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OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1 \*

**Ukraine**

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## **I. METHODOLOGY**

1. The current National Report has been prepared by the Ministry of Foreign Affairs on the basis of documents submitted by the Ministries of Justice, Internal Affairs, Labour and Social Policy, Health, Education and Science, the Ministry for Family, Youth and Sport, the State Committee on Nationalities and Religions, and the General Prosecutor's Office of Ukraine.

2. In preparing the report, inquiries were directed to the "Ukrainian Helsinki Human Rights Union" and to the Ukrainian Parliament Commissioner for Human Rights (Ombudsman). The main problems to which the said organization and office drew attention have been taken into account together with problems raised by "Amnesty International."

## **II. LEGAL AND INSTITUTIONAL MECHANISMS FOR PROTECTING AND PROMOTING HUMAN RIGHTS**

3. Ukraine is a party to the majority of international human rights treaties and, in particular, to the six principal United Nations Conventions on the Protection and Promotion of Human Rights and Fundamental Freedoms and related Optional Protocols. Ukraine cooperates fully with treaty bodies, in particular, by providing periodic reports on a regular basis on implementation of the provisions of such treaties.

4. Ukrainian national legislation as a whole is based upon the main international legal documents. Significant progress has been achieved in harmonizing Ukrainian legislation with international norms and standards, in strengthening the methods of legal protection at the national level, in reforming the justice system, and in increasing the level of legal culture.

### **A. Human rights as declared in the Constitution**

5. The Constitution of Ukraine proclaims the strengthening and protection of human rights and freedoms to be the main responsibility of the state and sets forth the principle according to which those rights and freedom and their guarantees determine the essence and direction of state activities.

6. Human rights and freedoms are guaranteed by more than forty articles of Ukraine's Constitution, each of which sets out fundamental rights. Citizens' rights and freedoms are affirmed by Ukraine's fundamental law, the Constitution, and are implemented through constitutional laws and other legal acts adopted in accordance with laws that define the order and details of the realization of those rights and freedoms.

7. Executive bodies and local self-government, and their officials and staff, while fulfilling the control function of observing human rights and citizens' freedoms and legislative compliance, give due attention to the real protection of constitutional rights and freedoms of citizens in cases where they have been violated.

### **B. Constitutional protection of human rights and freedoms**

8. Article 55 of the Constitution lays the basis for the mechanisms that protect human rights and freedoms through the court system, the Ukrainian Parliament Commissioner for Human Rights, international courts, and other bodies.

### **C. The Office of Ombudsman**

9. In accordance with article 101 of the Constitution, the Ukrainian Parliament Commissioner for Human Rights, also known as the Ombudsman, exercises parliamentary control over the observance of human and citizens' rights and freedoms as set forth in the Constitution. According to the article 55, everyone has the right to appeal for the protection

of their rights to the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine.

10. The financing of the Ombudsman's activities directly from the State budget acts as an important guarantee of the office's independence.

11. The usefulness of the Ombudsman's experts has been confirmed by their regular activities in Crimea and Zakarpattia and Lugansk regions. The establishment of additional Ombudsman missions in the near future in other regions will further strengthen the office's direct control over the observance of human rights and freedoms. This expansion has received support from the President of Ukraine, who has instructed the heads of regional state administrations to provide the Ombudsman's regional missions with premises, communications and other office equipment.

12. The draft law submitted to Parliament on changes to the codes of criminal, civil and administrative procedures provides for the Ombudsman's participation in legal procedures at every stage.

13. In December, 2007 the United Nations Representative in Ukraine and the Ombudsman marked the 60th Anniversary of the Universal Declaration of Human Rights by signing the Memorandum on Implementation of the Joint Action Plan for 2008. According to the Memorandum, Ukraine will receive assistance for its accession to such important international human rights treaties as the Convention on the Rights of Persons with Disabilities (2007) and the Council of Europe Convention on Action against Trafficking in Human Beings (2005).

### **III. HUMAN RIGHTS ACHIEVEMENTS AND CHALLENGES**

#### **A. National minorities and the combating of racism and xenophobia**

14. Ukraine now has the appropriate legal mechanisms for preventing manifestations of racism, racial discrimination, xenophobia, intolerance, and prejudicial treatment on the basis of national or ethnic identity.

15. Maintaining social stability is under the control of the President and the Government of Ukraine. Pursuant to presidential instruction, a separate sub-unit has been established within Ukraine's National Security Service for identifying and preventing activities leading to racial or ethnic animosity. The unit's basic task is to prevent violations from developing into organized forms of criminal activity.

16. Presently under consideration is the establishment within Ukraine's National Security Service of an advisory council on problems of xenophobia, racial discrimination and intolerance. The findings of such a body will serve as the basis for initiating criminal prosecution where the right to equality has been violated on racial, ethnic or religious grounds as stipulated in article 161 of the Criminal Code.

17. An Action Plan against Racism was adopted by the Ministry of Internal Affairs on May 31, 2007 and provides for a wide range of measures for preventing the commission of offences for racial, ethnic or religious reasons.

18. A special division was also established within the Department of Criminal Investigations and continuous monitoring of radical groups and associations is being conducted. The training of police in dealing with hate crimes is presently under negotiation with the OSCE office in Warsaw and a working group of representatives of legislative and executive bodies has been established to draft a national concept for countering racism and xenophobia in Ukrainian society.

19. The Youth Centre for Tolerance was established in Kyiv at the initiative of Jewish community organizations and conducts research annually on manifestations of racial prejudice and discrimination in Ukraine.
20. Article 24 of the Constitution states that all Ukrainians are equal before the law with equal constitutional rights and freedoms. Privileges or restrictions based upon race, colour of skin, political, religious or other convictions, gender, ethnic or social origin, financial position, place of residence, language or other grounds are prohibited.
21. In addition to the Constitution, the Declaration of the Rights of Nationalities of Ukraine of Nov. 1, 1991 and the Law of Ukraine “On National Minorities” form the legal basis for national ethnic policies. Article 1 of the Declaration of Rights of Nationalities prohibits acts of discrimination and provides for the prosecution thereof.
22. Article 1 of the Law of Ukraine “On National Minorities” guarantees all citizens equal political, social, economic and cultural rights and freedoms irrespective of national origin, and promotes the development of national self-consciousness and self-realization. Article 9 gives members of Ukraine’s national minorities the right to be elected or appointed on an equal basis to any position in legislative, executive, or judicial bodies, self-government, the armed forces, enterprises, institutions and other organizations.
23. Article 3 paragraph 2 of the Law of Ukraine “On Self-government” prohibits all restrictions on the right to participate in self-government on the basis of race, colour of skin, political, religious or other convictions, gender, and ethnic and social origin.
24. Article 3 of the Law of Ukraine “On Printed Media”, article 2 of the Law of Ukraine “On Television and Radio Broadcasting”, and article 46 of the Law of Ukraine “On Information” forbid the use of printed media for enflaming ethnic and religious animosity.
25. With a view to preventing the dissemination of xenophobic, racist or anti-Semitic information through computer systems, Ukraine has signed the Additional Protocol to the Council of Europe’s Convention on Cybercrime.
26. National legislation and the regulating of ethnic issues in education are formulated pursuant to international norms and the recommendations contained in the Universal Declaration of Human Rights, the Frame Convention on Protection of National Minorities, the European Charter of Regional Languages or Minority Languages, The Hague recommendations on the rights of national minorities to education, and other documents.

## **1. Social and economic issues**

### **(a) Status of children**

27. The protection of children and their rights have been defined as strategic national priorities in Ukraine.
28. On May 10, 2002 the Government of Ukraine signed “A World Favorable to Children”, the final document of the United Nations General Assembly’s special session on the interests of children, thereby assuming the obligation to implement the requirements of the United Nations Convention on the Rights of the Child. Ukraine declared 2006 as the Year of Protecting the Rights of Children.
29. Ukraine’s national policy on children is aimed at perfecting the legal basis of their protection, which includes coordinating national legislation with the corresponding norms of international law; reforming the national system for dealing with orphans and children without parental care; strengthening the social protection of underprivileged families with children; developing a network of institutions and establishments that work in the interests of children;

strengthening intersectoral cooperation between government agencies and their relations with community organizations; and strengthening national control and protection of children from cruelty, violence and exploitation.

30. Annual reports to the President, Parliament and Cabinet of Ministers of Ukraine, together with sociological studies serve as important means for reviewing the national policy on promoting and protecting the rights and interests of children.

31. The requirements of the United Nations Convention on the Rights of the Child are reflected in the Law of Ukraine "On the Protection of the Child", which sets protecting the rights of children to life, health, education, social security and all-around development as a national priority.

32. The fight against trafficking in children, child prostitution and pornography is intensifying. There are now five centres in Ukraine for rehabilitating victims of human trafficking and the network of establishments for the social protection of children, created with the support of community and religious organizations, is being expanded.

33. Since 2002 public initiatives on protecting children have been implemented with the direct participation of children themselves. This work was initiated by community organizations supported by UNICEF and the Ministry for Family, Youth and Sport. Since 2005 the national forum "The State that Listens to Children" has been held on an annual basis with the participation of government, heads of state administrations, and children. During the forum major results are discussed along with further measures for implementing national child policy.

34. The office of Children's Ombudsmen, which was established on the basis of open competition by the Parliamentary Representative on Human Rights in December, 2005 is one of the mechanisms for involving children in the protection of their own rights. The Children's Ombudsmen consider petitions to the Representative regarding violations of the rights of children, assist in reviewing program issues with respect to law enforcement and the rights of children, and participate in related meetings and conferences both in Ukraine and abroad.

35. Throughout 2007 the Ministry of Education and Science, educational administrations, and educational institutions devoted increased attention to the prevention of cruelty, violence, neglect and homelessness among children.

36. A national "Hot Line" for children (8-800-500-21-80) was established in 2002 and since 2003 has been implementing the 2003–2005 National Program for Preventing Child Neglect under the Ministry for Family, Youth and Sports.

37. The public prosecutor's office directs special attention to protecting children from violence, particularly in underprivileged families. In 2007 almost 3,500 official warnings and 648 protection orders were issued. Approximately 2, 600 administrative protocols for family violence or non-execution of protection orders were issued, and 9, 600 underprivileged families were identified.

38. The public prosecutor also focused on implementing measures directed at protecting children's constitutional rights. Due to the prosecutor's intervention, the rights of over 100,000 juveniles are renewed every year. In 2007 over 11,000 prosecutor response documents were issued for eliminating infractions for which over 13,000 officials were charged. Nearly 1,600 cases of crimes against juveniles were opened. Due to the prosecutor's intervention, 27 million UAH were paid for the benefit of children in the form of state assistance, pensions, compensation, child support payments, and scholarships.

39. The special attention is concentrated on the prevention of violence, alcoholism and drug abuse amongst youth, and protecting children from products inspiring violence, cruelty and sexual debauchery.

40. The measures taken have had a positive influence in reducing crime within the youth environment. In 2007 juvenile crime was reduced by 4.5 per cent and teenagers committed fewer serious and gravely serious crimes, including intentional murder, armed assault, robbery and theft.

#### Problems

41. The number of orphans and children without parental care is not declining. The problem of abandoned and homeless children is directly related to loss of parents, which in turn is determined to a significant extent by the poverty level of Ukrainian families and a weakening of the family's educational role.

42. As of 1 January 2008, 1,548 teenagers who should have been attending school were not. To reinforce the right of a child to education, prosecutor issued almost 2,000 orders and petitions and challenged over 1,300 illegal acts. As a result of prosecutor interventions, almost 3,000 officials were charged and 4 million UAH in scholarships, assistance and other payments were paid over to pupils and students.

43. In 2007 public prosecutors laid over 200 criminal charges for inflicting injury on children and acts of cruelty on the part of parents, most of whom were convicted in court.

44. Children run away from home, go begging, get involved in criminality activities or become victims of crime as a result of parental alcoholism or use and abuse of drugs. Every year nearly 20,000 teenagers enter Ukrainian orphanages. Such children are particularly vulnerable to human trafficking for the purposes of prostitution and pornography.

#### **(b) Status of Women**

45. In 1980 Ukraine ratified the United Nations Convention on Elimination of All Forms of Discrimination against Women that sets international standards for the equal rights of women and men in society. This remains the most important international document for formulating and realizing policy for equality of rights for women and men.

46. In fulfilment of its responsibilities under the Convention and Purposes of Millennium Development, the Cabinet of Ministers of Ukraine has set the goal of not less than 30 per cent for either sex in the representative sphere and reducing the gender gap by one half.

47. Enactment of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" on January 1, 2006 was an important step in putting the Convention into effect. The law defines the mechanism for ensuring equality of rights and opportunities for women and men in Ukraine, sets out the powers of the central executive branch for ensuring such equality, and legally defines gender-related terminology.

48. Cabinet of Ministers Resolution No. 504 "On Implementing Gender and Legal Review" of April 12, 2006 was important for the implementation of the Law provisions and Ukraine's responsibilities under the Convention. Today gender and legal review of legislation is actually being implemented. Cabinet of Ministers Resolution 1834 of December 27, 2006 approved the State Program for Confirming Gender Equality in Ukrainian Society to 2010.

49. The legal framework for gender equality in Ukraine is also set out in the Family Code, Criminal Code, Labour Code, and the Laws "On Preventing Family Violence" (2001), and "On Compulsory Social Insurance for Temporary Disability and Expenses related to Birth and Death" (2001).

### Problems

50. Daily practice shows that gender parity as proclaimed in Ukraine's Constitution is often not followed. Implicit sexual discrimination exists in many spheres and is most typical in the economic sector, both state and private. It is a common practice for a woman to be refused employment because of family status or age. In particular, single women, women with small children and women over 40 years old also experience discrimination.

51. Other widespread forms of discrimination faced by women at the workplace include refusal of maternity or care leave, payment of state guaranteed funds, restrictions on opportunities for professional growth, and sexual harassment.

52. The government has already started to resolve such problems. Steps are being taken to change the stereotype of the woman's role in society. The Law of Ukraine "On Maintaining Equal Rights and Opportunities of Women and Men" is meant to achieve gender parity in every sphere.

### **(c) Violence in the family**

53. The right to protection from all forms of violence is guaranteed by the articles 28 and 52 of the Constitution which prohibit torture, humiliation and punishment. This right is protected by the Law of Ukraine "On Preventing Family Violence" which came into effect in January, 2002.

54. To these ends an expert working group has been established to coordinate preventative measures against family violence and human trafficking. A questionnaire was developed for the purpose of studying problems in implementing the Law of Ukraine "On Preventing Family Violence", and on the basis of a poll taken of experts in the area, recommendations were elaborated for improving cooperation between the agencies and institutions responsible for preventing violence in the family.

55. With the passing in 2006 of the Parliamentary Assembly of the Council of Europe resolution No. 1512 "Parliaments United to Combat Everyday Violence against Women" and adoption of recommendations of the parliamentary hearings "Current Status and Actual Tasks for Prevention", Ukraine has joined the Council of Europe's campaign against violence towards women.

### Problems

56. The Law of Ukraine "On Preventing Family Violence" provides for the creation of special institutions for victims but in five regions such institutions still do not exist. The Ministry of Internal Affairs has not yet identified the families in question and taken the necessary preventive measures. The underlying reasons for family problems are often not known, nor is there background information on parents or other persons whose actions are detrimental to the welfare of children. There are also cases of refusal to register formal complaints about family violence and to lay criminal charges.

### **(d) Overcoming poverty**

57. One of the priority tasks of socioeconomic development in Ukraine is to reduce the level of poverty and to this end the National Strategy for Overcoming Poverty was developed and a program adopted in 2001 with implementation targeted for 2009. At present the Strategy is in its third implementation stage dealing with the years 2005-2009, which provides for improving economic processes to better meet human needs. In particular, this means all social security programs and a general raising of living standards.

58. Every year the government adopts an implementation plan for the Strategy on Overcoming Poverty which is directed towards increasing employment and wages, developing social insurance for family revenue losses, improvement of social assistance and services, and assistance to children without parental care.

59. Today one may talk of noticeable achievements in the improvement of living standards and lowering of poverty rates, mostly as a result of rising incomes and, in particular, a raising of minimum social guaranties. An analysis of the changes in poverty rates in implementing the Strategy for Overcoming Poverty bears witness to a more stable situation.

**(e) Latest developments in labour**

60. The legal, economic and organizational basis of employment, unemployment insurance, and guaranties of the right to work are all contained in the Labour Code of Ukraine and Laws of Ukraine “On Employment of the Population”, “On Compulsory State Unemployment Insurance” and other legislation. The Law “On Employment of the Population” directs national employment policy to ensuring equal opportunities in realizing ones right to work and provides for additional guaranties for the employment for special categories of citizens who not able to compete equally on the labour market and therefore require social protection.

61. Measures that ensure social protection from unemployment are defined in accordance with legislation on employment and unemployment insurance and provide for employment programs that are developed and approved at the national and regional levels.

In recent years the labour market in Ukraine has been developing under favourable macroeconomic trends that reflect positive changes in GDP growth. Today the Ukrainian labour market is experiencing the positive trends of increasing employment and decreasing of unemployment.

62. Thus, the unemployment rate, as defined by the ILO, has decreased from 6.4 per cent to 6.2 per cent of employable population aged 15 to 70 years. It should be noted that the unemployment level in Ukraine for the first nine months of 2007 was lower that corresponding rate in many economically developed European countries, in particular, in France and Germany (8.5 per cent), Spain (8.2 per cent), Portugal (8.1 per cent), Belgium (7.7 per cent), and Finland (6.9 per cent).

63. At the same time, despite these positive trends the employment level in Ukraine remains relatively low in comparison with most member states of the European Union.

Problems

64. The legalization of employment remains one of the most complex problems in the labour market and in the economy in general. According to statistics, Ukrainian employers’ monthly expenditures per employee in 2006 averaged 267 euros, which is 6 to 8 times less then in developed European countries like Cyprus, Spain, Slovenia, and Portugal and 2 to 3 times less then in the Baltic states and Poland. Today growth in the employment rate in Ukraine is being restrained mostly by unsatisfactory working conditions and low wages.

65. One of the priorities of the Public Prosecutor’s Office is protecting the constitutional right to full and timely payment for ones labour.

66. Indebtedness for wages owing dropped for 17 per cent during the past year, although the amount owing is still significant and totaled 669 million UAH as of January 1, 2008. At the same time, due to the inaction of government and state authorities, cases of deliberate non-payment of salary actually grew but the true increase was hidden thanks to illegal labour practices. Nearly 1,700 criminal charges were laid for related violations, of which 1,500

actually proceeded to trial. As a result of prosecutor intervention, 842 million UAH in overdue wages were paid to employees.

67. Moreover, the situation with respect to work safety remains complicated. Mine accidents, man-made catastrophes, and other threats to the lives and health of employees continue. High fatal accident rates are evident in mining, construction, and machine manufacturing. Prosecutor investigations reveal numerous incidents pointing to breaches of employer supervision over employee working conditions, inadequate financing of safety measures, work orders that violate production safety rules, lack of individual protection and failures to instructing personnel in safety measures. Moreover, employees ignore safety measures and cases of occupational injury are not reported.

68. The Ukrainian compensation fund for occupational accidents and diseases fails to provide for proper implementation of preventive measures for eliminating hazardous and unsafe working conditions. Moreover, the Ministry for the Coal Industry fails to provide the corresponding supervisory state agency with official powers to properly deal with such problems.

69. Given the urgency involved, these matters were examined on February 29, 2008 at a meeting of the board of the General Prosecutor's Office with a view to implementing a number of measures directed at improving legality in this sphere.

**(e) HIV/AIDS. Health Protection. Respecting the Rights of Infected Persons**

70. The strategy for combating HIV/AIDS in Ukraine is one of the priorities of state policy. In 2000 Ukraine together with a number of other countries initiated the holding of a United Nations General Assembly Special Session on issues related to AIDS/HIV and was one of the groups of countries that developed in 2001 the Declaration on Combating AIDS of the United Nations General Assembly's twenty-sixth special session.

71. Ukraine adheres to regulations of the Declaration and regularly reports on its achievements. Moreover, in order to meet the requirements of the Declaration on Eliminating Discrimination towards those with HIV/AIDS, Ukraine's Ministry of Health developed a national concept of strategic government measures for preventing the spread of HIV/AIDS up to 2011. According to the terms of the Concept, Ukraine is required to improve its legislative base for eliminating all forms of discrimination towards those infected with HIV/AIDS.

72. The highest coordinative body in the area of HIV/AIDS prevention and control is the National Council on Tuberculosis and HIV/AIDS.

73. On March 17, 2008 the Presidential Decree No. 220 "On a Coordination Council for HIV/AIDS, Tuberculosis, and Drug Addiction" was adopted.

74. Under the article 49 of the Constitution of Ukraine, every person has the right to protection of health, medical assistance, and medical insurance.

75. The Law of Ukraine "On the Basis of Ukrainian Legislation with respect to Protection of Health" of November 19, 1992, No.2801-XII establishes an inalienable right to protection of ones health and holds the state responsible for the health of present and future generations.

76. The program "Health Basics", on raising awareness about healthy lifestyles, has been integrated into the secondary school curriculum since 2001. Instruction in healthy lifestyles has also been introduced into humanitarian programs of higher education.

77. The Ministry of Education has been working on a regular basis to popularize the idea of a healthy lifestyle, to prevent the spread of HIV/AIDS and discrimination against those infected with HIV/AIDS, and to discourage the use of drugs, alcohol and tobacco. In partnership with

International HIV/AIDS Alliance of Ukraine, and with the support of the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Ministry has implemented an education component of the Program on Overcoming HIV/AIDS in Ukraine. In collaboration with EU Delegation in Ukraine, the Ministry has also implemented a project aimed at strengthening a multisectoral approach to HIV/AIDS prevention among youth, etc.

#### Problems

78. Government-run campaigns to prevent and control the spread of HIV/AIDS are not sufficiently effective. The spread of HIV has reached critical levels. Each year about 2,500 people die of HIV/AIDS in Ukraine. 82,000 people, including 2,000 children, are registered in public health institutions as being HIV-positive. More than 9,000 are HIV-infected. HIV/AIDS is therefore one of the most serious and pressing challenges facing Ukraine today.

79. A review of these issues points to inadequate implementation by public health institutions of the National HIV/AIDS Prevention, Treatment and Support Program for 2004-2008. Thus far the major cities of sixteen oblasts have failed to establish HIV/AIDS treatment units in their respective hospitals in violation of paragraph 5 of the Presidential “On Strengthening Public Administration in HIV/AIDS and Tuberculosis Prevention.” Moreover, a number of district centers have failed to establish cost-free anonymous testing centers known as “Dovira”.

80. Upon reviewing compliance with the Law of Ukraine “On Preventing AIDS and Social Protection of the Public,” prosecutors have initiated more than 700 cases and 130 officials have been charged. A report on legislative compliance was issued to the President and Prime Minister in February, 2008.

81. The worsening HIV/AIDS situation and increase in the number of persons infected are attributable to socioeconomic and medical causes. The leading causes include a decline in the general standard of living, an inadequate HIV/AIDS public awareness campaign, insufficient funding of HIV/AIDS prevention and treatment, and out-dated medical and social infrastructures.

82. A lack of funding is jeopardizing implementation of the National Program for the current year, which has already fallen beneath levels established in the Law on the State Budget of Ukraine for 2008.

83. There is still an acute need for a broad and effective awareness raising as one of the most important measures for preventing HIV/AIDS and promoting tolerance towards the infected, and consensus building among all stakeholders.

84. Additional problems in this area include violations of the rights of people infected with HIV/AIDS. In particular, there have been a number of reports of violations of the rights of HIV-infected inmates in prison medical units of the State Department of Corrections. In an overwhelming majority of oblasts, local administrations do not provide funding in their budgets for the local HIV/AIDS prevention program and treatment of HIV-infected children is inadequate.

#### **IV. IMPLEMENTING DECISIONS OF EUROPEAN COURT OF HUMAN RIGHTS**

85. On February 23, 2006 the Law of Ukraine “On Implementing Decisions, and Application of the Practice of European Court of Human Rights” was enacted.

86. Between 2001 and February, 2008 the European Court of Human Rights delivered 384 judgments with respect to Ukraine, 380 of which involved a breach of at least one provision of the Convention for the Protection of Human Rights and Fundamental Freedoms. Most breaches can be grouped as follows:

- unsatisfied judgements or delayed satisfaction of judgements of national courts;
- long-term pre-trial inquiries in criminal matters and judicial review in various processes;
- ineffective investigation of criminal cases conducted by law enforcement agencies regarding the death, disappearance, or mistreatment of persons;
- improper conditions for the incarceration and medical treatment of convicted persons;
- violations of the presumption of innocence;
- violations of the right to privacy, privacy of communication, and housing;
- application by courts and prosecutors to appeal decisions rendered before 2001 (when a particular procedure was abolished).

## **V. LEGAL PROCEEDINGS**

87. Given that both physical persons and legal entities have the right to defend their rights, freedoms, and interests, and upon exhausting all legal means of doing so at the national level, may then apply to defend those rights before international courts or appropriate international organizations of which Ukraine is a member, further improvement of judicial procedures with respect to the application of international law at the national level is required.

88. The judicial practice of applying the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and related protocols, decisions of the European Court of Human Rights, and decisions of the Constitutional Court of Ukraine are becoming more widespread.

89. With a view to ensuring the proper and standardized application of international principles and rules, as well as the international agreements of which Ukraine is a signatory, the Plenum of the Supreme Court of Ukraine adopted the Resolution “On Application of Generally Accepted Principles and Provisions of International Law and International Agreements of Ukraine.” This resolution directs the attention of judges to the need to subordinate their activities to the protection of human rights and fundamental freedoms pursuant to the Constitution of Ukraine, the Convention for the Protection of Human Rights and Fundamental Freedoms, and other international agreements guaranteeing such rights and freedoms and of which Ukraine is a signatory.

90. Numerous decisions of the Plenum of the Supreme Court of Ukraine were adopted in 2007 with a view to improving legal procedures in conformity with international law by providing the courts with explanations for the proper and standardized application of legislation and respect for human rights in legal proceedings.

91. A study of court practices was conducted on the application of international agreements for the recognition and execution of foreign court decisions in Ukraine. An appropriate decision of the Plenum of the Supreme Court is expected to be adopted on the basis of the results of that study.

## **VI. HUMAN RIGHTS AND LAW ENFORCEMENT**

92. In December, 2005 the Ministry of Internal Affairs established the Community Council, which is responsible for the protection of human rights. The council consists of a number of groups working in different areas involving human rights: detentions and investigation; election campaigns; prevention of domestic violence, including cruelty to children and human trafficking; refugees and immigrants; protection of privacy; racism and xenophobia; narcotic use prevention; legal and social protection of Ministry staff; gender

equality within the Ministry; and education in human rights. In June, 2007, similar councils were established in each region of Ukraine. The councils include representatives of international, Ukrainian national and regional organizations, educational institutions, and mass media.

93. Since July, 2005 the Ministry of Interior Affairs has also had a number of mobile groups, with representatives from the Ministry and various human rights organizations, for monitoring constitutional rights and freedoms. In 2006-2007 the mobile groups visited 235 or 48.2 per cent of all temporary detention units. Their findings led to the necessary improvements, and, as for now, 407, or 84 per cent of all units met the standards.

94. In January, 2008 the Ministry established the Human Rights Monitoring Department, the main task of which is to organize a system for monitoring compliance of law enforcement to international human rights standards.

95. Since 2007 a joint pilot project with the International Renaissance Foundation to provide cost-free legal aid to prison inmates has been in operation in the Kyiv, Kharkiv, and Khmelnytsky regions.

96. The problems faced by the Ministry in the area of human rights include: inadequate trade union involvement in providing social and legal support to Ministry staff; inadequate financing of repairs and reconstruction of special facilities for Ministry programs; poor living conditions of prison inmates; the need for a comprehensive approach to study and professional training of Ministry personnel with resources of international organizations and the participation of interested ministries and other Ukrainian state institutions.

97. In 2007 the state prosecutor accepted over 200,000 petitions. A total of 347,000 thousands petitions were considered, including over 143,000 dealing with the rights and freedoms of citizens and state interests, of which 13,000 were resolved. Most petitions positively resolved were in the area of work-place safety, social security payments to those with special privileges, and protection of minors.

98. Prosecutors instituted 480 criminal investigations against employees of state inspection agencies responsible for ensuring compliance with laws. A total of 295 criminal cases proceeded to trial and almost 100,000 state officials were either disciplined, fined or otherwise administratively punished. In total, 5,400 cases were initiated in defense of constitutional rights and freedoms, of which 4,500 proceeded to trial.

99. The increase in cases where constitutional rights and freedoms are abused by state offices that are actually responsible for implementing official reprimands is precipitated by their large numbers (more than 50), the absence of an appeal mechanism against court decisions regarding administrative offences, etc.

100. In cases on administrative offences, prosecutors appealed more than 22,000 illegal decisions and some 13,000 public officials were called to account.

101. Supervision of legal compliance in the execution of court decisions in criminal cases, and the implementing of other compulsory measures restricting personal freedom is one of the constitutional functions of the prosecutor's office as set forth in article 121, paragraph 4 of the Constitution, and article 4 of the Law of Ukraine "On the Prosecutor's Office." This work is conducted in an open and transparent manner, with the involvement of community human rights organizations, and their findings are reported on by the media.

102. The Prosecutor's Office has reacted promptly to reports of violations of the constitutional rights prison inmates. In 2007 there were 13,500 documented cases of prosecutor intervention (12,000 in 2006), 10,000 servicemen were disciplined (9,000 in 2006), 57

servicemen and institutions received administrative punishment on corruption charges, 259 persons under temporary confinement and 89 convicted persons were released after being held without just cause, and 5,000 complains were heard.(9,000) of

103. The President of Ukraine was advised on one occasion, and the Prime Minister on two occasions regarding adherence to the constitutional rights of prison inmates.

104. Legislative compliance in temporary confinement units of the Department of Penitentiaries and Corrections is supervised by the Prosecutor's Office.

105. Special attention is paid to the legality of detaining foreigners and stateless persons who are illegally residing on the territory of Ukraine. On the intervention of the Prosecutor General's Office, these persons are evacuated from special police institutions and transferred to two temporary placement centers in the Volyn and Chernihiv regions.

## **VII. HUMAN RIGHTS AND POLICE TRAINING**

106. Serious attention is now being directed to studying human rights issues in the education and trainings of police officers.

107. Eight new disciplines related to human rights have been introduced at the BA and MA level in institutions of higher learning within the police system.

108. In 2006-2007 the OSCE together with Kharkiv Institute of Social Studies and the International Renaissance Foundation conducted training for upgrading the effectiveness of community councils and over 110 qualified members of mobile groups were prepared.

109. In 2007, Amnesty International was involved in the training of 700 police officers on dealing with hate crimes. Practical training in applying decisions of the European Court of Human Right was held together with OSCE for lecturers and MA students in educational institutions of Ministry of Internal Affaires.

110. Human rights issues are studied in secondary schools as part of the regular curriculum and are supplemented with optional courses and electives. A course entitled "Basic Law" is now obligatory and human rights are included in the program.

111. Profile education provides additional opportunities in legal and civil education, particularly in social sciences and the humanities, combining history, law, philosophy, and economics. Lectures on human rights are given courses like "Practical law", "We are Citizens", and "Civil Education". The optional course "Human Rights" is recommended for senior professional schools. The optional course "Learning Humanitarian Law" has been taught in Ukraine since 2000 and has among its priorities the protection of human rights.

## **VIII. HUMAN RIGHTS INITIATIVES**

### **A. Improvement of legislation concerning Ukrainian citizenship and legal status of foreigners and stateless persons**

112. The Ministry of Justice of Ukraine has drafted the following laws:

"On Amendments to the Law of Ukraine "On Immigration""

"On Amendments to Certain Legislative Acts concerning Law "On Freedom of Movement and Choice of Place of Residence in Ukraine""

"On Legal Status of Foreigners and Stateless Persons" (new wording)

"On Refugees and Persons Entitled to Assistance and Temporary Protection."

113. The Ministry of Justice is currently drafting the Law of Ukraine "On Determining the Status of Ethnic Ukrainians Deported from Poland in 1944-1946, 1948 and 1951."

## **B. Reform of criminal justice and penitentiary system**

114. The Ministry of Justice has drafted the Law of Ukraine “On Amendments to the Criminal Code and Code of Criminal Procedure” that deals with criminal responsibility. This law provides for humanizing amendments to the Criminal Code, which is one of Ukraine’s important commitments to the Council of Europe. Changes to the Criminal Code will give the courts more latitude for individualized criminal sentencing.

115. The possibility of pronouncing other forms of sentencing, milder than imprisonment, will facilitate more effective sentencing, rehabilitation and crime prevention.

116. The Ministry of Justice has also drafted the Law of Ukraine “On Amendments to the Code of Criminal Procedure and of Code of Criminal Law Administration” that provides for improvements the implementation of criminal legislation, namely:

- excluding convicted persons from compulsory labour standards;
- abolishing the confinement of women to prison cells;
- increasing the minimum living space of convicted person from three to four square metres in compliance with European standards;
- abolishing restrictions on the rights of convicted persons to make telephone calls;
- introducing holidays for all categories of convict person;
- early release of all handicapped persons in categories 1 and 2;
- increasing public oversight of human rights observance in places of detention.

117. A major aim of the Ministry of Justice in 2008 will be the reform of the penitentiary system, the key priorities of which have been identified together with non-government organizations, including: increased involvement of NGO with the criminal justice and corrections system, public oversight of their operation, and facilitating the reintegration of the former convicts back into society.

118. Representatives of NGOs have been invited to participate in drafting the Primary Action Plan on Further Reforming the National Penitentiary Service for 2008; in developing national preventive procedures in compliance with the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; studying the possibilities for establishing mobile groups with Prosecutor General personnel, lawyers and human rights organizations for responding to prisoner rights violations through the illegal actions of prison administrations, etc.

## **C. Introducing mediation**

119. The Ministry of Justice has drafted the Laws of Ukraine “On Mediation” and “On Amendments to Several Legislative Acts on Mediation.”

## **D. Improvement legislation on administrative violations**

120. The Law of Ukraine “On Amendments to the Administrative and Customs Codes of Ukraine” has been drafted to deal with the appealing of court decisions in cases of administrative abuse.

## **E. Simplifying registration of community organizations**

121. To facilitate the registration of public organizations, effective exercise of the constitutional right to freedom of association, and harmonization of related legislation with other Ukrainian laws, the Ministry of Justice has drafted the Law of Ukraine “On Amendments to [Laws on Registration of Legal Entities.”

#### **F. Constitutional right to participate in public administration**

122. The Ministry of Justice has drafted the Law of Ukraine “On Citizen Participation in Forming National Policy and Resolving Issues of Local Importance”.

123. The government has assumed responsibility for drafting the laws on local self-government, on self-government at the district and regional level, and on the public service in local self-government (new edition).

#### **G. Improvement of language policy**

124. The government is about to draft the Law of Ukraine “On Amendments to the Law “On Ratifying the European Charter of Regional Languages and Languages of Minorities”, the Concept of a National Language Policy, and Law “On Languages”” (new edition).

#### **H. Legislation and rights to freedom of conscience and religious freedom**

125. The Ministry of Justice has drafted a new edition of the Law “On Freedom of Conscience and Religious Creed”, in accordance with international standards on the freedom of ideology and religion and pursuant to Conclusion 190 (1995), Resolution 1466 (2005), and Recommendation 1556 (2002) of the Parliamentary Assembly Council of Europe.

#### **I. Implementation of right to assembly**

126. In view of the need to legislatively exercise of the right to gather, hold meetings, rallies and demonstrations, the Ministry of Justice has drafted the Law of Ukraine “On Organizing and Holding Peaceful Events”.

#### **J. Implementation of constitutional right to freedom of membership**

127. The Ministry of Justice has drafted a new edition the Law of Ukraine “On Amendments to the Law “On Association of Citizens”” in order to improve the exercise of the constitutional right to freedom of membership in political parties and civil society organizations.

#### **K. Practical implementation of rights, freedoms and legal interests of citizens**

128. The Ministry of Justice is just completing a draft of the Administrative Procedural Code of Ukraine, which is designed to improve relations between the individual and the state, including the review of citizens’ applications for the realization their rights, freedoms and legitimate interests.

#### **L. Improving legislation on right of access to information**

129. The Ministry of Justice has drafted a new edition of the Law of Ukraine “On Amendments to the Law “On Information”.

#### **M. Strengthening rights of victims of violent crimes**

130. With a view to ratifying the European Convention on Compensation to Victims of Violent Crimes (1983), the Ministry of Justice has draft the Law “On Compensation of Victims of Violent Crimes”.

#### **N. Judicial reform**

131. One of the priorities of Ministry of Justice in 2008 is reform of the judicial system in compliance with European standards for ensuring an equitable, independent, effective, and accessible judiciary.

132. In this regard the Ministry of Justice drafted the Laws “On Amendments to the Law of Ukraine “On the Judicial System”” and “On Amendments to the Law of Ukraine “On the Status of Judges””.

**O. Advocacy reforms**

133. A draft of the Law “On Advocacy” for bringing Ukrainian legislation into compliance with European standards is now before the Verkhovna Rada of Ukraine for consideration.

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