

1. The Problem of Enforcement of Judgments



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97.45 Continue fully and effectively perform the judgment of the European Court of Human Rights¹.

1.1. By the judgments of the international jurisdictional bodies is being repeatedly stressed that the right to a fair trial is an ephemeral right without providing by the state the proper implementation of every judgment rendered by its name².

1.2. Disappointing remains the situation with the implementation of judgments of the European Court of Human Rights. Thus, there were 1.052 judgements concerning Ukraine of the European Court of Human Rights under the control of the Cabinet of Ministers of Ukraine in 2015. This is 41 judgement more than in 2014. At that, in 2015 Ukraine made all payments on time only under 23 cases. However, there were only 4 such cases in 2014. The amount of compensation paid under the judgements of the ECHR was also decreased in 2015 (Euro 966,357 against Euro 7.684,574 in 2014)³.

1.3. The Committee of Ministers of the Council of Europe identified eight main areas in which there are systematic problems with the implementation of activities of a general nature. This refers to the following challenges:

- ineffective enforcement of national courts⁴;
- too long duration of trial⁵;
- torture by the police, lack of effective investigation⁶;
- inadequate conditions for convicted⁷;
- manipulation with the law by prosecutors and judges for illegal deprivation of freedom of the applicants⁸;
- functioning of the judicial system in Ukraine⁹;
- lack of clear and understandable legislation that regulates the freedom of assembly¹⁰.

There were no changes in performance of these judgments since 2014.

¹ Recommendation is provided by Armenia: A/HRC/22/7/Add.1

² For example in the pilot ECHR judgment *Yuriy Mykolayovych Ivanov against Ukraine*

³ According to the official report of the Committee of Ministers of the Council of Europe

⁴ The judgement *Zhovner against Ukraine* and pilot judgement *Yuriy Mykolayovych Ivanov against Ukraine*.

⁵ Judgement *Svetlana Naumenko against Ukraine* and *Merit against Ukraine*. There are 268 similar cases on the control.

⁶ *Afanasiev against Ukraine* and *Kaverzin against Ukraine*. There are 37 similar cases on the control.

⁷ Judgement *Kharchenko against Ukraine*. There are 33 similar cases on the control.

⁸ Judgement *Tymoshenko against Ukraine* and *Lutsenko against Ukraine*.

⁹ Judgement *Alexander Volkov against Ukraine*

¹⁰ *Verentsov against Ukraine*

1.4. As of 28.02.2017 Ukraine is the leader in the number of cases pending in the ECHR – 18,850 (21.5%). The majority of the cases concerns non-compliance of judgements¹¹. The court in 2012 and 2014 twice noted the state's failure to take effective measures to ensure the proper implementation of judgments by setting a deadline for eliminating the shortcomings of the enforcement system.

1.5. Meanwhile, certain measures were pursued at the legislative level. In 2010, according to the new version of the Act of Ukraine *On Enforcement Proceedings*, were granted additional powers to the public bailiff, including access to information on registered property of the debtor and their bank accounts, introduced the system of online auction of the seized property.

1.6. In 2016 was adopted the Act of Ukraine *On the Bodies and Persons engaged in the Enforcement of Judgments and Decisions of other Bodies* and the new version of the Act of Ukraine *On Enforcement Proceedings*. By the Acts, in particular, since January 2017 it is provided an implementation of private bailiffs who will act on behalf of the state and under the same rules as public bailiffs. Their reward is being formed by 10% of the debt. However, during this period, the Ministry of Justice had failed training and qualification assessment of private bailiffs that did not allowed an introducing the institute in terms specified by the Act.

1.7. The system of judgments enforcement remains ineffective. The existing apparatus of state bailiffs is overloaded. In 2016, there were more than 1.100 judgements per public bailiff per year. The salary of the bailiffs remained at the level of EUR 50-60 per month. By the end of the year, of all the judgments that had been submitted for enforcement, only 18% were actually executed and as a rule, the rest of the proceedings are being completed on the other grounds (referral to the new place of execution, lack of debtor's property, etc.)¹². Moreover, the statistics of collected amounts is even worse. Of the nearly UAH 700 billion presented for execution in 2016, about UAH 13 billion were actually recovered, that is, no more than 2% of the amounts that had to be recovered under judgments and other executive documents.

1.8. The problem remains an enforcement of judgments in the Autonomous Republic of Crimea, Donetsk and Luhansk regions, where the government does not exercise their powers. As a rule, the government refers to the inability to check the actions of judgements bailiffs¹³.

Recommendations

1. Accelerate the process of reforms in the enforcement of judgments;
2. Provide qualification selection of private bailiffs;
3. Solve the issue of increasing the financial motivation of state bailiffs by raising wages and rewards for the timely and effective enforcement of judgments;
4. Strengthen the control over the judgments enforcement in the territory of Donetsk and Luhansk regions.

¹¹ http://www.echr.coe.int/Documents/Stats_pending_2017_BIL.pdf

¹² In accordance with official statistics.

¹³ *In connection with the holding of ATO and resumption of hostilities, at the moment it is not possible to check out the facts stipulated in the applications of the applicants about the actions of officials of state executive service, to provide a comprehensive information and take appropriate measures in response.* // Annual Report of the Verkhovna Rada of Ukraine Commissioner for Human Rights on Situation Concerning the Compliance and Protection of Human Rights and Citizen in Ukraine 2016. - K., p.500.

2. Observance of Environmental Rights



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97.132. [Ensure implementation of environment protection legislation](#)¹⁴.

2.1. The untimely publication by the Ministry of Natural Resources of Ukraine the main source of environmental information - National Reports on the state of the environment¹⁵, has become traditional. Moreover, in the violation of the law, the National Reports are not being submitted to the Verkhovna Rada of Ukraine for many years.

2.2. However, some executive authorities continue illegally restrict the access to environmental information by adopting their own bylaws¹⁶. The information of the State Water Cadastre should also be public¹⁷. However, such system does not currently established. Printed report Annual Data on the Surface Water Regime and Resources is not being replicated to the public. It can only be obtained on a contractual basis, for additional payment¹⁸.

2.3. The requirements of the Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement in respect of greenhouse gas is not also being performed by Ukraine¹⁹. However, greenhouse gas collection system is not being carried out properly. Low concentrations of methane according to the accounting for emissions is not being recorded, although in essential concentration they can significantly affect air quality and climate change. Government approval of the Concept of state policy in the field of climate change for the period till 2030 adds an optimism²⁰.

2.4. The challenge may be the Government's plans to develop waterpower engineering; in particular, the Dniester river basin may threaten the expanding capacities of the Dniester hydro

¹⁴ Recommendation is provided by the Islamic Republic of Iran on the basis of A/HRC/22/7/Add.1

¹⁵ At the beginning of 2017 the most urgent report on the website of the Ministry was for 2014.//

<http://www.menr.gov.ua/index.php/dopovidi>

¹⁶ Thus, the State Agency of Forest Resources of Ukraine (DALRU) after amending the list of information constituting an official information in DALRU, continues illegally conceal large amounts of information, classified as limited access data, on the condition of the state forest fund and forest inventory activity //

http://dklg.kmu.gov.ua/forest/control/uk/publish/article:jsessionid=B1DA47F07BBD070CEFD5B2D6D901A376?art_id=82020

¹⁷ This cadastre is created for state budget funds to provide government agencies and citizens with the necessary data on water resources by means of an automated information system.// <http://zakon0.rada.gov.ua/laws/show/1102-2011-%D0%BF>

¹⁸ In accordance with the List of Paid Services for Fire Prevention, approved by the government Decree.//

<http://greenworld.in.ua/index.php?id=1485006408>

¹⁹ Such register wasn't maintained in 2016. // https://ukr.lb.ua/economics/2016/07/19/340592_ukraina_rik_vela_reiestru_vikidiv.html

²⁰ December 2016. // <http://zakon2.rada.gov.ua/laws/show/932-2016-%D1%80>

power plant and the construction of a cascade of hydroelectric power station. At least, it goes about a possible violation of a number of international and bilateral treaties in the environmental field²¹.

2.5. The return by the President of draft bills approved by the Parliament on environmental impact and strategic environmental assessment does not promote a positive image of Ukraine²². These assessment types are separate environmental assessment mechanisms used to prevent any possible negative effects of economic development for the environment and human health.

2.6. The potential damage to ecological security inflicted extended to the end of 2017 a moratorium for state controlling bodies, including State Environmental Inspectorate (SEI), the planned supervisory measures of economic activity²³, which operates over the last few years.

2.7. The Act of Ukraine on the implementation of integrated approaches to water management by basin principle will promote preservation and restoration of water resources²⁴.

Recommendations:

1. Adopt a strategic environmental and environmental impact assessment at the legislative level.
2. Observe the plan for implementing the national legislation with EU Directives affecting the observance of environmental rights, in particular: 98/83/EC *Drinking Water*, 91/676/EC *Protection of Waters against Pollution caused by Nitrates from Agricultural Sources*, 2008/50/EC *On Ambient Air Quality and cleaner Air for Europe* and so on.
3. Ratify the Treaty between the Republic of Moldova and Ukraine on cooperation in the field of protection and sustainable development of the Dniester River Basin.
4. Establish functioning of a mechanism for monitoring of compliance with environmental requirements by the business entities.
5. Make a revision of hydropower programs.
6. Keep recreational areas and objects of natural reserve fund within cities and to acknowledge that the existence of such zones is the guarantee of the rights of poor layers of population to natural resources use and recreation.

²¹On June 13, 2016 the Government adopted the Development Program of Waterpower Engineering for the period up to 2026 (<http://zakon2.rada.gov.ua/laws/show/552-2016-%D1%80>). Prior to making this decision the Ministry of Environment provided the program developer – MFE of Ukraine (Ministry of Fuel and Energy) – their own critical observations and proposals for its project (<http://menr.gov.ua/press-center/news/123-news1/5110-minpryrody-vyslovylo-svoiu-pozytstiiu-shchodo-prohramy-rozvytku-hidroenerhetyky-na-period-do-2026-roku>). The Ministry of Environment stressed the serious negative consequences of the implementation of the Program, including transboundary basin of the Dniester. The capacity building projects of the Dniester Pumped-storage hydroelectricity (PSH) and construction of the Dniester HPP Cascade violate several acts of Ukraine and its international obligations, including the Aarhus Convention, the Espoo Convention and the Treaty between the Republic of Moldova and Ukraine on cooperation in the field of protection and sustainable development of the Dniester River Basin (<http://zakon2.rada.gov.ua/laws/show/942-2012-%D1%80>). The Government ignored a proposition by the Ministry of Environment as for holding a strategic environmental assessment of the Government Program on holding a strategic environmental assessment (SEA) of the Program in accordance with the Article 4 of the Minutes on SEA for Espoo Convention.//The response of the Ministry of Environment to the application by Green World EHO No. 5/3-5/7-7409-16 dated 05.08.2016-<http://greenworld.in.ua/index.php?id=1471622636>

²²On October 4, 2016, the Verkhovna Rada adopted the Draft Bill *On Environmental Impact Assessment* (http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58257) and *On Strategic Environmental Assessment* (http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56730). On October 31, both Draft Bills were defeated by the President and returned to the Verkhovna Rada.

²³ The Act of Ukraine *On Specific Features of the Exercise of State Supervision (Control) in the Field of Business* // <http://zakon2.rada.gov.ua/laws/show/1728-19>

²⁴ *On Amendments to some legislative Acts of Ukraine on the Implementation of integrated Approaches to Water Management by Basin Principle* // <http://zakon3.rada.gov.ua/laws/show/1641-19>

3. The Right to Participate in Public Affairs



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97.124. Implement recommendations made by independent electoral observation missions in relation to election rights.

3.1. Obstacle to exercise the right of the citizens to participate in public affairs is, in particular, the lack of transparency of election procedures (financing and spending of electoral funds, change of between-election constituency, the formation of election commissions, etc.) that do not provide free will of voters and transparency of formation of government bodies and local government agencies through elections. Need an improvement the mechanisms for the implementation of direct democracy, as well as the mechanisms for interaction between civil society and state authorities, local authorities in the decision-making process, including on issues of local importance.

3.2. By the legislation on local elections in 2015 it was introduced the simultaneous application of three electoral systems, increasing the threshold for political parties to 5%, limiting the right to participate in the election of independent candidates, a significant limitation the observers in their rights, the difficulty of voters' access to information about candidates, the prohibition to include voters in a list of voters on the voting day even by a court judgement. The problem of participation of internally displaced persons in the voting was not solved. Among the positive aspects was the introduction of a gender quota - 30% representation of persons of the other sex in the lists of parties, but the Act did not provide for any sanctions for non-compliance with this provision.

3.3. On October 25, 2015, it was held a regular local elections of deputies of local councils and rural, settlement, city heads. On the territory temporarily occupied by the Russian aggression (Crimea, Sevastopol, certain districts of the Donetsk and Luhansk regions), local elections did not take place officially. In addition, the elections did not take place in separate settlements in the Donetsk and Luhansk regions, where voting could be dangerous for the lives of citizens because of their proximity to military actions.

3.4. Significant obstacles to the implementation of the electoral law arose in the parliamentary elections of 2014. In some areas of Luhansk and Donetsk regions, electoral campaign was coming against the background of military actions, in an atmosphere of violence and intimidation.

3.5. The introduction of the electronic petition as a form of involving citizens in the decision-making process by the authorities may be welcomed²⁵.

3.6. However, the formation of regulatory and legal acts distinguishes instability and political motivation for changes. Electoral legislation has not been codified yet. Changes are made only to the acts on separate types of elections. These changes often were made in the operative mode and were a response to the problems that arose during the organization of the electoral process. The Act *On All-Ukrainian Referendum* remains imperfect

Recommendations:

1. Avoid legislative initiatives that carry potential features of discrimination. Accept, where necessary, positive actions with a view to the participation of all categories suffering from discrimination in the political life of society.

²⁵ According to the applicable legislation of Ukraine, a special form of collective appeal of citizens to the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the local government is an electronic petition that is submitted and considered in accordance with the procedure provided for in Article 23-1 of the Act of Ukraine *On Public Appeals*, which is a mechanism of real application of the fifth article of the Constitution of Ukraine.

4. Gender Equality and Problem of Poverty



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97.47; 97.48. Use a gender sensitive approach in poverty alleviation programs.

4.1. The level of real income of the population in Ukraine is decreasing. Since 01.05.2017, the state has established a living wage of UAH 1.399 per month (\$ 56). Approximately 25% of the population is below the poverty line. In the structure of total household spending, consumer spending are up to 92.9% with a total reduction of food consumption. Even in conditions where both parents work and receive wages 20-30% higher than the minimum, the family anyway feels poor. The emergence of second and subsequent child puts the family in a more difficult situation. In the worst situation are large families, where the risk of monetary poverty for them in 2.4-2.6 times higher than the average. The risk of poverty increases with decreasing the sizes of settlements - rural poverty level (29.7%) is almost twice exceeds such rate in large cities (17.1%). Rural women constitute the particular risk group.

4.2. During the last 4 years, Ukraine adopted a number of strategic regulations aimed at overcoming poverty, reducing the difference in labor remuneration for men and women²⁶. However, gender factor in these documents was almost not taken into account, and the proposed measures are not effective.

4.3. Gender gap index (World Economic Forum) in Ukraine registers an increase of a gender pay gap in Ukraine. In 2014, Ukraine held 56-th place in 2015 – 67-th, in 2016 – 69-th place²⁷. One of the components of this index is economic equality and opportunities. Accordingly, in 2014 women got wages by 23.67%, in 2015 by 25.1%, in 2016 by 25.71% less than men did. Men are more often involved into work with heavy, harmful, especially heavy and especially harmful work environment, and to work at night, which implies an increased payment. Payments from the social insurance fund for temporary loss of working capacity depend on the insurance period. In particular, with an insurance period of at least three years, 50% of the average wage is paid, and the length of service from three to five years is 60%. From 5 to 8 -

²⁶ The Decree of the Cabinet of Ministers of Ukraine No. 34-r of January 21, 2015 *On Approval of the Plans developed by the Ministry of Social Policy for the Implementation of EU Legislation* http://zakon3.rada.gov.ua/laws/show/34-2015-%D1%80;www.kmu.gov.ua/document/.../Action%20plan_78_13.01.15.pdf; The state program for ensuring equal rights and opportunities for women and men for the period until 2016, approved by Resolution of the Cabinet of Ministers of Ukraine No. 717 of September 26, 2013 // <http://zakon5.rada.gov.ua/laws/show/717-2013-%D0%BF>; The Order of the Cabinet of Ministers of Ukraine dated March 16, 2016 No. 161-r *On the Approval of the Strategy for Overcoming Poverty* // <http://zakon2.rada.gov.ua/laws/show/161-2016-%D1%80>; The Order of the Cabinet of Ministers of Ukraine of August 8, 2016 No. 573-r *On Approval of the Action Plan for 2016 - 2017 to implement the Strategy for overcoming poverty* // <http://zakon2.rada.gov.ua/laws/show/573-2016-%D1%80>

²⁷ World Economic Forum, The Global Gender Gap Report 2014, p. 358. Opposite to the UNDP's scoring system, a score of 0 represents absolute inequality between men and women; a score of 1, absolute equality

70%, over 8 years - payments are held in one hundred percent. Therefore, young women who have children of tender years suffer from this practice.

4.4. In Ukraine remains the prohibition for women to engage in more than 450 activities, that grossly violates their right to work, and equality with men in the labor field²⁸. This is accompanied by a gender imbalance in the public service system, where no more than 32% of women occupy leading positions at the oblast level.

4.5. The above problems are exacerbated by the lack of effective dialogue with civil society organizations, aimed at improving communication practices and investigate discrimination cases. In addition, women are not in the focus of the judicial power of Ukraine, there is almost absent judicial practice in cases of discrimination in wages based on sex²⁹.


Recommendations:

1. To provide for financing of the guarantees of observance of socio-economic rights enshrined in the legislation in full, stop the practice of ‘manual management’ when establishing the amount of social payments to households.
2. Avoid discrete increases of the minimal pension; introduce indexation rule, in which the increase in pensions will be tied to the consumer price index, calculated for the population groups with different incomes.
3. Start training courses on gender issues for students, civil servants, judges and candidates for judges.
4. Assure the implementation of judgments of national courts relating to the payment of social aid, where the state is the defendant.

²⁸ https://humanrights.org.ua/material/v_ukrajini_zhinkam_dosi_zaboroneni_ponad_450_profesij_zvit

²⁹ http://zib.com.ua/ua/95247-u_verhovnomu_sudi_ukraini_obgovorili_gendernu_problematiku_u.html

5. Protection of rights of asylum seekers, refugees and persons in need of complementary protection, within the frameworks of implementation of the “non-refoulement” principle and procedural guaranties against forcible returns.

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97.143. Ensure respect of the principle of non - refoulement and that the asylum seekers are not deported to countries where they might find themselves at risk.

97.144. Respect the principle of non-refoulement.

97.145. Ensure the protection of refugees and asylum seekers and reconsider cases in which asylum seekers are to be forcibly returned.

5.1. The non-refoulement principle is stipulated by the Act *On Refugees*³⁰, which provides protection from forced return and extradition of asylum seekers.

Nevertheless, and in spite of certain legislative measures that were taken in order to improve national legal framework on the situation with the asylum seekers, recognized refugees and persons in need of complementary protection, there is still a list of remaining problems. The main problems concern issues with access to the territory, legislative gaps in the refugee status determination leading to a low recognition rate of asylum seekers in Ukraine, and documentation of asylum seekers. All of the above results in non-compliance with effective implementation of the principle of *non-refoulement*.

5.2. It is unlikely for asylum seekers to apply for asylum easily, in case of being not admitted to the territory of Ukraine by the SBGS³¹, without the provision of legal assistance. Even in cases of accepting the asylum application by the SBGS officers, there is no comprehensive and well-regulated procedure of transferring such application to the nearest RMS³² office. There are no effective procedural instruments for protecting the rights of persons apprehended at the airport transit zones, as they are usually deprived of food, water, and decent hygiene routine. The asylum seekers that were not admitted to the territory of Ukraine, and which asylum applications were not transferred for the consideration of the SMS³³, after being apprehended at the transit zones of the airports and/or other SBGS checkpoints, are “pushed back” from the country in violation of the *non-refoulement* principle.

5.3. Asylum seekers whose applications are accepted and registered are issued with MSID³⁴, which is valid for the whole period of the state migration procedure, and entitles its holder to certain social and economic rights, like employment and education. However, in practice, it is

³⁰ The Act of Ukraine *On Refugees and Persons in Need of complementary or temporary Protection* // <https://goo.gl/giByfP>

³¹ State Border Guards Service of Ukraine;

³² Regional Departments of the State Migration Service of Ukraine;

³³ State Migration Service of Ukraine;

³⁴ Migration Service ID (ID for asylum seekers);

problematic for them to be legally employed, easily enter universities and/or schools, and it is not foreseen for them to register marriage with the MSID. The asylum seekers' claims are often rejected as manifestly unfounded or abusive claims before their consideration on the merits due to, among other, insufficient expertise of the RMS staff and, as a result of low state budget, failure to provide interpreters during the registration and interviews. Asylum seekers rejected by the RMS to be registered and/or admitted to the asylum procedure, as well as asylum seekers whose claims were rejected by the SMS on the merits have only 5 days for appealing the decision. In case of failure to appeal a negative decision, they automatically become a subject to expulsion from Ukraine in violation of the *non-refoulement* principle. The MSIDs of those asylum seekers, who exhausted all domestic remedies in appealing a negative RMS/SMS decision, become invalid putting such asylum seekers under the risk of *refoulement* due to their illegal stay in the territory of Ukraine.

5.4. Those asylum seekers who have been detained either in MACs³⁵ for deportation purposes, or, in extradition cases, in PTDCs³⁶ have the right to apply for asylum, which is provided by the Act *On Foreigners*³⁷. Yet, in practice, the legal procedure for transferring or registering an application by asylum seekers who have been detained is poorly regulated and potential asylum seekers are often deprived of their guaranteed right for asylum.

5.5. It is also stipulated in the Act *On Foreigners*, that asylum seekers released from the MAC were entitled to the “tolerate status” document, which is a Temporary Residence Permit (TRP) in Ukraine issued for 1 year. In practice, those documents are valid only with the residence registration of the asylum seekers, and there is no positive practice enabling asylum seekers to extend the document easily for another 1-year term. TRP holders, who are actually former asylum seekers, without registration in their document, and those, whose document is expired after 1 year, automatically return to the situation, where they are under risk of *refoulement*, as there are no further steps envisaged in legislation for such persons.

Recommendations:

1. It is necessary to set out well-regulated legislative procedure on:
 - transferring applications of asylum seekers detained at the SBGS checkpoints, in MACs and PTDCs;
 - adopting a set of amendments to current legislation in order to enable MSID holders to have unopposed access to social and economic rights (employment, education, marriage registration, financial services, receiving residence permit on the grounds of marriage with the citizen of Ukraine/having a child born in the territory of Ukraine);
 - providing an alternative instrument to apprehension while the case on *refoulement* is considered/appealed;
 - effective integration of asylum seekers into Ukrainian society.

³⁵ Migration Accommodation Centre (there are two of them in Ukraine: in Chernihiv oblast and in Volyn oblast);

³⁶ Pre-Trial Detention Centre;

³⁷ The Act *On Legal Status of Foreigners and Stateless Persons* // <https://goo.gl/YRI0sz> (UA)

6. Rights of disabled People



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97.16, 97.43, 97.134. Adopt a national action plans and revise national legislation for implementation of the UN Convention on the Rights of Persons with Disabilities and observance of rights of this group of citizens.

6.1. Two program documents were approved to implement the standards of the Convention on the Rights of Persons with Disabilities³⁸. In addition, measures to implement the CRPD are included into the action plans aimed at ensuring human rights³⁹.

6.2. NGO's note some progress of legal approximation with the standards of the UN Convention on the Rights of Persons with Disabilities, but are concerned about the situation with the implementation of the adopted legislative and normative acts/programs and financial support for their implementation⁴⁰. Declarative actions and corruption lead to violation of the rights of people with disabilities in various fields.

³⁸ In 2012 was adopted the State Program *National Action Plan on the Implementation of the Convention on Rights of Disabled Persons for the Period till 2020*. // <http://zakon0.rada.gov.ua/laws/show/706-2012-%D0%BF>. In 2016 it was accepted the Resolution by the Cabinet of Ministers of Ukraine *On Approval of the Action Plan on the Implementation the Recommendations contained in the concluding Observations given by the UN Committee on the Rights of People with Disabilities to the First Report of Ukraine on the Implementation of the UN Convention on the Rights of Persons with Disabilities for the Period till 2020*. // <http://zakon2.rada.gov.ua/laws/show/1073-2016-%D1%80>

³⁹ This refers to the National Human Rights Strategy approved by the Decree of the President of Ukraine of August 25, 2015, No. 501/2015. // <http://zakon5.rada.gov.ua/laws/show/501/2015>. *Action Plan for the Implementation of the National Human Rights Strategy for the Period till 2020*, approved by the Decree of the Cabinet of Ministers of Ukraine of November 23, 2015 No. 1393-p. // <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>. On the Approval of the Action Plan for 2016-2017 on the Implementation of the Poverty Reduction Strategy, Order of the Cabinet of Ministers of Ukraine of August 8, 2016 No. 573-r. // <http://zakon3.rada.gov.ua/laws/show/573-2016-%D1%80>. And on annual action plans to implement the Convention on the Rights of the Child. // <http://zakon2.rada.gov.ua/laws/show/590-2016-%D1%80>

⁴⁰ The level of budget programs funding aimed at people with disabilities is extremely unsatisfactory. Programs to ensure disabled people with aids are funded for 70% of the demand (sticks, crutches, wheel chairs, prostheses and orthoses for limbs, etc.) and for certain categories of persons with disabilities providing with aids is even worse. At the same time, programs to ensure people with disabilities medicinal products

6.3. Concerns are caused by the areas: combating discrimination on the basis of disability; healthcare; education; rehabilitation and care, including the provision of services at the place of residence; employment; equality before the law and access to justice; freedom of speech.

6.4. The main trends that do not suggest the implementation of CRPD standards are:

- misunderstanding and unwillingness to implement the model of disability, based on human rights such medical model dominates in health care field. International Classification of Functioning, Disability and Health is not being applied in full, an architectural inaccessibility of medical facilities remains the same; there is no information adapted for people with disabilities and educational activities for women and men with disabilities regarding their reproductive rights, for parents of children with functional impairment as to provide services at the place of their residence⁴¹;
- there was not provided the principle of reasonable accommodation for the realization of human rights by persons with disabilities. There are marked the cases of abused enforcement of judgments, where was stated discrimination based on disability⁴²;
- rehabilitation system does not meet international standards⁴³;
- care of persons with psychosocial and intellectual disabilities in boarding schools remains dominant⁴⁴. Deinstitutionalisation is not introduced;
- there is no system of early intervention and support that is needed for children with functional disabilities and families;
- there were not developed any state standards for evacuation and support of persons with disabilities during military operations, humanitarian and disaster situations⁴⁵;
- there were not created any conditions for the direct and indirect participation of people with disabilities at all stages of the legal process; administrative buildings are architecturally inaccessible; system of training of persons who work in the administration of justice needs to be improved;
- Inadequate provision of a decent standard of living⁴⁶.

and medical devices (prosthetic eye implants, colostomy and urine-collecting bags) depending on the drug names, products and regions are financed by 20% of the demand.

⁴¹ Access to services of families and children. Report on the results of focus groups in the pilot regions on the project "Development of early intervention in Ukraine.", NAIU, K. 2016

⁴² Ukrzaliznytsia was reminded of the website available for people with disabilities. // https://humanrights.org.ua/material/ukrzaliznyci_nagadali_pro_nedostupnij_sajt_dlja_ljudej_z_invalidnistju

⁴³ Evaluation of the rehabilitation system in Ukraine, December 2015.// http://www.physrehab.org.ua/tl_files/Docs/Assessment%20of%20the%20Rehabilitation%20System%20in%20Ukraine.%20Summary%20rs%20UKR.pdf

⁴⁴ According to All- Ukrainian NGO Coalition for Rights Protection of Disabled Persons in the Results of Intellectual Disabilities, for the last 3 years the number of people from this group dependent on outside help, who are forced to get boarding care has doubled: 30 thousand at the end of 2013 and 60 thousand in February 2017. There is no access to supported living.

⁴⁵ Not enough attention is paid to safety issues for people with disabilities at planning of evacuation in emergency cases that especially became a problem because of the military actions in the Eastern Ukraine. For example, hardware of warning systems - alarms "Attention all!" are inaccessible to the deaf. Actions of Civil Protection are unable to provide evacuation of people with disabilities and provide an assistance.

⁴⁶ Amount of disablement payout, including for children, is preferably less than USD 50 in a month. It is impossible to live for these funds through continuous expensiveness. According to NGOs, mothers of disabled children are recently going on strike because of scarcity of payments. There are restrictions on the disablement payout for childcare because of parents' employment. Certain categories of persons with disabilities (primarily Group III), are also partially or completely denied disablement payout. The size of monetary compensation instead of sanatorium vouchers, independent sanatorium treatment (paid every two to three years depending on the category), the annual amount of monetary compensation for transport services, and the annual amount of monetary compensation for petrol, repairs and maintenance of vehicles are USD 7-20 per year.

97.133. Ensuring the right to education for children with disabilities.

6.5. The state has made some positive steps to enforce the right to education of persons with disabilities⁴⁷.

6.6. However, NGO's of disabled people note the following: the majority of educational institutions remain architecturally inaccessible; training of teachers and administrations of schools and kindergartens for inclusive education are not systemic; the lack of material support of educational institutions; there are no funding mechanisms for inclusion of reasonable accommodation for students with disabilities; interdepartmental coordination is either formal or absent; mechanisms of penalties compensation for human rights infringement are not applied. In addition, there are insufficient practices to ensure access to education for persons with intellectual disabilities and persons with complex disabilities⁴⁸.

6.7. The existing system of professional and higher education is not ready to accept young people with disabilities, even with legislative guarantees, primarily because of the inadequacy of the environment and the educational process for persons with disabilities, and insufficient training of all pedagogical workers.

97.133. Establishing a barrier-free living environment.

6.8. Despite the presence in Ukraine of legislative and regulatory requirements for the creation of accessible environment, NGO's of disabled people note the lack of effective means of influence and monitoring⁴⁹ of their compliance. This applies to both new public facilities, ranging from design and construction, and previously constructed facilities in which various services are provided to the public. At the same time, the voice of people with disabilities is almost levelled off⁵⁰.

97.135. Protection of persons with mental disabilities in psychiatric hospitals.

6.9. It looks like positive one the potential possibility of imposing judicial control over hospitalization of persons recognized as incompetent⁵¹, normalizing the use of means of fixation and/or isolation of patients in a state of exacerbation, entrusting to boarding schools the task of rehabilitation of wards⁵².

⁴⁷ Changes in the basic laws in the field of education were made, it was developed and adopted the Concept of State Policy on Reforming of Secondary Education *New Ukrainian School* till 2029, the existing primary school programs were improved, amended the procedure for external evaluation, which will give an opportunity to disabled children to pass it with others.

⁴⁸ Progress towards implementation in Ukraine of Articles 7, 8, 24 of the UN Convention on the Rights of Persons with Disabilities. The report survey in five regions. Natalia Sofiy, Larisa Baida, April 2016 // http://naiu.org.ua/wp-content/uploads/2016/08/Ukraine-research-report_ukr.pdf

⁴⁹ According to the Resolution of the CMU of August 13, 2014 No. 408 *On the Limitation of Interventions* a moratorium was imposed on inspections of state architectural and construction control of scheduled and unscheduled inspections of new construction sites. This led to the commissioning with impunity of newly constructed barrier buildings and premises, roads without transitions for mobility impaired people (underground or groundless are without ramps and elevators).

⁵⁰ Entering into force in 2011 of amendments to the Act of Ukraine *On Regulation of Urban Development* virtually eliminated the possibility of influence of Availability Committees to decisions in the field of construction.

⁵¹ On June 1, 2016, the Constitutional Court of Ukraine declared unconstitutional the proposal of the first part of Article 13 of the Act of Ukraine *On Psychiatric Care*, according to which the incapacitated person should be hospitalized at the request of their guardian.// <http://zakon2.rada.gov.ua/laws/show/v002p710-16>

⁵² Standard provisions on the Psychoneurological Boarding School approved by the Resolution of the Cabinet of Ministers of Ukraine on December 14, 2016, No. 957. // <http://zakon0.rada.gov.ua/laws/show/957-2016-%D0%BF>

6.10. At the same time, there remains the practice of violations of the rights of patients in psychiatric hospitals and inpatient facilities for social protection. Patients in inpatient facilities either do not have access to justice, or it is significantly hampered, including their placement in the institution⁵³.

Recommendations:

1. Implement a system of early intervention for children with developmental disorders and the possibility of such violations and their parents according to place of residence.
2. Ensure the implementation of the International Classification of Functioning, Limitation of Life and Health. Conduct training for all relevant government institutions on this issue.
3. Provide training on disability issues for civil servants, specialists, to understand the rights of persons with disabilities set forth in the UN Convention on the Rights of Persons with Disabilities.
4. Provide a comprehensive and coherent legislative and programmatic framework for inclusive education, and provide for a clear and sufficient period for its implementation, as well as sanctions for violations.
5. Legislatively ensure the introduction of the practice of supported decision-making and the de-institutionalization of care services for persons with disabilities.
6. Ensure control and effectiveness of sanctions for non-compliance with regulations and standards in the field of unhindered access to buildings, transport and information.
7. Ensure an improvement of normative and legal acts on the issues of informing (alerting) and evacuating the population in the event of public emergency and martial law, armed conflict, act of terrorism, emergency and/or the threat thereof, taking into account the needs of persons with disabilities, including violations of the organs of vision, hearing, musculoskeletal system, with intellectual and mental disabilities, and other mobility impaired groups of the population, including those who are in the institutions of the penitentiary system, health, education and social protection), having provided without limitation, provisions for maintenance of such persons and their families (if any) and their location into agencies and institutions premises, adapted for service of these individuals and providing them with appropriate affordable housing.

⁵³ Apparent cases of use of psychotropic substances as a physical restraint punishment. There is no respect for the privacy of patients in residential institutions. In addition, treatment is mainly based on methods of using medicines, less on rehabilitation. In NGOs suspect the conducting experiments on patients at the individual institutions. More information at: *The Rights of Persons with Mental Health Problems: Compliance of National Legislation with International Standards. The Context of Human Rights in Neuropsychiatric Residential Institutions.* Analytical Report by Ukrainian Helsinki Human Rights Union / R.E. Imerelli, R.I. Kravchenko, B.S. Moysa / Ukrainian Helsinki Human Rights Union. - Kyiv, KVITS, 2015. - 40 p.; *The Rights of People with Mental Health Problems. Human Rights in Psychiatric Hospitals.* Analytical Report by Ukrainian Helsinki Human Rights Union / R.E. Imerelli, K.P. Kazachinska, B.S. Moysa / Ukrainian Helsinki Human Rights Union. - K.: KIT, 2016 – 34 p.

7. Strategic Challenges for Ukraine Related to Armed Conflict.



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7.1. The result of the conflict on both sides (2014-2017) were 9.400 victims, where about 2 thousand of civilians and more than 21 thousand were wounded, nearly 1.6 million people became IDPs⁵⁴. Losses from the destruction of infrastructure during military operations reach USD 15 billion⁵⁵. The conflict zone is polluted with heavy metals (titanium, vanadium, strontium) due to shell attacks. Flooding of mines, poisoning of drinking water and the emergence of radioactively contaminated waters of the Azov Sea and the Siverskyi Donets can lead to an ecological catastrophe of the Chernobyl level. Combat actions are accompanied by massive deforestation, use of reserved facilities for military purposes, uncontrolled mining of the territory. By the fires of a military nature were affected 17% of forests and 24% of steppes. The actions of combatants caused significant damage to cultural monuments as a result of shelling, robbery and their use as defence buildings.

7.2. The challenges of the hybrid-armed conflict, imposed by Russia, revealed the inability of the traditional system of criminal justice to protect fundamental human rights. Investigation of crimes committed in the conflict zone is conducted independently and uncoordinated by three different bodies - the Main Prosecutor's Office, the Security Service and the Ministry of Internal Affairs of Ukraine in accordance with their jurisdiction. However, such a distribution does not provide an opportunity to draw up a comprehensive picture of Russian aggression, and accordingly, to draw up an evidence base for the consideration of materials in the International Criminal Court. As a result, Ukraine does not have a single database of people who died during the conflict, base of damaged real estate, a separate base of combatants suspected/accused of crimes committed in the conflict zone.

⁵⁴ Report on the Situation of Human Rights in Ukraine 16 February - 15 May 2016 // Office of the United Nations High Commissioner for Human Rights [Electronic resource] - Access mode:

http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf


⁵⁵ Consequences of War: Will Donbas become a dead Economic Area [Electronic resource]. - Access mode: <http://link.ac/4XgB7>

7.3. The problems of investigating war crimes, mechanisms for swap of prisoners, reparation to victims of conflict, social protection of IDPs, movement of citizens through the fire demarcation line require the state to implement the principles of Transitional Justice and reform of the civil security sector. However, the state lingers with the ratification of the Rome Statute, the provisions of Art. 124 of the Constitution of Ukraine prohibit the introduction of *hybrid* and international courts, and the term *Transitional Justice* is known only to single parliamentarians.

Recommendations:

1. Apply necessary efforts to develop the legal mechanisms for the swap of prisoners, fixing of cases of civilian targets shelling, compensation for harm to civilians.
2. Strengthen the ability of Ukrainian specialists who work in the field of documenting and investigating of war crimes and violations of the international humanitarian law through educational specialized programs.
3. Develop a transparent mechanism for determining and distributing compensation for damaged and lost property with obligatory publication of results on the websites of local communities.
4. Support of civil society initiatives to implement the Transitional Justice mechanisms in the work of law enforcement and judicial bodies of Ukraine. To direct the expert potential for the formation of national truth-telling mechanisms aimed at reconciliation and not causing an additional trauma to the victims of the conflict (centralized database, mutual work of government bodies and non-governmental sector, documentary recovery of events).
5. Conduct a national discussion on civil security sector reform, developing of relevant policies and strategies to protect the right to life of the population during military and emergency situations.

8. Right to Peaceful Assembly.

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97.123 Implement a law on freedom of assembly that complies with applicable standards under article 21 of the IC CPR⁵⁶.

8.1. The obstacles to the realization of freedom of peaceful assembly in Ukraine continues to be the subject of consideration by the international organizations. Therefore, as of February 2017, there were 8 cases against Ukraine on communications in the European Court of Human Rights, which are mainly connected with the events of Euromaidan and the Revolution of Dignity 2013-2014⁵⁷.

8.2. The recognition of the unconstitutional Decree of the Presidium of the Supreme Soviet of the USSR⁵⁸ looks positive⁵⁹, which fixed the permissive order of holding of assemblies and obliged to file an application for holding no later than 10 days in advance, and contained a number of other restrictions⁶⁰.

8.3. The provisions of Part 5 of the Article 21 of the Act of Ukraine *On Freedom of Conscience and Religious Organizations* is also recognized as unconstitutional, according to which religious assemblies outside religious buildings and adjoining territories could be conducted only with the permission of the relevant local state administration, the executive body of village, town or city council⁶¹.

8.4. A number of legislative initiatives on the realization of the freedom of peaceful assembly, including as separate special acts, have been submitted to the Parliament for consideration. The Venice Commission considered two Draft Bills included in the agenda of the fifth session⁶² of the Verkhovna Rada. However, the Office of the United Nations High Commissioner for Human Rights has sharply criticized the Draft Bill of the special Act *On Protests* No. 3587⁶³.

⁵⁶ The recommendation provided by the United States under A/HRC/22/7/Add.1

⁵⁷ M. Kamenev, *Freedom of Assembly*. // Human Rights in Ukraine in 2016. Report of Human Rights Organizations: <https://helsinki.org.ua/svoboda-zibran-m-kamenjev/>

⁵⁸ Order dated July 28, 1988 No. 9306-XI *On the Procedure for Organizing and Holding Meetings, Rallies, Marches and Demonstrations in the USSR*

⁵⁹ The judgment of the Constitutional Court of Ukraine No. 6-rp / 2016 dated September 8, 2016

⁶⁰ M. Kamenev, *Freedom of Assembly*. // Human Rights in Ukraine in 2016. Report of Human Rights Organizations: <https://helsinki.org.ua/svoboda-zibran-m-kamenjev/>

⁶¹ Ibidem.

⁶² Annual Report on the Monitoring of the Implementation of the National Strategy for Human Rights (December 1, 2015 - December 1, 2016). - K. - 2016. – 60 p.

⁶³ M. Kamenev, *Freedom of Assembly*. // Human Rights in Ukraine in 2016. Report of Human Rights Organizations: <https://helsinki.org.ua/svoboda-zibran-m-kamenjev/>

8.5. Unfortunately, there are no normative acts on the regulation of police actions during the organization and holding of peaceful assemblies, the adoption of which was planned in 2016. It is impossible to evaluate the effectiveness of certain training programs for police officers⁶⁴.

8.6 However, in recent years, there was not made a decision regarding liability for unlawful obstruction of peaceful assembly. An investigation of violations of freedom of assembly remains ineffective⁶⁵.

Recommendations

1. To amend the current legislation of Ukraine on freedom of assembly, to exclude the Article 1851 of the Code of Ukraine on Administrative Offences, to amend Article 182 of the Code of Administrative Judicial Proceedings of Ukraine (clarify the procedure for restricting freedom of assembly and provide for an effective appeals mechanism), to amend the Acts of Ukraine *On the Procedure for Resolving of Collective Labor Disputes (Conflicts)* (exclude special regulation of holding peaceful assemblies outside of enterprises during strikes), *On Court Fee* (exempt from court fees defendants in cases of restrictions on freedom of assembly), etc.

⁶⁴ Ibidem.

⁶⁵ Ibidem.