



**ПОСТІЙНЕ ПРЕДСТАВНИЦТВО УКРАЇНИ  
ПРИ ВІДДІЛЕННІ ООН ТА ІНШИХ  
МІЖНАРОДНИХ ОРГАНІЗАЦІЯХ У ЖЕНЕВІ**

**MISSION PERMANENTE DE L'UKRAINE  
AUPRES DE L'OFFICE DES NATIONS UNIES  
ET DES AUTRES ORGANISATIONS  
INTERNATIONALES A GENEVE**

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The Permanent Mission of Ukraine to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit herewith the Questionnaire of the UN Special Rapporteur on the situation of human rights defenders completed by the Ministry of Justice of Ukraine.

The Permanent Mission of Ukraine avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Encl.: as stated, on 6 pages.

Geneva, 22 October 2012



**Office of the United Nations  
High Commissioner  
for Human Rights**

**Geneva**

## Questionnaire on national human rights institutions and human rights defenders

1.

a) The Constitution of Ukraine (Articles 101, 55, 85, 150) adopted on 28 June 1996 provides for the post of the Ukrainian Parliament Commissioner for Human Rights (general provisions). The Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights", hereinafter referred to as "*the Law*" and "the Commissioner", was adopted on 23 December 1997, and came into force on 15 January 1998. The law specifies status of the Commissioner.

The status, specific functions and powers of the Commissioner are envisaged in a number of other laws (statutes) of Ukraine: "On Civil Service", "On Appeals of Citizens", Code of the Enforcement of Criminal Sentences, Code of Civil Procedure, Code of Administrative Procedure, Laws of Ukraine "On Pre-trial Detention", "On the Constitutional Court of Ukraine", "On the Principles of Prevention and Fight against Discrimination in Ukraine", "On Access to Public Information", "On Protection of Personal Data", "On Implementation of Judgments and Case-law of the European Court of Human Rights", "On the Refugees", "On the Judicial System and the Status of Judges", "On Democratic Civilian Control over the Military Organization and Law-Enforcement Bodies of the State", "On Ensuring Equal Rights of Women and Men", "On the Legal Regime of the State of War", "On the Legal State of Emergency", "On Local State Administration" etc.

b) 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 Ukrainian legislation on the Ombudsman contains strong guarantees of his/her independence. According to §2 Article 4 of the Law the Commissioner shall be independent of other state bodies and officials in the exercise of his or her activity. Interference from bodies of state power, in particular the Government, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers into the activity of the Commissioner shall be prohibited (§1 Article 20 of the Law).

Article 22 of the Law envisages that illegal interference into the activity of the Commissioner with the purpose of counteraction shall incur liability in accordance with legislation in force.

The Commissioner shall not be obligated to provide explanations on details of cases that he or she has settled or cases that he or she is involved in settling (§2 Article 20 of the Law).

2.

a) According to the Law (Article 13) the Ombudsman has a broad mandate to exercise his or her functions, in particular:

- be received, without any delay, by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the Chairmen of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Prosecutor General of Ukraine, the chairmen of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers;

- attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine, the collegiums of procurators' offices of Ukraine and other collegiate 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 Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada 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;

- visit without prior notice about time and aim of such visits all places of the deprivation and restriction of liberty, as well as psychiatric facilities, centers for refugees, orphanages, geriatric utilities and other utilities;

- 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;

- appeal to the court about protecting human rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reason, and also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law;

- submit to respective bodies, documents containing the response of the Commissioner to instances of violation against human rights and freedoms for taking respective measures;

- supervise the observance of human rights and freedoms by respective bodies of state power, including those that conduct detective and search activity; make proposals about improvement of these bodies' activities etc.

The Ombudsman of Ukraine has as well specific functions as the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 19<sup>1</sup> of the Law with amendments adopted on 2 October 2012 which has not been signed by the President of Ukraine yet).

According to Article 15 of the Law the acts concerning the response of the Commissioner to acts of violation against provisions of the Constitution of Ukraine, the laws of Ukraine, international agreements of Ukraine on human rights and freedoms shall be constitutional acts of submission of the Commissioner and acts of submission to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership, and their officials and officers.

Constitutional acts of submission of the Commissioner shall be acts indicating his or her response directed to the Constitutional Court of Ukraine with regard to deciding on the issue of conformity with the Constitution of Ukraine (constitutionality) and a law of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, act issued by the President of Ukraine and the Cabinet of Ministers of Ukraine, legal act issued by the Autonomous Republic of Crimea; the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

The act of submission of the Commissioner shall be the document which is submitted by the Commissioner to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers for the purpose of assuming, within the period of one month, respective measures aimed at the elimination of uncovered acts of violation against human rights and freedoms.

According to Article 93 of the Law of Ukraine "On the Judicial System and the Status of Judges" "The Ukrainian Parliament Commissioner for Human Rights shall appoint a member of the High Qualification Commission of Judges of Ukraine by an order".

b) According to Articles 2, 17 of the Law the Commissioner shall receive and consider appeals of citizens of Ukraine irrespective of his or her dwelling place, foreigners and stateless persons who are on the territory of Ukraine, persons acting in their interests.

c) The mandate of the Commissioner covers all categories of constitutional human rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction. A special chapter of the Ukrainian Constitution comprises a wide list of human rights and fundamental freedoms (civil, political, social, economic, cultural, freedom from discrimination, rights of the child etc.).

Article 17 of the Law provides for general order of consideration of any appeal including those related to human rights violations committed by the police, the military and the Government.

d) The Commissioner is empowered to visit without prior notice about time and aim of such visits any place of detention and other places where vulnerable groups of persons live (children, disabled persons, old persons). According to Art. 19<sup>1</sup> of the Law (the last reading was adopted on 2 October 2012 but has not been signed by the President of Ukraine yet) the Commissioner shall exercise functions of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture.

### 3.

a) The cooperation with human rights defenders and NGOs is one of the priorities of the Commissioner's activity.

On 10 July 2012 the Commissioner established the Advisory Council under the Office 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.

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.

b) Human rights defenders are protected by the Commissioner who considers their complaints, initiates his or her own proceedings on such cases, submits appeals to prosecution bodies, state bodies, appealing to the court about protecting human rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reasons, and also attends judicial proceedings personally or through a delegate etc. The Commissioner can also present her standpoint on the cases of human rights defenders and express his or her concern to the Ukrainian Parliament during parliamentary hearings and presentation of his or her Annual and Special reports.

### 4.

a) Any member of the Secretariat's staff hasn't ever been the victim of threats or harassment as a result of work carried out on behalf of the organization.

b) Should the legislation on guarantees of activity of the Commissioner, his or her Representatives and Secretariat's staff members be violated, the offending persons shall be held liable in accordance with effective legislation (Article 20 of the Law).

5.

a) According to Article 12 of the Law financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine and will annually receive its own distinction.

The Commissioner shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and comply with his or her budgetary outlays.

b) No. The only challenge as for now is to guarantee an adequate financing of the institution.

6.

a) According to Article 5 and Article 6 of the Law a citizen of Ukraine, who has attained the age of 40 on the day of voting, has a good command of the state language, high moral qualities, experience in human rights protection, and has been residing in Ukraine for the last five years can be appointed to the post of the Commissioner.

A person who has a criminal record for committing a crime cannot be appointed the Commissioner if the record is not cancelled or erased by the procedure established by law.

The Commissioner shall be appointed for the term of five years, commencing from the day of his or her taking oath at the session of the Verkhovna Rada of Ukraine.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine in the form of a secret ballot vote.

The candidate shall not be deemed appointed until he or she receives the majority of votes from National Deputies of Ukraine making up the constitutional composition of the Verkhovna Rada of Ukraine, with the resolution adopted thereof.

Article 8 of the Law provides for that the Commissioner cannot be given a representative mandate, hold 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, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, except teaching, scholarly or any other creative activity.

The Commissioner cannot be a member of any political party.

In order to comply with the conditions stipulated in the first and second part of this Article, the Commissioner should eliminate any encumbrances within a period of ten days following his or her appointment. The Commissioner cannot take the oath until the aforementioned encumbrances are eliminated.

If the encumbrances noted in the first and second part of this Article emerged during the term of activity of the Commissioner, they should be eliminated within a period of ten days commencing from the day of disclosure.

According to Article 11 the Commissioner shall be entitled to appoint his or her Representatives within the allocated funds approved by the Verkhovna Rada of Ukraine.

The organization of activity and scope of authority for the Representatives of the Commissioner shall be governed by Regulations on Representatives of the Ukrainian Parliament Commissioner for Human Rights, which are approved by the Commissioner.

b. According to Article 6 of the Law, a respective Committee of the Verkhovna Rada of Ukraine shall submit its conclusions to the Verkhovna Rada 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.

According to Article 6 of the Law proposals for candidate(s) to the post of the Commissioner shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine.