

## Information of the Ombudsman of Ukraine for the 2nd cycle of the Universal Periodic Review

Under the influence of the financial and economic crisis, the human rights situation in Ukraine, like in many other countries, has recently significantly aggravated.

In the past 2011, 164 thousand people appealed to the Ukrainian Parliament Commissioner for Human Rights for the protection of their rights and freedoms, which is two times higher than before.

As before, more than a half of applications - 56.2% - relate to violations of *civil rights*, in particular, the right to a fair trial, including the execution of court judgments. **Almost 17%** of complaints relates to violations of *social rights defined by the laws of Ukraine*. **14%** of complaints are about the violations of *economic rights*: to employment, to proper and timely payment remuneration, to ownership of land. **12%** of applications are about *the violations of personal rights*, in particular, the right to personal security, non-application of torture, and non-interference of the government in private life. **2% of complaints** relate to violations of *political rights*.

The analysis of applications received by the Ombudsman of Ukraine shows that almost any violation of human rights and freedoms has signs of discrimination based on one or another principle.

The Commissioner for Human Rights, based on the results of her systemic monitoring, finds flagrant violation of human right to a fair trial, primarily because of the chronic non-execution of court judgments (only a third of national courts' judgments are completely executed).

As of 1 January 2012 the European Court of Human Rights delivered 820 judgments with respect to Ukraine, in 82% of which a violation of Art. 6 of the European Convention on Human Right *on the right to a fair trial* was found. However, the vast majority of the European Court judgments with respect to Ukraine (98 %) have not been fully executed, because the State didn't solve the systemic problems related to the improvement of legislation, law enforcement practice, and adoption of comprehensive measures for the implementation of the pilot judgments.

The abuse of the right to arrest remains the systemic problem in Ukraine. The longlasting delay in addressing it forced the European Court of Human Rights to undertake an extreme measure - to adopt the pilot judgment "Kharchenko v. Ukraine" on 10 February 2011. The Court drew attention to the lack of motivation in the decisions of the national courts on applying arrests and mentioned that arrests should be applied only when a risk of evasion from the investigation and trial exists.

In this regard, the Ombudsman had to actively counteract the abuse of the right to arrest, raising these issues publicly before the leadership of the state, law enforcement and judicial authorities, as well as protecting the human right to liberty and security in specific cases.

The problem of abuse of the right to arrest the Ombudsman of Ukraine raised during her personal meeting with the President of Ukraine in January 2011. After that, the President addressed all law-enforcement officers and judges to prevent abuse of the right to arrest and use it only as an exceptional preventive measure. Three

times in March-April 2011 the Commissioner for Human Rights addressed the boards of the General Prosecutor's Office and the prosecutor's office of the city of Kyiv on the subject.

Since the beginning of 2011 the Commissioner for Human Rights carried out a continuous monitoring of the rights of prisoners in the detention center of Kyiv. In particular, during her personal reception in prison in January 2011 Ombudsman was addressed by over 300 prisoners, most of whom complained on unreasonably prolonged detention and red tape with the consideration of criminal cases.

In this regard, in February 2011 the Ombudsman made a submission to the Prosecutor General, the Chairmen of the Council of Judges, the High Qualification Commission of Judges, the High Council of Justice on the violation by the city courts of Kyiv and Kyiv region of the prisoners' right to liberty and security, and consideration of the case for over a reasonable period of time.

The Commissioner for Human Rights has also carried out a constant monitoring of the trials of former senior officials of the Government, in particular, Yulia Tymoshenko, Yuriy Lutsenko, Valery Ivashchenko, Eugene Korniychuk, George Filipchuk and others. Ombudsman and her representatives were present at almost all court hearings in these cases, for a number of times the Commissioner for Human Rights made acts of response for protection of the rights of former top officials to health care, medical treatment, meetings, liberty and personal security.

The Commissioner for Human Rights urges to introduce in legislation the boundary terms of detention in custody, the right of the person under trial to appeal the decision on his or her arrest to the Court of Appeal, to provide citizens with a possibility to lodge complaints on the court decision directly to the Supreme Court of Ukraine, rather than through the higher courts, which decide on the appropriateness of complaints' admission to the Supreme Court. In this regard, the Ombudsman had submitted proposals to the new draft Criminal Procedure Code of Ukraine, which was adopted in first reading.

The results of inspections of the Ombudsman of Ukraine give grounds to conclude that so far it was failed to implement a number of important recommendations of the UN Committee against Torture.

Despite the positive developments, in some special police facilities detainees continue to be kept under the conditions that demean human dignity and are considered as a form of torture according to international standards. The fourth part of temporary isolation wards do not meet modern requirements, there are even worse conditions in the rooms for detained citizens, where a person may be detained up to three days.

There still occur the facts of law enforcement officers' ill-treatment of the detainees.

According to the Ombudsman of Ukraine, in order to eliminate tortures in police there has to be changed the system of evaluation of the effectiveness of the work of police officers on the ground of crime detention rate or the amount of criminal cases submitted to the court. There should also be provided a real possibility for detainee to take advantage of the lawyer, introduced statistics reports on the use of physical

violence to people and established an appropriate mechanism to investigate complaints on tortures.

The Commissioner for Human Rights considers the creation by the President of Ukraine in September 2011 of the Commission on Prevention of Tortures - a consultative body under the President of Ukraine, to be a very important step. But a separate special state agency on prevention of tortures should be created to fulfill the obligations under the Optional Protocol to the UN Convention against Torture. The Ombudsman of Ukraine has been insisting on it for many years, because it is more important to prevent tortures, than to fight for the rights of people affected by them.

The problems related to overcrowding in pre-trial detention centers and penitentiary facilities have been also aggravated. Over the past two years, the number of convicted persons has increased by 8265 persons or 7.5%.

The provision of the Law of Ukraine "On Amendments to the Penal Execution Code of Ukraine concerning the rights of convicted persons in the facilities of execution of sentence", according to which, in order to gradually meet the international standards on the conditions of detention of convicted persons, the standard of living space per one convicted person can not be less than 4 square meters, entered into force on 1 January 2012. But there appeared a risk to the implementation of this provision in practice due to the deficit of places in correctional facilities.

At the same time, the norm of living space per person in pre-trial detention facilities remains significantly below the standards.

The healthcare system in penitentiary facilities is very unsatisfactory. Over 80% of medical devices there are morally and physically obsolete, there is also a lack of qualified medical personnel. Over the last four years 813 people died only in pre-trial detention facilities, in particular in 2008 - 156, 2009 - 187, 2010 - 227, 2011 - 243.

According to the results of her monitoring, the Ombudsman of Ukraine made a submission to the Prime Minister of Ukraine proposing to establish a clear procedure for providing medical care to seriously ill detainees in the facilities of the Ministry of Health, and not to make human health dependent on the authorization of the investigator or the court. The proposal of the Commissioner for Human Rights has been implemented.

The issue of delivery of judgments by courts regarding release of convicted persons who are seriously and terminally ill is very pressing. The procedure of release from punishment because of the health condition on the stage of investigation requires a legislative settlement because as of now such procedure is provided only for convicted already serving sentences.

The Ombudsman of Ukraine considers it necessary to promptly approve the Concept of development and modernization of the facilities and institutions subordinated to the State Penitentiary Service of Ukraine.

As in previous years, *the problem of poverty in Ukraine remains one of the most pressing*. According to the latest official data, *the level of poverty in the country is 24.1 %*. Almost every eight citizen falls under the category of extreme poverty or poverty. Almost 38% of households in Ukraine are in a situation of a sharp marginalization (which means that people are not able to fully participate in public

life because of their poverty, lack of basic knowledge and opportunities or because of discrimination). Families with children and the rural population suffer the most from poverty.

The situation, when the income of the rich diverges ten times as much from that of the poor, destroys people's faith in justice, generates social irritation, provokes the mood of protest. Therefore, in most of the appeals to the Commissioner for human rights citizens indignantly emphasize on the social injustice and their resentment of the efforts of the authorities to put the burden of the crisis on their shoulders.

***The poverty of the working society is considered to be the Ukrainian phenomenon.*** Massive violations of the right to timely salary also reflect negatively on the standard of living of the working people. This phenomenon essentially has the nature of slave labor. At the same time it has been managed to shorten the salary debt by almost 20% in the recent year.

The most part of the Ukrainian society is not satisfied by the state of accessibility and quality of health care. The appeals received by the Commissioner for human rights contain complaints on the closure of medical establishments, particularly in the rural area.

According to the Ombudsman of Ukraine, with the aim to secure the constitutional rights of people to receive quality medical care it is necessary to set a clear legislative procedure and mechanism to determine the guaranteed level of free medical care; to introduce a general obligatory state social medical insurance and a priority financing of the medical sphere from the state budget.

Nearly 3 thousand citizens with disabilities annually appeal to the Commissioner for human rights. Many administrative buildings of the executive authorities, social, cultural and educational institutions, court buildings, railway stations don't have the conditions for free access for disabled persons.

On 16 December 2009 the Parliament of Ukraine ratified the Convention on the Rights of Persons with Disabilities of 2006 as well as the Optional Protocol to it. At the same time the National Action Plan for Equal Opportunities for Persons with Disabilities, providing for specific measures and deadlines for their implementation, has not yet been adopted. Above that, Ukraine has not yet designated the independent structure for the promotion, protection and monitoring of the implementation of this Convention as it is stipulated by the Article 33 of the Convention. These functions could be effectively carried out by the Institution of the Ombudsman of Ukraine, that enjoys the independent status and the required mandate, provided there be additional financing and personnel allocated.

Last year the Ombudsman received more than 1300 appeals from more than 3 thousand children and adults on behalf of children. This is 1,5 times more than a year before. The problem of securing the right of the child to life and health care, overcoming child poverty, homelessness and carelessness, social orphanage, violence against children, providing housing for children-orphans of age, remain very pressing.

Despite the high level of education and economic activity, Ukrainian women have limited access to decision making process in politics, as well as to the top levels of state and economic governance. Women make only 8% in the national parliament,

the Cabinet of Ministers has only one woman. On 19 July 2011 the Commissioner for human rights made a submission to the President of Ukraine “On guaranteeing the right of women to work in the bodies of executive power and governance” offering to adopt the National program for strengthening gender equality in the Ukrainian society for the period till 2016, that would lay down certain objectives for all authorities, allocate financial resources for their realization, designate responsible people for its implementation and set clear criteria for the evaluation of the achieved results.

In order to strengthen the protection of the rights of national minorities the Commissioner for Human Rights appealed to the President of Ukraine with the proposition to take the issue on the creation of the State Service for Nationalities of Ukraine as a consultative body under the President of Ukraine into consideration.

The Commissioner for Human Rights points out that the observance of the inalienable human rights and freedoms of everyone by the authorities and their officials is the basis for further democratic development of Ukraine.