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COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Ukraine
from 19 to 26 November 2011

Administration of justice and protection of human rights
in the justice system in Ukraine

Summary

Commissioner Thomas Hammarberg and his delegation visited Ukraine from 19 to 26 November 2011. During the visit, the Commissioner held discussions on the topics of administration of justice and the level of protection of human rights in the justice system in Ukraine. He paid particular attention to the ongoing reforms in the criminal justice system, including issues relating to the independence and effectiveness of the judiciary and the observance of the right to a fair trial during judicial proceedings.

Since the Commissioner's previous visit in December 2006, a number of important legislative initiatives have been undertaken by the authorities with a view to reforming the justice system. However, substantial constitutional, legislative, institutional and practical reforms are still needed in Ukraine in order to meet the requirements of the European Convention for Human Rights and to remedy the long-standing, systemic problems in the administration of justice highlighted in the case-law of the European Court of Human Rights (hereinafter "the ECtHR"). This is necessary not only to improve the protection of human rights in Ukraine but also to increase public trust in the justice system.

The present report focuses on the following major issues:

I. Functioning of the judiciary

The Commissioner recommended that the overall organisation of the judiciary should be thoroughly reviewed with a view to clarifying fully the respective roles and jurisdiction of different levels in the court system, in particular at the cassation level. In addition, further measures are needed to increase transparency of the judicial system and make it more open to public scrutiny.

An effective and efficient judiciary also requires appropriate working conditions and sufficient resources. There are presently problems regarding the recruitment of a sufficient number of judges and the provision of adequate support staff and equipment.

II. Issues relating to the independence and impartiality of judges

The independence of the judiciary – which also implies the independence of each individual judge - should be protected both in law and in practice. The Commissioner noted with concern that, in the public perception in Ukraine, judges are not shielded from outside pressure, including of a political nature. Decisive action is needed on several fronts to remove the factors which render judges vulnerable and weaken their independence. The authorities should carefully look into any allegations of improper political or other influence or interference in the work of the judicial institutions and ensure effective remedies.

The Commissioner calls upon the Ukrainian authorities to fully implement the Venice Commission's recommendations regarding the need to streamline and clarify the procedures and criteria related to the appointment and dismissal of judges, as well as the application of disciplinary measures. It is essential to institute adequate safeguards to ensure fairness and eliminate the risk of politicisation in disciplinary procedures. As for the judicial appointment process, the qualifications and merit of the individual candidates should be decisive.

The present composition of the High Council of Justice does not correspond to international standards and should be changed; this will require constitutional amendment. Further measures are needed to reinforce the independence of this institution and of the High Qualification Commission of Judges. It is also important to provide quality on-going training for judges, including on the jurisprudence of the ECtHR.

III. Criminal justice reform and access to justice

The Ukrainian authorities are taking important steps to reform the criminal justice system. To this end, a new draft Criminal Procedure Code is being developed, in close co-operation with Council of Europe experts. The protection of the right to a fair trial should be central to these efforts, as the current criminal justice system continues to be tilted significantly in favour of the prosecution, a situation which relates to the legacy of the Soviet past. It is important to ensure that the new Criminal Procedure Code will re-balance the system by providing for increased defence rights. Vigorous efforts are needed to ensure that

fair trial guarantees as well as the principle of equality of arms are respected, in accordance with Article 6 of the European Convention on Human Rights.

The Commissioner is concerned by reports of abusive prosecutions, harassment, and other forms of pressure on lawyers. Such pressure seriously impairs defence rights and prevents lawyers from effectively serving the cause of justice.

The Commissioner noted the policy initiatives in the area of juvenile justice and encourages the authorities to pursue their efforts towards reform, recalling that in cases involving juveniles, deprivation of liberty should be imposed only as a measure of last resort and for the shortest possible time.

IV. Systemic problems in the administration of justice

The ongoing reform of the criminal justice system represents a unique opportunity to address a number of structural problems identified in the judgments of the ECtHR relating to Ukraine, including excessively lengthy judicial proceedings, non-enforcement of domestic judicial rulings and the abusive use of remand in custody.

Detention on remand must always be exceptional, and each individual case must be properly justified. The Commissioner welcomed the authorities' intention to reduce the extensive use of the preventive measure of remand in custody and decrease the number of remand prisoners, including by introducing non-custodial preventive measures and curtailing further the time limits on detention on remand. There is also a need to transform attitudes in this area, including through training on the case-law of the ECtHR for judicial and prosecutorial authorities.

The Commissioner recommended that the authorities introduce effective remedies against excessive length of proceedings and unjustified remand in custody. Defence lawyers should have free and unimpeded access to their clients in places of deprivation of liberty and all those in need should have the possibility to receive free legal assistance.

V. Combating impunity

The authorities should take urgent measures to reinforce a message of "zero-tolerance" of ill-treatment by police officers and to demonstrate an unequivocal commitment to combating impunity for such acts. Every effort should be made to remove the existing obstacles to accountability for law enforcement officials, and to ensure that any criminal act committed by them is effectively investigated by the competent authorities, in full compliance with the criteria established by the ECtHR.

The mechanisms for ensuring democratic oversight of the law-enforcement and security structures should be strengthened. Further efforts are needed to ensure that persons who have a legitimate complaint against those institutions can seek redress before an independent body.

The Ukraine authorities' comments on the Report are appended.

Introduction

1. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, conducted a visit to Ukraine from 19 to 26 November 2011.¹ The purpose of the visit was to assess the situation of the administration of justice and level of protection of human rights in the justice system in Ukraine. The Commissioner paid particular attention to the ongoing reforms in the criminal justice system, including issues relating to the independence and effectiveness of the judiciary and the observance of the right to a fair trial during judicial proceedings. In addition, the Commissioner visited for the first time the Autonomous Republic of Crimea.
2. In the course of the visit, the Commissioner held in Kyiv discussions with representatives of the national authorities, including the Minister of Justice, Mr Olexandr Lavrynovych, the Minister of the Interior, Mr Vitaliy Zakharchenko, the Speaker of the Parliament, Mr Volodymyr Lytvyn, the Head of the Security Service of Ukraine, Mr Valeriy Khoroshkovskiy, and the Minister of Foreign Affairs, Mr Kostyantyn Hryshchenko. In the Presidential Administration, the Commissioner had exchanges with the Advisers to the President of Ukraine on judiciary, media and legal matters.² He also held discussions with the Deputy Prosecutor General, Mr Myhailo Havryliuk and members of the Ukrainian delegation to the Parliamentary Assembly of the Council of Europe, as well as representatives of the High Specialised Court on Criminal and Civil Cases, the Supreme Court of Ukraine and the Constitutional Court of Ukraine.
3. The Commissioner also had an exchange of views with the Ukrainian Ombudsman, Ms Nina Karpachova, and wishes to express his gratitude for the continuing close co-operation with her Office. In addition, the Commissioner had discussions with lawyers, the media and civil society representatives.
4. During his visit to Simferopol (Crimea), the Commissioner met the Prime Minister of the Autonomous Republic of Crimea, Mr Anatolii Mohyliov, as well as the Speaker, Mr Vladimir Konstantinov, and members of the Parliament of the Republic.³
5. The Commissioner would like to express his gratitude to the Ukrainian authorities, and in particular the Permanent Representation of Ukraine to the Council of Europe, for their helpful assistance in organising the visit. He wishes to thank all of his interlocutors for their willingness to share their knowledge and insights.
6. The present report contains the Commissioner's observations as regards some of the most serious problems related to the level of the protection of human rights in the justice system of Ukraine, as well as his recommendations on ways to find solutions to them.

General context

7. In the report following his previous visit to Ukraine in December 2006, the Commissioner underlined that the reform of the judiciary should be conducted in co-ordination with all other related reforms "i.e. those of the public prosecutor's office, pre-trial investigation, legal aid, the system of execution of judgments, admission to the legal profession, notary system, and the penitentiary."⁴ The reform of the judiciary in line with European standards was among the key commitments undertaken by Ukraine when it joined the Council of Europe.⁵

¹ During the visit the Commissioner was accompanied by the Deputy to the Director of his Office, Ms Bojana Urumova, and his Adviser, Ms Olena Petsun.

² Mr Andriy Portnov, Ms Olena Lukash and Ms Hanna Herman.

³ The Commissioner also visited one of the Crimean Tatar settlements close to Simferopol, and had meetings with the local civil society organisations and representatives of various local ethnic communities.

⁴ [CommDH\(2007\)15](#), Chapter XIII, § 1.

⁵ See PACE Opinion No. 190 (1995), § 11.v (on the adoption of a framework-act on legal and judicial reforms and a new criminal code and code of criminal procedure); § 11. vi (on the role and functions of the Prosecutor's Office);

8. Significant legislative efforts have taken place in recent years with a view to reforming the judiciary in Ukraine. In July 2010 the Law on the Judiciary and the Status of Judges was adopted. The European Commission for Democracy Through Law (the Venice Commission) delivered an expert opinion on this law in October 2010 and noted certain shortcomings relating inter alia to the system of the courts, the procedure of appointment of judges, and judicial self-administration.⁶ The Venice Commission also assessed subsequent draft amendments⁷ to the above-mentioned law which were proposed by the Ukrainian authorities via the National Commission for Strengthening Democracy and the Rule of Law.⁸ The Venice Commission found that the draft amendments presented a number of important improvements as compared to the current law, in particular as regards the strengthening of judicial independence in a number of areas, the restoration of certain important competences of the Supreme Court, and the manner of organisation of disciplinary proceedings. However, there are certain key areas of reform (in particular, vis-à-vis the role of the legislature and the executive in the appointment and dismissal of judges) which cannot be implemented without amending the Constitution.⁹
9. The Venice Commission has also assessed the Law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal which was passed by the Parliament in May 2010.¹⁰ This Law specifies the procedures for appealing against decisions of the High Council of Justice, as well as the President and the Parliament, which relate to certain important matters, including in relation to discipline or dismissal of judges.
10. On 20 October 2011 the Parliament adopted the Law on amendments to some legal acts regarding the examination of cases by the Supreme Court of Ukraine. This Law allows the Supreme Court to recover some of its competences which had been removed by the Law on the Judiciary and the Status of Judges of July 2010. In November 2011, the Parliament also adopted legislation decriminalising certain categories of economic offences, and stipulating that violators of the provisions concerned will incur only administrative and not criminal liability.
11. Recent legislative developments have also taken place in relation to the prosecutorial authorities and the legal profession. The Venice Commission issued an opinion in October 2011 on the draft Law on the Bar and Practice of Law which was drawn up by the National Commission for Strengthening Democracy and Rule of Law.¹¹ At the time of the Commissioner's visit, the President of Ukraine issued an order (22 November 2011) establishing a working group to prepare reforms of the Prosecutor General's Office and the Bar, to be chaired by one of the Advisers in the Presidential Administration.¹² Another legislative development of key importance to the judiciary which is currently underway is the preparation of a new Criminal Procedure Code, in consultation with Council of Europe experts.

§11.viii (on the independence of the judiciary in conformity with Council of Europe standards); and § 11.ix (on the status of the legal profession and a professional bar association).

⁶ Both the Venice Commission and the Ukrainian Ombudsman urged to introduce the necessary amendments, including constitutional ones, to address the shortcomings of the reform and to ensure compliance with the European standards.

⁷ At the time of drafting of this report, it was not clear what further steps would be taken with respect to this draft legislation.

⁸ The Commission is a consultative body to the President of Ukraine and is currently chaired by Mr Serhiy Holovaty, member of the *Verkhovna Rada* (Parliament) of Ukraine.

⁹ Joint Opinion on the draft Law amending the Law on the Judiciary and the Status of Judges and other legislative acts of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe, [CDL-AD\(2011\)033](#), §§ 6 and 77-79.

¹⁰ Joint Opinion on the Law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, [CDL-AD\(2010\)029](#), 18 October 2010.

¹¹ Joint Opinion on the draft Law on the Bar and Practice of Law of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe, [CDL-AD\(2011\)039](#), 18 October 2011.

¹² <http://www.president.gov.ua/documents/14200.html>

12. The European Court of Human Rights has examined a number of cases related to the functioning of the justice system in Ukraine, finding violations of Articles 5 (right to liberty and security) and 6 (right to a fair trial) of the European Convention of Human Rights (hereinafter “the Convention” or “ECHR”)¹³. In addition, the role of the judicial authorities has often been examined by the Court in cases concerning Articles 2 (right to life) and 3 (prohibition of torture) of the Convention, often in combination with Article 13 (right to an effective remedy), notably in connection with a failure by the respondent State to conduct effective investigations resulting in impunity for state actors.

I. Functioning of the judiciary

a *Organisation of the judicial system*

13. The Ukrainian judiciary system is fairly complex and consists of four levels of general jurisdiction: 1) local “general” courts (combining criminal and civil jurisdiction) and local specialised courts (either commercial or administrative jurisdiction); 2) appellate courts (combining criminal and civil jurisdiction) and appellate specialised courts (either commercial or administrative jurisdiction); 3) high courts with specialised jurisdiction, comprising the High Specialised Court on Civil and Criminal Cases, the High Administrative Court of Ukraine, and the High Commercial Court of Ukraine; and 4) the Supreme Court of Ukraine. Based on the information the Commissioner received during the visit, it would appear that under the current arrangements the Supreme Court will only exceptionally take up a case for further consideration, which in practice could mean that cassation proceedings before a specialised court would be the last instance of domestic judicial review. However, the exact division of responsibilities between various courts remains unclear and is subject to different interpretations.
14. The Venice Commission underlined in its Opinion on the Law on the Judiciary and the Status of Judges that a very elaborate and complicated judicial system carries with it the risk of prolongation of proceedings. For its part, the European Court for Human Rights emphasises in its judgments that the Convention obliges State parties to “organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time”.¹⁴ In a number of judgments against Ukraine, the Court has found a violation of the right to a fair trial due to the excessive length of judicial proceedings (cf paragraph 83 below). However, fundamental changes to the system can only be introduced through constitutional amendment.
15. According to Article 6 of the European Convention of Human Rights, a court must be established by law. Article 106 of the Constitution of Ukraine provides for the establishment of courts by the President. The procedure is specified in Section 19 of the Law on the Judiciary and the Status of Judges¹⁵. The European Commission on Human Rights has underlined in this regard that the courts should be created by an act of Parliament rather than being dependent on the discretion of the executive power.¹⁶

b *The role of the Constitutional Court*

16. The Constitutional Court is the sole legal body for constitutional review in Ukraine. It was created in October 1996 and its activities are regulated by the Constitution (Chapter XII) and the Law on the Constitutional Court of Ukraine.¹⁷ The Court examines the constitutionality of legal acts (laws and regulations) and interprets the Constitution. The President, at least 45 members of Parliament, the Supreme Court, the Ombudsman and the Supreme Council of the Autonomous Republic of Crimea have the right to make a constitutional submission requesting a ruling on the constitutionality of a

¹³ There are 28 judgements related to violations of Article 5 and 37 judgments related to violations of Article 6.

¹⁴ *Süssmann v. Germany*, judgment of 16 September 1996

¹⁵ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2453-17>

¹⁶ Cf. *Zand v. Austria*, 7360/76 (16 May 1977) and *Stieringer v. Germany*, 28899/95 (25 November 1996).

¹⁷ <http://www.ccu.gov.ua/doccatalog/document?id=10714>

legal act or a treaty. In addition, the Speaker of Parliament has the right to a constitutional submission regarding the constitutionality of a President's impeachment. Citizens of Ukraine, foreigners and stateless persons, as well as legal persons, have the right to request through individual petition the interpretation of the Constitution or laws of Ukraine with a view to securing the fulfilment and protection of constitutional rights and freedoms.

17. The Commissioner has received reports alleging that the resignation of four judges of the Constitutional Court in September 2010 had occurred as a result of pressure by the executive power. Shortly after the appointment of four new judges to the Constitutional Court, the latter issued a judgment which abolished the constitutional amendments of 2004, effectively reinstating the 1996 Constitution which provides for stronger presidential powers. In its Opinion on the Constitutional Situation in Ukraine adopted in December 2010, the Venice Commission underlined that it was highly unusual that far-reaching constitutional amendments, including the change of the political system of the country, were declared unconstitutional by a decision of the Constitutional Court after a period of 6 years. It also noted that the jurisprudence of a Constitutional Court should be consistent and based on convincing arguments in order to be accepted by the people.¹⁸

c The role of the Supreme Court

18. According to Article 125 of the Constitution, the Supreme Court is the highest judicial body in the system of courts of general jurisdiction, while the high courts are the highest judicial bodies of the respective specialised courts. The adoption of the Law on the Judiciary and the Status of Judges significantly reduced the role and competences of the Supreme Court. Following the adoption of this Law, the High Specialised Court on Criminal and Civil Cases was established by the Presidential Decree of 12 August 2010. It became the court of cassation for civil and criminal cases, whereas this role was previously fulfilled by the Supreme Court. The Venice Commission expressed its concern in relation to the drastic reduction in the competences of the Supreme Court and recommended that this situation be reviewed.¹⁹ As already noted (cf. paragraph 10 above), the Law on amendments to some legal acts regarding the examination of cases by the Supreme Court of Ukraine which entered into force in November 2011 allowed the Supreme Court to recover some of its powers.
19. In the case of *Bulanov and Kupchik v. Ukraine*²⁰, the European Court of Human Rights found a violation of the applicants' right of access to a court, since their appeal was neither considered by the Supreme Court, nor the Higher Administrative Court, as it had not proven possible to reach agreement as to which tribunal had jurisdiction.
20. At the time of the Commissioner's visit to Ukraine, the Supreme Court of Ukraine was not functioning. The powers of the previous Supreme Court Chairman ended in September 2011 and the plenary meeting of the Court to elect the new one was suspended by the decision of a lower court. In November 2011 Deputy Prosecutor General Myhailo Havryliuk, who is a member of the High Council of Justice, announced that disciplinary proceedings had been initiated against members of the criminal chamber of the Supreme Court on the grounds that they had violated their oath. The Commissioner received allegations that these developments amounted to pressure by the executive branch on this judicial institution aimed at influencing the outcome of the elections of the next Chairman of the Supreme Court.²¹

¹⁸ See Opinion on the Constitutional Situation in Ukraine by the Venice Commission, [CDL-AD\(2010\)044](#), 20 December 2010, §§ 35 and 38.

¹⁹ See Joint Opinion, [CDL-AD\(2011\)033](#), 18 October 2011, part 4.6 "On the Supreme Court".

²⁰ See *Bulanov and Kupchik v. Ukraine*, judgment of 9 December 2010

²¹ A plenary meeting of the Supreme Court of Ukraine eventually did take place on 23 December 2011. Mr Petro Pylypchuk was elected as the new Chairman.

d Access to judicial rulings, funding of the judiciary and judges' caseload

21. The Law on access to court rulings (2006) provided access to all court rulings. According to some estimations, however, only up to 50 % of the rulings have been entered into the State register of judicial decisions. The Law on amendments to some legal acts regarding examination of cases by the Supreme Court provided that only those decisions which are approved by the Council of Judges with the consent of the State Judicial Administration will now be included in the State register of judicial decisions. This could further decrease the transparency of the judicial system.
22. To function efficiently, the judiciary requires the allocation of adequate resources. The judicial system in Ukraine has been chronically under-funded. The Commissioner was informed that the courts are financed at 25% to 30% of their actual needs. Inadequate financing of courts gave rise to a judgement of the European Court of Human Rights in the case of *Zubko and Others v Ukraine*²², in which the Court found the lack of adequate financing to be contrary to the principle of independence of the judiciary. The Commissioner also received reports that several courts in Ukraine were forced to stop their activities in 2009-2010 because of the persistent problem of underfunding.
23. There is a continuing backlog problem in the court system in Ukraine, with judges facing ever-growing caseloads. Local court judges dealt on average with 121 cases per month in 2010 (as compared to 103 in 2009).²³ Section 16, paragraph 2, of the current Criminal Procedure Code²⁴ requires that a court should have an automated case management system to provide for an objective and unbiased assignment of cases among judges, based on a random selection procedure. However, the Commissioner was informed of cases where apparently no records of the automated case assignment were being kept by the courts. This leads to a perception that the random selection procedure is not always properly followed in practice.²⁵ It is important to ensure that there is no bias on the part of the judge or tribunal, and if any party to a dispute has a legitimate doubt as to the impartiality of the judge – including when it has questions as to the manner of assignment of the case to a particular judge – this should be addressed and an explanation should be provided to the interested parties.

Conclusions and recommendations

24. The Commissioner underlines that a strong and well-functioning judicial system, fully integrating the respect for human rights, is an indispensable component of the rule of law, which in turn constitutes the basis of a genuine democracy. He welcomes the past and ongoing efforts by the authorities to promote far-reaching reforms in the judiciary. The Commissioner encourages the Ukrainian authorities to undertake further resolute steps towards reforming the judiciary, with a view to promoting its full independence, impartiality and effectiveness, in line with European standards.
25. The Commissioner believes that for the reforms to reach their full potential, several important legislative, institutional and practical measures should be considered and implemented. The authorities should carefully review the overall organisation of the judiciary, with a view to simplifying it and fully clarifying the respective roles and jurisdiction of different levels in the court system, in particular at the cassation level.
26. The judiciary should be provided with sufficient funding. Appropriate resources should be allocated to ensure that the courts, both at the local and national levels, are staffed with the appropriate number of judges and support staff to be able to carry out their functions efficiently and avoid

²² Judgment of 26 April 2006

²³ <http://www.court.gov.ua/userfiles/1233.doc>

²⁴ <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=2&nreg=1001-05>

²⁵ This reportedly occurred in the cases involving former high-level governmental officials. For further information, see the Second Preliminary Report by the Danish Helsinki Committee for Human Rights on the legal monitoring in Ukraine.

overloading. The automated case assignment procedure should be strictly and systematically followed, and further measures should be considered to increase transparency in the judicial system, including through open access to court decisions.

II. Issues relating to the independence and impartiality of judges

27. The independence and impartiality of courts are two fundamental principles enshrined in Article 6, paragraph 1 of the ECHR. When assessing whether a court is independent, it is necessary to consider the manner of appointment of its members and their term of office, the existence of safeguards against outside pressure as well as whether the tribunal is perceived as independent by the public. The individual independence of judges in the exercise of their functions is not less important than institutional independence. European standards prohibit any kind of undue pressure, influence or interference with judges including that exerted by members of the judiciary themselves.²⁶
- a Appointment, dismissal and disciplinary proceedings against judges*
28. According to Article 128 of the Constitution of Ukraine, a judge has to be initially appointed for a five-year probationary period. This appointment starts with the High Qualification Commission (HQC), then the recommendation is approved by the High Council of Justice (HCJ) and the appointment is made by the President of Ukraine.
29. Judges are appointed to a permanent term following a majority vote in the Parliament, on the basis of a recommendation by the High Qualification Commission.²⁷ The Commissioner learned about a case when a candidate who had successfully completed the probationary period was nonetheless not confirmed by the Parliament to a permanent post, presumably due to political considerations.
30. On several occasions the Venice Commission has underlined that the appointment of judges by the executive and the legislature should be subject to special precautions and safeguards to ensure that in such appointment procedures the merit of the person rather than political or similar considerations is decisive.
31. Disciplinary liability of judges is regulated in the Law on the Judiciary and the Status of Judges. Although the grounds for liability are specified in the provisions of that law, much depends on their interpretation in practice. Several of the Commissioner's interlocutors suggested that the grounds and procedures for the opening of disciplinary proceedings for breach of oath – which could possibly lead to the dismissal of a judge – should be further specified and clarified, since they considered that this provision opens the possibility for abuse.
32. Judges of local and regional courts may challenge any disciplinary proceedings against them before the High Council of Justice (HCJ) and then before the High Specialised Administrative Court, while the judges of the Supreme Court and the High Specialised Court may only challenge such actions before the High Specialised Administrative Court.
33. In its Opinion on the Law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal, the Venice Commission indicated that the risk of politicisation of disciplinary proceedings against judges was high, and that it could have a chilling effect on judges, thereby weakening their independence.²⁸

²⁶ Cf. [Recommendation CM/Rec \(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, §22.

²⁷ If the High Qualification Commission decide not to recommend a candidate for the appointment to a permanent post, this decision could be appealed in the High Council of Justice.

²⁸ See Joint Opinion, [CDL-AD\(2010\)029](#), 18 October 2010, §50.

34. In the existing system, judges in their probationary period are particularly vulnerable. Therefore, it is important to ensure that the probationary period is kept to a minimum and to provide the necessary safeguards to reinforce the independence of judges serving their first term. Several of the Commissioner's interlocutors pointed out that certain judges who presided in the high-profile cases involving former governmental officials were either in their probationary period or had just been recently appointed. From this perspective, their participation in the hearing was viewed as yet another reason to question the independence and impartiality of the process.
35. The Constitution and the Law on the Judiciary and the Status of Judges provides for the dismissal of a judge by the body that elected or appointed him or her, upon a motion by the High Council of Justice. Several of the Commissioner's interlocutors underlined that, considering the current composition of the High Council of Justice (HCJ), the risk that such a decision might be initiated because of political or similar considerations was quite high. Such considerations may also play a role in the context of a decision by the Parliament to dismiss a judge elected for life. Therefore, additional safeguards should be introduced both in law and in practice, with a view to protecting the independence of judges.
36. There are provisions in the Constitution as well as in the Law on the Judiciary and the Status of Judges against undue pressure; however, these provisions should be further reinforced both in law and practice.

b The High Council of Justice and the High Qualification Commission of Judges

37. The High Council of Justice, established in 1998, is composed of 20 members. The composition and competences of the HCJ are set out in Article 131 of the Constitution of Ukraine. The Parliament, the President, the Congress of Judges, the Congress of Advocates and the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions each appoint three members to the HCJ, and the All-Ukrainian Conference of Employees of the Prosecutor's Office – two members. The Chairman of the Supreme Court, the Minister of Justice and the Prosecutor General are *ex officio* members of the HCJ. In its present composition, only three judges out of the 20 members of the HCJ have been appointed by their peers.
38. The Commissioner would like to recall in this context the recommendations of the Venice Commission regarding the High Council of Justice as well as Recommendation CM/Rec(2010)12 on judges, which specifies that no less than half of the members of such councils should be judges chosen by their peers from all levels of the judiciary.²⁹
39. The High Council of Justice has the following competences: to forward submissions on the appointment of judges to office or on their dismissal from office; adopt decisions with regard to violations by judges and prosecutors of the requirements concerning incompatibility; conduct disciplinary procedures relating to judges of the Supreme Court and judges of high specialised courts, and consider complaints regarding disciplinary decisions against judges of courts of appeal and local courts, as well as prosecutors.
40. The composition and competence of the High Qualification Commission of Judges of Ukraine is regulated in the Law on the Judiciary and the Status of Judges. It is composed of 11 members, six of whom are appointed by the Congress of Judges of Ukraine, and two by the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions. The Minister of Justice, the Head of the State Judicial Administration and the Ombudsperson each appoint a representative to the Commission. The High Qualification Commission can organise a competition for candidates to judicial posts; submit recommendations on the appointment of judges

²⁹ See [Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers, Chapter IV, § 27.

to initial (probationary) and permanent positions; and handle disciplinary proceedings in respect of judges of local and appellate courts.

41. The High Council of Justice and the High Qualification Commission of Judges are two bodies which play an important role in the appointment, dismissal and application of disciplinary procedures against judges. Since these institutions are crucial for safeguarding the individual independence of judges and the judiciary as a whole, their composition and competences should be in line with applicable international standards. The Venice Commission recommendations provide useful guidance in this respect.
42. The Commissioner is in particular concerned by reports of the strong influence exercised by the prosecutorial and executive authorities upon judges through their representation in the High Council of Justice.³⁰ In particular, the Commissioner was informed that there were occasions when disciplinary proceedings against judges had been initiated by members of the HCJ representing the Prosecutor's Office for alleged breach of oath on the grounds of the substance of the judicial ruling in cases where the judges reportedly did not support the position by the prosecution (cf. also paragraph 20 above). In this context the Commissioner would like to recall that judges should not have reasons to fear dismissal or disciplinary proceedings against them because of the decisions they take.

c Training of judges

43. In the report on his previous visit to Ukraine, the Commissioner recommended considering the establishment of a National School for Judges. The Law on the Judiciary and the Status of Judges provided for the establishment of such an institution under the auspices of the High Qualification Commission of Judges. The National School for Judges was opened in December 2010.
44. Public trust in the judicial system relates in part to perceptions about the competence of judges. From this perspective, continuous training of judges is of the utmost importance. Recommendation CM/Rec(2010)12 provides that an independent authority should ensure [...] that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.³¹ The above-mentioned Law on the Judiciary and the Status of Judges requires that judges in the probationary period should undergo two weeks of training every year, while judges on permanent posts should participate in a two-week training session at least once every three years.
45. An issue which requires continued attention, as clearly indicated in several judgments of the European Court of Human Rights, is the adequacy of the reasoning of court decisions. In the case of *Benderskiy v Ukraine*³², the Court found a violation of Article 6 of the Convention due to the local court's failure to properly examine and address the substantial arguments of the applicant. The Court in particular recalled that Article 6, paragraph 1, of the Convention obliges courts to give reasons for their judgments, although the extent to which this duty to give reasons applies may vary according to the nature of the decision.³³ In the Ukrainian context, the inadequate reasoning of court decisions contributes to the perception that judges are prone to influence by prosecutors aimed at securing convictions in all cases brought to the court. It is essential to address this issue, including through comprehensive training for judges and other systematic measures aimed at effecting a change in attitudes.

³⁰ The Commissioner was informed that while quite a number of disciplinary proceedings in the HCJ against judges were initiated by the prosecutorial representatives, there were hardly any disciplinary proceedings against the prosecutors opened in the period of the last two years.

³¹ See [Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers, Chapter VI, § 57.

³² Judgment of 15 November 2007

³³ See *Ruiz Torija v Spain*, judgment of 9 December 1994

Conclusions and recommendations

46. The Commissioner underlines that a judicial appointment system should be fully shielded from improper political or other partisan influence. Decisions of judges should not be subject to revision beyond the ordinary appeal procedure. Disciplinary actions against judges should be regulated by precise rules and procedures, managed inside the court system, and not be amenable to political or any other undue influence.
47. While the Commissioner is not in a position to comment on the veracity of the allegations of pressure upon judges of the Supreme Court described above (cf. paragraph 20), he nonetheless finds that the situation presents grounds for serious concern. The Ukrainian authorities should examine and address any allegations of interference in the work of judicial institutions. Officials from other branches of government should refrain from any actions or statements which may be viewed as an instrument of applying pressure on the work of judicial institutions or casting doubts as to their ability to exercise their duties effectively. Judges should not have reasons to fear dismissal or disciplinary proceedings against them because of the decisions they take. In addition, the opportunity presented by the current reform should be taken to affirm more solidly the independence of the judiciary from the executive.
48. The Commissioner reiterates that judges should be appropriately qualified and be persons of integrity and professional competence. Appointments and promotions of judges must be based on clear and objective criteria such as individual merit, qualifications, integrity and efficiency. After a successful completion of the probationary period, the appointment of a judge to a permanent position should take place as a rule.
49. Judges should also receive appropriate remuneration and adequate pension provision, commensurate with their responsibilities. They must also be able to exercise their functions with integrity without fear of adverse consequences. Persons seeking to influence judges in any manner should be subject to sanctions by law.
50. The Commissioner welcomes the establishment of the High School of Justice, and recommends that the training programmes include detailed coverage of the case law of the European Court.
51. The Commissioner urges the Ukrainian authorities to bring the composition of the High Council of Justice in line with the relevant European standards. The independence of this institution and of the High Qualification Commission of Judges are indispensable for the efficient functioning of the judiciary in Ukraine.

III. Criminal justice reform and access to justice

52. Criminal proceedings in Ukraine raise a number of concerns as regards the principle of equality of arms and include several elements which could be seen as major restrictions upon the right to defence. The present criminal justice system in Ukraine is still a prosecutor-dominated system and should be replaced by a modern adversarial and human rights-oriented process. Typical problems include the length of proceedings in criminal cases, the length of pre-trial detention and resort to ill-treatment of persons deprived of their liberty. In nearly twenty cases the European Court of Human Rights found different violations related to the lack of a fair trial in criminal cases.
 - a *The ongoing work on the new Criminal Procedure Code*
53. At the time of the Commissioner's visit to Ukraine, a new Criminal Procedure Code (CPC) was under preparation, with Council of Europe experts being consulted throughout that process. The Commissioner's official interlocutors indicated that the draft Code would be discussed in the

Parliament early in 2012, with a view to adopting it in the course of the spring of 2012.³⁴ Based on the final version of the Code as adopted by the Parliament, the working group established by the President of Ukraine will further develop and adjust the draft legislation on the Prosecutor General's Office and the Bar, which will be introduced to the Parliament shortly afterwards.

54. The Commissioner was informed that the new CPC would be fully based on the adversarial principle, with a view to re-balancing the powers of judges, prosecutors and the defence during criminal proceedings. It was also envisaged that the CPC would include provisions further reducing the upper time limits for remand in custody and introducing additional alternatives to remand in custody, such as house arrest.
55. The current acquittal rate of 0.2 percent calls into question the weight given to the presumption of innocence. It is important to ensure that the adoption of the new CPC and related legislation will also translate into changes in attitudes in this regard. In particular, judges should be properly trained and made aware of their role and responsibility in upholding the human rights of individuals in judicial proceedings.

b Reform of the Prosecutor's Office

56. Since the Commissioner's last visit at the end of 2006, there had been no substantial changes in the role and functions of the Prosecutor's Office. In line with the constitutional provisions and the Law on the Prosecution Service, it retains considerable powers related to supervising the observance and application of laws, pre-trial investigation and criminal prosecution on behalf of the state. The fact that prosecutors have a privileged standing in criminal proceedings, as representatives of the state, reinforces the perception according to which the Ukrainian judicial system has a strong built-in bias for the interests of the state to the detriment of that of individual rights.
57. Some of the Commissioner's official interlocutors indicated that, while the new CPC would lead to a significant revision of the competences of the Prosecutor's Office, in particular those related to the supervision of the application of the law, the prosecution may still retain its considerable powers even after those legislative changes. In this respect the Commissioner wishes to reiterate his long-standing recommendation that the role of the prosecutor's office should be limited to criminal prosecution on behalf of the State. The supervisory function should be left to the court system and to national human rights structures, such as the Parliamentary Ombudsman.
58. The Commissioner wishes to recall that in accordance with the Council of Europe Committee of Ministers Recommendation (2000)19 on the role of public prosecution in the criminal justice system, "States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges..."³⁵

c Reforms relating to the legal profession

59. There is still no single bar association, nor a clear set of rules regulating the legal profession in Ukraine. As already mentioned in the present report, in October 2011 the Venice Commission delivered its opinion on the draft Law on the Bar and Practice of Law. The opinion contained a positive assessment of this draft legislation, noting that it could provide a good basis for regulating the profession of lawyer.
60. During the visit, the Commissioner received reports about instances of harassment and intimidation of defence lawyers. In particular, the Commissioner's attention was drawn to a case concerning a

³⁴ On 12 January 2012, Adviser to the President of Ukraine, Mr Portnov, announced that the President had submitted the draft Criminal Procedure Code to the Parliament.

³⁵ CM [Recommendation Rec\(2000\)19](#), §17.

lawyer who had inquired of law enforcement officials on what grounds his client was detained after the reported expiry of the allowed period of initial detention by the police, after which he was physically assaulted by a group of policemen and subsequently himself detained and made subject to criminal proceedings.

61. The Commissioner would like to recall that the role of defence lawyers is crucial for the protection of human rights in the criminal justice system. In accordance with the well-established position of the ECtHR, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial³⁶. It is important to bear in mind in the context of the ongoing reform that an adversarial model will function efficiently only if the role of the defence lawyer in the criminal proceedings is substantially strengthened. Proper provision of free legal assistance to defendants with no or limited economic resources should also be ensured.

d Juvenile justice

62. Since the Commissioner's last visit to Ukraine at the end of 2006, there have been some developments in the area of juvenile justice. In particular, a concept for the development of juvenile justice for 2011-2016 was approved by the President of Ukraine by a decree issued on 24 May 2011³⁷. The concept provides for the development of special rehabilitation and mediation programmes for minors who have committed a criminal offence. It also places a special emphasis on preventive measures which would reduce criminality among minors. On 12 October 2011, the Cabinet of Ministers of Ukraine approved an Action Plan for the implementation of the above-mentioned concept³⁸. A special probation service will be created, in order to promote the social adaptation and reintegration of minors who are serving their sentence in special institutions or have been recently released.
63. While speaking at the All-Ukrainian forum on the rights of the children, the Prosecutor General of Ukraine expressed his concern about the growing number of criminal offences committed by minors. More than 14 000 such offences had been registered during the first nine months of 2011.³⁹ As of 1 January 2012, the number of inmates in the eight penitentiary establishments for minors in Ukraine was 1329.⁴⁰

Conclusions and recommendations

64. The right to a fair trial, including the principle of equality of arms, the need to ensure adversarial proceedings and respect the presumption of innocence, as well as the independence and impartiality of the courts, are well-established principles in the case-law of the European Court of Human Rights. In the Commissioner's view, the protection of these rights should be central to the judicial reform efforts in Ukraine.
65. The Commissioner encourages the authorities to take resolute steps to reform the criminal justice system, with a view to adopting a more humane and human rights-oriented approach, with special emphasis being placed on alternatives to imprisonment and a drastic reduction in the resort to remand in custody.
66. The Commissioner notes that an imbalance between the defence and the prosecution is still a conspicuous feature of the criminal justice system in Ukraine. He urges the authorities to ensure that the new Criminal Procedure Code will adequately address this issue. The newly established working group on the reform of the prosecutorial system and the Bar should take into account the recommendations of the Venice Commission when preparing the relevant draft legislation. In

³⁶ see *Krombach v. France*, judgment of 13 February 2001.

³⁷ <http://www.president.gov.ua/documents/13600.html>

³⁸ <http://www.minjust.gov.ua/0/37313>

³⁹ <http://citi.cv.ua/22.php?cid=26458&p=8>

⁴⁰ http://www.kvs.gov.ua/punish/control/uk/publish/article?art_id=95284&cat_id=95260

addition, further systemic measures are needed to ensure genuine adversarial proceedings, including comprehensive legal training for lawyers. Prosecutors should also be properly trained in order to effectively perform their new functions in the system.

67. The Commissioner is concerned by the reports of harassment, abusive prosecutions and other forms of pressure on lawyers. Such pressure seriously impairs defence rights and prevents lawyers from effectively serving the cause of justice. In this regard, the Commissioner wishes to stress that defence lawyers must be allowed to operate without impediments and in full confidentiality when providing legal assistance to their clients.
68. The Commissioner welcomes the stated commitment of the Ukrainian authorities to reforming the juvenile justice system. He wishes to recall the principle that in cases involving juveniles, deprivation of liberty should be imposed only as a measure of last resort and for the shortest possible period of time.

IV. Systemic problems in the administration of justice

69. Shortcomings and systemic problems in the functioning of the Ukrainian judicial system are some of the major sources of violations of the European Convention on Human Rights in Ukraine. Not only has the Ukrainian justice system not managed to date to effectively tackle and prevent human rights violations, but it has prompted a significant increase in the number of cases pending before the ECtHR. The main issues, as identified in the relevant decisions of the ECtHR, relate to non-enforcement or delayed enforcement of domestic judicial decisions; unlawful or excessively long deprivation of liberty, including lengthy periods of remand in custody; excessive length of civil and criminal proceedings; and the lack of an effective domestic remedy to address these problems.

a Excessive resort to remand in custody

70. The Commissioner recalls Recommendation Rec(2006)13 of the Committee of Ministers on the use of remand in custody,⁴¹ which provides that the use of remand in custody must always be exceptional and justified. It is crucial to safeguard the principle of presumption of innocence and bear in mind that the only justification for imprisoning persons whose guilt has not been established by a court can be to ensure that the investigations are effective (securing all available evidence, preventing collusion and interference with witnesses) or that they do not abscond. Where less restrictive alternative measures (such as judicial control, release on bail or bans on leaving the country) could address these concerns, they must be used instead of remand in custody. In any event, remand in custody must be as short as possible and only continue for as long as it is justified⁴².
71. In the judgment *Kharchenko v. Ukraine*,⁴³ the European Court of Human Rights emphasised that the recurrent violations of Article 5 in cases against Ukraine showed a continuing problem with the practice of imposing remand in custody, as people were often remanded in custody without any court order, or the grounds for their remand in custody were often formalistic and not regularly reviewed. The Court requested that the Government submit a strategy aimed at resolving the problems of unlawfulness and excessive length of remand in custody as well as the lack of judicial review of the lawfulness of detention. Such a strategy was submitted in November 2011.
72. The courts have a legal obligation to explicitly provide reasons for remanding a person in custody and for each time detention on remand is extended. In practice, the reasons given in such decisions are rarely case-specific, and mostly repeat the letter of the law. Domestic courts are also

⁴¹ Recommendation [Rec\(2006\)13](#) of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

⁴² See the Commissioner's Human Rights Comment entitled "[Excessive use of pre-trial detention runs against human rights](#)", 18 August 2011.

⁴³ Judgment of 10 February 2011.

reluctant to apply alternative restrictions on personal freedom, such as bans on leaving the country, release on bail or judicial control. According to available data, courts in Ukraine grant more than 80 percent of the requests to remand in custody as a preventive measure.

73. During his meetings with lawyers and civil society representatives, the Commissioner was informed of numerous cases of the unnecessary application of detention on remand before and during trial, including in cases involving former governmental officials.⁴⁴ Based on the information at his disposal, the Commissioner does not believe that there were sufficient justifications for using remand in custody as a preventive measure in the cases presented to him by the lawyers of the persons concerned.
74. The practice of remitting the case by the court to the prosecution service for additional investigation and excessively long judicial proceedings (see section below) are additional factors which contribute to prolonging detention.⁴⁵ According to the Commissioner's interlocutors from the government, the adoption of a new CPC will lead to a significant decrease in the number of persons held on remand.

b Access to medical care while in custody

75. Access to medical care while in custody is an issue which was brought to light in connection with the detention of former high-level governmental officials. The Commissioner was made aware of numerous cases of remand prisoners who were deprived of the possibility to receive the necessary treatment in due time. The failure to provide such assistance in the most urgent cases led to the death of the person concerned. The Commissioner was also informed that in some cases prison or detention establishments cannot provide the necessary medication and care due to the absence of sufficient funding.
76. In the case of *Yakovenko v. Ukraine*,⁴⁶ the European Court of Human Rights found violations of Articles 3 (conditions of detention and treatment, failure to provide medical assistance) and 13 (failure to provide effective and accessible remedy). This case concerned an applicant who was detained in Sebastopol ITT (temporary holding facility of the Ministry of Internal Affairs) for almost a year, contracted HIV/AIDS and tuberculosis in detention and died in May 2007 when he was only 32 years old.
77. The Commissioner would like to recall Recommendation No. R (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison, which provides that medical confidentiality should be guaranteed and respected with the same rigour as for the population as a whole.⁴⁷ Remand prisoners should be entitled to ask for consultation with their own doctor or another outside doctor at their own expense. In addition, he would like to draw attention to Recommendation Rec (2006)2 of the Committee of Minister to member states on the European Prison Rules⁴⁸, which provides that prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. The foregoing recommendation also specifies that sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

⁴⁴ Those persons include the former Minister of the Interior, Mr Yuriy Lutsenko, the former Acting Minister of Defence, Mr Valeriy Ivashchenko, and the former Prime Minister, Ms Yulia Tymoshenko.

⁴⁵ According to Ukrainian Ombudsperson, six persons currently imprisoned in the Kyiv pre-trial establishment (SIZO) have been held there on remand since 2002

⁴⁶ Judgment of 25 October 2007

⁴⁷ Cf. also the 3rd General Report of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), CPT/Inf (93)12.

⁴⁸ Adopted by the Committee of Ministers on 11 January 2006

c Access to legal aid by persons in need

78. The respect of the right of access to a lawyer should be further reinforced. According to reports of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) and other expert assessments, the problem in this area is not so much the legal framework, but rather its practical implementation. It would appear that the police frequently discourages detainees from seeking access to a lawyer. In other cases, police officers have reportedly refused to provide access to the lawyer chosen by a detainee, and have suggested contacting another lawyer instead.
79. In the case of *Yaremenko v Ukraine*⁴⁹, the ECtHR found a violation of the rights to a fair trial and to legal assistance. In particular, the Court considered that the manner, reasoning and alleged lack of legal grounds for the removal of the applicant's lawyer had raised serious questions as to the fairness of the proceedings in their entirety.
80. On 2 June 2011, the Ukrainian Parliament adopted the Law on Free Legal Aid, which included provisions on the content of the right to legal aid and the grounds and procedures for its implementation. Pursuant to that law, centres providing free legal aid should become operational before the beginning of 2013.

d Non-enforcement of domestic judicial rulings

81. More than 50 percent of all ECtHR judgments against Ukraine concern non-enforcement of domestic court decisions. Since 2004, the Ukrainian authorities have reported a number of initiatives aimed at resolving this problem, but little progress has been made. The majority of the unenforced judgments concern monetary awards (salary arrears, social benefits and compensation of various kinds) to be paid to applicants by public authorities or companies. According to available data, only 40 percent of domestic judgments are executed⁵⁰. The ECtHR delivered on 15 October 2009 a pilot judgment regarding the non-enforcement problem in the case of *Yuriy Nikolayevich Ivanov v. Ukraine*.⁵¹
82. The draft Law on guarantees of the State regarding the execution of court decisions has been developed by the government and tabled in the Parliament in January 2011. The Parliament passed it in the first reading on 9 September 2011, but there have been no further developments. The draft law provides that in all cases where courts have ordered that public institutions or companies make payments to plaintiffs, such payments should be paid from the state budget of Ukraine (sufficient funds should be envisaged for this purpose).⁵²

e Excessive length of proceedings and absence of an effective domestic remedy

83. The second group of ECtHR judgements against Ukraine concerns excessive length of proceedings in both civil and criminal cases. There are several general problems affecting the length of proceedings before Ukrainian courts: lengthy inactivity of investigative authorities and courts (to a large degree due to a heavy workload of judges and prosecutors); numerous transfers of cases between various courts and remittals for additional investigation, expert assessments and re-trials; the courts' failure to ensure the presence of the parties, experts, witnesses, etc. at the proceedings; frequent adjournments of hearings due to judges' non-availability (hearing of another case, sick leave, vacations, etc). As a result, many persons are only released from detention after their conviction, taking into account the "time already served".

⁴⁹ Judgment of 12 June 2008

⁵⁰ http://www.ombudsman.kiev.ua/dopovid_6/d_06_2_2.htm

⁵¹ Judgment of 15 October 2009.

⁵² The draft legislation passed in the first reading contains provisions empowering the Cabinet of Ministers to establish the procedure and amount of compensation to persons entitled to benefits. This apparently raised concern among public organisations of Afghan war veterans and Chernobyl victims, who believe that this may lead to the reduction of the applicable social benefits.

84. The problem of excessive length of proceedings is compounded by the absence of an effective domestic remedy. The Court has repeatedly found that the Ukrainian legal system offered no effective domestic remedy - within the meaning of Article 13 ECHR - allowing applicants to challenge the length of proceedings, observing in particular that the Ukrainian authorities were unable to submit any domestic case-law proving the contrary.
85. More specifically, in a number of cases the Court has observed that the Ukrainian legal system does not provide any remedies to accelerate the proceedings or to provide litigants with adequate redress, for example by obtaining compensation for the delays or having access to an authority which can exercise its supervisory jurisdiction over the trial court to expedite proceedings.

Conclusions and recommendations

86. The Commissioner is concerned about the overreliance on remand in custody before or during trial. He urges the Ukrainian authorities to ensure that they use the remand in prison only as the last resort, which should be reflected in the letter and the spirit of the law. The new Criminal Procedure Code should introduce further time limits on detention as well as alternatives to it, e.g. non-custodial measures or house arrest.
87. Judges and prosecutors should be strongly encouraged to apply alternatives to detention and should receive appropriate training and further assistance, having regard to the relevant European standards, in particular the case-law of the ECtHR. Decisions to impose or extend remand in custody should be duly reasoned based on the merits of the individual case.
88. The Commissioner urges the Ukrainian authorities to ensure that prisoners in need of hospital treatment are promptly transferred to appropriate medical facilities. Remand prisoners should be entitled to ask for a consultation with their own doctor or another outside doctor at their own expense.⁵³ If necessary, the applicable rules and procedures should be reviewed and amended accordingly. More generally, the principle of equivalence of care should apply in the prison context, i.e. health care in prison establishments should be provided in conditions comparable to those provided to patients in the outside community.
89. The Commissioner recommends that the authorities introduce, in accordance with the case-law of the ECtHR, effective domestic remedies, both for excessive length of proceedings and unjustified remands in custody. These remedies should make it possible to accelerate the proceedings or challenge the lawfulness of detention with reasonable prospects of success, as well as to obtain adequate compensation for unreasonably long proceedings and unlawful detentions.
90. The Commissioner wishes to emphasise that it is crucial that defence lawyers can operate without impediments and in full confidentiality when providing legal assistance to their clients. They should have free and unimpeded access to their clients in prison or other places of deprivation of liberty (i.e. police establishments) in order to ensure that the right to defence is fully implemented in practice as well as to prevent ill-treatment. If necessary, efforts should be made to adapt the arrangements and infrastructure in penitentiary institutions.
91. The Commissioner welcomes the adoption of legislation related to legal aid. More needs to be done in order to improve the quality of service and to ensure that legal aid is systematically provided to all those in need.

⁵³ Cf. §17 of CM Recommendation No. R(98)7.

V. Combating impunity

92. The Commissioner recalls the 2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations,⁵⁴ which provide that ‘States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system’. The Committee of Ministers observed that, when impunity occurs, faults might be observed, among others, at each stage of the judicial or administrative proceedings. These guidelines include several minimum standards, notably as regards prosecutions (Section VIII), court proceedings (Section IX), and the involvement of the victims in the investigations (Section VII).
93. Ill-treatment by police in custody is a persistent problem in Ukraine, which has been raised in a number of reports of the Council of Europe Committee for the Prevention of Torture. Reports by international non-governmental organisations suggest that the phenomenon is fed by a culture of police impunity. Complainants who make well-founded allegations of serious abuses often receive the standard response that “there is no evidence of a crime”. The vast majority of cases, however, both grave and minor, are not reported to the authorities at all because the victims fear retaliation by the police, or have no faith that any action will be taken.⁵⁵
94. Several ECtHR judgments against Ukraine concern police ill-treatment and torture and the lack of an effective investigation in this respect.⁵⁶ This problem was once again brought to public attention, following the death in police custody of a 21-year old student and a wave of subsequent student protests throughout the country. The Ukrainian Ombudsman has stated on several occasions that human rights violations by law enforcement officials have become systematic in Ukraine. At a meeting devoted to the results of the work of the Prosecutor’s Office for the first six months of 2011, the Prosecutor General admitted that incidents of torture at the stages of detective enquiry and criminal investigation were not isolated occurrences.⁵⁷
95. The key factors preventing effective investigations into allegations of ill-treatment as identified in the Council of Europe reports and reports by local and international non-governmental organisations are the following: “lack of evidence” (onus on the person complaining about ill-treatment); role of the prosecutor and entrenched attitudes within the system. The *Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police*⁵⁸ could serve as useful guidance for setting up an efficient system for investigating complaints involving police behaviour, including in cases of severe human rights violations.
96. By decree of 27 September 2011, the President of Ukraine established an anti-torture commission as an advisory body to the President.⁵⁹ Ukraine ratified the Optional Protocol to the UN Convention Against Torture in September 2006; however, a national preventive mechanism has not yet been set up.
97. The Commissioner received reports that the Department for the monitoring of human rights in the work of the police was dissolved in March 2010.⁶⁰ Simultaneously, the civic monitoring of places of

⁵⁴ [CM\(2011\)13](#), Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, adopted by the Committee of Ministers on 30 March 2011.

⁵⁵ See, for example, a report on Ukraine by Amnesty International “[Blunt force: Torture and police impunity in Ukraine](#)”.

⁵⁶ See, for example, *Suptel v. Ukraine* (judgment of 19 February 2009) on ill-treatment to extract confessions; *Afanasyev v. Ukraine* (judgment of 5 April 2005) and *Spinov v. Ukraine* (judgment of 27 November 2008) on ill-treatment during arrest; *Vergelskyy v. Ukraine* (judgment of 12 March 2009) on ill-treatment during interrogations.

⁵⁷ <http://journalismnetwork.ning.com/profiles/blogs/human-rights-in-ukraine-2011-more-and-more-violations>

⁵⁸ [CommDH\(2009\)4](#)

⁵⁹ <http://www.president.gov.ua/documents/14032.html>

⁶⁰ The department was established in 2008 and had set up a system of mobile monitoring groups carrying out checks on places of detention to ascertain whether human rights violations were being committed by the police.

detention by independent monitors was also discontinued. This is likely to have a negative impact on the prevention of ill-treatment by the police. At the same time, the relevant authorities expressed their interest in stepping up their co-operation with civil society organisations. There is a public council composed of representatives of various non-governmental organisations which is operating under the auspices of the Ministry of Interior; however, its efficiency should be further improved.

98. The Commissioner also received reports about alleged cases of harassment of opponents and critics of the current government by security forces and the ineffectiveness of domestic proceedings relating to reported abuses by members of security services. While the mechanisms for parliamentary and governmental control of the activities of the security forces seem to be in place, further efforts are needed to ensure greater involvement of civil society and the public in general in the exercise of such oversight. The Law on Access to Public Information could provide further impetus to increased transparency in the functioning of this body.
99. The case of the journalist Georgiy Gongadze, who disappeared in September 2000, remains an emblematic example of impunity, and one which illustrates the shortcomings of the Ukrainian judicial system when it comes to ensuring accountability. In its 2005 judgement, the European Court of Human Rights found that the Ukrainian authorities failed to conduct an effective investigation into the case and were more preoccupied with proving the lack of involvement of high-level state officials in the case than discovering the truth about the circumstances of his disappearance and death.⁶¹ The Commissioner has been closely following the developments related to this case, including the trial of one of the principal suspects in his murder and the legal proceedings against a former state official. The Commissioner deeply regrets that more than eleven years after Mr Gongadze's disappearance and murder, the masterminds of this crime have not yet been brought to justice.

Conclusions and recommendations

100. The Commissioner considers that further resolute action is necessary to combat impunity and implement the 2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations. The competent authorities should expeditiously and effectively investigate allegations of ill-treatment in full compliance with the criteria established by the European Court of Human Rights. The role of prosecutors in combating impunity and ill-treatment is crucial. They should be encouraged to investigate and prosecute promptly any allegation of human rights violations in accordance with Section VIII.1 of the CM Guidelines, and discouraged from bringing counter-charges against plaintiffs.
101. Allowing violent criminal acts by the police to go unpunished can greatly undermine public trust in the authorities responsible for upholding the law. By prosecuting these crimes and bringing those responsible to justice, the authorities will send a clear message of zero-tolerance of police violence. The independence of the investigation should be ensured by transferring the investigations away from the units of the law-enforcement officials who are subject to the investigation and from the units investigating and/or prosecuting any criminal case against the victim of the alleged ill-treatment.
102. The Commissioner encourages the Ukrainian authorities to regularly review and further strengthen the mechanisms to ensure democratic control and accountability of the security services. Individuals who claim to have been adversely affected by the security services must have a possibility of redress before an independent body. Action aimed at redressing individual cases might also prove effective in strengthening mechanisms for accountability and encouraging improvements in the system as a whole.
103. Finally, the Commissioner wishes to stress that he will continue to follow closely the situation in Ukraine, and give his support, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of Council of Europe standards related to human rights protection. The Commissioner stands ready to continue

⁶¹ *Gongadze v. Ukraine*, judgment of 8 November 2005.

his constructive dialogue with the Ukrainian authorities to assist them in their efforts to further improve the situation in light of the recommendations made in the present report.

Appendix

Comments of the Ukrainian Government

To paragraph 17

In September 30, 2010 the Constitutional Court of Ukraine has issued its judgment N 20-пп in the case of compliance procedures for amending the Constitution of Ukraine, by which the legal effect of the Constitution of 28 June 1996 was reinstated. This judgment was adopted under the request of 252 members of the Ukrainian Parliament to recognize as unconstitutional the Law of Ukraine "On Amendments to the Constitution of Ukraine" № 2222-IV, dated December 8, 2004.

The Constitutional Court of Ukraine ruled unconstitutional Law № 2222-IV because of the violation of procedure for its consideration and adoption, and restored the force of the wording of the Constitution of Ukraine, which were changed, amended and deleted before.

Therefore, the said decision of the Constitutional Court did not concern the content of the amendments to the Constitution of Ukraine.

To paragraph 20

Paragraph 20 of the Report referred to the fact that the Supreme Court of Ukraine was subject to the pressure by the executive branch aimed at influencing the outcome of the elections of the next Chairman of the Supreme Court.

According to the Prosecutor General's Office, it is due to the fact that at the briefing on November 7, 2011 Deputy Prosecutor General Myhailo Havryliuk, who is a member of the High Council of Justice, announced to the media and the public receiving by the High Council of Justice an appeal from the members of the Ukrainian Parliament, which sets forth facts indicating a violation of oath by the judges of the Supreme Court of Ukraine.

To paragraphs 29 and 48

Assumptions that political beliefs might influence the appointment of a candidate to permanent post of a judge are unfounded.

In addition, the Law of Ukraine "On the Judiciary and the Status of Judges" takes into account the recommendations of the Council of Europe and the opinions of the Venice Commission which require the setting up of a procedure of appointment judges, independent from political interference. It should be done by means of removing a political aspect from the process of initial appointment of judges for a five-year probationary period by the President of Ukraine and their election by the Parliament to a permanent position.

This Law provides that the decisions of the President and Parliament concerning the abovementioned appointments are of a ceremonial character. This Law doesn't ensure the right to the President of Ukraine to reject a submission to appoint a candidate for the post of judge, introduced by the High Council of Justice. The Verkhovna Rada of Ukraine doesn't have the

right to consider the issue of electing judges for permanent terms at the meetings of its committees and to conduct preliminary inspections.

This made possible to observe the Constitution of Ukraine and the European standards, in particular, in accordance with the recommendations of the Committee of Ministers № (94) 12 "On the independence, efficiency and role of judges": "The authority taking the decision on the selection and career of judges should be independent of the government and the administration. However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent".

To paragraph 32

On the appeal of disciplinary measures, as explained in paragraph 32, it should be noted that in accordance with Art. 85 of the Law of Ukraine "On judiciary and status of judges" disciplinary proceedings against judges are carried out by: the High Qualifications Commission of Judges of Ukraine - for local judges and appeal courts, the High Council of Justice - for the judges of high specialized courts and judges of the Supreme Court of Ukraine.

According to paragraph 3 of Art. 27 of the Law of Ukraine "On the High Council of Justice" the decisions of this body may be appealed before the High Administrative Court of Ukraine in the order prescribed by the Administrative Code of Ukraine.

According to judgment of the Constitutional Court of Ukraine № 2-пп/2011 dated March 11, 2011 on compliance of certain provisions of the Law of Ukraine "On the High Council of Justice" with the Constitution of Ukraine, the jurisdiction of this category of cases does not affect the possibility to review the decisions of the High Council of Justice in the court by a person who is convinced of violations of his/her rights, freedoms and legitimate interests.

The approved order concerning the consideration of such cases by the Supreme Administrative Court of Ukraine as a court of first instance is aimed to ensure the independence and impartiality of the judges who will consider those cases. In addition, by the establishment of a special procedure for judicial review of decisions of the High Council of Justice the proportionality between protecting of the rights of judges as citizens of Ukraine and their responsibilities and limitations as representatives of the government was observed.

To paragraphs 35, 37 - 40, 51

Regarding the composition and powers of the High Council of Justice it should be noted that these issues might be considered during the process of amending the Constitution of Ukraine, in particular Article 131, which defines the powers of the High Council of Justice, order and status of its formation.

In order to approximate the national legislation on the judicial system to the European standards on the legal level, the preliminary opinions of the Venice Commission, which did not require amendments to the Constitution of Ukraine, were taken into account. According to these opinions, the majority of members of the bodies responsible for the selection of judges have to be judges.

The Law of Ukraine "On the Judiciary and Status of Judges" amended the Law of Ukraine "On the High Council of Justice", which states that two of three members of the High Council of Justice, who are appointed by the Verkhovna Rada of Ukraine and the President of Ukraine, shall be judges. The Congress of Lawyers of Ukraine appoints three members of the High Council of

Justice, one being appointed among the judges. The Ukrainian conference of the General Prosecutor's officers appoints two members of the High Council of Justice, and one of them shall be judge.

To paragraph 42

This Paragraph groundlessly concludes that the Prosecutors and the executive branches of power are exercising a strong influence on the judges through their representatives in the High Council of Justice. Disciplinary proceedings towards judges were initiated by the High Council of Justice upon the submission of the Prosecutors' office on the grounds of the alleged violations of the oath by the judges when they rendered judgments in the cases when they did not support the position of the prosecution.

At the same time, according to paragraph 3 part 1 of Art. 131 of the Constitution of Ukraine the disciplinary proceedings towards judges of the Supreme Court of Ukraine and judges of high specialized courts belong solely to the competence of the High Council of Justice.

According to Art. 25, paragraph one of Art. 40 of the Law of Ukraine "On the High Council of Justice" (as amended) the information about the grounds for dismissing a judge from his office because of violating of the oath, committing an offense by the judge of the Supreme Court of Ukraine and judges of high specialized courts is subject for inspection by a member of the High Council of Justice, appointed by the High Council of Justice or the President of the High Council of Justice.

The results of such inspection are considered at a meeting of the High Council of Justice. The final decision on whether to initiate a disciplinary proceeding against a judge shall be collectively adopted by the High Council of Justice.

According to law, the High Council of Justice is a collective independent constitutional body with special status and tasks. The powers, organization and procedures of this organ are determined by the Constitution of Ukraine, the Law "On the High Council of Justice" and the rules of the High Council of Justice.

All decisions about initiating a disciplinary proceeding against judge and calling him responsible, if there are necessarily grounds, are collectively adopted by the High Council of Justice.

The submission of a proposal by the member of the High Council of Justice, as a result of the accomplished inspection, concerning the dismissal of a judge or the opening of disciplinary proceedings against judges of the Supreme Court of Ukraine and judges of high specialized courts is a necessary part of the mechanism of the constitutional powers of the High Council of Justice, as stipulated in paragraphs 1, 3 part 1 of Article 131 of the Constitution of Ukraine.

Only the High Council of Justice has the exclusive constitutional power to submit proposal to dismiss a judge. And no restrictions or reservation is laid down by the Constitution of Ukraine (ruling of the Constitutional Court of Ukraine №9-рп/2002 dated 21.05.2002).

In addition, it has to be mentioned that the grounds for disciplinary responsibility of judges, as set forth by paragraph 5 of part 4 of Article 125 of the Constitution of Ukraine, according to which the judge is dismissed by the body which elected him (Parliament of Ukraine) or appointed (President of Ukraine), in the case of breach of oath by the judge, and by Article 83 of the Law of Ukraine "On Judiciary and Status of Judges" are:

1. substantial breach of the provisions of the procedure law during the administration of justice, related, especially, to the denial to a person of an access to the court on the grounds,

which are not prescribed by the legislation, breach of the provisions concerning the automatic distribution and registration of cases before the court, rules of jurisdictions of cases, unmotivated use of measures of provisional remedy, unmotivated establishment of a term for removal of limitation period of an application or its return;

2. non-act of a judge concerning consideration of application, complaint or case during the period, prescribed by legislation;

3. breach of the provisions of the legislation concerning impartial consideration of a case, especially disqualification and self-recusation;

4. systematic or gross one-time breach of judges' ethic, which undermines the authority of justice;

5. breach of confidence, protected by the law, especially confidence of the conference rooms, or confidential information revealed during the trial in-camera;

6. non-submission or untimely submission for information of the declaration of property status, or submission of false information in this declaration.

The case when the judge "did not support the position by the prosecution" does not provoke the disciplinary responsibility of a judge, who has taken part in the adoption of a decision, if there was no willful breach of the law or irresponsible discharge of the official duty, which caused essential implications.

According to the High Qualification Commission of Judges of Ukraine, posted on the web-site www.vkksu.gov.ua in 2011 the disciplinary liability in a form of a reprimand was applied to 116 judges.

It has to be mentioned that in most cases the reason for holding judges disciplinary responsible was the violation envisaged in paragraph 2 of first part of the Article 83 of the Law of Ukraine "On Judiciary and Status of Judges", namely non-act of a judge concerning the consideration of application, complaint or case during the period, prescribed by legislation, which in fact constitutes the violation of Article 6 of the Convention for Human Rights and Fundamental Freedoms, according to which "everyone is entitled to a fair and public hearing within a reasonable time".

In this regard, the Prosecutor General's Office states that M.Gavrylyuk was appointed a member of the High Council of Justice by the Ukrainian Conference of Prosecutors in his personal capacity and does not belong to the composition of the High Council of Justice as a deputy of the Prosecutor General. In this respect the execution by Mr Gavrylyuk of his function as a member of the High Council of Justice is not conditioned on his duties as a deputy of the Prosecutor General and cannot be regarded as an illegal influence of the Prosecutor General's Office on the functioning of the Court.

To paragraph 57

The Prosecutor General's Office does not agree with the recommendation of T.Hammarberg that the "the role of the prosecutor's office should be limited to criminal prosecution on behalf of the State. The supervisory function should be left to the court system and to national human rights structures, such as the Parliamentary Ombudsperson."

The Prosecutor General's Office as one of the instruments of the law enforcement system is important for ensuring the application of laws, starting by the protection of the rights of an individual, community, social groups, territorial organizations, State and the society in general.

The working group of the Council of Europe experts following the outcome of the meeting of 15-18 November 2011 in Strasbourg prepared a draft recommendation to the

Committee of Ministers about the role of the Prosecutor General's Office beyond the criminal judiciary.

The draft underlines the importance of establishing the general principles for the Council of Europe member-states about the role of the Prosecutor General's Office beyond the criminal judiciary.

The draft notes that in the majority of the states such a role varies a lot and can include the national legislation beyond the system of the criminal judiciary, taking into account legal traditions of the states and with the view of protection of public interests, human rights and fundamental freedoms:

- representing the State interests in the court;
- supervising the activities of the state bodies and other legal entities.

Concerning the participation of the Prosecutor in the trial, it is important that the powers and the right of the Prosecutor to submit appeal or initiate the review of the decision by the courts of a higher jurisdiction shall not be different from the rights of other parties in the trial.

The participation in the trial of an individual whose interests are represented by the Prosecutor General's Office should not prevent the Prosecutor from participating in the trial in the cases of general or public interests.

It has to be noted that the issues linked to the reform of the Prosecutor General's Office in Ukraine have become of special priority.

Ukraine has taken on the obligation before the Council of Europe to change the role and functions of the Prosecutor General's Office, first of all as regards the general supervising the observance of laws. This should be done by transforming this institution to a body that will comply with the principles of the Council of Europe (opinion and recommendation of the PACE N190 (1995) of 26 September 1995 on accession of Ukraine).

In order to fulfill the said obligations, Decree of the President of Ukraine N362/2011-пр of 22.11.2011 established the working group to draft the laws which regulate the action of the Prosecutor General's Office and Lawyers. This group is composed of the chiefs of the state bodies and human rights organizations and officials of the headquarters of the Prosecutor General's Office.

Taking into account the tasks of the experts of the Prosecutor General's Office, the draft law of Ukraine "On the organization and the procedure of activities of the bodies of the Prosecutor General's Office of Ukraine" has been prepared.

This draft has taken into account at most the comments of the European experts and opinions of the following institutions: the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, the Venice Commission, and the Conference of the Prosecutors of Europe.

The draft envisages the role of the Prosecutor General's Office in this field as a supervisory body. So, when the supervising of the state bodies and other legal entity activities takes place it has to act independently, transparently and fully observing the principle of the rule of law.

Concerning the private legal entities the Prosecutor General's Office can exercise its supervising functions only in the cases when there are grounds to believe that such a legal entity violated the law, its legal obligations, including those envisaged by the international conventions in the field of human rights protection.

In addition, the state bodies or other legal entities can object or contest the Prosecutor General's Office actions in the court.

The draft also envisages the substantial change of the powers of the Prosecutor General's Office in order to ensure that the Prosecutor's reaction beyond the criminal justice is exercised, as a rule, by the means of submitting the relevant complaints or applications to the court.

In addition to the said international norms the draft Law also takes into account the legal *acquis* of Ukrainian experts.

First, its provisions are in line with the draft of the new Criminal Procedure Code of Ukraine.

Second, the function of supervising the observance and application of laws is substantially reviewed and reformed into human rights protection activity.

Third, taking into account the modern requirements, the prerequisites and grounds for the Prosecutor General's Office function of the representation of the state and public interests of the citizens in the courts as envisaged by p.2 Article 121 of the Constitution of Ukraine were reviewed.

The opinion of the Commissioner on the said issue cannot be shared on the following grounds. Supervising the observance of laws by the law enforcement bodies when they conduct general and pre-trial investigations should be one of the Prosecutor General's Office functions.

According to the new draft Criminal Procedure Code of Ukraine (positive remarks about drafting of which are also made in the Commissioner's report) the investigators of the law enforcement services will have the right to conduct silent investigative (detection) activities.

The interference of the persons not involved in the crime investigation in the process of pre-trial investigation and operative investigative activities, for example of the Parliamentary Ombudsman of Ukraine in the context of the complaints on illegal actions of law enforcement officers, will lead to the reveal of the investigation secret, confidential data about individuals, obtained in the course of operative and investigative as well as silent detection activities.

In addition, the verification of the lawfulness of the actions carried out by the law-enforcement bodies should be conducted by the Prosecutor, because according to the provisions of the new Code of Criminal Procedure of Ukraine (which is according to the Commissioner is being developed in a close cooperation with experts of the Council of Europe) it's exactly the prosecutor who exercises the procedural control over the pre-trial investigation and support the prosecution case.

To paragraph 76

There is no Sevastopol investigative isolation ward under the authority of the State penitentiary service of Ukraine.

To paragraph 97

The information in the said paragraph of the Draft report does not correspond to the factual circumstances.

In March 2010 the reorganization of the structural units of the Ministry of Internal Affairs was carried out in order to optimize the functioning of its central bodies, one of the areas of which was the elimination of the duplication of functions. In the context of these measures, the Office of the Minister of Interior, including its structural unit – Department of monitoring of

protection of human rights in the work of the police, were reorganized. As this Department carried out the function of the control of the work of units of police, thus duplicating the work of the internal security units and inspection of personnel, and substituted for the public control, it was reorganized through creation of the section of monitoring of the human rights in the work of the police (hereinafter SMHR).

All functions concerning the conduct of monitoring the protection of human rights in the work of the police is preserved and falls under the authority of the SMHR of the Office of the Minister. In addition, all functions on monitoring the protection of human rights, previously carried out by the personnel of the Department, were delegated to the representatives of the institutions of civil society and the general public in accordance with the legislation. At the moment, the staff of the SMHR of the Office of the Minister comprises 5 employees.

In order to ensure the public control over the pre-trial detention facilities in the police bodies, the effective engagement of the independent observers to the activities of the mobile units for monitoring of human rights protection with the participation of international and national human rights organizations, the draft order of the Ministry of Internal Affairs "On some issues of organizing the activity of permanent mobile units for monitoring of protection of human and civil rights and freedoms in the work of the police " was prepared. This monitoring system is being established taking into consideration the international commitments of Ukraine under the United Nations [Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), which is an integral part of the national preventive mechanism against torture and ill-treatment in the work of the police.

To paragraph 102

This paragraph has to be specified, as it is unclear, which bodies are meant as "security services".