

The Ukrainian Parliament  
Commissioner for Human Rights



# STATE OF OBSERVANCE AND PROTECTION OF THE RIGHTS OF THE CHILD IN UKRAINE

SPECIAL REPORT  
OF THE UKRAINIAN PARLIAMENT COMMISSIONER  
FOR HUMAN RIGHTS

On the occasion of the 20<sup>th</sup> anniversary of ratification by Ukraine  
of the United Nations Convention on the Rights of the Child



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## INTRODUCTION

Protection of the rights and interests of the child is one of top priority tasks of the Ukrainian State as the level of respect for children and their rights, freedoms, and human dignity is the most accurate indicator of a humane and civilized society.

The international standards for the rights of the child that have developed over the course of many decades are enshrined in several fundamental international documents.

Back in 1924, the League of Nations drafted and adopted the *Geneva Declaration of the Rights of the Child*. After the UN was formed in 1945, the international focus on the rights of the child strengthened; the international community adopted a number of documents defining the status of children under the age of 18 and the obligations of the state and society to them.

The issues of protection of the rights of the child were addressed in the *Universal Declaration of Human Rights* adopted by the UN in 1948, and the 1966 International Covenants. Article 24, Section 1 of the International Covenant on Civil and Political Rights stipulates the following: “*Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*”

**In 1959, the UN adopted the Declaration of the Rights of the Child** which had a major effect on the policies of governments and parliaments all over the world.

**On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child** rightfully considered to be the constitution for children. The Convention introduced the latest universal standards for implementation of the rights of children in the world and in each country. The Convention declares the right of the child to have his/her own views and contains the provision that in all actions concerning children the best interests of the child shall be the primary consideration.

The Convention has been ratified by almost every country of the world except the USA and Somalia. **Ukraine was one of the first UN member states to have ratified the Convention on the Rights of the Child on February 27, 1991.** By doing so, Ukraine acknowledged that children are an especially vulnerable

group in view of their age, mental and physical development, and therefore they require special care and protection. Ukraine undertook a number of commitments under the Convention, particularly regarding the reform of the national legislation to bring it in line with the international standards.

Ever since the institution of the Ukrainian Parliament Commissioner for Human Rights was established, the Commissioner has always paid special attention to children's rights and has closely monitored their implementation and compliance. "*Human rights begin with the rights of children*" is the governing principle of the work of the Ukrainian Ombudsman. Every Annual Report of the Ombudsman includes the analysis of the implementation of children's rights and freedoms. A separate chapter in the Annual Report presented by the Commissioner to the Verkhovna Rada (Parliament) of Ukraine in June 2009 was dedicated to the protection of the rights of the child.

The Special Report *«State of Observance and Protection of the Rights of the Child in Ukraine»* is based on the findings of a comprehensive long-term monitoring of the whole range of issues related to the implementation and protection of children's rights and freedoms, particularly the analysis of many complaints received by the Commissioner for Human Rights, including those submitted directly by children.

The Report contains the analysis of legislative implementation of the rights of the child in accordance with the international standards; implementation of the rights of the child to life and health care, adequate standard of living, education, and employment; and proposals to improve the procedures for national and international adoption of Ukrainian orphans and children without parental care.

The Commissioner for Human Rights believes that implementation of children's rights in accordance with the UN Convention on the Rights of the Child requires joint efforts of the central and local government agencies and the public to raise awareness of children and adults regarding the existing mechanisms and means of protection of children's constitutional rights and freedoms, implement a single national education program for the young generation, develop and establish a recreation system for children accessible to all, provide government support to children's organizations, introduce an effective mechanism to prevent the worst forms of child labor and counter them, and increase liability for violation of children's rights.

The well-being of children and protection of their rights and human dignity should be the main concern of the whole Ukrainian society.

On February 27, 2011, Ukraine will mark the 20<sup>th</sup> anniversary of the ratification of the UN Convention on the Rights of the Child. The main idea of the UN Convention on the Rights of the Child is that "*in all actions concerning children...the best interests of the child shall be the primary consideration*".

## I. IMPLEMENTATION OF THE INTERNATIONAL AND EUROPEAN STANDARDS ON THE RIGHTS OF THE CHILD IN THE NATIONAL LEGISLATION OF UKRAINE

The 1989 UN Convention on the Rights of the Child is a cornerstone international document that set the basis for international standards for protection of children's rights. Having ratified the Convention twenty years ago, Ukraine, just as other countries, has been developing its national legislation on the protection of children's rights to bring it in line with international documents. The international standards for the protection of children's rights have been enshrined in the Constitution of Ukraine, the Law of Ukraine *On Child Protection*, the Family Code, and other laws and regulations. Their implementation is a top priority objective of the state.

In accordance with Article 9 of the Constitution of Ukraine, the following international documents on the protection of children's rights have entered into force and were integrated into the national legislation as mandated by the Verkhovna Rada (Parliament) of Ukraine:

– *the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography* (ratified on April 3, 2003);

– *the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts* (ratified on June 23, 2004, with a statement);

– *the Agreement on Cooperation of the CIS Member-States on issues pertaining to repatriation of minors to their state of permanent residence* (ratified on January 12, 2005);

– *the Convention on Cybercrime* (ratified on September 7, 2005, with reservations and statements);

– *the Convention on the Civil Aspects of International Child Abduction* (ratified on January 11, 2006);

– *the Convention on the Recovery Abroad of Maintenance* (signed on July 20, 2006, with a statement);

– *the Additional Protocol to the Convention on Cybercrime, on criminalization of acts of racist and xenophobic nature committed through computer systems* (ratified on July 21, 2006, with reservations);

- *the European Convention on the Exercise of Children’s Rights* (ratified on August 3, 2006, with a statement);
- *the Hague Conference on Private International Law Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations* (signed on September 14, 2006, with a reservation and a statement);
- *the European Social Charter (revised)* (ratified on September 14, 2006, with statements);
- *the Hague Conference on Private International Law Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children* (signed on September 14, 2006, with statements and a reservation);
- *the Council of Europe Convention on Contact with Children* (ratified on September 20, 2006, with a statement);
- *the European Convention on Nationality* (ratified on September 20, 2006, with a reservation and a statement);
- *the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody on Children* (ratified on March 6, 2008, with statements and a reservation);
- *the European Convention on the Legal Status of Children born out of Wedlock* (ratified on January 14, 2009);
- *the Convention on Action against Trafficking in Human Beings* (ratified on November 29, 2010).

In pursuance of the provisions of the Constitution of Ukraine, the UN Convention on the Rights of the Child, and other international documents, the Law of Ukraine *On Child Protection* was adopted on April 26, 2001, as well as a number of other laws aimed at ensuring protection of the rights and interests of children.

In 2004, the new Civil Code of Ukraine and Family Code of Ukraine entered into force. These are Ukraine’s framework laws, particularly regarding legal relations with children. The new codes take due account of important **conclusions and recommendations made by the UN Committee on the Rights of the Child.**

The scope of the Family Code of Ukraine has widened dramatically. The legal regulation of all kinds of family relations has been further detailed. It regulates family, private, and property relations not only between spouses, parents and their children, adopters and adoptees, mothers and fathers, but also grandmothers, grandfathers, great-grandmothers, great-grandfathers and their grandchildren, siblings, in-laws and their stepchildren, and other family members. The new family legislation allows courts to settle family disputes according to local customs and ethnic traditions, provided they are not contrary to the law and moral standards of the society. The provisions of the Code clearly stipulate that the regulation of family relations shall, in the best possible manner, accommodate the interests of the child.

In 2005, the Laws of Ukraine *On Provision of Organizational and Legal Conditions for Social Protection of Orphans and Children without Parental Care* and *On the Main Principles of Social Protection of Homeless Persons and Street Children* were adopted. Also, in line with the international standards, amendments were made to a number of laws to ensure social protection of families with children.

Over the last few years, a series of government programs were implemented to secure children's rights, including the *National Program for Countering Child Homelessness and Child Neglect for 2006-2010* (approved on May 11, 2006, №623), the *National Program for Family Support for the period until 2010* (approved on February 19, 2007, №244), the *National Program for Countering Trafficking in Human Beings for the period until 2010* (approved on March 7, 2007, №410), the *Government's Target Social Program for Reform of the System of Institutions for Orphans and Children without Parental Care* (approved on October 17, 2007, №1242).

The *National Target Program for Promotion of Domestic Adoption of Ukrainian Children "A Family for Every Child" for 2006-2016* was approved with a decree of the Verkhovna Rada (Parliament) of Ukraine on January 1, 2006.

The implementation of these programs is expected to bring the protection of children's rights in Ukraine in line with international standards.

***A top priority objective of the Ukrainian Parliament Commissioner for Human Rights is to promote implementation of International and European standards on the protection of the rights and freedoms of the child in the national legislation.*** To this end, the Ukrainian Ombudsman maintains systematic monitoring of international documents related to children's rights, the status of implementation by Ukraine of bilateral and multilateral agreements, and court practices, particularly those of national courts and the European Court of Human Rights.

Another factor in the successful implementation of International and European best practices in this field is the close and effective cooperation between the Commissioner for Human Rights and the Office of the UN High Commissioner for Human Rights, the UN treaty bodies and special instruments, the UN Children's Fund, as well as the Council of Europe Commissioner for Human Rights and relevant Council of Europe institutions, particularly the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Commission against Racism and Intolerance.

With a view to accelerating the implementation of the international standards for human rights and freedoms, particularly children's rights and freedoms, in the national law, the Commissioner for Human Rights has repeatedly requested to sign and ratify several international documents related, in various degrees, to children's rights, particularly the *1951 UN Convention Relating to the Status of Refugees* and the *1967 Protocol Relating to the Status of Refugees* that regulate international protection of underage refugees and asylum seekers.

These documents were ratified on January 10, 2002, as advised by the Commissioner for Human Rights to the Chairman of the Verkhovna Rada (Parliament) of Ukraine.

In her request to the President of Ukraine to submit to the Verkhovna Rada (Parliament) of Ukraine for ratification the *UN Convention against Transnational Organized Crime* and the supplement *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *2000 Protocol against the Smuggling of Migrants by Land, Sea and Air*, the Commissioner for Human Rights emphasized that this Convention was the first ever universal international treaty in the history of the UN developed to combat the disgraceful practice of transnational crime. Its scope includes prevention, investigation, and prosecution of such criminal actions, as well as strengthening cooperation between the member states. The Convention and Protocols supplementing it were ratified on February 4, 2004, with reservations.

Since 2001, the Commissioner has encouraged Ukraine to sign and ratify the *1977 European Convention on the Legal Status of Migrant Workers* in several addresses to the President and the Prime Minister of Ukraine, as well as in her *2003 Special Report "The Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad"*. The Convention strives to improve protection of migrant workers with a valid permit in terms of employment, social and economic security, protection of the rights of their families, etc. The document was ratified by the Verkhovna Rada (Parliament) of Ukraine on March 16, 2007.

On January 21, 2008, during the meeting with the President of Ukraine, the Ombudsman submitted a request to sign and ratify the *2006 UN Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention*, which, she claimed, would be instrumental in strengthening legal protection of persons with disabilities. On September 24, 2008, by order of the President of Ukraine, the Convention and Protocol were signed on behalf of Ukraine. On December 16, 2009, the Convention was ratified by the Verkhovna Rada (Parliament) of Ukraine.

To this day, Ukraine has not signed or ratified the *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* that provides protection for the rights of both legal and illegal migrant workers, as well as their underage children. On May 18, 2007, the Commissioner for Human Rights submitted a request to the President of Ukraine regarding accession of Ukraine to the Convention, which would ensure protection of the rights of both Ukrainian migrant workers abroad and foreign migrant workers in Ukraine.

The Commissioner is of the opinion that Ukraine should ratify the *2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (signed on November 14, 2007) as soon as possible. On November 11, 2009, the Ombudsman submitted a request for the ratification of the Convention to the President of Ukraine. It is very sad to note that

these new international instruments have acquired a special importance in Ukraine: the country has been directly involved in their development, and has lately become one of Europe's centers for sexual exploitation of minors. On the back of the abolition of long-term (over 90 days) entry visas to Ukraine for citizens of a number of developed countries, the flow of sex tourists including potential child molesters has increased. This situation needs to be addressed by the government without delay.

The Commissioner believes that a special emphasis should be made on the implementation of conclusions and recommendations made by the UN Committee on the Rights of the Child that is responsible for ensuring compliance of the UN member states with the *1989 Convention on the Rights of the Child*.

In 1994, Ukraine submitted to the UN Committee on the Rights of the Child its first periodic report which was reviewed in November of 1995. The following periodic report was submitted in 1999.

A number of important actions were taken in response to the conclusions and recommendations made by the UN Committee on the Rights of the Child following Ukraine's second periodic report that was reviewed in September of 2002.

In 2002, the UN Committee on the Rights of the Child recommended, in particular, that Ukraine adopt a National Action Plan to implement the provisions of the Convention on the Rights of the Child that would cover all of the Convention's provisions and principles and support establishment of a single permanent coordination agency for children's rights.

According to Article 5 of the Law of Ukraine *On Child Protection*, ***the main principles and the state policy on child protection shall be implemented by the Verkhovna Rada (Parliament) of Ukraine*** through national target programs.

On March 5, 2009, following a five-year development process, the Verkhovna Rada (Parliament) of Ukraine finally adopted the ***Law On the National Program "National Action Plan for Implementation of the UN Convention on the Rights of the Child" for the period until 2016***.

According to Chapter two of the Program, this document shall promote effective functioning of a comprehensive system for children's rights protection in Ukraine in line with the requirements set by the UN Convention on the Rights of the Child with due account of the UN Millennium Development Goals and the strategy defined in the final document adopted during the UN General Assembly's Special Session on Children entitled *"A World Fit for Children"*.

The Program stipulates a number of measures aimed at improving mother and child health care; countering HIV/AIDS, tuberculosis, and substance abuse; recreation development; education; social services; aid to families with children, etc. The responsibility for coordination of the central and local government actions as well as monitoring and evaluation of the Program implementation shall lie with the *Interdepartmental Committee for Child Protection* chaired by the Minister of Ukraine for Family, Youth, and Sports.

*The Commissioner for Human Rights is positive about the adoption of this long-awaited document and is looking forward to the appropriate and complete fulfillment of the objectives set by it.*

The findings of the monitoring of the implementation by Ukraine of the conclusions and recommendations made by the UN Committee on the Rights of the Child and other treaty bodies were compiled in the *Special Report by the Commissioner entitled "The Status of Observance of the International Standards of Human Rights and Freedoms in Ukraine"* presented to the Verkhovna Rada (Parliament) of Ukraine on December 10, 2008. In this report, the Commissioner insisted on complete implementation of these conclusions and recommendations.

Raising awareness about the international human rights standards and their implementation in the Ukrainian law is crucial. To this end, in 2004, the Commissioner for Human Rights with the assistance from the UN Office in Ukraine published a digest entitled "*The Concluding Observations and Recommendations of the UN Treaty Bodies on Reports of Ukraine in the Area of Human Rights*" in three languages (Ukrainian, Russian, and English). This was the first attempt to communicate the UN concluding observations and recommendations to the central and local government officials, lawyers, NGOs, trade unions, mass media, students, and the general public.

The UN Committee on the Rights of the Child is planning to review both the third and the fourth periodic reports on the implementation of the Convention on the Rights of the Child in Ukraine during its 56<sup>th</sup> session to be held on January 28, 2011. The report shall cover the period from 2002 to 2006. That same day, the Committee intends to review Ukraine's initial report on the implementation of the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. The reports were prepared by the Ministry of Ukraine for Family, Youth, and Sports and submitted for the Committee review in September 2008. These reports can be found on the website of the Office of the UN High Commissioner for Human Rights.

*In 2007, the UN Committee on the Rights of the Child reviewed Ukraine's first periodic report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.* The Ukrainian Ombudsman's standpoint on these disgraceful practices and protection of the rights of children of Ukraine was also communicated by the Office of the Commissioner for Human Rights.

The UN Committee on the Rights of the Child has repeatedly emphasized that the responsibility to implement the Convention on the Rights of the Child first and foremost lies with the parties to the Convention, and that effective exercise of children's rights depends on active involvement and cooperation of numerous stakeholders. That is why *before presentation of the periodic reports and discussion of the Convention implementation, the Committee adopted the*

*policy of engaging* national human rights institutions, experts, and activist, *as well as children*. It should be noted that Ukrainian NGOs for children's rights have been actively involved in the preparation of periodic reports to the UN Committee on the Rights of the Child. In 2008, 14 such organizations from various regions of Ukraine formed an initiative group in cooperation with the All-Ukrainian NGO Coalition and prepared the Alternative Report to the Committee on the Rights of the Child to communicate their own vision of the state of implementation of the Convention on the Rights of the Child in Ukraine.

*The Ombudsman's monitoring suggests that, despite implementation of the key provisions of the international documents, the Ukrainian children's rights law remains in essence fairly declarative.* Some of the children's rights are particularly difficult to secure, namely the right to a home, access of gifted youth to higher education, high-quality health services, etc. These negative trends have only been aggravated by the latest financial and economic crises.

*In May of 2008, during the UN Human Rights Council session in Geneva, Ukraine presented its first National Report on the human rights situation* within the framework of the Universal Periodic Review.

The representatives of the Commissioner for Human Rights took part in the review.

The Working Group on the Universal Periodic Report listed several recommendations for Ukraine in its concluding report. Approximately one fifth of the Working Group's conclusions regarding Ukraine were related to children's rights and interests. *Specifically, it was recommended to implement the concept of children and youth justice as suggested by the Commissioner for Human Rights* that would be in line with the European and International standards, and step up efforts to reduce and prevent teenager violence.

In their reports, representatives of several countries also suggested measures to be taken to improve the national system for countering trafficking in children, child prostitution and pornography, and child labor in Ukraine.

*The Commissioner for Human Rights believes that the Cabinet of Ministers of Ukraine must develop a specific action plan for the implementation of recommendations made by the UN Human Rights Council to strengthen the protection of children's rights in Ukraine.*

In accordance with the UN Human Rights Council Resolution 11/1 adopted on July 17, 2009, a decision was made to set up a working group on development of an optional protocol to the 1989 Convention on the Rights of the Child that would establish a procedure for submission of personal appeals by children and their representatives to the Independent Expert Committee to go along with the periodic reporting procedure as stipulated by the Convention. According to the UN Human Rights Council and the Committee on the Rights of the Child, establishing this procedure would be useful in the situations when national legal instruments are not effective or non-existent. The Commissioner for Human

Rights has been actively promoting this new initiative. At the moment, the 3<sup>rd</sup> Optional Protocol has been drafted and is currently under review.

*In October of 2009, a delegation headed by the Commissioner for Human Rights participated in Dignity, Development, and Dialogue International Conference conducted on the occasion of the 20<sup>th</sup> anniversary of the adoption of the Convention on the Rights of the Child.* Based on the findings of this conference, a number of recommendations to reinforce the international protection of children's rights and effective implementation of the Convention by its parties were developed and adopted (*see Annex*). During its 53<sup>rd</sup> session held in January 11-29, 2010, the UN Committee on the Rights of the Child approved the recommendations adopted by the International Conference.

*On September 14, 2006, Ukraine ratified the European Social Charter (revised in 1996) accepting 74 of its 98 provisions as binding.* The Charter constitutes a single human rights instrument along with the *1950 Convention for the Protection of Human Rights and Fundamental Freedoms*, and it is in fact the European equivalent of the bill of human rights.

*A number of the rights and guarantees enshrined in the Charter (revised) are related to minors and families with children,* including the following:

- adequate social, legal, and economic protection of children and adolescents, as well as families as basic social units, to ensure their all-round development, protection against poverty and social alienation through social care and aid to families with children, providing families with homes, aid to newly married couples, and other measures;

- providing children and adolescents, with due account of the rights and obligations of their parents, with necessary care, assistance, education, and training by means of establishing and maintaining appropriate institutions and services;

- establishing the minimum employment age of 15 with the exception of children involved in activities officially defined as light work that can not harm their health, morale, or education; the minimum employment age for jobs officially defined as unsafe or dangerous to health shall be 18 years; limitation of working hours for minors, etc.;

- health care and availability of medical services; implementation of the government preventive health care policy;

- protection of children and adolescents against neglect, abuse, and exploitation;

- securing the right to home and progressive reduction of homelessness; access of every person to adequate and affordable housing;

- assisting disabled persons, irrespective of their age and the type and nature of disability, in the exercise of their rights to self-dependence, social integration and engagement, etc.

*The Action Plan for the Implementation of the European Social Charter (revised) for 2007-2010 was approved with Decree №237-p of the Cabinet of Min-*

*sters of April 26, 2007.* The Action Plan supported the following actions: to conduct an investigation into the use of child labor; to provide training for labor inspectors, job safety inspectors, child welfare supervisors, juvenile police officers, and child labor officers; to launch an awareness campaign targeting children and youth to prevent the spread of socially dangerous diseases and promote a healthy lifestyle; to take measures to provide homes, education, and post-graduation employment assistance to orphans and children without parental care, etc.

On June 6, 2008, the Parliament conducted hearings entitled *The State of Implementation of the European Social Charter (revised) in Ukraine*. The recommendations developed during the hearings were approved by the Decree of the Verkhovna Rada (Parliament) of Ukraine adopted on December 18, 2008, №773-VI.

Since 2008, Ukraine has submitted three reports on the implementation of the Charter (revised). The first report regarding the provisions of the Thematic Group 2 *Health, Social Security, and Social Protection* of the Charter that Ukraine accepted as binding (articles 3, 11, 14, 23, and 30 of the Charter (revised)) was submitted on October 29, 2008. Conclusions and recommendations regarding these provisions were to be published in January of 2010. The second report submitted on October 8, 2009, listed articles of the Thematic Group 3 *Labor Rights* that Ukraine accepted as binding (articles 2, 4, 5, 6, 21, 22, 26, 28, and 29 of the Charter (revised)).

The third report for the period from 2007 to 2009 covered Ukraine's compliance with articles 7, 8, 16, 17, 27, and 31 of the European Social Charter (revised), particularly the right of children and adolescents to social, legal and economic protection.

It should be noted that the developments in the international human rights law keep reminding every country, including Ukraine, of the importance of a thorough and comprehensive analysis of international legal instruments and human rights models or mechanisms and their compatibility with the national law, historical and social trends, traditional values and the nation's mentality, national interests, etc. This is especially important as far as the life and rights of children are concerned. The development and adoption of international documents are largely influenced by the interests of certain countries or groups of countries. This explains why some international approaches are not always accepted in every country of the world.

A fitting example would be the *1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Conference on Private International Law)*. The accession of Ukraine to this international document has for a long time been lobbied on behalf of those countries whose citizens adopt the majority of orphaned children from Ukraine.

*On four occasions (in 2001, 2003, 2006 and 2009), the Verkhovna Rada (Parliament) of Ukraine voted against the ratification of the aforementioned Con-*

*vention, with reasonable arguments and by an absolute majority.* The last time, only 34 of the 439 members of the Parliament present at the parliamentary hearings on the issue on April 1, 2009 (1 representing the BYuT faction, and 33 representing the Our Ukraine—People’s Self-Defense Bloc faction) supported the ratification.

It should be noted that the majority of the Convention’s provisions that contribute to the protection of the rights of Ukrainian children have long been transposed into the national legislation, while the others are contrary not only to the Ukrainian law but also to the national interests of Ukraine.

The Commissioner for Human Rights is of the opinion that the best way to ensure protection of interests of the internationally adopted Ukrainian children would be to conclude bilateral agreements with the countries whose citizens adopt the majority of orphaned children from Ukraine, i.e. U.S.A., Israel, Italy, Spain, France, etc. (For more information on the subject, see the relevant section of this Report.)

The President of Ukraine Viktor Yanukovich has submitted to the Verkhovna Rada (Parliament) of Ukraine the draft Law of Ukraine *On Ratification of the European Convention on the Adoption of Children (revised)*. The latter has been open for signing since November 27, 2008. On behalf of Ukraine, the Convention was signed on April 28, 2009. The ratification of this document may not be favored by all social groups as Article 7, Section 2 of the Convention stipulates for the possibility of adoption of children by same-sex married couples or registered partners.

The monitoring of the children’s rights international standards implementation in Ukraine suggests that the government has been making efforts to bring the national legislation in line with the key international documents on children’s rights and ensure their implementation in practice.

*On the other hand, the Commissioner for Human Rights believes that Ukraine should step up its efforts to fulfill binding commitments to children’s right, ensure more active involvement of the civil society in the preparation and presentation of Ukraine’s reports on children’s rights to the UN and the Council of Europe institutions, strengthen public monitoring of the implementation by the government of concluding observations and recommendations made by the UN Committee on the Rights of the Child and other international and regional treaty bodies.*

In view of Ukraine’s Euro-integration efforts, the implementation of high International and European standards of children’s rights and freedoms is one of top priority national objectives.

## II. CHILDREN'S RIGHTS MONITORING AND PROTECTION MECHANISM: THE DUTY OF THE STATE

### 2.1. System of government agencies for the protection of the rights of the child in Ukraine

According to the Constitution of Ukraine (article 51), “*the family, childhood, motherhood, and fatherhood shall be protected by the State.*” The system of central and local government institutions for the protection of children’s rights has been established in Ukraine to ensure the protection of children’s rights and to counter negative factors in the children’s environment. This is in line with Article 3 of the *UN Convention on the Rights of the Child* which stipulates that Member States shall oblige to ensure compliance of all institutions, services and agencies for child care and protection with the requirements established by relevant authorities, particularly regarding safety, health care, personnel competency, and competent supervision requirements.

A reform of public child protection system has begun in Ukraine to fulfill requirements set by the Convention as well as respond to new challenges. In 2007, major amendments were made to the Law of Ukraine *On Child Care Institutions, Services, and Specialized Establishments*.

*The Cabinet of Ministers of Ukraine is the responsible agency for implementation of the government policy on child protection* through the development and implementation of national target programs for children’s social care and welfare, and *coordination of central and local executive agencies*. The protection of children’s rights is also the responsibility of several central executive agencies, with the Ministry of Ukraine for Family, Youth, and Sports being a leading one.

**The Ministry of Ukraine for Family, Youth, and Sports was established in 2005.** Throughout the years of Ukraine’s independence, it was reorganized several times, and its functions, powers and organizational structure underwent a number of changes. To supervise these developments, a special State Committee of Ukraine was set up and functioned for six years. The lack of an independent central executive agency responsible for the implementation of the government policy on children’s rights undermined the effectiveness of the latter. That is why the Commissioner for Human Rights has always advocated the establishment of a dedicated ministry for family and children. In accordance with the Decree of the President of Ukraine *On the Ministry of Ukraine for*

*Youth and Sports* of February 26, 2005, №381/2005, the Ministry of Ukraine for Family, Children, and Youth and the State Committee of Ukraine for Physical Education and Sports were merged to form the Ministry of Ukraine for Youth and Sports.

According to the Statute of the Ministry of Ukraine for Family, Youth, and Sports approved by Decree №1573 of the Cabinet of Ministers of Ukraine on November 8, 2006, the Ministry of Ukraine for Family, Youth, and Sports is the leading central executive agency for implementation of the government's child, family, youth, gender equality, physical education, and sports policies, and it is structured accordingly (*see figure 2.1.1*). According to the Decree №464 of the Cabinet of Ministers of Ukraine *On Approval of Staff Caps for Central Executive Agencies and Subordinated Territorial Divisions and Other Government Agencies* of May 13, 2009, the number of Ministry staff shall be limited to 307 employees.

To ensure the implementation of the government's child protection policy in respective geographical areas, the Ministry has set up oblast, district, city, and city district departments for family, youth, and sports, as well as the Ministry of the Autonomous Republic of Crimea for Family, Youth, and Sports. Their activities are governed by the Constitution and laws of Ukraine, Decrees of the President of Ukraine and the Cabinet of Ministers of Ukraine, and orders of the Ministry for Family, Youth, and Sports. As of May 1, 2010, there were 1,009 regional structures with the total of 2,656 employees.

The Ministry is comprised of the Department for Family and Gender Policy and Health Care and two government agencies, namely the Department for the Adoption and Protection of Children's Rights and the State Social Service for Family, Children, and Youth that are directly responsible for the protection of the rights, freedoms, and interests of children.

The Department for the Adoption and Protection of Children's Rights is a government agency subordinate to the Ministry for Family, Youth, and Sports that is responsible for the development and implementation of the government policy on children and family, the protection of the rights, freedoms and interests of children, countering child neglect and homelessness, etc. The Department is also responsible for the coordination of children services at oblast state administrations, Kyiv and Sevastopol city state administrations, district state administrations, and city and district councils carrying out activities related to adoption, custody, child care, and placement of children in family-type orphanages and foster families. The Department also studies and analyzes application of the related legislation.

According to Article 4 of the Law of Ukraine *On Child Care Institutions and Services*, "the number of employees of district, city, and city district child care services shall be at least one employee per two thousand children for districts or four thousand children for cities". Article 12 of the Law of Ukraine *On the Provision of Organizational and Legal Conditions for the Social Protection of Orphans and*



*Children without Parental Care* stipulates that a separate child care service shall be established for custody and care of orphaned children and children without parental care, its staff size depending on the number of children concerned. Over the last few years, the number of employees of local child care services has increased by 2.5 times at 4,415 full-time employees as of January 1, 2009, which constitutes 89.7 per cent of the number of employees as suggested by the law.

**The State Social Service for Family, Children, and Youth** is subordinate to the Ministry for Family, Youth, and Sports and is responsible for providing social protection and aid to children, supervising and coordinating the work of republican (of the Autonomous Republic of Crimea), oblast, city of Kyiv and Sevastopol, district, city, city district, community, and village social service centers for family, children, and youth (*see figure 2.1.2*). As of May 1, 2010, 4,843 such services were established employing 4,875 social care workers responsible for providing counseling, educational, medical, economic, legal, and information assistance to families, children and youth living in poor conditions and in need of aid.

A network of specialized establishments attached to social care centers for family, children, and youth has been established in Ukraine, comprising social assistance services for family; counseling hotlines; volunteering schools; social services for students; mobile social counseling centers in rural and highland areas; information resource centers; service for intravenous drug users, etc.

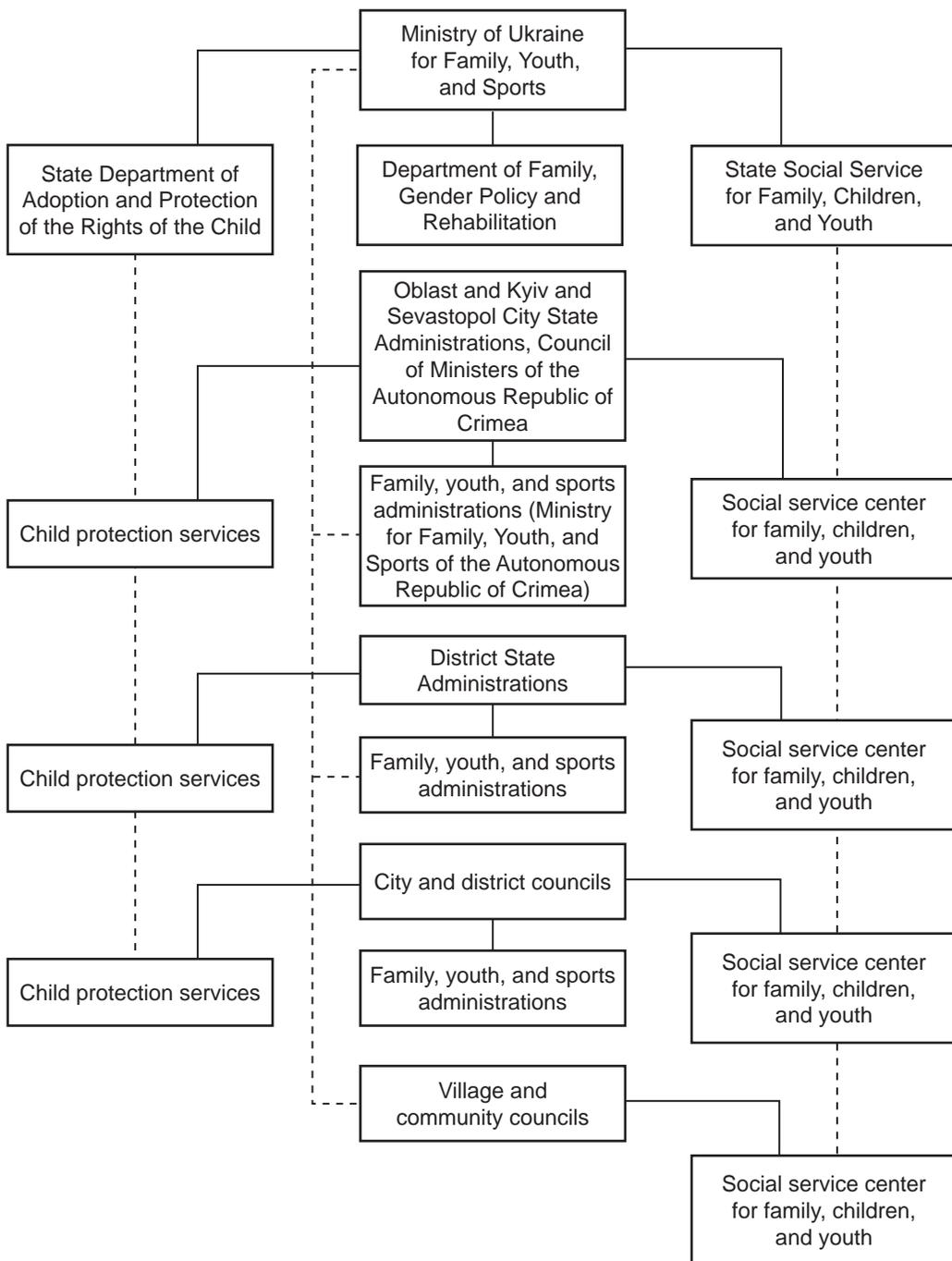
***However, the Commissioner's monitoring suggests that despite the availability of a branched network of institutions and services for children's rights protection, the results are often inadequate, particularly due to poorly defined scope of responsibilities, authority overlap, lack of accessibility and transparency of services, and lack of work ethics among employees.***

This is confirmed by a number of cases that the Ombudsman has investigated.

According to Article 24 of the Law of Ukraine *On Child Protection*, government agency and local self-government officials, law enforcement officers, employers of social services, housing and utilities, and education systems, as well as other persons should immediately report cases of child neglect by the parents, once they become aware of them, to a custody care institution nearest to the child's location. Nevertheless, there have been multiple instances ***of officials neglecting their duties, leaving children without attendance or in poor conditions for long periods of time.***

The Commissioner initiated an investigation after publication of an article in the January 29, 2009 issue of the *Facts and Comments* newspaper covering violation of the right to adequate living and upbringing conditions of the *little children of the Yaromenko family from Olevska, Zhytomyr oblast*. The investigation revealed neglect of their duties by local child care service employees. Since 2007, the Yaromenko family had been under the supervision by the district

**II. CHILDREN'S RIGHTS MONITORING AND PROTECTION MECHANISM: THE DUTY OF THE STATE**



**Figure 2.1.2** Organizational structure of central and local government agencies responsible for implementation of the rights and freedoms of the child in Ukraine, under control of the Ministry of Ukraine for Family, Youth, and Sports

social service center for family, children, and youth, and later, the child care service. The fact that the mother neglected her children which led to her four-month-old son being hospitalized with pneumonia as a result of freezing in December of 2007. Even after she was charged with child neglect in November of 2008, the procedure for termination of her parental rights was never initiated. Eventually, after her children Ivan (born 2007), Iryna (born 2005), and Olena (born 2001) were left in an unheated house where the air temperature barely reached +4°C for three days in a row, after which the youngest of the three children was diagnosed with pneumonia, frostbite, and shock, and admitted to a hospital, the court ruled to turn over child custody from the mother to the children's grandmother. The head of the district child care service was charged with disciplinary offense.

On the other hand, cases of wrongful and unjustified removal of children from their parents are becoming all the more frequent. For instance, in September of 2010, *Y.Matyash*, a 32-year-old single mother, died tragically in Poltava Oblast. Based on the findings of the investigation, the Commissioner for Human Rights arrived at the conclusion that the claim submitted by the child care service of Lohvytsya District State Administration to the custody care institution to remove the two little children, a seven-year-old boy and a one-year-old girl, from their mother was not substantially justified as required by the law. Several hours after the children had been removed from their mother, her dismembered body was found on railroad tracks. The violation of law by public officials whose primary task was to protect children's rights caused the death of a mother, turning two little children into orphans.

Regarding that case, the Ombudsman of Ukraine filed a request to the Minister for Family, Youth, and Sports and the head of Oblast State Administration. In the meantime, the Commissioner for Human Rights advised the Prosecutor General of Ukraine Viktor Pshonka to launch a comprehensive review of all cases where children have been taken away from their parents without termination of the latter's parental rights.

*The Commissioner for Human Rights believes that this sort of children's rights violations would happen much more rarely if there was a better coordination between relevant institutions and services of the Ministry of Ukraine for Family, Youth, and Sports and other ministries and institutions.*

This is also the primary task of the heads of local state administrations since the services, divisions and centers concerned have dual subordination.

The **Ministry of Labor and Social Policy of Ukraine** is another institution with an important functions related to the protection of children's rights in Ukraine. Local social security administrations are responsible for the distribution of government aid to families with children; social aid to low-income families, disabled children and persons disabled since childhood; temporary aid for children whose parents avoid paying child support, don't have sufficient means to support the child, or whose whereabouts are unknown; subsidies for

the reimbursement of utility charges; and they also supervise compliance with social security laws.

However, in their complaints to the Commissioner, people point at formalistic and impartial approach and sometimes deliberate violation of the rights of children by various social service officials on duty. Notably, the Commissioner for Human Rights has received a complaint from *Kharkiv resident Svyrydenko* and her daughter *Naumenko* whose father lived in Russia and for a long time had avoided paying child support. Since 2005, the mother had repeatedly applied for temporary aid for children whose parents avoid paying child support to the Frunzenskiy District Labor and Social Protection Administration in Kharkiv, but no assistance was ever provided.

The investigation of the case by the Ombudsman revealed that instead of providing assistance the officials kept requesting more documents from the mother. After two years of delays, it turned out that none of social service employees ever told the complainant that to apply for aid, a copy of a court decision confirming that the father was avoiding child support had to be provided. The family lived in poverty and the children kept wearing old clothes, which made the eldest son miss the school. Having collected heaps of certificates, the mother wrote to the Ombudsman in desperation: "*Public officials treat people like garbage. They treat Ukrainian citizens, including children, like enemies. Not only do they not protect the rights, they try to take them away.*" With the help of the Ombudsman, the children's rights were eventually restored.

As a rule, when people approach the Commissioner, it is usually after their complaint has been rejected or not addressed properly by government institutions. Despite the fact that, according to the law, the Ombudsman is not responsible for providing advice on issues such as procedures for social security payments, the Commissioner's Office employees have to do exactly that. When the procedures for payment of government nursing aid for children under 3 years of age changed in 2009, there was a marked increase in the number of related inquiries almost half of which called for clarification of provisions on the payment procedure. Among the people who received such advice were *O.Ivanenko from Izyum, Kharkiv Oblast; T.Nazar from Zelenodolska, Dnipropetrovsk Oblast; T.Kamenna from Bilogorska, Autonomous Republic of Crimea; M.Remizova from Horlivka, Donetsk Oblast; I.Shumova from Dovzhok, Kamyanyets-Podislkyi District, Khmelnytskyi Oblast*, and others. The flow of inquiries and requests regarding procedures for government aid payments suggests inadequate awareness-raising efforts from social service employees, which results in delays in the processing and receipt of payments by applicants and their children. In such cases, the children from poor families are the first to suffer.

***The Commissioner for Human Rights is of the opinion that the Ministry of Labor and Social Policy of Ukraine and local labor and social service administrations must review their approach to the protection of children's rights to ensure that every***

*person has access to all relevant information as well as actual assistance, primarily in obtaining certificates and other documents required to apply for aid.*

The findings of the monitoring by the Commissioner suggest that government agencies and their territorial branches do not always perform their functions related to child protection responsibly. Particularly, the approach of the Pension Fund of Ukraine to the protection of children's rights is purely formal. There was a recent case of two orphaned children, Kyiv residents *Viktoriya D.* and her sister *Yuliya* who for a long time had not received their survivor benefits. In response to the Commissioner for Human Rights's inquiry, the employees of the Obolon Pension Fund District Division in Kyiv cited software failure as the reason for leaving the little girls without any means of support for four months on! *The Commissioner for Human Rights is of strong conviction that this sort of negligence of public officials on duty is totally unacceptable, especially when little children are concerned, since it's not just a violation of their rights but it can also lead to tragic consequences.*

**The responsibilities of the Ministry of Justice of Ukraine** in relation to the protection of the rights and interests of children are particularly important. According to the Regulation on the Ministry of Justice of Ukraine as approved by Decree №1577 of the Cabinet of Ministers of Ukraine of November 14, 2006, the Ministry is responsible for implementation of the government's legal policy and policy on harmonization of the Ukrainian legislation with the EU law; ensuring, in accordance with the established procedure, that public officers enforce court rulings and decisions adopted by other government agencies and officials in an appropriate, complete and unbiased manner; ensuring protection of human and civil rights and freedoms in a particular field, etc. The efforts of the Ministry also fully apply to child protection.

The responsibilities of the Ministry of Justice related to the implementation of the National Program for Harmonization of the Ukrainian Legislation with the EU Law include developing proposals for bringing the Ukrainian Law in line with the *acquis communautaire* and developing draft laws and regulations accordingly. As far as implementation of the rights of children is concerned, amendments to the Ukrainian legislation have to take due account of the interests of the latter. Particularly, the Ministry has drafted a law on amendments to the Civil Procedure Code of Ukraine that would regulate judicial application of the provisions of the *1980 Convention on the Civil Aspects of International Child Abduction* ratified by Ukraine in 2006.

Despite the fact that this Convention has only recently entered into force for Ukraine, there have already been a number of claims from foreigners for removal of children from Ukraine. The Ministry of Justice of Ukraine and its regional office employees represent such claimants in courts. Complaints received by the Commissioner for Human Rights suggest that Ukrainian citizens who do not have sufficient means to hire an attorney find themselves at a disadvantage when such cases are brought to the court. *Lviv resident Yaroslava*

*Tatsyshyn* asked the Commissioner for Human Rights to protect her right to live with her little daughter *Anna* born of an illicit union with A.Pshynychnyak. In 2001, the father abducted the child and took her to France. It was only in 2009 that the mother could bring her daughter back to Ukraine with assistance from consular officers. Despite the facts of the case and the fact that the child's father was staying in France illegally, the Higher Jurisdiction Court of Nanterre of the Republic of France ordered that the daughter be returned to him without delay. On the basis of this ruling, the Main Justice Department in Lviv Oblast, on behalf of A.Pshynychnyak, filed a lawsuit to Halytskyi District Court of Lviv Oblast. A favorable decision by the court could result in removal of the child from her mother and taking her from her home country back to France to her father who is not only an illegal immigrant but is also on the wanted list in that country. Since, according to Article 13, Section 10 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Commissioner is entitled to participate in court proceedings either in person or through his/her representative, the decision was made by the Commissioner to represent *Anna* in the Ukrainian court.

The Ukrainian Ombudsman believes that, in order to protect the rights of Ukrainian children, the new amendments to the Civil Procedure Code of Ukraine on proceedings in cases based on the Convention on the Civil Aspects of International Child Abduction **must require compulsory investigation of such cases by a panel of judges** and establish sufficient time limits for appeals of court decisions.

Many complaints to the Commissioner for Human Rights are related to actions or omission thereof by the state enforcement service subordinate to the Ministry of Justice.

In most cases, complaints are related to the violation of children's right to adequate living standards and upbringing due to **failure to claim child support**. According to the law, it is exactly the responsibility of the enforcement service to ensure the recovery of child support payments. (This issue is covered in more detail in one of the next chapters of the Report.)

Here is only one vivid example of the bureaucratic delays in restoration of the child's rights by enforcement service employees. Kirovskyi District Court of the Autonomous Republic of Crimea ordered that *little Anastasiya P.* stay with her mother. Although the girl's father took her away, a state enforcement officer of Turkivskyi District Enforcement Service officially reported to the court that the child had been transferred to her mother. For a whole year, the mother had tried to prove that she had never been given her daughter back and she hadn't even seen her since, but to no avail. In response to her multiple claims, prosecution agencies and the police kept referring to the enforcement service report stating that *Anastasiya* had already been transferred to her.

As a result of the Commissioner's efforts, the state enforcement officer's act was repealed and the enforcement proceedings were resumed so that the child

could live with her loving mother. The child's rights were eventually restored, but who can tell what kind of effect the horrible long battle between the parents and the formalist and irresponsible attitude of public officials may have had on the child's morale and mindset?

Separate chapters of the Report cover the issues of children's right to pre-school, high-school, college, and out-of-school education which fall within the scope of the **Ministry of Education and Science of Ukraine**, and the rights to health care and rehabilitation services which fall within the scope of the **Ministry of Health of Ukraine**.

The **Ministry of Internal Affairs of Ukraine** is responsible for highly important tasks related to violations of children's rights. The ***Criminal Police Department for Children*** is responsible for prevention of juvenile delinquency, and detection, investigation and prosecution of crimes against children and committed by children. ***The Department for Countering Cybercrime and Trafficking in Human Beings*** is responsible for taking measures against the sale of children and the use of children in prostitution and pornography. According to the Regulations of the Ministry of Internal Affairs of Ukraine, one of its main tasks is to prevent child homelessness and juvenile delinquency. (On the issue of implementation of said children's rights by the divisions of the Ministry of Internal Affairs of Ukraine, read further.)

The **Ministry of Foreign Affairs of Ukraine** is responsible for making provisions for citizens of Ukraine, including minors, to enjoy full rights granted to them under the national laws of the countries of their sojourn and the international law. The Ministry's consular services are entrusted with the highly important responsibility of monitoring compliance with the rights of Ukrainian children adopted by foreigners.

Along with central executive agencies mentioned above, the following agencies take part in the implementation of the national child protection policy: **Ministry of Culture and Tourism of Ukraine; Ministry for Environmental Protection of Ukraine; Ministry of Economy of Ukraine; Ministry of Finance of Ukraine; Ministry of Ukraine in Emergencies and Protection of Population from the Consequences of Chernobyl Disaster**, and other central executive agencies. Many of them incorporate divisions responsible for hands-on coordination of regional child protection agencies. Particularly, ***the Division for Child Labor of the State Committee of Ukraine for Labor Safety and Protection*** is responsible for coordination between the institutions involved in countering the worst forms of child labor.

According to Article 19 of the Law of Ukraine *On Public Prosecutor*, the **Prosecutor's Office** is responsible for supervision of compliance with the laws on personal security, social, economic, political, and private rights and freedoms of citizens, and protection of their honor and dignity. The departments for the protection of rights and freedoms of minors at the Prosecutor General's Office

and regional prosecutor's offices are responsible for supervision of compliance with children's rights.

The Commissioner for Human Rights has established extensive cooperation with the Office of the Prosecutor General of Ukraine, particularly the *Department for Protection of the Rights and Freedoms of Minors*.

However, the Commissioner has to point out that local prosecutors do not always respond properly to the Commissioner's inquiries as stipulated by the Law of Ukraine *On the Ukrainian Parliamentary Commissioner for Human Rights*. This can have a negative effect on children's rights, as was the case with young *Yuliya N.* Following the death of her mother, the girl was not granted an applicable survivor's benefit; her father never cared about her situation, and her grandmother was denied custody of the granddaughter. The management of the boarding school that the little disabled girl was attending did not take any measures to protect her rights, either. The prosecutor's office in Solomyanskyi District of Kyiv never responded to the inquiry by Solomyanskyi District Child Care Service regarding the issue, and in response to the Ukrainian Ombudsman's inquiry the prosecutor's office replied that there were not enough grounds for the prosecutor to take action.

It took a long time to communicate and negotiate with the child care service at Podilskiy District Administration in Kyiv until the girl's father's parental rights were terminated, Yuliya was officially declared a child without parental care, and the grandmother was granted custody. Having received the first benefit payment, the child's grandmother came to the Commissioner with tears in her eyes to share her joy and to thank for help.

The investigation by the Commissioner for Human Rights also revealed violations of the housing rights of the child since she had no registration and her uncle illegally took hold of the part of the house that had belonged to her mother. In an effort to protect the rights of the little orphaned child, the Commissioner represented her in the Solomyanskyi Court in Kyiv. On October 7, 2009, the court upheld the right of the disabled child to reside and be registered at her deceased mother's former place of residence.

***The Commissioner is of the opinion that the formalistic approach of public officials and law-enforcement officers inevitably leads to blatant violations of children's rights. The effective protection of children in Ukraine totally depends on the responsible approach of public officials and their willingness to ensure protection of children's rights.***

The Verkhovna Rada (Parliament) of Ukraine has adopted the National Program entitled *National Action Plan for Implementation of the UN Convention on the Rights of the Child for the period until 2016*. It defines specific tasks for all government agencies as well as the National Television and Radio Broadcasting Council, the State Border Guard Administration of Ukraine, the State Committee of Ukraine for Ethnicities and Religions, and all other government and local self-government agencies. It should be noted that the involvement of

local executive and self-government agencies is expected to be the key factor in the fulfillment of the Program's objectives.

The Decree of the Cabinet of Ministers of Ukraine №866 of September 24, 2008, identifies *district, Kyiv and Sevastopol city district state administrations, and executive agencies of city, city district, village, and community councils as child custody and care agencies* responsible for granting orphaned children and children without parental care their appropriate status; arranging placement of children in the proper institutions; establishing child custody and care; and protecting their private rights, property, and housing rights.

On the other hand, as the findings of the Commissioner's monitoring suggest, a considerable number of children remain homeless exactly because of negligence of child custody and care officials who give permission for foreclosure of the homes where those children were registered. A notable example would be the case of *Dmytro B.*, an 11<sup>th</sup> grade student of a boarding school in Odessa that the Commissioner once investigated. After the death of his parents, the boy was placed in a boarding school. Meanwhile, some sneaky realtors sold their apartment. Custody institutions chose to stay out of the case. The fight for the child's home lasted for four years. The Commissioner repeatedly contacted local government agencies and personally Odessa Mayor Eduard Gurwitz regarding the illegal actions by local officials that caused the orphaned child to lose his home. Eventually, Malynivskiy District State Administration provided the orphaned child with a one-room apartment.

The Commissioner for Human Rights has also taken measures in response to the cases of violation of children's rights due to negligence of child custody and care institutions in Zaporizhya, Lviv, Mykolayiv, Kharkiv, and other regions.

According to the aforementioned Decree of the Cabinet of Ministers of Ukraine, *advisory agencies*, namely **committees on the protection of children's rights**, have to be established by the heads of district administrations, Kyiv and Sevastopol city district state administrations and executive agencies of city and city district councils. These civil committees are to provide social protection to children who find themselves in difficult situations, primarily orphaned children and children without parental care. Unfortunately, as complaints to the Commissioner for Human Rights suggest, the impact of these committees is yet to be felt.

*The provisions of the UN Convention on the Rights of the Child are an integral part of the national law. However, certain shortcomings in the government mechanisms make it difficult to implement them. The Commissioner for Human Rights believes this to be the cause of fundamental problems related to parenting, health care, education, social and legal protection of children.*

President of Ukraine Viktor Yanukovych has initiated an administrative reform in Ukraine. The Presidential Decree №1085/2010 On Improvement of Central Government Agencies was adopted on December 9, 2010.

*Nevertheless, the Commissioner for Human Rights is extremely concerned with the fact that no agency has been particularly designated within the central government reform to be responsible for implementation of the national policy on family, children, and gender equality. In view of this, on December 15, 2010, the Ukrainian Ombudsman sent a letter to the President of Ukraine entitled On Prevention of Weakening Government's Policy on Family, Children, and Gender Equality within the Administrative Reform in which she requested to designate the central government agencies to be responsible for implementation of the national policy in this field.*

*On the other hand, the Commissioner is of the opinion that the performance of oblast institutions and organizations for children's rights also needs to be improved (figure 2.1.3). Extra measures should also be taken to reinforce personal responsibility of public and local self-government officials for compliance with children's rights and their protection.*

## **2.2. The Commissioner for Human Rights as a constitutional body for monitoring implementation of the rights of the child**

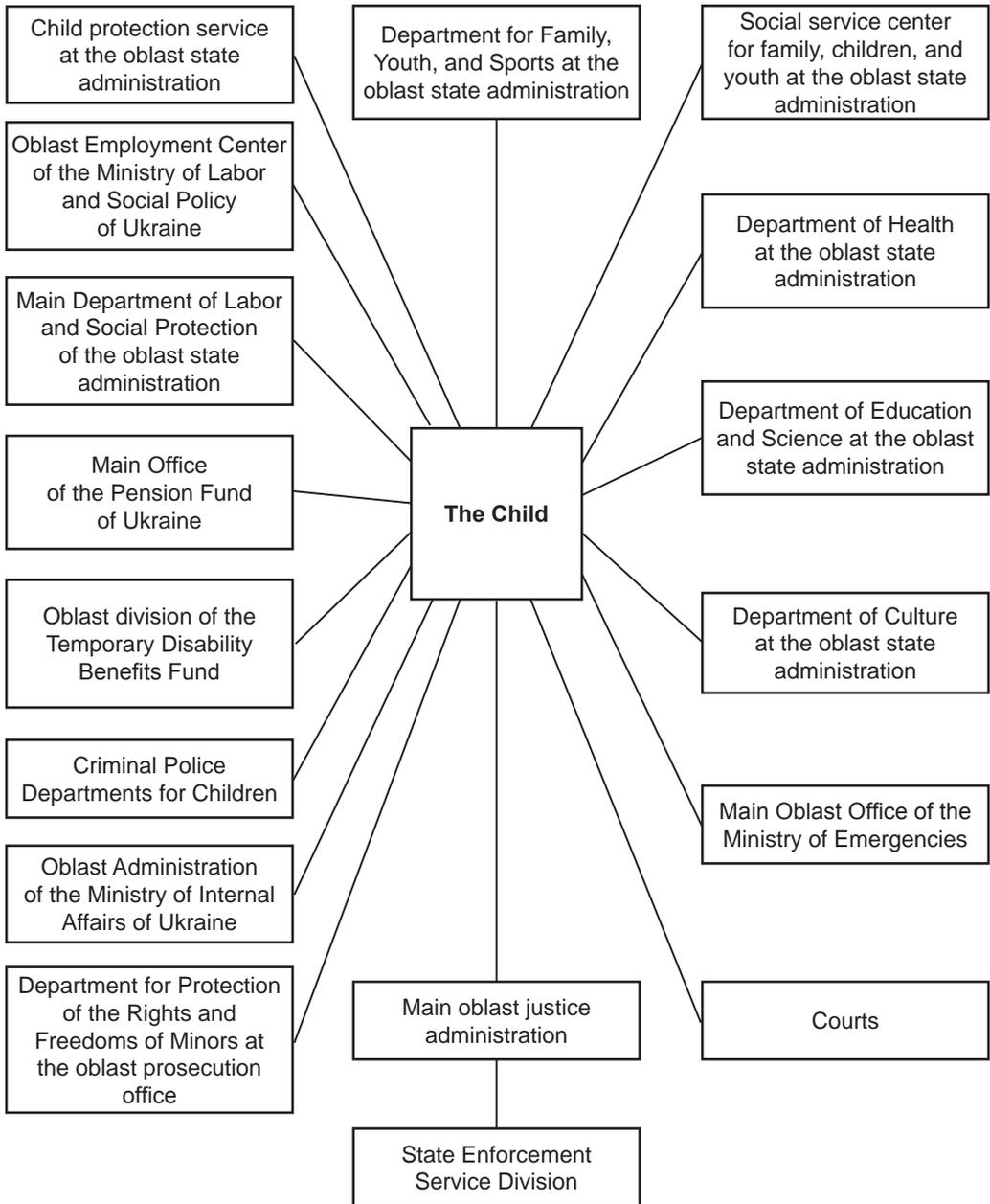
According to the Constitution of Ukraine, children in Ukraine possess the same constitutional rights as any other citizen, including rights to life, adequate living standards, health care, education, housing, medical services and insurance, safe and healthy environment, etc. Ensuring the rights of children is a priority objective of the state; violation of the rights of the child entails a more severe liability; any cases of child abuse or exploitation are subject to legal liability.

Article 52 of the Constitution declares the following: *“Children shall be equal in their rights regardless of their origin and whether they are born in or out of wedlock. The subsistence and upbringing of orphans and children deprived of parental care shall be entrusted to the State.”*

In addition to the rights and freedoms enshrined in the Constitution of Ukraine, Article 55 lays down the legal principles of the constitutional system of safeguards for protection of human rights and freedoms, including the judicial system of Ukraine (which is the core element in the system for the protection of human rights), the Ukrainian Parliament Commissioner for Human Rights, and international institutions (judicial or otherwise) that Ukraine has joined.

According to article 101 of the Constitution of Ukraine, the Commissioner for Human Rights is responsible for monitoring implementation of the human and civil rights and freedoms as granted by the Constitution. This applies to the whole spectrum of human rights and freedoms, including private, civil, political, social, economic, and cultural ones, and all categories of holders of these rights and freedoms, including children.

The establishment in Ukraine of the constitutional authority such as the Ukrainian Parliament Commissioner for Human Rights was a novelty in the



**Figure 2.1.3. Organizational structure of government agencies responsible for implementation of the rights of the child at the oblast level**

legal system for the protection of human rights and freedoms, including the rights of children.

According to article 21 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, “every person shall be able, without prejudice and on an unrestricted basis, petition the Commissioner in accordance with the legally established procedure. In the case of petitioning the Commissioner, no person petitioning the Commissioner may be privileged or disadvantaged on the basis of race, skin color, religious or other views, ethnic or social origin, financial status, place of residence, language, or any other characteristics.” This right fully applies to children as well.

The Commissioner shall be independent of other government agencies and public officials. It should be noted that, according to Article 20 of the Law, “interference with the Commissioner’s work by government agencies and local self-government, citizens associations, enterprises, institutions, and organizations irrespective of the form of ownership, and their officials and officers shall be prohibited.”

For the purpose of protecting children’s rights, the Commissioner is vested with wide powers as stipulated by Article 13 of the Law, including the following: to consult public officials without delay; to attend government agencies without restrictions; to attend sessions of the Verkhovna Rada (Parliament) of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, the Prosecutor’s Office Panel, and other collegiate authorities; to submit the Commissioner’s acts of response to relevant government agencies. Government agencies, local self-government agencies, citizen associations, enterprises, institutions, and organizations irrespective of the form of ownership, and officials and officers approached by the Commissioner shall be obliged to cooperate with him/her.

***The Commissioner for Human Rights is an independent constitutional subsidiary control authority responsible for extrajudicial protection of the rights of the child in accordance with the UN Convention on the Rights of the Child.***

The powers of the Commissioner for Human Rights regarding monitoring compliance with and protection of human rights, including children’s rights, are based on the requirements set by the international documents that have been ratified by Ukraine and a number of the laws of Ukraine.

***Protection of the rights of the child is a special concern for the Commissioner for Human Rights.*** Many complaints submitted to the Ombudsman are related to children’s rights (*see table. 2.2.1*). The majority of them are closely related to family, motherhood, and fatherhood rights. As a rule, the complainants ask for help regarding family problems and violations of children’s rights. Hence, the complaints are simultaneously reviewed by several divisions of the Commissioner’s office.

In pursuance of the recommendations of the UN Committee on the Rights of the Child, the Child Protection and Gender Equality Department was estab-

*Table 2.2.1. The number of complaints received by the Commissioner for Human Rights regarding protection of children's rights*

| Complaints regarding protection of children's rights | 2006       | 2007       | 2008       | 2009       |
|--|------------|------------|------------|------------|
| <b>Total:</b>  | <b>779</b> | <b>857</b> | <b>898</b> | <b>814</b> |
| <b>including:</b>                                    |            |            |            |            |
| the right to a home                                  | 161        | 138        | 178        | 150        |
| the right to child support                           | 265        | 266        | 204        | 189        |
| the right to adoption, custody, and care             | 56         | 84         | 107        | 69         |
| the right of access to children's institutions       | 19         | 29         | 45         | 47         |
| the freedom from abuse and sexual exploitation       | 19         | 15         | 17         | 30         |

lished at the Commissioner's Office. This specialized division is responsible for comprehensive monitoring of compliance with the Convention on the Rights of the Child and reviewing complaints submitted by children or by adults on behalf of children. In addition to this, every division has an expert responsible for reviewing complaints related to children's rights. For instance, the Department for Criminal, Civil, Administrative Law and Penitentiary Institutions has an employee with relevant expertise responsible for reviewing complaints by juvenile delinquents, and monitoring juvenile justice issues and compliance with the rights of children in conflict with the law.

**In 2010, in accordance with Article 11 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Ukrainian Ombudsman appointed the Special Representative of the Commissioner for Human Rights on Child Protection, Equality, and Nondiscrimination, Nataliya Ivanova** who is a renowned professional with vast experience in various offices, e.g., former Deputy Minister of Labor and Social Policy of Ukraine. The Representative is responsible for coordinating the efforts to improve monitoring of the compliance with children's rights in Ukraine and cooperation with children's and other non-governmental and international organizations. The Representative is also responsible for providing legal assessment and evaluation of the legislation and representing the Ombudsman at the Verkhovna Rada (Parliament) committee sessions on related issues. The Special Representative of the Commissioner for Human Rights on Child Protection, Equality, and Nondiscrimination is also a member of the Interdepartmental Council for family, gender equality, demographic development, and prevention of trafficking in human beings; the Expert Council for reviewing gender discrimination; she is directly involved in the UNHCR Committee on the best interests of the child, etc.

Owing to many years experience of working with children, particularly at the Prosecutor General's Office, the Child Protection Advisor of the Commis-

sioner for Human Rights Iryna Tarhulova is highly capable of professionally representing children in courts.

To make sure that the opinion of children is taken into account when trying to address their problems, the Ombudsman has initiated the establishment of a children's rights institution in which the children themselves would be closely involved and can actually be heard. The competition for the children's ombudsmen was held under the auspices of the Commissioner. The winners, Yuliya Kruk, a 16-year-old first-year student of the Institute of Foreign Affairs at the Kyiv National Taras Shevchenko University, and Ivan Cherevko, a 14-year-old third-year student of the National University of *Kyiv Mohyla Academy*, were announced on the Human Rights Day on December 10, 2005. A case study of their work was presented at the Conference of European ombudsmen held in Athens in 2006 where it received high praise.

The efforts of the Commissioner for Human Rights, her representatives and advisors, and the Office of the Commissioner are aimed at the protection of the rights and legitimate interests of the child in the best possible manner.

Individual complaints and group complaints submitted by children or their representatives are reviewed under personal supervision of the Ombudsman who provides legal support or represents them in courts as necessary.

Over the last few years, the Ukrainian Ombudsman has received the biggest number of complaints regarding protection of children's social rights. In 2009, every one in four of that complaints was related to the protection of the right to child support, and every fifth complaint was related to the housing rights of children. These cases are usually very complicated and require appropriate measures and persistent efforts of the Commissioner for Human Rights. (The issues of protection of children's social rights are examined in more detail in a separate chapter dedicated to the implementation of children's right to adequate standards of living.) Almost 10 per cent of complaints are related to the protection of adoption and custody rights.

**With each year, the number of complaints to the Commissioner submitted by children regarding the protection of their rights increases.** In 2006, the total number of individual complaints submitted by children was 376; in 2007, the number increased to approximately twice as many at 776; in 2008, individual and group complaints submitted to the Commissioner were signed in total by 4,663 children, and in 2009, by 2,430. It should be noted that in quite a few complaints, children are asking to help their parents and relatives to find a job, be granted a pension, receive adequate medical treatment, or get early release from places of detention.

Complaints submitted by children and on behalf of children are always reviewed in accordance with Article 3 of the UN Convention on the Rights of the Child which states that *"the best interests of the child shall be a primary consideration"*. The words of gratitude for the restored rights of the child seem to be the most appropriate outcome.

*A typical example would be the following.* The Commissioner was approached by *Nadiya Kilyushyk, a mother of seven children from Kuznetsovsk, Rivne Oblast.* Her family of nine was living in a one-room, 21.4 square meter apartment. For many years, she had repeatedly applied for improvement of her living conditions but to no avail. In an effort to protect the family's constitutional housing rights, the Commissioner persistently sent requests to the director of Rivne Nuclear Power Plant where the children's father worked. Eventually, the Kilyushyk family was granted an additional three-room apartment. Later, in a letter to the Commissioner, the grateful mother wrote: *"We would like to thank you for your efforts in response to our request, and wish you good health, long life, and inspiration in your pursuit of justice."*

***The Commissioner for Human Rights is of the belief that thorough attention to every complaint related to children's rights should be the norm for all government agencies and public officials.***

**Mass media is another important source of information on the violations of children's rights.** The Commissioner constantly monitors media news related to children's rights and takes appropriate action as stipulated by the legislation.

Each year, the Commissioner initiates over 50 investigations related to violations of the rights of the child reported by the media. ***On July 25, 2007, the "Facts and Commentary" newspaper*** reported on the *12-year-old girl from a village in Savranskyi District, Odessa Oblast,* giving birth to a child. The father of the newborn baby who died shortly after birth appeared to be the girl's mother's boyfriend. The Commissioner's office filed a request with the district prosecutor's office to investigate the case and immediately report on the progress of the proceedings and restoration of the child's rights. The prosecutor's office took action to protect the little girl's rights, and a criminal case was brought to the court. On August 27, 2007, the district court found the mother's boyfriend guilty of sex offense against an underage person (in accordance with Article 155, Section 2 of the Criminal Code of Ukraine) and sentenced him to imprisonment for four years. However, he was released with a three-year probation. The rapist returned to live in the same village as his victim!

Obviously, this kind of sentence for the child molester was disproportionate with the degree of offense. Sadly, the Supreme Court of Ukraine didn't recognize the social danger in the child molester remaining free either and rejected the prosecutor's appeal. To protect the child from possible encounters with the offender, she was transferred to a school in another district where her relatives lived. The Commissioner continues the proceedings.

At the moment the Commissioner is investigating several cases of violation of children's rights, including those based on the following reports: the case of an attempt by female Belgian and Polish nationals to illegally remove a little boy from Ukraine before they were stopped by border patrol guards, as reported by the ***ForUm News Agency on March 22, 2010***; the case of a three-month-old baby being sold by her 37-year-old mother and her boyfriend as reported in the

*July 1, 2010 issue of the "Facts and Commentary";* the case of a 7-year-old girl whom her mother, a resident of Stakhanov, Donetsk Oblast, forced into having sex with adult men as reported by the *KID News Agency on October 7, 2010*.

According to Article 13, Section 10 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Ombudsman has the right to file lawsuits to protect the rights and freedoms of the persons who are unable to do it in person due to health or other legitimate reasons, and also participate, personally or through a representative, in court proceedings according to the procedures established by the law. Therefore, *the Commissioner for Human Rights may represent children in court personally or through a representative*, as necessary.

An example of direct participation of the Ombudsman in court proceedings is the case of transfer of custody over three-year-old *Kyiv resident Nicole T.* to her grandmother. The little girl's mother died when she was still a baby. Her father was a drug addict. The grandmother's family took it upon themselves to support the child. However, the grandmother was denied custody since the child's father had not been deprived of his parental rights. Without a proper legal status, the child could not be placed in a kindergarten, not to mention being ineligible for social assistance. For three years in a row, all the efforts of her grandmother and grandfather had been unsuccessful. Upon a request from the Commissioner, the proceedings were finally initiated.

Requests were sent to the head of Obolonskiy District State Administration in Kyiv to take action to protect the rights of the child and to Obolonskiy and Desnyanskiy district child care services in Kyiv to compile a document package. The lawsuit was prepared, and the Commissioner for Human Rights personally represented the child in the court. Eventually, the court ruled that the custody over the girl be transferred to her grandmother, and applicable welfare benefits be granted. Currently, the girl lives with a loving family.

The Commissioner has also recently represented minors in courts in Lviv, Dnipropetrovsk, and Kharkiv oblasts, city of Kyiv, and other regions.

According to Article 3 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Commissioner is responsible for providing assistance in bringing the Ukrainian legislation on human rights and freedoms in line with the Constitution of Ukraine and relevant international standards. Article 2 of the Law of Ukraine *On Child Protection* stipulates that child protection law is first and foremost aimed at improving social and legal protection of children, physical, intellectual, and cultural development of the youth, and promotes establishment of social, economic, and legal institutions for the protection of the rights and legitimate interests of children in Ukraine.

The Ombudsman does not have the right of legislative initiative; however, draft laws and regulations related to children's rights are monitored, and legislative proposals are submitted accordingly to the Verkhovna Rada (Parliament) committees, ministries, and departments to ensure protection of the rights

and interests of the child in the best possible manner. The latest legislative proposals by the Commissioner have included the following: a proposal for the Verkhovna Rada (Parliament) Committee on Legislative Support of Law Enforcement, regarding provisions of the draft Law of Ukraine *On Amendments to the Criminal Code of Ukraine* on termination of parental rights; a proposal for the Verkhovna Rada (Parliament) Committee on Family, Youth Policy, Tourism, and Sports, regarding draft amendments to the Family Code of Ukraine; a proposal for the Ministry of Justice of Ukraine, regarding the draft Law of Ukraine *On Amendments to Certain Laws of Ukraine on the Placement of Children in Child Reception Centers*, etc.

The recommendations made by the Commissioner regarding amendments to the legislation were based on the findings of the review of actual complaints related to children's rights. On January 30, 2009, the Ombudsman received a complaint from *Svitlana Zamula*, a *Sumy Oblast resident, single mother of many children*. According to the complainant, she had worked part-time as a chef for 12 days in 2007 and was paid 197 hryvnias (approximately 21 USD) for her work. As the fact became known, the single mother was penalized by Sumy Labor and Social Protection Administration officials for abuse of social aid, the fines reaching 2,700 hryvnias (approximately 340 USD) which exceeded her earnings by far. For any family with many children, a fine this big would be staggering, especially at the time of financial crisis. Considering this, the Commissioner approached the Minister of Labor and Social Policy of Ukraine with a request to initiate amendments to the Law of Ukraine *On State Social Assistance for Low Income Families* with a view to protect vulnerable social groups. In July, 2009, the draft law №4795 *On Amendments to Article 7 of the Law of Ukraine "On State Social Assistance for Low Income Families"* developed jointly by the Commissioner and the Ministry of Labor and Social Policy of Ukraine was submitted to the Verkhovna Rada (Parliament) of Ukraine for consideration. Following the change of Government, the draft law was withdrawn. Nevertheless, the issue still needs to be addressed.

To ensure the best possible protection of the adopted children, the legal aspects of the Law of Ukraine *On Amendments to the Family Code of Ukraine (regarding specifics of adoption of certain groups of children)*, Reg. №7332, were thoroughly discussed with the Ministry for Family, Youth, and Sports and placed on Parliament's agenda on November 30.

The Commissioner's proposals regarding the Resolution of the Cabinet of Ministers of Ukraine №1352-p of October 16, 2008, *On Approval of the Action Plan Package for Education Development in Ukraine for the period until 2011* and the Decree of the Cabinet of Ministers №1228 of October 17, 2007, entitled *Enforcement of the Legislation on Custody and Care of Orphaned Children and Children without Parental Care* based on the review of child-related complaints were also taken into account. The Ukrainian Ombudsman personally reported on these issues during the Cabinet of Ministers sessions.

The Commissioner has also made recommendations on the draft resolution of the Cabinet of Minister of Ukraine *On Approval of the Action Plan for Implementation in 2011 of the National Program for Implementation of the UN Convention on the Rights of the Child*.

According to Article 3 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Commissioner is also responsible for **raising legal awareness of the public**. This implies raising children's awareness, too, particularly regarding prevention of violation of their rights and freedoms.

As a result of the Commissioner's efforts, occupational guidance terminals "*Live and Work in Ukraine!*" have been augmented with *Rights of the Child* information packages for schoolchildren developed in cooperation with the National Employment Center. In 2009-2010, approximately two thousand terminals were installed in schools all over Ukraine. The information about the rights and obligations of the child is comprehensible for all age groups. Also, instructions are provided for children on the procedures to follow and the authorities to contact regarding the protection of their rights, including information about the Commissioner for Human Rights. The work continues, and in the future this innovative approach is expected to be applied in every Ukrainian school.

The Ukrainian Ombudsman has arranged media campaigns for children's rights. On the Commissioner's initiative, the Channel One of the National Radio has launched a series of weekly radio programs entitled "For Human Rights" and dedicated to, among other things, protection of children's rights. One of July 2009 programs covered the case of the reunion of four-year-old Andriy with his mother who was serving her term at Chernihiv Penal Colony.

Close cooperation was established between the Commissioner for Human Rights and the UNICEF office in Ukraine. During a meeting with the newly appointed UNICEF Representative Yukie Mokuo, a joint action plan for implementation of provisions of the UN Convention on the Rights of the Child was developed.

**On November 20, 2009, a joint press conference with the UNICEF Representative in Ukraine Yukie Mokuo was held at the Ukrainian Ombudsman's Office commemorating the 20<sup>th</sup> anniversary of the adoption of the UN Convention on the Rights of the Child.** It touched upon the current issues of compliance with children's rights in Ukraine and internationally. A *Joint Statement of the Commissioner for Human Rights and the UNICEF Representative in Ukraine addressing the Government, Local Self-Government, and the Ukrainian Public* was presented. It urged all the stakeholders to join forces to improve the social protection system; ensure equal access of every child to health care institutions; ensure the constitutional right of orphaned children to a home; counter the use of the worst forms of child labor, trafficking in human beings, prostitution, and pornography; ensure real access to social services for child asylum seekers and refugee children. The Statement was forwarded to the President of

Ukraine, the Chairman of the Verkhovna Rada (Parliament) of Ukraine, and the Prime Minister of Ukraine with a request to find quick solutions to these child protection issues. The Commissioner has been updated on the progress of the efforts to address these issues.

*The Commissioner for Human Rights is of the opinion that international cooperation in the protection of children's rights needs to be expanded.* In her report presented at the First International Congress on the Rights of the Child which was held in 2003 in Porlamar, Venezuela, *the Ukrainian Ombudsman suggested that the individual right of children to file complaints about violations of their rights should be guaranteed, and stressed that the world ought to be more fair to children.* The proposal materialized in the draft Optional Protocol to the UN Convention on the Rights of the Child on an Individual Complaints Procedure that was submitted for consideration by the 15<sup>th</sup> session of the UN Human Rights Council in September of 2010. The Ukrainian Ombudsman hopes that the draft will be approved and adopted in 2011.

The Commissioner cooperates on children's rights with ombudsman offices in many other countries. Particularly, the issue of child protection was raised by the Ukrainian Ombudsman during her meetings with the ombudspersons from Argentina (2003), Greece (2006), Portugal (2007), Sweden (2009), Spain (2010), and other countries of residence of many migrant workers from Ukraine.

The representatives of the Commissioner for Human Rights's (children's ombudsmen) participated in the international meeting on the protection of children in educational institutions held in 2006 under the auspices of the children's ombudsman of Lithuania. Common solutions to children's problems were discussed during the Commissioner's meeting with the Chairman of the European Network of Ombudspersons for Children George Moschos.

In 2008, during the working visit to Azerbaijan, the delegation of the Commissioner for Human Rights presented a case study of the best practices in social protection of families with children and the work of the Ukrainian children's ombudsmen.

The issues of children's rights protection were also discussed during the seminars held in October-November of 2009 under the joint auspices of the Ukrainian Parliament Commissioner for Human Rights and the Civil Rights Commissioner of the Republic of Poland within the framework of the relevant EU program.

*The Commissioner for Human Rights, as the constitutional control authority for implementation of human rights, shall use every opportunity within its remit to ensure protection of the rights of Ukrainian children.*

*The Commissioner advocates the importance of access of children to all forms of representation, establishing children's control over implementation of their rights and interests, encouraging the government and the public to take due account of*

*children's points of view, and recognition of the rights of the child by children and adults.*

*By raising the most pressing issues of child protection, the Commissioner strives to capture the attention of the society and encourage central and local government agencies and the public join their forces to foster the environment where every Ukrainian child would feel happy.*

### III. PROTECTION OF CIVIL AND PERSONAL RIGHTS OF CHILDREN

#### 3.1. The Right of the Child to Life

Children are the future of the nation, but more importantly, they are its present. It is especially important that this fact is recognized by all branches and levels of government since children represent almost one fifth of the population of Ukraine. According to the State Committee of Statistics, the population of children under the age of 18 permanently residing in Ukraine was 8,081,126 as of January 1, 2010.

Article 6 of the UN Convention on the Rights of the Child stipulates that “*every child has the inherent right to life*”. According to Article 3 of the Constitution of Ukraine, it is the responsibility of the State to ensure the right of the child to life and health. The Cabinet has adopted and is currently implementing a number of national programs to secure the child’s fundamental right to life. Compared to previous years, in 2010 alone the national health care financing, including government programs, increased almost by half; the work continues to establish an early health and social rehabilitation network on the basis of child care centers.

Ukraine’s child population dynamics may serve as an indication of the level of child protection and compliance with children’s rights and legitimate interests. It is very sad that throughout the years of independence, the children population of Ukraine has been decreasing dramatically. As of early 2010, the number of children decreased by 5 million compared to 1991 (*see table 3.1.1*).

The period from 1991 to 2001 was marked by a birthrate reduction. However, since 2002, birthrate has been increasing on average by 10 percent each year. This helped slow down the decrease in the number of children of Ukraine but didn’t ultimately stop it, and the population of children went down by almost one million between 2005 and 2010 (*table 3.1.2*).

The Commissioner for Human Rights is sad to report that the demographic situation in Ukraine remains alarming, and the percentage of children in the total population continues to decline (compare 17.6 percent in 2009 with 22.3 percent back in 1991). It is no coincidence that, according to the United Nations, the natural population increase in Ukraine is one of the lowest in the world.

**Table 3.1.1. The population of children in Ukraine (permanent residents)**

| year<br>(as of January 1) | Total population of children | Percentage of children<br>in the total population |
|---------------------------|------------------------------|---|
| 1991                      | 13 187 078                   | 22,5  |
| 1994                      | 12 802 589                   | 24,9  |
| 1997                      | 11 973 707                   | 23,9  |
| 2000                      | 10 808 352                   | 22,4  |
| 2003                      | 9 690 972                    | 20,4  |
| 2004                      | 9 316 248                    | 19,7  |
| 2005                      | 8 896 575                    | 19,1  |
| 2006                      | 8 801 969                    | 18,8  |
| 2007                      | 8 536 066                    | 18,4  |
| 2008                      | 8 325 687                    | 18,0  |
| 2009                      | 8 186 277                    | 17,7  |
| 2010                      | 8 081 126                    | 17,6  |

\* Source: the State Committee of Statistics of Ukraine

To evaluate the efficiency of the nation's health care system and the level of social and economic development, the commonly used method is infant mortality rate indicating the number of deaths of babies under one year of age. In Ukraine, however, it has remained fairly high and hasn't fluctuated much since 2002. As of 2009, infant mortality rate was 9.4 per 1,000 births (*table 3.1.3*).

Compare this to infant mortality rates of 2.75 per 1,000 newborns in Sweden, 2.79 in Japan, 5.04 in Canada, and 5.82 in Cuba.

**Table 3.1.2. Total number of births from 1991 to 2009\***

| year | Total number of births,<br>ths. | year | Total number of births, ths |
|------|---------------------------------|------|-----------------------------|
| 1991 | 630,8                           | 2001 | 376,5                       |
| 1992 | 596,8                           | 2002 | 390,7                       |
| 1993 | 557,4                           | 2003 | 408,6                       |
| 1994 | 521,5                           | 2004 | 427,3                       |
| 1995 | 492,9                           | 2005 | 426,1                       |
| 1996 | 467,2                           | 2006 | 460,4                       |
| 1997 | 442,6                           | 2007 | 472,7                       |
| 1998 | 419,2                           | 2008 | 510,6                       |
| 1999 | 389,2                           | 2009 | 512,5                       |
| 2000 | 385,1                           |      |                             |

\* Source: the State Committee of Statistics of Ukraine

**Table 3.1.3. Infant mortality rate (per 1,000 live births) from 2002 to 2009**

| year  | 2002 | 2003 | 2004 | 2005 | 2006 | 2007  | 2008  | 2009 | 3a months of 2010 |
|---|------|------|------|------|------|-------|-------|------|-------------------|
| Number of deaths babies under one year of age | 4024 | 3883 | 4000 | 4241 | 4433 | 5188  | 5049  | 4802 | 3454              |
| Infant mortality rate per 1,000 births        | 10,3 | 9,6  | 9,5  | 10   | 9,8  | 11,02 | 10,36 | 9,4  | 9,1               |

This year, the highest infant mortality rates were registered in the following oblasts: Donetsk – 12.6; Transcarpathia – 10.9; Kirovohrad – 10.8; Zaporizhyya, Ivano-Frankivsk, Luhansk – 10.0 each.

For morbidity and mortality patterns of babies under one year of age in Ukraine, see *table 3.1.4*.

The Commissioner for Human Rights believes that high infant mortality rate in most regions and Ukraine in general is indicative of inadequate quality of pregnancy and newborn services, low standards of equipment support of obstetric hospitals, shortage of pediatricians and children's anesthesiologists, and a consequence of inadequate introduction of medical protocols and modern prenatal technologies.

By endorsing the Millennium Development Goals, Ukraine has committed itself to reducing under-five mortality rate by two thirds between 1990 and 2015. The 2010 National Progress Report pointed at the improvement in mortality rates for this age group from 16.0 in 1991 to 9.4 in 2009.

***The Ombudsman is confident that some of the main causes for a disastrously high child mortality rate in Ukraine could be prevented. First and foremost, this requires improving the quality of reproductive health services for women and newborn health services, particularly diagnosis and treatment, and ensuring adequate staffing and equipment support at the hospitals.***

The Commissioner for Human Rights believes that the quality of pregnancy, birth, and newborn services is one of the most critical problems related to the right of the child to health care in Ukraine. This is confirmed by many complaints to the Commissioner. The Commissioner for Human Rights has commenced a case based on the complaint filed by *I.Makoviychuk* from *Khorovtseve, Verkhovynskyi District, Ivano-Frankivsk Oblast* regarding protection of the right to proper internal investigation of the case of malpractice at Putivl Central District Hospital that resulted in the death of his wife and child.

To protect the violated rights, the Commissioner sent an inquiry to the Ministry of Health of Ukraine. The latter reported that, based on the findings

**Table 3.1.4. Infant (under one year of age) morbidity and mortality patterns (percentage)**

| Type of illness  | morbidity rate <sup>1</sup> |       |      | mortality rate <sup>2</sup> |       |      |
|--|-----------------------------|-------|------|-----------------------------|-------|------|
|  | 2007                        | 2008  | 2009 | 2007                        | 2008  | 2009 |
| <b>Total</b>   | 100                         | 100   | 100  | 100                         | 100   | 100  |
| including:   |                             |       |      |                             |       |      |
| Certain infectious and parasitic diseases                            | 2,41                        | 2,36  | 3,85 | 3,70                        | 3,35  | 2,6  |
| Neoplasms  | 0,77                        | 0,79  | -    | 1,02                        | 1,07  | 1,11 |
| Diseases of the blood and blood-forming organs                       | 6,51                        | 6,24  | 5,5  | 1,00                        | 0,57  | -    |
| Endocrine diseases   | 4,17                        | 3,99  | -    | 0,89                        | 0,83  | 1,36 |
| Mental and behavioral disorders                                      | 0,00                        | 0,00  | -    | -                           | -     | -    |
| Diseases of the nervous system                                       | 5,01                        | 5,21  | -    | 3,24                        | 2,46  | 2,82 |
| Diseases of the eye and adnexa                                       | 3,34                        | 3,54  | -    | -                           | -     | -    |
| Diseases of the ear and mastoid process                              | 1,92                        | 1,92  | -    | -                           | -     | -    |
| Diseases of the circulatory system                                   | 0,32                        | 0,36  | -    | 1,15                        | 1,39  | 1,5  |
| Diseases of the respiratory system                                   | 50,14                       | 50,07 | 52,6 | 3,53                        | 2,97  | 2,79 |
| Diseases of the digestive system                                     | 3,75                        | 3,86  | -    | 0,62                        | 0,67  | 0,5  |
| Diseases of the skin and subcutaneous tissue                         | 4,38                        | 4,74  | -    | 0,08                        | 0,04  | -    |
| Diseases of the musculoskeletal system                               | 0,37                        | 0,35  | -    | 0,02                        | -     | -    |
| Diseases of the genitourinary system                                 | 1,25                        | 1,23  | -    | 0,08                        | 0,02  | -    |
| Certain conditions originating in the prenatal period                | 12,03                       | 11,54 | 10,5 | 48,32                       | 51,97 | 52,9 |
| Congenital malformations, deformations and chromosomal abnormalities | 2,77                        | 2,86  | -    | 25,65                       | 24,60 | 24   |
| Symptoms, signs and abnormal findings not classified elsewhere       | 0,44                        | 0,48  | -    | 4,32                        | 3,86  | -    |
| Injury, poisoning and other external causes                          | 0,43                        | 0,45  | -    | 6,38                        | 6,20  | 6,22 |

<sup>1</sup> Source: the Ministry of Health of Ukraine

<sup>2</sup> Source: the State Committee of Statistics

of internal investigation of the death of the complainant’s wife and child, inadequate care of the patient was confirmed and that the district obstetrician-gynecologist, the head of the maternity ward at Putivl Central District Hospital was subsequently fired, and the anesthesiologists were put on probation at various maternity clinics in Chernivtsi.

Another example. *Citizen O. (residing in Bohodukhiv District, Kharkiv Region)* requested the Ombudsman’s assistance in pressing charges in the case of death of her newborn baby. The Ombudsman requested that the top officials of the Ministry of Health of Ukraine appoint official investigation that provided the following feedback, “...The commission found that maternity welfare clinic of the Bohodukhiv Central District Hospital did not provide sufficient community health advice regarding early examination of pregnant women for timely follow-up and prevention of congenital development defects. The baby’s death

was a result of congenital central nervous system abnormality, aggravated by perinatal hypoxic ischemic CNS damage and multiple organ failure.”

The Ombudsman filed another case based on complaint of *citizen D. from Mykhailivka District, Zaporizhia Region* concerning protection of her right for appropriate official investigation of reckless negligence of medical staff of the Mykhailivka Central District Hospital, causing death of a baby.

The Commissioner for Human Rights sent an immediate request to the Ministry of Health and Prosecutor General’s Office of Ukraine to protect the right to appropriate official investigation of the fact of reckless negligence of the hospital’s medical staff to their official duties. On May 12, 2009, Prosecutor’s office of the Mykhailivka District started disciplinary proceedings against gynecologist P. who was brought to disciplinary responsibility as a result. On July 8, 2009, the Prosecutor’s office filed a criminal case based on crime described in Article 140, part 2, of the Criminal Code of Ukraine, which was sent to appropriate jurisdiction of Mykhailivka District Police Department for pretrial investigation.

***The Ombudsman must state that unfortunately such tragic cases are not unique. All facts of low-quality medical services that cause tragic consequences must be assessed by top officials of the healthcare system and enforcement agencies objectively and adequately.***

One of the major hazards to children’s health are traumas. Unfortunately, children don’t always know how to react to dangerous situations. The state must take this into account when it takes measures to ensure safety of this vulnerable group. Otherwise this would infringe the basic rights of children to safety and full productive life as envisaged by the UN Convention on the Rights of the Child.

The World Report on Child Injury Prevention was published by the World Health Organization in cooperation with the UN Children’s Fund in 2008 and provided sad figures: as a result of accidents, 2270 children die every day in the world, amounting to 830,000 child deaths every year. Another several dozen million children end up in hospitals with traumas of various severity. That is why the report gives priority to the problem of child’s traumatism.

According to the data of Ukraine’s Ministry of Emergency and Protection of Population against the Consequences of Chornobyl Disaster, household accidents are the prevalent external cause of death of children. As a result of accidents, 1,094 children under the age of fourteen died in 2009, thousands were taken to hospitals or emergency wards, some were disabled for life.

The Ombudsman’s monitoring shows that boys die from traumas twice as often as girls, especially between the ages of 5 and 14. Boys under the age of 9 die from accidental drowning and traffic accidents more often, and self-inflicted injuries are added to the list at the age of 10–14 years. Boys of this age fall victim to traffic accidents 1.4 times more often than girls, and injure themselves twice as often.

Teenagers usually sustain the heaviest injuries. Household and outdoor traumas constitute approximately 90% of teenage injuries. The number of outdoor injuries grew by 55.4% in the last four years, and the number of traffic accidents by 44.3%, showing the highest growth rates among all types of traumas.

In the Ombudsman's opinion, *there is a direct link between poverty, inequality and traumatism*. The UN Children's Fund emphasizes that poverty impairs the life of children and further affects negatively their future.

Children residing in the rural areas run higher risks of water and fire accidents, pesticide poisoning, etc. In general, rural children under 14 have been dying from external causes nearly twice as frequently as their urban counterparts in the last 10 years.

*The Ombudsman keeps calling attention to terrible facts of death of children in fires*. According to the data of the Ministry of Emergency Situations of Ukraine, 542 children died in fires in the last five years. Fires start most often as a result of carelessness, playing with fire, improper installation, wrong maintenance and handling of electric devices and stove heating. Playing with fire caused fires in 1710 cases in 2004, in 1769 cases in 2005, 1299 in 2006, 1324 in 2007, 1015 in 2008, and in 896 cases in 2009.

Although the number of fire- and explosion-related emergency situations tends to go down, further vigilance is necessary.

For instance, three small children of Samoidiuk family died in fire in the village of *Koroschyne, Zhytomyr Region*, on January 2, 2009. Their mother locked the front door and went to celebrate the New Year. Fire took lives of little Illia, Anastasia, and Vladyslav, the oldest of them being only four years old. Their mother, who came back drunk after the children died, was sentenced to a three-year prison term. However, this is also the fault of village officials who never reacted to the mother's drinking and leaving children unattended, and the family was not even monitored by the juvenile service.

In January 2009, four children aged 2 to 6 died in a fire in the village of *Dubno, Rokytno District, Rivne Region*. Two children were playing with fire and died as the fire spread at hay storage in the village of Shkarbinka, Liubashivka District, Odesa Region. In July 2009, two small children died as a result of careless handling of fire in a private house in the village of *Podvirivka, Kelmentsi District, Chernivtsi Region*. In January 2010, three small children aged 3 to 7 died in fire after parents left them unattended and locked in the house in Kharkiv Region. Unfortunately, this tragic list is not exhaustive.

*The Commissioner for Human Rights is concerned about his situation and emphasizes that its main reason is the lack of parental care. That is why laws should enhance parental responsibility as well as responsibility of the local authorities for pre-school education and afterschool activities for children.*

While drawing attention to responsibility of parents who leave their children unattended, we should praise the deeds of the children who not only saved themselves in emergencies but also saved other children and even adults.

The Ombudsman's highest insignia *For Courage* was awarded to *Nastia Ovchar*. The girl of five from the village of *Vorontsivka, Kharkiv Region*, carried her two-year old sister Liuda out of their blazing house. The Ombudsman directly participated in saving the little heroine who suffered burns of 85% of her body surface. Within 36 hours, while medical care could still save the child, together with Ukrainian philanthropist Serhiy Samborskiy, they found the Schrainers clinic in Boston, USA, whose management agreed to provide surgery to the child free of charge. The President of Ukraine helped provide a special aircraft upon the Ombudsman's request.

When Nastia returned after the treatment, the Ombudsman facilitated her enrolment in preschool classes of the *Dominanta* social and humanitarian gymnasium in Kyiv. On September 1, 2009, Nastia took her saved sister, who follows her elder sister in everything, to the first-grade class. With financial assistance of common Ukrainians, a three-room apartment in Kyiv was bought for the family.

Children's mortality in classroom causes great concerns. In 2008, the Ombudsman investigated tragic cases of children deaths in the schools of Zaporizhia, Zhytomyr, Lutsk, Chernivtsi and other regions.

Based on its results, the Ombudsman submitted a ***request On Protection of Children's Rights to Safety and Appropriate Education in the General Educational Establishments of Ukraine to the Prime Minister of Ukraine*** in October 2008 to prevent such accidents in the future. It contained proposals on detailed medical examination of secondary school students at the beginning of every year; introduction of safety engineer positions in the regional and city education and science offices, and positions of a nurse, a practical psychologist and a counselor in every school. The Ombudsman's proposals were taken into account when the Cabinet of Ministers of Ukraine was approving the Comprehensive Plan of Measures for Education Development in Ukraine until 2011. This enhanced protection of the Ukrainian children's rights to safety and appropriate education in the educational institutions.

**The number of children who died of willful self-inflicted injuries, including suicides, remains high in the country, with 196 cases in 2005, 148 cases in 2006, 182 in 2007, 166 in 2008, and 168 cases in 2009.**

***The Ombudsman believes that the state should protect children by establishing appropriate environment that can guarantee safety of their life and health. All programs in child healthcare should include traumatism prevention and elimination. Special training programs, as well as TV and radio programs on life safety should also be introduced. All these measures should be incorporated into a comprehensive child traumatism prevention system.***

### **3.2. The role of family, society and state in prevention of neglect, homelessness and violence against children**

Family is a natural environment for physical, mental, social and spiritual development of children, their material support and the family is responsible for establishment of appropriate environment for this. The preamble of the UN Convention on the Rights of the Child says that the family must provide the child with adequate protection and support. Ukraine consistently adheres to international agreements related to implementation of parental rights and both material and immaterial duties.

This is primarily *the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children*, which establishes the authority of government agencies in child protection measures required in each individual case. After the Verkhovna Rada (Parliament) of Ukraine ratified the *Convention on Contact concerning Children* on September 20, 2006, general principles could be applied to the contacts between children and their parents, as well as other related persons. The *Convention on the Recovery Abroad of Maintenance* became effective for Ukraine on October 19, 2006, and the *Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* took effect on August 1, 2008, giving the opportunity to recognize and enforce rulings of the Ukrainian courts on collection of alimonies in other countries. The 1980 *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* was ratified and became effective on November 1, 2008, making it possible to introduce guardianship.

Ratification of the above conventions and respective amendments to the national laws aim to support families, enhance the state oversight of upbringing and support of children in family environment, and improvement of legal control mechanisms in child protection according to the international standards.

For instance, according to the Family Code of Ukraine, every child has the right to live in the family with parents whose primary care and primary duty is upholding the interests of their child. According to Article 13 of the Law of Ukraine *On Protection of Childhood*, parents should bring up the child ensuring personality development, respect to human and civil rights and freedoms, language, national, historic, and cultural values of the Ukrainian and other peoples, prepare the child for conscious life in the society in the spirit of mutual understanding, peace, compassion, promoting equality of all society members, peace and friendship between nations, ethnic, national, and religious groups.

Family is an integral indicator of the social development that reflects the moral status of a society. It brings up succeeding generations, laying the foundations for development and prosperity of the state, because the child studies the outside world in all its complex and multifaceted manifestations within

the family. According to the data of the Ukrainian State Statistics Committee, the country had 17,050,000 households in 2010, and only 18.5% of them had children under the age of 18. This includes 7.5% households with preschool children, 6.6% with children aged 7–13, and 4.8% with teenagers of 14–17. The largest share of households with children under 18 is situated in the Transcarpathian, Chernivtsi, Volyn, Rivne, Ivano-Frankivsk, Ternopil and Lviv regions.

However, social and economic hardships cause and aggravate the family crisis. One or both parents are missing in 1,367,600 families in Ukraine. In 2009, 93,500 children, or every fifth child, were born out of wedlock.

The Ombudsman is greatly concerned with the problems of disadvantaged families. According to the Ministry of Interior of Ukraine, over 19,000 people were brought to criminal account in the first six months of 2010 for malicious childcare evasion.

Every year, the courts decide to remove 8,000–11,000 children from their families (*table 3.2.1*). Unfortunately, the Ombudsman’s monitoring shows that children are often taken away from the troubled families too late.

Minor *Yu.* committed suicide in the village of *Ryasne, Mashyvka District, Poltava Region*, in April 2010. The Ombudsman’s inquiry, including a site visit of officers of the Ombudsman’s Secretariat, found that local authorities and services failed in their duties to provide timely assistance to the boy whose parents were alcohol-abusers and whose mother was getting treatment in the mental hospital. The child was trying to get out of that environment, move in with his sister to the city of Poltava, but he could not obtain residence registration and attend school, and had to return home. Unable to further endure humiliation, the boy left a suicide note, “*I can’t live like this.*”

***The Ombudsman is convinced that if the family endangers the child’s life, health, and moral upbringing, child care and guardianship authorities should react immediately and take every measure, including removing the child from parents and sending them to the respective institutions, where their rights can be ensured fully. However, such decisions must be considered carefully and correspond to legal requirements.***

According to Article 164 of the Family Code of Ukraine, parents can be deprived of parental rights if they fail to observe their duties, if they exploit

**Table 3.2.1. Number of children taken away from parents in a year**

|   | 2005 | 2006 | 2007   | 2008 | 2009 |
|---|------|------|--------|------|------|
| Number of children taken away from families following parental rights termination | 8565 | 9047 | 10 751 | 9420 | 7939 |
| Number of children taken away from families without parental rights termination   | 1272 | 1078 | 1129   | 1133 | 770  |

\*According to the data of the Ministry of Family, Youth and Sports of Ukraine

children, and for a number of other reasons. The number of first instance court rulings terminating parental rights went down slightly in 2008–2009, compared with the previous two years, but this number remains rather high (table 3.2.2).

The example of this is the reaction to willful failure to support her children by citizen A. from Kharkiv, which was described in the story of MOSTKharkiv news agency on July 15, 2009. The Ombudsman’s investigation found that a 5-years-old girl and a 2-years-old boy had been kept indoors for a year, starving, and had physical and mental development lag. Neighbors could not stand any longer the hungry children’s weeping and called the police. The children were taken to the city hospital No. 24 immediately. A criminal case was filed against their mother based on willful failure to support her children causing grave consequences under Art. 166 of the Criminal Code of Ukraine, and an indictment was submitted to the court. The criminal case and civil lawsuit of the prosecutor on termination of her parental rights is presently considered by Zhovtnevyi District Court of Kharkiv.

At the same time, the Ombudsman believes that termination of parental rights should be properly considered and approached in the best interests of the child. The *European Court of Human Rights made this observation while ruling in the case of the Savins v. Ukraine dated December 18, 2008*. Ukrainian courts of all instances have terminated parental rights of the Savin spouses with respect to six out of their seven underage children. Both parents were born blind, and the decision was made that they were “unable to provide adequate food and clothes to the children, maintain adequate sanitation, take adequate care of the children’s health, and ensure their social integration”. The European Court appreciated the underlying motivation of this decision of the public authorities but considered them inadequate and “insufficient to justify such serious interference into the family life of the claimants”.

**Table 3.2.2. Parental rights termination cases in first instance courts\***

|   | 2000 | 2005   | 2006   | 2007   | 2008   | 2009   |
|---|------|--------|--------|--------|--------|--------|
| Cases at beginning of the year          | 787  | 1526   | 2356   | 2713   | 2916   | 3068   |
| Cases received during the year          | 6542 | 15 411 | 18 326 | 19 651 | 18 017 | 15 885 |
| Rulings                                 | 5688 | 13 287 | 16 254 | 17 587 | 15 864 | 14 101 |
| including rulings satisfying the claimy | 5403 | 12 774 | 14 834 | 16 262 | 14 424 | 12 899 |

\*According to the State Court Administration

Principles of the European Court state that *“the child’s transfer into more favorable environment does not justify forcing the child away from their parents.”* That is why, the ruling said, termination of the Savins’ parental rights violated Art.8 of the *European Convention on Human Rights and Fundamental Freedoms* (the right for respect for private and family life).

***The Ukrainian Ombudsman is convinced that when a court practice ignores this decision of the European Court in the cases of termination of parental rights, children may become social orphans without justification. The task of the state is to protect and support families and not deprive the child of the right to be brought up in family environment, albeit under difficult life circumstances.***

Ukraine has been unable to resolve the problem of child **homelessness** and **neglect** for a long time. Unfortunately, the street becomes home for thousands of children when adults fail to protect their rights.

There is no available consolidated official data about the total number of children and youth living and working in the streets. Different estimates place their number in the range between 40,000 and 300,000 people. Before the 2005 National Program against Neglect and Homelessness was approved, officials mentioned the figure of 150,000 homeless children, and now public authorities only have the data on the children removed from the streets, although the same child can be removed several times. For instance, 58,000 children were taken away from the streets in 2001, 42,000 in 2005, 38,000 in 2006, 37,000 in 2007, 31,000 in 2008, and 23,000 children in 2009.

Work with such children, as well as prevention of homelessness and neglect, are regulated by a number of laws of Ukraine, namely, *the Family Code of Ukraine, laws On Social Work with Families, Children, and Youth, On Protection of Childhood, On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care, On Foundations of Social Protection of Homeless Citizens and Children.*

The above-mentioned *National Program against Children’s Homelessness and Neglect for 2006–2010* is implemented to overcome child homelessness and neglect, prevent social orphanhood, and facilitate comprehensive child development and upbringing.

The Ministry of Family, Youth and Sports of Ukraine has also formed a network of children’s social protection institutions, which included 70 child shelters and 30 social and psychological rehabilitation centers, housing about 18,000 children in 2009.

Homeless and neglected children get more assistance from more than 70 social protection institutions set up by non-governmental and religious organizations.

The Ombudsman monitors the status of children’s rights in such institutions. For instance, staff of the Ombudsman’s secretariat studied conditions for children in Orikhiv Shelter, Zaporizhia Region, Kyiv City Children’s Shelter, etc.

However, the *system of state institutions providing shelter, social assistance and counseling is unable to eradicate the reasons of homelessness and neglect*. It lacks rehabilitation specialists, lawyers and other professionals. The Accounting Chamber of Ukraine stated that the Ministry for Family, Youth and Sports of Ukraine failed to arrange necessary measures to overcome homelessness and neglect in 2006–2010, so a consolidated E-Databank is still unavailable, an optimal shelter and institution network has not been established, and problem-solving is not monitored.

Homeless and neglected children need timely information about location of assistance providers. Local telephone hotlines are available in some places, but they cannot resolve all of the child’s problems.

The Ombudsman believes that a nationwide toll-free hotline or helpline is necessary. It must have a simple, three-digit number, just like other directory services, and children must have the best possible access and information about it.

**The problem of violence, especially violence against children, presents a global challenge nowadays.**

UNICEF Executive Director Ann Veneman presented the organization’s report *Progress for Children: Achievements in Child Protection* in October 2009 in Tokyo. The report stated, “*While progress is being made in reducing some violations of children’s rights, not enough is yet known about the extent of abuses against children. Violence and exploitation remain a harsh reality in the lives of many children around the world.*”

The scope of home violence raises the greatest concerns. The Ombudsman’s monitoring shows that families have been unable to provide safe environment for their children and protect them from violence in the recent years.

In the first six months of 2010, police kept prevention records of 70,473 people who committed family violence (*table 3.2.3*). According to the data of the Ministry for Family, Youth and Sports of Ukraine, 53,785 reports related to family violence were received during that period.

**Table 3.2.3. Number of people on preventive police records in January–June 2010\***

| Total on record<br>(January-June 2010) | Including:                  |        |                          |       |     |
|--|-----------------------------|--------|--------------------------|-------|-----|
|  | precinct police inspections |        | criminal juvenile police |       |     |
|  | women                       | men    | children                 | women | men |
| 70 473                                 | 6530                        | 57 769 | 1673                     | 293   | 916 |

\* According to the data of the Public Security Department of the Ministry of Interior of Ukraine

The Ombudsman has investigated the case for protection of rights of a village girl V. from *Kamyanka-Buzka District, Lviv Region*. Her father committed violence, belted her ruthlessly, and then chained her to bed for a long time till she was exhausted. Following the Ombudsman's instructions, a request was sent to the prosecutor's office of the Lviv Region to protect the victimized child. On October 11, 2007, Kamyanka-Buzka District Court sentenced the violent father to a twelve-month prison term, and he was taken to jail from the courtroom. The underage child stayed in another place with her elder sister for psychological rehabilitation for some time.

Unfortunately, the Ukrainian children also face violence from their counterparts at schools.

According to a research conducted in 2009 with support of the Ministry of Education and Science of Ukraine, prevalent forms of violence include beatings, insults, intimidation, kicking, clumping, name-calling, property damage, food and money dispossession, molesting, boycotting, etc.

All the identified problems are systemic, they do not depend on location and confirm that the school is not only a major socialization environment in a child's life, but also a most frequent place of violence.

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The Ministry of Education issued an order on February 1, 2010, to prevent cruelty and violence in the educational institutions, as well as provide a risk analysis mechanism for all forms of violence among children and students.

In 2006, the country was shaken by *Chernivtsi* school students abusing their classmate, with mobile phone records of violence posted online. Unfortunately this terrible practice is spreading.

In March 2010, *Uzgorod school* girls beat up their 13 year-old classmate. In the Ombudsman's opinion, the worst thing was that Tanya's former 'best friend' organized the beating, and that the fight was recorded on a mobile phone.

Students of the *Transcarpathian, Ivano-Frankivsk, Poltava, Cherkasy, Zaporizhia regions and Kyiv City* have committed similar crimes against their classmates lately.

Such actions can also be qualified as cyber-hooliganism, which can attract teenagers because of the use of modern technologies. International experience of fighting against this brutality can be useful. For instance, France has prohibited recording and distribution of violent scenes (with exception of specialized publications), under penalty of 5-year imprisonment or a fine of EUR 75,000.

Italy has banned mobile phones at schools. Apparently the time has come to introduce similar measures in Ukraine.

*After conducting her investigation of violence cases among children, the Ombudsman sent a request On Protection of Child Rights to Safety and Appropriate Education at General Educational Establishments of Ukraine to the Prime Minister of Ukraine in October 2008.* The document raises the issue of inappropriate educational work in general schools and proposes to provide adequate remuneration for teacher's educative work.

At the same time, the Ombudsman believes that teachers often cover up violence to save their professional reputation, or worse, abuse children.

A teacher of English hit a seventh grade student with a stack of notebooks in Pavlysh-based Sukhomlynskiy General School, a cradle of Ukrainian teaching tradition, last year. This fact was reported by UNIAN newswire and the Ombudsman started monitoring it immediately and informed the Kirovohrad regional Prosecutor's Office. Onufriyivka district prosecutor launched a criminal case based on Art. 126, para. 1 of the Criminal Code of Ukraine, but Onufriyivka District Court ruled that the teacher be set free on January 27, 2009, on the basis of the law of Ukraine *On Amnesty*.

Such cases have occurred in the educational institutions in Kyiv, Lviv, Kharkiv and other regions.

*The Ombudsman believes that violation of child rights by people working with children is inadmissible and insists on enhanced responsibility for illegal actions against children, as well as establishment of clear regulation of functional duties among the subjects of the educational process.*

*The Ombudsman is convinced that violence against children, homelessness and neglect can be overcome through introduction of timely anti-violence reaction mechanisms, implementation of timely assistance programs for families in crisis, individual rehabilitation and counseling assistance to children brought up in such families. Nationwide telephone and e-mail help lines should be established, and a risk analysis mechanism for all forms of violence among children should be introduced. The state should aim to create a violence-free environment, primarily through respective awareness campaigns and educational programs.*

### **3.3. Fighting against trafficking and sexual exploitation of children**

Ukraine has faced a new challenge of disgraceful acts of children trafficking and involvement of children in prostitution and pornography. Articles 34 and 35 of the *UN Convention on the Rights of Child* commit the signatory states to protect children from all forms of sexual exploitation and sexual abuse, from kidnapping, their trafficking or smuggling for any purpose and in any form.

According to the UNICEF, *more than 1 million children fall victim to human trafficking in the world every year.* Europol experts believe that human trafficking brings over USD 10 billion in annual profits.

Ukraine was one of the first countries to start developing legal mechanisms of fighting against these phenomena. In 1998, it became the third country in Europe to amend national criminal laws envisaging criminal punishment for human trafficking. Moreover, the 1960 Criminal Code of Ukraine (Art. 124-1) qualifies trafficking in children as an aggravating circumstance.

*In 2003, Ukraine ratified the Optional Protocol to the Convention on the Rights of the Child on Trafficking in Children, Child Prostitution and Pornography.* This international treaty was drawn to fight against these abominable phenomena.

Before the Interdepartmental Commission on Human Trafficking was formed under Ukraine’s Minister for Family, Youth and Sports in 2007, the National Coordination Council under the Ombudsman had coordinated relevant activities of the government agencies and NGOs.

The Ombudsman participated in the development and implementation of the Program for Prevention of Trafficking in Women and Children (1999) and the Comprehensive Program against Human Trafficking for 2002–2005 (2002). In March 2007, the Cabinet of Ministers of Ukraine approved the State Program against Human Trafficking until 2010, stipulating specific measures against human trafficking, including trafficking in children.

However, the Ombudsman’s monitoring show that human trafficking crimes become further more widespread. Ukrainian children fall victim to human traffickers mostly because of the economic crisis, unemployment, poverty, educational gaps, dissoluteness and violence promotion by mass media, formality and lack of coordination among specialized services, etc.

According to the Ukrainian Ministry of Interior, *280 children have been brought back to Ukraine and recognized as victims of human trafficking since 2003 (table 3.3.1).* Many of them were involved in sexual exploitation. Unfor-

**Table 3.3.1. Number of child victims of human trafficking brought back to Ukraine\***

| year   | number of children |
|--------|--------------------|
| 2003   | 40                 |
| 2004   | 15                 |
| 2005   | 39                 |
| 2006   | 52                 |
| 2007   | 55                 |
| 2008   | 37                 |
| 2009   | 42                 |
| Всього | 280                |

\* According to the data of the Department for Fighting against Cybercrime and Human Trafficking, Ministry of Interior of Ukraine

unately, lack of judicial statistics about the number of child victims of human trafficking precludes a more detailed research of these processes.

***Ukraine reported to the UN Committee on the Rights of the Child on implementation of its commitments under the Optional Protocol to the Convention on the Rights of the Child on Trafficking in Children, Child Prostitution and Pornography for the first time in 2007.*** The Ombudsman sent her comments to the Committee emphasizing the need to establish a system of measures preventing the use of children in sexual crimes, as well as the need to protect victims of these crimes.

When Ukraine presented its first report on fulfillment of the above Optional Protocol to the 45<sup>th</sup> Session of the UN Committee on the Rights of the Child on June 4, 2007, representatives of the Ombudsman informed Committee members about the results of the Ombudsman's monitoring, and provided her comments and proposals.

For instance, they raised the matter of rehabilitation of the victims of human trafficking and sexual exploitation.

In September 2010, Ukraine acceded to the Council of Europe Convention on Action against Trafficking in Human Beings which also sets requirements for special assistance to child trafficking victims. The Ombudsman's special report *Status of Observance of the European Standards of Human Rights and Freedoms in Ukraine*, presented on October 22, 2010 at the Verkhovna Rada (Parliament) of Ukraine, specifically emphasized the importance of implementation of the Convention's provisions into the national law.

Nowadays, human trafficking is furthered by new technologies in reproductive medicine, promotion of anonymous germinal cell donation, etc. These processes lack legal regulation, and these achievements can be used for criminal purposes, for instance, in child trafficking. A new dangerous crime is child tissue and organ transplantation.

***Only five public and municipal medical institutions and public research institutions are permitted to perform transplantations in Ukraine.*** However, different sources make one doubt that only those institutions perform the surgeries.

Several criminal cases have been filed against parents attempting to sell their children for organ transplantation. For instance, a resident of Kirovohrad Region was sentenced to imprisonment for four years after she intended to sell her 5-years-old son for kidney transplantation. The court could not sentence that mother to tougher punishment as the crime was qualified under Art. 143 of the Criminal Code of Ukraine (organ transplantation) with much softer sanctions than those of Art. 149 of the Code. However, the first version of Art. 149 (written by the Ombudsman of Ukraine back in 1998) para. 3 defines human trafficking for organ or tissue removal as an aggravating circumstance with the sanction of prison term from 8 to 12 years. Later, the legislators changed the wording of Art. 149 of the Criminal Code of Ukraine with Law 3316-IV dated January 12, 2006 and removed that provision.

The Ombudsman believes that lawmakers should enhance responsibility for human trafficking with the aim of victim's organ and tissue transplantation.

Child trafficking is linked to forced child labor covered in the next section of the Report, and sexual exploitation.

The scope of sexual exploitation and abuse of children have become threatening with the IT development, and this problem is not unique for Ukraine.

***The UNICEF reports that nearly 2 million children are involved in sex industry every year***, over one million photographs of 10,000 to 20,000 children are posted online, and only several hundred of those children have been identified. More than 75% of all child pornography is distributed online. Nearly 750,000 pedophiles are constantly linked to the Internet.

According to the UN Special Rapporteur on the sale of children, child prostitution and child pornography, annual profit from production and distribution of pornographic images of children amounts to USD 3 to 20 billion.

Unfortunately, pedophilia has become an epidemic in Europe. The number of minors involved in sex-business in the EU member states ranges from 100,000 to 250,000 children every year. Sadly, Ukraine has been recognized as an unofficial center of child pornography production. According to estimates of Interpol experts, the Ukrainian child pornography market is assessed at USD 100 million annually.

Ukraine ***does not have any data about child victims of sexual exploitation and human trafficking, for instance, a breakdown by gender, age, or location of the children***. The Ombudsman believes that this data should be collected urgently.

Imports, production, sale and distribution of pornographic items are penalized, according to Art. 301 of the Criminal Code of Ukraine, with a fine equivalent to 100 untaxed minimum incomes, arrest for up to 6 months, or custodial restraint for up to 3 years, with confiscation of pornographic items and means of their production and distribution.

On that basis, 130 people were sentenced for those crimes in 2005, 191 people in 2006, 321 in 2007, 311 in 2008, and 371 in 2009.

At the same time, current law envisages no responsibility for possession of pornographic products containing images of children with the use of computer systems for personal use or for transfer to other people, contrary to Art. 9 of the Council of Europe Convention on Cybercrime that Ukraine ratified back in 2005.

Laws of different countries envisage responsibility for production, distribution, and even use of child pornography. Punishment for production and distribution of child pornography varies from a 10-year prison term to life sentence in different countries. Internet providers are responsible for online distribution of child pornography in the US. Canada and several European countries track down and punish its consumers with imprisonment ranging between 6 months

and 5 years. Producers of hard-core child pornography have been sentenced to death in Thailand.

**At the International Conference *Dignity, Development and Dialogue* dedicated to the 20<sup>th</sup> anniversary of approval of the UN Convention on the Rights of the Child in October 2009, the Ombudsman of Ukraine *proposed that member states introduce criminal responsibility for clients of sexual services in their national laws, as had been done in Sweden and Norway. The Ombudsman is convinced that, similarly, criminal responsibility should be introduced for the use of online pornography with child images which paves a direct way towards pedophilic crimes and is often closely linked to them.***

***The Ombudsman also believes that Ukrainian criminal laws should be amended urgently to criminalize the use of products with child images for pornographic and erotic contents production, and introduce criminal responsibility for the use and possession of those products, as well as so-called grooming, perceived as online contacts with children in order to gain their trust and induce them to some brutal treatment, including sexual satisfaction of adults.***

Disturbingly, UN experts suggest that “after entry visas were canceled for tourists from most Western countries, Ukraine has become a major sex-tourism destination” and “minors are exploited for this activity”.

The Ombudsman has monitored a case on protection of the rights of children who were abused by Swiss pedophile Hans Biercher, who traveled around Ukraine satisfying his sexual needs in unnatural forms. Small children from poor rural families fell victim to the crone from Zurich in exchange for small presents or payments. The Ombudsman contacted the Investigation Police Department of Zhytomyr Region which investigated the case. Legal representatives were assigned for five victims in the case. Zhytomyr District Court sentenced the Swiss man to a prison term of 11 years and 6 months, according to para. 2 Art. 153, and para. 3 of Art. 156 of the Criminal Code of Ukraine in November 2009. The felon is now servicing his term.

***The Ombudsman is also convinced that a system should be established to deny entry to Ukraine for foreigners who had been charged or sentenced for sex crimes.***

The Criminal Code of Ukraine establishes responsibility for crimes against sexual freedom and sexual integrity for people, including minors, in Art. 152, 153, 155, 156, as well as crimes related to trafficking in human beings, including minors, in Art. 149.

In the last five years, 2944 people were sentenced for crimes against life, health, and sexual integrity committed against minors (*table 3.3.2*).

At the same time the Ombudsman’s analysis shows that every fifth case related to those crimes is dismissed, and criminals escape punishment. Unfortunately, victims of those crimes often do not even contact the enforcement agencies.

**Table 3.3.2. Number of people sentenced for crimes against sexual freedom and sexual integrity (with young and underage victims)**

| Year         | Articles of the Criminal Code of Ukraine |  |                            |                                   |             |
|--------------|--|--|----------------------------|-----------------------------------|-------------|
|              | Art. 152<br>Rape                         | Art. 153 Forced<br>Satisfaction of<br>Sexual Needs<br>in Unnatural<br>Ways | Art. 155<br>Statutory Rape | Art. 156<br>Child Sexual<br>Abuse | Total       |
|              | Para.3, 4                                | Para.2, 3  | Para.1, 2                  | Para.1, 2                         |             |
| 2005         | 384                                      | 190  | 25                         | 75                                | 674         |
| 2006         | 301                                      | 205  | 36                         | 95                                | 637         |
| 2007         | 286                                      | 192  | 24                         | 79                                | 581         |
| 2008         | 261                                      | 157  | 39                         | 96                                | 553         |
| 2009         | 236                                      | 136  | 29                         | 98                                | 499         |
| <b>Total</b> | <b>1468</b>                              | <b>880</b>   | <b>153</b>                 | <b>443</b>                        | <b>2944</b> |

Sadly, orphans fostered by pedophile families also suffer from sexual crimes. A Kyiv resident contacted the Ombudsman in July 2009 requesting assistance in bringing her husband to account for sexual abuse of two adopted minors. An urgent notice was sent to prosecutor of the Dniprovskiy District of Kyiv, and a criminal case was filed and submitted to Kyiv Investigation Police Department.

Details of this case were broadly covered by the media, that is why the Ombudsman addressed international organizations, namely the UNICEF office in Ukraine, requesting asylum for child victims abroad. She also requested that the Minister of Interior and Prosecutor General of Ukraine inform her about measures taken to assure a comprehensive and unbiased investigation of the case, as well as identification and sentencing of all criminals involved; she also requested that the Security Service of Ukraine be involved in the PGO's investigation because of its sluggish progress. The case has now been transferred to the PGO Investigation Department, and the Ombudsman continues monitoring the case.

It is well-known that foster parent candidates are selected by special services of the Department for Adoption and Protection of the Rights of the Children of the Ukrainian Ministry for Family, Youth and Sports. Those services must check the living and education conditions of the adopted children annually during the first three years, and then every three years, according to para. 104

of the *Procedures for Adoption and Oversight of Protection of Adopted Child Rights*, approved by resolution of the Cabinet of Ministers No 905 on October 8, 2008 (the provision was present in the previous versions of the Procedures, too). ***Adequate compliance with those norms can largely help to avert abuse.***

Children adopted by foreigners also suffer from sexual abuse. For instance, the Ombudsman sent a request to the President of Ukraine on August 2, 2006, about immediate repatriation of several Ukrainian orphans who had been adopted by US citizens and suffered from violence and sexual abuse. Namely, ***US citizen John Walter Krueger*** adopted three boys born in 1994, 1995 and 1997 in the Kherson Region ***in 2002–2004***, and Bakersfield Police Department filed a criminal case as early as December 2005, charging him with sexual abuse of those children. John Krueger received a 75-years sentence but was bailed out, and the children are now staying with the families believed to have “good reputation and cooperation with social services.”

***No officials except the Ombudsman ever expressed any real concerns about the fate of these children. Nobody was ever punished for entrusting Ukrainian children to an overseas pedophile, either.***

***The Ombudsman is convinced that adoptive parents should be selected more carefully, and adoption procedures must not be simplified, as some politicians and officials have been suggesting lately.***

Young victims of such crimes can get counseling only at the Medical Rehabilitation Center of the IOM Representative Office in Kyiv and seven reintegration centers in the regions for human trafficking victims in Ukraine. The only rehabilitation center for minor victims of sexual abuse was opened in Odessa by *Faith, Hope, Love* NGO in February 2008, but specialized state institutions are non-existent in this country.

***The Ombudsman believes that public authorities must organize assistance to victims of sexual crimes and human trafficking, and insists that rehabilitation systems should be established for such children.***

Ratification of the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* that Ukraine signed back in 2007 can guarantee the rights of underage victims of sexual abuse in the best possible way. This international treaty provides for the best possible interests of child victims and child witnesses during criminal proceedings and court trials, protection of their private life, confidentiality and prevention of publicizing of any information that could identify those children to prevent the risk of revenge and repeated victimization. Moreover, the Convention sets high protection standards for sexually abused children, and establishes responsibility for organization of child prostitution and pornography, child’s participation in pornographic performances, production, distribution and possession of pornographic products using the images of children on any carriers, sexual harass-

ment, etc. The Convention also requires that records be kept on the people sentenced for sexual crimes against children.

**On November 11, 2009, the Ombudsman sent a request to the then President Viktor Yushchenko about the necessity to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Ombudsman later sent the same request to the new President Viktor Yanukovich.**

*The Ombudsman opines that growing trafficking in children, child pornography, prostitution and pedophilia are brutal effects of cynical market rules interfering with the extremely fine fabric of human relations. These rules treat literally everything as a commodity with a certain price. This has become especially vivid during the global financial crisis that led to growing social inequality, poverty and destitution. Ideological contents of reforms and all the government policies should be changed to remedy this situation as human beings, their lives, physical and spiritual health must not be perceived as a commodity but as the goal and measure of all social activities.*

### **3.4. Children in conflict with the law**

Analysis of reasons behind juvenile crime, continuously performed by the Ombudsman, shows that permanent economic and political instability, catastrophic property stratification, living on the verge of survival, loss of spiritual values, and introduction of immoral market rules to human relations are destructing for the formation of the young generation. The family loses its educational role, the interest in knowledge and productive labor is falling, people are losing confidence in their future and becoming more bitter and aggressive. Children face the choice between positive things that are taught by most parents and teachers, and what they see around them. Confronted with such controversies, some children start looking for support of their asocial behavior among their friends.

Minor crime spreads as a result of unsatisfactory conditions of family upbringing, parental neglect and homelessness, proliferation of violence in the society, and inadequate professional performance of the teachers, particularly in boarding schools.

Its reasons also include poor legal education and upbringing, followed by legal nihilism, or negativity, or indifference to the norms of law.

Reality of the modern school, such as basic law courses taught by history teachers, with its overly formal and theoretical approach to law lead to unsatisfactory legal knowledge of children. In fact, children get the first legal knowledge at the age of 15 when they start studying *Fundamentals of Law* in the ninth grade of secondary schools, that is why smaller children usually don't even know that criminal responsibility of minors for certain types of crimes starts from the age of 14 according to the Criminal Code of Ukraine.

The Ombudsman is convinced that quality legal education is impossible only within the limits of the *Fundamentals of Law* compulsory course. The process of legal education and upbringing should be permanent, starting from kindergarten, and continuing at school and higher educational institutions. This awareness can give children adequate legal guidelines and knowledge of their rights and duties. And it will keep them from breaking the law.

The Ombudsman's monitoring shows that drugs and alcohol abuse are growing among children, endangering their life and health as well as the future of the nation. At the same time, in many cases this brings in criminal consequences. The number of minors sentenced for crimes related to distribution of drugs, psychotropic substances, their substitutes or precursors, has grown from 4.6% in 2004 to 6.3% in 2009. Nearly every fourth of 8555 sentenced minors have committed a crime in the state of alcohol intoxication. Drunk teenagers usually commit grave and ruthless crimes.

According to the WHO, Ukraine is the country with the most wide-spread underage alcohol consumption, with 40% teenagers consuming alcohol at least once a month and 20% drinking every day. For an absolute majority, i.e. 64%, the main reason for drinking is getting good mood, and 28% drink to keep the company of their friends.

The doctors believe that the dose of 250 grams of vodka is lethal for a 12-13-years-old teenager. The public relations unit of Transcarpathia Police Department has reported that a 14-years old schoolgirl was admitted to children's hospital with alcohol intoxication in the state of coma. Doctors had to fight for the girl's life for several days.

Despite an effective legal ban, alcohol sales to minors are a usual thing. Among the polled teenagers, 62% never had a problem buying alcohol in the shops.

***The Ombudsman believes that the country should introduce systemic measures to fight alcohol and drugs addiction among children. This requires developing a network of afterschool clubs available for children free of charge to keep teenagers occupied. A greater number of printed media and social advertising targeting children and teenage audiences should also inform them about the harm and irreversible consequences of alcohol consumption.***

Obviously, responsibility for selling any form of alcohol and drugs to children should also be enhanced.

The Ombudsman is concerned about the scope of replication and cultivation of cruelty and violence among teenagers leading to casualties and illegal behavior. Current laws, namely, Art. 6 and 28 of the Law of Ukraine *On Television and Radio Broadcasting* prohibit displays of violence in the media, distribution of programs with scenes of murder and scenes invoking sexual instincts. However, the air is still oversaturated with violent movies showing aggression and brutality, which damages the teenage psyche, deforms their understanding of human values, and distorts consciousness.

The Ombudsman believes that the family should help children overcome cruelty. Evil should find no place in the souls of the children whose parents care about children’s upbringing and live good lives.

At the same time, media involvement in juvenile crime prevention is another effective tool, given the scope of its coverage and influence opportunities. Moreover, media should cover the broadest possible range of issues, including promotion of healthy lifestyle, respect for human values, and enhancement of legal awareness. Series of TV and radio programs on this topic should be produced, and e-media should be encouraged to promote best examples of national, cultural and artistic achievements.

The Ombudsman is convinced that those steps can largely improve the juvenile criminal situation.

*According to the Ministry of Interior of Ukraine, in the last five years the number of juvenile crimes has gone down by more than a half (table 3.4.1).* So-called crime rejuvenation has also stopped. The number of people aged between 14 and 16 sentenced for crimes went down nearly by a factor of three, from 6478 in 2004 to 2152 in 2009. During the same period, the number of cases against minors who committed socially dangerous actions before they reached the criminal responsibility age, according to Art. 7–3 of the Ukrainian Criminal Procedure Code, also went down from 3096 to 1197 cases.

The share of minors in the total number of sentenced people is also going down gradually, with 10.4% juveniles in 2004, 9.9% in 2005, 8.7% in 2006, 7.3% in 2007, 6.9% in 2008, and 5.8% in 2009.

Despite the mentioned positive trends, the status of juvenile delinquency and the nature of crimes committed by minors should keep us alert. Ukraine has one the highest numbers of juvenile criminal cases in Europe.

**Table 3.4.1. Juvenile crime statistics\***

| Years | Number of juvenile delinquents | Change year-on-year |
|-------|--------------------------------|---------------------|
| 2002  | 31 407                         | —                   |
| 2003  | 32 571                         | +3,7                |
| 2004  | 30 275                         | -7,0                |
| 2005  | 25 907                         | -14,4               |
| 2006  | 19 639                         | -24,2               |
| 2007  | 18 755                         | -4,5                |
| 2008  | 13 541                         | -27,8               |
| 2009  | 12 956                         | -4,3                |

\* According to the Ministry of Interior of Ukraine

### III. PROTECTION OF CIVIL AND PERSONAL RIGHTS OF CHILDREN

Property crimes take a major part, with 43.9% minors sentenced for theft and 26.3% for robberies in 2009.

The high rate of grave juvenile crimes and felonies is particularly disturbing. For instance, more than 5,700 or 67.6% of all sentenced minors were imprisoned in 2009 for grave crimes and felonies (*table 3.4.2*).

The number of intended murders committed by minors is of particular concern, with nearly 100 teenagers sentenced for this crime in Ukraine every year. Minors often commit crimes not only for lucrative gains but for entertainment. Homeless people are the most frequent victims of the murderers. For instance, on July 21, 2008, a court sentenced four minors aged 14 to 16 for beating three homeless people to death in *Luhansk*. For three consecutive days the young

**Table 3.4.2. Number of sentenced minors, by type of crimes\***

|   | 1995   | 2000   | 2002   | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   | 2009 |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|------|
| <b>Total</b>  | 16 745 | 20 016 | 20 104 | 21 111 | 21 806 | 17 556 | 13 939 | 11 170 | 10 078 | 8555 |
| Premeditated murders (and attempts)   | 147    | 257    | 223    | 195    | 115    | 109    | 106    | 156    | 109    | 88   |
| Intentional grave bodily injuries   | 155    | 233    | 203    | 246    | 268    | 253    | 211    | 205    | 200    | 154  |
| Human trafficking or other illegal agreement on human transfer  | —      | —      | 2      | —      | 1      | —      | 2      | 1      | —      | 1    |
| Rape (and attempts)   | 276    | 106    | 112    | 93     | 87     | 86     | 76     | 68     | 68     | 67   |
| Theft   | 9967   | 13809  | 13086  | 13562  | 13467  | 10078  | 6299   | 4641   | 4162   | 3752 |
| Robbery   | 1895   | 1655   | 1903   | 2153   | 2674   | 2734   | 2951   | 2449   | 1784   | 1763 |
| Robbery with violence   | 594    | 655    | 717    | 700    | 705    | 673    | 740    | 713    | 515    | 484  |
| Fraud   | 57     | 81     | 74     | 77     | 146    | 182    | 232    | 195    | 154    | 105  |
| Crimes against traffic safety and vehicle operation   | —      | —      | —      | —      | —      | 849    | 801    | 789    | 700    | 558  |
| Hooliganism   | 1302   | 1475   | 1033   | 987    | 1042   | 831    | 797    | 567    | 630    | 428  |
| Crimes related to circulation of drugs, psychotropic substance, their substitutes or precursors, and other crimes against public health | 316    | 681    | 652    | 738    | 999    | 850    | 830    | 651    | 637    | 536  |
| Other crimes  | 2036   | 1064   | 2099   | 2360   | 3340   | 855    | 837    | 674    | 1119   | 499  |

\* According to the State Court Administration of Ukraine (Criminal Codes ca 1960 and 2001)

delinquents went to the place where the homeless were kept, beat them up with stick prepared in advance, kicked them, forced them to sexual intercourse, set fire to their clothes and committed other atrocities. *“Why should we have pity on them? They are toe rags! Well, we beat them up a bit, what’s wrong with that?”* one of the minors explained during arrest. The criminals were sentenced to prison terms of 8 to 10 years.

The Ombudsman is convinced that violence and cruelty become a systemic problem. Children perceive cruelty as a norm when they suffer violence in the family, see violence on TV screens every day, and play computer games with regular murders and no responsibility.

Court practice shows that the predominant motive of murders committed by teenagers is personal gain. *Two underage Polupan brothers committed a shocking murder of a 14-year-old girl and her 8-year-old brother in Zaporizhia Region in 2007.* The young murderers came from well-off families, and they were no different from their schoolmates as they had satisfactory marks and the teachers raised no complaints about them. However, they exhibited particular cruelty as they inflicted about 50 lethal knife wounds to their victims. Two lives became the price for a computer, an audio player, and four mobile phones. On April 4, 2008, they were found guilty and each was sentenced to 15 years of imprisonment.

The Ombudsman’s investigators made a site visit and found that family problems were the reason of the tragedy. The parents were divorced and hostile to each other, besides one of the teenagers had worked the night shifts in a bar serving alcohol.

Shortfalls in upbringing featured in another **investigation of violation of the child’s right to life that the Ombudsman initiated.** The investigation was provoked by media reports about a fight between students of the 10<sup>th</sup> grade of **secondary school No. 18 of Zhytomyr City** on September 11, 2008, when Andrii Masliuk received a grave brain injury and died. The reason of the fight was trivial: the boys had failed to share an apple!

The Ombudsman’s expert team studied the reasons of the tragedy on the site. Assistance had to be provided to re-establish relations between the teachers and students and restore a normal psychological environment at school. The children were indignant that the teachers and school management had tried to conceal the circumstances of the tragedy, reported a false version of the boy’s death to the investigation authorities and ordered the children to stick to it. Such an *“educational process” can hardly bring up law-abiding people.*

The number of children with a criminal police record has been going down in the recent years. In 2009, only 22,360 children had such a record, which was two times less than in 2004. Nearly every third child with a police record is an orphan or is brought up by a single parent (*table 3.4.3*), which should attract attention of the authorities to this category of children.

**Table 3.4.3. Minors with juvenile criminal police record\***

|  | 2000   | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   | 2009   |
|--|--------|--------|--------|--------|--------|--------|--------|--------|
| <b>Total</b>                                 | 39 806 | 47 291 | 46 032 | 41 506 | 33 367 | 30 402 | 28 920 | 22 360 |
| <b>including</b>                             |        |        |        |        |        |        |        |        |
| Children from single-parent families         | 10 373 | 11 917 | 11 910 | 10 956 | 9421   | 8844   | 8097   | 6052   |
| Orphans                                      | 879    | 1145   | 1273   | 1215   | 1275   | 1115   | 1029   | 829    |
| Residents of orphanages and boarding schools | 1032   | 1650   | 1683   | 1703   | 1717   | 1497   | 1531   | 1153   |
| Students of secondary schools                | –      | 23 652 | 24 272 | 22 537 | 18 262 | 16 614 | 15 645 | 11 777 |
| учні ПТНЗ                                    | –      | 7648   | 7566   | 6987   | 5664   | 4762   | 4987   | 3951   |
| не працювали і не навчались                  | 10 026 | 11 089 | 9353   | 7775   | 6515   | 6437   | 6194   | 4544   |
| дівчатка                                     | 3155   | 4001   | 4057   | 3746   | 3120   | 2808   | 2985   | 2743   |

\* According to the Ministry of Interior of Ukraine

At the same time, we must remember that *nearly 6% of the minors sentenced to educational work by courts in 2004–2009 had a police record at the time of committing the crime. Every fifth teenager sentenced for a crime had prior legal problems.* This shows that the agencies and services authorized to educate delinquents and prevent juvenile crime are not effective enough.

Here is a typical example. *Komsomolskiy District Court of Kherson sentenced three teenagers in 2008*, who had been active members of an organized criminal robbery group for a year. Despite the fact that all the teenagers had juvenile criminal police records, and one of them had been sentenced before, no prevention mechanisms were used. As a result, the court sent a special covenant to the Ombudsman. This covenant draws attention of the top police officials in Kherson Region to the lack of prevention activities by relevant services.

*The Ombudsman is convinced that a considerable reduction in crime rates among minors is possible only if all agencies and institutions join efforts in legal awareness and prevention campaigns.*

The children who commit socially dangerous actions before they reach the criminal responsibility age of 11 are sent to *special juvenile remand institutions. There are 19 such remand institutions in Ukraine*, including four transit ones. Delinquents on their way to the specialized prisons stay in remand institutions following court decisions under Art. 7-3 of the Criminal Procedure Code of Ukraine. Besides that, children from other CIS countries who require isolation stay there before they are sent back to their countries.

In general, the annual number of minors staying in remand institutions has been going down in the recent years. However, it went up again in 2009, with 1034 children sent to those institutions (*table 3.4.4*).

*Table 3.4.4. Number and structure of minors in juvenile remand institutions (annually)<sup>1</sup>*

|  | 2000        | 2003        | 2004        | 2005        | 2006       | 2007       | 2008       | 2009        |
|--|-------------|-------------|-------------|-------------|------------|------------|------------|-------------|
| <b>Total</b>   | <b>1736</b> | <b>1686</b> | <b>1503</b> | <b>1097</b> | <b>676</b> | <b>624</b> | <b>767</b> | <b>1034</b> |
| <b>including:</b>  |             |             |             |             |            |            |            |             |
| Children aged 11 to 14 who committed socially dangerous acts | 754         | 605         | 626         | 443         | 252        | 217        | 144        | 105         |
| Sent to specialized juvenile institutions by courts          | 417         | 425         | 442         | 367         | 240        | 176        | 148        | 115         |
| Deserted from specialized educational institutions           | 61          | 46          | 27          | 22          | 17         | 93         | 6          | 7           |
| Students of secondary schools, lyceums, gymnasiums           | 1098        | 1090        | 996         | 696         | 416        | 458        | 636        | 936         |
| Persons who do not study or work                             | 638         | 564         | 482         | 353         | 258        | 144        | 126        | 77          |
| Employed   | –           | 3           | 4           | 2           | –          | 1          | 1          | —           |
| Girls  | 258         | 277         | 228         | 182         | 120        | 148        | 225        | 347         |
| Orphans  | 228         | 334         | 285         | 221         | 132        | 170        | 160        | 255         |
| Children from single-parent families                         | 709         | 647         | 641         | 431         | 328        | 235        | 285        | 268         |

<sup>1</sup> According to the Ministry of Interior of Ukraine

The Ombudsman is constantly monitoring the status of children's rights in remand houses. For instance, after the Ombudsman studied the status of children's rights in Kyiv Remand Institution and found out that the institution did not have up-to-date textbooks, she raised the matter at the Ministry of Education of Ukraine and several sets of new textbooks were sent to that institution.

The Ombudsman insisted on amending several laws regulating activity of remand houses in order to harmonize the national legislation with the international standards.

The Ombudsman insists that child crime problem should be resolved as soon as possible and emphasizes that **the state that cares about its future must not throw its minors behind the bars but take care of them, eradicating disorder, as well as social and educational neglect, from their lives.**

That is why the problem of juvenile correctional facilities system's harmonization with international standards remains highly relevant for this category of convicts, leading to gradual rejection of cruelty and pressure in work with juvenile delinquents, and recognizing the priority of prevention. It is very important that

juvenile delinquents should stay in normal conditions surrounded by attention of teachers and psychologists, and specialized institutions should meet appropriate standards.

Continuous humanization of the state's penal policy has brought about the trend for reduction of the number of imprisoned juvenile delinquents. The number has gone down by a factor of three since 2000 (*table 3.4.5*). The Criminal Executive Inspectorate keeps an eye on nearly 6,000 minors sentenced to punishments other than imprisonment.

This has been facilitated by implementation of the *Joint Project of the President of Ukraine and the Ombudsman to reduce the number of imprisoned juvenile delinquents*, for instance, through remission on occasion of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights.

At the moment, **10 juvenile correctional facilities host 1452 convicts, including 102 girls**. Half of them have been sentenced to prison terms of 3 to 5 years, every third was punished for theft, robbery or burglary, 14% for premeditated murder or willful infliction of grave bodily injuries. Another thousand minors are kept in remand facilities as they wait for trial.

As we mentioned before, most convicted minors lacked proper parental care and education in their daily life. Nearly a quarter of them did not study or work. Two thirds of the residents of juvenile correction facilities are aged between 14 and 18. Those sentenced before coming of age continue their prison term until the age of 22 to confirm correction results and complete their studies.

**Table 3.4.5. Number and structure of juvenile delinquents in specialized institutions\***

|                       | 2000        | 2003        | 2004        | 2005        | 2006        | 2007        | 2008        | 2009       |
|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|
| <b>Ukraine</b>        | <b>2459</b> | <b>2403</b> | <b>2519</b> | <b>2121</b> | <b>1641</b> | <b>1256</b> | <b>1147</b> | <b>875</b> |
| Including             |             |             |             |             |             |             |             |            |
| <i>Boys</i>           | 2329        | 2297        | 2397        | 2001        | 1544        | 1195        | 1084        | 831        |
| Volyn Region          | 132         | 157         | 190         | 112         | 86          | 92          | 99          | 66         |
| Dnipropetrovsk Region | 309         | 240         | 279         | 231         | 204         | 177         | 198         | 157        |
| Donetsk Region        | 341         | 320         | 349         | 267         | 234         | -           | -           | -          |
| Luhansk Region        | 301         | 344         | 272         | 224         | 180         | 172         | 112         | 111        |
| Lviv Region           | 207         | 201         | 186         | 153         | 149         | 111         | 99          | 87         |
| Poltava Region        | 306         | 287         | 309         | 257         | 190         | 135         | 129         | 97         |
| Rivne Region          | 105         | 202         | 170         | 211         | 146         | 126         | 103         | 49         |
| Ternopil Region       | 89          | 100         | 175         | 188         | 105         | 122         | 100         | 72         |
| Kharkiv Region        | 242         | 237         | 211         | 160         | 94          | 125         | 134         | 111        |
| Chernihiv Region      | 297         | 209         | 256         | 198         | 156         | 135         | 110         | 81         |
| <i>Girls</i>          | 130         | 106         | 122         | 120         | 97          | 61          | 63          | 44         |
| Zaporizhia Region     | 130         | 106         | 122         | 120         | 97          | 61          | 63          | 44         |

\* According to the State Court Administration of Ukraine (Criminal Codes circa 1960 and 2001)

The Ombudsman would also like to draw attention to the problem of mothers serving their sentences with their babies. For instance, baby care centers of Chernihiv and Odessa female correctional colonies host 84 babies under the age of three, and 530 children over the age of three are staying in boarding pre-school child care centers.

*The Ombudsman has visited both baby care centers in Chernihiv and Odessa* and pays constant attention to the babies and children spending the first years of their lives in penitentiary institutions together with their mothers.

*Director of All-Ukrainian Charity Fund Zoriana Mriya (Star Dream) Yablunovskiy and the NGO's coordinator Bakhtyiev* addressed the Ombudsman in December 2008 asking for protection of rights of *Larysa Nerush, prisoner of Chernihiv Correctional Colony No. 44* and her *four-year-old child*. The woman was sentenced during pregnancy. She had a baby in Kryvyi Rih remand prison and started her correction term in prison.

Her son, little Andriy, was transferred from a baby care center at Chernihiv Correctional Institution to Pryluky boarding pre-school child care center. The boy's father died by then and no other relatives could take care of the child until his mother's release.

Acting in the best interest of the child, the Ombudsman supported the plea of the charity fund to release the young mother from prison and sent a request to the top officials of the Penitentiary Department of Ukraine. Correctional institution provided a reference confirming that the convict was deeply penitent for her crime, she reproached herself for her previous lifestyle and was determined to turn to correction. She was working at garment manufacture conscientiously and doing everything to become eligible for release on parole. She was inspired by her desire to bring up her little son herself, and she was deeply concerned about him, keeping phone and mail contact with staff of the child institution.

The Ombudsman was convinced that the little boy needed his mother because she could give him more love and warmth than any child institution.

*On March 30, 2009, Novozavodskiy District Court of Chernihiv* considered the case filed by the administration of the Chernihiv Correctional Colony No 44 at its visiting session, and *ruled to release Larysa Nerush from prison on parole*. After this she was sent for residence to *Myloserdia (Grace) Social Rehabilitation Center* for mothers with children at Spaso-Preobrazhenska nunnery in Vyshhorod District of Kyiv Region. Her son was transferred to the same place from the boarding house.

The Ombudsman's monitoring of juvenile crime prevention shows that a protection system is necessary for children who fall victims of criminals. The first positive steps in this area include establishment of more than 300 'green rooms' at juvenile criminal police departments for communication with the victimized children. Ukraine's first Friendly Room has been opened in Kyiv

city child shelter and set up according to the European Standards, and a court in Ivano-Frankivsk Region hears cases of such children.

The Ombudsman insists on amending the criminal procedures and civil procedure legislation to guarantee the rights of child victims and child witnesses, particularly by using video records of their interviews as evidence during court trials. The recording must be made in specially equipped premises by professionally trained people to minimize the number of interrogations and psychological traumas for children.

*The Ombudsman consistently supports the need to introduce and implement a comprehensive program of reform in relations between the state and minors, and make this area a national policy priority. First and foremost, the state should introduce an up-to-date system of juvenile crime prevention and social rehabilitation of children in conflict with the law, thus preventing possible crimes.*

### **3.5. Rights of children to participation in social life**

The 21<sup>st</sup> century gives new relevance to development of persons who are capable of thinking independently, generating new ideas and making non-standard decisions. Documents of the *31<sup>st</sup> United Nations General Assembly's Special Session on Children: A World Fit for Children* rightly say that children must have the opportunity to express their thoughts freely, gain knowledge and skills for decision-making and communication to resolve life tasks. Ukraine has supported the final document of this session, stating its readiness to change the world for the better in the interests of children and with their participation.

According to *Art. 2 of the Law of Ukraine On Youth and Children's Public Organizations*, citizens aged 14 to 35 have the right to association in youth and non-governmental organizations, to engage in activities directed at satisfaction and protection of their legitimate social, economic, creative, spiritual and other common interests. Child public organizations are associations of citizens aged between 6 and 18 working to realize and protect their rights and freedoms, develop creative potential, meet their interests and establish their social positions as full members of the society. Such organizations are voluntary, established on the principles of equality of their members, self-governance, legitimacy, and openness. Persons above the age of 15 can found them.

*By early 2010, fifteen national and 1,500 regional children's public organizations have been registered in Ukraine.* Of these, the Ukrainian Junior Society *Sich*, the League of Pioneer Organisations of Ukraine (LPOU) and others excel in terms of activity. Their mission is to promote development of various skills in children and adolescents, respectful attitude to the family, home country, state, health and physical education, modern environmental education, etc.

The Commissioner for Human Rights is supporting children's NGOs and working with them with a view to best ensure rights and interests of the child. The staff of the Ombudsman's Secretariat have helped the Zaporizhzhya Oblast Pioneer Organisation with a supply of promotion material on the Convention

on the Right of the Child for further dissemination amongst primary school students.

Close cooperation has been established with the children sports NGO *"Shkid" of Shostka, Sumy Oblast*, whose main task is to divert young people, particularly minors, from the street, vodka and drugs. After all, of 35,000 young people living in the city almost 2,000 are members of *Shkid*. By inviting to its ranks children from disadvantaged families and orphans *Shkid* members have managed to turn them away from their addictions and parasitic lifestyle, as a result of which children's delinquency in the region has decreased by 70%. With the help of the Ombudsman, the gym that was abandoned by the former owners of Khimreaktyv Plant, has been refurbished and equipped, a football pitch with artificial turf has also been built, and various sports section, e.g., boxing, wrestling, football and checkers, organised. Now they use *Shkid* facilities in Shostka to organise various sports tournaments and championships.

The Ombudsman has also been very much involved with *"Let's Help Children", a Dnipropetrovsk-based children's NGO* led by Mykola Kozhushko. When Mykola himself was a child left without parental care, he had sought the Ombudsman's assistance in protecting his housing rights. And, inspired by such assistance granted, Mr Kozhushko decided to commit himself to protection of other orphans' rights, where he now has full support of the Ukrainian Human Rights Commissioner.

However, as the Commissioner's monitoring has shown, despite the ever growing number of children's and youth organizations, the percentage of children involved in their activities remains low. One reason for this is insufficiency of financial, informational and technical support provided to such organizations.

**The Ombudsman considers therefore it necessary to enhance social activity of the younger generation, to involve it in various associations, develop conditions for fulfilment of children's creative potential and encourage different forms of student self-government.**

The fundamentals of student self-government in schools are determined by the laws of Ukraine *On General Secondary Education, On Vocational Training and On Extracurricular Education*.

Since 2001, Ukraine has had *the All-Ukrainian Children's Parliament*, which comprises representatives of parliaments and NGOs of Kyiv, Sevastopol, Rivne, Chernivtsi, Sumy, Chernihiv, Dnipropetrovsk, Kirovohrad, Evpatoria, Odessa, Donetsk, Zaporizhya, Lviv, Nadvirna, and Slavutich.

***The Commissioner for Human Rights emphasizes the need to fully support student self-government which contributes to the development of social activity of students, their leadership and organisational skills, and fosters a sense of dignity and active citizenship.***

According to the Commissioner, no effective protection of children rights is possible without their direct participation in this important cause. It was

therefore decided to institute **the Commissioner's delegates for child protection on voluntary basis (Children's Ombudsmen)**. On December 10, 2005, i.e. on the Human Rights Day, the winners of the competition were announced: Yuliya Kruk, a 16-year-old student at the Institute of International Relations, Kyiv Taras Shevchenko National University, and Ivan Cherevko, a 14-year-old junior of the Kyiv Mohyla Academy National University. The Children's Ombudsmen acted as a liaison between the Commissioner for Human Rights with children's groups, reviewing children rights legislation, media reports, and making proposals related to the protection of the rights of the child to the Commissioner *by looking at issues "with a child's eye"*.

They met with students organizations of many regions, student activists of the Kyiv City Student Self-Government, and visited children's residential institutions. In order to establish the circumstances under which the rights of children complaining to the Ombudsman had been violated, the children's ombudsmen made trips to the regions, paid several visits to the Kyiv City shelter for children where they had talks on children's rights, and participated in various leisure-time activities of the residents. The Children's Ombudsmen were actively involved in conferences and round tables, radio and television programs on childhood-related issues, and made speeches at the National Children's Forum 'The State That Hears Children' and the All-Ukrainian Conference 'To Children with Love and Care'.

The Ukrainian Ombudsman supports popularisation of Children's Ombudsmen best practices in the regions and select children's groups. E.g., the *students of Korosten secondary school №7 (Zhytomyr Oblast) hold annual election of their student rights' defender*. A community office for children's rights of the Commissioner for Human Rights of Ukraine has been operational *in Uzhgorod* since 2008. The Commissioner has promoted establishment of such institutions in *Chernivtsi*, as well as at schools in *Kyiv, Ternopil* and other oblasts.

In 2007, a *team* was formed at the *Vinnytsia Office of Children's Ombudsmen at the City Hall*, which, in two years, managed to open its branches at many schools of the oblast's administrative capital city. This team of ombudsmen visited boarding schools, organised assistance to a local orphanage, had numerous meetings with groups of children, and helped many children. Their activity reports was twice on the agenda of Vinnytsia City Council. The Commissioner for Human Rights has commended the office for active contribution to the protection of the constitutional rights of the child and development of children's human rights movement in Ukraine.

*According to the Ombudsman, popularising the best practices of Children's Ombudsmen in the regions will best ensure the rights of children.* Their activities echo the speech delivered by the UN High Commissioner for Human Rights at the International Conference *Dignity, Development and Dialogue* on the occasion of the 20<sup>th</sup> anniversary of the *Convention on the Rights of the Child* on October 8, 2009, in which a stress was laid on the **need to promote implemen-**

tation at the national level of the Convention's key principles, one of which is every child's right to be heard. In the recommendations adopted by the said Conference, there was a proposal to create mechanisms for child participation in decision-making at the national and local levels and provide opportunities for children to monitor the implementation of their rights.

Effective legislation prohibits creation of children's political and religious organisations, which corresponds with the UN Convention on the Rights of the Child and the Constitution of Ukraine. At the same time, as the Commissioner's monitoring gives reason to believe, children would not stay away from social and political developments in the country. Notably, young people's vital energy has manifested itself during some events related to Ukraine's presidential campaign. The measures taken by the Commissioner to protect children from being used for political confrontation have been covered in the Annual Reports on respect and protection of human rights and freedoms in Ukraine, as presented to the Verkhovna Rada (Parliament) of Ukraine.

In 2007, the Commissioner for Human Rights opened proceedings in the case of *engaging students and school pupils in street political actions* at the time of political and legal crisis. A group of the Ombudsman's experts then went to Cherkasy Oblast of Ukraine with a fact finding mission. Eventually, the Commissioner found it to have been unlawful for certain adults to deliberately politicise children and use their civic activism for political struggle.

*The Ombudsman of Ukraine believes that civic activism of underage persons should be confined to their free time. At the same time, public authorities and local government should make more active efforts to involve student and youth organisations in decision making, primarily on issues related to childhood.*

## IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF CHILDREN

### 4.1. Ensuring the right of the child to an adequate standard of living

The Constitution of Ukraine (Art. 48) proclaims the right of everyone to an adequate standard of living for oneself and one's family, including adequate food, clothing, and housing. This right extends fully to each child.

The global financial crisis which caused economic recession combined with internal political and legal crisis, however, has had a negative impact on the social condition of most people, reducing the living standards of all, especially those of families with children.

The Ombudsman must admit that the low wages of most workers, the shameful persistence of wage arrears, unemployment, low efficiency of social protection programs, make it almost impossible to provide living standards not lower than the subsistence minimum to the families with children, turning the majority of them into the needy ones.

*Unfortunately, poverty in Ukraine has an aspect directly related to children.* Research made by the Institute of Demography and Social Studies of the Ukrainian Academy of Sciences has indicated that in the past 10 years, poverty rate in households with children was almost a quarter higher than the national average and more than 1.6 times that of the households without children. The figure was the highest in families with four or more children: in 2009, it ran up to as high as 72.3%, exceeding Ukraine's average 2.8 times (see *Table 4.1.1*).

**Table 4.1.1. Level of poverty by type of households in Ukraine in 2000–2009 (%)**

| Type of households                  | 2000        | 2001        | 2002        | 2003        | 2004        | 2005        | 2006        | 2007        | 2008        | 2009        |
|-------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Households with children            | 31,9        | 33,4        | 34,4        | 33,1        | 35,4        | 35,4        | 35,3        | 33,9        | 33,1        | 32          |
| with 1 child                        | 25,4        | 26,5        | 25,8        | 24,1        | 26,5        | 28,9        | 27,6        | 27,3        | 26,4        | 26,9        |
| with 2 children                     | 35,9        | 37,7        | 39,9        | 40,7        | 42,2        | 42,9        | 41,8        | 40,6        | 42,0        | 39,6        |
| with 3 and more children            | 54,1        | 59,6        | 64,3        | 63,5        | 69,6        | 66,0        | 68,4        | 64,6        | 62,4        | 53,8        |
| with 4 and more children            | 70,8        | 66,9        | 87,3        | 64,6        | 85,5        | 64,7        | 79,9        | 70,8        | 76,4        | 72,3        |
| with children up to 3               | 35,2        | 43,8        | 40,3        | 40,4        | 44,2        | 36,4        | 42,0        | 39,5        | 37,6        | 34,2        |
| with all working adults             | 25,7        | 27,5        | 27,4        | 25,0        | 26,1        | 27,9        | 27,8        | 26,3        | 24,6        | 23,6        |
| with working and non-working adults | 36,6        | 38,2        | 40,2        | 39,4        | 42,7        | 41,7        | 40,5        | 40,5        | 40,3        | 37,7        |
| <b>Total in Ukraine</b>             | <b>26,4</b> | <b>27,2</b> | <b>27,2</b> | <b>26,6</b> | <b>27,3</b> | <b>27,1</b> | <b>28,1</b> | <b>27,3</b> | <b>27,0</b> | <b>26,4</b> |

Poverty in households with children is also much higher than the national average and the one in the households without children.

Financial situation of households is determined primarily by their income. In Ukraine, the per capita income in households with children has only reached 84-88% of the average in recent years, while large families (three or more children) have seen it decrease from 69% in 1999 to 55.9% in 2008 (see *Table 4.1.2*).

Low incomes show negatively on the structure of expenditures of the families with children that are short of resources for even the most necessary items. Children raised in poor families do not have the possibility to eat normally and live in proper conditions, receive quality health care, quality education, particularly good professional training, and good out-of-school care. Inadequate nutrition of the poor families affects the health of children. The structure of total household expenditures on certain foods is shown in *Table 4.1.3*.

According to the Research Institute of the Ministry of Economy of Ukraine, should income of the families with children rise they would use the funds pri-

**Table 4.1.2. Indicators of total average income per capita and total expenditures per capita in households (UAH per month)**

|  | 1999   | 2001   | 2003   | 2005    | 2007   | 2008    |
|--|--------|--------|--------|---------|--------|---------|
| Incomes of households with children  | 102,15 | 158,64 | 221,75 | 403,89  | 640,75 | 891,97  |
| including families with many children  | 80,22  | 113,52 | 156, 0 | 275,86  | 416,31 | 585,8   |
| Childless households   | 139,19 | 219,23 | 306,03 | 574, 54 | 867,83 | 1229,92 |
| Average in Ukraine   | 116,42 | 183,30 | 259,02 | 483,57  | 745,82 | 1047,23 |
| Relation of income in households with children to average income in Ukraine (%)      | 87,9   | 86,5   | 85,6   | 83,5    | 85,9   | 85,2    |
| Relation of income in households with many children to average income in Ukraine (%) | 69,0   | 61,9   | 60,2   | 57,0    | 55,8   | 55,9    |
| Expenditures of households with children   | 133,84 | 190,22 | 239,06 | 390,94  | 572,27 | 853,8   |
| including families with many children  | 96,58  | 128,03 | 159,67 | 246,52  | 391,33 | 554,4   |
| Childless households   | 186,18 | 269,27 | 334,40 | 562,45  | 766,79 | 1164,0  |
| Average in Ukraine   | 153,98 | 222,36 | 281,21 | 471,02  | 662,30 | 996,3   |
| Relation of income in households with children to average income in Ukraine (%)      | 87,0   | 85,5   | 85,0   | 83,0    | 86,4   | 85,7    |
| Relation of income in households with many children to average income in Ukraine (%) | 62,8   | 57,6   | 56,8   | 52,3    | 59,1   | 55,6    |

**Table 4.1.3. Structure of consolidated household expenditures for food products in 2008 (%)**

| Food products                            | All households | All households with children | Households with five and more children |
|--|----------------|------------------------------|--|
| Bread and bread products                 | 12,2           | 12,1                         | 18,6                                   |
| Meat and meat products                   | 23,6           | 23,6                         | 16,6                                   |
| Fish and fish products                   | 6,7            | 6,2                          | 3,8                                    |
| Milk, cheese and eggs                    | 11,5           | 11,9                         | 10,9                                   |
| Oil and fats                             | 8,5            | 7,7                          | 11,8                                   |
| including pork fat and other animal fats | 2,5            | 2,1                          | 5,4                                    |
| Fruit                                    | 6,1            | 6,5                          | 5,0                                    |
| Vegetables including potatoes            | 13,8           | 13,7                         | 18,5                                   |
| share of potatoes                        | 4,5            | 4,6                          | 7,5                                    |

marily on food, clothing, health care, and education. More specifically, families of five, if their income increased significantly, would spend extra money on food (83% of families), education (62.9%), clothing and shoes (62.6%), health services (51.5%), housing (21.8%), home appliances (10.0%), motorcar (6.2%), recreation (1.1%), savings (0.7%), and business development (0.3%).

According to the Institute of Demography and Social Studies, the worst situation in terms of energy and nutritional value of food of Ukrainian households can be observed in the large families. Across entire Ukraine and in various types of households the diet, while being generally a calorie-high one, is too low in protein/carbohydrates and too high in fats. So, both in 1999 and in 2008, the actual consumption of fats by families with children exceeded the recommended value by 80%. On the contrary, one could observe a noticeable deficiency in protein (30-35%) and carbohydrates (15-20%) intake.

A primary means of social protection of families with children is state benefits payable under the laws of Ukraine *On State Assistance to Families with Children* and *On State Assistance to Low Income Families*.

As of January 1, 2010, 1,886,200 persons were receiving benefits for *families with children*, including maternity allowance benefits (259.1 K); birth support grants (504.5 K); child care until age 3 (794.8 K), allowance for children in tutelage or guardianship (84.6 K), single mother child allowance (241.4 K), and adoption grants (1600).

As a positive measure, one can cite the amendments introduced to Article 12 of the Law of Ukraine *On State Assistance to Families with Children*,

whereby, effective January 1, 2008, much higher birth grants were provided, e.g.: UAH 12,240 for the first child, UAH 25,000 for the second child, and UAH 50,000 for the third and every subsequent child born. As opposed to 2007, the amount of allowance for the first child in the family was increased by 44%, 2.9 times for the second one, and 5.9 times for the third one.

The actual increase in the amount of birth support grants, as envisaged by the Law of Ukraine *On State Budget of Ukraine for 2008 and Amendments to Certain Legislative Acts of Ukraine*, has helped to improve the demographic situation. However, while in 2008 the birth rate in Ukraine increased by 8% compared to 2007, it then slowed down: in 2009, only 0.4% more children were born compared to 2008; and in the 9 months of 2010 the birth rate was 3.5% lower than in the same period of 2009.

Ombudsman's monitoring points to rather serious gaps in the state policy of social protection for families with children, as well as to the imperfect and cumbersome benefit accrual mechanisms. Even though state allowances to such families have increased and the number of families receiving them has grown, it has not been enough to ensure decent living standards for them, even less so in case of large and one-parent families. This is primarily due to the fact that almost every year, the Law on State Budget for the relevant year establishes the so-called living wage provision at a rate well below the legally defined minimum subsistence level. ***The Commissioner for Human Rights has referred to this violation of Art. 46 of the Constitution of Ukraine in her submission concerning protection of social rights of children from low-income families, orphans and children deprived of parental care delivered to President Viktor Yanukovich on May 26, 2010.***

It is not infrequent that the Commissioner receives letters from families with children who complain of difficult material and living conditions, seek her help in settling overdue rent and utility bills, getting vouchers for health treatment or travel, buying some clothing, school accessories etc.

The Commissioner for Human Rights once participated in a case initiated on the request of *Mrs Kalinkina of Volodymyrivka, Znamensky District, Kirovohrad Oblast*, asking to protect her right to prompt award and payment of state benefits for her child. In her letter to the Ukrainian Ombudsman, she stated that she was raising two children on her own, taking a 3-year parental leave. Her ex-husband, the father of the elder daughter, was serving a sentence in Correctional Institution No. 49. In August 2007, she filed a request with Znamyanka District Department of Labour and Social Protection, asking to award her daughter a provisional state aid as a child whose parents are unable to provide for her. However, it took almost a full year and an appeal to the Cabinet of Ministers for the aid to be awarded in July 2008.

The staff of the Department of Labour and Social Protection had failed to extend proper assistance to Mrs Kalinkina who at the time was looking after her baby, and made her instead collect all sorts of documents, which is the

responsibility of public authorities. Because of their incompetence and procrastination, the social aid was awarded with a delay during which the mother of two children had to be in reduced circumstances and suffered moral distress.

Following the Commissioner's appeal, the Ministry of Labour and Social Policy of Ukraine assumed immediate control in the matter of the family's right to prompt award of state social benefits.

For almost a year *Mrs N. Reshetnyak, a mother of three young children residing in the village of Maloorlivky, Shakhtarsky District of Donetsk Oblast*, had to haunt the doorsteps of local authorities as she sought award of a birth grant in connection with the birth of her third child in January 2010. Alerted by the Commissioner, Shakhtarsky District Public Prosecutor's Office performed an inspection of Maloorlivky Village Council to find that the cause of the mother's distress had been an unlawful and ungrounded refusal to issue a certificate of family composition by the residence registry. Moreover, the legitimate request of the applicant for her baby Artur Reshetnyak's certificate of birth was granted only after the mother's third attempt. On finding these facts, the prosecutor decided to institute disciplinary proceedings against the secretary of Maloorlivky Village Council, and the mother was awarded all the benefits she was entitled to.

Of particular concern to the Commissioner are the *living standards of 750,000 children living in almost 220,000 large families*. Over 30% of such households receive low-income family benefits. The most of low income families reside in the regions of Ternopil (80% of large families) and Odessa (60%).

In effect since January 1, 2010, the Law of Ukraine *On Amending Certain Legislative Acts of Ukraine on Social Protection of Large Families* provides that the large families shall be entitled to reduced rent and utility rates, priority installation and 50% reduction on residential phone user charge. The children from large families are entitled to receive free prescription medicine, annual health survey and preventive medical examination in the state-run and municipal health care institutions, as well as reimbursement of prosthetic dentistry cost, free public transit, etc. Undoubtedly, this will further secure their right to adequate standards of living.

However, while implementation of these benefits depends on their financing, it does likewise on specific actions of the authorities that sometimes create artificial barriers to their implementation. Thus, the Commissioner for Human Rights was addressed by *Ms Kiselyova of Lviv* who, together with her husband, was raising three young children, including one with a disability, and was refused to be issued appropriate certificates to which parents and children from large families are entitled and without which it is impossible to claim statutory benefits. The reasoning of the municipal Department for Family, Youth and Sports for such refusal was that one of the daughters was born in the mother's earlier marriage. The Ombudsman's monitoring showed that the problem existed in all regions of Ukraine, as the Ministry of Ukraine for Family, Youth and

Sports had sent out instructions in its letter dated February 16, 2010 that the families formed by way of repeat marriage of the parents, where they jointly raised three or more children from previous marriages without their formal adoption, may not be issued certificates of large families and, hence, awarded the benefits.

The Ombudsman made a relevant submission requesting that the letter be revoked as being contrary to Article 2 of the Convention on the Rights of the Child and Article 3 of the Family Code of Ukraine.

The Commissioner for Human Rights has repeatedly brought up the fact that the living wage defined under the Law of Ukraine *On State Budget of Ukraine for 2009*, which remained at the rate established in December 2008, viz.: per capita average of UAH 626 a month, UAH 557 for children under 6, UAH 701 for children from age 6 to 18, UAH 669 for able-bodied adults, and UAH 498 for persons with disabilities, did not match the current needs.

According to the calculations of the Ministry of Labour and Social Policy of Ukraine, the actual amount of a living wage (e.g., in December 2009 prices) per month was: UAH 859 per capita, UAH 779 for children under 6 years of age; UAH 992 for children aged 6–18; UAH 913 for able-bodied persons, and UAH 683 for persons with disabilities (see *Table 4.1.4*). These figures are on average a quarter higher than the amounts defined by the Law of Ukraine *On State Budget of Ukraine for 2009*.

In view of numerous appeals of individuals, community-based and trade union organisations regarding violations of the constitutional rights of millions of our countrymen and their children to an adequate standard of living because of the mismatch between the cost of living index as established by the Law of Ukraine *On the State Budget of Ukraine for 2009* and its actual size, ***the Commissioner for Human Rights made a submission to the Prime Minister of Ukraine in October 2009 requesting that steps should be taken to determine the cost of living index, taking into account the inflation rate and a revised basket of food, non-food goods and services, so that the former should take into account the man's modern requirements in essential expenses.***

In its reply to the above petition, the Ministry of Labour and Social Policy of Ukraine stated that under the Law of Ukraine *On the Living Wage* the figures were approved by the Verkhovna Rada (Parliament) of Ukraine in its budget law for the relevant year. Any economically ill-justified increase of basic social guarantees, including a sharp rise of the minimum wage, may cause a significant increase in the cost of production, consumer prices and, consequently, lead to a decline of citizens' real incomes and deterioration of their living standards. Therefore, considering the financial and economic situation in the country, it should be wise to establish a guaranteed and financially secured living wage.

Despite the increase in the size of the living wage for 2010, its actual size is still higher than the approved one. Thus, in October 2010, the actual living

**Table 4.1.4. Amount of approved subsistence minimum for 2009 and actual subsistence minimum by months (UAH)**

| Subsistence minimum in breakdown by months | Approved by law             | Actual amount of minimum subsistence |          |       |       |     |      |      |        |           |         |          |          |
|--|-----------------------------|--------------------------------------|----------|-------|-------|-----|------|------|--------|-----------|---------|----------|----------|
|  |                             | January                              | February | March | April | May | June | July | August | September | October | November | December |
| Per person                                 | до 1.11. 626<br>з 1.11. 701 | 773                                  | 781      | 791   | 799   | 814 | 830  | 835  | 811    | 802       | 816     | 844      | 859      |
| For children under 6                       | до 1.11. 557<br>з 1.11 632  | 696                                  | 705      | 713   | 719   | 731 | 740  | 737  | 717    | 712       | 725     | 759      | 779      |
| For children from 6 to 18                  | до 1.11. 701<br>з 1.11. 776 | 890                                  | 900      | 911   | 919   | 932 | 941  | 937  | 914    | 908       | 924     | 966      | 992      |

wage exceeded the approved one by 14 to 20% for children age groups up to 6 and 6–18, respectively.

*The Commissioner for Human Rights would like to emphasize that, in Ukraine, the brunt of failed economic reforms and economic crisis has been shifted onto its citizens, especially minors.*

In addition, the Law of Ukraine *On State Budget of Ukraine for 2009* defined the living wage financing rate (the guaranteed minimum) for the purposes of awarding benefits under the Law of Ukraine *On State Assistance to Low Income Families*, which is the following: UAH 133 for able-bodied population, UAH 187.5 for persons with disabilities, and UAH 200 for the totally disabled. In the case of low-income large families raising three or more children under 16 (under 18 if the child attends a school), the living wage financing rate (the guaranteed minimum) for each child is as follows: UAH 278.5 for a child under 6 years of age, and UAH 350.5 for children aged 6 to 18. That is to say, the guaranteed minimum rate is only about a half of the statutory cost of living index.

Similar trends have been envisaged in the 2010 State Budget.

*According to the Ombudsman, one can actually guarantee an appropriate standard of living for families with children by increasing the state aid to families with children to a level not lower than the living wage.*

The Ombudsman receives petitions from large families regarding protection of the rights of women who have given birth and raised five and more children up to the age of eight, *conferral of the honorary title of Hero Mother* and, also, on the implementation of the constitutional rights to an adequate standard of living, proper housing, medical care and so on. President of Ukraine estab-

lished with his Decree of December 25, 2007, No. 1254, that starting January 1, 2008, women who were awarded the title of Hero Mother should be paid a one-time bonus. In 2009, the amount of such remuneration was UAH 6690, which is a tangible supplement to the family budget for the vast majority of large families.

However, as our monitoring has shown, executive agencies and local authorities fail to approach properly the drafting and filing of relevant papers supporting submissions of the Ombudsman to the President of Ukraine regarding conferment of the honorary title of Hero Mother.

Thus, *Mrs V. Kindrat, of Chernivtsi Oblast, a mother of a large family*, is writing: *"Back in March 2009, we, nineteen mothers in all, were requested to go to the town for the award ceremony. A week later, we were invited to promptly file some documents and applications for the one-time bonus. It has been six months to-day, but seems beyond recall. They say it'll be paid sometime in 2010. The question then is why we were hurried to file the papers? Where are our certificates? Why are those lies? We are no longer young; of the nineteen mothers four have already passed away, however, they also raised their children and waited for the award.*

Many other mothers of large families refer to all the lengths they had to go in order to exercise their legal right to this honorary title: e.g., *H Trotskovets of Sarny, Rivne Oblast; N Polyakova of Hoholeve, Velyka Bahachka District, Poltava Oblast; M Badlyuk of Khmeleva, Zalischyky District, Ternopil Oblast; O Hrynenko of Bakhmach, Chernihiv Oblast; L Pozheluyeva of Kerch, AR Crimea*, and others.

In her letter to the Commissioner for Human Rights, *O Chellenyak, a mother of 12 from Transcarpathia*, is writing: *"For two years I roamed the offices of district bureaucracy, but in vain, and only after your intervention, I got the title of Hero Mother."*

***The Commissioner believes that the procedure of conferment of the title and award of the relevant remuneration must be transparent, strictly regulated, and more prompt.***

***In November 2009, the Commissioner presented a submission to President Viktor Yushchenko on the right of mothers of large families to be awarded the honorary title of Hero Mother and to proper social protection***, requesting establishment of a clear procedure and criteria for selecting candidates for the title, deadlines for decision-making at every administrative level, and simplification of the procedure in case of mothers earlier awarded the Order of Mother Heroine.

The Ombudsman's monitoring shows that, despite certain measures taken by central and local authorities to resolve the issues concerned, no substantial change has been achieved in the area. Unfortunately, mother-heroines have to wait too long for the bonus. As of September of 2010, the bonus was yet to be paid to some 27,125 mothers, including 11,076 women upon whom the title was conferred in 2004-2009. It is a shame that the absent regulation of the is-

sue and inadequate response of the authorities lead to violation of the rights of these people, and many mother-heroiners die before they receive the promised reward. *In 2009 alone, 235 such women passed away.*

**In December 2010, the Commissioner for Human Rights sent a petition to President Viktor Yanukovich *On securing the right of hero mothers to remuneration.***

The Commissioner is compelled to draw public attention to an extremely acute problem related to the parents' obligation to maintain their children. It primarily concerns payment of support ordered by the courts where the parents shun their duty to maintain their children (see Table 4.1.5).

Where parents are found to have been persistently evading this duty, they are subject to criminal liability under Art.164 of the Criminal Code of Ukraine.

According to the Ministry of Justice, at least 10,000 persons in Ukraine continue to evade paying such support, in defiance of court orders, brutally violating the rights of their children. Malicious failure to pay support is the most common reason for which state enforcement officers had to request that criminal proceedings be instituted against the debtors (see Table 4.1.6).

As is shown by repeated appeals to the Ombudsman, the law enforcement agencies are reluctant to apply criminal measures to offenders for the purpose of protecting the violated right of children to adequate standard of living. Thus, on May 29, 2009, the Commissioner was addressed by Ms *O. Vetrova of Donetsk* alleging persistent failure of Mr B. Zaporozhchenko to comply with a decision of Voroshilov District Court, Donetsk, on November 26, 1992, obliging him to pay a monthly alimony for the benefit of his daughters, Svitlana and Daria. Her ex-husband now owes his children more than UAH 32,000 in arrears for 17 years, he was twice proclaimed wanted, and on March 29, 2002, the Enforcement Service of Kirov District, Donetsk, terminated enforcement proceedings altogether for unknown reasons. At the same time, the debtor, as H. Medunytzia, Head of State Enforcement Service in Donetsk Oblast, advised

**Table 4.1.5. Breakdown of alimony cases in courts**

| Year | Cases received | Cases tried |                           |                                       | Amounts to be collected, UAH |
|------|----------------|-------------|---------------------------|---------------------------------------|------------------------------|
|      |                | Total       | <i>у тому числі</i>       |                                       |                              |
|      |                |             | With approval of decision | Including cases with sustained claims |                              |
| 2006 | 120 374        | 119 811     | 103 663                   | 98 173                                | 622 113                      |
| 2007 | 110 753        | 111 362     | 95 033                    | 90 912                                | 946 856                      |
| 2008 | 100 598        | 99 339      | 82 984                    | 79 395                                | 936 182                      |
| 2009 | 99 263         | 97 275      | 82 189                    | 79 057                                | 1 897 728                    |

the Commissioner on July 16, 2009, is a registered owner of a motorcycle and half of an apartment.

The Commissioner for Human Rights instituted proceedings in the matter of violated rights of the child. After the Commissioner had filed an inquiry with the regional branch of the state enforcement service, a friendly settlement was made, under the debtor, B. Zaporozhchenko, undertook to alienate 1/2 of the apartment against his arrears on maintenance in favour of plaintiff O. Vetrova.

Article 196 of the Family Code of Ukraine prescribes that the payer of maintenance is liable for delay on payment. In particular, where arrears accrue on a maintenance collected on court orders through a fault of the payer, the recipient is entitled to forfeiture (fine) at the rate of 1 % of the amount maintenance due for each day of the delay.

*In Commissioner's belief, if the sanctions concerned were applied by the courts more actively, this would help ensure proper implementation of the maintenance obligations and reinstatement of the rights of children.*

Provision of adequate living conditions remains the most dramatic problem for families with children, including large families. According to the Household Survey conducted by the State Statistics Committee of Ukraine, households with children have a much lower rate of housing in terms of gross and living floor space as compared to households without children (see *Table 4.1.7*).

The National Academy of Sciences of Ukraine, in its national report *On Socio-Economic Situation in Ukraine: Implications for People and the State*, indicates that the average living space in households without children was 24 sq.m, whereas in households with children it was only 11.6 sq.m. Also, in households with children, resident load per room was significant. E.g., Ukraine's average household with children was 1.9 persons per one room in 2008, or more than twice the figure for a household without children.

**Table 4.1.6. Number of people sentenced under Article 164 Evasion of Alimony for Child Support of the Criminal Code of Ukraine**

| Year | Number of sentences |   |  |
|------|---------------------|---|--|
|      | Total               | including under                                 |  |
|      |                     | para.1 Art. 164 of the Criminal Code of Ukraine | para.2 Art.164 of the Criminal Code of Ukraine |
| 2006 | 6874                | 6281  | 593  |
| 2007 | 6880                | 6172  | 708  |
| 2008 | 6569                | 5790  | 779  |
| 2009 | 6366                | 5527  | 839  |

The Ombudsman pays special attention to the protection of housing rights of large families, as well as to securing the property rights to housing of the orphans and children deprived of parental care.

*Although Art. 45 of the Housing Code of Ukraine entitles large families to preferential housing and, as of January 1, 2010, families having 5 or more children, have the right to priority allocation of housing, large families have to stay on the waiting list for decades.* Thus, an inquiry initiated by the Commissioner on the request of a large family from the city of Kharkiv led to a finding that more than a thousand families were on the city waiting list for housing in 2008; the first on it the families had registered 23 years before.

It is increasingly more apparent that it would be impossible to solve the problem of housing for large families without appropriate national and regional programs. *L. Vyshkovska, the mother of a large family from Dobronychivky, Yahotyn District of Kyiv Oblast, sent the Commissioner what appears a typical appeal for the protection of her family's right to adequate housing. In 2004, she answered her grandmother's request: she moved to her house and registered her domicile there. After the old lady died, it turned out, however, that her will had devised her house for her sons, i.e. the applicant's uncles who then offered the house for sale. As the mother of many children did not have the funds to buy it out, she ended up with the children on the street.*

The Ombudsman intervened and the housing problem of the Vyshkovskys was settled positively: they were allowed to use for good a residence in the village of Dobronychivtsi.

**Table 4.1.7. Residents per room in households with and without children (%)**

|                                 | Childless households |      | Households with children |      | Including families with many children |      |
|---------------------------------|----------------------|------|--------------------------|------|---------------------------------------|------|
|                                 | 2005                 | 2007 | 2005                     | 2007 | 2005                                  | 2007 |
| Less than 1 person per room     | 51,0                 | 52,4 | 8,7                      | 7,8  | 1,1                                   | 0,0  |
| One person per room             | 33,3                 | 32,3 | 22,2                     | 22,8 | 1,7                                   | 1,7  |
| 1–2 persons per room            | 8,3                  | 8,4  | 39,2                     | 39,6 | 31,9                                  | 39,4 |
| 2 persons per room              | 6,5                  | 5,7  | 15,0                     | 13,9 | 16,6                                  | 10,5 |
| 2–3 persons per room            | 0,2                  | 0,1  | 3,2                      | 4,0  | 26,7                                  | 28,6 |
| Three and more persons per room | 0,8                  | 1,2  | 11,6                     | 11,9 | 27,2                                  | 21,9 |

However, similar cases are many, and the issue should be resolved systematically.

As a result of privatisation of public housing and development of a housing market that started as early as in the 90's, children have become co-owners of dwellings. The Ukrainian legislation requires that approval of the agency of tutelage or guardianship is mandatory where a deal is made in regard of any property owned by children. In practice, however, this requirement is sometimes disregarded, which leads to numerous violations of children's rights. The Commissioner continues to receive appeals from or on behalf of children against *violation of their property rights to housing*, which then trigger proper proceedings. In some cases, in accordance with Art. 13 para. 10 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Commissioner takes the matter of restoring children's rights to housing directly to court.

*Protection of housing rights of the children living with their parents in hostels is an extremely difficult problem, and there are almost a million of such children in Ukraine, or every tenth child.*

The owners of more than *two thousand* unlawfully privatised dormitories have created living conditions there that are literally unbearable. There have even been cases when the owners throw young children with their parents out into the street. An emergency occurred, for instance, in relation to *nine appropriated sovkhos dormitories near the town of Balaklava, Sevastopol District*, which are home to nearly 4,000 people, including about a thousand children. The owner of the illegally acquired dormitories taunts their residents, including defenceless children, by shutting off supply of water, heat, electricity, and by throwing out the "obstinate" ones into the street, using the courts.

The district public prosecutor launched a protest against misappropriation of some of these dormitories only after the Commissioner intervened in the situation.

Similar violations take place *in Lviv, Berdyansk, Kherson, Kharkiv, Luhansk, Odessa* and several other cities. People complain in their letters to the Commissioner that prosecutor's offices, disregarding the Constitution of Ukraine (Art. 121), actually shy away from the protection of the housing rights of those who are living in unlawfully privatised dormitories. However the courts do not appear too concerned.

The Commissioner considers unacceptable the indifference with which all branches of government approach protection of the housing rights of children. Since children are the most vulnerable population, protecting their housing rights requires additional mechanisms. To this end the Commissioner for Human Rights called upon the Government to amend the Law of Ukraine *On Measures Supporting Exercise of the Housing Rights of Residents of Dormitories*, adopted by the Verkhovna Rada (Parliament) of Ukraine in September 2008. The Cabinet of Ministers of Ukraine created with its Resolution of October 27,

2010, a working group to find a solution to the situation of dormitory residents and proposed a mechanism to resolve the issue.

According to the findings of a socio-demographic sample survey *Family and Family Relations* conducted by the Institute of Demography and Social Studies of the Ukrainian Academy of Sciences in 2009, *the main obstacle to having a child remains the inadequate financial support of the family and lack of adequate housing.*

*The Ombudsman regrets to admit that poverty of families with children is becoming a chronic phenomenon and is already one of the main factors contributing to polarisation of the society and to inherited poverty. The country has not yet created adequate conditions for real improvement of the situation of families with children, full and harmonious development of each child and improvement of the demographic situation.*

*This is a consequence of the fact that provisions putting families with children, especially large ones, in unequal conditions compared to other households are created at the legislative level. Despite the measures taken in Ukraine, the system of social protection of families with children is not effective enough.*

*Therefore, as the Ukrainian Ombudsman believes, large and low-income families will not be able to solve most of their social problems without appropriate national and regional programs.*

#### **4.2. The right to health care**

Protection of children's right to health is a priority task of the state. The Laws of Ukraine *On Child Welfare*, *Basic Principles of the Ukrainian Legislation On Public Health* and other regulations adopted in furtherance of the UN Convention on the Rights of the Child, provide measures for the protection of children's rights.

Solving this problem immediately calls for a change in the strategic approaches to health care of children, as defined by the *European Strategy "Health and Development of Children and Adolescents"* adopted in September 2005 by the WHO European Regional Committee. This document envisages creating in Europe conditions conducive to full realisation of children's health and development potential and, also, reduction of their morbidity and mortality. The basic principles of the Strategy are as follows:

- aim the national program at addressing problems associated with health at all stages of a child development (from pre-natality to adolescence);
- solve the problems of children from low income families as a priority;
- engage public, especially youth, in the development, implementation, and monitoring of the program.

The Government and Parliament of Ukraine are taking measures to improve funding of institutions dealing with child health care, increase social assistance for the needy, and increase public spending on treatment and rehabilitation of

children. One should support such targeted programs of the Ministry of Health of Ukraine as: *"Prevention and Treatment of Cardiovascular and Cerebrovascular Diseases for 2006–2010"*, *"Reproductive Health of the Nation"*, *"Construction of Modern Infectious Hospitals"*, *"Countering Incidence of Tuberculosis in 2007 – 2011"*, *Comprehensive Program "Diabetes"*, *"Intersectoral Complex Program "Health of the Nation'2002–2011," State Program "Supply of Medicines for 2004–2010," State Program "Children's Oncology for 2006–2010", State Program "Healthy Child for 2008–2012", National Program "Measures to Support HIV Prevention, Care and Treatment of HIV/AIDS Patients", etc.*

At the same time, the Ombudsman's monitoring shows that the way the right of the child to health is secured in Ukraine does not meet the international standards.

**Monitoring respect for children's rights to health, as carried out by the Commissioner for Human Rights, points to a strong tendency of deterioration of children's health (Table 4.2.1).**

The structure of morbidity shows prevalence of respiratory diseases, diseases of skin and subcutaneous tissue, those of digestive system, ears, eyes and accessory structures, musculoskeletal, infectious and parasitic diseases, injuries, poisoning and certain other consequences of external causes, as well as conditions arising in the prenatal period.

Another reason for concern is the *growing prevalence of diseases among adolescents*. Thus, in 2008, the figure was 18,445 per 10,000 as opposed to 17,120 in 2006. That is, on average, a teenager suffered from two diseases, the point prevalence being higher in girls (19,438 per 10,000) than in boys (17,494).

The incidence in children aged 0 – 17 in 2009 was 1,394 per 1,000 children compared to 1,175 in 2003. Overall incidence increased due to an increase in all nosologies. The incidence in children aged 0 – 17 in 2008 was 1,502 per 1,000 children in urban population (1,344 in 2003), and 1,037 in rural population (875 in 2003).

**According to the Commissioner, this regrettable situation is caused by several factors, e.g.:**

- Lack of priority funding available to health care for children;
- Lack of interaction between all authorities and agencies involved in implementation of the public health policy;
- Less attention paid in recent years to prevention, which should be a priority in the health care system for children;
- Unsatisfactory dynamics in staffing, especially primary care, with paediatricians, neonatologists, and children anaesthesiologists;
- Paucity of research focused on survival and development of children;
- Insufficient rate at which health institutions are provided with medical equipment and ambulance vehicles;
- Limited availability of specialised care, especially for children living in the rural areas;

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF CHILDREN

**Table 4.2.1. Morbidity level in children aged 0 through 17 by classes of diseases in Ukraine (number of new cases per 100000 children aged 0 through 17 years of age)**

| <b>Class of diseases according to ICD-10</b>  | <b>2000</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| All diseases  | 114 403     | 119 387     | 122 627     | 127 463     | 128 052     | 134 288     | 137 262     | 14 0299     |
| Specific infectious and parasitic diseases  | 5626        | 5408        | 5555        | 5629        | 5511        | 5568        | 5811        | 5414        |
| Neoplastic diseases   | 242         | 272         | 293         | 305         | 317         | 318         | 321         | 326         |
| Diseases of blood and blood-forming organs and individual disorders affecting immune mechanism                  | 1607        | 1645        | 1741        | 1738        | 1762        | 1768        | 1757        | 1667        |
| Endocrine , nutritional, and metabolic disorders  | 2872        | 2624        | 2538        | 2459        | 2380        | 2327        | 2265        | 2252        |
| Mental and behavioral disorders   | 655         | 628         | 636         | 630         | 615         | 612         | 619         | 587         |
| Diseases of the nervous system  | 1690        | 1956        | 2061        | 2106        | 2190        | 2174        | 2281        | 2212        |
| Diseases of the eye and accessory structures <sup>y</sup>   | 3977        | 4218        | 4356        | 4459        | 4413        | 4560        | 4737        | 4687        |
| Diseases of the ear and mamillary process   | 3508        | 3600        | 3717        | 3885        | 3893        | 4099        | 4110        | 4021        |
| Diseases of the circulatory system  | 847         | 870         | 908         | 940         | 951         | 933         | 995         | 1038        |
| Respiratory diseases  | 69 202      | 73 320      | 75 567      | 79 695      | 80 223      | 85 772      | 87 603      | 92 009      |
| Digestive diseases  | 4823        | 5021        | 5102        | 5176        | 5198        | 5262        | 5492        | 5356        |
| Skin and subcutaneous tissue  | 6720        | 6950        | 7078        | 7312        | 7327        | 7567        | 7631        | 7416        |
| Diseases of the musculo-skeletal system and connective tissue   | 2976        | 3104        | 3184        | 3163        | 3143        | 3039        | 3116        | 3045        |
| Diseases of genitourinary system  | 2554        | 2922        | 2998        | 3032        | 3026        | 3057        | 3071        | 2989        |
| Pregnancy, childbirth and postpartum <sup>1</sup>   | 217         | 252         | 242         | 237         | 224         | 226         | 228         | 200         |
| Specific states arising in the perinatal period <sup>2</sup>  | 33 188      | 27 129      | 25 212      | 23 094      | 22 072      | 19 900      | 18 446      | 16 161      |
| Birth anomalies (development defects), deformities and chromosomal aberrations                                  | 503         | 489         | 526         | 527         | 543         | 540         | 564         | 581         |
| Symptoms, signs and anomalies identified during laboratory and clinical tests, not classified in other headings | 522         | 335         | 300         | 250         | 239         | 228         | 246         | 238         |
| Injuries, poisoning and certain other consequences of external causes   | 4811        | 4791        | 4828        | 4950        | 5092        | 5261        | 5442        | 5349        |

<sup>1</sup> Per 100000 girls aged 0-17 years.

<sup>2</sup> Per 100000 children under 1 year of age.

Source: National report on implementation of the European Social Charter (Revised)

– Insufficient awareness of the healthy lifestyles, nutrition, prevention of infectious diseases, including STDs, reproductive health, etc.

The problem of resources available for adolescent care service also calls for certain actions to be taken as it does not meet modern needs. Compared to 1991, the number of outpatient polyclinic institutions operating adolescent care rooms has considerably decreased. In 2008, there were only 537 adolescent health practitioners in 715 outpatient clinics. Their work was limited mainly to getting young men ready for conscription and compiling paperwork, while preventive activities targeting girls and boys were practically non-existent.

In recent years, the world is growing aware of the need to create structural divisions of health care which would meet the needs of adolescents and be focused on adolescents as a special group ('no longer children but not yet adults').

*According to the Ombudsman, providing medical assistance to persons in adolescence should be combined organically with the understanding of their problems and identifying, in cooperation with the doctor, options for changing their behaviour to promote health.*

Research has found that paediatricians and family doctors in a traditional health care system are unable to meet all the medical and social needs of adolescents. This would call for a change, and in particular creation of a service capable of solving problems of modern-day adolescent risk behaviour. One should train personnel that is able and willing to work with adolescents.

The network of 'youth-friendly clinics' which consisted, as of February 10, 2008, of 46 units (compared to 28 in 2006) plays an important role here. The network provides medical and social services to adolescents at no cost and in accordance with the WHO/UNICEF principles.

The Ombudsman believes that the implementation of new strategies of care for children, especially adolescents, will change for the better the overall health of the population of Ukraine and, eventually, improve the demographic situation.

Supplying health care institutions where children are treated with modern medical instruments and equipment is still an issue. Recently, however, there have been some positive developments. Thus, now that a modern *Kiev City Heart Centre* has opened, unique surgical interventions are performed not only on adults but also on very young patients. An advanced medical establishment in terms of technology and personnel, it provides the possibility to carry out 15,000 diagnostic tests and 6,000 operations per year.

*Cardiac surgeon Boris Todurov, MD, Merited Doctor of Ukraine, Director of the Heart Centre*, was the first among Ukrainian doctors to start performing heart transplant surgeries. He successfully operates not only Ukrainians but nationals of other countries, too.

Azerbaijani Ombudsman Elmira Suleymanova who had visited the Centre as a guest, asked the Commissioner to negotiate Mr Todurov's agreement to help

an Azerbaijani boy. Todurov gave his consent. In August 2008, qualified staff of the Kiev City Heart Centre, under the guidance and with direct participation of Mr Todurov, performed as a charity a cardiac surgery on the nine-year old Alik Eyvazovu of Baku, thereby protecting his right to life.

At the invitation of Egypt's Minister of Health, Mr Todurov, joined by 9 skilled colleagues of the Heart Centre, went to Egypt to operate babies with congenital heart defects. Mr Todurov has also operated on children with heart defects in Iraq, Albania, Serbia, and other countries.

The Ombudsman is at the same time concerned about the fact that modern diagnostic and therapeutic equipment is missing in most regions of Ukraine, and that the fixed assets of state and municipal medical institutions are much worn: the share of physically worn out and obsolete equipment is 60-70%. Much of the medical equipment has been in use for 20-25 years now and exceeded its useful operating life two- or threefold.

A salient proof of the above is the appeal sent to the Commissioner for Human Rights by Mr. *V. Chepurnyuk who lives in Illichivsk, Odessa Oblast*. He was asking for help in acquiring Gammacell® 1000 irradiator whose action helps children with cancer to recover sooner and sustain chemo much easier.

This man had lost his thirteen-year-old granddaughter who had suffered from lymphoblastic leukaemia. He was sure that Gammacell 1000 could have saved her as its application increases remission rate from 60% to 85%-90%. The quality of treatment is also much higher and helps achieve stable remission for five years, which means that the child is apparently healthy and may be struck off from the register. In Ukraine, however, there is no such device, and Ukrainians have to travel to neighbouring Belarus or other countries, but treatment there is hardly affordable for the majority of our nationals.

The Ministry of Health of Ukraine has informed the Commissioner for Human Rights that this equipment is not used in Ukraine for technical reasons, viz.: failure of the manufacturer to submit papers required for its registration.

*The above points to unsatisfactory work of the Ministry of Health of Ukraine as the principal body in the system of executive departments entrusted with implementation of public policy in health care, including provision of state and municipal health facilities with modern diagnostic and medical equipment .*

**Availability of essential pharmaceuticals for free treatment of children is not satisfactory either.** Given acute budgetary constraints, an ever longer list of outpatient and inpatient health services and essential medicines becomes unavailable for the majority of people. Common are cases when children who need urgent operations are first sent invoices to be paid in advance, and no treatment, including surgery, is provided to them unless the invoices are paid. Children, the most vulnerable clients, find themselves in the most difficult situation.

Numerous appeals to the Ombudsman confirm this. Mrs *N. Solomko, a resident of Krasnokutsk, Kharkiv Oblast*, raises the question as to her son's right to

health care and AHF VIII. She writes: "... *Dear Nina Ivanivna, the child needs for a single administration 1,500 units of the factor worth UAH 3,500, or about 50,000 units per year, totalling UAH 139,000. For a long time, we have been asking officials of the Ministry of Health of Ukraine to provide medical assistance to my son, securing supply of AHF VIII which is just as much a life-saving medication for a bleeder as insulin for a diabetic. To no avail so far ...*".

Upon request of the Commissioner, the Ministry of Health of Ukraine made it known that, in accordance with Order no. 40 of the Main Department of Health of the Regional State Administration of January 22, 2009, 30 vials of the antihaemophylic drug Immunate® 500 IU were moved onto the balance of Krasnokutsky Central District Hospital in 2009 for the benefit of patient *Solomko*.

A similar appeal to the Commissioner for Human Rights was sent by *Mrs L Zamorylenko, a resident of Marhanets, Dnipropetrovsk Oblast*, who was pleading to protect the right of her 11-year-old son *Ivan*, suffering from haemophilia B, to free supply of necessary medicines. She informed the Commissioner that despite her repeated requests to the Ministry of Health of Ukraine, and even to the prosecutor's office, the issue was yet unresolved.

Again, the Commissioner immediately appealed to the Ministry of Health of Ukraine which then reported that the Department of Health of the Dnipropetrovsk Regional State Administration was instructed to resolve the issue of providing the child with necessary medical assistance at the expense of the budget, including centralized procurements by the MoH.

*These and other petitions show that Ukraine is yet to establish a reliable system of emergency aid and care of haemophilia patients, including community-based services, which would ensure return from disability to normal life for almost 3,000 patients, many of whom are children.*

*The Commissioner has launched proceedings in the matter of safeguarding the right to adequate medical protection of persons suffering from haemophilia: on 23 July 2004, a submission was made to the Prime Minister of Ukraine "On ensuring the right to adequate medical protection of citizens suffering from haemophilia," containing a proposal to approve a State Haematology Programme.*

It has been years since the Commissioner made the submission. Over this period, several governments have changed. Yet, the programme the need for which the Commissioner has emphasised, has not been developed or adopted. As a result, many children's right to adequate medical protection continues to be brutally violated. In view of above, the Ombudsman hopes that the Decree of the President of Ukraine *On ensuring conditions for effective and affordable medical services to individuals suffering from haemophilia*, of 20 November 2010, will help solve this problem as soon as possible.

Vaccination against infectious diseases is important for child health and disease prevention. In 2006, a revised immunizations schedule was adopted in Ukraine according to which preventive vaccinations should be related to four

factors: age, health reasons, epidemiological indications, and recommendations.

According to the schedule, clinics shall perform vaccination against 10 diseases (tuberculosis, polio, whooping cough, diphtheria, tetanus, measles, mumps, rubella, hepatitis B) and, since 2006, also against haemophilic infection – Nib-infection). Introducing the latter will significantly reduce the incidence of purulent meningitis and pneumonia, especially among children under five. Over the past three years, on orders of the Chief Medical Officer of Ukraine, pre-season preventive vaccination against influenza was to be conducted annually.

Children under 1 year of age are covered by vaccination at the following rate: 98,3% against diphtheria; 98.0% whooping cough; 98.3% polio; 97.1% TB; 94,2% hepatitis B, whereas 98,6% of children under 2 against measles, rubella, and mumps.

However, the Commissioner receives increasingly more petitions from parents who object vaccination and consider compulsory vaccination a violation of children's rights.

*According to the Ombudsman, the cause of the ever more widespread negative perception of vaccination in the community has been the deaths of children that their parents associate with vaccination.*

The public was shocked by the news of *a tragic death of Anton Tishchenko, a Grade 11 student from the city of Kramatorsk*, on 13<sup>th</sup> of May 2008, following vaccination against measles and rubella. Kramatorsk Prosecutor launched criminal inquiry into the schoolboy's death.

A few days later, eighty-five Grades 10 and 11 students of Kramatorsk school system whose condition worsened on May 15-16 in connection with vaccination against measles and rubella were under medical supervision in hospitals of Donetsk and Kramatorsk. **In order to protect children's rights to health and life, the Commissioner requested that Ministry of Health of Ukraine examine these appalling circumstances and inform her about the status of the problem.** On May 26, 2008, the Ministry advised the Commissioner of a special fact-finding committee having been set up to look into each case of post-vaccinal complications and collect information. According to the Committee, the teenager's death was not associated with vaccination.

As is known, however, experts of the Academy of Medical Sciences of Ukraine have submitted to the Prosecutor General's Office their opinion clearly pointing to a direct causality between the death of Anton Tishchenko and his vaccination against measles and rubella.

Inquiries conducted by the Prosecutor General's Office of Ukraine have indicated that physicians often violate the rules of procedure when performing preventive vaccinations of children.

In Donetsk, Zaporizhzhya and Cherkasy oblasts children's deaths have triggered criminal investigations. In the meantime, refusal of parents to let their

children be vaccinated has become a widespread phenomenon, as they, quite naturally, are worried about the health of their children.

As it turned out, the national health system was not capable of providing an adequate response to the outbreak of flu, in particular a pandemic in the autumn of 2009. The Government and Parliament had to take what was in fact extraordinary measures to prevent further spread of the epidemic. It also turned out that the country lacked stock of even the simplest protectors and medicines, medical equipment, diagnostic products etc. Public debate as to expediency and feasibility of vaccination is going on.

As it becomes increasingly more apparent, to prevent epidemics of infectious diseases in the country one must achieve fundamental changes in the system of health care, sanitary and epidemiological welfare of population, develop consistent, evidence-based measures and regulations of care provision, and carry out adequate awareness activities.

**One cannot emphasize enough the problem of HIV spread among children.** A very important development in this context, is the approval by the Cabinet of Ministers of Ukraine of the *Concept of Government Policy Actions Aimed at Preventing the Spread of HIV/AIDS for the Period up to 2011* and the *National Program for HIV Prevention, Care and Treatment for HIV/AIDS for 2004-2008*. In the course of implementation of the Program, support was provided to measures promoting prevention of vertical HIV transmission, and a system of monitoring HIV+ pregnant women and children born of them.

Last year, HIV-infected women gave birth to 3,635 children. In the country, as of 1 January 2009, there were only 1,968 children living with the confirmed diagnosis. The rate of HIV transmission from mother to child is 7%, which is four times lower than it was in 2000. Ukraine has managed to show such a significant achievement due to introduction of HIV mother-to-child transmission prevention system operated jointly by AIDS Service, maternity welfare clinics, and maternity hospitals. However, in spite of these positive developments, the problem of HIV spread among children in Ukraine continues to worsen (*Table 4.2.2*).

The Commissioner has repeatedly examined the situation with respect to the rights of children infected with HIV and suffering from AIDS. In particular, she visited the children's department of Odessa Regional Centre for AIDS Prevention and Control. In 2003, the Ombudsman, along with wives of the ambassadors accredited in Ukraine who are members of the International Women's Club, visited Kiev Hospital No. 1. Its children infectious ward has newborns suffering from AIDS and toddlers suspected to have this terrible diagnosis. Most of them have been relinquished by their parents. The Ukrainian Ombudsman and the wives of foreign ambassadors brought these little patients their gifts: diapers, baby food kits, catheters, rubber gloves for medical staff, liquid disinfectants etc.

According to the Commissioner, the measures taken to overcome "social" diseases such as TB, AIDS, etc., are not enough. To this end, the state should undertake concrete, primarily preventive measures that would have adequate funding.

*In view of the above, the Ombudsman considers it worth mentioning that the main idea underpinning a reform of health care for children should be the creation of a medical service model securing absolute accessibility of health services, guaranteeing their quality, efficiency, and effectiveness. Prevention of child morbidity must be a priority. We must restore the status of school doctors who are*

**Table 4.2.2. HIV-positive and AIDS affected children**

|   | HIV+ |      |      |      |       |       |       | Of all HIV+ AIDS cases |      |      |      |      |      |      |
|---|------|------|------|------|-------|-------|-------|------------------------|------|------|------|------|------|------|
|   | 2000 | 2004 | 2005 | 2006 | 2007  | 2008  | 2009  | 2000                   | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
| <b>No. of newly diagnosed persons</b>                             |      |      |      |      |       |       |       |                        |      |      |      |      |      |      |
| Children 0-14 years of age  | 730  | 2036 | 2516 | 2834 | 3449  | 3649  | 3765  | 13                     | 93   | 143  | 123  | 115  | 74   | 93   |
| Children 15-17 years of age                                       | 64   | 68   | 87   | 105  | 114   | 103   | 68    | 3                      | 2    | 6    | 6    | 18   | 1    | 6    |
| <b>Per 100000 population in respective age bracket</b>            |      |      |      |      |       |       |       |                        |      |      |      |      |      |      |
| Children 0-14 years of age  | 8,5  | 28,6 | 36,6 | 42,4 | 52,6  | 56,2  | 58,1  | 0,2                    | 1,3  | 2,1  | 1,8  | 1,8  | 1,1  | 1,4  |
| Children 15-17 years of age                                       | 2,7  | 3,1  | 4,2  | 5,3  | 6,1   | 5,8   | 4,1   | 0,1                    | 0,1  | 0,3  | 0,3  | 1,0  | 0,1  | 0,4  |
| <b>No. of persons registered with health care, by end of year</b> |      |      |      |      |       |       |       |                        |      |      |      |      |      |      |
| Children 0-14 years of age  | 1226 | 4003 | 5302 | 6023 | 7094  | 8065  | 8793  | 14                     | 148  | 251  | 336  | 426  | 490  | 594  |
| Children 15-17 years of age                                       | 173  | 175  | 190  | 234  | 493   | 245   | 527   | 4                      | 3    | 9    | 7    | 32   | 29   | 31   |
| <b>Per 100 000 population of respective age</b>                   |      |      |      |      |       |       |       |                        |      |      |      |      |      |      |
| Children 0-14 years of age  | 14,6 | 57,3 | 78,4 | 91,2 | 109,1 | 124,5 | 135,6 | 0,2                    | 2,1  | 3,7  | 5,1  | 6,6  | 7,6  | 9,2  |
| Children 15-17 years of age                                       | 7,3  | 8,2  | 9,3  | 12,1 | 27,0  | 14,3  | 33    | 0,2                    | 0,1  | 0,4  | 0,4  | 1,8  | 1,7  | 1,9  |

*posted full time at schools and would follow on students' wellness. It is also necessary to ensure strict enforcement of the constitutional provisions on free treatment of children.*

#### **4.3. The right to education and access to cultural heritage**

The role of education is crucial to the society, sustainable development, poverty reduction, and promotion of universal values.

Articles 28 and 29 of the *UN Convention on the Rights of the Child* define the content of State obligations as regards safeguarding children's rights to education, e.g., to introduce free and compulsory primary education, promote different forms of secondary education, including general education and vocational training, and ensure its accessibility for all children, ensure access to higher education based on the child's skills and availability of information and materials in the area of education and training for all children, encourage regular attendance of schools and reduce the number of students dropping out from school. Education, to which every child has the right, should provide one with essential life skills, empower children to use all of human rights, nourish cultural development, responsibility, and respect for the rights of others. The purpose of education lies in unleashing the potential of the child by developing their abilities, human dignity, and self-confidence.

Article 53 of the Constitution of Ukraine recognizes the right of everyone to education and defines complete secondary education as compulsory. Education and practical guarantees of children's rights to education are governed by the laws of Ukraine *On Education, On General Secondary Education, On Pre-School Education, On Extracurricular Education, On Vocational Training, On Higher Learning, by the National Education Development Doctrine*, as approved by Decree of the President of Ukraine on April 17, 2002, No. 347/2002, as well as by the State Educational Standards, resolution of the Cabinet, Ministry of Education and Sciences, and other.

*The Ombudsman considers it crucial for Ukraine that quality education and equal access to it should be provided to all categories of children and young people.*

High level of education attained by its citizens has always been a characteristic of Ukraine. However, as the monitoring of the Ombudsman shows, the potential required to further support and develop public education has in recent years been squandered.

One of the most difficult problems is ensuring children's right to preschool education. In 2010, 1,214,000 children were getting pre-school education, in particular 972,000 attending 6,700 municipal kindergartens, and 242,000 going to 8,800 kindergartens operating in rural areas.

In 2007-2009, the overall percentage of children covered by preschool education remained at the rate of 54-56% of the total enrolment, or 2-3% more than it was in previous years. Enrolment rate in urban pre-schools (66-68%)

exceeds by more than a half that in the countryside (31-33%), which leads to uneven capacity utilisation of pre-school establishments (*Table 4.3.1*).

**In the years 1990–2010, the number of preschool educational establishments in Ukraine dropped from 24,500 to 15,500.**

The existing network of institutions in preschool education system does not match the needs. At the beginning of 2010, more than a thousand pre-schools were shut down while only 105 of them were closed for major repairs. Most institutions that do not function are found in the Autonomous Republic of Crimea (129), Kyiv (113), and Luhansk Oblast (90).

Even though there is shortage of seats in kindergartens, 811 schools were leasing some space out.

In Kiev alone, commercial operations have leased space at 212 pre-school establishments. And this was happening at the time when over 1,000 kindergarten places were missing in Poznyaky and Osokorky Estates, 1,200 in Pechersky District, over 900 in Shevchenkivsky District, and about 500 in Obolonsky District of Kyiv.

At the same time, only four new kindergartens were commissioned in the capital in the past two years.

While there are, on average in the country, 108 children per 100 places in preschool, the figure is 131 children in Lviv Oblast, 126 in Volyn, 131 in Sumy, and 119 children in Chernivtsi.

Thus, in July 2009, the Commissioner received a letter sent by the *Yuras couple of Lviv*, parents of three children under school age, reading: *"For the second year running we have been trying— in vain— to have our elder preschoolers signed for a kindergarten. There are two in our neighbourhood, and our kids are registered with both of them. However, Kindergarten no. 136 is so overcrowded that the chances of getting there are practically nil, and "Kazka"— the other one — won't open since late 2007 due to lack of funds in the local budget (as city's financial resources have been earmarked for preparation for Euro Football Finals 2012)"*.

**Table 4.3.1. Average occupancy of preschool institutions**

| Year | Average occupancy (%) |       |       |
|------|-----------------------|-------|-------|
|      | All                   | Urban | Rural |
| 2007 | 105                   | 116   | 75    |
| 2008 | 108                   | 119   | 78    |
| 2009 | 108                   | 119   | 79    |

Following a call of the Commissioner on the regional state administration, it was promised that *Kazka* Kindergarten would indeed open before the end of 2009.

In 2009, as opposed to 2008, the number of children attending kindergartens grew to 19,400, and the number of pre-schools to 94 units. In 2007, according to the State Statistics Committee of Ukraine, there were 3 new kindergartens commissioned, whereas in 2008, there were 9, and in 2009, 3 kindergartens. Overall, however, the pace at which pre-school network is being restored does not meet modern needs.

***Supportive of the initiative of the Ministry of Education and Science of Ukraine to reclaim kindergartens for their original use, the Commissioner believes that the practice of leasing space of preschool facilities must be terminated at once, closed kindergartens should resume service, and delayed renovation should finally be completed. This should be a priority for the local authorities and local governments.***

**Secondary education.** According to the Ministry of Education and Science of Ukraine, there were 20,600 full-time day secondary state and municipal schools functioning in the country as of the end of school year 2009/2010 providing education for 4.5 million students; 135,000 children in 1,248 schools had to attend classes in 2 shifts. 16,900 schools (3.3 million students) functioned with the Ukrainian language of instruction; 1,200 schools (404,000 students) in Russian, 89 (18,200 students) in Romanian; 66 (11,600 students) in Hungarian; 15 (2,900 students) in Crimean-Tatar; 6 (1,900 students) in Moldovan; 5 (1,200 students) in Polish. In 1,175 general schools classes were given in two or more languages of instruction.

Last school year, 66,000 children attended 400 special schools (boarding schools) and social rehabilitation schools.

However, due to faulty registration of school-age children, 1,600 minors, especially those living in disadvantaged families, were not given any education.

***The Ombudsman's monitoring shows that the recent trend for gradual reduction of the number of secondary schools has not been overcome.***

***According to the Prosecutor General's Office of Ukraine, 2,000 secondary schools were shut down and liquidated in the past five years, including 80 in 2010.*** Of course, one of the factors contributing to closure of schools is the receding school age population which is attributable to negative demographics. But the birth rate in Ukraine is gradually picking up: in 2009, 4,500 more babies were born than in 2008, and, for example, in the school year 2009/2010, the number of first formers increased by 9,000.

In view of the situation, the Ombudsman cautions: if closure of schools is not stopped, institutions of secondary education would soon be unable to accept all. That is, the same situation is going to arise as what the country is facing in pre-school education: overcrowding because of schools being closed and restructured without justification.

A school may be closed in only exceptional cases, on consent of the community and on condition that in each locality where there are children of appropriate age there is at least one functioning school.

In practice, unfortunately, this is not so. Thus, in April 2009, the Commissioner received an appeal from *residents of Zastavlya, Dunayivtsi District, Khmelnytsky Oblast*, who requested her to help save a rural school from closure. They said that the local authorities were planning to close it because the student number was declining (the school had only 86 students, including 34 coming from Dunayivtsi). Although on December 19, 2008, the Parliament adopted Resolution no. 778-VI *On the Moratorium on Closure of Secondary Schools in Rural Areas*, the villagers were told that the school would be suspended until September 1, and come January 1, when the moratorium expires, it would officially close down.

Although construction of a new school had started in the village in 1994, with a kindergarten, community club, medical post, and a library, the villagers were not happy. Here are a few lines from their letter: *"Why can not our children go to school where they want? Why must they walk 4.7 miles to another school in the town though they are living in a big beautiful village? ...In our village, there is no club, kindergarten or library, and now there will be no school?"* » ...

Trying to find an answer to these difficult questions and be of help, the Ombudsman appealed to the regional administration and the Ministry of Education and Science of Ukraine. It was then found that the number of pupils in Zastava School was getting smaller with every passing year, and the district budget, given the difficult financial and economic conditions of today, could not meet its material needs. The reason for having suspended construction of the new school was also underfunding.

There are, however, some encouraging examples. Here is a letter from residents of *Pavlohrad, Dnipropetrovsk Oblast*, which was received by the Commissioner in June 2009: *"Through a fault of Pavlohrad city officials, the school where our children go is to be sold to one of the local entrepreneurs. This school is new, full of light, and in very good state thanks to its students and administration. Our school is the only centre of cultural development and personality formation for the children in the Geologist Village, for we have nothing else – no library, no other community centres for children and youth. The school where they promise to transfer our kids after closure of this one, is in utmost disrepair. Please intervene and help stop this lawlessness, for, as they say, breaking is easier than making!"*

As a result of the proceedings of the Commissioner it was found that the Department of Education of Pavlohrad City Executive Committee, with a view to cost optimization, had indeed considered closing Secondary School no. 20 attended by only 214 students, though its designed capacity was 500, and selling its premises off to a private institution. Concerned about this situation, the Commissioner asked the *Head of Dnipropetrovsk Oblast State Administration and the Minister of Education and Sciences of Ukraine* to protect the rights of

students from Geologist Village to adequate education at Secondary School no. 20. *The school was spared*, and it functioned normally in 2009/2010. Obviously, however, the struggle over it is going to continue.

**The Ombudsman is also concerned about the fact that the process of closing rural schools has resumed after the effect of Parliamentary Resolution imposing a moratorium on closure of secondary schools in rural areas (December 19, 2008, No. 778-VI) lapsed.**

The Ombudsman is concerned that the problem of school buses in the country has not been resolved. Only 96.3% of students and 81% of teachers were provided with transportation in the school year 2009/2010; furthermore, there are currently 752 vehicles with a life span of 20 years that are in need of replacement. Keeping old vehicles in operation alongside the challenge of rural roads poses a direct threat to children on their way to and from school. In addition, children come home from school in another village in the late afternoon, which causes their physical exhaustion and requires of rural families, poor as they are, additional costs to take care of proper meals.

*The Ombudsman believes that the rural school network streamlining may be pursued only when arrangements are in place for bussing children to schools, and when road maintenance, and other forms of rural children's access to quality education is properly supported.*

There are new challenges facing general schools. *Internet connection is extremely important for the Ukrainian school.* Across the nation, *about 85% of schools are connected to the Internet, but in the countryside, the rate is as low as 54%.* Moreover, the situation looks even gloomier in that the schools are connected to the network through phone lines, whereas in most countries today this technology is no longer used.

*The Commissioner believes that while preserving the best achievements of the past, the latest scientific and technological successes and pedagogical innovations should be implemented at a faster pace.*

The Ombudsman devotes significant attention to protecting the right to use one's mother tongue by children of national minorities in the education system, as provided for by Art. 30 of the Convention on the Rights of the Child.

In their letters to the Commissioner, heads of public organizations and associations draw her attention to the violation of children's rights to study and receive instruction in their native language, to discrimination in the sphere of education, lack of advanced methods, textbooks, and highly qualified teachers in secondary schools where classes are held in minority languages.

Thus, *O. Volker, alderman of the Russian community of Ivano-Frankivsk Oblast*, sent a letter to the Commissioner, saying that the Russian language/literature entrance test for higher schools of Ukraine had been abolished by decision of the Ministry of Education. The petitioner emphasized that institutions of higher learning would administer— under the terms of admission— competitive selection only in such foreign languages as English, German,

French and Spanish. Thus, the aspiring students who would want to major in Russian language and literature may not take independent external testing or their entrance exams in the Russian language. In his view, the network of schools with Russian language instruction is being reduced ever faster: whereas *in 2006, there were 1,305 schools in Ukraine where instruction was provided in Russian, in 2010 their number dropped to 1,154.*

One can not be satisfied with the situation of *the right of Roma children to education.* Despite the fact that the Government of Ukraine approved the *Program of Social and Spiritual Revival of Roma in Ukraine* in 2004, no significant changes have since transpired. Most Roma have not attained general secondary education. Thus, only about 15% of Roma in Transcarpathia have received general secondary education while about 85% of them hold post-primary education certificates. Among Roma children there is a significant number of homeless and neglected ones.

Obviously, to achieve the goals of the program, the authorities will have to take genuine efforts, especially as regards funding.

The Ombudsman has received a letter from *Ilia Levitas, President of the National Societies of Ukraine, Chairman of the Jewish Council of Ukraine,* regarding introduction of the so-called tolerance curriculum in Ukraine that has been developed with support of the Embassy of Netherlands in Ukraine. Some questions, images or cartoons used in the curriculum are, in the petitioner's opinion, *"a source of negative information about the Jewish ethnic community"* and too focussed on issues of homosexuality and same-sex marriages. Judging the material to be *offensive to Jews* and *contributing to interethnic and sectarian strife,* he considers it unacceptable to include it for educational purposes in the secondary schools of Ukraine. Despite caution voiced by ethnic minority NGOs of Ukraine, the matter has been recommended by the Ministry of Education and Sciences of Ukraine for use in secondary schools (Procis-Verbal № 5 of December 14, 2008).

Sharing Mr Levitas's concerns as regards the content of the material, the Commissioner for Human Rights appealed to the Minister of Education and Sciences of Ukraine and asked him to take measures as prescribed by law to prevent any manifestations of discrimination on ethnic grounds.

*The Resolution of the Cabinet of Ministers of Ukraine of September 30, 2009, (№ 1033) amending regulations on the general educational institution* required categorically that only the official language should be used in schools, *causing massive outrage.* Members of local legislature from Zaporizhya and Luhansk Oblasts, and Sevastopol city councillors legitimately pointed out in their appeals to the Ombudsman that the Government had violated the constitutional right to free use of minority languages in Ukraine. The Ombudsman addressed the Prime Minister of Ukraine proposing to amend the said Resolution in order to restore constitutional rights of the people. By now, the Government has made the appropriate amendments.

Analyzing the situation with secondary education in Ukraine, the Ombudsman subscribes to the conclusion reached by the participants of *Education System in the Assessment of Citizens of Ukraine*, the survey carried out by the Institute of Social Technologies in 2007 on commission of the joint project of the Ministry of Education and Sciences of Ukraine and the World Bank *Equal Access to Quality Education in Ukraine: In principle, all the children have equal access to secondary education. Each student, regardless of the parents' income, may in the least obtain secondary education. The question is if this is going to be good secondary education? Technically, the access is equal, while in reality it is not.*

**Out-of-school education** is part of the educational system, which is designed primarily to ensure proper development of abilities and talents of children and youth, promote the leisure and training of adolescents to reach adulthood. Of course, the family plays a crucial role in educating the child, while the government should ensure appropriate conditions for school education at the educational institutions.

In 2009, there were 1,493 state and municipal out-of-school institutions and 647 youth sports schools operating within the system of the Ministry of Education and Sciences of Ukraine. These establishments were attended by over 1,242,000 children, or, according to the Ministry, 35.7% of all school-age children.

However, an unbiased analysis *shows that the actual coverage of out-of-school education remains catastrophically low.* The existing system of out-of-school educational institutions, which is expected to be a major focus of educational work among children in their free time, does not meet modern needs.

According to the Commissioner, public authorities should pay additional attention to the development of out-of-school education, expansion of the network of pertinent institutions, and identification of novel forms and methods of encouraging children's involvement in out-of-school educational and training activities. According to the Ministry of Education and Sciences of Ukraine, the network of out-of-school establishments in 2009 lost 3 schools as against 2008; there were 11 schools fewer in the system of junior sports training, including the schools of Olympic pool. At the same time, the facts cited in the petitions sent to the Commissioner indicate that there have been attempts to convert or reorganise out-of-school institutions, seize plots of land, commercialise their operation or charge fees for attendance, though this is expressly prohibited by the Law of Ukraine *On Out-of-School Education*.

Here is one example. At the beginning of 2009, papers reported of the intention of Kyiv City State Administration to merge all teen clubs in Kyiv under the auspices of a single municipal utility, the Teenage Clubs, and start charging attendance. The Commissioner addressed it to Kyiv Prosecutor Blazhivsky, asking to check whether the reform of out-of-school establishments in the capital was lawful. Upon inquiry, an order was issued ordering to stop violation of

the law and correct the situation, which was compiled with, and attendance of youth clubs remains free of charge.

***As a result, a breach of local children's rights to free out-of-school education has been prevented.***

At Khust District Young Travelers' Station, 760 children attend regional studies/ hiking groups where their skills are developed and spiritual needs served. Khust District Council, however, has transferred some premises where the groups convened to private businesses. The Ombudsman, supportive of the desire to ensure appropriate conditions for group activities, as expressed by Station Director V. Komyaty, addressed the Prosecutor's Office of Transcarpathia which then intervened in the proceedings to terminate lease in the interests of the children. Now the children keep attending their favorite free time group activities.

The Commissioner considers it necessary to draw public attention to the significance of out-of-school education in encouraging children to share the country's heritage. In existence for years, the Movement *My Land, the Land of my Parents* has encouraged preservation and augmentation of customs, traditions and rites of the Ukrainian people, the All-Ukrainian Regional Studies Expedition *Beauty and Pain of Ukraine* has been exploring several themes, e.g. Picturesque Ukraine, Abused Land, From Ashes of Oblivion, and Sacred Heritage. New 'destinations', such as *The Embroidered Ukraine, History of Towns and Villages in Ukraine, Rye-ear of Memory* and so on, are in the pipeline.

Apart from their important educational functions, out-of-school centers deliver great social work, creating an inviting environment in the groups for children with disabilities. Thus, singing group Vnochok works in Cherkassy Specialized Boarding School; in Korsun-Shevchenko Specialized Boarding School for children with hearing impairments a dance team performs; and social adaptation group Zhuravlyk works at the Children's Recreational and Environmental Centre in Obolonsky District of Kyiv.

Rehabilitation of adolescents with disabilities by means of choreography reduces spasticity and promotes a caring attitude toward one's own health. Dance therapy, as practiced in the *Dancing In Wheelchairs*, helps teenagers overcome their development defects through active involvement in life as equal members of the society. Kyiv Regional Juvenile Creativity Centre and Bila Tserkva Wellness Centre *Chance* have for many years been working with children with cerebral palsy. At Kyiv Palace of Children and Youth they successfully run such programs as Care and Glow of Hope.

***And these activities, the Commissioner stresses, should be encouraged.***

However, adequate funding of out-of-school education establishments, upgrading their material and technical resources and providing them with educational materials are issues that have not yet been resolved. Aging of teachers working in the out-of-school education (number of teachers reaching the retirement age has increased since 2002 from 7% to 15,2%) and poor training of

teachers (in the past three years, almost half of the group mentors, more than half of teaching methods specialists and 70 % of headmasters have not been exposed to professional development) are other alarming factors.

*The Ombudsman considers that revival of the out-of-school system or organization of quality education and development of children in Ukraine are possible if the problems concerned are promptly attended to.*

The main purpose of **vocational education and training** is to create conditions for professional self-fulfillment of the person, gaining qualifications and meeting the needs of the economy for skilled workers competitive in the labor market. Technically, these provisions are enshrined in the Law of Ukraine *On Vocational Education*.

But, as it was stressed in the Ombudsman's latest *Annual Report on the State of Observance and Protection of Human Rights and Freedoms in Ukraine*, the situation with training workers at vocational schools has deteriorated significantly since the nation's independence. In particular, the issue of bringing vocational education closer to the needs of labor markets while promoting cooperation and collaboration between vocational schools and employer community, appropriately reviewing curricula and substantially improving the quality of educational services, all require a quick solution. This in turn is not possible without substantially increasing budget financing, upgrading material and technical resources, and approximating the education system to European standards (see *Table.4.3.2*).

*The agenda of socioeconomic development of the country, ensuring the human rights to access to quality education and, ultimately, to decent work and income may only be met through development of a modern system of lifetime vocational education and training of workers.*

Unfortunately, there is every reason to say that **higher education** does not perform its main function either, i.e. that of training competitive professionals. After graduation, specialists who have been awarded diploma in prestigious specialties, having paid considerable tuition fees, just swell the ranks of the unemployed or are forced to work outside of their skills profile. The universities are driven by prestige of professions as they plan their enrolment rather than the needs of employers.

According to the regional employment services, supply of economic and legal professions exceeds the needs of the labor market three and six times, respectively.

It should be noted that one of the most critical problems to which people who intend to acquire higher education point in their petitions to the Commissioner, is **accessibility and affordability**. This issue becomes ever more urgent in times of economic crisis, as today, when education is fee-based, and the dream of just making it into a university may never come true for many young people. That is why state support to Ukrainian students is so particularly important. *Table 4.3.3* shows a breakdown of university enrolment in 2005-2009 (in %) by types of financial arrangement.

Inability to finance education is a particularly acute problem for the least socially protected categories of children. In August 2008, the Commissioner received a petition from *Mrs. C. Kravchuk, a resident of Pavlohrad (Dnipropetrovsk Oblast)*, mother of a person disabled from childhood: *In 2003, a budget-funded learning project for deaf and blind children was launched on the basis of Dnipropetrovsk Metallurgy Academy. My son, Disability Group Two*

**Table 4.3.2. Distribution of students and VET trainees by specific categories, 2009**

|   | all            | initial vocational training of school leavers |                          |                             |             |
|---|----------------|---|--------------------------|-----------------------------|-------------|
|   |                | based on K11                                  | based on post-primary    |                             | based on K9 |
|   |                |   | with high school diploma | without high school diploma |             |
| No. of students – incl.:                        | <b>424 313</b> | <b>140 348</b>                                | <b>241 706</b>           | <b>177 85</b>               | <b>4088</b> |
| Male  | 260 850        | 77 419  | 155 828                  | 10 514                      | 2809        |
| Female  | 163 463        | 62 929  | 85 878                   | 7271                        | 1279        |
| Orphans and children left without parental care | 18 966         | 3714  | 12 946                   | 1526                        | 780         |
| Children from single parent families            | 66 823         | 20 236  | 42 307                   | 3177                        | 1076        |
| Children from disadvantaged families            | 12 035         | 2183  | 8796                     | 681                         | 375         |
| Children from low income families               | 36 374         | 10 045  | 23 421                   | 2608                        | 285         |
| Persons with functional disabilities            | 5791           | 1144  | 2208                     | 1113                        | 1320        |

**Table 4.3.3. Admission of students to universities, Accreditation levels I-II and III-IV, by source of financing of studies (%)**

| I-II Accreditation level universities |                                  |                               |   | Accreditation level III-V university |                               |   |
|---------------------------------------|----------------------------------|-------------------------------|---|--------------------------------------|-------------------------------|---|
| years                                 | admitted at national budget cost | admitted at local budget cost | admitted at the cost of individuals and legal persons | admitted at national budget cost     | admitted at local budget cost | admitted at the cost of individuals and legal persons |
| 2005                                  | 35,6                             | 13,5                          | 50,9  | 34,2                                 | 0,8                           | 65,0  |
| 2006                                  | 35,9                             | 15,7                          | 48,4  | 35,6                                 | 0,8                           | 63,6  |
| 2007                                  | 35,6                             | 16,8                          | 47,6  | 37,6                                 | 0,8                           | 61,6  |
| 2008                                  | 59,3                             |                               | 40,7  | 44,8                                 |                               | 57,2  |
| 2009                                  | 37                               | 18                            | 45  | 35                                   | 1                             | 64  |

(sight), was enrolled in a special class for the visually impaired to study Industrial Economics. The group, consisting of 14 people, became a family for him; the kids got their maintenance and an allowance, their classroom computer equipment. But, on completion of year 4, the students were told they would not get free tuition next year because of financial difficulties and they should enroll for paid class, i.e. UAH 6500, and no maintenance. For us this is a fortune to pay. Help us please, for my son will never be able to finance a complete course in view of our scarce family income.

**The Ombudsman stood up to defend the disabled students** and sent the senior officials of the Ministry of Education and Sciences of Ukraine a request to re-enrol them for a course at the State Metallurgy Academy of Ukraine, the cost to be paid out of the budget. After she repeated her appeals to the Ministry of Education and the Fund for Social Protection of the Disabled People, twelve places were provided as an exception against the public contract for the disabled students of the Academy, and the young people from low-income families were given their chance to complete training.

In 2010, after an intervention of the Ombudsman, the rights to higher education were reinstated to **the disabled child Vakhnich, of Konotop, Sumy Oblast**, and **Mina, an orphan from Poltava**,— enabling them to continue studies at NAU at public expense.

The Ombudsman has also helped to protect the rights of seven cadets of the Military College of Information and Communication Technologies at the KPI

National Technical University when they were unlawfully expelled. All of them were minors from low income families and different regions of Ukraine.

The 17-year-olds were unlawfully dropped out, without an attempt to establish the circumstances of a conflict arising from army hazing, forcing them by threat to file resignations.

Once the Commissioner intervened to protect the rights of the students and their parents, on February 22, 2010, the first-year students were re-enrolled by order of the Armed Forces command.

*As the situation at the Military College is still tense, the Ombudsman has not yet terminated her proceedings in this high-profile matter.*

The reason for the largest number of complaints and disputes was the **introduction of external educational tests for secondary school graduates**. As is known, admission to universities has since 2008 depended on the outcome of such testing; the applicants unwittingly serving as "guinea pigs" in the MoE's experimenting with independent external tests.

Despite attempts of the Ministry to improve rules of admission to higher educational institutions of Ukraine, the admissions of 2009-2010 showed several significant shortcomings. In particular, although the main purpose of testing with which it was introduced was to promote equal access to higher education, even some children with the maximum possible score were denied admission in 2009 because all the budget-funded places had already been reserved for 'privileged persons', notwithstanding the significantly lower level of knowledge they had. Also, the option to submit copies of applications to an unlimited number of universities wrought organizational havoc and encroachments on the rights of entrants with high levels of training.

Based on the results of her monitoring of admissions in 2010, the Commissioner sent a request to the Ministry of Education and Sciences of Ukraine to run an additional session for the students who failed the tests for various reasons. She also proposed to introduce a unified procedure for issue and use of copies of Form 086-O medical certificates while applying for admission to higher schools, which was eventually taken heed of in the revised Rules of Admission to higher educational institutions of Ukraine, as approved by Order of the Ministry of Education and Sciences of Ukraine (№ 961) of October 19, 2010.

The Ombudsman also receives numerous requests from representatives of ethnic community organizations based in the Crimea, Ivano-Frankivsk, Transcarpathia and Luhansk oblasts, Kyiv, as well as from local councils, with regard to violation of the children's right to receive instruction in their mother tongue, as provided by Art. 53 of the Constitution of Ukraine and relevant international documents. The ethnic minorities are particularly concerned over the requirement to take external tests in Ukrainian, as translation of the tests into national minority languages was practiced only in 2008-2009.

The petitioners alleged that the Regulations adopted by the Ministry of Education on the procedure of external evaluation, requiring of national minorities to take them in Ukrainian, violated Art. 10, para. 5, and Art. 92, para. 2, of the Constitution of Ukraine, reading that ‘the use of languages in Ukraine shall be guaranteed by the Constitution of Ukraine and determined by law’ and that ‘use of languages in Ukraine shall be determined exclusively by the laws of Ukraine ...’, as well as art. 22, para 3, of the Constitution of Ukraine which declares that narrowing of the content and scope of the existing rights is inadmissible.

As the petitioners noted, MoE and local authorities had failed to create, in the past 17 years, proper conditions for efficient learning of the Ukrainian language in schools where instruction was provided in national minority languages; in particular, no relevant scientific and methodological basis had been formed, new textbooks written or educators proficient in Ukrainian trained to work in these educational institutions.

The students who had studied subjects in their native languages throughout their school years had to take their final achievement evaluation, which was equal to entrance tests, in the Ukrainian language. Moreover, as petitions noted, Ukrainian language classes in the schools with tuition in national minority languages had not yet evolved into a long-standing tradition and usually followed the same approach as it did in the schools where instruction was given in Russian. It was never taken into account that at the educational institutions of national minorities this process required a fundamentally different approach to the selection of content and methods of teaching and evaluation of achievement.

NGO activists and parents of students attending schools with instruction in national minority languages had not been involved in the drafting and making decisions to introduce external evaluation tests.

Having considered the petitions alleging violations of children's rights to education in their mother tongue, the Commissioner appealed to the Minister of Education, asking to review these facts and take response.

The Ministry of Education and Sciences of Ukraine issued its *Order Amending the Regulations of the Ministry of Education on External Evaluation Testing in 2010*, (March 25, 2010, no. 238) stipulating that ‘upon request of students who gained complete secondary education in Russian or any other language of national minorities, the tests are translated into the relevant language of instruction (except for the tests in the Ukrainian language and literature and foreign languages).

According to the Commissioner, the test-takers, teaching and parenting communities, and representatives of national minorities alike should be involved in the appropriate advocacy efforts vis-a-vis external testing, and selection of professional teachers should be subjected to effective public control.

*The Ombudsman considers that the authorities should focus their efforts on ensuring children's access to free and quality education and eliminate any discrimination and social exclusion of children on the grounds of their residence, social status of parents, ethnic extraction, language etc.*

#### **4.4. Combating exploitation of child labor and protecting labor rights of minors**

Article 32 of the UN Convention on the Rights of the Child provides that every child is entitled to protection against economic exploitation and any work that could harm one's health, hinder education, physical, mental, spiritual, moral and social development.

The national legislation on child labor rights regulates, in detail and fairly strictly, the relations involving employment of minors. Thus, Art. 188 of the Code of Labor Laws of Ukraine prohibits employment of people under 16. However, with consent of a parent or person acting in their stead, a person turned 15 years of age may be employed as an exception. Similarly, with consent of a parent or person in their stead, with the view to preparing young people for productive work, it is acceptable to employ students of general secondary, vocational and specialized secondary schools, provided that they carry out light work which is not harmful to their health or impedes learning, out of their regular school hours and upon achieving the age of 14.

Ukraine has ratified *ILO Convention № 138 On Minimum Age for Employment* and *ILO Convention № 182 On the Worst Forms of Child Labor* which obligate the Parties to implement policies ensuring effective abolition of child labor and gradual increase of the minimum age of employment to a level corresponding to the fullest physical and mental development of adolescents.

Instead, it should be noted, Ukraine has not yet implemented what the ILO bodies recommended in the comments to direct inquiry of 2005. In particular, this concerns the fact that *'in accordance with Article 2 paragraph 1 of the Convention, no other minimum age for work than is specified in the ratified Convention may apply, with the only exception for light work, which according to Article 7 of ILO Convention № 138 may be permitted for persons age 13 and older.* In addition, under the Convention, *'The competent authority shall determine the activities in which employment or work may be permitted – and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.'* In other words, the legislation of Ukraine does not give a clear definition of 'light work' nor does it specify the list of operations fitting the definition.

***The Ombudsman believes that this problem must be resolved as soon as possible by making appropriate amendments to the Labor Code of Ukraine.***

Defining 'light work' also has a considerable social value. Work for the younger generation, provided the effective legislation is respected, may be of great educational benefit. Work performed by teenagers during their holidays or

industrial training period enhances life experience of children, increases their awareness and self-confidence, and it facilitates acquisition of basic skills and development of positive attitude to work. Helping parents about the household, too, has a positive educational effect unless it distracts from schooling. Light work, subject to regular and careful monitoring, may be an important component of the child's socialization and development, teaching one to act responsibly and being proud of one's achievements.

In her Annual Reports, the Commissioner has repeatedly drawn attention to the pressing need to safeguard the rights of young people leaving school and being of legal age when admitted in employment. First of all, it concerns persons with the status of orphans or children deprived of parental care. The State is obliged to guarantee them their first job placement.

According to the State Employment Agency, its services were sought by over 13,000 minors in 2008, including 200 orphans and 45 children aged 15. Of these, only 4,132 children, i.e., less than a third, were eventually employed. In 2009, this figure dropped to 20.4%, and in the 9 months of 2010 to 19,7%. Therefore, the *vast majority of young people appear to join the ranks of the unemployed.*

In 2008, Sumy Oblast Prosecutor's Office filed 10 criminal cases against managers of the companies who, rather than offering the first job to university graduates who have been trained against a public contract, and graduates of vocational schools, supplied false information on employment.

In 2010, Kyiv Prosecutor's Office, having verified compliance with the labor legislation and employment of minors, forwarded 13 supervisory response submissions, brought 12 persons to disciplinary responsibility, and initiated 2 criminal cases. In particular, it was found that in Desnyansky District, Kyiv, no job vacancies for disabled children had been opened for two years, though 265 such children aged 15-18 resided there. Evidence was also found of employing minors informally, without signing a written contract and conducting a medical examination, without adequate arrangements for health care; instances of irregular working hours for children were also found.

*The above leads to the conclusion that the local authorities do not take enough action to develop and carry out local juvenile employment programs, whereas the legal requirements regarding reservation of vacancies for employment of school-leavers and graduates are oftentimes reduced to formality.*

Under the law, juvenile workers are equal in their labor rights to adults, but in terms of work safety, working hours, holidays and working conditions, they are entitled to benefits as defined by Art. 187 of the Labor Code of Ukraine. Employers hiring minors must keep a special record of such employees inasmuch as violation of labor laws and economic exploitation of children entails responsibility.

Despite existence of the relevant legal provisions, *comprehensive statistical reports on child labor in Ukraine do not exist.* The only large-scale statisti-

cal survey of the matter was conducted by the State Statistics Committee of Ukraine in 1999-2000, in cooperation with the International Labour Organization. It involved 456,000 employed children of which 350,000 were engaged in economic activities and 106,000 in the household over 24 hours a week. The average age of employed children was 12 years, and every fifth working child was aged 7 to 12 years.

Unfortunately, no such study of child labor in Ukraine has been carried out. However, according to the Ombudsman's monitoring, the situation with the spread of child labor, especially given increased poverty, has not changed in any fundamental way. Experts tend to believe that up to 1 million children have to work in Ukraine. About ***40% of children work in poor conditions in agriculture; one child dies every year and 15-16 become disable because of injuries.***

As prior Annual Reports on respect for and protection of human rights and freedoms in Ukraine stressed, child labor is widespread throughout Ukraine. To see that it is true one should only venture to the nearest farmers' market and watch teenagers sell food and retail goods at the time when they are supposed to be at school or, in rural areas, notice 8-12-year-old children toiling orchards or pasturing cattle. Equally widespread are such unacceptable practices when children work in illegal coal pits in Donbas or tend to customers at private restaurants and cafes in resort towns until late in the evening, let alone "children in the street" being often involved in the worst forms of child labor. (See more on the worst forms of child labor, e.g., trafficking in children, begging, commercial and sexual exploitation in the above sections of this Report).

***According to the Ombudsman, it is high time that an effective mechanism for systematic control over the use of child labor be put in place.*** The first important step in this direction has been taken: the Law of Ukraine *On the National Program 'National Action Plan for implementation of The UN Convention on the Rights of the Child' for the period until 2016*, adopted on 5 March 2009, establishes a system for monitoring the use of child labor at enterprises, institutions and organizations of all forms of ownership. It is essential however that these intentions should promptly be realized rather than remain on paper.

***Among the reasons for which children are compelled to work, poverty is number one. At the same time, child labor is a leading factor breeding inherited poverty in the society, from generation to generation.***

Poor families have to have their children start working at an early age. Educational opportunities in this case become out of reach for the child, but some parents even believe that work will benefit the child more than learning. In turn, a low level of education does not contribute to the preparation of the younger generation for productive work life, creating poverty in the future. As of September 1, 2009, the number of children aged 6 to 18 who did not go to school was 14,521 without accounting for the children requiring physical and (or) mental correction, including 527 aged 15 and 1,448 aged 16 -17.

ILO, in its immediate comment on the information regarding Ukraine's implementation of the provisions of ILO Convention № 182 *on the Worst Forms of Child Labor*, notes inter alia that *'since education makes a great contribution to the elimination of the worst forms of child labor, the Committee hopes that the Government doubles its efforts to monitor regularity of school attendance and reduce school absenteeism rates.'*

Getting school-age children to work is also prompted by the inaccessibility of out-of-school education and proper organization of children's free time, especially in smaller and rural communities. Thus, only every third child of school age attends junior research academies, art and aesthetic education, environmental and naturalist clubs, tourism and local history centers, technology groups or youth sports schools.

In turn, children differ in their attitude to early beginning of work life, and often they start to work either on their own initiative because of the family's poor economic conditions or difficult relationships with parents, or spurred by adults. In public consciousness, child labor is usually associated with positive aspects of labor education and preparation for adulthood, though this tends to ignore the fact that modern-day economic activity, particularly in production, carries along many risks for the child.

***Often children are forced to work by parents or teachers, i.e. those who should know better than others the negative consequences of child labor and protect children in every possible way against them.***

Thus, *the Ombudsman has initiated proceedings seeking to protect the rights of ten adopted children aged 10 to 18 whom their so-called parents, residents of Snizhne, Donetsk Oblast, involved in illegal coal mining working night shifts for a long time.* Every child was assigned a quota: twenty buckets of fuel a night. Inna, one of the victimized children, recalled that sometimes *'a truckload of coal for a customer had to be delivered in three days. Then we had to go to the pit straight from the school and would return home from there at dawn. We then bathed ourselves, milked the goats and went back to school. A bucketful is 32 pounds, a truckload is 6 metric tons. We would do that in three nights.*

Despite criminal charges for exploitation of children filed against the adoptive mother, Snizhne City Court, on account of the generally positive attitude toward using child labor in the mining communities, awarded her civil claim against the board of trustees of the municipal executive committee and ruled it unlawful to deprive her of custody over the adopted children. The children's rights were defended only by decision of the Appeal Court of Donetsk Oblast.

Unfortunately, outrageous as they are, there are cases of teachers who do not mind at all exploiting children. The Commissioner has received a petition alleging the use of illegal employment of children under 14 in Prometheus labor camp, Odessa Oblast. The violations concerned were immediately stopped and the culprits brought to disciplinary liability.

It should be noted that one often learns of such cases from media reports. Take, for instance, the developments in Zaporizhya where an educator of the local city orphanage had long been exploiting disabled children, making them toil her plots and build her car park. The head of Hvardiys'k boarding school in the Crimea would send five of her students to harvest fruit to the property of the school's chief accountant's daughter residing in Bakhchisarai District. The prosecutor filed criminal charges, and the perpetrators were punished.

And how many cases of child labor remained beyond public and law enforcement's scrutiny! According to statistics, about 80% of children are hired through oral contract, without filing any papers. Employers benefit by hiring children informally as labor of minors is not as much cost as that of adults', children are likely to believe that legal employment is not required, and they know too little about their rights. The latter statement is confirmed by ILO-IPEC evaluation conducted a few years ago: as many as 29% of urban children were aware of their rights at workplace, compared to only 15% in the rural areas. Again, only 21% of urban children and 17% of rural kids knew about any watchdog organizations monitoring the rights of children at work.

***The largest consumer of child labor is small business in agriculture, retail trade, and services. The Commissioner is currently proceeding a case of nine children from Transcarpathia whose rights have been violated by a farmer from Nova Kakhovka District, Kherson Oblast.*** The businessman apologized by saying that he had actually 'bought' the children from a middleman, declaring cynically: 'I've paid for the children. I have bought them for all the summer'. While the teens who had wanted to earn some money during their summer holidays to finance a short vacation at the seaside ended up in a real bondage, the intolerable and appalling conditions of their work and accommodation turned them in fact into slaves: they lived next to the herd in a sty, starved, worked 10-16 hours every day under the scorching steppe sun, experienced physical abuse, and were deprived of the possibility to communicate with the outside world. After three weeks of slave labor, they managed to escape from the farmer, against whom charges were shortly filed. After the investigation was over, the case was referred to the Mizhgirya District Court in Transcarpathia Oblast where the child victims resided to prevent pressure that the accused had been trying to exert during investigation. On October 5, 2009, the court sentenced the farmer for gross violation of child labor statutes. Since the court in its verdict failed to assess the facts of child trafficking and economic exploitation, the district prosecutor appealed the verdict to a Court of Appeal which sent the case to a new trial. The Ombudsman continues to keep a close eye on the case.

***The observance of labor rights of the minors calls for immediate action. In view of the developments in small business, agrifarms, individual farms, and family businesses which are major consumers of child labor, new mechanisms of public and state control over the use of child labor in these areas should be established***

***and liability of employers for use of child labor without proper formalization of labor relations must be instituted.***

As the Commissioner's monitoring shows, the situation with employers' respect for the labor rights of minors is not much better in official employment either. Thus, according to the examination of State Labor Inspectorate carried out in August 2008, violations of labor laws for minors were found in 63% of enterprises. In particular, most working children among 66 minors under 14 years worked in agriculture. 241 underage persons were also found working without any labor contracts, 222 of them worked in private enterprises, and 14 ran dangerous machinery, 11 worked in unhealthy environments, and 26 children were involved in work with harmful or dangerous working conditions. 94 employers paid 145 minor workers wages in envelopes ('backdoor salary').

Employers tend to ignore the legal requirements as regards mandatory medical examination of minors at intake, the number of working hours and annual leave to which they are entitled, the prohibition to engage employees under 18 for work in the night-time, afterhours or on weekends, as well as those governing remuneration of child labour for reduced hours of day's work. Inspections carried out in 2008 found 204 instances of involving workers under 18 in overtime, night work and on weekends. Most of these violations were found in Poltava, Sumy and Ternopil Oblasts.

Last year brought no radical change. At the 347 enterprises inspected in August 2009, there were 682 minors working, including 38 minors under 14 years of age. 156 minors had no formal labor contracts, 44 of them were working longer hours than was permitted. 39 minors were engaged for work during holidays, days off and in the night-time. UAH 17,000 worth of salaries was overdue to 53 underage workers.

To deal with such brutal violations it is necessary to impose harsher administrative sanctions on employers. Art. 41 of the Code of Ukraine of Administrative Offences provides liability for violation of labor laws, however, as the labor rights of minors are governed by a special section of the Labor Code of Ukraine, liability for violations of children's labor rights should be likewise provided under a separate head in the Code of Ukraine on Administrative Offences.

At the same time, we must reinforce the supervisory functions of the law enforcement agencies. Art. 150 of the Criminal Code of Ukraine criminalizes exploitation of children. However, according to the State Court Administration of Ukraine, in 2005 only one person was convicted on such charges, another 7 in 2006, 8 persons in 2007, 5 persons in 2008 (the court terminated proceedings against 4 other persons), 18 persons in 2009 (proceedings against another 7 were terminated by the court), and 4 persons more in the first half of 2010. Obviously, the rate of convictions does not correspond to the statistics of violations of the labor laws related to minors.

Here is a concrete example. The Commissioner has received a petition from *an inhabitant of Berezova Rudka, a village in Poltava Oblast, complain-*

***ing that local school students of grades 5-11 were forced to do hard work during their schooling process.*** The Commissioner initiated proceedings. According to Pyryatyn District Prosecutor, indeed, the students of grades 5 through 11 of Berezova Rudka School (among whom were children under 15) had to take part, for five days during autumn-time fieldwork performed by the State Agricultural Enterprises *Berezivske*, in harvesting beetroots in the enterprise's farm fields instead of going to classes. Following his inquiry, the prosecutor decided not to commence criminal proceedings under Article 6 §2 CCP of Ukraine for want of essential elements of crime in the actions of the school officials. The school principal and his deputy were only reprimanded. One should hope that the reprimand announced to the school principal will make him revise his attitude to child labor and refrain from letting schoolchildren out to any employers in the future.

***In order to improve radically the situation with employment of minors a number of certain laws and regulations should also be amended,*** including:

– a list of types of light work on which children aged 13 to 15 may be hired should be drawn, thereby following the requirements of Article 7 paragraph 3 of ILO Convention № 138 on the minimum age for admission to employment;

– the *List of heavy work and work with harmful and hazardous working conditions where employment of labor of minors is prohibited* approved earlier by Decree № 46 of the Ministry of Health of Ukraine of 31 March 1994 should be reviewed and supplemented with definitions of activities that may harm morals of children (e.g., participation in staging drama performances or shooting motion pictures featuring scenes of violence, etc.) as required by Article 4 para. 1 of ILO Convention № 182 on the Worst Forms of Child Labor;

– the laws of Ukraine *On Farms* and *On Private Agricultural Households* should be amended to set the minimum age of 16 for members of both private households and farming enterprises and extend the requirements of legislation regulating the work of minors to minor members of such farms.

***The Ombudsman believes that it is necessary to reduce the extent of child labor and ensure the right of every Ukrainian child to childhood, normal and full life. This can be achieved through a change in public attitude toward child labor and its negative consequences, increased general awareness of children's rights and ways of their protection, significant reduction of poverty and unemployment, rising welfare of the Ukrainian families to create conditions for quality schooling and accessible out-of-school education, prompt implementation of child labor monitoring system and strict state control over employer's respect for the requirements of labor laws related to minors, ensuring smooth interaction between central/ local executive agencies and local authorities in solving the pressing problems of child labor, and constructive cooperation of the state, employers', trade union, women's, youth and children's organizations.***

## V. STATE OF OBSERVANCE OF RIGHTS OF VULNERABLE GROUPS OF CHILDREN

### 5.1. Protection of rights of orphans and children deprived of parental care

Children lose parents for various reasons. However, there are countries without orphans where children are fostered by relatives or simply kind people. For ages, the Ukrainian community has paid special attention to orphans. That is why it is sad that more than 1% of all children in Ukraine are orphans or children deprived of parental care.

Article 20 of the UN Convention on Protection of the Rights of the Child has clearly established responsibility of the state to look after the child without parental care, “A child temporarily or permanently deprived of his or her family environment, or in the child’s best interests cannot remain in that environment, shall be given special protection and assistance by the State.”

According to the Constitution of Ukraine (Art. 52), “The maintenance and upbringing of orphans and children deprived of parental care is entrusted to the State.” The country has established a respective legal framework for this. For instance, the Law of Ukraine On Social Protection of Orphans and Children Deprived of Parental Care was approved in 2005 defining legal, organizational, social foundations and guarantees of state support for this category of children. Significant amendments have been made to the Law of Ukraine On Authorities and Agencies for Child Affairs and Special Institutions for Children in 2007 and to the Law of Ukraine On State Assistance to Families with Children in 2008.

To encourage national adoption, the President of Ukraine proclaimed 2008 the Year of Support to National Adoption and Other Forms of Family Upbringing for Orphans and Children Deprived of Parental Care. Nationwide meetings With Love and Care for Children have become a tradition and the Commissioner for Human Rights takes part in them.

However, those measures do not guarantee child rights protection on the level of international standards. The number of orphans and children deprived of parental care remains high year after year, even though their number has fallen to 100,800 by early 2010 (table 5.1.1). The number of such children in the total child population remains mostly unchanged, with 1.11% in 2005,

1.21% in 2006, 1.24% in 2007, and 1.26% in 2008. Their share fell slightly to 1.23% in 2009.

*The phenomenon of social orphanhood is becoming more widespread*, when biological parents abandon their duties and leave the child, taking no care about the child's upbringing. Even the considerable increase of childbirth assistance to 22.6 subsistence minimum incomes since April 1, 2005 has not reduced the number of children who become orphans with living parents.

Parental rights can be terminated for different reasons, but in any case this is a forced measure when all other methods of influencing the parents' behavior fail, and this is a tragedy for the child violating his or her right to be brought up in the family environment.

According to Article 24 of the Law of Ukraine On Protection of Childhood, orphans and children deprived of parental care must be given to custody or adopted by families (foster families), referred to orphanages for babies and children, boarding schools, or family orphanages.

The Ombudsman's analysis shows that custody and care remain the most popular form of fostering. In early 2010, adults took guardianship and care over 63,154 children or 61.2% of the total number of orphans and children deprived of parental care.

In 2009, the Law of Ukraine On State Assistance to Families with Children was amended, doubling child care assistance for families of guardians and custodians. The state must be interested in establishing guardianship to preserve family ties and values.

However, complaints received by the Commissioner show procrastination in guardianship registration violating the rights of the children, including the right to state assistance. The request for protection of rights of underage Ukrainian girl Sana L. who was born far away in Italy is a good example. The girl's mother had been working there, but she fell ill and returned to her homeland to the town of Stryi in Lviv Region where she died soon after that. Her elder sister's family took the small girl but could not register guardianship for a long time. And though the woman's family was poor, she refused to give her sister away to

**Table 5.1.1. Number of orphans and children deprived of parental care\***

|  | 2004   | 2005   | 2006   | 2007    | 2008    | 2009    | 2010    |
|--|--------|--------|--------|---------|---------|---------|---------|
| Total number of orphans and children deprived of parental care | 96 112 | 97 590 | 97 829 | 102 912 | 102 924 | 103 542 | 100 787 |
| Number of such children for every 100,000 children under 17    | 1011   | 1069   | 1111   | 1206    | 1236    | 1265    | 1247    |

\* According to the State Statistics Committee of Ukraine

an orphanage despite the fact that she could not buy even the most basic things without state assistance.

MP Lukyanova sent a petition of the girl's sister to the Commissioner. The Ombudsman's staff visited the little Ukrainian citizen to study her situation, met with representatives of the local authorities, and sent a request for action to Lviv Regional Prosecutor.

The child's father was a Moroccan national staying in Italy illegally and his whereabouts were unknown, which further complicated the situation. After the Ombudsman's request, Stryi Prosecutor's Office filed a lawsuit and Stryi District Court terminated the father's parental rights. This allowed the authorities to establish the child's guardianship and assign appropriate social payments. Sana's guardian thanked the Commissioner for protection of the rights and interests of the little girl.

Another example. The Ombudsman received a request from grandmother of Marharyta V. from the town of Verkhivtseve, Verkhnyodniprovsk District, Dnipropetrovsk Oblast, asking her to protect the rights of her granddaughter. The girl's mother died, and her father lived in another area without participating in her upbringing or providing any financial support. The Commissioner addressed Verkhnyodniprovsk District Prosecutor's Office, and the inspection resulted in a lawsuit on termination of paternal rights of Marharyta's father. The court's decision made it possible to assign appropriate social payments to the girl under the care of her grandmother, who had raised her three children by herself.

***The Ombudsman is convinced that the foster families should receive timely assistance from the state authorities and services. As a rule, children are adopted by their relatives, often by elderly grandparents who cannot resolve all their legal problems without appropriate legal assistance.***

Adoption gains priority for children without parental care in Ukraine. Celebration of the Adoption Day was introduced in 2009, social protection for foster families has improved with one-off adoption assistance introduced since January 1, 2010, and a social vacation is provided to the adoptive parents to familiarize the child with the family.

This has increased the number of adoptions, including adoptions of older children and children with special needs. We should specifically emphasize the fact that national adoptions have become more widespread in the recent years. For instance, in 2008 Ukrainians adopted 2,066 or 56.6% children out of 3,653 orphans and children without parental care including three disabled and 15 HIV-positive children. In 2009, Ukrainians adopted 2,374 out of 2,802 children (table 5.1.2). Ukrainians also adopted 1,807 out of 2,757 children by November 1, 2010.

The Commissioner for Human Rights is convinced that priority should be given to national adoptions. However, the Ombudsman has received multiple requests from Ukrainians demonstrating a different position of public officials.

**Table 5.1.2. Number of adopted orphans and children deprived of parental care (2009)\***

| Administrative unit           | Total number of orphans and children deprived of parental care adopted during the year | Of the total number of orphans and children deprived of parental care |                              |
|-------------------------------|--|---|------------------------------|
|                               |  | Adopted by Ukrainian citizens   | Adopted by foreign nationals |
| <b>Ukraine</b>                | <b>3802</b>  | <b>2374</b>   | <b>1428</b>                  |
| Autonomous Republic of Crimea | 191  | 129   | 62                           |
| Vinnitsia Region              | 96   | 60  | 36                           |
| Volyn Region                  | 38   | 37  | 1                            |
| Dnipropetrovsk Region         | 361  | 229   | 132                          |
| Donetsk Region                | 546  | 304   | 242                          |
| Zhytomyr Region               | 108  | 60  | 48                           |
| Transcarpathia Region         | 65   | 47  | 18                           |
| Zaporizhia Region             | 237  | 113   | 124                          |
| Ivano-Frankivsk Region        | 51   | 35  | 16                           |
| Kyiv Region                   | 213  | 127   | 86                           |
| Kirovohrad Region             | 135  | 62  | 73                           |
| Luhansk Region                | 207  | 155   | 52                           |
| Lviv Region                   | 77   | 70  | 7                            |
| Mykolaiv Region               | 116  | 70  | 46                           |
| Odessa Region                 | 318  | 152   | 166                          |
| Poltava Region                | 117  | 84  | 33                           |
| Rivne Region                  | 52   | 49  | 3                            |
| Sumy Region                   | 73   | 50  | 23                           |
| Ternopil Region               | 17   | 15  | 2                            |
| Kharkiv Region                | 204  | 131   | 73                           |
| Kherson Region                | 110  | 93  | 17                           |
| Khmelnyskyi Region            | 70   | 43  | 27                           |
| Cherkasy Region               | 99   | 73  | 26                           |
| Chernivtsi Region             | 35   | 19  | 16                           |
| Chernihiv Region              | 99   | 44  | 55                           |
| Kyiv City                     | 121  | 82  | 39                           |
| Sevastopol City               | 46   | 41  | 5                            |

\* According to the data of the Ministry of Family, Youth and Sports

For instance, the Ombudsman has received a request from Nina H., a resident of the Autonomous Republic of Crimea who works at Yalynka Pre-school Orphanage and has a degree in pedagogy and psychology. The young woman's

heart went out to a small boy from her group, and the child reciprocated her feelings. She weighted her options, got approval from her family and decided to adopt the child. However, the boy's anxiety to meet his new family and new home was futile. Local Child Affairs Service and management of the institution preferred foreigners 'for some reason.' The child spent an extra year in the orphanage receiving support from foreign candidates while his long-awaited mother was struggling through bureaucratic obstacles. Finally, the woman went to seek the Commissioner's assistance. The Ombudsman supported her noble will and addressed the Prosecutor General's Office of Ukraine. The adoption struggle took two years and became successful when the court ruled in favor of Nina H., making the boy and the mother happy.

By 2010, the list of eligible orphans and children deprived of parental care included 31,000 child names. The Commissioner believes that priority must be given to national adoption giving family care to every child. This requires special conditions and elimination of artificial restrictions and obstacles. In the Ombudsman's opinion, these obstacles include *provisions of Article 211 of the Family Code of Ukraine establishing the maximum age difference of 45 years between the adopted and the adopter*. This provision does not take into account real demographic changes in Ukraine and does not correspond to the child's best interests.

Because of this rule the Ombudsman failed to help a couple from Donetsk Region to adopt a small HIV-positive girl. The spouses have repeatedly visited the child and considered her their little daughter. While they were preparing the adoption documents, the Verkhovna Rada (Parliament) approved amendments to the legislation without any justification and ruined the dreams of potential parents and the child.

Ambassador of the Federal Republic of Germany Reinhard Scheffers addressed the Ombudsman on behalf of German nationals Friederike and Christian Gussels who wished to adopt an underage disabled orphan. They were also rejected because of this discriminating age limit.

However, those children need adoption most of all to provide the best possible conditions to treat and overcome their disability in family environment.

The current version of Article 211 of the Code prevents adoption into one family of brothers and sisters if one of them has the mentioned age difference with the adopters. It is also unacceptable when children lose some of their rights if they are adopted by a family where one parent has the right to adopt and the other one does not because of the age limit. In those cases the situation becomes absurd: the child is adopted by one parent who gets the single parent status and even appropriate state assistance. For instance, L. Parmuzina-Ivanova from Poltava in her request to the Commissioner rightly mentioned that provision of Article 211 of the Code "violates the orphans' rights and deprives them of legal ground for becoming full members of their adoptive

families.” The woman cited the example of her daughter’s family. The daughter was allowed to adopt little Katrusia, but her husband was rejected because he exceeded the established age limit only by 14 weeks. The child actually lives in the family but legally she has no father, and the court gave the single mother status to the woman.

*The Ombudsman is convinced that only the court should determine whether a child can get adequate conditions for sustainable and harmonious development when it makes adoption decisions according to Article 207 of the Family Code of Ukraine. The European Convention on the Adoption of Children signed by Ukraine in April 2009 does not contain any requirements about maximum age limit. That is why the Ombudsman proposes that the Verkhovna Rada (Parliament) of Ukraine abolish those discriminating age restrictions.*

At the same time the Commissioner notes the problem of adoption annulment. Between 2005 and 2010, the courts annulled adoption for 196 Ukrainians and 8 foreign nationals (table 5.1.3). This happened in 22 cases in 2010.

In those cases children receive yet another blow because they are once again betrayed by their fate and irresponsible adults who make decisions about the children without a sound judgment of their capacity. This is also the fault of adoption decision makers who fail to notice that the candidates do not have basic parental features of love for the child and self-sacrifice.

It was emphasized before that the number of children adopted by foreign nationals has been going down lately: 2,187 or 58% children were adopted by foreigners in 2003; 2,058 or 58% in 2004; 2,110 or 60% in 2005; 1,092 or 43% in 2006; 1,670 or 48% in 2007; 1,587 or 43.4% in 2008; and 1,428 or 42% of all adopted children in 2009. However, the international adoption ratio remains high despite the fact that, according to Article 21 of the Convention on the Rights of the Child, it shall only be exercised when there is no chance to find a family in the child’s homeland. Overseas adoption of the Ukrainian children still remains a priority in some regions. For instance, last year foreigners adopted

**Table 5.1.3. Number of annulled adoptions\***

| Year         | Annulled adoptions                |                      |
|--------------|-----------------------------------|----------------------|
|              | In families of Ukrainian citizens | In overseas families |
| 2005         | 59                                | –                    |
| 2006         | 75                                | 2                    |
| 2007         | 34                                | 2                    |
| 2008         | 28                                | 4                    |
| 2009         | 24                                | 3                    |
| <b>Total</b> | <b>220</b>                        | <b>11</b>            |

\* According to the data of the Ministry of Family, Youth and Sports

166 children compared with 152 adopted by Ukrainians in Odessa Oblast, 124 compared with 113 in Zaporizhia Oblast, 73 compared with 62 in Kirovohrad Oblast, and 55 compared with 44 in Chernihiv Oblast.

***The Ukrainian Parliament Commissioner for Human Rights is convinced that overseas adoption should be exceptional!***

For example, foreigners adopt more children above the age of 6. For instance, in 2009, foreign nationals adopted children aged between 6 and 18 in 838 cases or more than 58.7% of the total number of overseas adoptions, and 569 or more than 60% during 10 months of 2010 (table 5.1.4).

The Commissioner consistently supports the idea that national interests and primarily comprehensive protection of Ukrainian children must be a priority in the government policy on adoption. That is why ***the Ombudsman emphasizes that she does not support the proposals on Ukraine's ratification of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption***, also known as ***the Hague Convention***, actively lobbied by receiving countries of Ukrainian children for a long time. The Ombudsman is convinced that the Convention does not correspond to the national interests of Ukraine and contains provisions contradicting the Ukrainian national legislation. For instance, articles of the Convention allow intermediary activity that is liable to criminal responsibility in Ukraine (Art. 169 of the Criminal Code of Ukraine). The Family Code of Ukraine also bans any intermediary or commercial activity in adoption.

Article 40 of the Hague Convention does not allow any reservations in its ratification, but permits activity of authorized foreign adoption agencies. In fact this can give green light to trade in Ukrainian orphans.

Moreover, the Ukrainian legislation has already implemented the best practices of the Hague Convention, for instance, the provision on the central government adoption agency. The Adoption Center was established in 1996 under the Ministry of Education and Science of Ukraine and its powers were transferred to the State Department for Adoption and Protection of the Rights of the Child at the Ministry of Ukraine for Family, Youth and Sports in 2006.

**Table 5.1.4. Number of orphans and children deprived of parental care adopted in 2009, breakdown by age**

|                               | Total No. of children | Under 3 | Aged from 3 to 6 | Aged from 6 to 18 |
|-------------------------------|-----------------------|---------|------------------|-------------------|
| Adopted by Ukrainian citizens | 2374                  | 1691    | 466              | 217               |
| %                             | 100                   | 71,2    | 19,6             | 9,2               |
| Adopted by foreign nationals  | 1428                  | 284     | 306              | 838               |
| %                             | 100                   | 19,9    | 21,4             | 58,7              |

Besides that, the law defines that adoption is performed exclusively in the court to protect interests of the child (Chapter 18 of the Family Code of Ukraine).

That is why the Verkhovna Rada (Parliament) of Ukraine rightly rejected the Convention lobbying attempts in 2001, 2003, 2006, and in 2009.

According to the Ministry of Foreign Affairs of Ukraine, the records of the Ukrainian diplomatic and consular institutions contained data about 20,538 adopted Ukrainian children by 2010. Among them, 7,735 live in families in the US, 5,839 in Italy, 3,162 in Spain, 1,173 in France, 916 in Israel, 654 in the Federal Republic of Germany, 376 in Canada, 137 in Belgium, 126 in Sweden, 105 in Switzerland, and 102 in Ireland (table 5.1.5).

***The Ombudsman is convinced that only bilateral agreements with countries adopting most Ukrainian children, which have a strong Ukrainian community, can provide the best control over observance of their rights in foreign families.***

Those agreements would give the chance to help Ukrainian children who have suffered from violence of the adopters and bring them back to their homeland. Back in 2001, the Hilt family from the US adopted a small Ukrainian girl. However, later a US court sentenced Peggy Sue Hilt, the so-called mother, to 35-year prison term for killing a Russian girl who had also been adopted by the family. Despite terrible psychological trauma suffered by the Ukrainian child, the Human Services Department of Wake County, North Carolina, decided that she can stay with the father. According to the US laws, the child with US citizenship cannot be returned, despite the fact that he or she holds on to the Ukrainian citizenship until the age of 18.

**Basically, a Ukrainian child adopted by foreigners acquires double citizenship.** Ukraine cannot control actual rights of children adopted by overseas families despite the fact that “an adopted child retains nationality of Ukraine till he/she has attained the age of 18,” according to para. 6, Art. 283 of the Family Code of Ukraine. For example, according to the US laws a child adopted by the US citizens automatically gets US citizenship as soon as he or she crosses the border. That is why even if adoptive parents lose their parental rights, the child shall be transferred to another US family without any approval of relevant Ukrainian authorities.

***Both local and international experience must be studied and taken into account carefully when bilateral agreements are signed. A useful example can be found in the similar agreement between the Republic of Italy and the Russian Federation which, as a matter of fact, has not ratified the Hague Convention.***

Adoption of the Ukrainian children into the countries involved in military conflicts raises special concerns. Military conflicts between Israel and Palestine, as well as other Arab countries, have lasted for several decades now. Even when relations between them normalise, peaceful residents die in terrorist attacks in Israeli cities. Nevertheless, the Department for Adoption and Protection of the Rights of the Child of the Ukrainian Ministry for Family, Youth and Sports reports that nearly fifty Ukrainian children are adopted by Israeli families every

**Table 5.1.5. Data of the Ministry of Foreign Affairs of Ukraine on the number of adopted children holding Ukrainian citizenship**

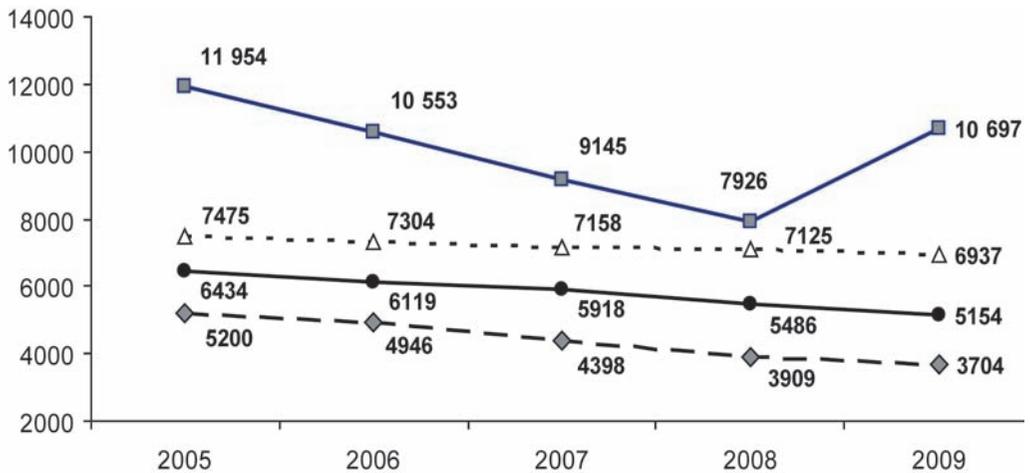
| <b>№</b> | <b>Countries</b>     | <b>Total for country as of February 2010.</b> |
|----------|----------------------|---|
| 1.       | Australia            | 4   |
| 2.       | Austria              | 6   |
| 3.       | Argentina            | 14  |
| 4.       | Belgium              | 137   |
| 5.       | Belarus              | 2   |
| 6.       | Bulgaria             | 1   |
| 7.       | Great Britain        | 6   |
| 8.       | Greece               | 39  |
| 9.       | Israel               | 216   |
| 10.      | Iran                 | 1   |
| 11.      | Ireland              | 102   |
| 12.      | Spain                | 3162  |
| 13.      | Italy                | 5839  |
| 14.      | Kazakhstan           | 1   |
| 15.      | Canada               | 376   |
| 16.      | Cyprus               | 1   |
| 17.      | China                | 3   |
| 18.      | Lebanon              | 1   |
| 19.      | Mexico and Guatemala | 34  |
| 20.      | The Netherlands      | 14  |
| 21.      | Norway               | 3   |
| 22.      | Peru                 | 19  |
| 23.      | Portugal             | 1   |
| 24.      | Poland               | 15  |
| 25.      | Romania              | 2   |
| 26.      | Russia               | 23  |
| 27.      | Slovenia             | 12  |
| 28.      | USA                  | 7735  |
| 29.      | France               | 1173  |
| 30.      | Germany              | 654   |
| 31.      | Croatia              | 1   |
| 32.      | Czech Republic       | 10  |
| 33.      | Switzerland          | 105   |
| 34.      | Sweden               | 126   |
| 35.      | Japan                | 1   |
|          | <b>Total</b>         | <b>20 538</b>                                 |

year. *Evidently, in this case adoption does not serve the best interests of the child threatening life and health of the Ukrainian children.*

Ukraine has been implementing the National Reform Program of the Institutional System for Orphans and Children Deprived of Parental Care since 2007. It envisages replacement of orphanage boarding schools with institutions of the new type established by local executive authorities in the children’s area of origin, with proper account of their age and social status. Those institutions should host no more than 50 children who can also study in normal schools. Conditions of residence, development and upbringing shall take into account the individual needs and experience of every child.

The reform has quickly reduced the number of children in the orphanages, and transfers between institutions are gradually coming down. Mixed pre-school and school institutions let brothers and sisters of different age live together. Changes in the number of boarding school and orphanage residents in 2005–2009 according to the State Statistics Committee and the Ministry of Labour and Social Policy of Ukraine are displayed on chart 5.1.1.

At the same time the Ombudsman believes that the diminishing number of boarding orphanages should not lead to children’s transfers to similar institutions in other regions. Children still have relatives, mostly grandfathers and grandmothers, who cannot take care of orphan grandchildren because of poor



- Boarding schools for orphans and children deprived of parental care (specialized boarding schools are included from 2009)
- ▽— Orphanages under management of the Ministry of Education and Science
- Orphanages under management of the Ministry of Labor
- ◆— Baby orphanages under management of the Ministry of Health

**Chart 5.1.1. Number of inmates of boarding houses** (of the total number of children in the institutions. Both orphans and children who have parents are taken into account.)

health and financial conditions but who can visit them and take them home during school vacations. That is why children's transfers to remote institutions may ruin family ties.

The Commissioner for Human Rights of Ukraine is also concerned about a new tendency whereby institution managers try to fill their institutions and convince large families to give their children away to them. Parents can not always visit their children in remote locations and lose their parental rights.

Educational and housing facilities have been improved in many orphanages in the last two years in Vinnytsia, Volyn, Dnipropetrovsk, Donetsk, Zhytomyr, Kyiv, Lviv, Mykolaiv and other regions, but life and study conditions in many institutions still do not meet modern criteria, especially in the institutions located far from regional centers.

***The Ombudsman is convinced that all the orphanages must meet European standards for such institutions.***

Alternative care has been actively introduced lately. The number of orphans and children deprived of parental care in adoptive families and family orphanages has increased considerably (table 5.1.6).

The Ukrainian Commissioner actively promotes these forms of parental care. For instance, the Ombudsman received a request from Shevchuk family from the town of Yampil in Vinnytsia Region in May 2009. The spouses asked for assistance to organize a family-type orphanage. The applicant and his wife had been brought up in children's institutions, and now they were willing to provide adequate care to children deprived of parental care. However, the local authorities were procrastinating with provision of premises. The Ombudsman asked the district state administration to provide premises as soon as possible. The Shevchuk family opened the doors to the first two orphans in September 2010.

**Table 5.1.6. Number of orphans and children deprived of parental care brought up in the families of Ukrainian citizens\***

|  | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   | 2009   |
|--|--------|--------|--------|--------|--------|--------|--------|
| Total number of adoptive families at the year end  | 70     | 131    | 180    | 744    | 1617   | 2461   | 2931   |
| Number of children (persons) brought up in adoptive families at the year end                             | 129    | 240    | 288    | 1152   | 2561   | 4050   | 4934   |
| Total number of family orphanages at the year end  | 112    | 127    | 149    | 234    | 300    | 400    | 484    |
| Total number of children (persons) brought up in family orphanages at the year end                       | 1134   | 1214   | 1025   | 1462   | 1960   | 2605   | 385    |
| Total number of persons out of orphans and children deprived of parental care under guardianship or care | 66 493 | 65 264 | 64 353 | 64 192 | 63 591 | 62 965 | 63 154 |

\* According to the data of the Ministry of Family, Youth and Sports

At the same time, while supporting alternative family forms of child care, the Commissioner warns against coercion in this important activity. The state should support establishment of foster families and family orphanages but it should not send down instructions about them. This activity should be centered around a child whose right to live in the family has already been infringed. That is why further psychological traumas and sufferings resulting from a formal approach to the child must be prevented at all costs. The Ukrainian Ombudsman stated this position at the All-Ukrainian meeting With Love and Care for Children on April 17, 2008, in Donetsk.

***On May 26, 2010, the Ombudsman sent a letter to President of Ukraine Viktor Yanukovich asking for protection of social rights of the children from poor families, orphans and children deprived of parental care.*** Following the request of the President of Ukraine, the Prosecutor General's Office and the Ombudsman's representatives inspected the Ministry of Family, Youth and Sports and found the agency was paying less attention to child care services after establishment of foster families and family type orphanages. As a result, children were often entrusted to families that were not always able to provide social protection and establish adequate conditions for their life and education. More than 20 foster families were suspended in the last two years. Their temporary functioning had cost Ukraine over UAH 700,000. More than 30 children returned to child institutions or were transferred to other families.

Based on results of this inspection, the Prosecutor General's Office held an interdepartmental meeting of the enforcement and central executive agencies with participation of an Ombudsman's representative on July 29, 2010, to discuss legal protection of orphans and children deprived of parental care in adoption, upbringing and care in the families of Ukrainian citizens.

***The Ombudsman believes that the state must provide appropriate control of the establishment and activity of all types of child care institutions.***

After the children come of age, they start adult life. However, the children from adoptive families and boarding institutions are left without housing, start-up financial resources, and in many cases without adequate knowledge and household skills. These young people face severe employment difficulties, and the lack of employment guarantees often leads to their ruthless exploitation by dishonest businessmen.

Here is a typical example reported by Kyiv resident Natalia Shkavron who graduated from the 9<sup>th</sup> grade of a boarding school in Kyiv, went to vocational school and was expelled as soon as she turned 18. Nobody cared about the further fate of the child whose parents had been deprived of parental rights. Her relatives did not let her stay in the apartment where she was registered and had lived before the boarding school, and later they canceled her registration in a court. The girl became homeless, even though she was trying to earn her living. With assistance of Kyiv City State Administration, the Ombudsman helped the girl to get a job and temporary housing. The child's rights wouldn't have been

violated comprehensively if the social support was properly provided to orphans and children deprived of parental care after they leave the state institutions.

Out of 14,000 children in this category who came of age in 2009, only 8,000 had housing, but it was unlivable in 500 cases. Only 227 of those people received some housing that year and 134 got housing from the social residential funds.

Disturbingly, the effective legislation prescribes that children without parental care can get the housing where they had been registered before admission to a state institution. However, after their graduation the children are forced to go back to their parents who abuse alcohol, drugs and commit crimes. The children can't even register for a housing waiting list. And after the so-called parents finish their prison terms, they have the rights to return and live with their families even if they had committed violence against them.

The Ombudsman had to protect Kyiv orphans whose father had killed their mother when a daughter was in the other room. The man's parental rights had been terminated, and subsequently Kyiv's Holosiyivskiy District Court, with support of the Ombudsman, canceled his registration and residence in that apartment. Now the rights of the children to safe housing are properly protected.

On many occasions the Ombudsman has supported the interests of orphans from Kyiv, Kharkiv, Simferopol, Dnipropetrovsk, etc., and often participated in the court processes protecting their right to housing abused by parents and guardians or improper performance of custodial and care authorities.

***The Ombudsman is convinced that Ukrainian laws must be amended to regulate registration of children without parental care for priority housing waiting lists if they cannot live in the same premises with their parents whose parental rights have been revoked.***

***On November 20, 2009, the Ombudsman and the UNICEF Representative in Ukraine presented a Joint Statement to the authorities and the Ukrainian public on the 20<sup>th</sup> Anniversary of the UN Convention on the Rights of the Child. They emphasized that in the absence of effective legal mechanisms orphans and children deprived of parental care have nowhere to return from guardians or orphanage boarding schools and become homeless. The Ombudsman also wrote to the President of Ukraine about protection of the social rights of children from poor families, orphans and children deprived of parental care, and she emphasized the need to resolve the orphans' housing problem.***

The dream to continue education is nearly unattainable for those young people without any family support.

Currently the Ombudsman is following the petition of orphan Erik V., graduate of Tsyurupynsk specialized boarding school for orphans and children deprived of parental care in Kherson Region who studied choreography for six years. He made two unsuccessful attempts to become a student of the Circus and Variety Arts School, but his perseverance and talent helped him enter Serge

Lyfar State Dance Academy in Kyiv. However, the boy could only study for half a year trying to save on everything. He cycled from the dormitory to the Academy and mostly subsisted on bread. He was expelled from the Academy because he had to earn his living. Now the boy studies at the Kyianochka Choreography College that has given him a room at the dormitory. The Ombudsman has helped Erik get appropriate social payments and a registration in the waiting list for priority housing.

The children of those categories are entitled to some legal privileges for entry to higher educational institutions, but only a few manage to handle the problems and complete their studies.

*The Ombudsman is convinced that talented orphans should get financial assistance, especially in the time of crisis. National policies should support children deprived of parental care so they can build a reliable basis for their adult life.*

## **5.2. Rights of children with special needs**

As of January 1, 2010, there were 157,474 children with special needs in Ukraine. Most of them suffer from nervous system pathologies, mental and behavioural aberrations, as well as congenital development defects. More than 23,000 Ukrainian children suffer from cerebral palsy. Protection of disabled children's rights requires improvement of their material status, as well as special conditions for their integration into social life.

The rights of disabled children are regulated in the international documents ratified by Ukraine, the Constitution of Ukraine, the Laws On Fundamental Social Protection of Disabled People in Ukraine, On Rehabilitation of Disabled People in Ukraine, On Psychiatric Assistance, On State Social Support to People Handicapped Since Childhood and Disabled Children, On Social Services, On Protection of Childhood, etc.

*While positively assessing the new laws and by-laws that regulate protection of disabled children, the Ombudsman notes that this work has not been completed yet.* Due to perseverance of the National Assembly of Disabled People of Ukraine and the Ombudsman, Ukraine signed the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol on September 24, 2008 and ratified it on December 16, 2009. Parliamentary ratification of those international documents have established a sound legal ground for more effective and fair protection of the rights of people with special needs, for instance, disabled children.

A central executive agency should be set up to coordinate implementation of the Convention and its monitoring.

The Commissioner for Human Rights and non-governmental organizations shall provide independent monitoring of the Convention's implementation status.

**Table 5.2.1. Amount of public social assistance to disabled children in 2009 (UAH)**

| Category of the disabled   | January – March | April – June | July – August | October | November – December |
|--|-----------------|--------------|---------------|---------|---------------------|
| Disabled children under 18   | 544             | 551,5        | 558,2         | 572,4   | 601,4               |
| Disabled children under 6*   | 627,1           | 634,6        | 641,3         | 655,5   | 745,5               |
| Disabled children aged from 6 to 18*                                     | 660,5           | 706,6        | 713,3         | 727,5   | 817,5               |
| Children with Chernobyl disaster-related disabilities under 18           | 544             | 551,5        | 558,2         | 572,4   | 630,05              |
| Children with Chernobyl disaster-related disabilities under 6*           | 801,4           | 808,9        | 815,6         | 829,8   | 946,05              |
| Children with Chernobyl disaster-related disabilities aged from 6 to 18* | 873,4           | 880,9        | 887,6         | 901,8   | 1 018,05            |

\* Data include care allowance

Current laws guarantee National Budget funding to support disabled children and provision of their social protection by establishing the amount of the state social assistance at the subsistence minimum level (*table 5.2.1*).

The number of recipients and volume of the state social assistance according to the Law of Ukraine *On State Social Assistance to People Disabled since Childhood and Disabled Children* are provided in *table 5.2.2*.

The Commissioner for Human Rights promotes equal participation of the children with special needs in the life of the society in every way. ***In January 2009, the Commissioner sent a request to Prime Minister of Ukraine Yulia Tymoshenko to provide technical rehabilitation aids to disabled people including children.*** The Ombudsman drew attention of the Government to the fact that the rules introduced by resolution of the Cabinet of Ministers of Ukraine № 1652 dated November 29, 2006 (in the version of resolution of the Cabinet of Ministers of Ukraine № 1015 dated November 12, 2008) *On Approval of Procedures for Provision of Technical and Other Rehabilitation Aids to Certain Categories of Citizens and Formation of Respective State Order and List of Such Aids*. This document makes disabled children under 14 ineligible for motorized wheelchairs and reduces the list of technical and other rehabilitation aids, limiting the rights of disabled people and above all children with special needs.

***The Ombudsman's request sent to the Prime Minister of Ukraine in July 2009 mentioned that the right to information should be upheld for disabled people and children with special needs.*** For instance, it noted that the Law of Ukraine *On the National Budget of Ukraine for 2009* for the first time in many years did not envisage the procurement of Braille type literature published by the Republican

**Table 5.2.2. Number of recipients and volume of assigned public social assistance to disabled children\***

| Categories of recipients   | Number of recipients of public social assistance, persons |         |         |           | Total assistance, thousands UAH |         |         |         |
|--|---|---------|---------|-----------|---------------------------------|---------|---------|---------|
|  | 2006  | 2007    | 2008    | 2009      | 2006                            | 2007    | 2008    | 2009    |
| Total disabled children under 18 receiving public social assistance          | 48 565  | 112 639 | 123 043 | 1 009 078 | 164 712                         | 568 016 | 869 881 | 132 087 |
| Of them, recipients of care allowance (for single mothers or single fathers) | 2 321   | 5 728   | 6 568   | 27 783    | 5019                            | 16 969  | 25 223  | 7 194   |
| For children under 6   | 1 154   | 1 955   | 2 295   | 8 222     | 2 218                           | 5 010   | 7 519   | 2 487   |
| From 6 to 18   | 1 167   | 3 773   | 4 273   | 19 561    | 2 801                           | 11 958  | 17 704  | 4 707   |
| For disabled child (except for single parents)                               | 26 705  | 78 607  | 83 187  | 362 518   | 56 097                          | 247 899 | 341 791 | 84 697  |
| For children under 6   | 9 160   | 17 128  | 18 509  | 69 252    | 15 831                          | 44 269  | 69 361  | 18 742  |
| From 6 to 18   | 17 545  | 61 479  | 64 678  | 293 266   | 40 266                          | 203 630 | 272 429 | 65 955  |
| Allowance for burial of disabled children under 18                           | 261   | 548     | 677     | 902       | 218                             | 582     | 780     | 746     |

\* According to the Ministry of Labor

House of Audio Recording and Publishing at the Ukrainian Society for the Blind. The Ombudsman pointed out in her request that it would be extremely difficult to restart operation of this enterprise if it loses its expertise.

Following instructions of Deputy Prime Minister I. Vasyunyk, the Ministry of Labor and Social Policy of Ukraine informed the Commissioner that it notified the Central Board of the Ukrainian Society for the Blind that contractual funds would be provided for the publication of *Promin* newspaper, as well as *Zaklyk* and *Shkolyar* magazines by the Republican House of Audio Recording and Publishing.

Most children with special needs (90%) live with their families, and others are brought up at boarding schools. That is why institutions where disabled children can get rehabilitation services, talk to therapists, lawyers and doctors are especially important for them. The institutions servicing children with special needs should become an alternative to boarding houses.

There are 209 rehabilitation institutions for disabled children in the labor and social protection sector, including: the National Social Rehabilitation Facility for Disabled Children (Mykolaiv); the Crimean Republican Social Rehabilitation Center for Disabled Children (Simferopol); 12 institutions with regional status; 16 institutions with district status; 33 institutions with municipal status

and 146 branches. Those institutions provide rehabilitation services to disabled children aged from 2 to 18 with visual, hearing, central and peripheral nervous system impairments, Down syndrome, cerebral palsy, and light mental retardation.

A rehabilitation course for a disabled child takes six months. On average, 20,000 disabled children take rehabilitation courses at such institutions, and approximately 1,100 children are integrated into the general education institutions. More than 18,000 disabled children went through rehabilitation in those institutions in 2009 and 1,500 were integrated to the general education institutions. Those institutions are funded by the national and local budgets.

The social protection and labor authorities establish custody over the disabled children with defects of physical and mental development through the network of 55 boarding schools. By January 1, 2010, those boarding schools with full state support hosted 6,937 students, including 4,000 children aged 4 to 18, and 2,900 people aged 18 to 35 who lived in the youth sections of the child boarding institutions.

Of the total number of children and young people in the institutions managed by the Ministry of Labor and Social Policy of Ukraine, 2,336 inmates were orphans and children deprived of parental care.

***The Ombudsman is deeply concerned about inadequate conditions for disabled children in the boarding schools, particularly boarding houses of the Ministry of Labor and Social Policy of Ukraine.***

A significant number of children is transferred to those boarding schools from the specialized boarding baby orphanages subordinated to the Ministry of Health of Ukraine hosting orphans and children with defects of physical and mental development deprived of parental care.

The specialized boarding baby orphanages provide daily medical examinations of pediatricians (and other medical specialists if necessary), in-depth medical examinations are provided twice a year, and recommended medical standards envisage staff positions for medical specialists. The situation changes dramatically when the children are sent to the boarding institutions of the Ministry of Labor and Social Policy at the age of 4.

Medical service and medical staff standards in those institutions do not meet vital needs of their patients, especially those with complex functional body damage. Adjustment after transfer from the specialized baby orphanages to the boarding houses is extremely difficult and sometimes lethal for those children.

Experts of the Ombudsman's Secretariat have carried out multiple inspections of the status of children's rights observance in boarding schools of the Transcarpathia, Dnipropetrovsk, Chernivtsi and other regions. They inspected the Chernihivka Orphanage in Zaporizhia Oblast twice. The boarding house is a social medical institution for children with various degrees of mental retardation and complex physical defects. It hosts 143 inmates aged from 4 to

35 with physical and mental development defects who need constant external care, domestic and medical service.

The inspection found defects in medical service and medical assistance provided to the children. For instance, the staff list of the boarding house envisaged 1.5 pediatrician positions, while in fact the doctor only worked half-time. The institutions did not have the specialized medical assistance of physiotherapist, dentist, speech therapist, psychologist, masseur, etc.

As a result of that comprehensive inspection, the government of Zaporizhia Oblast State Administration was instructed to take urgent measures to recruit a full-time pediatrician, resume operation of the physiotherapy unit, hire a masseur, increase the number of paramedical staff, and provide medical examination of children twice a year accounting for their individual situations.

The government is now considering a reform of I–III level child orphanages managed by the Ministry of Labor and Social Policy of Ukraine to be replaced by special correctional educational institutions under the Ministry of Education and Science of Ukraine. Another suggestion is to transfer boarding houses of level IV to the Ministry of Health of Ukraine. However, no specific decisions have been made yet.

The Ombudsman has personally looked into observance of the children's rights in Tsiurupynsk Orphanage Boarding House in Kherson Oblast that treats children with cerebral palsy, the orphanage at the Holy Ascension Monastery in the village of Bancheny, Chernivtsi Oblast, hosting more than 140 children, including disabled children, which is an example of humane treatment of children in general and disabled children in particular. This experience merits support in every way.

**The Ombudsman's monitoring shows that the children with special needs are not yet adequately involved into all aspects of daily life, including education.**

The educational system was supposed to replace the existing model of education and upbringing of disabled people with education at normal schools, but for the time being the disabled children continue their studies in the specialized educational institutions.

The system of general education for disabled children includes specialized general schools (boarding schools), general education sanatorium schools (boarding schools) of levels I–III with respective education system specialization for children who need treatment.

In 2007/2008 academic year 50,300 children who needed correction of their physical or mental development studied in 387 special educational institutions, including 52 schools with extensive afterschool program and 335 boarding schools. The education system has the following general educational institutions: 226 schools for mentally retarded children with 27,700 students, 6 schools for the blind with 800 students, 28 schools for children with vision impairments hosting 4,200 students, 30 schools for the deaf with 2,900 students, 26 schools for children with impaired hearing hosting 3,000 students, 20 schools for chil-

dren with musculoskeletal system disorders with 2,300 students, 16 schools for children with heavy speech impediments for 2,900 students, and 33 schools for children who require intensive pedagogical correction with 4,700 students.

However, only 6,100 of those children studied in specialized classes of general schools. ***The Ombudsman is convinced that Ukraine has not yet established a proper environment for integration of disabled children in the general education system.*** Besides, special methodologies and teaching aids should be developed to improve teaching for students of the boarding schools under the Ministry of Labor and Social Policy of Ukraine.

The Commissioner for Human Rights notes repeated attempts to shut down special needs groups in kindergartens motivated by lack of funding. For instance, the Ombudsman received a letter in June 2009 from *Cherkasy resident M. Drobot* who wrote on behalf of parents of the children with musculoskeletal system disorders at Cherkasy-based *Kazka* Pre-School Institution № 62. She called for protection of the children's rights and reported that *"Following the decision of Cherkasy City Council on streamlining and reduction of public spending, the Department of Education and Humanitarian Policy signed order № 108 dated February 23, 2009 On Regulation of the Network of Kindergarten Groups for Musculoskeletal System Disorders and Speech Impediments. According to this order, 16 kindergarten groups for children with musculoskeletal system disorders should be closed by September 1, 2009. We, parents, trust that you would not let our children lose the opportunity for physical development as the group for musculoskeletal system disorders is their chance for normal development. Other kindergartens that still keep a few of those groups are overloaded."*

***Considering this a brutal violation of the rights of children with special needs, the Ombudsman emphasized*** in her address to the Minister of Education and Science and Cherkasy Mayor that despite the need to streamline and reduce public spending, ***economizing on children, especially sick children, is inadmissible.*** After the Ombudsman's interference the *Kazka* kindergarten was saved from "streamlining" and kept the group for children with musculoskeletal system disorders.

**The Ombudsman believes that special programs and material resources should establish the environment for fulfillment of the constitutional right to education for talented young people with special needs.** This is particularly relevant for their vocational and university education. Given that more than 2% of children are disabled, they constitute only 1% of the total number of students of vocational schools and less than 0.5% of university students.

Most disabled people who are physically able and mentally capable of attending higher educational institutions cannot make their dream come true because ***most facilities do not have such a simple thing as ramps.*** Only a few teachers have been trained to work with children with special needs. Inability to get higher education makes prestigious work unreachable for the disabled people, too. At

the same time disable students are a fact of life in most European educational institutions because disability-friendly environment is a standard there.

That is why the Commissioner pays special attention to make sure that all institutions and public authorities establish appropriate conditions for the disabled people and particularly children, and that the latter feel no obstacles or disadvantages. Barrier-free environment should become the norm of life in Ukraine.

The standard reference to a lack of funds for this purpose is groundless as the costs of office renovation and equipment exceed the costs of threshold-free environment by far. At the moment only a few public institutions and cultural centers are accessible for the disabled people.

Incidentally, the neglected building that the Government has provided to house the Secretariat of the Commissioner for Human Rights is still under renovation, but it was immediately fitted to make sure that the people and children with special needs can visit it. A special heated entrance ramp and special steps were installed, and a ground floor toilet was fitted according to international standards. The offices have no thresholds to provide unrestricted access to any of them.

Every year the children with special physical needs and cerebral palsy come to the Ombudsman's New Year party. Although the room is located on the fourth floor, children have no problem with access and can take the freight elevator. They watch the New Year performances with excitement, participate in the games, recite poems and happily receive their much-needed presents.

**The quality and access to medical care remain a problem for the children with special needs in Ukraine.** The Ombudsman receives numerous letters reporting that the children who need emergency surgeries are given invoices for prepayment, and surgery is only provided after the money has been transferred.

*The Ombudsman's monitoring shows that the children with special needs do not receive adequate social and legal protection in Ukraine.*

*The amount of the state social assistance cannot ensure comprehensive and harmonious development for those children, and the indifferent bureaucratic attitude of public officials to the problems of the disabled children jeopardizes their full integration in the life of society. They cannot access most public buildings, public transport, drugstores, medical clinics, and other social and cultural establishments.*

*The fate of disabled children in specialized boarding houses causes particular concerns, primarily because of inadequate medical care.*

*The Ombudsman believes that despite the country's social and economic difficulties all public authorities should pay more attention to children with special needs. Their material support, medical care, educational services and rehabilitation aids should meet modern international standards.*

### 5.3. Protection of the rights of children of Ukrainian migrant workers

With so many Ukrainians traveling abroad mostly to work, protection of rights and interests of children who find themselves overseas with their parents and become migrants is particularly relevant. This category of our young compatriots is especially vulnerable and therefore it requires special attention of the state. The local authorities should take particular care about the children residing in Ukraine whose one or both parents are gone to work abroad.

The international legal documents of the UN and the Council of Europe on migration and other multilateral and bilateral treaties in this area contain important safeguards for the rights and interests of migrant children staying outside their country of origin or permanent residence with one or both parents. *The Ombudsman constantly emphasizes the importance of our country's accession to the international documents on migration.*

In her Special Report *On the Status of Fulfillment and Protection of the Rights of Ukrainian Nationals Abroad* in April 2003, the Commissioner made a number of proposals to the national authorities and local governments of Ukraine. Those proposals were developed to improve national mechanisms of fulfillment and protection of the rights of our citizens who had emigrated overseas for different reasons, including migrant children.

*Following the Ombudsman's numerous requests, on March 16, 2007 the Verkhovna Rada (Parliament) ratified the 1977 Council of Europe Convention on the Legal Status of Migrant Workers.* Although the Convention's provisions only cover the so-called legal migrants, the signatory states commit to guarantee important rights of the children, namely:

- reunion of families of migrant workers in the country of employment (husband, wife and unmarried underage children) if adequate housing is available;

- recovery of support money on the basis of family relations, fatherhood or motherhood, marriage or relation, including duties to support children born out of wedlock;

- guaranteed right for the general, vocational and continuing education, access to the higher education on common grounds, scholarships to the children of migrant workers; the receiving country's language classes for migrant workers and their family members. The Convention also encourages its signatories to organize linguistic training in their native languages for children of migrant workers to facilitate their return to the countries of origin;

- migrant workers and their family members should get the same social and medical assistance as the citizens of the receiving country, taking into account provisions of the national legislation and international treaties.

Given that many of our migrant workers stay abroad without proper registration, the Ombudsman has been advocating since 2000 Ukraine's signing and ratification of the **1990 International Convention on the Protection of Rights of**

**All Migrant Workers and Members of Their Families** which covers both legal and illegal migrant workers. This Convention provides more adequate protection to the rights of migrant workers as well as their families. Unfortunately, the authorities have failed to hear the arguments of the Ombudsman.

That is why migrant children remain virtually unprotected if they stay illegally in the foreign countries that have not signed this International Convention, including the EU Member States, US, Canada and others. They run the greatest risk of falling victim to crimes such as human trafficking. The ratification of this Convention can give Ukraine the moral right to demand protection for its migrants and their families from those countries.

On June 18, 2008, the European Parliament and the Council of the European Union passed in the first reading the Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals that was criticized a lot both in the European Union and outside it. The directive gives EU member states the right to arrest illegal migrants and their families, **including children**, and keep them in custody for six months. Moreover, this term can be extended **to 18 months (!)**. UN High Commissioner for Human Rights Louise Arbour and Council of Europe Commissioner for Human Rights Thomas Hammarberg qualified those provisions of the directive as a violation of human rights. The final version of the Directive dated October 13, 2008 (Art. 17) mentions that unaccompanied children and families with children should be detained in specialized conditions and for the shortest term possible. Obviously, the approval of the Directive must motivate the Ukrainian embassies abroad to step up protection of our countrymen's rights.

Monitoring of the Commissioner for Human Rights shows that children often become hostages of irresponsible actions of their parents on whom they fully depend. This can happen when parents illegally cross the border in search of a better life and leave the child to live in a foreign country. These violations usually threaten the life and health of juvenile migrants. The story of *Ms. B*, a resident of Donetsk oblast, is quite typical. In 2000, she left for Hungary along with her seven children (without the consent of their father), where she applied for refugee status. They lived in Hungary nearly seven years, and after the final denial of the refugee status and under the threat of deportation, they illegally moved to Italy. Two girls, one of whom at that time has already reached adulthood, refused to go with their mother. One of them stayed in Hungary by herself, while the other left for Austria, which saved both of them from further abuse. In January 2008, the mother with other children headed for the border with Switzerland through the Alps. After several days of traveling they got lost but were rescued by the Swiss border guards and taken to a hospital, where one of the boys miraculously managed to avoid a limb amputation.

The former husband of this woman and the father of her children sent a letter to the Commissioner whom he asked to protect the rights of the children and facilitate their return to Ukraine. He rightly believed that the children's

wandering abroad without a proper legal status prevented them from normal life and development. The Swiss judicial authorities finally decided to deny residence permit for Ms. B and to return the family to Ukraine.

During the *Ombudsman's* working visits abroad, *she examines the state of observance of the rights of Ukrainian migrants and their children* and meets with compatriots living abroad, their associations, as well as with the country officials responsible for migration policy and issues related to the observance of the rights of migrants.

Thus, during a working visit to Portugal in 2007, the Ombudsman of Ukraine held a meeting with High Commissioner for Migration and Intercultural Dialogue Rui Markesh and Director of Jesuit Refugee Assistance Rosario Farmhouse to learn about the status of human rights of our migrant workers and their children. During the meeting with Enrique Rodriguez, the Ombudsman of Portugal, the Ombudsman of Ukraine raised the issue of assistance in providing adequate facilities for Ukrainian schools.

During meetings with the Ukrainian community in Portugal, and the leadership and the students of Ukrainian Saturday school Dyvosvit in Lisbon, citizens' association Ukrainian Union in Portugal, and the parishioners of the Greek Catholic Church they discussed the issue of preserving relations of migrant children with the homeland, their learning of Ukrainian language and cultural heritage.

On the territory of Portugal there are 12 Ukrainian Saturday and Sunday schools. However, their provision with curricula and textbooks is insufficient. There is an urgent need for Ukrainian language dictionaries, spelling dictionaries, and Ukrainian-Portuguese dictionaries. All Ukrainian schools lack teaching aids, charts, diagrams, maps and more. There are absolutely no video or audio materials on historical, scientific, cultural, and other topics. Ukrainian migrants in Portugal have also emphasized the necessity of signing an agreement between the two countries on mutual recognition of secondary education that will enable children of Ukrainian labor migrants to continue their education after moving to Portugal or returning home and enter higher education establishments in Ukraine.

The Commissioner has made the appropriate recommendation to the Prime Minister of Ukraine and hopes to see the issues raised above resolved.

Similar proposals have been made to the Ombudsman by the Ukrainian migrants in Argentina, Brazil, and France.

It should be noted that Ukraine has begun to take steps to solve the problem of education for migrant children. This is evidenced by the adoption by the Cabinet of Ministers of Ukraine of the Decree No. 91-r of 7 March 2007, which established a **comprehensive educational institution *Ukrainian International School for citizens of Ukraine residing abroad***. This institution provides conditions for primary, basic and full secondary education in Ukraine in ac-

cordance with the state standards for the citizens of this country temporarily or permanently residing in other states.

The main objectives of the institution are, in particular: securing the right of citizens to accessible and free full secondary education according to their personal needs, individual abilities, health, aptitude, talents, etc., using distance learning methods, modern information and communication technologies; annual evaluation and final certification for non-resident students. Based on the evaluation results, the students are awarded basic general secondary education certificates, and certificates of complete secondary education. The International Ukrainian School is also coordinating the activities of foreign educational institutions where Ukrainian is taught or is the language of tuition, and provides information, consulting, analysis, and methodological support, methodological and informational assistance to educational institutions that teach the language, traditions, customs and culture of Ukraine.

In 2009, the Institute of Innovative Technology and Education at the Ministry of Education and Science of Ukraine compiled a useful handbook *Ukrainian Education Abroad* which provides information on institutions, schools, departments, and courses where the Ukrainian language and other Ukrainian country subjects are taught. The handbook provides data on 36 countries, and it is available on the Ministry's website.

***However, the Commissioner believes that these measures are not enough.***

As the Ombudsman's monitoring shows, there is a serious problem with the rights of migrant children caused by the lack of agreements on legal assistance in civil and family cases between Ukraine and the host countries where the child or his/her parent(s) live. This makes it difficult or even impossible to levy alimony, as well as ensure protection of rights and interests of the child and parental rights in the court. Among the largest countries – recipients of mass migration from Ukraine, which at present have not signed such an agreement, are the United States, the State of Israel, and Germany.

Here is a typical case. A Ukrainian citizen from *the city of Odessa Ms. E* married a US citizen, but after they divorced the husband took the children away. The claimant was told that the most realistic way to solve the problem of returning the children was to file a petition, personally or through a representative, to a competent court in Massachusetts where the children were staying, with the request to consider her place of residence as the residence for her children, to award her alimony, and so on. A Ukrainian court ruling to that effect would be impossible to implement given the absence of agreements between the two countries on legal assistance in civil and family cases.

***According to the Commissioner for Human Rights, the Ukrainian state should intensify the negotiating process aimed at concluding bilateral agreements on legal assistance in civil and family cases with the countries where migrants from Ukraine and their children live.***

As it is seen from the petitions received by the Ombudsman, some serious and specific problems with the rights of children, including migrant children, occur in mixed marriages. According to the legislation of Ukraine and most other countries, parents have equal rights to raise their children. In the event of disputes concerning children in such families, solutions are particularly complex. The situation becomes even more difficult due to insufficient legal awareness of Ukrainians.

According to article 7, "Acquiring Citizenship of Ukraine by Birth" of the Law of Ukraine *On Citizenship of Ukraine*, a person whose parents or one parent at the time of the child's birth were citizens of Ukraine, becomes a citizen of Ukraine regardless of the birthplace. In case of a foreign birth, the registration is organized by a relevant diplomatic mission or consular office of Ukraine.

Unfortunately, in practice, if a citizen of Ukraine has a child born abroad and the other parent is a citizen of the host country, the birth of the child is rarely registered at the Embassy or Consulate of Ukraine. This deprives the child of the rights of a citizen of Ukraine and the protection of the state. Typically, the issue of acquiring the citizenship of Ukraine only arises if there is a real danger that the child will be taken away by a foreign parent. At the same time, the appropriate government authorities, including courts of the host country, naturally take the side of their citizens in disputes about determining the place of residence of the child.

In the summer of 2008, the Ombudsman was approached by a *married couple P. from Khmelnytskyi Oblast*, whose daughter *K*, a Ukrainian national, lived in a common law marriage with a citizen of Italy. In 2006, she gave birth to a baby boy. The child was not registered at the Consulate Office of Ukraine so the citizenship of Ukraine was not recorded and no information about the child entered his mother's Ukrainian passport for travel abroad. By the law of the Italian Republic, the boy acquired Italian citizenship. Over time the relations between Ms. *K* and the father of the child worsened. He began beating her, and once she even had to call an ambulance; he prevented her from returning to Ukraine with the child, he threatened to kill her and refer the child to an orphanage, and he would not let her go out by herself. *K*'s parents were concerned for the lives and health of their daughter and grandson.

The Commissioner asked the Ministry of Foreign Affairs of Ukraine to take appropriate measures to protect the rights of the citizen of Ukraine and her infant son and help them return to Ukraine. As a result of measures taken by the Consulate General of Ukraine in Naples, the mother was returned home with the child: the birth was registered at the Consulate, albeit late, the information was entered into the mother's passport, and assistance was provided in purchasing tickets.

***The Ombudsman believes that in such situations the national authorities have to do their best to protect the rights and interests of Ukrainians and their children and bring them home.***

The situation was even more complicated in another case. *Dnipropetrovsk-born Ukrainian woman L.* married an Italian man and gave birth to her son in Italy. When the family relationships with her Italian husband failed, she left for Ukraine with the child without obtaining consent from her husband to take the child along. The father turned to an Italian court asking that his residence be established as the place of residence of his son and he be brought back to Italy.

L. was a citizen of Ukraine, and she could not participate in the proceedings either personally or by proxy because of her financial situation and fear of possible prosecution. The court upheld the claim. After that, the Appellate Court of Dnipropetrovsk Oblast supported the claim of the *Italian citizen on recognition and enforcement of Italian court ruling in Ukraine and obliged the mother to return the child to the Italian father.* Moreover, the interests of the father in court were represented by the Ukrainian Ministry of Justice (!).

Upon learning of that situation, the Ombudsman started proceedings on her own initiative and asked the experts of her Secretariat working in Dnepropetrovsk to provide the Ukrainian woman with the necessary legal assistance. A lawyer was hired for her, she was assisted in drafting a cassation appeal, and she also filed a motion to suspend enforcement of the Court of Appeals' decision.

As it turned out, the Ukrainian court had ruled to return the child under the procedure laid down by the *1980 Convention on the Civil Aspects of International Child Abduction* (the Conference of the International Private Law in Hague), ratified by Ukraine on January 11, 2006.

According to the Convention, removal or retention of a child is considered unlawful if it is in breach of the rights of custody belonging to any person, institution, or another authority under the law of the State in which the child was a habitual resident immediately before the removal or relocation at the time when those rights were actually exercised or would have been exercised, but for removal or retention.

The central authority of the State where the child stays (**the Ministry of Justice in Ukraine**) shall take or ensure all appropriate measures to return the child, including “*initiate judicial or administrative procedures or support such procedures to achieve the return of the child.*”

The judicial and administrative authorities of the Contracting States shall without delay carry out all the procedures for the return of children. However, in some cases defined in the Convention, the judicial or administrative agency of the State is not obliged to order the return of the child.

The Supreme Court of Ukraine dismissed the cassation appeal of L. Therefore, the child was subject to a forced return to Italy. While not agreeing with the court rulings, the woman decided to abscond with the child.

At the end of 2008, the Commissioner for Human Rights received a complaint from *a woman living in Zaporizhia Oblast, Ms. N*, who had once married

a German man and moved to that country with her little daughter, born in Ukraine. Over time, due to the applicant's health condition and a complex family situation, the girl was taken away from her mother and placed in a special child care facility in Germany. N. returned to Ukraine after a divorce without her child and began to solicit her daughter's return to Ukraine. On the Ombudsman's request, the Consular Department of the MFA of Ukraine took the proper measures, including petitioning the German court to return the child home. The girl returned to Ukraine on March 5, 2009, with the assistance of the Embassy of Ukraine in Germany.

*The situation is especially difficult with the rights of migrant children from mixed marriages between citizens of Ukraine and people from Arab countries, as Sharia law suggests that a child reaching the age of three can be taken from his/her mother and turned over to the father to raise.* In some cases it is a tragedy for the Ukrainian mothers who can not participate in the raising of their children, and even see them. The grandparents who live in Ukraine suffer, too.

Mr. M. from Kharkiv asked the Commissioner to help return his daughter and her children from Lebanon to Ukraine. After his daughter's Lebanese husband died she could not leave for Ukraine with her children as, according to Lebanese law, in case of the father's death the custody of underage children shall be entrusted to the closest male relative, who in this case was the father of the deceased, i.e. the lady's father-in-law. The children may leave the country only with a written permission of the guardian, but in that case he did not want to give it. As a result, the women had to stay in the family of her deceased husband till the time her children would reach adulthood when they have the right to leave the country should they wish to.

The petitions to the Ombudsman constantly raise **the problem of a parent taking the children abroad without consent of the other parent**, which makes it impossible for the parent staying in Ukraine to communicate with the child and participate in his/her upbringing. Therefore, the rights of the children to communication with both parents are violated.

Until recently, the legislation of Ukraine allowed one of the parents (not necessarily the one who the children live with) take them abroad without the consent of the other parent, provided that person had a foreign travel passport featuring the children's records.

Starting January 1, 2004 the new Civil Code of Ukraine came into effect, where Part 3, Article 313 stipulates that "*a person under the age of sixteen has the right to travel outside of Ukraine **only with the consent of the parents (adoptive parents), guardians, and their escort or accompanied by the persons authorized by them***". Thus, if a child goes across the state border **with one of the parents**, the consent of the other parent is required.

This norm has become a guarantee for ensuring the interests of the child and parental rights. But at the same time the Ombudsman began to receive a number of the other categories of addresses due to the above stated norm.

The children who have lost contact with one of the parents now experience the problem with receiving parental notarized consent when traveling abroad. To obtain permission to leave, the children are forced to go to the court.

However, the precautionary mechanism of the mentioned above provision of Article 313 of the Code does not work in effect when children who are foreign nationals, cross the Ukrainian border with one parent who is a foreign citizen carrying a passport with information about the children traveling with him/her, or child travel document issued by a foreign state.

Thus, in case of *Ms. M. from Kherson*, her husband being a national of Palestine, moved their two young daughters who were citizens of Ukraine to Palestine without the consent of their mother, having provided them with relevant Palestinian travel documents. As a result, the mother has not seen her daughters for several years. The measures taken by the MFA of Ukraine and its diplomatic missions and consular offices to return the children to their mother have not yet produced any results.

Similar violations in each single case may be prevented by a court decision identifying the child's residence as the place of residence of his/her father or the mother who are the citizens of Ukraine. However, this mechanism is rather long, and each situation usually requires quick decisions. Thus, in any case the Administration of State Border Guards of Ukraine should be timely informed about the danger of taking a child who is a citizen of Ukraine outside the country without permission of the father or the mother who are the citizens of Ukraine. That would be the reason for the State Border Guards of Ukraine to take measures to prohibit the child from leaving Ukraine using foreign travel documents.

Considering the above, the *Ombudsman considers it necessary to introduce amendments to the regulations that would make it impossible for such cases to occur, which actually would enforce the requirements of Article 313 of the Code in cases when Ukrainian children leave the country accompanied by one of the parents who is a foreigner.*

Unfortunately, **Ukrainian migrant children sometimes find themselves in combat areas**, facing a threat to their lives and health. It was the case *in late 2008 – early 2009 in Palestine (the Gaza Strip)*. The punitive action by the Israeli troops led to mass deaths of civilians - 500 were killed and 2,200 injured, which showed disregard by the armed forces of Israel of the principles of international humanitarian law. The parties to the conflict brutally violated the basic norms of international law, especially the Fourth Geneva Convention for the Protection of Civilian Persons in Times of War.

The Commissioner for Human Rights was deeply concerned about the events in Gaza where hundreds of citizens of Ukraine reside along with the Palestinians. Most of the mentioned above Ukrainian citizens are children. At that time, *the people living on both sides of the conflict area found themselves under threat, including 875 adopted Ukrainian children who were registered with the*

*Embassy of Ukraine in Israel.* Unfortunately, some casualties occurred during shelling in the Gaza Strip where a citizen of Ukraine and her eighteen-month-old child were killed, and two other children were wounded.

In response to these events, the Commissioner addressed the Minister of Ukraine for Family, Youth and Sports and the Ministry of Foreign Affairs of Ukraine expressing the need for emergency evacuation of the citizens of Ukraine from the combat zone in Gaza. More than two hundred citizens of Ukraine were evacuated, and most of them were children.

**The Ombudsman of Ukraine is convinced that the fight against terrorism should not lead to violation of the basic human right – the right to life, especially when it concerns children.**

Unfortunately, the problem of mass migration of Ukrainian citizens abroad is closely related to an equally serious **problem**, i.e. **child abandonment and neglect of children whose parents left to other countries to work.**

According to the results of the Ombudsman's regular monitoring, the problems faced by children of migrant workers are complex. However, the dominant psychological factors that children face are: missing their parents, inability to contact them for advice, hypochondria, lack of parental affection, etc. The children who have been left with their grandparents experience a negative change in behavior: they miss classes without a valid reason, their performance is reduced, they show aggressive and unpredictable behavior, use alcohol, drugs, and smoke. Children often run from home and end up in emergency shelters.

*Labor migrant from Uzhgorod Kateryna Sh.* went to work to Italy to support her two children. In Italy she worked illegally nursing the elderly. The woman had not seen her children for four years and the children were left with her old mother. Kateryna missed them greatly. When they finally met, she did not recognize them – the children had become older and ...strangers. It was difficult to even find something to chat about with her beloved children.

*Neglect of children of migrant workers can often even lead to tragic losses.* Thus, in Vynohradov, *14 year old boy Olexander* committed suicide by hanging. The circumstances were investigated by Vynohradov District Prosecutor's Office. The boy's mother had died and his father had married again. At the time of his son's death the man had been working abroad for four years. The boy's stepmother stayed with her husband. She would come home several times a year, and the rest of the time Olexander was looked after by his grandma. The boy was deprived of parental support, understanding, and family warmth. The parents who toiled abroad for years had no time for Olexander, and the boy saw and understood it.

Unfortunately, for a long time there have been serious obstacles to our migrant workers' remittances to Ukraine. Due to measures taken by the Cabinet of Ministers of Ukraine after publication of the Special Report of the Commissioner for Human Rights on the "*Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad*", this important and urgent problem was

finally addressed. The companies lowered the fees for transfers to Ukraine of the money earned by Ukrainians abroad. These funds were intended to provide a decent standard of living for families of migrant workers, especially children. The Western Union Company was forced to accept the recommendations of the Antimonopoly Committee, and since April 1, 2005, they reduced tariffs on money transfers to Ukraine. Other Ukrainian and foreign banks began to offer cheaper services as well.

*According to the Ombudsman, the legal status of child abandonment and effective mechanisms to protect the rights and interests of the children of labor migrants deprived of parental care should be defined as soon as possible. Putting off a response to this new challenge to children's rights is unacceptable.*

#### **5.4. Respecting the rights of refugee children and children seeking asylum**

In recent years Ukraine has increasingly become a transit country and destination for refugees and asylum seekers. Foreign underage and stateless persons enter Ukraine in search of international protection. They usually travel from the country of origin to Ukraine accompanied by their parents or other close relatives. In some cases, unaccompanied children seeking asylum find themselves in our country for various reasons.

Ukraine is party to several international treaties which provide important standards and ensure protection of the rights of refugee children and asylum seekers. Thus, the *Convention on the Rights of Children* (Article 22) declares the obligation of participating states to take necessary measures to ensure appropriate protection and humanitarian aid for refugee children and asylum seekers, including unaccompanied children, and take efforts to protect these children and provide them with help in finding parents or other family members in order to obtain information necessary for their reunification with their families. In cases when no parents or other family members can be found, these children shall be accorded the same protection as any other children permanently or temporarily deprived of family environment.

By ratifying *the Convention on the Status of Refugees of 1951* and the *Protocol on the Status of Refugees of 1967*, Ukraine undertook to secure the rights and freedoms of this category of children within the scope established by the Convention and the Protocol. One of the most important safeguards provided by Article 33 of the Convention is the prohibition of expulsion or forced return of refugees and asylum seekers to the country where their life or freedom can be threatened because of their race, religion, nationality, membership in a particular social group, or political beliefs. **This provision applies to both adults and underage refugees and asylum seekers.**

The requirements of international agreements on the rights of refugees in general are set in the national legislation, particularly in the Law of Ukraine *On Refugees*.

According to the law, the country shall promote unity of refugee families and allow the family members of the persons who have been granted refugee status in Ukraine, particularly children under the age of 18, to enter Ukraine and acquire refugee status to reunite with the family.

Article 19 of the law contains a provision stating that individuals who have been granted refugee status in Ukraine shall enjoy the same rights and freedoms and also bear the same responsibilities as the citizens of Ukraine. This means that refugee children have the right to health care, medical care and medical insurance, education, financial aid, pensions and other social security, use of accommodation provided at the place of residence, legal assistance, and so on.

*At the same time, the Ombudsman's monitoring indicates some serious problems with the rights of the refugee children and asylum seekers, especially in view of the incomplete process of harmonizing the legislation of Ukraine with the Convention on the Status of Refugees, the Protocol on the Status of Refugees of 1967, and the Law of Ukraine "On Refugees". This is particularly true about laws and by-laws in the sectors of health, education, social security, guardianship, and law enforcement practice. The actual implementation of provisions of these documents should be supported with adequate state funding for the needs of the above mentioned category of persons.*

According to the State Committee of Ukraine on Nationalities and Religions, **among 2,317 foreigners and stateless persons who had refugee status in Ukraine as of late 2009, 532, or nearly a quarter of the total number, were children under 16** who resided in Ukraine with their relatives and family members. Most refugee children were raised in the families of immigrants from Afghanistan, Azerbaijan, Armenia, and the Russian Federation (Chechen Republic).

In the recent five years there has been an increase in the number of applications to the regional migration service authorities from underage asylum seekers and children of refugee families and asylum seekers. During 2003-2009 the total number of applications was 480, with 28 in 2004, 63 in 2005, 180 in 2007, and 134 in 2009. However, only 36 applications were filed during eleven months of 2010.

*According to the Commissioner for Human Rights, refugee children who have appropriate status under the laws of Ukraine and children seeking asylum require special attention and protection of the Ukrainian state since they and their families were victims of persecution in their country of origin; besides, they were forced to suffer the hardships of the fleeing their country, and they lack their usual environment.*

Upon arrival in Ukraine, they face new problems associated with refugee status and integration into the Ukrainian society (mastering a new language, communication, education, the need to address socio-economic and psychological problems, etc.). However, under proper conditions, the children are

capable to adapt to the new environment and become full members of the society more quickly than adults.

The Commissioner believes that it is extremely important to ensure efficient and stable performance of the special central executive agency for migration that can, inter alia, award refugee status in Ukraine. However, during a year between August 2009 and August 2010 the status was not awarded to anyone, including children. The Ombudsman considers this a violation of rights of the asylum seekers and the failure of the government to meet its commitments under the Convention on the Status of Refugees of 1951 and the Protocol on Status of Refugees of 1967.

The Commissioner has consistently advocated the establishment in Ukraine of a powerful National Migration Service as a civil executive agency with a special status to be defined in a law on Ukraine's migration policy. Such a responsible step would promote proper enforcement of the rights of migrants, including children of refugees and asylum seekers. **The Ministry of Interior of Ukraine as the law enforcement authority can not effectively combine the functions of awarding refugee status, enforcing and protecting the rights of refugees and asylum seekers on the one hand, and fighting against illegal immigration on the other.** On the positive side, the State Migration Service of Ukraine has been set up as a central executive agency. Its work is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs. *However, the Ombudsman hopes that as the Law of Ukraine On National Migration Policy is developed, the State Migration Service will receive a special civil status.*

The regional representative office of UNHCR in Ukraine and its partners, other international and non-governmental organizations express concern about the long stay of illegal migrants, including underage asylum seekers, in temporary detention facilities for foreigners and stateless persons who are illegally staying in Ukraine. The above facilities are subordinate to the Ministry of Internal Affairs of Ukraine. By law, the detention of illegal aliens in the said facilities shall not exceed six months, in exceptional cases this period can be extended. The children who are foreign nationals and separated from their families, are not subject to placement in the temporary detention facilities, except children aged 10 and older who have close relatives. This procedure is organized only with their consent, otherwise they are sent to the temporary emergency shelters for children.

However, according to the UNHCR regional representative office in Ukraine, there have been cases when unaccompanied underage asylum seekers were put in temporary detention when there were doubts about the child's age and no identification documents were available. Moreover, international organizations raised concerns about extended detention of children seeking asylum in a hostel for women and children in Mukachevo (restricted access institution), which could sometimes last for months.

In May 2009, a UNHCR partner NGO that provides legal assistance to migrants held in the temporary detention facility for foreigners and stateless persons illegally staying in Ukraine (the village of Rozsudiv, Chernihiv Oblast), was addressed by a national of Afghanistan, born in 1993. He had been detained by law enforcement officers in the town of Vyshgorod, Kiev Oblast, for illegal stay, and the court decided to refer him to the above facility pending a decision on expulsion. The boy claimed he had told the officers the year of his birth, but he had not been present during the trial and could not explain this information to the court. As it turned out, the ruling indicated a different year of birth – 1990, so the case was processed as one of an adult person. While in the detention facility, the national of Afghanistan submitted an application for refugee status in Ukraine to the Department of Migration Service of Chernihiv Oblast. *The case files were also supplemented with a birth certificate confirming his age (16 years old).*

However, the attempts to release this underage person before the maximum 6-month period failed. This happened only in October 2009.

Regarding the latter, UNHCR regional representative office in Ukraine has drawn attention to the fact that the agencies organizing detention of foreigners or stateless persons who illegally stay in Ukraine, and the courts that hear cases of forced expulsion, should provide quality translation of these cases and enforce personal presence of the individual during trial.

The Commissioner for Human Rights pays special attention to the rights of foreigners and stateless persons kept in detention centers. During her working visits to Transcarpathia, the Ombudsman saw the conditions of detention of foreigners and stateless persons in the place of temporary detention *Pavshyne* (now closed down). The Commissioner, together with her colleagues, Civil Rights Commissioners of Poland, regularly attends temporary detention centers and specially equipped facilities subordinate to the Administration of the State Border Guards of Ukraine, and talks to the detainees during her inspections of the status of observance of human rights and freedoms at the Ukrainian-Polish border.

Constant monitoring of the rights of migrants, including asylum seekers, is organized by the representatives of the Commissioner in Transcarpathia Oblast. On November 18, 2009 on behalf of the Ombudsman, they visited the temporary accommodation center for refugees *in Perechin* where at that time there were nine children with their parents. The conditions were noted as appropriate, and the residents did not have complaints. The staff of the Commissioner's Secretariat has repeatedly studied the situation in the Temporary Accommodation Center for refugees in Odessa Oblast.

On October 26-27, 2009 representatives of the Ombudsman participated in a monitoring visit to Transcarpathia Oblast jointly with the Ministry of Interior, Security Service, State Border Guards of Ukraine, migration service officers, UNHCR regional representative office in Ukraine, the representative

office of the European Commission and IOM in Ukraine, the embassies of Germany, Norway, Denmark, and Sweden, the Danish Council for Refugees, the International Federation of Red Cross, representatives of charities Caritas-Ukraine and NEEKA, and other NGOs. The participants visited a dormitory for women and children *in Mukachevo* and a temporary detention facility in *Chop*, subordinate to the State Border Guards of Ukraine.

The inspection showed certain problems with the detention conditions at the dormitory for women and children: the children's playground was unavailable and the dormitory was not accessible for disabled people. There was no adequate state support for the needs of migrants and no access to qualified interpreters: this function was carried out by the migrants themselves who can speak some Ukrainian, Russian or English, or through the help of non-governmental organizations. Dormitory inhabitants received help from charities that provided adequate legal and social support: maintenance, food parcels, household cleaners, personal care products, phone cards to make calls, toys and games, sports equipment and more. The Oblast Administration had not been able for a long time to allocate other facilities for this category of migrants.

The Ombudsman stresses that detained children who are seeking asylum should be immediately placed in the facilities where they will be provided with adequate nutrition, medical and psychological care, access to education and a qualified interpreter. Putting children to detention centers that are not adapted to the children's special needs should be exceptional, and the period of such detention should be shortened as much as possible.

On November 19, 2009 the Commissioner for Human Rights received a note from Simone Wolken, the UNHCR Regional Representative in Ukraine, who expressed concern about the fate of *eight Afghan citizens among whom there were two women, one of them quite old, a 19 year-old boy, and 5 children aged 3 to 15* detained on November 16, 2010 in the transit zone of Boryspil Airport. The family was traveling from the United Arab Emirates to London via Ukraine. The family had fake entry visas to the UK for which reason they were stopped.

On November 18, UNHCR regional representative office in Ukraine was informed of this situation by phone, and they were also informed that the family members could not return to Afghanistan because of a threat to their life. They intended to apply for asylum in Ukraine.

In that situation, representatives of the Ombudsman immediately arrived at Boryspil Airport together with the staff of the UNHCR office, where they met with the Afghan family. It should be noted that despite the request of the Ombudsman and the international organizations the **procedures for taking the Afghans back home were not suspended**, and they remained in Ukraine only because the aircraft commander refused to take them back to the UAE. The border guards stated that the citizens of Afghanistan were in the international transit area at the moment of detention, i.e. they had not crossed the Ukrain-

ian border and had not entered the territory of Ukraine, therefore they could not be covered by Ukrainian legislation on refugees. It was also emphasized that the stay of the asylum seekers in the transit area could not be regarded as detainment.

It should be noted that *the European Court of Human Rights had ruled in the case of Amyuur v. France (1996)* that the transit (international) areas at the airports do not have international status and people who stay there are subject to the legislation of the country in which territory the airport is located and its law. The Court noted that the legitimate right of the countries to combat illegal immigration must not deprive asylum seekers of protection guaranteed by the Convention on the Status of Refugees of 1951. The Court recognized that detainment of the plaintiffs (four citizens of Somalia) from 9 to 26 March, 1992 in the transit area of the airport in Paris in practice was equivalent to imprisonment.

During the meeting, the Afghans said that they had spent three days in the transit area with no proper conditions for long stays: there were no beds and no conditions for personal hygiene. All that time they had no food, which is totally unacceptable, especially for children. The foreigners claimed that their oral statements explaining that they were refugees and could not return to their home country had been ignored by the border guards who did not inform the migration authorities of the family's intention to submit appropriate applications for refugee status in Ukraine.

At the time of the meeting, the representatives of the Commissioner and the family of the asylum seekers were aware of the decision by the European Court of Human Rights that ruled to apply Rule 39 of the Court Regulations (interim measures) and prohibit Ukraine to return the family to the UAE before November 26, 2009 .

It should be noted that the migration service never gave the Afghan family the papers confirming the submission of an applications for refugee status in Ukraine which would have confirmed the legality of their stay in Ukraine. As a result, the family could not leave the airport. On November 27, 2009 the migration service decided not to process documents on granting the refugee status to the Afghans, and the border guards sent them back to the UAE on November 28, 2009.

According to the State Committee of Ukraine on Nationalities and Religion, when the decision not to process the documents on granting refugee status was announced, the foreigners did not inform the representatives of the migration agency that they wished to appeal this decision (it is unknown whether they were explained that the appeal was possible). The UNHCR regional representative office in Ukraine stressed that the border guards violated the requirements of paragraph 4, Article 3 of the *Agreement between Ukraine and the UN High Commissioner for Refugees of 1996*, under which the government has committed to provide free access for UNHCR staff to refugees and other persons in the

competence of UNHCR, and access to the places where UNHCR projects were carried out, to monitor all the stages of their implementation.

*The Ombudsman believes that such actions of the Ukrainian border guards are unacceptable and violate Ukraine's commitments made under the international agreements, including the Convention on the Rights of the Children of 1989, the Convention on the Status of Refugees of 1951, the Protocol on Refugees of 1967, the Convention on Human Rights and Fundamental Freedoms of 1950.*

Among the problems related to the rights of children seeking asylum, the UNHCR regional representative office in Ukraine also notes the difficulty in registering birth of the children of asylum seekers born in Ukraine. According to Article 7 of the Convention on the Rights of the Child, the child must be registered immediately after birth. According to the legislation of Ukraine, registration of the birth of an asylum seeker's child is possible upon presentation of respective certificates confirming the seeker's participation in the procedure for granting refugee status. In practice, there have been numerous instances where asylum seekers could not get the child's birth certificate because the migration authorities either refused to issue such documents or delayed them.

According to the UNHCR regional representative office in Ukraine, a family of asylum seekers from Uzbekistan wanted to register the birth of their child in the Registrar's Office of Sviatoshynskiy District of Kyiv in 2008. The father of the newborn baby had a valid certificate confirming that his application for refugee status was pending, while the mother did not have such a certificate because the migration service was delaying its issuance. The Registrar's Office requested that a notarized translation of the woman's national passport be submitted. Since the validity of the passport at that time had expired, the notary refused to notarize the translation, whereupon the Registrar's Office refused to register the child's birth and issue the birth certificate. The certificate was issued only after the asylum seekers filed an appeal and an Appellate Court upheld it.

It should also be noted that the refugee children have problems with higher education as in view of their status they are treated by the educational establishments as foreign nationals or stateless persons who are staying in Ukraine on legal grounds and therefore have to fully pay for their education. Few refugee families can afford it. In this case there is a conflict between Article 20 of the Law of Ukraine *On Refugees*, and Part 1, Article 14 of the Law of Ukraine *On Legal Status of Foreigners and Stateless Persons*, which clearly affirms equal rights of the citizens of Ukraine and refugees in the area of education at all the levels, and Part 2, Article 4 of Law of Ukraine *On Education*, under which all foreigners and stateless persons who are staying in Ukraine on legal grounds are not eligible to receive university-level tuition at the cost of the State Budget of Ukraine and local budgets. *According to the Ombudsman, this conflict should be resolved as soon as possible for the sake of the refugees, for example, by introducing appropriate amendments to the Law of Ukraine On Education.*

Some refugee children and asylum seekers, mostly boys, are not able to attend secondary schools as they have to earn money along with the adults to support the families. This situation arises from the general problem of poverty of the families with children in Ukraine, and it prevents refugee children from normal integration in Ukrainian society. ***The Commissioner is certain that the guardianship agencies have to respond to such situations to ensue the right of underage refugees to education.***

According to the Law of Ukraine *On Refugees*, the Ministry of Health of Ukraine and its territorial divisions should react to requests by the migration services by providing compulsory medical examination and, if necessary, treatment of the persons, including children, for whom a decision has been made to process their documents to receive refugee status and the persons who have received that status. In reality, this provision is properly implemented and underage refugees and asylum seekers who need medical care usually get it.

**We should indicate here a particularly vulnerable group** among the asylum seekers, namely **the unaccompanied underage children seeking asylum**. The arrival of these children to Ukraine is quite a new phenomenon, and therefore the state should take appropriate measures to ensure proper care of this category of the minors.

There are practical difficulties in determining the number of unaccompanied children in Ukraine. According to the State Committee on Nationalities and Religions, there were 72 unaccompanied children in Ukraine in 2009. However, the Representative office of the United Nations High Commissioner for Refugees has cited a different number: 160 children separated from their families, many of whom were 10 to 17 years old. The Ombudsman considers that the number of unaccompanied children in Ukraine may in fact be higher than the official statistics show for the reasons mentioned below. And the number of such children keeps growing.

According to Article 1 of the Law of Ukraine *On Refugees* “a child separated from the family” (unaccompanied child) is a person under 18 who arrives or has arrived in the territory of Ukraine without both of his/her parents or without one of them and accompanied by a grandfather or grandmother, adult brother or sister, guardian or custodian appointed pursuant to the laws of the refugee’s country of origin or any other adult who, before coming to Ukraine, voluntarily or by the custom of the country of origin, had claimed responsibility for the upbringing of the child.

By the law of this country, information about the children under 18 shall be put in the application form for refugee status in Ukraine by one of the legitimate representatives of the underage child. ***The application for granting refugee status to a child separated from his/her family shall be submitted by one of his/her legal representatives.*** Thus the legitimate representatives of a child separated from the family are the custody authorities, foster parents, guardians or custodians appointed under the legislation of Ukraine, and a representative

of the orphanage or boarding school or any other child care facility where the child is educated.

In other words, an unaccompanied child seeking asylum and intending to obtain refugee status in Ukraine can not personally submit an application to the migration service authorities. Only after the appointment of the child's legal representative under the laws of Ukraine, the representative may apply for refugee status in line with the child's interests. As the experience of the State Committee on Nationalities and Religions and UNHCR regional representative office in Ukraine shows, the *procedure for appointment of a legal representative for such children is very complicated*, particularly because there is no sufficient coordination between the government agencies which are responsible for supporting unaccompanied underage asylum seekers. Most importantly, there are no clear instructions for the Ministry of Family, Youth and Sports which is the leading department in charge of several aspects regarding this category of children, which makes it impossible to quickly and effectively help them, especially in terms of children's identification. The national legislation on guardianship does not regulate the appointment of guardians and/or custodians for unaccompanied underage children seeking asylum.

According to the Commissioner, the number of asylum seekers, including children, can increase in view of the provisions that oblige Ukraine to take back all foreigners, i.e., third country nationals and stateless persons who have illegally entered the EU from the territory of Ukraine.

The Commissioner fully supports the recommendations made by the State Committee on development of a long-term national program to support the rights of the unaccompanied underage children seeking asylum, and inclusion of those children to the State Program of Combating Child Neglect.

On July 22, 2009, the Cabinet of Ministers of Ukraine issued Resolution No. 853-r adopting the *Action Plan for Integration of Persons With Refugee Status into Ukrainian Society (2009-2012)*. This is the first comprehensive document in Ukraine representing serious government intentions vis-a-vis refugees who should become full-fledged members of the Ukrainian society. The plan suggests a number of measures to ensure the rights of the refugee children, including specific tasks for government ministries and departments to develop guidance on teaching the children in secondary schools, recommendations on how to help children separated from their families as well as women and other vulnerable groups of refugees, establish a regional center for children separated from their families at the Temporary Accommodation Facility for Refugees in Transcarpathia Oblast, organize additional training for the children enrolled in secondary schools to prepare the graduates for university admission exams, etc.. *The Ombudsman welcomes the adoption of this document and hopes that the state shall provide adequate funding and support for the envisaged activities.*

International organizations and national NGOs that provide substantial aid to migrants take vigorous efforts to enforce the rights of refugee children

and asylum seekers in Ukraine. With assistance of the European Union, the Danish Council for Refugees in Ukraine is implementing a project called *Legal and Social Protection of Refugee Children and Children who Seek Asylum in Ukraine*. The project participants are the State Committee on Nationalities and Religion and Ukrainian NGOs HIAS, Rokada, Vinnytsya Human Rights Group, NEEKA, and Vira, Nadiya, Liubov (*Faith, Hope and Love*). The project provided the refugee children and asylum seekers with over 600 consultation sessions on social and psychological assistance issues in 2009. Thirty three families with children received expert legal assistance to clarify national legislation on refugees and migration and assistance in preparation of applications to obtain refugee status in Ukraine, lawsuits and so on.

In Kyiv, UNHCR is working to find solutions for every refugee child or asylum seeker within the framework of the Committee on Children's Best Interests. In 2010, the Ombudsman's office joined the process.

For several years, the State Committee on Nationalities and Religion had a Public Council on Enforcement of Refugee Legislation in Ukraine which included a representative of the Commissioner. The Council discussed legislative problems and law enforcement practices, provided expert assessment of legislation and draft laws, made recommendations for improvement of the situation, and organized joint events and activities. ***This form of cooperation between various government agencies and the public to protect refugee children and asylum seekers proved very effective, and it should continue.***

## CONCLUSIONS AND RECOMMENDATIONS

The Commissioner's comprehensive study of children's rights in Ukraine allows her to make the following conclusions. After Ukraine ratified the UN Convention on the Rights of the Child in 1991 and joined its two Optional Protocols and other Conventions on child protection, the country started developing legislation on child protection in accordance with the International and European standards.

Progress has been made concerning protection of rights and legal interests of orphans and children deprived of parental care; family education methodology has developed, as well as social protection of children who find themselves in difficult circumstances; finally the Parliament adopted the *Law On the State Program "National Action Plan for Implementation of the UN Convention on the Rights of the Child" for the period until 2016*.

However, despite the adoption of laws and regulations designed to ensure respect and protection of children's rights, the country has not yet formed an integral national system to ensure the rights of every child, nor has it created proper conditions for children's harmonious and comprehensive development.

Ukraine needs a better coordination system for the activities of the extensive network of service providers and agencies that the legislators have set up to protect the rights of Ukrainian children.

The Commissioner for Human Rights believes that the government should primarily take efforts to overcome poverty of the families with children, particularly the inherited poverty that has become more dramatic in the time of the financial and economic crisis. The government must improve health care, provide access to quality health services for every child, overcome child neglect and homelessness, put efforts to prevent child abandonment, and combat the worst forms of child labor, trafficking, child involvement in sex industry, and so on.

In view of the above, the Commissioner suggests the the following steps:

## **The Verkhovna Rada (Parliament) of Ukraine shall**

- *Develop a Code of Laws of Ukraine on children's rights, ensuring the principle of equality and non-discrimination, legal and social protection of children, and conditions for a comprehensive development of the young generation;*
- *Ratify the Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse of 2007 and implement its provisions in the national legislation;*
- *Amend the Criminal Code of Ukraine to introduce criminal liability for use of children's images in erotic products, use and possession of pornography featuring images of children, and increase responsibility for the crimes of sexual exploitation and abuse of children;*
- *Amend the Criminal Code of Ukraine to provide increased criminal liability for illegal transplantation of organs and tissues;*
- *Amend Article 211 of the Family Code of Ukraine to eliminate the restriction on maximum age difference between the adopting person and the adopted child;*
- *Amend the Laws of Ukraine On Education, On Compulsory Education, and On Pre-school Education to end the practice of closing schools and leasing them out for purposes other than education;*
- *During adoption of the new Housing Code of Ukraine provide a possibility to receive priority housing for children deprived of parental care or such children returning from custodians or orphanages who can not live with their parents deprived of parental rights;*
- *Amend the labor laws to bring them in compliance with ILO Convention No. 138 On Minimum Employment Age;*
- *Amend the laws of Ukraine On Farms and On Private Farms to cover under-age children working at the farms with provisions of the Labor Code of Ukraine;*
- *Provide funding for child protection programs in the national budget of Ukraine for 2011 and subsequent budgets;*
- *Amend the existing legislation to guarantee adequate standards of living for families with children;*
- *Amend the law On Charity and Charitable Organizations to support charitable assistance to children;*

## **The Cabinet of Ministers of Ukraine shall**

- *Take measures to prevent the weakening of mechanisms to protect the rights of children, particularly orphans, children deprived of parental care, and children with special needs in the course of the Administrative Reform;*
- *Submit to the Verkhovna Rada (Parliament) of Ukraine the draft National Program of Overcoming and Preventing Poverty;*
- *Promote elimination of discrimination against vulnerable groups of children, particularly orphans and children deprived of parental care, children with disabilities, refugee children and asylum seekers;*

- *Take steps to determine the minimum living standard with account of inflation and a revised list of essential food products, commodities and services which would take into consideration the children's current essential needs;*
- *Increase state aid for each child to a level not lower than the subsistence minimum;*
- *Promote development and implementation of special regional programs to support large and poor families;*
- *Develop a national program to provide orphans and children deprived of parental care with housing, and earmark funds in the State Budget of Ukraine for its implementation;*
- *Expedite the submission to the Verkhovna Rada (Parliament) of Ukraine of the draft law On Ratification of the 2007 Convention for the Protection of Children from Sexual Exploitation and Sexual Abuse;*
- *Speed up conclusion of bilateral agreements with the countries whose nationals adopt Ukrainian children;*
- *Improve legislation on protection of refugee children, including appointment of their legal representatives and the procedure of identifying the age of unaccompanied underage asylum seekers;*
- *Initiate a moratorium on closing down sports facilities, stadiums, playgrounds, and recreation areas for children;*
- *Improve the procedures for selection of women to be awarded Hero Mother honorary title, establish the period when decisions to that effect should be made at every level, and develop a simplified procedure to confer the title to those mothers who were awarded the Order of Hero Mother before Ukrainian independence;*

### **The Ministry of Education, Youth, and Sports shall**

- *Ensure proper coordination of all the agencies and services that are to enforce the rights of children;*
- *Create mechanisms for child participation in decision-making on children's rights at national and local levels;*
- *Provide government support for involvement of children in different forms of student self-government;*
- *Promote a network of children and youth NGOs;*
- *Run regular information campaigns for the public about the rights of children, parents, guardians, custodians, the rights and eligibility of the families with children to legally established types of government assistance, guarantees and benefits;*
- *Develop a program of activities to tackle child abandonment;*
- *Develop a database on all orphans and children deprived of parental care, and take into account the interests of children in the course of the boarding school reform;*
- *Continue implementation of government policy on priority adoption of Ukrainian children by Ukrainian nationals;*

- *Research international practice of concluding bilateral treaties on adoption;*
- *Step up the introduction of free public hot line service for children;*
- *Develop a national program for rehabilitation and construction of sports facilities, stadiums, and playgrounds to revitalize mass sports for children and youth;*
- *Develop a system to prevent and protect children from abuse, sexual and economic exploitation;*
- *Develop a system of specialized government institutions that provide assistance to children who fall victims to crime;*
- *Develop and submit to the Cabinet of Ministers of Ukraine draft amendments to the legislation on education to prevent shutting down kindergartens and secondary schools;*
- *Take steps to implement the right to education for children whose parents have rejected mandatory vaccination;*
- *Promote recovery of closed kindergartens and complete their long-term renovation;*
- *Improve the system of external evaluation of secondary school graduates with maximum enforcement of all the rights of children, including ethnic minorities;*
- *Ensure equal access to quality education for all children, including children with special needs and national minorities;*
- *Develop and submit to the Cabinet of Ministers of Ukraine a draft national program to reform the current system of vocational education and training of specialists;*
- *Promote a broad network of out-of-school education facilities accessible for every child, and provide salaries, benefits and guarantees to out-of-school educational workers at the secondary school level;*
- *Make proposals to the Cabinet of Ministers of Ukraine to improve class masters pay policies so that employees of the educational institutions can properly accomplish their functions;*
- *Introduce training programs on human rights, and children's rights in particular;*

### **The Ministry of Social Policy of Ukraine shall**

- *Provide comprehensive information to the public on state aid, guarantees and benefits provided by law for families with children through local social security departments;*
- *Develop and submit to the Cabinet of Ministers of Ukraine amendments to the labor laws to gradually increase the minimum employment age to a level which corresponds to full physical and mental development of adolescents;*
- *Review the list of heavy labor activities and types of work with harmful and/or dangerous working conditions where employment of underage persons is prohibited, as approved by the Order of the Ministry of Health of Ukraine No.*

46 on March 31, 1994, complementing it with types of activities that may harm children's physical or moral conditions;

– Initiate amendments to the Administrative Code of Ukraine to establish sanctions for violations of labor rights of children as a separate type of offense, introducing liability of employers for use of child labor without proper registration of an employment contract;

– Improve the mechanism of state and public control of the use of child labor by small businesses, farms, private enterprises, and family businesses, which are the major consumers of child labor;

### **The Ministry of Health Care of Ukraine shall**

– Ensure equal access of every child to health facilities and provide high quality health care for free;

– Introduce a modern system of child morbidity prevention;

– Develop measures to prevent child disability and improve provision of medical care to children with special needs;

– Ensure provision of medication to children with phenylketonuria, immunodeficiency, cystic fibrosis, cerebral palsy, Gaucher disease, hemophilia, and diabetes (insulin dependant children requiring treatment with imported insulin);

– Provide fund for surgical operations for disabled children from the State Budget;

– Improve the network of rehabilitation centers to accommodate the needs of children with disabilities equipping them in accordance with modern methods of rehabilitation services;

– Restore the network of child recreation facilities, improve their material state, human resources, the level of children's nutrition, health care for children, and educational work;

### **The Ministry of Foreign Affairs of Ukraine shall**

– Ensure proper control over enforcement of the rights of Ukrainian children abroad, including those adopted by foreigners;

– Expedite conclusion of multilateral and bilateral agreements on mutual recognition of incomplete and complete secondary education in the countries with a significant number of Ukrainian migrants;

– Take measures to support Ukrainian Sunday schools abroad, providing them with the latest books and textbooks, films and audio records about the history and culture of Ukraine;

– Actively promote conclusion of bilateral agreements with countries whose nationals adopt Ukrainian children and have a sizeable Ukrainian community;

### **The Ministry of Internal Affairs of Ukraine shall**

- Consider feasibility of applying international experience to restrict children's unaccompanied presence in public places at night;
- Establish effective mechanisms to counter the use of Internet and other technologies for sexual abuse of children;
- Prevent child trafficking, sexual exploitation, and other forms of ill-treatment;
- Strengthen international cooperation to counter abuse and exploitation of children and implement, including through multilateral agreements, a system of technical and financial assistance, information sharing and exchange of best practices in investigating criminal cases where children are involved;
- Establish permanent control of compliance with the rights of unaccompanied underage asylum seekers by the police and investigate each violation of the rights of such children, including on request by UNHCR and human rights organizations;

### **The Ministry of Justice of Ukraine shall**

- Consider possibility of introducing amendments to Articles 31 and 32 of the Civil Code of Ukraine and Chapter 13 of the Family Code of Ukraine to clearly define legal acts which can be independently performed by minors and underage persons;
- Induce the Cabinet of Ministers to initiate legislative amendments to strengthen protection of the rights of children who fall victims to crime and child witnesses during the inquiry, investigation and trial, including use of special measures, mechanisms and programs;
- Promote strict enforcement of court decisions concerning children's rights, including recovery of alimony;
- Enforce court decisions concerning protection of children's rights;
- Promote establishment of juvenile justice in Ukraine;

### **Public authorities and local governments shall**

- Provide full support to children's and youth organizations and movements, and student self-government;
- Implement local employment programs for adolescents and youth, and ensure compliance with legal requirements to reserve jobs for graduates of educational institutions;
- Provide public housing funds to support housing rights of orphans and children deprived of parental care;
- Take measures to set up social dormitories for temporary stay of families in difficult circumstances, particularly for single mothers, as well as orphans and children deprived of parental care.

***The Ombudsman is convinced that the Ukrainian society should unite around the national idea to establish a state that will be friendly to every child.***

## CONVENTION ON THE RIGHTS OF THE CHILD \*

Adopted by General Assembly resolution 44/25 of 20 November 1989;  
entry into force 2 September 1990

### Preamble

#### **The States Parties to the present Convention,**

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding, considering that the child should be fully

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\* Ratified by Resolution of the Verkhovna Rada (Parliament) of Ukraine No.789-XII (789-12) of 27 February 1991

prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration, taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

### **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

**Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability

of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent inter-governmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where

no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### **Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

#### **Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

### **Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

### **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with

the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### **Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### **Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner

consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure

that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

### **PART II**

#### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

#### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.<sup>1</sup> The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### **PART III**

#### **Article 46**

The present Convention shall be open for signature by all States.

#### **Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph<sup>1</sup> of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

**Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then

inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

**Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

**Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

## **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT \***

Adopted and opened for signature, ratification and accession  
by General Assembly resolution A/RES/54/263 of 25 May 2000

### **Preamble**

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being

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\* Ratified by the Law of Ukraine No.1845-IV (1845-15) of 23 June 2004 with a statement

below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

## **Article 1**

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

## **Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

## **Article 3**

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

#### **Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

#### **Article 5**

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

#### **Article 6**

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

#### **Article 7**

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

## **Article 8**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

## **Article 9**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

## **Article 10**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

## **Article 11**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

### **Article 12**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

### **Article 13**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

## **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY \***

Adopted and opened for signature, ratification and accession  
by General Assembly resolution A/RES/54/263 of 25 May 2000

### **Preamble**

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in

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\* Ratified by the Law of Ukraine No.716-IV of 3 April 2003

1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

## **Article 1**

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

## Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

## Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

## Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

## Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

## Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

## Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

## Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

## **Article 9**

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

## **Article 10**

1. States Parties shall take all necessary steps to strengthen international co-operation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

## **Article 11**

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

## **Article 12**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

### **Article 13**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

### **Article 14**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

### **Article 15**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

### **Article 16**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

### **Article 17**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

**NATIONAL PROGRAM  
“THE NATIONAL ACTION PLAN FOR IMPLEMENTATION  
OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD”  
FOR THE PERIOD UNTIL 2016 \***

**Chapter I**

**GENERAL PROVISIONS**

Ukraine as a member of the international community takes part in the efforts to create an environment fit for children that would ensure their proper development in compliance with the principles of democracy, equality, peace, social justice, with due account of ethical principles and traditional values of the Ukrainian society aimed at the strengthening of family relationships and moral well-being of children in Ukraine.

The outcome document of the UN General Assembly’s Special Session on Children entitled “A World Fit For Children” and signed by the Cabinet of Ministers of Ukraine on May 10, 2002, set four priority goals: promoting healthy lifestyle; providing quality education; protecting children against abuse, exploitation and violence; combating HIV/AIDS, and also included a global plan of action for promotion and protection of the rights and interests of the young generation, and tasks to be fulfilled by the international community for the sake of children and in cooperation with them.

This Program strives to integrate the government’s efforts for the protection of children’s rights.

**Chapter II**

**PROGRAM GOALS, OBJECTIVES, AND IMPLEMENTATION**

The Program aims to ensure effective operation of an integral system for the protection of children’s rights in Ukraine in accordance with the UN Con-

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\* Approved by the Law of Ukraine of 5 March 2009.

vention on the Rights of the Child and with due account of the Millennium Development Goals as set by the UN Millennium Declaration and the strategies within the framework of the outcome document of the UN General Assembly's Special Session on Children entitled "A World Fit For Children".

## **1. Health Protection and Promotion of Healthy Lifestyle for Children**

### **1.1. Health Protection**

Goal: to facilitate healthy child birth and protection of the health of every child during childhood years, and to ensure access to quality health services.

Main objectives:

- to ensure equal access of all women irrespective of location and social status to quality pregnancy health services and adequate conditions for safe child delivery, and to this end:

- to reduce stillbirth rate by 20 percent before 2010;

- to increase natural birth rate up to 70 percent before 2010;

- to ensure that at least 90 percent of newborns are delivered in health care institutions compliant with the *fit for children* status before 2010;

to create a safe and supportive environment for child development and protection of health and life by means of the following, and to this end:

- to facilitate the increase in breastfeeding rate at six months postpartum up to at least 60 percent before 2015;

- to reduce child mortality rate in children under five years of age by two thirds compared to 1990 before 2016;

- to provide expert advice at maternity clinics for parents of children with birth defects;

- to improve the quality and widen the scope of children's health services and reduce mortality rate in children by 10 percent before 2010;

- to take measures to prevent child disability and to improve the quality of health services for children with disabilities and to this end reduce birth defects mortality rate in infants under one year by 10 percent and in children under 18 years of age by 10 percent before 2010;

- to reorganize the mother and child health care system with the main focus on the development of the free-of-charge primary health service institutions network and improve the secondary medical care system in compliance with international standards and to this end:

- to conduct a comprehensive medical examination of all children before 2010;

- to complete the upgrade of medical equipment of children's and obstetric health care institutions before 2016 by means of increasing the domestic

production and wider use of domestically produced medical equipment by at least two times;

– to take measures to ensure treatment of child pathologies currently not treatable in Ukraine and to develop an effective mechanism for treating children in health institutions abroad.

### **1.2. Combating HIV/AIDS, Tuberculosis, and Substance Abuse**

Goal: to prevent the spread of HIV/AIDS, tuberculosis, and substance abuse among children.

Main objectives:

– to ensure implementation of the government’s policy for combating tuberculosis, substance abuse, and HIV/AIDS; protection of the rights of children with HIV and AIDS; to reduce the risk of infection in HIV-positive children, and to this end:

– to provide access to relevant information and service package to reduce the risk of HIV infection as well as treatment and care for at least 75 percent of minors living in poor conditions before 2010;

– to reduce the mother-to-child HIV transmission rate down to 5 percent;

– to provide access to the mother-to-child HIV transmission prevention services for at least 95 percent of women with HIV before 2010;

– to provide at least 90 percent of HIV-positive children with medications for HIV/AIDS and opportunistic infections to be procured using the state budget funds before 2016;

– to raise awareness on HIV/AIDS, tuberculosis and substance abuse and promote lenient attitude towards children with HIV/AIDS and drug abuse problems, and to this end:

– to run, on an annual basis, a nationwide media campaign to promote lenient attitude towards children with HIV/AIDS;

– to run a HIV/AIDS prevention awareness campaign with a 100 percent coverage of high-school age children before 2010;

– to carry out scientific research of the HIV/AIDS spread patterns and possible aftereffects among children; to develop domestic products for prevention and diagnosis of HIV in children and women;

– to run, on an annual basis, a nationwide anti-drug media campaign focusing on the consequences of drug addiction and intolerance to any forms of drug trafficking.

### **1.3. Rehabilitation and Recreation**

Goal: to ensure the right of every child to rehabilitation and recreation through a series of social, educational, medical, hygiene, and sports activities aimed at improving and promoting the health and recreation of children.

Main objective: to conserve, improve and ensure efficient use of the children's recreational institutions network, and to this end:

– to ensure that at least 50 percent of school age children before 2010 and at least 70 percent of school age children get access to rehabilitation services at children's recreational institutions before 2016;

– to ensure that all orphaned children and children without parental care get access to recreation services before 2010;

– to ensure that at least 70 percent of children from low-income families, families with many children and single-parent families get access to recreation services before 2010;

– to ensure that all children's recreational institutions are properly equipped with assistive devices for children and adults with disabilities before 2016.

#### **1.4. Physical Education**

Goal: to facilitate maintenance and promotion of physical health of children and formation of healthy lifestyle.

Main objective: to make provisions for at least 5 to 6 hours per week of recreational physical activities for children before 2010.

## **2. Education**

Goal: to ensure equal access of every child to quality education (pre-school, high-school, out-of-school, vocational, higher) with a view to the development of an individual, the society, and the state.

Main objectives:

– to increase the number of children attending educational institutions;

– to ensure access of all disabled children to educational institutions irrespective of their health status and place of residence and upbringing before 2010;

– to ensure high standards of education, and to this end:

– to introduce, starting in 2009, comprehensive monitoring of pre-school, high-school, out-of-school, vocational, and higher education institutions and annual announcement of their ratings in mass media;

– to develop and start introducing domestic next-generation textbooks, including electronic textbooks, and tutorials including those for special schools (correctional boarding schools for children with physical and/or mental defects) according to modern high technology standards, and to this end, ensure that pre-school, high-school, out-of-school, vocational, and higher education institutions have Internet access;

– to provide all educational institutions with software products (Microsoft Office, etc.) localized for the Ukrainian language by the end of 2010.

### **3. Cultural and Spiritual Development of the Child**

Goal: to encourage development of creativity in children and to facilitate their aesthetic and patriotic education.

Main objectives:

- to ensure equal access of every child to socio-cultural institutions;
- to renew stocks of children’s and youth books and periodicals in all libraries, including rural libraries, before 2016;
- to prohibit advertising (with the exception of social advertising) in textbooks, school diaries and other printed school products;
- to raise the standard of aesthetic and patriotic education of children; particularly, to provide socio-cultural employees with teachers edition on cultural and spiritual development of children of different age groups before 2016.

### **4. Protection of the Rights of Different Groups of Children**

#### **4.1. Social Care and Support of Families with Children**

Goal: to facilitate the promotion of family values in the society; to provide financial support and to maintain moral well-being of families with children; to promote responsible parenting; and to prevent child abandonment.

Main objectives:

- to increase birth rate;
- to tackle poverty among children and families with children;
- to encourage employment among families with children, and to improve self-reliance and social protection of families with children;
- to raise the standard of family relationships and parental responsibility through wider participation of parents in seminars and training courses designed to promote family values;
- to facilitate the development of social services and to ensure access of families with children to them;
- to develop and implement an educational course on family life and responsible parenting for children and youth based on moral principles and traditional values of the Ukrainian society and aimed at strengthening family relationships and improving moral well-being of children in Ukraine.

#### **4.2. Prevention of Child Abandonment, Neglect, and Homelessness**

Goal: to take effective measures for prevention of child abandonment, rehabilitation of abandoned and homeless children, and promotion of family-type parenting of children without parental care, abandoned, homeless, and vagrant children.

Main objectives:

- to raise the standards of social work for families with children and in difficult living conditions;

- to prevent child abandonment from an early age, and facilitate the work of social, psychological, and child guidance counseling centers at obstetric institutions, and to this end:

- to prevent parents' abandonment of children at an early age, including children with birth defects;

- to promptly discover abandoned and homeless children and place them in family-type orphanages and social care institutions;

- to grant children without parental care a status of an orphaned child or a child without parental care no later than two months after they were discovered;

- to improve the rehabilitation process for abandoned and homeless children and their families, and to this end:

- to streamline the procedure for registering abandoned and homeless children at relevant organizations irrespective of the form of ownership before 2010;

- to reduce the number of abandoned and homeless children by 60 percent before 2010, by 75 percent before 2012, and by 95 percent before 2015.

#### **4.3. Social Protection of Orphaned Children and Children without Parental Care**

Goal: to facilitate the implementation of the right of every child to growing up in a family environment.

Main objectives:

- to implement the reform of institutions for orphaned children and children without parental care;

- to develop operating standards for institutions for orphaned children and children without parental care;

- to develop and implement the funding mechanisms for the needs of orphaned children and children without parental care based on the *money follows the child* approach;

- to develop and implement mechanisms for the provision of orphaned children and children without parental care with sufficient quantities of quality food and clothing; to ensure adequate preventive health care and effective treatment of such children;

- to bring the procedures for the adoption of orphaned children and children without parental care by foreign nationals in line with international agreements signed by Ukraine; to ensure effective monitoring of the protection of the rights and interests of children adopted by foreign nationals;

- to ensure effective monitoring of the protection of the rights of orphaned children and children without parental care;

- to promote family-type parenting of orphaned children and children without parental care (adoption, custody and care, family-type orphanages, foster families), and to this end:

- to increase the number of children adopted by Ukrainian nationals three-fold compared to 2005 before 2010; to ensure the adoption of 15 percent of orphaned children and children without parental care before 2010, and 25 percent before 2016;

- to increase the number of orphaned children and children without parental care placed in family-type orphanages and foster families up to 40 percent before 2010, and up to 80 percent before 2016;

- to reduce the number of orphaned children and children without parental care in special institutions for orphaned children and children without parental care to 20 percent before 2010, and to 13 percent before 2016;

- to ensure access of at least 95 percent of the population to complete and objective information on the placement of orphaned children and children without parental care in family-type orphanages and foster families before 2010;

- to ensure protection of the rights of children placed in special institutions for orphaned children and children without parental care, and to this end:

- to adopt decisions to reserve housing and other property rights of orphaned children and children without parental care no later than one month after they were granted their status;

- to provide hostel accommodation to boarding school graduates with housing needs and to ensure their access to counseling, social-educational, social-medical, legal, informational, and other services;

- to improve the mechanism for reservation of housing and property rights of orphaned children and children without parental care;

- to facilitate adaptation of orphaned children and children without parental care to self-reliant living and to ensure their access to various social services.

#### **4.4. Protection of Disabled Children**

Goal: to ensure social protection of disabled children and provision of quality counseling, social-educational, social-medical, legal, informational, and other services to disabled children and their families; to facilitate their personal development.

Main objectives:

- to facilitate upbringing and care of disabled children in families;

- to provide assistance and support and social guidance to disabled children to ensure their personal fulfillment, and to this end to provide:

- counseling, social-educational, social-medical, legal, informational, and other services as required for at least 80 percent of disabled children before 2010 and to 100 percent before 2016;

- volunteer assistance as required to at least 60 percent of disabled children before 2010 and at least 80 percent before 2016.

#### **4.5. Protection of Child Refugees, Children Staying in Ukraine without Their Legal Representatives, and Stateless Children**

Goal: to ensure social adaptation of child asylum seekers without parental guidance and child refugees.

Main objectives:

- to facilitate the adaptation of child refugees, children staying in Ukraine without their legal representatives, and stateless children, and to assist them in their reunion with families;
- to ensure access of children staying in Ukraine without their legal representatives, and child refugees to education (schools or individual training programs) and personal development programs.

#### **4.6. Elimination of the Use of Child Labor**

Goal: to prevent and eliminate the worst forms of child labor by means of effective economic, legal, and social mechanisms aimed at prevention of violations of child labor law.

Main objectives:

- to develop and implement mechanisms for cooperation between executive agencies and local self-government, trade unions and employer organizations, and other non-governmental organizations focusing on activities against the use of the worst forms of child labor;
- to ensure implementation of the right of the child to protection against economic exploitation and from performing any work that is likely to be hazardous or interfere with the child's education, or to be harmful to the child's physical, intellectual, spiritual and moral development, and to this end:
  - to introduce, starting in 2009, monitoring of the use of child labor by enterprises, institutions, and organizations of all forms of ownership;
  - to raise awareness of the public on child labor situation in Ukraine via mass media as well as at enterprises, institutions, organizations, and educational institutions;
  - to ensure physical, mental, and spiritual rehabilitation of children who have been engaged in the worst forms of child labor;
  - to ensure access of at least 70 percent of working minors to permanent education before 2010.

#### **4.7. Elimination of Trafficking in Human Beings, Sexual Exploitation, and Other Forms of Abuse**

Goal: to eliminate trafficking, sexual exploitation, and other forms of abuse of children; to facilitate effective rehabilitation of children.

Main objectives:

- to improve the effect of preventive efforts and awareness-raising campaigns against child abuse with the parents;

- to improve the procedures for detecting child victims of sexual exploitation and other forms of abuse;
- to create a system for rehabilitation and reintegration of child victims of trafficking, sexual exploitation and other forms of abuse;
- to ensure effective operation of the system for protection of children against abuse and to take appropriate preventive measures.

#### **4.8. Protection of the Rights of Juvenile Delinquents**

Goal: to prevent and significantly reduce juvenile delinquency; to ensure compliance of juvenile detention facility conditions with international standards.

Main objectives:

- to enhance the efforts to prevent juvenile delinquency, and to this end:
  - to implement the newest approaches and procedures for working with delinquency-prone children;
  - to raise legal awareness of school age children;
  - to improve monitoring of:
    - juvenile delinquency and crimes against children;
    - compliance with the rights of children and ensuring adequate detention conditions at juvenile reception centers at the internal affairs agencies, pre-trial detention centers, special educational institutions of the State Department of Ukraine for Execution of Sentences, social rehabilitation schools, and vocational schools subordinated to educational establishments;
  - to ensure social protection of children serving sentences at or released from special educational institutions of the State Department of Ukraine for Execution of Sentences, and to this end:
    - to ensure the implementation of housing rights of minors released from special educational institutions of the State Department of Ukraine for the Execution of Sentences in accordance with the Ukrainian law and to provide them assistance with employment or enrollment processes;
    - to take action to reduce the number of repeat juvenile crimes by at least 20 percent before 2016;
    - to look into the possibility of establishing a juvenile justice system within the framework of the judicial reform to refine national legislation on protection of children's rights, to improve preventive efforts against juvenile crimes and other offenses, and to ensure effective rehabilitation of juvenile delinquents.

#### **5. Increasing the Role of the Local Community in Addressing the Issues of Protection of the Rights and Development of Children**

Goal: to engage the local community in the protection of the rights and development of the child through participation in activities for children.

Main objectives:

– to introduce the mechanism for the promotion of the local community's initiatives related to the interests of children, and to this end, local self-government agencies shall develop programs for the protection of the rights of the child before 2010 and complete the monitoring and assessment of the implementation of these programs before 2016;

– to provide special training to at least 55 percent of social service employees before 2010 and at least 90 percent before 2016 in preparation for campaigning for more active involvement of local communities in the protection of children's rights.

## **6. Children's Participation in the Life of the Community**

Goal: to ensure implementation of the children's right to express their opinions; to promote socially responsible decision-making.

Main objective: to encourage the development of responsible decision-making skills in children, and to this end:

– to promote production of a series of television programs accompanied with sign language or subtitles, radio programs, and printed information bulletins for children as well as in audio format for children with hearing and vision impairments in every region before 2010;

– to establish advisory agencies made up of representatives of children and youth NGOs at every district and city council.

## **7. International Cooperation**

Goal: to develop various forms of cooperation with other nations and international organizations with a view to addressing the current issues of child protection.

Main objectives:

– to bring the Ukrainian legislation in line with international standards derived from relevant international agreements on the protection of the rights and development of the child;

– to ensure further cooperation between Ukraine and UNICEF, and other international organizations for protection of children's rights;

– to facilitate international cooperation within the framework of student exchange programs with a view to the development of their gifts and talents;

– to conclude new international agreements on the protection of the rights and development of the child or to accede to international agreements in force.

## Chapter III

### PROGRAM FINANCING

The Program shall be financed by the State Budget of Ukraine, the budget of the Autonomous Republic of Crimea, local budgets, as well as other sources not contrary to the Ukrainian law.

## Chapter IV

### PROGRAM IMPLEMENTATION MONITORING, EVALUATION, AND EXPECTED RESULTS

Coordination of executive agencies and local self-government, monitoring and assessment of the implementation of the Program for the implementation of children's rights and freedoms shall be the responsibility of the Interdepartmental Committee on Child Protection.

Updates on the actions taken and results achieved shall be included in periodic reports of Ukraine to the UN Committee on the Rights of the Child.

The Cabinet of Ministers of Ukraine shall develop and approve activities and financing estimates for the next year to ensure the implementation of this Program.

Comprehensive monitoring of the Program implementation shall be conducted on an annual basis starting in 2010.

Stakeholder representatives of central and local executive agencies, local self-governments, and non-governmental and charity organizations shall participate in the monitoring and assessment of the implementation of the Program.

The findings of the monitoring and assessment of the implementation of the Program shall be published in mass media.

#### **Expected Results:**

– a system for children's protection and health maintenance is established on the national level;

– provisions are made for disabled children and children with physical and/or mental defects to live a full social life, get education, and find employment;

– healthy lifestyle is widely promoted; children are widely engaged in physical and sports activities;

– a system for the provision of counseling, social-educational, social-medical, legal, informational, and other services to children irrespective of their location is established;

- conservation and improvement of health care infrastructure, educational, and cultural institutions are ensured;
- the reform of the system of institutions for orphaned children and children without parental care is implemented;
- the funding mechanism for the needs of orphaned children and children without parental care based on the *money follows the child* approach is developed and implemented;
- family-type parenting of orphaned children and children without parental care is becoming more popular;
- measures are taken to promote national adoption;
- protection of child refugees is ensured;
- efforts to eliminate trafficking, sexual exploitation, and other forms of child abuse are reinforced;
- executive agencies, local self-government, and the public are more engaged in the support of families with children;
- work is carried out to promote national cultural and spiritual heritage and patriotic education of children, and to find and support gifted children;
- provisions are made for wider participation of children in the life of the community;
- local communities are more involved in activities related to the protection of children's rights;
- social advertising and extensive media coverage of the issues of social and legal protection of children are implemented, and action is taken to ensure compliance with the UN Convention on the Rights of the Child.

**RECOMMENDATIONS FORMULATED BY THEMATIC  
WORKING GROUPS OF THE INTERNATIONAL CONFERENCE  
“DIGNITY, DEVELOPMENT AND DIALOG”, DEDICATED  
TO THE 20TH ANNIVERSARY OF THE UN CONVENTION  
ON THE RIGHTS OF THE CHILD \***

Adopted by the UN Committee on the Rights of the Child at 53<sup>rd</sup> session,  
11-29 January 2010 (CRC/C/53/3)

**THEME I: DIGNITY**

**Working group 1: Children: rights holders versus commodity**

**Recommendations**

1. **Integrated approach to prevention and protection based on the rights of the child:** Establish a long-term system of prevention and protection against abuse and sexual and economic exploitation of girls and boys through the development of an effective multisectoral and inter-institutional coordination mechanism that is based on a holistic, dynamic, decentralized and evolutionary approach. Report, on a regular basis, on the progress made in the implementation of this system at all levels. Ensure the active participation of children in all stages of elaboration of public policies on children.

2. **Legislation:** Expedite the ratification by all States of international and regional human rights instruments, in particular the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and adopt a legal framework in conformity with these instruments, criminalizing all forms of child exploitation and providing for universal jurisdiction.

3. **Investigation, complaints and penalty mechanisms:** Establish effective procedures and mechanisms to receive and follow-up on complaints, and investigate and punish those soliciting, promoting and profiting from child exploita-

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\* Held in Geneva, on 8-9 October 2009 at the International Conference Center Geneva and participated by the delegation of the Ombudsman of Ukraine.

tion networks (cybercrime, drug trafficking), taking into account the necessary adaptation of the justice system to the needs of children, notably through the establishment of appropriate special measures, mechanisms and programmers to ensure the protection of child victims and witnesses of criminal acts and their social reintegration. Set up effective mechanisms against impunity and corruption.

4. **Favorable environment:** Guarantee that children enjoy a protected and secure environment within families, communities, schools and institutions by promoting positive and non-violent education methods. Organize information, awareness and training campaigns on children's rights for families, communities, schools, institutions, municipalities and local leaders and involve them in all preventive actions against child abuse and exploitation. Identify vulnerable children, and give particular attention to those children who are refugees, displaced, migrants, orphans, non-registered and/or who belong to poor families, street children, those involved in armed conflict, those deprived of their family environment, and those who are orphans because of AIDS and adopt effective measures to fight poverty and support the most destitute families.

5. **Private enterprise/media:** Make aware the media and private enterprises (Internet and telecom companies, the tourist sector, banks) of the fight against child abuse and exploitation. Prohibit the use of Internet sites and other technologies that use and/or portray children for the purpose of sexual exploitation on- and off-line. Identify and dismantle financial devices aimed at concluding transactions involving child exploitation. Develop public/private partnerships to support the development of educational and awareness campaigns.

6. **International cooperation:** Strengthen international cooperation in connection with the fight against child abuse and exploitation and establish, including through multilateral agreements, a system for technical and financial assistance, as well as for the exchange of information and good practices, in particular with respect to police investigations carried out in the framework of the fight against organized crime.

## Working Group 2: Discrimination against children

### Recommendations

1. **Strengthening collaboration between treaty bodies:** Given the inter-related and overlapping nature of various grounds and forms of discrimination, the treaty bodies are encouraged to strengthen their collaboration in various ways, across areas and at different levels, e.g. a joint general comment on discrimination, joint days of general discussion, etc.

2. **Depiction of children:** In order to respect the inherent dignity of the child and respect children as a group, States parties should reference develop and/

or strengthen guidelines (such as codes of conduct, codes of ethics) and legislation regarding the depiction of children by the media, and in fundraising, advertising and research (and any other purpose), and involve civil society partners in such activities.

3. **Research, data collection, monitoring, evaluation:** Promote research on and monitoring and evaluation of various grounds and forms of discrimination against children to strengthen implementation of the Convention on the Rights of the Child and relevant policies. Consideration should also be given to establishing national indicators, among other tools. In particular, the active participation of children should be encouraged and their views should be taken into account with a view to informing policies and practices. Wide dissemination of the outcomes is needed.

4. **Prevention of discrimination:** States parties, civil society, and all stakeholders should seek to prevent discrimination through measures aimed at changing attitudes by promoting dialogue, addressing structural injustices, disseminating information, and providing human rights education (non-violent communication, conflict resolution, promotion of exchange programmes and inclusive participation). Investment in evidence-based practices is required.

5. **Remedies:** States parties should assure the availability of and accessibility to recourse procedures at the international, national and local levels, providing remedies for individual and groups of children victims of discrimination. These procedures should have a broad scope and should include judicial and non-judicial procedures (mediation, recovery assistance (social, health, psychological)).

6. **Child rights mainstreaming:** States parties should be encouraged to cooperate closely at the local, sub-national, national and international levels to ensure mainstreaming of the rights of the child to prevent and tackle discrimination, including through the implementation and monitoring of the Convention on the Rights of the Child.

## THEME II: DEVELOPMENT

### **Working Group 3: States parties' obligations: realizing economic, social and cultural rights. Are child rights a luxury during an economic crisis?**

#### **Recommendations**

1. **National plans of action:** In the current economic crisis, which can be used as an opportunity and a test of political will, national plans of action for children should be reviewed or developed, and anchored in national development strategies, incorporating sustainable social protection policies, with time-bound indicators, and strategic budgets for universal policies in the fields

of health, quality education, nutrition, social security and justice for all children. These national plans of action and policies should be elaborated in a participatory manner involving children and their families.

**2. Policy-making and indicators:** Policy-making should be evidence-based, building on a renewed impetus of data collection and analysis, particularly the establishment of child-focused benchmarks. The Committee may wish to endorse in the future a set of concrete human-rights based indicators and specify what is understood by “to the maximum extent of available resources” (article 4) in conjunction with the principle of progressive realization. The Committee may also wish to define the parameters of child poverty.

**3. Financial stimulus activities:** States parties should ensure that financial stimulus packages and other efforts to re-vitalize the economy contain child-centred components, and aim specifically at strengthening the resilience of the family, for example by supporting small- and medium-sized enterprises and conditional cash transfer programmes.

**4. Responsibility of the business sector:** States parties should appropriately encourage the business sector to minimize the risk of activities resulting in violations of children’s rights and underline that the business sector has social and environmental responsibilities.

**5. Justiciability of economic, social and cultural rights:** States parties should undertake all appropriate legislative, administrative and other measures to ensure the justiciability of the economic, social and cultural rights of children. States parties are encouraged to support current efforts to create a new international complaints procedure as a tool to further strengthen the implementation of these rights.

**6. International development and cooperation:** Countries should be urged in the global management of the current economic crisis to protect present levels of contributions towards international development and cooperation, which strategically prioritize the rights of the child. In this context, invite countries to participate in the panel during the High-Level Segment of the 13<sup>th</sup> session of the Human Rights Council, in March 2010, to discuss and evaluate the impacts of financial and economic crises to the realization of all human rights world-wide.

#### **Working Group 4: Evolving capacities as an enabling principle in practice**

##### **Recommendations**

**1. Responsibility for care and protection of the child:** States parties should support and assist parents, guardians or others with the primary responsibility for the care and protection of the child to enhance their capacities to create an environment in which the capacities of the child can develop in a harmoni-

ous and healthy manner. At the same time, States parties should abstain from undue interference into family life. In this respect, the social and cultural contexts should be taken into account.

2. **Education:** States parties should recognize the important role that education can play with regard to the promotion of the holistic development of children. This is particularly relevant where educational institutions are understood as communities of children and adults who cooperatively develop and implement the education, learning and social life of their school. States parties should also support and facilitate the efforts of educational facilities to create an environment in which students are enabled to further develop their capacities and apply these capacities in school matters.

3. **Establishment of appropriate ages:** States parties should elaborate on the consequences of the recognition of the child as a person with evolving capacities to exercise her or his own rights and consider the establishment of appropriate ages for the independent exercise of some rights, allowing for flexible application. This would recognize the capacities of the child while providing necessary protection to the child and clear standards for those who have to implement and respect the rights of the child.

4. **Exercise of the right of the child to be heard:** States parties should avoid regulations that require an assessment of the individual child's evolving capacities any time she or he wishes to exercise one of her or his rights, in particular in the exercise of the rights to express her or his views. In all informal settings, such as the family, every child should be provided with a meaningful opportunity to express her or his views without a prior assessment of his or her evolving capacities.

5. **Recognizing the diversity of capacities:** States parties should take due account of the differences in the way children develop and mobilize their capacities. Children are girls and boys of any age and belong to different cultures and religions, come from a varied social and ethnic backgrounds, live in difficult circumstances, may be in need of special assistance and protection, may have experienced refuge and displacement, and must be respected as such.

6. **Development of indicators:** States parties should develop indicators to measure progress – or lack thereof – in recognition of the evolving capacities of a child to independently exercise his or her rights.

THEME III: DIALOGUE

**Working Group 5: A new democratic dynamic:  
child participation in the public sphere**

**Recommendations**

1. **Institutionalization of mechanisms:** States parties should institutionalize mechanisms for child participation at national and local levels and consult children in the definition of such mechanisms. States parties should ensure that these are sustained, avoid tokenism and allow for inclusive participation, bearing in mind that children are not one homogenous group. Mechanisms for child participation should be accountable to children and explain how their views are taken into account in decision-making processes in order for children to monitor the implementation of their rights. Mechanisms for child participation should be included in international and regional fora.

2. **Support for child participation:** National legislation should incorporate specific reference to article 12 of the Convention on the Rights of the Child and guidelines should be adopted on modalities for child participation. Child-led associations should be given legal recognition. Indicators for child participation should be developed in order to evaluate the degree of participation of children and regular research should be conducted on all aspects of child participation.

3. **Training and awareness-raising:** States parties should ensure that parents and professionals are trained and the general public is informed on how child participation can be encouraged and of its benefits, both within the family and for the community. Authorities should be made aware of their responsibility to support mechanisms which facilitate the right of the child to be heard.

4. **Education:** Schools are a key setting to support child participation and should ensure active and continuous consultation with children through participatory mechanisms such as student councils and student representatives. Schools should teach and practice human rights. Children must be informed about their rights in order to exercise them, human rights and civic education should be fundamental components of school curricula and should be introduced in primary, secondary and tertiary education.

5. **Media and creative arts:** Media should involve children and ensure that they are given opportunities to develop programmes and allocate specific broadcasting time for programmes designed by children. States parties are reminded of the importance of promoting the role of the mass media in ac-

cordance with article 17. Arts should be used as a means of expression and participation in schools and in the community.

**6. Discriminated and marginalized groups of children:** The participation of discriminated and excluded groups of children should be ensured and proactive measures should be taken to promote empowerment of children and ensure equality of access to participation.

### **Working Group 6: Children's voices in the family: overcoming resistance**

#### **Recommendations**

**1. National strategy and complaints mechanism:** States parties should put in place a national holistic strategy and a child-friendly complaints mechanism, for productive dialogue in the family, in order to develop parenting styles that respect the child's right to be heard. In this regard, sufficient resources should be provided, including for monitoring and evaluation with particular attention paid to the girl child.

**2. Children with specific needs:** Undertake special measures to promote dialogue in the family by taking into consideration children with specific needs such as children of divorced parents, children in alternative care institutions, migrant children, asylum seekers and refugees, children with disabilities children in conflict with the law and others by taking into consideration cultural diversity, and respect for the cultural values that exist within the family, that are not in contradiction with the Convention, and strengthen economic, social and cultural rights.

**3. Awareness-raising activities:** Develop training modules and multimedia resources (including the media and creative arts) based on factual studies to address priorities and to reach broader society. Provide human rights education for children, their parents and other caregivers so that they are aware of their rights and how to exercise them in the family context and to improve their understanding about the needs and rights of children. This should include targeted awareness-raising, including in the community.

**4. Human rights education and full implementation of article 12:** Provide human rights education for children and their parents and caregivers. The Committee should find a way to systematically call on States parties to fully implement article 12 and to reflect on children's participation in general, and in particular, dialogue within families.

**5. Research activities:** The Committee may wish to suggest that studies be carried out by research centres such as the UNICEF Innocenti Research Centre on the following issues:

a) dialogue in families, including the extended family, to reflect on the importance of such dialogue and identify modalities in assisting families to strengthen such communication.

b) the importance and benefits of investing in sufficient time within the family, the costs of this investment and the expected social returns.

6. **Organization of work:** Encourage States Parties to promote organisation of work which enables necessary time for dialogue within families.

**JOINT STATEMENT**  
**of the Ukrainian Parliament Commissioner**  
**for Human Rights and the Representative of the**  
**United Nations Children’s Fund (UNICEF)**  
**in Ukraine to the government authorities**  
**and the public of Ukraine**

Today, on 20 November 2009, the global community commemorates the 20<sup>th</sup> anniversary of the United Nations Convention on the Rights of the Child, adopted by the U.N. General Assembly. This fundamental international children’s rights instrument is legally binding for each of 193 states that ratified it, and Ukraine was one of the first states to do so.

This Convention, which is also called “the global constitution of children’s rights”, sets standards for the protection of children against neglect and abuse, and obligates the states to observe four guidelines in the implementation of measures related to children’s rights: non-discrimination, the best interest of the child, the right to life and development and the right of a child to be heard.

While declaring the universal nature of the children’s rights, the Convention also takes into account such an important factor as the diversity of cultural, political and economic peculiarities of countries.

UNICEF global report on the Protection of Children, launched in October 2009, states that the living standards of children in the world have generally improved in the last 20 years due to the efforts of the global community. However, large numbers of children in many countries still have to struggle for survival on a daily basis; they still become victims of violence, exploitation and human trafficking. Global financial crisis significantly aggravated the situation. According to the UN, about 200 million of children starve regularly worldwide, and each third child death is attributable to hunger.

Thanks to efforts of the public and all branches of power in Ukraine, provision of the rights and legal interests of children has become an important

component of national policy. The size of the state assistance at child birth and child adoption has increased dramatically. The number of children, born in 2008, has increased by 20% as compared to 2004. This year the country has the highest birth rate in the last 17 years. A positive trend of increase in national adoption has emerged. Family-based child care has become more widespread in the country; new social institutes – foster families and children's homes of family type – are established and undergo rapid development in Ukraine.

At the same time, however, the monitoring of the Commissioner for Human Rights and UNICEF Ukraine's recent study provide evidence on the presence of systemic violations of rights of children in Ukraine that especially became stronger due to the financial crisis.

The level of poverty for households with children exceeds the country average by 25%. More than 76% of families with 4 and more children live in poverty. Poverty is the worst form of violation of the child's rights; in the course of time it becomes the key factor to ingrain destitution in the society across the generations. Government authorities are required to undertake decisive and consistent efforts to implement more effective system of social protection, increase state aid to households with children to the level not less than a minimum cost of living, taking into account the needs of every child.

That is why we appeal to the Cabinet of Ministers of Ukraine and to the Verkhovna Rada of Ukraine to introduce changes to the current legislation in order to guarantee the provision of sufficient living standard to families with children.

Inadequate level of health care for children, especially in rural areas, require the development of such a model of medical attendance that would ensure access to quality medical services to all categories of families. To this end, we appeal to the Cabinet of Ministers of Ukraine to provide equal access of every child to health facilities; improve the technical, organisational support and capacity of these facilities; ensure quality and free medical assistance to every child in need of it.

The priority of child care reform is to prevent child abandonment by improving protection mechanisms for vulnerable families and children. Children deprived of parental care have the right to grow up in a family environment. That is why, ensuring rights of orphaned children and children deprived of parental care shall be one of the priorities. Exercising the constitutional right of orphans to housing is the most painful issue. Due to the lack of mechanisms to implement legislation on the provision of children with living quarters after

they leave caregivers or residential institutions, these children are left in the open air, thus joining the ranks of homeless. That is why we appeal to the Cabinet of Ministers of Ukraine regarding practical resolution of the housing issues of orphaned children with priority budget funding.

More often Ukrainian children become victims of worst forms of child labour, human trafficking, prostitution and pornography. These issues require more thoughtful attention to the problem of child homelessness, as well as implementation of specific measures, in particular, to improve the national legislation in line with the relevant international instruments. We appeal to the President of Ukraine and to the Verkhovna Rada of Ukraine regarding full harmonization of Ukraine national legislation with requirements of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child as well as ratification of the Council of Europe Conventions on Action against Trafficking in Human Beings (of May 16, 2005) and on the Protection of Children against Sexual Exploitation and Sexual Abuse (of October 25, 2007).

The national system of protection of the rights of asylum seeking and refugee children remains underdeveloped. In particular, assigning a legal guardian for unaccompanied minors remains unresolved. Without it, access of asylum seeking and refugee children to social services is restricted, which is contrary to the CRC principle of non-discrimination and protection of all children without exception.

We appeal to all government authorities, local self-governments and non-governmental organisations dealing with children's rights in Ukraine, to unite their efforts in order to change Ukraine in the best interests of children and certainly - together with children.

*Of November 20, 2009, Kyiv*

**Nina Karpachova**

**State of Observance and Protection  
of the Rights of the Child in Ukraine**

Special Report of the Ukrainian Parliament  
Commissioner for Human Rights

On the occasion of the 20<sup>th</sup> anniversary of ratification by Ukraine  
of the United Nations Convention on the Rights of the Child

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