

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Ukraine



Ukraine

Ukrainian Parliament Commissioner for Human Rights

Please note that, in line with the time-scope of ENNHRI's annual rule of law reporting, the below report reflects the situation in Ukraine and of the NHRI until end 2021, and does not reflect the drastic changes in the rule of law situation since the eruption of the armed conflict in February 2022, nor the dismissal of the Ukrainian Parliament Commissioner for Human Rights in June 2022 and its impacts on the independent and effective functioning of the institution.

References

- Dismissal of Ukrainian Parliament Commissioner for Human Rights raises serious concerns for human rights and the rule of law in Ukraine – ENNHRI: <https://ennhri.org/news-and-blog/joint-letter-on-the-dismissal-of-the-ukrainian-parliament-commissioner-for-human-rights/>
- NHRI responses to the armed conflict in Ukraine and emerging human rights challenges - ENNHRI: <https://ennhri.org/nhri-response-conflict-ukraine/>

Impact of 2021 rule of law reporting

Follow-up by State authorities

In order to further improve the activities for the promotion and protection of human and civil rights and freedoms in Ukraine, the National Strategy for Human Rights was approved by the Decree of the President of Ukraine of 24.03.2021 № 119. The Action Plan for the implementation of the National Strategy for Human Rights for 2021 – 2023 was approved by the order of the Cabinet of Ministers of Ukraine of June 23, 2021 (№ 756-r) and was developed with the involvement of government officials, local authorities, civil society institutions, leading national scholars and international experts.

References

- <https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80?lang=en#Text>

Impact on the Institution's work

The ENNHRI Rule of Law Report helped to strengthen the Commissioner's institutional capacity, raise awareness of the Commissioner's work and mandate at both national and European level. The issue of the rule of law is also regularly considered during the Commissioner's awareness-raising activities for all categories of participants.

Independence and effectiveness of the NHRI

The Commissioner indicated that the overall situation of the independence and effectiveness of the NHRI has improved since the last report.

International accreditation status and SCA recommendations

The Ukrainian Parliamentary Commissioner for Human Rights was last re-accredited with A-status in October 2019 (1).

The SCA acknowledged that, in practice, the NHRI interprets its mandate in a broad manner and carries out a wide variety of activities to promote human rights and encourages ratification of and accession to regional and international human rights instruments. Yet, the SCA recommended the NHRI to advocate for appropriate amendments to its enabling law in order to include a more explicit mandate to undertake these functions.

At the time, the SCA noted that the NHRI had proposed amendments to its enabling law with respect to the selection and appointment of the Commissioner. However, it still encouraged the NHRI to continue to advocate for the formalization of a process that includes requirements to broadly publicize vacancies; maximize potential candidates from a wide range of societal groups and educational qualification; promote broad consultation and participation in the process; and assess applicants on the basis of pre-determined, objective, and publicly available criteria.

Further, the SCA noted that the enabling law is silent on the number of times a Commissioner can be re-appointed and took the view that it would be preferable for the term of office to be limited to one re-appointment.

Additionally, the SCA encouraged the NHRI to continue to strengthen its cooperation with civil society organization and human rights defenders.

Finally, during the review the NHRI reported a need for greater capacity to provide training to its staff. The SCA encouraged the NHRI to continue to advocate for adequate funding to effectively carry out the full extent of its mandate, and to provide necessary training for staff.

References

- (1) https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_October_2019_English.pdf

Regulatory framework

The Institution functions on a constitutional basis. The Institution has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and awareness-raising. The applicable national regulatory framework has not changed since the last report.

However, the Commissioner indicated the need to strengthen the regulatory framework. The Commissioner initiated proposals to amend the Law of Ukraine «On the Ukrainian Parliamentary Commissioner for Human Rights» and submitted them to the relevant Committee in the Parliament.

Enabling and safe space

The relevant state authorities have good awareness of the Institution's mandate, independence and role.

The Institution has adequate access to information and to policy makers and is it involved in all stages of legislation and policy making with human rights implications. In accordance with Article 13 of the Law of Ukraine «On the Ukrainian Parliament Commissioner for Human Rights», the Commissioner has the right to make proposals in the prescribed manner to improve Ukrainian legislation in the field of protection of human and civil rights and freedoms. However, the Commissioner does not have the right of legislative initiative.

Addressees of the Institution's recommendations are legally obliged to provide a timely and reasoned reply.

According to Article 22 of the Law «On the Ukrainian Parliament Commissioner for Human Rights», public and local authorities, associations of citizens, enterprises, institutions, organizations regardless of ownership, officials addressed by the Commissioner are obliged to cooperate with him/her and provide him/her with the necessary assistance, in particular: to provide information and provide explanations regarding the factual and legal basis of their actions and decisions; to consider the proposals of the Commissioner to improve their activities in the field of protection of human and civil rights and freedoms and within one month from the date of receipt of proposals to provide a reasoned written response to them.

Refusal of public and local authorities, associations of citizens, enterprises, institutions, organizations, regardless of ownership, to cooperate, as well as intentional concealment or provision of false information or any other illegal interference in the activities of the Commissioner for the purpose of counteraction entail responsibility according to the current legislation.

Measures necessary to protect and support the Institution, heads of institution and staff against threats and harassment and any other forms of intimidation are in place. They are similar to the provisions in place for heads and staff of other state authorities.

Towards the end of 2021 and the start of 2022, an attempt was made to establish a Temporary Special Commission of the Verkhovna Rada (Parliament) of Ukraine on the possible violation of the Commissioner's oath. This measure was used by the authorities to exercise pressure on the Commissioner. On January 25, 2022, the decision to establish a temporary special commission was not supported by the Members of Parliament (MPs).

References

- <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text>

NHRI's recommendations to national and regional authorities

- The Commissioner recommends to the Government of Ukraine to ensure the implementation of Recommendation CM / Rec (2021) 1 of the Committee of Ministers of the Council of Europe to member states on developing and strengthening effective, pluralistic and independent national human rights institutions, which will create an environment of rule of law for the independent activity of the Commissioner.

Human rights defenders and civil society space

Access to and involvement of civil society actors in law and policy making

Within the Commissioner's parliamentary control over the observance of the right to information, and using evidence based on the analysis of citizens' appeals, inspections and monitoring visits, the Commissioner observed that officials of state bodies, local authorities, enterprises, institutions and organizations continue to violate legal requirements for timely disclosure and full provision of information in response to a request that is an administrative offense in accordance with the provisions of Article 212-3 of the Code of Ukraine on Administrative Offenses.

For example, a journalist asked one of the political parties to provide information on the use of budget funds and was denied information without proper justification.

Due to this refusal, the journalist appealed to the Commissioner to protect his right to information. Letters have been repeatedly sent to the political party with a request to provide the requested information, and proceedings are underway.

Thus, one of the most common examples of violations of the right of access to public information is the restriction on the provision of public information due to its classification as information with limited access, but without proper justification for such a restriction.

NHRI's role in promoting and protecting civil society space and human rights defenders

The Commissioner's Secretariat is actively cooperating with the United Nations Development Program (UNDP), particularly in the framework of the Human Rights for Ukraine (HR4U) project conducted with the Council of Europe in the framework of «The European Union and the Council of Europe working together to promote media freedom in Ukraine».

1. In the framework of cooperation with UNDP, regional coordinators (local public experts) were established in all 24 oblasts (regions) of Ukraine to ensure cooperation between civil society at the regional level and the regional offices of the Commissioner
2. In order to properly apply the provisions of the legislation in the field of access to public information and reduce violations by its administrators, the Commissioner developed «Recommendations of the Ukrainian Parliament Commissioner for Human Rights on the constitutional right of man and citizen to access information». These Recommendations are stylistically structured in a «question-answer» format, which facilitates and speeds up the search for the necessary clarification, contains links to scientific sources and legal positions of courts, sample documents, etc. These Recommendations were developed as part of the European Union and the Council of Europe Project Working Together to Promote Media Freedom in Ukraine, which aims to strengthen the role of the media, their freedom and security, and public broadcasting as tools for consensus in Ukrainian society.
3. The Ukrainian Parliament Commissioner for Human Rights supported bill № 3952 of 03.08.2021 «On Amendments to Certain Legislative Acts to Ensure Open Information on Remuneration in State Companies», adopted on 08.09.2021 to increase the transparency of management bodies and officials of state companies. In 2022, the Secretariat of the Commissioner plans to carry out monitoring visits to ensure compliance with the requirements of this law.

4. The educational series «Current issues of access to public information: Course for civil servants and employees of local authorities», was created and posted on the online platform «Diia.Digital Education». This series was created jointly by the Commissioner and the Ministry of Digital Transformation of Ukraine with the assistance of UNDP Ukraine and aims to increase knowledge of legislation related to access to public information, prevention of violation of citizens' rights to information in connection with unjustified restrictions on access, acceleration of the process of digitization of information and use of Internet technologies during its publication and interaction with civil society.

References

- <https://bit.ly/3fTQdsM>
- <https://osvita.diia.gov.ua/courses>

Checks and balances

Transparency and access to information

Of the total number of appeals to the Commissioner (about 60 000 in 2021), 35% were related to information rights, namely the right to appeal and receive answers and the right to access public information (an increase of 20% compared to last year).

As mentioned above, within the framework of the Commissioner's parliamentary control over the observance of this right, the Commissioner established that the requirements of the legislation on disclosure of information, timely and complete provision of information in response to a request for information continue to be violated.

Violations of the right to information are also recorded in cases where information managers unreasonably restrict access to public information, claiming that the requested information is official or confidential.

At the same time, among the challenges faced by national human rights institutions, particularly the Commissioner in terms of information rights, the abuse of the right of access to public information (i.e. the sending of a large number of similar requests) is a major issue.

The abuse of the right of access to public information needs to be addressed and remedied as soon as possible to ensure transparency and openness of Government officials while safeguarding the legitimate exercise of the right to access information, so as to allow timely and complete responses to genuine access requests.

The existing Law «On Access to Public Information» does not set any limitations for the requester in terms of the number and frequency of requests for access information to a particular manager. To prevent abuse by unscrupulous requesters, it is necessary to establish mechanisms on effective responses to be used by information managers in the Law «On Access to Public Information».

Enforcement of court decisions

The problem of enforcing the decisions of administrative courts on the restoration of citizens' rights on social issues remains unresolved.

This is due to some authorities' avoidance from the proper implementation of court decisions of a binding nature, the lack of an effective mechanism for enforcement of court decisions, as well as the lack of necessary expenditures in the state budget to repay arrears of social benefits by court decision.

According to the Commissioner's recommendations, the reporting forms were amended in January 2021 to record court decisions over which judicial control was established.

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

Trust amongst citizens and between citizens and the public administration

A key feature of increasing the level of public trust in public authorities is the quality of the response of public authorities to citizens' appeals to address the issues raised in the appeals. In 2021, the Commissioner received 59,040 appeals from citizens, 22% more than in the previous year (48,405), which indicates an increase in trust in the Commissioner by citizens.

Functioning of the justice system

Challenges to judicial protection

The COVID-19 pandemic, combined with the instability of the judiciary due to understaffing and inadequate funding, has repeatedly threatened the right of Ukrainian citizens to judicial protection in 2021.

As of January 1st 2022, almost a third of the total number of judge posts (2102) are vacant and 8 courts do not administer justice.

In addition, the issue of non-communication of copies of court decisions to parties by courts of various instances was raised in 2021. This issue makes it impossible to exercise the procedural right to appeal against a court decision.

According to the results of inspections conducted in January-April 2021 in 18 courts of first instance across 4 regions of Ukraine, funding for mailing has been suspended due to the lack of current budget expenditures to ensure the administration of justice.

One of the consequences of the COVID-19 outbreak was also the minimization of oral hearings, restriction of access to court hearings of persons who are not participants in court proceedings, which contradicts the openness and free access to court proceedings.

Another negative consequence was the appointment of court hearings by videoconference in connection with the outbreak of COVID-19 and the request of the parties to hear cases with their direct participation, which in turn leads to delays in the trial.

Enforcement of court decisions

Another problem is the non-enforcement of court decisions in Ukraine, which is systemic in nature.

Despite several measures taken by the Government of Ukraine, including the approval for the establishment of a Commission to implement the decisions of the European Court of Human Rights and its Regulations (CMU Resolution 258), the existing problems remain unresolved.

Thus, in 2021, the Commissioner received about 40 reports from citizens about non-enforcement of court decisions by state bodies for not transferring the awarded payments as compensation to the accounts of debt collectors within three months of the court decision becoming final.

The results of the inspections showed that the main reason for non-enforcement of the court decision is insufficient budget funding.

Observance of rights in detention

The monitoring of the observance of the rights of suspects subject to pre-trial detention revealed inconsistency of the provisions of the Rules of Procedure in temporary detention facilities of the Ministry of Internal Affairs of Ukraine as approved by the order of the Ministry of Internal Affairs of Ukraine of December 2, 2008 № 638 with the rules of the Criminal Procedure Code of Ukraine. The inconsistency relates to the suspect's right before the first interrogation to have a confidential meeting with the lawyer without the permission of the investigator, prosecutor, court, and after the first interrogation - the

same meetings without limitation of the number and duration. A further inspection revealed a loophole in Ukraine's law «On the National Police».

There is a lack of a properly regulated mechanism of cooperation between the State Judicial Administration (SJA) of Ukraine and the administrations of pre-trial detention facilities on the exchange of information on crediting necessary funds to a special account of the territorial administration of the SJA of Ukraine, which provides organizational and financial support to the court. This hinders the proper observance of the suspects' right to personal liberty after the bail is paid, as the relevant checks on the status of crediting the bail require additional time.

Role of the NHRI in contributing to the effective functioning of the justice system

The Commissioner addressed the Prime Minister of Ukraine D. Shmygal and the Parliament Committee on Legal Policy to resolve the issue of adequate financial support for the administration of justice by local and appellate courts. On June 17th, 2021, the Parliament of Ukraine adopted the Law of Ukraine «On Amendments to the Law of Ukraine «On the State Budget of Ukraine for 2021» 1558-IX, according to which the SJA of Ukraine got increased funding by UAH 600 million (EUR 19 million).

As a result of the measures taken by the Commissioner to restore the right to the proper execution of court decisions, two citizens were transferred funds equating to 12,000 euros.

To legally resolve the issues outlined in the previous question, the Commissioner submitted a proposal to the Minister of Internal Affairs of Ukraine to bring the Rules at Pre-trial Facilities in line with the Criminal Procedural Code of Ukraine and the Law of Ukraine «On Pre-trial Detention» on 10 June 2021. According to the results of the review, the Minister of Internal Affairs of Ukraine informed that the legislation does not currently provide for police powers to provide security to detainees in pre-trial facilities, and the proposed amendments to the Rules may be made only after the Parliament adopts the draft Law of Ukraine «On Serving an Administrative Arrest».

In October 2021, the Commissioner submitted a petition to the Minister of Justice of Ukraine to take measures to regulate the procedure of interaction between state bodies and institutions during the exchange of information on bail, crediting it to a special account of the relevant SJA body of Ukraine and informing pre-trial detention institutions.

The Ministry of Justice informed that the issue would be further considered in the framework of the mechanism of electronic information interaction between the Unified State Register of Judgments and the Unified Register of Convicts and Detainees, carried out by the Ministry of Justice together with the SJA of Ukraine.

Another problematic issue is the implementation of court decisions that oblige the Pension Fund of Ukraine (PFU) to review the decision made on a citizen's pension taking into account the conclusions and legal assessment of courts, but do not contain direct requirements to assign or transfer a pension. As a result, citizens are forced to re-apply for protection of their right to the court so that the court obliges the PFU body to take specific actions regarding the appointment or recalculation of pensions.

The Commissioner set up a working group consisting of representatives of the Ministry of Social Policy, the Ministry of Justice, the Office of the Prosecutor General, the PFU, the Federation of Trade Unions of Ukraine and the Supreme Court and provided recommendations to the Ministry of Social Policy and the PFU on the settlement at the legislative level of the ban on reducing the amount of pension, if it occurs as a result of its recalculation in execution of a court decision given the nature of the proceedings is to restore the violated right and not worsen the situation.

NHRI's recommendations to national and regional authorities

- In order to improve access to justice, the Commissioner recommends the Government of Ukraine to accelerate the process of formation and setup of the High Qualifications Commission of Judges of Ukraine and to provide for the speedy appointment of new judges by launching relevant competitions.

Media freedom, pluralism and safety of journalists

Consideration of individuals' appeals to the Commissioner and monitoring of open sources revealed the following violations: inability to obtain and disseminate information, including information of public interest; obstruction of the lawful activities of journalists; restrictions on freedom of speech, especially in the temporarily occupied territories of Ukraine.

Most journalists who appealed to the Commissioner in 2021 reported violations of their right to engage in professional activities, including the inability to obtain information and visit state or local authorities.

Monitoring of the media and social networks shows violations of the right to safety for the life and health of journalists during their professional activities and coverage of sensitive topics - allegations of corruption, restrictions on the COVID-19 pandemic, political issues.

The police's inadequate qualification of criminal offenses committed against journalists favours impunity for violations of their right to freedom of expression and to exercise their journalistic activity. Often, the application of measures provided by criminal law by law

enforcement agencies is ensured in such cases only when the case becomes widely known - including after requests coming from the Commissioner.

During 2021, the Commissioner observed a deterioration of the situation as regards the exercise of freedom of speech and expression in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. This includes reported arrests of pro-Ukrainian journalists and bloggers on trumped-up charges, restrictions to the accreditation of foreign media, and control of existing media by the administration of the Russian Federation, which are reportedly used as a means to disseminate propaganda.

The Russian occupation administration in the temporarily occupied territory reportedly resorted to threats, searches, and illegal detentions of journalists for expressing opinions and pro-Ukrainian views. Expression of alternative and critical views on public issues was qualified as extremism, incitement to hatred and acts of terrorism. At the time of writing, 8 Ukrainian journalists are held in illegal detention on such grounds to the Commissioner's knowledge.

With regards to the Crimean Peninsula, the occupation administration of the Russian Federation has reportedly spread hate speech and hatred against minorities through the media. Crimean Tatars, Euromaidan activists and representatives of various religious minorities are the main groups facing hate speech in the information space.

Due to reported censorship by pseudo-state organizations in the temporarily occupied territories in Donetsk and Luhansk regions and the introduction of media licensing and control of information circulation, the Commissioner is concerned that residents of these regions are deprived of the right to receive alternative information other than allowed by occupation administrations.

This is supported by evidence contained in numerous reports submitted to the Commissioner by partner human rights organizations that have access to the temporarily occupied territories.

References

- https://www.ohchr.org/Documents/Countries/UA/UkraineCivicSpace2021-UA.pdf?fbclid=IwAR0HNV_mETpNLzeDV96nXTWyWDPIJaiBFGgtSxAUxOqjoEF04HnWYTrbsfl

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

Appropriate measures were taken by the Commissioner to identify violations of journalists' rights within the framework of parliamentary control - inspections were carried out,

clarifications were provided, acts of response were introduced, and the rights of applicants were restored.

For example, media monitoring in early October 2021 revealed the use of force by Ukreximbank security guards against journalists of the «Schemes» program during an interview with the Bank's Chairman of the Board. The cameras were confiscated from the journalists and the video of the interview was removed. In the light of the public response to the case and following the Commissioner's intervention, the National Police of Ukraine launched an investigation in accordance with part one of Article 171 of the Criminal Code of Ukraine on the obstruction of lawful professional activity of journalists.

NHRI's recommendations to national and regional authorities

- The Commissioner recommends the Parliament of Ukraine to speed up the consideration and adoption of the draft Law of Ukraine «On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine on repeated violations related to illegal denial of access to information» (from 06.10.2021 №6136).
- The Commissioner recommends the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Ministry of Culture and Information Policy of Ukraine, the Ministry of Digital Transformation of Ukraine to develop and submit to the Cabinet of Ministers of Ukraine a comprehensive program to strengthen Ukraine's presence in the information space of the occupied territories and also to improve the broadcast of television, radio and activities of the Ukrainian media in order to disseminate truthful information about the activities of the Government of Ukraine, access to services and payments in the territory controlled by the Government of Ukraine, obtaining legal assistance.

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

In 2021, measures to overcome the outbreak of COVID-19 did not require severe nationwide restrictions (lockdown) on the right to travel, temporary suspension of operation of state and budgetary institutions and organizations, eating places etc. However, a number of concerns were identified as regards the legality and proportionality of certain measures.

Emergency regimes and related measures

The Constitution of Ukraine guarantees that constitutional rights and freedoms may not be restricted, except under the conditions of martial law or a state of emergency.

The administration of vaccination against COVID-19 and related regulations were regulated by relevant acts of the Ministry of Health of Ukraine. Depending on the administration and the vaccine used, certain restrictions were imposed on citizens regarding freedom of movement and assembly and the ability to perform professional duties. These restrictions were enforced by by-laws, thereby violating the requirements of the Constitution of Ukraine on the possibility and conditions of restricting some rights of citizens only by the law.

The issues of development and approval of relevant laws on measures to overcome the outbreak of COVID-19 in order to comply with the Constitution of Ukraine also need urgent settlement.

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 showed that the COVID-19 pandemic revealed the unpreparedness of educational institutions to guarantee the quality functioning of the distance learning system.

Violations of children's right to education arose due to the lack or insufficient number of necessary gadgets for children and the lack of Internet at home. The impact was significant for families who found themselves in difficult life circumstances.

Violations of children's right to social protection were also recorded due to a significant increase in the number of newly discovered families in difficult life circumstances from 19,797 families in 2020 to 29,124 in 2021.

Families have faced unemployment, declining wealth, and increased psychological strain in their relationships. This has led to a 150.3% increase in the number of children removed from their families due to threats to the child's life and health.

The right of children to adequate social protection was also violated due to the insufficient number of social workers and employees of children's services.

One of the measures taken during the pandemic limited the right to free travel on public transport for certain categories of people (elderly, disabled) who had had that right before. That was a violation of the legislation. According to identified cases (in Dnipro and Starokostiantyniv), the Commissioners submitted a proposal to the chairmen of the relevant commissions with a request to cancel the said decisions. In the city of Dnipro the rights were renewed from 09.12.2021.

The Commissioner's monitoring, which covered 1484 territorial communities, also found that in the context of anti-epidemic restrictions, the work of services for free transportation

of persons with disabilities in specialized vehicles was not properly ensured by local authorities. Based on the results of the monitoring, recommendations were provided to the heads of regional and Kyiv city state administrations, the Ministry of Social Policy of Ukraine and the Ministry of Health of Ukraine. The Ministry of Social Policy has taken into account the recommendations of the Commissioner on the regulation of the mandatory availability of a dispatch service or a special telephone line, an online service for ordering transportation services by a person by making appropriate changes to the law.

The public health system has also been under strain. As of August 30, 2021, wage arrears existed in 111 health care facilities. From July to November, arrears of wages to medical workers increased to UAH 340.6 million (EUR 10.6 million).

On the basis of appeals submitted by human rights organizations and monitoring of open sources of information the Commission observes violations of the rights of Ukrainian citizens living in the temporarily occupied territories to health care and medical care during the COVID-19 pandemic. The occupying authorities have reportedly pressured residents of the peninsula and employees of institutions and organizations to vaccinate with Russian vaccines that are not approved by the WHO. Among others, the administration of the Russian Federation has allowed only citizens who have received passports of the Russian Federation or so-called «DPR» and «LPR» to receive a vaccination.

In 2021, the Commissioner and members of the public conducted 981 monitoring visits to all types of detention places and investigated their compliance with anti-epidemic measures as well as their issues in combatting the spread of Covid-19.

Human rights violations continue to be recorded during monitoring visits in the context of the pandemic, namely violations of the right to health care and medical care as the compliance with established quarantine measures is not monitored. In particular, the issues focus on the observance of the mask regime, the use of personal protective equipment by detainees and employees of institutions. Furthermore, daily temperature screening is not provided to employees, visitors, patients, detainees. With regard to safe accommodation and social distancing, there are no facilities for isolating people suspected of having a coronavirus infection due to overcrowding in pre-trial detention facilities. In 2022, the Ukrainian Parliament Commissioner for Human Rights will continue to make monitoring visits, including to study the state of compliance with anti-epidemic measures in places of detention during a pandemic.

The resolution of the Cabinet of Ministers of Ukraine for the period of quarantine led to the dismissal of employees who refused to be vaccinated while not even paying them the minimum wage.

Regarding the closing of the court during the state of emergency and the appropriate measures taken to combat the outbreak of COVID-19: According to Article 64 of the Constitution of Ukraine, restrictions on the right to go to court to protect one's rights are not allowed. During the period of quarantine, restrictive anti-epidemic measures were imposed by the Government but courts continued to administer justice, with Covid19-positive judges and court staff.

The court may not refuse to administer justice if a citizen of Ukraine, a foreigner or a stateless person considers that their rights and freedoms have been violated or are being violated. Judicial protection is the highest guarantee of the rights and freedoms of citizens.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Commissioner initiated proceedings to study the grounds for submitting a constitutional petition to the Constitutional Court of Ukraine on the compliance of the Constitution of Ukraine with certain provisions of the Cabinet of Ministers of Ukraine of December 9, 2020 № 1236 «On quarantine and restrictive anti-epidemic measures to prevent Ukraine of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2».

To restore the right of children to education, the Commissioner appealed to the Ministry of Health of Ukraine, the Ministry of Education and Science of Ukraine and heads of regional state administrations to review the position on the transfer of educational institutions to distance learning in November 2021. As a result, 37 schools (0.3%) operated in distance learning as of December 18, 2021.

Pursuant to the Commissioner's recommendation on the need to establish Internet access for educational institutions and provide teachers with the necessary equipment, the Cabinet of Ministers of Ukraine adopted a resolution on April 28, 2021 (№ 453) and allocated UAH 500 million (EUR 17 million) to increase the availability of broadband Internet access in rural educational institutions, as well as allocated UAH 980 million (EUR 31 million) for the purchase of laptops for secondary school teachers. .

In addition, the Cabinet of Ministers of Ukraine has allocated UAH 20 million (EUR 800 000) to implement the recommendations of the Commissioner to allocate funds to provide protection in the form of masks, gloves and other anti-pandemic items for pupils, teachers and school staff. (Resolution of the Cabinet of Ministers of Ukraine of April 21, 2021 № 403)

In pursuance of the Commissioner's recommendations from October 2021, the Ministry of Health provided an opportunity for residents of the temporarily occupied territories to be vaccinated against COVID-19 with certified vaccines in the territory controlled by Ukraine,

given existing restrictions imposed by the administration of the Russian Federation in these territories according to which only citizens in possession of passports of the Russian Federation may vaccinate there.

References

- <https://zakon.rada.gov.ua/laws/show/453-2021-%D0%BF#Text>
- <https://zakon.rada.gov.ua/laws/show/403-2021-%D0%BF#Text>

NHRI's recommendations to national and regional authorities

- The Commissioner addressed the Prime Minister of Ukraine with a proposal to instruct the relevant central executive bodies to develop and submit to the Parliament of Ukraine a draft law defining human and civil rights and freedoms that may be restricted during the introduction of restrictive anti-epidemic measures to prevent the spread of acute respiratory disease COVID-19 in Ukraine. The Commissioner's proposal also included the need to regulate the use of documents such as a the COVID certificate at the legislative level and empowering the relevant state authorities to verify its existence.
- The Commissioner also drew attention to the need to regulate the possibility of introducing distance work for employees in accordance with Article 60-2 of the Labor Code of Ukraine.

Other relevant developments or issues having an impact on the national rule of law environment

The Ombudsman's monitoring of human rights has revealed systemic problems in the observance of social rights.

Every year the arrears of wages increase. As of December 1, 2021, the debt to employees reached UAH 3.9 billion (EUR 122.2 million).

The number of informally employed population is 3.0 million or 19.3% of the total employed population.

The monitoring of the right to education revealed several problematic issues related to the realization of the rights of students to access quality services in the field of vocational and higher education, particularly during the reorganization of educational institutions.

The monitoring of cultural rights revealed that maintaining the basic network of cultural institutions and quality of cultural services became problematic in the context of the reform of local self-government and territorial organization of power in Ukraine and more

specifically in connection with the consolidation of districts. The Commissioner observed numerous instances of non-compliance with the requirements of the legislation, as well as delays in resolving the issues of transferring cultural institutions to the ownership of consolidated territorial communities in most of the inspected regions. The Commissioner stresses that the failure to provide citizens with an adequate offer of cultural services in the context of such reform violates citizens' rights to access quality cultural services.

The Commissioner does not have access to the temporarily occupied territories and thus is not able to exercise control over the observance of the rights of citizens living in these territories. The Commissioner receives information on human rights violations in the temporarily occupied territories from citizens who apply to the Commissioner, international organizations and civil society.

On this basis, the Commission established in 2021 a violation of the right of citizens to freedom of movement by the administration of the Russian Federation. In 2021, of the 7 checkpoints on the demarcation line (three in Luhansk region and four in Donetsk region), daily admission was carried out only through the Stanytsia Luhanska Checkpoint and partially (twice a week) through the Novotroiitske Checkpoint. In May 2021, the occupying authorities of the Russian Federation reportedly imposed several restrictions on the crossing of the Stanytsia Luhanska checkpoint in the Luhansk region. Residents of the temporarily occupied territory of the Luhansk region have only been allowed to enter the territory once a month. Crossing the checkpoint more than once a month was made possible only in exceptional cases (for treatment, education, care of a close relative, funeral of relatives, etc.) with the special permission of the occupying authorities. From October 2021, similar restrictions were imposed for leaving the temporarily occupied territory of Luhansk region. The Commissioner stresses that the blockade of the temporarily occupied territories in Luhansk and Donetsk regions by the occupation administrations violates the rights of citizens to freedom of movement and access to basic services, insofar as almost 90% of residents routinely cross the checkpoints to receive medical, social, educational or administrative services.