

ALTERNATIVE REPORT

by the Ukrainian Helsinki Human Rights Union

**on implementation of recommendations provided by the UN Human Rights Committee
based on consideration of the Seventh Periodic Report of Ukraine (CCPR/C/SR.3002)
in regard to implementation of the International Covenant on Civil and Political Rights**

The Ukrainian Helsinki Human Rights Union (UHHRU) is the largest association of human rights organizations in Ukraine, which unites 27 human rights NGOs. The Union contributes to the development of a humane society based on respect for human life, dignity and the harmonious relationship between man, nature and the state through the creation of a platform for cooperation between members of the Union and the other members of the human rights movement.

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Introduction.

On 8-9 June 2013, the United Nations Human Rights Committee considered the 7th periodic report submitted by Ukraine in regard to the implementation of the International Covenant on Civil and Political Rights, and on 23 July 2013, at the 3002nd meeting (CCPR/C/SR.3002) the Committee took the concluding observations. Following the review, there were delivered around 23 recommendations related to such areas as the antidiscrimination and antiracism, ensuring gender equality and freedom of speech, the prevention of ill-treatment and domestic violence, the eradication of human trafficking.

Considering importance of fulfilment by Ukraine of its international obligations under the International Covenant on Civil and Political Rights, UHHRU prepared this alternative report, which takes into account the human rights challenges arising from the armed conflict.

Implementation of para. 5¹.

5.1. The curricula for training of judges and secretariat staff do not envisage studying the Covenant provisions separately, although knowledge of conventions and international treaties ratified by Ukraine is one of the indicators used for measuring the contents of education of judges². At the same time, issues pertaining to the European Convention on Human Rights and the ECtHR case law are included³.

5.2. Taking into consideration the human rights challenges caused by the armed conflict, a separate lecture or a training session is discussed on guaranteeing the rights of internally displaced persons and the conflict-affected population⁴.

5.3. No attention is paid to separate study of the Covenant provisions in the National Police curricula either. Police officers are taught about the Universal Declaration of Human Rights, rights of persons with disabilities, integration of Roma, anti-discrimination, and hate crimes. The delivered lectures also included issues related to human rights during arrest and prevention of improper treatment⁵.

5.3. The armed conflict and the need to prevent violations of human rights by military personnel brought to the foreground the need to deliver training for the Armed Forces and the National Guard units. The training courses on Fundamental Principles of International Humanitarian Law and Fundamental Human Rights Principles were included in the curricula for the National Guard officers only in March 2017⁶. International humanitarian law courses were also added to the curricula of universities training military specialists⁷. In March 2017, the

¹ The State party should take measures to ensure that judges and law enforcement officers receive adequate training to enable them to apply and interpret domestic law in the light of the Covenant and disseminate knowledge of the provisions of the Covenant among lawyers and the general public to enable them to invoke its provisions before the courts. The State party should include in its next periodic report detailed examples of the application of the Covenant by domestic courts and access to remedies provided for in the legislation for individuals claiming a violation of the rights contained in the Covenant.

² Concept of National Standards of Education of Judges in Ukraine, <http://nsj.gov.ua/ua/about/symbols/>

³ <http://nsj.gov.ua/ua/training/vivchennya-konventsiii-ta-praktiki-espp/>

⁴ As an example, Standardized Curriculum for Judges of Administrative Courts of Appeal, <http://nsj.gov.ua/files/1515590445%D0%A1%D1%82%D0%B0%D0%BD%D0%B4%D0%B0%D1%80%D1%82%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%B0%20%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%0%BC%D0%B0%20%D0%BF%D1%96%D0%B4%D0%B3%D0%BE%D1%82%D0%BE%D0%B2%D0%BA%D0%B8%20%D1%81%D1%83%D0%B4%D0%B4%D1%96%D0%B2%20%D0%B0%D0%BF%D0%B5%D0%BB%D1%8F%D1%86%D1%96%D0%B9%D0%BD%D0%B8%D1%85%20%D0%B0%D0%B4%D0%BC%D1%96%D0%BD%D1%96%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D0%B8%D1%85%20%D1%81%D1%83%D0%B4%D1%96%D0%B2.pdf>

⁵ Based on the materials of monitoring of the National Strategy in the Sphere of Human Rights for the Period Ending 2020, http://hro.org.ua/index.php?r=9#341_3

⁶ Ibid.

⁷ As an example, class opening in the National Defense University of Ukraine, <http://www.mil.gov.ua/news/2017/06/13/u-naczionalnomu-universiteti-oboroni-ukraini-vidkrili-klas-pidgotovki-z->

Guidelines were approved on the procedure for implementation of international humanitarian law norms in the Armed Forces of Ukraine⁸.

5.4. There is no statistics of implementation of the Covenant provisions by domestic courts. The Ukraine's Ministry of Justice reports on application of the international treaty or individual provisions thereof in more than 14, 000 decisions⁹. At the same time, analysis of the Unified Register of Court Decisions demonstrates that courts refer to the Covenant provisions together with other international and regional treaties in the cases related to access to justice, property rights, the right to marriage and family, the right to freedom, and others. For example, in 2017 the Covenant provisions were mentioned in 727 civil justice decisions: first instance – 765 decisions, appellate – 27 decisions, and no decisions in the cassation instance. In the criminal process, the Covenant provisions were mentioned in 84 verdicts of the first instance courts, and in four verdicts of appellate courts – 88 decisions in total. In the area of administrative justice, the Covenant was applied in 648 cases – 592 in the first instance courts, and 56 – in the appellate courts.

Implementation of para. 6¹⁰.

6.1. Unfortunately, the information submitted to the Committee in the interim stakeholders report remains relevant¹¹.

6.2. Attempts to resolve the issues raised by the recommendation were laid down in the bill of May 19, 2015. The draft law proposes to make not only the decisions of an international judicial institution, but also the decisions of an appropriate body of an international organization that has established through court¹² violations by Ukraine of its international obligations, enough grounds for re-examination of court decisions by the Supreme Court of Ukraine. The bill was put on the agenda of the Verkhovna Rada only in March 2018 but has not yet been considered.

[mizhnarodnogo-gumanitarnogo-prava/](#), and respective programs in the Military Institute of Telecommunications and Informatization named after Heroes of Krut, <http://www.viti.edu.ua/news/599>

⁸ Order of the Ministry of Defense of Ukraine № 164 dd. March 23, 2017

<http://zakon2.rada.gov.ua/laws/show/z0704-17>

⁹ Draft National Report on VIII Cycle of Ukraine's Implementation of the International Covenant on Civil and Political Rights – p. 6, <https://minjust.gov.ua/news/ministry/gromadski-obgovorennya-proektu-dopovidi-pro-vikonannya-mijnarodnogo-paktu-pro-gromadyanski-ta-politichni-prava>

¹⁰ The State party should reconsider its position in relation to Views adopted by the Committee under the First Optional Protocol. It should take all necessary measures to establish mechanisms and appropriate procedures, including the possibility of reopening cases, reducing prison sentences and granting ex gratia compensation, to give full effect to the Committee's Views so as to guarantee an effective remedy when there has been a violation of the Covenant, in accordance with article 2, paragraph 3, of the Covenant.

¹¹ Interim stakeholders Report for the interim reporting of Ukraine on the status of implementation of The International Covenant on Civil and Political Rights. Kyiv, 2016. – P. 6 – 7.

¹² Draft Law on Amendments to Certain Legislative Acts of Ukraine on Ensuring the Implementation of Decisions of International Organizations for the Purpose of Protecting Human Rights. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55226

6.3. At the same time, the draft resolution of the Verkhovna Rada of Ukraine proposes to return the said draft law for revision¹³ on the grounds that "the draft law does not take into account that by their nature, decisions of international organizations are not judicial acts, since these organizations are not judicial institutions that carry out their activities in the procedural order intrinsic to for court institutions. Therefore, by their nature, their decisions, which may have different forms, are documents of general nature, which mainly contain recommendations for states on measures aimed at preventing violations of human rights and freedoms"¹⁴.

Other implementation aspects.

6.4. The ongoing armed conflict in Ukraine made particularly pressing the issue of observance of international humanitarian law and revealed insufficient compliance of the national legislation with IHL. Jointly with experts from UHHRU and other NGOs, the Parliamentary Committee on Human Rights, Ethnic Minorities and International Relations is drafting the law to address this issue.

Implementation of para. 7¹⁵.

7.1. Unfortunately, the procedure for the election of the new Ukrainian Parliament Commissioner for Human Rights may threaten the Ombudsperson's independence and undermine trust of civil society in this institution. The doubts regarding the legitimacy of the election process were caused by two reasons. The first has to do with the time allowed for voting: "For unknown reasons, the voting for nominees did not take place in the term prescribed by the law"¹⁶. The voting is supposed to be held "<...> no later than twenty days after the expiration of the term for nomination of the candidates"¹⁷. Instead, the voting was delayed by almost 10 months. The second reason is the change of the voting procedure: "In the middle of the election process, the law on the Verkhovna Rada regulations was amended in an impermissible manner, and the Ombudsperson's appointment procedure changed. Meanwhile, the special law

¹³ Draft Resolution on the Return for Elaboration of the Draft Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Ensuring the Implementation of Decisions of International Organizations for the Purpose of Protecting Human Rights. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59237

¹⁴ Conclusions of the Committee on Legislative Support of Law Enforcement to the Draft Law Amendments to Certain Legislative Acts of Ukraine on Ensuring the Implementation of Decisions of International Organizations for the Purpose of Protecting Human Rights of May 18, 2016. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55226.

¹⁵ The State party should provide the Office of the Commissioner for Human Rights with additional financial and human resources commensurate with its expanded role, to ensure fulfilment of its current mandated activities and to enable it to carry out its new functions effectively. It should also establish regional offices of the Commissioner for Human Rights, as planned.

¹⁶ Address of the Human Rights Agenda Platform on the appointment procedure of the Ukrainian Parliament Commissioner for Human Rights. <https://helsinki.org.ua/articles/zvernennya-pravozahyshnoho-poryadku-dennoho-schodo-protsedury-obrannya-upovnovazhenoho-verhovnoji-rady-ukrajiny-z-prav-lyudyny/>

¹⁷ Part 3, Article 6 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights. <http://zakon2.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80>

on the Ombudsperson's office still contains provisions that require a secret ballot procedure for candidates"¹⁸.

7.2. The capacity of the National Preventive Mechanism could be affected by the change in the structure of the Ombudsperson's Office, namely the performance by a single official of the functions related to the implementation of the National Preventive Mechanism and to the observance of procedural rights¹⁹.

7.3. The change in the structure of the Ombudsperson's Office could also impact the ability to work in other areas. Currently, the scale of the impact is difficult to assess. However, the abolition of the Office of the Ombudsperson's Representative for the Rights of IDPs seems premature, given the challenges in the protection of IDPs' rights. The decision to combine a wide range of issues (discrimination, gender equality, observance of the rights of IDPs and persons living in temporarily occupied territories) in two departments of a single administration also seems questionable²⁰.

Implementation of para. 8²¹.

8.1. Despite the adoption of the Anti-Discrimination Law²² and the availability of regulations on the observance of the principle of equality in other laws of Ukraine, no effective mechanism for combating discrimination exists so far. One of the reasons for this is that various legislative acts not only contain different types of discrimination types (Constitution of Ukraine, Anti-Discrimination Law, Criminal Code of Ukraine, electoral law), but also offer different definitions of discrimination itself.

8.2. The formal declaration of administrative and civil liability for discrimination in the Anti-Discrimination Law, combined with the liability for discrimination within criminal proceedings only, does not provide adequate protection from discrimination. A person may turn to court with a complaint regarding discrimination within the framework of civil or

¹⁸ Address of the Human Rights Agenda on the appointment procedure of the Ukrainian Parliament Commissioner for Human Rights. <https://helsinki.org.ua/articles/zvernennya-pravozahysnoho-poryadku-dennoho-schodo-protsedury-obrannya-upovnovazhenoho-verhovnoji-rady-ukrajiny-z-prav-lyudyny/>

¹⁹ <http://www.ombudsman.gov.ua/ua/page/secretariat/informatsiya-pro-finansovo-gospodarsku-diyalnist-sekretariatu/>

²⁰ Ibid.

²¹ The State party should further improve its anti-discrimination legislation to ensure adequate protection against discrimination in line with the Covenant and other international human rights standards. The State party should explicitly list sexual orientation and gender identity among the prohibited grounds for discrimination and provide victims of discrimination with effective and appropriate remedies, taking due account of the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. It should also ensure that those responsible for discrimination bear administrative, civil and criminal responsibility in appropriate cases.

²² The Law of Ukraine No. 5207-VI of 6 September 2012 On the Principles of Prevention and Combating of Discrimination in Ukraine. <http://zakon3.rada.gov.ua/laws/show/5207-17>

administrative procedure, but neither the Civil Code nor the Administrative Code contain appropriate articles and sanctions toward the offender.²³

8.3. To partially change the situation is called The There is a bill²⁴ that is supposed to partially change this situation, proposing, in particular: to decriminalize liability for discrimination by removing from Article 161 of the Criminal Code the provision that deals with direct and indirect restrictions of rights; to introduce an administrative liability mechanism by adding Article 188-49 to the Code on Administrative Offenses, which will concern violations of legislation on the prevention and combating of discrimination. In addition, the draft law proposes to introduce definitions of additional forms of discrimination: "victimization" and "denial of reasonable concessions", and to supplement the law with the terms "multiple discrimination" and "discrimination by association". Nevertheless, the Parliament has been delaying the bill's second reading for over two years.

8.4. We are forced to conclude the absence of legislative initiatives aimed at expanding the list of protected areas of discrimination, such as health, sexual orientation and gender identity. As for the latter two, there exists outright rejection and opposition to enshrining them at the legislative level.

8.5. To illustrate, we could take the Parliament's consideration of the issue of joining the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence²⁵, ratification of which has been postponed. The obstacle was the presence in the text of the terms "gender" and "sexual orientation", which some MPs associate with "threat to family values" and "promotion of homosexual marriages".²⁶ Moreover, the terms "gender-based violence", "gender stereotypes", "gender-based approach", "sexual orientation" and "gender identity" have been removed from the draft law "On the Prevention and Combating of Domestic Violence"²⁷ as early as in the first reading, and as a result, the law²⁸ was adopted without proper clarifications. Another example is the "impossibility", according to the government, of fulfilling

²³ Universal Periodic Review. Alternative dimension. Compilation of alternative reports by civil society organizations. P. 85.

²⁴ Draft Law No. 3501 of 20 November 2015 On Amendments to Certain Legislative Acts of Ukraine (On Bringing Legislation in the Field of Prevention and Combating of Discrimination in Line with the Law of the European Union). http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57162

²⁵ Draft Law No. 0119 of 14 November 2016 On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and Combating of Such Practices. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60492

²⁶ Combating discrimination. Annual report of human rights organizations Human Rights in Ukraine 2017. <https://helsinki.org.ua/publications/richna-dopovid-pravozahysnyh-orhanizatsij-prava-lyudyny-v-ukrajini-2017/>

²⁷ Draft Law No. 5294 of 20 October 2016 On Prevention and Combating of Domestic Violence. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60306

²⁸ The Law of Ukraine On Prevention and Combating of Domestic Violence of 7 December 2017. <http://zakon2.rada.gov.ua/laws/show/2229-19>

the part of the Action Plan for the Implementation of the National Human Rights Strategy 2020²⁹ that involves drafting a bill on the legalization of official civil equality for heterosexual and same-sex couples in Ukraine. This is explained by numerous petitions sent by regional and city councils as well as civic and religious organizations in protest of this measure.³⁰

8.6. Giving due credit to the fact that draft laws No. 1155 and No. 0945 were recalled (the so-called bills "on homosexual propaganda"), we are forced to conclude that these dubious legislative initiatives do exist.³¹

8.7. The armed conflict has created categories of population that are particularly vulnerable to discrimination - internally displaced persons and residents of temporarily occupied territories, yet anti-discrimination legislation does not treat them as separate categories. National legislation contains provisions that lead to discrimination of these people, including those relating to the rights established by the Covenant.

8.8. As an example, we can name the restriction of the voting rights of IDPs at the local level and in the parliamentary elections in single-member constituencies. About 4% of voters are excluded from the election process.³² Despite a number of legislative initiatives, this situation has not yet been resolved.³³

8.9. Another problem of Ukrainian legislation is the long overdue amendment of the Criminal Code that still remains unaddressed. Thus, Articles 115, 121, 122, 126 and others concerning "crimes of intolerance", define these offenses as crimes committed solely on the grounds of "racial, national or religious intolerance", which makes them impossible to properly investigate and classify when they are committed for other reasons. This shortcoming should have been corrected in 2016³⁴, yet no such bill has yet been introduced.

Implementation of para. 9³⁵.

²⁹ The Decree of the Cabinet of Ministers of Ukraine No. 1393-r of 23 November 2015 On Approval of the Action Plan for the Implementation of the National Human Rights Strategy until 2020.

<https://www.kmu.gov.ua/ua/npas/248740679>

³⁰ Report on the state of implementation of the Action Plan for the implementation of the National Human Rights Strategy for the first quarter of 2018. <http://hro.org.ua/files/docs/1525590085.docx>

³¹ Among the recent initiatives is the Draft Law No. 8489 of 15 June On Amendments to Certain Legislative Acts of Ukraine (Concerning the Prohibition of Expression in Public of Any Kind of Sexual Orientation).

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64237

³² Almost 4% of Ukrainian voters are unable to vote in local elections, experts from the Group of Influence say. <https://www.cvu.dn.ua/uk/news/mayzhe-4-vyborciv-ukrayiny-ne-mozhut-golosuvaty-na-miscevyh-vyborah-eksperty-grupy-vplyvu>

³³ Participation in state affairs - 2017. <https://helsinki.org.ua/uchast-v-upravlinni-derzhavnymy-spravamy-2017/>

³⁴ in accordance with the Action Plan for the implementation of the National Human Rights Strategy.

³⁵ The State party should step up its efforts to achieve equitable representation of women in Parliament and at the highest levels of the Government within specific time frames, including through temporary special measures, to give effect to the provisions of the Covenant. It should adopt a State programme for equal rights and opportunities of women and men and other measures aimed at ensuring gender equality, and effectively implement them.

9.1. Over the recent years, the state has been implementing a number of actions for ensuring gender equality in various spheres of social and political relations. For instance, the State Social Program on Ensuring Equal Rights and Opportunities for Women and Men for the Period Ending 2021³⁶ was adopted. Among other things, the Program envisages improvement of the legislative framework, the mechanism of carrying out gender legal expert analysis, and introduction of statistical indicators in the sphere of ensuring equal rights and opportunities for women and men; an increased share of women among members of parliament of Ukraine as well as among members of regional and local councils (towns with regional subordination). At the same time, certain activity areas in the Program look insufficient, especially in the part related to ensuring equal rights in the armed conflict context. The document mentions only the need to “carry out activities to inform internally displaced persons about the possibilities of access to health care, educational, and social services, employment, justice, etc.”³⁷ However, female IDPs suffer multiple discrimination more often than male IDPs³⁸. The situation in this sphere can be improved with the help of the National Action Plan for the Implementation of UN SCR 1325 on Women, Peace and Security for the period ending 2020³⁹. One can only hope for more efficient achievement of strategic priorities in this sphere, because as of today their implementation looks not very optimistic⁴⁰.

9.2. Welcoming introduction of the institute of the Government Commissioner on Gender Policy by the Cabinet of Ministers of Ukraine in 2017 with approval of the respective Regulation⁴¹, experts however see a challenge in her somewhat narrow powers

³⁶ Resolution of the Cabinet of Ministers of Ukraine № 273 dd. April 11, 2018 On Approving the State Social Program on Ensuring Equal Rights and Opportunities for Women and Men for the Period Ending 2021, <http://zakon2.rada.gov.ua/laws/show/273-2018-%D0%BF#n12>

³⁷ Ibid.

³⁸ <http://zakon2.rada.gov.ua/laws/show/273-2018-%D0%BF#n12>

https://humanrights.org.ua/material/zhinkipereselenki_bilsh_socialno_nezahishheni_ta_diskriminovani_nizh_choloviki_doslidzhennja

³⁹ Approved by the Resolution of the Cabinet of Ministers of Ukraine № 113-p dd. February 24, 2016 <http://zakon3.rada.gov.ua/laws/show/113-2016-%D1%80>

⁴⁰ As an example, out of 67 points related to women, as of the end of 2017 only 13 (or 19%) were implemented in full, and further nine (13%) were implemented in part. Implementation in progress was indicated for 32 activities (47%) regardless of the fact that the implementation period for many of them ended in 2015 – 2016. The number of unimplemented activities or with no actual information about the implementation status totals 14 (or 21%). // Women’s Rights – 2017. <https://helsinki.org.ua/prava-zhinok-2017/> Another example: the Strategy of Implementation of Gender Equality and Non-Discrimination in the Educational Sphere, Education: Gender Dimension– 2020⁴⁰, was developed back in 2016 and envisages gender expert analysis of legislative framework in the educational sphere as well as development of educational standards taking the gender component into; however, it is still not approved by the Cabinet of Ministers of Ukraine.

⁴¹ Resolution of the Cabinet of Ministers of Ukraine № 390 dd. July 7, 2017 On Government Commissioner for Gender Equality Policy, <https://www.kmu.gov.ua/ua/npas/250049925>

and authorities⁴². At the same time, appointment of advisors on equal rights and opportunities for women and men has positive impact on the institutional mechanism⁴³.

9.3. In 2015, a norm was introduced, according to which 10% of state financing of political parties is distributed among those political parties that, according to the parliamentary election results, have not more than two thirds of representatives of the same gender in parliament⁴⁴. At the same time, the level of representation of women in the Verkhovna Rada remains low: 371 men and 52 women⁴⁵. Legislation also provides for the minimum 30% quota of representatives of the same gender in the election list of candidates for members of parliament of Ukraine, and candidates for members of local councils nominated by political parties⁴⁶. At the same time, no sanctions were introduced against political parties that failed to comply with the quota⁴⁷. According to the results of the 2015 local elections, 214 female and 969 male members were elected to city councils in Kyiv and in regional centers (22 city councils) with an average level of representation being 18.1%). In 22 regional councils, 252 female and 1 422 male members were elected – 15%, respectively. Compared to the previous elections, the situation with representation of women improved only by 3%⁴⁸.

9.4. The problem of gender misbalance is addressed also in the Strategy of Public Administration Reform in Ukraine⁴⁹, although the Action Plan of the Strategy does not reflect the respective aspects. The number of women in the public administration sector is also not significant: among 17 secretaries, there are two women; out of 35 persons

⁴² As an example, Powers and Authorities: receiving information from officials and organizations, preparing requests and reports, providing information to the public through the mass media about ensuring equal rights and opportunities for women and men, initiating establishment of expert groups, convening meetings, taking part in sessions of the Cabinet of Ministers and other governmental structures with an advisory vote rights. // Women's Rights – 2017. <https://helsinki.org.ua/prava-zhinok-2017/>

⁴³ Advisors were appointed in the Ministry of Defense, Ministry of Internal Affairs, and the Ministry on Education and Science as well as in ten regions of Ukraine.

⁴⁴ Part 1 Article 17.5 of the Law of Ukraine On Political Parties, <http://zakon2.rada.gov.ua/laws/show/2365-14/parao271#o271>

⁴⁵ During the previous convocation, the number of women was five less (47 female MPs)

⁴⁶ Part 10 Article 8 of the Law of Ukraine On Political Parties refers to a respective norm in the statutes of political parties, <http://zakon2.rada.gov.ua/laws/show/2365-14>. Part 3 Article 4 of the Law of Ukraine On Local Elections sets forth a respective requirement for election list of candidates nominated by political parties, <http://zakon3.rada.gov.ua/laws/show/595-19>

⁴⁷ On the eve of the 2015 local elections, the Central Election Commission in its resolution № 362 On Explanations Concerning Implementation of Certain Provisions of the Law of Ukraine *On Local Elections...* cancelled mandatory gender quotas stating that a “refusal to register candidates <...> because of the failure to comply with the Law provisions on representation of individuals of the same gender in election lists <... > is not allowed”. // Women's Rights– 2016. <https://helsinki.org.ua/prava-zhinok-blaha-a-uvarova-o/>

⁴⁸ Final Report on the results of gender monitoring at the 2015 local elections in Ukraine, <http://www.cvu.org.ua/nodes/view/type:news/slug:finalnyi-zvit-za-rezultatamy-gendernogo-monitoryngu-2015>

⁴⁹ Executive Order of the Cabinet of Ministers of Ukraine № 474-p dd. June 24, 2016 Some Issues Pertaining to Public Administration Reform in Ukraine, <http://zakon5.rada.gov.ua/laws/show/474-2016-%D1%80/print1452881860522917>

appointed to leadership civil service positions in central executive bodies, five are female; out of 75 individuals appointed heads of district state administrations, 17 are female⁵⁰.

Implementation of para 10⁵¹.

10.1. The lack of notions "sexual orientation", "gender identity" in national legislation, in particular the Criminal Code of Ukraine, complicates the fight against intolerance-motivated crimes. Experts believe that: "the practice of investigating "hate crimes" based on homophobia or transphobia remains largely unsatisfactory." Like before, investigators try to completely ignore the homophobic motivation of criminals, and often they themselves are guilty of overtly homophobic and unprofessional behavior towards victims of LGBT hate crimes⁵². Most crimes against LGBT people are classified as hooliganism, but subsequently even these cases are closed due to limitation period⁵³. The vulnerability of these groups (the victim believes that the police will not investigate the crimes against him (her), as well as the risk of revealing sexual orientation, gender identity) significantly affects the reporting or non-reporting of such crimes⁵⁴.

10.2. The statistics on these crimes are unequal. Of the 49 cases registered by the National Police of Ukraine in 2015 under Article 161 of the Criminal Code of Ukraine, there was only one

⁵⁰ The situation with representation of women at the decision-making level has not changed dramatically, which fact is reflected in the report on the Strategy implementation: "According to the results of competitions for vacant positions of Category A in 2017, 23 % of such positions are held by women. Compared to 2016, this figure remains almost unchanged (22 %)". // Public Administration Reform. 2016-2017 Report on Implementation of the Strategy of Public Administration Reform for 2016-2020. p. 42 <https://www.kmu.gov.ua/storage/app/media/uploaded-files/pro-vikonannya-u-2016-2017-rokakh-strategii-reformuvannya-derzhavnogo-upravlinnya-ukraini-na-2016-2020-roki.pdf>

⁵¹ While acknowledging the diversity of morality and cultures internationally, the Committee recalls that all States parties are always subject to the principles of universality of human rights and non-discrimination. The State party should therefore state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or hate speech, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity. It should also take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights. The State party should also amend order No. 60 and other laws and regulations with a view to ensuring that: (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to 45 days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed. The Committee finally urges the State party not to permit the two draft bills "on propaganda of homosexuality" to become law.

⁵² УГСПЛ: «Закликаємо МВС удосконалити закон щодо покарання за злочини ненависті».

<https://helsinki.org.ua/articles/uhspl-zaklykajemo-mvs-udoskonalyty-zakon-schodo-pokarannya-za-zlochyny-nenavysti/>

⁵³ Більшість злочинів проти представників ЛГБТ кваліфікують як хуліганство.

<https://hromadske.ua/posts/bilshist-zlochyniv-proty-predstavnykiv-lhbt-spilnoty-kvalifikuiut-ia-khulihanstvo-dyrektora-ho-kyivpraid>

⁵⁴ Hate crimes. <https://t-o.org.ua/zlochunu-na-grunyi-nenavisti/>

case on the grounds of sexual orientation⁵⁵. According to the ombudsman, during 2017 pre-trial investigation was conducted in criminal proceedings for 95 criminal offenses on the grounds of intolerance, 2 cases of which were related to sexual orientation⁵⁶.

10.3. Other data is provided by non-governmental organizations. Thus, 391 people polled from all over Ukraine, including the occupied territories, encountered hate crimes / incidents: in 2014 - 123 people; 2015 - 152; 2016 – 116⁵⁷. In 2017, 226 cases of actions on the grounds of homophobia / transphobia, discrimination, as well as the other violations of LGBT rights in Ukraine (insults, humiliation of human dignity, threats - 134 cases, physical violence of various degree of severity - 92, etc.) were documented⁵⁸.

10.4. Although there has been some progress in ensuring peaceful assembly for equality⁵⁹, police are not always able to protect the protesters from collisions with counter-protesters⁶⁰. "In general, inaction or too passive reaction to the harshly aggressive behavior of LGBT adversaries remains typical of the Ukrainian police, which in such cases only tries to keep the victims of the attack away from aggressors, but is in no hurry to stop the obvious violation of public order and civil rights of the action's participants."⁶¹ The tendency of reducing the number of court decisions to ban peaceful gatherings also looks positive⁶².

10.5. Due to the armed conflict, the influence of ultra-right movements has intensified, whose homophobic activity is alarming⁶³. During the first half of 2018, at least six events and occasions dedicated to LGBT were attacked by representatives of these movements⁶⁴. In these

⁵⁵ The National Police created a contact center in Ukraine for hate crimes (infographics).

<http://old.npu.gov.ua/mvs/control/main/uk/publish/article/1830725>

⁵⁶ Annual report of the Ukrainian Parliament Commissioner for Human Rights "On the observance and protection of human and citizens' rights and freedoms in Ukraine". K. 2018. 661 p. P. 520.

⁵⁷ The face of hatred. Crimes and incidents motivated by homophobia and transphobia in Ukraine in 2014-2017 The second edition, corrected and enlarged. / Nash Svit Center, Kyiv, 2018. – 90 c. P. 4.

⁵⁸ The face of hatred. Crimes and incidents motivated by homophobia and transphobia in Ukraine in 2014-2017 The second edition, corrected and enlarged. / Nash Svit Center, Kyiv, 2018 – 90 c. P. 21.

⁵⁹ На піднесенні. Становище ЛГБТ в Україні у 2017 році. / Центр "Наш світ". – К.: Центр "Наш світ", 2018. – 55 с. С. 9.

⁶⁰ LGBT Festival in Lviv has been disrupted. <https://www.radiosvoboda.org/a/27623385.html> . In Zaporizhzhia/ Annual report of the Ukrainian Parliament Commissioner for Human Rights "On the observance and protection of human and citizens' rights and freedoms in Ukraine". K. 2018. 661 p P. 529. Small LGBT actions in Kherson and Kharkiv has been disrupted. On the rise. LGBT situation in Ukraine in 2017 / Nash Svit Center, Kyiv, 2018. – 90 p. P. 9-10.

⁶¹ On the rise. LGBT situation in Ukraine in 2017 / Nash Svit Center, Kyiv, 2018. – 90 p. P. 10.

⁶² The only court decision in 2017 // On the rise. LGBT situation in Ukraine in 2017 / Nash Svit Center, Kyiv, 2018. – 90 p. P. 7.

⁶³ Ultra-right extremism as a threat to Ukrainian democracy. <https://freedomhouse.org/report/special-reports/far-right-extremism-threat-ukrainian-democracy-ukrainian-translation>

⁶⁴ We are talking about the next events. An attack on the visitors of the Queer Home office in Krivyi Rih, and the disruption of a lecture on the LGBT movement in Kharkiv.// Ultra-right extremism as a threat to Ukrainian democracy.// <https://freedomhouse.org/report/special-reports/far-right-extremism-threat-ukrainian-democracy-ukrainian-translation>. Disrupting a lecture on LGBT in Kyiv /Disrupting a lecture on LGBT in Kyiv: no one was hurt,

cases, law enforcement officers were either unable to stop the attackers, or forbade an event, justifying the prohibition by their inability to guarantee the safety of its participants⁶⁵.

10.6. The new trend in 2017 became the adoption of homophobic appeals by local councils, including ones for the prohibition of LGBT-related peaceful assembly and for excluding the terms "sexual orientation" and "gender identity" from the legislation⁶⁶. Unfortunately, electronic petitions are also used in order to incite discrimination⁶⁷.

Implementation of para 11⁶⁸.

11.1. Among the positive change in this area, experts singled out: changes in the police record form of the circumstances of the crime, now contains a column to indicate that the victim considers the crime against his (her) as hate-motivated; establishment of a National contact center for hate crimes and the appointment of special police officers at the regional level to monitor investigation of cases where the victim perceives the motive of hatred; intensive police training, in particular from the OSCE for the identification of crimes committed on the basis of intolerance; collecting data on hate crimes against LGBT persons; placement of posters in police departments, encouraging to report hate crimes, which depict photos of five socially disadvantaged groups⁶⁹.

visitors were taken out of the building // <https://hromadske.ua/posts/zryv-lektsii-pro-lhbt-u-kyievi-nikhto-ne-postrazhdav-vidviduvachiv-vyvely-z-budivli>. Disruption of the Equality Festival in Chernivtsi, attempts to disrupt the public discussion "Human Rights: the problem of the spread of radical-right movements in Ukraine" within the framework of the human rights program of the festival Docudays UA. // Statement on the disruption of the festival of equality in Chernivtsi. <https://helsinki.org.ua/appeals/zavava-schodo-zryvu-festyvalyu-rivnosti-u-chernivtsyah/>

⁶⁵ Ultra-right extremism as a threat to Ukrainian democracy. <https://freedomhouse.org/report/special-reports/far-right-extremism-threat-ukrainian-democracy-ukrainian-translation>

⁶⁶ In their appeals to the state government, local councils encouraged to: "Prohibit the propagation of different types of deviant sexual behavior, including of so-called "marches of equality", "pride", "gay parades", "festivals of quirky culture", etc.; eliminate the phrase "sexual orientation" and "gender identity" from the Labor Code of Ukraine and other laws, bills and government documents// Fighting discrimination – 2017.

<https://helsinki.org.ua/publications/richna-dopovid-pravozahysnyh-orhanizatsij-prava-lyudyny-v-ukrajini-2017/>

⁶⁷ An electronic petition "On prohibiting the conduct of actions (parades) of sexual minorities in Lutsk", posted on the site of the Lutsk City Council, was issued by a patrol police officers. // Annual report of the Ukrainian Parliament Commissioner for Human Rights "On the observance and protection of human and citizens' rights and freedoms in Ukraine". K. 2018. 661 p. C. 530. Only thanks to the intervention of the representative of the Commissioner for Human Rights, a petition on protecting family values was removed from the President's website.

⁶⁸ The State party should strengthen its efforts to combat hate speech and racist attacks, by, inter alia, instituting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity. The State party should also step up its efforts to ensure that alleged hate crimes are thoroughly investigated, that perpetrators are prosecuted under article 161 of the Criminal Code and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated.

⁶⁹ ECRI report on Ukraine (fifth monitoring cycle). Adopted on June 20, 2017. Published on September 19, 2017. - P. 20.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjvKnVlajcAhXNmLQKHahFDOAQFggoMAA&url=https%3A%2F%2Fwww.coe.int%2Ft%2Fdghl%2Fmonitoring%2Fecri%2Fcountry-by-country%2FUkraine%2FUkr-CbC-V-2017-038-UKR.pdf&usq=AOvVaw3ZHiUfOM5V8o8Ltk_Q8cK

11.2. However, the actual number of such crimes can not be estimated, as victims may not report attacks to law enforcement agencies, in particular due to lack of trust in the system and the fear of revictimization, as well as along of qualification of such crimes as hooliganism. Among the shortcomings of the investigation of hate crimes should be mentioned ineffectiveness of investigators' actions, refusal to accept report on a crime, delaying procedural actions, etc 70.

11.3. Only in 2016 the National Police of Ukraine for the first time published the statistics on hate crimes, which data was included in the Unified register of pre-trial investigations (Annex 1).

11.4. Despite a certain number of criminal cases opened, only a small fraction of them go to trial. According to the Unified State Register of Court Decisions in 2016, two sentences were issued where individuals were found guilty of committing a criminal offense under Article 161 of the Criminal Code of Ukraine, in 2017 and 2018 – 1 sentence each year.

11.5. In 2017 experts did not detect cases of antisemitic violence, while in 2015 and 2016, two people were injured in violent incidents. In addition, public manifestations of antisemitism were documented, in particular, six such cases in 2016⁷¹⁷².

11.6. Cases of vandalism can be as well treated as hooliganism. Moreover, this happens despite the presence of relevant articles in the Criminal Code of Ukraine (for example, 178, 179, 297, 298). The motive for religious intolerance may not be taken into account even when crimes are directed against such buildings as monuments to Holocaust victims, synagogues, mosques and other religious buildings and monuments⁷³. In 2015, the experts documented 22 cases of antisemitic vandalism, 2016 - 19, 2017 – 24⁷⁴. Cases of vandalism are also recorded by the Human Rights Commissioner of the Verkhovna Rada 75.

70 Universal Periodic Review. An alternative dimension. Compilation of CSO's Alternative Reports. P. 88.

⁷¹UCSJ Report: Antisemitism in Ukraine 2017

. http://kngu.org/sites/default/files/Antisemitism_in_Ukraine2017Rus_1.pdf

⁷² On February 2, 2018 in "Chortkivskiyi Visnyk", an article titled "Jews or Jewish?" was published, signed by the editor-in-chief of the newspaper. According to the Prosecutor's Office of the Ternopil region, the procedural guidance is being carried out in criminal proceedings initiated by the police investigators under Part two of Article 161 of the Criminal Code of Ukraine (inciting national, racial or religious enmity and hatred committed by an official). https://tern.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=223810

⁷³ Universal Periodic Review: An alternative dimension. Compilation of CSO's Alternative Reports. P. 88.

⁷⁴ Anti-Semitism in Ukraine, 2017. Report on the results of monitoring // http://kngu.org/sites/default/files/Antisemitism_in_Ukraine2017Rus_1.pdf

⁷⁵ Among the most high-profiled events of 2017 the next can be mentioned: the incident of desecration of the memorial monument established by the representatives of the Polish national minority that took place in the village of Guta-Penyatsk, Brody district of the Lviv region; the desecration of the monument to Polish professors who were shot dead by the Nazis in 1941 in Lviv and the memorial to the Poles died in 1944 in the Pidkamin village in Brodivsky district of Lviv region. / Annual report of the Ukrainian Parliament Commissioner for Human Rights "On the observance and protection of human and citizens' rights and freedoms in Ukraine". K. 2018. 661 p. P. 534.

11.7. Roma people still remain the most vulnerable category, that suffers from hate crimes. The events of the last two years show not only the failure of law enforcement agencies to protect Roma people from aggression, but sometimes their direct involvement in illegal actions.

11.8. Often, crimes committed against Roma people are committed and then investigated by officers of the same police units. This violates the principles of independence and impartiality of the investigation. Thus, the practice of police raiding Roma families and homes in the framework of search or "preventive" measures and "operational work out of the territory".

In December 2017, in the city of Boryslav in Lviv region, police and the operational staff of the Lviv battalion, in the framework of the murder investigation, raided about 20 Romani families in the absence of any information regarding their involvement in the murder.

The intruders broke into victims' homes in the morning without proper sanction of the court for their entry and search, forced victims to lie on the ground face down, inflicted bodily injuries, bound men's hands and publicly used hate speech. A sick victim, who had no possibility to lie down, was forced to stand on her knees for a long time. She was also not allowed to inject insulin on time, although she suffers is diabetic. Also, the victims in light clothing were taken outside and held for a long time in the cold.

All the victims' houses were searched without a search warrant, without witnesses and writing a police report. All men of Roma nationality were taken to a police station and questioned. All men of Roma nationality were taken to a police station and questioned. According to the victims, all people detained and delivered to the police station were Romani. At least two victims were fingerprinted.

The attack on Roma families in December 2017 is qualified exclusively as unlawful entry into residence - that is, the infliction of bodily injuries to the victims, their illegal detention, damage of their property, excess of official powers are not the subject of investigation. The investigation also does not consider this crime to be hate-motivated, although according to testimonies of the law enforcement officers who took part in the "visits" to Romani families, during the briefing they were informed that they had to "work over" persons of Roma nationality, who were also called "a specific contingent "and a" criminal element ". In addition, the case materials directly indicate the conduct of the Boryslav police "operational and preventive work over previously convicted persons, drug addicts and persons of Roma nationality". At the same time, there is a letter from the Boryslav police claiming that police officers in Boryslav were not involved in the "work" with the persons of Roma nationality. This indicates a bold police attempt to hide its involvement in illegal actions against the Roma community.

The investigation of a crime is considerably complicated by the fact that the law enforcement officers, who broke into houses were in balaclava masks and without license plates, in spite of the paragraph 4 of part 3 Article 20 of the Law of Ukraine "On National Police". This made their identification by the victims impossible and contributed to the ineffectiveness of the investigation as a whole.

11.9. Over the past few years, in the capital and other large cities, in which Roma people form spontaneous settlements, isolated cases of their pogroms are recorded, in particular in the capital - in April 2017 and April 2018⁷⁶, in Lviv – in April 2017. In the last two months of 2018, six attacks on Roma settlements have been documented, the last of which ended with the murder of one person and wounding of three more⁷⁸.

11.10. Victims of attacks are not only residents of spontaneous settlements. For instance, in recent years, human rights defenders have registered cases when the local community makes a decision to evict Roma people from their permanent residence with the corresponding consequences.

The situation in Loshchinivka village of Izmail district of the Odessa region can be considered as a relevant precedent in this case. At the end of August 2016, its inhabitants demolished the houses of the Roma minority representatives after a man, allegedly Romani national, was accused of the murder of a 9-year-old girl.

Subsequently, the community of Loshynivka decided to evict from the village all representatives of the Roma nationality. In this situation, the actions of the police and the village

⁷⁶ On March 31st on the territory of the residential area "Novobilychi" (Svyatoshinsky district), and on April 5, 2017, near the lake Nizhnyi Telbin. These two settlements were place of residence for about 300 people of different nationalities. One of the reasons named by the victims was the fact that the highway and the railway track are passing nearby, so it is undesirable for Eurovision guests to see the spontaneous settlements in these territories. First, the habitants were warned by unknown persons that the settlements would be burned down and offered to come to their places of permanent residence. Tents, where these people resided, were set on fire. The settlement near the lake Nizhnyi Telbin was burned again on April 11th, completely clearing all what remained there. // Statement on the events in Kyiv that have signs of ethnic cleansing. <https://helsinki.org.ua/appeals/zayava-schodo-podij-u-kyjevi-yaki-nosyat-harakter-etnichnyh-chystok/>

⁷⁷ On April 21, 2018, the representatives of the right-wing radical organization "C14" disassembled and burnt tents from the Roma settlement on Lysa Hora in Kyiv. The day before, an anti-Roma "raid" with the participation of right-wing radicals took place at the central railway station of the capital, during which representatives of this national minority were asked to show their tickets and forced to clean. The role of the regional government administration and police seemed ambiguous in this situations. // UHHRU Statement on the burning of the Roma camp near Lysa Hora. <https://helsinki.org.ua/appeals/uhspl-rishuche-zasudzhuje-diji-predstavnykiv-s14-v-holosijvskomu-rajoni-m-kyjeva/>

⁷⁸ On June 23, 2018, members of the right-wing radical group "Sober and Evil Youth" attacked a camp located in the suburb of Lviv. According to police reports, a group of masked and batted people went to the camp, "and began to inflict bodily harm on its inhabitants." Law enforcers arrested 12 people, some of whom are minors. Crime without penalty: how attacks on Roma settlements are being investigated. <https://hromadske.ua/posts/rozsliduvannya-napadiv-na-romski-poseleennia>

head are ambiguous⁷⁹. Moreover, as of 2018, law enforcement officers have not announced any of the attackers⁸⁰, that does not contribute to reducing the number of incidents. Similar conflicts between the Roma and the local population calling for the eviction of the Roma began to emerge in other settlements, in particular, in Sheludkivtsi village in Zmiev district of the Kharkiv region at the end of 2016⁸¹; in Vilshany village of the Kharkiv region in the spring of 2017⁸²; in the town of Zolotonosha in Cherkasy region in early 2018,⁸³ etc.

11.11. Unfortunately, such degree of intolerance had been largely caused by the armed conflict situation, and with it the significant legitimacy of ultra-right movements, and with it the significant legitimacy of ultra-right movements. The absence of a comprehensive national agenda for reconciliation and conflict overcoming does not contribute to its (intolerance) reduction.

Implementation of para. 13⁸⁴.

13.1. International organizations⁸⁵ stress the critical state of healthcare in penitentiary institutions. The government of Ukraine recognizes this, as well as the fact that the increase in mortality rates is directly related to it⁸⁶. For example, according to the Prosecutor General's Office of Ukraine, 144 prisoners and convicts died in the first quarter of 2017. By comparison,

⁷⁹ The representatives of the National Police, who were present at the place of the scene, did not intervene in the event and did not try to stop the offenders. A head of the village at the common gathering of villagers addressed the audience with a speech stating that problems with representatives of Roma nationality has been brewing for a long time in the village. He also noted that Roma, both adults and children, commit illegal acts in the village. In addition he stated that "the only desire he has, like other community members, is that the Roma should not reside in Loshchinivka ". // "Our children were threatened to kill": the victims of the attacks in Loshchinivka seek to the perpetrators. <https://helsinki.org.ua/articles/nashyh-ditej-pohrozhuvaly-vbyty-poterpili-vid-pohromu-v-loschynivtsi-domahayutsya-pokarannya-vynnyh/>

⁸⁰ Anniversary of Roma pogroms in Loshynivka: none of the attackers have been delivered a notification of suspicion suspicion. https://humanrights.org.ua/material/richnicija_romskih_pogromiv_u_loshhivci_nikomu_z_napadnikiv_ne_ogolo_sili_pro_pidozru

⁸¹ Ignoring the situation in Sheludkivtsi may provoke yet another anti-Roma riots - human rights activists. <http://legalspace.org.ua/napryamki/posilennya-romskikh-gromad/item/8533-ihnoruvannia-sytuatsii-u-sheludkivtsi-mozhe-sprovokuvat-cherhovi-antyromski-pohromy-pravozakhysnyky>

⁸² Shooting in Vilshany: a conflict or a murder? (photo, video). <http://legalspace.org.ua/napryamki/posilennya-romskikh-gromad/item/9569-strilianyna-v-olshanakh-odyn-rom-zahynuv-troie-poraneni-video-pres-konferentsii>

⁸³ Guilty, because ... is a Romani, or whow people in Zolotonosha want to condemn the famous human rights activist. <http://legalspace.org.ua/napryamki/posilennya-romskikh-gromad/item/10737-vynuvatyi-bo-rom-abo-yak-u-zolotonoshi-khochut-zasudyty-vidomoho-pravozakhysnyka>

⁸⁴ The State party should take immediate and effective steps to ensure that cases of death in custody are promptly investigated by an independent and impartial body, that sentencing practices and disciplinary sanctions against those found responsible are not overly lenient, and that appropriate compensation is provided to families of victims.

⁸⁵ For example, see preliminary remarks by the UN Special Rapporteur on Torture regarding the visit to Ukraine <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23193&LangID=E>

⁸⁶ Item 4 of the Decree of the Cabinet of Ministers of Ukraine No. 654-r of 13 September 2017 On Approval of the Concept for the Reform (Development) of the Penitentiary System of Ukraine <http://zakon3.rada.gov.ua/laws/show/en/654-2017-p#n11>

over the same period in 2016, 112 people held in penitentiary institutions died, despite the significant decrease in the prison population during this period.⁸⁷

13.2. It appears that the attempts to improve the situation yielded no positive results, and sometimes, on the contrary, have only led to negative ones. For instance, due to the reorganization of the penitentiary healthcare administration, some prisons were left without medical staff at all, forcing them to resort to calling ambulances.

13.3. The system of the release of seriously ill convicts remains unacceptable. In practice, people are released from penitentiary institutions half dead already. Even that is done so as not to "spoil" the statistics. This approach exists, among other things, due to the established practice of courts and the penitentiary system itself, as well as the imperfection of regulations on the release of convicts⁸⁸, which has been long criticized by the European Court of Human Rights.⁸⁹ This approach has not changed, despite the Human Rights Action Plan (clause 8.5).

13.4. In general, the attention and financial resources allocated by the government to remedy the state of healthcare in penitentiary institutions are insufficient, considering how critical the situation is. The announced initiative to make penitentiary healthcare subordinate to the Ministry of Healthcare⁹⁰, despite the support of the Committee for the Prevention of Torture, remains suspended.⁹¹

13.5. There also exists the issue of suicides in penitentiary institutions. According to human rights activists, Ukraine ranks first in Europe here.⁹²

Other aspects of the right to life.

13.6. The armed conflict is causing significant civilian casualties due to bombings and mines. Thus, in 2017, attacks on settlements near the demarcation line were recorded, not just with small arms, but also with various artillery systems, rocket launchers and tanks. Indiscriminate bombings resulted in significant damage to water and electricity supply systems as well as municipal facilities. UN personnel documented damage to two hospitals, a polyclinic, a dental clinic and a kindergarten, caused by the bombings of Makiyivka and Donetsk. On May 28, 2017, direct hits at the central hospital and at school №2 were documented in government-controlled Krasnohorivka (Donetsk Oblast). On June 15 and 17, missiles hit orphanages in non-

⁸⁷ <http://khpg.org/index.php?id=1496056348>

⁸⁸ <http://khpg.org/index.php?id=1496056348>

⁸⁹ § 61, Yermolenko v. Ukraine, no. 49218/10.

⁹⁰ <http://moz.gov.ua/article/news/penitenciarni-ustanovi-povinni-buti-nevidemnoju-chastinoju-sistemi-ohoroni-zdorovja>

⁹¹ § 42, Report of the Committee on the visit to Ukraine in 2016 <https://rm.coe.int/pdf/1680727930>

⁹²

https://humanrights.org.ua/material/ukrajina_zajmaje_pershe_misce_v_jevropi_za_kilkistiju_samogubstv_pravo_zahisnik

government-controlled territories in the village of Trudovske and in the city of Yasynuvata (Donetsk Oblast) respectively.⁹³

13.7. The convicts held in penitentiary institutions in non-government-controlled territory have also become hostages of these bombings. The administrations of penitentiary institutions do not evacuate convicts or even take them to bomb shelters. Artillery fire completely destroyed Chervonopartyzanska correctional colony and seriously damaged Donetsk and Makiyivka correctional colonies. Human rights activists reported more than five deaths and dozens of wounded there.⁹⁴

13.8. In 2017, the alarming trend of reporting lower mortality rates among the civilian population by giving false reasons for death remained. According to the Kharkiv Human Rights Protection Group, they have confidential information that forensic experts are being pressured into changing the cause of death in instances related to the Anti-Terrorist Operation (mine explosion injury, bullet wound, etc.) to more conventional ones (domestic accidents or injuries from explosions not related to professional activities), or even to natural causes (heart attack, lung inflammation, etc.).⁹⁵

13.9. By the end of 2017, the government of Ukraine failed to fulfill a number of measures envisaged by the National Human Rights Strategy: developing a mechanism for the evacuation of population from the combat zone and a legislative act that would clearly determine the actions of the staff of institutions where children under guardianship or care are housed (penitentiary institutions, psychiatric and boarding schools, etc.) who are in non-government-controlled territories; informing the citizens residing in non-government-controlled territories that it is safe to relocate to other regions of Ukraine; ensuring access of citizens voluntarily relocating to other regions of Ukraine and citizens residing in non-government-controlled territories to medical care, washrooms, mother and child rooms, bomb shelters and alert systems at the checkpoints.⁹⁶

Implementation of para. 14⁹⁷.

⁹³ The right to life, prohibition of torture and ill-treatment – 2017. https://helsinki.org.ua/pravo-na-zhyttya-zahyst-vid-katuvan-ta-pohanoho-povodzhennya-prava-lyudyny-u-vidnosynah-iz-fiskalnymy-orhanamy-2017/#_ftn1

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ The State party should strengthen its efforts to prevent and combat all forms of domestic violence, including by adopting a new law on prevention of domestic violence and ensuring its effective implementation. It should also facilitate complaints from victims, ensure that they are thoroughly investigated, that perpetrators are prosecuted and punished with appropriate sanctions and that victims, including children, have access to effective remedies and means of protection, including an adequate number of shelters available in all parts of the country. The State party should also ensure that law enforcement authorities, as well as medical and social workers are provided with

4.1. At the end of 2017 - early 2018, the Parliament of Ukraine adopted several laws aimed at the combating of domestic violence and gender-based violence: On Prevention and Combating of Domestic Violence, On Amendments to the Criminal and Criminal Procedure Codes of Ukraine for the Purpose of Fulfilling the Provisions of the Council of Europe Convention On Preventing and Combating Violence against Women and Domestic Violence; On Amending Certain Legislative Acts of Ukraine to Enhance the Protection of the Right of the Child to Proper Care by Improving the Procedure for Compulsory Collection of Alimony Debts⁹⁸; On Amendments to the Criminal Code of Ukraine on the Protection of Children from Sexual Abuse and Sexual Exploitation.⁹⁹ These laws are in line with international standards, prioritize the needs of the victim, affirm the principles of non-discrimination and zero tolerance toward violence, and lay the groundwork for the development of a comprehensive system for preventing and combating gender-based violence.

14.2. At present, in accordance with the plan approved by the Cabinet of Ministers in January 2018, draft laws necessary for ensuring the implementation of the Law of Ukraine On Prevention and Combating of Domestic Violence are being developed in coordination with stakeholders. These drafts are made public for discussion, but they are somewhat behind deadlines.

14.3. In 2017, 110,932 reports of domestic violence were registered in Ukraine, 1,391 of those filed by children. Following these reports, 80,842 protocols on administrative violations were drawn up and 1,341 criminal offenses registered.

14.4. During the first half of 2018, 61,051 reports of domestic violence were registered, 44,493 of those filed by women and 694 by children. 1,412 of these reports led to pre-trial investigations, and protocols on administrative offenses were drawn up for 50,743 reports. According to the La Strada Ukraine, since the beginning of 2018, 9,256 calls have been received by the national hotline for the prevention of domestic violence, gender discrimination and human trafficking. The vast majority of calls concern domestic violence. 49% - psychological violence, which is often not identified as violence and underestimated, 36% are victims of physical violence, 14% - of economic violence, and 1% - of sexual abuse. It should be noted that in most cases the victim is exposed to several types of violence at the same time.¹⁰⁰

appropriate training to deal with cases of domestic violence, and awareness-raising efforts should be continued to widely sensitize members of the public.

⁹⁸ <http://zakon5.rada.gov.ua/laws/show/2234-19>

⁹⁹ <http://zakon3.rada.gov.ua/laws/show/2334-19>

¹⁰⁰

14.5. The armed conflict in Donetsk and Luhansk oblasts has only made more relevant the issue of gender-based violence, including domestic violence. New challenges have emerged - domestic violence in families of IDPs and ATO veterans. The organization and provision of assistance to these categories of people (especially where children are victims, witnesses or offenders) require special attention and proper response from state authorities due to the psychological suffering as well as financial problems brought about by the armed conflict.

14.6. Currently, access is guaranteed at the legislative level to all types of free legal aid for children, including orphans, children deprived of parental care, children in difficult living conditions, children who suffered as a result of hostilities or the armed conflict; IDPs; and persons who suffered from domestic violence or gender-based violence.¹⁰¹

14.7. In 2015, the United Nations Population Fund, together with its partners in five eastern regions most affected by the armed conflict, created mobile teams for rendering social and psychological aid to victims of gender-based violence, including domestic violence. The number of these teams has currently increased to 46, and they are already working in ten regions. In 2017, these teams provided assistance to more than 13,000 victims of gender-based and domestic violence.

14.8. The issue of safety of victims of violence remains relevant. Currently, there are 7 shelters in Ukraine for women who became victims of violence, created thanks to the UN Population Fund. Thus, we can conclude that Ukraine still needs to establish specialized institutions for assisting people who suffered from gender-based violence, including domestic violence, where women could get help regardless of age and health, making sure that even people from remote and rural areas have access to these institutions.

14.9. Another unresolved issue concerns correctional programs for offenders, which requires more active development, adoption and implementation in regions. Since January 2018, the assignment of offenders to such programs has been done by courts. The Unified State Register of Judgments currently contains only 28 such verdicts.¹⁰² We also note that under the law, offenders must also be able to attend programs for offenders voluntarily, at their own initiative.

14.10. Another important issue is efficient response to instances of domestic violence. Our analysis of court decisions suggests that, as a result of improper registration of materials and failures of persons brought to administrative liability to appear in court, defendants were not brought to justice, under part 1, Article 173-2 of the Administrative Offenses Code of Ukraine, in 8,847 cases in the first half of 2018.

¹⁰¹ <http://zakon5.rada.gov.ua/laws/show/3460-17>

¹⁰² <http://www.reyestr.court.gov.ua/Page/1>

Implementation of para. 15¹⁰³.

15.1. There is a More and more people in Ukraine come to hospitals with complaints of police violence. In 2015, there were 1,217 such incidents, in 2016 – 1,666, and in 2017 – 2,386 (almost twice as many as in 2015). The overwhelming majority of injuries are on the head (30%), or on the head and/or extremities (38%). The number of people who had to be treated in in-patient clinics as a result of police violence is also increasing (2015 - 215, 2016 - 274, 2017 - 376 persons).¹⁰⁴

15.2. Observations 13 and 15 of the Committee indicate a particular concern regarding the impunity of the perpetrators of torture. Statistics do little to alleviate this concern.¹⁰⁵

15.3. Impunity begins at the registration stage for reports of crimes involving torture. Let us compare the number of complaints concerning torture received by medical institutions and the number of criminal proceedings initiated. In 2016, there were 1,666 such reports and 1,500 proceedings, in 2017 – 2,386 reports and 1,485¹⁰⁶ proceedings. One would expect that, on the contrary, the number of proceedings would be greater than the number of reports, since proceedings should be initiated not only following reports, but also based on information received from any other source (Article 214 of the Criminal Procedure Code of Ukraine). One of the reasons for this situation is the incorrect registration of torture reports. For example, instead of opening a criminal case as per the Criminal Procedure Code, crime reports are unlawfully registered as regular appeals from citizens, under the Law of Ukraine On Appeals of Citizens.¹⁰⁷

15.4. Even more critical is the situation with bringing the perpetrators to real criminal liability. The analysis of the Unified Registry of Judgments for the period from 2012 to 2017 indicates that the vast majority of torture sentences ended with probation (133 cases). Real prison time was given less often (96 cases). Moreover, the average sentence was 3-4 years. In addition, 41 persons were acquitted by the court, and 18 were released due to expiration of the limitation

¹⁰³ The State party should reinforce its measures to eradicate torture and ill-treatment, ensure that such acts are promptly, thoroughly, and independently investigated, that perpetrators of acts of torture and ill-treatment are prosecuted in a manner commensurate with the gravity of their acts, and that victims are provided with effective remedies, including appropriate compensation. As a matter of priority, the State party should establish a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment. It should also amend its Criminal Procedure Code to provide for mandatory video recording of interrogations, and pursue its efforts towards equipping places of deprivation of liberty with video recording devices with a view to discouraging any use of torture or ill-treatment.

¹⁰⁴ Improper behavior in the activities of the National Police of Ukraine: manifestations, scale and causes <http://ecpl.com.ua/wp-content/uploads/2018/04/Nenalezhne-povodjennja-v-dijalnosti-Nacpolsciji.pdf>

¹⁰⁵ Ibid.

¹⁰⁶ The statistics apparently differ from those provided by the government due to methodological reasons.

¹⁰⁷ Section 6 of the Annual Report of the Ukrainian Parliament Commissioner for Human Rights 2015 www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2015_10b.pdf

period. In conclusion, the number of court decisions clearly does not correspond to the number of reports of police violence.

15.5. Aside from incorrect registration of offenses and their signs, one of the main causes of impunity is classification of torture cases. Courts rarely classify them as torture in itself (Article 127 of the Criminal Code), and more often as abuse of power combined with violence (part 2, Article 365 of the Criminal Code), or both. The practice of courts to distinguish between these crimes is controversial and indicates the need for proper regulation of torture classification, since this contradiction often allows offenders to evade criminal charges.

15.6. In addition, Articles 127 and part 2 of Art. 365 are also problematic. For example, Article 127 of the Criminal Code provides for the general subject of a crime - that is, not only that committed by representatives of the state, but by any citizen. In addition, contrary to international standards, this article is subject to a limitation period for prosecution. Another issue is with classifying inaction as well as actions as torture. In addition, part 2, Art. 365 of the Criminal Code stipulates that a crime must involve "substantial harm" to law-protected rights and interests to be classified as a crime under this article. In practice, lack of such harm often leads to acquittal.

15.7. Before November 2017, the prosecutor's office had been responsible for investigating torture incidents. After that date, the prosecutor's office lost its investigative powers (except for already initiated cases). This authority was supposed to belong to the State Bureau of Investigations (SBI) instead.¹⁰⁸

15.8. The SBI has not yet started its work and is still at the formation stage. As a result, there is confusion in investigative powers regarding the investigation of torture and deaths in penitentiary institutions and other places. A "gap" has formed in investigative powers involving these types of crimes. The prosecutor's office, on a temporary basis, under part 5, Art. 36 of the Criminal Procedure Code (CPC), distributes new proceedings regarding these incidents between various investigators, such as investigators of the National Police or the Security Service.

15.9. Additional problems are caused by the so-called "penitentiary investigators", created by amendments to Article 216 of the CPC. They have been added to the list of persons authorized to investigate crimes, subordinate to the Ministry of Justice. They were supposed to investigate the crimes of their colleagues working in penitentiary institutions, which are also subordinate to the Ministry of Justice. This change caused doubt as to the independence of such investigators and was criticized by human rights organizations.

¹⁰⁸ Concerning the termination of the powers of the prosecutor's office to investigate crimes that are within the jurisdiction of the SBI <https://www.gp.gov.ua/ua/news.html? m=publications& c=view& t=rec&id=219365>

15.10. In the end, the Constitutional Court of Ukraine recognized as unconstitutional the provision that formed investigative units in the penitentiary system.¹⁰⁹ However, these investigators had already started criminal proceedings on cases of bodily harm and deaths in penitentiary institutions. This endangers proper completion of these proceedings, including due to the questionable admissibility of evidence gathered by the investigators that had been found unconstitutional.

15.11. In any case, it is clear that problems with the distribution of powers in the investigation of torture and death in places of detention (as well as in the activities of the National Police) are not conducive to effective investigations. In this regard, it is crucial that the SBI start operating soon.

15.12. The director of the SBI assures that this body will begin its work in September 2018, although this promise may prove unrealistic.¹¹⁰ As at July 2018, the SBI was actively hiring staff for its central and regional offices. The hiring concerned investigators and civil servants. However, due to legislative problems, the SBI was unable to recruit operatives.¹¹¹ This could negatively affect investigations of torture in the beginning.

15.13. At the same time, the SBI has already announced its three main priorities for the future: crimes committed by high officials, war crimes and crimes related to human rights violations (specifically torture). They have announced the creation of a separate instruction on responses to reports of ill-treatment, including the recording of signs of such ill-treatment and registration of crime reports.¹¹² It appears, however, that only state authorities are involved in this process, not human rights organizations.

15.14. The SBI is all the more important since it will be directly involved in the investigation of crimes in the conflict zone. Thus, the SBI will be responsible for investigating crimes involving violence against the population in the combat zone specified in Article 433 of the Criminal Code. In this context, the attempts of certain government officials to create an alternative investigative body – the Bureau of Military Justice¹¹³ – appear unreasonable.

15.15. Aside from investigations of crimes in the framework of criminal procedural law, alternative institutions such as the National Preventive Mechanism also help in the detection and prevention of torture. Despite the recognized role of the NPM, NGOs are seeing alarming signals

¹⁰⁹ <http://zakon5.rada.gov.ua/laws/show/v003p710-18>

¹¹⁰ <http://uacrisis.org/ua/66295-aktivisty-pro-dbr>

¹¹¹ The registered draft law on this subject is still awaiting adoption in the second reading: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=5395-д&skl=9

¹¹² https://censor.net.ua/blogs/3073475/spravi_pro_torturi_chomu_sldch_povinn_vivchiti_rshennya_spl

¹¹³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64055

that threaten its existence. The NPM continues to be overwhelmed by responding to complaints instead of performing its main – preventive – function.¹¹⁴

15.16. An online complaint map regarding ill-treatment in penitentiary institutions should have been introduced in Ukraine. This measure was envisaged by the Human Rights Action Plan (clause 7.13).¹¹⁵ In addition, the practice of accepting confidential correspondence of convicts by representatives of the Ukrposhta (Ukrainian Post, clauses 7.7-7.8) should have been introduced. However, the government ignored these points of the Action Plan. As a result, the only effective tools for complaints from penitentiary institutions are the banned cellphones and Internet.

15.17. In 2014, Article 24 of the Criminal Executive Code became a significant deterrent to ill-treatment. These changes provided freedom for journalists and community activists to visit correctional colonies and have confidential conversations with the convicts. As a result, the number of reports of ill-treatment in penitentiary institutions has significantly decreased. However, Art. 24 does not apply to pre-trial detention facilities, which therefore remain outside civic control. Moreover, during the drafting of the Law On Penitentiary System, the department's management tried to change Article 24 and significantly restrict public oversight, or even that of the NPM.¹¹⁶

15.18. The National Police is also opposing the expansion of public oversight over police departments, in spite of the abovementioned Human Rights Action Plan.¹¹⁷ The issue of complaints against the police is made even more complicated due the improper distinguishing signs on officers, especially during mass events. Identifying persons that apply force remains difficult, despite the sad events of 2014. Therefore, human rights defenders insist on changing these signs.¹¹⁸

15.19. The most high-profile cases of torture and ill-treatment committed by representatives of the state are also connected to the armed conflict. In April 2017, in the city of Bakhmut (Donetsk Oblast), police officers arrested two men, brought them outside the city and kept them at an unknown location. One of them was had been held for one day, another for three, without any connection with the outside world. During this time, the men were individually

¹¹⁴

https://humanrights.org.ua/material/v_ukrajini_znishhujetsjia_npm_jedinih_nezalezhnij_mehanizm_poperedzhennjia_tortur_pravozahisniki

¹¹⁵ The Decree of the Cabinet of Ministers of Ukraine No. 1393-r of 23 November 2015 On Approval of the Action Plan for the Implementation of the National Human Rights Strategy until 2020. <http://www.kmu.gov.ua/document/248740672/R1393.doc>

¹¹⁶

https://humanrights.org.ua/material/projekt_zakonu_pro_penitenciarnu_sistemu_treba_doopracjuvati_predstavnik_ombudsmana

¹¹⁷

https://humanrights.org.ua/material/mvs_proti_shhob_misceve_samovrjiaduvannjia_vidshukovuvalo_v_jogo_objekt_ah_porushennjia_prav_ljudini

¹¹⁸

<http://umdpl.info/news/efektyvna-identyfikatsiya-pravoohorontsiv-znyzyt-riven-bezkarnosti-avtory-zakonoproektiv-5700-5701/>

questioned about their involvement in armed groups in 2014, with torture used during the interrogations. Both were brutally beaten, one of them had electric current applied to his genitals. Both victims were then placed in a pre-trial detention facility and charged with membership in illegal armed groups¹¹⁹. In May 2017, in Mariupol, a woman was lured to the position of the Azov battalion, where she had her eyes covered and taken in an unknown direction. Hit in the ribs with a rifle butt and threatened to be buried on the spot, she was forced to cooperate. The perpetrators informed law enforcement that they had captured a member of armed groups, after which the police questioned her without the presence of her lawyer, and she signed a record of interrogation in which she confessed being a member of an armed group. The next day her "confession" was recorded on camera. After that, the woman was transferred to the Security Service building in Mariupol, where she had to repeat her confession to two Security Service officers. When one of them left the room, the second closed the door from the inside and ordered the woman to take off her clothes for a physical examination. The officer took photos of her scars and tattoos without providing any explanations. After that, the woman was taken to her place of residence, where a search was conducted. She stayed there with two Security Service officers for three days. Then she was brought to court, where a Security Service officer hit her in the stomach twice, causing her severe pain. The Military Prosecutor's Office initiated a criminal investigation into the actions of the Security Service officers¹²⁰. On September 28, 2017, armed people in camouflage forced a civilian man to step out of a bus at one of the internal checkpoints, justifying this by the fact that the photos posted on his page in social networks indicated his connection to armed groups. The man was taken to the police station at Kreminna, where he was forced to undress with only his underwear on and to stand like this for two hours in a cold room, while people were entering and leaving the room. The man was threatened with rape and warned that he would be handed over to the Azov battalion. Without a lawyer, he was forced to sign an explanation note typed by the investigator, which stated that he was a member of armed groups. He was released the next day.¹²¹

Implementation of para 16¹²².

¹¹⁹ The right to life, prohibition of torture and ill-treatment – 2017. https://helsinki.org.ua/pravo-na-zhyttya-zahyst-vid-katuvan-ta-pohanoho-povodzhennya-prava-lyudyny-u-vidnosynah-iz-fiskalnymy-orhanamy-2017/#_ftn1

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² The State party should continue its efforts to prevent and eradicate trafficking in persons, including by effectively implementing the existing relevant legal and policy frameworks and by cooperating with neighbouring countries. It should ensure that allegations of trafficking in persons are thoroughly investigated, that those responsible are brought to justice, and that victims receive adequate medical care, free social and legal assistance, and reparation, including rehabilitation. The State party should also ensure that legal alternatives are available to victims who may face hardship and retribution upon removal.

16.1. Ukraine continues to make efforts to combat human trafficking. According to the legislation, the system of counteraction to human trafficking and protection of the persons who suffered from this crime is created in Ukraine.

16.2. A person who considers him (her)self to be a victim of human trafficking has the right to apply to the local state administration at his place of residence for the establishment of the status of a person who has suffered from human trafficking, as well as to the units of the National Police for the opening of a criminal proceeding and for prosecution of persons guilty of committing those crimes. The status of a person who has suffered from human trafficking is established by the Ministry of Social Policy, entitles such person to receive psychological, medical, social assistance, help in finding work or retraining, temporary shelter if necessary, other types of assistance, as well as single time material support in the amount of three subsistence minimums for the corresponding category of citizens¹²³.

16.3. Every year, Ukrainian authorities identify about 200 citizens who have been trafficked. According to international organizations, this figure is much higher and reaches about 1,000 people¹²⁴. Under the official data of the Ministry of Social Policy of Ukraine, for the period from 2012 to 01.08.2017, the status of a trafficked person has been established for 406 citizens (including 400 citizens of Ukraine and 6 foreigners), among them: 162 persons - women, 204 - men, 40 - children (13 boys, 27 girls). 25% of those who have been granted such status have suffered from internal trafficking (104 persons), 73.8% have suffered from cross-border human trafficking (301 persons) and 1% from mixed trafficking (1 person). By the type of exploitation, labor exploitation is 64% (262 victims) of the total number of victims, sexual exploitation - 19,64% (78 people), trafficking for begging - 11,34% (45 people), mixed exploitation - 1,51% (6 persons), removal of organs - 2,26% (9 persons), sale of a child - 1% (4 persons), surrogate motherhood - 0,25% (1 person)¹²⁵.

16.4. However, the effectiveness of investigating the facts of trafficking and bringing the perpetrators to justice remains low: 342 such crimes were recorded during the 12 months of 2017, however, only 98 cases (or 29%) were sent to the court with the indictment; during 6 months of 2018, 176 crimes were registered and 56 cases were filed to court(or 32%).

16.5. Today, the Government of Ukraine faces an acute problem of counteracting the involvement of Ukrainian citizens in criminal activities related to the transportation of narcotic substances in the territory of foreign countries, as well as to the transportation of illegal migrants to foreign countries by sea. At present, more than 200 Ukrainian citizens who were involved in

¹²³ <https://www.msp.gov.ua/news/15401.html>

¹²⁴ <https://www.msp.gov.ua/news/15578.html>

¹²⁵ <http://legalspace.org/ru/romski-poseredniki-u-sferi-okhoroni-zdorov-ya/item/10110-opryliudnena-kilkist-ukraintsiv-postrazhdalykh-vid-torhivli-liudmy-za-5-rokiv>

this type of criminal activity are in custody in Russia, Thailand, Malaysia, and Greece. In some countries, the term of imprisonment for such a crime may reach life imprisonment¹²⁶.

16.6. The annexation by the Russian Federation of the Autonomous Republic of Crimea and the situation of armed conflict on the territory of Donetsk and Luhansk regions adds a special urgency to this issue. There are many reports of human trafficking in the temporarily occupied and annexed territories of Ukraine, including the ones entered the National "hotline" for preventing human trafficking, domestic violence and gender discrimination. At the same time, a problem exists with documentation and investigation of these crimes committed in temporarily uncontrolled territories¹²⁷.

16.7. Due to the deterioration of the socio-economic situation, citizens of Ukraine as a whole and residents of the territories of the armed conflict in particular more often become victims of human trafficking in the territory of the Russian Federation, but have fewer opportunities to protect their rights. Thus, the Russian Federation legislation does not stipulate the principle that trafficked persons should not be prosecuted or punished by the states for crimes that they could commit in the process of human trafficking; there is no due and effective investigation regarding these persons; the reports of Ukrainian citizens of crimes related to trafficking are ignored; impediments to receiving consular support by these people are imposed; the possibility of transferring such convicts to serve their sentence in Ukraine is complicated under various pretexts.

16.8. Over the past four years, about 250 citizens of Ukraine were deceived and / or threatened and blackmailed by criminal groups and shipped to the territory of the Russian Federation on the pretext of legal employment as couriers of household goods. However, upon arrival at their destination in various regions of the Russian Federation, they found that their work would be to perform the illegal distribution of narcotic substances (so-called spices - smoking flavored blends). Yet, it was no longer possible for trafficking victims to refuse to work in the criminal schemes: in Russia, "couriers" did not contact anyone personally - all their movements and communications were tracked through mobile phones received free of charge from recruiters back on the territory of Ukraine.

In the case victims of trafficking attempted to secretly "get out" from the scheme and return home, Ukrainian citizens were immediately arrested by the Russian police and prosecuted for illegal drug trafficking; sometimes - also for participating in an organized criminal organization. There is information that some of these people were subject to illegal methods of investigation - beatings, torture, threats to themselves and members of their families. According

¹²⁶ <https://www.msp.gov.ua/news/15216.html>

¹²⁷ The report "Countering Human Trafficking", presented by the NGO coalition to the United Nations Universal Periodic Review (third cycle)

to the court sentences, they are sentenced to imprisonment for a term of 7 to 19 years with serving a sentence in the strict regime colony.

16.9. Despite the abolition of the scheme on a large scale and the arrest of 4 people who are currently charged with human trafficking, individual cases of recruitment have taken place in Ukraine so far.

Implementation of para. 20¹²⁸.

20.1. In 2017, a dangerous trend of suppression of civic rights and freedoms by state agents emerged in Ukraine, specifically in connection with criminal prosecutions of civil society activists and amendments to Art. 3 of the Law of Ukraine On Prevention of Corruption, which included employees of non-governmental organizations in the list of persons obligated to submit electronic declarations of their income to authorities (e-declarations). Incidentally, the Law applies to NGOs that carry out activities related to preventing and combating corruption, implementing standards in the field of anti-corruption policies, monitoring anti-corruption policy in Ukraine, preparing proposals for the development and implementation of such policies, and/or participating in activities related to the prevention and combating of corruption (anti-corruption NGOs). The changes have put representatives of anti-corruption NGOs on an equal basis with public servants, making NGOs criminally liable for failure to submit e-declarations. This will enable the government to persecute specific anti-corruption organizations and to limit anti-corruption activities of those who receive funding from foreign sources, which poses a threat to the personal safety of people working in NGOs;

The President of Ukraine introduced legislative initiatives to the Parliament (bills No. 6674 and No. 6675), where he proposed to replace e-declaration for civil society anti-corruption activists with additional tax reporting for NGOs, sole proprietors receiving international technical assistance, as well as enterprises, institutions and organizations that provide them with services. Draft law No. 6674 was not adopted by the Parliament, but there is still the bill No. 6675, as well as the recently registered bill No. 8501 (introduced by MP S. Taruta), which suggests provisions similar to those proposed by the President, albeit without sanctions.¹²⁹

¹²⁸ The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. Any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant. Furthermore, the State party should ensure that acts of aggression, threats and intimidation against journalists are investigated, prosecuted and punished and victims provided with appropriate remedies.

¹²⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64255

20.2. By mobilizing civil society, we managed to bring the attention of international organizations to the persecution of journalists and civic activists.¹³⁰ NGOs, activists and journalists were forced to form a Coalition for the Protection of Civil Society¹³¹, opening the Memorandum on the Coalition's creation for signing.¹³²

20.3. Civil society organizations (CSOs) in Donbas territories under effective control of the Russian Federation are being attacked and forced to leave this area, including CSOs that mainly carry out humanitarian work (such as the Initiative of Concerned Citizens). In Crimea, independent CSOs are facing systemic and massive persecution by the occupying authorities, which has caused a massive outflow of activists from the peninsula. Organizations, including the Committee for the Rights of the Crimean Tatar People, the Mejlis of the Crimean Tatar People, and the League of Crimean Tatar Women, are prosecuted or otherwise exposed to pressure by the occupying authorities through the selective application of Russian laws. Organizations engaged in cultural activities, such as the Ukrainian Cultural Center in Crimea, are also facing persecution.

20.4. Oppressive legislation unlawfully imposed by Russia in occupied Crimea is being used to persecute members of civil society. For example, the de facto authorities in Crimea brought criminal charges against human rights activist and member of the Crimean Human Rights Contact Group Emir Useyin Kuku. Amnesty International has named him a prisoner of conscience; according to human rights activists, he has been treated poorly while in custody. His family is also under pressure and intimidation by special services.

20.5. Abductions, torture and extrajudicial executions of pro-Ukrainian activists have become a widespread practice in non-government-controlled territories of Donbas. Such conditions make the work of human rights activists almost impossible. The responsibility for these violations lies with the Russian Federation as the state that exercises general and effective control over the so-called "DPR" and "LPR".¹³³

¹³⁰ <https://helsinki.org.ua/appeals/vlada-pishla-v-nastup-na-hromadyanske-suspilstvo-pravozahysnyky/>,
<https://helsinki.org.ua/appeals/spilna-zayava-upovnovazhenoho-z-prav-lyudyny-ukrajinskoji-helsinskoji-spilky-z-prav-lyudyny-ta-harkivskoji-pravozahysnoji-hrupy-schodo-zakonoproektiv-6674-ta-6675/>,
<https://helsinki.org.ua/articles/zayava-pravozahysnoho-poryadku-dennoho-iz-vymohoyu-do-verhovnoji-rady-ukrajiny-prypynyty-nastup-na-hromadyanski-prava-i-svobody-v-ukrajini/>,
<https://freedomhouse.org/article/ukraine-government-proposals-ngos-would-curtailed-their-work>,
[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)006-e),

¹³¹ <https://press.unian.ua/press/10076840-freedom-house-v-ukrajini-ugspl-ta-shche-ponad-20-organizacij-budut-spilno-protidiyati-atakam-na-gromadyanske-suspilstvo-v-ukrajini-video.html>

¹³² <https://helsinki.org.ua/articles/memorandum-pro-stvorennya-koalitsiji-na-zahyst-hromadyanskoho-suspilstva-v-ukrajini/>

¹³³ Annual report of human rights organizations Human Rights in Ukraine 2017 <https://helsinki.org.ua/svoboda-ob-ednan-2017/>

Implementation of para. 21¹³⁴.

21.1. Positive changes since the last report:

adoption of the Law of Ukraine No. 2147-VIII of 3 October 2017 On Amendments to the Economic Procedure Code of Ukraine, Civil Procedure Code of Ukraine, Code of Administrative Litigation of Ukraine and Other Legislative Acts, which entered into force on the day the Supreme Court began its work, namely on 15 December 2017 The Law, among other things, introduces fundamental changes to the Code of Administrative Litigation regarding the limitations of the freedom of peaceful assembly, intended to protect the interests of individual organizers and participants as well as the state and the people. The changes include: the right to appeal the decision of the first instance court on the prohibition of a peaceful protest for another day; the duty of the appeals court to immediately review such appeals; the change of certain criteria that should be in the court decision (the applicant must prove that a certain method of limitation is sufficient and proportional). The court may not necessarily prohibit a protest – it may also allow it, but with a warning, for instance, that there should be no counter protests. The authorities may demand to have a peaceful protest banned only in certain cases and no later than 24 hours before the protest. The court must consider the case within two days or immediately. The applicant, before turning to court, must publish the lawsuit on their website, as well as notify by e-mail the protest's organizers about the lawsuit. The authorities must be the ones to prove to the court that there are grounds for the ban, as well as include all arguments in the application beforehand. The amendments have removed provisions on the immediate enforcement of court decisions in cases on restrictions on the exercise of the right to peaceful protests that did not comply with international standards. The co-authors of these amendments believe that there is no longer a need to draft a new law, since the new rules are prescribed very thoroughly.¹³⁵

provisions of part 5, Article 21 of the Law of Ukraine No. 987-XII of 23 April, 1991 On Freedom of Conscience and Religious Organizations have been declared unconstitutional, as amended (as regards the requirement to obtain prior permission to conduct peaceful religious gatherings in public places), as well as the Decree of the Presidium of the Supreme Council of the USSR No. 9306-XI of 28 July 1988 On the Procedure for Organizing and Conducting Meetings, Rallies, Marches and Demonstrations in the USSR;

the situation with peaceful gatherings in the country has improved significantly after the Revolution of Dignity. In 2015-2016, the number of court bans has decreased, as well as the

¹³⁴ The State party should ensure that individuals fully enjoy their right to freedom of assembly. The State party should adopt a law regulating the freedom of assembly, imposing only restrictions that are in compliance with the strict requirements of article 21 of the Covenant.

¹³⁵ Annual report of human rights organizations Human Rights in Ukraine 2017 <https://helsinki.org.ua/unemozhlyvlennya-bezpidstavnoho-ta-neproportsijnoho-obmezheniya-prava-na-myrni-zibrannya-2017/>

instances of administrative or criminal liability for the participants of peaceful gatherings. For comparison: during the peak 2012, courts issued 349 bans and restrictions on peaceful assembly (84% of lawsuits were satisfied), in 2015 - 20 (48%), in the first half of 2016 – only 6 (46%). In the capital of Ukraine and some other cities, city authorities ceased seeking to ban peaceful gatherings in court altogether. At the same time, police stepped up security measures during peaceful gatherings after the grenade blast in the summer of 2015 that killed law enforcement officers during a protest against changes to the Constitution regarding the special status of Donbas. Some regions are still using Soviet-style regulations on peaceful assembly, and some courts continue to ban peaceful gatherings, merely imitating the use of ECHR practices, while in fact ignoring them.¹³⁶

21.2. Persisting issues:

in 2017, the Parliament did not pass laws on the establishment of legal safeguards and mechanisms for exercising the freedom of peaceful assembly. The bills registered in the Parliament – No. 3587 and No. 3587-1 On Guarantees regarding the Freedom of Peaceful Assembly – in accordance with the Resolution of the Parliament No. 1852-VIII of 21 February, 2017, had been put on the agenda of the sixth session of the Verkhovna Rada of Ukraine of the eighth convocation, but were never considered.

21.3. Based on the monitoring of the implementation of the National Human Rights Strategy, the lack of such a law prevents relevant state authorities from adopting subordinate legislative or even methodological recommendations that would regulate (or provide recommendations for) the conduct of relevant authorities during peaceful gatherings;¹³⁷

Ukraine still lacks reliable statistical data on the number of held peaceful gatherings.

21.4. Instances of violence perpetrated by right-wing radical organizations against peaceful gatherings dedicated to gender equality and minorities were recorded.¹³⁸

21.5. Last year, the occupying authorities on the Crimean peninsula significantly restricted the freedom of peaceful assembly¹³⁹. According to human rights activists (as at 20

¹³⁶ Analytical report Freedom of Peaceful Assembly http://pravo.org.ua/img/zstored/files/DRI-UA_Freedom-of-Assembly_ua.pdf

¹³⁷ Annual report of human rights organizations Human Rights in Ukraine 2017. <https://helsinki.org.ua/unemozhlyvlennya-bezpidstavnoho-ta-neproportsijnoho-obmezheniya-prava-na-myрни-zibrannya-2017/>

¹³⁸ Women of Uzhhorod are rallying // pershij.com.ua [website] - Access mode: <https://pershij.com.ua/uzhgorodki-vyshli-na-akciyu/>; A children's books will not be published because of threats of right-wing organizations at the publishers forum // The Ukrainska pravda (Ukrainian truth). Life [website] - Access mode: <https://life.pravda.com.ua/culture/2017/09/11/226386/>;

Unidentified individuals disrupted the National Minorities Forum of Ukraine in Kyiv // ZAXID.NET [website] - Access mode:

https://zaxid.net/nevidomi_v_kiyevi_zirvali_forum_natsmenshin_ukrayini_n1442051,

The occupants banned peaceful protests in Crimea // Ukrainian Helsinki Human Rights Union [website] - Access mode: [articles/okupanty-zaboronyly-myрни-protesty-v-krymu/](https://articles.okupanty-zaboronyly-myрни-protesty-v-krymu/)

October 2017), the Crimean occupying passed 268 sentences on participants of peaceful gatherings, and 256 persons faced administrative liability. The total amount of fines collected for participating in peaceful gatherings is over 2 million 942 thousand rubles. The largest fine for participating in a peaceful gathering is 150 thousand rubles.¹⁴⁰

21.6. The issue of systemic violations of the right to peaceful assembly in Crimea is highlighted in the Thematic Report of the Office of the United Nations High Commissioner for Human Rights entitled Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)¹⁴¹, as well as in the reports of the United Nations Human Rights Monitoring Mission in Ukraine.¹⁴²

Recommendations:

1. To ensure proper regulation of criminal liability for torture and ill-treatment.
2. To organize appropriate documentation of traces of torture and registration of reports on crimes related thereto.
3. To launch operations of the State Bureau of Investigations as soon as possible and to ensure its capability to investigate tortures efficiently.
4. To take measures for reducing the level of impunity for torture in the context of changed approaches of courts.
5. To change the marking system for law enforcement officers using force.
6. To introduce a mechanism of online complaints in penitentiary institutions.
7. To establish a mechanism of public control in police stations and investigative detention facilities of the penitentiary system.

¹³⁹ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance of human and civil rights and freedoms in Ukraine // Official website of the Human Rights Ombudsperson [website] - Access mode: <http://www.ombudsman.gov.ua/files/Dopovidi/Report-2018-1.pdf> ;

¹⁴⁰ 268 participants of peaceful gatherings were punished since the beginning of the occupation in Crimea, human rights activists say // Human Rights Information Center [website] - Access mode: https://humanrights.org.ua/material/u_krimu_z_momentu_okupaciji_pokarali_268_uchasnikiv_mirnih_zibran_prav_ozahisnikiv

¹⁴¹ See p. 23 of the Thematic Report Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) // Official website of the Ukrainian Parliament Commissioner for Human Rights [website] - Access mode: http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/UA/Crimea2014_2017_Ukrainian.pdf&action=default&DefaultItemOpen=1

¹⁴² For example, report on the Situation of Human Rights in Ukraine in May 16 - August 15, 2017 // Office of the United Nations High Commissioner for Human Rights [website] - access mode: http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/UA/UARep19th_UKR.pdf&action=default&DefaultItemOpen=1 ;

Report on the situation of human rights in Ukraine, November 16 - February 15, 2018 // Office of the United Nations High Commissioner for Human Rights [website] - access mode: http://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_UKR.pdf

8. Following the priority procedure, to solve the problem with health care provision in penitentiary institutions.

9. To introduce an appropriate mechanism of release from penitentiary institutions for the terminally ill persons.

10. To establish a reliable system for preventing suicides in penitentiary institutions.

11. To develop legislative provisions on guarantees and mechanisms ensuring the right to peaceful assembly, including judicial practice, departmental documents, and practical training for government officials.

12. To draft and approve by a normative act the algorithms of actions for police and other law enforcement bodies for ensuring public order during peaceful assembly and mass events, taking into consideration relevant decisions of the European Court of Human Rights and the OSCE/ODIHR Guidelines on Freedom of Assembly.

13. To renew maintenance of differentiated state statistics of the number of held peaceful assembly events and their participants, statistics of the use of force by law enforcement officers against participants, and the number of persons detained during events. To develop an efficient uniform methodology for collecting and generalizing such information.

14. To eliminate from the Law of Ukraine *On Preventing Corruption* the norms introduced by the law № 1975-VIII dd. 23 March 2017, requiring submission of e-declarations by individuals working in the sphere of preventing and combating corruption (anti-corruption activists).

15. To ensure implementation of the minimum efficiently standards established by the ECtHR practice in activities of pre-trial investigation agencies.

16. To ensure documenting and reporting of all violations of human rights and fundamental freedoms committed by the occupation authorities on temporarily occupied territories, implementing international mechanisms for termination of such violations, and liability of the occupying state.

Statistical data on hate crimes filed by the National Police of Ukraine

During 2015, information on 79 crimes has been entered in the Unified Register of Pre-trial Investigations – including 49 crimes under Article 161 (Violation of citizens' equality based on their race, nationality or religious preferences) of the Criminal Code of Ukraine, in the following categories: racism / skin color - 1; national, ethnicity - 24; language - 2; antisemitism - 4; - religion - 15; disability - 2; sexual orientation – 1. 30 crimes under other articles: torture (p. 2 of Art. 127) – 1; murder (§ 14 p. 2 of Art. 115) – 1; damage of religious architecture or houses of worship (Art. 178) – 7 crimes; illegal retention, desecration or destruction of religious sanctities (Art. 179) – 10 crimes; preclusion of religious ceremonies (Art. 180) – 11 crimes. At the same time, control over the investigation was carried out in 78 criminal proceedings, in which were likely motivated by racial, national and religious and other intolerance¹⁴³.

During 2016, 76 crimes committed on the basis of intolerance were entered into the Unified Register of Pre-trial Investigations: 50 were opened under Art. 161 of the Criminal Code of Ukraine, 12 - under Art. 179, 8 - on Art. 180, 4 - under Art. 178. In addition, an investigation was conducted on 68 facts of committing unlawful acts, which further considered as hate-motivated¹⁴⁴.

According to the information provided by the National Police of Ukraine at the request of the Commissioner, in 2017 pre-trial investigation was conducted in 95 hate-motivated criminal offenses: 42 – bias against Christians and members of other religions (excluding antisemitism and prejudice against Muslims), 26 - national / ethnicity, 6 - antisemitism, 4 - language, 3 - bias against Roma and Sinti, 2 - sexual orientation, 1 – disability , 11 - other signs. Only 4 of 95 criminal proceedings, qualified as "bias against Christians and members of other religions (not including antisemitism and prejudice against Muslims)," have been sent to prosecution in court¹⁴⁵.

¹⁴³ The National Police created a Contact center for hate crimes in Ukraine (infographics) // <http://old.npu.gov.ua/mvs/control/main/uk/publish/article/1830725>

¹⁴⁴ In 2016, the National Police initiated 76 proceedings for the commission of hate crimes (INFOGRAPHIC) // <http://old.npu.gov.ua/mvs/control/main/uk/publish/article/2104575>

¹⁴⁵ Annual report of the Ukrainian Parliament Commissioner for Human Rights "On the observance and protection of human and citizens' rights and freedoms in Ukraine". K. 2018. 661 p. P. 521.