

Ukraine

Ukrainian Parliament Commissioner for Human Rights

International accreditation status and SCA recommendations

The Ukrainian NHRI was reaccredited with A status in October 2019. While acknowledging the proposed amendments to the establishing law, the SCA encouraged the NHRI to continue to advocate for a broader and more transparent selection and appointment process, as well as clearer limits to the terms of office of the decision-making body of the NHRI. Similarly, the SCA welcome the increase in funding to the NHRI but encourages the NHRI to keep advocating for the provision of adequate resources. Finally, the SCA encouraged the NHRI to strengthen its cooperation with civil society organizations.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The ENNHRI Rule of Law Report 2020 helped to raise awareness of rule of law issues among public authorities, and to strengthen the interaction of the Parliament Commissioner for Human Rights with public authorities and local bodies. Updates on identified rule of law issues are now provided by the National Strategy for Human Rights, approved by the Decree of the President of Ukraine of 25 August 2015 № 501/2015 (amended and approved again by the President in 2021), the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their states -members, on the other hand, ratified by Law № 1678-VII of 16.09.2014 and the Council of Europe Action Plan for Ukraine for 2018-2022.

With a view to implementing the provisions of the Association Agreement, special attention was paid to the rule of law in the Resolution of the European Parliament of 11 February 2021 on the implementation of the Association Agreement between the EU and Ukraine (2019/2202 (INI)). The Resolution emphasizes that respect for the rule of law is fundamental on the path to Ukraine's European integration.

Impact on the Institution's work

As mentioned above, the ENNHRI Rule of Law Report 2020 helped strengthen the interaction of the Parliament Commissioner for Human Rights with public authorities and local bodies.

References

- (1) <https://www.president.gov.ua/documents/1192021-37537>
- (2) <https://rm.coe.int/rule-of-law-checklist-at-national-level-case-of-ukraine/1680a07dd0>

Follow-up initiatives by the Institution

The Secretariat has taken steps to promote the rule of law in Ukraine. In particular, on November 27, 2020, within the framework of the implementation of the Action Plan of the Council of Europe for Ukraine for 2018-2022, a presentation of the manual "Measuring the rule of law at the national level: practice of Ukraine" was held (1). This manual is a comprehensive detailed tool for practical assessment of the rule of law, both in rule-drafting and rule-projecting activities. This publication was aimed primarily at the legislative and executive authorities.

As part of the Commissioner's Rule of Law initiatives, a number of events were organized in order to promote the rule of law and prevent torture by police and law enforcement officers in Cherkasy and Kirovohrad regions.

Independence and effectiveness of the NHRI

Enabling space

Due to the delays in responses of the executive authorities (and their representative offices and structures within Ukraine and abroad) to the Commissioner's requests, there are in turn delays in replying to the citizens' complaints.

In order for the Commissioner to exercise parliamentary control over the observance of, in particular, the human right to a safe environment for life and health, it is usually necessary to involve state supervision (control) bodies in the relevant areas. However, the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" does not provide for an appeal of the Commissioner for Human Rights as a ground for an unscheduled inspection of an economic entity.

Under such conditions, inspections by regulatory authorities are carried out only in accordance with the individual's complaint about a violation of his/her rights, legitimate interests, life or health, the environment or the security of the state.

This lack of legislation creates obstacles to parliamentary observance of human rights.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

This year in Ukraine as well as all over the world, the COVID-19 virus became an invisible enemy for humans, the rate of its spread has grown to the scale of a pandemic. The Government of Ukraine has taken measures to counteract the spread of this disease. However, the temporarily occupied territories of Crimea and Donbas remain inaccessible due to COVID related restrictions, also for the purpose of oversight over the observance of fundamental rights and freedoms, which significantly increases the threat to life and health of citizens.

National quarantine caused citizens to face not only certain restrictions on their constitutional rights and freedoms, but also violations. In particular, issues related to the respect of social and economic rights, the right to appeal against authorities' measures and to receive information, judicial protection, the right to privacy, freedom of movement, and finally, the right to life, have all become more acute.

Human rights defenders and civil space

The Commissioner sent a reminder to the Cabinet of Ministers of Ukraine to ensure the implementation of its previous recommendation provided in the Commissioner's annual report on the state of observance and protection of human and civil rights and freedoms in 2019 (1), to amend Article 185 of the Code of Administrative Offenses in order to provide for the guarantees of peaceful assemblies by law-enforcement agencies.

References

- (1) https://ombudsman.gov.ua/files/2020/opendata/Zvit%202019%20English_22.06.20.pdf

Checks and balances

Inadequate data collection

The lack of consistent policies and practices to collect data and statistics hinders effective measures to assess and counter important human rights issues.

This is the case as regards preventing and combating domestic violence for which the availability of statistics is crucial. The Commissioner's monitoring activities revealed the imperfection of the relevant collection system. The Ministry of Social Policy, as a coordinator of cooperation at the national level, collects, analyses and disseminates information on violence in accordance with the law, develops proposals for improving the system of indicators, which are reflected in the forms of state statistical reporting on preventing and combating violence. In addition, the Decree of the President of Ukraine № 398/2020 of 21.09.2020 "On urgent measures to prevent and combat domestic violence, gender-based violence, protection of the rights of victims of such violence" provides for effective monitoring, data recording and control in the field of prevention and counteraction to domestic violence and gender-based violence. At the same time, the Ministry of Social Policy of Ukraine continues to collect statistics in accordance with the Law of Ukraine "On Prevention of Domestic Violence", which expired on January 7, 2018. However, the authority in charge of data on such crimes is the Ministry of Internal Affairs of Ukraine.

Execution of Constitutional Court's judgments

The problem of execution of decisions of the Constitutional Court of Ukraine is urgent due to the lack of a clear mechanism in the legislation for the execution of these decisions.

The processing of a large number of requests from the same requester by information source managers causes an excessive burden which can limit the rights of others to a timely and proper consideration of their requests. The Commissioner was informed of such cases by a number of letters from information source managers. In particular, it was established that the Office of the Prosecutor General received 4,500 requests in 2020, paralysing their work.

In a letter to the Commissioner, the Supreme Court stated that the provisions of Law № 2939 – VI are often not used for legitimate purposes, and the obtained information is used by interrogators to harm the authority of the judiciary power by disseminating information manipulatively, unilaterally, selectively or distortedly.

At the request of the Commissioner on February 1, 2021, the Constitutional Court of Ukraine started constitutional proceedings regarding certain provisions of Ukrainian laws concerning

health care, provision of medical services, liquidation and reorganization of health care facilities during COVID-19 pandemic.

The Commissioner noted that the fight against the COVID-19 pandemic was a new challenge for the country, but most government agencies and services were not ready for this from an organizational, legal and psychological point of view. Certain legislative changes, including a medical reform launched in 2017 and reforms of decentralization and administrative-territorial organization, caused difficulties in responding to the crisis.

Access to information

As part of the parliamentary control over the observance of the right to information, the Commissioner's capacity to provide timely and complete information as requested by the citizens directly depends on the available human and technical resources of the information source manager.

According to the Law of Ukraine "On Access to Public Information", a request for information may be submitted without the direct purpose of using the information, and the possibility of duplicating requests for the same or related public information is not limited. In fact, the legal mechanism for obtaining information and sending a large number of requests can significantly paralyze the work of the information source manager, which is inconsistent with elements of the constitutional principle of the rule of law such as proportionality, reasonableness, fairness and prudence.

Therefore, in order to prevent abuse of the right to information by unscrupulous inquirers, it is necessary to establish in the Law of Ukraine "On Access to Public Information" mechanisms for responding to similar information requests from the same requestor.

It should be noted that in order to unify and improve the monitoring of constitutional rights to information and appeal, "Guidelines for monitoring visits and inspections of human and civil rights to information and treatment" (1) in the framework of the project "Human Rights for Ukraine" were developed by the Commissioner and published with the assistance of UNDP in Ukraine. The project is implemented by UNDP in Ukraine and funded by the Ministry of Foreign Affairs of Denmark for the period 2019-2023. The recommendations facilitate the work of the staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, regional coordinators of public relations of the Commissioner, human rights defenders and representatives of public organizations.

References

- (1) Guidelines for monitoring visits and inspections of human and civil rights to information and treatment: <https://www.ombudsman.gov.ua/ua/all-news/pr/dotrimannya-prav-lyudini-%D1%96-gromadyanina-na-%D1%96nformacz%D1%96yu-ta-zvernennya/>

Functioning of the justice system

The Commissioner sent recommendations to the Ministry of Justice to prompt measures to eliminate human rights violations and bring enforcement proceedings in line with the requirements of the Law of Ukraine "On Enforcement Proceedings". As a result, an official from the Prosecutor's office was prosecuted, and an investigation was launched in order to bring the legal framework to the requirements of the Constitution and laws of Ukraine.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the spread of COVID-19" introduces restrictions on a person's direct participation in court proceedings. In April 2020, the Commissioner sent a letter to the State Judicial Administration of Ukraine (SJA) with recommendations on establishing systematic work of the courts of Ukraine to ensure video broadcast of court hearings and organization of videoconferences. The SJA took into account the recommendations of the Commissioner.

In 2020, due to bad functioning of the system and omission of certain officials, there were cases of failure to enter information in the unified register of pre-trial investigations (ERDR), and failures or unjustified refusals to provide extracts from the ERDR information about crimes or closure of criminal proceedings. According to the 140 appeals received by the Commissioner, the relevant acts of response were sent to the prosecutor's office. According to the results of consideration in 67 cases, information was entered into the ERDR.

On April 1, 2020, the Cabinet of Ministers of Ukraine adopted a decision (1) on the establishment of the Commission for the Implementation of Decisions of the European Court of Human Rights and approved its Regulations (CMU Resolution № 258), where the Commissioner is a member. On September 17, 2020, the first meeting was devoted to the implementation of the decisions of the European Court of Human Rights in the cases "Yuriy Mykolayovych Ivanov v. Ukraine" and "Burmych and Others v. Ukraine". According to the results of the meeting of the Cabinet of

Ministers of Ukraine, the order of September 30, 2020 № 1218-r approved the National Strategy (2) for solving the problem of non-compliance with court decisions, the debtors of which are public authorities for the period up to 2022; an Action Plan for its implementation is being developed.

The Commissioner submitted proposals to the Ministry of Justice to the draft Action Plan for the implementation of this Strategy on the development of effective mechanisms for the implementation of court decisions. On December 8, 2020, the second meeting was held on the issue of torture, improper and degrading treatment of law enforcement officers and the lack of effective investigation of complaints of such treatment, which was stated in the decisions of the European Court of Human Rights "Kaverzin/Afanasyev/Belousov v. Ukraine". At the meeting, the members of the Commission were presented with the draft Concept of the state policy to combat torture in the criminal justice system.

References

- (1) <https://zakon.rada.gov.ua/laws/show/258-2020-%D0%BF#Text>
- (2) <https://zakon.rada.gov.ua/laws/show/1218-2020-%D1%80#Text>

Media pluralism and freedom of expression

Last year, the Commissioner carried out a comprehensive monitoring of the observance of the constitutional right to freedom of speech and opinion and guarantees of the lawful professional activity of journalists. Almost a third of the total number of violations of freedom of speech in Ukraine (27%) in 2020 was related to the quarantine restrictions imposed due to the COVID-19 pandemic. In particular, 62 cases concerned the exclusion of journalists from local government sessions, as well as attacks on journalists in public places and establishments during a quarantine inspection.

Numerous facts of violation of freedom of the press and other media, which play an important role in respecting the right to freedom of thought and other human rights and fundamental freedoms, are recorded in the updated UN General Assembly Resolution "Human Rights Sevastopol, Ukraine" (1), which was adopted on December 16, 2020.

Based on the results of the Commissioner's monitoring, the military command restricted the personnel in accessing social networks, Facebook and Instagram pages, which is a violation of the right of servicemen to freely use and disseminate information (Article 34 of the Constitution of Ukraine).

As a result of the Commissioner's response, the relevant order of the Command of the Logistics Forces of the Armed Forces of Ukraine was revoked.

The following recommendations were sent by the Commissioner to:

The Verkhovna Rada of Ukraine: to speed up the adoption of the draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Committing Criminal Offenses against Journalists" (Reg. № 3633 of 11.06.2020).

The Committee of the Verkhovna Rada of Ukraine on Humanitarian and Information Policy: to speed up the submission to the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On Media" (Reg. № 2693 of December 27, 2019).

The Cabinet of Ministers of Ukraine: to ensure the implementation of the Commissioner's recommendation (provided in the Commissioner's annual report (2) on the state of observance and protection of human and civil rights and freedoms in 2019) to amend Article 185 of the Code of Administrative Offenses in order to provide for the guarantees of peaceful assemblies by law-enforcement agencies.

The Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Ministry of Culture and Information Policy of Ukraine: to develop a joint action plan to increase the capacity of television and radio broadcasting in the temporarily occupied territories of Ukraine and ensure the activities of Ukrainian journalists.

References

- (1) <https://digitallibrary.un.org/record/3896447>
- (2) https://ombudsman.gov.ua/files/2020/opendata/Zvit%202019%20English_22.06.20.pdf

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Commissioner's monitoring revealed violations of the **right of children to quality education** during distance learning, due to the lack of practical experience in the administration of educational institutions, and the lack of technical means or access to them. In order to create safe learning conditions and provide children and employees with personal protective equipment, the Commissioner sent letters to the Prime Minister and the Ministry of Education and Science requesting funds from the stabilisation fund, which were allocated in October 2020. During October and November 2020, the Commissioner conducted monitoring of 30 educational institutions in 18 regions, and found lack of personal protective equipment and antiseptics, as well as violation of the mask regime. Based on these results, the Commissioner sent recommendations to the Ministry of Education and Science and the heads of regional state administrations.

According to the results of monitoring of regional and Kyiv city state administrations' activities, it was found that there were restrictions such as the abolition of lectures and training events, seminars and conferences. Cooperation has been established with institutions of higher education, in which information and educational centres on human rights have been established at the initiative of the Commissioner. Within the framework of cooperation with 8 institutions of higher education, online lectures, round tables, and scientific and practical conferences were held.

The main challenge in ensuring the **right to privacy** was to strike a balance between this right and the need to take measures to prevent COVID-19. Aware of the high level of threat to the right to privacy and in order to prevent its violation, the Commissioner conducted inspections of the state web portal "Diia", including mobile apps "Diia" and "Diia Home", and the functioning of video surveillance systems in public places. Violations in the field of personal data protection were revealed. In this regard, the Commissioner issued appropriate instructions to eliminate violations. In 2020, together with the Office of the Council of Europe in Ukraine, the Commissioner drafted a course in the field of personal data protection, which will be presented in April 2021.

The monitoring revealed that the most significant consequences of the measures imposed by the Government on the outbreak of the COVID-19 pandemic were the restrictions of **freedom of movement**. Local governments have unreasonably revoked the right of certain categories of citizens to free travel on public transport. The government has included 'viral respiratory infection COVID-19' in the official list of occupational diseases. Additional social insurance for medical

workers with COVID-19 has been introduced. A special procedure for investigating the death of medical workers from an occupational disease at COVID-19 has been approved. The introduction by the Russian Federation of the **rule of one-time departure** from the temporarily occupied territory of the Autonomous Republic of Crimea is regarded as a violation of Articles 13 and 26 of the Universal Declaration of Human Rights. As a result of this rule, some students were unable to start their studies because they had already taken the opportunity to leave the Crimea during the admission campaign.

The Commissioner's monitoring revealed that as of December 31, 2020, 46,762 employees of **health care facilities** became ill with COVID-19, of which 459 died. The investigation of COVID-19 in relation to 25,881 (55%) persons has not been completed. Procrastination in the investigation leads to a violation of the right of such patients to receive social benefits and payments.

The COVID-19 pandemic is also increasing the **vulnerability of citizens to trafficking and exploitation**.

The problem of the spread of **domestic violence** in the context of a pandemic has become more concerning. During self-isolation, women and girls are at greater risk of becoming victims of such violence. In order to provide an explanation of mechanisms for protection against domestic violence, the official website of the Commissioner contains contacts of institutions that provide assistance to victims (1).

Vulnerable groups, including members of the **Roma** minority, have particularly suffered from the global pandemic.

In cooperation with the CoE Office in Ukraine, the International Charitable Organization "Roma Women's Foundation "Chirikli" prepared a special report "The impact of the COVID-19 pandemic on the Roma community in Ukraine" (2), which contains an analysis of issues faced by Roma in the spread of COVID- 19, and recommendations for the authorities.

The Secretariat of the Commissioner, in cooperation with the Danish Institute for Human Rights and the International Laboratory for Business and Human Rights of the Yaroslav the Wise National Law University, conducted a study entitled "**Business and Human Rights** in the Age of COVID-19". The risks of negative impact of business entities on human rights in a pandemic have been identified and recommendations have been made to prevent such threats. The results are posted on the official website of the Commissioner (3).

The Commissioner addressed the Prime Minister of Ukraine with a proposal for a simplified mechanism for crossing the checkpoint for children heading to the territory controlled by Ukraine

to pass the exams during quarantine. Based on the results of consideration of the Commissioner's recommendations, the Resolution of the Cabinet of Ministers of Ukraine of May 29, 2020 № 424 "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine of May 20, 2020 № 392" was adopted, which regulates this issue. Such measures ensured the realization of the right to education for more than 2,000 children from the temporarily occupied territories.

References

- (1) <http://ombudsman.gov.ua/ua/all-news/pr/zapob%D1%96gannya-domashnomunasilstvo-v-umovax-karantinu-kudi-zvertatisya/>
- (2) https://ombudsman.gov.ua/files/2021/SPECIAL_REPORT_11.01.2021.pdf
- (3) https://ombudsman.gov.ua/files/2020/UN/BHR_covid19_ukr.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

Taking into account the Recommendations of the UN Subcommittee on Torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provided on 20 March 2020 to State Parties and national preventive mechanisms to ensure that the necessary measures are taken to human rights in places of detention, the Commissioner decided to continue the implementation of the NPM in quarantine.

In order to assess the effectiveness of measures to prevent the spread of COVID-19 in detention facilities, the Secretariat of the Commissioner has developed recommendations for the planning and conduct of targeted monitoring visits to various types of detention facilities. Online training on their use for Secretariat staff and public monitors was conducted. Since April 2020, the Secretariat of the Commissioner together with members of the public has conducted 677 monitoring visits to places of detention, of which 270 were targeted visits, during which the issue of combating the spread of coronavirus was investigated.

Monitoring visits revealed violations of human rights in a pandemic, namely violations of legislation:

for health care and medical support: there is no control over the respect of quarantine measures, in particular with regard to the use of personal protective equipment by detainees and employees of institutions;

for safe accommodation and social distancing: due to the overcrowding of pre-trial detention facilities, there are no facilities for isolating people suspected of having a COVID-19 infection;

for contacts with the outside world: in most social care institutions, patients are not provided with the opportunity to use means of communication to communicate with relatives and friends;

for the receipt of food and other devices from relatives in compliance with the necessary protective equipment: in some geriatric boarding houses, guardhouses it is generally forbidden to accept parcels and transfers for detainees.

In 2021, the Commissioner will continue to carry out monitoring visits to study the state of compliance with anti-epidemic measures in places of detention during a pandemic. In the context of restrictive measures due to the spread of COVID-19 in 2020, the Secretariat of the Commissioner also conducted on-site monitoring. Despite the fact that this form of work is new, the monitoring of human rights to a safe environment for life and health shows that violations of environmental human rights are currently systemic due to ineffective state control over compliance with environmental legislation. and sanitary legislation.

The quarantine restrictions in 2020 had a negative impact on the observance of human rights, given that under such conditions, the planned measures by the regulatory authorities in relation to economic entities - polluters were not carried out.

