

**Information of the Ukrainian Parliament Commissioner for Human Rights
under the Universal Periodic Review of the Human Rights Council on
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Key terminology: *legal framework, international obligations, poverty, labor migration, trafficking in human beings, HIV/AIDS and tuberculosis pandemics, tortures, judicial reform, freedom of speech, constitutional reform.*

Adopted in 1996 the Constitution of Ukraine proclaims that all people are free and equal in their dignity and rights, and human rights and freedoms are inalienable and inviolable. The human being, his or her life and health, honor and dignity, inviolability and security are recognized in the Ukrainian Constitution as the highest social value. Article 55 of the Constitution of Ukraine outlines legal mechanisms of human rights and freedoms protection by means of court system, the Ukrainian Parliament Commissioner for Human Rights, international judicial institutions and other bodies of which Ukraine is a member or a participant.

The establishment of a constitutional institution of the Commissioner for Human Rights (Ombudsman) has become the innovation within the state and legal framework of Ukraine. The Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” provides for creating a “strong” model of Ombudsman. The Ukrainian Parliament Commissioner for Human Rights is a classical example of an ombudsman, since he/she is elected by the Parliament by secret ballot, thereby ensuring his/her independence from all branches of state power.

An additional guarantee of independence of the Ombudsman is his/her financial self-sufficiency. The operation of the Commissioner’s office is funded from the state budget of Ukraine. A substantial underfunding, however, is being observed during the whole period of the Ombudsman’s institution existence (since 1998). Thereto the UN treaty bodies have repeatedly paid the attention of the Ukrainian government during the Ukraine’s periodic reports consideration. Thus, the funding of the Ombudsman’s activity accounted for: in 2004 – 83% of the needs; in 2005 – 73%; in 2007 – 80%. The Secretariat of the Ombudsman is in the emergency building which has been under reconstruction since 2001.

According to the Ombudsman, one of the most important directions of the development of human rights protection system is **the cooperation with international bodies, the fulfillment of Ukraine’s human rights obligations and commitments as well as the national legislation improvement.**

The Ombudsman of Ukraine actively participates in the process of Ukraine’s reporting to the UN treaty committees, makes her critical observations and proposals as well as conducts its work on the implementation of the UN treaty bodies’ recommendations. For example, three of six UN treaty committees pointed to **the lack of public accessibility to the UN treaty bodies propositions and recommendations.**

Therefore in 2003 upon the Ukrainian Ombudsman's initiative and in cooperation with the UN office in Ukraine the book "Concluding Observations and Recommendations of the UN Treaty Bodies on State Reports Submitted by Ukraine" was published in three languages: Ukrainian, Russian and English. It made the UN treaty bodies recommendations on Ukraine accessible for general public and facilitated the strengthening of the public control over the state's activity in the field of human rights protection. The first edition was presented to Ms. Louise Arbour, the UN High Commissioner for Human Rights. The same goes to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, that have been officially published only after the Ukrainian Ombudsman's appeal to the President of Ukraine two years after its ratification.

In December 2007 the Ombudsman of Ukraine and the UN Office in Ukraine signed the Memorandum of Understanding on Joint Action Plan implementation in 2008 in view of the 60th Anniversary of the Universal Declaration of Human Rights, which, particularly, provides for the promotion of important international human rights documents: the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (the acts of submission of the Ombudsman of Ukraine to the President of Ukraine were made on 18 May 2007 and 17 January 2008), the UN Convention on the Rights of Persons with Disabilities and the European Council Convention on Action Against Trafficking in Human Beings of 2005. The Ombudsman hopes the state bodies will support these initiatives.

Poverty is defined by the Ombudsman as one of the main factors of human rights violations in Ukraine. According to the State Statistics Committee of Ukraine the profits of the Ukrainian citizens grow from year to year. The increase of the household income level, however, doesn't imply the decrease of Ukraine's poor population. In 2000 the poverty level accounted for 26,4%, in 2004 – 27,3%, in 2005 – 27,1%, in 2006 – 28,1%. Taking into account constitutional guarantees, as the Ukrainian Ombudsman's monitoring results attest, 70% of the Ukrainian population can be considered as poor population.

The main poverty factors in Ukraine are low social standards and guarantees, back wages, unemployment and inflation. Thus, almost a quarter of workers get the salary below the subsistence level. Two thirds of the total number of the European Court of Human Rights decisions via Ukraine deal with the enforcement of domestic court decisions on payment of back salaries.

Therefore the Ombudsman considers the increase of social standards and guarantees level to be an urgent task. This is possible provided that the relevant state policy, directed to insuring more equal access of all community to resources, will be elaborated and national wealth distribution mechanism will be changed. Otherwise, poverty will be the reason of instability, social disruption and labour migration abroad in future.

Every year from 5 to 7 million citizens of Ukraine (seasonal workers included) stay for employment on temporary or permanent basis abroad. At the same time, according to the UN, Ukraine holds the place within ten states, receiving the majority of migrants mainly traveling to Western countries.

As the monitoring of claims received by the Ukrainian Ombudsman attests, the problem of observance and protection of Ukrainian migrant workers' rights abroad is extremely topical. The overwhelming majority of them are aliens and to defend such category of people is very difficult.

In 2003 the Ombudsman of Ukraine conducted a special complex monitoring of the phenomenon of a large-scale migration of the Ukrainian citizens abroad and submitted its outcome to the Parliament in the form of a Special Report. On implementing the recommendations of the Ombudsman's Report, the Parliament of Ukraine adopted a special resolution and the Cabinet of Ministers elaborated the Action Plan.

On 16 March 2007 upon the Ombudsman's initiative, who addressed the President of Ukraine with the relevant submissions, the European Convention on the Legal Status of Migrant Workers, 1977 was ratified. Unfortunately, Ukraine hasn't established a state migration service yet, a special government agency involved in protecting migrants' rights and settling the problems in this regard. The Law of Ukraine on the Concept of Ukraine's Migration Policy hasn't been ratified for a long time.

A topical for Ukraine is **the problem of trafficking in human beings**. To promote the counteraction to trafficking in human beings, in 1999 the National Coordinating Committee under the Ukrainian Ombudsman was established and two state programs were elaborated in active cooperation with it. Upon the Ombudsman's initiative, on 4 February 2004 the Parliament ratified the Palermo Convention and Protocols to it on counteraction to trafficking in human beings, women and children in particular.

One of the channels of trafficking in children is international adoption. Unfortunately, the national legislation imperfection and realization of certain foreign adopters' interests being far from ensuring rights of a child, have led to outrageous facts of violation against Ukrainian children in foster homes. For example, the adoptive mother from South Carolina, Peggy Sue Hilt, in 2005 was sentenced to 35 years of imprisonment for having killed her adopted Russian girl.

Another example concerns the adoption of three Ukrainian boys by John Walter Kruger, an American, who in December 2005 was brought to criminal responsibility by Police Department of Bakersfield on a charge of sexual harassment against children. In view of the above mentioned facts the Ombudsman of Ukraine made a submission to the President of Ukraine to improve the adoption procedure of Ukrainian children by foster families, elaborate and sign bilateral agreements with countries, where the Ukrainian adopted children live, ensure proper control over the conditions of their education as well as return of victims back to Ukraine (according to the national legislation adopted children preserve the Ukrainian citizenship up to 18). Unfortunately, the Ukrainian legislation norms on signing bilateral agreements with states, whose legislation substantially differs from the Ukrainian one hasn't been satisfied.

In the First Annual Report "State of observance and protection of human rights and freedoms in Ukraine" the Ombudsman of Ukraine expressed her major concern about HIV/AIDS escalation. Ukraine has the highest HIV/AIDS indices in Europe. According to the UN data,

additional 14 480 persons infected with HIV were registered for the first 10 months of 2007 only. As the official data attest,

120 000 persons infected with HIV are registered in Ukraine. According to the medical workers, a real number of persons infected with HIV/AIDS amounts to 380 000 people, experts think the figure amounts to nearly 400 000.

The Ombudsman of Ukraine came up with a proposal to cooperate on the UNDP project implementation “Governance of HIV/AIDS in Ukraine”, which provides for the increase of the effectiveness of the counteraction to HIV/AIDS pandemics at high level on a long-term basis, anticipating that wider state bodies, civil society, trade unions and private business representatives involvement to counteract the epidemics, will substantially decrease its negative influence on the society. The draft Special Report of the Commissioner in this regard has been prepared.

Moreover, today in Ukraine one can observe a very critical situation with **tuberculosis infection**. Every hour 4 more cases and 1 mortal case are registered in Ukraine. **For the last 15 years the tuberculosis case rate has increased 2,6 – fold, whereas the death rate – 2,9 fold.** In 2006 the overall number of persons infected with all forms of tuberculosis accounted for 514 850 on file, that exceeded 1100 cases per 100 000 population.

To considerably lower tuberculosis cases is possible upon condition of poverty overcoming, strict implementation of provisions, enshrined in the National TB Programme in 2007-2011, as well as sanatorium-resort therapy restoration in the Crimea and the Carpathians regions.

One of the key national priorities of Ukraine has been **tortures and other forms of cruel, inhuman and degrading treatment**. To that effect, the Criminal Code of Ukraine provides for a punishment for such kind of crime. Upon the Ombudsman’s act of submission, on 27 July 2006 the Verkhovna Rada of Ukraine ratified the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A national preventive mechanism issue (an independent state body with special status), however, is still under discussion.

The judicial reform, conducted in Ukraine, still hasn’t solved the main problem – improvement of human rights and freedoms protection situation in courts. In 2006 the President of Ukraine approved the decrees on the Concept for the Improvement of the Judiciary and Ensuring Fair Trial in Ukraine in Line with European Standards and on the Concept of Forming the System of Free Legal Aid in Ukraine. Unfortunately, the provisions of the above mentioned concepts have not been implemented.

The European Court’s decisions against Ukraine is the evidence of a critical situation of the Ukrainian judiciary, where 90% of judgments deal with the violation of the right to a fair trial. Every third application to the Ombudsman is connected with the violation of the right to court protection.

So far, a number of issues haven’t been solved: providing legal assistance to socially vulnerable people, completion of administrative courts network for settling claims between

a person and a power, establishment of juvenile justice system, adoption of an amended Criminal Procedure Code, the law on the bar, legal assistance, administrative procedures.

To strengthen human rights protection in courts, on 12 January 2007 draft laws on amendments to the Criminal Procedure Code, the Civil Procedure Code, as well as the Administrative Procedure Code of Ukraine were submitted to the Parliament, with the Ombudsman and his representatives participating in the proceedings at different stages and having the right to appeal court decisions in the relevant cases. So far, these draft laws haven't been considered.

Ukraine **has recently achieved a particular progress in the enhancement of freedom of speech.** In practice, however, the journalist profession has been one of the most dangerous crafts. There are facts of intimidation and beating of the Ukrainian journalists, at the regional level in particular. Among 39 journalists, died for their professional and public activity in the independent Ukraine, is Norik Shirin, the founder and the editor of the Simferopol newspaper "Youth Voice", killed in 2006. Still the high-profile case on Georgy Gongadze's disappearance hasn't been revealed (the trial over the executors is underway, while the clients are out of prison). The trial on fictional accusation against Vladimir Lutyev, the chief editor of the newspaper "Yevpatoria Week", who made a stand against mafia and corruption, has been studied for 7 years already.

According to the Ombudsman, the tendency of monopolization of media market by oligarch clans and bribery of journalists has been worsening, power censorship is replaced by money censorship. The only way out is a public television and radio network establishment. This process, however, has been unreasonably delayed for 15 years.

The most challenging problem for Ukraine has been **a constitutional reform issue.** The balance in this regard can be achieved only by putting human rights first and directing the reform to this fundamental task implementation.

Additional materials in this regard will be sent by post.

The Ombudsman of Ukraine

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