
2. Here and elsewhere references are made to Russia, and not the self-proclaimed DPR and LPR, since, in this author’s opinion, they are not independent and merely act under the Kremlin’s instructions. [↑](#footnote-ref-2)