

## **SPEECH**

**of the Ukrainian Parliament Commissioner for Human Rights, Nina Karpachova,  
at the presentation to the Parliament of Ukraine of the Special Report on**

**“THE STATUS OF OBSERVANCE  
OF THE INTERNATIONAL STANDARDS OF  
HUMAN RIGHTS AND FREEDOMS IN UKRAINE”**

*December 10, 2008*

*Dear Mr. Chairman!*

*Distinguished Members of the Parliament!*

*Esteemed participants of the session!*

*Mass media!*

*My fellow Ukrainians!*

Today Ukraine and the whole world commemorate the important historic event – the International Human Rights Day and the 60th Anniversary of the Universal Declaration of Human Rights. It was December 10, 1948 when the new era for the mankind began, the era of hope and faith – as was said by Eleanor Roosevelt, who was chair of the UN Human Rights Commission at that time.

The first Article of the Declaration states “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Author of this first article is our fellow countryman, famous lawyer, scientist and academician Volodymyr Koretskyi, member of the United Nations International Court, who thereafter founded the Ukrainian school of international law, established and headed the Institute of State and Law under the Academy of Sciences of Ukraine.

I also ought to mention the names of other drafters of the Declaration – Professor Rene Cassin of France, who was awarded with the Nobel Prize for his contribution to international protection of human rights, Dr. P.C. Chang of China and Canadian Dr. John Peters Humphrey.

It should be mentioned that an open struggle against human rights violations in Ukraine was pioneered by the Ukrainian group for promoting implementation of Helsinki agreements. And it was by no means a coincidence that today the President, Chairman of the Parliament and other Ukrainian top officials laid flowers to the monument of Vyacheslav Chornovil, a member of Helsinki group.

The 60th Anniversary of the Universal Declaration is the best opportunity to evaluate the conformity of human rights situation with international standards. For this purpose, the Commissioner for Human Rights prepared the Special Report “On the Status of Observance of the International Standards of Human Rights and Freedoms in Ukraine”.

The Report provides findings of the monitoring of the observance of international standards in Ukraine. Mostly, it was based on the Observations and Recommendations of the United Nations treaty bodies on the results of the review of Ukrainian periodic reports for the period of 17 years of independence of Ukraine. The Report gives an opportunity to assess the implementation of the high standards in our country and allows understanding of the key problems in this regard.

Special Report summarizes the year of the 60th Anniversary of the Universal Declaration of Human Rights and the 10th Anniversary of the Ukrainian Parliament Commissioner for Human Rights institution; the institution that was created to follow-up the idea of the Universal Declaration of Human Rights. It was the year of fruitful interaction of the Ombudsman and the United Nations Office in Ukraine in the framework of their Memorandum of Understanding.

Important in the context of preparation of this Report was the International Conference “The Modern Challenges to Human Rights and Freedoms”, which we held on 14 April 2008. Ombudsmen from 50 countries of different continents took part in this significant event. The Special Report is attached with the outcome document of this conference – Kyiv Declaration, which convincingly proves that human rights have no borders.

I would like to note that the Universal Declaration is of advisory nature, but universality of its provisions for all countries made it the basement for developing system of international human rights standards. Thus, in 1966 the UN General Assembly approved the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These documents together with their two Optional protocols and the Universal Declaration of Human Rights constitute the International Bill of Human Rights.

In addition, the UN General Assembly adopted a number of universal conventions in the sphere of human rights. The UN covenants and conventions introduced special mechanisms of control over protection of specific rights. In particular, there were created UN treaty committees, which were authorized to supervise how the State Parties performed their commitments under these treaties. The committees analyze state reports and evaluate the performance of the state commitments in the sphere of human rights as well as elaborate recommendations and approve concluding observations.

In general, Ukraine is a Party to 220 United Nations treaties, 64 Council of Europe treaties (27 of them have not been ratified yet). It is important that our country has also ratified 55 conventions of the International Labor Organization.

*Distinguished Members of the Parliament!*

The Special Report is a systemic compilation of all concluding observations and recommendations of the UN treaty bodies. It should be mentioned that the consideration of the Ukrainian periodic reports to the UN treaty bodies has been participated not only by governmental agencies, but also by the Ombudsman of Ukraine and NGOs, who could introduce their alternative point of view.

On this occasion, we can frankly state that until recently the authorities have actually kept in the dark not only the reports on the situation of human rights, which Ukraine submitted to the UN treaty bodies, but also the observations and recommendations made on the results of the review of these reports. The public access to this information was restricted.

That is the reason why the Special Report has been enclosed with observations and recommendations of the UN treaty bodies for the period since proclaiming independence of Ukraine. It is for the first time, that the results of the Universal Periodic Review of human rights situation in Ukraine – held by the UN Human Rights Council in 2008 – have been published. One of the first, our country became a member of the newly established United Nations Human Rights Council and hence Ukraine was among the first countries to present its National report on the status of observance of human rights and freedoms under UPR.

Now I would like to draw your attention to problems related to the status of implementation of international standards of human rights and freedoms of the ratified international treaties by Ukraine.

I am going to start with the International Covenant on Economic, Social and Cultural Rights as it is its implementation that creates the most acute problems in Ukraine. In particular, as the UN Committee on Economic, Social and Cultural Rights observed, the transition of Ukraine to the market economy had negative consequences for the implementation and enjoyment of the rights envisaged in this International Covenant, and resulted in the high rate of poverty among the majority of people.

I am convinced that it is poverty that outrageously violates the human rights and prevents the implementation of all other rights. It was not until the UN Office in Ukraine and the Ombudsman drew attention to the problem of poverty that it was officially recognized on the national level.

However, despite the undertaken measures, officially 30% of the Ukrainian population is poor. And if we apply poverty criteria of the World Bank, which is 3 dollars per day, there will be 70% of Ukrainians leaving in poverty. In such a country as Ukraine with

its developed industry and agriculture, high rate of education, **the problem of poverty, in the first place, is caused by the blatant violation of the rights of the majority of citizens to access to the resources and national wealth.**

The most vulnerable groups with high rate of poverty are the disabled persons, pensioners and residents of rural areas. Especially severe are the sufferings of families with children, where the rate of poverty is directly dependent on the number of children.

It was the **low income rate that caused the current demographic crises;** crises which decreased the population of Ukraine by 6 million during the last 15 years.

The authorities failed to ensure an effective implementation of the provisions of the International Covenant on Economic, Social and Cultural Rights in relation to labor rights. In particular, citizens are not able to freely enjoy the right to work (Article 6) or to have equal opportunity to choose profession and kind of work (Article 7). The rate of wage of most working people does not meet even the minimum requirements of their families and about 1.5 million of the employees get under minimum wage, which is 669 hrivnas.

To secure the constitutional right of the working people to the amount of wage not less than that stipulated by law, starting from January 1, 2009 the draft law “On the State Budget of Ukraine for 2009” should put in effect the minimum wage at the rate of not less than the minimum subsistence for the working population, as envisaged by Labor Code of Ukraine and the Law of Ukraine “On Remuneration of Labor”, which shall be effective from 1 January 2009.

The salary debt is still a shameful reality. As of 1 November 2008 it amounted to 1 billion hrivnas and had become 1.5 times larger than early this year.

Violated have been the requirements of the Article 7 of the Covenant as regards the right of everyone to safe and healthy working conditions. **The occurrence rate of industrial injuries, including lethal cases, is still excessively high today.**

The healthcare situation in Ukraine does not meet the standards stipulated in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which require a State Party to **recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and create conditions which would assure to all the medical service and medical attention in the event of sickness.**

The increased number of complaints to the Commissioner has indicated the mass nature of violations of the rights to healthcare and medical treatment. During the last 5 years the number of complaints increased by 1.5 times. The inappropriate budget funding of healthcare – only 50% of the required amount; low wages of medical professionals – 1140 hrivnas or 60% of an average wage in Ukraine; the increased

amount of paid medical services and their high costs reasonably incur reproach of the citizens.

The low income level of the majority of people and continuously decreasing number of sanatoriums have been **aggravating the problem in relation to preventing such diseases as tuberculosis, drug addiction and AIDS**. Thus, I can say without exaggeration that the problem of tuberculosis is a serious threat to the national security of Ukraine. Its infection and mortality rates, indicating its epidemic nature, are higher than that in countries of the European Union. It was only in 2007 that 37 thousand people were taken ill of tuberculosis in Ukraine. Every year tuberculosis kills 10 thousand our countrymen.

The global financial and economic crises have aggravated the current situation and brought to nothing all our hopes for social justice. The gap between the poor and the rich has dramatically increased in Ukraine as well as on international level. The world has been divided into the so-called “golden billion” of rich countries and the poor countries with 5 billion of aggregate population.

It should be noted in this context that on October 31, 2008 the Ukrainian Parliament adopted the Law submitted by the Government “On the Immediate Measures for Preventing Negative Consequences of the Financial Crises and On Amendments to Some Legislative Acts of Ukraine”. However and as a matter of fact, the measures of the authorities for combating the consequences of the crises make the rich richer and the poor – poorer.

The situation with the working people is of particular concern for the Commissioner. As the result of the crises, up to 7 thousand people have been being made redundant every day. In general, according to the estimates of the Cabinet of Ministers, the drop in production will result in 4 million of unemployed people in Ukraine.

The remuneration rate has continuously decreased, while the wage debt has been increased. The intention of the authorities to freeze the level of social guaranties in remuneration is of great concern. All the developments lead to further impoverishment of the citizens and mass violations of the rights of the Ukrainians.

**Safeguarding the financial stability of the Pension Fund of Ukraine is an urgent issue today.** The aggregated debt to the Pension Fund has increased to almost 500 million hrivnas this year. The mass reduction and the decreased remuneration rate at the enterprises in Ukraine result in decreased transfers to the Pension Fund. In this context, the Government has to undertake comprehensive measures for preventing non-payment of pensions.

The low income rate creates unbearable obstacles for realization of the vitally important human rights – to sufficient food, medical care, education, housing, legal aid etc. According to social researches, **as the result of the global crisis every second**

**Ukrainian has been forced to reduce food spending and almost 20% of the Ukrainians have already been saving on the medicines.**

On the other hand, the experts note that certain commercial banks use the availability of foreign currency deposits of the National Bank of Ukraine for speculative currency trade. As the consequence, the cost of the USD and Euro has been increased drastically leading to a harsh escalation of inflation and prices. And furthermore, the **IMF credit to Ukraine is used, as a matter of fact, for supporting financial and bank systems, in particular private banks. In other words, it is used to help the most well-off part of society and also to pay the fees for foreign experts** – 30 million euros, the burden of which will rest on the shoulders of the taxpayers for many years to come.

**In the context of the aggravated financial crisis the Commissioner has stood up to protect the right of the citizens to use their deposits in Ukrainian banks.** Mr. Volodymyr Stelmakh, the Governor of the National Bank of Ukraine, was addressed in the Ombudsman's submission with a request to safeguard the right of citizens to free possession, usage and disposal of deposits as well as to raise a ban on claiming the deposited sum before the schedule for natural and legal persons. The ban was introduced by the order №319 of the National Bank of Ukraine dated October 11, 2008 "On Additional Measures in Relation to Bank Activities". Unfortunately, this problem has not been solved yet.

In my opinion, the state should undertake extraordinary anti-crises measures to mitigate the consequences of the financial crisis, in particular for securing existing jobs. It is especially important for these measures to be applied at the enterprises of construction, metal and chemical industries.

**The International Covenant on Civil and Political Rights.** Despite the substantial efforts of the state, a number of its articles have not been observed. This has been regularly emphasized by the UN Human Rights Committee. In particular, the Committee noted **the urgent need to proceed with the justice reforms.**

**To assure the rights of the citizens to fair trial and execution of court judgments** is one of the most acute problems in Ukraine. It is reflected by the statistics of the European court. There have been 45 judgments of the court against Ukraine and 90% of them have been connected with violation of the right to fair and timely trial. The execution of the judgments of the European court (as well as that of national courts) cost the State budget 18 million hryvnas. And it was paid from the pockets of the taxpayers.

It is important **to provide the socially unprotected citizens with free legal aid**, and not only in criminal cases, but also in civil and administrative ones. It is all about the access to justice for majority of the Ukrainian citizens. The absence of such aid prevents the poorest groups of society from protecting their rights. Every year there are 10 thousand administrative and 70 thousand civil inadmissible cases due to unawareness of the complainants how to eliminate procedural shortcomings.

In February 2006, to settle this issue I addressed the President of Ukraine with a submission. By his Edict, the President approved the concept for establishing free legal aid system in Ukraine. However, despite our expectations, there have been no further steps. The Parliament should finally adopt the new Laws of Ukraine “On Bar” and “On Free Legal Aid”. It will help to protect the rights of the poorest citizens.

I would like to draw your attention to the extremely acute problem – the *possibility to appeal against court decision on administrative arrest*. The UN treaty bodies note, the right to appeal has been continuously violated. The Code on Administrative Violations of Ukraine needs being amended by incorporating it with procedures of appeal and cassation for reviewing judicial decisions. It was by no means a coincidence when the European court made a decision on September 6, 2005 in the case “Gurepka vs Ukraine”. It stated violation of Article 2 Protocol 7 to the European Convention on Human Rights in relation to the complainant. The court noted the absence of the mechanism in Ukrainian legislation for appealing against court decisions instituting administrative proceedings.

Every year there are 70 thousand of administratively arrested persons deprived of their constitutional rights to appeal against corresponding decisions. For this reason, in April 2008 I addressed the submission to the President of Ukraine on the protection of the rights of people to appeal against court decisions in relation to administrative violations. On the assignment of the President, the Government drafted such a law and submitted it to the Parliament for consideration.

It is important that recently the Parliament of Ukraine has finally managed through amending the Code on Administrative Violations of Ukraine in relation to traffic security to introduce an appellate procedure for reconsideration of judicial decisions on administrative violations, including administrative arrests.

***The unprotected judges cannot effectively perform their duty to protect human rights.*** Justice towards judges is also being exposed to risk in Ukraine. This standpoint I presented at IX Convention of the Judges of Ukraine. It fully complies with principles of the rule of law, independence of judges and respect to human rights. Today, there have been efforts to drag through the Parliament a law, actually aimed at destroying the system of justice through establishing control over judges by other branches of power and political forces as well as reducing responsibility of a judge. In my capacity as the Commissioner for Human Rights, I have been unalterably opposed to such reforms – **the system of justice in Ukraine should not be destroyed, but changed!**

It should be noted that almost a thousand of judges have been waiting to be nominated by the Parliament, which impedes the right to a timely trial. And how do you like the Presidential Edict on Liquidation of Kyiv Administrative District Court?! A liquidation of a court in such a manner and dismissing judges from their position violate the principle of the independence of judges, which is guaranteed by international

documents and the Constitution of Ukraine; and, in fact, makes it impossible to protect a number of constitutional human rights and freedoms in the capital city of our country. For this reason, the **Commissioner has publicly addressed the President of Ukraine** as the guarantor of the constitutional human rights and freedoms with the request to cancel his Edict on dismissing judges and liquidation of the court. I asked him to do so *in sake of securing the rule of law, peace in the country as well as observance of constitutional human rights and freedoms.*

*Distinguished members of Parliament!*

In 1965 the UN General Assembly adopted *the International Convention on Elimination of All Forms of Racial Discrimination*. Since ratification of the Convention in 1969, Ukraine has already presented to the Committee on elimination of racial discrimination 18 periodic reports. The state has been continuously undertaking measures for countering different forms of discrimination. The Parliament of Ukraine has supplemented the Ukrainian legislation, which bans propaganda of race and ethnic hatred, public organizations or political parties resting on race hatred or discriminatory grounds. In March 2007 the State Committee on Nationalities and Religions commenced its work. The Committee was mandated to deal with combating racism and racial discrimination.

However, despite the substantial improvement of legislation, the implementation of the responsibilities under the Convention is still an acute problem for Ukraine. The independent monitoring of the Commissioner has indicated *an upturn of negative trends in xenophobia, religious, national and racial intolerance in society*. For the last several years, there has been a high rate of racially, ethnically and religiously motivated violence and vandalism. Thus, in 2007 there were 94 victims of racially motivated crimes, first of all they were people of African and Arab descent, immigrants from Asia Pacific; 9 of them were killed. In 2008 there have already been 76 attacks with 5 fatal casualties. In 2006-2007 there were 92 documented acts of desecration of graves, including 7 cases of damaged relics and gravestones. For this reason, there were established relevant units for dealing with racially, ethnically and religiously motivated offences.

At the same time, it should be noted that the UN Committee on Elimination of Racial Discrimination expressed its concern over the fact that there had been no criminal proceedings under Article 191 of the Criminal Code which deals with offences against non-nationals. And it was not until recently that the situation began to improve – there has been several criminal proceedings initiated under this Article.

The Commissioner is convinced that the facts of such offences are indicators of serious gaps in the state policy towards countering discrimination in the society as well as securing rights of the national minorities. Taking into account the relevance of these issues, in the near future the Commissioner is going to present to the Parliament her



Special Report on the Status of Observance of the Rights of the National Minorities in Ukraine based on the monitoring of the Ombudsman.

Ukraine has joined a range of international conventions that guarantee equal rights to women and men. Inter alia, in 1981 Ukraine ratified **the UN Convention on Elimination of All Forms of Discrimination Towards Women**. It is very important, since securing equal opportunities is considered to be the deciding factor in the ongoing progress. Equality is a key component of building just and democratic social relations of XXI century.

Ukraine has presented six periodic reports to the UN Committee on Elimination of Discrimination Towards Women. The state has undertaken concrete measures for securing gender equality to comply with its commitments under the UN Convention on Elimination of All Forms of Discrimination Towards Women as well as recommendations and observations of the UN Committee. To be more precise, the Parliament has adopted a range of legal documents: the Declaration on General Principles of State Policy Towards Family and Women, stipulating increased role of women in economic, political, social, cultural and spiritual life of the country; the Family Code of Ukraine, safeguarding equal rights and responsibilities of men and women in family life; the Law of Ukraine “On Preventing Family Violence”, which initiated establishing crises centers and asylums for social rehabilitation of women and children who suffered from the violence; the Law of Ukraine “On Safeguarding Equal Rights and Opportunities for Women and Men” (2005), which provided for establishing a state mechanism on safeguarding equal rights and opportunities for women and men and prohibited gender motivated discrimination. In accordance with Article 9 of the Law, the control over the observance of equal rights and opportunities for women and men has become a component of Commissioner’s control over the observance of human rights and freedoms.

At the same time during consideration of the Ukrainian periodic reports the UN Committee noted that despite implementing provisions of the Convention in legislation, *there still were manifestations of direct and indirect discrimination towards women in society*. It holds of the rate of remuneration in women dominated industries; high unemployment rate, especially among women of older age; a significantly misbalanced participation of women in senior positions in bodies of state authority and local self-government, as well as the Parliament.

The Commissioner fully agrees with the viewpoint of the UN Committee, which insists in its recommendations on the necessity to apply item 1 of the Article 4 of the Convention as regards *undertaking special interim measures* aimed at speeding up the establishment of actual equality between women and men. Thus, the situation can be improved through *positive discrimination*, which could considerably increase the number of women in the Parliament, Government and local self-government. It would harmonize the social relationships in the state.

Like the majority of the world nations (191), except for the US and Somalia, **in 1991 Ukraine ratified the Convention on the Rights of the Child**. In accordance with the recommendations of the UN Committee on the Rights of the Child, the Ukrainian legislation was incorporated with provisions of the UN Convention on the Rights of the Child. In particular, the Law of Ukraine “On Childhood Protection”, the Family Code of Ukraine etc. ***Ukraine has also ratified Optional Protocols to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography as well as on Involvement of Children in Armed Conflicts; Convention on Civil and Legal Aspects of International Kidnapping of Children, as well as the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children.***

Implementation of international standards has brought over positive changes in Ukraine - the protection of children is becoming a national policy. There has been gradual progress in establishing an integrated system for protection of the rights of orphaned children and children without parental care. Underway is the implementation of the reform program for the system of institutions for such categories of children. By his Edict, the President of Ukraine has ***proclaimed 2008 to be the year of promoting national adoption*** and other forms of family education of orphaned children and children without parental care. Underway is the realization of measures for intensifying social protection of children and families with children.

However, the monitoring of the Commissioner has made it obvious that we still have such ***acute problems as violence towards children and among them; high rate of juvenile delinquency; use of narcotics; homelessness; neglect and child trafficking.*** It was only in 2007 that 12 thousand children suffered from criminal offences. Annually, the Commissioner is addressed with almost 1000 complaints directly from children or their representatives. Lately, there have been frequent reports about child cruelty; in particular, when children abused their schoolmates, recorded it on their mobile phone cameras and distributed it on the Internet. Such cases took place in Chernivtsi, Zaporizhia, Odessa, Chernihiv, Poltava and other Oblasts. Though the juvenile delinquency has been gradually decreasing, the rate of grave crimes committed by minors or with their involvement is still high. Thus, in 2007 58% of approximately 20 thousand crimes committed by persons under 18 were either grave or especially grave crimes. It has to be noted that the crime is being juveniled.

During the decade after the criminal liability for human trafficking had been instituted, 282 children, who suffered that crime, were returned to Ukraine. But it is just the top of the iceberg, taking into account the latent character of that crime.

Most of the mentioned problems have not been solved, but aggravated due to social and economic difficulties in the country, low level of life, increased poverty and unemployment. As the consequence, children are becoming increasingly trapped in the worst forms of exploitation – such as prostitution, pornography etc. Every year ***the law-enforcement bodies arrest from 1.5 up to 2 thousand minors for begging.***

In the observations of the UN Committee on the Rights of the Child, it was especially emphasized that in most cases the Ukrainian legislation was declarative and did not contribute to the state complying with high standards of the child rights. Changes have been slow. For example, **the national legislation still fails to comply with the requirements of the ILO Convention №138, establishing 16 years as the minimum age for working children.** In Ukraine, under certain circumstances, children are allowed to work starting at 14. Hence, *there are more than 400 thousand working children, whose labor has been ruthlessly exploited.*

It was as early as 1996 that the acting Commissioner for Human Rights initiated establishment of the **Center for adopting orphaned children, intended to set the primacy of national adoption over international.** However, the Center which is a Department of the Ministry for Family, Youth and Sport Affairs actually has become a Center for assisting foreign adoptive parents. It should be noted, there is no system of control over conditions of a child in placement family; that results in outrageous violation of the rights of these children. Such situation happened to Ukrainian children adopted by the USA citizens Krueger and Hilt couple. These people were held criminally liable and deprived of their parental rights. The future of these children, who lost their Ukrainian nationality according to the USA legislation, is being determined by US guardian authority, and the Ukrainian diplomats have been restricted from contributing to the destiny of these children, who hold their Ukrainian nationality until 18.

It has been envisaged in the item 6 of the Article 283 of the Family Code of Ukraine that the adopted children have the right to choose their nationality after 18. Though, on crossing the border they automatically become foreign citizens with no right to choose nationality in the future. To prevent such situations the Commissioner proposed the Government of Ukraine to supplement the *Procedure for Adoption Activities and Supervision Over the Observance of the Child Rights in Placement Families* with a list of obligations for the foreign adoptive parents that would secure the right of the child to hold the Ukrainian nationality until 18, as required by the legislation of Ukraine.

It should be noted that starting *from January 1, 2009, the Ukrainian citizens adopting a child shall, finally, receive the amount of financial support equal to that received by parents at birth of their first child; and the amount of government aid for children raised in child custody shall be increased.* The President of Ukraine addressed the Government with the request to make provisions in the State Budget of 2009 for relevant funding.

Grave concern of the Commissioner for Human Rights has been raised over the cases of death of children in secondary schools of Zaporizhia, Zhitomyr, Lutsk and Chernivtsi and other Oblasts that have occurred since the beginning of the current academic year. After investigation, the Ombudsman suggested supplementing the project of Comprehensive Development Plan for Education in Ukraine for the period until 2011 by a range of activities aimed at protection of the child rights to security and

appropriate education. To this end, the relevant submission supported by the Government has been addressed to the Prime-Minister.

Inter alia, the UN Committee on the Rights of the Child recommended to ***further improve special medicare for children who suffered the consequences of the Chernobyl power plant accident***. In this context, I would like to emphasize the significance of the Ukraine-Cuba medicare program for Chernobyl children. 22 thousand little Ukrainians have already received medical care thanks to this program. Cuba is the only country in the world that has been providing Ukrainian children with highly qualified medical care for so many years.

To improve the realization of the child rights in line with the international standards, the state should undertake the following measures:

- Speedy adoption of national program “National Plan of Action for Realization of the UN Convention on the Rights of the Child for the period until 2016”;
- enhance responsibility of the central governmental authority for realization of child rights;
- establish the juvenile justice system, which it has been obliged to do since 1991. First of all, there should be established special courts for dealing with children cases.

**In 1987 Ukraine ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.** In accordance with this Convention Ukraine has been actively undertaking measures for countering use of tortures and other cruel, inhuman or degrading treatment or punishment.

It was no coincidence that the UN Committee against Torture noted positive changes, 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 the amended and redrafted Law of Ukraine “On Immigration”, the Law of Ukraine “On Refugees”, the Criminal Code, defining torture as a criminal offence, and the Code of Criminal Procedure. On November 5, 1998 Ukraine recognized the authority of the UN Committee to receive and consider communications from countries and individuals; and abolished reservations on Article 20 of the Convention concerning confidential inquiry.

***On February 4, 2004, upon the submission of the Commissioner for Human Rights the Parliament ratified the UN Convention against Transnational Organized Crime of 2000 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.*** Furthermore, on the direct initiative and involvement of the Commissioner the Parliament ***ratified the Optional Protocol to the UN Convention against Tortures and Other Cruel, Inhuman and Degrading Treatment or Punishment.*** 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 the national control mechanism for preventing tortures as an independent government agency with special status. When this proposal is supported by the Government, Ukraine will be able to fully comply with its relevant obligations and implement the observations of the UN Committee.

It has been from the very beginning that the monitoring of the status of implementation of the rights of persons deprived of their liberty has been a priority of the Commissioner for Human Rights. The monitoring of the Commissioner has been conducted, inter alia, through “*visits without previous notice*” to the penitentiary facilities. The Commissioner for Human Rights has urged the Government of Ukraine to undertake comprehensive measures to create in penitentiary and special police facilities the incarceration conditions that would meet, in general, the European standards. Yet, however, despite certain progress these essential measures have not resolved all of the acute problems.

Based on the results of monitoring, the Commissioner has come to a conclusion that there is a need for a fundamental change in practice of using task force detachments for action in penitentiary facilities and pretrial detention centers. Their methods of work caused concern of the UN Committee against Tortures as well. In particular, it holds of using special camouflage masks by these detachments, which is considered to be intimidation and ill-treatment of the detainees.

The effective elimination of law violations and better observance of human rights and freedoms have often been impeded by loosening prosecutor’s supervision in some regions; lack of comprehensive approach to its organization in this sphere; a lot of paper work instead of appropriate and profound response by prosecutors. To 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 State Department of Ukraine for Execution of Punishments.

**In the observations and recommendations of the UN Committee, it has been regularly emphasized on use of torture and ill-treatment of 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 have been typically received by the Commissioner as well. Almost every fifth of them has been from places of detention. While in 2007 there were 1053 complaints about use of torture, cruel and inhuman treatment or punishment, in 2008

the Commissioner has received 1380 complaints. In other words the number of complaints has been increased by one third.

Much to my regret, there have been several cases lately, when the use of torture by law-enforcement officers resulted in loss of life. I would like to show you some pictures. This is the picture of 26-year-old Yuri Mozola, a worker from Horodok town in Lviv Oblast. He was tortured to death in an investigatory isolation ward of the Security Service of Ukraine. He was charged with a number of murders, which, as turned out afterwards, had been committed by the serial killer Onoprienko. I want you to see a severely truncated body of this person lying in coffin. It was the year 1996.

Now, this was in 2007. This is Petro Khudak, a father of three children, born in 1961. He was tortured to death by police officers in the facilities of Nadvirniansk police department in Ivano-Frankivsk Oblast. What else has to be done in Ukraine to stop these terrifying crimes against the main human right – the life itself? The time distance between these events is 9 years, but tortures, that kill people, still exist. Yet, some top officials have refused to recognize that there have been tortures. Unfortunately, they do exist. And for this reason we should combine our efforts in countering this notorious phenomenon.

After the review of the latest, fifth periodic report of Ukraine the UN Committee noted that ***the definition of torture given in Article 127 of the Criminal Code does not correspond to all of the elements 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 and ensure the opportunity to indict any guilty state official on the basis of Article 127 of the Criminal Code.

However, the Law of Ukraine “On Amendments to the Criminal Code and Criminal Proceedings Code of Ukraine for Humanization of Criminal Responsibility” dated 15 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. Part 3 of Article 127 determined criminal liability for use of torture by law-enforcement officers in the form of 10-15-year-long imprisonment. Part 4 envisaged 12-15 years imprisonment or life sentence. Today such actions are punished by 3-7 years of imprisonment, including for law-enforcement officers.

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 on criminal liability for abuse of power or authority***.

Furthermore, the UN Committee also noted another daunting problem for Ukraine. It 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.* All of these creates additional punishment and sufferings for the detained persons. 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; this norm still has to be increased to 4 square meters per prisoner. In general, the issue of accommodating places of detention for a human being needs immediate solution.

On 8 November 2007 the Commissioner organized the First Ombudsman Public Hearings on the results of the 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. New constructive approaches were elaborated for comprehensive protection and remedy of the constitutional rights of the detainees. In particular, **the duration of arrest should be changed from 72 hours to 48 hours, as required by international standards.**

Recently, the Government of Ukraine approved the *Conception of the Reform Program for the State Department of Ukraine for Execution of Punishments for the period until 2017*. I hope, the further implementation of the Program will have positive impact on execution of sentences by the Department, as well as facilitate the realization of the constitutional rights and freedoms of socially isolated persons.

**The UN Human Rights Council was established in March 2006** to become the successor of the UN Commission on Human Rights; it **introduced the Universal Periodic Review for considering National reports of the UN member-states on human rights situation**, intending to strengthen the effectiveness of the international efforts in protection of the human rights and fundamental freedoms.

*Ukraine*, 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), was one the first when *presented its National report on the human rights situation in Geneva on 13 March 2008*. 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: combating poverty, a phenomenon which entails violations of the fundamental human rights; providing free legal aid; intensifying 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; strengthening protection of the rights of the migrant workers. This document also contains relevant comments from NGOs.

Conclusions and recommendations of the Working Group of the UN Human Rights Council actually proved the analysis of the status of observance of international standards in Ukraine from this Special Report.

*Distinguished Members of Parliament!*

In addition to the mentioned Universal UN Conventions, there is still a range of other international treaties that should be ratified. Among them – **the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990**. 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.

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. 90% of all migrants – our countrymen beyond the borders of Ukraine as well as immigrants inside the country – unfortunately, work illegally. 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.

For the first time, the Commissioner for Human Rights raised the necessity to ratify this Convention eight years ago in the relevant submission to Mr. A.Kinakh, the then-Prime Minister of Ukraine. The second submission of the Commissioner on this issue was addressed to Mr. V.Yushchenko, the President of Ukraine, on 18 May 2007.

It is highly 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.

Commissioner for Human Rights have been actively engaged in the protection of the rights and freedoms of the Ukrainians abroad. Many of the cases were extremely difficult and even hopeless.

As you know, today there are a number of vessels being held in pirates' captivity. Currently, the destiny of seafarers from 7 vessels is under special control of the Ombudsman. Upon the appeal of crewmembers, mothers, wives and even children of the victimized seafarers, the Commissioner has commenced legal proceedings in the cases of violated rights to safety and life of the crewmembers of MV Lehman Timber,



MV Perekopskyi, MV Tolstoy, MV Faina, MV Capitan Stephanos, MV Umurga and MV Kent Locomotion.

There are also good news. Yesterday, 9 December, released from the pirates' captivity in Somalia was MV Capitan Stephanos with the Ukrainian seafarer on board. Moreover, thanks to coordinated efforts of the Ombudsman and relevant agencies, the MV Kent Locomotion with four Ukrainian seafarers on board managed to escape pirates' captivity while passing through the Gulf of Aden.

To protect the rights of its seafarers **Ukraine has to** make a very important step – additionally to the UN Convention on the Law of the Sea of 1982, which was ratified upon the submission of the Ombudsman, **ratify the ILO 2006 Maritime Labor Convention.**

Profound analysis of migration issues have been done in the Special Report of the Commissioner “*On the Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad*”, which was presented to the Parliament in 2003. However, a range of proposals from the Special Report of the Commissioner have not been implemented up to date. **Unapproved** is the most important – **Conception and Principles of a state migration policy**; the 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 and ways of cooperation for the state authorities competent in migration. Not less important is the issue of *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*.

I would like to note that, eventually, the 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”. The draft law was elaborated by the Ministry of Justice, with the proposals and recommendations of the Ombudsman taken into account. The policy is aimed at 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.

In 2006 the UN General Assembly adopted the Convention on the Rights of Persons with Disabilities. In 2008 there was established the UN Committee on the Rights of Persons with Disabilities.

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 found active support of the National Assembly of the People with Disabilities of Ukraine. No doubt, ratified Convention would be instrumental for implementation of the appropriate legal framework for the effective and fair protection of the rights of persons with special needs.

Yet, there are such important international UN treaties that have never been ratified by Ukraine – *the Convention relating to the Status of Stateless Persons* and *the International Convention for the Protection of All Persons from Enforced Disappearance*. Highly important for Ukraine, these Conventions need additional efforts on the part of the Government and the Parliament for their speedy ratification and implementation into the legal framework of Ukraine.

To sum up, I would like to emphasize that the analysis of the state of observance of international human rights standards in Ukraine from the Special Report has proved – the state has been undertaking certain steps to bring the Ukrainian legislation in conformity 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 the Ukrainian legislation in line with international human rights standards*. It should identify the list of universal and regional conventions on human rights to be ratified first of all. The Parliament 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 has been 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 one in case of conflict of jurisdiction of the legislation*.

The Commissioner for Human Rights is also convinced that 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.

In the end, I would like to say that human rights in conformity with high UN standards should become our national idea, the idea which shall consolidate Ukraine. On the Day of Human Rights, let me congratulate you, my fellow citizens, and wish to all of us real security of our rights and freedoms.