

Questionnaire on National Human Rights Institutions and human rights defenders

Ukraine

1.

a) Please provide a brief overview of the legislative framework adopted to establish a National Human Rights Institution (hereafter “the Institution”) in your country. Please cite the names of any such laws or regulations in full.

The institute of Ukrainian Ombudsman was introduced by the Constitution of Ukraine adopted on 28 June 1996 which established a position of the Ukrainian Parliament Commissioner for Human Rights (“the Commissioner”). The provisions of general capacity of the Commissioner are set out in the Constitution (Art. 55, 85, 101 and 150). The Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” (“the Law”) contains detailed provisions on the capacity of the Commissioner, the main areas of her activity, the procedure of election and dismissal from the post, etc. The Law of Ukraine “On the Appeals of Citizens” envisages the procedure of dealing with citizens’ appeals which is one of the main Commissioner’s area of activity.

The Commissioner is vested with the power to apply to court with the aim of protecting rights of persons and participate in the court proceedings. The rights and duties in this respect are envisaged by the specific legislation such as the Code of Civil Procedure (Article 45), the Code of Administrative Court Procedure (Article 60) etc.

The authority and duties of the Commissioner arising out of the participation in different aspects of social relations are contained in the specific legislation, regulating relevant sphere of such relations. There are following examples of such specific Laws of Ukraine: “On the Principles of Prevention and Combating Discrimination in Ukraine”, “On Access to Public Information”, “On Protection of Personal Data”, “On Pre-trial Detention”, “On the Refugees and Persons in Need of Complementary or Temporary Protection in Ukraine”, “On Democratic Civilian Control over the Military Organization and Law –Enforcement Bodies of the State”, “On Ensuring Equal Rights of Women and Men”, etc.

b) Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles.

All Ukrainian legislation adopted to establish the Office of the Commissioner fully complies with international human rights standards and the Paris Principles.

In particular, the Law “On the Ukrainian Parliament Commissioner for Human Rights” specifies the legal status of the Commissioner, the mechanism of appointment to and termination of the post, the mandate of the Commissioner. The Commissioner is vested with the power to promote and protect human rights, deal with violation of human rights and freedoms. The governmental and non-

governmental bodies are obliged to cooperate with the Commissioner and abstain from interference into the Commissioner's activity.

The Law "On the Appeals of Citizens" details the procedure of considering complaints of citizens which is one of the main Commissioner's areas of activity in the sphere of human rights protection.

The other specific laws as mentioned in the clause 1 (a) above envisage Commissioner's authority to deal with human rights violations and promote human rights in some specific areas of social relations. For example, the Law "On the Principles of Prevention and Combating Discrimination in Ukraine" envisages the following Commissioner's powers in this field: consideration of complaints of victims of discrimination, reporting on the facts of discrimination taking place in the different social relations to the Parliament of Ukraine, cooperation with international entities in the sphere of discrimination prevention, etc.

The Code of Civil Procedure and the Code of Administrative Court Procedure envisage the Commissioner's right to initiate court proceedings on behalf of individuals providing that such individuals due to valid reasons are unable to initiate court proceedings by themselves. The mechanism of initiation of such court proceedings and further participation of the Commissioner is set out in laws of Ukraine.

c) Please indicate the current accreditation status of the Institution with the International Coordination Committee (ICC) and what measures, if any, have been taken to implement the recommendations highlighted at the most recent ICC Sub Committee on Accreditation meeting with a view to strengthening NHRI's compliance with the Paris Principles.

In March 2009 the institution of the Ukrainian Parliament Commissioner for Human Rights has been granted a status "A" accreditation with the ICC Sub-Committee on Accreditation, **confirming its full compliance with the Paris Principles.**

The General Observations of the ICC's Sub-Committee on Accreditation developed at the November 2008 session and adopted at March 2012 session have been fully implemented by our institution.

In particular, according to Art. 18 of the Law during the first quarter of every year the institution provides the Annual report to the Parliament of Ukraine regarding the observance and protection of human rights and freedoms by governmental and non-governmental bodies of Ukraine and details facts of violation of human rights and freedoms together with conclusions and recommendations aimed at improving the human rights situation. The Commissioner may also present special report to the Parliament of Ukraine on the issues deserving a special attention.

As a result of consideration of the Commissioner's report at its plenary session the Parliament of Ukraine shall pass a specific resolution. Usually this resolution is adopted the same day or a few days later and obliges the Government to consider and implement recommendations contained in the Report and to inform the

Commissioner on this process. The Annual or Special report along with the relevant resolution of the Parliament of Ukraine is publicized by being published in official publications of the Parliament of Ukraine (Art. 18 of the Law). The same information is also made available on the Commissioner's website.

In accordance with the Law the last Annual report was presented by the Ombudsman of Ukraine to the Parliament in February 2012 (for the period of 2011).

The institution is funded from the State Budget on the annual basis. The estimated budget of the institution is elaborated by the Commissioner and submitted for further approval to the Parliament (Art. 12 of the Law).

The institution is accountable for its expenditures in the general manner prescribed for all state bodies of Ukraine funded from the State Budget.

2.

a) Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.

The Commissioner is vested with the broad mandate with the purpose of promoting and protecting of human rights in Ukraine.

The main area of activity of the Commissioner is to react to human rights violation set out in appeals addressed to the Commissioner. In order to efficiently deal with human rights violations the Commissioner has the following powers: to be received, without any delay, by the highest officials of Ukraine such as the President of Ukraine, The Chairman of the Parliament of Ukraine, the Prime Minister of Ukraine as well as by other chairmen of state bodies, bodies of local self-government, associations of citizens, institutions etc; attend sessions and meeting of these bodies; appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Parliament of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Parliament of the Autonomous Republic of Crimea concerning human rights and freedoms; the official interpretation of the Constitution of Ukraine and the laws of Ukraine; visit, without hindrance, bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, and be present at their sessions; read documents, including ones containing information with restricted access and obtain their copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, bodies of prosecution, including cases which have been filed in court. The access to information with restricted access shall be given in accordance with the procedure established by the law; demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, facilitation in conducting

acts of inspection regarding the activity of enterprises, institutions and organizations under their control and subordination, and ensure that experts participate in acts of inspection, providing their expertise and respective conclusions; invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review; attend court sessions of all instances, including court sessions held behind closed doors, in the event that the subject of the legal case at hand, in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent.

The Law also empowers the Commissioner to react on the breach of any law containing provisions on the human rights and freedoms by means of issuing acts of response which are the constitutional acts of submission – acts referred to the Constitutional Court of Ukraine and concern the compliance of any law of Ukraine with the Constitution of Ukraine; and the acts of submission addressed to the bodies of state power, bodies of local self-government, institutions, enterprises etc aimed at the elimination of the breach of human rights and freedoms (Article 15 of the Law).

The Commissioner is also vested with the broad powers to react on the breach of human rights of those people deprived of their liberty. The Commissioner as the constituent part of the National Preventive Mechanism (brought into force to facilitate the effective implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to be entered into force after being signed by the President of Ukraine) has the statutory powers to prevent the ill-treatment of detained persons through the mechanism of visits and inspections (including those without prior notices) of the places of detention.

In order to promote and protect human rights and freedoms the Commissioner closely cooperates with the international organizations and institutions operating in this field.

b) Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations.

The Law stipulates the obligation of the Commissioner to adjudicate appeals of individuals and sets out the general principle that such appeals should not be disregarded on the basis of the status of complainants (i.e. foreigners, stateless persons) and their current location (whether being in Ukraine or outside) (Art. 2, 17 of the Law).

c) If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or the military are permitted and how they are dealt with.

The mandate of the Commissioner is not limited to specific rights and covers all areas within the jurisdiction of Ukraine where the breach of human rights and

freedoms could potentially occur. Therefore, the violation of human rights committed by the police, military or Government is within the scope of the Commissioner's mandate. The facts of such violations should be considered by the Commissioner according to the general procedure set forth in Articles 2, 17 of the Law.

d) In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.

The laws of Ukraine do not empower the Commissioner to carry out protection related functions including providing remedies to victims of human rights violations, witness protection. However, the Commissioner has the power to conduct visits to detention places including those without prior notice in order to prevent the ill-treatment of detained persons and to verify the conditions of such detentions (Art. 13(8) of the Law).

According to Article 113 of the Criminal Executive Code of Ukraine and Article 13 of the Law of Ukraine "On pre-trial detention" correspondence sent by the Commissioner to sentenced persons shall not be subjected to examination.

3.

a) Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases).

Commissioner considers complaints of human rights defenders in general order, initiates proceedings on such cases, submits appeals to prosecution bodies, state bodies etc.

The Commissioner can also presents her standpoint on the cases of human rights defenders and expresses concern to the Parliament of Ukraine during parliamentary hearings and presentation of Annual and Special reports.

b) Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the Institution addresses them.

The Office of the Commissioner has no special mechanisms of human rights protection.

4.

a) Please describe the working relationship between the Institution and civil society, including human rights defenders, in accordance with the Paris Principles.

The Office of the Commissioner has been effectively cooperating with NGO's with the aim to protect and promote human rights.

According to Article 10 of the Law a board of advisors (which can also operate on a voluntary basis) – Advisory Council, made up of persons having practical experience in the area of protection of human rights and freedoms, can be formed under the Commissioner with the aim of offering consultation, conducting scientific investigations as well as examining proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms.

On 10 July 2012 there was established the Advisory Council under the Commissioner consisting of 28 representatives of NGOs and human rights defenders. The Co-Chairman of the Advisory Council is the Head of the Ukrainian Helsinki Human Rights Union. Such cooperation enables the Commissioner to take operative measures in case of human rights violations. The main functions of the Council: representation of people's interests before the Commissioner; advisory support to the Commissioner; conducting legal expertise of legal acts; consideration of suggestions concerning the improvement of human rights protection.

On 11 July 2012 the work of the Expert Council for Access to Public Information has been started. Its main functions: development of effective mechanism to protect citizens' rights to access to public information; right to access to public information awareness campaigns; recommendations to the Commissioner.

On 2 August 2012 Public Committee on Protection of Voting Rights was established. Main goal of the Committee is to secure voting rights of citizens during the election campaign which began in August 2012. Main functions of the Committee are the next: monitor the election process; inform the Commissioner on the election legislation violations; consolidate the activity of leading NGO's working in the area of voting rights protection; provide a true situation of voting rights violations.

On 19 September 2012 a Memorandum of Cooperation between the Commissioner for Human Rights and the Pan Ukrainian Civil Organization "Association of Ukrainian Monitors on the observance of Human Rights in the activity of law enforcement authorities"

On 20 September 2012 the Advisory Council established an expert group on operative legal response to human rights violations which deals, in particular, with violations in relation to human rights defenders.

In the Office of the Commissioner on a regular basis organize round tables, conferences, trainings with NGO.

b) Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and/or human rights defenders and how the Institution seeks to address them.

There are no any challenges or obstacles that might impair effective cooperation with civil society and human rights defenders. The cooperation between the Commissioner and the mentioned above institutions is being successfully developed.

5.

a) Please indicate whether any member of the Institution's staff has ever been the victim of threats, or other kind of harassment, as a result of work carried out on behalf of the organization.

Not a single member of the Institution's staff has ever been subjected to the threats or harassment of any kind, being the result of the work carried out on behalf of the institution.

b) Please specify what mechanisms, if any, are in place to protect Institution members investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect institution members.

According to Article 20 of the Law any violation of rights of the staff of the Office of the Commissioner or any harm or damages sustained in the result of the work carried out on behalf of the institution shall be subject to punishment.

c) Please indicate whether the Institution has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subject to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles.

No, the Institution has never been subjected to an unannounced visit by representatives from the police or state authorities and therefore there was no interference or threat that could have jeopardized the institution's independence as NHRI under the Paris Principles.

6.

a) Please indicate the main sources of funding for the Institution

According to Article 12 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine.

The Commissioner shall elaborate, submit to the Parliament of Ukraine for approval and comply with the budgetary outlays.

The Commissioner shall submit the financial report in accordance with the procedure established by the legislation of Ukraine.

b) In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organization and how this impacts on the work of the Institution.

Such mode of financing does not impair the functional autonomy of the institution. However, the scope of financing is not always considered as sufficient.

7.

a) Please describe the procedures in place relating to the selection and appointment of members of the governing body.

The Commissioner is appointed in accordance with Art. 5, 6 of the Law which set out the following requirements for candidates: hold citizenship of Ukraine, attain the age of 40 on the day of voting, have high moral qualities, be fluent in Ukrainian, have a relevant practice in the field of human rights, etc.

The Commissioner is elected by the majority of votes of Members of Parliament. His/her term of office is 5 years which commence upon the taking of the oath. According to the current legislation the Commissioner cannot execute his/her mandate while holding any other positions at bodies of state power, perform any other work, paid or unpaid, at bodies of state power, bodies of local self-government, etc.

Article 11 envisages the appointment of the Representatives of the Commissioner. A specific regulation on the Representatives defines the areas of their activity and scope of authority as well.

As for now there are five Representatives of the Commissioner on following directions: the Representative of the Commissioner for realization of the national preventive mechanism; the Representative of the Commissioner for social-economic and humanitarian rights; the Representative of the Commissioner for observance of rights of child, nondiscrimination and gender equality; the Representative of the Commissioner for observance of the right to vote of citizens; the Representative of the Commissioner for observance of right for information and personal data protection.

The other members of the staff (including the Head of the Office of the Commissioner) of the institution are appointed by the Commissioner and are subject to participation in the competition procedure of which is envisaged by the law.

b) Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.

Proposals for candidate(s) to the post of the Commissioner shall be made by the Chairman of the Parliament of Ukraine or by no fewer Members of Parliament the of Ukraine than one-fourth of the constitutional composition of the Parliament of Ukraine.

A respective Committee of the Parliament of Ukraine shall submit its conclusions to the Parliament of Ukraine on each candidate to the post of the Commissioner, on how the candidate meets the requirements envisaged by the Law, and on the absence of reasons which would prevent the candidate from holding this post.

After such conclusion has been submitted the prospective candidate is subjected to the election procedure by the Parliament of Ukraine as set out in the Law.

The security of tenure of the Commissioner is guaranteed by the Article 9 of the Law which provides the exhaustive list of reasons of termination of the office of the Commissioner as well as detailed procedure on the manner of termination of the office. The dissolution of the Parliament of Ukraine and new elections hereto shall not entail the termination of the office of the Commissioner.

The appointment and dismissal of other staff of the Office is conducted according to the labor legislation of Ukraine, taking into account the status of civil servant the Office's staff.