

# **UKRAINE**

## **Review of Ukraine at the United Nations Human Rights Committee 108th session**

NGO input to the List of issues to be taken up in connection with the consideration of the 7th periodic report of Ukraine, adopted by the Committee at its 106th session (CCPR/C/UKR/CO/7)

**June 2013**

### **Coalition of NGOs submitting the report:**

- All-Ukrainian Non-Governmental Organization “Coalition for Persons with Disabilities”
- Association of Ukrainian Human Rights Monitors on Law Enforcement
- Center for Civil Liberties (Kyiv)
- Center for Law and Political Research «SiM» (Lviv)
- No Borders Project/Social Action Centre (Kyiv)
- Human Rights House Kyiv
- Human Rights House Foundation
- Informational and Consulting women’s center
- Maidan Monitoring Information Center (Kharkiv)
- International women’s advocacy center «La Strada – Ukraine»
- Kharkiv Human Rights Protection Group
- Kharkiv oblast’ foundation “Public Alternative”
- Kherson Regional Branch of the Committee of Voters of Ukraine
- Ukrainian Helsinki Human Rights Union

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## 1. Introduction

From 2005 to 2009 Ukrainian NGO's reported the State's positive intentions with respect to human rights however State policy in this field was ineffective, unsystematic and chaotic. In 2010 – 2011 NGO's experts had been forced to recognize that there was no policy at all, that human rights were not a priority for the country's leaders and that there were even more violations of human rights and fundamental freedoms.

In 2012 the State policy in this sphere changed somewhat and the human rights situation became more diverse. One saw positive, sometimes successful, actions by the authorities in certain spheres, aimed at enabling Ukrainians to exercise their rights, however in other spheres there were either no changes or in fact the results of efforts led to even more violations.

The reasons for the change in policy lay in the fear of sanctions from international bodies and total international isolation, as well as the need to demonstrate the regime's successes before the parliamentary elections. An indisputably positive element was the adoption of a new Criminal Procedure Code (CPC) which, despite numerous failings, proved to be much better than could have been expected, as well as some other laws – on bar lawyers; on civic associations. There were attempts to fulfill the PACE recommendations regarding freedom of peaceful assembly which was violated on a large scale in Ukraine in 2012 through the preparation, with the participation of civic specialists, of a good draft law. There has not yet been any success in getting it adopted. The system of legal aid is developing, with regional centers created which began to work from 1 January 2013. The elected in 2012 new Ombudsperson has successfully begun creating national preventive mechanisms for prevention of torture and ill-treatment, mechanisms of parliamentary supervision over access to information and protection of personal data; and submission to parliament of recommendations regarding draft bills concerning human rights, some of which have been taken into account.

At the same time, 2012 fully exposed the main feature of this policy, that being to try to implement all recommendations from international bodies which don't encroach on the power of the Ukrainian leadership and ignore those which threaten that power. It is not surprising that despite the dirty election campaign 2012; the use of administrative resources; bribery of voters; other considerable infringements of the electoral law; and the rigging of the results in some election districts; planning to gain more than 300 assured votes in parliament [a constitutional majority – translator], those in power cannot even form a majority without resorting to pressure and political corruption. All international institutions found these elections to have been non-transparent and unfair.

In 2012 the use of the Prosecutor's Office, the Interior Ministry; SBU [State Security Service]; and tax bodies as instruments of repression against the opposition and civic movements continued, or even increased. The judicial system remained entirely dependent, with control over the courts being a key condition for maintaining power. There was no point in even talking about respect for the justice system. Every time there was a clash between the economic interests of the elite in power and human rights, the interests of those in power won out. All "reforms" – tax, pension, medical, administrative, etc - as well as many ongoing actions by public authorities (reduction in the network of medical; educational; and cultural institutions; bus routes; local and fast trains, etc) were aimed at reducing the public deficit at the expense of the population and with disregard for human rights. This has resulted in an increase in poverty and social inequality which seems particularly disgusting against the incredible increase in political corruption and

corruption of high-ranking State figures; the squandering or use for the wrong purposes of public funding. This is coupled by the imitation of a fight against corruption via selective criminal prosecutions with this in fact only increasing corruption.

A flagrant example of laws which violate human rights was the Law on a Unified State Demographic Register which envisages the creation of a huge database containing personal data on people living in the country (the list of data is not exhaustive) and used for the issue of biometric documents (their list is also not exhaustive). As well as passports, the internal “passport” or ID document; driving license will also become biometric and will to be replaced every 10 years.

This law obviously violates the Constitution, the Personal Data Protection Act; the right to privacy; and adds the burden of extremely expensive technologies to the State budget. Nevertheless all arguments regarding its unacceptability remained unheard and the entire system will function, against commonsense and the interests of Ukrainians who will be forced to regularly pay large amounts for biometric documents; and in the interests of the private corporation.

All the above events have led to a general deterioration of political and civil rights of the citizens of Ukraine. The report submitted by NGOs to the UN Committee, offers to get acquainted with the current situation in Ukraine in more detail. This report is based on studies by various non-governmental human rights organizations and specialists in this area. It contains also the recommendations for eliminating human rights violations and improving the overall situation.

## **2. Non-discrimination, equality between men and women, prohibition of advocacy of national, racial or religious hatred and rights of minorities (arts. 2, 3, 20, 26 and 27)**

### **2.1. Prohibition of discrimination, art. 2.**

#### **Issue N° 3:**

Please indicate whether the State party plans to include in the Constitution the right to equality and non-discrimination for all, but not just for citizens. Please also clarify whether the Law on the principles of preventing and combating discrimination adopted on 6 September 2012 (a) addresses discrimination in all areas of life; (b) defines direct and indirect, as well as de facto and de jure discrimination; (c) contains a comprehensive list of grounds for discrimination, including discrimination based on sexual orientation and gender identity; (d) provides for remedies to victims of discrimination and (e) establishes a mechanism for the effective implementation of its provisions in practice.

1. Despite the issue of non-discrimination and appropriate changes into the Ukrainian legislation had been in focus of many recommendations coming from Human Rights Council and other international monitoring treaties (such as UPR, CERD, ECRI, etc.) for years on, Ukrainian authorities started developing first draft of anti-discrimination legislation only in 2012. Before that, all state reports had a tendency to show that article 24 of the Constitution was enough to provide for anti-discrimination framework in the country.
2. First draft law developed by the Ministry of Justice, was labeled as a high priority according to Ukraine' obligations within EaP, and submitted to the Parliament before it went through the transparent and inclusive process of public discussion. Such hurry and persistence not to include human rights institutions and civil society organizations into the process of development and shaping of anti-discrimination law were explained by official Kyiv due to the pressure from EU and additional pressure from Orthodox Church to exclude sexual orientation and gender from the list of protected grounds.
3. Both national and international CSO provided comments and contributions to the draft, all of them ignored by the Parliament Committee on Human Rights, national minorities and inter-ethnic relations, responsible for the draft, despite the fact that the Committee even managed to establish a working group to further develop the draft, inviting representatives from CSOs, NHRI, etc. Alike, commented and suggestions from EU and ECRI were ignored.
4. The Law "On the Principals of Preventions and Combating discrimination in Ukraine" eventually adopted by the Parliament in September 2012 contained very basic number of issues that are supposed to be covered by such piece of Law and needs substantial further development to be considered as comprehensive and sufficient to effectively protect from discrimination. Almost immediately after the adoption of the first anti-discrimination law, the same

responsible Ministry started drafting amendments to the law “On the Principals of Preventions and Combating Discrimination in Ukraine”. These amendments, with the explanatory note stating that the law draft does not need any public discussion, were registered in the Parliament in February 2013.

5. There is a special committee created to develop a new draft of the Constitution, though there is no information that the list of protected characteristics or the essence of the Article 24 is to be proposed for amendments. The list of protected characteristics included into the Law “On the principals of preventions and combating discrimination in Ukraine” is coming from the Constitution and does not include either sexual orientation, or gender identity. Both grounds are excluded from the draft law ‘On Changes into Several Legal Acts of Ukraine on Prevention and Combating Discrimination in Ukraine”.
6. The first Law and amendments both lacked systematic approaches to such legislative acts. Definitions of different forms of discrimination clearly copy pasted from EU Directive, were wrongly translated and lamely adopted to current Ukrainian legislation. First Law lacked effective mechanism to protect from discrimination and did not provide for the mechanism of “shifting the burden of the proof” essential for such legislation.
7. The second draft made an attempt to cover several of shortcomings, namely introducing sexual orientation as protected characteristic into the Labor Code, “shift of the burn of proof” into the Civil Code and defining discrimination within the Criminal Code. Though some of these amendments are crucial to establishment of effective and comprehensive anti-discrimination legislation, they are not sufficient enough and do not cover all areas, e.i. changes to Labor Code for example do not cover all areas and subsequently cannot provide protection in all spheres of professional life of an individual, not to mention the fact that in other spheres of life, such specific protection is not clearly stated in the law, that might bring difficulties with application.
8. Further developments are needed to provide appropriate changes to the Criminal Code of Ukraine, the Criminal Procedural Code of Ukraine, the Code of Ukraine on Administrative Offences, the Civil Code of Ukraine and the Civil Procedural Code. In particular, in this context special attention should be drawn to the fact that definition of discrimination, should be taken out of the Art. 161 of the Criminal Code of Ukraine, which stipulated criminal responsibility, in particular, for “direct or indirect restriction of rights, or provision of direct or indirect privileges for citizens on the grounds of race, skin color, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, language or other grounds.” According the Art. 62 of the Constitution of Ukraine, legal responsibility for the action constituting corpus delicti, can only be established in the order foreseen by the criminal process. In the light of the ECtHR criticism of such a legal casus (Danilenkov and others v. Russia) it is much more appropriate to suggest to amend the dispositions of the Special Part Articles of the Criminal Code of Ukraine (both crimes against a person and crimes against property) with a clause which would proclaim a discriminatory motivatio, by an open and widest possible list of grounds, an aggravating circumstance, and to remove from the Art. 161 the part quoted above, also taking away the part “inciting hatred” and “insult to the honor and dignity on the basis of discrimination” and entering them into the Code of

criminal offences or Administrative Code.

9. The Law “On Ombudsman” should be equally amended to explicitly mention the latter's possibility to intervene in both the public and private sectors. While looking into discrimination-related cases, the courts should be obliged to turn to the NHRI for the expert conclusion at least during a certain trial period to ensure proper application and understanding of new law.
10. Further amendment is needed to the part 1 of the Art. 14 of the Law of Ukraine “On Free Legal Aid” with the p. 13 of the following content: “individuals who turn to the court with discrimination-related lawsuits, or are victims of crimes which, in their opinion, were committed against them or property belonging to them, through victims’ association with a group which is defined by one or several of the grounds mentioned in the Art. 1 of this Law”. As well as some other minor but significant amendments needed to be introduced to achieve an effect of comprehensive legislation with an easy and effective mechanism to protect from discrimination.

## **2.2. Gender equality art. 3.**

### **Issue N° 4:**

Please comment on information before the Committee that women are still underrepresented in high-level elected and appointed bodies, and account for 8.1 per cent of parliamentarians, while no women are represented among the 25 appointed governors, and that according to official statistics for January 2012 a salary gap of 25 per cent exists between men and women. In this respect, and further to the information supplied by the State party (CCPR/C/UKR/7, paras. 28-36), please indicate whether the draft law ensuring equal opportunities for women and men in the electoral process and the Draft State Gender Equality Programme (2011-2015) have been adopted, and, if so, provide information on their implementation and the results achieved. Please indicate the steps the State party has taken to enhance the representation of women in all legislative and executive bodies and to give effect to the principle of equal remuneration for men and women for work of equal value.

11. Women’s representation on the higher tiers of power and on the decision-making positions remains very low. Statistics did not change much compared to the previous years. At the same time the even those changes in figures are rather statistical but not political changes.
12. Gender pay gap constitutes more than 25 % for the benefit of men. In March 2012 the Ministry of Social Policy made public the index of salary differences at the amount of 8 %. These figures need further research.
13. Analysis of the situation for 2012 compared to 2011, 2010 and 2009 gives reasons to believe that most of the negative social and political tendencies keep

developing, the general social and political context shows no significant changes, the efforts made to institutionalize the gender policy are insufficient, and anti-gender movements, which find support from deputies of various levels, are getting stronger.

14. During last years, the sad tradition of sexist and discriminatory statements from the highest-ranked officials of the state persisted in Ukraine. Over the years 2010-2011 a number of sexist and discriminatory utterances of higher public officials, including President, Prime-Minister and others have been registered: "If she is a woman, her place is in the kitchen" - Candidate to the President Viktor Yanukovych with these words, January 2010; "With all my respect to women, I would like to mention that carrying out the reforms is none of women's business." - Prime Minister Mykola Azarov, March 2011 (Mr. Azarov has got support from the court when in May 31, 2010 Pechersky district court of Kyiv considered this to be non discriminative and a way to realize Prime Minister's right for freedom of speech. Courts of Appeal and Cassation approved the previous decision without any changes.); the Minister of Education and Science, Youth and Sports Dmytro Tabachnyk on May 17, 2012 stated that girls that study at the master's courses and PhD programs are "not very beautiful". The Prime Minister's apology for him is hardly less discriminatory.
15. Experts admit that since 2010 the anti gender movements become stronger and manipulate with low level of gender culture of citizens and public servants of Ukraine. Their representatives disseminate unveracious information, including information about the content and the directions of policies on protection of human rights and on equality of men and women. They organized attacks against the human rights advocacy and women's organizations in Ukraine. On May 24, 2012, the State Registration Service sent a letter to non-governmental human rights advocacy organizations of Ukraine (No. 434-08-19-12-8), including - the „La Strada - Ukraine» Center and the All-Ukrainian Non-Governmental Organization «Women's Consortium of Ukraine», with which it demanded to provide, within two weeks, complete information about the organizations' activities. As the grounds for such demands the State Registration Service mentioned numerous letters from the public, in which people expressed their protest against these organizations' activities and demanded to ban operation of human rights advocacy organizations, based on the imaginary conclusions that they presumably were undermining the institution of family and the state itself, as well as the traditional moral values. Every organization mentioned in the letter of the State Registration Service, sent their responses, indicating that they were conducting their activities in the directions stipulated by the organizations' charters, in compliance with the effective legislation of Ukraine, including international treaties, whose binding authority the Verkhovna Rada of Ukraine granted consent for. No response from the State Registrar has been received.
16. By spreading false information on the Internet, in schools, and during street actions, they mislead not only the general public on the activity of human rights and women's organizations, but also governmental representatives, who seemingly should protect norms and principles of Ukrainian legislation in this field. Their activities and policy is aimed at pushing authorities, intimidation of the CSI and activists, contradicting such universal and democratic values as equality, non discrimination, and human rights respect. They also call to cancel the Equal Opportunities Law and exclude the word "gender" from any national



legal document.

17. In 2012, regional policy has reflected the denial of gender equality principles. Thus, according to the regional council's decision from 21.06.2012, № 12/13, the Volyn regional council held session hearings on "Revealing the nature of gender policy, as well as the problems and risks that it brings to Ukrainian society". The initiators of the event suggested Verkhovna Rada hold parliamentary hearings on «Clarification of essence of gender policy and problems and risks it brings to Ukrainian society»; they also insisted on necessity of monitoring of the essence and dangers of gender programs, which are being implemented in the region, and monitoring of agreements Lutsk city council came into with the gender organizations, which are representatives of foreign gender foundations». More similar examples can be provided, and this proves both the situation's gravity and the necessity of strengthening the governmental gender policy and its informational and educational component. Among the negative aspects of this anti gender attacks is the fact that in most cases respective government institutions take "wait-and-see policy" that obviously negatively effects the situation.
18. The positive step in addressing gender based discrimination problem: on June 8, 2012, the Minister of Social Policy signed the Decree on resumption of work of the Expert Council for consideration of complaints against sex-based discrimination (created in 2009). In September 2012 the first meeting of the Council was held. Representatives of governmental structures, civil society institutions, and independent experts are the members of the Council. The Expert Council considered more than 20 claims most of them were recognized as discrimination facts. The majority of claims dealt with sexism and discrimination in ads. In 3 cases fines were imposed upon the firms using discriminative images in their ads. The work of the Expert Council is continued.
19. The draft Law on making amendments to the Law of Ukraine about Provision of Equal Rights and Opportunities for Men and Women has not been adopted yet.
20. In September 2012 work on the State Program for implementation of gender equality by 2015 was renewed. Discussions with experts, public hearings were held. Experts of civil society institutions including Center "La Strada-Ukraine" were included in the expert group working on the State Program. By the end of May 2013 the Program has not been approved. That in fact means the absence of the instrument of state regulation of gender equality ensuring. Though according to the Program financing of the Program realization will start only from 2014 (in case of approving).

### 2.3. Discrimination against the LGBT community.

#### Issue N° 5

In light of reports about attacks and discrimination against lesbian, gay, bisexual or transgender (LGBT) persons, including violence, threats, illegal arrests and extortion by law enforcement bodies please outline the steps taken to combat discrimination and social exclusion of LGBT persons. Please provide information on the status of the following draft laws and explain whether these laws are compatible with the Covenant: (a) draft law No.10290, that bans the “promotion” of homosexuality; (b) draft law No. 8711 (adopted by the parliament at first reading on 2 October 2012), concerning the ban imposed on any production or publication of products “promoting” homosexuality, which provides for fines or deprivation of liberty of up to five years.

21. Developing new legal acts that prohibit discrimination in certain areas in line with international human rights standards from one side, Ukrainian authorities on the other side develop and try to introduce legal acts that might narrow human rights for certain vulnerable groups and deny universality of human rights in general within one country. Thus persistent attempts of Ukrainian parliamentarians to develop and lobby laws that might be generally named “On Prohibition of Homosexual Propaganda” (law drafts №№ 8711, 1155, 0945, etc.) clearly show first of all genuine lack of understanding what is a universal principal of human rights and principal of non-discrimination, as well as lack of systematic and human rights based approach to the development of legal system in Ukraine. It also shows that several parliamentarians, when developing their legal proposals are not reading existent laws and do not know about Ukraine’ obligations according to European Convention on Human Rights and Fundamental Freedoms and other relevant treaties.
22. All above mentioned laws if eventually adopted by the Parliament risk to substantially limit freedom of expression and association firstly to LGBT community, but also to CSOs at large and media in general. Such acts are not only narrow human rights for certain groups of people, but are build with disregard of the non-discrimination principal and approach, which is clearly abusive according to Ukraine national law. The mere fact that such law drafts are not rejected by the appropriate Committees in the Parliament or its General Expert Department (responsible for analysis and recommendations on all drafts), shows also limited application of the anti-discrimination law, though the latter specifically states that all law drafts should be developed in line with non-discrimination principal and go through the obligatory anti-discrimination expertise (Article 8).
23. Ukrainian parliamentary do not only develop and register law drafts aimed at limiting human rights for LGBTI persons, but also create and fuel public discussions around such initiative and the LGBTI rights in general. Such public discussion is lead with uncontrolled usage of hate speech towards LGBTI people and is followed and copied by the Orthodox Churches and ordinary public. The mere fact that hate speech is coming from the politicians and the Church somehow legitimize it to the public and make it acceptable, covered and

explained by threats to traditional values and moral.

24. Ukrainian authorities completely fail to address the issue, stop the hate speech and even start any education around the basic human rights principal and anti-discrimination approach. Since the adoption of the anti-discrimination law in September 2012, no state effort to start national information or education campaign on explaining why such law is needed or how can people use it to protect themselves, was initiated. Instead several political leaders were making comments that anti-discrimination law is something unnatural for Ukraine and introduced into the legislation only because of the pressure from UE, opposing their attempts to lobby for homophobic laws as acts to keep the balance and protect “traditional values and moral”.
25. Apart from non-mentioning sexual orientation or gender identity explicitly among protected characteristics, Ukrainian authorities do nothing to prevent human rights abuses of LGBTI people. Thus hate crime incident that occurred during Gay-Pride 2012 was not properly investigated, as well as the Pride itself was canceled last minute due to the fact that Kyiv local authorities and police failed to provide adequate protection to the Pride participants. At the same time when CSOs report massive limitations to the freedom of assembly and peaceful protests, in the case of Pride 2012, local authorities did not use their power to stop Pride opponents and prohibit clearly homophobic and hateful rally of right-wing extremists and Orthodox Church supporters who gathered en mass to abuse the Pride, instead all suggested by the police was to cancel the Pride.
26. Quite on the contrary with the Pride approach, on December 8, 2012, when LGBTI activists decided to conduct street action devoted to the World Human Rights Day, Kyiv local authorities decided to ban public event via the court (using old and much criticized by the ECHR legislation) and police instead of protecting LGBTI people from All-Ukrainian Party “Svoboda” (who came with clear intention to attack protesters), arrested organizers of the public event. Even after the “Svoboda” people openly manifested via their web site that it were their supports who came to block and attack the action, Ukrainian authorities did not take any steps to punish those guilty for physical violence, as well as investigate police behavior. Court appeal against Kyiv local authorities decision to ban the action, was lost, which again shows low level of understanding of human rights and freedoms by Ukrainian courts and their lack of independence.
27. Addressing the issue of mistreatment of LGBTI people by police officers, risen by the HRC in its questions to the State, it is important to note, that no significant changes or even a goodwill to start any development in the area, was shown by Ukraine for the last two years. According to the “Nash Mir” NGO monitoring, 86 cases of LGBTI people rights violations were documented during 2012, 33 of them coming from police (illegal arrests and racket, breach of confidentiality, non-effective protection, physical abuse, etc.).
28. In 2011 Ukrainian LGBTI leaders addressed the Ministry of Interior with a proposal to create an intersectional working group at the MoI with the aim to monitor human rights abuses, reaction to such cases, investigation and development of recommendations and education of police officers on issues connected with LGBTI rights violations in Ukraine. The Ministry refused to participate in the initiative, as well as never openly demonstrated any intention

to start working on the issue of police abuses of LGBTI people or merely recognizing the problem as such.

## **2.4. People with disabilities (Arts. 16 and 26)**

### **Issue N° 6**

With regard to the information provided in paragraphs 261-266 (CCPR/C/UKR/7), please provide further information on the progress achieved in the implementation in practice of the Law “On Amending Several Laws of Ukraine on the Rights of Persons with Disabilities” adopted on 22 December 2011, including on the penalization of those responsible for the failure to ensure the rights of persons with disabilities.

29. Ukrainian system of protecting people with disabilities, who do not fully understand the meaning and consequences of their actions, has no respect to a human being and his/her dignity, completely excluding such person from decision-making process concerning his/her life. There is no procedure of decision-making with participation of qualified assistants to such people with disabilities, which is recommended by the UN.

30. In Ukraine the only mechanism of protecting rights offered to people with disabilities, who do not fully understand the meaning of their actions and respective consequences (48 thousand legally incapable persons live in Ukraine), is classifying such persons as legally incapable and establishing guardianship over them. This means that incapable person loses a right to any legal action; he/she is deprived not only of civil rights, but ceases altogether to be a legal subject. E.g. such person cannot submit an application on employment, marriage, getting heritage, can not effect his/her treatment, location, day regiment, rehabilitation and social services, submit a petition on incapability revision.

31. Ukrainian legislation contains norms which violate rights of persons with disabilities recognized legally incapable by court. In particular, Article 70 of Ukrainian Constitution states “there is right to vote for persons recognized legally incapable by the court”.

32. The state has neither vision nor concept for de-institutionalization and creation of support network for independent community based living of people with disabilities. The agencies for temporary or permanent stay of persons with mental retardation are not included into the Budget Code and, therefore, receive no state budget funding as guaranteed by Article 37 of the Ukrainian Law ‘On Rehabilitation of Disabled Persons in Ukraine’.

33. According to official data from 01/01/2011 2,709,982 people with disabilities live in Ukraine, but the standards of statistics collection concerning people with disabilities is imperfect and not consistent with the social model of disability. The lack of reliable statistics is an obstacle to the development of pragmatic

policy and its effective implementation.

34. Responsibilities of the state are declarative in nature, since their implementation isn't provided either legally or financially. Moreover, the norm that defines the responsibilities of the State, is declarative because of lack of corresponding cross-norms which establish scope and content of responsibility.
35. Thus, the issues of people with disabilities are not considered during the development of policies on protection and security, technological emergency, humanitarian situations. There are facts of discrimination against women with disabilities when it comes to reproductive health and the provision of quality health services.
36. Provision of the law concerning educational services for disabled along with other citizens isn't performed due to lack of schools, fit for the needs of disabled; lack of the necessary human resources, who are supposed to assist people with disabilities to receive these services properly, and because of strict public attitude to the issue, which show that public is yet not ready to accept the disabled as equals. Thus, only 55 percent of children and youth with physical or mental disabilities attend the schools. According to the Ministry of Education, Youth and Sports of Ukraine, only 11% of schools are fully accessible to children with disabilities, 39% - partially available.
37. A number of fundamental guarantees for use of sign language are frozen because of the reluctance of the government to take practical steps for implementing the provisions of applicable law. In particular, it reduces the television and film duplication by sign language: on television there is almost no information and themed programs, films with subtitles and sign language.
38. Architectural inaccessibility of the court premises for people with disorders of the musculoskeletal system remains the main problem, as well as the lack of "reasonable accommodation", access to information in appropriate formats or translated with sign language.
39. Persons with disabilities are deprived of the opportunity to be an active participant in the election process. For example, none of the laws doesn't establish the requirements for equal access for persons with disabilities to pre-election campaign in the media. This applies, in particular, to mandatory titration and sign language of pre-election campaign on television, adaptation of information at the polling stations for blind people, the location of polling stations in the architecturally available buildings.
40. The state has not provided or implemented the principle of inclusion for people with disabilities in society. They are not treated as equal members of socio-economic development, alienated from the political and cultural life, education and health. In particular, the youth with disabilities after 18 years are transferred from orphanages to psychiatric hospital or centers for the elderly and disabled people under the Ministry of Social Policy. Being into these establishments throughout of life, they are doomed to complete isolation, can not participate in society as full citizens with access to education, employment and self-control over their own lives.
41. New version of Law "On Principles of Social Protection of the Disabled" specifies that the planning and construction of objects without physical environment

adaptation for use by persons with disabilities are not allowed. However personified obligation to implement these measures is absent, the competence of state bodies authorized to verify compliance with the Law has not yet been established.

42. Article 38 of the above mentioned Law specifies that any constriction of the rights of disabled persons for transportation privileges is not allowed. However, current government policy is contrary to the declared positions. In addition, the adaptation of public transport to the needs of the disabled, including that owned by private entrepreneurs, is performed only partially.
43. Dwell declarative set of Law "On Principles of Social Protection of the Disabled" which defines responsibilities of the companies - creating workplaces with reasonable accommodation, reimbursement of insurance costs, the necessary conditions for unimpeded access for persons with disabilities to the objects of the physical environment.
44. These responsibilities are not supported by appropriate sanctions and adequate benefits, that is why the enterprises, not responsible for them, bare no financial or administrative risks. The state does not encourage compliance by the private sector to the rights of persons with disabilities. For example, ATMs that are installed for public use, are inaccessible to people with disabilities, who use a wheelchair, for the blind and visually impaired.

## **2.5. The prohibition of propaganda for war, incitement to racial, national and religious hatred (art 20)**

### **Issue N° 7**

Please respond to reports that hate speech, threats and violence against foreigners, members of ethnic groups, religious and national minorities, including racial profiling by law enforcement bodies, still occur throughout the country, and that the perpetrators of the most serious hate crimes are committed by a movement of skinheads driven by extreme nationalist and racist ideology. Please indicate whether any concrete measures have been taken to prevent the registration and functioning of such groups and monitor constantly their activities, and report on the results achieved. Please report on any results following the implementation of the Plan of Action to Combat Xenophobia and Racial and Ethnic Discrimination for the period 2010-2012. Please also explain the limited number of prosecutions and convictions under article 161 of the Criminal Code compared with the number of suspected racially motivated attacks that are qualified as hooliganism, and provide additional information on the remedies available to victims of violence and discrimination based on ethnic, religious, or linguistic grounds. Please also report on the outcome of the investigations initiated into the following incidents: (a) the September- October 2011 identity checks in Lviv, targeting Roma, and resulted in alleged arbitrary detentions and beatings of Roma individuals; (b) the violent police raid on a Roma settlement in Uzgorod on 11 January 2012, when law enforcement

officials reportedly used tear gas and rubber batons; (c) the burning to the ground of a Roma settlement in Kiev on 31 May 2012.

45. The Criminal Code of Ukraine remains a primary locus of the prohibition of discrimination in Ukraine' legal system. It was slightly altered through the adoption of the Law "On Amendments to the Criminal Code of Ukraine concerning the Liability for Crimes Motivated by Racial, National [inter-ethnic] or religious Intolerance". Relevant amendments enhanced the punishment provided for by the Article 161 and brought minor changes into its disposition. These amendments left unaffected the content of Article 67(1)(3) that identifies racial, national and religious enmity as aggravating circumstances to every crime defined by the Criminal Code and has previously attracted substantial amount of criticism from experts for its lack of usability.
46. The abovementioned Law introduced a range of novel points into several provisions of the Criminal Code that have a potential of providing better protection against racially motivated violence. The amendments recognized a "motive of racial, inter-ethnic or religious bigotry" as a specific aggravating circumstance for the number of offences.
47. Despite these legislative changes, Ukrainian authorities failed to protect minorities from racist violence and bring perpetrators to liability. In its review Ukraine indicates that a number of crimes were prosecuted under Article 161 of the Criminal Code were 4 in 2009, not specifying how many cases were opened or investigated since. Most of these cases concerned hate speech and hate crimes thus these cases did not concern anti-discrimination component of these Article. However, at least 3 of them were cases of racist violence.
48. According to the latest report from the Ministry of Interior in 2012 4 cases were qualified as hate crime (Article 115 – willful murder), only one case was sent to the Court so far and 3 cases were qualified as violation of equality of citizens due to their racial, ethnic or religious origin (Article 161 of the Criminal Code of Ukraine). No information was provided as to the outcomes of all that cases.
49. Majority of violent crimes motivated by racism, however, have continued to be classified with no regard to the possible racist motivation. According to the results of the hate crime monitoring by civil society organizations the actual number of incidents of racist violence may not even be put in comparison with the alarmingly small number of violent attacks that were classified under Article 161. It is also noted that in majority of such cases racist motivation was dismissed from the outset and not even investigated by law enforcement authorities. Such insufficient performance of police can be explained both by lack of understanding of the nature of hate crimes and by lack of special attention and control after such crimes coming from the State.
50. Institutional national framework charged with elimination of racial discrimination in Ukraine remains inefficient. An Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance was set up under the Cabinet of Ministers led by the State Committee in Nationalities and Religion (SCNR) stopped its activity in 2010 due to the closure of the SCNR. At the beginning of 2012 the Ministry of Culture were handed the responsibility of the Group in part of counteraction of xenophobia and racism. So far no

initiative came from the Ministry.

51. Similarly departments within the Ministry of Internal at central and local levels charged with investigating and overseeing cases involving suspected racist motivations, created in 2008 no longer exists after the reform the MOI underwent in 2010 with the appointment of the new Minister. Plan to counteract racism with activities up to 2009 and later prolonged up to 2012 approved at the MOI in 2007 was implemented only in parts. Plan contained actions like – creation of database of extreme-rights activists and groups, prevention work, educational work with police officers, etc. After structural and staff changes at the Ministry in 2010, relevant work was stopped.
52. In its report to the HRC the State is referring to the commitment between the Ministry of Interior and the Prosecutors office to conduct joint monitoring and reporting on hate crimes and its investigation (order № 11/128). There is no information in open sources as to any joint activity of both bodies apart from announcing the initiative itself, even if information was somehow collected and structured, it was never published or send to CSO on their numerous requests. There is also no clear information on the Security Service activities as to prevention of activities of the rights- wing groups and initiatives. All that together with low statistics which is not corresponding to the data obtained by CSOs show low level of engagement and commitment from the State.
53. On the contrary, there are cases, when victims of hate crimes become defendant in the course of investigation of hate crime. A bright and typical example is the case of African student Olaolu Femi, who was accused of murder attempt after he braved to stop his attackers. This example is quite illustrative in term of showing selective approach of Ukrainian Justice and not a single one. Same case happened in Kyiv in 2012, when international student from Africa in attempt to defend himself from racist attacker used knife and wounded the attacker. Criminal charges were brought against the student, his complaint on hate speech and attempt of hate crime were not investigated by police.

## **2.6. Protection of national minorities (art. 27)**

### **Issue N°9**

Please provide information on any legal and policy measures aimed at facilitating access of Roma to personal documents and at improving the situation of Roma in terms of access to education, health care, housing, and employment. Please indicate the measures taken to counter discrimination against Crimean Tatars, including the adoption of a legal framework regulating property restitution issues and payment of adequate compensation, and clarify whether the State party intends to adopt specific legislation regarding the rights of indigenous people, as well as the draft law on the restoration of rights of persons formerly deported on the basis of ethnic origin.

### **Roma**

54. During 2012 – beginning of 2013 alongside the development of anti-



discrimination law and minority languages law, the State made several attempts to come up with development of policies on national minorities in general and on specific minorities as well. Thus the State attempt to develop and introduce national strategy on ethnic minorities in 2012 failed after the draft Law "On the Concept of the State Ethnic Policy" was withdrawn from the Parliament. Instead the president signed "The Strategy of Protection and Integration of Roma' Minority into the Ukrainian Society for the Period till 2020" on 8 of April 2013. Taking the fact that national legislation apart from the Declaration on the Rights of Nationalities in Ukraine from 1991, lack not only clear definition of national minority, but also any affirmative actions aimed to guarantee minority rights, such Roma strategy might be considered as first necessarily step on the way to protect ethnic minorities in Ukraine, though further legal developments are clearly needed in this area.

55. Roma population, according to various estimates, reaching approximately 300,000 people and up to 3% of the population in some regions of Ukraine. At the same time, according to the National Institute of the social studies, the social distance index with respect to the Roma people is high – from 5.1 in 1994 (reluctance to see this social group members as the citizens of the state) to 6.1 in 2010 (extreme intolerance – xenophobia, total banning them from the country).
56. Roma in Ukraine are regularly and systematically discriminated directly and indirectly. It is clear that the State policy on Roma rights is needed and should be systematically implemented on all levels. According to the data published by Kharkiv Institute of Social Research (2012), mostly Roma are discriminated in employment, have difficulties with issue of ID, low access to the education, no access to housing, face discrimination and denial of access in health care, abused by police and are not protected from intolerance and discrimination in society in general. The particular note is the double discrimination of Roma women, which are discriminated in society as Roma, and into Roma environment - as women (gender discrimination).
57. Majority of Roma are living beyond the poverty rate, have minimum if non access to social benefits and health care. Being in need for social benefit, they are mostly denied an access, thus in 2012 after the natural disaster that happened in Poltava region in 2012, local Roma received no compensation for housing reconstruction just because the mere fact that they are Roma, at the same time, funds from the State budget for such reconstruction were allocated and distributed among other people in the region.
58. Roma are particularly vulnerable to abuses by law enforcement officers. Both impunity of law enforcement officers when they violate human rights, marginalization of Roma community, their low level of education and empowerment, as well as intolerant and animus attitudes of police, makes Roma frequent and unprotected victims
59. Among the militia remains unacceptably widespread practice of illegal detention, illegal documentation of personal data and fingerprints of Roma population, at hoc searches of their premises without a court order. Many cases when Roma in mass were apprehended and fingerprinted without any legal reason are reported by NGOs.
60. Bias on the part of law enforcement and the judiciary remains a barrier faced by

Roma in access to impartial justice. Simultaneously the Roma communities are disproportionately controlled by the militia, who often resorted to unlawful punishment Roma without proper proof of their guilt.

61. The media continue to publish the xenophobic materials, which are qualified by experts as hate speech.
62. On the other hand, the unlawful acts suffered by the Roma are not investigated with law enforcement agencies properly. In June 2012, the eve of Euro 2012, the gypsy camp, set up for a long time on the outskirts of Kyiv, had been burned to the ground by the unknown persons. According to the Roma victims, on June 1, 15 plain-clothes men shot from the pistol 8 times, twice – into the air and twice aiming at the dog. They told the Gypsies to get packed and move on, and then set the tents on fire. Almost all the belongings and documents were burnt. The Gypsies themselves claim also, that they recognized some of the assailants as the militia officers, who earlier came to the settlement and collected 10-15 UAH from them. Despite the fact that the event had shown obvious signs of committing a criminal offense and, because of numerous publications in the media, attracted considerable public attention, the police has not informed the public about the criminal investigation into the arson and the measures taken to search for arsonists. Investigation of this fact is still pending. Offenders have not been established.

### **Crimean Tatar people**

63. Presently about 280,000 Crimean Tatars live in Crimea, but the process of repatriation to their historical homeland remains incomplete for the 150,000 people more, living in the former soviet republics. Government policy on their return remains undeveloped.
64. On June 20, 2012 the Verkhovna Rada of Ukraine adopted the Bill №5515 "On the restoration of the rights of persons deported on ethnic grounds", which was developed in 2004. However, within the year after receiving 109 additional amendments this bill has not yet passed.
65. Situation with Crimean Tatars rights remain difficult and unsolved for years on. The authorities of Ukraine and autonomy failed to promptly respond to economic, demographic and national processes in the Crimea. Moreover, the local authorities, as well as 15 years ago, in 2003-2004 had refused the granting of building homes, what has lead to aggravating of the land problem. As result, approximately 11,000 Crimean Tatars of empty lots in the cities of Evpatoria and Simferopol, as well as in Simferopol district. On the squats they organized so-called squatting fields. Working committees, formed within the Council of Ministers of Crimea, did not solve the land problem, which was aggravated by destruction of one of squatting fields at the end of 2012.
66. Approximately 53% of Crimean Tatars have housing problems: they do not have habitation or the conditions of their habitation don't meet the minimum standards. In the Crimea out of 300 settlements of dense residential development or residence of Crimean Tatars only 65% are provided supplied with potable water, 30% gas supply, and 87% electric supply. Practically all 300 settlements have no surfaced roads, indoor sanitation, schools, kindergartens, and first-aid

and midwife stations etc. The State Program for the resettlement of deported citizens is chronically out of budget that is why in 2012 it was funded only by 35.2% (UAH 15.9 millions). State Budget of Ukraine for 2013 provides for these needs even less - only 10 million 928, 000 UAH, which is not comparable scale problems.

67. The humanitarian issues of the Crimean Tatars constantly need for financial support - preparation and publication of textbooks for schools with Crimean Tatar, the development of media in their native language, preservation and restoration of historical and cultural monuments of the Crimean Tatars. Most of the Crimean Tatar children – 27,930 pupils (84%) studied in schools with Russian and Ukrainian languages. Of these, 19,985 (59%) study their native language only 1.5-2 hours per week, 7,845 (25%) of pupils do not study their native language in any form. The number of Crimean Tatar pupils who lack an opportunity to study their native language increases each year.
68. The efforts of Tatar community to open schools and kindergartens educating in the native language remain unsupported by local government. The number of schools providing education in the native language has stopped at 15, though demand for them is further increasing. So the symbolic is the history of the kindergarten №1 "Sevinch" with two groups groomed in Crimean Tatars and two groups groomed in Ukrainians opened in Bilohorsk on September 1, 2012. Earlier in its building there was the Crimean Tatar school №4 closed down in 2003 despite the protests of parents and public. After repeated appeals the regional administration promised to open a Crimean Tatar kindergarten under condition to attract the investors. The reconstruction of the building was carried out due to inspiration of Mejlis and Association «Maarifchi» and with support of Turkish Agency for international cooperation and development (TICA), and in 2009 its official presentation took place. However the executive committee authorized the opening of the kindergarten only three years later.
69. The peaceful protests, kept by the Crimean Tatar people, have become the subject of political speculation, blackmail and violence. Thus, in the night of December 1, 2012 at one of the "glades of protest", located along the Moscow highway near the village of Molodeznoe of Simferopol district, around 2 am, over a hundred small houses was destroyed by a large group of young people, numbering about a hundred people. Police squad, arrived at the scene, by its presence provided the actual cover of vandals acts. Responsibility for the incident had been taken by the party "Russian Unity".
70. The representation of the Crimean Tatars in the state authority remains at the consistently low level. In 2012 only one representative of the Crimean Tatars - Head of Mejlis M.Dzhemilev was elected to the Verkhovna Rada of Ukraine after the elections in 2007. After the 2010 local elections the Crimean Tatars were represented in the Verkhovna Rada of the ARC with 6 members (6% of the Crimean parliament), while the proportion of Crimean Tatars in the Crimean population is 13%. 123 deputies more were elected to the city and district local councils (9.2% of the deputies in this level of ARC). 870 members were elected to the village councils, representing about 16% of all members of this category in the ARC due to less tension in relations between ethnic groups in local communities.
71. According to the experts, the level of Crimean Tatars representation in the executive power bodies for the last two years has decreased, because of several

factors: the discrimination against the Crimean Tatars while their applying for public service; further reducing of the already small number of Crimean Tatars in Crimea state bodies.

72. Vandalism became more wide-spread and remained unpunished in 2012 damaging Crimean Tatar cemeteries, places of religious worship and shrines, historical monuments and statues of Crimean Tatar public figures. Ignoring of religious backgrounds and traditions, neglecting of historical memory, reluctance to take steps to restore historical place names, negative images of Crimean Tatars in school history books demonstrate a continuing government policy of discrimination. In one of the latest researches, 28 school textbooks were analyzed to allocate 170 passages describing ethnic and religious minorities, of which only 10 passages were approving. Out of 160 negative passages, 25 passages referred to ethnic and religious minorities and peoples that inhabited Ukraine in different historical periods. The remaining 135 passages with intolerant connotations were directly related to the Crimean Tatars, representing 80% of all detected negative references.

### **3. Violence against women, including domestic violence (arts.3, 7, 26)**

#### **Issue N° 10**

Please provide updated statistics on the number of complaints lodged by victims of domestic violence, of persons prosecuted and convicted, as well as on the remedies provided to the victims. With reference to paragraph 90 of the report (CCPR/C/UKR/7), please indicate whether the draft Act amending the Family Violence Prevention Act has been adopted and whether it: (a) broadens the definition of "domestic violence"; (b) abolishes the reference to victim's behaviour as a potential form of impunity; (c) introduces the notion of restraint orders; (d) provides for criminalization of domestic violence and for sanctions that target specifically the perpetrators and not the family as a whole. Please outline any other concrete measures addressing the problem of domestic violence against children and provide information on their impact (CCPR/C/UKR/7, paras. 242-245).

73. Domestic violence remains to be a serious problem in Ukraine. Every year the number of persons on the police register for committing acts of domestic violence grows: Individuals who are being registered by the police for violence in family: 2010 - 104,892 persons; 2011 - 109,468 persons; 6 months of 2012 - 111,094 persons.

74. According to the data of the Ministry of Social Policy of Ukraine, during 2012, 110002 applications concerning violence in the family have been submitted, of them from women – 93402. The number of persons on the police registers for committing violence in the family amounts to 110,057 persons.

75. The statistics of the National Toll Free Hot Line on prevention domestic violence, trafficking in persons and gender based discrimination run by “La Strada-Ukraine” Center also proves the increase and actuality of the domestic violence problem in Ukraine: 2009 – 3756 calls, 2010 – 6244 calls, 2011 – 12162 calls, 2012 – 10156 calls.
76. The draft Act amending the Family Violence Prevention Law has not been adopted by the end of May 2013. The new version of the Law of Ukraine “About Prevention Family Violence” is registered in Verkhovna Rada of Ukraine on 14th of March 2013. This Draft Law has not been considered yet. The term “victimized behavior” was excluded from the current Family Violence Prevention Law on 25.09.2008 by adoption of the Law № 599-VI.
77. Notion of restraint orders exist in current national legislation. At the same time it needs to be enforced, in particular in the aspect of issuing such orders in the judicial procedure. Responsibility for number of grave manifestations of physical, sexual, economic and psychological violence is referred by Criminal Code of Ukraine. According to old Criminal Procedure Code victims of domestic violence that suffered light traumas or battering have to apply to court by themselves according to the procedure of private prosecution. In most cases such persons composed their applications by themselves but these applications had to comply with the requirements for the prosecution conclusion, which is usually composed by the investigators and prosecutors with education in law. Because victims of violence made mistakes in these applications, judges often rejected them. The private prosecution procedure was changed by new Criminal Procedure Code of Ukraine that was adopted on 13 April 2012 and came into force on 19 November 2013. According to Article 477 private prosecution could be opened by investigator or prosecutor, but only by the application of the victim. However, according to it now most of the manifestations of physical, sexual, economic and psychological violence committed by wife/husband, other family member are seen by the private prosecution procedure. Also according to the new Code district policemen lost most of their competencies, as those domestic acts that are criminal offences are under the competence of investigators, who do not have proper anti-domestic violence education and lack of problem understanding.
78. State Targeted Social Program for Support of Family till 2016 was adopted by the Cabinet of Ministries on 15th of May, 2013 and contains measures aimed at domestic violence prevention.
79. Problems with access to services for victims of domestic violence: The Law «On prevention of violence in the family» does not provide for obligatory establishment of crisis centers. They have to be established by local state administrations on submission of the specially authorized body of executive power, but there is no procedure for identification of the needs of the region. As a matter of fact, there is virtually no funding for activities in the sphere of prevention of gender-based violence, in particular, for provision of assistance to people who suffered from such violence. This leads to non-observance of the legislative provisions.
80. It is still problematic to protect the rights of persons, who suffer from domestic violence, but formally they do not comply with the description of a family member as stipulated in the Law of Ukraine «On prevention of violence in the family». These people can be former spouses or relatives who do not live

together. Officers of law enforcement agencies address such cases formally and fail to apply other norms of the legislation to protect the rights of victims of such violence.

81. The rights of victims of violence in the family are violated in courts of Ukraine, as well. When criminal cases on domestic violence are considered in court, the sentences are rather short or are replaced with probation. In 2012 there was a huge scandal about the sentence of 15 months in prison Rovenkivsky city court of Lugansk region gave to an ex-police captain, who cruelly murdered his wife – a police senior lieutenant herself, and threw their little son to a side of the road. Such inadequate conviction of the court of the first instance shocked Ukraine. The court of appeal of Lugansk region cancelled the decision of the first instance and gave him a life sentence.
82. A positive shift in the society is the spreading of awareness that violence is not just a problem of families in crisis, it happens in well-off families as well, as it does in the families of officers of law enforcement agencies; this topic gets more mass media coverage.
83. Results of the monitoring the institutions providing assistance those who suffered from domestic violence and trafficking in human beings conducted in June-October 2012 by «La Strada-Ukraine» Center has also revealed a number of problems with access to services and namely the limitation as to these persons' age (up to 35 years), availability of registration at admitting to the centers of social and psychological assistance, absence or the age of the children, etc. In total there are 33 shelters for adult victims of domestic violence, 5 regions do not have any.
84. Many complaints on inactivity and actions of different governmental agencies are received at the National Toll Free Hot Line on prevention domestic violence, trafficking in persons and gender based discrimination. During 9 months of 2012, the National Toll Free Hot Line received about 200 complaints on ineffectiveness or inactivity of governmental agencies. Most complaints are about systematic breeches by officers of law enforcement agencies (71.2 %): they do not respond to complaints and do not come when called, while emphasizing that violence in the family is a problem of this separate family and does not require addressing by law enforcement agencies; protection of the abuser's rights (the husband is a co-owner of the house or a father of the child, so his detention, arrest, or issuing a restraining order against him may violate his rights), «hanging» calls usually are left without response, and in case of physical violence other forms of violence, especially psychological, are left unnoticed. Other complaints include 7.1% – on the Ministry of Health Care, 10.6% – on the Ministry of Social Policy, and 5.1% – on the Ministry of Justice.
85. In spite of the importance to support initiatives on prevention domestic violence against children that was also underlined in the Concluding Observations of the UN Committee on the Rights of the Child (Paragraph 81 states that “The Committee welcomes the establishment of free helplines for children at risk or in need of protection, such as “Trust Line” and those established by “La Strada-Ukraine”) the National Children Toll Free Hot Line run by the “La Strada-Ukraine” is working almost on the voluntary base and all statements of the officials about necessity to support children hot line remain virtual. During 4 months of 2013

#### 4. Elimination of slavery and servitude (art.8)

##### Issue N° 17

Please provide information on the implementation in practice of the Law on Combating Trafficking in Human Beings of 15 October 2011, as well as on the results achieved since the adoption of the State Programme on Combating Trafficking in Human Beings for the period up to 2015. Please indicate the number of reported cases of human trafficking on an annual basis, disaggregated by gender, age and country of origin, as well as the number of investigations, prosecutions, and convictions (in particular under article 149 of the Criminal Code). Please provide information on the victims' access to effective remedies and reparation, including compensation and rehabilitation, as well as any counter- trafficking measures. Please also outline any other concrete steps taken to eliminate forced labour, in particular child labour, and provide information on the sanctions applicable to perpetrators, as well as the remedies available to victims (CCPR/C/UKR/7, paras. 106- 111).

86. Trafficking in human beings remains to be a burning problem for Ukraine. Even after adoption of special Law on Combating Trafficking in Human Beings and a number of steps forward in this field. The problem of the years 2010 – 2013 was destroying of the institutional mechanism of counteraction to trafficking in human beings. The Presidential Decree as of December 9, 2010, liquidated the Ministry of Ukraine for Family, Youth and Sports that was a coordinating body of central executive power in the sphere of counteraction to trafficking in human beings. By the Presidential Decrees as of April 6, 2011 (only!), Provisions on the central bodies of executive power were approved, and some of the functions of this Ministry were given to the Ministry of Social Policy. But such important direction as counteraction to trafficking in human beings was left uncovered by any of the central governmental agencies by 2012 when Ministry of Social Policy was appointed as National Anti-Trafficking Coordinator.

87. The following documents were adopted to implement the Law on Combating Trafficking in Human Beings:

88. National Anti-Trafficking Coordinator (Decree of the Cabinet of Ministers from 18.01.2012, №29). The Ministry of Social Policy is defined as the National Anti-Trafficking Coordinator. At the same time personal responsibility was not foreseen by this Order that causes some organizational difficulties.

89. Provision about the establishment and operation of the Unified State Register of trafficking crimes (Decree of the Cabinet of Ministers of Ukraine from 18.04.2012 № 303). The Provision defines the procedure of the creation, formation, and maintenance of the Unified State Register of trafficking crimes.

The Unified State Register will contain the statistics on crimes related to trafficking in human beings, persons who have committed them, including the database uniform system of accounting crimes and those who committed them in Ukraine, except the data that contains information which is considered as state secret. MIA is the Holder (owner) and administrator (manager) of the Register.

90. State Targeted Social Programme on combating trafficking in human beings for the period till 2015 (Decree of the Cabinet of Ministers of Ukraine of 21.03.2012, № 350). The financing of program will be implemented by the state and local budgets, as well as other sources. The estimated budget is 7,393,184 million UAH. The program contains indicators which will measure the success of its implementation, but it is only quantitative indicators and one-by-one for each task. The Program comes into force only since 2013 and there is no report on its implementation yet. During the period 2011–2012 any state program on counteraction human trafficking did not function.
91. Procedure of granting Defining procedure of the trafficked persons status (Decree of the Cabinet of Ministers of Ukraine from 23.05.2012, № 417). According to the information of the Ministry of Social Policy of Ukraine in 2012-2013 – 31 persons received official status of trafficked persons. At the same time there are cases of refuse in granting the status of trafficked persons. At this moment lawyers of the International Women’s Rights Center “La Strada-Ukraine” are working on preparing an appeal in the case of status refuse. It is the first precedent of appealing the status refuse in Ukraine.
92. Procedure of paying one time financial assistance to persons who received status of trafficked persons (Decree of the Cabinet of Ministers of Ukraine from July 25, 2012, № 660). This procedure came into force since 2013.
93. Procedure of interaction between entities that perform measures in the sphere of counteraction to trafficking in human beings (NRM) (Decree of the Cabinet of Ministers of Ukraine as of August 22, 2012, No.783) The introduced mechanism covers only one direction of counteraction – protection of the victims and provision of assistance to them while such directions as prevention, combating, or coordination are left disregarded.
94. Number of registered crimes filed by CT Division of DCI of MOI of Ukraine and number of verdicts passed by the courts of Ukraine according to Art. 149 (previously 124-1) of the Criminal Code of Ukraine (1998 – December 2012): 2009 – 71 cases, 2010 – 257 cases, 2011 – 197 cases and in 2012 – 162 cases of human trafficking crimes were registered. Number of verdicts (Art. 149) according to the State Court Administration: 2009 – 71, 2010 – 85, 2011 – 106, 2012 – 56. The decrease of the number of registered crimes can also be caused by reforming of the Department on combating crimes related to trafficking in people and lowering of its status in the system of the Mol. The number of verdicts is significantly less than criminal cases and shows the fact of inefficiency of court sentences.
95. Situation with victims’ access to effective remedies and reparation, including compensation and rehabilitation, as well as any counter-trafficking measures:
  - a. Problems with access to services for suffered from trafficking in human beings. Art. 17 of the Anti Trafficking Law determines that to secure observance



of rights stipulated by the Law, persons that suffered from trafficking in human beings can be referred to one of the centers of social services for family, children and youth, the social service centers or the centers of social and psychological rehabilitation of children and shelters for children, in case when a victim is a minor. But, in compliance with the provisions of the specified institutions developed based on «Standard Provision on Center of social and psychological aid» (Decree of the Cabinet of Ministers of Ukraine, May 12, 2004, № 608), «Standard Provision on Center of social and psychological rehabilitation of children» (Decree of the Cabinet of Ministers of Ukraine, January 28, 2004, № 87) and «Standard Provision on Territorial Social Service Center (provision of social services)» (Decree of the Cabinet of Ministers of Ukraine, December 29, 2009, № 1417), such category as suffered from trafficking in human beings is not included in the list of persons that are entitled to receive services in these institutions. Besides, the monitoring results of institutions that render assistance those who suffered from domestic violence and trafficking in human beings conducted in June-October 2012 by «La Strada-Ukraine» Center has proven problems with access to services and namely the limitation as to these persons' age (up to 35 years), availability of registration at admitting to the centers of social and psychological assistance, etc. There are also problems with identification of suffered from trafficking in human beings among the total number of clients (persons in difficult life circumstances) of the mentioned institutions. Experience of implementation of the referral mechanism for those suffered in the pilot oblasts showed that as a result of trainings conducted and education of specialists that work in the mentioned institutions, the number of those identified as suffered from trafficking in human beings, is growing.

b. There are no provisions on reflection period for persons, concerning whom there are reasons to believe that they have suffered from trafficking in human beings, in the Law and in the corresponding statutory instruments, and this also leads to violation of the rights of the victims, especially citizen of other countries. Despite the fact that Anti Trafficking Law of Ukraine contains provisions concerning necessity to assess risks associated with the victim's return to the country of origin, the regulatory documents that were adopted as a part of implementation of the Law do not contain a clear procedure for conducting of assessment of such risks. Also, this procedure is not included in the provisions that guide the activities of the subjects that perform measures in the sphere of counteraction to trafficking in human beings.

c. There are complexities and violations during the process of compensation to the victims of the property, moral and physical harm they have suffered as a result of the committed crime of trafficking in human beings, as well. They include the investigators' formal approach to explaining to the victims about their right to claim compensation; necessity to prove the fact of moral sufferings; remoteness of the expert centers and low number of attested court experts-psychologists; absence of the practice of international cooperation on protection of the property rights of citizens of Ukraine; the imperfect legislative mechanism for recovery of the compensation; inefficiency of article 1177 of the Civil Code of Ukraine concerning the state's obligations to compensate losses to the victims, etc.

96. The standards for rendering of services in the sphere of counteraction to trafficking in human beings, which have been developed and submitted to the Ministry of Social Policy by the group of experts-representatives of the state,

non-governmental, and international organizations as early as in 2010, still have not been adopted yet.

97. In the Law of Ukraine «On country-wide program «National action plan on implementation of the UN Convention on the Rights of the Child till 2016» in the section on elimination of trafficking in children, sexual exploitation, and other forms of cruel treatment of children, the annual action plan mentions only conducting of prevention work against cruel treatment of children in families in complicated life circumstances. In 2011 and 2012, no money is allocated in the State budget for implementation of the objectives of the corresponding section of the Plan.
98. A number of initiatives in the field of prevention trafficking in children, commercial sexual exploitation of children and in the area of children rights protection are carried out by the civil society institutions. Thus, on the base of the Center “La Strada - Ukraine” functions National Toll Free Children Hot Line. The importance of such initiatives and necessity to support them is underlined in the Concluding Observations of the UN Committee on the Rights of the Child. Paragraph 81 states that “The Committee welcomes the establishment of free helplines for children at risk or in need of protection, such as “Trust Line” and those established by “La Strada-Ukraine”. Another initiative is Internet Hotline on Child Pornography Counteraction [www.internetbezpeka.org.ua](http://www.internetbezpeka.org.ua). Its aim is receiving information from individuals about facts of distribution the child pornography on the internet, especially on servers of Ukrainian internet-providers, to facilitate further response to the issue, in accordance with the existing legislation of the Ukraine on child protection, and where possible to block such content. During November 2009 - December 2012 929 messages were received. 235 of them are about child pornography. In 2012 - 293 messages out of which 43 are about child pornography.
99. The research “Child sex tourism in Ukraine; attempt of the situational analysis” on the situation with sexual exploitation of children in tourism was done in 2010-2011 by “La Strada-Ukraine” experts. The research is aimed at analyzing the legislation on counteraction sex-tourism, analyzing the root causes and actuality of spreading this phenomenon, organizing the sex-tourism and social portrait of participating parties.

## 5. Refugees and asylum seekers (arts. 7, 9 and 13)

### 5.1 Principle of non-refoulement: prohibition of expulsion of foreigners and stateless persons (Art. 13)

#### Issue N° 21

According to information available to the Committee, the State party continued to expel or deport aliens to countries where they faced a risk of torture or ill-treatment, without a proper determination of their claims and without the possibility of appeal against negative decisions, despite the Committee's recommendation to the contrary (CCPR/C/UKR/CO/6, para. 9). Please provide information on the measures taken to ensure the effective protection against refoulement in practice. Please comment on the information before the Committee that authorities at border points deny entry to persons expressing the need for refugee protection, exposing them to refoulement.

100. Non-refoulement principal is provided by several legal acts, thus Chapter 9 of the Criminal Procedural Code of Ukraine (Articles 573-594), The Law "On the Status of Foreigners and Stateless Persons" contains also a non-refoulement provision (Article 32-1) that prescribes that a foreigner or a stateless person may not be expelled or in other form returned to a country where he/she may be subjected to torture, inhuman or degrading treatment or punishment and according to the Law "On Refugees and Persons in Need of Subsidiary and Temporary Protection" (Article 3): A refugee may not be expelled or forcefully returned to countries where his life or freedom would be in danger because of his race, religion, ethnicity or nationality (citizenship), membership in a social group or political beliefs. These provisions, however, fail to ensure sufficient protection of non-citizens from refoulement to countries where they are at risk of being subject to serious human rights abuses, including torture.
101. The relevant provision of the Law "On the Status of Foreigners and Stateless Persons" remains purely declaratory until relevant framework for its full implementation is introduced in Ukrainian legislation. The new Law "On Refugees and Persons in Need of Subsidiary and Temporary Protection" makes an attempt to bridge this gap by introduction of the additional subsidiary status. However, it itself entails substantial deficiencies that leave the prohibition of refoulement both for refugees and persons in need of subsidiary and temporary protection purely declaratory.
102. Another obstacle to the full implementation of non-refoulement principle is a lack of clear procedural standards of refugee claims assessment. Furthermore, effective procedural guarantees against expulsions that may affect human rights are not available to foreign nationals and stateless persons subject to expulsion. Currently, appeal against the denial of entry or deportation decision, do not have suspensive effect, which basically refuses defendant a right to fair trial, as one might be deported before court procedures are over.
103. Until 2011 the authorities were not even formally informing persons subject to deportation orders about the reasons behind their decision. Today a person

subject to deportation order is served with a written statement containing justification of such decision. However, such a statement is served in Ukrainian language which prevents many non-citizens from being able to understand and effectively challenge it.

104. Measures of Ukrainian law enforcement authorities aimed at enforcement of migration rules specifically target certain groups of non-citizens on the ground of their 'race' (color, national or ethnic origin). The arsenal of such measures, however, is not limited to the documents' checks or verification if a person has sufficient funds for the period of her stay in Ukraine. Internal regulations of MOI demonstrate that the indicators that police strives to achieve by means of ID checks are a number of 'identified illegal migrants' and a number of deportations. In practice, however, the criteria used by police for regarding that or another person as an 'illegal migrant' are far from clarity. Ukrainian legislation does not provide for due regard to any personal circumstances of a person subject to deportation, including private and family life and one's right not to be returned to a country where he/she faces a real risk of torture, inhuman and degrading treatment.
105. Despite for the changes into the Criminal Procedural Code of Ukraine and possibilities to apply alternative to detention measures, no changes were introduced into the Law "On the Status of Foreigners and Stateless Persons", so such alternative to detention measures are applicable to those detainees. Same applies to those arrested under the extradition procedures.
106. It is also worth noting that there is no legislation currently in force that would regulate detention in transit zones of the airports. No effective legal mechanism is available for those non-citizens who wish to challenge the decision of border-guards to refuse him/her entry to Ukraine. Such conditions create a fertile soil for abuse of authority by border-guard officials. According to the NGO reports persons who declared to the border-guards that they arrived to Ukraine to seek asylum, were be subjected to immediate refoulment without having their asylum claims considered.
107. Two extraditions of asylum seekers were carried out by the General Prosecution Office during summer 2012, followed by disappearance of Russian opposition leader Razvozhaev in October 2012. Both extraditions were carried out in breach of non-refoulment principal and national legislation. The fact of disappearance of Razvozhaev was not properly investigated. This gives a possibility to assumption that Ukraine is not a safe country for refugees despite the fact that legislation had been reformed recently.
108. More than two years after the new law "On Refugees and Persons in Need of Subsidiary and Temporary Protection" was adopted, as well as after the reform of the State Migration Service which was supposed to guaranty its effective and transparent work, there is still huge backlog on the individual cases, many policies and legal acts were not drafted nor came into force. All these add to generally poor asylum situation in Ukraine. According to the data received from SMS, only 48 people received refugee status in 2012 (9 months) and 54 got complimentary protection in 2012 out of 1543 applicants.

## 5.2. Refugees and asylum seekers (arts. 9 and 13)

### Question N°22

Please provide information on the implementation of the Law on Refugees and Persons who are in Need of Complementary and Temporary Protection of 8 July 2011 (Law No. 3671-VI) in practice. What measures have been taken to ensure well-founded decisions in the refugee status determination procedures and adequate procedural safeguards, including free legal assistance and translation/interpretation services? Please indicate whether the State party intends to extend the short time limit for filing appeals against negative decisions and to grant suspensive effect to such appeals. Please provide statistics, on an annual basis, on the number of people seeking asylum and on the number of cases in which asylum is granted. Please clarify whether sufficient space in temporary accommodation centres is available, whether any services to facilitate the asylum seekers' integration into society are provided, such as language courses, social assistance, or employment assistance, and indicate the measures taken by the State party to improve the detention conditions of asylum seekers, including by the use of alternative measures to detention.

109. Despite many comments from international monitoring bodies and pressing need to solve the issue, Ukraine did very little during last years to provide social security and integration for refugees and asylum seekers. There is no clear integration policy or guidelines, many provision of the law are still remaining on paper unfulfilled. Thus asylum seekers and refugees in needed are not provide with housing because of the lack of places in temporary accommodation centres. Only two are fully operating, the third is still under construction.
110. Guidelines on age assessment for unaccompanied minors – a document that has been pointed as an urgent one many times by international experts and UNHCR, had not been adopted yet, thus cases when unaccompanied minors end up in temporary detention centre together with adults, their files proceeded as adults, their needs as minors are not met, were still reported by NGOs in 2012.
111. Refugees and asylum seekers continued reporting lack of services and its low quality during refugee determination procedure (provided by law) in 2011-2012, thus there were cases when NGOs or applicants themselves had to provide translational services for a person to have an access to the procedure because of inefficiency of the State Migration Service.
112. Cases when decisions were taken longer than prescribed by the law were also documented.
113. General framework of social benefits for refugees and asylum seekers did not change during reporting period and remained totally inadequate. The one-time settlement payment sum for a recognized refugee did not change since the beginning of 2000 and equals to non-taxable minimum of 17 UAH. In 2011 the Cabinet of Ministers took a new order by which all health services to non-citizens including urgent should be provide on a paid basis. Refugees and

asylum seekers were not excluded from this order, which basically means that most vulnerable of them have no access to health care. Only possibilities are services paid by or provided by UNHCR partners and NGOs.

114. While children of refugees and asylum seekers are usually have access to secondary education, there is lack of language courses for youngsters and adults, as well as general absence of integration programs, apart from some initiatives run by CSOs.
115. In terms of employment, no substantial changes were introduced in legislation or practice. According to the current legislation, asylum seekers have a right for temporary employment, but the State failed to provide the order of such temporary employment. Employment services when approach by asylum seekers or NGOs have no instructions or understanding how to deal in such situation and how to advice employers to hire asylum seekers in a way not to breach the law. This situation leads to marginalization of asylum seekers and refugees, their total vulnerability at the labor market and poor conditions of their living.

## 6. Freedom of religion and belief, freedom of expression and association, rights of peaceful assembly (arts.2, 18, 19. 21 and 22)

### 6.1. Freedom of speech (art. 19)

#### Issue N° 26

Please indicate the measures taken to guarantee, in practice, the right to freedom of expression. Please indicate whether the following draft laws have been adopted and, if so, provide information on their implementation in practice and their compliance with the Covenant and the Committee's general comment No. 34: (a) the law amending existing legislation with a view to strengthening safeguards for freedom of speech and countering censorship (CCPR/C/UKR/7, para. 202); (b) the law on the protection of the professional activity of journalists (para. 203); (c) the law amending legislation on ensuring media ownership transparency (para. 206); (d) the draft defamation law adopted at first reading by the parliament in September 2012, providing for prison terms of up to five years.

116. In 2012, the Verkhovna Rada of Ukraine didn't preoccupy itself with establishing greater legal safeguards for freedom of expression and freedom of the media; in particular, it didn't get moving the process of adoption of a law on public broadcasting, protection of professional journalists, etc. The activities of the National Expert Commission for the Protection of Public Morals, activity of which in itself was a violation of Art. 34 of the Constitution of Ukraine, hadn't been stopped.
117. The threat to freedom of expression was created by legislative initiatives of Verkhovna Rada of Ukraine concerning establishing of criminal liability for defamation because they are aimed at the persecution of independent journalists who expose abuses of state authorities.
118. In 2012, the Mass Media Institute recorded 65 cases of using physical force against journalists during discharge of their professional duties, which approximately two and a half times more than had been registered in Ukraine in 2011. Most of the cases occurred during the election campaign and 33 attacks were committed for political motives. During the elections was found 185 violations of journalists' rights, of which 98 cases - obstruction of journalists to perform their professional duties It, 37 cases - beating of journalists and 32 cases - lawsuits against mass media.
119. One of the main motivations of attacks on journalists is also their coverage of topics that expose corruption and fraud. For example, on September 26, 2012 journalist Dmitry Volkov, television program "Hroshi", was assaulted, when he returned home from work. Since, according to the journalist, one of the attackers shouted "you dig it and we make short work on you", there was every reason to believe that the attack was committed with regard to professional activity of the journalist, particularly in the investigation of land issues in Kyiv.

120. State actively exerting pressure on independent media by numerical and poorly reasoned audits from tax authorities and the prosecution side, and imposition of the regime of self-censorship. So, the UNIAN agency authority established a ban on putting online on UNIAN's site the names of Viktor Yanukovich, Azarov and Volodymyr Lytvyn in a negative context and site editors were obliged to coordinate all news with these names with the administration.

121. Additional threat to freedom of speech is the activity of the National Expert Commission on Public Ethics, which declared its readiness to revise so wideknown cartoons as "Cinderella," "Beauty and the Beast," "The Lion King," "The Jungle Book," "Sambo," "101 Dalmatians," "Pinnokio", "Shrek" in the name of the secure media environment for children.

## 6.2. Right to peaceful assembly (art. 21)

### Issue N° 28

Please indicate whether the draft Act on organizing and holding peaceful events has been adopted (CCPR/C/UKR/7, para. 216), and whether it complies with the Covenant. Please also provide information on its implementation in practice, including on sanctions provided for violations of the right of peaceful assembly and their application in practice.

122. In Ukraine there are systemic problems of legal regulation and enforcement practices, which significantly complicates the practical ability of citizens to peaceful assembly and creates a direct threat to the very essence of that right by limiting its content and / or volume.

123. The clear legal regulation of freedom of assembly is absent. Different interpretation of the existing legislation by public authorities and the controversial practice of national courts lead to a situation of legal uncertainty. Adopted on first reading a draft law of Ukraine "On the organization and conduct of peaceful events" in March 2013 was rejected and withdrawn from consideration. As of May 27, 2013 a new draft law to regulate freedom of peaceful assembly was not registered in the Parliament.

124. On contrary with the Constitution, in 17.4% of Ukrainian settlements the freedom of assembly is limited with the decisions of local authorities, i.e. the local normative acts, governing the organization and conduct of peaceful assembly. In the third of settlements the freedom of assembly is limited by the Decree of the Presidium of the Soviet Parliament No9306-XI by 28/07/88 "On the organization and holding meetings, rallies, street marches and demonstrations in the USSR" norms which violate the Constitution of Ukraine.

125. In 2012 the number of considered cases of peaceful assembly, had been banned by courts, increased in more than 30%. Unified State Register of Court Decisions contains 358 verdicts on this category of cases, of which 316 – with prohibition of peaceful gatherings. Thus, the courts have make decisions in



88% of cases on favor of the state authorities. The largest number of prohibitions became Kharkov region (103 prohibitions), ARC (43 prohibition), Kiev (26 bans) and Nikolayev region (24 prohibition). In Kharkiv, which has about 2 million people, the authorities claims to ban peaceful assembly had been satisfied by courts in 100% of cases.

126. Most often reasons for court bans of peaceful assembly are violations the local authorities decisions, filing notification on holding contra-meetings, inability to secure public order, improvement potential violations, violation of the rest of the public.
127. The unlawful restrictions of the peaceful assemblies by law enforcement are continuing. There are several documented facts concerning the following misconduct: the use of militia officers without standard uniform; the interferences in order to stop the citizens in peaceful assemblies participating; giving preference to one side during several meetings taking place at the same time; inactivity during the conflicts that occur in the course of peaceful assembly; unjustified termination of peaceful assemblies and detention of their members; excessive use of force against peaceful protesters; repression of peaceful assembly participants after the event.
128. In 2012, 124 people were draw to administrative responsibility for violation of the procedures concerning the organizing and holding meetings, rallies, street marches and demonstrations. However, at the same time the law enforcement agencies didn't initiate any criminal cases in connection with the unlawful interferences to holding of the meetings, rallies, marches and demonstrations.
129. The decision of the European Court of Human Rights on 11 April 2013 in the case "Vyerentsov against Ukraine" the court found that although the Constitution of Ukraine provides some general rules about possible restrictions on freedom of assembly, but these rules require the further development of national law. The court can not agree that the delay more than twenty years to develop those national legislation is justified.

## 7. OTHER ISSUES

### 7.1. Right for privacy (art.17)

130. One of the important problems of the right to privacy is unwarranted and unacceptable extension by the Constitutional Court of Ukraine of the protection from discrimination to the status of a public person and equated necessity of protection of the right for protection of private life for a common citizen and a public person
131. On January 20, 2012, the Constitutional court of Ukraine made a ruling in the case concerning official interpretation of provisions of Article 34 of the Constitution of Ukraine. Among other things, it considered the issue concerning what should be considered as information about personal and family life and, in particular, whether such information is to be treated as confidential information about a person; as well as, whether collection, storage, use and dissemination of information about a person is intrusion into his or her personal and family life.
132. In its ruling, the Constitutional Court of Ukraine, in particular, noted: «a systematic analysis of provisions stated in Article 24 and Article 32 of the Constitution of Ukraine gives grounds for the Constitutional Court of Ukraine to believe that the right for inviolability of personal and family life is guaranteed for each person regardless of their gender, political, property, social, language or other attributes, as well as the status of a public person, in particular, public servant, state or public figure that plays a certain role in political, economic, social, cultural or other sphere of state and public life».
133. Also, there are serious violations of the right to privacy of the detained, especially those whose cases are politically motivated and have great resonance in mass media. In September 2012, it became known that the state penitentiary service installed surveillance cameras owned by the agencies of Internal Affairs in the Ukrzaliznytsia hospital in the ward, where Yulia Tymoshenko, ex-Prime Minister, is being held. Several cameras were installed by police in the hospital corridors. Later, Yulia Tymoshenko stated that video cameras were installed also in the bathroom, in the shower and in the room where she has meetings with defendants. Later this was confirmed by People's Deputies Oleksandra Kuzhel, Tetiana Sliuz and Liudmyla Denysova, who visited Yulia Tymoshenko in the hospital ward. Also, some videos from the camera at the colony emerged online, which, probably, were edited in such a way so that to put together actual and forged recordings.
134. In November 2012, the wife of Yuri Lutsenko, ex-Minister of Internal Affairs, Iryna Lutsenko addressed Oleksander Lisitskov, head of the state penitentiary service, concerning wiretapping of her telephone conversation with her husband. She claimed that this followed from the content of remarks by the officers of the penitentiary service, in which they voiced issues she had been discussing only with her husband.
135. Protection of personal data is done on the grounds of the Law of Ukraine «On Protection of Personal Data» (adopted on June 1, 2010), which regulates

relations concerning protection of personal data during their processing.

136. Although this Law was adopted as part of implementation by Ukraine of provisions of the Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data, but its wording turned out to be not very accurate and it manifests some drawbacks and contradictions. For starters, failure to differentiate between general (surname, name, patronymic, nationality, place and date of birth) and sensitive personal data causes excessive hindrances and leads to grotesque situations when recording a person's surname and name can constitute – from the point of view of the Law's corresponding provisions – a violation of this Law. For instance, when a university professor keeps records of students' marks, in this Law's terms it is in fact processing of personal information.
137. Similarly, the requirement concerning necessity to process personal data for scientific, statistical and historic purposes in the depersonalized form can lead to an absurd situation, when using a person's surname, name, and patronymic in scientific and historic texts can be considered a violation of this Law, as can be collection of information about well-known historic figures, publishing of books about their life or memoirs, which contain a list of persons mentioned in them. The facts are observed of restricting historians' access to the archive materials relating to persons that were arrested by the Soviet repressive apparatus and died in prison, since there are no relatives who can permit the access to such materials, or such relatives are unknown.
138. The legislation that is intended to create a single database of personal data in Ukraine cause serious concern of the experts. On November 20, 2012, the Verkhovna Rada of Ukraine adopted the Law «On Unified State Demographic register». It should be mentioned that during the voting on this Law, a part of the MPs' votes was received by using the voting cards of MPs who were personally absent from the hall. This obviously makes legitimacy of this Law under question. The Law stipulates excessive and inadequately wide inclusion of biometric data into the documents that identify a person.
139. Until now, the issue concerning the legal grounds of surveillance in public areas has not been properly regulated. At the same time, police does not stop trying to install video cameras in public areas on the wide scale. For instance, in Kyiv it is planned to install 11 thousand video cameras.
140. According to the observers, at least in one region the police was instructed to collect information concerning politically active members of the opposition, as well as concerning their immediate family, relatives and company, including photographs and biographical particulars
141. Searches are still widely used in cases initiated for political reasons to exercise pressure on political, trade union and public figures.
142. For instance, on January 31, 2012, the apartment of Arsen Avakov, leader of Kharkiv regional organization of the “Batkivshchyna” Party, where he had been living for more than two years, was searched, and later the apartment, where his family lives, was searched, too, and during this search the police confiscated a photocopy of his passport, the identification card of the deputy of the regional council and money.

## 7.2. Freedom of association (Art. 22)

143. The situation with freedom of association is gradually deteriorating compared to previous years. This is due to the general deterioration of the environment for NGOs, in particular, an increase in pressure from the authorities and curtailment of possibilities of cooperation with the authorities. The number of inspections by certifying bodies kept increasing, as well the number of requirements during the registration or re-registration of NGOs, which are not specified by the law, and number of actions for liquidation of public organizations.
144. The Ukrainian legislation does not meet international standards and largely unduly restricts freedom of association. New laws "On Charity and Charitable Organizations" dated July 5, 2012 and "On Public Associations", which entered into force on 1 January 2013, not yet allow us to properly evaluate the situation changes for the better.
145. The registration procedure is not sufficiently clear, what allows the legalization body not to register the association of citizens or to delay such registration for many months without any reasons whatsoever. Most often such refusals are groundless and are based on rather arbitrary interpretation of the statute of the organization and legislation. Appeal to the Court does not lead to a positive result, since according to the law, the court may require the registration and can only cancel an order refusing registration. As a result, in practice, citizens can obtain refusing to register indefinitely. The situation worsens lack of clear definition of the grounds for refusal of registration and respectively - the lack of official statistics on failures to register.
146. An example might be the case of public organization "Association of Falun Dafa." Since 2001, its founders legalized the organization by notification. And since 2006, they are seeking legal status for public organization. The founders received five refusals of registration with different arguments. After the first two failures they changed the statutory documents. They lodged a complaint concerning the third refusal in 2009. The case went up to the Supreme Administrative Court, which approved the decision of the local court and canceled the order refusing registration of the NGO. During the judicial reviews, the organization received the fourth refusal, although it had not filed new documents. When they turned to the executors, on May 7, 2012 they received the fifth refusal of registration. After that, the founders decided to appeal to the European Court of Human Rights for violation of the freedom of association.
147. Over the past few years, the numerous verdicts on NGOs elimination had been recorded. There is increasing of examples when authorities of legalization, exercising control over the legality of NGOs, submit claims for their elimination. The largest number of these lawsuits were initiated in the Crimea and Odessa region. To achieve the desired result - the liquidation of the organization - state actively involves the tax authorities and prosecutors. Simultaneously, the Ministry of Justice as a result of control over the practices of political parties filing mass lawsuits on the elimination of political parties.

### 7.3 Right to political participation (article 25)

148. The Voting rights of citizens are among the most important and widespread civil rights, and apply to absolutely all people in the country. Unfortunately, the situation with this core public right has worsened since 2012 which has been reflected in the legislation of Ukraine as well as during the Elections itself - electoral process and procedures. The new legislation has not been thought through and led to massive violations of the voting rights of the public, and in some cases left them unable to vote at all.
149. Since the new President of Ukraine took office the electoral situation has worsened in the country overall which was reflected during the 2010 local elections and 2012 parliamentary elections. Therefore we can clearly see a systematic violation of public voting rights on all the levels and stages of the elective process in Ukraine: election legislation; local election Commissions; Central Elections Commission; legal bodies; local politicians and authorities; non-balanced media, and particularly the well-off candidates in majority districts.
150. Voting legislation remains unstable and far from perfect. A number of basic international standards from the Codex of proper elections practice (which was accepted by the Venetian Commission in 2002) were violated during the change of the government which took place prior to the 2012 elections, such as: the stability and permanence of the elections system as well as set timings for determining the boundaries of the elective districts.
151. During the set-up of local voting districts the international standards were omitted. The creation of the local districts took place without a proper expert commission being involved. This led to so called “gerrymandering” whereas a certain candidate gains a better position as a result of changing the boundaries between the elective districts. The principle of non-disruption of the boundaries of a district was violated in 15 out of 27 regions of the country. Areas of compact settlement of minorities were not taken into account during the creation of the districts.
152. Certain decisions of the Central Election Commission (CEC) led to the violation of the principles of equal voting rights. In general, CEC has ensured the preparation to the elections was in place, in line with the current legislation. However certain acts of the CEC, in our opinion, led to the violations of the principle of equal voting rights:
153. The draw of the candidates to the local elections commissions was such that led to a major imbalance in the make-up of the commissions in favor of little-known political parties most of which didn’t take part in a mass elections campaign and were the “dummies” of the government’s parties.
154. The decision of the CEC regarding the voting rights of the public as per their place of current residence without changing their voting address only within the boundaries of the elections district.

155. The refusal of the CEC to announce the results of the voting in five “problematic” single-seat electoral districts. These appeared to be only those districts where the candidates representing the government’s party have lost in the elections. As a reminder, as per the Law the CEC is obliged to announce the results of the elections and can assign for the re-elections to take place only in certain cases.
156. Sentencing the leaders of the opposition; illegal dismissal of political opponents from taking part in the elections. The incidents with sentencing the leaders of the opposition Y. Tymoshenko and Y. Lutsenko are widely known and undermine the entire process of democratic elections in the country more than anything else.
157. Creation and Activity of Elections Commissions. The problems were laid at the legislation level and become systematic. The authorities had, in most cases, an unlimited influence over the elections commissions. Influential parties taking part in the elections such as UDAR and VO Svoboda were left without their representatives in local elections commissions.
158. Misusing the local lobbying power, PR in governmental media activities, participation of local authorities in elections campaign during their working hours. The level of involvement of the members of the government and local authorities in the elections campaign was extremely high. Representatives on local authorities were constantly present during the meetings of the Party of Regions candidates with the voters.
159. Bribing the voters became a widespread phenomenon across the country. This became possible due to the “holes” in the legislation, passive attitude of the legal bodies and the lack of judicial practice to tackle this issue.
160. The number of violations of journalists' rights with the year 2012 can only be compared with 2004. Experts of the Institute of Media recorded 185 violations, of which 115 were directly related to elections and / or carried out the candidates. The most common violations were: obstruction of journalists to carry out professional duties - 98 cases, 37 the facts of beating and intimidation of journalists and 32 media claims to the court. Journalists were not allowed to meet candidates and voters, prohibited conduct where photo-video. Journalists investigating the bribery of voters were especially pressures. There were a lot of DDoS-attacks on the websites of online publications that paralyzed work. Total the number of violations of Ukrainian journalists' rights in 2012 reached a record over the past 10 years: experts have 329 facts, which is 3.5 times larger than for the full 2011.
161. Violation of citizens' electoral rights during voting. Voting in polling stations was overall not bad organized in accordance with the electoral law. Election Day passed without massive and systematic violations that could significantly affect the will of the citizens of Ukraine. In 91% of polling stations, where representatives of NGOs held monitoring, no violations were recorded.
162. Counting and tabulation tremendous violations. Unlike voting, vote counting and tabulation in the most districts were accompanied by numerous violations and other problems:
163. In the most constituencies the receipt of election documents was not

organized properly by DEC, there were long queues of the members of PEC in the DEC;

164. Violation of the tabulation in the DEC: damage of ballot boxes, withdrawal of election documents by members of the Interior, intentional damage ballots in support of a candidate who received a slight advantage in voices compared to the other candidate, obstruction of observe the tabulation of election results, violence and hooligan actions;
165. Disclaimer CEC tabulation of five single-member constituencies. CEC appealed to Parliament about possibility of re-election in these districts. Parliament, in turn, instructed the CEC to be repeated elections in these five districts. But CEC did not have an appropriate legal authority. There was also the problem of inability of re-voting for voters at polling stations where court found invalid voting (about 30 000 voters at 27 polling stations in the constituency number 94 (Kiev region))
166. Thus, we note that the parliamentary election in Ukraine in 2012 were held with violation of the standards of fair and democratic elections and were most problematic election science the national elections of 2004.

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