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National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*

Ukraine

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I. Methodology

1. This report was prepared by Ukraine in the context of the second cycle of the universal periodic review, in accordance with Human Rights Council resolutions 5/1 of 18 June 2007 and 16/21 of 25 March 2011 and Human Rights Council decision 17/119 of 17 June 2011. It reflects the human rights situation in the country and the main changes that have taken place over the past four years. Special emphasis is placed in the report on the implementation by Ukraine of the recommendations made during the first cycle.

2. The national report was prepared by an interdepartmental working group comprising representatives of all interested State bodies, as well as the Human Rights Commissioner of the Verkhovna Rada, the parliament of Ukraine. With support from the United Nations Development Programme (UNDP), a separate page devoted to the universal periodic review was set up on the website of the Ministry of Justice, containing all necessary information on the mechanism itself and the procedures and documents relating to the universal periodic review process.

3. The preparation of the report involved broad public discussion and the holding of round tables and thematic working groups. The Ukrainian Helsinki Human Rights Union served as coordinator of this process on behalf of civil society and as co-organizer of the working meetings.

II. Legal and institutional mechanisms for protecting and promoting human rights

A. Legal regulation and international obligations

4. In accordance with article 3 of the Constitution of Ukraine, the human being and his or her life, health, honour, dignity, inviolability and security are recognized as the highest social value. As noted in the previous report, there are more than forty articles of the Constitution setting out human rights and safeguards.

5. Ukrainian legislation on the protection of human rights is based on the main international instruments in this area, including those of the United Nations. Ukraine, which cooperates with the relevant treaty bodies and submits periodic reports on the fulfilment of its obligations, is continuously taking steps to refine domestic legislation with a view to implementing best practices and the recommendations of the international community.

6. Under article 9 of the Constitution, international treaties that are in force and have been accepted as binding by the Verkhovna Rada form part of the country's law. In this regard, it should be noted that in the past four years Ukraine has ratified, among other international instruments:

- The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows
- The Council of Europe Convention on Action against Trafficking in Human Beings

- The European Convention on the Adoption of Children (Revised)
- The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
- The Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health

7. Concerning the recognition by Ukraine of the International Criminal Court (recommendation 1), according to a ruling of the Ukrainian Constitutional Court (No. 3/2001 of 11 July 2001), the Rome Statute of the International Criminal Court, specifically the tenth preambular paragraph and article 1, is not in conformity with the Constitution of Ukraine. Given that, under article 9, paragraph 2, of the Constitution, international treaties that are at variance with the Constitution may not be concluded until appropriate amendments have been made to the latter, the question of ratification of the Statute will be considered as part of a systematic process to develop proposals for enhancing the constitutional regulation of social relations in Ukraine.

8. To ensure that proposals for amendments to the Constitution are elaborated in an integrated manner, on the basis of practical experience of implementing that instrument and taking into account progress and trends in the development of modern constitutionalism, a Constituent Assembly was established by Presidential Decree No. 328/2012 of 17 May 2012 as a special auxiliary body attached to the Office of the President.

B. The Ombudsman (recommendations 3 and 4)

9. The office of parliamentary Human Rights Commissioner (Ombudsman) was established in accordance with the Constitution. Pursuant to article 101 of the Constitution, the incumbent exercises parliamentary oversight over the observance of human and civil rights and freedoms as set forth in the Constitution.

10. The Act on the Parliamentary Human Rights Commissioner governs the legal status, powers and working methods of the Ombudsman. The Ombudsman carries out his work independently of other State bodies and officials. Interference in the work of the Ombudsman by central or local government bodies, citizens' associations, and enterprises, institutions and organizations irrespective of the form of ownership, or by their officials, is prohibited.

11. The Ombudsman's activities are financed from the State budget, which each year contains a separate budget line for that purpose. The Ombudsman works out a budget estimate, submits it to the Verkhovna Rada and implements the approved budget. The Ombudsman presents financial accounts in accordance with the legally established procedure.

12. In April 2012, pursuant to article 85, paragraph 17, of the Constitution, a new Ombudsman was elected. In addition to continuing the activities and initiatives already under way, the Ombudsman is giving great attention to the development of the national preventive mechanism. The staff of the Ombudsman's Office now includes an official responsible specifically for that area of activity, as well as dedicated officials dealing with social, economic and humanitarian rights and children's rights, non-discrimination and gender equality, respectively.

III. Achievements, implementation of recommendations and challenges in the field of human rights protection

A. Protection of the rights of ethnic and religious minorities and efforts to combat all forms of intolerance (recommendations 6, 7, 8, 9, 10, 25 and 26)

Legal regulation

13. Government policy on combating discrimination is carried out in accordance with the provisions of the Constitution, criminal law, other legislative acts and international treaties establishing guarantees of fundamental human rights and freedoms and equality in the enjoyment of such rights, without privileges or restrictions based on race, colour, political, religious or other belief, sex, ethnic or social origin, property status, place of residence, language or other grounds.

14. At the same time, work is still under way on the preparation of comprehensive anti-discrimination legislation. On 5 June 2012, the Verkhovna Rada adopted on first reading a bill on the principles of preventing and combating discrimination in Ukraine. On 16 July 2012, the Ombudsman requested an expert opinion on the bill from the Council of Europe Committee of Ministers.

15. The bill will define the institutional and legal principles of preventing and combating discrimination with a view to ensuring equal opportunities for the realization of human and civil rights and freedoms. To that end, it will delimit the concept of discrimination and its main forms; introduce the principle of non-discrimination in domestic legislation; outlaw discrimination while simultaneously defining actions not regarded as discriminatory; identify the entities to be assigned powers to prevent and combat discrimination, including the parliamentary Human Rights Commissioner, who will assume additional functions in that area; and institute anti-discrimination analysis of draft laws and regulations.

Criminal liability and monitoring of law enforcement

16. The establishment of criminal liability for manifestations of intolerance and discrimination is an important means of combating them. The Criminal Code thus contains articles establishing criminal liability for offences motivated by racial, ethnic or religious intolerance. Furthermore, in 2009 the Code was amended to include motivation by racial, ethnic or religious intolerance as an *indicium* of an offence. Article 161 of the Code stipulates that the *mens rea* of the offence referred to in the article is characterized by direct intent, mandatory components of which are the motive for which the offence is committed and its purpose. The motive is manifested in enmity towards particular persons based on race, religious, political or other belief, ethnic or social origin, property status, sex, colour, language or other grounds.

17. In application of the aforementioned legislative provisions, the law enforcement agencies are constantly taking measures to prevent and combat xenophobia, racial discrimination and other forms of intolerance. The Ministry of Internal Affairs and the Office of the Procurator-General have standing subdivisions tasked with identifying offences involving manifestations of racial or ethnic intolerance or xenophobia (Criminal Code, art. 161). A record of offences motivated by racial, ethnic or religious intolerance, along with statistical data, is posted on the official website of the State Court Administration.[1]

Religious intolerance

18. The positive developments in interfaith relations and dialogue in Ukraine are largely due to the work of interdenominational consultative and advisory bodies at the national level and cooperation among churches and religious organizations within the framework of public councils and commissions reporting to central Government bodies, such as the All-Ukrainian Council of Churches and Religious Organizations. The Council brings together the leading Christian churches (Orthodox, Catholic and Protestant), one Jewish religious association and three Muslim ones; in total, 90 per cent of the country's religious networks are represented on the Council.

Roma (recommendation 9)

19. To date, 90 Roma ethnic cultural associations have been established in Ukraine. The main task on which Roma civil society associations are focused is the revival of the language, culture, traditions and customs of the Roma minority. The overwhelming majority of ethnic cultural associations are set up with support from the international community.

20. The situation with respect to Roma is rather complex and requires further regulation through legislation and additional financial input. For example, the problem concerning the significant number of Roma who lack identity documents and birth certificates remains unresolved; this issue stems from the fact that such persons have no registered place of residence in Ukraine or, in other words, are in a state of homelessness. A positive step in addressing it was the introduction in 2010 of amendments to the Act on the Principles of Social Protection for Homeless Persons and Abandoned Children allowing the persons concerned to register a social institution or registration centre for the homeless as their place of residence.

B. Gender equality (recommendations 4, 11 and 32)

21. A number of guarantees of gender equality are provided in domestic legislation, as has been noted repeatedly in the country's reports on the fulfilment of its obligations under the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women, including the combined sixth and seventh periodic reports on the implementation of the latter instrument, submitted on time and considered by the Committee on the Elimination of Discrimination against Women at its forty-fifth session, in 2010. An important step forward in the regulation of gender equality issues through legislation will be the future law on the principles of preventing and combating discrimination in Ukraine, as noted in paragraph 15. Complex machinery has been created for guaranteeing equal rights and opportunities for women and men in both the legislative and executive branches.[2]

Employment

22. At the same time, the number of women in leadership positions in the civil service and the parliament remains low, while overall women's pay is lower than men's. An analysis of the situation points to the following conclusion: this disparity is due primarily to the fact that a larger percentage of men occupy leaderships positions, in which salaries are higher. Men are engaged more often to work in arduous, dangerous, especially arduous or especially dangerous conditions, as well as at night, for which pay is commensurately higher; women avail themselves of their right to work part-time in order to devote more time to taking care of their families and raising children. In addition, social stereotypes concerning women's role persist.

23. To change the situation and overcome the stereotypes concerning women's role in society, various educational activities and campaigns are under way. Many organizations in Ukraine are currently working to address gender issues. They include 7 gender research centres and departments at higher education establishments and 20 gender studies centres. On 18 April 2012, another gender studies centre was formally opened, at Petr Vasilenko National Technical University of Agriculture in Kharkiv. A course entitled "Principles of gender politics" has been introduced in the curriculum for the preparation of specialists for recruitment to the internal affairs agencies, specifically in the "Jurisprudence" module of the bachelor's degree in law offered at the higher education establishments of the Ministry of Internal Affairs. During this course, the fundamental elements of modern gender politics are elucidated.[3]

C. Protecting children's rights (recommendations 2, 12 and 31)

Legal and institutional framework

24. A strong corpus of laws and regulations has been developed in Ukraine to combat, prevent and overcome violence against children. Between 2009 and 2011, amendments were made to domestic legislation in order to enhance the State system of protection for children's rights, notably amendments to the Criminal Code and Code of Criminal Procedure related to the use of children for begging and amendments to certain legislative acts providing for action against the dissemination of child pornography, the establishment of a list of measures to combat trafficking in children, the raising of the level of protection afforded children in Ukraine and the improvement of the work of the law enforcement agencies in that regard.

25. To ensure that the comprehensive system of protection for children's rights functions optimally, and in keeping with the requirements of the Convention on the Rights of the Child, in 2009 a National Plan of Action to Implement the Convention for the Period up to 2016 was approved. The Plan also takes account of the Millennium Development Goals and the outcome document of the special session of the General Assembly on children "A world fit for children".

26. Furthermore, with a view to establishing an enabling environment for the realization of the rights and lawful interests of children and addressing pressing tasks in that regard, in August 2011 the post of Children's Ombudsman was established under the authority of the President. The Children's Ombudsman ensures that the President exercises his constitutional powers with respect to the observance of children's rights as set forth in the Constitution and that Ukraine fulfils its international obligations in that area. It should be noted that the Children's Ombudsman is not a fully autonomous children's rights institution in the sense of United Nations international standards. The Constitution does not, however, provide for the establishment of specialized bodies in addition to those already envisaged in its provisions. Nevertheless, the Ombudsman of Ukraine, who, in accordance with the Act on the Parliamentary Human Rights Commissioner, exercises parliamentary oversight over the observance of children's rights under the Constitution, has appointed a delegate with responsibility for issues relating to the rights of children.

Access to secondary education

27. Under the Constitution, general secondary education is compulsory until graduation. To ensure the fulfilment of this requirement, Ukraine has 19,800 general education establishments of all types and under all forms of ownership and administration with more than 4.29 million students, including 13,000 institutions in rural areas with 1.36 million students. As at 1 September 2011, 41,975 children aged from 6 to 18 years were not receiving full secondary education (i.e. were not attending general education

establishments), including 10,472 (25.0 per cent) on health grounds and 13,200 (31.4 per cent) for other reasons. In addition, 414 individuals (1.0 per cent) were undertaking apprenticeships not leading to secondary school graduation, while 17,889 were studying at special remedial institutions for children with intellectual impairments (42.6 per cent).

28. The most acute problem at present is the cutting of the number of schools. This is due to a 40 per cent fall in pupil numbers over the past 20 years, attributable to the declining birth rate; there are now 7 per cent fewer schools. Coordinating councils have been set up in every region to devise plans for streamlining the network of general education establishments.[4] Work is being completed on the development and adjustment of such plans. Of course, the process is inevitably painful. To mitigate the effects, outreach work is being undertaken among teachers' and parents' groups and school buses are being purchased to transport students and teachers living beyond walking distance from schools.[5]

Access to education for children with special needs

29. Amendments to education legislation in 2010 ensured that the necessary legal framework was in place for the further development of the education system, first and foremost through the introduction of integrated and inclusive education for children with special needs.[6]

30. In accordance with the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, domestic education legislation, the relevant presidential decree, and laws and regulations issued by the Cabinet of Ministers, a comprehensive initiative is being implemented to improve the network of residential general education schools of various types. As part of the efforts to extend the integration process and entrench inclusive education, in the 2011/12 school year alone the number of special residential general education schools for children with special educational needs was reduced by seven.

31. With a view to the comprehensive rehabilitation, including social rehabilitation, of children with special educational needs (hearing, visual or locomotor impairments, mental retardation or severe speech impairments), a remedial-developmental module has been introduced in the curricula of special general education establishments.[7] The remedial focus of vocational education ensures the practical application by students with special needs of the knowledge, skills and know-how imparted, the all-around development of students and the appropriateness of the vocational guidance provided, taking into account students' psychophysical developmental characteristics and the recommendations of their doctors.

32. A comprehensive professional socialization programme has been developed for students with special educational needs during their vocational training at special residential general education schools under contracts concluded with vocational and technical training institutes and organizations offering work experience outside the schools.

Recommendation 31

33. In primary schools, elements of human rights education are being integrated in subjects of the mandatory core curriculum. Thus, it is planned to provide teaching on human rights, notably the rights of the child, by including the topic in the "Ukraine and me" course in grades 1 to 3. The elective course "Rights of the child" is recommended for primary schools. A module of the "Ethics" course for children in grade 6, which elucidates basic concepts of morality and ethics in a democratic society, is devoted to the rights of the child. In grades 9 and 10, students are required to take the "Legal studies" and "Practical legal studies" courses, which incorporate the study of human rights. In senior specialized schools, the "Human rights" course is recommended.

Criminal justice for juveniles (recommendations 13 and 14)

34. In the light of the international obligations Ukraine has assumed to afford children special care and assistance, first and foremost children who are in conflict with the law, in 2011 an outline plan for the development of the juvenile justice system in Ukraine[8] was approved; it is intended to implement the plan progressively between 2011 and 2016.

35. One of the main tasks set out in the plan is to ensure effective justice for juvenile offenders (during the conduct of initial inquiries, pretrial investigations and court proceedings), taking into account their age and sociopsychological, psychophysical and other developmental characteristics. To this end, it is planned to provide training to law enforcement officers, judges, procurators, lawyers and staff of agencies of tutorship or guardianship on the conduct of initial inquiries, pretrial investigations and court proceedings involving juveniles and to have judges specialize in hearing juvenile cases.

36. Under the plan, the powers of children's agencies and services will be extended and new institutions for children (a probation service to provide support to juveniles serving sentences and social rehabilitation centres for juvenile offenders) will be established. Such institutions will form a single, integrated juvenile justice system.

37. Great emphasis is placed in efforts to develop the criminal justice system on preventing juvenile crime and reintegrating juvenile offenders in society. To enable sociopsychological and educational activities to be conducted for juveniles held in remand centres, classrooms have been set up, along with training and advisory units, and 31 psychological and emotional decompression rooms are in operation. At the beginning of the 2011/12 school year, 760 juveniles were receiving training in units established in remand centres. The average coverage rate of such units stood at about 100 per cent.

38. In order to remove the factors in children's environment that may give rise to crime, the Ministry of Internal Affairs, as part of its preventive efforts, is identifying and prosecuting adults who involve children in antisocial activity; initiatives are under way with retailers to prevent sales of alcoholic beverages and tobacco products to children; and educational and preventive work is being conducted with families in which the parents or guardians are failing to fulfil their duty under the law to create appropriate conditions for the life, education and upbringing of children or have committed acts of child cruelty or violence against children.[9]

D. Action against domestic violence (recommendation 15)

39. Ukraine recognizes that domestic violence, a concept defined in law in the country, is a pressing problem. Accordingly, in September 2008 amendments were made to certain legislative acts with a view to refining the legislation on combating domestic violence. The relevant acts stipulate that, if a person commits an act of domestic violence after receiving an official warning as to the inadmissibility of such conduct, he or she must be referred to a crisis centre to undergo a programme of therapy.

40. Under article 15 of the Prevention of Domestic Violence Act, family members who commit acts of domestic violence may incur criminal, administrative or civil liability. Thus, article 173^2 of the Code of Administrative Offences establishes liability for acts of domestic violence that cause, or may cause, harm to the victim's physical or mental health.

41. To raise awareness among militia officers of issues relating to the safeguarding of equal rights and opportunities for women and men and the prevention of domestic violence, between 2010 and 2011 the Ministry of Internal Affairs conducted a number of joint activities with UNDP. As part of those efforts, 690 training courses were held for

neighbourhood militia officers in all regions of Ukraine on the organization of domestic violence prevention work.

42. With a view to the implementation of measures to prevent domestic violence, in 2010 the Government approved a plan of action for the conduct of a national "Stop violence!" campaign covering the period up to 2015. There are 67 telephone helplines offering psychological counselling services to assist victims of violence.[10]

43. A network of institutions has been established to help families with children and citizens who are in difficulty, including victims of domestic violence; it comprises 21 sociopsychological assistance centres, 4 medical and social rehabilitation centres for victims of violence, and centres working with women and refuges. These institutions provide psychological, social, socioeducational, sociomedical, information and legal services to persons in difficulty.

44. The Act on Children's Agencies and Services and Specialized Institutions for Children provides for the functioning of refuges, children's services, sociopsychological rehabilitation centres for children and social rehabilitation centres (children's villages) for 3- to 18-year-olds who are in difficulty, including child victims of various forms of violence. The main tasks of these institutions are to provide the children concerned with comprehensive social, educational, medical, legal and other types of assistance and to create an environment in which they can lead a normal life. The refuges have sociopsychological rehabilitation departments staffed by specialists who ensure children's all-around rehabilitation and prepare them to return to their birth families or to be placed in new families. As at 1 January 2012, there were 67 children's refuges, children's services and 51 sociopsychological rehabilitation centres for children.

E. Efforts to combat trafficking in persons

Legal regulation

45. The ratification by Ukraine in 2010 of the Council of Europe Convention on Action against Trafficking in Human Beings, of 2005, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was an important step forward in efforts to prevent trafficking in persons and protect victims. These instruments have in turn provided a framework for the implementation of State policy and the adoption of comprehensive, and significantly enhanced, measures in this area, as well as new legislation.

46. The Combating Trafficking in Persons Act, which provides for the protection of victims of trafficking, including children, was adopted in 2011. The Act defines special principles for combating and preventing trafficking in children, provides for assistance to trafficked children and establishes the following types of monitoring: parliamentary and governmental monitoring (within the limits of the powers of the respective bodies) and public monitoring (pursuant to the laws in this area). The Procurator-General and the procurators reporting to him are responsible for overseeing the observance and enforcement of laws to combat trafficking in persons.

47. To implement the aforementioned Act:

- The Ministry of Social Policy has been made the national focal point for action against trafficking in persons[11]
- A State special-purpose social programme to combat trafficking in persons covering the period up to 2015 has been approved with the aims of preventing trafficking, making prosecutions of persons who commit or abet trafficking-related offences

more effective, protecting the rights of victims and ensuring that they receive assistance

- The legal framework for the establishment and operation of a unified State register of offences associated with trafficking in persons has been defined[12]
- A special status has been established for victims of trafficking so as to allow them to receive free medical, psychological and legal assistance, be placed temporarily in institutions assisting trafficked persons and obtain one-off financial help[13]
- Provision has been made for the establishment of an interdepartmental council for family matters, gender equality, demographic development, preventing domestic violence and combating trafficking in persons, responsible for coordinating the implementation of Government policy on these issues[14]

Preventive measures

48. Since the main factor driving trafficking in persons is unemployment, the Government employment services have increased vocational training for the unemployed. Some 72 per cent of unemployed persons applying to employment services are now placed in jobs. This is having a positive impact on efforts to combat trafficking. Furthermore, in order to prevent offences in this category, procuratorial bodies are verifying that legal requirements are being complied with in the provision of job placement services abroad and tourism services.

49. Since trafficking in persons was made a criminal offence in March 1998, the law enforcement agencies have identified almost 3,000 such offences altogether, including: 322 in 2008, 279 in 2009, 257 in 2010 and 197 in 2011. In the first five months of 2012, the following offences were uncovered:

- 89 offences of unlawful deprivation of liberty or kidnapping (compared with 79 in the same period of the previous year)
- 66 offences of trafficking in persons (compared with 77 in the same period of the previous year)

During the first quarter of 2012, the courts heard, and handed down judgements in, 21 cases against 41 persons accused of trafficking-related offences.[15]

Training on combating trafficking in persons (recommendation 19)

50. Between 2007 and 2010, the Ministry for Family, Youth and Sport, in cooperation with international organizations such as the office of the Organization for Security and Co-operation in Europe (OSCE) Project Co-ordinator in Ukraine, the Ukraine office of the International Organization for Migration (IOM) and the International Labour Organization (ILO), as well as the La Strada-Ukraine international women's rights centre, conducted, at national level, a number of training activities on combating trafficking in persons, including:

- 28 seminars on the coordination of the activities of regional government bodies in combating trafficking in persons and on specific features of preventive and reintegration work
- 263 training sessions on combating trafficking in persons for civil servants, trainers, psychologists, neighbourhood militia officers, staff of procurator's offices, lawyers and jurists, representatives of non-governmental organizations and members of the media

- 19 round tables devoted to child safety online, Government measures to combat trafficking in children and eradicate child labour, analysis of labour migration policy, domestic legislation and international standards, and practice in other countries
- 7 international seminars on combating trafficking in persons
- Training sessions for 114 diplomatic staff

51. The training, retraining and advanced training programmes for teaching staff of postgraduate teacher training institutes and staff of the State employment service now include a special course of lectures on preventing trafficking in persons and child slavery and a course on issues relating to labour migration and combating trafficking in persons.

F. Access to justice and independence of the judiciary

Judicial reform and efforts to combat corruption in the judiciary (recommendation 23)

52. Pursuant to the Organization of the Courts and Status of Judges Act, adopted in 2010, the judicial system has undergone comprehensive reform to bring it into line with European standards, and a number of problems and shortcomings have been addressed. The majority of the new features introduced in the Act are aimed at safeguarding the independence of the judiciary and helping to prevent, or reduce the level of, corruption in the judicial system.

53. As part of the reform, the court system has been streamlined through the establishment of a single system of cassational courts headed by the respective high courts, thus solving the problem of "double cassation" (the review of judgements of courts of general jurisdiction by high specialized courts, with the possibility of subsequent cassational review by the Supreme Court of the judgements handed down by the latter). The period required for the hearing of cases by courts of appeal and courts of cassation has been reduced by almost half, and appeals may now be lodged without the submission of a preliminary notice of appeal.

54. An automated system for processing documents and assigning cases has been introduced in all courts of general jurisdiction. The new rules prevent the presidents of courts from exerting any kind of influence on the provision of facilities to judges in their respective courts and remove any procedural levers at their disposal for influencing the hearing of cases.

55. The new judicial selection mechanism is based on the principles of competition and transparency. Candidates for the office of judge are required to undertake special training, on completion of which they must sit an anonymous qualifying examination, and special checks are conducted to ensure that they meet the requirements established for candidates for the office of judge.

56. Issues concerning disciplinary action against judges of local courts and courts of appeal come within the purview of the High Judicial Qualification Commission, which, following the recruitment of disciplinary inspectors, is able to deal with these issues more thoroughly and effectively. This year, the Commission has served 12 notices of disciplinary action against judges. Authority to institute criminal proceedings against judges lies solely with the Procurator-General and his deputies, which precludes the exertion of influence on judges by other actors, notably law enforcement agencies.

57. Moreover, pursuant to Act No. 4874-VI of 5 June 2012, which amended certain of the country's legislative acts with a view to strengthening guarantees of judicial

independence, the authority of procurators to propose disciplinary action against judges or the removal of judges from office has been restricted. Thus, in accordance with the High Council of Justice Act and the Organization of the Courts and Status of Judges Act, as amended, if a procurator has taken part in proceedings in a case, the procuratorial bodies may file a complaint with the High Judicial Qualification Commission or High Council of Justice concerning inappropriate conduct by the judge only if no court of any instance is considering the case or if the deadline established in procedural law for lodging an appeal or application for cassational review has expired. Furthermore, a member of the High Council of Justice who is a procurator or was a procurator at the time of his or her appointment to the Council may not be tasked with investigating reports of violations of the judicial oath or disciplinary breaches by judges of the Supreme Court or of one of the high specialized courts.

58. The adoption in 2011 of the Act on the Principles of Preventing and Combating Corruption was a significant step in making law enforcement measures against corruption in judicial bodies more effective. Thus, between 2008 and the beginning of 2012, criminal proceedings for corruption offences were instituted against 63 judges, 45 of whom were convicted; charges against the remainder were not pressed. Between 2011 and the beginning of 2012, however, 44 criminal cases were brought, including 18 under article 368 (Receipt of a bribe) of the Criminal Code; 9 court employees were convicted, 7 of them judges, and 7 reports were filed concerning administrative offences involving corruption.

Legal assistance

59. Legal assistance is an important factor in access to justice. In this connection, the adoption in 2011 of the Free Legal Assistance Act significantly expanded the opportunities for persons from low-income groups to realize their right to receive legal assistance free of charge, both primary and secondary.

60. Under the Act, citizens on low incomes may receive legal information and advice, explanations on legal issues and assistance in drafting statements, complaints and other documents of a legal nature. In addition, citizens are granted the right to such legal services as defence against charges and representation of interests, and they are entitled to free secondary legal assistance in court and before central and local government bodies and officials, including drafting of procedural documents. The application of these provisions will be phased in from the beginning of 2013, once free secondary legal assistance centres have begun operation. Such assistance is intended to be fully available free of charge from 2017.

61. In accordance with the new Code of Criminal Procedure, from 1 January 2013 defence counsel in criminal proceedings will be appointed through the mechanism laid down in the Free Legal Assistance Act. To govern the functioning of this mechanism and secure the implementation of the Act as a whole, in the period from November 2011 to June 2012 a number of laws and regulations were adopted assigning the Ministry of Justice overall responsibility for the administration of legal assistance. In addition, provision was made for the establishment of a Legal Assistance Coordination Centre. A State special-purpose programme for the development of a system of free legal assistance covering the period up to 2018 was adopted and a procedure for payment for the services of lawyers providing secondary legal assistance to persons detained under administrative or criminal procedural law, or in connection with criminal cases, was approved.[16]

62. In the first half of 2012, in the Autonomous Republic of Crimea, the provinces and the cities of Kyiv and Sevastopol, a competitive process took place to select lawyers who will be engaged to provide free secondary legal assistance. Of 1,171 lawyers who applied to take part in the process, 953 successfully completed all three stages and were entered in local registers of practitioners providing free secondary legal assistance under permanent

contracts or in the register of practitioners providing such assistance under temporary arrangements.

63. The blueprint for the administration of the legal assistance system envisages the establishment of a network of local offices of the Legal Assistance Coordination Centre, known as free secondary legal assistance centres. By the end of 2012, the first 27 such centres will have been established in the Autonomous Republic of Crimea, the provinces and the cities of Kyiv and Sevastopol, as well as 2 pilot interdistrict centres in the towns of Shepetivka and Kamyanets-Podilskyy in Khmelnytskyy province.

64. In 2013, it is planned to establish 43 interdistrict centres for the provision of free secondary legal assistance and, in 2014, 24 centres in self-governing cities and provincial centres.

G. The rights of convicted persons and persons deprived of their liberty (recommendations 16 and 17)

65. To reduce the number of individuals placed in cells for arrestees and administrative detainees, in November 2011 amendments were made to the Instructions on the organization of the work of militia station front offices. The amendments sought to bring the Instructions into line with the requirements of article 259 (Bringing offenders to the militia station) of the Code of Administrative Offences concerning the custody register and the log of personal and official visitors. Furthermore, the internal affairs agencies are working in close cooperation with the courts to reduce the number of individuals held in remand centres for periods of between one and one-and-a-half years.

66. During the first half of 2012, monitoring groups comprising members of the staff inspectorate, headquarters units and public security units of the central departments and departments of the Ministry of Internal Affairs conducted more than 11,000 inspections covering the legality of the detention, and the detention conditions, of individuals placed in the aforementioned cells, among other matters.

Detention conditions

67. Most temporary holding facilities of the internal affairs agencies provide living space of 4 square metres per detainee and are equipped with individual bunks, washbasins and toilet areas. As at 1 June 2012, there were 1,438 cells for arrestees and administrative detainees in militia stations, of which 588 (or almost 41 per cent) met international standards and internal building code requirements. These cells are provided with bedding, tableware, washing facilities and medical supplies, including two types of first-aid kit (a universal first-aid kit and an HIV/AIDS prevention kit).

68. To address the problem of housing detainees, since 2011 remand units providing 2,466 places have been built at 42 correctional colonies; a new block for female detainees with 180 places has been opened at the Kyiv remand centre; and extensive repairs have been completed at 23 facilities belonging to agencies and institutions of the prison system. In addition, short-stay prisons providing 1,057 places have been constructed at 39 correctional colonies to house persons sentenced to short terms of rigorous imprisonment, who are transferred from remand centres once their sentences become enforceable.

69. There is a particular focus on penal enforcement in the case of convicted women. As a result of efforts to improve judicial practice with respect to the imposition of non-custodial sentences, the number of convicted women in penal institutions has declined.[17] In September 2010, a nursery was opened at correctional colony No. 44 in Chernihiv as part of a joint Ukrainian-Swiss project to support penal reform in Ukraine. The opening of the

facility has allowed Ukraine to meet the requirement, stipulated by the European Court of Human Rights, for convicted women to be held with their children aged up to 3 years; this helps to strengthen the stability and continuity of family ties and enhances the quality of the contact between mother and child.

Humanization of penalties

70. Since 2000, the number of convicts and detainees in penal institutions and remand centres has fallen by 70,000. This reduction is due to the application of the Amnesty Act; amendments to legislation effectively decriminalizing certain offences; and wider use of statutory incentives, such as the commutation of the unserved part of a sentence to a lighter penalty and release on parole.

Mortality rates

71. One of the main causes of death is HIV/AIDS: during the first six months of 2012, 163 persons died of the disease, which accounted for 30.1 per cent of all deaths in prison system facilities. The mortality statistics show, however, that the total number of such cases is declining.[18]

72. The number of convicts dying of AIDS would be significantly higher were it not for the application of article 408 of the Code of Criminal Procedure to persons suffering from serious illness. Thus, in the first quarter of 2012, the courts released 241 persons in the final stages of AIDS from serving their sentences; they represented 52.4 per cent of all prisoners released on grounds of serious illness.

73. In this context, the problem of the rather protracted consideration by the courts of applications for the release of seriously ill prisoners must regrettably be noted: 26 individuals died in 2012 before the courts had reached a decision on their cases.[19]

Provision of medical services

74. The Internal Regulations for temporary holding facilities were developed in 2008 to ensure the observance of the constitutional rights of citizens held in special institutions of the internal affairs agencies. Under the regulations, to ensure that detainees in temporary holding facilities receive necessary medical care, they must, without fail, undergo an examination by a doctor from a local health-care facility in order for any physical injuries or illness to be identified. All entries in the medical record are analysed and, when doctors so recommend, detainees are hospitalized without delay.

75. In five months of this year alone, 557 arrested persons and detainees were treated in medical facilities of the Ministry of Health. Since 2009, militia station front offices have been required to maintain logs detailing medical care provided to individuals held in cells for arrestees and administrative detainees.

76. Health care for inmates of remand centres is provided by 32 medical units. In addition, medical services for convicts and detainees are given at hospitals of the Ministry of Health. Provision has been made for 147 medical units in penal institutions, remand centres and correctional colonies. Each medical unit or hospital has a dental office, and there are 59 drug-treatment and 21 infectious disease units. In order to provide expert medical care and inpatient treatment, 612 special wards with a total of 1,347 beds have been set up at district and municipal hospitals; this year, more than 1,500 persons have been treated in these wards.

77. In 2012, a procedure for cooperation between health-care establishments of the State Penal Correction Service and health-care facilities was laid down. In particular, a legal framework was established for the free choice of doctors by detainees, for their

examination and treatment in health-care facilities on both an urgent and a routine basis, and for the recruitment of foreign specialists.[20]

78. In 2011, for the first time, budgetary funding was used to replace 30 per cent of all equipment at institutions and organizations of the State Prison Service. Some 830 items of medical equipment (X-ray machines, resuscitation equipment, apparatus for laboratory and clinical examinations, diagnostic, surgical and dental equipment, and so forth) were acquired at a cost of 79.2 million hryvnias.[21]

79. Continuous steps are being taken to prevent tuberculosis, notably the application of a set of disease-control measures involving mandatory regular and terminal prophylactic disinfection at sources of infection, constant monitoring of medication compliance throughout the cycle of treatment of tuberculosis patients and follow-up with anti-relapsing and chemoprophylactic therapy. In 2011 and the first five months of 2012, 100 per cent of persons taken into custody underwent prophylactic fluorographic examination.

80. Access to voluntary, free testing is provided in penal institutions and remand centres with a view to identifying and preventing cases of HIV infection. Every institution has a doctor who is responsible for treating inmates with HIV, and the possibility of establishing additional posts for infectious disease specialists is being studied. This year, an additional ward was opened at correctional colony No. 124 in Donetsk in order to improve treatment for inmates with HIV.

81. Financial assistance is being actively sought from international organizations in order to modernize the diagnosis and treatment of HIV.[22] As part of the World Bank Tuberculosis and HIV/AIDS Control Project for Ukraine, equipment for 85 level I bacteriological laboratories (at remand centres and penal institutions) and 10 level III laboratories (for tuberculosis patients) has been purchased, along with laboratory apparatus and expendables, for a total amount of 2.4 million dollars.

Prevention of torture (recommendations 18 and 21)

82. Under domestic legislation, evidence obtained using illegal means, including torture or cruel, inhuman or degrading treatment or the threat thereof, is inadmissible. The relevant standards are contained in article 62 of the Constitution and articles 67, 73, 74 and 87 of the Code of Criminal Procedure. Article 127 of the Criminal Code criminalizes acts related to torture and the intentional infliction of severe physical pain or physical or mental suffering through beatings, torture or other acts of violence with the aim of coercing victims or other persons to carry out actions against their will, including to extract information or confessions from them, with the aim of punishing them for their actual or suspected acts or for those of others, or with the aim of intimidating or discriminating against them or others.

83. Nevertheless, torture and ill-treatment are still among the most serious problems encountered. Procuratorial bodies constantly conduct checks to detect cases of torture or other ill-treatment of detainees and convicts. They have ascertained that, at facilities run by the State Prison Service, torture and other ill-treatment are not widespread; generally, they occur only in isolated instances.

84. At the same time, the statistics on checks done at internal affairs facilities are not reassuring. In the first quarter of 2012, 975 complaints of violations of constitutional rights and freedoms were received by the internal security units of the Ministry of Internal Affairs, 211 of which involved reports of torture or bodily harm. Upon verification, 86 complaints contained information that was substantiated. Disciplinary action was taken against 99 militia officers and in 32 cases criminal proceedings were initiated against militia employees for violating citizens' constitutional rights and freedoms.

85. The Office of the Minister of Internal Affairs has a unit in charge of monitoring respect for human rights in the work of the internal affairs agencies. Its basic functions include ensuring that there is a system of departmental and public oversight of respect for human rights in the work of internal affairs agencies and units, as required by the Constitution, domestic law and the country's international obligations in the field of human rights, and also by international standards for law enforcement work.

National preventive mechanism

86. To meet the country's obligations under article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in September 2011 a Commission on the Prevention of Torture was established as a consultative and advisory body reporting to the President, and its composition was approved.[23]

87. As the Commission is not a fully-fledged national preventive mechanism in the sense of the Optional Protocol, steps are now being taken to find a solution within the framework of the Ombudsman's Office, following the "Ombudsman Plus" model. A department has been set up in the secretariat of the Ombudsman's Office for the institution of a national preventive mechanism, and a representative has been assigned to carry out this task. Furthermore, working jointly with experts from the Council of Europe and representatives of non-governmental organizations, the Ombudsman has drawn up a bill to amend the Act on the Parliamentary Human Rights Commissioner. The text in question would empower the Ombudsman to ensure the functioning of a national preventive mechanism. On 16 July 2012, the bill was sent by the Ombudsman to the Council of Europe Committee of Ministers for an expert opinion.

H. Right to freedom of speech and access to information

88. To ensure the effective realization of the right of everyone to freedom of speech and access to information and the right freely to collect, store, use and disseminate information orally, in writing or by other means, in 2011 the Access to Public Information Act and an act amending the Information Act (new version) were adopted.

89. The two laws are closely interrelated. The new version of the Information Act defines in particular the basic principles for the exchange of information in Ukraine, describing the active and passive participants and the types of information in question. The Access to Public Information Act, for its part, sets out how to realize and guarantee the right of everyone to access information held by the authorities and information that is of public interest. The Act obliges all those holding public information to make it available and to publish it.

Freedom of the press (recommendation 27)

90. Ensuring freedom of the press requires not only the appropriate legal framework, but also the prohibition in practice of violations of this right. In 2008, 47 members of the media were victims of such violations, including 1 who died. In 2009, it was established that 60 had been victims of crime, 27.7 per cent more than the previous year; none died. In 2010, the number rose to 159 (up 165 per cent), including 5 who died. The number of victims declined in 2011 by 21.4 per cent, to 125, and the number who died fell by 40 per cent, to 3. In the first five months of this year, 45 members of the media were reported to have been victims of crime, 43.8 per cent fewer than during the same period of the previous year, when the figure was 80. No fatalities have been registered among this group so far this year.

High-profile cases involving journalists

91. In the criminal case of the killing of the journalist Mr. Gongadze, the Office of the Procurator-General ascertained who was directly responsible for the premeditated murder (M.K. Protasov, A.V. Popovich and V.M. Kostenko). They were sentenced in 2008 to various terms of deprivation of liberty. The criminal proceedings against A.P. Pukach are still under way; the Pechersk district court in Kyiv is still questioning witnesses. The Office of the Procurator-General of Ukraine is continuing its investigation into the criminal case of abuse of power or authority that brought grievous harm to the legally protected rights and interests of Mr. Gongadze. At the end of the proceedings, once the corresponding verdict has been reached, a legal assessment will be conducted of the actions of each person involved in this crime.

92. On 15 August 2010, the Dzerzhynsky district internal affairs office reporting to the Kharkiv municipal administration of the Central Department of the Ministry of Internal Affairs in Kharkiv province instituted criminal proceedings related to the premeditated murder of Mr. V.P. Klymentyev, the chief editor of the newspaper *Novy Stil* (New Style), who disappeared on 11 August 2010. The pretrial investigation is being conducted by the main investigative administration of the Ministry of Internal Affairs and is continuing. At the current time, all measures called for under the law are being taken to ascertain the circumstances of the crime and identify the perpetrators. The investigation is being carried out under the supervision of the Office of the Procurator-General of Ukraine.

I. Rights of applicants for asylum (recommendations 29 and 30)

93. The Refugees and Persons Requiring Subsidiary or Temporary Protection Act was adopted in 2011 to complete the establishment of the institution of asylum in Ukraine and to bring the country's migration legislation into line with European laws and standards. The Act introduces the concepts of subsidiary and temporary protection and establishes State guarantees for the protection of the rights of refugees and persons entitled to such protection. It establishes a single procedure for recognizing people as refugees or as persons requiring subsidiary protection and for forfeiture or removal of such status. Additionally, the Act introduces for the first time such key concepts as "persons requiring subsidiary protection" and "persons requesting temporary protection".

94. Corresponding subsidiary enactments[24] and departmental regulations have been adopted to ensure the effective implementation of the Act and to improve the legal procedures related to refugees and asylum and bring them into line with the relevant international standards. The enactments specifically address matters related to the documentation of refugees and persons requiring subsidiary protection or to whom temporary protection is afforded and to travel documents for refugees and for persons granted subsidiary protection.[25] The departmental regulations contain the rules for the consideration of applications and the completion of the documents required for a decision on recognition as a refugee or as a person requiring subsidiary protection, and also the rules on forfeiture or removal of such status. They also provide a model form for applying for protection in Ukraine.[26]

95. With the entry into force of the new law, the number of foreign citizens and stateless persons seeking protection in Ukraine increased substantially in comparison with previous years. By 1 May 2012, the local offices of the State Migration Service had received 710 applications for recognition as a refugee or as a person requiring subsidiary protection. In 2011, just 844 people had filed such applications with the competent bodies, and 187, or 22 per cent of them, had received refugee status (a figure in line with European levels).

96. As a result of this increase, a network of temporary placement centres for refugees must be developed. Currently, there are two such facilities in the country: one with 200 places, in Odesa, and another for 130 people, in Zakarpattia province (in the towns of Mukacheve and Perechyn). The spaces available are insufficient to meet the demand for temporary housing from all asylum applicants and refugees. The facilities now take in those in greatest need of protection, such as large families with young children, single women and unaccompanied minors; accommodation and food are provided using Government funding. The State Migration Service is taking steps to refurbish and begin operation of a similar centre, with 250 places, in the town of Yahotyn, in Kyiv province.

J. Rights of persons with disabilities (recommendation 58.2)

97. Ukraine ratified the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto in 2009; they entered into force for Ukraine on 6 March 2010. To bring the terminology of domestic legislation into line with the standards of the Convention, specify the main lines of the work of the public administration in this field and increase participation by disabled persons' organizations in developing and implementing State policy, new standards were drawn up addressing the obligations of the State to persons with disabilities and the existing ones were further elaborated. In 2011, a number of domestic laws were amended in consequence.

98. Also in 2011, the Government adopted a policy framework for a national programme entitled "National plan of action for the implementation of the Convention on the Rights of Persons with Disabilities and for the development of a rehabilitation system for disabled persons" for the period up to 2020. The programme also includes measures for the implementation of the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006–2015.

K. Electoral rights

99. To carry out a system-wide and thorough reform of electoral law and implement the recommendations set out in the relevant reports of the election observation mission in Ukraine of the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), a working group on improving electoral law was set up in 2010. Some twenty foreign experts took part in its work, including representatives of the Council of Europe, OSCE, the International Foundation for Electoral Systems (IFES), the European Commission for Democracy through Law (Venice Commission) and other international organizations.

100. After a year of work, both in the working group and in the national parliament, the Act on Elections of People's Deputies of Ukraine was adopted on 17 November 2011. It took into account the recommendations contained in the joint opinion issued by the Venice Commission and OSCE/ODIHR on the following subjects:

- Defining deadlines for the registration of candidates for the post of people's deputy in single-mandate districts
- Adopting a procedure for the "establishment" of electoral precincts abroad in single-mandate districts
- Defining a procedure for the adoption of decisions by district and precinct electoral commissions

- Ensuring access to the minutes of district and precinct electoral commission meetings for all participants in the electoral process

101. The Act on Elections of People's Deputies of Ukraine contains provisions according to which the same individual may be included in a party's electoral list of candidates and nominated in only one of the single-mandate electoral districts, either by means of a party nomination or by self-nomination. The Constitutional Court of Ukraine[27] has found those provisions to be unconstitutional.

IV. Initiatives and challenges in the field of human rights

A. Reform of criminal procedure (recommendations 22 and 23)

102. The current reform of criminal procedure represents a major step forward in the protection of human rights. The new Criminal Code has been in force in the country for nearly 10 years, while criminal procedure has so far not undergone reform. The Code of Criminal Procedure of 1961, which contains rules and standards from the Soviet era, no longer meets the modern requirements of society and the State. In its 50 years of existence, more than 80 per cent of the Code's articles have been amended, and a number of provisions have been recognized as inconsistent with the country's Constitution. The Code has also been the subject of criticism from the international community, in particular the Council of Europe.

103. All these factors raised awareness that it would be ineffective to patch together updates to the law, thus prompting the drafting of a new Code of Criminal Procedure, constructed on ideologically different principles and foundations. In April 2012, the Verkhovna Rada adopted the new Code of Criminal Procedure. After European experts had analysed the Code and issued a generally positive opinion on it, the Code was signed by the President in May of this year. It will enter into force on 19 November 2012.

104. Among the innovations in the new Code are the following:

- Ensuring the equality of the parties and the adversarial nature of the proceedings by granting the parties equal rights to submit information directly to the court and equal opportunities to put to the court evidence of guilt or lack of guilt.
- Improving guarantees to protect the rights of suspects and accused persons (people who have been charged or are on trial), in particular by barring the institution of criminal proceedings against a specific person, reducing the time of the pretrial investigation so that it begins only once the suspect has been identified, or in other words once the person's rights and freedoms have actually been restricted in connection with the criminal proceedings, and applying more stringent requirements for the demonstration by the prosecution of the need to apply a preventive measure of pretrial detention.
- Extending victims' rights: the new Code of Criminal Procedure increases the influence that the victim, as an accusing party, can have on the conduct of a criminal prosecution or on its termination.
- Updating pretrial investigation procedures by bringing together previously distinct parts of the initial inquiry and the pretrial investigation into a single pretrial examination that begins from the moment a law enforcement body is informed that a crime has been committed. The police work and the investigation will take place as part of a single process, with all procedural actions (measures taken by police and investigators) beginning only after the criminal proceedings in a case have begun.

- Improving the procedures for judicial oversight, which at the pretrial investigation stage will be effected by investigating judges selected by rotation for each case from among the judges of the corresponding court, who will resolve problems related to any restrictions of citizens' rights and freedoms during the pretrial investigation.
- Improving procedures for appealing against judicial decisions.
- Introducing new forms of criminal proceedings with a view to achieving procedural economy in the activities of the investigative bodies, the procurator's offices and the courts, while ensuring respect for human rights.

Institutional reform of the procurator's office and the legal profession

105. In November 2011, the President of Ukraine established a working group on the reform of the procurator's office and the legal profession, with a view to preparing agreed proposals for such a reform, taking into consideration generally recognized international democratic standards, and to ensuring the observance by Ukraine of its obligations to the Council of Europe. Taking into account the recommendations previously issued by the Venice Commission, the working group drew up a bill on the legal profession and the activities it performs. In April 2012, the President submitted the bill to the Verkhovna Rada for urgent consideration.

106. The working group is also considering a bill on the procurator's office (new version), taking into consideration the new Code of Criminal Procedure. This work is aimed at ensuring that, as a result of the reform, the country's procurator's offices will be relieved of functions that are beyond their remit and will protect State interests primarily by conducting criminal legal proceedings that respect the principle of the primacy of law and other generally recognized international democratic standards.

B. Systemic problems noted by the European Court of Human Rights and measures taken to deal with them

Non-execution of judicial decisions

107. One of the main problems in the defence of property rights is the failure to enforce the decisions issued by the domestic courts. This led to the handing down by the European Court of Human Rights of a pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine*, according to which Ukraine must eliminate such problems and establish an effective mechanism for the implementation of court decisions.

108. To give effect to the decision of the European Court of Human Rights, the State Guarantees of the Enforcement of Judicial Decisions Act was adopted; it will enter into force on 1 January 2013. This law provides for the introduction of a new procedure for the enforcement of judicial decisions relating to the recovery of funds from State bodies (State institutions and enterprises). The intention is that awards against State bodies should be paid from the State budget within three months and, if the decision is not executed within that time, compensation will be paid. For State enterprises (State institutions and organizations), if a decision is not executed through payment by the debtor within six months, then the payment will be made from the State budget. The payment from the State budget must be made within three months, failing which the claimant is paid compensation.

Deprivation of liberty

109. In its judgment in the case of *Kharchenko v. Ukraine*, the European Court of Human Rights held that lacunae of a legislative nature, practices in respect of the use of detention, the choice of custody as a preventive measure, the modification or extension of such

preventive measures, the ineffectiveness of appeals against preventive measures and the impossibility of receiving compensation for such violations constituted violations of article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and presented a systemic problem in Ukraine.

110. On 13 April 2012, the Verkhovna Rada adopted the new Code of Criminal Procedure of Ukraine, which was signed by the President on 14 May 2012. The new Code eliminates the legislative lacunae responsible for the recurrent violations of article 5, paragraphs 1 (c), 3 and 4, of the Convention cited by the European Court of Human Rights in the case of *Kharchenko v. Ukraine* and thus solves the problems of illegal and excessively long periods of custody and lack of judicial review of the legality of detention. Specifically, the new Code stipulates that:

- Judicial bodies must provide justification when applying and extending custody as a preventive measure and must establish time limits for such custody
- Custody is an "exceptional measure"

111. Custody may be used as a preventive measure for a period of up to 2 months and may be extended for the same length of time. The duration of custody during a pretrial investigation may not exceed 6 months in criminal proceedings involving minor or ordinary offences and 12 months in the case of serious or especially serious offences. The provisions in question should also correct situations in which individuals are held in custody for an undetermined period without any judicial decision after the pretrial investigation is completed and prior to the preliminary consideration of the case by a court.

112. Under the new Code of Criminal Procedure, applications against the use of preventive measures are to be considered with the participation of the procurator, the accused and his or her counsel. The court is obliged to take the necessary measures to secure representation for the accused if he or she so requests, if the participation of defence counsel is mandatory or if the judge decides that the circumstances of the criminal proceedings require it.

113. The new Code also provides for a procedure to review the legality of detention at reasonable intervals. If a person held in custody files a request to change the preventive measure, the court is obliged to consider the request within three days. The court is obliged every two months to verify the application of the preventive measure and to cite new justification for extending the person's detention.

114. In addition, the new Code introduces new measures, in particular house arrest, that should significantly reduce the number of people in custody at remand centres.

115. The new Code also makes provision for the participation in proceedings of new parties, in particular investigators, investigating judges and substitute judges. The investigating judge is selected by the local court to monitor respect for the rights of individuals during an investigation. The substitute judge attends all court hearings and, if the main judge cannot conduct a hearing for a particular reason, the substitute replaces him or her. These provisions should also help reduce the length of proceedings.

116. Furthermore, given that the aspect of judicial practice mainly responsible for the recurrent violations of article 5, paragraphs 1 (c), 3 and 4, of the Convention was the lack of justification in judicial decisions for holding people in custody, beginning in June 2011 the courts of appeal in each of the country's 27 provinces held round tables on the issues around judicial practice referred to in the case of *Kharchenko v. Ukraine*. Representatives of the Office of the Government Commissioner for the European Court of Human Rights took part in these events along with judges from the Criminal Division of the High Specialized Court for Criminal and Civil Cases. They discussed with judges of the courts of appeal and local courts of the provinces the corresponding practice of the European Court

of Human Rights in respect of the use of remand in custody as a preventive measure. The round tables noted the need to comply with the requirements of the Convention and with the practice adopted by the European Court.

Ill-treatment and use of inadmissible evidence

117. In the case of *Kaverzin v. Ukraine*, the European Court of Human Rights ruled that the use of cruel and degrading treatment and torture against people deprived of their liberty and the failure to carry out effective investigations of complaints of such treatment were systemic in Ukraine. In nearly all cases, the ill-treatment was used with the aim of extracting confessions from detainees.

118. The case of *Balitskiy v. Ukraine* pointed to yet another systemic problem. The European Court of Human Rights stated in particular that the applicant's confessions, which were later cited by the court to convict him, were obtained officially from the applicant as a witness during his administrative detention. In fact, the applicant was being questioned at the time as a suspect, but without regard for his right of access to a defender or his right not to incriminate himself. Unfortunately, this is a practice used by the investigative bodies: despite the existence of a basis for classifying an act as a crime the investigation of which requires the participation of defence counsel, the investigative bodies instead qualify it as a lesser offence, and, having obtained from the person concerned a dubious waiver of the right to counsel, they then deny him or her that right during the first phases of the investigation.

119. These two systemic problems are inseparably linked, as the violations have the same aim: to obtain evidence that in future can be used to convict the person of committing a given offence.

120. Despite the fact that the Code of Criminal Procedure currently in force forbids the use of evidence obtained through a violation of the Code's standards, the ambiguity in this rule and poor judicial practice have made it possible to use such evidence.

121. At the same time, this question has been addressed in detail in the new Code of Criminal Procedure, which stipulates that in cases involving charges of especially serious offences the participation of defence counsel is mandatory. A suspect or person charged with an offence has the right to decline counsel. Such refusal must take place exclusively in the presence of the defender, once the person has had the possibility to have a confidential interview with him or her. Refusal of counsel must be documented in the record of proceedings and is not accepted in cases where counsel is mandatory. In the latter case, if the suspect or person facing charges declines counsel and does not hire another defender, a lawyer must be assigned to conduct the person's defence, as stipulated by law.

122. The new Code also provides that evidence obtained by means of a significant violation of the human rights and fundamental freedoms guaranteed by the Constitution, laws or international treaties of Ukraine is inadmissible, as is any other evidence obtained via information procured by such means. Significant violations of human rights and fundamental freedoms include in particular violations of the right to a defence, obtaining testimony or explanations from a person who has not been informed of his or her right to refuse to give testimony and refrain from answering questions or obtaining such testimony or explanations in violation of that right, and obtaining testimony from a witness who is later declared a suspect or is charged in the criminal proceedings in question. Such evidence is recognized by the court as inadmissible and cannot be taken into account in the court's decision.

123. Additionally, the new Code, unlike the Code dating from 1960, does not provide for the use of confessions in criminal cases. This innovation is particularly important in cases where a person is detained in connection with an administrative offence but is actually

questioned in connection with a specific criminal case. The existence of such a practice was explained by the possibility of obtaining a confession and later bringing criminal charges. The new provisions will do away with ill-treatment of the person, since, as noted above, the main reason for using it is to obtain a confession for later use as evidence.

124. In addition, in the context of the reform of criminal procedure, the procuratorial bodies will be reformed. Specifically, their role both in criminal proceedings and in respect of domestic legislation as a whole will be reassessed. The European Court of Human Rights has concluded that one of the reasons for ineffectiveness in the investigation of complaints of ill-treatment is that the procuratorial bodies tasked with investigating criminal cases are responsible for both monitoring compliance with the law during the investigation and supporting the State's charges in court. Clearly, that involves a conflict of interest.

C. Protection of children's rights

125. In June 2012, the Verkhovna Rada adopted the Act on the Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the Act has now been sent to the President for signature. Implementation of this Convention will make it possible to establish penalties for crimes related to the sexual exploitation of children and to deal with the procedural specificities encountered in investigating such cases, which involve participation by child witnesses and victims. It will prevent the commission of illegal acts against children by persons who work in constant contact with them.

D. Realization of the right of peaceful assembly

126. The Verkhovna Rada on 3 June 2009 adopted on first reading a bill on procedures for organizing and conducting peaceful events, which was the subject of some reworking in the light of the conclusions of the Venice Commission and was later renamed the bill on peaceful assembly. The text was considered on second reading on 15 March 2012, and it was decided that it required further work in preparation for a repeat second reading. The bill was drafted taking into consideration the provisions of international and regional standards for freedom of peaceful assembly. Specifically, its provisions are based on the International Covenant on Civil and Political Rights, of 1966, and the Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950. The bill stipulates that restrictions on the right of peaceful assembly may be established by a court in accordance with the law, and only in the interests of national security and public order, with the aim of preventing unrest or crime, for the preservation of health, or in defence of the rights and freedoms of others.

E. Right to an environment that is safe for life and health

127. Unfortunately, insufficient progress has been made at this stage in bringing Ukrainian legislation into line with the requirements of the Convention on the Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). Specifically, the lack of an appropriate legal mechanism for public participation in environmental impact assessment and authorization procedures does not allow for the proper realization of the human right to participation in environmental decision-making.

128. To address the comments made by the meetings of the parties to the Espoo Convention and the Aarhus Convention, in May 2012 a bill on environmental impact assessment was prepared jointly with experts taking part in a European Union project entitled “Support to Ukraine to implement the Espoo and Aarhus Conventions”.

Notes

[1] http://court.gov.ua/sudova_statystyka.

[2] Национальный механизм обеспечения равных прав и возможностей женщин и мужчин на сегодня представлен целым рядом государственных учреждений:

- в Верховной Раде Украины действует подкомитет по международно-правовым вопросам и гендерной политике Комитета по вопросам прав человека, национальных меньшинств и межнациональных отношений, а в секретариатах 27 комитетов Верховной Рады Украины назначены ответственные за оказание консультативной и методической помощи по вопросам обеспечения равных прав и возможностей женщин и мужчин;
- в 2010 году назначен представитель Омбудсмена по защите прав ребенка, равноправия и недискриминации;
- в 2011 году определен специально уполномоченный центральный орган исполнительной власти по вопросам обеспечения равных прав и возможностей женщин и мужчин – Министерство социальной политики Украины (Минсоцполитики), которое приняло на себя полномочия ликвидированного Министерства семьи, молодежи и спорта;
- в 2010 году введена должность советника по гендерным вопросам Премьер-министра Украины (приказ Министра Кабинета Министров Украины от 01.07.2010 года № 10600-К);
- в 16 регионах Украины назначены советники глав областных государственных администраций по гендерным вопросам (на общественных началах);
- в связи с первым этапом административной реформы и оптимизации системы центральных органов исполнительной власти временно была приостановлена работа Межведомственного совета по вопросам семьи, гендерного равенства, демографического развития, предупреждения насилия в семье и противодействию торговле людьми. Однако, постановлением Кабинета Министров Украины от 3 мая 2012 года № 354 “О внесении изменений в постановление Кабинета Министров Украины от 5 сентября 2007 года № 1087” возобновлена деятельность этого Межведомственного совета. А в июне этого года утвержден ее персональный состав (приказ Минсоцполитики от 08.06.2012 года № 346);

для своевременного и эффективного реагирования на жалобы и обращения граждан по фактам дискриминации по признаку пола, во исполнение статьи 6 Закона Украины “Об обеспечении равных прав и возможностей женщин и мужчин” при Минсоцполитики в 2012 году возобновлена деятельность консультативно-совещательного органа – Экспертного Совета по рассмотрению обращений по фактам дискриминации по признаку пола.

[3] В соответствии с приказом МВД от 19.01.2012 года № 47 обучение курсантов набора 2011 года по экспериментальной программе подготовки специалистов по схеме «курсант – военнослужащий – курсант», которая вызвала обеспокоенность общественности на предмет дискриминации женщин по признаку пола при приеме в ведомственные вузы, продлен только на базе Харьковского национального и Днепропетровского государственного университетов внутренних дел. В 2012 году обучение по экспериментальной программе не предусмотрено.

[4] Согласно законодательству в сфере образования решение об открытии, реорганизации или ликвидации общеобразовательного учебного заведения принимают органы местного самоуправления. Кроме того, ликвидация и реорганизация общеобразовательных учебных заведений в сельской местности происходит исключительно при условии согласия территориальной общины.

[5] В рамках Государственной программы «Школьный автобус» в 2011 годах было приобретено 209 машин за средства Государственного бюджета и более 300 автобусов – за счет местных бюджетов.

[6] В общеобразовательных учебных заведениях предусмотрено введение в штатное расписание общеобразовательных учебных заведений должности учителя-дефектолога и учителя-логопеда для осуществления соответствующей коррекционно-развивающей работы. Кроме того,

Классификатор профессий дополнен должностью ассистента учителя инклюзивного обучения, который введен в Типовые штатные расписания общеобразовательных учебных заведений (это положение вступит в силу с 1 сентября 2012 года). По оперативным данным, в общеобразовательные учебные заведения интегрировано около 129 тыс. детей с особыми образовательными потребностями, из которых 45% составляют дети с инвалидностью. В 2011/2012 учебном году в общеобразовательных школах Украины функционировало 508 специальных классов, где получали образование 4,9 тыс. учащихся, что является распространенной формой интегрированного обучения.

[7] Формирование жизненных навыков у детей с особенностями развития, в том числе детей с инвалидностью, предусмотрено учебными предметами «Социально-бытовое ориентирование», «Ориентировка в пространстве», «Развитие слухового-зрительного-тактильного восприятия речи и формирования произношения», «Украинский язык жеста», «Трудовое обучение».

[8] Указом Президента от 24.05.2011 года № 597/2011.

[9] Благодаря принятым мерам на 2,1% уменьшилось количество несовершеннолетних, причастных к совершению преступлений, в том числе на 3,7% – совершивших преступления в состоянии опьянения. Следственными подразделениями милиции направлено в суд почти 2 тыс. уголовных дел за вовлечение несовершеннолетних в преступную деятельность (ст. 304 УК Украины). Выявлены практически 5 тыс. семей, в которых проживает более 9 тыс. детей, которые нуждались в социальной помощи.

[10] Количество обращений по поводу насилия в семье, поступивших на «Телефон доверия» и выявленных в рамках Национальной кампании «Стоп насилию»:

год	*общее количество*	*от женщин*	*от детей*	*от мужчин*
2010	110 252	100 390	924	8 938
2011	126 495	113 872	762	11 861
I квартал 2012	31 920	28 787	215	2 918

[11] постановление Кабинета Министров Украины от 18.01.2012 года № 29.

[12] постановление Кабинета Министров Украины от 18.04.2012 года № 303.

[13] постановление Кабинета Министров Украины от 23.05.2012 года № 417.

[14] постановление Кабинета Министров Украины 03.05.2012 года № 354.

[15] Из общего количества рассмотренных дел:

- в 17 делах относительно 29 лиц вынесены обвинительные приговоры;
- в 2 делах действия 3 лиц переквалифицированы и они осуждены по другим статьям УК;

по 1 делу судом принято решение об оправдании 4 лиц в части обвинения, связанного с торговлей людьми, и об осуждении по другим статьям УК.

[16] Указ Президента Украины от 11.01.2012 года № 11/2012 «О внесении изменений в Положение о Министерстве юстиции Украины»; Указ Президента Украины от 01.06.2012 года № 374/2012 «О внесении изменений и признании утратившими силу некоторых указов Президента Украины»; постановление Кабинета Министров Украины от 28.12.2011 года № 1362 «Об утверждении Порядка и условий проведения конкурса и требования к профессиональному уровню адвокатов, привлекаемых к оказанию бесплатной вторичной правовой помощи»; постановление Кабинета Министров Украины от 28.12.2011 года № 1363 «Об утверждении Порядка информирования центров по предоставлению бесплатной вторичной правовой помощи о случаях задержания лиц»; постановление Кабинета Министров Украины от 18.04.2012 года № 305 «Вопросы оплаты услуг адвокатов, оказывающих вторичную правовую помощь лицам, задержанным в административном или уголовно-процессуальном порядке, а также по уголовным делам»; постановление Кабинета Министров Украины от 06.06.2012 года № 504 «Об образовании Координационного центра по оказанию правовой помощи и ликвидации Центра правовой реформы и законопроектных работ при Министерстве юстиции».

[17] В 2009 году — 7742 человека, в 2010 году — 6583 человека и на 01.06.2012 года – 7092 женщины и 93 девушек.

[18] Так, за первые шесть месяцев 2012 года в учреждениях Пенитенциарной службы умерло 537 человек, что на 64 человека меньше, чем за аналогичный период в 2011 года , в

многопрофильных больницах — 186 человек, что на 37 человека меньше, чем за аналогичный период в 2011 года, в специализированных туберкулезных больницах — 104 человек, что на 24 человека меньше, чем за аналогичный период 2011 года.

[19] Среди умерших в течение текущего года 40 лицам было отказано судами в освобождении по болезни, из них 14 лицам было отказано в освобождении дважды, 2 лицам – 5 раз.

[20] Совместный приказ Министерства юстиции Украины и МОЗ от 10.02.2012 года № 239/5/104.

[21] По состоянию на 01.06.2012 года в учреждениях ГПС Украины находилось 5024 больных туберкулезом и 6347 ВИЧ-инфицированных, из которых 1144 получают антиретровирусную терапию.

[22] 21 марта 2012 года подписано Соглашение о сотрудничестве между ГПТС и Всеукраинской благотворительной организацией «Всеукраинская сеть от людей, живущих с ВИЧ/СПИДом» по противодействию распространения ВИЧ/СПИДа при финансовой поддержке Глобального Фонда для борьбы со СПИДом, туберкулезом и малярией.

[23] Указы Президента Украины № 950/2011 от 27.09.2011 года и № 1046/2011 от 18.11.2011года, соответственно.

[24] Президентом Украины одобрена Концепция государственной миграционной политики, во исполнение которой Правительством Украины разработан План мероприятий по интеграции иностранных мигрантов и реинтеграции украинских мигрантов в Украину на 2011–2015 годы, План мероприятий по реализации Концепции государственной миграционной политики.

[25] постановления Кабинета Министров Украины от 14.03.2012 года № № 196, 197, 199, 202 и 203.

[26] приказ Министерства внутренних дел от 05.10.2011 года № 649.

[27] Решение КСУ от 5 апреля 2012 года № 8-рп по делу о соответствии Конституции Украины (конституционности) части пятой статьи 52, абзаца второго части десятой статьи 98, части третьей статьи 99 Закона Украины «О выборах народных депутатов Украины» (дело о выдвижения кандидатов в народные депутаты Украины по смешанной избирательной системе).