联 合 国 A/HRC/16/NI/5

大 会

Distr.: General
28 February 2011
Chinese
Original: English

人权理事会
第十六届会议
议程项目 3
增进和保护所有人权——公民权利、政治权利、
经济、社会和文化权利，包括发展权

乌克兰议会人权专员提交的资料*

秘书处的说明

人权理事会秘书处谨此转交乌克兰议会人权专员提交的来文，** 按照理事会第 5/1 号决议附件载列的议事规则第 7(b)条转载如下。该条规定，国家人权机构的参与须遵循人权委员会议定的安排和惯例，包括 2005 年 4 月 20 日第 2005/74 号决议。

* 具有增进和保护人权国家机构国际协调委员会赋予的“A 类”认可地位的国家人权机构。

** 附件不译，原文照发。

请回收

Annex

Summary of the special report of the Ukrainian Parliament Commissioner for Human Rights "State of observance and protection of the rights of the child in Ukraine"[1]

Introduction

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

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

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

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

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

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

The Convention has been ratified by almost every country of the world except the USA and Somalia. **Ukraine was one of the first UN member states to have ratified the Convention on the Rights of the Child on February 27, 1991.** By doing so, Ukraine acknowledged that children are an especially vulnerable group in view of their age, mental and physical development, and therefore they require special care and protection. Ukraine undertook a number of commitments under the Convention, particularly regarding the reform of the national legislation to bring it in line with the international standards.

Ever since the institution of the Ukrainian Parliament Commissioner for Human Rights was established, the Commissioner has always paid special attention to children's rights and has

[1] The full text of the Special Report is available at http://www.ombudsman.kiev.ua/S_dopovid_04_en/Dop4_en_Zmist.htm

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

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

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

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

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

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

1. Implementation of the International and European standards of the Rights of the Child in the National Legislation of Ukraine

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

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

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

- the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts* (ratified on June 23, 2004, with a statement);
- the *Agreement on Cooperation of the CIS Member-States on issues pertaining to repatriation of minors to their state of permanent residence* (ratified on January 12, 2005);
- the *Convention on Cybercrime* (ratified on September 7, 2005, with reservations and statements);
- the *Convention on the Civil Aspects of International Child Abduction* (ratified on January 11, 2006);
- the *Convention on the Recovery Abroad of Maintenance* (signed on July 20, 2006, with a statement);
- the *Additional Protocol to the Convention on Cybercrime, on criminalization of acts of racist and xenophobic nature committed through computer systems* (ratified on July 21, 2006, with reservations);
- the *European Convention on the Exercise of Children's Rights* (ratified on August 3, 2006, with a statement);
- the *Hague Conference on Private International Law Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations* (signed on September 14, 2006, with a reservation and a statement);
- the *European Social Charter (revised)* (ratified on September 14, 2006, with statements);
- the *Hague Conference on Private International Law Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children* (signed on September 14, 2006, with statements and a reservation);
- the *Council of Europe Convention on Contact with Children* (ratified on September 20, 2006, with a statement);
- the *European Convention on Nationality* (ratified on September 20, 2006, with a reservation and a statement);
- the *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody on Children* (ratified on March 6, 2008, with statements and a reservation);
- the *European Convention on the Legal Status of Children born out of Wedlock* (ratified on January 14, 2009);
- the *Convention on Action against Trafficking in Human Beings* (ratified on November 29, 2010).

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

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

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

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

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

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

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

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

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

With a view to accelerating the implementation of the international standards for human rights and freedoms, particularly children's rights and freedoms, in the national law, the Commissioner for Human Rights has repeatedly requested to sign and ratify several international documents related, in various degrees, to children's rights, particularly the *1951 UN Convention Relating to the Status of Refugees* and the *1967 Protocol Relating to the Status of Refugees* that regulate international protection of underage refugees and asylum seekers. These documents were ratified on January 10, 2002, as advised by the

Commissioner for Human Rights to the Chairman of the Verkhovna Rada (Parliament) of Ukraine.

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

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

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

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

The Commissioner is of the opinion that Ukraine should ratify the *2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (signed on November 14, 2007) as soon as possible. On November 11, 2009, the Ombudsman submitted a request for the ratification of the Convention to the President of Ukraine. It is very sad to note that these new international instruments have acquired a special importance in Ukraine: the country has been directly involved in their development, and has lately become one of Europe's centers for sexual exploitation of minors. On the back of the abolition of long-term (over 90 days) entry visas to Ukraine for citizens of a number of developed countries, the flow of sex tourists including potential child molesters has increased. This situation needs to be addressed by the government without delay.

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

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

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

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

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

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

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

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

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

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

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

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

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

The UN Committee on the Rights of the Child has repeatedly emphasized that the responsibility to implement the Convention on the Rights of the Child first and foremost lies with the parties to the Convention, and that effective exercise of children's rights depends on active involvement and cooperation of numerous stakeholders. That is why ***before presentation of the periodic reports*** and discussion of the Convention implementation, ***the Committee adopted the policy of engaging*** national human rights institutions, experts, and activist, ***as well as children***. It should be noted that Ukrainian NGOs for children's rights have been actively involved in the preparation of periodic reports to the UN Committee on the Rights of the Child. In 2008, 14 such organizations from various regions of Ukraine formed an initiative group in cooperation with the All-Ukrainian NGO Coalition and prepared the Alternative Report to the Committee on the Rights of the Child to communicate their own vision of the state of implementation of the Convention on the Rights of the Child in Ukraine.

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

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

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

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

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

The Commissioner for Human Rights believes that the Cabinet of Ministers of Ukraine must develop a specific action plan for the implementation of recommendations made by

the UN Human Rights Council to strengthen the protection of children's rights in Ukraine.

In accordance with the UN Human Rights Council Resolution 11/1 adopted on July 17, 2009, a decision was made to set up a working group on development of an optional protocol to the 1989 Convention on the Rights of the Child that would establish a procedure for submission of personal appeals by children and their representatives to the Independent Expert Committee to go along with the periodic reporting procedure as stipulated by the Convention. According to the UN Human Rights Council and the Committee on the Rights of the Child, establishing this procedure would be useful in the situations when national legal instruments are not effective or non-existent. The Commissioner for Human Rights has been actively promoting this new initiative. At the moment, the 3rd Optional Protocol has been drafted and is currently under review.

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

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

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

- adequate social, legal, and economic protection of children and adolescents, as well as families as basic social units, to ensure their all-round development, protection against poverty and social alienation through social care and aid to families with children, providing families with homes, aid to newly married couples, and other measures;
- providing children and adolescents, with due account of the rights and obligations of their parents, with necessary care, assistance, education, and training by means of establishing and maintaining appropriate institutions and services;
- establishing the minimum employment age of 15 with the exception of children involved in activities officially defined as light work that can not harm their health, morale, or education; the minimum employment age for jobs officially defined as unsafe or dangerous to health shall be 18 years; limitation of working hours for minors, etc.;
- health care and availability of medical services; implementation of the government preventive health care policy;
- protection of children and adolescents against neglect, abuse, and exploitation;
- securing the right to home and progressive reduction of homelessness; access of every person to adequate and affordable housing;
- assisting disabled persons, irrespective of their age and the type and nature of disability, in the exercise of their rights to self-dependence, social integration and engagement, etc.

The Action Plan for the Implementation of the European Social Charter (revised) for 2007-2010 was approved with Decree №237-p of the Cabinet of Ministers of April 26, 2007. The Action Plan supported the following actions: to conduct an investigation into the use of child labor; to provide training for labor inspectors, job safety inspectors, child welfare supervisors, juvenile police officers, and child labor officers; to launch an awareness campaign targeting children and youth to prevent the spread of socially dangerous diseases and promote a healthy lifestyle; to take measures to provide homes, education, and post-graduation employment assistance to orphans and children without parental care, etc.

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

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

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

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

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

On four occasions (in 2001, 2003, 2006 and 2009), the Verkhovna Rada (Parliament) of Ukraine voted against the ratification of the aforementioned Convention, with reasonable arguments and by an absolute majority. The last time, only 34 of the 439 members of the Parliament present at the parliamentary hearings on the issue on April 1, 2009 (1 representing the BYuT faction, and 33 representing the Our Ukraine—People's Self-Defense Bloc faction) supported the ratification.

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

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

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

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

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

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

2. Children's Rights Monitoring and Protection Mechanism: the Duty of the State

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

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

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

The Cabinet of Ministers of Ukraine is the responsible agency for implementation of the government policy on child protection through the development and implementation of national target programs for children's social care and welfare, and ***coordination of central and local executive agencies.*** The protection of children's rights is also the responsibility

of several central executive agencies, with the Ministry of Ukraine for Family, Youth, and Sports being a leading one.

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

The Commissioner is of the opinion that the performance of oblast institutions and organizations for children's rights also needs to be improved. Extra measures should also be taken to reinforce personal responsibility of public and local self-government officials for compliance with children's rights and their protection.

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

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

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

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

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

The establishment in Ukraine of the constitutional authority such as the Ukrainian Parliament Commissioner for Human Rights was a novelty in the legal system for the protection of human rights and freedoms, including the rights of children.

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

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

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

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

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

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

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

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

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

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

Owing to many years experience of working with children, particularly at the Prosecutor General's Office, the Child Protection Advisor of the Commissioner for Human Rights Iryna Tarhulova is highly capable of professionally representing children in courts.

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

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

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

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

With each year, the number of complaints to the Commissioner submitted by children regarding the protection of their rights increases. In 2006, the total number of individual complaints submitted by children was 376; in 2007, the number increased to approximately twice as many at 776; in 2008, individual and group complaints submitted to the Commissioner were signed in total by 4,663 children, and in 2009, by 2,430. It should be noted that in quite a few complaints, children are asking to help their parents and relatives

to find a job, be granted a pension, receive adequate medical treatment, or get early release from places of detention.

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

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

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

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

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

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

At the moment the Commissioner is investigating several cases of violation of children's rights, including those based on the following reports: the case of an attempt by female Belgian and Polish nationals to illegally remove a little boy from Ukraine before they were stopped by border patrol guards, as reported by the ***ForUm News Agency on March 22, 2010***; the case of a three-month-old baby being sold by her 37-year-old mother and her boyfriend as reported in the ***July 1, 2010 issue of the "Facts and Commentary"***; the case of a 7-year-old girl whom her mother, a resident of Stakhanov, Donetsk Oblast, forced into having sex with adult men as reported by the ***KID News Agency on October 7, 2010***.

According to Article 13, Section 10 of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights*, the Ombudsman has the right to file lawsuits to protect

the rights and freedoms of the persons who are unable to do it in person due to health or other legitimate reasons, and also participate, personally or through a representative, in court proceedings according to the procedures established by the law. Therefore, ***the Commissioner for Human Rights may represent children in court personally or through a representative***, as necessary.

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

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

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

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

The Ombudsman does not have the right of legislative initiative; however, draft laws and regulations related to children's rights are monitored, and legislative proposals are submitted accordingly to the Verkhovna Rada (Parliament) committees, ministries, and departments to ensure protection of the rights and interests of the child in the best possible manner. The latest legislative proposals by the Commissioner have included the following: a proposal for the Verkhovna Rada (Parliament) Committee on Legislative Support of Law Enforcement, regarding provisions of the draft Law of Ukraine *On Amendments to the Criminal Code of Ukraine* on termination of parental rights; a proposal for the Verkhovna Rada (Parliament) Committee on Family, Youth Policy, Tourism, and Sports, regarding draft amendments to the Family Code of Ukraine; a proposal for the Ministry of Justice of Ukraine, regarding the draft Law of Ukraine *On Amendments to Certain Laws of Ukraine on the Placement of Children in Child Reception Centers*, etc.

The recommendations made by the Commissioner regarding amendments to the legislation were based on the findings of the review of actual complaints related to children's rights. On January 30, 2009, the Ombudsman received a complaint from *Svitlana Zamula,* a *Sumy Oblast resident, single mother of many children*. According to the complainant, she had worked part-time as a chef for 12 days in 2007 and was paid 197 hryvnyas (approximately 21 USD) for her work. As the fact became known, the single mother was penalized by Sumy Labor and Social Protection Administration officials for abuse of social aid, the fines reaching 2,700 hryvnyas (approximately 340 USD) which exceeded her earnings by far.

For any family with many children, a fine this big would be staggering, especially at the time of financial crisis. Considering this, the Commissioner approached the Minister of Labor and Social Policy of Ukraine with a request to initiate amendments to the Law of Ukraine *On State Social Assistance for Low Income Families* with a view to protect vulnerable social groups. In July, 2009, the draft law №4795 *On Amendments to Article 7 of the Law of Ukraine* "*On State Social Assistance for Low Income Families"* developed jointly by the Commissioner and the Ministry of Labor and Social Policy of Ukraine was submitted to the Verkhovna Rada (Parliament) of Ukraine for consideration. Following the change of Government, the draft law was withdrawn. Nevertheless, the issue still needs to be addressed.

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

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

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

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

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

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

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

On November 20, 2009, a joint press conference with the UNICEF Representative in Ukraine Yukie Mokuo was held at the Ukrainian Ombudsman's Office

commemorating the 20th anniversary of the adoption of the UN Convention on the Rights of the Child. It touched upon the current issues of compliance with children's rights in Ukraine and internationally. A ***Joint Statement of the Commissioner for Human Rights and the UNICEF Representative in Ukraine addressing the Government, Local Self-Government, and the Ukrainian Public*** was presented. It urged all the stakeholders to join forces to improve the social protection system; ensure equal access of every child to health care institutions; ensure the constitutional right of orphaned children to a home; counter the use of the worst forms of child labor, trafficking in human beings, prostitution, and pornography; ensure real access to social services for child asylum seekers and refugee children. The Statement was forwarded to the President of Ukraine, the Chairman of the Verkhovna Rada (Parliament) of Ukraine, and the Prime Minister of Ukraine with a request to find quick solutions to these child protection issues. The Commissioner has been updated on the progress of the efforts to address these issues.

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

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

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

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

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

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

The Commissioner advocates the importance of access of children to all forms of representation, establishing children's control over implementation of their rights and interests, encouraging the government and the public to take due account of children's points of view, and recognition of the rights of the child by children and adults.

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

3. Protection of civil and personal rights of the child

3.1. The right of the child to life

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

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

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

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

Source: the State Committee of Statistics of Ukraine

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2. The role of family, society and state in preventing neglect, homelessness and abuse of the child

Family is an integral indicator of the social development that reflects the moral status of a society. It brings up succeeding generations, laying the foundations for development and prosperity of the state, because the child studies the outside world in all its complex and multifaceted manifestations within the family. According to the data of the Ukranian State Statistics Committee, the country had 17,050,000 households in 2010, and only 18.5% of them had children under the age of 18. This includes 7.5% households with preschool children, 6.6% with children aged 7–13, and 4.8% with teenagers of 14–17. The largest share of households with children under 18 is situated in the Transcarpathian, Chernivtsi, Volyn, Rivne, Ivano-Frankivsk, Ternopil and Lviv regions.

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

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

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

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

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

Minor *Y.* committed suicide in the village of ***Ryasne, Mashyvka District, Poltava Region***, in April 2010. The Ombudsman's inquiry, including a site visit of officers of the Ombudsman's Secretariat, found that local authorities and services failed in their duties to provide timely assistance to the boy whose parents were alcohol-abusers and whose mother was getting treatment in the mental hospital. The child was trying to get out of that environment, move in with his sister to the city of Poltava, but he could not obtain

residence registration and attend school, and had to return home. Unable to further endure humiliation, the boy left a suicide note, *"I can't live like this."*

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

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

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

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

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

However, the ***system of state institutions providing shelter, social assistance and counseling is unable to eradicate the reasons of homelessness and neglect***. It lacks rehabilitation specialists, lawyers and other professionals.

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

The Ombudsman's monitoring shows that families have been unable to provide safe environment for their children and protect them from violence in the recent years.

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

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

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

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

The Ombudsman is convinced that violence against children, homelessness and neglect can be overcome through introduction of timely anti-violence reaction mechanisms,

implementation of timely assistance programs for families in crisis, individual rehabilitation and counseling assistance to children brought up in such families.

3.3. Fighting against trafficking and sexual exploitation of children

Ukraine has faced a new challenge of disgraceful acts of children trafficking and involvement of children in prostitution and pornography.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ratification of the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* that Ukraine signed back in 2007 can guarantee the rights of underage victims of sexual abuse in the best possible way.

On November 11, 2009, the Ombudsman sent a request to the then President Viktor Yushchenko about the necessity to ratify the Council of Europe Convention on the

Protection of Children against Sexual Exploitation and Sexual Abuse. ***The Ombudsman later sent the same request to the new President Viktor Yanukovych.***

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

3.4. Children in conflict with the law

According to the Ministry of Interior of Ukraine, in the last five years the number of juvenile crimes has gone down by more than a half (*table 3.4.1*).

Table 3.4.1. **Juvenile crime statistics***

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

** According to the Ministry of Interior of Ukraine*

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

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

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

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

The children who commit socially dangerous actions before they reach the criminal responsibility age of 11 are sent to ***special juvenile remand institutions. There are 19 such remand institutions in Ukraine***, including four transit ones.

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

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

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

The problem of juvenile correctional facilities system's harmonization with international standards remains highly relevant for this category of convicts.

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

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

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

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

This has been facilitated by implementation of the ***Joint Project of the President of Ukraine and the Ombudsman to reduce the number of imprisoned juvenile delinquents***,

for instance, through remission on occasion of the 60th Anniversary of the Universal Declaration of Human Rights.

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

3.5. Rights of the child to participate in public life

By early 2010, fifteen national and 1,500 regional children's public organizations have been registered in Ukraine.

The Commissioner for Human Rights is supporting children's NGOs and working with them with a view to best ensure rights and interests of the child.

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

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

According to the Commissioner, no effective protection of children rights is possible without their direct participation in this important cause. It was therefore decided to institute **the Commissioner's delegates for child protection on voluntary basis (Children's Ombudsmen)**. On December 10, 2005, i.e. on the Human Rights Day, the winners of the competition were announced: Yuliya Kruk, a 16-year-old student at the Institute of International Relations, Kyiv Taras Shevchenko National University, and Ivan Cherevko, a 14-year-old junior of the Kyiv Mohyla Academy National University. The Children's Ombudsmen acted as a liaison between the Commissioner for Human Rights with children's groups, reviewing children rights legislation, media reports, and making proposals related to the protection of the rights of the child to the Commissioner ***by looking at issues "with a child's eye"***.

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

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

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

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

4. Economic, social and cultural rights of children

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

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

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

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

Type of households	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*
with working and non-working adults	36,6	38,2	40,2	39,4	42,7	41,7	40,5	40,5	40,3	37,7
Total in Ukraine	**26,4**	**27,2**	**27,2**	**26,6**	**27,3**	**27,1**	**28,1**	**27,3**	**27,0**	**26,4**

As a positive measure, one can cite the amendments introduced to Article 12 of the Law of Ukraine On State Assistance to Families with Children, whereby, effective January 1, 2008, much higher birth grants were provided, e.g.: UAH 12,240 for the first child, UAH 25,000 for the second child, and UAH 50,000 for the third and every subsequent child born. As opposed to 2007, the amount of allowance for the first child in the family was increased by 44%, 2.9 times for the second one, and 5.9 times for the third one.

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

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

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

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

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

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

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

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

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

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

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

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

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

Provision of adequate living conditions remains the most dramatic problem for families with children, including large families.

It is increasingly more apparent that it would be impossible to solve the problem of housing for large families without appropriate national and regional programs. *L. Vyshkovska, the mother of a large family from Dobronychivky, Yahotyn District of Kyiv Oblast*, sent the Commissioner what appears a typical appeal for the protection of her family's right to adequate housing.

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

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

The Commissioner considers unacceptable the indifference with which all branches of government approach protection of the housing rights of children. Since children are the most vulnerable population, protecting their housing rights requires additional mechanisms. To this end the Commissioner for Human Rights called upon the Government to amend the Law of Ukraine *On Measures Supporting Exercise of the Housing Rights of Residents of Dormitories*, adopted by the Verkhovna Rada (Parliament) of Ukraine in September 2008. The Cabinet of Ministers of Ukraine created with its Resolution of October 27, 2010, a working group to find a solution to the situation of dormitory residents and proposed a mechanism to resolve the issue.

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

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

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

4.2. The right to health care

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

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

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

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

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

Availability of essential pharmaceuticals for free treatment of children is not satisfactory either.

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

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

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

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

The Ombudsman also hopes that the Decree of the President of Ukraine *On ensuring conditions for effective and affordable medical services to individuals suffering from haemophilia*, of 20 November 2010, will help solve this problem as soon as possible.

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

The Commissioner has repeatedly examined the situation with respect to the rights of children infected with HIV and suffering from AIDS. In particular, she visited the children's department of Odessa Regional Centre for AIDS Prevention and Control.

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

In view of the above, the Ombudsman considers it worth mentioning that the main idea underpinning a reform of health care for children should be the creation of a medical service model securing absolute accessibility of health services, guaranteeing their quality, efficiency, and effectiveness. Prevention of child morbidity must be a priority. We must restore the status of school doctors who are posted full time at schools and would follow on students' wellness. It is also necessary to ensure strict enforcement of the constitutional provisions on free treatment of children.

4.3. The right to education and access to cultural heritage

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

One of the most difficult problems is ensuring children's right to preschool education.

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

The existing network of institutions in preschool education system does not match the needs.

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

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

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

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

According to the Prosecutor General's Office of Ukraine, 2,000 secondary schools were shut down and liquidated in the past five years, including 80 in 2010.

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

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

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

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

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

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

Out-of-school education is part of the educational system, which is designed primarily to ensure proper development of abilities and talents of children and youth, promote the leisure and training of adolescents to reach adulthood.

However, an unbiased analysis ***shows that the actual coverage of out-of-school education remains catastrophically low***.

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

Unfortunately, there is every reason to say that **higher education** does not perform its main function either, i.e. that of training competitive professionals.

It should be noted that one of the most critical problems to which people who intend to acquire higher education point in their petitions to the Commissioner, is **accessibility and affordability**.

Inability to finance education is a particularly acute problem for the least socially protected categories of children.

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

The Ombudsman has also helped to protect the rights of seven cadets of the Military College of Information and Communication Technologies at the KPI National Technical University when they were unlawfully expelled. All of them were minors from low income families and different regions of Ukraine.

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

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

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

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

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

The Ministry of Education and Sciences of Ukraine issued its *Order Amending the Regulations of the Ministry of Education on External Evaluation Testing in 2010*, (March 25, 2010, no. 238) stipulating that 'upon request of students who gained complete secondary education in Russian or any other language of national minorities, the tests are

translated into the relevant language of instruction (except for the tests in the Ukrainian language and literature and foreign languages).

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

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

Despite existence of the relevant legal provisions, ***comprehensive statistical reports on child labor in Ukraine do not exist***.

According to the Ombudsman, it is high time that an effective mechanism for systematic control over the use of child labor be put in place.

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

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

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

Thus, the Commissioner has received a petition alleging the use of illegal employment of children under 14 in Prometheus labor camp, Odessa Oblast. The violations concerned were immediately stopped and the culprits brought to disciplinary liability.

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

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

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

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

- the *List of heavy work and work with harmful and hazardous working conditions where employment of labor of minors is prohibited* approved earlier by Decree № 46 of the Ministry of Health of Ukraine of 31 March 1994 should be reviewed and supplemented with definitions of activities that may harm morals of children (e.g., participation in staging drama performances or shooting motion pictures featuring scenes of violence, etc.) as required by Article 4 para. 1 of ILO Convention № 182 on the Worst Forms of Child Labor;
- the laws *of Ukraine On Farms and On Private Agricultural Household*s should be amended to set the minimum age of 16 for members of both private households and farming enterprises and extend the requirements of legislation regulating the work of minors to minor members of such farms.

5. State of observance of the rights of vulnerable groups of children

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

The number of orphans and children deprived of parental care remains high year after year, even though their number has fallen to 100,800 by early 2010 (table 5.1.1). The number of such children in the total child population remains mostly unchanged, with 1.11% in 2005, 1.21% in 2006, 1.24% in 2007, and 1.26% in 2008. Their share fell slightly to 1.23% in 2009.

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

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

** According to the State Statistics Committee of Ukraine*

The phenomenon of social orphanhood is becoming more widespread.

The Ombudsman's analysis shows that custody and care remain the most popular form of fostering.

However, complaints received by the Commissioner show procrastination in guardianship registration violating the rights of the children, including the right to state assistance.

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

Adoption gains priority for children without parental care in Ukraine. In this context, the Commissioner for Human Rights is convinced that priority should be given to national adoptions.

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

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

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

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

The Ombudsman proposes that the Verkhovna Rada (Parliament) of Ukraine abolish those discriminating age restrictions.

According to the Ministry of Foreign Affairs of Ukraine, the records of the Ukrainian diplomatic and consular institutions contained data about 20,538 adopted Ukrainian children by 2010. Among them, 7,735 live in families in the US, 5,839 in Italy, 3,162 in Spain, 1,173 in France, 916 in Israel, 654 in the Federal Republic of Germany, 376 in Canada, 137 in Belgium, 126 in Sweden, 105 in Switzerland, and 102 in Ireland (*table 5.1.5*).

Table *5.1.5.* Data of the Ministry of Foreign Affairs of Ukraine on the number of adopted children holding Ukrainian citizenship

№	*Countries*	*Total for country as of February 2010.*
1.	Australia	4
2.	Austria	6
3.	Argentina	14
4.	Belgium	137
5.	Belarus	2
6.	Bulgaria	1
7.	Great Britain	6
8.	Greece	39
9.	Israel	216
10.	Iran	1
11.	Ireland	102
12.	Spain	3162
13.	Italy	5839
I4.	Kazakhstan	1

№	Countries	Total for country as of February 2010.
15.	Canada	376
16.	Cyprus	1
17.	China	3
18.	Lebanon	1
I9.	Mexico and Guatemala	34
20.	The Netherlands	14
21.	Norway	3
22	Peru	19
23.	Portugal	1
24.	Poland	15
25.	Romania	2
26.	Russia	23
27.	Slovenia	12
28.	USA	7735
29.	France	1173
30.	Germany	654
31.	Croatia	1
32.	Czech Republic	10
33.	Switzerland	105
34.	Sweden	126
35.	Japan	1
	Total	**20 538**

The Ombudsman is convinced that only bilateral agreements with countries adopting most Ukrainian children, which have a strong Ukrainian community, can provide the best control over observance of their rights in foreign families.

Alternative care has been actively introduced lately. The number of orphans and children deprived of parental care in adoptive families and family orphanages has increased considerably (*table 5.1.6*).

Table 5.1.6. **Number of orphans and children deprived of parental care brought up in the families of Ukrainian citizens***

	2003	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*
Total number of adoptive families at the year end	70	131	180	744	1617	2461	2931
Number of children (persons) brought up in adoptive families at the year end	129	240	288	1152	2561	4050	4934
Total number of family orphanages at the year end	112	127	149	234	300	400	484

	2003	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*
Total number of children (persons) brought up in family orphanages at the year end	1134	1214	1025	1462	1960	2605	385
Total number of persons out of orphans and children deprived of parental care under guardianship or care	66 493	65 264	64 353	64 192	63 591	62 965	63 154

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

At the same time, while supporting alternative family forms of child care, the Commissioner warns against coercion in this important activity. The state should support establishment of foster families and family orphanages but it should not send down instructions about them. This activity should be centered around a child whose right to live in the family has already been infringed. That is why further psychological traumas and sufferings resulting from a formal approach to the child must be prevented at all costs.

The Ombudsman believes that the state must provide appropriate control of the establishment and activity of all types of child care institutions.

After the children come of age, they start adult life. However, the children from adoptive families and boarding institutions are left without housing, startup financial resources, and in many cases without adequate knowledge and household skills. These young people face severe employment difficulties, and the lack of employment guarantees often leads to their ruthless exploitation by dishonest businessmen.

On many occasions the Ombudsman has supported the interests of orphans from Kyiv, Kharkiv, Simferopol, Dnipropetrovsk, etc., and often participated in the court processes protecting their right to housing abused by parents and guardians or improper performance of custodial and care authorities.

The Ombudsman is convinced that Ukrainian laws must be amended to regulate registration of children without parental care for priority housing waiting lists if they cannot live in the same premises with their parents whose parental rights have been revoked.

On November 20, 2009, the Ombudsman and the UNICEF Representative in Ukraine presented a Joint Statement to the authorities and the Ukrainian public on the 20th Anniversary of the UN Convention on the Rights of the Child. They emphasized that in the absence of effective legal mechanisms orphans and children deprived of parental care have nowhere to return from guardians or orphanage boarding schools and become homeless. The Ombudsman also wrote to the President of Ukraine about protection of the social rights of children from poor families, orphans and children deprived of parental care, and she emphasized the need to resolve the orphans' housing problem.

5.2. Rights of children with special needs

As of January 1, 2010, there were 157,474 children with special needs in Ukraine. Most of them suffer from nervous system pathologies, mental and behavioural aberrations, as well as congenital development defects. More than 23,000 Ukrainian children suffer from cerebral palsy. Protection of disabled children's rights requires improvement of their material status, as well as special conditions for their integration into social life.

The Commissioner for Human Rights promotes equal participation of the children with special needs in the life of the society in every way. ***In January 2009, the Commissioner sent a request to Prime Minister of Ukraine Yulia Tymoshenko to provide technical rehabilitation aids to disabled people including children.***

Most children with special needs (90%) live with their families, and others are brought up at boarding schools. That is why institutions where disabled children can get rehabilitation services, talk to therapists, lawyers and doctors are especially important for them. The institutions servicing children with special needs should become an alternative to boarding houses.

There are 209 rehabilitation institutions for disabled children in the labor and social protection sector

A rehabilitation course for a disabled child takes six months. On average, 20,000 disabled children take rehabilitation courses at such institutions, and approximately 1,100 children are integrated into the general education institutions.

The Ombudsman is deeply concerned about inadequate conditions for disabled children in the boarding schools, particularly boarding houses of the Ministry of Labor and Social Policy of Ukraine.

Experts of the Ombudsman's Secretariat have carried out multiple inspections of the status of children's rights observance in boarding schools of the Transcarpathia, Dnipropetrovsk, Chernivtsi and other regions. They inspected the Chernihivka Orphanage in Zaporizhia Oblast twice. The boarding house is a social medical institution for children with various degrees of mental retardation and complex physical defects. It hosts 143 inmates aged from 4 to 35 with physical and mental development defects who need constant external care, domestic and medical service.

As a result of one such comprehensive inspection, the government of Zaporizhia Oblast State Administration was instructed to take urgent measures to recruit a full-time pediatrician, resume operation of the physiotherapy unit, hire a masseur, increase the number of paramedical staff, and provide medical examination of children twice a year accounting for their individual situations.

The Ombudsman's monitoring shows that the children with special needs are not yet adequately involved into all aspects of daily life, including education.

The educational system was supposed to replace the existing model of education and upbringing of disabled people with education at normal schools, but for the time being the disabled children continue their studies in the specialized educational institutions.

In 2007/2008 academic year 50,300 children who needed correction of their physical or mental development studied in 387 special educational institutions.

However, only 6,100 of those children studied in specialized classes of general schools. ***The Ombudsman is convinced that Ukraine has not yet established a proper environment for integration of disabled children in the general education system.***

The Ombudsman believes that special programs and material resources should establish the environment for fulfillment of the constitutional right to education for talented young people with special needs. This is particularly relevant for their vocational and university education.

The Commissioner pays special attention to make sure that all institutions and public authorities establish appropriate conditions for the disabled people and particularly children, and that the latter feel no obstacles or disadvantages. Barrier-free environment should become the norm of life in Ukraine.

Incidentally, the neglected building that the Government has provided to house the Secretariat of the Commissioner for Human Rights is still under renovation, but it was immediately fitted to make sure that the people and children with special needs can visit it. A special heated entrance ramp and special steps were installed, and a ground floor toilet was fitted according to international standards. The offices have no thresholds to provide unrestricted access to any of them.

The Ombudsman believes that despite the country's social and economic difficulties all public authorities should pay more attention to children with special needs. Their material support, medical care, educational services and rehabilitation aids should meet modern international standards.

5.3. Protection of the rights of children of Ukrainian migrant workers

With so many Ukrainians traveling abroad mostly to work, protection of rights and interests of children who find themselves overseas with their parents and become migrants is particularly relevant.

In her Special Report ***On the Status of Fulfillment and Protection of the Rights of Ukrainian Nationals Abroad*** in April 2003, the Commissioner made a number of proposals to the national authorities and local governments of Ukraine. Those proposals were developed to improve national mechanisms of fulfillment and protection of the rights of our citizens who had emigrated overseas for different reasons, including migrant children.

During the ***Ombudsman's*** working visits abroad, ***she examines the state of observance of the rights of Ukrainian migrants and their children*** and meets with compatriots living abroad, their associations, as well as with the country officials responsible for migration policy and issues related to the observance of the rights of migrants.

Thus, during a working visit to Portugal in 2007, the Ombudsman of Ukraine held a meeting with High Commissioner for Migration and Intercultural Dialogue Rui Markesh and Director of Jesuit Refugee Assistance Rosario Farmhouse to learn about the status of human rights of our migrant workers and their children. During the meeting with Enrique Rodriguez, the Ombudsman of Portugal, the Ombudsman of Ukraine raised the issue of assistance in providing adequate facilities for Ukrainian schools.

Their provision with curricula and textbooks is insufficient.

The Commissioner has made the appropriate recommendation to the Prime Minister of Ukraine and hopes to see the issues raised above resolved.

Similar proposals have been made to the Ombudsman by the Ukrainian migrants in Argentina, Brazil, and France.

According to the Commissioner for Human Rights, the Ukrainian state should intensify the negotiating process aimed at concluding bilateral agreements on legal assistance in civil and family cases with the countries where migrants from Ukraine and their children live.

As it is seen from the petitions received by the Ombudsman, some serious and specific problems with the rights of children, including migrant children, occur in mixed marriages. According to the legislation of Ukraine and most other countries, parents have equal rights to raise their children. In the event of disputes concerning children in such families, solutions are particularly complex. The situation becomes even more difficult due to insufficient legal awareness of Ukrainians.

At the end of 2008, the Commissioner for Human Rights received a complaint from *a woman living in Zaporizhia Oblast*, Ms. N, who had once married a German man and moved to that country with her little daughter, born in Ukraine. Over time, due to the

applicant's health condition and a complex family situation, the girl was taken away from her mother and placed in a special child care facility in Germany. N. returned to Ukraine after a divorce without her child and began to solicit her daughter's return to Ukraine. On the Ombudsman's request, the Consular Department of the MFA of Ukraine took the proper measures, including petitioning the German court to return the child home. The girl returned to Ukraine on March 5, 2009, with the assistance of the Embassy of Ukraine in Germany.

Unfortunately, the problem of mass migration of Ukrainian citizens abroad is closely related to an equally serious **problem**, i.e. **child abandonment and neglect of children whose parents left to other countries to work**.

According to the results of the Ombudsman's regular monitoring, the problems faced by children of migrant workers are complex. However, the dominant psychological factors that children face are: missing their parents, inability to contact them for advice, hypochondria, lack of parental affection, etc. The children who have been left with their grandparents experience a negative change in behavior: they miss classes without a valid reason, their performance is reduced, they show aggressive and unpredictable behavior, use alcohol, drugs, and smoke. Children often run from home and end up in emergency shelters.

Neglect of children of migrant workers can often even lead to tragic losses.

According to the Ombudsman, the legal status of child abandonment and effective mechanisms to protect the rights and interests of the children of labor migrants deprived of parental care should be defined as soon as possible. Putting off a response to this new challenge to children's rights is unacceptable.

5.4. Respecting the rights of refugee children and children seeking asylum

In recent years Ukraine has increasingly become a transit country and destination for refugees and asylum seekers.

The Ombudsman's monitoring indicates some serious problems with the rights of the refugee children and asylum seekers, especially in view of the incomplete process of harmonizing the legislation of Ukraine with the *Convention on the Status of Refugees, the Protocol on the Status of Refugees of 1967*, and the Law of Ukraine "*On Refugees*". This is particularly true about laws and by-laws in the sectors of health, education, social security, guardianship, and law enforcement practice. The actual implementation of provisions of these documents should be supported with adequate state funding for the needs of the above mentioned category of persons.

According to the State Committee of Ukraine on Nationalities and Religions, **among 2,317 foreigners and stateless persons who had refugee status in Ukraine as of late 2009, 532, or nearly a quarter of the total number, were children under 16** who resided in Ukraine with their relatives and family members. Most refugee children were raised in the families of immigrants from Afghanistan, Azerbaijan, Armenia, and the Russian Federation (Chechen Republic).

According to the Commissioner for Human Rights, refugee children who have appropriate status under the laws of Ukraine and children seeking asylum require special attention and protection of the Ukrainian state since they and their families were victims of persecution in their country of origin; besides, they were forced to suffer the hardships of the fleeing their country, and they lack their usual environment.

Constant monitoring of the rights of migrants, including asylum seekers, is organized by the representatives of the Commissioner in Transcarpathia Oblast. On November 18, 2009 on behalf of the Ombudsman, they visited the temporary accommodation center for refugees ***in Perechin*** where at that time there were nine children with their parents. The conditions

were noted as appropriate, and the residents did not have complaints. The staff of the Commissioner's Secretariat has repeatedly studied the situation in the Temporary Accommodation Center for refugees in Odessa Oblast.

On October 26-27, 2009 representatives of the Ombudsman participated in a monitoring visit to Transcarpathia Oblast jointly with the Ministry of Interior, Security Service, State Border Guards of Ukraine, migration service officers, UNHCR regional representative office in Ukraine, the representative office of the European Commission and IOM in Ukraine, the embassies of Germany, Norway, Denmark, and Sweden, the Danish Council for Refugees, the International Federation of Red Cross, representatives of charities Caritas-Ukraine and NEEKA, and other NGOs. The participants visited a dormitory for women and children ***in Mukachevo*** and a temporary detention facility ***in Chop***, subordinate to the State Border Guards of Ukraine.

The inspection showed certain problems with the detention conditions at the dormitory for women and children: the children's playground was unavailable and the dormitory was not accessible for disabled people. There was no adequate state support for the needs of migrants and no access to qualified interpreters: this function was carried out by the migrants themselves who can speak some Ukrainian, Russian or English, or through the help of non-governmental organizations.

It should also be noted that the refugee children have problems with higher education as in view of their status they are treated by the educational establishments as foreign nationals or stateless persons who are staying in Ukraine on legal grounds and therefore have to fully pay for their education. Few refugee families can afford it. In this case there is a conflict between Article 20 of the Law of Ukraine *On Refugees*, and Part 1, Article 14 of the Law of Ukraine *On Legal Status of Foreigners and Stateless Persons*, which clearly affirms equal rights of the citizens of Ukraine and refugees in the area of education at all the levels, and Part 2, Article 4 of Law of Ukraine On Education, under which all foreigners and stateless persons who are staying in Ukraine on legal grounds are not eligible to receive university-level tuition at the cost of the State Budget of Ukraine and local budgets. ***According to the Ombudsman, this conflict should be resolved as soon as possible for the sake of the refugees, for example, by introducing appropriate amendments to the Law of Ukraine*** **On Education.**

We should indicate here a particularly vulnerable group among the asylum seekers, namely **the unaccompanied underage children seeking asylum**. The arrival of these children to Ukraine is quite a new phenomenon, and therefore the state should take appropriate measures to ensure proper care of this category of the minors.

In other words, an unaccompanied child seeking asylum and intending to obtain refugee status in Ukraine can not personally submit an application to the migration service authorities. Only after the appointment of the child's legal representative under the laws of Ukraine, the representative may apply for refugee status in line with the child's interests. As the experience of the State Committee on Nationalities and Religions and UNHCR regional representative office in Ukraine shows, ***the procedure for appointment of a legal representative for such children is very complicated***, particularly because there is no sufficient coordination between the government agencies which are responsible for supporting unaccompanied underage asylum seekers. Most importantly, there are no clear instructions for the Ministry of Family, Youth and Sports which is the leading department in charge of several aspects regarding this category of children, which makes it impossible to quickly and effectively help them, especially in terms of children's identification.

International organizations and national NGOs that provide substantial aid to migrants take vigorous efforts to enforce the rights of refugee children and asylum seekers in Ukraine.

In Kyiv, UNHCR is working to find solutions for every refugee child or asylum seeker within the framework of the Committee on Children's Best Interests. In 2010, the Ombudsman's office joined the process.

Conclusions and recommendations

The Commissioner's comprehensive study of children's rights in Ukraine allows her to make the following conclusions. After Ukraine ratified the UN Convention on the Rights of the Child in 1991 and joined its two Optional Protocols and other Conventions on child protection, the country started developing legislation on child protection in accordance with the International and European standards.

Progress has been made concerning protection of rights and legal interests of orphans and children deprived of parental care; family education methodology has developed, as well as social protection of children who find themselves in difficult circumstances; finally the Parliament adopted the *Law On the State Program "National Action Plan for Implementation of the UN Convention on the Rights of the Child" for the period until 2016*.

However, despite the adoption of laws and regulations designed to ensure respect and protection of children's rights, the country has not yet formed an integral national system to ensure the rights of every child, nor has it created proper conditions for children's harmonious and comprehensive development.

Ukraine needs a better coordination system for the activities of the extensive network of service providers and agencies that the legislators have set up to protect the rights of Ukrainian children.

The Commissioner for Human Rights believes that the government should primarily take efforts to overcome poverty of the families with children, particularly the inherited poverty that has become more dramatic in the time of the financial and economic crisis. The government must improve health care, provide access to quality health services for every child, overcome child neglect and homelessness, put efforts to prevent child abandonment, and combat the worst forms of child labor, trafficking, child involvement in sex industry, and so on.

In view of the above, the Commissioner suggests the the following steps:

The Verkhovna Rada (Parliament) of Ukraine shall

- *Develop a Code of Laws of Ukraine on children's rights, ensuring the principle of equality and non-discrimination, legal and social protection of children, and conditions for a comprehensive development of the young generation;*
- *Ratify the Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse of 2007 and implement its provisions in the national legislation;*
- *Amend the Criminal Code of Ukraine to introduce criminal liability for use of children's images in erotic products, use and possession of pornography featuring images of children, and increase responsibility for the crimes of sexual exploitation and abuse of children;*
- *Amend the Criminal Code of Ukraine to provide increased criminal liability for illegal transplantation of organs and tissues;*
- *Amend Article 211 of the Family Code of Ukraine to eliminate the restriction on maximum age difference between the adopting person and the adopted child;*

- *Amend the Laws of Ukraine On Education, On Compulsory Education, and On Pre-school Education to end the practice of closing schools and leasing them out for purposes other than education;*
- *During adoption of the new Housing Code of Ukraine provide a possibility to receive priority housing for children deprived of parental care or such children returning from custodians or orphanages who can not live with their parents deprived of parental rights;*
- *Amend the labor laws to bring them in compliance with ILO Convention No. 138 On Minimum Employment Age;*
- *Amend the laws of Ukraine On Farms and On Private Farms to cover underage children working at the farms with provisions of the Labor Code of Ukraine;*
- *Provide funding for child protection programs in the national budget of Ukraine for 2011 and subsequent budgets;*
- *Amend the existing legislation to guarantee adequate standards of living for families with children;*
- *Amend the law On Charity and Charitable Organizations to support charitable assistance to children;*

The Cabinet of Ministers of Ukraine shall

- *Take measures to prevent the weakening of mechanisms to protect the rights of children, particularly orphans, children deprived of parental care, and children with special needs in the course of the Administrative Reform;*
- *Submit to the Verkhovna Rada (Parliament) of Ukraine the draft National Program of Overcoming and Preventing Poverty;*
- *Promote elimination of discrimination against vulnerable groups of children, particularly orphans and children deprived of parental care, children with disabilities, refugee children and asylum seekers;*
- *Take steps to determine the minimum living standard with account of inflation and a revised list of essential food products, commodities and services which would take into consideration the children's current essential needs;*
- *Increase state aid for each child to a level not lower than the subsistence minimum;*
- *Promote development and implementation of special regional programs to support large and poor families;*
- *Develop a national program to provide orphans and children deprived of parental care with housing, and earmark funds in the State Budget of Ukraine for its implementation;*
- *Expedite the submission to the Verkhovna Rada (Parliament) of Ukraine of the draft law On Ratification of the 2007 Convention for the Protection of Children from Sexual Exploitation and Sexual Abuse;*
- *Speed up conclusion of bilateral agreements with the countries whose nationals adopt Ukrainian children;*
- *Improve legislation on protection of refugee children, including appointment of their legal representatives and the procedure of identifying the age of unaccompanied underage asylum seekers;*

- *Initiate a moratorium on closing down sports facilities, stadiums, playgrounds, and recreation areas for children;*
- *Improve the procedures for selection of women to be awarded Hero Mother honorary title, establish the period when decisions to that effect should be made at every level, and develop a simplified procedure to confer the title to those mothers who were awarded the Order of Hero Mother before Ukrainian independence;*

The Ministry of Education, Youth, and Sports shall

- *Ensure proper coordination of all the agencies and services that are to enforce the rights of children;*
- *Create mechanisms for child participation in decision-making on children's rights at national and local levels;*
- *Provide government support for involvement of children in different forms of student self-government;*
- *Promote a network of children and youth NGOs;*
- *Run regular information campaigns for the public about the rights of children, parents, guardians, custodians, the rights and eligibility of the families with children to legally established types of government assistance, guarantees and benefits;*
- *Develop a program of activities to tackle child abandonment;*
- *Develop a database on all orphans and children deprived of parental care, and take into account the interests of children in the course of the boarding school reform;*
- *Continue implementation of government policy on priority adoption of Ukrainian children by Ukrainian nationals;*
- *Research international practice of concluding bilateral treaties on adoption;*
- *Step up the introduction of free public hot line service for children;*
- *Develop a national program for rehabilitation and construction of sports facilities, stadiums, and playgrounds to revitalize mass sports for children and youth;*
- *Develop a system to prevent and protect children from abuse, sexual and economic exploitation;*
- *Develop a system of specialized government institutions that provide assistance to children who fall victims to crime;*
- *Develop and submit to the Cabinet of Ministers of Ukraine draft amendments to the legislation on education to prevent shutting down kindergartens and secondary schools;*
- *Take steps to implement the right to education for children whose parents have rejected mandatory vaccination;*
- *Promote recovery of closed kindergartens and complete their long-term renovation;*
- *Improve the system of external evaluation of secondary school graduates with maximum enforcement of all the rights of children, including ethnic minorities;*
- *Ensure equal access to quality education for all children, including children with special needs and national minorities;*
- *Develop and submit to the Cabinet of Ministers of Ukraine a draft national program to reform the current system of vocational education and training of specialists;*

- *Promote a broad network of out-of-school education facilities accessible for every child, and provide salaries, benefits and guarantees to out-of-school educational workers at the secondary school level;*
- *Make proposals to the Cabinet of Ministers of Ukraine to improve class masters pay policies so that employees of the educational institutions can properly accomplish their functions;*
- *Introduce training programs on human rights, and children's rights in particular;*

The Ministry of Social Policy of Ukraine shall

- *Provide comprehensive information to the public on state aid, guarantees and benefits provided by law for families with children through local social security departments;*
- *Develop and submit to the Cabinet of Ministers of Ukraine amendments to the labor laws to gradually increase the minimum employment age to a level which corresponds to full physical and mental development of adolescents;*
- *Review the list of heavy labor activities and types of work with harmful and/or dangerous working conditions where employment of underage persons is prohibited, as approved by the Order of the Ministry of Health of Ukraine No. 46 on March 31, 1994, complementing it with types of activities that may harm children's physical or moral conditions;*
- *Initiate amendments to the Administrative Code of Ukraine to establish sanctions for violations of labor rights of children as a separate type of offense, introducing liability of employers for use of child labor without proper registration of an employment contract;*
- *Improve the mechanism of state and public control of the use of child labor by small businesses, farms, private enterprises, and family businesses, which are the major consumers of child labor;*

The Ministry of Health Care of Ukraine shall

- *Ensure equal access of every child to health facilities and provide high quality health care for free;*
- *Introduce a modern system of child morbidity prevention;*
- *Develop measures to prevent child disability and improve provision of medical care to children with special needs;*
- *Ensure provision of medication to children with phenyiketonuria, immunodeficiency, cystic fibrosis, cerebral palsy, Gaucher disease, hemophilia, and diabetes (insulin dependant children requiring treatment with imported insulin);*
- *Provide fund for surgical operations for disabled children from the State Budget;*
- *Improve the network of rehabilitation centers to accommodate the needs of children with disabilities equipping them in accordance with modern methods of rehabilitation services;*
- *Restore the network of child recreation facilities, improve their material state, human resources, the level of children's nutrition, health care for children, and educational work;*

The Ministry of Foreign Affairs of Ukraine shall

- *Ensure proper control over enforcement of the rights of Ukrainian children abroad, including those adopted by foreigners;*
- *Expedite conclusion of multilateral and bilateral agreements on mutual recognition of incomplete and complete secondary education in the countries with a significant number of Ukrainian migrants;*
- *Take measures to support Ukrainian Sunday schools abroad, providing them with the latest books and textbooks, films and audio records about the history and culture of Ukraine;*
- *Actively promote conclusion of bilateral agreements with countries whose nationals adopt Ukrainian children and have a sizeable Ukrainian community;*

The Ministry of Internal Affairs of Ukraine shall

- *Consider feasibility of applying international experience to restrict children's unaccompanied presence in public places at night;*
- *Establish effective mechanisms to counter the use of Internet and other technologies for sexual abuse of children;*
- *Prevent child trafficking, sexual exploitation, and other forms of ill-treatment;*
- *Strengthen international cooperation to counter abuse and exploitation of children and implement, including through multilateral agreements, a system of technical and financial assistance, information sharing and exchange of best practices in investigating criminal cases where children are involved;*
- *Establish permanent control of compliance with the rights of unaccompanied underage asylum seekers by the police and investigate each violation of the rights of such children, including on request by UNHCR and human rights organizations;*

The Ministry of Justice of Ukraine shall

- *Consider possibility of introducing amendments to Articles 31 and 32 of the Civil Code of Ukraine and Chapter 13 of the Family Code of Ukraine to clearly define legal acts which can be independently performed by minors and underage persons;*
- *Induce the Cabinet of Ministers to initiate legislative amendments to strengthen protection of the rights of children who fall victims to crime and child witnesses during the inquiry, investigation and trial, including use of special measures, mechanisms and programs;*
- *Promote strict enforcement of court decisions concerning children's rights, including recovery of alimony;*
- *Enforce court decisions concerning protection of children's rights;*
- *Promote establishment of juvenile justice in Ukraine;*

Public authorities and local governments shall

- *Provide full support to children's and youth organizations and movements, and student self-government;*
- *Implement local employment programs for adolescents and youth, and ensure compliance with legal requirements to reserve jobs for graduates of educational institutions;*

- *Provide public housing funds to support housing rights of orphans and children deprived of parental care;*
- *Take measures to set up social dormitories for temporary stay of families in difficult circumstances, particularly for single mothers, as well as orphans and children deprived of parental care.*

The Ombudsman is convinced that the Ukrainian society should unite around the national idea to establish a state that will be friendly to every child.