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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Seventh periodic report**

**Ukraine\***

[5 July 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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## Abbreviations

CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ILO	International Labour Organization
Morals Committee	National Expert Committee on Public Morals
PACE	Parliamentary Assembly of the Council of Europe
Venice Commission	European Commission for Democracy through Law (Venice Commission of the Council of Europe)

## **I. General information on the country**

1. There have been no changes to the general information provided on the country in the sixth periodic report (CCPR/C/UKR/6). Unless otherwise stated in this report, the information provided in documents CCPR/C/UKR/CO/6/Add.1 of 21 August 2008 and CCPR/C/UKR/CO/6/Add.2 of 28 August 2009 in reply to observations and recommendations also remains unchanged.

2. By decision of 30 September 2010, the Constitutional Court deemed Act No. 2222-IV of 8 December 2004 on amendments to the Constitution to be unconstitutional. Pursuant to article 152 (1) of the Constitution, the Constitutional Court finds acts and other legal instruments to be in whole or in part unconstitutional if the procedure laid down in the Constitution for their consideration, adoption or entry into force has been violated. According to the statement of reasons for the above decision, in examining the question formulated in the submission, the Constitutional Court took the view that the subject of judicial review was not the content of the Act in question but the procedure followed in considering and adopting the Act. Deeming that Act to be unconstitutional on the grounds of non-compliance with the constitutional procedure for its consideration and adoption implies the reinstatement of the earlier constitutional provisions, which the Act had amended, supplemented or set aside, and by the same token ensures the stability of the constitutional system, guarantees the human and civil rights and freedoms enshrined in the Constitution and safeguards the Constitution's integrity, inviolability, continuous applicability and primacy as the fundamental law governing the Ukrainian territory as a whole.

## **II. Implementation of specific articles of the Covenant**

### **Article 1**

3. Under article 5 of the Constitution, the people are the bearers of sovereignty and the sole source of power in Ukraine. The people exercise power directly and through State and local government bodies. The right to determine and amend the country's constitutional system resides exclusively in the people and may not be usurped. By virtue of that principle, in 1996 the Verkhovna Rada (parliament) of Ukraine adopted the Constitution on behalf of the Ukrainian people, as stated in the preceding report.

4. Under article 18 of the Constitution, Ukraine's foreign-policy activity is aimed at upholding the country's national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community, in accordance with generally acknowledged principles and rules of international law.

5. As stated in the preceding report, the Constitution confirms the principle that the State is responsible for promoting the consolidation and development of the Ukrainian nation, the nation's awareness of its history, its traditions and culture, and the development of the specific ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

## Article 2

### Guarantees of non-discrimination

6. As a State governed by the rule of law, where the human being and a person's life, health, inviolability and security are recognized as fundamental social values while rights, freedoms and related safeguards guide State activity, Ukraine guarantees the freedom of all persons and their equality in terms of dignity and rights. The principle of the equality of all regardless of race, colour, gender, political, religious or other beliefs, ethnic or social origin, property status, place of residence, linguistic or other characteristics is enshrined in article 24 of the Constitution.

### Binding character of the provisions of the Covenant

7. As noted in the preceding report, international treaties in force which are recognized by the Verkhovna Rada as binding form part of the country's law and must be conscientiously implemented in keeping with the *pacta sunt servanda* principle. Accordingly, all persons under Ukraine's jurisdiction and within its territory, without any discrimination, are guaranteed protection of the rights and freedoms enshrined in the Covenant.

### Right to judicial protection

8. Under article 55 of the Constitution, human and civil rights and freedoms are protected by the courts. The Constitution confirms the right to challenge in court the decisions, acts or omissions of State or local government bodies, officials, and officers.

9. Accordingly, article 7 of the Judicial System and Status of Judges Act of 7 July 2010 guarantees the protection of everyone's rights, freedoms and legitimate interests by an independent and impartial court, created in accordance with the law.

10. The country's judicial system seeks to ensure that cases are heard fairly and impartially within reasonable periods prescribed by law and comprises first-instance, appellate and cassational courts and the Supreme Court.

11. Everyone may participate, in the manner prescribed by procedural law, in judicial proceedings concerning him or her in a court of any instance. In Ukraine, aliens, stateless persons and foreign legal entities are entitled to judicial protection on an equal footing with Ukrainian citizens or legal entities.

12. As noted above and in the preceding report, the equality of all persons before the law and, in particular, in court is constitutionally guaranteed. Specifically, under article 9 of the Judicial System and Status of Judges Act, the administration of justice is based on the equality of all parties to judicial proceedings before the law and in court, regardless of race, colour, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics.

13. The Constitution guarantees that anyone may request protection of his or her rights from the Human Rights Commissioner of the Verkhovna Rada of Ukraine and, after exhausting all domestic legal remedies, from the relevant international judicial institutions or bodies of international organizations in which Ukraine is a member or participant.

14. Pursuant to article 113 of the Penal Enforcement Code and article 13 of the Pretrial Detention Act, complaints, petitions and letters addressed by sentenced persons or detainees to the Human Rights Commissioner of the Verkhovna Rada of Ukraine, the European Court of Human Rights, other competent bodies of international organizations in which Ukraine is a member or participant, designated officials of such international organizations or a

procurator are not subject to review and must be sent off within 24 hours after being handed in.

**Effectiveness of legal protection, and information on paragraph 17 of the Committee's concluding observations on the sixth periodic report (CCPR/C/UKR/CO/6)**

15. The judicial reform carried out in 2010 has been a major step towards enhancing the efficiency of the country's judicial system and, in particular, implementing the recommendation to promote judicial inviolability. The provisions of the new Judicial System and Status of Judges Act, adopted by the Verkhovna Rada on 7 July 2010 as part of the reform, reflect the opinions of the European Commission for Democracy through Law (Venice Commission) and earlier opinions of Council of Europe experts on the draft of the Act, in addition to observations on constitutional reforms. In the opinion on the above Act, adopted at its session of 15-16 October 2010, the Venice Commission considered that most of the Act's provisions met European standards. In particular, appreciation was expressed for the change in the status of the State Judicial Administration, the elimination of military courts, and the introduction of automated court-case assignment and of control by the judiciary over the professional training of judges.

16. The Judicial System and Status of Judges Act confirmed the constitutional principle of court independence as a basic tenet safeguarding the effectiveness of the judicial protection of human rights and freedoms. Article 5 of the Act reflects article 124 of the Constitution in providing that justice is administered exclusively by the courts and prohibiting the delegation or assignment of court functions to other bodies or officials. For an adequate presentation of the Act, its legislative innovations are described below.

**Court system**

17. The Act established a uniform cassational system headed by the competent high courts. In particular, the High Specialized Court for Civil and Criminal Cases, the High Administrative Court and the High Economic Court function as courts of cassation. In that framework, the main role of the Supreme Court consists in ensuring the uniformity of judicial practice specifically by reviewing cases in which:

(a) Non-uniform application of the same rules of substantive law by the cassational court or courts has led to essentially different court decisions regarding similar legal situations.

(b) An international court, whose jurisdiction is acknowledged by Ukraine, has established a violation of Ukraine's international obligations in relation to court proceedings. The above organization obviated the problem of "dual cassation" (review by way of cassation of common court decisions handed down by high specialized courts and possible subsequent review of these courts' decisions by the Supreme Court), which existed before the adoption of the Act and contravened the international principle of *nemo iudex in propria causa*.

The court system proposed by the new Act is consonant with Constitutional Court decision No. 8-rp/2010 of 11 March 2010, according to which the constitutional status of the Supreme Court does not provide it with cassational powers in respect of decisions of high specialized courts acting as courts of cassation. Moreover, the Act eliminates military courts, whose existence was incompatible with European standards and with the practice of the European Court of Human Rights.

**Appointment of judges**

18. The above Act introduces a new judge selection mechanism, based on competitiveness and transparency. Under the Act, authority for the selection of candidates for judge will for the first time reside in the High Judicial Selection Commission, constituting a permanent body of the judiciary and consisting mainly of judges. This approach reflects Council of Europe standards. The judicial appointment procedure will for the first time include special training for the candidates, who must take a qualifying examination (by anonymous testing); the rating of candidates; their placement in a reserve for filling vacant judicial posts; and recommendations provided for candidates by the judiciary on the basis of their rank. The proposed procedure will help to build a body of judges consisting exclusively of persons with the requisite professional training and thereby reduce the risk of corruption. The Act takes into account the recommendations of the Council of Europe and the conclusions of the Venice Commission, which require the establishment of a procedure for appointing judges, which will be free from political interference.

**Liability of judges**

19. The Act improves the procedure for taking disciplinary measures against judges. The High Judicial Selection Commission is authorized to investigate violations of the Act by judges. In order to facilitate the effective examination of cases involving a judge's liability, the Commission will use a service of disciplinary inspectors who, on instructions issued by a Commission member, will proceed with a preliminary analysis of petitions and communications claiming judicial misconduct. The Act lists clear-cut grounds for disciplinary measures against judges. A complaint against a judge may be filed directly with the Commission by anyone. This mechanism is expected to ensure prompt and transparent response to offences committed by judges.

**Judicial administration**

20. The Act takes into account earlier conclusions of the Venice Commission and incorporates the State Judicial Administration into the judiciary. This body will provide organizational support for the activity of the organs of the judiciary within the framework of powers provided for by the Act. The leadership of the State Judicial Administration is designated or dismissed by the Council of Judges of Ukraine, a judicial self-governance body, through the Congress of Judges of Ukraine.

**Financial security of judges and financing of courts (on paragraph 17 of the concluding observations)**

21. The Act abolishes privileges for judges and provides for their adequate remuneration, as required by the Constitution and European standards regarding the independence of judges. As of 1 January 2012, when the relevant provisions of the Act take effect, a judge's remuneration shall consist of a salary and related bonus payments and shall be a function of the minimum wage. With a view to ensuring the independence of the judiciary, the Act proposes new approaches to the financing of the courts. Thus, funds for court maintenance shall be provided for in the Budget Act and specifically earmarked for every local, appellate and high specialized court. This procedure will make it possible to provide for the actual expenditures required for administration of justice by the courts. Furthermore, the funds in question will be managed by court staff, not by a competent executive authority, as was the case heretofore.



### **Independence of judges**

22. The Act introduces an automated document-management and case-assignment system in all courts having general jurisdiction, thereby preventing presiding judges from influencing in any way logistical support to the judges of a given court and from bringing procedural leverage to bear on the hearing of cases. Moreover, the Act regulates the issue of criminal liability of judges in a new manner. Solely the Procurator-General or his or her deputy may institute criminal proceedings against a judge. It becomes as a result impossible to influence judges of other bodies, law-enforcement agencies in particular. One of the anticorruption regulations under the Act consists in a judge's obligation to transmit a copy his or her annual property and income statement (tax declaration) and expenditures to the State Judicial Administration for publication of that information on the judiciary's official web site. The above and other innovations introduced by the Act are aimed at safeguarding the independence of the courts and judges with a view to ensuring the proper functioning of the judiciary and, thereby, the protection of the civil rights and freedoms enshrined in the Constitution.

23. Moreover, in order to optimize judicial proceedings, the final provisions of the Act introduce the following amendments to procedural law:

(a) Time limits for case review at the appellate and cassational instances are significantly reduced (under economic procedures, for instance, the time limit for hearing a complaint by way of cassation is reduced from two months to one);

(b) Under administrative procedures, it is made possible to serve a summons to the parties by fax or email;

(c) Under administrative and civil procedures, a person may appeal without prior petition.

Furthermore, the following Presidential Decrees were promulgated with a view to ensuring the implementation of the provisions of the Act and enhancing the accessibility of justice:

(a) No. 810 of 12 August 2010 on the High Specialized Court for Civil and Criminal Cases;

(b) No. 811 of 12 August 2010 on issues related to the network of economic courts, whereby the system of economic courts and their geographic jurisdiction is modified;

(c) No. 900 of 14 September 2010 on the elimination of military appellate and local courts.

The High Judicial Selection Commission is part of the new structure. The National School for Judges of the High Judicial Selection Commission has been set up in the Academy for Judges. Thorough implementation of the Act will fully ensure the proper functioning of the judiciary and, thereby, the protection of the civil rights and freedoms enshrined in the Constitution.

### **On paragraph 5 of the concluding observations**

24. There have been no changes to the constitutional and legislative framework for the activity of the Human Rights Commissioner of the Verkhovna Rada presented in the preceding report. Funds for that activity are provided under various State budget items and follow an upward trend. Budget Act allocations to meet the costs of the Commissioner's secretariat increased from Hrv. (hryvnias) 17,823,000 in 2009 to Hrv. 21,335,000 in 2010 and Hrv. 22,966,000 in 2011.

### Article 3

#### Gender equality guarantees

25. The equality of rights and opportunities for men and women is enshrined in article 24 of the Constitution, which stipulates that there shall be no privileges or restrictions based on race, colour, political, religious or other beliefs, gender, ethnic or social origin, place of residence, or linguistic or other characteristics. Equal rights for women and men are ensured by:

(a) Offering women the same opportunities as men in social, political and cultural activities, in education and vocational training, in work, and with regard to remuneration for work;

(b) Implementing special measures to protect women's work and health, and providing pension benefits;

(c) Creating conditions which enable women to combine work with motherhood;

(d) Furnishing legal protection and material and moral support for mothers and children, including paid leave and other benefits for pregnant women and mothers.

26. As noted in elaborating on the relevant article of the Constitution in the preceding report, the Verkhovna Rada adopted Act No. 2866-IV of 8 September 2005 on equal rights and opportunities for women and men, whose purpose is to achieve parity between women and men in all areas of social life by enacting legislation guaranteeing equality of rights and opportunities between women and men, eliminating gender-based discrimination, and introducing specific temporary measures to correct the imbalance between the possibilities available to women and men with regard to the realization of the equal rights accorded to them by the Constitution and the law. The above Act regulates legal relations involved in ensuring equal rights and opportunities for women and men in the sociopolitical and socioeconomic spheres and in education, and provides for a mechanism to ensure the promotion of equal rights and opportunities for women and men by State bodies, institutions and organizations.

#### National mechanism for ensuring gender equality

27. The national mechanism for ensuring gender equality is structured as follows: The Verkhovna Rada includes a subcommittee on international-law issues of gender policy, created under the Committee on Human Rights, National Minorities and Ethnic Relations. Within the secretariats of 27 Verkhovna Rada committees, officials have been tasked with providing advice and methodological assistance on issues related to ensuring equal rights and opportunities for women and men within the area of responsibility of such committees. Expert working groups on gender mainstreaming operate within 38 central executive authorities. A total of 21 gender centres have been set up and operate in 17 oblasts, namely the Volyn, Dnipropetrovsk, Kirovohrad, Luhansk, Lviv, Mykolaiv, Odesa, Poltava, Sumy, Ternopil, Kharkiv, Kherson, Khmelnytskyi and Chernovitsi oblasts (each with one gender centre) and the Vinnytsia, Zhytomyr and Zakarpattia oblasts (each with two gender centres). Amendments, made under the Equal Rights and Opportunities for Men and Women Act, to the Verkhovna Rada Human Rights Commissioner Act of 15 April 2008 broadened the ombudsman's powers in the gender area, particularly with regard to monitoring the promotion of equal rights and opportunities for women and men and reviewing complaints of gender discrimination. A Verkhovna Rada Human Rights Commissioner deputy on issues related to the protection of the rights of child, equal rights and non-discrimination and an adviser to the Prime Minister on gender issues have been appointed; and so have 17 advisers to chairmen of oblast-level State administrations on issues related to promoting gender equality. More than 10 gender resource and 20 gender

education centres have been created. An Inter-agency Council for family affairs, gender equality, demographic development and combating trafficking in persons was established by Cabinet of Ministers decision No. 1087 of 5 September 2007 on consultative and advisory bodies on family matters, gender equality, demographic development and combating trafficking in persons. An expert council to review submissions regarding occurrences of gender discrimination has been set up as a consultative and advisory body.

**On paragraph 18 of the concluding observations with regard to the designation of women in the public sector**

28. In order to ensure gender parity in political-party and electoral lists, the compliance of political parties with the ban on gender-based discrimination, and the promotion of members of the sex affected by gender imbalance to senior civil-service posts, a draft Act amending legislation on equal rights and opportunities for women and men has been drawn up and submitted to the Verkhovna Rada for consideration.

29. A draft social programme for the targeted State-wide promotion of equal rights and opportunities for women and men through 2015 has been formulated.

30. The overall ratio of men to women among State employees has remained stable in recent years at 24.3-24.7 per cent men to 75.3-75.7 per cent women (see table No. 1). This shows that Ukraine has complied with the Committee's recommendations on eliminating gender discrimination.

**On paragraph 18 of the concluding observations with regard to prohibiting discrimination against women in the area of employment, particularly with regard to hiring and wages**

31. An analysis of labour-related legal and regulatory instruments shows no explicit gender discrimination in the country's legislation, which provides for the social protection of women based on female physiology and the need for additional free time to combine work and motherhood. In particular, the law prescribes reduced working hours for women with children up to 14 years of age or children with disabilities (article 51 of the Labour Code); part-time work for women in that group or pregnant (article 56 of the Labour Code); restrictions on overtime and work-related travel for women with children aged 3-14 or disabled children (article 177 of the Labour Code); transfer of pregnant women and women with children under 3 to easier jobs (article 178 of the Labour Code); restrictions on night work for women (article 175 of the Labour Code); and other advantages and safeguards.

32. Labour law guarantees citizens equality in the areas of employment and remuneration for work. Under article 8 of the Remuneration for Work Act, the State regulates the remuneration of workers of enterprises of all types of ownership, in particular by setting minimum wages and conditions and also the remuneration of workers of enterprises and organizations financed under the State budget. Under article 15 of the Act, in self-supporting enterprises, the forms and systems of remuneration of labour, labour norms, wage rates, wage scales, official salary schedules, entry conditions, raises, premiums, rewards, and other incentive, compensation and guarantee payments are established by collective agreement in accordance with standards and guarantees prescribed by law. Statistically, men's wages are higher than women's. This, however, is not due to discrimination in setting wages but results from the greater percentage of men in management posts, which offer higher pay, and from men's more frequent assignment to jobs characterized by difficult or harmful or particularly difficult or harmful working conditions and to night work, on which the pay is also higher. Labour remuneration differences between men and women exist as a result of:

(a) Women's exercise of their right to work part-time (on a daily, weekly or monthly basis) in order to be able to spend more time with their families and raising children;

(b) The prohibition, under article 174 of the Labour Code, to assign women to jobs characterized by difficult, harmful or hazardous working conditions and to underground work, save for some types of underground employment (non-physical work and health and community services);

(c) Restrictions on employing women for night work, save for types of economic activity where such employment is permitted as a temporary measure to meet special needs (article 175 of the Labour Code).

According to statistical data, women's and men's average monthly wages in 2009 amounted to, respectively, Hrv. 1,677 and Hrv. 2,173, showing a 29.6 per cent difference in favour of men. In the period January-June 2010, the respective figures were Hrv. 1,860, Hrv. 2,388 and 28.4 per cent.

### **State monitoring of compliance with women's rights in employment-related legal relations**

33. Local units of the State department monitoring compliance with labour legislation regularly conducts relevant inspections aimed at preventing and eliminating discrimination infringing women's rights in employment-related legal relations. In 2010, verifications of compliance with the law on women's labour were carried out in 2,537 enterprises (employing 285,232 women according to February 2010 data).

34. These inspections revealed no violation of legal gender-equality requirements or of the guarantee of equal rights for women and men with regard to work and wages.

35. Nevertheless, other labour law violations not infringing the gender equality principle but affecting the rights of women were recorded in 1,952 enterprises. The most frequent violation (observed in 975 enterprises) consists in disbursing the full pay for basic leave three days after the beginning of the leave. Six enterprises were found to have violated Labour Code article 184, which prohibits the dismissal of pregnant women and women with children of up to 3 years of age by the enterprise owner or an owner-authorized organ. Such violations concerned 120 women. Violations were also recorded with regard to the rights of 713 women engaged in night work. No cases were reported involving non-compliance with legal provisions on overtime or on work-related travel by pregnant women and women with children aged 3-14 or disabled children, on part-time work arrangements at a woman's request or paid leave to care after a child of up to 6 years of age.

36. The management of 1,041 enterprises gave instructions to redress the labour law violations observed during the checks. Pursuant to article 41 of the Administrative Offences Code, 806 reports were filed with the local courts for the institution of administrative proceedings against officials for labour law violations. Pursuant to article 188-6 of the same Code, administrative charges were brought against 46 enterprise managers for failure to comply with the legitimate demands of State labour inspectors that they desist from practices in breach of labour legislation. The findings of 159 checks were transmitted to law-enforcement agencies for possible procuratorial action.

## Article 4

### Prohibition of restricting rights and freedoms

37. Under article 64 of the Constitution, constitutional human and civil rights and freedoms may not be restricted, except in cases provided for in the Constitution. As noted in preceding reports, such exceptional cases are specified in the Constitution, while restrictions must be accompanied by a statement of their duration and may be imposed only on certain types of rights and freedoms, also listed in the Constitution.

38. Under the above article of the Constitution, the following entitlements, among others, may not be restricted even under conditions of martial law or a state of emergency:

- (a) Right to life (enshrined in article 27 of the Constitution and article 6 of the Covenant);
- (b) Right to respect of one's dignity (article 28 of the Constitution and article 7 of the Covenant);
- (c) Freedom and inviolability of the person and prohibition of torture (article 29 of the Constitution and articles 7 (1) and (2) and 8 of the Covenant);
- (d) The principle that legislation may have no retroactive effect (article 58 of the Constitution and article 15 of the Covenant);
- (e) Right to citizenship (article 25 of the Constitution and article 16 of the Covenant);
- (f) Other rights and freedoms enshrined in articles 24, 40, 47, 51, 52, 55, 60, 61, 62 and 63 of the Constitution.

### On paragraph 6 of the concluding observations with regard to the consistency of constitutional provisions with article 4 of the Covenant

39. With regard to the right to freedom of conscience and religion, enshrined in article 18 of the Covenant, it should be noted that, under article 35 of the Constitution, everyone has the right to a personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.

40. The second paragraph of article 35 of the Constitution clearly establishes a framework for a possible restriction of the above right, namely that its exercise may be limited by law only in the interests of protecting public order, the health and morality of the population, or the rights and freedoms of other persons. This fully matches the provision of article 18, paragraph (3), of the Covenant. Restrictions on the right to freedom of conscience and religion which fall outside the framework laid down in article 35 of the Constitution are unconstitutional.

41. Guided by the principles enshrined in the Covenant, the Freedom of Conscience and Religious Organizations Act was adopted as early as 1991. The Act, particularly in article 3, fully matches the provisions of article 18 of the Covenant in respect of the guarantees of liberty of conscience and religion. Under that article, everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activities. No one may establish obligatory beliefs and world views. No coercion is allowed in connection with a citizen's choice of attitude towards religion and beliefs, rejection of religion or participation or non-participation in religious services, rites, ceremonies or studies. Parents or persons in *loco parentis* may, by mutual agreement, educate their children according to their beliefs

and attitudes towards religion. Freedom to profess one's religion or beliefs is subject only to such limitations as are required by public safety and policy and for the protection of the life, health, morals and rights and freedoms of others pursuant to the law and Ukraine's international obligations.

#### **Notice under article 4, paragraph 3, of the Covenant**

42. As noted in the sixth report, under article 27 of the State of Emergency Legal Rules Act, once a state of emergency is declared Ukraine promptly notifies States parties to the Covenant, through the United Nations Secretary-General, of restrictions on human and civil rights and freedoms which represent derogations from obligations under the Covenant and of the parameters of these derogations and the reasons for declaring the state of emergency. The notification also indicates the period for which the restrictions constituting such derogations are introduced.

43. During the reporting period, there have been no cases in which Ukraine derogated from provisions of the Covenant.

#### **Article 5**

44. Ukraine is a State governed by the rule of law, where the human being and a person's life, health, inviolability and security are recognized as fundamental social values while rights, freedoms and related safeguards guide State activity. The list of rights and freedoms provided for in the Constitution, is not exhaustive.

45. Moreover, the content and scope of existing rights and freedoms may not be diminished when new Acts are adopted or amendments made to existing Acts.

46. Ukraine recognizes and abides by the principle that the fulfilment of international commitments is obligatory.

47. Therefore, the principle contained in article 5 of the Covenant is fully and incontestably observed. No human rights or freedoms have been abolished or restricted in the country on the grounds that they are not provided for in the Covenant.

#### **Article 6**

48. Every person's inalienable right to life is guaranteed under Ukraine's international obligations and by Constitution article 27, which provides for this right and states that no one may be arbitrarily deprived of life and that it is a duty for the State to protect human life.

49. By decision No. 11-rp/99, the Constitutional Court on 29 December 1999 deemed the provisions of the 1960 Criminal Code of the Ukrainian Soviet Socialist Republic on capital punishment to be at variance with the Constitution of Ukraine (unconstitutional). On 22 February 2000, the Verkhovna Rada adopted an Act amending the Criminal Code, the Code of Criminal Procedure and the Corrective Labour Code, which entered into force on 4 April 2000. Under that Act, the death penalty was removed from the Criminal Code of the Ukrainian Soviet Socialist Republic and a new penalty, life imprisonment, was introduced. On 5 April 2001, the Verkhovna Rada adopted the new Criminal Code of Ukraine, which entered into force on 1 September 2001 and does not provide for capital punishment. Life imprisonment constitutes the severest penalty that may be imposed on persons found guilty of particularly violent crimes.

50. On 16 March 2007, Ukraine acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

51. By Act No. 43/98/VR of 16 December 1998, Ukraine ratified the European Convention on Extradition, article 11 of which provides that, if the offence for which extradition is requested is punishable by death under the law of the requesting party, and if in respect of such offence the death penalty is not provided for by the law of the requested party, extradition may be refused unless the requesting party gives such assurance as the requested party considers sufficient that the death penalty will not be carried out.

52. During the reporting period, there have been no cases in which capital punishment was applied.

## Article 7

### **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (and information on paragraph 7 of the concluding observations with regard to the provision of State guarantees)**

53. As noted above, article 3 of the Constitution recognizes the human being and a person's life, health, inviolability and security as fundamental social values. In line with this principle, article 28 of the Constitution lays down everyone's fundamental right to respect for one's dignity. No one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment violating his or her dignity. The realization of this right is regulated by:

- A number of domestic legal instruments, including the following:
  - (a) Criminal Code;
  - (b) Code of Criminal Procedure;
  - (c) Penal Enforcement Code;
  - (d) Office of the Procurator Act;
  - (e) Verkhovna Rada Human Rights Commissioner Act;
  - (f) Pretrial Detention Act.
- Ukraine's international obligations under the:
  - (g) Human Rights Declaration of 1948;
  - (h) Covenant;
  - (i) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the Optional Protocol of 18 December 2002 to that Convention;
  - (j) Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the related protocols;
  - (k) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987 with the related Protocols No. 1 and No. 2 of 4 November 1993.

54. The following provisions of the Criminal Code prescribe criminal liability for acts constituting torture or cruel, inhuman or degrading treatment or punishment in places where people are deprived of their liberty:

(a) Chapter II, entitled “Crimes against the life or health of a person”, provides for criminal liability for incitement to suicide, torture, causing of bodily injuries of various degrees of gravity, threat of murder, failure of a medical worker to provide assistance to a patient and improper fulfilment of professional duties by physicians or pharmacists.

(b) Article 127 establishes the definition of torture as the deliberate infliction of severe physical pain or physical or mental suffering by battery, torment or other acts of violence to coerce the victim or another person to commit acts contrary to their will, including statements or admissions by him or her or another person; to punish him or her or the other person for acts committed by him or her or that person or for the commission of which he or she or that person is suspected; and to intimidate or discriminate against him or her or other persons.

(c) Under articles 364 and 365, abuse of authority or official position and improper exercise of authority or powers constitute crimes. They involve the use by a civil servant of his or her powers or position in a manner incompatible with the interests of the service, or the commission by a civil servant of acts that manifestly exceed the rights and powers vested in him or her, and the occasioning thereby of substantial damage to the legally protected rights, freedoms and interests of other citizens.

(d) Under article 373, coercion, through illegal acts, by the person conducting an inquiry or pretrial investigation, into testifying during questioning is punishable as an offence against justice.

#### **Monitoring (and information on paragraph 7 of the concluding observations with regard to independent inspections of detention facilities)**

55. Monitoring of respect for the right to protection from torture and cruel, inhuman or degrading treatment or punishment is carried out directly by the police authorities, by the procurator’s office as part of procuratorial oversight, on the basis of a judicial appeal, and with the help of the civil society apparatus.

#### **Internal controls**

56. In that connection, under article 25 of the Militia Act, police personnel must make their own decisions within their area of competence, as defined by the Act and other legislation, and are subject to disciplinary or criminal liability for unlawful acts or omissions. Their acts may be challenged according to the established procedure by appeal to internal affairs bodies, courts or procurators.

#### **Procuratorial oversight**

57. Article 234 of the Code of Criminal Procedure lays down the procedure for appealing against acts of, in particular, an internal affairs investigator. A written or oral appeal may be lodged with the procurator against the acts of an investigator either directly or through the investigator. Oral appeals are recorded in a report by the procurator or investigator. An investigator is obliged to transmit an appeal which he or she has received, together with his or her comments, to the procurator within 24 hours. Filing an appeal does not constitute grounds for stopping the act which is challenged, if the investigator or procurator does not consider it necessary to discontinue that act.

58. In that context, procuratorial services act resolutely to ensure the fulfilment of the regulatory functions laid down in article 121 (4) of the Constitution. Special attention is paid to monitoring compliance with the constitutional rights of detainees and sentenced offenders, and preventing torture or other inhuman or degrading treatment or punishment. Thus, guided by the Constitution, the Office of the Procurator Act and orders of the Procurator General, procurators at all levels systematically monitor compliance with the



legislation governing the enforcement of court decisions in criminal cases and of other coercive measures involving restrictions on the personal freedom of citizens. In order to ensure constant procuratorial oversight of remand centres and correctional colonies, every month detainees may have interviews with the authorities on personal matters, and procedures are conducted to verify the lawfulness of decisions taken by the administration. The public is systematically informed of the findings of such inspections through the media, and the relevant information is transmitted on an ongoing basis to the President of Ukraine, the Prime Minister, the Verkhovna Rada, the Presidential Administration and the Human Rights Commissioner of the Verkhovna Rada.

59. Procurators are required to investigate complaints filed by detainees and persons in custody denouncing violations of their rights and freedoms and to hear those persons. Under article 25 of the Penal Enforcement Code, oversight committees, operating in accordance with regulations on watchdog bodies, adopted by the Cabinet of Ministers, have been entrusted with public monitoring of observance of the rights of convicted offenders serving their sentences.

**On paragraph 7 of the concluding observations with regard to storing video records of the interrogation of criminal suspects**

60. Under article 85-2 of the Code of Criminal Procedure, inspections, searches, the reconstruction of situations and circumstances surrounding events and other investigative acts may be filmed. Participants in such procedures are informed of any filming or video recording from the outset. After shooting, recording and processing, the film or videotape is viewed by all participants in the investigative act, and a relevant special report is drawn up. The process of filming or video recording and subsequent screening during investigation, presentation of the case after a pretrial inquiry or court hearings is governed by rules prescribed in article 85-1 of the Code of Criminal Procedure.

**Organization of public monitoring**

61. The organization of public monitoring of the realization of the rights of convicted offenders serving their sentence is regulated by article 25 of the Penal Enforcement Code and is carried out by oversight committees established by local-government and local State administration bodies.

62. In order to enhance the effectiveness of public monitoring of the realization of the rights of sentenced offenders, amendments made to articles 24 and 25 of the Penal Enforcement Code under the 2010 Act amending the Penal Enforcement Code and safeguarding the rights of convicted offenders in criminal correctional facilities have extended:

(a) To the members of oversight committees, the right to visit the above facilities without any special permissions by the administration of the facilities;

(b) To civil society associations, the right to engage in public monitoring of the realization of the rights of sentenced offenders.

63. The legal bases of the activity of oversight committees, in particular their tasks, their rights and relevant organizational issues, are regulated by Cabinet of Ministers decision No. 429 of 1 April 2004 containing provisions on the oversight committees and supervisory boards of special correctional institutions.

On 10 November 2010, the Cabinet of Ministers adopted decision No. 1042 on amendments to the regulations of oversight committees. These amendments provided for, *inter alia*, the:

- (a) Detailed specification of the procedure for the establishment of oversight committees and thereby greater openness and transparency of that procedure;
- (b) Requirement that citizens and public association representatives should account for at least half of the membership of oversight committees;
- (c) Responsibility of oversight committees to hold some of their meetings (at least one per quarter) within the criminal correctional facilities;
- (d) Responsibility of oversight committees to inform the community through the media (once every six months) as to the outcome of their work and the state of realization of the human rights, basic freedoms and lawful interests of sentenced offenders;
- (e) Termination of the mandate of oversight committee in the event that their decisions are incompatible with the legislation in force and lead to violation of the rights, basic freedoms or lawful interests of sentenced offenders or persons having been granted remissions.

64. In addition to monitoring by oversight committees, note should be made of the institution of public councils, which are attached to the State Prisons Service and its regional establishments and consist of representatives of public associations, human rights and religious organizations and the media.

65. The State Prisons Service work plan for 2011 includes the preparation of a draft order on the continuous operation of mobile groups, which monitor criminal correctional facilities. That measure will make it possible to identify and respond to human rights violations in such establishments. The activity of the groups is to be coordinated by public councils attached to the regional establishments of the State Prisons Service.

66. With the support of the Organization for Security and Cooperation in Europe (OSCE) Project Coordinator in Ukraine, a two-year project on the development of national preventive mechanisms against torture and other forms of cruel treatment in the State Prisons Service of the Criminal Corrections Department was launched in June 2009. Through the project, which includes visits to criminal correctional facilities by groups consisting of representatives of public associations and human rights organizations, a mechanism was established to monitor respect for human rights in penal enforcement service establishments; and monitoring methods were developed to identify possible causes of conflict situations involving inmates and the administration of such facilities.

#### **National preventive mechanism**

67. Work on building a national preventive mechanism is currently carried out as part of meeting Ukraine's commitments under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Optional Protocol was ratified by the Verkhovna Rada through Act No. 22-V of 21 July 2006 and having entered into force in Ukraine on 19 October 2006.

68. The Third East European Conference on National Preventive Mechanisms, Combating and Investigating Ill-Treatment was held in Odesa on 2 and 3 November 2010 with the support of the OSCE Project Coordinator in Ukraine and the Council of Europe, within the framework of the "Combating ill-treatment and impunity" Joint Programme between the Council of Europe and the European Union and in cooperation with the Kharkiv Institute for Social Researches. The proposals and recommendations on the creation of a national preventive mechanism that were formulated during the Conference were transmitted to the appropriate State bodies.

69. Taking into account that work and those recommendations, the Ministry of Justice drew up a draft presidential decree on the Public Commission for the Prevention of torture, a permanent consultative and advisory body reporting to the President of Ukraine.

70. Under the draft presidential decree, the above Commission is responsible for identifying cases of torture and other cruel, inhuman or degrading treatment or punishment and submitting to the President of Ukraine proposals for the elimination and prevention of such occurrences; and for participating in the preparation of improvements to legislation regarding such prevention and submitting relevant proposals to the President of Ukraine.

71. In order to perform the above tasks, the above Commission may:

(a) Visit any detention facilities (including prisons and psychiatric institutions), interrogate the inmates and obtain information on detention conditions;

(b) Communicate with State bodies and the establishments reporting and subordinate to such bodies;

(c) Obtain, in accordance with the established procedure, necessary information, documents or material, including confidential items, from State enterprises and institutions;

(d) Call upon representatives of State authorities, local government or civil associations, scholars or specialists in order to resolve specific issues.

#### **International cooperation**

72. In view of the importance and complexity of the task of preventing torture and cruel, inhuman or degrading treatment or punishment, Ukraine actively cooperates with relevant international bodies, particularly the United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

73. During the above Subcommittee's first visit to Ukraine on 16-25 May 2011, subcommittee members visited criminal correctional facilities.

74. Ongoing cooperation with CPT is fruitful. In particular, the latest (sixth) visit by CPT took place on 9-21 September 2009. The CPT delegation visited establishments and institutions subordinate to the Ministry of Internal Affairs, State Border Service Administration, State Prisons Service and Ministry of Health. The report on the results of the CPT delegation's work in Ukraine was approved on 1 April 2010, and a general report by the Government was transmitted to the CPT secretariat in December 2010.

#### **Liability for violation of rights and freedoms provided for in article 7 of the Covenant**

75. Under article 4 of the Code of Criminal Procedure, whenever evidence is brought forward pointing to the commission of an offence, it is the obligation of the courts, or the investigator, or the body conducting judicial inquiries to institute criminal proceedings, and they are obliged, within their respective areas of jurisdiction, to take all steps prescribed under law to establish whether or not an offence has been committed, to identify the persons guilty of the offence and to ensure their punishment.

76. In conducting oversight inspections, the procurators have focused on the prevention and elimination of violations of the law on respect for human rights and detention. In the period 2009-2010, more than 5,000 procuratorial action documents were drawn up for such violations. Disciplinary measures were taken against 4,000 staff members of internal affairs bodies.

77. In the period covering 2009 and the first eight months of 2010, procurators released 360 illegally detained persons from detention centres; while 155 sentenced offenders illegally held in special cells, disciplinary units and punishment cells in criminal correctional facilities of the State Prisons Service were released and subjected to disciplinary control.

78. During 2009, procuratorial investigative organs dealt with 162 criminal cases which concerned offences committed by staff members of internal affairs bodies and involved abuse of power or official position and violence or abasement of human dignity. Of those cases, 10 and 152 cases, respectively, were investigated in connection with offences under articles 127 and 365 (2) and (3) of the Criminal Code and, as a result of pretrial inquiries, led to 89 criminal actions against 143 persons (7 actions against 14 persons under article 127 and 82 actions against 129 persons under article 365).

79. In 2010, procuratorial bodies recorded 6,817 petitions and communications on offences involving use of violence by staff of internal affairs bodies during performance of official duties; procuratorial investigators dealt with 167 criminal cases of that category; and, of the 109 criminal files completed through investigation, 88 judicial proceedings were instituted (in 8 and 74 cases, respectively, under articles 127 and 365 of the Criminal Code, and in 6 cases under other articles) against 175 persons (23 and 145, respectively, under articles 127 and 365 of the Criminal Code and 7 under other articles). In the same year, courts handed down 71 judgements of conviction, and, of the 133 persons thereby found guilty of torture or other forms of cruel treatment, 76 were sentenced to deprivation of liberty.

80. In the first quarter of 2011, procuratorial bodies recorded 971 petitions and communications on offences involving use of violence by staff of internal affairs bodies during performance of official duties. On the basis of the examination of such petitions and communications, 17 criminal proceedings were instituted (17 under article 365 of the Criminal Code and 2 under other Criminal Code articles). A guilty verdict in such cases was delivered against 8 persons (7 under article 365 of the Criminal Code and 1 under another Criminal Code article). In the same period, 22 judicial proceedings were instituted on the basis of investigations into cases of the above category.

**On paragraph 13 of the concluding observations with regard to discontinuing the practice of “hazing” in the armed forces, including through the intervention of the Human Rights Commissioner of the Verkhovna Rada and the adoption of disciplinary measures**

81. With a view to protecting the national interests of Ukraine, confirming and strengthening the constitutional principles of a democratic State governed by the rule of law in the area of civilian-military relations and safeguarding human rights and freedoms, and in accordance with Ukraine’s international obligations, Act No. 975-IV of 19 June 2003 on democratic civilian control of the military and the law-enforcement authorities lays down the legal framework for the organization and implementation of democratic civilian control over the country’s armed forces, other military formations organized in accordance with the law, and the law-enforcement agencies. Under article 5 of the Act, civilian control in the area of defence, security and law enforcement is aimed at ascertaining:

(a) Compliance with the requirements of the Constitution and the law regarding the rights and freedoms of citizens serving in the country’s armed forces and other military and law-enforcement organizations;

(b) The legal and social protection of persons subject to the draft or serving in the armed forces, reservists, persons released from military service and the members of their families;

(c) Compliance of State authorities and military officers with the law in examining communications and complaints of persons serving in the armed forces or released from military service or members of their families.

82. Civilian control over the military and the law-enforcement authorities is exercised by the following bodies or persons:

- (a) Verkhovna Rada;
- (b) Human Rights Commissioner of the Verkhovna Rada;
- (c) President of Ukraine;
- (d) National Security and Defence Council;
- (e) Cabinet of Ministers;
- (f) Central and local executive authorities within powers established by law;
- (g) Local government bodies within powers established by law;
- (h) Procurator's offices;
- (i) Judiciary;
- (j) Citizens, and public associations established in accordance with the Constitution for the realization and protection of civil rights and freedoms and for upholding the citizens' political, economic, social and cultural interests;
- (k) The media.

83. The Human Rights Commissioner of the Verkhovna Rada, in accordance with his or her powers, which are laid down in the Constitution, the above Act or other legislation:

(a) On his or her own initiative, on instructions from the Verkhovna Rada or in connection with a communication by a citizen or public association, examines the state of compliance with the constitutional rights and freedoms of persons subject to the draft or serving in the armed forces, reservists, persons released from military service and the members of their families;

(b) Subject to the established information security rules, has the right to request and obtain documents, other material and explanations necessary for performing his or her legitimate functions from the chiefs and other officers of the armed forces, other military organizations and the law-enforcement agencies;

(c) May call urgent meetings with officials of the armed forces, other military organizations and the law-enforcement agencies;

(d) In order to perform his or her functions, may, unhindered and without warning, visit, in accordance with the established rules, military units and subdivisions and attend the meetings of collegiate bodies of the armed forces, other military organizations and the law-enforcement agencies when issues related to his or her responsibilities are discussed.

84. In order to monitor compliance with constitutional human and civil rights and freedoms in the area of national security, defence and law enforcement, the above Act created the office of the Verkhovna Rada Human Rights Commissioner deputy for the protection of the rights of persons serving in the armed forces. The duration of the deputy's mandate is coterminous with that of the Commissioner's. The deputy in question may not be in active military service. The procedure for the designation of the Commissioner, the creation of the office of the deputy for the protection of the rights of persons serving in the

armed forces and the termination of that deputy's mandate is governed by the Verkhovna Rada Human Rights Commissioner Act.

85. The annual report of the Human Rights Commissioner of the Verkhovna Rada specifically addresses the situation regarding compliance with the constitutional rights and freedoms of persons serving in the armed forces and contains proposals for enhancing respect for the law and eliminating weaknesses and violations observed in the functioning of the relevant military and law-enforcement services. The report is made public.

86. The powers of the Human Rights Commissioner of the Verkhovna Rada or his or her deputy for the protection of the rights of persons serving in the armed forces are not restricted by the declaration of a state of war or the imposition of emergency or martial law on the national territory or particular areas thereof.

87. Under article 11 of Act No. 975-IV, the Human Rights Commissioner of the Verkhovna Rada regularly informs the public, *inter alia* through the media, on his or her activity and the situation regarding compliance with the constitutional rights and freedoms of persons serving in the armed forces, other military organizations and the law enforcement agencies.

**Prohibition of family violence (on paragraph 10 of the concluding observations with regard to intensifying efforts to combat domestic violence and ensuring that social and medical centres for rehabilitation are available to all victims, regardless of their age and gender)**

88. Under article 8 of the Family Violence Prevention Act, the staff of crisis centres receive, *inter alia*, family members who are actual or potential victims of family violence; and organize the provision of appropriate psychological, pedagogical, medical and legal assistance to such persons. Under article 9 (2) of the Act, family violence victims are placed (with their consent or at their request) in medical and social rehabilitation centres for such victims upon decision of the centre's medical board. In the case of under age family members, the consent of one of the parents or adoptive parents or of the guardian or tutor, provided the minor has not suffered violence from such an adult, or of the guardianship and custodianship agency is required. The Statutes of medical and social rehabilitation centres for family violence victims, adopted through Ministry of Health Order No. 38 of 23 January 2004, establish similar rules. Under paragraph 13 of the Statutes, the centre proceeds with the rehabilitation of the victims in question (with their consent or at their request) upon decision of the centre's medical board, regardless of the victim's gender or age.

89. Instructions on the procedure for cooperation between administrations (divisions) for family affairs, youth and sport, services for children, social service centres for the family, children and young persons and the units of internal affairs bodies responsible for family violence prevention measures were drawn up in 2009 and adopted by Ministry for Family Affairs, Youth and Sport and Ministry of Internal Affairs joint order No. 3131/386 of 7 September 2009.

90. A draft Act amending the Family Violence Prevention Act and other legislation is under preparation. The amendments comprise the introduction of the concepts of "domestic violence" and "forms of domestic violence", a significant broadening of the set of persons to whom the Act applies and of the set of entities involved in the implementation of family violence prevention policy, and the stiffening of penalties to be meted out by the courts for the commission of family violence.

91. Specific measures against family violence are included in a special section of a draft strategic Act on the adoption of a State social programme for support of the family and demographic development through 2015. An action plan for the "Stop violence!" national campaign has been developed and adopted for the period 2010-2015; and a nationwide

“Bracelet campaign” has been launched to repudiate family violence (200,000 bracelets with the inscription “I am against violence” were distributed in six cities).

92. A network of establishments working with victims and introducing improvement programmes for the offenders (comprising 1,388 social service centres for families, children and young persons, 16 medical and social rehabilitation centres for domestic violence victims, 22 social and psychological assistance centres, 87 shelters for children and child services, and 32 social and psychological rehabilitation centres for children) has been created and is being enhanced.

93. Reform programmes are developed for persons having committed family violence, including children behaving aberrantly. The Ministry for Family Affairs, Youth and Sport adopted order No. 390 of 19 February 2010 on the organization of training in 2010 for specialists for the introduction of reform programmes for family violence perpetrators (336 persons were trained to work with offenders).

94. A national hotline for the prevention of family violence and the protection of the rights of children has been set up and operates effectively. Moreover, 77 confidential telephone support lines operate in social service centres for families, children and young persons, and a number of such lines have been set up by civil and charitable organizations.

95. According to data provided by regional line units of departments or offices for family affairs, youth and sport, of the 53,965 communications regarding family violence received in 2010, 42,722 were filed by women, 422 by children and 10,821 by men. Of the 2,532 persons referred to a reform programme, 165 went through such an initiative. Of the 70,262 families recorded in regional databases of vulnerable families, 3,986 were entered in 2010 in connection with family violence occurrences. Of the 3,937 persons received by social services, 249 persons were referred to 21 centres providing social and psychological assistance in relation to violence. In 2010, expenditures on violence prevention measures under local budgets amounted to Hrv. 192,000.

## **Article 8**

### **Prevention of crimes involving illegal deprivation of liberty, such as subjecting to slavery or a state of servitude**

96. Under article 29 of the Constitution, the right to freedom and personal inviolability is an inalienable human right which, moreover, under article 64 of the Constitution, may not be restricted under any circumstances.

97. According to a study by the International Organization for Migration (IOM), approximately 117 thousand Ukrainian citizens have been victims of trafficking in human beings since 1991. According to information provided by law-enforcement agencies, although until 2007 almost all identified human trafficking cases involved sexual exploitation, the problem of human trafficking for labour exploitation is currently turning into a matter of urgency in most of the oblasts. Since 2000, the local IOM office has assisted more than of 7,000 human trafficking victims, including 1,669 recipients of medical care. As at October 2010, the local IOM office was assisting 827 victims, including 5 repatriates. Moreover, 193 victims were assisted in 2010 at the IOM medical rehabilitation centre in Kiev. Since recently, Ukraine seems to be turning into a transit country for persons from other States who are trafficked for labour and sexual exploitation. According to IOM data for 2009, in 15 out of 27 cases (including 3 cases in the first half of 2010) Ukraine was the human traffickers’ country of destination. The human trafficking cases identified included instances involving labour exploitation in agriculture and the service sector and commercial sexual exploitation. Children from Ukraine who become

human trafficking victims at home or abroad are, as a rule, subjected to commercial sexual exploitation or forced into mendicancy.

98. Human trafficking, whose victims are women, men and children, is a crime involving labour exploitation, particularly forced labour, sexual exploitation, and the illegal transplant of human organs or tissues. Currently, the combat against trafficking in human beings is aimed at stemming the spread of that phenomenon, identifying and punishing the perpetrators, and assisting and protecting the victims. In Ukraine, the establishment in 1998 of criminal liability for human trafficking emphasized the character of that practice as a public security threat, distinguishable from other criminal offences on that score.

99. Ukraine's signature and ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Council of Europe Convention on Action against Trafficking in Human Beings prompted the adoption of a State policy and of upgraded systematic measures.

100. Currently, work continues on the preparation of a draft Human Trafficking Prevention Act designed to consolidate the ground rules for such prevention; unify the relevant system; and set out the legal basis for a State policy on the eradication of human trafficking through comprehensive preventive work, an improved system for restoring the rights of human trafficking victims, compensation for the damage caused to them and making society averse to using their services and the products of their labour.

101. The ratification of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine on 21 September 2010 was a major step towards preventing human trafficking and protecting its victims.

102. The Ministry of Internal Affairs operates a confidential telephone support line in order to prevent and combat the crimes in question and provide legal assistance to the victims and to members of high risk groups. In general- and higher-education establishments, information and explanation activities are carried out among children and adolescents in order to raise their awareness and understanding of the danger. In particular, such work is undertaken on the basis of Ministry of Education and Science, Youth and Sport order No. 292 of 29 March 2011 on the organization of awareness-raising and preventive work against trafficking in and exploitation and cruel treatment of children in 2011.

103. In 2009, 279 crimes under article 149 of the Criminal Code were detected, an end was put to the activity of 11 organized criminal groups and 335 human trafficking victims, including 42 minors, were repatriated to Ukraine. In 2010, thanks to the work of internal affairs bodies, 215 crimes under article 149 of the Criminal Code (trafficking in human beings or other illegal agreement with respect to a human being) were detected, 233 human trafficking victims, including 28 minors, were repatriated to Ukraine, 78 perpetrators of such crimes were discovered and 9 organized criminal groups of the type concerned were dismantled.

### **International cooperation**

104. Ongoing cooperation with the International Criminal Police Organization (ICPO-INTERPOL), the "Organization for Democracy and Economic Development – GUAM" and other international governmental and non-governmental organizations is constantly sought. In that context, the relevant State authorities work closely together with the International Organization for Migration (IOM), the Organization for Security and Cooperation in Europe (OSCE) and the International Women's Rights Centre "La Strada – Ukraine". As part of such cooperation, financing is provided for the translation of requests for international assistance in the criminal cases concerned; draft legislation, analyses,



methodological recommendations and reference handbooks are prepared; and joint research, seminars, training, conferences and consultation are carried out.

105. A textbook entitled “Identifying and eliminating trafficking in persons” was prepared and published with the assistance of the American Association of Jurists, as part of an initiative for the promotion of the rule of law in Ukraine. The local IOM office carried out a socially orientated publicity and information campaign entitled “Together let’s stop trafficking in persons”. As part of the campaign, in the second half of 2009, approximately 100 billboards were placed in Kiev, with the campaign slogan and a hotline number.

#### **Prohibition of forced or compulsory labour**

106. Under article 43 of the Constitution, forced labour is prohibited. The State must create conditions for citizens to fully realize their right to labour, guarantee equal opportunities in the choice of profession and type of labour activity, and implement vocational education, training and retraining programmes for workers according to the needs of society. Military or alternative (civilian) service, and work or service performed by an individual as a result of a sentence or other court decision, or in accordance with martial or state of emergency law are not considered to be forced labour. The employment of women or minors on work which is hazardous for their health is prohibited.

107. Under article 3 of ILO Convention No. 81, 1947, concerning Labour Inspection in Industry and Commerce, the functions of State labour inspectors are:

(a) To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, and the employment of children and young persons;

(b) To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;

(c) To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

The labour inspectors’ fundamental task is to ensure compliance with the national labour legislation. They have no clear mandate with regard to forced labour and trafficking in human beings. The reason is that sectors of the economy in which forced labour occurs, such as agriculture, domestic services and the sex-industry may not fall within the scope of labour inspections. Moreover, there is a gap between legal provisions and their enforcement in practice. Mandating labour inspectors to combat forced labour requires significant political will and the wish to strengthen labour inspection as a whole, for instance by increasing the number of inspectors, improving their training and providing them with the necessary resources. Labour inspectors lacking access to computers and means of transport are unable to operate effectively. The two ILO conventions bearing directly on the mandate and functions of labour inspectors are the above Convention No. 81 and Convention No. 129, 1969, concerning Labour Inspection in Agriculture. Offences in the area in question are too complex to task any single central executive authority with tackling the relevant issues.

108. By addressing such areas as the following, labour inspectors carry out certain functions which help to identify key approaches to the prevention and eradication of forced labour:

- (a) Labour relations;
- (b) General working conditions;
- (c) Protection of labour;

- (d) Illegal employment;
- (e) Certain aspects of social insurance.

The labour standards which labour inspectors are expected to promote and protect are key tools for safeguarding decency in employment. Often, however, these standards are not applied to forced labour victims. Moreover, such victims, as a rule, are not organized into unions and are not covered by collective labour agreements. Excluded from the social security system, they frequently work without an official employment contract under hazardous and often degrading conditions.

109. Three key functions of a labour inspector fully correspond to three tasks of the global combat against forced labour and trafficking in human beings. These functions are prevention, initiation of criminal proceedings and the provision of protection.

#### **Overseeing compliance with labour legislation**

This general function of labour inspectors may be fulfilled through persuasion methods and recourse to stiff penalties as a deterrent. To ensure compliance with the legislation, labour inspectors monitor respect for the law and record the extent of such compliance on the part of enterprises in the various sectors of the economy. They are thereby able to play a crucial role in the collection of information on forced labour and trafficking in human beings.

#### **Providing advice and information**

In solving the problems identified in the course of visits to enterprises or discussions with workers' and employers' union representatives, labour inspectors draw on their own accumulated experience and knowledge. They can provide advice on the organization of information campaigns and participate actively in such action, including campaigns against illegal employment. One of the tasks of labour inspectors is the promotion of labour standards, fundamental ones in particular, and of national regulatory instruments for their implementation. Inspectors play a key role in testing and disseminating best practices. *Inter alia*, they may organize training for trade unions, employers, NGOs and the staff of labour courts or other Government bodies. Labour inspectors may broaden the possibilities open to workers through information and awareness-raising work during workplace inspections. Raising the workers', employers' and potential human trafficking victims' awareness of their rights is crucial to the prevention and protection strategy.

110. The broad range of tools available to labour inspectors affords them flexibility in responding to the specific circumstances encountered at workplaces, including the delicate situations in which forced labour and human trafficking victims are often found. In a first stage, labour inspectors may, without imposing penalties, give warnings, thereby enabling enterprises in breach of established rules to remedy the weaknesses detected. Moreover, in that process, labour inspectors may hold discussions with the employers, lend support to the workers and share their helpful experience.

111. Every year, the regional offices of the State Department for Monitoring Compliance with the Labour Legislation (Gosnadzortrud) carry out sectoral checks in enterprises, organizations and institutions and on individuals conducting business activities, taking into consideration the specific and particularly delicate character of issues involving violations of the law on the employment of minors. In 2010, 441 enterprises underwent such checks. Breaches of the law on the employment of minors, including use of their labour on weekends and holidays, at night and after hours were identified in 251 enterprises, constituting 57 per cent of all those checked. The majority of violations were identified in privately owned enterprises. During the checks, violations were identified under article 190 of the Labour Code; ILO Convention No. 182, 1999, concerning the Prohibition and

Immediate Action for the Elimination of the Worst Forms of Child Labour; and ILO Recommendation No. 190, 1999, concerning the prohibition and immediate action for the elimination of the worst forms of child labour. The checks led to the identification of 16 minors who were working in arduous and harmful conditions. Administrative action is taken against the directors of enterprises permitting such violations of the law. In the light of checks carried out, 195 reports were filed with the courts for the institution of administrative proceedings for breaching the law on the employment of minors.

## Article 9

### **On paragraph 8 of the concluding observations with regard to limiting the length of police custody and pretrial detention**

112. Under article 29 of the Constitution, every person has the right to freedom and personal inviolability. The Constitution guarantees that no one may be arrested or remanded in custody other than pursuant to a reasoned court decision and only on the grounds and in accordance with the procedure established by law. In the event of an urgent necessity to prevent or stop a crime, bodies authorized by law may remand a person in custody as a temporary preventive measure, the reasonable grounds for which must be verified by a court within 72 hours. Should the person detained not be presented within 72 hours from the arrest with a reasoned court decision for his or her detention, that person must be immediately released.

113. According to articles 106 and 115 of the Code of Criminal Procedure, the detention of a suspect for a crime is a temporary preventive measure intended to forestall any evasion of the inquiry, investigation or court; any hindrances to the elucidation of the criminal case (through, *inter alia*, pressure on the victims or witnesses); or continuation of the suspect's criminal activity; and to ensure the strict implementation of procedural decisions. Under article 115 Code of Criminal Procedure, an investigator may detain and interrogate a suspect for a crime on the grounds and according to the procedure laid down in articles 106, 106 (1) and 107 of the Code of Criminal Procedure. Under article 106, a body of inquiry may detain a person suspected of committing an offence punishable by deprivation of liberty, only if one of the following conditions is met:

- (a) The person was caught in or shortly after the commission of the offence;
- (b) Witnesses, including victims, point directly to the person as having committed the offence;
- (c) Clear traces of the offence are found on the suspect, his or her clothes, with him or her, or in his or her residence.

If there are other grounds for suspecting a person of having committed a crime, that person may be detained only if he or she attempted to avoid arrest or has no permanent residence or if his or her identity has not been established.

114. The body of inquiry must prepare a report on each case of detention of a person suspected of committing an offence, specifying the grounds, reasons, day, hour, year, month and place of the detention, the suspect's statements, and the time of drafting of the report, and stating that the suspect has been informed, in accordance with the procedure laid down in article 21 of the Code of Criminal Procedure, of his right to see a lawyer the moment he or she is detained. A copy of the report, with a list of rights and obligations, is immediately given to the detainee and also to the procurator. At the procurator's request, the evidence constituting the grounds for the detention are also provided. One relative of the suspect is immediately informed of the detention by the body of inquiry. Within 72 hours from the time of detention, the body of inquiry:

(a) Releases the detainee, if the suspicion of commission of the offence is not confirmed, the period of detention established by law elapses, or the detention has been carried out in violation of the requirements laid down in the first and second sections of the article;

(b) Releases the detainee and chooses to take, with regard to him or her, a preventive measure other than remand in custody;

(c) Presents the detainee to a judge with the proposal that the preventive measure to be chosen should be remand in custody.

Therefore, criminal procedure law provides for and strictly regulates the detention of a suspect by the investigator and the body of inquiry subject to a 72-hour time limit.

115. Regarding compliance with human rights in criminal procedure, it should be noted that one of the conditions for Ukraine's accession to the Council of Europe was the obligation to adopt a new Code of Criminal Procedure, which would ensure that criminal proceedings would, above all, be based on guaranteed constant exercise of the rights of persons subject to pretrial inquiry and judicial proceedings in accordance with the requirements of the Constitution and international agreements in the area of human rights. A working group on criminal proceedings reform was established by Presidential Decree No. 820 of 17 August 2010 in order to safeguard effectively the citizens' constitutional rights and confirm the generally accepted international standards in the area of criminal justice. The working group consists of representatives of the United States Justice Department and embassy in Ukraine, the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) of the Organization for Economic Cooperation and Development (OECD), and the International Renaissance Foundation. A new draft Code of Criminal Procedure was presented at a working group session held in early June 2011 and presided over by the President of Ukraine. The draft is based on preliminary work carried out in preceding years and partly drawing on previously developed drafts and reflects proposals formulated by State bodies and leading educational institutions. The key innovations of the new draft Code of Criminal Procedure are the following:

(a) Establishment of procedural equality and the adversarial principle;

(b) Broadening of the rights of the suspect and the victim;

(c) Updating of the pretrial inquiry procedure;

(d) Improvement of the procedures of judicial review and appeal against court decisions, and prohibition of sending back cases for further investigation.

The provisions of the draft Code of Criminal Procedure will make it possible to establish effective legal mechanisms for combating crime and to safeguard the rights of the parties to criminal proceedings based on the principles of adversarial and equitable treatment.

#### **On liability, under national legislation, for illegal arrest or detention**

116. Under article 55, paragraph 2, of the Constitution, everyone is guaranteed the right to challenge through the courts the decisions, acts or omissions of State or local government authorities, officials or employees. Under article 2, paragraph 2, of the Code of Administrative Court Procedure, complaints may be submitted to the administrative courts concerning any decision, act or omission on the part of a State body, except in cases where the Constitution or the law envisages other arrangements for legal proceedings. Accordingly, article 371 of the Criminal Code provides for liability for deliberate illegal detention, warrant in default of appearance, arrest or remand in custody. Article 375 Criminal Code provides for liability for deliberately handing down a unjust verdict,

judgement, ruling or decision. Under article 1, paragraph 1, of the Act on the procedure for compensation for damage caused to a citizen by unlawful acts of bodies of inquiry or preliminary investigation, the procurator's office or the court, citizens are entitled to compensation for damage caused by:

- (a) Unlawful conviction, indictment, remand in custody or detention; conduct of an unlawful search during an investigation or court hearing of a criminal case; unlawful seizure, confiscation of property or removal from work (duties) or other procedural acts infringing citizens' rights;
- (b) Unlawful administrative arrest or imposition of corrective labour, unlawful confiscation of property and unlawful imposition of a fine;
- (c) Unlawful police searches under the Police Operations Act, the Organizational and Legal Bases for Combating Organized Crime Act, or other legislation.

In the above cases, the damage caused is subject to compensation in full regardless of whether a fault was committed by officials of the bodies of investigation or pretrial inquiry, the procurator's office or the courts.

## **Article 10**

### **On paragraph 11 of the concluding observations with regard to guaranteeing detainees' right to decent treatment**

117. A State programme (2006-2010) to improve the conditions of detention of convicts and persons in custody, adopted by Cabinet of Ministers decision No. 1090 of 3 August 2006, was implemented during the reporting period. Organizational groundwork was carried out for the preparation of a draft strategic State programme for the development of the State Prisons Service with a view to establishing procedures and conditions for the serving of criminal sentences in accordance with national legislation requirements and international standards by 2015. Through the adoption on 21 January 2010 by the Verkhovna Rada of the Act amending the Penal Enforcement Code and safeguarding the rights of convicted offenders in criminal correctional facilities and the Act amending legislation on the right of detainees and convicted offenders to send and receive correspondence, amendments designed to strengthen human rights guarantees were made to numerous subsidiary legal and regulatory instruments.

118. A draft Act on amending legislation for the purpose of humanizing pretrial detention is currently being drawn up and provides for:

- (a) Establishment of specific time limits for court hearings of criminal cases;
- (b) Improvement of the procedure for opting for remand in custody as preventive measure;
- (c) Annulment of the procedure of sending back criminal cases for further investigation;
- (d) Removal of restrictions on prisoners' correspondence and on the amounts that they may spend on food and necessities;
- (e) Increase in the number of interviews in the case of women and minors;
- (f) Recognition of a prisoner's right to telephone calls in accordance with European standards and rules.

119. Planning is under way with a view to reducing overcrowding in remand centres and upgrading detention and custody conditions in order to align them with the provisions of the Pretrial Detention Act.

120. The basis for early conditional release and for commuting the unserved part of a sentence to a lighter penalty is laid down in articles 81 and 82 of the Criminal Code. Under article 81, paragraphs 1-4, of the Criminal Code, early conditional release may be granted to persons serving sentences of deprivation of liberty. A person may also be fully or partially released from serving an additional sentence. Parole may be granted, if the sentenced offender displays decent behaviour and diligence at work as evidence that he or she has reformed. Parole may be granted after the sentenced offender has actually served:

(a) Not less than one half of the term imposed by a court for an offence of minor or medium gravity or for a grave offence committed as a result of recklessness;

(b) Not less than two thirds of the term imposed by a court for a deliberate grave offence or for a particularly grave offence committed as a result of recklessness, and also where a person had previously served a sentence of deprivation of liberty for a deliberate offence but, before that conviction was cancelled or expunged, he or she committed another deliberate offence, for which he or she was sentenced to deprivation of liberty;

(c) Not less than three quarters of the term imposed by a court for a deliberate particularly grave offence, or of the term imposed on a person who had previously been granted early release but committed another deliberate offence during the unserved part of the sentence.

Under article 82, paragraphs 1-5, of the Criminal Code, a court may commute the remaining part of a sentence of restriction or deprivation of liberty. In this case, a more lenient punishment shall be imposed within the time limits provided for in the General Part of the Code with regard to a given type of punishment and may not exceed the remaining part of the initial sentence. Early conditional release and commuting of the unserved part of a sentence to more lenient punishment do not apply to persons sentenced to life imprisonment. Under article 87 of the Criminal Code, an Act of pardon may commute a life sentence imposed by a court to imprisonment for a term of at least 25 years. Under paragraph 6 (2) of the Pardon Implementation Regulation adopted by Presidential Decree No. 1118 of 19 July 2005, persons sentenced to life imprisonment may apply for pardon after serving at least 20 years of their sentence.

### **Medical care**

121. In order to carry out, in coming years, basic tasks and measures of State policy on health, including action against HIV/AIDS, tuberculosis and oncological and cardiovascular diseases and specialized medical care for prisoners and detainees, structural changes to the health care system are required. Such changes entail the creation of an upgraded system of health services in the country.

122. A set of measures conducive to a better organization of health services is being developed in the State Prisons Service and its regional establishments in an effort to improve the quality of medical care for prisoners and detainees and to create appropriate legal, economic and organizational conditions. The health establishments of the State Prisons Service have introduced the following two departmental programmes:

(a) A programme to promote prevention of HIV infection and to provide assistance and treatment for persons infected with HIV/AIDS, 2009-2013;

(b) A programme of action against tuberculosis in criminal correctional facilities and detention centres, 2007-2011.

123. Health services are provided to prisoners by 105 medical units in criminal correctional facilities and 22 hospitals, to detainees by 32 medical units, and to both groups by medical facilities of the Ministry of Health.

124. The above programmes made it possible to control the spread of HIV infections and tuberculosis in criminal correctional facilities, and thereby to reduce tuberculosis morbidity and stabilize HIV-infections morbidity among prisoners and detainees. In recent years, as a result of measures under the programmes, full preventive fluorographic examination coverage of detainees and prisoners, and increased State budget allocations to the State Prisons Service, particularly for food and medical support, tangible progress was achieved in combating tuberculosis insofar as, between 2009 and 2010, active-tuberculosis morbidity in State Prisons Service facilities declined by 12 per cent. Special diets are reserved to all tuberculosis patients in such facilities. Counselling and testing for HIV infection are available to patients on a voluntary basis, and an infectious disease physician's post has been established in every tuberculosis hospital. Pursuant to a decision taken at an inter-agency meeting of all ministries and departments concerned and in order to offer medical care to detainees suffering from tuberculosis, there are plans to set up detention sections within eight tuberculosis hospitals of the State Prisons Service in the Dnipropetrovsk, Donetsk, Zaporizhia, Luhansk, Mykolaiv, Poltava, Kharkiv and Kherson oblasts. Currently, such sections function within the tuberculosis hospitals of the Luhansk and Kharkiv oblasts.

125. Specialized medical care is provided to prison inmates infected with HIV/AIDS at an infectious disease department of the general hospital in Darivka penal colony No. 10 in the Kherson oblast, with 40 beds, and at 21 infectious disease units within general and specialized tuberculosis hospitals. In 2010, 273 persons were treated in the infectious disease department, which is fully provided with the necessary medical staff. As at 1 January 2011, 813 HIV/AIDS patients had received antiretroviral therapy (compared to 438 persons as at 1 January 2010) and 890 were in need of such treatment. Currently, HIV-positive persons in need of treatment but receiving none undergo the required observation, on the basis of which the appropriate antiretroviral therapy scheme is prescribed to them. Laboratory examinations to check for HIV infections or determine the immune status (lymphocyte count and viral load) of HIV-positive persons are carried out in the regional AIDS prevention and treatment centres of the Ministry of Health. In order to improve HIV/AIDS detection, diagnosis and treatment, the Ministries of Health and Internal Affairs and the State Prisons Service prepared a draft joint order "establishing the procedure for cooperation among health facilities of the Ministry of Health, internal affairs territorial bodies and health facilities of the State Prisons Service to ensure the consistency of dispensary observation for HIV-positive persons, clinical laboratory monitoring of the course of the disease and administration of antiretroviral therapy". In 2011, for the first time in two years, funds were earmarked, in the amount of Hrv. 79.6 million, for the purchase of medical equipment to improve the diagnosis and treatment processes.

#### **Adequate nutrition**

126. With a view to setting new nutrition standards and rules, the State scientific research centre on food hygiene is working on reviewing and updating the existing prisoner nutrition standards, which had been established through Cabinet of Ministers decision No. 336 of 16 June 1992 "on nutrition standards for inmates of criminal correctional facilities and detention facilities of the State Prisons Service, and temporary detention, remand and other reception centres of the Ministry of Internal Affairs". Similar work is carried out by the Ministry of Health with a view to amending the existing nutrition standards and aligning them with Ministry of Health order No. 272 of 18 November 1999 on the establishment of physiological requirements for the population in terms of basic nutrients and energy.

**Alternative forms of punishment**

127. The establishment of the State Prisons Service as part of administrative reform in December 2010 and the change in the stated social and political role of that service can accelerate the adoption of legislation in this area through the decision to organize a probation division in the State Prisons Service.

128. On 15 April 2008, the Verkhovna Rada adopted Act No. 270-VI, amending the Criminal Code and the Code of Criminal Procedure with a view to humanizing criminal proceedings. *Inter alia*, the Act broadened the range of penalties that the court may impose for crimes. In particular, the Act allows the court to impose a fine payable by instalments over a period of up to three years, depending on the defendant's financial situation, and by the same token facilitates the courts' recourse to such penalties as fines. Moreover, the list of alternative, non-custodial forms of punishment among the penalties stipulated in article 36 of the Criminal Code has been expanded, and the duration of sentences to deprivation of liberty under article 12 of the Criminal Code has been reduced.

129. As part of the implementation of the Council of Europe Action Plan for Ukraine, 2011-2014, the State Prisons Service and the Council of Europe Secretariat began the preparation of a two-year project to support prison reform in the country. One of the thrusts of the project consists in paving the way for the introduction of probation.

**Juvenile criminal justice**

130. A juvenile criminal justice development strategy adopted by presidential decree on 24 May 2011 provides for measures contributing to the introduction of probation for minors. The strategy's main thrusts consist in broadening the responsibility of the family, society and the State for children's education and formative stages of development, ensuring compliance with the rights and freedoms of children in conflict with the law by enhancing their legal and social protection, and reducing juvenile delinquency. The strategy aims to build a comprehensive juvenile criminal justice system ensuring the legality, soundness and effectiveness of any decision related to rehabilitating and providing further social support to children in conflict with the law.

131. The development of juvenile criminal justice calls for the following action:

(a) Enhancement of preventive and proactive work through, *inter alia*, strengthening the role of the family and the community in the process of bringing up children, undertaking a number of comprehensive educational initiatives, and improving the monitoring of juvenile delinquency and fulfilment of the rights of children in conflict with the law.

(b) In the course of investigations, pretrial inquiries and judicial proceedings involving minors, fulfilment of their rights in view of their age-related, sociopsychological, psychophysical and other developmental specificities. To that end, the minors' access to free legal assistance should be ensured, the staff of the bodies concerned should receive appropriate training, specialization of judges in dealing with minors should be introduced, and emergency assistance centres operating on a 24-hour basis and staffed with lawyers and social workers should be set up.

(c) Contribution to the development of programmes of restorative justice for under age offenders by establishing mediation procedures, inculcating such offenders with a sense of responsibility for their behaviour, and involving the community in conflict resolution.

(d) Establishment of an effective rehabilitation system for under age offenders with a view to their re-education and social reintegration through corrective, educational,



awareness-raising, psychological and pedagogical programmes; educational, preventive, cultural and spiritual action; and the creation of a probation system.

### **Article 11**

132. Under Ukrainian law, failure to fulfil contractual obligations by itself does not constitute grounds for detention. As stated above, the Constitution guarantees the human right to freedom and personal inviolability. Thus, under article 29 of the Constitution, no one may be arrested or remanded in custody other than pursuant to a reasoned court decision and only on the grounds and in accordance with the procedure established by law.

### **Article 12**

133. Under article 33 of the Constitution, any person who is legally present on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave that territory, with the exception of restrictions established by law. A citizen of Ukraine may not be deprived of the right to return to Ukraine at any time.

134. Pursuant to that guarantee, Act No. 1382-IV of 11 December 2003 on freedom of movement and choice of place of residence in Ukraine, the Ukrainian citizens, aliens and stateless persons legally present in Ukraine are guaranteed freedom of movement and free choice of place of residence in its territory, with the exception of restrictions established by law. The registration of a person's place of residence or the absence of such registration may not serve as grounds for the exercise of the rights and freedoms stipulated by the Constitution or by the country's law or by international treaties or for the limitation of such rights and freedoms. Under article 5 of the above Act, the legal basis for residing in the national territory consists in, for Ukrainian citizens, their citizenship and, for aliens and stateless persons, registration in the territory of Ukraine of a passport or possession of a permit of permanent or temporary residence in Ukraine or documents certifying the granting of refugee status or asylum.

135. The Act clearly lists restrictions on freedom of movement and free choice of place of residence. Such restrictions may concern areas or persons. Thus, under articles 12 and 13 of the Act, freedom of movement and free choice of place of residence may be restricted in border areas, in areas with military facilities, in areas characterized as limited access zones under the Act, in areas under martial law or state of emergency, in specific areas or communities subject to special living or economic-activity conditions and regulations because of a risk of propagation of infectious diseases or of intoxication, and in particular areas or cases specified by law. Moreover, freedom of movement and free choice of place of residence are restricted in the case of persons who:

- (a) Under procedural law, are subject to preventive measures involving restriction or deprivation of liberty;
- (b) Serve a court-imposed sentence involving restriction or deprivation of liberty;
- (c) Are under administrative surveillance in accordance with the law;
- (d) In accordance with legislation on infectious diseases and psychiatric assistance are subject to compulsory hospitalization and treatment;
- (e) Are aliens or stateless persons lacking the legal prerequisites for residing in Ukraine;
- (f) Are under 16 years of age (only free choice of place of residence).

Moreover, freedom of movement is restricted in the case of persons who:

- (a) Have been drafted for compulsory military service in the country's armed forces or other military formations organized in accordance with the law;
- (b) Are aliens serving in foreign military units and having military status;
- (c) Are asylum seekers or applicants for refugee status, until a decision is made by the competent authority (on granting to them refugee status or asylum).

136. Under article 14 of the above Act, the decisions, acts or omissions of State or local government bodies, officials and officers with regard to freedom of movement, free choice of place of residence or registration of a person's place of residence or stay may be challenged according to the procedure established by law.

137. Under the above Act, in order to improve the organization of the registration or deletion of an individual's place of residence or stay in Ukraine and standardize the relevant documents, Ministry of Internal Affairs order No. 96 of 3 February 2006 laid down model rules for the formulation of such documents.

## **Article 13**

### **Protection of the rights of aliens and stateless persons**

138. As stated in the preceding report, foreigners and stateless persons who are in Ukraine on legal grounds enjoy, under article 26 of the Constitution, the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, the law or international treaties of Ukraine. The principles governing the status in question are laid down in the Legal Status of Aliens and Stateless Persons Act and include the following elements:

- (a) Rights, freedoms and responsibilities identical with those of Ukrainian citizens;
- (b) Equality before the law regardless of origin, social and property status, race or nationality, gender, language, attitude to religion, type and nature of occupation, or other circumstances.

139. Under articles 3, 4, 5 and 6 of the Act, aliens and stateless persons may exercise, according to the established procedure, the following respective rights:

- (a) Right to immigrate to Ukraine for permanent residence, travel there for employment during a specific period and stay in Ukrainian territory temporarily;
- (b) Right to asylum;
- (c) Right to refugee status in Ukraine in accordance with the Refugees Act;
- (d) Right to Ukrainian citizenship in accordance with the Constitution and the Citizenship Act.

140. Grounds for expelling an alien from Ukraine are clearly regulated by amendments made to the above Act under Act No. 3186-VI of 5 April 2011 and include, *inter alia*, the commission of a crime (with expulsion after the sentence is served), non-compliance with a decision terminating the residence period, and threat to national security or public order. The decision to expel an alien or stateless person from the country is taken by the internal affairs body of the place of residence of the person concerned, whereby the procurator must subsequently be informed within 24 hours of the grounds for that decision. In addition to the above cases, aliens and stateless persons may be expelled from the country by decision of the State border protection authorities (if arrested by such authorities within monitored

border areas while attempting to cross or having crossed the border illegally) or the Ukrainian Security Service, whereby the procurator must subsequently be informed within 24 hours of the grounds for that decision, if their conduct manifestly breaches the law on the status of foreigners and stateless persons. The alien or stateless person must leave the Ukrainian territory within the time limit specified in the decision of expulsion. If that person eludes departing subsequent to the decision, he or she is subject to forcible expulsion by decision of an administrative court. Save where an alien or stateless person is arrested by the Ukrainian State border protection authorities while illegally crossing the State border off the border-crossing points and transferred to the border protection authorities of a neighbouring State, the internal affairs bodies, State border protection authorities or Ukrainian Security Service may arrest and forcibly expel from the country an alien or stateless person only after requesting and obtaining to that effect an administrative court decision, which is issued if there are valid grounds for expecting that the alien or stateless person will elude departing. By administrative court decision, aliens or stateless persons arrested for illegal presence in the national territory, including with borrowed, counterfeit, damaged or non-standard passports, or admitted to the national territory under international agreements on readmission, are placed in stations for the temporary holding of aliens and stateless persons staying illegally in Ukraine, for the period necessary for the preparation of their forcible expulsion from the country but not longer than 12 months.

141. A decision of internal affairs bodies, the State border protection authorities or the Ukrainian Security Service to expel an alien or stateless person from Ukraine may be appealed before a court.

**On paragraph 9 of the concluding observations with regard to the prohibition of expelling or deporting aliens to any country where there is a risk of torture or cruel or degrading treatment or punishment**

142. The above amendments to the Legal Status of Aliens and Stateless Persons Act also established (under article 32-1) the prohibition of expulsion or other forms of forcible return of an alien or stateless person to countries where he or she may be subjected to torture or severe, inhuman or degrading treatment or punishment. If an alien or a stateless person has committed an offence in a State where the offender may suffer torture or the ill-treatment or punishment in question, extradition to that country may not take place as prescribed in the Code of Criminal Procedure. Instead, Ukraine undertakes the investigation of the criminal case involving that person or enforces the sentence handed down in the other State. Accordingly, under article 466 of the Code of Criminal Procedure, if extradition is refused on grounds of citizenship, refugee status or other, which do not exclude judicial proceedings, the General Procurator's office of Ukraine, at the request of the competent foreign authority, instructs the body of pretrial inquiry to investigate the criminal case concerned. Sentences handed down by foreign courts are served in accordance with Ukraine's relevant international agreements on issues of reciprocal recognition and enforcement of judicial decisions.

**On the arrest and deportation of Afghan citizens in 2011**

143. In this connection, mention should be made of a high-profile case of deportation of Afghan citizens arrested, while attempting to cross Ukraine's border with Slovakia, by the Chop border troops of the Western regional administration of the State Border Service. As mentioned above, alien or stateless persons may be forcibly expelled from Ukraine only on the basis of an administrative court decision if there are valid grounds for expecting that the alien or stateless person will elude departing. Accordingly, the Zakarpattia district administrative court, after hearing the administrative case introduced by a petition filed by the Chop border troops in question for the arrest and forcible expulsion of the Afghans from the country, handed down decisions dated 8, 11 and 13 October 2011 for such forcible

expulsion. Through thorough and full elucidation of the circumstances and after objective assessment of the evidence, the court found that, by attempting illegally to cross the State border of Ukraine and also of Slovakia, the Afghans had violated Ukrainian law, and in particular articles 25 and 26 of the Legal Status of Aliens and Stateless Persons Act. The Afghans did not challenge those decisions at the higher instance, namely the Lviv appellate administrative court. In accordance with article 32 (10) of the above Act, the Afghans, having been arrested for staying illegally in Ukraine, were placed in the station for the temporary holding of aliens and stateless persons of the Department of the Ministry of Internal Affairs in the Volyn oblast and, after the relevant court judgements were pronounced regarding their case, were taken to Borispol airport for enforcement of the decisions. The Afghan citizens in question applied for refugee status only four months after their arrest. Thus, six of them filed such an application on 23 February, two on 28 February and two more on 1 March 2011, while four did not apply at all. While they were at the temporary holding station, their rights and the national procedures for granting refugee status were explained to them. In that connection, under article 9 (2) of the above Act, persons who illegally cross or attempt to cross the State borders in order to obtain refugee status in Ukraine must immediately address the competent body of the immigration service; and, should they lack, or carry counterfeit or fake, identification documents, must report that circumstance in their refugee status application. On the basis of the applications filed, on 1 March 2011, an official of the immigration service division conducted with the Afghans concerned a series of interviews, during which the potential risks from the applicants' extradition to their country of origin and the credibility of their affirmations were assessed in accordance with article 7 of the Refugees Act. In that process, it was noted that the text of all of the applications filed by the persons in question was identical and had been written by the same person, although all of the applicants could write. The applications contained no explanation as to why the applicants lacked documents and no arguments in support of the claim, formulated in the applications, that their lives would be in danger should they be extradited. The applicants' references to feared persecution were not borne out by verifiable facts and were of a hypothetical nature. Moreover, the applications for refugee status were filed only after the Afghans' arrest and placement in the above temporary holding station. Furthermore, "Volyn Prospects" non-governmental public association representatives, acting on behalf of IOM, including translators and lawyers, worked in the temporary holding station throughout the applicants' stay. The Afghans were informed of the grounds on which they had been placed in the station, the rules for preparing the documents related to their request for refugee status, the procedure for appealing decisions based on the consideration of such documents, and the forms of assistance available from IOM and the delegation of the Office of the United Nations High Commissioner for Human Rights (UNHCHR) in Ukraine. However, at no time in the period during which they were held at the station did they take steps to challenge the court orders for their forcible expulsion from the country. Lastly, during the interviews, some of the Afghans stated that their ultimate destination was Germany, Austria or the United Kingdom, while the applications to the immigration service focused on their request for international protection. Actually, any reference to ways of legalizing their presence in Ukraine was intended to facilitate their departure for Western Europe. This reveals that they viewed Ukraine not as the State to which they wished to seek refuge from persecution in their country of permanent residence but as a transit country. In fact, the basic reasons for their leaving Afghanistan were economic and therefore did not constitute grounds for granting refugee status under article 1 of the Refugees Act. According to the Compendium of information on countries of origin and legal material for determining refugee status (fourth edition, February 2008) compiled by the United Nations High Commissioner for Refugees (UNHCR), Afghanistan is not a country where offences against the person are committed, and the life of a person returning to Afghanistan as his or her country of origin is not threatened. On 11 March 2011, the above Afghan citizens were informed that their

application for refugee status had been rejected. The rejection was based on the foregoing considerations and the following facts:

- (a) The persons in question were not part of any political, social or military organizations, membership in which could constitute grounds for persecution;
- (b) They had not experienced any incidents involving the use of physical violence in relation to their racial, national or religious background or their political views;
- (c) Their departure from their country of permanent residence was not flight from persecution but a planned attempt to reach the economically more developed countries of Western Europe.

#### **On granting refugee status**

144. The issue of turning back asylum seekers and refugees is regulated by article 3 of the Refugees Act, which prohibits the expulsion of refugees to countries where their lives would be in danger for reasons of race, faith (religion), ethnicity, citizenship (nationality), membership of a particular social group, or political beliefs. Forcible expulsion and extradition of asylum seekers and refugees contradict provisions of international law, particularly articles 32-33 of the Convention Relating to the Status of Refugees; Ukrainian legislation, particularly article 3 of the Refugees Act; and the general principle against forcible expulsion of refugees exposed to the risk of persecution.

145. Ukraine is taking steps to strengthen guarantees of the rights of refugees and persons in need of protection, in accordance with international best practices. In this connection, a draft Act on refugees and persons whose case warrants additional and temporary protection in Ukraine is under preparation. The draft Act introduces the concept of additional and temporary protection and provides for State guarantees of the rights of refugees and persons entitled to additional or temporary protection. The adoption of the Act will make it possible to develop fully in Ukraine the institution of asylum and contribute to the convergence of Ukrainian legislation on migration with European standards and rules. In preparing the draft Act, account was taken, in particular, of the European Union Council Directives of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences (“Temporary Protection Directive”), and of 30 April 2004 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status; the recommendations of UNHCR; and the decisions of the European Court of Human Rights. The draft Act proposes the establishment of a single procedure for the recognition of a person as a refugee or as needing additional protection and for the forfeiture and withdrawal of such recognition. The draft Act introduces for the first time such key concepts as “person in need of additional protection” and “person in need of temporary protection”. The draft Act proposes to classify as needing additional protection persons who are not refugees within the meaning of the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees or the draft Act itself but need protection, having been compelled to enter or stay in Ukraine as a result of threats to their life, security or freedom in their country of origin and of fear of receiving the death penalty or suffering torture, inhuman or degrading treatment or punishment. The draft Act proposes to classify as needing temporary protection aliens and stateless persons residing permanently in a neighbouring country and massively compelled to seek protection in Ukraine as a result of external aggression, foreign occupation, civil war, ethnically instigated clashes, natural or technological disasters or other occurrences seriously disrupting law and order in all or part of their country of origin. Additional protection is to be granted on a case-by-case basis, while temporary protection is defined as an emergency provisional measure for aliens or stateless persons arriving massively in Ukraine. This approach is in line with the concept of

temporary protection formulated in Council of Europe Recommendation R (2000) 9 on Temporary Protection. The draft Act regulates fundamental issues related to the protection of refugees and other persons, providing for, *inter alia*, the prohibition of deportation or forcible return of refugees or persons in need of additional or temporary protection to countries where their lives would be in danger; the prohibition of discrimination against such persons; and assistance aimed at preserving the unity of their families. The draft Act lays down a clearly defined procedure for granting and withdrawing temporary protection; and regulates the possibility of making a translator or lawyer available at all stages of consideration of requests for the status of refugee or of a person in need of additional or temporary protection. The draft Act updates the procedure for admitting refugees, persons in need of additional protection and children.

146. On 2 March 2011, the draft Act on refugees and persons in need of additional or temporary protection was considered by the Foreign Affairs Committee of the Verkhovna Rada. That committee session was attended by Oldrikh Andrysek, regional representative of UNHCR, who supported the approval of the draft Act on first reading provided it would be further revised on certain points. On 6 April 2011, the Verkhovna Rada Committee on Human Rights, the Rights of National Minorities and Inter-Ethnic Relations met to consider detailed information provided by central Government on the practical implementation of the Refugees Act and the need to improve current legislation in that area.

## **Article 14**

### **Right to judicial protection**

147. The Ukrainian Constitution and law, particularly article 7 of the Judicial System and Status of Judges Act of 7 July 2010, guarantee the protection of everyone's rights, freedoms and legitimate interests by an independent, impartial and legally constituted court.

148. As stated in the preceding report, under article 124 of the Constitution, justice in Ukraine is administered exclusively by the courts; and, as noted in relation to article 2 of the Covenant, a similar principle is confirmed by the new Judicial System and Status of Judges Act.

149. The principle of equality before the law and the court of all citizens regardless of origin, social status, property, racial or ethnic affiliation, gender, education, language, attitude to religion, type and nature of employment, place of residence or other circumstances is enshrined in the Constitution, the above Act, and the Codes of Criminal, Economic, Administrative and Civil Procedure. In that regard, aliens, stateless persons and foreign legal entities are entitled to judicial protection on an equal footing with Ukrainian citizens or legal entities.

150. The country's judicial system seeks to ensure that cases are heard fairly and impartially within reasonable periods prescribed by law and comprises first-instance, appellate and cassational courts and the Supreme Court. Anyone may participate, in the manner prescribed by procedural law, in judicial proceedings concerning him or her in a court of any instance. No one may be deprived of the right to have his or her case examined by a court under the jurisdiction of which the case falls according to procedural law.

151. As stated in the preceding report, Ukraine's criminal procedural law guarantees the right of suspects and accused persons to know of what they are suspected or being accused; to make statements regarding charges against them or to refuse to make such statements and to answer questions; to have a defence lawyer and to have an interview with that lawyer before the first questioning; to submit evidence; to file petitions; to be informed of all the evidence in the case, following the conclusion of the pretrial investigation; to take part in first-instance judicial proceedings; to challenge the jurisdiction of the court; and to

lodge complaints about the actions and decisions of the persons conducting the initial inquiry, the investigators, the procurators, the judges and the courts. These rights are still in force.

### Legal assistance

152. Under article 10 of the Judicial System and Status of Judges Act and article 59 of the Constitution, everyone has the right to legal assistance. In cases specified by law, such assistance is provided free of charge. Everyone is free to choose the defender of his or her rights. The procedure and conditions for the provision of legal assistance are determined by law. The Bar acts to ensure the right to a defence against accusation and to provide legal assistance when cases are decided in courts and other State bodies.

153. In order to ensure uniform interpretation, understanding and implementation of the above constitutional provision by procuratorial staff, particularly by investigators in examining witnesses in criminal proceedings, the Constitutional Court formulated (in decision No. 23-rp/2009 of 30 September 2009) the official interpretation of article 59 of the Constitution. Accordingly, the provision of article 59, paragraph 1, of the Constitution that “everyone has the right to legal assistance” must be understood to mean that the State guarantees the possibility of any person, regardless of the nature of his or her legal relations with State or local government bodies, civil associations, legal entities or individuals, to receive assistance on legal issues, to the extent and of the type that he or she requires, free of charge and without undue restrictions. Accordingly, during a person’s examination as a witness by investigative bodies, during pretrial inquiry or in providing explanations as part of procedural relations with these or other State bodies, he or she is entitled to legal (juridical) assistance by a lawyer of his or her choice, or by other persons, subject to any restrictions imposed by the law.

154. On 2 June 2011, the Verkhovna Rada adopted the Free Legal Assistance Act, essentially aimed at creating a system for the provision of free legal assistance to ensure realization of everyone’s right to such assistance under article 59 of the Constitution. The Act specifies the content and procedure of implementation of the right to legal assistance; the basis, procedure and State guarantees for the provision of such assistance; the relevant powers of State bodies; and the procedure for appealing decisions, acts or omissions of State and local government bodies and their officials and officers. The Act distinguishes between primary and secondary legal assistance. Under the Act, primary free legal assistance includes the provision of legal information, counselling and explanations on legal issues, and the drawing up of statements, complaints and other documents of a legal nature (other than procedural documents). Such legal assistance is provided by State and local government bodies, individuals, legal entities under private law and specialized agencies created by local government bodies and financed from the local budget or other non-prohibited sources. All persons under the jurisdiction of Ukraine are entitled to such assistance. Under the Act, secondary legal assistance relates to defence against charges, representation of persons eligible for this type of assistance before courts and State, local-government and other bodies, and the drawing up of procedural documents. The Act clearly specifies the population categories eligible for such assistance. They include, *inter alia*, various vulnerable groups, such as the poor, orphans, other categories of children lacking social protection and veterans; persons arrested and detained under the Administrative Offences Code; persons whose capacity to have rights and obligations is under discussion; and persons, with respect to whom a court is considering compulsory psychiatric support. Under the Act, secondary legal assistance centres, which shall officially begin to operate in Ukraine on 1 January 2013, are to be financed from the State budget or other non-prohibited sources. Such centres will be created by the Ministry of Justice in its general directorates in the Crimean Autonomous Republic, the oblasts and the cities of Kiev and Sevastopol. The Act clearly lays down the procedure for requesting and

the grounds for declining free secondary legal assistance. The adoption of the Act is a major step towards safeguarding the rights and freedoms of all persons under the jurisdiction of Ukraine. In fact, the absence heretofore of legislation such as the Act had virtually neutralized the afore-mentioned constitutional provisions, save for cases explicitly specified by law (criminal procedure law in particular).

#### **Openness of judicial proceedings**

155. The Judicial System and Status of Judges Act also guarantees the right to obtain from the court oral or written information on the outcome of the hearing of one's case; and the right of persons who are not parties to proceedings to have free access to the court decision according to the process established by law.

156. According to the general rule established in article 11 of the above Act, cases are heard in open court unless procedural law otherwise provides. Parties to proceedings and persons attending a public hearing may use portable sound recording equipment. Photographing, filming or videotaping judicial proceedings in the courtroom or translating such proceedings may be allowed by court decision.

157. Closed court hearings may be permitted by court decision in cases specified by procedural law, particularly those relating to crimes committed by persons under the age of 16, those involving sexual offences and in other cases, with a view to preventing the disclosure of information about intimate aspects of the lives of persons taking part in the hearing.

158. Under article 20 of the Code of Criminal Procedure, the hearing of cases is open in all courts except when this runs counter to the interest of protecting State secrets.

#### **Presumption of innocence and compensation for damage**

159. Under article 62 of the Constitution and article 2 of the Criminal Code, a person is presumed innocent of committing an offence and shall not be subjected to criminal punishment until his or her guilt has been proved through legal procedure and established in a guilty verdict handed down by a court. No one shall bear the burden of proof of his or her innocence of an offence.

160. An indictment may not be based on illegally obtained evidence or assumptions. All doubts regarding proof of a person's guilt are interpreted in his or her favour. In the event that a court verdict is revoked as unjust, the State provides compensation for the material and moral damage caused by the unwarranted conviction.

#### **On the language of judicial proceedings**

161. Under article 12 of the Judicial System and Status of Judges Act, judicial proceedings and office work in the courts of Ukraine are conducted in the State language.

162. Under the above Act, courts must ensure that, in judicial proceedings, citizens enjoy equal rights in respect of language. Accordingly, citizens are guaranteed the right to use, in judicial proceedings, their native language or a language with which they are conversant. Under the European Charter of Regional Languages and Languages of Minorities Ratification Act, regional languages or languages of minorities may be used in court along with the State language, as prescribed by procedural law.

#### **Evidence**

163. Under the Constitution, an indictment may not be based on illegally obtained evidence (art. 62, para. 3) and a person shall not bear responsibility for refusing to testify or to provide explanations regarding himself or herself, members of his or her family or close



relatives of a degree of relationship determined by law (art. 63). Under article 73 (2) of the Code of Criminal Procedure, testimony by a suspect is subject to verification. Confession by a suspect is subject to verification. Confession by a suspect may be used as grounds for indictment only if corroborated by the totality of the evidence present in the case. Under article 74, second paragraph, of the Code of Criminal Procedure, testimony by the accused, including a plea of “guilty”, are subject to verification. Confession by a suspect or an accused may be used as grounds for indictment only if corroborated by the totality of the evidence present in the case. Under article 67 Code of Criminal Procedure, the court, procurator, investigator and person conducting the inquiry evaluate evidence according to their moral certainty, which is based on thorough, complete and objective examination of the totality of circumstances in the case, being guided by law. Under article 373 of the Criminal Code, compelling to testify during interrogation by means of unlawful acts and use of violence or torture on a person is a crime punishable according to the law.

### **Criminal liability of minors**

164. The provisions referred to in the preceding report with regard to the criminal liability of minors continue to apply.

165. As noted in paragraphs 129-130 above, a strategy for developing the country’s juvenile criminal justice was adopted by presidential decree on 24 May 2011. The strategy aims to build a comprehensive juvenile criminal justice system ensuring the legality, soundness and effectiveness of any decision related to rehabilitating and providing further social support to children in conflict with the law; raise social awareness of the importance of special protection of the rights and interests of children; and reduce juvenile delinquency. The strategy is to be implemented by stages over the period 2011-2016.

### **Right to appeal**

166. Under article 16 of the Judicial System and Status of Judges Act, parties to judicial proceedings and other persons in circumstances and in the manner prescribed by procedural law are entitled to challenge judicial decisions in higher courts by way of appeal or cassation and to have their case reviewed by the Supreme Court.

## **Article 15**

167. Amendments to the Criminal Code under Act No. 270-VI of 15 April 2008 rendered specific the provisions on the application at a given time of criminal liability legislation.

168. Thus, in article 4, the Code stipulates that criminal liability legislation enters into force 10 days after the date of its official promulgation, unless the legislation itself otherwise provides, but not earlier than the date of its publication. An act’s criminality, punishability or other consequences under criminal law shall be determined by the criminal liability legislation in force at the time of commission of the act. The time of commission of a crime is the time when a person carries out the act or omission provided for in the criminal liability legislation.

169. Under article 5 of the Criminal Code, if under criminal liability legislation an act is decriminalized or its criminality lessened, the effect of such legislation shall be retroactive, in other words, shall extend to persons who perpetrated the act in question prior to the entry into force of the legislation, including persons serving sentences or having served sentences but whose records have not yet been expunged. Inversely, criminal liability legislation which criminalizes an act or imposes heavier penalties for an offence may not be retroactive in effect.

170. Where criminal liability legislation partially lightens a person's criminal liability or otherwise improves a his or her situation and partially worsens that situation, only those parts that lighten criminal liability or otherwise improve that person's situation shall be retroactive in effect. If criminal liability legislation has been amended several times since the moment a person committed a crime provided for by the Criminal Code, that version of legislation which lightens criminal liability or otherwise improves that person's situation shall be retroactive in effect.

## **Article 16**

171. Under article 25 of the Civil Code of 16 January 2003, all individuals have an equal capacity to possess civil-law rights and duties (civil legal capacity). Civil legal capacity arises at birth. In cases established by law, the interests of a conceived but still unborn child are safeguarded; and the capacity to possess individual civil-law rights and duties may be linked to a person's attainment of the appropriate age. Civil legal capacity is terminated at death.

172. Under article 27 of the Civil Code, arrangements restricting an individual's right to exercise civil rights and duties not prohibited by law are deemed null and void. Acts of the President of Ukraine, State bodies, authorities of the Crimean Autonomous Republic, local government bodies, their officials and officers may not restrict an individual's right to exercise civil rights and duties not prohibited by law, save for cases where such a restriction is provided for in the Constitution.

173. According to the general rule, established by article 34 of the Civil Code, civil legal capacity commences on attainment of the age of majority, namely at age 18. In certain cases, full civil legal capacity may be accorded to persons before they attain their majority. For instance, an adolescent who enters into marriage acquires full civil legal capacity upon registration of the marriage. The scope of a person's civil legal capacity may be limited solely in the cases and according to the procedure provided for by the law.

## **Article 17**

174. Constitution chapter II, entitled "Human and citizens' rights, freedoms and duties", guarantees every person's basic rights, particularly those related to the inviolability of the person and the protection of personal life and privacy of correspondence. Under article 30 of the Constitution, everyone is guaranteed the inviolability of his or her dwelling. Entry into a dwelling place or other property of a person, and the inspection or search thereof, shall not be permitted, other than pursuant to a reasoned court decision. In urgent cases related to the preservation of human life and property or to the direct pursuit of persons suspected of committing a crime, another procedure established by law is possible for entry into a person's dwelling or other property, and for the inspection and search thereof. Under article 47 of the Constitution, no one may be forcibly deprived of one's dwelling other than on the basis of the law and pursuant to a court decision.

175. Under article 31 of the Constitution, everyone is guaranteed privacy of correspondence, telephone conversations and telegraphic and other communications. Exceptions may be determined only by a court in cases established by law, with the purpose of preventing crime or ascertaining the truth in the course of criminal investigation, if it is not possible to obtain information by other means.

176. Under article 32 of the Constitution, no one may be subjected to interference in his or her personal and family life, except in cases envisaged by the Constitution. The collection, storage, use and dissemination of confidential information about a person

without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare or human rights. Every citizen has the right to examine information about himself or herself, which is not a State secret or other secret protected by law, at State or local government bodies, institutions and organisations.

177. Everyone is guaranteed judicial protection of the right to rectify incorrect information about himself or herself and members of his or her family, the right to demand that any type of information be expunged, and the right to compensation for material and moral damage inflicted by the collection, storage, use and dissemination of such incorrect information.

178. In this connection, as part of fulfilling commitments related to its membership in the Council of Europe and in order to accelerate the development of cooperation with Eurojust and Europol in creating an appropriate legal basis, in accordance with the current European standards, for the protection of personal data, Ukraine ratified (by Act No. 2438-VI of 6 July 2010) the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and the related Additional Protocol regarding supervisory authorities and transborder data flows of 8 November 2001.

179. On 1 January 2011, the Verkhovna Rada adopted the Protection of Personal Information Act in order to meet obligations under the above Convention, and in view of the country's legal and regulatory framework, which did not fully ensure the protection of human rights in accordance with articles 3, 32 and 34 of the Constitution with regard to the protection of personal information. Before the adoption of that Act, social relations in the country in respect of the collection, storage, use and dissemination of personal information were regulated by more than two dozen Acts, none of which contained a clear definition of personal data, aligned with European legislation. The Act is based on articles 3, 32 and 34 of the Constitution; articles 4, 6 and 20-22 of the Civil Code; articles 30, 38, 39 and 54 of the Information Act; the Act on basic principles for the development of the Information Society in Ukraine in the period 2007-2015; the Act on the protection of information in information and telecommunications systems; other legal and regulatory instruments; and Ukraine's international agreements. The Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector were taken into consideration in drawing up the Act. According to article 2 of the Act, the concept of "personal data" may refer to any identifying information relating to a person, including his or her address, date and place of birth, education, civil or property status, nationality, religion and state of health. Under the Act, the collection, processing, storage and use of personal information is subject to the written consent of the person concerned. The administrator of a database containing personal information may process data only for the purpose and within the scope specified by agreement; and, in the event of a change in the purpose of processing, must obtain a new statement of consent from the person concerned. Article 8 of the Act lays down the rights of the data subject, including the right to:

- (a) Know the location of and have access to the database containing his or her personal data;
- (b) Be informed of the conditions of access to the personal data;
- (c) Impose a reasoned requirement prohibiting the processing of his or her personal data by State or local government bodies in carrying out their official functions;

(d) Ensure the protection of his or her personal data from illegal processing, inadvertent loss, deletion, damage and deliberate concealment, failure to provide or belated provision of the data; and his or her protection from the provision of information which is misleading or damaging to his or her honour, dignity or business reputation;

(e) Resort to legal redress in the event of violation of personal data protection law.

## Article 18

### Right to freedom of conscience and religion

180. Under article 35 of the Constitution, everyone has the right to a personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity. The exercise of this right may be limited by law only in the interests of protecting public order, the health and morality of the population, or the rights and freedoms of other persons.

181. In Ukraine, the Church and religious organizations are separate from the State, and the school from the Church. No religion shall be recognized by the State as mandatory.

182. No one may be relieved of his or her duties to the State or refuse to apply the laws for reasons of religious beliefs. In the event that the performance of military duty is contrary to a citizen's religious beliefs, the performance of this duty shall be replaced by alternative (civilian) service.

183. Act No. 987-XII on freedom of conscience and religious organizations, adopted by the Verkhovna Rada on 23 April 1991, regulates legal relations in the area of freedom of conscience and religion and the activity of religious organizations.

184. In view of the need to align the Act with the requirements of society, European Union legislation and other international instruments on freedom to a personal philosophy and religion, the State has launched work on legislative reform in that area. Such work consists in the preparation of draft Acts on an outline of relations between the State and religious faiths, on a new version of the Freedom of Conscience and Religious Organizations Act, and on returning worship-related property to religious organizations.

185. Current efforts are aimed at combating and preventing possible occurrences of discrimination, xenophobia, anti-Semitism, religious intolerance and hatred through the media.

186. Within the framework of the implementation of the Memorandum on Cooperation with the All-Ukrainian Council of Churches and Religious Organizations, the National Expert Commission for the Protection of Public Morality (hereafter referred to as the Morals Protection Commission), established by Cabinet of Ministers decision No. 1550 of 17 November 2004, created the Educational-Consultative Council on questions of religions and nationalities to work on problematic calling for scrutinizing publications and other material for, *inter alia*, incitement to religious or national animosity or offences to the religious sentiments of the faithful. Interested representatives of churches and religious organizations were invited to participate in the work of the National Expert Commission.

**On paragraph 12 of the concluding observations (with regard to extending the right of conscientious objection against mandatory military service to additional categories of persons)**

187. Under article 35, fourth paragraph, of the Constitution, no one may be relieved of his or her duties to the State or refuse to comply with the law on the grounds of religious belief. If performance of military duty is contrary to a citizen's religious beliefs, such the performance shall be replaced by alternative (civilian) service. The organizational and legal framework for such alternative (civilian) service is laid down in the Alternative (Civilian) Service Act, under article 2 of which all Ukrainian citizens have the right to perform alternative service if the performance of their military duties runs counter to their religious beliefs and if they belong to religious organizations whose doctrine prohibits the use of weapons. Under article 13 of the Act, alternative service is governed by the Act, the alternative service regulations adopted by the Cabinet of Ministers, and other Ukrainian legal and regulatory instruments. Cabinet of Ministers decision No. 2066 of 10 November 1999 adopting legal and regulatory instruments for the implementation of the Alternative (Civilian) Service Act established, in particular, the following list of religious organizations whose doctrine prohibits the use of weapons:

- (a) Adventists-Reformists;
- (b) Seventh Day Adventists;
- (c) Evangelical Christians;
- (d) Evangelical Christians – Baptists;
- (e) “The Penitents” or Slavic Church of the Holy Ghost;
- (f) Jehovah’s Witnesses;
- (g) Charismatic Christian Churches (and churches assimilated to them according to registered statutes);
- (h) Union of Christians of the Evangelical Faith – Pentecostals (and churches assimilated to them according to registered statutes);
- (i) Christians of Evangelical Faith;
- (j) Society for Krishna Consciousness.

**Article 19**

**State guarantee of the right to freedom of thought and speech and to free expression of one’s views and beliefs; and information on paragraph 15 of the concluding observations with regard to the clarity of standards protecting such rights**

188. Under article 34 of the Constitution, everyone is guaranteed the right to freedom of thought and speech, and to the free expression of one’s views and beliefs. Everyone has the right freely to collect, store, use and disseminate information by oral, written or other means of his or her choice.

189. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population and the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.

190. Social relations relating to the right to information are legally regulated by, primarily, the Acts on information; on the print media (press), television and radio broadcasting; on the National Board for television and radio broadcasting; on State support for the media and the social protection of journalists; on the procedure for the presentation of the activity of State and local government bodies by the media; and on news agencies.

191. Under article 9 of the Information Act, all Ukrainian citizens, legal entities and State bodies have the right to information, entailing the possibility freely to receive, use, disseminate and store information which they need in order to exercise their rights, freedoms and legitimate interests and to perform their tasks and functions.

192. The exercise of the right of citizens, legal persons and the State to information must not infringe the public, political, economic, social, spiritual, ecological or other rights, freedoms and legitimate interests of other citizens or the rights and interests of legal entities. Every citizen is granted free access to information regarding him or her personally, except in cases provided for by the law.

193. Article 10 of the Information Act establishes guarantees relating to the right to information, which is safeguarded as follows. It is mandatory for State and local or regional government bodies to provide information on their activities and decisions; special information services or systems have been set up in State bodies to provide access to information in accordance with the established procedure. Information users have free access to statistical data, archives, library and museum collections; such access is restricted only on the grounds of the particular value and special storage conditions of the collections, as specified by law. A mechanism has been established to guarantee the right to information. The State monitors compliance with the Information Act, and there are penalties for breaches.

194. Under article 45 (1) of the Information Act, the right to information is protected by law. The State guarantees information users equal rights and opportunities for access to information. No one may restrict a person's right to choose the forms and sources of the information he or she receives, unless otherwise provided by law. Information users have the right to demand that any infringements of their right to information be remedied.

**On paragraph 14 of the concluding observations with regard to State protection of freedom of opinion and expression, including the right to freedom of the press**

195. Since independence, Ukraine's information sector has progressively developed, mainly with regard to the legislative confirmation of a person's right to information, the transformation of the pattern of relations between the State and the media, and the creation of national information systems and networks. Steady development and structuring are observed in all information market segments. In recent years, the country made considerable strides in introducing European and global standards in respect of freedom of speech. A multifaceted legal framework for the information sector has been worked out. Favourable conditions have been created for the activity of free and pluralistic media. Problems encountered in the process of developing the area of information in Ukraine include, in particular, the following issues:

- (a) Gaps in the legislation on information;
- (b) In certain cases, obstruction of lawful journalistic activities and of the exercise of the human right to information;
- (c) Attempts by information-related actors to manipulate public opinion;
- (d) Opacity of media ownership relations;

(e) Trend towards concentration of ownership and monopolization of the information market segments;

(f) Significant volume of information output that does not meet the legal requirements of public morality.

The resolution of these problems and further development of a free and competitive information space in the country requires the cooperation of all branches of State authority, information-sector actors and civil society organizations in order to ensure that all legal provisions concerning journalists and freedom of speech are clearly defined and the country is endowed with an effective system for monitoring compliance with information legislation. Currently, State policy on the media focuses primarily on resolving such issues as creation of a public service television- and radio-broadcasting system, privatization of State and local-government print media, transparency of media ownership, and improved guarantees of the journalists' right to freedom of expression and activity.

196. Ukraine joined the Council of Europe on 9 November 1995. Upon accession, it committed itself to respecting its general obligations under the Statute of the Council of Europe, namely pluralist democracy, the rule of law and respect for human rights and fundamental freedoms of all persons under Ukrainian jurisdiction. In particular, Council of Europe Parliamentary Assembly Resolution No. 1466 of 5 October 2005 on the honouring of obligations and commitments by Ukraine assessed the implementation of the key reforms which Ukraine had an obligation to carry out. The Parliamentary Assembly concluded that, although notable progress had been made by Ukraine in the field of legislation, the country had not yet honoured all obligations and commitments it had entered into on becoming a member state of the Council of Europe, and that the rule of law in many areas had not yet been fully established; and, in particular, called upon the Ukrainian authorities to enhance the legal framework for access to information, strictly adhere to Article 34 of the Ukrainian Constitution on freedom of information while classifying documents, and declassify all official documents which were closed to the public contrary to the law. Pursuant to the above resolution, the Verkhovna Rada adopted on 13 January 2011 the Access to Public Information Act and the Act amending the Information Act (new version), with a view to ensuring the effective exercise of everyone's rights to freedom of expression of one's views, access to information, and freedom of collecting, storing, using and disseminating information orally, in writing or otherwise. These Acts entered into force on 10 May 2011.

197. The above two Acts are closely interrelated. In particular, the new version of the Information Act specifies the basic principles, actors and scope of relations within the area of information in Ukraine, and defines information and its forms.

198. The Access to Public Information Act lays down procedures for exercising and securing the right of every person to access to information of public interest possessed by State bodies and other administrators of public information identified in the Act. In addition to State bodies, all of the Act's requirements apply to other public organizations, the authorities of local government and the Crimean Autonomous Republic, and other bodies fulfilling administrative functions in accordance with the law and required to take implementation decisions. The Act's requirements regarding disclosure and provision of information on request concern the following actors:

(a) Legal entities funded under the State or local budgets or the budget of the Crimean Autonomous Republic;

(b) Legal entities with powers delegated by State or local government bodies according to the law or under a contract to provide, *inter alia*, educational, health-related, social, or other State services;

(c) Commercial entities which enjoy a dominant position in the market or special or exclusive rights or are natural monopolies;

(d) Commercial entities possessing information on the environmental situation; the quality of foodstuffs and household products; emergencies, disasters, natural hazards and other accidents which have occurred or may occur and threaten the health and security of citizens; or other information of public interest (information that the public must know).

199. The Access to Public Information Act obliges all information administrators to provide and publish public information recorded and displayed by the use of any means or on any medium; obtained or created as part of acts performed by the actors in their capacity as State authorities in accordance with the law; or possessed by such actors or other public information administrators. The establishment of clear criteria for restricting access to public information implies that State bodies must review the lists of documents, access to which was restricted before the Act came into force.

200. Attention is drawn to the above Act's provisions regarding the procedure for exercising one's right to access to information through a request to an information provider to supply public information in the provider's possession. Under the Act, a person may request an information provider for information regardless of whether the information in question is related to that person and without specifying the reason for the request. That the information is provided free of charge contributes significantly to the realization of the right to access to public information upon request.

201. Committing the following violations incurs liability for infringing the law on access to public information:

- (a) Failure to respond to a request;
- (b) Failure to provide information upon request;
- (c) Unjustifiable failure to satisfy a request for information;
- (d) Failure to disclose information under article 15 of the Act;
- (e) Provision or publication of misleading, inaccurate or incomplete information;
- (e) Belated provision of information;
- (g) Unwarranted characterization of information as classified;
- (h) Failure to register documents;
- (i) Deliberate concealment or destruction of information or documents.

Persons who consider their rights and lawful interests to have been violated by information providers have the right to challenge the information providers' decisions, acts or omissions in court in accordance with the Code of Administrative Court Procedure, and to request compensation for material and moral damage in accordance with the procedure established by law. In sum, through the Act, Ukrainian citizens acquired specifically the right to obtain, easily and rapidly, in the European manner, information on the functioning of State and local government bodies.

202. On 6 October 2010, the Verkhovna Rada approved in principle a draft Act amending existing legislation with a view to strengthening safeguards for freedom of speech and countering censorship. The draft Act supplements the Criminal Code with provisions which establish liability:

(a) For imposing censorship and violating the right to freedom of literary, artistic, scientific and technical creation;



(b) In a detailed manner, for obstructing the legitimate professional activities of journalists;

(c) For withholding equipment or materials used by journalists in their professional activities.

203. The Government, in cooperation with the National Union of Journalists, has prepared and submitted to the Verkhovna Rada for consideration a draft Act on the protection of the professional activity of journalists, with a view to regulating the relations involved in and providing guarantees for that activity, defining the journalists' professional rights and responsibilities and establishing liability for violating legislation protecting the professional activity of journalists. The draft Act lays down guidelines and principles for the professional activity of journalists; their rights, freedoms and obligations; safeguards for the professional activity in question; the accreditation procedure for journalists; and self-regulation rules for their profession. If adopted, the new Act will replace the bulky and obsolete current legislation, and Ukrainian society will get a single Act governing the professional activity of journalists.

204. The above draft Act would align Ukrainian legislation with international legal standards and current reality, contribute to the protection of the journalists' legitimate rights and freedoms and the fulfilment of their professional responsibilities, and meet the standards and requirements of European Union and Council of Europe legislation.

205. On 11 January 2011, the Verkhovna Rada on first reading approved in principle a draft Act outlining State policy on information and setting the goals, principles, priority tasks and basic targets of State activity for information sector development. The outline is conducive to establishing a unified national framework and strengthening sovereignty in the area of information, developing the information society in the country, and ensuring the protection of the constitutional rights to freedom of expression and access to information, the development of national information resources and infrastructure on a priority basis, the introduction of state-of-the-art information technologies, and the defence of cultural values and public morality.

206. Further development of a free and competitive information space in Ukraine requires that the State should ensure the transparency of media ownership and prevent concentration of such ownership and the monopolization of domestic information markets, particularly those of television and radio broadcasting. In view of these requirements, a draft Act amending legislation on ensuring media ownership transparency is currently before the Verkhovna Rada for consideration. The media ownership transparency guarantees provided for in the draft Act are in line with the content of Council of Europe Parliamentary Assembly Resolution No. 1466 of 5 October 2005 on the honouring of obligations and commitments by Ukraine.

207. The introduction of public broadcasting as a means of ensuring pluralism, freedom of speech and programme variety is a priority for the Ukrainian authorities. The national public-broadcasting model should reflect the experience of European countries, where public media function successfully and compete effectively with the leading commercial media. Accordingly, the State Television and Radio Broadcasting Committee (Goskomteleradio) drew up a draft Act amending the Public Television- and Radio-Broadcasting System Act. The draft Act provides for a two-stage development of public television and radio broadcasting: a transitional stage (three years from the entry of the Act into force) and a main stage (the following four years). During the transitional stage, the National Television Company, the National Radio Company and the State Television and Radio Company "Culture" are to combine into a single State enterprise, the National Public Television and Radio Company. During the main stage, there will be a shift from State administration of the new company's financial and economic activity to the

operation of an independent legal entity, National Civil Television and Radio Company. The National Public Television and Radio Company, whose broadcasts will reflect the interests of society as a whole, is to be financed and controlled by the community, and have a programme policy independent of the influence of the legislature, the executive and the judiciary at all levels and free of any another political, judicial or economic influence; while its editorial policy shall aim at broad satisfaction of the information needs of all citizens. The financial and economic activity of the National Public Television and Radio Company shall be independent of the influence of the legislature, the executive and the judiciary at all levels and free of the influence of any another political, economic, religious or other social group.

208. State and public print media privatization, already launched by the authorities on the recommendation of the Council of Europe Parliamentary Assembly, is a priority task of Ukrainian authorities for the current year.

209. The Government has drawn up, in accordance with Council of Europe standards, and, after extensive public discussion, has sent to the Verkhovna Rada for consideration a draft Act on State and local-government print media reform, with a view to reforming print media and editorial activity based on State bodies, State organizations and local government bodies. In order to achieve its stated goals, the draft Act contains provisions which constitute a mechanism for restricting the influence of State bodies, State organizations and local government bodies on the editorial staff of print media, and reducing to a minimum the possibility of using such media to manipulate public perceptions and the citizens' personal opinions. The draft Act lays down procedures for the above reform, provides for free transfer of assets to enterprises set up by the editorial boards of print media, concessional leasing terms for the premises of such enterprises, and State support for the reformed locally distributed print media. Adoption of the draft Act by the Verkhovna Rada will pave the way to thorough reform of the print media sector and ensure the creation of economically viable print media and of appropriate conditions for their operation.

210. Thus, Ukraine is taking tangible steps towards media reform and abides by the principles of European democracy, freedom of expression and provision of clear guarantees of the journalists' independence and freedom of activity.

**On paragraph 14 of the concluding observations with regard to investigating attacks against journalists and prosecuting the offenders**

211. The deliberate obstruction of the legitimate professional activities of journalists and the persecution of a journalist for the performance of professional duties or criticism, by an official or a group of persons acting in collusion, are punishable under article 171 of the Criminal Code. Procurator's offices are responsible for investigation into such criminal cases.

212. In 2010, Ukrainian courts heard 11 criminal cases involving 12 persons accused of offences against members of the media. These cases included only 5 criminal cases against 5 persons in relation to offences affecting professional activity of members of the media. Of the 10 persons convicted as a result, 2 were found guilty of crimes related to the professional activity of members of the media; 5 were sentenced to deprivation of liberty; 3 were exempted from punishment in the form of deprivation of liberty under article 75 of the Code of Criminal Procedure; and a fine was imposed on 2 persons. Lastly, the courts closed 3 criminal cases of the type in question, involving 3 persons, on the grounds of reconciliation of the offender and the victim and of expiry of the statute of limitations.

### **On the murder of journalist Georgiy Gongadze**

213. On 19 September 2000, the procurator of the Pechersk district of Kiev city initiated a criminal case for the disappearance of journalist Georgiy Gongadze. The case was subsequently investigated by the Office of the Procurator-General. The investigation established that the murder of Georgiy Gongadze was perpetrated by Ministry of Internal Affairs officials Aleksey Pukach, Nikolai Protasov, Valery Kostenko and Alexander Popovich acting on instructions by former Ministry of Internal Affairs Yuri Kravchenko. On 5 March 2008, the Court of Appeals of Kiev city handed down a verdict against Nikolai Protasov, Valery Kostenko and Alexander Popovich. The Court found them guilty of abuse of power and authority, with the aggravating circumstance of the deliberate murder of journalist Georgiy Gongadze, and sentenced them to deprivation of liberty for various periods. The judgement became enforceable. On 31 March 2011, a criminal file against Aleksey Pukach and documents against defunct Yuri Kravchenko for the deliberate murder of Georgiy Gongadze and other violent crimes were referred to the Pechersk district court of Kiev city for consideration of the merits. On 1 March 2011, on the basis of evidence of an offence under article 166 of the Criminal Code, the Office of the Procurator-General instituted criminal proceedings against former President of Ukraine Leonid Kuchma for abuse of power and authority leading to grave consequences in the form of the death of journalist Georgiy Gongadze. The pretrial inquiry into this criminal case was completed on 26 April 2011. In accordance with article 217 of the Code of Criminal Procedure, the victim has been presented with the criminal case file for perusal.

### **Article 20**

214. The following acts are punishable under the Criminal Code:

- (a) Public calls for forcible change or overthrow of the constitutional order or for seizure of State power, and dissemination of materials containing appeals to commit such acts (art. 109, para. 2);
- (b) Deliberate acts aimed at modifying the country's territorial boundaries or national borders in violation of the procedure provided for in the Constitution, and public calls or dissemination of materials containing appeals to commit such acts (art. 110, para. 1);
- (c) Public calls for the commission of a terrorist act (art. 258-2);
- (d) Public calls to riotous damage, arson, destruction of property, seizure of buildings or constructions, or forcible eviction of citizens, where these actions pose a threat to the public order, and also distributing, making or storing, with a view to disseminating, material of such content (art. 295);
- (e) Public calls to an aggressive war or an armed conflict, and production of material with calls to such acts for distribution purposes, or distribution of such material (art. 436);
- (f) Public calls to genocide, and production of material with calls to genocide for the purpose of distribution, or distribution of such material (art. 442, para. 2).

### **Article 21**

215. Under article 39 of the Constitution, citizens have the right to assemble peacefully without arms and to hold meetings, rallies, marches and demonstrations, provided they notify the central or local government bodies beforehand. Restrictions on the exercise of

this right may be established by a court in accordance with the law and only in the interests of national security and public order, for the purpose of preventing disturbances or offences, protecting public health or safeguarding the rights and freedoms of others.

216. In order to ensure the exercise of this right through legislation, a draft Act on organizing and holding peaceful events has been prepared. The draft Act is aimed at providing State guarantees of the right of persons to assemble peacefully without arms and to hold meetings, rallies, marches and demonstrations and safeguarding such freedom, which implies a clear definition, by the law, of possible restrictions on that freedom by State local government bodies, such limitations being necessary for the protection of the legitimate rights of other persons and for a democratic society. The draft Act was drawn up taking into account the provisions of international and regional instruments on freedom of peaceful assembly, and is in particular based on the Covenant and the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. The draft Act provides for legal mechanisms ensuring respect for the inalienable civil rights that it lays down, *inter alia* the right to peaceful assembly and freedom of expression of one's views and beliefs, and specifies the rights and obligations of peaceful event organizers and participants, State and local government bodies, and their authorized representatives. The draft Act was registered at the Verkhovna Rada on 6 May 2008 under No. 2450 and, on 3 June 2009, was approved by the Verkhovna Rada on first reading. The European Commission for Democracy through Law (the Venice Commission) adopted at its plenary session of 16 October 2010 a joint opinion on the above draft Act, noting, in particular, that the draft Act could be considered as a further step towards ensuring that freedom of assembly was properly protected in Ukraine.

## **Article 22**

217. Under article 36 of the Constitution, the citizens have the right to freedom of association in political parties and public associations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests, with the exception of restrictions established by law in the interests of national security and public order, the protection of the health of the population or the protection of rights and freedoms of other persons. All citizens' associations are equal before the law.

218. Political parties promote the development and expression of the political will of citizens, and participate in elections. Only Ukrainian citizens may be members of political parties. Restrictions on membership in political parties are established exclusively by the Constitution and the law. Article 37 of the Constitution prohibits the establishment and activity of political parties and public associations that seek, through their programmes or activities, to subvert the independence of Ukraine, change the constitutional order by violent means, violate the sovereignty and territorial indivisibility of the State, weaken its security, bring about an unlawful seizure of State power, propagate war or violence, incite ethnic, racial or religious enmity, infringe human rights and freedoms or undermine the health of the population.

219. Currently, the legal and institutional framework for realizing the right to freedom of association in political parties and civil society organizations is governed by the Citizens' Associations Act and the Political Parties Act.

220. A draft Act on civil society organizations has been drawn up. Its main purpose is to define the legal and institutional framework for the exercise of the right to freedom of association and to create conditions conducive to the establishment of civil society organizations, the implementation of their activities and the development of civil society in general. The draft Act is based on the provisions of article 11 of the Convention on the

Protection of Human Rights and Fundamental Freedoms. It takes into account the legislative framework within which NGOs operate in major European countries, including the provisions of the Recommendation of the Committee of Ministers of the Council of Europe to member States on the legal status of NGOs in Europe, adopted on 10 October 2007. The new element in the draft Act is the lack of territorial restrictions: NGOs are not categorized as local, nationwide or international entities, as in the Citizens' Associations Act. This will enable them to operate freely throughout the territory of Ukraine without having to re-register.

221. Ukrainian citizens have the right to participate in trade unions for the purpose of protecting their labour and socio-economic rights and interests. The Trade Unions (Rights and Guarantees) Act governs the legal aspects of trade unions, lays down the basis for their creation, provides for their rights and specifies guarantees for their activity. Trade unions are voluntary organizations that unite citizens bound by common interests according to the nature of their professional activities. Trade unions are formed without prior authorization on the basis of the free choice of their members. All trade unions have equal rights. Restrictions on membership of trade unions are established exclusively by the Constitution and the law. Article 6 of the above Act provides for the right to form a trade union. No one may be compelled to join any citizens' association or be restricted in his or her right to belong or not to belong to political parties or voluntary organizations. Any activities of trade unions or their associations that violate the Constitution or the law may be prohibited solely by decision of a local court or, in the case of trade unions or trade union associations with all-Ukrainian or nationwide status, by decision of the Supreme Court. No other body may decide the compulsory dissolution or termination or prohibition of the activity of trade unions or trade union associations. Restrictions on membership in trade unions may be imposed solely by the Constitution or the law. Under article 127 of the Constitution, professional judges may not belong to trade unions.

222. Under article 17 of the Armed Forces Act, conscripts' membership in trade unions ceases for the period of their military service. They may be members of public associations whose statutes contain no provisions incompatible with the principles of Armed Forces activity, and may participate in the work of such associations on their own free time when off duty.

223. Under the Security Service Act and the Intelligence Agencies Act, intelligence agency staff may not be members or participate in the activities of citizens' associations pursuing political goals. The membership of Security Service staff in such associations ceases for the period of their service or employment contract. Membership of persons under an employment contract with the Security Service or the intelligence agencies may be authorized as an exception.

224. Under article 18 of the Militia Act, police personnel may form trade unions.

## **Article 23**

225. Issues related to the basis for marriage, personal non-property and property rights and spousal obligations, the grounds for emergence and the content of personal non-property and property rights and of parents' and children's obligations are mainly regulated by the Constitution, the Family Code and the Civil Code.

226. Under national law, the family is the primary and fundamental unit of society. A family consists of persons who live together, and have a joint household and mutual rights and obligations. The State protects the family, childhood, motherhood and fatherhood and creates conditions for the strengthening of the family.

227. Under article 24 of the Family Code, a marriage must be based on the free consent of a woman and a man. It is prohibited to force a woman and a man into marriage. Under the Family Code, a person who has attained marriage age enjoys the right to found a family. A person to whom a child has been born may also found a family regardless of that person's age. Everyone has the right to live in a family.

228. With regard to the dissolution of marriage, note should be made that, over and above basic provisions contained in the Family Code, the State Civil Registration Act, which entered into force on 27 July 2010, introduced a number of important new elements and amendments to the Family Code, the Civil Code and the Code of Civil Procedure; and that the Notaries Act specifically deals with the procedure for the dissolution of marriage. Under the Family Code, dissolution of marriage by the State civil registration authority may take one of following two forms, depending on whether only one spouse or both spouses have expressed their intent:

- (a) Marriage dissolution by mutual consent of the spouses;
- (b) Marriage dissolution based on a petition by only one spouse.

In the first case, the marriage is terminated on the basis of a joint petition by the spouses, if they have no children (article 106 of the Family Code). Where the spouses have children, the petition for dissolution of the marriage must be accompanied by a written agreement specifying the spouse with whom the children will live, the participation of the other parent in ensuring appropriate living conditions for the children, and the conditions for the realization of that parent's personal rights in relation to the children's upbringing. For the marriage to be dissolved on the basis of a petition by only one spouse, the other spouse must have been declared missing or as having no legal capacity (article 107 of the Family Code). The State Civil Registration Act has invalidated a provision whereby the sentencing of a spouse to deprivation of liberty for a period of at least three years constituted grounds for dissolving the marriage on the basis of a petition by the other spouse. Under that Act, a spouse sentenced to deprivation of freedom may, regardless of the length of the sentence, propose the dissolution of the marriage by judicial procedure or through the State civil registration authority by mutual agreement with the other spouse, provided they have no children. A court may hear a case for marriage dissolution based on a petition by a spouse sentenced to deprivation of liberty, whereby a representative of that spouse participates in the proceedings, and at the same time examine any claims put forward by that spouse in relation to his or her property rights or his or her share in the upbringing of the children. Since these provisions took effect, namely in the period July 2010-March 2011, the State civil registration authority has recorded 35 dissolutions of marriage by persons sentenced to deprivation of liberty, while official marriage records for such persons show 153 annotations of marriage dissolution based on court decisions.

229. The State Civil Registration Act does not provide for State registration of marriage dissolution based on a court decision. Once it becomes enforceable, such a decision is a definitive document certifying the dissolution of marriage and obviates the need for redundant procedural formalities for registering the event and obtaining the relevant attestation. Where a marriage is dissolved by judicial procedure, the enforceable court decision is transmitted by the court to the local State civil registration authority for entry of the information into the State civil registry and for annotation in the official marriage records. An annotation of marriage dissolution based on a court decision is made by the State civil registration authority in the passports or identification documents of former spouses at their request. This procedure, which obviates the need for registration procedures, applies only to court decisions handed down after 27 July 2010.

230. The adoption of the above Act constitutes a decisive step towards improving current legislation on family relations and ensuring its convergence with European standards. The

amendments made to procedural regulations for marriage dissolution are clearly helpful insofar as they significantly streamline the procedures in question and are conducive to the realization of the marriage- and family-related personal non-property and property rights of all citizens without exception.

## Article 24

### Legal provisions governing the rights of children

231. Under article 6 of the Child Protection Act, the State guarantees a child's right to health care and quality medical attention free of charge in State and community health establishments; and promotes the creation of a safe environment for the children's life, healthy development, proper nutrition and development of healthy living habits.

232. To that end, the Government takes measures for reducing infant and child mortality; ensuring the provision of necessary medical care for all children; combating disease and malnutrition, *inter alia* through ensuring children's access to adequate quantities of quality food and clean drinking water; creating safe and healthy working conditions; providing mothers with appropriate prenatal and postnatal health-care services; providing all social groups, particularly parents and children, with information on children's health and nutrition, the benefits of breastfeeding, hygiene, appropriate sanitary living conditions for children, and accident prevention; enhancing the provision of information and services in relation to family planning and reproductive health; and ensuring children's access to medicines and food on preferential terms in accordance with the law.

233. Under the Child Protection Act, from the moment of birth each child has the right to a name and citizenship.

234. Under the Family Code, a child's birth must be registered by parents in the State civil registration authority without delay but not later than one month after the child was born.

235. A child's birth registration is carried out by the State civil registration authority, which at the same time establishes the child's parentage and confers to the child a family name, first name and patronymic.

236. Under chapter 13 of the Family Code, the parents have a duty to attend to the child's health and physical, spiritual and moral development; and must ensure that the child obtains full general secondary education and prepare him or her for independent life.

237. The child's right to appropriate parental education is secured by the State control system established by law.

238. In order to protect his or her rights and interests, a child may turn to a guardianship and custody agency, other State or local government bodies and public associations, or the court.

239. In the State Programme for Economic and Social Development in 2010, adopted by Act No. 2278-VI of 20 May 2010, a separate section addresses issues related to policy on support for families, children and young persons, particularly:

- (a) Providing appropriate legal, economic and social conditions for the functioning and reinforcement of families;
- (b) Building the parents' sense of responsibility for their children's upbringing;
- (c) Ensuring the realization of the right of orphans and children deprived of parental care to be brought up in a family setting;

- (d) Encouraging national adoptions and preventing child abuse and neglect;
- (e) Reforming residential institutions.

240. The State-wide programme entitled “National action plan for the implementation of the United Nations Convention on the Rights of the Child” and adopted for the period up to 2016 through Act No. 1065-VI of 5 March 2009 is aimed at unifying State efforts for the protection children’s rights into a single, comprehensive and optimal system. This document confirms Ukraine’s ambition and readiness to build up efforts to improve the condition of children; provides for an integral approach to the realization of children’s rights to an upbringing in a family setting, health, education, social protection, cultural and spiritual development, participation in social life, and protection from abuse; and seeks to enhance the system of surveillance and monitoring of the condition of children in the country, and to increase the effectiveness of State policy.

241. Amendments made during the period 2008-2010 to Ukrainian legislation on safeguarding children’s rights in accordance with the United Nations Convention on the Rights of the Child and other related international legal instruments are based on the human rights approach and seek the improvement of mechanisms, in existence or currently under development, for the implementation of all legal and regulatory instruments related to the Convention. The amendments are mainly aimed at, *inter alia*, reforming the State system for the placement of orphans and children deprived of parental care, through adoption, guardianship, custody and foster care; developing the network of social institutions for children; protecting children against abuse; and establishing stiffer penalties for trafficking in children and sexual exploitation of children. Legislation adopted in recent years by the Verkhovna Rada in order to improve social protection for orphans and children deprived of parental care and promoting the realization of their right to be brought up in a family setting consists of the following Acts:

(a) No. 257-VI 10 April 2008 amending legislation on adoption. Thereby, restrictions were imposed on the adoption of children by single aliens and a 45-year cap on the age difference between adopter and child.

(b) No. 269-VI of 15 April 2008 amending the Act on State support for families in respect of the amount of benefits for children placed under guardianship or custody. Thereby, as from 1 January 2009, those benefits increased up to twice the subsistence minimum depending on the child’s age.

(c) No. 573-VI of 23 September 2008 amending legislation on State support for families having adopted an orphan or child deprived of parental care. Thereby, as from 1 January 2009, for the first time in Ukraine, a State benefit for child adoption was established in the same amount as the benefit for the birth of the first child. Moreover, paid leave of 56 calendar days, not counting holidays and non-working days, was introduced for one of the parents to attend to an adopted child older than 3.

(d) No. 1452-VI of 4 June 2009 amending the Criminal Code and the Family Code with regard to adoption. Thereby, stricter requirements were established for persons seeking to adopt or bring up an orphan or child deprived of parental care; and stiffer penalties were introduced for illegal acts related to child adoption, placement under guardianship or custody or bringing up a child in a family setting.

Cabinet of Ministers decisions No. 866 of 24 September 2008 on children’s rights protection issues related to the activity of guardianship and custody agencies and No. 905 of 8 October 2008 establishing the procedure for conducting adoption-related activities and monitoring compliance with the rights of adopted children lay down clear rules for the action of guardianship and custody agencies from the moment of identification of a child



deprived of parental care up to placement with a family, and specify the procedure for child adoption and for monitoring the living conditions of adopted children.

**On paragraph 10 of the concluding observations with regard to protecting children from domestic violence**

242. The legal and organizational framework for preventing family violence and the bodies and institutions tasked with implementing the relevant measures are specified in accordance with the Constitution, the United Nations Convention on the Rights of the Child, the Child Protection Act and the Family Violence Prevention Act. The above bodies and institutions include the juvenile police and the bodies for family and youth affairs, education and health care.

243. The protection of the rights and freedoms of the more than eight million children living in the country is a State priority and efforts are made to monitor compliance with those entitlements from the children's birth until they have received an education or secured their first job. Special attention is paid to guaranteeing the rights of such vulnerable children as those placed in child care centres, foster families or special institutions for minors, and children brought up in disadvantaged families.

244. With a view to the protection of children's rights in the period 2007-2011, procurator's offices brought criminal charges in more than 7,000 cases, most of which were taken to the court. As a result of 54,300 procuratorial action documents that were filed, proceedings were instituted against 60,000 officials; while 23,000 illegal acts were annulled. On the initiative of procurators, compensations amounting to Hrv. 243 million were provided for alimony, allowances and social benefits. The rights of 890,000 children were restored.

245. At the same time, checks are carried out on an ongoing basis to ensure compliance with legislation on the prevention of any form of violence against children, including family violence. Such checks have revealed that children are subjected to violence mainly in vulnerable families, in which parents are addicted to alcohol or drugs or out of work or lead immoral lives. As a result of such checks conducted in the period 2009-2011, criminal charges were brought in 327 cases, of which 284 were taken to the court. As a result of more than 1,500 procuratorial action documents that were filed, proceedings were instituted against 60 thousand officials; while 182 illegal acts were annulled.

**Article 25**

**On the right to participate in elections**

246. Under article 71 of the Constitution, elections to State local government bodies are free and are held on the basis of universal, equal and direct suffrage and by secret ballot. Under article 71 of the Constitution, Ukrainian citizens who have attained the age of 18 by the date on which the elections are held have the right to vote. Citizens deemed by a court to lack legal capacity may not vote. On the basis of articles 38, 70, 71, 76, 103 and 141 of the Constitution, the right to participate in elections consists essentially in the citizens' right freely to vote and to stand for election to State local government bodies. This right is universal, equal and direct. The basic principles governing that right and the secret expression of the citizens' will, particularly at elections of the people's deputies, form the constitutional basis for the legal regulation of the electoral process (paragraph 4 (2) of the preambular section of Constitutional Court decision No. 1-rp of 26 February 1998 on elections for the people's deputies).

247. Currently, Ukraine's electoral law consists primarily of the People's Deputies Election Act of 25 March 2004, as amended on 7 July 2005; the Act on Elections of

Deputies of the Supreme Council of the Crimean Autonomous Republic, Local Councils and Village, Settlement and Municipal Mayors, of 10 July 2010; and the Presidential Elections Act of 5 March 1999, as amended on 3 February 2010. These Acts specify the electoral process to a significant degree of detail. The Central Electoral Commission Act of 30 June 2004 and the State Electoral Register Act, as amended on 21 September 2010, may also be considered part of electoral law. A working group on the improvement electoral law, created by Presidential Decree No. 1004 of 2 November 2010, has been tasked with preparing legislative proposals for a comprehensive systemic amelioration of electoral regulations. Regrettably, electoral law is one of the most unstable branches of Ukrainian legislation. In the short time since their adoption, the above Acts have been extensively amended. Experts and the public constantly discuss the appropriateness of existing electoral models and the need to improve the electoral procedures stipulated by the above Acts for the various types of elections, including through the codification of legislation on elections and referenda. Yet compliance of the organization and conduct of elections with democratic principles largely depends less on the relevant legal provisions and more on the acts of those who participate in the organization of the electoral process or in the electoral process itself, on the extent to which those participants duly abide by the existing legislation, and on the level of the legal culture of all participants in the electoral process.

### **On participation in the conduct of public affairs and on paragraph 19 of the concluding observations**

#### **Civil service**

248. As stated in the sixth periodic report, Ukrainian citizens have the right to participate in the conduct of public affairs by working in the civil service,.

#### **Public consultation**

249. Presidential Decree No. 854/2004 of 31 July 2004, adopting Cabinet of Ministers decision No. 996 of 3 November 2010, was promulgated in order to boost the guarantees of the citizens' constitutional right to participate in the conduct of public affairs, the sovereignty of the people, and the development of civil society. The decision in question laid down the procedure for public consultation on State policy formulation and implementation; and standard rules regarding public councils attached to ministries, other central executive bodies, the Council of Ministers of the Crimean Autonomous Republic, and State administration bodies at the levels of oblasts, the cities of Kiev and Sevastopol, districts, and the Kiev and Sevastopol city districts.

250. The above procedure specifies the basic requirements for the organization and conduct, by State bodies, of public consultation on State policy formulation and implementation. To that end, the State bodies must encourage the people to participate in the conduct of public affairs; provide free access to information on their own activities; and ensure clarity, openness and transparency of such activities. Public consultation takes place on issues related to the State's social and economic development, the exercise and protection of civil rights and freedoms, and the satisfaction of the citizen's political, economic, social, cultural or other interests. Consultation outcomes are taken into account by the Government in making decisions or in its subsequent work. Public consultation takes place on a regular basis. Every year, State bodies draw up an indicative public consultation plan comprising the main tasks envisaged in the operational programme of the Cabinet of Ministers, the State Programme for Economic and Social Development, the draft legislation preparation programme and other documents, and in the outcome of earlier public consultation exercises. Public consultation takes the forms of social discussions in public and public opinion analysis. During consultation, the executive authorities interact with the media and provide them with the necessary information and analyses.

### **Public councils**

251. Public councils are a key element in involving the community in the conduct of public affairs. Under the above standard provisions, the main tasks of a public council are the following:

- (a) Promoting the realization of the citizens' constitutional right to participate in the conduct of public affairs;
- (b) Ensuring public oversight of the activity of the executive authorities;
- (c) Helping to ensure that, in formulating and implementing State policy, the executive authorities take public opinion into consideration.

Public councils consist of representatives of public association, religious and charitable organizations, trade unions and trade union associations, creative profession unions or associations, employers' organizations, non-governmental media and other non-profit associations and institutions established in accordance with the law. The composition of public councils is determined at constitutive meetings by preferential voting, whereby the candidates are volunteers proposed by civil society bodies.

### **Article 26**

#### **On paragraph 16 of the concluding observations with regard to ensuring that all members of ethnic, religious, or linguistic minorities are protected against violence and discrimination**

252. Efforts to combat racial discrimination are governed by the Constitution (arts. 24, 37, 38, 119); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 4); the Declaration on the Rights of Nationalities in Ukraine (art. 1); the National Minorities Act (art. 9); the Local Government Act (arts. 3 (2) and 32 (b) (1)); the Legal Status of Aliens and Stateless Persons Act; the Citizens' Associations Act (art. 4); the Education Act (arts. 6 and 56 (6)); the Advertising Act (art. 8 (1)); the Print Media (Press) Act (art. 3); the Information Act (art.46); the Equal Rights and Opportunities for Women and Men Act; the Code of Administrative Court Procedure (art. 10); and the Criminal Code (arts. 161, 300).

253. With a view to regional stability and security and the enhancement of intergovernmental relations based on reciprocal trust, Ukraine has concluded with neighbouring States a series of bilateral agreements providing for, *inter alia*, cooperation in the area of protection of the rights of national minorities.

254. Moreover, Ukraine is taking steps to improve legislation providing for action against intolerance, xenophobia, racism, discrimination and ethnic bias; and, in particular, has prepared the draft Act on the strategy underpinning the State ethnic and nationality policy. The draft Act lays down the principles governing the policy in question; guarantees the legal protection of citizens against offences to national honour and dignity, and against discrimination, hostility, threats and violence based on their ethnic, cultural, linguistic or religious background; and provides for measures aimed at ensuring equality among Ukrainian citizens and national minorities in all areas of the economic, political and cultural life of the State.

255. Amendments to the Criminal Code which were adopted by the Verkhovna Rada in October 2009 stiffened considerably the penalties incurred for offences motivated by racial, national or religious intolerance.

256. In sum, Ukraine's legal framework for action against racism and xenophobia is adequate, although it is still necessary to improve the reporting of such crimes.

**On remedies provided by the State against the problems of intolerance and discrimination**

257. As stated above and in earlier reports, article 24 of the Constitution stipulates that there shall be no privileges or restrictions based on race, colour, political, religious or other beliefs, gender, ethnic or social origin, place of residence, linguistic or other characteristics.

258. Criminal liability constitutes one of the remedies provided in support of the above constitutional principle. Article 161 of the Criminal Code penalizes the wilful incitement of ethnic, racial or religious animosity and hatred, the demeaning of ethnic honour and dignity, offences against a person's dignity in connection with his or her religious beliefs, and the direct or indirect restriction of rights or the establishment of privileges based on race, colour, political, religious or other convictions, gender, ethnic or social origin, wealth, place of residence and linguistic or other characteristics. Under the current criminal procedure legislation, the offences referred to in that article are investigated by procurator's offices. Amendments to the Criminal Code which were introduced on 5 November 2009 stiffened the penalties incurred for offences motivated by racial, national or religious intolerance. In particular, such elements as motivation based on racial, national or religious intolerance constitute circumstances which aggravate the offences of deliberate homicide (art. 115 (2) (14)), deliberate severe bodily injury (art.121 (2)), deliberate bodily injury of medium gravity (art.122 (2)), physical abuse and cruelty (126 (2)), torture (art.127 (2)), and threat of murder (art.129 (2)). Under article 300 of the Criminal Code, importing, producing or disseminating works which propagate racial, national or religious intolerance incurs criminal liability.

259. The Ministry of Internal Affairs and the Office of the Procurator-General issued Joint Order No. 11/128 on the reporting of crimes motivated by racial, national or religious intolerance and the outcome of related investigations in order to ensure that the crimes in question are monitored and systematically detected and investigated. Offences motivated by national, racial or religious intolerance may lead to the commission of crimes against the foundations of national security. Accordingly, the Ukrainian Security Service is constantly engaged in the prevention of such acts. In that connection, emphasis is placed on operational coordination with other law enforcement agencies, primarily the procurator's offices, whose responsibilities include investigation into crimes under article 161 of the Criminal Code ("Violation of the equal rights of citizens on the grounds of their racial or national affiliation or attitude to religion").

260. In 2009, Ukrainian courts heard and handed down decisions in four criminal cases involving nine persons accused of offences related to racial and national intolerance or xenophobia (under article 161 of the Criminal Code). Of those persons, four were found guilty, four were released from punishment under an amnesty Act, and one was sentenced to coercive re-education measures. In particular, on 15 January 2009, the appellate court of the Prymorsk district in the city of Odesa found I. Volin-Danilov, editor-in-chief of the *Nashe delo* ("Our business") newspaper (published in Odesa oblast), guilty of a crime under article 161 (2) of the Criminal Code for having published in 2008 an article entitled "Kill the best of the goys". Accordingly, he received a suspended sentence to 18 months' deprivation of liberty. On 9 February 2009, three residents of the Simferopol district received a court sentence to two years' deprivation of liberty, for vandalizing in March 2008 a Muslim cemetery (they destroyed 38 tombstones) in the settlement of Chistenke, Simferopol district. On 21 December 2009, the appellate court of Kiev city sentenced S. V. Kuchma and A. D. Davydov to 13 years' deprivation of liberty each, for crimes under articles 115 (2) (12) and 161 (3) of the Criminal Code. They were found guilty of deliberate acts aimed at offending national honour and dignity and of the murder, committed by a group of persons upon prior conspiracy, of Jordanian citizen Muzafa Edin Anwar Amin Al Farook. In 2010, a single court decision was handed down in relation to crimes of the type

in question: two persons, O. V. Kushnarev and S. O. Tsypanov, were sentenced on 2 September 2010 by the Energodar municipal court in Zaporizhia oblast to fines of Hrv. 1,700 each, under articles 161 (1) and 194 (2), pursuant to article 69, of the Criminal Code. They were found guilty of arson, motivated by ethnic intolerance, of the “Footwear” commercial showroom owned by A. A. Vartanyan and of writing on it signs offending the ethnic honour and dignity of persons of Armenian nationality. In the first quarter of 2011, no court decisions were handed down in the country with regard to offences involving occurrences of ethnic intolerance or xenophobia.

#### **Protection of the rights of persons with disabilities**

261. Under article 46 of the Constitution, citizens have the right to social protection, including the right to benefit in cases of complete, partial or temporary disability, the loss of the principal wage earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.

262. The current State social policy is aimed at the realization of constitutional rights related to the social protection of persons faced with difficult living conditions, one of the most vulnerable social groups. One of the State and social support mechanisms for such persons consists in the provision of social services. Persons having significantly lost the ability to look after themselves and to move and who constantly require the assistance of others are admitted to State residential social services institutions.

263. The State system of social services, created as part of the activities of the Ministry of Social Policy, was primarily set up to provide social services to war and labour veterans, pensioners, single elderly citizens and persons with disabilities. Such social services include, *inter alia*, everyday-life and socio-medical rehabilitation, monetary aid and assistance in kind, and are provided through an extensive network of establishments comprising 324 boarding facilities, 339 residential units, 736 regional centres for social services, 135 establishments for the homeless and persons released from prison and 207 centres for the rehabilitation of persons with disabilities.

264. Under Cabinet of Ministers decision No. 558 of 29 April 2004, unemployed individuals may provide social services to persons who require the assistance of others but for various reasons are not supported by a regional centre for social services. The individuals providing such services receive financial compensation equal to a percentage of the minimum wage. This novel method of making social support available in the immediate vicinity of the persons most in need of such assistance made it possible to organize individualized social services for approximately 90,000 thousand beneficiaries.

265. One of the key new tasks of State social policy under Act No. 966-IV of 19 June 2003 on social services consists in the development and implementation of modern and effective methods of operation of the social services system.

266. Currently, the Ministry of Social Policy focuses on the development of a strategic framework for a new policy on social services. A social services reform strategy, formulated through the work of specialists of the Ministry, other central executive authorities, public organizations and associations, and a number of international projects for technical assistance to Ukraine, was adopted through Cabinet of Ministers order No. 178-r of 13 April 2007. In order to attain the objectives of the strategy, the Ministry drew up an action plan (confirmed by Cabinet of Ministers order No. 1052-r of 30 July 2008) for the implementation of the social services system reform in the period up to 2012. Implementation of the main thrusts of the action plan is expected to build in Ukraine a social services system meeting the relevant modern operational norms and European Union social standards, which are expected to ensure the fulfilment of the right to decent social services for the population as a whole and thereby contribute to poverty reduction.

## Article 27

267. The right of Ukrainian citizens and members of all nationalities to education and guarantees for such rights is laid down in the Declaration on the State Sovereignty of Ukraine, the Constitution, the National Minorities Act, the Languages in Ukrainian Soviet Socialist Republic Act, the Education Act, the Print Media (Press) Act, the Citizens' Associations Act, the Citizenship Act, the Preschool Education Act, the General Secondary Education Act, the Out-of-School Education Act, the Vocational and Technical Education Act and the Higher Education Act.

268. Ukrainian Citizens have the right to free education in all State establishments regardless of gender, race, nationality, social and property status, type and nature of employment, philosophical beliefs, party affiliation, attitude to religion, faith, state of health, place of residence or other circumstances.

269. An extended network of preschool, general, vocational and higher education establishments is in operation in order to give effect to the right to education in ethnic minority languages and to the study of these languages.

270. Information regarding education in a native language and study of ethnic minority languages in educational establishments in the 2009/10 academic year is presented in tables 2-6 below.

271. Bulgarian, Crimean Tatar, Moldovan, Modern Greek, Polish, Russian, Romanian, Slovak, Turkish and Hungarian are studied in Ukrainian higher education establishments.

272. For members of the ethnic minorities that are dispersed about the country, there are cultural and educational centres and Sunday schools, attendance of which is not subject to any age limit. Azerbaijani, Afghan (Pashto), Belarusian, Bulgarian, Armenian, Hebrew, Italian, Karaim, Korean, Krymchak, Lithuanian, Moldovan, German, Modern Greek, Polish, Romany, Tatar, Turkish and Czech language and literature and the corresponding history, culture and popular traditions are studied at these centres and Sunday schools.

273. Training for teaching staff of general schools that teach in ethnic minority languages is provided for by a Cabinet of Ministers decision of 11 August 1995 on resolving political, legal, social, economic and ethnic issues in the Crimean Autonomous Republic. With a view to implementing the decision, one of whose objectives is to train local professionals in the social and cultural sphere, higher education institutions prepare an increased number of specialists meeting social and cultural needs in the Crimean Autonomous Republic, in the existing areas of specialization and within the framework of State requirements.

274. Of the country's 96 ethnic cultural centres which as at 1 January 2010 met the cultural needs of ethnic minorities, the following 12 were funded from local budgets: the national Bulgarian cultural centre in Odesa; the Bulgarian cultural research centre in Bolhrad; the ethnic cultural centre in Izmayil district, Odesa oblast; the ethnic cultural centre in Reni district; the centre for the arts in Izmayil, Odesa oblast; the Zakarpattia ethnic minorities cultural centre, Uzhhorod; the Sevastopol ethnic cultural centre; the Styl rural house of Greek culture; the Volnovakha municipal ethnic cultural centre, Donetsk oblast; the Velikoanadol rural Greek cultural centre, Donetsk oblast; the house of ethnic cultures, Luhansk; and the municipal ethnic cultural centre, Mykolayiv.

275. The practical mechanism for ensuring the ethnic cultural and linguistic development of members of national minorities consists in organizational and financial support provided by the State for the activity of public associations of national minorities in order to preserve the ethnic or national identity of such groups.

## Tables

Table 1  
Per cent breakdown of the numbers of civil servants by gender

<i>Civil servants at manager or specialist level, as a whole</i>	2007		2008		2009		2010	
	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>
Managers	36.2	63.8	35.7	64.3	35.2	64.8	55.2	44.8
Of whom, at official grade:								
First	89.4	10.6	87.5	12.5	86.7	13.3	86.3	13.7
Second	75.8	24.2	76.0	24.0	74.4	25.6	76.0	24.0
Third	60.6	39.4	59.9	40.1	58.5	41.5	59.9	40.1
Fourth	53.3	46.7	52.2	47.8	51.3	48.7	49.8	50.2
Fifth	33.6	66.4	31.5	68.5	30.9	69.1	29.9	70.1
Sixth	30.1	69.9	30.4	69.6	30.0	70.0	29.2	70.8
Specialists	20.3	79.7	20.5	79.5	20.5	79.5	31.9	68.9
Of whom, at official grade:								
Second	55.4	44.6	55.0	45.0	53.8	46.2	55.0	45.0
Third	37.7	62.3	36.1	63.9	35.9	64.1	33.6	66.4
Fourth	35.4	64.6	36.4	63.6	37.7	62.3	37.1	62.9
Fifth	28.3	71.7	28.9	71.1	28.9	71.1	28.9	71.1
Sixth	20.8	79.2	21.2	78.8	20.9	79.1	20.6	79.4
Seventh	16.3	83.7	16.0	84.0	16.2	83.8	16.0	84.0

Table 2  
Languages of instruction in pre-school education establishments

<i>Language of instruction</i>	<i>Number of establishments</i>	<i>Number of children being instructed in the language in question</i>
Ukrainian	12 252	1 022 929
Russian	988	164 568
Hungarian	70	3 247
Romanian	36	2 063
Moldovan	16	1 062
Crimean Tatar*	-	476
Polish*	-	104
German*	-	20
<i>Multilingual establishments</i>	853	

\* Separate groups in pre-school education establishments.

Table 3  
**Languages of instruction in State and community general-education establishments**

<i>Language of instruction or study</i>	<i>Number of schools with instruction in this language</i>	<i>Number of pupils being instructed in this language</i>	<i>Number of pupils studying this language as a subject</i>	<i>Number of pupils studying this language optionally or in study circles</i>
Ukrainian	16 677	3 541 190	788 043	-
Russian	1 154	739 819	1 284 505	147 781
Romanian	88	21 092	861	203
Hungarian	66	15 596	1 198	388
Crimean Tatar	15	5 592	16 318	4 497
Moldovan	6	4 300	1 609	526
Polish	5	1 401	9 245	3 959
Slovak**	-	102	212	209
Bulgarian**	-	44	8 604	3 213
Modern Greek	-	-	3 622	1 326
Gagauz	-	-	1 447	-
Hebrew	-	-	2 644	69
Korean	-	-	405	20
Czech	-	-	189	74
German	-	-	78	39
Estonian	-	-	-	19
Turkish	-	-	408	383
Armenian	-	-	28	20
Vietnamese	-	-	10	77
Multilingual establishments	1 664			

Table 4  
**Languages of instruction in vocational and technical education establishments**

<i>Language of instruction</i>	<i>Number of institutes</i>	<i>Number of students being instructed in the language in question</i>
Ukrainian	771	358 515
Russian	35	51 685
Bilingual establishments	113	

\*\* Separate classes in schools providing general education.



Table 5  
**Languages of instruction in higher education establishments with accreditation at levels I and II**

<i>Language of instruction</i>	<i>Number of students being instructed in the language in question</i>
Ukrainian	319 312
Russian	34 755
Hungarian	81
Romanian	78

Table 6  
**Languages of instruction in higher education establishments with accreditation at levels III and IV**

<i>Language of instruction</i>	<i>Number of students being instructed in the language in question</i>
Ukrainian	2 006 997
Russian	235 611
Hungarian	915