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Informations communiquées par le Commissaire aux droits de l'homme du Parlement ukrainien*

Note du secrétariat

Le secrétariat du Conseil des droits de l'homme fait tenir ci-joint la communication présentée par le Commissaire aux droits de l'homme du Parlement ukrainien**, reproduite conformément à l'article 7 b) du Règlement intérieur figurant dans l'annexe à la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, notamment la résolution 2005/74 du 20 avril 2005.

* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation « A ».

** La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

Annexe

[*Anglais seulement*]

Contents

Interim shadow report of the Ukrainian Parliament Commissioner for Human Rights on the status of implementation of recommendations made to Ukraine within the 2nd circle of the Universal Periodic Review

I. On the National Human Rights Strategy

1. According to the Decree of the President of Ukraine dated October 15, 2014, No. 811/2014, a task group has been established at the Ministry of Justice of Ukraine for development of the National Human Rights Strategy (hereinafter the Strategy), with representatives of nongovernmental organizations engaged for the group's activities.

2. It should be mentioned that the Strategy draft is a unique product of joint efforts of the state and civil society institutions. However, despite the efforts put in by all parties in order to draft the strategy, the result currently available does not satisfy the Ukrainian Ombudsman and many civilian organizations. The lack of time made it impossible to elaborate the strategy provisions in depth and discuss provisions in the expert community and with stakeholders. For the same reason, even the methodological approaches to preparation of the Strategy have not been coordinated.

3. According to the Ukrainian Ombudsman, Ukraine needs to adopt a substantial document determining the priorities of the government policy on human rights for the nearest years, which would become the basis for the planning of state activities in, and monitoring of, this activity.

4. The human rights community insists on the needs to continue working on the draft strategy by establishing an expert task group for deliberation of the draft engaging representatives of the Verkhovna Rada Committee on Human Rights, Minorities, and Interethnic Relations, Secretariat of the Parliament Commissioner for Human Rights, the Government, and the Ministry of Justice of Ukraine, as well as specialists on human rights, including representatives of civilian society.

5. The human rights organizations insist that the Strategy draft be adopted as a Law, and that its further deliberation be continued based on fundamentally different methodological principles, i.e. simultaneously with a Strategy Implementation Action Plan.

II. Freedom from Torture or Inhuman and Degrading Treatment or Punishment; Rights of Convicts

2.1 On recommendations 97.32–97.35, and recommendation 97.37

6. On October 2, 2012, the Verkhovna Rada of Ukraine adopted the Amendments to the Law of Ukraine On Verkhovna Rada Human Rights Commissioner regarding the National Preventive Mechanism, which entrusted the functions of the national preventive mechanism to the Parliament Commissioner for Human Rights. The law entered into force on November 4, 2012.

7. This was done with due attention to the recommendations received from public discussions involving lead national and international experts on the advantages of implementing the national preventive mechanism in the "Ombudsman+" format in Ukraine, which provides for monitoring visits to places of freedom deprivations by employees of the Human Rights Commissioner Secretariat jointly with civilian activists.

8. According to Article 13, section 8, of the Law on Ukrainian Parliament Commissioner for Human Rights, the NPM may visit the following places without prior notice about the time or purpose of the visit and without limitation of the number of visits:

- Places where persons are detained by judgment of a court or an administrative resolution according to the law, including temporary detention facilities, police detention facilities, places for temporary detention of foreign citizens and stateless persons unlawfully staying in Ukraine, detention facilities for military servicemen, pre-trial detention centers, arrest houses, penitentiary facilities, juvenile reception centers, social rehabilitation general and vocational schools, special education facilities, military units, military custody facilities, disciplinary battalions, special reception centers for persons detained for administrative infringements, city, district, and transit internal affairs administrations, departments, precincts, and stations, specialized motor vehicles (including specialized vehicles with escort), criminal defendant (convict) detention rooms in courts, and compulsory treatment facilities;
- mental health institutions;
- temporary refugee placement stations;
- transit passenger rooms at state border crossing stations;
- childcare centers, children's boarding schools, orphanages, orphan asylums, general education boarding schools for orphans and children deprived of parental care, centers for social rehabilitation of disabled children, and centers for social and mental rehabilitation of children;
- psychiatric and neurological inpatient facilities;
- geriatric care facilities, and residential care facilities for senior citizens and disabled persons;
- residential care facilities for war and labor veterans; and
- social rehabilitation centers.

9. Among other powers of the national preventive mechanism defined in article 19[1] of the Law on Ukrainian Parliament Commissioner for Human Rights, the following rights should be mentioned:

- making regular visits to aforementioned places without prior notice about the time or purpose of the visit and without limitation of the number of visits;
- interview persons held in such places in order to receive information regarding their treatment and detention conditions, as well as interviewing other persons who may provide such information;
- make proposals to government agencies, state institutions, companies, institutions, and organizations, regardless of their ownership form, for prevention of torture and other cruel, inhuman, or degrading treatment or punishment;
- engage, on a contractual basis (either paid or unpaid), representatives of non-governmental organizations, experts, scholars, and specialists, including foreign ones, for regular visits to places specified in article 13, section 8 of this Law;

10. A Department for Implementation of the National Preventive Mechanism was established at the Secretariat, to conduct both scheduled and extraordinary visits to the aforementioned places.

11. For instance, 585 such visits were made in the period from 2012 to 2014:

2012 - 169

2013 - 262

2014 - 152

12. Between January 1 and April 22, 2015, 45 such visits were made.

13. At the same time, the problem of supplying the NPM with the appropriate funding remains to be resolved.

2.2 On recommendations 97.36 and 97.98

14. Article 38 of the Criminal Procedure Code of Ukraine (2012) provides for establishment of the State Bureau for Investigation, intended as an agency independent from the Ministry of Internal Affairs of Ukraine and the Prosecutor's Office agencies, whose authority includes investigation of criminal offenses conducted by law enforcement officers.

15. According to section 21 of chapter XI, "Transitory Provisions", of the Criminal Procedure Code of Ukraine, the Cabinet of Ministers of Ukraine was to submit its proposals for bringing the legislation into line with the Code for review by the Verkhovna Rada of Ukraine within one month after the publication of the Code (published in the *Voice of Ukraine* official publication No. 90–91 of **May 19, 2012)**.

16. It should be mentioned that the draft law on the State Bureau of Investigations of Ukraine was first introduced to the Verkhovna Rada of Ukraine on August 1, 2013, and registered under number 3042, by A. Kozhemiakin, a member of Parliament of Ukraine. However, the draft was rejected and removed from the agenda on June 3, 2014.

17. The Draft Law of Ukraine on the State Bureau of Investigations was submitted for review by the Verkhovna Rada of Ukraine for the second time by A. Kozhemiakin jointly with a group of 11 members of parliament on February 12, 2015, registered under No. 2114. **On May 21, 2015, the draft law was adopted by Parliament in the first reading.** According to section 2, part one, chapter X "Final Provisions" of the criminal procedure code, the end date for establishment of the Bureau is November 20, 2017.

18. After the State Bureau of Investigation is established, the Prosecutor General's Office of Ukraine will only retain the function of procedural administration.

19. According to article 216, part 4 of the Criminal Procedure Code of Ukraine, the investigators of the State Bureau of Investigation, excluding cases specified in part five of the same article, shall conduct pre-trial investigation of criminal offenses committed by officers in positions of special responsibility according to article 9, part one, of the law of Ukraine On Public Service, public servants in positions of categories one through three, judges, and law enforcement officers.

20. The investigators of the State Bureau of Investigation offices shall also conduct pre-trial investigation of criminal offenses conducted by officers of the National Anti-Corruption Bureau of Ukraine and prosecutors of the Specialized Anticorruption Prosecutor's Office, excluding cases where pre-trial investigation of criminal offenses falls under the jurisdiction of detectives of the internal supervision units of the National Anti-Corruption Bureau of Ukraine according to part five of the same article.

21. According to section 1 of Chapter XI "Transitory Provisions" of the Criminal Procedure Code of Ukraine, until an independent agency is established in Ukraine, all cases of torture shall be investigated by investigators of internal affairs agencies, or, in case of torture by law enforcement officers, by investigators of the prosecutor's office.

2.3 On recommendations 97.75 and 97.104

22. On the initiative of the Commissioner for Human Rights, on November 4, 2013 a permanent interdepartmental task group was established for elaboration and implementation of joint measures for improvement of the protection of human rights and liberties in places of deprivation of freedom. This group includes representatives of the Ukrainian Ombudsman, Administration of the President of Ukraine, Ministry of Justice of Ukraine, State Court Administration of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Health of Ukraine, Ministry of Education and Science of Ukraine, State Penitentiary Service of Ukraine, State Border Guard Service of Ukraine, State Migration Service of Ukraine, Ministry of Defense of Ukraine, and the Prosecutor General's Office of Ukraine.

23. The group works to elaborate standards of detention in places of freedom deprivation and develop proposals to improve the regulatory framework and bring it into line with international standards and the practice of the European Court of Human Rights.

24. According to article 13, section 8, of the Law on Ukrainian Parliament Commissioner for Human Rights, the NPM shall *organize and make systematic (scheduled and extraordinary) visits to places of deprivation of freedom* without prior notice about the time or purpose or the visit and without limitation of the number of visits, in order to prevent improper treatment, in particular acting jointly with the representatives of nongovernmental organizations.

25. The State Penitentiary Service of Ukraine shall not create obstacles for effective performance of the NPM functions. In particular, the NPM personnel shall have unobstructed access to institutions in the jurisdiction of the State Penitentiary Service of Ukraine.

26. In order to ensure cooperation with the Ombudsman on the aforementioned issues, the State Penitentiary Service of Ukraine issued order number 810 of November 30, 2012, according to which the administrations of territorial penitentiary agencies shall provide the required cooperation with the NPM personnel in the course of monitoring visits to penitentiary institutions and pretrial detention facilities.

27. The results of monitoring visits made it possible to identify systemic violations of the procedure of detention and service of sentences resulting in cruel or degrading treatment of detainees and convicts. Such relations include:

- unlawful use of physical force (beating);
- inhuman or harsh treatment of convicts and detainees by specific officers;
- unjustified restrictions, not provided for by the law, as well as abuse of security measures in relation to detainees and convicts;
- negative practice of engaging convicts for work connected with supervising the behavior of other convicts;
- unjustified transfers from one facility to another, applying disciplinary punishments, and restriction of TV viewing;
- non-objective official investigations, the inability to receive legal advice, and violation of the procedure for sending inquiries, precluding appeal against the actions by facility administrations.

28. The problem of nonconformity of the legally prescribed area in the pretrial detention rooms with the modern human rights standards remains unresolved.

29. There are problems related to inappropriate conditions of detention of convicts and arrested persons:

- the issues of placement and provision of living area are not being properly addressed, proper health and living conditions are not provided;
- the equipment is old and worn, residential premises, as well as utility grids, require ongoing or sometimes capital repairs;
- the majority of mass cells in pretrial detention facilities and penal institutions are dirty, walls are moist and covered with mold, there is barely any free space in the cluttered cells, the conditions are unsanitary, and a there is a foul smell;
- toilets are in an unsatisfactory technical condition, ventilation and lighting are insufficient or absent, etc.

2.4 On recommendations 97.75, 97.93-97.97, 97.103, 97.104

30. Ukrainian law provides for several safety measures to reduce the risks of torture or cruel treatment; unfortunately, most of them are not applied.

Explaining the person's rights immediately after detention

31. In the course of NPM interviews of detainees, it was established that in the vast majority of cases, the detained persons are not informed about their rights, although article 29, part three, of the Constitution of Ukraine, article 208, part four of the Criminal Procedure Code of Ukraine, article 5, part eight of the law of Ukraine On the Police, etc., authorized officers performing the detention are required to inform the detained person about his or her rights starting from the time of actual detention.

A person's right to immediately notify their relatives about being detained

32. This right is granted under article 29, part five of the Constitution of Ukraine, part one of article 213 of the Criminal Procedure Code of Ukraine.

33. Additionally, notification about detention of a person is required under article 5, part three, of the Law of Ukraine On Police. However, the aforementioned article provides for such notification within two hours after the person is detained, which is contrary to the aforementioned provisions of the Constitution and the Criminal Procedure Code of Ukraine.

Right to defense

34. This right is granted by article 29, part three, and article 62, part two, of the Constitution of Ukraine, article 20, part one, article 42, part three, section 3, and article 49, part one, section 2 of the Criminal Procedure Code of Ukraine. The Criminal Procedure Code of Ukraine specifies that a suspect has a right to receive legal assistance free of charge at the expense of the state in cases prescribed by the Code and/or the law regulating the provision of free-gratis legal assistance, in particular in case of lack of funds to pay for such assistance;

35. Additionally, article 5, part eight, of the law of Ukraine On the Police requires that police officers provide the defendant with the opportunity to use legal assistance starting from the time of detention, including free-gratis legal assistance according to the law regulating the provisions of free-gratis legal assistance.

36. According to article 14, part one, section 5 of the law of Ukraine On Free-Gratis Legal Assistance, persons detained on suspicion of a crime are entitled to free-gratis legal assistance. According to article 213, part four, of the Criminal Procedure Code of Ukraine, the officer performing the detention is required to immediately notify the

agency (institution) authorized by law for provision of free-gratis legal assistance and, if the defense counsel does not arrive within the time prescribed by the law, immediately notify such agency (institution).

37. At the same time, despite several imperative provisions on this issue, and even the existence of criminal liability for violation of the same (article 374 of the Criminal Code of Ukraine), the time for notification of free-gratis secondary legal assistance centers is not met, and sometimes the centers are not informed at all. Based on regular monitoring visits by the NPM to internal affairs agencies and numerous citizens' appeals to the Human Rights Commissioner about violation of their right to defense, it is safe to say that the right to defense is systematically violated in Ukraine.

38. Additionally, despite the wide prevalence of the aforementioned violations, only 15 criminal offenses related to violation of the right to defense were registered in 2014, two persons were notified of suspicion, but not a single officer was held criminally liable for violation of this fundamental human right.

Appointment of officers responsible for the holding of detainees at each pretrial investigation agency. Conflict of interest of the authorized officer responsible for the holding of detainees.

39. According to the provisions of article 212, section 1, of the criminal procedure code of Ukraine, each unit of a pretrial investigation agency shall appoint one or more officers responsible for the holding of detainees. The responsibilities of such officers shall include supervising the observance of the rights of detained persons during their stay at internal affairs agencies.

40. Unfortunately, in practice this safety measure is practically nonfunctional. In internal affairs agencies, such officers are either not appointed at all, or are appointed but fail to perform the responsibilities prescribed by the criminal procedure code.

41. Moreover, the only unit of the pretrial investigation agency is the investigations unit. Therefore, the person responsible for holding detainees is an officer of the investigations unit, which is contrary to section 2 of the aforementioned article.

42. As a consequence, the unit directly performing the investigation is at the same time responsible for the person detained on suspicion of the crime. Such a situation creates grounds for potential violations of rights and liberties of the detained person.

43. ***In addition, the law does not prescribe a way in which the officer responsible for holding the detainees is supposed to perform the duties prescribed by the Criminal Procedure Code of Ukraine, in particular recording all actions involving the detainee, documents (books/logs) where the detainee shall be registered, etc.***

44. Each internal affairs agency does have several books and logs for entries concerning the holding of detainees at the agency and procedural activities involving them. There are also provisions for several procedural documents to be prepared immediately after the person is detained (e.g. detention report, personal search and examination of possessed items). However, there is no "single personal file" for recording all aspects connected with the holding of the detainee and reflecting all measures taken in relation to the detained person starting from the first minutes of detention, such as: time when the person was deprived of freedom and motive(s) for such measure; time when the person was informed about his/her rights; registration of injuries and signs of mental illness, etc.; time of notification of relatives/counsel or attorney, as well as the time when such persons visited the detainee; the time when food was offered; the time of interrogation; the time when a person was transferred to another facility or released, etc.

45. Such a unified document may allow effective supervision of observance of the detained person's rights starting from the time of detention.

46. Meanwhile, in the vast majority of city, district, and transit departments, such registration is made either for form's sake only or selectively, which deprives it of the preventive function. Moreover, persons who are actually detained are often registered as invited, which effectively deprives them of protection from improper treatment, as guaranteed by the law.

Video recording of the persons' stay at the law enforcement agency

47. The directive of the Ministry of Internal Affairs of Ukraine No. 404 of September 16, 2009 provides for establishment of a video surveillance system at the entrances to city, district, and transit department, police station front offices, corridors, and investigation rooms, with archive storage of video information for at least one month.

48. Meanwhile, the NPM audits of internal affairs agencies determined that not all internal affairs agencies have the data archiving function and, where it is present, the video information storage time is usually much shorter than one month.

Restriction of the types of rooms were detained persons may be kept at an internal affairs agency

49. The Ukrainian law specifies an exhaustive list of places where various categories of persons deprived of freedom may be temporarily held.

50. At internal affairs agencies, persons may be temporarily detained at *detention rooms of internal affairs agencies*. For investigative activities with detained persons, internal affairs agencies are supposed to have specially equipped *investigation rooms*. Investigation rooms are intended for documenting of the facts of examination of persons delivered to internal affairs agencies and seizure of clothes and items with obvious traces of crime or prohibited for civilian use and require special permits for possession, personal belongings of the detained persons, questioning about the circumstances of crimes, as well as urgent and priority investigative actions (interrogations, face-to-face questioning, lineups, examinations, presentation of charges, etc.), as well as other activities involving persons detained on suspicion of crimes as provided for by the Ukrainian law according to the procedure prescribed by the Criminal Procedure Code of Ukraine.

51. In order to enable the aforementioned functions, the investigation room must be properly equipped, in particular by a video surveillance system with archive storage of data for at least one month (MIA directive of September 16, 2009 No. 404 On Protection of Human Rights in the Operation of Ukrainian Law Enforcement Agencies). The presence of such a system makes it possible to ensure the security of internal affairs officers during their contacts with detained persons, as well as eliminate risks of improper treatment of the latter.

52. Moreover, the Regulation on rooms for investigative actions and other activities at internal affairs agencies and units approved by the MIA directive of December 18, 2003 No. 1561 directly prohibits investigative actions and other activities provided for by the Ukrainian law (questioning, meetings with defense counsel, etc.) required for full, comprehensive, and objective investigation of circumstances of crimes with participation of persons detained on suspicion of such crimes in any rooms of internal affairs agencies and units except investigation rooms.

53. Therefore, the law permits holding detained persons in the following rooms: detention rooms of internal affairs agencies front-offices and investigation rooms.

54. In practice, however, detained persons stay in corridors and other rooms of internal affairs agencies for hours, and investigative actions are conducted mainly in the personal offices of investigators. In many internal affairs agencies, investigation rooms are either absent, not properly equipped, or are simply not used for their intended purpose.

2.5 On recommendations 97.75 and 97.104

55. There are regulations in Ukraine governing the registration of bodily injuries by medical personnel and facilities of the State Penitentiary Service of Ukraine, and prescribing the procedure for notification of appropriate agencies for investigation of possible effects of cruel treatment of detainees and convicts. However, in the course of monitoring visits, the NPM personnel has found multiple occasions of:

- failure to record bodily injuries in the respective documents;
- medical examination and description of bodily injuries by a medical professional for form's sake only;
- failure to provide detainees and convicts with certificates regarding bodily injuries found during medical examination as required by the current law.

2.6 On recommendation 97.100

56. The system for training of law enforcement personnel currently in place does not always meet the practical needs of the respective units and today's requirements for the training of highly qualified specialists in this area.

57. The departmental education system, despite the annually increasing number of graduates, does not fully satisfy the current needs for training of law enforcement officers. As a result of poor selection of candidates for training, low pay rates and insufficient social and legal protection of young specialists, deficiencies in the education process (gap between the theoretical skills of graduate students and the practice, insufficient practical experience, lack of attention to young specialists, and insufficient life experience of the graduates themselves), one in five young specialists with up to three years of professional experience resigns from the service.

58. Practical measures are being taken to organize training of management personnel of agencies and institutions in the jurisdiction of the State Penitentiary Service of Ukraine, sometimes involving international and national consultants on human rights and liberties.

59. However, the results of the NMP's sampling review of penitentiary officers' awareness of the current human rights standards, in particular as related to prevention of torture and improper treatment, demonstrate insufficient training in this area.

2.7 On recommendation 97.102

60. On each application concerning torture, the Ukrainian Ombudsman initiates proceedings, which involve sending inquiries demanding that an effective investigation be conducted and the Commissioner for Human Rights be informed about the investigation results. In addition, appropriate instructions are given to the the special proceedings department staff as well as the regional representatives of the Ukrainian Ombudsman. Under each special proceeding, the Commissioner for Human Rights sends a response statement to the Prosecutor General of Ukraine, as well as to the head of the respective ministry and department; the Commissioner also keeps track of the measures taken for implementation of the response statements.

61. In response statements, the Commissioner always draws the attention of the respective ministry and department head to the European Court of Human Rights case-law, which has on multiple occasions found violation of the procedural aspect of article 3 of the Convention, due to ineffective investigation of the applicant's claims about cruel treatment by police officers and the absence of impartiality and objectivity of investigation.

62. Article 214 of the Criminal Procedure Code of Ukraine requires that the officers authorized to conduct criminal proceedings make the respective entries in the Unified Registry of Pretrial Investigations and commence pretrial investigation not later than 24 hours after the submission of an application or notification about a crime, or finding out from any source about circumstances which may point to a criminal offense being committed. The current revision of this article does not contain any requirements for the applicants to provide reliable facts or information about criminal offenses when filing an application or notice of a criminal offense, since all circumstances of a criminal offense are to be established only in the course of criminal proceedings.

63. Unfortunately, the investigators of the prosecutor's office agencies in Ukraine often fail to comply with the provisions of article 214 of the Criminal Procedure Code of Ukraine regarding the time of commencement of the pretrial investigation and verification of the applicants' claims about ill-treatment. Failure to comply with the provisions of this article results in loss of evidence, as the evidence potentially important to establish the circumstances of the crime and identify the person or persons who committed a criminal offense may be lost or be impossible to receive later. As a consequence, this violates the rights to fair official investigation of cases of ill-treatment according to the European Court of Human Rights case-law.

2.8 On recommendation 97.135

64. In pursuance of its NPM function, the Ukrainian Ombudsman monitors the observance of the rights of persons held at mental/psychiatric and neurological hospitals.

65. In 2012–2015, 40 monitoring visits to psychiatric hospitals were made, including 5 repeated visits.

66. There were systemic problems identified in the course of the visits, in particular:

Absence of regulation of forced isolation and physical restraint measures to persons with mental disorders during treatment at psychiatric hospitals, which results in violation of their rights. Both self-made and industrially produced restraints are used at mental hospitals. In the penitentiary system, the criminal procedure code also permits the use of straitjackets and handcuffs on mentally ill persons, which is contrary to international standards.

- Violations in the practice of compulsory medical treatment: violations of the right for personal presence during a court session reviewing the cases for prolongation, modification, or termination of compulsory medical treatment, patients sent for treatment from pretrial detention facilities not having their passports; absence of a mechanism for the use of pension and social payments by the aforementioned group of patients, etc.

- Violation of children's rights during treatment at a Ukrainian intense-supervision psychiatric hospital: children staying in the same hospital room with adults, and absence of specialists in treatment and rehabilitation of children with mental disorders at the hospital.

- Violation of patients' rights for proper treatment conditions; in particular, at several hospitals there were problems with proper nutrition of patients, overcrowding, a lack of chairs, bedside chests, tables, and other furniture, making it impossible to create a proper treatment environment.

67. Based on the results of the Ombudsman's visits, several recommendations were sent to the Ministry of Health of Ukraine, and inquiries to the respective government agencies were made regarding systemic problems with observance of the patients' rights in order to improve the law and restore the patients' rights.

68. The Commissioner made recommendations on protection of the patients' rights in its 2014 Annual Report presented to Parliament.

III. Non-discrimination

3.1 On recommendations No. 97.26-28, 30, 55-56, 66

69. The law of Ukraine on Basic Principles of Preventing and Counteracting Discrimination in Ukraine (hereinafter "the Law") was adopted by the Verkhovna Rada of Ukraine on September 6, 2012, and became effective on October 4, 2014. The first provision of the Law had several deficiencies, pointed out in the final report on Ukraine by the UN Human Rights Committee in 2013 (UN Doc. CCPR / C / UKR / CO / 7, August 22, 2013, section 8) and the UN Committee on Economic, Social and Cultural Rights in 2014 (UN Doc. E / C.12 / UKR / CO / 6, June 13, 2014, section 7).

70. In order to improve the deficiencies in the Law, the Ministry of Justice of Ukraine, in close cooperation with the Ukrainian Ombudsman, drafted the Law of Ukraine On Amendment of Selected Legislative Instruments of Ukraine (on preventing and counteracting discrimination)." The draft law was adopted by the Verkhovna Rada of Ukraine on May 13, 2014, and came into force as the Law on May 30, 2014, becoming a significant improvement of the national antidiscrimination law.

71. The definition of the term *discrimination* given in article 1 of the Law fully corresponds to the definitions of this notion in international legal instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of Persons with Disabilities, as well as the interpretation of this notion by the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, and the European Court of Human Rights.

72. The list of grounds discrimination on which is prohibited is non-exhaustive (including "other grounds") and includes the possibility of discrimination by perception (where the offender assumes the victim's possession of certain characteristic – "real or perceived characteristics"), which fall under current international standards on non-discrimination.

73. In saying that discrimination most often manifest itself in specific forms, the new Law includes the following forms of prohibited discrimination (article 5):

- Direct discrimination
- Indirect discrimination
- Incitements to discrimination
- Aiding in discrimination
- Harassment

74. The list of forms of discrimination prohibited by the law, as well as definitions given to these forms (article 1 of the Law) correspond to the best global practices (interpretation of the UN Human Rights Committee, UN Committee on Economic, Social and Cultural Rights, and the European Court of Human Rights case-law) as well as to the provisions of the EU directives 2000/78/EC and 2000/43/EC.

75. Additionally, article 14 of the Law prohibits *victimization*, i.e. negative consequences for the person exercising his or her right to appeal against discrimination to any entity entrusted with antidiscrimination authority by the Law.

76. The scope of the Law is sufficiently wide and generally meets the requirements of international standards. The list of areas of social relations to which the Law is applicable is non-exhaustive. At the same time, the Law applies to relations between legal entities, which are agents under both public and private law, as well as between individuals (article 4 of the Law).

77. According to articles 14–16 of the Law, a person suffering from discrimination may appeal for protection of his or her rights to a court, Ukrainian Parliament Commissioner for Human Rights, as well as government agencies or local self-governance agencies, and demand payment of financial or moral damages. Violation of the provisions of the Law entails civil, administrative, and criminal responsibility.

78. The aforementioned Law amended article 60 of the Civil Procedure Code of Ukraine, implementing the principle of division of the burden of proof in discrimination cases, which is recognized in European practice (ECHR case-law : judgments in cases "*Nachova et al. vs Bulgaria*", *"Stoika vs. Romania",* EU directives 2000/78 and 2000/43). The said article of the Civil Procedure Code specifies that, "in discrimination-related cases, the plaintiff is required to provide factual data confirming that discrimination took place. In case such data are provided, the burden of proving the absence thereof shall lie with the defendant."

79. Meanwhile, there still remain many unresolved issues in the area of regulatory support for prevention of, and counteraction to, discrimination. First, the antidiscrimination law does not regulate the issue of prohibition of multiple discrimination and discrimination by association, the need for which follows, for instance, from article 2, section 2, of the International Covenant on Economic, Social and Cultural Rights (according to the interpretation of the Committee on Economic, Social and Cultural Rights described in General Remarks No. 20 of July 2, 2009 UN Doc. E/C.12/GC/20).

80. Second, the antidiscrimination provisions in numerous laws, primarily in the Laws of Ukraine On Promotion of Equal Rights and Opportunities for Women and Men and On the Base Principles of Social Security of Persons with Disabilities in Ukraine (as regards clearer prohibition and liability for discrimination by disability and refusal from reasonable recommendation), need to be brought into line with the provisions of the Law of Ukraine On Base Principles of Preventing and Counteracting Discrimination. Such internal harmonization of the regulatory framework would ensure unified standards and an equal level of protection from discrimination by all indicators and in all spheres of social life.

81. Third, the issue of criminalizing discrimination (article 161 of the Criminal Code of Ukraine) remains problematic, although instituting of criminal proceedings for discrimination is neither an effective nor a proportional way to prevent and counteract it, as confirmed by the European Court of Human Rights case-law and the practice of implementation of the aforementioned article 161 of the Criminal Code of Ukraine.

82. Fourth, proper regulation is required for implementation of positive actions and other special measures for removal of actual inequality in opportunities of groups of

persons who are in a less favorable situation due to certain characteristics (articles 1, 7, 12 of the Law). As demonstrated by the results of monitoring by the Commissioner for Human Rights, currently, government agencies barely implement such measures at all, in particular due to a lack of understanding of their content, procedure of implementation, and absence of appropriate binding provisions in the law.

3.2 On recommendation 97.30

83. In response to the joint inquiry by the Ministry of Justice of Ukraine and the Ministry of Foreign Affairs of Ukraine of May 7, 2014, the Higher Specialized Court of Ukraine for Review of Civil and Criminal Cases for Inferior Courts prepared the explanation "On proper provision for equal labor rights of citizens in the review of all disputes emerging in the area of labor relations" No. 10-644/0/4-14. In its explanation, the Court stated that, in order to properly ensure equal labor rights of Ukrainian citizens, one should take into account the provisions of the Law of Ukraine On Base Principles of Preventing and Counteracting Discrimination in Ukraine, and that "other characteristics" in the context of non-discrimination in labor relations should be understood as such characteristics as age, skin color, family status, sexual orientation, and other physical characteristics (weight, growth, speech disorders, etc.).

84. Although the explanations provided in the letter of the Higher Specialized Court are not binding, their presence is an important positive factor, since inferior courts will be aware that, if their judgments fail to take into account the standpoints expressed by the Higher Specialized Court of Ukraine, such judgments would be overruled at the appeal or cassation stage.

85. Furthermore, the resolution of the Cabinet of Ministers of Ukraine No. 847-r of September 17, 2014 adopted the Action Plan for Implementation of the Association Agreement between Ukraine, of one part, and the European Union, European Atomic Energy Community, and their member states, of the other part, for 2014 – 2017. Among the obligations for harmonization of the national law with European Union standards, Ukraine undertook those related to development, adoption, and implementation of regulations in pursuance of provisions of the Directive 2000/78/EC of November 27, 2000 on establishment of a general system of equal treatment in the area of employment and professional activities.

86. Since the aforementioned EU directive, among other things, contains a binding provision on prohibition of discrimination by sexual orientation in the context of labor relations, the Ministry of Social Policy of Ukraine included the respective guarantees to article 6 of the new draft of the Labor Code of Ukraine under development.

87. At the same time, the draft Labor Code developed by the Ministry of Social Policy of Ukraine was never registered with the Verkhovna Rada of Ukraine, whereas Draft 1658 on December 27, 2014, recommended as the basis by the Verkhovna Rada Committee on Social Policy, Employment, and Pension Support, does not contain clear guarantees against discrimination by sexual orientation (article 3 of the draft Labor Code of Ukraine).

3.3 On recommendations No. 97.24, 56, 69

88. As of the end of 2014, all draft laws concerning prohibition of, and liability for, the so-called homosexualism propaganda were revoked, rejected, or removed from the agenda of the Verkhovna Rada of Ukraine. In particular, these include the draft Law On amendment of selected legislative instruments (regarding the protection of children's rights to a safe informational environment) No. 8711 of June 20, 2011 (used as the base on October 2, 2012, and reregistered on December 12, 2012, under

No. 0945), and the draft law On prohibition of homosexual relations propaganda among children (No. 1155 of December 24, 2012).

3.4 On recommendations No. 97.38, 60, 65

89. The law of Ukraine on Base Principles of Preventing and Counteracting Discrimination in Ukraine specifies the following agencies as entities in the area of preventing and counteracting discrimination: 1) Verkhovna Rada of Ukraine, 2) the Parliament Commissioner for Human Rights, 3) Cabinet of Ministers of Ukraine, and 4) central and local government agencies and local self-governance agencies.

90. The authority of the Commissioner for Human Rights under the Law is to take measures for prevention of, and counteraction to, discrimination in the course of parliamentary supervision of observance of human and civil rights and liberties. The detailed list of the Commissioner's powers in this area, as provided below, in fact gives it the status of a proper independent national institution for equality and non-discrimination issues, the presence of which is recommended by international legal instruments and required by the EU Directives (2000/43/EC, 2000/78/EC).

91. The authority of the Commissioner includes:

- Monitoring and supervision of adherence to the principle of non-discrimination in all spheres of social relations
- Registration and analysis of discrimination cases
- Reviewing complaints about discrimination
- Making proposals for improvement of the antidiscrimination law
- Submission of claims of discrimination to protect the public interest, as well as participation in trial
- Preparation and submission of conclusions on discrimination upon the court inquiry
- Coverage of the issue of preventing and counteracting discrimination in the annual report
- Cooperation with international organizations and appropriate agencies of foreign countries on the matters of international standards for nondiscrimination
- Other powers specified in the Constitution of Ukraine, Law of Ukraine on Parliament Commissioner for Human Rights, other laws, etc.

92. Additionally, in May 2013, amendments to article 2 of the Law of Ukraine on Parliament Commissioner for Human Rights extended the Commissioner's competence to preventing and counteracting discrimination in private law relations, where the number of discrimination cases is traditionally the highest.

93. In order to ensure effective application of the antidiscrimination mechanism in Ukraine and support compliance with the constitutional principle of equality and non-discrimination, on November 15, 2013, the Human Rights Commissioner, with its directive No. 23/02-13, approved the *Strategy for Prevention of, and Counteraction to, Discrimination in Ukraine in 2014–2017*.

94. According to its general purpose, the Strategy provides for the following strategic goals, achievement of which would ensure proper supervision of compliance with the legal guarantees of equality and non-discrimination and a reduction in the number of violations, in particular against minority groups in society:

- Conformity of the national regulatory framework and judicial practice on equality and non-discrimination issues with international and European standards
- Effectiveness of the system for monitoring of compliance with the legal standards of equality and non-discrimination in the operation of government agencies and private law entities
- Effective response to separate or systemic manifestations of discrimination, and facilitation in restoration of rights.
- Effectiveness of the system for promotion of equality and non-discrimination principles by providing information and raising the awareness level on this issue.
- Functioning of strategic national and international coalitions for promotion of equality and non-discrimination principles.

95. The 2014 action plan approved on March 17, 2014 contained over 90 specific measures intended for implementation of each of the goals and each strategic objectives designated by the Strategy. According to the conclusion of the European Commission mission for evaluation of the 2nd phase of the Visa Liberalisation Action Plan for Ukraine, which visited Ukraine on February 9–13, 2015, the performance of the 2014 Action Plan and activity of the Commissioner for Human Rights for prevention and countering discrimination were generally effective, despite the lack of financial and human resources

3.5 On recommendations 97.76 and 78

96. Based on analysis of legal provisions for prevention of domestic violence, the Ukrainian Ombudsman declares that there is no effective mechanism for a person suffering from domestic violence to use his or her right to a defense.

97. The authority for protection of persons from domestic violence assigned to agencies and institutions are of a general nature. Even the name of the domestic violence prevention law targets the preventive measures instead of implementing an effective mechanism to protect the victims of family violence and hold the guilty parties liable. At the same time, a significant gap in the law is that its provisions apply to persons who are not family members but who reside together.

98. Additionally, the provisions establishing liability for domestic violence need to be reviewed. Article 15 of the Law of Ukraine On Prevention of Domestic Violence states that, “family members committing domestic violence shall incur criminal, administrative, or civil liability according to the law.” The current Criminal Code of Ukraine does not distinguish domestic violence as a separate crime; instead, it provides for liability for inflicting bodily injuries of various degrees of severity, torture, beating, and threat of murder. Commission of a criminal offense in the household environment is not even treated as an aggravating circumstance.

IV. Social and Economic Rights

4.1 On recommendation 97.2 and 97.142

99. Migration issues play a special role in Ukraine, since our country is simultaneously a mass migration donor, primarily in labor migration, a country receiving a large number of migrants (mainly from CIS countries), and a country on the root of transit migrants (including illegals) towards Western Europe.

100. Nevertheless, this range of problems has not been given sufficient attention by the state over the years of Ukraine’s independence, and the approach to state regulation of migration was neither systemic nor strategic. In particular, it cannot be

said that the state policy on regulation of external labor migration is effective or targets the prevention of loss of qualified personnel and the return of labor migrants.

101. Over the 23 years of independence, the Strategy of State Migration Policy of Ukraine has not been adopted as a law, although this is required by the Constitution of Ukraine.

102. It should be mentioned that some international documents determining the modern standards in the sphere of migration, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, have not been ratified by Ukraine, and therefore the provisions contained therein are not implemented in Ukrainian law.

103. In this regard, the Ukrainian Ombudsman has on multiple occasions stated and insisted that it is necessary to develop and adopt the Strategy of State Migration Policy of Ukraine and the law on external labor migration, as well as to ratify the international conventions on protection of labor migrants, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

104. It should be mentioned that based on the results of parliamentary hearings on "Ukrainian Labor Migration: Situation, Problems, and Possible Solutions" held on July 3, 2013, the Cabinet of Ministers of Ukraine instructed to take measures for signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

105. However, the idea of ratifying this convention was not supported by the government agencies, particularly the Ministry of Labor and Social Policy of Ukraine, according to which such ratification is not beneficial for Ukraine.

106. At the moment, an extremely difficult situation in the Ukrainian labor market exists due to internal displacement of persons caused by the occupation of Crimea and the events in the Eastern part of our country.

107. According to the State Employment Center, nearly 50,000 persons sought employment assistance, whereas only 9,000, or 7%, of employable displaced persons found jobs.

4.2 On recommendations 97.46 and 97.128

108. The results of parliamentary supervision by the Commissioner for Human Rights regarding the observance of citizens' rights to healthcare show that the healthcare system model inherited from the USSR, imperfect from economic and management standpoints, proved to be inefficient in the new economic conditions, which resulted in decreased availability of medical care for large population groups. The deficit of the healthcare sector budget, observed throughout Ukraine's independence, resulted in a significant deterioration of the quality of medical care and the health condition of the nation.

109. According to experts studying the current situation in the Ukrainian healthcare system, Ukraine has second highest mortality rates in Europe, which increased by 12.7% between 1991 and 2013. The employable population mortality makes up a quarter of the total.

110. One of the required conditions for proper medical care is financial support. The issue of providing citizens with accessible, high-quality, and diverse medical services currently remains problematic, as the State Budget of Ukraine, which is the source for funding of healthcare today, is unable to meet even half of its needs.

111. At the same time, despite the current law (Law of Ukraine on Base Principles of Mandatory State Social Insurance), the mechanism of supplementary funding of healthcare under social medical insurance is not being widely implemented.

112. The Human Rights Commissioner annually receives hundreds of applications from citizens complaining about violations of their healthcare rights guaranteed by the law, in particular a failure to provide the necessary medications (in particular at the expense of specialized state programs) and medical products, the high price of medications and treatments, including surgeries, insufficient funding of hospitals and polyclinics, etc.

113. The proceedings showed that the funding of targeted state programs, eight of which currently operate in the healthcare sector, does not meet the needs of patients. Along with a general lack of funding, the situation is additionally aggravated by delays in public procurement of medications.

114. For instance, the issue of observing the rights of patients with chronic myeloid leukemia for specialist treatment remains unresolved. In their submissions to the Commissioner, the applicants indicated that they require treatment by tyrosine kinase inhibitor drugs (Glivec and Tasigna), which are centrally procured at the expense of the State Budget of Ukraine.

115. The proceedings have shown that the 2013 state budget allocated UAH 64 million for procurement of the said medications, and, despite the funds being fully disbursed, they cover only 18% of needs. The supply level of tyrosine kinase inhibitor drugs was increased to 60% due to humanitarian aid from the pharmaceutical company Novartis-Pharma.

116. In this context, the Human Rights Commissioner pointed out that it is unacceptable to rely on humanitarian aid from third parties in the supply of vital medicines. Provision of humanitarian aid is voluntary and may be terminated at any time. In the given situation, this would mean almost complete termination of vital treatment for severely ill persons.

117. The available information about the status of procurement of the respective medicines in 2014 (UAH 59,861,813.40) shows no positive change in this respect.

118. Additionally, the Commissioner for Human Rights conducted two-year-long proceedings on the observance of the constitutional right for healthcare among persons suffering from rare (orphan) diseases.

119. The Commissioner’s monitoring shows that significant measures have been taken over the last year to resolve the problems of persons with rare diseases. For instance, the Law of Ukraine On Amendment of the Basic Principles of the Ukrainian Healthcare Law Regarding Prevention and Treatment of Rare (Orphan) Diseases of April 15, 2014 provides for lifelong provision of rare disease patients with treatment free of charge. Another Law, On amendment of the Law of Ukraine On Medications, regarding the improvement over the procedure for supply of medications for treatment of socially dangerous and severe diseases and dated August 12, 2014, is intended to give patients access to vital medications by simplifying the procedure of registering such medications in Ukraine.

120. Although after the adoption of the simplified registration procedure the drugs will be significantly easier for patients to obtain, situations where the required medication is unavailable remains possible.

121. For example, the parents of children with phenyl ketonuria and representatives of nongovernmental organizations raise the issue of improper public procurement of

medicinal nutrition for such patients, and complain about procurement of food unsuitable for a large number of children.

122. The Commissioner for Human Rights, believing it unacceptable that children with phenyl ketonuria face the threat of termination of treatment due to a delay in the bidding for procurement of medicinal nutrition, made the respective inquiry to the Ministry of Health of Ukraine. According to information provided by the Ministry, at the end of 2014 alone, the medicinal nutrition for children with phenyl ketonuria to a total amount of UAH 5,597,227.80 was centrally procured using the funds of the State Budget of Ukraine and distributed among territorial health care agencies.

123. The Ukrainian Ombudsman believes that, in order to resolve the problematic issues related to observance of institutional rights and state guarantees of persons with rare diseases, a nationwide system of comprehensive care must be established for such patients, ensuring that appropriate amendments to the existing regulations are made, or new regulations are adopted, which would take into account the needs of patients with rare diseases and conform with European standards in this area.

124. Among the resolution of other problems, the Ukrainian Ombudsman is engaged in providing proper treatment of viral hepatitis, one of the most severe medical and social problems.

125. According to the Ministry of Health, there are 650,000 to 1,000,000 people with the hepatitis C virus in Ukraine, however, reliable statistical data are not available due to the lack of large-scale screening studies and the concealed epidemic process. Thus the infection prevalence rates are different from source to source, ranging from 3% to 9% of the population. In any case, there are five times more people with hepatitis C in Ukraine than people with HIV/AIDS, and 5–6 times more than people living with HIV. The Ombudsman has received appeals, concerning improper supply of the respective group of patients with the necessary medications, which are supposed to be procured centrally at the expense of the State Budget of Ukraine under the State Targeted Social Program for Prevention, Diagnostics, and Treatment of Viral Hepatitis till 2016.

126. According to the information available, the funds allocated from the 2014 State Budget for purchase of medications for treatment of viral hepatitis exceeded UAH 83,000, which is significantly more than in 2013 (around UAH 30,000). In fact, the total price of such procurements in 2014 exceeded UAH 60,000, and the respective medications were distributed among the regions. The Law On 2015 State Budget of Ukraine allocates over UAH 140,000 for these purposes.

127. Welcoming the measures for increased funding of the program, the Commissioner still believes that the procedure for prevention, diagnostics, and treatment of viral hepatitis, in particular hepatitis C, still needs improvement. All possible measures should be taken to ensure timely and full funding of the respective program and procurement of medications.

4.3 On recommendation 97.129

128. The issues concerning the right to treatment of such socially dangerous infectious diseases as HIV/AIDS and tuberculosis receive special attention from the Ukrainian Ombudsman.

129. In spite of long-standing implementation of preventive, diagnostic, clinical, and other measures against HIV, the HIV/AIDS problem remains one of the most severe in the global and Ukrainian healthcare systems, and at the current stage has signs of an epidemic.

130. According to the State Service of Ukraine against HIV/AIDS and Other Socially Dangerous Diseases, as of January 1, 2014 there were 245,216 HIV-positive individuals among Ukrainian citizens (as compared to 234,257 in 2013) and 65,733 people with AIDS (in 2013, 62,288).

131. The main factor influencing the AIDS incidence, mortality, and prevalence rates is the axis of the respective population group to antiretroviral therapy (ART). As of January 1, 2014, there were 55,784 persons receiving such treatment (in 2013, 46,666). Of them, 51,044 were receiving treatment at healthcare facilities of the Ministry of Health of Ukraine, 2119 at the Hromashevskyi Epidemiology and Infectious Disease Institute of the National Academy of Medical Science of Ukraine, a state enterprise. An additional 2,621 persons were receiving antiretroviral therapy at the facilities of the Penitentiary Service of Ukraine at the expense of the Global Fund (in 2013, 1,764).

132. The treatment of persons receiving ART at the facilities of the Ministry of Health and Academy of Medical Science of Ukraine is paid for by: state budget – 43,790 patients (82.37%), Global Fund against AIDS, Tuberculosis, Malaria – 9,323 patients (17.54%), and 50 more persons (0.09%) by the AIDS Healthcare Foundation.

133. Although the state has reached some progress in the provision of ART to people living with HIV, **the number of patients dying from HIV-related diseases continues to increase.** In 2013, there were 6,374 deaths of HIV positive individuals, including 69 children. The statistical data show that the mortality rate among HIV-positive persons not receiving ART exceeded the mortality of those receiving the treatment (9.7 and 4.3 per 100,000 population, respectively), which shows the importance of antiretroviral treatment for a significant reduction of mortality among HIV-positive individuals.

134. According to the NPM conclusions, the state institutions where HIV-positive individuals are held (State Penitentiary Service facilities, facilities of the Ministry of Social Policy and the Ministry of Health) do not always cooperate effectively with nongovernmental organizations, and have insufficient staffing coordination and provision of access to the full range of possible services for prevention, treatment, and social follow-up of HIV-positive individuals.

135. In order to coordinate the efforts of the government agencies and local self-governance agencies, nongovernmental organizations, and international organizations against HIV/AIDS, the National Council against Tuberculosis and HIV/AIDS was established as an advisory and consultative agency under the Cabinet of Ministers of Ukraine, with a representative of the Ukrainian Ombudsman among the members of the Council.

4.4 On recommendation 97.130

136. One of the priority areas in the activities of the Ukrainian Ombudsman is the supervision of observance of the constitutional human right for health and epidemic well-being and protection from infectious diseases through vaccination.

137. The monitoring of the immunological prevention activities situation in Ukraine, conducted by the Ombudsman over the last two years, shows significant problems in this area. Despite the coverage of children by preventive vaccination, as recommended by the WHO (at least 95%), the actual coverage by vaccination in our country is significantly lower.

138. The available information about the coverage of children by preventative vaccination against infections regulated by the vaccination schedule gives rise to

concern. For instance, over the eight months of 2014, the respective indicators in Ukraine did not exceed 35 to 40% (e.g., BCG, polio under one year, MMR vaccine), were under 30% on some vaccines (e.g. hepatitis B-3 vaccine under one year), and even lower than 15% on some parameters (BCG vaccination at the age of 7).

139. Such low coverage of children by vaccination is partly explained by medical contraindications and parents' refusals for various reasons, but the **main factor remains the insufficient supply with vaccines, which are centrally procured and supplied**.

140. A vivid example in the area of vaccination was the situation of spring 2014, when all regions of the country faced the problem of impossibility to perform vaccination against tuberculosis due to expiry of the state registration certificate of the Russian-made vaccine available at the healthcare facilities. The registration renewal was initiated, but the manufacturer did not have all the requisite documents (this refers to the production conditions conformity certificate). Using unregistered medications is prohibited by law.

141. According to the Ministry of Health, to which the Ukraine Ombudsman made multiple inquiries in connection with the situation, there was a significant reserve of vaccines suitable for use, which could not be applied due to such legislative prohibition to use unregistered medications.

142. As of the beginning of the fall, the situation was critical, especially considering the prevalence of tuberculosis in Ukraine. The situation was resolved only by the Law On Amendment of the Law of Ukraine on Medications (No. 4459 of October 20, 2014). The amendments to articles 9 and 17 of the law on medications removed the requirement for regular renewal of registration of all medicinal products after initial renewal of registration, and permits using the medicine until the end of their shelf life even if the state registration certificate of such medications has expired.

143. Immunologists say that the critical vaccine supply situation in Ukraine may repeat in 2015. According to specialists, there is already a significant deficit of antituberculosis vaccines and preparations for infants under one year, as well as vaccines for children under six and adults.

144. The draft law developed in order to resolve the problematic issues of procurement of respective medications, among other things, permits such procurements via international organizations. On March 19, the respective law (No. 2150) was adopted by the Verkhovna Rada of Ukraine, and submitted for signature by the President of Ukraine on April 3.

145. If the Law is signed by the President, the issue of detailed regulation of the respective procedures will have to be addressed as quickly as possible. Any delays in this regard are unacceptable, as they may bring back last year's situation when the vaccination was in fact not provided (or provided to a very low extent).

4.5 On recommendations No. 97.16, 97.43, and 97.134

146. In pursuance of the UN Convention on the Rights of Persons with Disabilities and the Law of Ukraine On Basic Principles of Social Security of Persons with Disabilities in Ukraine, which defines the content of the national policy of Ukraine in the provision of constitutional rights of persons with disabilities, several Decrees of the President of Ukraine, resolutions and directives of the Cabinet of Ministers of Ukraine, and executive government agency regulations were issued, providing for measures for maximum improvement on the situation for persons with disabilities.

147. In particular, the resolution of the Cabinet of Ministers of Ukraine of August 1, 2012 No. 706 approved the State Targeted Program "National Action Plan for

Implementation of the Convention on the Rights of Persons with Disabilities by 2020", the purpose of which is to support the rights of persons with disabilities and meet their needs on an equal basis with other citizens, as well as to improve their living conditions according to the Convention on the Rights of Persons with Disabilities.

148. However, most provisions of legislative instruments and regulations related to protection of constitutional rights of persons with disabilities remain mere declarations, since a significant part of the rights of such persons are not fully enforced in practice; they are not provided with appropriate conditions which would allow them to lead a normal life according to their personal abilities, skills, and interests.

149. The main cause is insufficient funding for programs and events related to the support of the rights of persons with disabilities.

150. At the same time, legislation in the following areas needs to be brought into line with the requirements of the Convention:

- **social security of persons with disabilities,** because the existing social security system does not provide them with the proper level of, and opportunities for, rehabilitation services according to a personal rehabilitation program (including health improvement resorts, technical and other rehabilitation means, pharmaceutical treatment, etc.)

- **employment of persons with disabilities,** because the current law does not stimulate the employers to create jobs for this population group within the quota prescribed by law (4% of the total number of employees). In practice, only 55% of companies meet the prescribed level, as it is easier for them to pay a fine then create a job for a person with disabilities.

- **education:** as regards the basic principles, guarantees, and standards of education for children with special needs, in particular, the need for implementation of an inclusive teaching model in the education system, and providing persons with disabilities and other limited mobility population groups with unobstructed access to education, science, youth, and sports facilities.

151. The majority of public and civil facilities, urban amenities, transport infrastructure, road service, information, communication, etc. remain **not properly equipped for unobstructed access** by persons with disabilities.

152. The current mechanism for protection of adults with disabilities caused by mental disorders, which consists in declaring them legally incapable by court and establishing complete guardianship over them, with all decisions and legal acts made by a guardian on their behalf, does not meet the international obligations of the state. The existing mechanism limits the rights of such persons for equality and nondiscrimination, access to justice, an independent way of life and participation in local community life, the right to create a family, voting rights, etc.

153. In particular, persons currently under guardianship are deprived of the right to appeal against actions or inaction of their guardians in case the latter fail to perform their responsibilities, because, under article 8 of the Law of Ukraine On Citizens' Appeals, appeals from citizens declared legally incapable by court shall not be reviewed.

154. The status of legally incapable persons in Ukraine also deprives them of the right to recourse directly to court: according to article 121, part three, section 2 of the Civil Procedure Code of Ukraine, a statement of claim filed by a legally incapable person shall be returned to such person. The absence of administrative procedural legal

capacity, established according to article 48 of the Administrative Court Proceedings Code of Ukraine, makes it impossible for legally incapable persons to file an administrative claim with a court in case of infringement of the rights by guardianship agencies or guardians.

155. The persons declared fully or partly legally incapable by court are also unable to directly use their right to free-gratis legal assistance, because, according to article 10, part three of the Law of Ukraine on Free-Gratis Legal Assistance, one of their guardians are allowed to apply for one of the types of legal services.

V. Other Issues

5.1 On recommendation 97.17

156. According to paragraphs 45 and 46 of the internal regulations of the Cabinet of Ministers of Ukraine approved by Resolution No. 950 of the Cabinet of Ministers of Ukraine of July 18, 2007, the Ministry of Justice of Ukraine shall audit the government's draft laws for conformity with the international obligations of Ukraine, in particular the European Convention on Human Rights. However, according to paragraph 47 of the government regulations, if the Ministry of Justice determines that a legislative instrument drafted by the Cabinet of Ministers does not conform with the Constitution and the Laws of Ukraine or decrees of the President of Ukraine, the resolution on such draft is made at a meeting of the Cabinet of Ministers. Thus, nonconformity with the Constitution and the Laws of Ukraine or decrees of the Present of Ukraine and Ukraine's international obligations do not constitute grounds for a draft law to be rejected by the Government.

157. According to article 103 of the Law of Ukraine On the Internal Regulations on Verkhovna Rada of Ukraine, a draft law shall be verified for conformity with the international obligations of Ukraine, particularly the European Convention on Human Rights, only upon instruction from the Chairman of the Verkhovna Rada of Ukraine, his or her deputies, or based on the resolution of the main committee. The conclusions produced by the verification are sent to the main specialist committee and are not binding on it. The situation creates real grounds for adoption of draft laws which are contrary to Ukraine's international obligations regarding human rights.

5.2 On recommendation 97.45

158. According to the 8th annual reports by the Committee of Ministers of the Council of Europe, and according to the results of monitoring by the Ukrainian Ombudsman, all judgments of the European Court of Human Rights concerning systemic problems (including pilot judgments), particularly in cases in the following groups, remain unperformed:

- Afanasiev (group of 37 cases) and Kaverzin: cases related to law enforcement brutality and absence of effective investigation of such claims.

- Kharchenko (group of 33 cases): cases concerning violations related to detention according to the old Criminal Procedure Code; moreover, in 2014 the European Court made its judgment in the case Chanev vs Ukraine, in which the Court made a conclusion about the existence of a systemic problem which consists in the new Code's lack of regulation of the issue of detention from the time of indictment being sent to court and until the time of preliminary court session. The court underscored that the deficiencies were not eliminated in the new criminal procedure code.

- Svitlana Naumenko (group of 200 cases) and Merit (group 68 cases): case concerning excessive duration of proceedings in civil and criminal cases.

- Verentsov and Shmushkovych: cases related to restriction of freedom of gatherings in the absence of legislative regulation of this issue.

- Zhovnir (group of 419 cases) and Yurii Mykolaiovych Ivanov (pilot judgment): cases concerning long-standing failures to perform judgments of national courts and a lack of effective means to protect the right to a fair trial as regards proper and timely performance of binding court judgments.

- Oleksandr Volkov: a case regarding absence of an independent judicial branch of power and absence of a clear procedure of disciplinary liability for judges.

159. In addition, on February 5, 2015, The Great Chamber of the European Court made the first judgment concerning Ukraine in the case "Bochan vs Ukraine (No. 2)", declaring that the plaintiff's rights guaranteed by article 6 of the Convention were violated by the refusal of the Supreme Court of Ukraine to review the plaintiff's case based on the judgment of the European Court in it.

160. As of today, all of the cases concerning violation of the right to a fair trial continue to be monitored by the Committee of Ministers of the Council of Europe, which means they were not fully complied with. Also, so far there are no new judgments of the European Court analyzing the provisions of the new criminal procedure code as regards protection of rights, liberties, and interests of persons involved in criminal proceedings.

5.3 On recommendation 97.123

161. The regulations governing the organization and holding of peaceful gatherings at the national level, and specify the liability for offenses in this sphere, are the constriction of Ukraine, the cabinet, a special section in the Code of Administrative Court Proceedings, as well as judgment No. 4-rp/2001 of the constitutional court of Ukraine of April 19, 2001.

162. Article 39 of the Constitution of Ukraine guarantees the right for peaceful gathering without weapons, and the right to hold meetings, rallies, marches, and demonstrations, notifying the executive government agencies or local self-governance agencies in advance.

163. This right may be restricted by court according to the law and only in the interests of national security and public order in order to prevent unrest or crimes, for protection of public health, or protection of rights and liberties of other persons.

164. At the moment, there is not even a registered draft base law governing the organization and holding of peaceful gathering of citizens. The absence of such a law results in the legislative gaps being filled by subordinate legislation of local self-governance agencies, unjustified prohibitions of peaceful gatherings administered to courts, administrative liability for participants of peaceful gatherings, human rights violations by internal affairs agencies, the imposition of various restrictions on peaceful gatherings by local government agencies, and unlawful use of the provisions of the Decree of the Presidium of the Supreme Council of the USSR No. 9306 of July 28, 1988 On the Procedure for Organization and Performance of Meetings, Rallies, Street Marches, and Demonstrations in the USSR.

165. In fact, not a single legal instrument today requires the state to fulfill its positive obligations in relation to the participants of gatherings, guarantees of their safety, and guarantees for protection of other persons and property. The failure of the states to fulfill such obligations is, unfortunately, a ubiquitous phenomenon, which, considering the practice of the European Court and according to article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, is a direct violation of the freedom of peaceful gatherings.

166. It should be mentioned that observance of the freedom of peaceful gatherings and holding liable the officials guilty of unlawful termination of protest rallies and beating the participants of such rallies were among the main demands of the Revolution of Dignity (November 2013 – February 2014).

167. The absence of a law which would guarantee the protection of peaceful gatherings results, and will result, in case-by-case regulation of this guarantee and application of the provisions of the Decree of the Presidium of the Supreme Council of the USSR No. 9306 of July 28, 1988. Canceling such procedures does not guarantee that local self-governance agencies will not adopt further documents restricting participation in peaceful gatherings.

5.4 On recommendation 97.118

168. The data centers of *Datagroup* and *NetAssist* companies were searched by the officers of the Security Service of Ukraine; as a result, servers belonging to companies which were customers of the Nic.ua domain name registrar, *Nic.ua* and *Service online* companies. The search warrant was issued by the Pecherskyi District Court of Kyiv.

169. A short time before the *Nic.ua* incident, the amendments to articles 159 and 168 of the Criminal Procedure Code of Ukraine on the procedure of seizure of telecommunications equipment became effective. The court resolution must list specific equipment to be seized, instead of simply indicating “server equipment”.

170. Four domain names registered via Nic.ua were used by separatist websites containing calls against the constitutional order and inviolability of Ukraine.

171. The register that is in place operates in relation to the websites themselves: its actions consisted in recording the domain names in the registry. The websites and the servers hosting them were located outside Ukraine; thus the seizure of Nic.ua servers did not harm the separatists.

172. Instead, 30,000 other customers of Nic.ua were harmed, with their resources becoming fully or partly unavailable.

173. The entities who suffered from this included mass media: watcher.com.ua and politkor.info. Many customers have already filed complaints and calculated their losses. State institutions and nongovernmental organizations were also harmed.

174. The websites of the Central Library and the network of libraries for adults in Dnepropetrovsk, Dnipropetrovsk Polytechnic College, the State Service for Mining Supervision and Industrial Safety in Kyiv, the Red Cross, and websites of some village and district councils are down.

5.5 On recommendations 97.119 and 97.120

175. The arrests of Ruslan Kotsaba, a blogger from Ivano-Frankivsk, and Andrii Zakharchuk, a Ukrainian citizen working as a reporter for *Nevskie novosti*, suspected of high treason by the State Security Service, demonstrate that any criticism of the actions of Ukrainian government officials may be seen as treason, and other reporters working for Russian mass media may also be treated as criminals.