

**Anne Gaspard, Co-Director of
Network Strategic Engagement**

**Tamás Kádár, Co-Director of
Operations, Policy & Legal**

Equinet AISBL

**Place Victor Horta, 40
1060, Brussels
Belgium**

May 3rd, 2023

On behalf of the Ukrainian Parliament Commissioner for Human Rights I request formal membership of Equinet AISBL/INFPA – European Network of Equality Bodies, enjoying the full rights that members of Equinet are entitled to and respecting the obligations that membership brings with it, including adhering to Equinet statutes.

In confirmation of our compliance with the Equinet membership criteria, we would like to inform you of the following.

Pursuant to Article 101 of the Constitution of Ukraine, the Ukrainian Parliament Commissioner for Human Rights (hereinafter - the Commissioner) exercises parliamentary control over the observance of human and citizen's constitutional rights and freedoms.

Pursuant to Article 1 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" (hereinafter - the Law on the Commissioner), the Commissioner exercises parliamentary control over the observance of human and citizen's constitutional rights and freedoms and protection of the rights of everyone on the territory of Ukraine and within its jurisdiction on a regular basis. Under Article 3 of the Law on the Commissioner, the purpose of the parliamentary control exercised by the Commissioner is, in particular, to prevent any form of discrimination in the exercise of human rights and freedoms.

Under Article 13(13) of the Law on the Commissioner, the Commissioner is empowered to monitor the implementation of equal rights and equal opportunities for women and men.

Under Article 9 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", the Ukrainian Parliament Commissioner for Human Rights is a body empowered to prevent and combat discrimination.

Article 10 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" defines the powers of the Ukrainian Parliament Commissioner for Human Rights. Thus, the Ukrainian Parliament Commissioner for Human Rights within the framework of execution of parliamentary control over observance of human and citizen's constitutional rights and freedoms and protection of rights of everyone staying in the territory of Ukraine and within its jurisdiction shall prevent any form of discrimination and take actions in order to prevent discrimination, namely:

- exercise control over observance of the principle of non-discrimination in different spheres of public life, in particular in private sphere;
- appeal to the court for discrimination, in order to protect the public interest, and personally or through a representative participate in litigation in the cases and manner as provided for by the law;
- monitor and summarize results of observance of the principle of non-discrimination in different spheres of life;
- consider petitions of individuals or groups of persons concerning discrimination;
- record and generalize instances of discrimination in all spheres of life;
- make proposals on improving legislation on preventing and combating discrimination, application or termination of application of positive actions;
- issue opinions in cases of discrimination upon a court request;
- elucidate in the annual report issues concerning prevention and combating discrimination and observance of the principle of non-discrimination;
- cooperate with international organizations, and relevant bodies of foreign countries in the sphere of observance of international standards of non-discrimination;
- exercise other powers, provided for by the Constitution and laws of Ukraine.

Pursuant to Article 9 of the Law of Ukraine "On Ensuring Equal Rights and Equal Opportunities for Women and Men", the Ukrainian Parliament Commissioner for Human Rights:

- within the framework of monitoring the observance of human and citizen rights and freedoms, monitors the observance of equal rights and opportunities for women and men;
- reviews appeals on cases of gender-based discrimination and gender-based violence;
- in the annual report, covers the issues of observance of equal rights and opportunities for women and men and gender-based violence.

In general, the mandate of the Commissioner as an equality body includes a wide range of issues that are constantly monitored, however, the following areas are worth highlighting:

- monitoring the observance of the rights of national minorities and indigenous peoples;
- monitoring the observance of the rights of the LGBTIQ+ community;
- monitoring the observance of the rights of persons with disabilities;

- Ensuring equal rights and equal opportunities for women and men;
- monitoring the observance of citizens' religious rights;
- counteracting hate speech.

Article 10 of the Law on the Commissioner stipulates that to support the Commissioner's activities, the Secretariat is established, which is a legal entity, has its own bank account and a seal of the established form. It is worth noting that the Commissioner maintains gender balance in the structure of the Secretariat. As of the beginning of the year, the Secretariat employed 274 civil servants, including 166 women (61%) and 108 men (39%).

The Department for Monitoring of Observance of Equal Rights and Freedoms, Rights of National Minorities, Political and Religious Beliefs was established within the Commissioner's Secretariat to carry out the functions on equality issues, and its activities are coordinated by the Representative of the Commissioner for Equal Rights and Freedoms, Rights of National Minorities, Political and Religious Beliefs (hereinafter - the Representative of the Commissioner).

The Representative of the Commissioner, pursuant to Article 11 of the Law on the Commissioner, is an official who is entitled to be appointed by the Commissioner within the limits of the funds approved by the Verkhovna Rada of Ukraine. The main mission of the Representative of the Commissioner is to exercise a part of the Commissioner's powers in the relevant field on behalf of the Commissioner. The Representative of the Commissioner shall be subject to guarantees of the Commissioner's activity provided for by the current legislation of Ukraine.

Under Article 17 of the Law on the Commissioner, the Commissioner receives and reviews appeals from Ukrainian citizens, foreigners, stateless persons or persons acting in their interests. When reviewing an appeal, the Commissioner:

- initiates proceedings on violations of human and citizen rights and freedoms;
- explains the measures to be taken by the person who filed the appeal with the Commissioner;
- forwards the appeal as appropriate to the body competent to consider the case and controls the consideration of the appeal.

In total, in 2022, the Commissioner received 142 appeals on freedom from discrimination, which contained 395 reports of discrimination on various grounds, including:

- on the basis of ethnic (national) origin - 40;
- health condition - 72;
- disability - 16;
- place of registration or residence - 35;
- gender - 24;
- social origin - 9;
- citizenship - 11;
- membership in organisations (trade unions, political parties, NGOs) - 9;
- race, skin colour - 3;
- sexual orientation - 9;
- gender identity - 3;
- religious beliefs - 33;
- political and other beliefs - 1;

language - 18;
age - 12;
marital status - 1;
special measures for equal rights of women and men - 3;
other grounds - 62;
freedom from discrimination in the field of labour - 34.

Considering that one of the main functions of the Commissioner under Ukrainian legislation is to prevent any form of discrimination and take measures to overcome it, and the current situation with the observance of the principle of non-discrimination in various spheres of social relations needs to be improved in terms of both improving legislation and ensuring its implementation in practice, we believe that joining Equinet and deepening cooperation with other European equality bodies will strengthen the institutional capacity of the Commissioner to prevent and combat discrimination.

It is worth noting that the European integration draft law "On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Combating Discrimination" (Reg. No. 5488 of 13.05.2021) is currently under consideration by the Verkhovna Rada of Ukraine, which provides for administrative liability for violation of legislation in the field of preventing and combating discrimination and empowers the Commissioner to draw up a protocol for the said administrative offence. In view of this, the Commissioner will benefit from the similar experience of the Equinet member bodies.

It is important to gain international experience and jointly develop tools for the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), ratified by Ukraine in 2022. In addition, given the relevance of the topic of combating hate speech, joint activities, analysis and development of recommendations to bring the mechanism for monitoring and responding to the spread of hate speech in the media/other open sources in line with international standards and practices are possible.

Overall, it is important for the Commissioner to share experience and adopt best practices through joint events, conferences, seminars, trainings, and visits to EQUINET members in order to learn and further implement the best international practices in preventing and combating discrimination, ensuring equal rights and equal opportunities for women and men, vulnerable groups, and protecting the rights and freedoms of victims of domestic violence in accordance with international standards.

We trust that with necessary European Commission funding support, our potential future participation in cooperation and capacity-building work with other peer equality bodies through Equinet activities will be fully supported financially alongside other equality bodies from candidate countries by the time we may join Equinet as a member, following the Equinet Annual General Meeting (AGM) in early October 2023.

Ukrainian Parliament
Commissioner for Human Rights

Dmytro LUBINETS

THE LAW OF UKRAINE

On the principles of prevention and combating discrimination in Ukraine

(Official Bulletin of the Verkhovna Rada (BVR), 2013, No. 32, p.412)

{As amended by the Law No. 1263-VII of
13.05.2014, BVR, 2014, No. 27, p. 915}

Article 9. Bodies vested with authorities in respect of prevention and combating discrimination

1. Bodies vested with authorities in respect of prevention and combating discrimination shall include:

Verkhovna Rada of Ukraine;

Ukrainian Parliament Commissioner for Human Rights;

Cabinet of Ministers of Ukraine;

other state bodies, the bodies of power of the Autonomous Republic of Crimea, the bodies of self-government;

public organizations, legal and natural persons.

2. Bodies vested with powers in the sphere of prevention and combating discrimination in order to pursue the objective of this Law in their activity may take positive actions.

Article 10. Powers of the Ukrainian Parliament Commissioner for Human Rights in the sphere of prevention and combating discrimination

1. The Ukrainian Parliament Commissioner for Human Rights within the framework of execution of parliamentary control over observance of human and citizen's constitutional rights and freedoms and protection of rights of everyone staying in the territory of Ukraine and within its jurisdiction shall prevent any form of discrimination and take actions in order to prevent discrimination, namely:

exercise control over observance of the principle of non-discrimination in different spheres of public life, in particular in private sphere;

appeal to the court for discrimination, in order to protect the public interest, and personally or through a representative participate in litigation in the cases and manner as provided for by the law;

monitor and summarize results of observance of the principle of non-discrimination in different spheres of life;

consider petitions of individuals or groups of persons concerning discrimination;

record and generalize instances of discrimination in all spheres of life;

make proposals on improving legislation on preventing and combating discrimination, application or termination of application of positive actions;

issue opinions in cases of discrimination upon a court request;

elucidate in the annual report issues concerning prevention and combating discrimination and observance of the principle of non-discrimination;

cooperate with international organizations, and relevant bodies of foreign countries in the sphere of observance of international standards of non-discrimination;

exercise other powers, provided for by the Constitution and laws of Ukraine;

LAW OF UKRAINE

On Ensuring Equal Rights and Equal Opportunities of Women and Men

(Official Bulletin of the Verkhovna Rada (BVR), 2005, № 52, ст.561)

{As amended by the Law

No. 4719-VI of 17.05.2012, BVR, 2013, No. 15, p. 97

No. 1263-VII of 13.05.2014, BVR, 2014, No. 27, p. 915

No. 2229-VIII of 07.12.2017, BVR, 2018, No. 5, p. 35

No. 2849-IX of 13.12.2022}

Article 9. Powers of the Ukrainian Parliament Commissioner for Human Rights in the field of ensuring equal rights and equal opportunities for women and men

The Ukrainian Parliament Commissioner for Human Rights:

within the framework of monitoring the observance of human and citizen rights and freedoms, monitors the observance of equal rights and opportunities for women and men;

reviews appeals on cases of gender-based discrimination and gender-based violence;

in the annual report, covers the issues of observance of equal rights and opportunities for women and men and gender-based violence.

LAW OF UKRAINE

"On the Ukrainian Parliament Commissioner for Human Rights"

With relevant amendments and supplements (as of 16 July 2021)

CHAPTER I

GENERAL PROVISIONS

Article 1. Parliamentary control over the observance of constitutional human and citizens' rights and freedoms

Parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction is permanently exercised by the **Ukrainian Parliament Commissioner for Human Rights** (hereinafter referred to as «the Commissioner»). The Commissioner shall be guided by the Constitution of Ukraine, the laws of Ukraine and effective international treaties approved by the Verkhovna Rada of Ukraine.

Article 2. The scope of application of the Law

The scope of application of the Law shall extend to relations emerging from the fulfillment of human and citizens' rights and freedoms between a citizen of Ukraine, irrespective of his or her dwelling place, a foreigner or a stateless person, who are on the territory of Ukraine and bodies of state power and local self-government, their officials.

The operation of this Law also applies to relations that arise between juridical persons of public and private law, as well as individuals who are on the territory of Ukraine in cases provided for by a specific law.

Article 3. The purpose of the parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The purposes of the parliamentary control exercised by the Commissioner are:

- 1) protection of human and citizens' rights and freedoms envisaged by the Constitution of Ukraine, the laws of Ukraine and international treaties of Ukraine;
- 2) observance of and respect for human and citizens' rights and freedoms by subjects indicated in Article 2 of this Law;
- 3) prevention of violation of human and citizens' rights and freedoms or the facilitation of their restoration;
- 4) facilitation of the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;
- 5) improvement and further development of international cooperation in the area of the protection of human and citizens' rights and freedoms;
- 6) prevention of any forms of discrimination in relation to fulfillment of person's rights and freedoms;
- 7) promotion of legal awareness of the population and protection of confidential information about a person.

Article 4. Legal status of the Commissioner

The Commissioner is an official, whose status is stipulated by the Constitution of Ukraine, this Law, other laws of Ukraine.

The Commissioner performs his or her duties independently of other state bodies and officials. The activity of the Commissioner supplements legal remedies for violation of constitutional human and citizens' rights and freedoms; it neither repeals them nor results in reviewing the competence of state bodies which ensure protection and restoration of violated rights and freedoms.

The authority of the Commissioner shall not be terminated or limited in case of expiration of term of the authority of the Verkhovna Rada of Ukraine or its dissolution (self-dissolution), declaration of martial law or the state of emergency in Ukraine or in its certain areas.

The Commissioner has a seal with the emblem of Small State Coat of Arms of Ukraine and his or her appellation.

The capital of Ukraine – the City of Kyiv shall be the seat of the Commissioner.

CHAPTER II

APPOINTMENT TO THE POST, DISMISSAL FROM THE POST

AND TERMINATION OF AUTHORITY OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS

Article 5. Requirements for the candidate for the post of the Commissioner and appointment to the post of the Commissioner

The Commissioner shall be appointed to his or her post and shall be dismissed from his or her post by the Verkhovna Rada of Ukraine by a secret ballot vote.

To the post of the Commissioner can be appointed a citizen of Ukraine who has attained the age of 40 on the day of election, speaks the state language in accordance with the level determined by the National Commission on State Language Standards, has high moral qualities, experience in human rights protection, and has been residing in Ukraine for the last five years.

By their written consent candidates for the post of the Commissioner shall be subject to special check under procedure prescribed by Law "On Principles of Preventing and Counteracting Corruption".

Candidates for the post of the Commissioner before appointment to the post shall file to the body which appoints the Commissioner declaration of property, incomes, expenditures, and financial obligations under procedure prescribed by Law "On Principles of Preventing and Counteracting Corruption".

A person who has a criminal record that is not expired or expunged for committing a crime unless a person is rehabilitated or a person who has been given an administrative punishment for corruption during the last year shall not be appointed as a Commissioner.

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.

The Commissioner is subject to requirements and restrictions prescribed by the Law of Ukraine "On Principles of Preventing and Counteracting Corruption".

Article 6. The procedure for nomination of the candidates for the post of the Commissioner

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 less than one-fourth of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine. A respective Committee of the

Verkhovna Rada of Ukraine on the basis of the special check provided for by Article 5 of this Law 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.

The candidate to the post of the Commissioner shall be nominated within twenty days, commencing from the next day after:

- 1) this Law has entered into force;
- 2) the term of office of the Commissioner has expired, his or her authority has been terminated or in the event of his or her dismissal;
- 3) the results of voting have been announced, if the Commissioner has not been appointed.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine by a secret ballot vote but no earlier than ten days and no later than twenty days after deadline for nomination of candidates for participation in election.

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

Should more than two candidates to the post of the Commissioner be nominated and none of them is appointed, the Verkhovna Rada of Ukraine shall repeat voting between the two candidates who have won the majority of votes.

Repeat voting on the appointment of the Commissioner shall be conducted in accordance with the procedure established by this Article.

Candidates to the post of the Commissioner shall be nominated again if none of the candidates received the required number of votes.

Article 7. The oath of the Commissioner

Before assuming his or her post at the session of the Verkhovna Rada of Ukraine, the Commissioner shall take the following oath:

«I (first and last name) on assuming the post of Ukrainian Parliament Commissioner for Human Rights, solemnly swear to honestly and scrupulously protect human and citizens' rights and freedoms, conscientiously perform my duties, honour the Constitution of Ukraine and laws of Ukraine, and be governed by justice and personal conscience. I commit myself to acting in an independent and unbiased manner, serving human and citizens' interests».

The authority of the Commissioner shall be effective from the moment of taking oath.

Article 8. Incompatibility of the post of the Commissioner

The Commissioner shall not have representative mandate, hold any other positions at bodies of state power, perform any other paid or unpaid work 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 shall not be a member of any political party.

In order to comply with the requirements provided for in the first and second paragraphs of this Article, the Commissioner shall eliminate any incompatibility within a period of ten days following his or her appointment. The Commissioner shall not take the oath until the aforementioned incompatibilities are eliminated.

If the incompatibilities mentioned in the first and second parts 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 they were discovered.

If incompatibilities cannot be eliminated over a period of ten days, the Commissioner during this period shall make a statement on the refusal to perform any other duties than that of the Commissioner.

The authority of the Commissioner shall be terminated and the Verkhovna Rada of Ukraine shall dismiss him or her from the post, if the Commissioner has not complied with established requirements within the aforesaid period. The new nomination of candidates and appointment of the Commissioner shall be exercised in accordance with the procedure envisaged by Article 6 of this Law.

Article 9. Termination of authority and dismissal of the Commissioner from the post

The authority of the Commissioner shall be terminated in such cases:

- 1) the Commissioner refuses to further perform his or her duties by submitting a statement of resignation;
- 2) verdict of guilty of a court against him or her has come into effect;
- 3) court decision according to which a person holding the post of the Commissioner is considered missing or deceased has come into effect;
- 4) the newly-elected Commissioner has taken the oath;
- 5) person holding the post of the Commissioner has deceased;
- 6) entry into force of a court decision recognizing the assets of the Commissioner or assets acquired on his behalf by other persons or in other cases provided for in Article 290 of the Civil Procedure Code of Ukraine, unfounded and providing their recovery into state revenue.

The Verkhovna Rada of Ukraine shall adopt the resolution on dismissal from the post of the Commissioner before the expiration of term to which he or she has been elected, in case of:

- 1) violation of the oath;
- 2) incompliance with the requirements of incompatibility of the post of the Commissioner;
- 3) termination of citizenship of Ukraine;
- 4) inability to perform duties for more than four months in a row due to unsatisfactory health conditions or inability to work.

The Temporary Special Commission of the Verkhovna Rada of Ukraine shall conclude whether there are grounds to dismiss the Commissioner from the post.

If such grounds exist, the Verkhovna Rada of Ukraine shall consider this issue and adopt a respective resolution on dismissing the Commissioner from the post following an application by the Chairman of the Verkhovna Rada of Ukraine or no fewer than one-fourth of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine.

The Commissioner is considered dismissed from the post if the majority of People's Deputies of Ukraine of the constitutional composition of the Verkhovna Rada of Ukraine voted in favour of it.

Termination of authority and dismissal of the Commissioner from the post shall be legalized by a respective resolution of the Verkhovna Rada of Ukraine.

CHAPTER III

ORGANIZATION OF THE ACTIVITY OF THE COMMISSIONER

Article 10. The Secretariat of the Commissioner

The Secretariat shall be established in order to secure the activity of the Commissioner. The Secretariat is a legal entity and has its own bank account and established seal.

The structure of the Secretariat, distribution of duties and other issues concerning the organization of its activity shall be regulated by the Regulations on the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as «Regulations»). The Law of Ukraine «On Civil Service» shall apply to the Secretariat staff members. The Regulations and the budget of the Secretariat shall be approved by the Commissioner within the scope of budget expenses allotted for the Commissioner's activity. The appointment and dismissal of the Secretariat staff members shall be exercised by the Commissioner.

A board of advisors (which can also operate on a voluntary basis), made up of persons having practical experience in the area of protection of human and citizens' rights and freedoms, can be established under the Commissioner with the aim of providing consultation, conducting scientific investigations as well as considering proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms.

Article 11. Representatives of the Commissioner

The Commissioner has the right 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 of the Representatives of the Commissioner shall be regulated by the Regulations on Representatives of the Ukrainian Parliament Commissioner for Human Rights, which are approved by the Commissioner.

Article 12. Procedure for financing the activity of the Commissioner

Financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine and will annually be envisaged in a separate line.

The Commissioner shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and implement budgetary outlays.

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

The Verkhovna Rada of Ukraine and respective bodies of executive power and bodies of local self-government shall create the necessary conditions for operation of the Commissioner, his or her Secretariat and Representatives.

CHAPTER IV

THE AUTHORITY OF THE COMMISSIONER

Article 13. The rights of the Commissioner

The Commissioner has the right to:

1) 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 heads 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;

2) 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 prosecutors' offices of Ukraine and other collegiate bodies;

3) appeal to the Constitutional Court of Ukraine with regard to: conformity of 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 and citizens' rights and freedoms with the Constitution of Ukraine; the official interpretation of the Constitution of Ukraine;

3-1) make in due course proposals for improvement of legislation of Ukraine in the sphere of protection of human and citizen's rights and freedoms;

4) 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;

5) review documents, including those which contain classified information and obtain 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 court cases.

The access to classified information is provided according to procedure established by the relevant legislation;

6) 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 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;

7) invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;

8) visit without prior notification of purpose and time such places:

places in which persons are forcibly held in accordance with a court decision or a decision of an administrative body pursuant to legislation, including temporary detention rooms, cells of bodies of internal affairs for detained and delivered persons, places of temporary stay of foreigners and stateless persons who illegally stay in Ukraine, cells for temporary detained military servants, pretrial detention centers, arrest houses, penal enforcement institutions, reception centers for children, public schools and vocational schools of social rehabilitation, centers of medical and social rehabilitation of children, special educational institutions, military units, military detention cells, disciplinary battalions, special centers for detention of persons subject to administrative arrest, city and district departments and units, transport departments, divisions and units under bodies of internal affairs, specialized motor vehicles (including specialized car convoy), court rooms for holding accused (convicted) persons, institution of compulsory treatment;

psychiatric institutions;

units of temporary stay for refugees;

units for transit passengers at checkpoints of state border;

child care centers, orphan homes, shelters for children, children's homes, boarding schools for orphans and children deprived of parental care, centers of social rehabilitation of children with disabilities, centers of socio-psychological rehabilitation of children;

neuropsychiatric centers,

geriatric boarding houses; boarding houses for senior citizens and people with disabilities;

boarding houses for veterans of war and labour;

social and rehabilitation centers.

This list is not exhaustive;

8-1) interview persons who stay in places mentioned in paragraph 8 of this Article and obtain information on their treatment and living conditions;

9) attend court sessions of all instances, including court sessions held behind closed doors, if legal person in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;

10) in order to protect the rights and freedoms of man and citizen personally or through his or her representative in the manner prescribed by law:

apply to the court for protection of the rights and freedoms of persons who due to physical condition, underage, old age, incapacity or limited capacity are unable to independently protect their rights and freedoms; to take part in court proceedings in which proceedings are opened on his or her claims (applications, petitions);

intervene in cases in which proceedings are opened on claims, applications, petitions (submissions) of other persons, at any stage of their trial;

initiate review of court decisions regardless of his or her participation in court proceedings;

11) submit to respective bodies, documents containing the response of the Commissioner to instances of violation of human and citizens' rights and freedoms, for taking respective measures;

12) supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those who conduct investigative activities, make proposals for improving activity of such bodies in this area pursuant to established procedure;

13) exercise control over the ensuring equal rights and opportunities for women and men;

14) exercise other authorities envisaged by the law.

Article 14. The duties of the Commissioner

The Commissioner shall honour the Constitution of Ukraine and the laws of Ukraine, other legal acts, human and citizens' rights and interests protected by law, ensure the exercise of functions conferred on him or her and fully use the rights given to him or her.

The Commissioner shall keep the confidential information secret. This obligation shall be effective after the termination of his or her authority.

If the Commissioner has disclosed such information, he or she shall be liable in accordance with the procedure established by legislation.

The Commissioner shall not disclose information that was obtained about personal life of a petitioner and other persons related to the petition, without their prior consent.

The Commissioner shall exercise his or her parliamentary control over the observance of the right to access to public information.

The Secretariat of the Commissioner for Human Rights on behalf of the Commissioner ensures that information on requests submitted to the Commissioner for Human Rights under the Law of Ukraine 'On Access to Public Information' are made public and provided.

Article 15. Acts of response of the Commissioner

The acts of response of the Commissioner to violations of provisions of the Constitution of Ukraine, laws of Ukraine, international agreements of Ukraine on human and citizens' rights and freedoms are a constitutional submission of the Commissioner and a 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.

The constitutional submission of the Commissioner is an act of response submitted to the Constitutional Court of Ukraine with regard to the issue of conformity (constitutionality) of a law of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine, a legal act of the Autonomous Republic of Crimea with the Constitution of Ukraine; and with regard to the official interpretation of the Constitution of Ukraine.

The submission of the Commissioner is a 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 taking, within the period of one month, relevant measures aimed at the elimination of revealed acts of violation of human and citizens' rights and freedoms.

Article 16. Grounds to conduct legal proceedings and inspections

The Commissioner shall perform his or her duties on the basis of information about acts of violation of human and citizens' rights and freedoms, which he or she obtains through:

1. the appeals of citizens of Ukraine, foreigners, stateless persons or their representatives;
2. the appeals of the People's Deputies of Ukraine;
3. his or her own initiative.

Article 17. Consideration of appeals by the Commissioner

The Commissioner shall receive and consider appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine «On Appeals of Citizens».

Appeals shall be submitted to the Commissioner in a written form within the period of one year after disclosure of the act of violation of human and citizens' rights and freedoms. In case of exceptional circumstances, this period can be extended by the Commissioner, but should not exceed two years.

While considering an appeal the Commissioner shall:

1. initiate proceedings on violation of human and citizens' rights and freedoms;
2. explain what measures the person who has filed an appeal with the Commissioner should undertake;
3. submit an appeal, as appropriate, to the body which is competent to consider the case, and control the consideration of this appeal;
4. decline consideration of an appeal.

The Commissioner shall not consider appeals which are under review in courts, and shall terminate legal proceedings that have been initiated if the person concerned has filed an appeal, statement or complaint to the court.

Notification on accepting an appeal for consideration or refusal to accept an appeal for consideration shall be submitted in a written form to the person who has filed it. The refusal to accept an appeal for consideration shall be grounded.

Article 18. Annual and Special reports of the Commissioner

Every year the Commissioner submits to the Verkhovna Rada of Ukraine an annual report on the state of observance and protection of human and civil rights and freedoms in Ukraine by state and local authorities, associations of citizens, enterprises, institutions, organizations regardless of ownership and their officials, who violated by their actions (ommission) the rights and freedoms of man and citizen, and the identified shortcomings in the legislation on the protection of human and civil rights and freedoms. The annual report is submitted by the Commissioner to the Verkhovna Rada of Ukraine annually by March 20.

The annual report should contain references to cases of violations of human and civil rights and freedoms in respect of which the Commissioner has taken the necessary measures, the results of inspections carried out during the year, conclusions and recommendations aimed at improving human and civil rights and freedoms, and information on the status of implementation of the recommendations set out in the annual report for the previous year.

In cases provided by law, on his or her own initiative or pursuant to a decision of the Verkhovna Rada of Ukraine, the Commissioner shall submit to the Verkhovna Rada of Ukraine a special report (reports) on certain issues of observance of human and civil rights and freedoms in Ukraine.

The Verkhovna Rada of Ukraine shall adopt a resolution based on consideration of Annual and Special reports presented by the Commissioner.

Annual and Special reports, along with the resolution adopted by the Verkhovna Rada of Ukraine, shall be published in official publications of the Verkhovna Rada of Ukraine and on the official websites of the Verkhovna Rada of Ukraine and the Commissioner.

Article 19. Participation of the Commissioner in international cooperation

The Commissioner participates in the preparation of reports on human rights submitted by Ukraine to international organizations in accordance with effective international agreements ratified by the Verkhovna Rada of Ukraine.

Article 19-1. Performance of functions of national preventive mechanism by the Commissioner.

The Commissioner is entrusted with functions of national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

To perform the functions of the national preventive mechanism the Commissioner:

- 1) makes regular visits to places mentioned in paragraph 8 of Article 13 of this Law, without prior notice of the time and purpose of such visits and without limits of their quantity;
- 2) interviews persons kept in places referred to in paragraph 8 of Article 13 of this Law, in order to obtain information regarding their treatment and detention conditions as well as interviews other persons who may provide such information;
- 3) submits proposals to public authorities, state bodies, enterprises, institutions and organizations regardless the form of their ownership, including those referred to in paragraph 8 of Article 13 of this Law with regard to prevention of torture and other cruel, inhuman or degrading treatment or punishment;

4) draws on a contract basis (on a monetary or free of charge basis) representatives of civil society organizations, experts, scholars and professionals, including those from abroad, to regular visits to places referred to in paragraph 8 of Article 13 of this Law;

5) performs other duties prescribed by this Law.

Interview of persons referred to in paragraph 2 of part 2 of this Article shall be carried out in private and under conditions that preclude the possibility of wiretapping or eavesdropping. At the request of the Commissioner, if necessary, such interview can be carried out in the presence of an interpreter, a doctor, workers of institutions mentioned in paragraph 8 of Article 13 of this Law, and in case of an interview of a minor, his or her legal representative, teacher or a psychologist.

Representatives of civil society organizations, experts, scholars and professionals involved by the Commissioner on a contractual basis to perform functions of the national preventive mechanism, on the grounds of a separate written order of the Commissioner visit places mentioned in paragraph 8 of Article 13 of this Law and in compliance with requirements of part 3 of this Article may interview persons kept in such places with the view of obtaining information about treatment of those persons and their detention conditions.

Classified information, as well as confidential information obtained by the Commissioner, representatives of civil society organizations, experts, scholars and professionals engaged by the Commissioner to perform functions of the national preventive mechanism during interview of persons kept in places specified in paragraph 8 of Article 13 of this Law, is used in compliance with legislation of Ukraine on information.

At the request of the Commissioner state authorities, state bodies, enterprises, institutions and organizations regardless of form of ownership shall provide information on the number of persons kept in places specified in paragraph 8 of Article 13 of this Law, the quantity of such places and their location as well as any other information concerning the treatment of people and their detention conditions.

A separate structural unit for the prevention of torture and other cruel, inhuman or degrading treatment or punishment shall be established in the Secretariat of the Commissioner. This structural unit shall be established on the basis of the equal representation of men and women as well as national minorities. The unit shall consist of experts from various areas who possess professional qualifications.

Every year the Commissioner prepares a special report on the state of affairs in relation to prevention of torture and other cruel, inhuman or degrading treatment or punishment. This report shall be published in the media and sent to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine in compliance with the legislation of Ukraine on information.

When performing the functions of the national preventive mechanism the Commissioner cooperates with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture formed under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the international organizations and relevant bodies of foreign states working in this area.

Expenditures on financing the national preventive mechanism shall be provided in the State budget of Ukraine.

CHAPTER V

GUARANTEES OF SECURING THE ACTIVITY OF THE COMMISSIONER

Article 20. General guarantees of the activity of the Commissioner

Interference from 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 into the activity of the Commissioner shall be prohibited.

The Commissioner is not obligated to provide explanations on details of cases which are being considered or have been closed by the Commissioner.

The Commissioner shall enjoy the rights to immunity during the entire period of tenure. He or she cannot be held criminally liable without consent of the Verkhovna Rada of Ukraine or be subject to administrative punishment imposed by judicial procedure, be detained, arrested, searched as well as be subject to personal examination. No one except the Prosecutor General of Ukraine can inform the Commissioner on the suspicion of a criminal offence being committed. Should the legislation on guarantees of activity of the Commissioner, his or her Representatives and Secretariat staff members be violated, the offending persons shall be held liable in accordance with the legislation in force.

Upon the expiration of the term of tenure for which the person has been elected to the post of the Commissioner, he or she shall be provided with the job (post) previously held before the appointment and which is retained for him or her during the period that he or she performs the duties of the Commissioner, or he or she shall be provided with another equivalent job (post) at the same enterprise or, if it is impossible, with his or her consent, at another enterprise, institution, organization.

The life and health of the Commissioner, his or her Representatives employed on a permanent basis, shall be indemnified in the form of a mandatory state insurance under the legislation on state social insurance.

Article 21. Guarantees of protection of human and civil rights during the process of appealing to the Commissioner

Anyone can appeal to the Commissioner without any restriction and hindrance in accordance with the procedure envisaged by effective legislation.

Privileges or restrictions related to race, skin colour, religious or other beliefs, sex, ethnic and social origin, financial status, place of residence, language and other such factors are forbidden when appealing to the Commissioner.

Person deprived of liberty can appeal to the Commissioner or his or her Representatives in writing. In this case, restrictions related to correspondence shall not be applied. Correspondence from this individual shall be dispatched to the Commissioner within the period of twenty-four hours.

Correspondence addressed to the Commissioner and his or her Representatives from persons who are detained, arrested, held in custody, or in various types of prison facilities and facilities where medical treatment is forcefully applied, as well as from other citizens of Ukraine, foreigners and stateless persons, irrespective of their place of residence, shall not be subject to any censorship and inspection.

Those persons who have committed acts prohibited by this Article shall be held liable in accordance with effective legislation.

Article 22. Obligation to cooperate with the Commissioner

Bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, officials and officers addressed to by the Commissioner shall cooperate with him or her and assist him or her, as appropriate, in:

1) ensuring access to materials and documents, as well as under provisions of the legislative acts on the protection of classified information;

2) providing information and explanations with regard to the factual and legal basis of their acts and decisions;

3) considering proposals of the Commissioner to improve their activities in the area of protection of human and citizen's rights and freedoms and during one month from the date of receipt of such proposals providing the Commissioner with a reasoned written response.

Any refusal of 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 to cooperate as well as deliberate concealment or the provision of false information, illegal interference into the activity of the Commissioner with the purpose of counteraction shall incur liability in accordance with effective legislation.

CHAPTER VI

CONCLUDING PROVISIONS

1. This Law shall become effective on the day of its publication.

2. The Cabinet of Ministers of Ukraine shall, by 1 February 1998:

provide the Verkhovna Rada of Ukraine with proposals on bringing legislative documents of Ukraine in conformity with the Law of Ukraine «On the Ukrainian Parliament Commissioner for Human Rights»; bring resolutions of the Government of Ukraine in conformity with this Law; ensure that ministries and other central bodies of executive power of Ukraine review and repeal normative acts which contradict this Law.

President of Ukraine

L. KUCHMA

Kyiv, 23 December 1997

№776/97 – BP