

**SPECIAL REPORT OF THE UKRAINIAN PARLIAMENT  
COMMISSIONER FOR HUMAN RIGHTS**

***“The Status of Observance of the International Standards of Human Rights  
and Freedoms in Ukraine”***

The establishment of the unified world system of human rights protection has become one of the most important tasks of the United Nations Organization, created after the end of World War II. Ukraine was among the founders of this organization.

As envisaged by the Charter of the United Nations Organization, one of the UN purposes is to achieve *international cooperation for the sake of promoting general respect to and observance of fundamental human rights and freedoms for everybody.*

The establishment of such protection system envisaged not only creation of the international law system by means of assuming obligations by the UN Member States through international multilateral and bilateral treaties, but also the development of the international mechanism for ensuring control over fulfilment of these obligations in the field of human rights.

The promulgation of the *Universal Declaration of Human Rights* by the UN General Assembly 60 years ago in 1948, became the foundation stone in building the international system of human rights protection. Actually, this document became a manifesto of mankind on the necessity to ensure human rights as one of the most important conclusions after World War II. And although the provisions of this Declaration were of advisory nature, they formed the basis for the development of the whole system of international legislation.

In 1966, the UN General Assembly adopted the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, which together with the Universal Declaration of Human Rights and two Optional Protocols to the *International Covenant on Civil and Political Rights* constituted the **International Bill of Human Rights.**

Both Covenants are the international legal treaties. The peculiarity is that when the countries, which are the UN members or have not yet become the UN members ratify the Covenant and become its “States Parties”, they voluntarily assume a number of legal obligations on human rights protection, stipulated in the respective text of rules and norms, as well as responsibility to conscientiously ensure the compliance of their national laws with their international obligations. Therefore, ratification of treaties in the area of human rights envisages responsibility and accountability of a state on these issues both before the international community and other states, which ratified the same documents, as well as its citizens and other people living in its territory.

***According to the Commissioner for Human Rights, this is exactly the matter of principle in the established system of international human rights standards. But unfortunately, responsible attitude towards this fact has not yet become a norm in our country either for state authorities or for civil society, what makes***

*the issue of constant monitoring of observance of international standards in the area of human rights by Ukraine very important today.*

The adopted Covenants introduced specific mechanisms of control over protection of certain rights as well: the *International Covenant on Civil and Political Rights* formed a basis for creation of a separate UN body – the **Human Rights Committee** (1976), responsible for control over fulfilment of obligations, assumed by States Parties to this treaty; according to the *International Covenant on Economic, Social and Cultural Rights*, powers to carry out monitoring of fulfilment of obligations were conferred on the existing UN body – the Economic and Social Council. Only in 1985 was the *Committee on Economic, Social and Cultural Rights* established.

Moreover, the UN General Assembly adopted a number of International Conventions, particularly, *the International Convention on the Elimination of All Forms of Racial Discrimination 1965*, *the Convention on the Elimination of All Forms of Discrimination against Women 1979*, *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*, *the Convention on the Rights of the Child 1989*, *the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990*, *the Convention on the Rights of Persons with Disabilities 2006* and *the International Convention for the Protection of All Persons from Enforced Disappearance 2006*. These Conventions provide for creation of relevant treaty committees: **the Committee on the Elimination of All Forms of Racial Discrimination (1970)**, **the Committee on the Elimination of All Forms of Discrimination against Women (1982)**, **the Committee against Torture (1987)**, **the Committee on the Rights of the Child (1991)**, **the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2003)**, **the Committee on the Rights of Persons with Disabilities (2008)**.

Treaty committees form a system of the UN treaty bodies. All states that ratified those Covenants and Conventions or joined them, are obliged to provide the respective committees with reports on measures taken to implement the rights, envisaged by the Covenants and Conventions, and on the progress reached in implementing these rights. The treaty bodies are composed of members who are elected by the States Parties to each treaty. Committee members do not receive any external instructions. They cannot be exempted from their obligations or replaced without their own consent. Treaty committees consider the reports from States Parties and give the assessment of their activity on the effectiveness of fulfilment of assumed obligations, as well as develop recommendations.

Upon analyzing the reports, submitted by States Parties, the committees adopt concluding observations. Though from the legal point of view these observations don't have any binding force, they reflect the opinion of the unified expert body able to make decisions on the fulfilment of obligations by a State Party according to the signed Convention or Covenant. Therefore, as a rule, *States Parties make changes in their legislation and law-enforcement practice on the basis of concluding observations of the treaty committees.*

The International Covenant on Civil and Political Rights and a number of Conventions envisage that any State Party may provide notification to the respective committee, informing that another State Party does not fulfil its own obligations under the Covenant or Convention. Filing such complaints is possible only when both parties acknowledged the committee's competence to receive and consider such notifications.

Ukraine ratified *the International Covenant on Civil and Political Rights* and *the International Covenant on Economic, Social and Cultural Rights* in 1973, *the International Convention on the Elimination of All Forms of Racial Discrimination* in 1969, *the UN Convention on the Elimination of All Forms of Discrimination against Women* in 1981, *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in 1987, *the Convention on the Rights of the Child* in 1991. *The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* 1990, *the Convention on the Rights of Persons with Disabilities* 2006 and *the International Convention for the Protection of All Persons from Enforced Disappearance* 2006 have not yet been ratified by Ukraine.

Thus, Ukraine assumed obligations to provide the treaty bodies with reports on observance of human rights and freedoms, envisaged by the UN international Conventions, and follow the observations of these bodies, as well as take part in any other forms of international control. According to the *UN Charter and Vienna Convention on the Law of Treaties 1969*, Ukraine is obliged to diligently fulfil all acting treaties, ratified by it, and observe all generally accepted rules of international law in the sphere of human rights and freedoms. For example, according to the *International Covenants on Human Rights*, Ukraine has assumed obligations to bring its legislation into compliance with international standards, stipulated in these Covenants.

According to the Law of Ukraine “*On Legal Succession of Ukraine*” of 12 September 1991, Ukraine confirmed its obligations under the international treaties concluded by the Ukrainian Soviet Social Republic before the declaration of the Ukrainian independence, as well as the fact of Ukraine's becoming a legal successor of rights and obligations under international treaties of the USSR, which do not contradict the Constitution of Ukraine and the interests of the Republic. Thus, Ukraine acknowledged its obligations under observations and recommendations of the UN treaty bodies as well.

On gaining its independence, Ukraine declared the necessity to build a rule-of-law state, focused on universal human values. This has become a principal direction of Ukraine's development as a democratic state and obligatory precondition for Ukraine's joining the World and European community. Prior to the adoption of the Constitution of Ukraine in 1996, the fulfilment of country's obligations under international treaties was regulated by the Laws of Ukraine “*On the Effect of International Treaties on the Territory of Ukraine*” of 1992 and “*On International Treaties of Ukraine*” of 1994.

The adoption of a new Constitution by the Parliament of Ukraine (the Verkhovna Rada) opened a new stage in the fulfilment of observations and

recommendations of the UN treaty bodies. The Constitution of Ukraine envisages efficient mechanism of fulfilment of international obligations. Article 9 of the Constitution establishes a constitutional principle, providing for *that international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine*. Implementation of this principle in practice means real incorporation of the rules of international law into the national legislation of Ukraine.

General monitoring over fulfilment of the international treaties of Ukraine is carried out by the **Ministry of Foreign Affairs of Ukraine and the Ministry of Justice of Ukraine**, also responsible for timely preparation and submission of periodic reports to the treaty bodies, providing recommendations as to their compliance with the requirements of these bodies, preparing separate parts of the state reports within the limits of their competence, as well as protecting state interests of Ukraine in the reporting process at the meetings of the treaty bodies, being a part of the delegation of Ukraine.

**An important element of the constitutional system of parliamentary control over the observance of constitutional human and citizens' rights and freedoms, including implementation of international standards in this field, was the establishment of the position of the Ukrainian Parliament Commissioner for Human Rights according to Article 101 of the Constitution of Ukraine.** By the way, observations of the UN treaty bodies repeatedly referred to the necessity to establish the institution of the Ombudsman in the country.

It should be noted (and this is a characteristic feature of the national legislation) that according to Article 19 of the Law of Ukraine "*On the Ukrainian Parliament Commissioner for Human Rights*", *the Commissioner shall participate in the preparation of reports on human rights which will be submitted by Ukraine to international organizations in accordance with effective international agreements that the Verkhovna Rada of Ukraine has given consent to comply with on a mandatory basis.*

However, although the participation of the Commissioner for Human Rights in the preparation of Ukraine's reports for the UN treaty bodies was specifically envisaged by the valid legislation, executive authorities represented by the Ministry of Justice and the Ministry of Foreign Affairs of Ukraine did not consider it necessary first to involve the Commissioner in the process of control over the reports' preparation.

Therefore, in order to implement this right the Commissioner was forced to overcome enormous opposition on the part of officials, and even to appeal to the Prime Minister of Ukraine. The reason was that in the process of preparation of national reports, the executive authorities as a rule tried to embellish the reality and hide the shortcomings in the observance of human rights and freedoms in Ukraine. The Commissioner did not radically agree with such practice.

Already the **First Periodic Report** on the State of Observance and Protection of Human Rights and Freedoms of the Commissioner contained a detailed Commissioner's monitoring of the process of preparation of reports to the international treaty bodies. *The monitoring showed that in most cases the*

***recommendations of the UN Committees were at best partially fulfilled, or even completely ignored.*** As the Commissioner thinks, a general comment on preparation of Ukraine's reports to the UN treaty bodies was their insufficient statistical provision and absence of educational programs on international standards in the sphere of human rights in Ukraine. The Commissioner was especially concerned by the fact that ***those observations remained unknown to the citizens of Ukraine.***

Apart from active participation of the Commissioner in the preparation of reports on human rights, a decision on the participation of the Commissioner and his or her representatives ***as the third party in the process of examination of Ukraine's reports by the UN treaty committees*** was taken. The Commissioner is persuaded that it allows to ensure the objectivity of the assessment made by Ukraine as a State Party, and at the same time to avoid criticism, supplementing the reports of state representatives with constructive proposals on improvement of government's actions aimed at fulfilment of Ukraine's international obligations in the sphere of observance and protection of human rights and freedoms. Thus, the position of the Commissioner essentially differs from that of particular nongovernmental organizations of Ukraine in a treaty body reporting process, which focus their notifications first of all on negative examples.

At the same time the Commissioner has to draw attention to the fact that the UN has no general practice of involvement of national Ombudsmen in the process of examination of the reports by the treaty bodies. Different treaty committees interpret the form of participation of an Ombudsman and his representatives in a different way. Thus, some committees, as for example the Committee on Human Rights, provide a favourable possibility for participation of the Ombudsman, while other committees, such as the Committee on Economic, Social and Cultural Rights, until recently had no definite procedure of the Ombudsman's participation. ***This, in the Ukrainian Ombudsman's opinion, diminishes the efficiency of influence of national Ombudsmen on the quality of national reports preparation and fulfillment of recommendations and observations of the treaty bodies.***

To increase the professional level of Ukraine's representatives in preparation and defense of reports before the UN treaty bodies, the Commissioner together with the UN Office in Ukraine organized a number of seminars with the participation of Mr. Roman Wieruszewski, an expert of the UN Committee on Human Rights, focused on functioning of the UN treaty bodies, peculiarities of preparation of periodic reports by member states, and consideration of claims. The seminars were held both for employees of the Secretariat of the Commissioner for Human Rights, and for representatives of profile ministries and departments, responsible for preparation of periodic reports.

Very important is the problem of the necessity of ***dissemination of information on recommendations and observations of treaty bodies in the Ukrainian society***, already emphasized by the Commissioner in her First Annual Report. This not only presents an important precondition for perception and deepening of legal awareness of the Ukrainian population as regards the state's obligations, but also

creates conditions for *public control over the observance of human rights and freedoms by the state in compliance with the international standards*.

Unfortunately, notwithstanding the constant criticism of this fact directly by the treaty bodies, nothing was done for many years for promulgation of these observations.

Therefore, it was not coincidentally, that *the Commissioner's initiative on the publication of the special compilation "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, accomplished in 2004 with the support of the UN Office in Ukraine, was met with a broad public approval*. This is a unique publication, having no counterparts in the world, provided a possibility for the citizens of Ukraine, nongovernmental organizations, trade unions and mass media to learn more about convention documents, which Ukraine ratified and thus assumed additional obligations in the protection of human rights and freedoms. *For the first time, observations and recommendations of the UN treaty committees, which should be followed by Ukraine as a State Party, were published*.

Therefore, the actions of state authorities and control functions of the UN committees became transparent to all Ukrainian citizens, what is an important precondition of conscious participation of the civil society in the control over the state's activity on ensuring and protecting human rights and freedoms.

Owing to the persistent actions of the Commissioner for Human Rights, coordination of actions of executive power bodies (the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine, and the Ministry of Foreign Affairs of Ukraine) with the Commissioner for Human Rights *as regards preparation of Ukraine's reports to the UN treaty bodies has been essentially improved in recent years*.

In the process of national reports preparation, executive authorities send requests to the Commissioner to provide observations and proposals on particular national reports. In particular, the Ministry of Labor and Social Policy of Ukraine addressed the Commissioner with a request to provide proposals on the 5<sup>th</sup> periodic report, submitted to the Committee of Economic, Social and Cultural Rights, the State Committee on Nationalities and Migration addressed the Commissioner with a request to provide proposals on the 17<sup>th</sup> and 18<sup>th</sup> periodic reports, submitted to the UN Committee on the Elimination of Racial Discrimination, etc.

Cooperation with central executive authorities and the Permanent Mission of Ukraine to the UN and other international institutions in Geneva furthered timely involvement of the Commissioner and Commissioner's representatives in the procedure of consideration of these reports by the UN treaty committees.

*However, notwithstanding the progress in these directions, the Commissioner for Human Rights considers that system analysis of the status of Ukraine's fulfillment of obligations, raised in the concluding observations and recommendations of the UN treaty committees, as well as their broad promulgation, is one of the most important tasks of the Ukrainian Ombudsman.*

## **I. Implementation of Observations and Recommendations of the UN Human Rights Committee by Ukraine**

The First Annual Report of the Commissioner noted that in 1994 Ukraine submitted the fourth periodic report to the UN Human Rights Committee, which was considered in 1995, and in September 1999 Ukraine submitted its fifth periodic report. This report was considered by the UN Committee in October 2001, and in 2005 Ukraine submitted its sixth periodic report, which was considered in October 2006. The deadline for submission of the next seventh periodic report of Ukraine to the UN Committee will be November 2011.

**Recommendations of the UN Committee on the results of consideration of the fourth periodic report** of Ukraine depicted first of all the problems, connected with the necessity to form the state legal environment in compliance with the *International Covenant on Civil and Political Rights* and other international standards recognized by Ukraine: carrying out the constitutional reform, adopting new codes and laws, **including setting up an independent body, such as a Human Rights Ombudsman, to monitor the implementation of the law in conformity with the obligations under the various human rights instruments to which Ukraine is a party, and to receive complaints by individuals.**

Ukraine actively implemented these recommendations. As it was noted in the fifth periodic report, a number of international human rights standards were introduced into the legislation of Ukraine, the Constitution in particular. An institution of the Ukrainian Parliament Commissioner for Human Rights was established. New Laws of Ukraine “On Refugees”, “On Immigration”, “On the Citizenship of Ukraine” and decriminalization of defamation were approved.

*However, Ukraine has failed to follow the recommendations of the UN Committee in most cases. Particularly what concerns obligations on ensuring women’s rights and overcoming xenophobia in the society, as well as providing decent detention conditions for detainees and prohibition of torture.*

Taking into consideration the significance of further implementation of international standards in the area of human rights, **the Commissioner personally took part in the presentation of the fifth periodic report of Ukraine at the meeting of the UN Committee in October 2001.** In her speeches during the report presentation, the Commissioner did not deny the existence of very serious problems with observance of human rights and freedoms in Ukraine. Thus, she drew the attention of the UN Committee members to the fact that the most critical problem, preventing from an adequate fulfillment of Ukraine’s obligations under the Covenant, is the **problem of poverty**, resulted in a catastrophic decrease in the population. Owing to the Commissioner’s efforts, this problem was recognized at the state level and the government started to take systematic actions to overcome it.

Poverty also incites people to search a better life abroad, what creates conditions for expansion of labour migration and related critical problems: trafficking in human beings, women and children in particular, prostitution, and a number of other problems, whose acuteness was understood by the society after the respective analysis of the situation, conducted by the Commissioner and her active

counteraction to the most evident manifestations. Special attention of the UN Committee members was paid to the **problem of tortures and violence towards detainees**, which unfortunately still remains quite widespread phenomenon in Ukraine. The Commissioner acquainted the UN Committee members with recommendations on overcoming the problems, made during the presentation of the Annual Report to the Parliament. The UN Committee members were informed on the difficult way of development of the Ombudsman institution since its creation in 1998, on the necessity to overcome stereotypes of state officials related to human rights and the Commissioner's functions, on the problems of organization of the Secretariat's work.

But at the same time, the Commissioner demonstrated positive changes achieved by the country in the area of protection of human rights and freedoms, as well as emphasized the measures planned to overcome the existing negative phenomena in observance of human rights and freedoms.

Therefore, *upon consideration of the fifth periodic report, the UN Committee not accidentally noted the achieved progress in the fulfillment of the Covenant on Civil and Political Rights*: adoption of a new Constitution, abolishment of the death penalty, reforming the legislation, creation of the Constitutional Court and a courts of appeals system, adoption of a new Criminal Code. **The Committee especially noted the significance of establishment of the institutions of the Ukrainian Parliament Commissioner for Human Rights as an important instrument of ensuring fulfillment of the Covenant obligations assumed by Ukraine.**

*The concluding observations upon this report in 2001 touched upon the problems directly connected with the fulfillment of obligations assumed by Ukraine according to the International Covenant on Civil and Political Rights.* Thus, the UN Committee members noted certain problems with fulfillment of the Covenant *on inadmissibility of use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials, bullying or hazing (didivshchyna) of young conscripts in the armed forces by older soldiers, trafficking in human beings and discrimination of women, intimidation and harassment of journalists, persons belonging to national minorities etc.*

The UN Committee made a number of recommendations on respective government actions with a view to ensure compliance with the Covenant requirements, which obliged Ukraine to take certain measures to fulfill its obligations, in particular **to provide the Secretariat of the Commissioner for Human Rights (Ombudsman) with adequate human and material resources to enable it to carry out its work effectively.**

As the Commissioner's monitoring ascertains, to fulfill the UN Committee recommendations, made during the presentation of the fifth periodic report, the state authorities of Ukraine took a number of measures.

During the reporting process, Ukraine agreed to be bound by a number of universal instruments in the area of human rights: *Convention relating to the Status of Refugees and Protocol Convention relating to the Status of Refugees* (ratified on 10 January 2002); the Optional Protocol to the Convention on the Elimination of



all Forms of Discrimination against Women (ratified on April 3, 2003) etc. ***In February 2006, Ukraine became a party to the Protocol No.12 to the European Convention for the Protection of Rights and Fundamental Freedoms, proclaiming a general prohibition of discrimination.***

***In September 2005 a new Code of Civil Procedure and a new Code of Administrative Procedure entered into force.*** The latter envisages establishment of new courts – administrative courts – aimed at punishment for violations of human rights, committed by law-enforcement officers. The demilitarization of criminal-executive system took place, in particular since November 2005 vacant positions have been replaced only by civilian personnel. The system is no more subordinated to a defense and law enforcement agency – the Ministry of Internal Affairs, and since May 2006 by the Resolution of the Cabinet of Ministers the activity of the State Department of Ukraine for Execution of Punishment has been coordinated by the Cabinet of Ministers of Ukraine via the Minister of Justice.

***On 29 June 2005 the Commissioner for Human Rights submitted the President of Ukraine a comprehensive act of submission on the necessity to sign and ratify the Optional Protocol to the UN Convention against Torture. The same year by the order of the President of Ukraine the Protocol was signed in New-York by Mr.Valerii Kuchynskyi, Ukraine’s Permanent Representative to the United Nations. On 21 July 2006 with the direct participation of the Ukrainian Parliament Commissioner for Human Rights the Verkhovna Rada considered the issue of ratification and approved the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*** The Protocol entered into force in September of the same year, and now constitutes an integral part of the national legislation. In August 2006, a five-year program with the budget of 2 billion UAH was approved, aimed at essential improvement of prison and detention conditions.

The government developed a 10-year plan of judicial system reform. ***In July 2006, a new law providing for Internet publication of all national courts resolutions was adopted .***

The status of fulfillment of the mentioned recommendations was a subject matter of a thorough analysis of Ukraine during the presentation of the sixth periodic report to the UN Committee in October 2006.

**The Commissioner’s delegation taking part in the presentation of the sixth periodic report of Ukraine,** drew attention of the Committee members to those measures, taken to fulfill the previous Committee recommendations. Thus, they were informed of the publication of the Treaty Bodies Concluding Observations compilation prepared by the Commissioner in 3 languages including those made during the presentation of the fifth periodic report of Ukraine to the UN Human Rights Committee. The Committee members were also informed that ***the Commissioner for Human Rights submitted the Parliament a draft bill on the amendment of Article 29 of the Constitution of Ukraine to shorten the term of detention as an interim measure from 72 hours to 48 hours*** according to the recommendations, given by the Committee after consideration of the fifth periodic report of Ukraine. This would allow abolish provisions of this article,

noncompliant with Article 9 of the Covenant. So far no changes have been made to the Constitution of Ukraine.

To study the situation with the observance of the rights of particular population categories in more details *the Committee members were given Special Reports of the Commissioner for Human Rights on the protection of the rights of Ukrainian citizens abroad and on the protection of rights and freedoms of national minorities in Ukraine*, containing various proposals on strengthening the protection of rights of the mentioned categories of population addressed to legislative and executive authorities.

*At the same time, the Commissioner for Human Rights believes that up to now Ukraine has not managed to fulfill a number of important UN Committee recommendations: the practice of torture and other degrading treatment in places of detention still preserves; Ukraine hasn't managed to stop the expansion of HIV/AIDS epidemics, tuberculosis, hepatitis in penitentiary institutions of Ukraine. All this testifies to the necessity of taking urgent measures to create an independent national preventive mechanism for prevention of torture; the problem of court corruption remains an urgent issue till now, what makes continuation of the judicial reform very urgent; practice of returning refugees to their countries of origin has been under way, notwithstanding the real threat to their lives and health on the part of the state authorities; in spite of all positive tendencies, practice of hazing in the Armed Forces of Ukraine still preserves; xenophobic, racist and Anti-Semitism violence escalates; the number of women holding executive positions in the government and state authorities still remains insignificant.*

The UN Committee established a deadline for the elimination of these and other violations of the Convention requirements, as well as the fulfillment of its recommendations, until November 2011, when the next periodic report of Ukraine is to be considered. The Commissioner will continue to conduct the monitoring of implementation of the UN Human Rights Committee recommendations.

## **II. Implementation of Observations and Recommendations of the UN Committee on Economic, Social and Cultural Rights by Ukraine**

*In 1994, Ukraine submitted its third periodic report to the UN Committee on Economic, Social and Cultural Rights, which was considered in 1995, in 1999 Ukraine submitted the fourth periodic report, which was considered in August 2001, in 2005 the fifth periodic report was submitted, which was considered in November 2007, the deadline for submission of the sixth periodic report to the UN Committee is June 2011.*

Expressing its *observations on the third periodic report*, the UN Committee paid attention to the fact that it was the first report submitted by Ukraine after the declaration of its independence, and that the main problems regarding the violations of economic, social and cultural rights originated from the economic consequences of market transformation: *unemployment, mass impoverishment of population*, etc. At the same time, the UN Committee noted that namely *those remnants of the former social security system, ruined in the process of market*

*transformation, were the most significant achievements in the protection of the rights*, stipulated by the *Covenant on Economic, Social and Cultural Rights*: social benefits, free primary education, etc. It should be emphasized that the Committee expressed its concern over the possible discrimination impacts of such former social achievements as retirement of women five years earlier than retirement of men within a new social environment and old age protection system breakdown through pension payments.

At the same time, the Committee noted the aggravation of problems connected directly with a modern stage of Ukraine's development: increase in discrimination of women in all spheres of social and economic life, domestic violence against women, a broad range of spheres and other kinds of hired labor where creation of trade unions is prohibited, and official restrictions of the right to strike.

Therefore, back in 1995 the Committee recommended Ukraine as a State Party to take specific legislative measures to prohibit all kinds of sex discrimination and make efforts to promote awareness and understanding of human rights among women, particularly within the educational system, as well as establish institutions for ensuring the protection of and assistance to the victims of violence and discrimination.

The UN Committee paid special attention to the necessity of creation of the Ukrainian National Centre for Human Rights and its technical provision.

**The Commissioner for Human Rights has to admit that almost all of these UN Committee recommendations in fact were ignored.**

Therefore, the majority of Ukraine's problems were again emphasized by the UN Committee during the consideration of **the fourth periodic report in 2001**. In its observations and recommendations to this report, the UN Committee *noted* that *the transition of the State Party to a market economy had negatively influenced the implementation of the rights, stipulated by the Covenant, and led to the high level of poverty among the majority of population*. The situation has aggravated especially due to the policy of the State Party in the field of privatization, a high level of unemployment, low level of pensions and wages, (particularly, the minimum wage level established by law is lower than the subsistence level established by law), as well due to the shortage of housing.

A very important recommendation of the UN Committee was the obligation imposed on Ukraine: *to analyze its own policy of economic reforms, taking into account its influence on the level of poverty in the country, as well as take measures to bring such policy in conformity with the guarantees to ensure economic, social and cultural rights of the most vulnerable population groups*. The UN Committee also recommended Ukraine to develop by means of open consultation process a national action plan, directed at implementation of its obligations, assumed according to the international documents in the area of human rights, particularly according to the *International Covenant on Economic, Social and Cultural Rights*.

The UN Committee again drew attention of the State Party to **the necessity to support the activity of the newly established institution of the Ukrainian Parliament Commissioner for Human Rights as one of the most important**

**social instruments for the protection of rights of the least privileged groups of the Ukrainian population.**

Importance should be also paid to the UN Committee recommendation on broad dissemination of its Concluding Observations in the Ukrainian society as a precondition of public control over fulfillment of the state obligations.

**The monitoring of the fulfillment of the above mentioned observations and recommendations, conducted by the Commissioner for Human Rights, attests that Ukraine for the moment of the fourth periodic report presentation has taken a number of actions to ensure the implementation of the Committee's recommendations.**

*Since 2001 Ukraine has been implementing the Poverty Reduction Strategy*, according to which a Comprehensive Implementation Program was developed with special action plans being annually approved by the government. As a result of fulfillment of the State Employment Program for 2001-2004 employment opportunities were increased by means of creation of work places for more than 2.3 million people. The government also managed to decrease the level of back pay. In November 2004, *Ukraine ratified the ILO Labor Inspection Convention No.181* (1947). In September 2005, *the Ukrainian Parliament adopted the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men"*, directly providing for establishing gender approaches into the state policy.

*On 14 September 2006 Ukraine also ratified the revised European Social Charter*; introduced changes to *the Labor Code* prohibiting the gender discrimination in employment and remuneration of labor; *introduced 4-percent quota for employment of disabled people at all enterprises*; essentially increased state funding for fighting HIV/AIDS epidemics, as well as increased attention to HIV/AIDS prevention in the National Anti-AIDS Program (2004-2008).

To bring the Criminal Code of Ukraine in line with *the UN Convention Against Transnational Organized Crime* and the Protocol to it of 15 November 2000, the Law of Ukraine *"On Introduction of Changes to the Criminal Code of Ukraine Envisaging Enhanced Responsibility for Trafficking in Human Beings and Involvement in Prostitution"* of 12 January 2006 revised and amended Articles 149 and 303 of the Criminal Code of Ukraine.

The Ministry of Justice prepared a draft Law of Ukraine "On Refugees and Persons Requiring Additional or Temporary Protection in Ukraine" with the aim to establish, according to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the institutes of additional and temporary protection, the procedure of granting, cessation or cancellation of refugee status, introduce guarantees of protection of refugees and people requiring additional or temporary protection in Ukraine.

To solve the problem of providing housing to population categories requiring the state protection, on 12 January 2006 the Ukrainian Parliament adopted the Social Housing Law, which entered into force on 1 January 2007. On the basis of this Law the *government prepared a Draft Social Housing Development Programme 2008-2012 for submission to the Parliament of Ukraine.*

However, the situation with ensuring economic, social and cultural rights in Ukraine has been changing very slowly, what is proved by the results of the Commissioner's monitoring. Therefore, it was no coincidence that **following consideration of the fifth report of Ukraine**, taking place in November 2007, the UN Committee expressed a special concern over *the absence of mechanisms of effective protection in cases of discrimination and violence against women, ethnic or religious minorities, especially Roma, Crimean Tatars, refugees from Asia and Africa, as well as Muslims and Jews, and the reluctance of law-enforcement bodies to properly investigate these cases.*

The UN Committee again confirmed its concern over the problem of poverty and the fact that according to the official statistics *the living standard of 28% of population in Ukraine is lower than the official level of poverty, and the minimum wage does not ensure the adequate standard of living for workers and their families, while the unemployment benefits do not exceed 50% of the subsistence level.*

At the same time, the UN Committee emphasized the problem of *domestic violence*, and especially pointed at the aggravating problem of *child labor exploitation*, noting that **over 400000 persons under 15 work in shadow economy**, particular at illegal mines, in sex industry, or engaged in begging, while several thousands of children have lived in the streets and have been subjected to police abuse, sexual exploitation and forced labor, or have become victims of alcohol and drug addiction, and are exposed to various illnesses.

Still acute is *the problem of overcrowding of prisons, detention and refugee centres*, including medical departments for prisoners and detained persons, suffering from tuberculosis. The UN Committee was extremely concerned by a high level of HIV/AIDS epidemics in the country, also among women, discrimination of people living with HIV/AIDS and people belonging to the risk groups, such as sex industry workers, drug addicts and prisoners, *disclosure of information on their HIV-status by law-enforcement bodies, medical and educational establishments.*

Evaluating the level of fulfillment of the *International Covenant on Economic, Social and Cultural Rights* by Ukraine, the Committee made new recommendations. The Committee recommendation on *ensuring effective judicial protection of economic, social and cultural rights, also by means of introduction of the right of direct access of individuals to the Constitutional Court of Ukraine*, should be especially emphasized.

The Commissioner for Human Rights has repeatedly submitted the acts of submission to the Verkhovna Rada of Ukraine with a request to establish the mechanism of submitting constitutional claims to the Constitutional Court of Ukraine by individuals.

The UN Committee urged Ukraine as a State Party to consider the issue of *ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the Convention on the Rights of Persons with Disabilities and its Optional Protocol.*

To fulfill the observations and recommendations upon the consideration of the **fifth periodic report**, Ukraine has been taking specific measures. *Ukraine has been implementing the International Program on the Elimination of the Worst Forms of Child Labor*. On 13 February 2007 the Verkhovna Rada of Ukraine adopted the Draft Law of Ukraine “*On the National program “The National Action Plan on Implementation of the UN Convention on the Rights of the Child for the period till 2016”*”. The aim of the National Action Plan is to determine the ways of ensuring effective protection of the rights of the child, taking into consideration the Millennium Development Goals and the final document of the General Assembly Special Session on Children “A World Fit for Children”.

*The Commissioner’s monitoring attests that the above mentioned steps are insufficient to overcome the acuteness of problems, indicated by the UN Committee, therefore the preparation of Ukraine to presentation of the sixth periodic report will require additional efforts on the part of the state with a view to fulfill recommendations and observations of the Committee.*

### **III. Implementation of Observations and Recommendations of the UN Committee on the Elimination of Racial Discrimination by Ukraine**

*In 1997 Ukraine submitted the thirteenth and fourteenth periodic reports considered by the UN Committee on the Elimination of Racial Discrimination in March 1998. In 2000 the fifteenth and sixteenth periodic reports were submitted by Ukraine, and considered by the Committee in August 2001. In 2004 the seventeenth and eighteenth periodic reports were submitted, and considered by the Committee in August 2006. The nineteenth, the twentieth and the twenty-first periodic reports are scheduled for April 2010.*

The status of Ukraine’s implementation of observations and recommendations of the Committee on the Elimination of Racial Discrimination upon the results of *the thirteenth and the fourteenth national reports* was carefully studied by the Commissioner for Human Rights in her First Annual Report on the State of Observance and Protection of Human Rights and Freedoms in Ukraine and deemed unsatisfactory.

**The fifteenth and the sixteenth periodic reports** of Ukraine submitted to and considered by the Committee showed that measures had been taken to strengthen the fight against different forms of discrimination. *In January 2000 the Verkhovna Rada approved the Law of Ukraine “On Refugees”, in January 2001 – the Law “On Citizenship of Ukraine”, in April 2001 – The Criminal Code of Ukraine (Article 161) and the Law of Ukraine “On the Political Parties in Ukraine” (Article 5), prohibiting advocacy of racial and ethnic hatred and establishment of organizations and political parties based on principles of racial hatred or discrimination. In June 2001 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Immigration”*. Eventually, Ukraine has abolished the death penalty, established the system of courts of appeal giving the possibility to protect the rights more effectively, including the rights of national minorities. Further development was given to minority-language educational services.

At the same time the Committee stressed that the main problems concerning Ukraine's complying with *the International Convention on the Elimination of All Forms of Racial Discrimination* still remained unresolved. This coincided with a critical assessment of the situation given by the Commissioner for Human Rights in her First Annual Report.

The Commissioner deems it necessary to emphasize that the Committee did not receive any individual communication from persons under jurisdiction of the State Party, despite the State Party's having recognized the right of the UN Committee to accept and consider individual or group communications, stipulated in Article 14. Nevertheless, this shows not the absence of violations of the Convention, but the lack of population awareness in this regard.

Taking into account that Ukraine still has problems on its performing the obligations under *the International Convention on the Elimination of All Forms of Racial Discrimination*, and these problems have been aggravating, the UN Committee recommended Ukraine to take all relevant legislative measures to achieve full compliance of the national legislation with the provisions of the Convention. The Committee emphasized the importance of *adequate prohibition of and punishment for racial segregation and discrimination violence, regardless of whether the violence was committed by a single person or a group of persons*.

Ukraine was recommended to ensure that the next periodic report contained information on the complaints received, investigation and legal prosecution initiated, as well as criminal and civil penalties applied in racial discrimination cases, **especially the results of investigation initiated upon complaints received by the Ukrainian Parliament Commissioner for Human Rights**. Ukraine also had to take immediate and effective measures to stop Roma abuse, put an end to all tendencies towards labeling certain ethnic groups, any indiscriminate charges or stereotypes, as it may lead to police and immigration service officers, mass media and society in general, assuming a certain attitude to some national groups because of their racial background.

To implement the observations and recommendations made by the UN Committee, Ukraine took a number of important actions in the field of reforming the national legislation with a view to bring it in conformity with the Convention. For instance, **in September 2001 by the decree of the President of Ukraine the State Committee on Nationalities and Migration was entitled to act as a state central body accomplishing the state policy in the field of intercultural relations**.

*In January 2002 Ukraine joined the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967. In May 2003 the European Charter for Regional or Minority Languages was ratified by Ukraine for the second time. In September 2003 the government approved the Programme of Social and Spiritual Rebirth of Roma in Ukraine for the period till 2006* providing for specific methods of educating Roma children taking into account their customs and traditions, as well as a number of benefits: free meals, medical service, elective courses in History, Culture and Roma Traditions. To implement the European Charter, in 2005 the government approved the State

Programme of Financial Support, to which UAH 1 mln was allocated from the State Budget of Ukraine. The Government *took and implemented Comprehensive Measures on National Minorities Cultural Development in Ukraine for the period till 2005*, especially those *on Karaites and Crymchaks cultural heritage preservation*.

A refugee detention centre was opened in July 2004 in Odesa region. Construction of the same centre in Kyiv region is under way. In May 2005 Articles 9, 13 of the Law of Ukraine “*On Refugees*”, abolishing the maximum term of application submission on granting the refugee status and prolonging the term of such applications consideration, were amended.

At the same time, **as the Commissioner’s monitoring attests, Ukraine has failed to implement the Committee recommendations on strengthened prosecution of hate crimes**. The law enforcement bodies still qualify the racially-motivated crimes against foreigners and national minorities representatives as hooliganism. As a result, *there is no official statistical information in this regard*. On the other hand, there is an increase in vandalism, xenophobia and racism, hate violence and hate crimes.

**The delegation of the Ukrainian Commissioner participating in the consideration of the seventeenth and the eighteenth periodic reports by the Committee for the Elimination of Racial Discrimination in August 2006** informed the Committee on the results of the monitoring performed, the implementation of the Committee recommendations and certain negative tendencies in society towards racism and racial discrimination. The Commissioner also *informed the Committee members on the joint project of the Commissioner and the OSCE High Commissioner for National Minorities concerning the monitoring of observance of the rights of national minorities in Ukraine, performed in six regions of Ukraine*, and also on the **Special Report of the Commissioner “On the Status of Observance and Protection of the Rights and Freedoms of National Minorities in Ukraine”**, based on the results of this monitoring. This document was presented to every Committee member.

The Committee members were presented with the compilation of Concluding observations of the UN treaty bodies, composed in three languages and published on the initiative of the Commissioner. The compilation was highly appreciated by the Chairman of the Committee. As the Committee Chairman pointed out, the Commissioner’s appraisal of the state of Ukraine’s performance of obligations under the Convention often concurred with the views held by the Committee.

The delegation of the Commissioner also presented the Special report of the Commissioner “On the Status of Observance and Protection of the Rights of the Ukrainian Citizens Abroad” and informed the Committee on the Action Plan, approved by the Cabinet of Ministers of Ukraine on the basis of this report. The report for the first time in the international practice gave a comprehensive assessment of problems encountered by migrant workers and allowed the Committee members to study the situation with observance of the rights of the Ukrainian migrant workers in a number of States Parties to *the International Convention on the Elimination of All Forms of Racial Discrimination*.



In its concluding observations on the seventeenth and the eighteenth periodic reports submitted by Ukraine, ***the Committee noted a certain progress in the field of legislation***, particularly the submission of a bill to amend the Law “On National Minorities” to the Verkhovna Rada recognizing the right of national minorities to use their traditional names and languages; abolishment of restrictive limitations for application submission on granting asylum in the Law of Ukraine “*On Refugees*”, etc.

***Since 2004 Ukraine has been implementing the project “Protection of Roma Rights and Ensuring Their Access to Justice”*** with support of the European Union. Within the framework of this project, 15 Roma Rights Centers were created in different regions of Ukraine, namely in Vinnytsia, Volyn, Cherkasy, Donetsk, Kherson regions and Kyiv City. In 2006-2007 only, nearly a thousand Roma people visited the centers seeking legal assistance.

**In March 2007 the State Committee for Nationalities and Religion**, that substituted the State Committee for Nationalities and Migration, **started working** at its full capacity. Its primary activities include considering appeals to grant political asylum, combating racism and racial discrimination.

At the same time the Committee confirmed the negative tendencies in observance of human rights, based on Ukraine’s obligations under ***the International Convention on the Elimination of All Forms of Racial Discrimination***, and recommended to take immediate measures to improve the situation. So, the Committee expressed concern over the absence of official recognition of Rusyns in Ukraine despite their distinct ethnic peculiarities. That is why the Committee recommended Ukraine studying the issue of official recognition of Rusyns as a national minority.

The Committee also expressed concern over the absence of criminal cases initiation under Article 191 of the Criminal Code of Ukraine on crimes committed against foreigners.

***The independent monitoring of the Commissioner for Human Rights on Ukraine’s implementation of the Committee’s observations and recommendations upon consideration of the seventeenth and the eighteenth periodic reports shows growing negative tendencies towards xenophobia, religious, national and racial intolerance. Violence and vandalism based on religious, ethnic and racial grounds have been increased in recent years.***

In 2006 more than 60 instances of violence committed on racial grounds against foreign citizens were registered, including attacks on African people, Arabs and persons from the Far East, with seven people killed in these attacks. In 2007 there were more than 80 racist attacks. In 2006-2007, 92 instances of desecration of graves were recorded, including 7 cases on damaging holy places and memorial headstones in burial places. The situation generated a need for creating in 2007 relevant units within the Security Service of Ukraine and the Ministry of Internal Affairs of Ukraine on religiously, ethnically and racially motivated crimes.

Such tendencies show certain gaps in the state policy on preventing discrimination in society, as well as ensuring the rights of national minorities. ***Taking into account the relevance of these issues, the Commissioner will shortly***

*submit the Verkhovna Rada of Ukraine the Special Report on the State of Ensuring the Rights of National Minorities in Ukraine prepared upon the results of the monitoring conducted.*

#### **IV. Implementation of Observations and Recommendations of the Committee**

##### **on the Elimination of Discrimination against Women by Ukraine**

*In 1996 the Committee on the Elimination of Discrimination against Women considered the third periodic report of Ukraine. In January 1999 Ukraine submitted the fourth and the fifth reports considered in June 2002. In 2005 the sixth periodic report of Ukraine was submitted though it has not been considered yet.*

Paying considerable attention to gender equality issues, the Commissioner has analyzed in her First Annual Report the implementation of the UN observations and recommendations upon consideration of the third periodic report of Ukraine.

In order to perform the obligations under *the Convention on the Elimination of All Forms of Discrimination against Women*, Ukraine has taken specific measures to ensure gender equality in Ukraine:

*– In 1999 the Parliament of Ukraine approved the Declaration on the General Principles of State Policy on Family and Women, providing for increasing the role of women in the economic, political, social, cultural and spiritual life of the country;*

*– The Family Code was brought into effect in 2001, establishing equal rights and obligations of men and women in family issues;*

*– In April 2001 the Decree of the President of Ukraine (No. 283 2001) “On Improvement of Social Status of Women in Ukraine” was published;*

*– A new National Action Plan for 2001-2005 complying with the Beijing Platform for Action was approved;*

*– In 2001 the Law of Ukraine “On Prevention of Violence in the Family” was enacted, crisis centers and asylums for social rehabilitation of women and children – victims of violence were created;*

*– In 2002 a Comprehensive Programme on Fighting against Trafficking in Human Beings for 2002-2005, with special attention to counteracting trafficking in human beings, legal prosecution of such crimes and rehabilitation of victims, was approved.*

However, *during consideration of the fourth and the fifth periodic reports in June 2002*, noting the positive changes in elimination of discrimination against women in the country, the UN Committee underlined that despite entrenching the Convention provisions in the national legislation, *there is direct and indirect discrimination against women*. This concerns the pay levels in the spheres dominated by women, a high unemployment level, especially among older women, domestic violence, trafficking in human beings and girls, substantial disproportionate representation of women holding management positions in bodies of state power and local self-government, as well as in the Parliament of Ukraine.

The monitoring results of the Commissioner coincide with the UN Committee's observations. *According to the Commissioner*, the main problem touched upon by the UN Committee in its observations is nonconformity between the women's rights established by the law and their practical discriminatory implementation. This happens not only because of existing stereotypes on discrepancies in social roles of women and men, but also due to a devastating impact of market reforms that led to mass poverty and deprived women of implementing the rights stipulated by the law to a greater extent than it did to men. The stereotypes are left engrained, inter alia, in the Ukrainian language (for example, inequality between masculine and feminine gender) and still occur in social relations, while in modern English, French, Spanish, German and other languages these terms are used on a parity basis.

**The Commissioner fully supports the UN Committee** insisting on the necessity to implement Paragraph 1 Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women, what concerns interim measures aimed at enhancement of equality between men and women. *It is the only way, unfortunately, underestimated both by the society and the state authorities, that can improve the situation.*

The Commissioner's monitoring attests that Ukraine has been taking measures to implement the UN Committee's observations upon consideration of the fourth and the fifth periodic reports of Ukraine.

*The enactment of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Men and Women" by the Verkhovna Rada of Ukraine in September 2005 was an important step in meeting the requirements of the UN Convention.* In particular this law ensures equal participation of men and women in making socially important decisions, and recognizes providing such opportunity as a main direction of the state policy. Article 6 of the law prohibits any discrimination based on sex. The aim of the law is to create a state mechanism to ensure equal rights and opportunities for men and women. It is noteworthy that Article 7 of the law defines the Ukrainian Parliament Commissioner for Human Rights *as one of the authorities empowered to ensure equal rights and opportunities for men and women.* **According to Article 9 of the law the Commissioner, within the framework of its control over observance of citizens' and human rights and freedoms, exercises control over observance of equal rights and opportunities for men and women.**

To comply with Ukraine's obligations under the Convention, the government of Ukraine envisaged supplementary guarantees on particular population categories in need of social protection, including women, who have children under 6 years, single mothers, women having children under 14 years or disabled children. The guarantees are ensured by reservation of jobs for such categories up to 5% of the total amount of working places. *The measures taken gave the possibility to reach a perceptible downward trend in a number of unemployed women as a proportion of the total numbers of people out of work.*

Ukraine enhances a women's active participation in non-governmental organizations. In particular, there are nearly 50 national and international women's

organizations operating in Ukraine and some 1500 regional ones. Under the Cabinet of Ministers there is a consultative body – the Women’s and Men’s Equal Rights and Opportunities Council. The Institute of Advisers on Gender Issues has been established in the country as well.

To overcome domestic violence *in April 2003 the Cabinet of Ministers of Ukraine adopted the Procedures of consideration of complaints and statements on commitment of domestic violence or its real threat* , and in May 2003 the Verkhovna Rada adopted the *Law of Ukraine “On the Amendments to the Ukrainian Code of Administrative Offences Relating to Liability for the Commission of Domestic Violence or Failure to Comply with Injunctions”*, which provides measures to prevent domestic violence. More than 30 Crisis Centres and Centres for Medical and Social Rehabilitation were established under this law.

*Upon the submission of the Commissioner to the President of Ukraine (of 29 December 2001), the Verkhovna Rada of Ukraine ratified the UN Convention against Transnational Organized Crime in April 2004, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against Smuggling of Migrants by Land, Air and Sea.*

*In March 2005 under the Ministry for Foreign Affairs of Ukraine the Center for Assistance to Ukrainian Citizens Abroad was established.* The activity of the Centre is aimed at reduction of possible negative trends, abolishment of legal nihilism regarding employment abroad, conducting preliminary public awareness activity, as well as providing legal assistance to the Ukrainian citizens working abroad. *Special units to fight against trafficking in human beings were created within the law enforcement bodies.*

An important step was the ratification of the revised European Social Charter in September 2006.

However, *the Commissioner believes*, these measures are not enough to ruin the existing stereotypes regarding women’s role in society and implement the state policy on ensuring equal rights and freedoms of women and men. First and foremost this is connected with a critical low representation of women in the parliament and in the upper echelons of the State.

*The Commissioner for Human Rights believes that the situation can be changed for the better by means of positive discrimination as well, that would increase representation of women in the Parliament, the Government as well as in the bodies of local self-government. Otherwise, economic poverty, low social status of women, distrust in women as political leaders and lack of political will within the state administrative bodies will further preserve the existing discriminatory status of women in Ukraine.*

The Commissioner is concerned by a high level of violence against women, almost every third application to the police is connected with domestic violence. Imposing a fine as an administrative penalty for domestic violence with a woman being often financially dependant on a man, however, negatively influences first of all the victims, that is why other measures of influence and social rehabilitation need to be implemented.

*The Commissioner conducts regular monitoring of ensuring equal rights and opportunities for women and men, which attests, that it is impossible to achieve substantial progress only by means of eliminating social and economic factors, that put a major part of population into unequal position compared to another one.*

## **V. Implementation of Observations and Recommendations of the Committee on the Rights of the Child by Ukraine**

*In 1994 Ukraine submitted its first periodic report to the Committee, which was considered in November 1995. The second periodic report was submitted in 1999 and considered in September 2002. The third periodic report to the Committee is scheduled to be submitted in September 2008.*

Committee on the Rights of the Child is a UN treaty body, to which Ukraine has reported twice as an independent state under *the Convention on the Rights of the Child 1989*. That is why the concluding observations and recommendations of the UN Committee may have provided the best opportunity to see the impact of social and economic transformations in the society on ensuring the rights of the child.

It is no coincidence that in its observations on the first periodic report of Ukraine in November 1995, the Committee has clearly emphasized the negative role of social changes and a deep economic recession caused by them which resulted in deteriorating the life of many children because of the growing impoverishment and unemployment of their parents. Besides, Ukraine still faces great difficulties in eliminating after-effects of the Chernobyl disaster, particularly the consequences it has had on the environment, physical and mental health of people, especially children.

Ukraine has taken a number of measures to fulfill the UN Committee's observations and recommendations upon consideration of the first periodic report. So, the Verkhovna Rada of Ukraine adopted the following laws:

– *The Law of Ukraine “On State Social Assistance to Low-Income Families” (June 2000);*

– *The Law of Ukraine “On State Social Assistance to Persons Disabled from Childbirth and Disabled Children” (November 2000);*

– *The Law of Ukraine “On the Protection of Childhood” (April 2001);*

– *The Law of Ukraine “On Social Work with Children and Youth” (June 2001);*

– *The Law of Ukraine “On Prevention of Domestic Violence” (November 2001), prohibiting, particularly, corporal punishment in school, educational establishments and family (November 2001);*

– *Ratification of the ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (October 2000);*

– *The Family Code of Ukraine 2002 provides for the right of the child to independently appeal to court: every party to family relations that has attained the age of 14 has the right to directly seek a remedy in court to protect his/her*

***right or interest.*** It has become a great achievement in the field of ensuring the right of the child to protection against maltreatment and all forms of violence.

The laws on educational issues directly concerning the right of the child to accessible education have also been approved.

***Since July 2001*** within the framework of technical cooperation with the ILO ***Ukraine has been implementing the Project “International Programme on the Elimination of the Worst Forms of Child Labour”*** according to the Memorandum of Understanding between the ILO and the Cabinet of Ministers signed on 10 June 2002. The aim of the project is to provide assistance to Ukraine in implementing the ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

***The Commissioner believes, however, that during consideration of the first periodic report of Ukraine the Committee members did not have the opportunity to see all the deepness of crisis in Ukraine and its influence on Ukraine’s implementation of its obligations under the Convention, first of all because the state authority itself did not realize the consequences of transformations made at that time for human rights.***

***That is why the Commissioner deems it necessary to pay attention to the fact that consideration of the second periodic report by the UN Committee witnesses about deeper understanding of the whole range of factors leading to aggravation of problems connected with ensuring the rights of the child in Ukraine by the Committee members as well as by the State authority.***

This makes it clear that ***the UN Committee’s concluding observations and recommendations on the second periodic report of Ukraine*** adopted in September 2002 cover a wider range of issues on Ukraine’s complying with its obligations under the UN Convention and are based on understanding of the dependence of these problems on economic transformation in the society, resulted in decline in living standards, increase in poverty and unemployment levels, that in its turn negatively affected the families with children.

Upon consideration of ***the second periodic report of Ukraine, the UN Committee recommended Ukraine*** to develop a strategy to combat homelessness or decrease a number of homeless children, take effective measures to reform the family-type orphanage system and improve the conditions in child care facilities, as well as create mechanism that would allow active, timely and effective enforcement of alimony payments from parents having such obligations.

The Committee recommended to ensure that all children, especially from the most vulnerable population groups, have access to immediate medical assistance, ***further improve specialized medical care to children suffered from after-effects of the Chornobyl disaster.*** Taking into account psychological and social aspects of the situation, the Committee recommends to take all measures to fight against growing consumption of alcohol, smoking and drug addiction, take into account the rights of the child while elaborating and implementing the state policy and fight against HIV/AIDS in the interests of children suffered from this disease and their families, as well as to increase efforts to prevent HIV/AIDS.

*To implement the UN Committee's observations and recommendations* upon consideration of the second periodic report of Ukraine, Ukraine has been actively implementing relevant measures. So, *the UN Committee stressed on the necessity to implement the National Action Plan Against Commercial Sexual Exploitation of Children*, taking into account the Declaration and the Action Plan, as well as the Global obligations adopted in 1996-2001 at the World Congress against Commercial Sexual Exploitation of Children, *to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*. Upon the relevant submission of the Commissioner for Human Rights to the President of Ukraine as early as December 29, 2001 Ukraine ratified the above mentioned Convention and the Protocol on 4 February 2004.

The Laws of Ukraine “*On State Assistance to Families with Children*”, “*On State Social Assistance to Low-Income Families*”, “*On State Social Assistance to Persons Disabled from Childbirth and Disabled Children*” on strengthening a social assistance to children have been amended as well.

To implement the Committee's recommendations, a special unit responsible for systematic control over observance of the provisions of *the Convention on the Rights of the Child* was created within the Office of the Commissioner for Human Rights. It also studies complaints submitted by children themselves or by adults pursuing the interests of children. Moreover, two Ombudsmen for Children (a boy and a girl) were appointed on a competitive basis to serve in the Commissioner's office. They contact with children's associations, hold awareness raising activities on the rights of the child, study legislation, mass media information, as well as enable the Commissioner to see the problems of asserting the rights of the child through a child's eyes.

*Such Ombudsman's activity was welcomed during presentation of the first periodic report of Ukraine on its observance of human rights to the UN Human Rights Council in May 2008.*

Ukraine has been acquiring experience in electing ombudsmen for children in regions and within children's associations. Thus, pupils annually elect a pupils' rights protection representative in Korosten secondary school №7 (Zhytomyr region, Ukraine). In 2007 a team of ombudsmen for children under the Ukrainian Parliament Commissioner for Human Rights in Vinnytsia was created. A public children's association under the Ukrainian Parliament Commissioner for Human Rights has functioned in Uzhgorod since 2008. An assistance to create such structures in Chernivtsi, in schools of Kyiv, Ternopil and other regions has been provided.

*A unique Ukraine' experience of involving children and youth in protection of the rights of the child has been internationally recognized, especially at the European Ombudsmen Conference in Athens, 2006.*

**Protection of the rights of the child has become more and more a national policy in Ukraine in recent years.** An integral system of legal protection of children, orphaned and abandoned children in particular, has been gradually developed. National programmes aimed at reforming the orphanage system have

been elaborated, alternative family forms of arrangement have been developing, a great progress in the field of social assistance to families with children has been achieved, etc.

*At the same time, as the Commissioner's study attests, the Ukrainian legislation on implementing the UN Convention on the Rights of the Child is mostly of declarative nature.* Besides, there is a threatening aggravation of problems connected with observance of the rights of the child.

*The UN Convention on the Rights of the Child* states that every child has the right to life. Unfortunately, Ukraine has failed to ensure this fundamental provision of the Convention so far. The Commissioner for Human Rights, as well as the whole society, is greatly concerned by tragic deaths of children in early 2008-2009 academic year in schools of Zaporizhzhia, Zhytomyr, Lutsk, Chernivtsi region, etc. The Commissioner initiated investigation into each case on violation of constitutional rights to life. Based on the analysis made in October 2008, the Commissioner for Human Rights submitted the act of submission to the Prime Minister of Ukraine "On Protection of the Rights of the Child to Defense and Adequate Education in Secondary Educational Establishments".

Moreover, to prevent such tragedies in future, the Commissioner for Human Rights made proposals to amend the draft resolution of the Cabinet of Ministers of Ukraine "On Comprehensive Action Plan to Develop the Education in Ukraine for the Period till 2011" by introducing important measures, particularly, to conduct complex medical examination of pupils from secondary schools at the beginning of each academic year and complete such examination till December of the current year; to establish a position of security engineer in regional and local departments of education and law, introduce a position of medical assistant, practical psychologist in every school, as well as to improve the remuneration system for teachers.

*The Cabinet of Ministers supported the proposals of the Commissioner. Their implementation will help to protect the rights of Ukrainian children to defense as well as adequate education.*

In 2002 the UN Committee on the Rights of the Child expressed its concern over the growing number of homeless children. The monitoring of the Commissioner for Human Rights attests that there is still a high rate of homelessness among children in Ukraine. Moreover, in recent years a new kind of child homelessness (the so-called "European orphans" – children whose parents have left abroad to earn money) has appeared.

*The Commissioner for Human Rights believes, that a decision of the Cabinet of Ministers of 26 November 2008 on establishing the Coordinating Council on Social Assistance to Homeless Citizens and Homeless Children, with the Commissioner's representative being a member of the Council, will give the possibility to exercise control over protection of the rights of this category of children.*

It is the category of children, the most vulnerable one, that most often becomes a victim of trafficking, child prostitution and child pornography. Ratification of the Optional Protocol to the *UN Convention on the Rights of the Child* on the Sale of



Children, Child Prostitution and Child Pornography is intended to promote solving this problem. At the same time the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was ratified. Under these Protocols Ukraine has taken obligations to prepare periodic reports on implementation of the provisions of the Convention to the UN Committee on the Rights of the Child .

***On 4 June 2007 the UN Committee on the Rights of the Child considered the first periodic report of Ukraine at its 45 session on 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 Commissioner's representatives took part in the work of the UN Committee on the Rights of the Child and informed its members of the results of *the monitoring conducted by the Commissioner for Human Rights on Ukraine's implementation of the Optional Protocol*, the activity of the Commissioner in the field of protection of the rights of the child, particularly on combating disgraceful phenomena – the sale of children, child prostitution and child pornography, as well as focused on the necessity to strengthen preventive measures against such violations and presented the Commissioner's observations and recommendations in this regard.

*The reasons for non-ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption by Ukraine (1993), with some provisions not meeting the national interests of the country of origin of children adopted by foreigners*, have also been explained. Joining the above mentioned Convention opens a door to the activity of intermediary international non-governmental organizations which is prohibited by the criminal legislation of Ukraine and is subject to legal prosecution (Article 149 of the Criminal Code of Ukraine). One should mention, that provisions meeting the interests of orphans, children deprived of parental care and children, who are in the process of adoption, were implemented in the Ukrainian legislation back in 1996. That is why the Parliament of Ukraine rejected ratification of this Convention three times.

It should be emphasized, that Ukraine has performed a substantial work on promoting coordination of efforts to counteract the sale of children, with the first steps being made back in 1998 by the Ukrainian Parliament Commissioner for Human Rights. According to Article 10 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" to offer consultation, conduct scientific investigations, examine proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms, as well as coordinate the work of institutions and organizations to counteract trafficking in human beings and elaborate a single state policy in this regard *the National Coordinating Council for the Prevention of Human Trafficking in Ukraine was established under the Commissioner for Human Rights in 1999*. This Council has played an important role in coordination of work of different executive bodies and non-governmental organizations, until the Interagency Coordinating Council for Combating Trafficking in Human Beings, Especially Children, as well as

permanent regional commissions on coordination of information exchange on the prevention of trafficking in human beings were created by the Order of the Cabinet of Ministers № 1961 of 25 December 2002.

With a direct participation of the Commissioner for Human Rights the state programmes on counteraction of trafficking in human beings have been elaborated and implemented: the Programme for the Prevention of the Sale of Women and Children (1999) and the Comprehensive Programme for the Counteraction of Trafficking in Human Beings for 2002-2005.

In March 2007 the Cabinet of Ministers approved the Programme for the Counteraction of Trafficking in Human Beings for the period till 2010 providing for implementation of comprehensive measures aimed at disclosure and elimination of offences connected with trafficking in human beings and human organs.

Ukraine took an active part in *elaboration of the European Convention on Action against Trafficking in Human Beings*, opened for signature during the Council of Europe's Third Summit in May 2005. ***On 17 November 2005 Ukraine ratified this Convention.***

***In January 2006 the Parliament of Ukraine adopted the Law of Ukraine "On Accession of Ukraine to the Convention on the Civil Aspects of International Child Abduction" and in March 2008 the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children was ratified.***

These Conventions aim at ensuring immediate return of a child in case of unlawful removal of a child to any Contracting State or failure to return a child from Contracting States, as well as stipulate, that the rights to custody and access to a child, envisaged by the law of a Contracting State should be strictly observed in other Contracting States.

Despite the measures taken by the State, trafficking in human beings remains widespread in Ukraine. According to the Ministry of Internal Affairs of Ukraine, 376 crimes connected with trafficking in human beings were registered in 2006, 359 related crimes were registered in 2007 and 243 crimes were registered for the first six months of 2008.

One can state that minors from problem families amounting to more than 80 000 in Ukraine are mostly subjected to human trafficking, child prostitution and child pornography.

The Commissioner for Human Rights believes, that until social and economic reasons of trafficking in human beings are eliminated, all state efforts to counteract this phenomenon will come to naught.

To implement recommendations of the UN Committee on the Rights of the Child, the State has taken measures to protect the most vulnerable categories of children – orphans and children deprived of parental care. So, ***the Law of Ukraine "On Ensuring the Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care" was adopted on 2 February 2005.*** It defines legal, organizational, social principles and guarantees of state

assistance to orphans and children deprived of parental care and constitutes an integral part of child protection law.

***The Decree of the President of Ukraine of 11 July 2005 “On Urgent Measures to Protect the Rights of the Child”*** has stated further reforming of a child custody system and a system of care for children. The Concept of State Programme on gradual reforming of institutions of all forms of ownership for orphans and children deprived of parental care was elaborated and submitted for approval to the Cabinet of Ministers of Ukraine.

Notwithstanding the fact that an integral system of the protection of orphans and children deprived of parental care has been gradually developing ***and the year 2008 was proclaimed the Year of National Adoption and other forms of family upbringing of orphans and children deprived of parental care by the Decree of the President of Ukraine***, the child’s problems still remain unresolved due to the lack of coherent and coordinated activity of relevant ministries and agencies.

The Commissioner for Human Rights made proposals on a draft decree of the Cabinet of Ministers “On the Procedure of Implementation of the Adoption Activity and Exercising Control over Observance of the Rights of the Child after Adoption”. The point is that both the interests of adopters and adopted children should be respected, as well as the adoption procedure should be regulated and any discrimination in this regard should be eliminated. The Commissioner proposed to expand the list of requirements for adopting children from Ukraine securing the right of a child to retain nationality of Ukraine till he/she has attained the age of 18. The Cabinet of Ministers supported the Ombudsman’s proposals.

***According to the Commissioner, acute remains the problem of absence of bilateral agreements with recipient countries, particularly, with the USA, Italy, Israel, which don’t provide effective control over Ukrainian children, adopted by the citizens of these countries. That is why Ukraine has to take additional measures to radically change the situation.***

It is very important, as in some countries a child acquires the citizenship of the recipient country upon the adoption. Despite the regulations of Article 283 (par.6) of the Family Code of Ukraine, providing for the right of the adopted child to preserve his/her ethnic identity upon attaining majority, in some countries a child when crossing the frontier of a country automatically acquires the citizenship of the recipient country, forfeiting the right to choose a citizenship in future. At the same time in case of revocation of an adoption, the guardianship bodies of those countries decide the destiny of that child without consultations with the relevant bodies of our country.

So, in 2002–2004 the citizen of the USA John Walter Krueger adopted three boys from the orphanage of Ukraine born in 1994, 1995, 1997 respectively. Since December 2005 he has been charged with sexual abuse of these children by the Bakersfield Police Department. Despite prior molestation allegations against Krueger in 1991, California Social Services Agency Chrysalis House had given positive characteristics of the adopter that gave grounds to the Ukrainian side to grant permission for the adoption of children from the Kherson orphanage twice.

The reports on upbringing of children sent by the adopter to Ukraine proved that children “were accustomed to a new family without any problems”.

Krueger was admitted to bail and the children were put into families that allegedly had “a trustworthy reputation and cooperated with the social service”. The Department of Social Service of Bakersfield refused to assist the Consulate General of Ukraine in San-Francisco, claiming that the children “were in satisfactory condition”, and did not allow meeting with the children, who had suffered sexual abuse.

The same situation happened to the Ukrainian girl adopted by the Hilts couple. The wife, as turned out after her arrest and in the course of criminal proceedings, murdered her adopted daughter from Russia.

On 8 August 2006 the Commissioner addressed Mr. V.Yushchenko, the President of Ukraine with the submission on the urgent necessity to return the Ukrainian orphans, who suffered violence and sexual abuse in their US families (those of the Hilts and J. Krueger) back in Ukraine.

The destiny of the children, who lost their Ukrainian nationality according to the US legislation, is now being determined by the US guardianship authority restricting any contribution even from Ukrainian diplomats.

*The Commissioner notes that many problems and violations of the rights of children have been caused not only due to the shortcomings in legislation, but also because of its inappropriate execution, a number of objective implications as well as bureaucratic red-tape. In the opinion of the Commissioner, to meet the national interests of Ukraine the authorities should conclude bilateral agreements with all countries, which adopt our children most frequently and where our children adopted by the nationals have already resided.*

Highly instrumental for solving the most acute child’s problems in Ukraine would be the implementation of a range of recommendations of the UN Committee on the Rights of the Child, such as adoption of a nationwide program entitled “National Action Plan on Implementation of the UN Convention on the Rights of the Child” for the period till 2016, which has been already passed in the first reading by the Parliament of Ukraine, as well as creating the system of juvenile justice – Ukraine has been obliged to create such system since 1991 when the Convention on the Rights of the Child was ratified.

**The Ombudsman expresses deep concern that there are no relevant laws as well as juvenile courts, that would deal only with cases of the protection of the rights of the child, in particular in case of the criminal accusation.** There were the so called child courts in Ukraine as early as the beginning of the last century, however we lost this experience with the course of time.

Though courts for dealing with delinquency were created, the Juvenile Justice Advisory Council was established and special pilot projects were implemented within the context of the effective juvenile justice concept, the efforts of the state fall short of decisive ones.

With particular anxiety the Commissioner notes a new trend of the so-called “juvenation” of the crime. Thus, during this period every third delinquent committed crime at the age of 14-15 years. In addition, it cannot help being

nervous taking into account the high rate of grave and especially grave crimes committed by minors. For example, in 2007 there were 19,888 crimes committed by minors, with 10,976 of them being grave or especially grave crimes.

**The Commissioner is convinced that the implementation of the juvenile justice should be hastened** and necessarily accompanied by comprehensive efforts aimed at solving the most acute issues in relation to children – overcoming child homelessness and neglect; eliminating the gravest forms of child labor, including child prostitution; and eliminating violence against children and child cruelty.

*The analysis of the status of execution of Ukraine's commitments under the UN Convention on the Rights of the Child conducted by the Commissioner has proven that children are one of the most vulnerable groups in terms of protecting their rights and freedoms. For this reason, supervising the execution of Ukraine's commitments under the Convention on the Rights of the Child and its Optional Protocols is one of the priorities of the Commissioner for Human Rights.*

## **VI. Implementation of Observations and Recommendations of the UN Committee against Torture by Ukraine**

*In 1994 Ukraine submitted the third periodic report, which was considered by the Committee in April 1997, in 1998 the fourth periodic report was submitted and considered by the Committee in November 2001; the fifth periodic report was submitted in 2004 and considered by the Committee in May 2007. A tentative term of submission of the sixth periodic report is 2009.*

To implement the recommendations of the UN Committee against Torture upon consideration of the **third periodic report**, Ukraine has been actively taking measures to fight against use of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement officers. However, as it was underlined by the Commissioner in the First Annual Report upon the monitoring of Ukraine's implementing the observations and recommendations of the Committee, the majority of these recommendations have not been complied with and made public.

In November 2001 the UN Committee against Torture considered **the fourth periodic report of Ukraine** on Ukraine's complying with its obligations under the Convention and noted some positive changes since consideration of the third periodic report, particularly, abolishment of the death penalty, *establishment of the institution of the Ukrainian Parliament Commissioner for Human Rights entitled to visit and have a full access to all places of detention*, as well as amending and redrafting the Law of Ukraine "On Immigration", the Law of Ukraine "On Refugees", excluding from the text of the Law of Ukraine "On State Secrets" the crimes related to violation of human rights.

At the same time evaluating the situation on Ukraine's complying with its obligations under the Convention, the UN Committee emphasized on receiving numerous information about using torture in Ukraine. Particularly, **according to the Commissioner for Human Rights, 30% of detainees are subjected to**

**torture.** The Committee is concerned by the duration of pre-trial detention, which cannot exceed the period of 18 months by law, but can be practically prolonged up to three years; prisons and pre-trial detention centres overcrowding; lack of basic health aids and adequate medical assistance, accompanied by numerous cases of tuberculosis; bullying or hazing (*didivshchyna*) of young conscripts in the Armed Forces by older soldiers.

To bring the situation in line with the requirements of the Convention, **the UN Committee made a number of recommendations for Ukraine**, particularly, to take effective measures to prevent acts of torture and ill-treatment on its territory and **create an independent complaint-handling mechanism** to provide the opportunity for prompt, independent and comprehensive investigations of the reports about the use of torture; **to reduce the existing 72-hour period of pre-trial detention** which detained persons may spend in solitary confinement cells before they are delivered to court; to ensure that competent authorities strictly observe the principle contained in Article 3 of the Convention providing for that ***no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture***; to introduce a more effective system **to put an end to practice** of bullying or hazing (*didivshchyna*) of young conscripts **in the Armed Forces** by means of discipline and education, as well as to initiate legal prosecution against and impose penalties on offenders.

**Ukraine has taken a number of measures to implement the observations and recommendations of the Committee.** In 2001, a new Criminal Code defining torture as a criminal offence took effect, in 2004, a new Code of Criminal Procedure was enacted. Ukraine has recognized the authority of the UN Committee to receive and consider communications from countries and individuals; it has also abolished reservations concerning Article 20 of the Convention and ratified the UN Convention against Transnational Organized Crime in February 2004 upon submission of the Commissioner for Human Rights.

On the initiative of the **Commissioner** and under her direct control over the incarceration conditions in penitentiaries, the Cabinet of Ministers has undertaken comprehensive measures to create in the majority of centres the detention conditions meeting, in general, the European standards.

**As it was emphasized, the Verkhovna Rada of Ukraine ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the direct initiative of the Commissioner.**

In the opinion of the Commissioner, the ratification of the document has created grounds for establishing effective and independent mechanism for preventing tortures in Ukraine. However, there was a long stage of discussions which delayed the establishment of the mechanism and consequently became the violation of the international and national law by the state. Eventually, the Ministry of Justice **supported the opinion of the Commissioner on the necessity to establish an independent governmental agency for prevention of tortures with special status.** When this proposal is supported by the Government, Ukraine will be able

to fully comply with its obligations and implement the observations of the UN Committee. This is a typical example of the impact of the Commissioner on the accession of Ukraine to the UN treaties and her participation in cooperation with the UN treaty bodies in incorporating international law standards into the national legislation.

**The fifth periodic report of Ukraine** on implementation of provisions of the Convention against Torture and Inhuman or Degrading Treatment or Punishment, covering the period of 2000-2003 was prepared by the executive bodies in a more mindful and thorough way. The Commissioner for Human Rights submitted concrete proposals for this report on the request of the Ministry for Foreign Affairs of Ukraine.

On 8-9 May 2007 the UN Committee against Torture considered at its sessions **the fifth periodic report of Ukraine**. The representatives of the Commissioner, that took part in the review, stressed that the permanent monitoring of the observation of the rights of persons deprived of their liberty conducted by the Commissioner through, inter alia, “visits without previous notice” to the penitentiary facilities, indicated that there had been some progress in renovating places of detention and improving incarceration conditions during the previous five years. It was noted that the abovementioned efforts were important for preventing cases when the grave conditions of the penitentiary facilities created additional sufferings for its inmates. Despite those efforts there were still other urgent problems. The attention of the Committee was drawn to the problem of the overcrowded penitentiary facilities, which resulted in an easy spread of infectious diseases, in particular tuberculosis, hepatitis and HIV/AIDS.

In the approved concluding observations on this report the Committee noticed certain achievements of Ukraine in performing its obligations according to the mentioned Convention. In particular, the Committee welcomed the ratification by Ukraine of *the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution* in July 2003, and *the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* in July 2005. In addition to that the Committee drew attention to the fact that **many problems which had been mentioned in the observations and recommendations on the previous report, were yet unresolved.**

First and foremost, the Committee noted that the **definition of torture given in Article 127 of the Criminal Code does not correspond to all of the components** contained in Article 1 of the Convention, especially those **concerning discrimination**. That is why the Committee recommended that Ukraine **should bring the definition of torture in line with Article 1 of the Convention, ensure the opportunity to indict any state official on the basis of Article 127 of the Criminal Code, and include discrimination into such definition as an integral element of it.**

However, the Law of Ukraine “On Amendments to the Criminal Code and Criminal Proceedings Code of Ukraine for Humanization of Criminal Responsibility” dated 15<sup>th</sup> April 2008, in fact, **mutilated the sense and the**

**structure of the Article.** Instead of extending the jurisdiction of Part 3 and 4 of the Article not only over the law-enforcement officers, but also over any official, they were excluded at all. As the consequence the criminal liability stipulated in Article 127 for use of torture by law-enforcement bodies was decreased from 10-15 years (Part 3) and 12-15 years of imprisonment or life sentence (Part 4) to 3-7 years of imprisonment.

*At the same time the monitoring of the Commissioner points out that even in case of mitigated legislation the procedure for imposing criminal penalties on the law-enforcement officers for using torture has not been changed and is still regulated by Article 365 of the Criminal Code of Ukraine that determines the criminal liability for abuse of power or authority.*

The definition of a “torture” crime has been replaced by a more broad definition “abuse of power”, which made it possible to hide the real situation in relation to such crimes. In fact, this prevents Ukraine from implementing provisions of Article 4 of the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* stating that every State Party has to ensure that all acts of torture be offences under its criminal law and be made punishable by appropriate penalties which take into account their grave nature.

The Commissioner is convinced that such situation is a result of the activities of the prosecution authorities since the efforts of preventing and combating tortures have been hold back to a great extend by their neglectful attitude towards the duties to investigate complaints and other allegations of torture and ill-treatment. The absence of actual effective investigation by the prosecution authorities produces a sense of impunity among law-enforcement officers using torture and results in their misunderstanding that ill-treatment is not a crime, but a routine method of crime fighting.

The overview of the case-law of courts proved the abovementioned. There were no policemen sentenced under provisions of the Part 3 or 4 of Article 127 of the Criminal Code of Ukraine in 2005-2006. In 2007 there were only 2 cases where these Parts were applied. At the same time, according to Ministry of Internal of Ukraine, there were 439 criminal cases initiated in relation to law-enforcement officers, with 88 of them being determined according to the Article 365 of the Criminal Code of Ukraine and 2 of them being “torture” cases. It allows for a conclusion that the penalties applied by the courts correspond neither to the nature nor to the scale of the crime. Moreover, in most cases the law-enforcement officers are sentenced conditionally or with suspension of punishment.

*The Commissioner points out the fact that the Committee notes again, with anxiety, receiving information on torture and ill-treatment applied to persons held in custody in Ukraine; arrest without court order; cases when detained persons are not timely delivered to court within the statutory term of 72 hours; no registration of the actual time of arrest; limited access of detained persons to lawyers and independent doctors; abuse of power concerning administrative detention for the term up to 15 days.*

Such complaints are typically received by the Commissioner as well.



Members of the Committee are most worried by the fact that the relevant authorities do not take measures to initiate prompt, impartial and effective investigation of complaints concerning use of torture and ill-treatment.

The Committee recommends that Ukraine **should reform the Prosecutor General's Office in order to ensure its independence and impartiality, and should separate the function of criminal investigation from the function of control over investigation of reports on use of torture and ill-treatment. Actions should be taken to protect detainees who complain against cases of torture from possible reprisal.**

The UN Committee shows concern over reports of violating the Convention provisions by law-enforcement officers, especially in relation to persons detained by police and held in pretrial detention centres. There have also been reports on members of anti-terrorist detachments using their masks for intimidating and abusing prison inmates (as it was in Iziaslav penitentiary center in January 2007).

Taking into account the above mentioned, **the Committee recommends to ensure that all reports on use of torture and ill-treatment should be effectively and impartially investigated, with legal prosecution taken and proper penalties duly imposed on offenders. Anti-terrorist detachments should not be used for action inside prisons in order to prevent intimidation and ill-treatment of prison inmates.**

*As shown by the Commissioner's monitoring*, these problems continue to be a burning issue for Ukraine today. The abovementioned and other violations of constitutional rights of the detainees and prisoners have become wide-spread due to **the inappropriate internal control and absence of clear mechanism for protection of their rights and legal interests.** There has been an overdue need to establish in the State Department of Ukraine for Execution of Punishment and its regional offices relevant structures for preventing violations of human rights of the persons that have been isolated from the society as well as remedial actions.

The effective elimination of law violations and better observance of human rights and freedoms have been often impeded by loosening prosecutor's supervision in some regions, lack of comprehensive approach to its organization in this area, submission of a large number of documents instead of appropriate response by prosecutors. ***To radically reverse the trend the Government of Ukraine has authorized the Ministry of Foreign Affairs to implement a range of measures for coordination of law-enforcement and other special functions of the Department.***

In addition to that, another daunting problem in Ukraine creating additional sufferings for the detained persons consists of inadequate living conditions in prisons, overcrowded cells, widespread occurrence of HIV/AIDS and tuberculosis, poor incarceration conditions and unfitness of pretrial detention facilities for continued detention of ill suspects. **That is why the Committee recommends that Ukraine should take effective action to improve conditions of detention, eliminate cases of overcrowded prisons, and meet the needs of all detained persons and requirements of medical treatment in accordance with the internationally accepted standards.**

Unfortunately, the Commissioner has to state that in violation of the international standards *the norm of living space (2.5 square meters for a person) for pretrial detention facilities has not been changed up to date, the norm of living space still has to be increased to 4 square meters for a prisoner.* In general, the issue of accommodating places of detention for a human being urgently needs governmental determination.

The Commissioner is also concerned by an extremely difficult situation with **observance of constitutional rights of the detainees to life, health and appropriate medical treatment in many pretrial detention facilities.** The detainees suffering from tuberculosis or other severe diseases are not provided with a timely medical care and other treatment.

On 8 November 2007 the Commissioner organized the First Ombudsman Public Hearings on the results of her monitoring. The officers of the state authorities, procurators, human rights defenders, journalists, academics and independent experts discussed issues of human rights and freedoms, and legitimate interests of the inmates of the preliminary detention facilities. The Commissioner elaborated new constructive approach for comprehensive protection and remedy of the constitutional rights of the detainees. The Commissioner will organize such hearings in future as well.

On 26 November 2008 the Government of Ukraine approved the Conception of the reform program for the State Department of Ukraine for Execution of Punishment for the period till 2017. The further implementation of the Program will have positive impact on execution of sentences by the Department as well as facilitate the realization of a key national priority of the Commissioner for Human Rights – securing the constitutional rights and freedoms of socially isolated persons.

An important issue addressed by the Committee is the question of **absence of any compensations to victims of torture and other cruel, inhumane or degrading treatment, and also absence of proper efforts to provide rehabilitation to victims of torture, ill-treatment, domestic and sexual violence.** In this connection, the Committee recommends **to ensure an adequate compensation to victims of torture, ill-treatment, domestic and other sexual violence by way of introducing appropriate rehabilitation programs including medical and psychological assistance.**

A particular concern has been expressed by the Committee in connection with the enforced deportation of eleven Uzbekistan nationals – members of Uzbekistan opposition – who were exposed to serious risk of being tortured in their home country.

It should be noted that this case caused concerns of the Commissioner as well. As it was found out by investigation of the Ombudsman, there were 11 Uzbekistan nationals arrested in the Autonomous Republic of Crimea on 7 February 2006. 9 of them, who had been previously rejected a refugee status, still were entitled to appeal against this decision during the following 7 days. However, they were excluded from Ukraine on the basis of the court decision on 14 February 2008.

*The Commissioner for Human Rights believes that the abovementioned persons were prevented from using their right to appeal against decisions of the Ukrainian authorities to full extent, in particular there were the decision of the migration authority to refuse their application for refugee status and the decision of the court to exclude them from Ukraine. Though the law-enforcement bodies argued that the Uzbekistan nationals had refused to appeal against the abovementioned decisions in a written form, this process was not transparent enough. Thus, while being detained and during court session they did not have access to lawyers that could provide them with legal assistance.*

The Commissioner for Human Rights addressed Ms. Sayera Rashidova, the Ombudsman of Uzbekistan, with a request *to take under personal control conditions of detention of the abovementioned persons in Tashkent pretrial detention centre as well as their further destiny in order to ensure observance of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.*

*It should be noted that the Ombudsman has included the assessment of the status of implementation of the Ukraine's obligations to the UN Committee Against Torture in her Annual and Special Reports. Thereby, the Ombudsman has fulfilled the requirement of the Committee concerning distribution of its recommendations.*

## **VII. Activities of the Human Rights Commissioner to Protect the Rights of Migrant Workers and Members of Their Families in Line with the International Standards**

*On 18 December 1990 the UN General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force on 1 June 2003. As of 1 November 2008 the Convention was ratified by 39 countries of the world, including countries of residence of a large number of migrant workers from Ukraine – Argentine, Azerbaijan, Turkey, Bosnia and Herzegovina, Egypt, Libya, Mexico, Chili, Syria etc.*

The Commissioner for Human Rights is convinced this important international instrument **provides for better protection of the rights of migrant workers, in particular of the Ukrainian ones. There are from 5 to 7 million Ukrainians working abroad.**

It is important that unlike the European Convention on the Legal Status of Migrant Workers of 1977 the UN Convention covers all migrant workers – legal as well as illegal.

The UN Convention has defined for the first time the rights of specific categories of migrant workers and members of their family, such as border migrants, season workers, seafarers employed on the foreign vessels, offshore platform workers as well as freelance workers.

The Convention obliges States Parties to ensure that migrant workers within their jurisdiction be treated not less favorably than nationals; provides that migrant workers have the same right to social security as the nationals of the state of

employment provided they comply with its legislation or bilateral and unilateral treaties.

According to the Convention migrant workers are **guaranteed equal rights** with the nationals of a state of employment **to receive any medical care, and their children are guaranteed to the right to education.**

The Convention provides additional rights and freedoms for migrant workers that have immigration authorization or work permit: right to liberty of movement in the territory of the state of employment and freedom to choose their residence there; the right to form associations and trade unions for the protection of their interests; right to participate in public affairs of the state of employment, in particular to vote and be elected at elections of that state in accordance with its legislation, as well as the whole range of other rights. States Parties shall undertake appropriate measures to ensure protection of integrity of families of migrant workers.

The Convention requires the States Parties to establish appropriate services to deal with issues of international migration of workers and members of their families, which functions should include, inter alia: the formulation and implementation of policies regarding such migration; an exchange of information, consultations and cooperation with the competent authorities of other state parties; the provision of appropriate information and assistance to migrant workers.

**In 2003 there was established a UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee consists of 10 independent experts and its purpose is to ensure execution of the Convention by its State Parties.**

*In the opinion of the Commissioner for Human Rights, it is important for Ukraine to join this Convention in the context of implementing new effective mechanisms for protection of the rights of the migrant workers. The Convention would enhance the protection of human rights and freedoms of Ukrainian workers abroad as well as non-nationals and stateless persons residing in the territory of Ukraine with the aim to get employed.* In addition, if we take into account the large scale of migrants flow through the territory of Ukraine, ratified Convention will be instrumental in decreasing possibilities for illegal migration in the territory of Ukraine as it would strengthen official regulation, control and transparency of the movement.

Finally, ratified International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 would give Ukraine the moral right to demand that its migrants be protected in countries of the EU, the USA and Canada, the states which postpone joining the Convention.

Taking into account these circumstances, *the Commissioner for Human Rights has emphasized for several times already that it is necessary for Ukraine to join the UN Convention of 1990.* For the first time, the Commissioner for Human Rights raised the necessity of ratification of this Convention in 2000, eight years ago, in the relevant submission to Mr. A. Kinakh, the then Prime Minister of Ukraine. This issue was further raised in the Special Report of the Commissioner "On the Status of Observance and Protection of the Rights of Ukrainian Citizens

Abroad” in 2003, the submission of the Commissioner forwarded to Mr. V.Yushchenko, the President of Ukraine, on 18 May 2007 and a range of other submissions.

***Unfortunately, the authorities that deal with migration and social issues failed to understand the viewpoint of the Commissioner.***

It should be noted that the Ombudsman had consistently insisted on signing and ratification of the European Convention on the Legal Status of Migrant Workers of 1977 in her submissions to the President of Ukraine for several years. As the result of the determined efforts of the Commissioner, this Convention was ratified by Ukraine, although with reservations, in 2007.

***At the same time, the Commissioner believes the Government should apply additional efforts to get a better understanding of the trends and perspectives of migration processes in Ukraine and develop appropriate state policy in relation to these processes, which would ensure the protection of the rights of all migrant workers, not only Ukrainians abroad, but also non-nationals in Ukraine.***

The abovementioned issues are the long-standing ones in Ukraine, that is why from the first days the Commissioner for Human Rights had to become actively engaged in the protection of the rights and freedoms of the Ukrainians abroad. Many of the cases were extremely difficult and even hopeless.

One of the first cases was the protection and repatriation of 27 Ukrainian seafarers – crew members of MV Dubai Valour – who had been kept hostages in Nigeria (port Sapele). Some time later there were other extremely difficult cases, in particular the releasing and bringing back to Ukraine the captain and first mate of the MV Nav Star-1, who had been imprisoned in Iraq and suffered terrors of the notorious Abu Ghraib prison. It took Ombudsman six years of intensive struggle for the family of Sergiy Kudria – the Ukrainian migrant worker, who was ruthlessly killed by Polish policemen in front of his pregnant wife – to receive material and moral compensation. Then there was the case of Oleksandr Kazantsev, crew chief of the Ukrainian plane, who had been unfairly sentenced to 10 years in prison after the plane crash in Baku airport. During her meeting with Mr. Ilham Aliiev, President of Azerbaijan in August 2004 the Ombudsman raised concern about the destiny of the Ukrainian pilot and convinced the President that he did not deserve such a severe punishment. Eventually, the court applied under minimum sentencing in this case – O.Kazantsev was sentenced to three years conditionally. After several days the pilot was back in Ukraine.

The case of Zinaida Voloshyna is another example of work of the Ombudsman of Ukraine. A mother of three children, she was sentenced to death penalty for the crime that she had never committed and spent 13 years imprisoned in awful conditions of remand house in Abkhazia. She waited for being executed every single day during the first five years of imprisonment and was stuck to bed by a grave illness for the last several years. Furthermore, she knew that her beloved ones had rejected her. Mr. Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, personally addressed the Ombudsman with the request to help in solving this case. Then, in April 2007 the Ombudsman of Ukraine made the impossible thing. This poor woman was released after the

Ombudsman had addressed the President of Abkhazia. She was transported on ambulance car from the capital city Sukhumi to hospital in Simpheropol (the Crimea, Ukraine) accompanied by the Ombudsman's representative, a professional doctor.

The case of 27-year-old Lemma Susarov, a Chechen by origin, was an important breakthrough in the sphere of protection of the rights of asylum seekers in Ukraine. Due to coordinated efforts of the Ombudsman of Ukraine, the Office of the UN High Commissioner for Refugees, the Embassy of Finland joining at the final stage, public organization "European Wave", "Vinnytsia Human Rights Group" and lawyers, the extradition of Mr. Susarov to the Russian Federation, where he was exposed to danger, was stopped.

On 2 April 2003 the Commissioner presented her Special report "On the Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad" to the Parliament, which became a general act of response of the Commissioner to numerous violations of the rights of Ukrainian nationals abroad. Such a comprehensive monitoring was first of its kind not only in Ukraine, but also in the history of the world Ombudsmanship. The Parliament of Ukraine adopted a resolution based on the results of the Commissioner's Special Report. On 20 November 2003 the Government of Ukraine approved the Decree "On Approval of Actions Providing Organizational Support for Further Elaboration of Legislation Concerning Protection of Human Rights and Freedoms and Bringing it in Line with International Standards (based on the Annual and Special Reports of the Ukrainian Parliament Commissioner for Human Rights)".

At the same time it should be noted that **a whole range of proposals on legal regulation of migration issues from the Special Report of the Commissioner have not been implemented so far.** There are still **no approved basic principles of state migration policy**, which would clearly identify profile and priorities of the Ukrainian state in the sphere of migration and integrate its immigration and emigration components, as well as clearly identify functions of the state authorities competent in migration and ways of their cooperation. The Commissioner for human rights has stressed the need to adopt the appropriate law for several years already.

The Parliament of Ukraine had been elaborating the draft law "On Basic Principles of State Migration Policy" for five years. Unfortunately, as the result of a poor political will the Parliament failed to establish a legal framework for the protection of the rights of migrants, in particular refugees and asylum seekers. That is why on 28 February 2008 the Commissioner addressed Mr. V. Yushchenko, the President of Ukraine, with the submission in which ***she once again asked to take decisive measures for the abovementioned law to be adopted.*** The absence of such conception in legislation and appropriate coordination of the activities of different ministries and government agencies prevents Ukraine from undertaking effective response to the current challenges of mass migration, especially from securing protection of the rights of Ukrainian migrant workers.

Another important issue is the establishment of an efficient State Migration Service of Ukraine, which, in the Commissioner's opinion, should be a civil central governmental authority with a special status.

The status and responsibilities of such service should be fixed in the law that would identify basic principles of state migration policy of Ukraine.

Regrettably, there were active efforts to give migration functions to the defense and law-enforcement agency of Ukraine, the Ministry of Internal Affairs during 2008. As the result the President of Ukraine suspended two relevant Government resolutions and appealed to the Constitutional Court of Ukraine. The Government resolutions assigned the Ministry of Internal Affairs with the mandate of a special central authority dealing with migration issues in the framework of refugee legislation and coordinating activities of other central government agencies in the framework of the state migration policy. The above means that the Government failed to take into account the complex nature of a migration policy and its important humanitarian components, and approached it only as counteraction to the illegal migration. The Commissioner for Human Rights made reasonable objections to such approach at the sessions of the Government for two times and made two appeals to the Constitutional court of Ukraine on the issue of conformity between the abovementioned resolutions and the Constitution of Ukraine and international standards.

***Finally, the abovementioned proposals of the Commissioner have received support and the authorities have begun to implement them.***

Thus, on 18 November 2008 the Government committee on law policy, defense and law-enforcement activity considered and approved the **draft law “On State Migration Policy for the period until 2018”, which was elaborated by the Ministry of Justice, with the proposals and recommendations of the Ombudsman taken into account.** The policy is aimed at, inter alia, harmonization of the national legislation on migration with the Constitution of Ukraine and widely accepted principles and standards of international law. One of the priorities is to improve the system of the authorities managing migration, in particular, **to establish a central governmental migration authority of a civil nature.**

It is a positive fact that this year the State Committee of Statistics conducted with the support of the International Migration Organization and International Labor Organization ***the first national research on migration*** applying international methodology. The results will be made public in the nearest future.

The urgent issue of a favorable environment for the implementation of the rights of migrants, in particular the promotion of legal migration in receiving countries, was critically pointed out by the Commissioner for Human Rights at the International conference “Causes, Effects and Consequences of the Migratory Phenomenon and Human Rights Protection”, which was held in October 2004, in Zacatecas (Mexico) and the Eighth International Conference of National Institutions for the Promotion and Protection of Human Rights “The role of National Human Rights Institutions (NHRIs) in Dealing with Migration”, which

was held in October 2006, in Santa Cruz, the Republic of Bolivia. Both events were held under aegis of the UN High Commissioner for Human Rights.

It should be noted that the participants of the conferences highly evaluated the English version of the Commissioner's Special Report "On the Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad".

**In the Santa Cruz Declaration participants of the Eighth International Conference of NHRIs** condemned the specially created barriers for free movement of migrant workers in some receiving countries; emphasized the necessity of enhanced work of the NHRIs in relation to safeguarding implementation of the rights and freedoms of migrant workers; urged their states to ratify *the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

*The Commissioner believes that the analysis of the reasons for migration in the world and Ukraine gives grounds to conclude that the labor migration and mass immigration is going to determine public and economic development of Ukraine for a long time to come, which will have direct impact on the observance of civil, political, economic, social and cultural rights of the Ukrainian citizens. For this reason, one of the priorities of Ukraine in the sphere of protection of the rights of migrant workers is to establish the State Migration Service with the mandate of a special central governmental authority and to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.*

#### **VIII. Review of the First National Report of Ukraine by the UN Human Rights Council. Conclusions and Observations**

*The UN Human Rights Council was established as the successor of the UN Commission on Human Rights in 2006. In July 2007 with the aim to strengthen the effectiveness of the international efforts in protection of the human rights and fundamental freedoms the Council established the Universal Periodic Review. The Review is intended for considering National reports of the UN member-states on human rights situation.*

As the state traditionally taking active part in the work of the UN human rights bodies and reelected to the UN Council for the next three-year-term (until 2011), Ukraine was offered to present its Report among the first.

**The first National report of Ukraine on the human rights situation was presented to the Working group of the UN Human Rights Council at its session on 13<sup>th</sup> May 2008 in Geneva.**

In addition to the National report of Ukraine, the Working group was presented the Summary prepared by the Office of the UN High Commissioner for Human Rights, which included, in particular, the opinion of the Ukrainian Parliament Commissioner for Human Rights on a wide range of issues in the sphere of human rights in Ukraine: providing free legal aid; intensified counteraction to human trafficking and the existing international adoption as one of its channels; establishment of a juvenile justice system; prevention of tortures by law-enforcement bodies; combating poverty, which entails violations of the



fundamental human rights; strengthened protection of the rights of the migrant workers. This document also contains relevant comments from the NGO.

The representatives of the Commissioner distributed among members of the Working group the following documents: the compilation of documents “Concluding Observations and Recommendations of the UN Treaty Bodies on Reports of Ukraine in the Area of Human Rights”, which was published at the initiative of the Commissioner for Human Rights with the support of UNDP in Ukraine; Special Report of the Commissioner “On the Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad”; and the Kyiv Declaration – the outcome document of the International conference “Modern Challenges to Human Rights and Freedoms” dedicated to the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights and 10<sup>th</sup> anniversary of the Ukrainian Parliament Commissioner for Human Rights, which was held in session room of the Parliament of Ukraine at the initiative of the Ombudsman and UN Office in Ukraine on 14<sup>th</sup> April 2008.

After the presentation of the National report there was interactive dialog participated by delegates from 26 countries, members of the Ukrainian delegation, including representatives of the Commissioner for Human Rights. The members of the Working group were grateful to Ukraine for preparation and presentation of the report noting its content to be qualitative, open and soul-searching. Positively evaluated were the active contribution to the preparation of the National report of the Ukrainian Parliament Commissioner for Human Rights and a number of NGO.

In its final report on the Universal Periodic Review of Ukraine, which was considered and approved by the UN Human Rights Council on 12 July 2008, the Working group made **the Conclusions and Recommendations to be implemented by Ukraine**, in particular:

– *To consider ratifying the Rome Statute of the International Criminal Court as soon as possible;*

– *To continue its efforts to improve legislation and policies and to create institutional mechanisms to combat all forms of discrimination, to adopt comprehensive anti-discrimination legislation, as recommended by the Committee on Economic, Social and Cultural Rights in 2007;*

– *To enhance human rights training for police officers and undertake more effective measures of preventing hate crimes;*

– *To step up struggle against racism, inter alia through implementing the recommendations made by the Committee on the Elimination of Racial Discrimination;*

– *To mainstream tackling racism throughout the departments of the Government and other state authorities;*

– *To take further efficient measures to ensure that law enforcement officials, prosecutors and judges involved in enforcing the law relating to hate crimes and other violent acts of racial discrimination and xenophobia fully understand the nature of such crimes and that statistics on racist incidents are kept centrally and publicized;*

- *To report regularly to the Committee on the Elimination of Discrimination against Women; to recruit more women for public service and adopt measures requiring equal pay for equal work;*
- *To enhance the protection of the rights of the child, including fight against child trafficking, prostitution, pornography and labour;*
- *To implement the recommendations of various treaty bodies as well as of the national Parliament Commissioner for Human Rights to establish a separate juvenile justice system for children and youth in line with European and international standards, as soon as possible;*
- *To take measures to criminalize domestic violence in accordance with the recommendations of the Committee on Economic, Social and Cultural Rights; to continue to fund and set up victim-centric services for women and children dealing with domestic violence;*
- *To develop a programme to effectively improve the situation of persons deprived of their liberty, including measures that would lead to a reduction of the mortality rates among prisoners;*
- *To take measures to implement the recommendations made by the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Human Rights Committee regarding prison conditions and the treatment of detainees that meet international standards as well as fully implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;*
- *To allocate sufficient funds for the implementation of the State Programme and training and awareness-raising projects for law enforcement officials dealing with victims of trafficking;*
- *To further progress on the recommendation of the Committee against Torture to set up an independent oversight mechanism for investigating torture;*
- *To vigorously investigate and prosecute prison and police officials guilty of the mistreatment of detainees and prisoners;*
- *To change its domestic laws to make confessions obtained under torture inadmissible as evidence in criminal court proceedings against the person who confessed;*
- *To undertake further work regarding the independence of the judiciary and corruption in the judiciary and across the executive;*
- *To take all measures necessary to ensure that all acts of violence against journalists be investigated and that appropriate punishments are meted out;*
- *To ensure full and effective compliance of national legislation and law enforcement practices, particularly in the areas of education and mass media with the obligation of Article 27 of the International Covenant on Civil and Political Rights and the obligations that derive from Ukraine being party to other international legal instruments, including on the protection of national minorities;*
- *To provide a more orderly process for refugees/asylum applicants and ensure that repatriations are carried out in line with UNHCR guidelines and*

*bring its legislation on the determination of the status of refugees and stateless persons in line with international standards;*

*– To develop a national strategy for human rights education in the school system in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education, including the review and revision of curricula and textbooks, the training of teachers in human rights;*

*– To ratify the International Convention on the Rights of All Migrants and Members of their Family;*

*– To ratify the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol;*

*– To implement the Committee on Economic, Social and Cultural Rights encouragement to recognize the right to self-identification of all ethnic groups in Ukraine as well as to ensure protection and development of their cultural heritage.*

The implementation of the abovementioned Conclusions and Recommendations requires coordinated efforts of all branches of state power and the whole society.

**The Commissioner for Human Rights is convinced that the establishment of the new procedure by the UN Human Rights Council – the Universal Periodic Review – indicates that issues related to the observance of human rights in the UN Member States are of high importance for international community. The requirements to fully and unconditionally abide by the international standards which are of particular importance in today's globalized world will become increasingly strict.**

### **IX. Ways of Strengthening the Effectiveness of Cooperation of Ukraine with the UN in Implementation of the International Human Rights Standards**

The overview of performance of observations and recommendations of the UN treaty bodies in Ukraine allows understanding of the general problems that our country faces in bringing the current state of observance of human rights and freedoms in line with international standards. Recommendations and observations of the UN committees and UN Human Rights Council clearly identify the certain range of problems which should be resolved.

At the same time it is understood that merely formal inclusion of an international standard into the national legislation is an important but insufficient condition to implement proper protection of human rights and freedoms. It is no coincidence that a general comment of the treaty bodies is the issue of non-fulfillment of laws and court decisions. This is easily illustrated even by the case with the Constitution of Ukraine which has one of the most perfect chapters on the rights and freedoms among other European constitutions, but in practice our citizens feel a huge gap between the declared rights (e.g. the right to adequate housing, education or health service) and the actual state of their observance for millions of average Ukrainians.

The Ukrainian Constitution also contains an important principle according to which the citizens' and human rights established in it are non-exhaustive. *The*

*Commissioner believes that standards of human rights and freedoms to be observed in Ukraine need to be extended by acceding to a number of universal and European conventions on human rights, and by abolishing reservations to the Conventions already ratified by Ukraine.*

The issue of compliance of Ukrainian legislation with international standards and international obligations of Ukraine has often been raised in reports of the Commissioner to the Parliament of Ukraine. The First Annual Report of the Commissioner for Human Rights presented to the Parliament in 2000 contained a special part devoted to the implementation of international human rights standards into Ukrainian legal framework. In this report the Commissioner suggested that the Parliament of Ukraine should make amendments to Article 9 of the Constitution in order to extend the constitutional principle according to which *the international treaties in effect, the binding force of which was agreed upon by the Parliament of Ukraine, are part of the national legislation of Ukraine* so that **the international law have primacy over the national** legislation in case of conflict of jurisdiction of the latter. Unfortunately such amendments to the Constitution have not yet been endorsed by the Parliament.

There are important international legal instruments of the United Nations concerning human rights that have not yet been ratified by Ukraine – *the Convention on the Rights of Persons with Disabilities, the Convention Relating to the Status of Stateless Persons, the International Convention for Protection of All Persons from the Enforced Disappearance etc.*

The importance of these Conventions to Ukraine requires additional efforts on the part of the Government and the Parliament to approve and implement them into the legal framework of our country as soon as possible. It is no coincidence that the question of promoting ratification of *the Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (1990)* and *the Convention on the Rights of Persons with Disabilities (2007)* became the subject of the joint plan of action according to the already signed Memorandum of Understanding between the Ombudsman of Ukraine and the UN Office in Ukraine for 2008.

On 17 January 2008 the Commissioner addressed Mr. V. Yushchenko, the President of Ukraine, with the submission **on the necessity to ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol**. This effort of the Ombudsman was actively supported by the National Assembly of the Disabled of Ukraine. No doubt, ratified Convention would be instrumental for implementation of the appropriate legal framework for effective and fair protection of the rights of persons with special needs.

Furthermore, **the Commissioner addressed the President with the submission on the necessity to join and ratify the International Convention for the Protection of All Persons from the Enforced Disappearance on 23 October 2008.**

Ukraine did not manage to avoid such a phenomenon as the disappearance of people. The case of the outrageous disappearance of Heorhiy Gongadze is known through out the world. The case has been investigated for several years, however

the paymasters have not been found so far. There were 28 thousand cases of disappearance uncovered for the last 7 years in Ukraine. The relevant authorities do not bother themselves with searching the disappeared too much. Annually, there are eight-nine thousand cases when the courts of Ukraine declare citizens disappeared or deceased.

The International Convention for the Protection of All Persons from Enforced Disappearance has been open for signature from the 6<sup>th</sup> February 2007 and shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. So far the Convention has been ratified by five states, in particular Albania, Argentina, Honduras, Mexico and France, and signed by 74 countries.

The Commissioner is convinced that the ratified International Convention for the Protection of All Persons from Enforced Disappearance will be an important instrument for Ukraine to prevent disappearances on national level as well as counter state terrorism on international level.

The attention should also be drawn to the situation with preparation of the Ukrainian periodic reports to the UN treaty bodies. Despite their considerable improvement over the last several years, they need further enhancement of coordination. To this end there should be established an efficient procedure for elaborating periodic reports with the following stages: report drafting, public discussion, government endorsement and submitting to the UN treaty bodies.

Special attention should be paid to the observations of the treaty bodies as regards the necessity for regular publication of reports of Ukraine, materials of their review by the UN Committees, as well as observations and recommendations of the UN Committees made on the results of the report review. ***In the opinion of the Commissioner, the main problem in this context is the lack of transparency in the actions of authorities concerning preparation of periodic reports for UN treaty bodies.***

That is why the publication of the observations and recommendations of the UN treaty bodies in three languages initiated by the Commissioner was immediately welcomed by the Ukrainian society as well as international community. It is no coincidence that the Memorandum on Mutual Understanding between the UN Office in Ukraine and the Commissioner for Human Rights has recognized continuation and extension of such publications as a priority sphere of their cooperation.

***The Commissioner notes that these efforts are not enough. The regular publications of all materials relevant to the performance of obligations of our country to the UN treaty bodies not only in state language, but also in languages of national minorities, has to be enshrined in legislation.***

***As shown by the analysis of the status of observance of international standards of human rights and freedoms in Ukraine, the Government has been undertaking measures to bring legislation of Ukraine in line with international human rights standards and implement them in practice.***

***At the same time the Commissioner believes that Ukraine has to enhance the performance of its obligations in the area of human rights and freedoms. First of***

*all, there should be elaborated the National program of adjustment of Ukrainian legislation in line with its international human rights obligations. The Program should include the list of international and regional human rights conventions to be ratified first of all. The civil society should actively participate in the preparation and presentation of National reports. The society should also actively supervise the implementation of observations and recommendations of the UN Committees and UN Human Rights Council by the state.*

*In the opinion of the Commissioner, the scale of administrative and criminal liability for violation of specific human rights by the officials should be increased. For this reason, the effective legislation should be appropriately amended.*

*Ukraine has steadily joined the international community, so the implementation of high international standards in the area of observance of human rights is the top priority of the state. The sustained efforts of the state in this regard will be the best way of implementation of the idea and fundamental principles of the Universal Declaration of Human Rights.*