

**Report of the Ukrainian Parliament Commissioner for Human Rights  
“State of Observance and Protection of Human Rights and Freedoms in Ukraine”**

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## **Opening remarks**

This Annual Report of the Commissioner for Human Rights on the state of observance and protection of human rights and freedoms in Ukraine contains the results of the complex research of the state of observance of civil, political, economic, social and cultural rights and freedoms, envisaged by the Constitution of Ukraine, valid legislation of Ukraine, and international standards in the area of human rights.

First of all, this research is based on the analysis of facts of violation of rights and freedoms, disclosed from the petitions of citizens of Ukraine, stateless people, foreigners and refugees, sent to the Commissioner. It contains references to the actual cases of violation of rights and freedoms of a person and citizen, dealt with by the Ombudsman in a consistent and exhaustive way, and to the conclusions made by the Commissioner on the basis of conducted inspections.

In her Report, the Commissioner traditionally focuses on the most painful problems in the area of observance of human rights and freedoms in Ukraine. Each section of the Report contains the analytical conclusions and specific recommendations as to the ways of improvement of the state of observance of rights of certain categories and groups of population.

### ***I. Securing the right to appeal to the Commissioner for Human Rights***

#### **1.1. Consideration of claims related to the protection of human rights by the Commissioner**

The Constitution of Ukraine provides for the right of every person to appeal to the Commissioner for protection of his or her constitutional rights. In 2006, 53.2 thousand of citizens of Ukraine, foreigners and stateless people appealed to the Commissioner, and in 2007, this number amounted to 77,4 thousand. As of 1 January 2008, for the whole period of the Commissioner's activity, the Commissioner's Office received a total of 807 thousand petitions and complaints related to the violations of human rights and freedoms because of decisions, actions, or failures to act of various state authorities, local authorities, officers and officials.

As the monitoring shows, essential amount of such petitions is generated, first of all, by the neglecting and bureaucratic attitude of public officers and officials of state and local authorities, directors of enterprises, institutions and organizations of various forms of ownership to the consideration of petitions of people, realization of their legal rights.

Most of claims are submitted to the Commissioner in written form, as envisaged by the valid legislation. In 2006, the Commissioner received 17941 claims, in 2007 this number increased almost by one third and constituted 23539. Analysis of arrival of claims per 10 thousand of population certifies that in 2007 this index increased almost in all regions as compared to 2006, except Kharkiv. The highest level of this index was registered in Kyiv city: 6,7 in 2006, 10,2 in 2007; Kirovohrad region – 4,8 and 5,7 respectively; Odessa region – 5,0 and 5,6; Dnipropetrovsk region – 4,1 and 5,6; Autonomous Republic of Crimea - 5,1 and 5,6. The number of petitions per 10 thousand people also increased in Kyiv region:

from 3,5 in 2006 to 6,1 in 2007.

The majority of claims addressed to the Commissioner are related to violations of civil, social and economic rights (*table 1*).

**Table 1. Number of claims, by types of violated rights, 2006-2007.**

Types of violated rights	Number of petitions related to violation of rights, 2006	Percentage	Number of petitions related to violation of rights, 2007	Percentage
Personal	5046	13,5	5554	12,5
Civil	20 477	54,9	22 076	49,7
Economic	4935	13,2	7454	16,8
Social	6527	17,5	8862	19,9
Political	279	0,8	460	1,0
Cultural	32	0,1	45	0,1

The Commissioner devoted continuous attention to the organization of personal reception of citizens. Almost 10 thousand citizens of Ukraine and foreigners turned to the public receptions of the Commissioner in 2006-2007. In 2006, the Commissioner and the Secretariat employees personally received 3987 people in the various regions of Ukraine, and 3407 people in 2007.

Existence of essential problems with observance of human rights by the state authorities and local governments at all levels is witnessed by the work of the hot telephone line of the Commissioner for Human Rights. On average, this telephone line receives nearly 6 thousand verbal claims from citizens.

Restoration of violated rights of people according to their petitions is the main and the most laborious direction of the Commissioner's everyday activity. This section of the Report cites specific examples of proceedings on violation of human rights and freedoms, initiated by the Commissioner on the basis of the received petitions.

## **1.2. Cooperation with the Verkhovna Rada of Ukraine and consideration of claims from people's deputies of Ukraine**

The Commissioner for Human Rights believes that the effective parliamentary control over the observance of constitutional human rights and freedoms, execution of which is the responsibility of the Commissioner according to the Constitution of Ukraine, is impossible without well-coordinated cooperation with the Verkhovna Rada of Ukraine, in particular people's deputies, parliamentary committees, and fractions.

During 1998-2007, 963 people's deputies addressed the Commissioner in written form, having sent 2070 deputy petitions and inquires, most of which concerned the protection of rights of their voters. In particular, 192 written petitions from the people's deputies of Ukraine were received in 2006, and 178

petitions – in 2007. Respective response measures were taken in relation to each petition according to the valid legislation.

Active participation of the Commissioner in plenary sessions of the Verkhovna Rada of Ukraine in the course of consideration of draft laws, related to the human rights, Government's days in the parliament, parliamentary hearings, as well as invitation of people's deputies of Ukraine, heads of parliamentary committees, heads of deputy groups and fractions to participate in the round tables and other events, held by the Commissioner, became a regular practice in her work and yielded positive results.

The priority direction of the cooperation between the Commissioner and Verkhovna Rada of Ukraine is the legislative guarantee of observance of human rights and freedoms, bringing the national legislation in the area of human rights and freedoms closer to the international standards. Thus, the Commissioner offered to legislate the provision of free legal assistance to the most socially vulnerable groups of population, especially physically and mentally handicapped people, not only in criminal, but also on civil and administrative cases, and to adopt redrafted laws "On Free Legal Assistance" and "On Advocacy". Together with the parliamentary committees, the Commissioner carried out a work on introduction of changes to the legislation in connection with adoption of a law on ensuring equal rights and opportunities for men and women. The Commissioner believes that joint work over the draft laws, bringing the valid legislation to conformity with the international standards will foster the formation of more effective mechanism of observance of constitutional human rights in Ukraine.

### **1.3. Ensuring the rights of foreigners and stateless persons**

In 2006, the Commissioner received 246 petitions from foreigners and stateless persons (or from other persons on their behalf), and 267 petitions in 2007. Thus, in 2006-2007, the number of foreigners and stateless persons, which claimed the violation of their right to acquire citizenship of Ukraine, essentially decreased as compared to 2005 (almost halved). It can be explained by the improvement of national legislation in the sphere of citizenship, as well as by the fact that the majority of former USSR citizens, which expressed a wish to return to Ukraine, completed the procedure of acquisition on citizenship. At the same time, the Commissioner received more petitions from applicants, seeking to acquire a refugee status in Ukraine or realize rights of refugees, and from the asylum seekers.

Results of the Commissioner's monitoring indeed testify that the facts of assaults at representatives of African and Arabic nations became more frequent. In the course of the last two years, Ukrainian mass media almost monthly report on the assaults at the representatives of other nations on the grounds of racial or national intolerance. The problem is aggravated by the fact that cases of such assaults, in particular those involving bodily injuries and deprivation of life, are qualified by law enforcement authorities as crimes, committed on the grounds of hooligan motives, and not on the grounds of xenophobia or racism. The Commissioner believes that instead of the flat denial of existence of this problem,

it should be carefully investigated, openly discussed and therefore prevented at its early stages. All these issues were emphasized in the open appeal of the Commissioner to the state authorities.

## ***II. Protection of civil and personal rights.***

### **2.1. State of judicial protection of human rights in Ukraine.**

The Commissioner notes that the judicial system reforms, carried out during the last few years, did not improve the state of protection of human rights and freedoms. On the contrary, in conditions of political and legal crisis the problems of judicial protection of human rights became even more aggravated. This is certified by the increase of written petitions to the Commissioner, reporting on violations of the right for fair judicial protection. Thus, 8273 such petitions were received in 2006, and 9659 – in 2007.

The improper state of judicial protection of human rights in Ukraine is also reflected by a sky-rocket increase of petitions of Ukrainian citizens to the European Court of Human Rights and resolutions made by it, which establish a systematic violation of the right to fair trial in Ukraine. As of January 9, 2008, the European Court delivered 370 verdicts against the state of Ukraine; in 332 of them (i.e. in 90.8% of all verdicts) it established violations of the right to fair trial.

The Commissioner is assured that the process of realization of judicial reform itself should secure the mechanisms, which would guarantee the observance of human rights and freedoms. At the parliamentary hearings “On the state of justice in Ukraine” which took place in the Verkhovna Rada of Ukraine on May 23, 2007, the Commissioner introduced a number of proposals on reformation of judicial system, most of which were included into the recommendations of the hearings. Also the Commissioner submitted a proposal to the President of Ukraine on the protection of right of a person to appeal against court decisions in administrative cases. The Commissioner asked the Head of the State to initiate introduction of changes into the Administrative Code of Ukraine, which would establish an appellate and cassation procedure of appeal against the verdicts of local courts directly by a physical person.

The Commissioner is concerned by the fact that the issue of prolongation of detention periods became a formal procedure for the courts. Only in 2 percent of such petitions the courts deny to satisfy the claim. Therefore, if a person is arrested by the court, he has no chances for any change of preventive measures. It does not correspond to the European practice. Therefore, the Commissioner thinks that groundless detention is equivalent to torturing, as cynical neglect of the right to freedom and personal immunity takes place.

During the recent years, almost every tenth written petition to the Commissioner dealt with the violation of rights of citizens for proper and timely judicial trial. Thus, 2017 such petitions or 11.2% of their total amount were received in 2006, and 2386 – in 2007 (10.1%). The Commissioner for Human Rights believes that excessive length of judicial proceedings is caused both by the negligence of certain judges, and behaviour of the process participants, as well as by the existence of legislative problems. According to the Commissioner, in order

to eliminate the unnecessary delays, the court councils, qualification commissions of judges, and courts of superior jurisdiction should intensify control over organization of courts' activity in the range of their competencies. The judges themselves should realize the irreversibility of punishment for procedure violations, committed by them, and to take all necessary measures to fulfil the requirements of international legislative documents and national legislation.

The Commissioner believes that it is vitally important to create a temporary juridical body for revision of criminal cases, where the defendants refuse to admit their guilt.

The Commissioner for Human Rights thinks that further postponements of reformation of judicial system aggravate the problems of observance of constitutional right of a person to judicial protection.

## **2.2. Rights of citizens to execution of judgments and legal assistance**

According to the Article 124 of the Constitution of Ukraine, judicial decisions are binding in the whole territory of Ukraine. The function of execution of judicial decisions is the responsibility of state penal service, which is a part of the system of the Ministry of Justice of Ukraine.

In fact, only one third of judicial decisions within the competency of the penal service are carried into effect. Thus, in 2006, the state officers executed about 1.9 million of court orders, or 33.2% of their total amount, subject to execution in the accounting period. In 2007, 1.8 orders were executed, or 31.5%. Therefore, violations of rights of citizens to fair trial because of non-execution of judicial decisions become large-scale and systematic. Impossibility to execute a court decision not only nullifies realization of the right to judicial protection, but also makes people lose their faith in the power of law.

Such state, according to the Commissioner, is an evidence of the fact that the system of execution of judgments is rather ineffective. Insignificant percentage of completed executive proceedings both in separate regions, and in the whole country, is a result of legislative unsettlement of this problem, as well as existence of faulty frank-pledge and cooperative solidarity of state executors and debtors, especially subjects of economical activity. Therefore, the Commissioner offered certain mechanisms, which would guarantee the observance of the right to execution of judgments in the course of judicial reform implementation.

## **2.3. Observance of the right of persons detained by law enforcement bodies to respect of their dignity and freedom from tortures**

Systematic Commissioner's monitoring of the state of prevention of the use of tortures evidences that notwithstanding all implemented measures the Ministry of Internal Affairs did not manage to achieve a real breakthrough in ensuring the human rights to dignity and freedom from torture. Thus, in 2006 the Commissioner received 2467 petitions from citizens related to the use of torture, cruel, degrading or inhuman treatment by law enforcement officers. In 2007, this number amounted to 2556, which is 3.6 percent higher as compared to the previous year. Observations regarding the absence of effective national mechanism of prevention

of torture in Ukraine were expressed during the presentation of all periodic reports of Ukraine on the fulfilment of provisions of the UN Convention Against Torture.

As the Commissioner concludes, one of the most important reasons for the use of torture in the internal affairs agencies is the actual preservation of the planned number of disclosed crimes. In most cases, the detained people are being tortured to force them admit their guilt, and in 70% of cases such tortures are committed in the offices of law enforcement agencies. The Report cites striking facts of such tortures. The most widespread types of physical tortures are: continuous beating aimed at the most vulnerable parts of the body, hanging on the stick and handcuffs, deprivation of the possibility to breathe by putting on a gas mask or plastic bag, use of electric current. Namely by the use of such brutal force, the police is trying to compensate the lack of professionalism.

These actions ignore the requirements of the Constitution, criminal and procedural legislation and the Law of Ukraine "On Police", envisaging the immediate notification of relatives about the detention of a person, as well as provision of possibility to protect oneself and use the assistance of a lawyer from the very moment of the detention. To evade the legislative requirements, the policemen at first interrogate the detained person as a witness, because the law does not envisage the presence of a lawyer during a witness examination. Refusal of a detained person to give evidence on the basis of the article 63 of the Constitution of Ukraine or article 69<sup>1</sup> of the Criminal and Procedural Code, or insisting on interrogation only in the presence of an advocate, as a rule make the law enforcement officers furious and provoke them to use forbidden investigation methods. Unfortunately, such practice exists in all regions of Ukraine, what is corroborated by the results of the Commissioner's proceedings, information obtained from regional prosecutors at the request of the Commissioner, and court verdicts.

In 2006-2007, the Commissioner continued to monitor the cases when people turn to patient care institutions for medical help because of bodily injuries obtained during the detention in law enforcement agencies. Results of this monitoring show that cases of torture and battery of detainees by the police became more frequent than in the recent years. Thus, in 2006 the ambulance cars were called 3061 times in connection with bodily injuries, inflicted on detainees by policemen, i.e. 32.2% more than in 2005. In 18 cases the detainees and prisoners died because of these injuries. 5852 persons were taken to hospitals from police offices by ambulance cars, 1996 of them with bodily injuries, or 22.3% and 29.5% higher as compared to 2005. The highest level of these negative phenomena is observed in law enforcement authorities of Poltava, Mykolayiv, Kyiv regions and the Autonomous Republic of Crimea. The Commissioner believes that the General Prosecutor's Office of Ukraine, Ministry of Internal Affairs, and the Ministry of Health of Ukraine should more carefully investigate all cases when people seek medical assistance in connection with bodily injuries, inflicted by the law enforcement officers, while requesting necessary medical conclusions, expertise, other investigations and certificates.

According to the Ministry of Internal Affairs, 5415 citizens turned to

internal affairs agencies in 2007 on the grounds of unlawful actions of police officers, which is 5.6% higher than in 2006. 32.5% of the total amount of petitions was submitted on the grounds of valance, torture or humiliating treatment. At the same time, only 107 criminal cases were instituted on the basis of such petitions.

The Commissioner is forced to admit that in most cases the police head officers close eyes at the misdeeds committed by their subordinates with the view to solve a crime, even if such actions led to the death of the detainee because of the tortures. This is obviously the main reason for incurability of the use of torture in the practice of law enforcement authorities.

The Commissioner monitoring also shows that notwithstanding the respective amendments introduced to the Criminal Code, the practice of criminal punishment of law enforcement officers for the use of torture is still based on the provisions, which establish criminal responsibility for exceeding one's authority or abuse of power, envisaged by the article 365 of the Criminal Code of Ukraine. Dissolution of the term "torture" in the broader notion of "abuse of power" gives possibility to hide the actual dissemination of this crime. This also prevents from the fulfilment by Ukraine of the provisions of article 4 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which establishes that every member state should ensure that all cases of torture and participation in such acts are considered as crimes and that these crimes are punished with consideration of their graveness.

The Commissioner believes that prosecutor's organs essentially impede the process of prevention of torture due to the negligent attitude to their responsibilities on effective investigation of appeals and other information on the facts of torture and cruel treatment. This creates a feeling of impunity of police officers, as well as contributes to their perception of torture and cruel treatment not as crime but as a routine element of crime fighting.

Analysis of the court statistics shows that in 2005-2006 no policeman was brought to trial on the basis of article 127 of the Criminal Code of Ukraine, which envisages responsibility for torture, and only two policemen were convicted in 2007.

The Commissioner for Human Rights gives permanent attention to bringing the conditions of detention into compliance with the national legislation and international norms and standards. In 2007, the Commissioner solved a question of provision of three meals daily for people, detained in temporary detention facilities. Now the state budget of Ukraine provides for respective expenditures for this purpose. In total, since the establishment of the institution of the Commissioner, the conditions of detention in 407 of 487 acting temporary detention facilities were improved, as well as the conditions of detention in 14 out of 31 reception centres and 9 out of 12 special reception centres.

At the same time the results of inspections, made by the Commissioner, show that the citizens of Ukraine, who are only suspected in commitment of a crime or administrative violation, are being detained in special police establishments, conditions of which are humiliating and considered as one type of torture according to the international standards. In particular, 25 such

establishments are situated in the semi-basements and 17 – in the basements, therefore the detained persons do not receive sufficient natural light and fresh air. 68 temporary detention facilities do not have sanitary arrangements, 89 – do not have water supply, 32 – do not have washstands and beds. 28 temporary detention facilities do not have enough exercise yards, and 23 of them do not have these yards at all. 82 temporary detention facilities are not equipped with sanitary inspection stations. The Commissioner has to admit that in 2006-2007 almost half a million citizens suffered while being under arrest in temporary detention facilities of law enforcement agencies.

Therefore, the Commissioner makes conclusions as to the necessity of speeding-up the reformation process of law enforcement agencies and judicial system, as well as emphasizes the necessity of creation of a national mechanism for prevention of torture and cruel treatment, envisaged by the Optional Protocol to the UN Convention Against Torture.

#### **2.4. Observance of human rights and freedoms in institutions of the State punishment execution system**

The Commissioner constantly and thoroughly monitors the activity of penal organs and institutions and investigation wards, first of all – observance of rights, freedoms and legal interests of arrested and convicted persons. As of December 31, 2007, 149.7 thousand people were detained in 183 penal institutions, including 32.1 thousand people in 33 investigation wards; 110.4 thousand people, including 6.4 thousand women – in 118 penal colonies; 1902 underage convicted, including 104 girls – in 10 juvenile correction facilities.

According to the Commissioner's assessments, the activity of penitentiary system of Ukraine does not correspond to the modern requirements of observance of human rights and freedoms. In 2006, the Commissioner received 4960 petitions from convicted and arrested persons or their representatives, including 3012 petitions from people detained in investigation wards and 1208 – from penal institutions. In 2007, such petitions amounted respectively to 5312, 2931 and 1296.

The Commissioner makes systematic visits without notice to penitentiary establishments, on the basis of which she arrived at a conclusion on the necessity to principally reconsider the practice of use of unconventional units in penal institutions and investigation wards. The Commissioner also emphasizes that the norm of dwelling space in investigation wards – 2.5 sq.m. per one person – does not correspond to the international standards. The norm of dwelling space per one convict – 4 sq.m. – also has to be increased.

Especially humiliating and brutal is violation of rights of people suffering from tuberculosis. More than 4.5 thousand of them were detained in temporary detention faculties in 2006-007 instead of being sent for treatment in communal antituberculous institutions.

On November 8, 2007, the Commissioner held the First Ombudsman Public Hearings with the participation of representatives of state authorities, prosecutor's office, human rights activists, and independent experts. At these hearings, the participants discussed topical issues of observance of rights, freedoms and legal

interests of people detained in preliminary detention centres. Respective recommendations were made based on the results of the hearings.

### ***III. Political rights of citizens.***

#### **3.1. Protection of electoral rights of citizens and principles of parliamentarism in Ukraine**

The Commissioner for Human Rights carries out permanent control over observance of political rights of citizens of Ukraine, the results of which are cited in a separate section of the Report.

In the recent years, the election campaigns take place in conditions of lingering political and legislative crisis, which according to the Commissioner resulted from systematic violations of human rights and freedoms by the state authorities and state officials.

During the election of people's deputies of Ukraine and deputies of local councils on March 26, 2006, as well as pre-term elections to the Verkhovna Rada of Ukraine, called on September 30, 2007 according to the political agreements, the Commissioner carried out monitoring of observance of constitutional rights of citizens to free expression of will. In particular, the Commissioner and her representatives examined the work of electoral districts in the regions of Ukraine and abroad, organized a special hot telephone line of the Commissioner, which received hundreds of complaints from citizens about violations of electoral legislation. The results of the monitoring showed that the majority of violations of electoral rights resulted from improper preparation of electoral registers. People, who were not registered or registered in a place different from the place of living, were deprived of the possibility to realize their electoral rights. The use of administrative resource was observed. Still unsolved is the problem of provision of electoral rights for millions of Ukrainian citizens, whom the poverty forced to seek for work and better life abroad.

After the end of elections in 2006, the political situation did not stabilize. Because of the constant neglect of principles of rule of law and disrespect to constitutional rights of citizens on the part of political leaders, the country faced a threat of power opposition in the first half of 2007. On May 24, 2007, the Commissioner was forced to publicly address the servicemen, junior and key personnel of law enforcement agencies with an appeal to show courage, self-control and wisdom, stay faithful to the oath, given to Ukrainian people, manifest their public position, which is a guarantee of peace and order in every home and in every family. With the view to ease tension, find the ways of overcoming the crisis within the legal framework and prevent possible mass violations of constitutional rights of citizens, the Commissioner personally met with the leaders of Armed Forces and military units. Owing to the joint efforts, the fundamentals of parliamentarism and public order in the country were preserved.

Unfortunately, pre-term elections to the Verkhovna Rada of Ukraine on September 30, 2007, agreed upon by the opposition parties, also did not become an example of observance of constitutional electoral rights. From the very beginning of the electoral process, it was groundlessly intervened by the Security Service of

Ukraine, what was noted and emphasized by the Commissioner. Again, the problem of insufficient amount of electoral centres in the single foreign electoral district arouse, resulting in violations of electoral rights of many citizens of Ukraine, which were abroad at that time. The Commissioner submitted a respective proposal on this issue to the Constitutional Court of Ukraine, which unfortunately was not considered for formal reasons.

The Commissioner is convinced that it is vitally important to introduce changes to the electoral legislation, which would make the elections more democratic, as well as guarantee realization of electoral right for every citizen. The first step in this direction would be a creation of the State Electoral Register.

### **3.2. The right to freedom of speech and information, freedom of opinion and expression is an integral part of democracy**

The analysis performed by the Ukrainian Parliament Commissioner for Human Rights justifies that for Ukraine, along with and despite a certain progress achieved over the last years in upholding the freedom of speech, it was not possible to avoid impairment of journalists' rights, creating bureaucratic obstacles to proper performance of their professional duties, groundless refusals of accreditation, economic pressure on editorial staff, unlawful dismissal of journalists, numerous lawsuits against journalists initiated by politicians, public officials and businessmen concerned with protection of their dignity, honor and business standing. In particular, the following numbers of facts of intimidation, beating and assaulting journalists over the last years have been registered by the monitoring organized by the Ukrainian Parliament Commissioner for Human Rights in cooperation with the Institute of Mass Media: in 2005 – 16, in 2006 – 33, and in 2007 – 22 cases of such conduct. As a rule, however, the criminal cases based on the facts of such interference to professional activities of mass media workers are investigated in a most inefficient way, if ever initiated.

The case of Vladimir Lutyev, the editor of the newspaper *The Yevpatoriyskaya Nedelya*, who was sentenced to eight years of imprisonment in June 2006, became very resonant in Ukraine. The Ukrainian Parliament Commissioner for Human Rights determined that V. Lutyev was the victim who suffered from revenge of certain criminal groups in Autonomous Republic of Crimea for publishing articles which exposed their crimes. With consideration of convincing arguments presented by the Ukrainian Parliament Commissioner for Human Rights, the Supreme Court of Ukraine approved the decision to revoke the judgment of the Sevastopol Court of Appeal, and V. Lutyev was released from under guard.

The systemic monitoring performed by the Ukrainian Parliament Commissioner for Human Rights in the field of regional mass-media revealed a tendency for using sheer pressure against the print media on the part of its founders (co-founders), primarily those belonging to local public authorities. In February 2007 the Ukrainian Parliament Commissioner for Human Rights initiated the investigation based on facts of exerting moral and financial pressure on the editorship of *The Podilska Zorya* committed on the part of one of its co-founders,

namely Vinnytsya district council (rada). Thanks to the action taken by the Ombudsman it was possible to avoid bankruptcy of this newspaper, well-known in Vinnytsya Region.

The tendency for monopolization of the Ukrainian information market by oligarchic clans is also getting more and more evident. The only real way to resist this negative process is by creating a public television and radio.

In May 2007 Ambeyi Ligabo, the Special Rapporteur for right to freedom of opinion and expression of the UN Human Rights Committee, was informed on the situation in our country while on a visit to the Office of the Ukrainian Parliament Commissioner for Human Rights. He made the following remark: “We wish the Government would be as sincere as the Ukrainian Ombudsman is.”

#### ***IV. Protection of economic, social and cultural rights***

##### **4.1. Ensuring the right to freedom from poverty and dignified standard of living**

As the Ukrainian Parliament Commissioner for Human Rights is convinced, the main factor responsible for the insufficient ensuring the fundamental human rights and freedoms in Ukraine, especially as regards the right to life, is the poverty of most people of the country. Despite the general growth of income of the population, the poverty level in our country has not changed much over the years: it somewhat fluctuated from 27,1% in 2005, 28,1% in 2006 and to 27,3% in 2007. Considering the Constitutional guaranties, around 70% of the population could be considered poor, in the Commissioner’s opinion.

The Ukrainian Parliament Commissioner for Human Rights believes that creating conditions for providing actually equal access of all citizens to resources, fair distribution and use of the national wealth by all members of the society is an important condition in the course of overcoming poverty.

One of the basic criteria which are used to evaluate the level of economic development and stability of a country is social protection of its people, especially as regards pensioners, the disabled, children orphans and children deprived of parental care, large and low-income families. Out of Ukraine’s 13,5 million of families, 6,9 million of them have children, 2,3 million are single-parent families and 396,000 are large families (with three or more children), plus 13,3 million of pensioners. The expenditures for social protection and welfare of the people did rise in 2006–2007; though, their share in the total amount of expenditures declined in comparison with 2005.

The Ukrainian Parliament Commissioner for Human Rights believes that improving demographics of the country and living standards for pensioners, low income and large families requires that the government should take more effective measures than it does today. In particular, it is necessary to increase the amount of social welfare to families with children, and also provide assistance to those Ukrainian families, which adopted children orphans, of the same amount as paid at a child’s birth.

Given the inadequate subsistence levels of most Ukrainian people, the problem of improving people’s health and combating such diseases as AIDS, tuberculosis and

drug addiction is still relevant. Unfortunately, by tuberculosis and AIDS morbidity rates our country takes the first position in Europe. As of 1 January 2008, Ukraine had 81741 HIV-positive people on dispensary observation, 8944 people officially registered as ill with AIDS and the total number of 12511 deaths caused by AIDS. Every hour, four new incidences of tuberculosis and one incidence of death caused by the disease are registered. In 2007 only 37095 people fell ill with tuberculosis.

One of the reasons for such threatening situation with the spread of these dangerous diseases is that the funding of medicine industry is totally inadequate to its real needs. Year after year, the state budget includes such amount of expenditures for health care that would only satisfy the industry's needs by half. We also need to immediately restore the network of sanatory anti-tuberculosis facilities. The Ukrainian Parliament Commissioner for Human Rights included such proposals into the draft Government Plan of Action for 2008.

By early 2007, in Ukraine there were over 2,5 million of disabled people which is more than 5% of the country's population. Cooperation of the Ukrainian Parliament Commissioner for Human Rights with public organizations uniting the disabled and her participation in the activities organized by them provide grounds to state the unfortunate truth, which is that the authorities and society have not yet fundamentally changed their attitude to the disabled and handicapped and the problems they face with. Nowadays, the physically and mentally handicapped citizens of Ukraine are subject to discriminating treatment in many spheres of their life, they constantly face obstacles to their full participation in the life of society and cannot fully enjoy human rights and freedoms.

This is also justified by monitoring of the appeals sent by the disabled to the office of the Ukrainian Parliament Commissioner for Human Rights. Thus for 2007 only, about 4000 disabled persons appealed to the Ukrainian Parliament Commissioner for Human Rights for protection of their rights, which is by one third more than the corresponding number of appeals for the previous year. Every second of these appeals is concerned with observance of the right to social protection, and every third regards the issue of adequate defense in court, and every tenth appeal deals with protection of the right to housing, health and medical care. The number of communications concerning violation of labor rights of the disabled grows as well.

That is why the Ukrainian Parliament Commissioner for Human Rights addressed the President of Ukraine with the suggestion to issue instructions to accelerate signing and introducing of a draft law concerning ratification of the Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol by Ukraine.

#### **4.2. Right to employment and safe working conditions**

The Ukrainian Parliament Commissioner for Human Rights noted general positive tendencies in realization of everyone's right to labor, especially marked by a decline in unemployment among the productive age population determined by ILO methodology: from 7,8 % in 2005 to 6,7 % in 2007. There has also been an

increase in the level of employment of idle population with the help of the State Employment Service – it rose to 45,4 % in 2007 from 36,4 % in 2005.

At the same time, there are still instances of mass violations of labor rights of specific citizens, who appeal to the Ukrainian Parliament Commissioner for Human Rights with the request for assistance in realization or protection of their constitutional labor rights, stipulated in and guaranteed by Article 43 of the Constitution of Ukraine. In 2006, the Ukrainian Parliament Commissioner for Human Rights received 1169 such communications and 1370 of them were received in 2007.

The Ukrainian Parliament Commissioner for Human Rights is confident that now there is a long awaited need for a substantial rise in wages and for improving its structure. Though minimal wages increased by 31,4 % during 2006–2007, reaching the figure of 460 UAH by the end of 2007, this amount is still low and makes only 81 % of the subsistence level for able-bodied citizens. In December 2007 every eighteenth Ukrainian worker received the wages lower than minimal, and this is indicative of a violation of the Constitutional right of the person to sufficient remuneration.

There is still no end to such shameful thing as arrears of wages, which reached the figure of 668,7 million by 1 January 2008. As the Ukrainian Parliament Commissioner for Human Rights believes, under such circumstances it would be useful to ratify in full all provisions of the Convention No. 173 of the ILO Concerning Protection of Employee's Requirements in Case of the Employer's Insolvency (1992).

Over 2004–2007, a tendency for decline in the number of accidents and occupational diseases is observed. In particular, in 2007 there were 18192 industrial accidents which is by 4499 (or 19,8 %) less than in 2004.

Despite some improvement in the situation with labor protection in specific industries, the Ukrainian Parliament Commissioner for Human Rights believes that the level of industrial accidents and occupational diseases is too high in Ukraine. The most dangerous sphere for human health and survival is the coal industry. 268 miners died in 2007. At the end of 2007, at the Zasyad'ko Mine, Donetsk city, a gas blasts killed 106 miners and rescue workers. Within the first days after the accident, the Ukrainian Parliament Commissioner for Human Rights together with members of her Secretariat took part in the work of the Government commission investigating causes and consequences of the tragedy. She met in person the wounded workers in hospitals and the families of killed miners; the Commissioner communicated with public officials of central and local authorities. The Commissioner's team included a psychologist and a forensic medical examiner, which helped identify the remains of dead miners.

By results of the investigation, on 29 January 2008 the Ukrainian Parliament Commissioner for Human Rights sent the Prime Minister of Ukraine a proposal suggesting a complex of measures to prevent violation of constitutional rights of coal mining industry workers to life, safe working conditions and social protection.

The Ukrainian Parliament Commissioner for Human Rights is convinced that at the present stage of economic development, effective industrial labor protection and organization of preventive measures to create safe and harmless working conditions at workplaces should become issues of high priority for the state, employers and employees themselves.

### **4.3. Ensuring the land rights**

The analysis performed by the Ukrainian Parliament Commissioner for Human Rights proves that as the land reforms are getting further and the numbers of landowners and land users grow larger, there seems to be a tendency for a rapid growth in number of violations committed within the sphere of land ownership. For comparison, in 2006 the Ukrainian Parliament Commissioner for Human Rights received 462 appeals concerning violation of the right to land, but in 2007 this figure reached 1040, which is more than a double increase if compared with the previous year. Most of the communications came from Kyiv, Vinnytsya, Odesa, Cherkasy regions and Autonomous Republic of Crimea.

A predatory repartition of land, including land within city limits is more and more often attended by serious injuries and deaths of people. The whole country was rocked by the tragic death of *Natalia Kobelyeva, a resident of Alushta (Autonomous Republic of Crimea)*. The fate of the resident of Alushta, driven to suicide by throwing herself out of the fifth-floor window of the city executive committee building on June 29 2006, as another session of the city council commenced, showed all the infamy of systemic land-related violations of law committed by higher officials of the city. The Commissioner initiated an investigation in the course of which the actual circumstances of the tragedy were studied and adequate measures taken.

The Ukrainian Parliament Commissioner for Human Rights believes that in order to ensure the constitutional rights of people to land, it is necessary to approve a number of laws, especially Laws “On National Program for Use and Protection of Land,” “On the State Cadastre of Land” and “On Market of Land”, and increase the criminal and administrative liability for the decisions taken by heads of state and local authorities as regards land-related issues.

### **4.4. Ensuring the housing rights**

About 1,3 million of families or single people are included in the housing register. Of this quantity, about 876000 or 67,4% of such people have been waiting for their housing conditions to improve for 10 years or even more. In 1990 there were 285,000 of such families or 11% of the people, accordingly. Given such rates, it would require 60 to 70 years to provide housing to all those citizens in the line, waiting for their time.

Despite the investment activities recently flourishing in the sphere of housing construction, and the renewal of housing loans provided for young people, these issues are still problematic and resonant within the society. It is notable that one in ten appeals sent to the Commissioner Office deals with violations of the

housing rights, and their number is increasingly growing. For instance, in 2006 there were 1713 such communications and 2230 of them in 2007.

The problem of housing for homeless people is another issue of particular importance. Ukraine is estimated to have about 1 million of homeless citizens without a place of permanent residence, and about 150,000 homeless children who have not any housing as well. In spite of such situation, *the Law of Ukraine "On Basic Social Protection for Homeless Citizens and Children,"* in effect since 1 January 2006, is not duly executed. As a result, there are often cases of tragic deaths during the cold period of the year. During the winter days 16 to 31 January 2006 only, about 7,000 homeless people applied to hospitals for medical care because of hypothermia; most of them were hospitalized, but 589 persons died.

In her report, the Ukrainian Ombudsman also drew attention to the fact that the virtually breakdown state of public utility system is often the reason for technogenic accidents. An example of this was the survival of almost 70000 citizens of Alchevsk, Lugansk Region, without heating, with the frost reaching -20 or even -30 degrees by Celsius. In September 2007 a gas blast in Dnipropetrovsk city killed 23 people, destroyed a nine-storey residential building and deprived 160 families of their property, leaving them without a place to live. The Commissioner initiated investigations on the mentioned and other facts of massive violations of human rights, and finally the aggrieved people were rendered assistance.

The Commissioner is convinced that adoption of a new Housing Code is an urgent need of our society. This Code is meant to create an exhaustive legal basis for regulating all relationships that exist in the field of providing, using, owning or maintaining housing.

#### **4.5. Observance and protection of the right to education**

In the academic year of 2006/07 almost 8,4 million Ukrainians studied in more than 23 000 of educational establishments (comprehensive, secondary, vocational and those pertaining to higher education). 485 000 people left school and received their certificates of secondary education, vocational and technical schools completed training of 259 500 specialist workers, and 413 600 people graduated from institutions of higher education.

At the same time, monitoring of the situation with observance of the constitutional right to education, carried out by the Commissioner, shows some negative processes, which requires an immediate reaction. In particular, it is necessary to stop reducing the red of pre-school and out-of-school educational establishments, primarily, in the rural area. It is essential to rise the pedagogic role of the education. It is indispensable to renew the volumes of preparation of regular labor force. All of the citizens, notwithstanding their income level, must have access to higher education. Remuneration of the education area workers also must be cardinally reformed.

#### **4.6. Ensuring the right to safe environment**

Article 50 of the Ukrainian Constitution declares the right of every person to environment safe and harmless for life and health. However, as noted in the report

by the Commissioner, natural resources of the country are still being used in an irrational way.

The monitoring of air pollution, availability of fresh water, rational use and protection of land, treatment of radioactive waste, performed by the Commissioner, provided grounds to consider ecologic situation in Ukraine as tense, and the situation with ensuring the constitutional ecologic rights of citizens as unsatisfactory. The Commissioner also supported public initiatives as regards the need to improve access to ecology-related information.

#### ***V. Protection of the rights of the child is a special concern of the Commissioner for Human Rights***

The Commissioner commenced monitoring of the situation with ensuring of the rights of the child, in line with the UN Convention on the Rights of the Child.

Unfortunately, the demographic situation in our country is being negatively affected during a protracted period of time. For the last five years only, since 1 January 2003 to 1 January 2007 the number of children of 17 or younger was reduced by 1 155 000. Neonatal mortality in Ukraine is still high in comparison with the advanced countries: 10 deaths per every 1000 newborns.

Every year, the Commissioner receives appeals dealing with violation of the rights of the child, including appeals from children themselves. In 2006 there were 779 such communications, and 857 appeals in 2007. Based on every piece of information concerned with violation of the rights of the children, investigations were initiated. Consideration of these was personally controlled by the Commissioner. Thanks to such attention paid to the matter, most problems mentioned in the communications received by the Office were successfully solved.

The Ukrainian Parliament Commissioner for Human Rights is concerned by the fact that Ukraine offers rather limited opportunities for access and participation of disabled children in every sphere of everyday life, especially opportunities of access to the system of education. Educational institutions and establishments still do not have enough places equipped with special features, such as ramps and specially constructed stair-steps.

As concerns the office of Secretariat of the Ukrainian Parliament Commissioner for Human Rights, it is duly equipped with all technical features to ensure free entrance for the disabled people, especially children. On every New Year's Eve the Commissioner invites disabled children to take part in a special New Year celebration.

In spite of the efforts taken by the government to implement the program of protecting the rights of children orphans and children deprived of parental care, introducing a procedure for adoption of such children by families involved certain difficulties. This is why children were mainly adopted by foreign citizens. During 2004–2007, the total number of 13 125 Ukrainian children orphans and children deprived of parental care were adopted, with 47% of them (6172) taken into Ukrainian families. However, only 12,7% of the general number of children orphans and children deprived of parental care have been adopted in this time

period. That is why the Commissioner is convinced that it is necessary to stimulate the adoption, specially the adoption by Ukrainian families.

The issue of child homelessness is still very problematic. In 2004 juvenile asylums where homeless children were sent from the streets, provided housing to 23 194 children, in 2005 – to 23 674 children, in 2006 – to 21 221 children and in 2007 – to 20 593 homeless children. Yet, however, these figures do not represent the whole picture as regards homeless and unattended children, in the Commissioner's opinion, the real numbers are even larger, and that is why all authorities dealing with the problems of children, need to better coordinate its actions.

The Commissioner has always stood to the view that problems and worries of children can be best understood by children themselves who should cooperate with adults in order to defend their own rights. That is why the Commissioner has started an experiment of appointing children Ombudsmen from among the juveniles themselves, also ensuring the gender representation. Their activities are already bringing positive results.

#### ***VI. Observance of constitutional rights and freedoms of servicepersons, regular and senior military persons, members of the Military organization and law enforcement bodies, war veterans, ex-servicepersons and members of their families***

Being a subject of civil control over the Military organization and law enforcement bodies of the country, the Commissioner notes that the number of cases concerning violation of the rights of servicepersons, especially their rights to life and health, has not decreased substantially. For instance, in 2006 the Ukrainian army lost 84 servicepersons for such reasons, including 16 cases of suicide, and in 2007 there were 89 deaths of soldiers (including 15 cases of suicide).

The Commissioner foremost drew attention to the problem of protecting servicemen from violation of army internal regulations (hazing in the military). In particular, the Commissioner initiated an investigation on the two cases: the death of *O. Rybka, a 19-year-old soldier*, after his being beaten by two sergeants at the Desna Land Force Training Center on November 27 2006, and the death of *Yu. Stashenko, a junior soldier*, at Arsenal 61 of the South Operative Command, Land Forces, Armed Forces of Ukraine, on 19 December 2007.

Facts of brutal violation of human rights in the form of victimization, beatings, humiliation and overt violence towards servicepersons were observed in the military unit A0488, which is a disciplinary battalion dislocated in Kyiv. The Commissioner is convinced that the only disciplinary battalion in the Armed Forces of Ukraine has long become an anachronism, and therefore the need for sending soldiers to this unit is a greatly doubtful form of punishment for breaking criminal laws.

The Commissioner also maintains constant control over the issues of safety of military activities for the civil population and environment of Ukraine. Over the last years there have been three cases of detonation in the territory of Missile and Ammunition Base No. 275 belonging to Ministry of Defense of Ukraine near the

village of Novobogdanivka village, Zaporizhzhya Region, and a case of detonation at military unit A1358 located in the village of Zvitokha village, Slavutsk district, Khmelnytsky Region. The Commissioner sent a proposal to the President of Ukraine, noting the need for urgent action to prevent emergency happenings in explosive objects belonging to the Ministry of Defense of Ukraine, and to move families of servicepersons and people no longer involved with the Armed Forces of Ukraine out of the area of arsenals and ammunition depots.

The Ombudsman duly considered the ensuring of the rights to adequate burial and honoring the memory of the fallen soldiers. Therefore the exhumation of remains of 12 Soviet soldiers buried at the monument to the Soldier Liberator in Tallinn (the two of them, Olena Varshavska and Stepan Khapikalo, are reported to be of Ukrainian ancestry) made by the Republic of Estonia in April and May of 2007 without any prior notice to Ukraine, bears the signs of violation of international humanitarian law, particularly Paragraph 3, Article 34 of the First Optional Protocol to Geneva Conventions of 1949.

The Commissioner initiated a special international investigation which helped to recover unique archive documents, find and by means of DNA expertise identify relatives of the fallen soldiers. Thanks to joint efforts of the Commissioner, the authorities and public, we have finally managed to eternize the memory of the two heroes and create a precedent of solemnly returning the ashes of the liberating soldier to his motherland.

### **Closing remarks**

Based on the circumstantial analysis of the corresponding facts and tendencies, the Commissioner has made the following conclusions in her report: the situation with observance of human rights and freedoms in Ukraine does not meet international standards. Most of the unsolved problems in the field of ensuring human rights are caused mainly by the poverty of the major part of Ukrainian population. The situation is negatively influenced by imperfection of the national legislation and law enforcement practices, especially persistent neglect of court judgments, brutal methods of investigation and torture applied to detainees and prisoners by investigation and law enforcement bodies, pressure exerted on mass media, the freedom of speech restrictions and a low level of legal culture/awareness of the society.

The Ukrainian Parliament Commissioner for Human Rights believes that the country needs both political will and professionalism of all governmental bodies as well as active participation of the people in the struggle for their rights and legitimate interests, to overcome these shortcomings.