



SPEECH
OF THE UKRAINIAN PARLIAMENT
COMMISSIONER FOR HUMAN RIGHTS
NINA KARPACHOVA AT THE PRESENTATION
OF THE ANNUAL REPORT TO THE PARLIAMENT
OF UKRAINE ON THE STATE OF OBSERVANCE
AND PROTECTION OF HUMAN RIGHTS
AND FREEDOMS IN UKRAINE

7 February 2012



Kyiv

УДК 342.7 (477) (042.3)
ББК 67.9 (4УКР) 400.7
С 76

- C 76 **Speech of the Ukrainian Parliament Commissioner for Human Rights Nina Karpachova at the presentation of the Annual report to the Parliament of Ukraine on The State of Observance and Protection of Human Rights and Freedoms in Ukraine, 7 February, 2012.** — K., 2012. — 28 pages.

ISBN 966-7855-00-07

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Allow me to present for your consideration the 2011 Annual Report of the Commissioner for Human Rights entitled “The State of Observance and Protection of Human Rights and Freedoms in Ukraine”. The full text has been submitted to the members of the Parliament.

Like in many other countries of the world, the global financial crisis has aggravated the human rights situation in Ukraine last year. *At the UN Human Rights Council 18th session, the United Nations High Commissioner for Human Rights Mrs Pillay rightfully observed:* “When economy faces hard times, it is the poor who bear the brunt of crises. These are the groups and individuals who are entitled to protection and safety nets, and not those private actors who stoked financial and economic unrest”. Governments do their best to regain economic growth momentum and balance the budgets by implementing proper reforms. Quite often that brings about the restriction of people’s economic, social, and cultural rights.

In 2011, a global wave of social turmoil swept many nations, from North Africa to Europe and the U.S. The crisis aggravated the world's polarization of the rich and poor, discrimination, food crisis, migration, armed conflicts, and violence. The increased global efforts to support human dignity, justice, and the right to participate in public decision-making were totally understandable.

Modern information technologies, particularly *social networks such as Facebook, YouTube, and Twitter* were instrumental in this global awakening process.

In the end, the international mass media monopoly was overthrown!

The importance of social networks in Ukraine became evident quite recently after the shutdown of the EX.UA file-sharing website. Without any prejudice to copyright protection whatsoever, I would like to point out that in view of the extent of poverty in our society, *for hundreds of thousands of Ukrainians* a website like this may be *their only way to access the cultural legacy of mankind*.

I do believe that *the right to free Internet access has to be recognized as an inviolable and fundamental right*. Also, the Internet may not be used for manipulating people or invading their privacy, including through abuse of personal data.

During the last year, Ukraine was in the focus of attention of the European community. *Ukraine's chairmanship of the CoE Committee of Ministers*, on the one hand, contributed to Ukraine's EU integration aspirations, while on the other hand it increased responsibility for fulfilling the obligations undertaken when Ukraine joined the Council of Europe.

Under my mandate of the Ombudsman, I have made an active contribution into promoting the EU-Ukraine dialogue as a mediator. To this end, we successfully cooperate with the CoE Commissioner for Human Rights, the President of the European Parliament, members of

the most influential factions, and members of the Delegation to the EU-Ukraine Parliamentary Cooperation Committee.

On recommendation of Mr. Teixeira, Head of the EU Delegation in Ukraine, I had a meeting with the ambassadors of the EU member states to Ukraine. We had an open and mutually beneficial discussion of the systemic problems of human rights protection. I am convinced that despite all difficulties, these problems should not impede Ukraine's EU integration.

This year, the Parliamentary Assembly of the Council of Europe issued its Resolution No.1862 based on the findings of the pending monitoring procedure. It welcomed the Ukrainian government's ambitious reform program but it also expressed serious concern over the persisting systemic problems, particularly those involving the judiciary, and also pointed out that the court processes of former high-ranking officials, namely Yuliya Tymoshenko, Yevhen Korniychuk, Yuriy Lutsenko, Valeriy Ivaschenko and others, resulted from criminalization of political decisions, which goes against the rule of law principle. As the Ukrainian Ombudsman, I had to take direct action to protect human rights in each of these cases.

In all honesty, those high-profile cases involving former high-ranking officials also revealed a number of long-standing problems of pre-trial and judicial investigation and detention conditions that also affect hundreds of thousands of Ukrainian citizens. I firmly believe that Ukraine will do its best to implement this PACE resolution.

Ensuring Ukraine's compliance with the international and European human rights standards is crucial in view of Ukraine's future OSCE chairmanship in 2013.

This Report presented to you today is based primarily on the findings of the monitoring carried out in response

to **complaints submitted to the Ukrainian Commissioner for Human Rights** by foreign citizens, refugees, and stateless persons which are a sensitive gauge of the most pressing social problems and the government's ability to solve them.

Last year, **164,000 complaints** were submitted to the Office of the Commissioner for Human Rights, which is twice as many as in the previous year. Overall, during my term in office, I have received **1,300,000 complaints**.

Like before, more than a half, or **56.2 percent** of complaints involve violations of **civil rights**, particularly the right to a fair trial, and persistent failure to enforce court judgments. **Almost 17 percent** of claims involve violations of **social rights**, particularly loss of compensation and benefits, violations of pension, welfare, and subsidies rules, holding back of payments to mothers with many children, etc. Rank third on this list at **almost 14 percent** are complaints against violations of **economic rights** such as the right to labor and timely payment for work, the right to land, etc.

12 percent of complaints involve **violations of personal rights**, particularly the right to personal integrity, cases of torture, as well as government invasion of citizen's privacy. Approximately **2 percent of claims** involved violations of **political rights**.

I would also like to point out that last year **almost 100,000 Orthodox Ukrainians** sent their complaints to the Commissioner asking to protect their right to alternative methods of taxpayer accounting, i.e. without using identification numbers or any forms of electronic documents.

As the analysis of complaints received by the Commissioner for Human Rights suggests, in fact, one way or another, every reported case of human rights violations involves some sort of discrimination. Therefore, all problems of human rights protection in Ukraine should be approached through the prism of **equality of rights**.

Cooperation with Public Authorities and Local Self-Government

The cooperation between the Commissioner for Human Rights and the President of Ukraine, the Verkhovna Rada, the government, the judiciary, the law-enforcement, and local executive and self-government agencies is instrumental in human rights protection.

Early in 2011, the Ombudsman met with *Ukraine's President Viktor Yanukovich* to discuss in details human rights protection in Ukraine. Throughout the year, the Commissioner for Human Rights submitted a number of requests to the President of Ukraine which he supported.

In 2011, the Commissioner for Human Rights reviewed 660 draft laws and regulations submitted to the Cabinet of Ministers of Ukraine for consideration; 52 of them were amended following suggestions that the Commissioner made during the Cabinet sessions.

The cooperation between the Commissioner for Human Rights and parliamentary committees, factions, and groups was also constructive.

I would also like to point out that *since the institution's creation, the Commissioner for Human Rights has received the total of 3,288 queries and written requests from members of the Ukrainian Parliament*. It means that on average every Member of Parliament of all convocations has sent at least one request to the Ukrainian Ombudsman.

In 2011, the number of such requests was 208, or 30 percent more than in the previous year.

As the Ukrainian Parliament Commissioner for Human Rights, I have always been a proponent of unbiased investigation of the issues raised by members of the Ukrainian parliament representing all factions and groups, and of joint efforts to resolve them strictly in accordance with the requirements of the international and national legislation.

Fighting Poverty and Protecting Labor and Social Rights

The Human Development Index (HDI) is a composite indicator used to measure the standards of living. According to last year's HDI, Ukraine ranked **76th out of 187 countries of the world**, i.e. lower than average in Europe and Central Asia.

How did that happen? Sadly, the demographic crisis still persists in Ukraine. Compared to 1990, neither the life expectancy (70.4 in 2010 vs. 70.7 in 1990) nor the GDP per capita (US\$ 6,535 in 2010 vs. US\$ 8,928 in 1990) figures have been matched. In fact, the current HDI ranking should be attributed mostly to the high level of education in Ukraine.

The unfair distribution of the country's resources and wealth and the dangerous trend towards polarization between the rich and the poor result in people's marginalization from economic, social, political, cultural, and informational activities, hindering the exercise of their constitutional rights and freedoms.

Just as in the previous years, ***the issue of poverty alleviation in Ukraine remains one of the most pressing problems affecting the national security***. The majority of complaints from people reflect their outrage with social injustice and resentment of the government's attempts to shift the burden of the crisis onto them.

According to the latest official statistics, ***Ukraine's poverty rate is currently 24.1 percent***. In fact, every one in eight Ukrainian residents lives in extreme poverty or below the poverty line. Almost 38 percent of Ukrainian households are heavily marginalized, meaning that these people are not able to fully participate in public life due to poverty, lack of basic knowledge and skills, or discrimination. Families with children and rural population are among the poorest of the poor.

I have to point out that according to the UN criteria for Central and Eastern European countries, **almost 80 percent** of Ukraine's population is considered poor. The situation when the income of the richest ten percent of the country's population is more than 40 times bigger than that of the poorest ten percent of the population undermines people's faith in justice. Inevitably, people begin to resent the government's actions, no matter how sound or reasonable. Public discontent and protest are growing.

The government-approved objective of reducing poverty by just 0.2 percentage points by 2015 will not solve the problem. It does not match the ambitious *Millennium Development Goals* adapted for Ukraine that call for reducing the share of the poor population by one third.

Working population's poverty is another typical Ukrainian phenomenon. I, as the Ombudsman, believe that the government should not be misguided by the fact that the unemployment rate in Ukraine has dropped below that of other European countries. Sadly, industry employment continues to decrease (*note the decrease by 182,000 employees from December 2010 to December 2011*). As of January 1 this year, there were on average eight jobseekers per job vacancy. In the majority of regions, the situation is even more dramatic, i.e. 140 unemployed persons per job vacancy in Cherkasy oblast, 51 in Khmelnytsky, and 47 in Vinnitsa. To add to that, employers offer salaries no higher than the minimum wage for one third of vacancies.

The violations of the right to receive timely pay also have an adverse impact on the working people's living standards. This practice can be essentially likened to slave labor, to say the least.

I should point out that over the last year, wage arrears were cut down by almost 20 percent.

Because of low pensions, the majority of people automatically find themselves in poverty after retirement. 74

percent of retirees receive a monthly pension of UAH 1,200 (US\$ 150) at best, and 11 percent receive no more than a minimum wage. More than 145,000 retirees receive even less than that.

Everyone was expecting that the pension reform would bring justice and introduce fair-value pensions. However, the Ombudsman's monitoring suggests that, since the launch of the pension reform, the average monthly pension has increased by only UAH 15.88 (US\$ 2), or 1,3 percent.

On the other hand, the increase in retirement age for women as well as the increase in pensionable service was naturally met with resentment. The Commissioner for Human Rights has made recommendations regarding the pension reform, particularly during the parliamentary hearings, however, very few of them have been taken into consideration.

To meet people's expectations, the pension reform requires new jobs, by all odds bringing the economy out of the shadows, legalizing wages, and improving pay schemes. It is high time to show political will to adjust a minimum living wage and other social standards that have become outdated in relation to an adequate standard of living.

All the more people are forced to apply for *welfare*. Various benefits and social payments amount to almost 33 percent of the population's income.

I hope that the Cabinet as well as the Ukrainian parliament will adopt the Ombudsman's recommendations regarding the improvement of social welfare laws.

Failure to comply with the existing laws on social rights and guarantees of war veterans and former child victims of war, Chernobyl veterans, and other welfare beneficiaries have prompted a wave of protest. And it's not just about the lack of financial resources. People are outraged by the continuous cuts of social spending in the budget, year

after year. I believe that social guarantees have to be established strictly by laws and be indexed to take account of the increasing cost of living.

Some of the existing legislation is yet to be brought in compliance with the rulings of the Constitutional Court of Ukraine. When speaking to the protesters during the rally of Chernobyl veterans in front of the Cabinet of Ministers building in November 2011, I as the Ombudsman supported their demands.

In my view, social guarantees have to be established strictly by laws and be indexed to take account of the increasing cost of living. It should be noted that any legislative changes must be agreed upon by civil society that represents the most vulnerable social groups.

Right to Health Care

A significant part of Ukraine's population finds accessibility and quality of health care inadequate. Per capita health care expenditures are currently UAH 920 (US\$ 115). Compare this with the average of more than US\$ 1,500 per capita in Europe and approximately US\$ 500 in the world.

In my opinion, to secure people's constitutional right to quality health care would require introducing a strict statutory procedure and mechanism for the provision of guaranteed free health services, universal social health insurance, and priority public funding of health care.

The Rights of People with Disabilities

Today, over 2.7 million people with disabilities, i.e almost 6 percent of Ukraine's population, do not feel equal and remain one of the most disadvantaged social groups.

Following numerous requests made by the Ukrainian Ombudsman and the National Assembly of Persons with Disabilities, the Parliament has finally ratified the UN Convention on the Rights of Persons with Disabilities

and its Optional Protocol. However, people with disabilities still face a major problem exercising their rights and freedoms, especially in terms of creating a barrier-free environment.

Over the last ten years, the office of the Commissioner for Human Rights has been successfully implementing the Ombudsman's aid project for children with cerebral palsy.

The pending draft government program entitled "The National Action Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities and the Development of a Rehabilitation System for Persons with Disabilities for the period until 2020" is expected to give people with disabilities equal opportunities for personal fulfillment and comprehensively promote their natural desire to make a valuable social contribution. The non-discrimination of people with special needs in the fields of health care, education, culture, arts, and employment should be its main purpose.

Last summer's tragic events in the village of Bile, Rivne oblast, when 16 people living in a social care institution burned alive, laid open the pressing problems of people who are, for various reasons, devoid of family support.

With support from the Cabinet of Ministers, the Ombudsman, together with the administration of Rivne oblast, made sure that the social care center was rebuilt in the shortest time possible and that the new rural family clinic was opened that fall.

I am convinced that the government's social support programs for persons with disabilities and elderly people must target the issues of social insurance, and employ an adequate number of medical workers needed to take care of bedridden patients as well as evacuate them in an emergency.

Rights of the Child

The *protection of the rights of the child* is one of the main concerns for the Ombudsman of Ukraine. I would like to thank all members of the Parliament, of all factions, for adopting in April last year a resolution based on the Special Report of the Commissioner for Human Rights entitled “*The State of Compliance and Protection of the Rights of the Child in Ukraine*” presented on the occasion of the 20th anniversary of the ratification by Ukraine of the UN Convention on the Rights of the Child.

The accomplishment of child protection objectives as established by the President, the Parliament, and the Cabinet of Ministers of Ukraine has allowed us to reinforce the positive trends in adoption of orphans, prioritizing family orphanages and domestic adoption, and a significant increase in financial assistance for child birth and adoption.

Last year, the Ombudsman received more than 1,300 complaints from almost 3,000 children and adults on behalf of children. This is 1.5 times more than the previous year. The major persistent problems remain securing children’s rights to life and health care, child poverty alleviation, homelessness and neglect, social orphanhood, violence against children, etc.

Despite the last five year’s positive trend towards reducing infant mortality, its rate still remains relatively high at 9.1 per 1,000 live births, while the lowest rates are observed in such countries as Japan, Sweden, France, and Cuba.

Sadly, there has recently been an increase in the number cases of *children dying during classes, particularly physical education classes*. I believe, extra efforts are required to promote healthy lifestyle, daily sports classes at school, construction of sports grounds, and involvement of all children regardless of their family’s income in after-school activities.

The most frightening form of violence against children is mothers killing their children. Last year, twenty criminal cases involving infanticide were initiated. I believe that government-funded *baby hatches* should be set up across all regions, and an extensive awareness campaign should be undertaken, especially among the young people.

The Ombudsman of Ukraine has pointed out a new challenge for Ukraine that is *the use of modern reproductive technologies*, such as *surrogacy*, for *sale of children*. In November last year I submitted requests to the Prime Minister and the Prosecutor General to take action to address inadequate regulation of the use of assisted reproductive technology in Ukrainian medical institutions for sale of children. I hope for the Cabinet's and the Prosecutor General's efficient response to the Ombudsman's recommendations.

I believe that the pressing issues of child protection can be resolved only if *the voice of children is heard*. As the Ombudsman, I wholeheartedly welcome the Optional Protocol to the UN Convention on the Rights of the Child regarding the right of petition adopted by the UN General Assembly in December 2011.

Protection of the rights of military personnel

As a civil supervisory authority over the military and the law-enforcement in Ukraine, the Commissioner for Human Rights monitors the compliance with the constitutional rights and freedoms of military personnel and takes necessary actions to protect the interests of military servicemen.

First and foremost, I am talking about compliance with the rights of military personnel **to safe military service conditions, life protection, and health care**. 45 Ukrainian military servicemen died while in military service in 2011. It is a shame that one third of them committed suicide. Almost 70 percent of those deaths were non-

service related. One third of those military servicemen were officers.

Military servicemen and parents of conscripted soldiers keep sending complaints to the Ombudsman of Ukraine against the violation of their rights to **free and quality health care**. A case in point would be *the efforts of the Commissioner for Human Rights to protect the rights of patients and personnel of the Pirogov Central Military Health Resort in Saki*. I would like to thank members of the Ukrainian Parliament T. Bakhteyeva, O.Kuzmuk, V.Sushkevych, and A.Hrytsenko for helping preserve that unique health care facility.

Rights of the Ukrainian Labor Migrants

Protection of the rights of the Ukrainian labor migrants receives special attention in my activity. Because of their inability to earn decent living with honest labor, 5–7 million of my countrymen continue looking for better fortune overseas.

Ukraine's first monument to the laborers was installed on May 8, 2011, in the highland village of Kolochava in Transcarpathia Region, following the initiative of Ukrainian MP Stanislav Arzhevitin. The monument symbolizes a man parting with his family.

Migration, primarily for the labor purposes, has become a systemic problem in Ukraine that requires adequate actions from the authorities. On May 30, 2011, the President of Ukraine approved **the Concepts of the State Migration Policy** with a decree.

Finally, **the State Migration Service has been established as a central civil executive authority** to provide systemic protection of the rights for Ukrainians overseas. However, the service is still in the making, and it remains subordinated to the Ukraine's Minister of Interior causing a certain conflict of interests and giving priority to fighting against illegal migration among all its activities.

A positive example of migration policy is demonstrated by Portugal. Its government encourages migration and social adaptation of migrants taking into account the nation's ageing and workforce needs. Ukrainians are the second largest community in that country and are represented in the Advisory Board on Immigration operating under the Commissariat for Migration and Intercultural Dialogue. In the Ombudsman's opinion, this step would best represent the interests of the Ukrainian immigrants, preserve the national traditions, language and culture, as well as development of the intercultural dialogue.

At the Government meeting on November 9, 2011, the Ombudsman requested to envisage funding for the International Ukrainian School abroad for the testing of the Ukrainian students. I hope this proposal will be reflected in the amendments to the national budget.

The Ombudsman continues to protect the rights of the Ukrainian seamen abroad, including **the Leman Timber ship crew** liberated from the captivity of Somali pirates in 2008. The seamen have been litigating with the German ship owner for three years with the support of the Ukrainian Ombudsman.

Finally, in January 2012, Odessa Regional Court of Appeal passed a precedent decision obligating the German ship owner to reimburse damages to the Ukrainian seamen.

The Ombudsman's proceedings for the protection of rights to life, health and return to homeland of the **Ukrainian nationals detained by the Libyan rebels** have been very complicated. The Ombudsman has established cooperation with the MFA and Foreign Intelligence Service of Ukraine, the Red Cross and Amnesty International in this matter.

The Ombudsman has asked High Representative of the European Union, Vice President of the European Commission Catherine Ashton and Secretary General of

the Amnesty International Salil Shetty to take all possible steps to save lives of 28 Ukrainians detained in Libya.

I am convinced that despite all difficulties we can bring our countrymen back to Ukraine through our joint efforts, and they can embrace their relatives and friends in their homeland in the nearest future.

Rights of the National Minorities

Let me draw your attention to the sensitive issue of ethnic national policy and rights of the national minorities.

Unfortunately, humanitarian issues are losing priority further in our country in the time of global financial and economic crisis. Despite the existing Law on the National Minorities, the status of the focal point for the implementation of ethnopolitical policy has been narrowed down from a separate ministry to a department within the Ministry of Culture.

This stalls the improvements of the legislation on interethnic relations.

The government is procrastinating with the approval of the state program for the settlement of the persons deported because of their ethnic background, which causes fair criticism from the representatives of the Crimean Tatars and other nationalities.

We have been facing regular criticism from the Council of Europe regarding the discrimination of the Roma, violation of their rights to education, passports, medical service, access to the public services.

I am convinced that the authorities must establish the **State Service for Nationalities** and resume the operation of the advisory **National Minority Representatives Board under the President of Ukraine**.

Participants of the recent parliamentary hearings on ethnic policy have supported this proposal unanimously, too.

Equal Rights and Opportunities for Women and Men

I would like to focus the attention of the members of the Parliament on the problem of *equal rights and opportunities for women and men*. The Ombudsman welcomes the establishment of the *Equal Opportunities* inter-faction parliamentary association with both female and male members.

We have to do a lot more on the way to the real equality. Let us analyse the situation. We have no women in the government, among the members of the regional state administrations, among top officials of the judiciary. Women constitute only 8% of the Parliament's members. During the latest local elections only 7 women or 4.0% were elected to the posts of the regional or republican city mayors, 18 women or 6.5% as district town mayors, and 151 women or 19.5% as village heads.

In my last year's report I proposed to approve the nationwide program for the establishment of gender equality in the Ukrainian society. Respective proposals were submitted to the President and the Prime Minister of Ukraine as well.

On the eve of the parliamentary elections I would especially like to emphasize that the time has come for the practical implementation of the recommendations of the Parliamentary Assembly of the Council of Europe and the UN Committee on the Elimination of **Discrimination against Women on the introduction of interim special measures, for instance, the establishment of the gender quotas**. In my opinion, the elected authorities must have no less than 40% representatives of every gender.

The Human Right to Fair Trial

The Ombudsman provides systemic monitoring of the adherence to the human right for fair trial.

As of January 1, 2012, the European Court for Human Rights passed 820 decisions against Ukraine featuring

violation of Art. 6 of the European Convention *on the human right for fair trial* in 82% of cases.

I am convinced that only the *reform of the judiciary* may change the situation. It has really started with the approval of the new Law on Judiciary and the Status of Judges. The next step was the Parliament's approval of the Law on Free Legal Aid.

The President of Ukraine has submitted the new draft Criminal Procedure Code to the Verkhovna Rada, and the PACE in its Resolution No 1862 dated January 26 this year has called for its approval as fast as possible.

I would like to indicate that the draft includes principal positions of the Ombudsman of Ukraine on the liquidation of the institute of additional investigation; the introduction of home arrest; shortening of the terms of custody, etc.

The next steps include the approval of the new laws on the Prosecutor's Office and the Bar.

I maintain my position that the judicial reform shall become final only when the **judges will be elected by the people**.

The human rights for fair trial are brutally violated because of the chronic **lack of enforcement of the court decisions** (only about 33% of decisions implemented).

The level of the enforcement of judgements of the European Court of Human Rights (ECHR) is also critically low in Ukraine. Ukraine has paid **almost UAH 88 million** from the National Budget towards the enforcement of the ECHR judgements. However, currently **the absolute majority of the judgements against Ukraine (98%) are considered unimplemented fully**, as the state has not resolved systemic problems of the legislation improvement and the law enforcement practice, introduction of urgent measures for the implementation of the pilot decisions, for instance, in the case of *Yurii Mykolaiovych Ivanov vs. Ukraine*.

Right to Liberty and Personal Integrity

The Ombudsman's monitoring shows that the **law-enforcement officers and judges** continue **abusing the right to arrest** like before.

This problem has been building in Ukraine for decades, but has become especially acute lately. This can also be observed in **nearly double** number of complaints on that matter that the Ombudsman had received last year.

After our meeting in January 2011, President Viktor Yanukovich publicly called upon all law-enforcement officers and judges to prevent abuse of the right to arrest and only exercise it as an exceptional preventive measure.

The Ombudsman has been addressing the problem of excessive use of arrests at the panel meetings of the Prosecutor General's Office and Kyiv Prosecutor's Office.

Perennial procrastination with solution of the issue forced the European Court of Human Rights to take extreme measures and pass **pilot judgement in the case of *Kharchenko vs. Ukraine* dated February 10, 2011**. The Court focused on the lack of motivation in the arrest decisions issued by the local courts and noted that they have to be applied only in the cases of a real threat of the person's evasion of investigation and trial.

However, the Ombudsman's monitoring has confirmed that both the law-enforcement officers and judges continue blatantly neglecting the President's addresses, opinions of the European Court of Human Rights, recommendations of the CoE Commissioner and the Ombudsman of Ukraine.

Last year the Ombudsman repeatedly provided her protection to the 'Tax Maidan' participants and ex-officials on numerous occasions. However, let's remember the year of 2005! At that time, from this rostrum the Ombudsman gave her support to the governors of Donetsk, Kharkiv, Transcarpathia, and Ternopil Regions, as well as teachers, doctors and cleaners.

That is, abuse of the right to arrest is a **systemic long-standing problem in Ukraine touching upon lives of hundreds of thousands of people** going through humiliating detention or arrest procedures every year.

The Ombudsman insists on legal stipulation of **the right of the persons under trial to appeal their arrest in the Court of Appeal**. This will comply with the requirements of Article 5 of the Convention for the Protection of **Human Rights** and Fundamental Freedoms, judgements of the European Court of Human Rights in the case of *Hurepka vs. Ukraine* dated September 6, 2005, as well as Art. 129 of the Ukrainian Constitution that guarantees the right to appeal a court decision.

It is especially appalling when people in critical health state are thrown behind the bars. For instance, this happened to *Oleksandra Robeiko, 28*, who was put into the Kyiv City's remand prison and taken to court in critical condition; after the court made its verdict, she was taken to hospital, where she died three days later. Following this shameful fact I have addressed the High Qualification Commission of Judges to bring to disciplinary account the two Shevchenkivskiyi District Court judges who had been **considering O. Robeiko's theft case for 18 months and cynically disregarded the remand prison's request to change her measure of restraint**.

One of the factors contributing to the violation of the right to freedom and personal integrity is the **judicial red tape**.

This was confirmed by *the Ombudsman's personal meetings with prisoners in the Kyiv remand prison on January last year*. Most of over 300 people at the personal reception complained about the unreasonably long custody and court red tape. Some of them basically serve their full sentence while waiting for the court decision.

So, *in February 2011, I have submitted a request to the Prosecutor General, presidents of the Council of Judges,*

High Qualification Commission of Judges and High Council of Justice On Violation of the Human Right to Freedom and Personal Integrity and Reasonable Terms of Trial taking the Kyiv City and Kyiv Region as an example.

The High Qualification Commission of Judges has discussed the request of the Ombudsman and passed an extremely important decision to stop recommending judges for promotion until the judges in question finish all cases under their proceedings.

The High Specialized Court for Civil and Criminal Cases **has instructed presidents of the appeal courts to study the cases of violation of the reasonable terms of trial found by the Ombudsman and enhance control over timely proceedings on the cases.**

In my opinion, Ukraine does not require construction of new prisons, but it does require putting an end to the abuse of the right to arrest.

Protection of Citizens from Torture, Abuse and Ill-Treatment

Protection of citizens from torture, abuse and ill-treatment remains a key priority of the Ombudsman's activity.

A vivid example of police disregard for the human right to life is a high-profile case of ***death of 20-year-old student Ihor Indylo on May 2010*** in the Shevchenkiivskiy District Police Department in Kyiv. I have been saying from the very first days that ***the student died as a result of heavy bodily injuries inflicted specifically at the district police department.***

Together with the youth organizations, the Ombudsman has risen to protect honor and dignity of student Indylo. Meetings, discussions and polling was held with 320 people during this process. The Ombudsman has instructed its representative to participate in the court hearing of the criminal case on the side of the dead student's parents. **The mother of the dead, Liudmyla Indylo, is present in the session hall today.**

Although the case is under control of the President of Ukraine, the Ombudsman and the public, the persons guilty of the student's death still have not been found. One of the policemen was amnestied, and another received a parole sentence. The Ombudsman appealed those decisions in the Appeal Court.

In my opinion, establishment of the real circumstances of this crime is a matter of honor for the whole law-enforcement and judicial system.

According to the data of the Ukrainian Ministry of Interior, there were 27 deaths, including 14 suicides in the police departments and remand prisons last year.

Laslo Kolomparov, 39, could not stand torture and jumped from the fourth floor of Lozivskyi Town Police Department in the Kharkiv Region. Detainee **Hryhorii Baklan** died in the Svyatoshynskyi District Police Department as a result of numerous bodily injuries. **Yevhen Zvenyhorodskyi, 32**, was nearly beaten to death in Kharkiv Regional Department; afterwards the policemen took him out to a bench in a park and left there to die.

Very often the detainees in the special police institutions are kept in the degrading conditions regarded as a type of torture. Every fourth remand unit and 90% of detention rooms receiving up to half a million people annually do not meet the requirements.

The arrested persons are waiting for the hearings for hours in tight 'boxes' where they can hardly move.

I believe that the establishment of the Commission for the Prevention of Torture in September 2011 by the President was an important step. However, the implementation of the commitments under the Optional Protocol to the UN Convention against Torture requires establishment of a separate public authority for the prevention of torture. The Ombudsman has been insisting on this for many years, because it is more important to prevent torture than fight for the rights of the victims afterwards.

Human Rights in the Penitentiary Institutions

Growing overcrowding of remand prisons and penitentiary institutions cause further more concerns. The number of inmates and the sentenced has increased over the last three years by 8083 persons or almost 6%.

The Ombudsman's monitoring of the Kyiv Remand Prison has shown that its catastrophic overcrowding creates inhuman conditions for most detainees: people sleep on the floor or take their turns, as the institution was almost 1,000 beds short throughout 2011! Many other remand prisons experience the same situation.

I believe that the state has no moral right to put a person behind bars in the absence of the most basic conditions.

At the moment the number of prisoners in Ukraine constitutes 347 inmates for every 100,000 of population. By the way, the only European countries with higher prison population are the Russian Federation with 542, Georgia with 539, and Belarus with 385 inmates. At the same time, this index ranges from 60 to 120 in Finland, Slovenia, Norway, Switzerland, Germany, France and Italy, reaches 122 in Uzbekistan and 146 in Armenia.

A positive step is the recent introduction of a new building for 180 women in the Kyiv Remand Prison with support of Switzerland. This gave the opportunity to put some of the women into the premises that meet international standards.

Healthcare system in the penitentiary institutions is extremely unsatisfactory. More than 80% of medical equipment is obsolete and worn out, and prisons are short of qualified medical staff.

A crying example of the inhuman treatment was the case of 40-years-old Hanna Afanasieva. The investigators of the Kyiv Prosecutor's Office had been failing to give permission for her medical examination and surgery for a year. Only the efforts of the Ombudsman made it possible to organize the surgery and save the sick woman's

life. The Ukrainian journalists approached me about the case of Volodymyr Bondal, who found himself in the same situation.

On the basis of monitoring, the Ombudsman of Ukraine has submitted a request to the Government with a proposal to establish clear medical assistance procedures for the gravely sick inmates in the Ministry of Health institutions, as a human health should not depend on the investigator's or judge's permission for treatment.

Freedom of Speech

In the recent years, mass media have experienced a difficult transition from entirely state-owned governance to major denationalization and commercialization. Nearly 90% of the national mass media are now controlled by the business structures, individuals, political and civic associations. Although Ukraine does not have official censorship system, most mass media remain under the censorship of money, which limits the rights of the public for unbiased and objective information. Ukraine's information environment suffers from show-oriented trends that weaken the instructional, patriotic, cultural and educational functions of the media.

Journalists still face the threat of unpunished violence, while according to CoE Commissioner for Human Rights T. Hammarberg, the very threat of such violence itself is a form of censorship.

According to the Kyiv Independent Media Trade Union, a total of **65 journalists died** in the years of Ukraine's independence. High-profile cases of journalists Georgiy Gongadze and Vasyl Klymentiev still have not been finished. The Ombudsman holds an unchanging position in this case: the public demands that the court process must have maximum transparency. **Mrs. Lesya Gongadze is with us in this room today.**

I believe that following the international standards, Ukraine should introduce the practice of parliamentary investigations of murders of the mass media representatives and threats against them. An effective security system should be established at the national level to guarantee protection for the journalists during the discharge of their professional duties.

At the same time, in the opinion of the Ombudsman, the society has to get more effective protection from unscrupulous activity of those media representatives who brutally violate the Ethical Code of the Ukrainian Journalist.

I am convinced that we must move on to the practical *establishment of the Public Television and Radio Broadcasting to counterbalance the interests of the commercial clans.*

Access to Public Information and Internet. Personal Data Protection

The Ombudsman had received over 30 direct requests for information in 2011. Only 20% of them were related to the information possessed by the Ombudsman, and the rest can be qualified as requests regulated by a special law.

Results of the monitoring of the human right to access to public information have lead to the conclusion that the violations are not systemic and mostly result from insufficient explanatory work.

Both adults and children should be aware of the right to privacy, as they often share personal data with strangers during online communication, risking abuse of this information by offenders.

The Ombudsman proposes to develop and introduce the Code of Conduct for the media based on the Law on Personal Data Protection. Taking into account the available European experience, the Code should facilitate and ensure the right for free distribution of information and

strengthening of the press function as a public watchdog of authorities.

Internet is used by 33% of adult population in Ukraine. We are ahead of some of the Central and Eastern Europe countries in terms of growth of the internet users' numbers. However, the internet coverage development is rather erratic: almost 60% of all Internet users live in the capital. The main reason for this is poverty and irregular development of the regions.

Currently the country is faced by the need to eradicate computer illiteracy throughout the country. This requires financial support of the providers and mobile internet operators who provide services to schools, academic institutions, libraries, museums and archives.

I believe we should speed up the domestic software development and legally stipulate online safety rules to protect honor and dignity of every person.

In conclusion,

The Ombudsman strives to provide you with fair and credible information because the truth is above all. It is an elixir that can treat grave diseases of the society.

I would like to express my sincere gratitude to those who have helped to protect and reinstate violated rights and freedoms, and joined the efforts of the Ombudsman's team to bring back people's faith in justice with their care and support, as every person has the right to happiness!

SPEECH
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7 February 2012

Editor *O. Kuzmina*

Page-proof *M. Borshch*
S. Bogdanets

Формат 84 x 108/16. Офсетний друк. Папір офсетний.
Наклад 200 прим.