

## **Ukraine**

### **Report submitted for the Universal Periodic Review United Nations**

#### **Fourteenth session of the UN Human Rights Council on Universal Periodic Review (2nd cycle)**

**2012**

##### *Coalition of non-governmental organizations:*

- 1) All-Ukrainian Association of non-governmental organizations “Ukrainian Helsinki Human Rights Union”
- 2) Association of Ukrainian monitors on Human Rights conduct in Law Enforcement (Association UMDPL)
- 3) Non-governmental organization “Legal Analysis and Strategies Institute” (Kharkiv)
- 4) Centre for Legal and Political Studies “SIM” (Lviv)

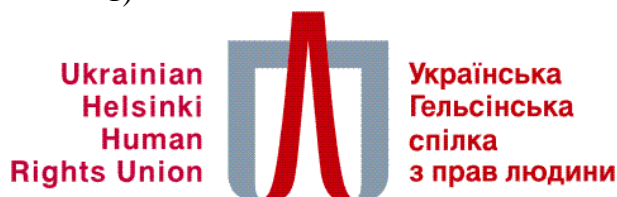
Coalition is informal association operating since 2004. Its goal is monitoring of human rights violations and devising annual report of human rights organizations “Human rights in Ukraine”<sup>1</sup>. The report contains analysis of violations committed with respect to more than 25 rights and freedoms over the year, as well as recommendations for bodies of authority on how to improve current situation.

The report covers the following aspects of human rights’ observance:

- General assessment of compliance with international commitments;
- Ukraine’s realization of decisions passed by international bodies;
- Right to fair trial;
- Freedom of association and peaceful assemblies;
- Access to information.

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1)



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## **General assessment of compliance with international commitments**

1. Over the years 2004-2009 Ukraine has made significant progress in adherence to human rights, especially, in the area of political rights and freedoms. However, after the presidential elections of 2010 situation started to aggravate quickly. In 2010-2011 such tendencies as the use of criminal justice for persecuting political opposition and civil activists, as well as narrowing political freedoms, destroying the independency of the judicial system, political interference into judicial proceedings, rigidity of criminal policy, violations of right to peaceful assemblies, restricting freedom of expression and pressure on journalists have become prominent.

2. The new administration eventually proceeded to persecute its opponents and critics. The 15-days incarceration of two protesters against trees-felling in a Kharkiv Park in June 2010 was the first manifestation of new times. “Amnesty International” recognized them as prisoners of conscience (it is a second occurrence of this type over 20 years of independence – the first happened in 2004).

3. On August 11, 2010, journalist Vasyl Klymentyev, who had conducted anti-corruption investigation against the officials and edited local newspaper “Novy Styl” (“New Style”), disappeared under suspicious circumstances. Till now search brought no results and criminal investigations was neither quick nor efficient. Human rights activist Andriy Fedosov several times was physically assaulted after he published the results of monitoring of human rights observance in psychiatric wards of the Crimea; then he had to go in hiding and finally was granted political asylum in another country. He was denied criminal investigation on his claim. Human rights activist Dmytro Groysman who is co-chair of Vinnytsia Human Rights Group was accused in 2010 of criminal distribution of pornography. Now the court proceedings continue and Dmytro stay under city arrest. In the process of investigation in October 2010 unwarranted search was conducted in the office of Vinnytsia Human Rights Group, which resulted in confiscation of over 300 files on human rights violations and office equipment, which has not been returned to date. In October 2010 on prosecutor’s office motion the court ruled enforced psychiatric detention of trade union activist Andriy Bondarenko for filing too many complaints against court and prosecutor’s office staff. He had to go in hiding, and only several months later the court ruling was quashed by appeal court.<sup>ii</sup>

4. In general, over the years 2010–2011 over 60 activists and 11 organizations from 17 regions were subjected to different forms of political persecution. Criminal proceedings were initiated against 30 persons; administrative proceedings – against 3 persons, and civil proceedings on damages – in two cases, psychiatric detention – against 1 person. 27 individuals had their freedom restrained (arrest, detention, keeping in custody); 16 persons suffered physical violence, three emigrated and obtained refugee status.

5. The criminal proceedings against participants of “Entrepreneurial Maidan”<sup>iii</sup>, members of “Tryzub” (for cutting off the head on Stalin’s monument in Zaporizhzhya in December 2010), against individuals who painted Dzerzhinsky’s monument, certainly bear political connotations. The most prominent criminal persecutions of former officials, i.e. Yu.Tymoshenko, Yu.Lutsenko, Ye.Korniyuchuk, V.Ivashchenko, I.Didenko, A.Makarenko et al. were characterized by numerous violations of fair trial rights, while criminal law was used for political decisions or actions related to official competences.<sup>iv</sup>

6. Despite numerous recommendations of international institutions<sup>v</sup>, Ukraine failed to ratify the Rome Statute of International Criminal Court, signed in January 2000. According to conclusion of Constitutional Court of July 11, 2001 the provisions of p. 10 of the preamble and article 1 of the Statute are not in line with the Constitution, as “International Criminal Court ... supplements the national bodies of criminal justice”, which is not envisaged by the Constitution. For over 11 years, no amendments the Constitution to make ratification possible were made. The newly formed Constitutional Assembly never included these tasks into its broad plans to introduce changes to the Constitution. It shows the reluctance to ratify the Statute and virtual obstruction of the International Criminal Court operation.

7. Ukraine has no legal or institutional mechanisms for the implementation of international bodies’ recommendations, apart from partial regulations in respect of judgments of the European

Court of Human Rights. Final recommendations of the UN bodies are not translated into Ukrainian or made public. No official plan of action or concept with respect to human rights is in place.

#### **Recommendations:**

- Ratifying the Rome Statute and introducing relevant changes into the national legislation;
- Signing and ratifying International Convention for the Protection of All Persons from Enforced Disappearance<sup>vi</sup>;
- Implementing UN Declaration on Human Rights Defenders into administrative practice<sup>vii</sup> and stopping the persecution of civil activists; broadening the scope of cooperation between authorities and civil organizations by means of regular consultations, advisory consultative bodies, discussing draft laws in the area of human rights;
- Devising appropriate national mechanism for the implementation of recommendations of UN bodies and other international organizations, including Ukrainian translations and dissemination of all the recommendations among authorities, followed by specific action plans for their implementation, which should be approved by different bodies of central power (President, Government, Parliament etc).
- Ensuring opportunity for the convicted former high officials to seek reviews of their cases within the framework of fair trial.

#### **Realization of decisions passed by international bodies**

8. Ukraine has a special law on implementing decisions of the European Court for Human Rights (ECHR). However, there are no provisions for the implementation of other international bodies' decisions.

9. The High Specialized Court for Criminal and Civil Proceedings (HSC) refuse treating the Views of the UN Human Rights Committee as international court decisions, which makes resolving of individual cases impossible.

10. On July 19, 2011 the HRC passed two rulings on individual communications in cases of *Shchetka v. Ukraine* and *Butovenko v. Ukraine*<sup>viii</sup>. In both cases the Committee found violations of Article 7 and various provisions of Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Both rulings stated that a respondent party should provide “effective remedy, including: carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the victim with full reparation, including appropriate compensation”.

11. On September 25, 2011 Mr Shchetka appealed to the Supreme Court demanding review of his conviction. However, on November 3, 2011 the HSC refused reopening of case, passing an opinion that “the UN Committee on Human Rights is not a judicial body, its decisions in its form and contents are not court decisions, and from the legal point of view, have no legal force”.

12. Similar decision was made by the HSC on Mr. Butovenko case.

13. The mandatory nature of judgments by the ECHR is not under question. However, procedure for review of convictions passed with the violation of fair trial rights looks most complicated, especially for people in custody. Procedural laws restrict the term of petitioning for review of case to one month since the moment when a person learns about the final judgment of the ECHR. This term is unacceptably short, especially, for an imprisoned person, who is practically deprived of the right to **legal representation** by existing judicial practice.

14. Passing a ruling in response to Nechyporuk's petition for reopening of case on the basis of the ECHR's judgment in the case *Nechyporuk and Yonkalo v. Ukraine*<sup>ix</sup>, the HSC argued that the petition can be submitted only by the person, in whose favour the ECHR ruled. Therefore, the petition, submitted by defense attorney cannot be considered valid. In practice it deprives a person of the right to legal representation and makes compliance with all the HSC's requirements towards petition impossible. It is well known that the HSC is constantly broadening the list of requirements towards such petition, significantly exceeding respective law provisions. Here is the summary of all

the requirements, failure to comply with which can lead to rejection of petition. The prisoner shall provide:

- copies of court decisions under review, however bound, enumerated and stamped with the court's seal;
- authentic translation of the ECHR's judgments endorsed by the Ministry of Justice;
- notification from the ECHR on final effect of the decision, received by the prisoner personally, and not be his representative; duly certified translation of the said document;
- certified copy of the ECHR judgment;
- certified copy of the claimant's passport or certificate from the penitentiary institution.

Besides, the petition cannot hold the signature of the legal representative, even it holds the signature of the petitioner himself, and petition should be sent from the address stated as address of penitentiary institution, where he is serving his term.

None of these requirements is stipulated by the law; some of them are impossible to comply with, and the expediency of any and all of them is highly questionable.

15. The compliance with decisions concerning use of torture and absence of efficient investigation is very difficult to track as well. In many cases the prosecutor's office, even after an international body has established the fact of ill-treatment, will not initiate investigation. For example, in the aforementioned *Shchetka* case the Kyiv Prosecutor's Office refused to comply with recommendations of the UN HRC, stating in the letter of December 12, 2011 that "Committee's conclusions ...on violations of V.Shchetka's rights under Articles 7 and 14 of the ICCPR, in particular, with respect to tortures, applied to him in the course of pre-trial investigation, unfair and biased trial, were not confirmed by conducted investigation".

16. Besides, in many cases the expiration of term of statute of limitations for criminal proceedings makes criminal investigation impossible.

#### ***Recommendations***

- Spreading the legal norms stipulating review of cases to all international judicial bodies' decisions, if these bodies have been recognized by Ukraine as competent to adjudicate individual communications; establishing longer term for petitioning on such review of court rulings, annulment of such term for criminal convictions; establishing legislative safeguards for the right to legal representation for the petitioners, including the stage when they submit petitions;
- Simplifying the procedure for initiating the review of such cases; eliminating unjustified bureaucratic requirements which hinder efficient re-consideration of cases;
- Revising the statutes of limitations for criminal liability of persons suspected of actions described in Article 1 of the UN Convention against Torture.

#### **Right to fair trial**

17. The observance of right to fair trial deteriorated over the recent years. In May-July 2010 judicial reform was carried out. This reform has been anticipated for many years, but in fact it did almost nothing to improve the situation. Moreover, it resulted in further politicization of justice system and judges' dependence on politicians. Other persistent problems include:

- Violations of reasonable time for court proceedings;
- Mass non-enforcement of courts' decisions (about 70 %);
- Financial and administrative dependence of the judges;
- Incompleteness of the procedural law reform – the provisions and concepts of Criminal Procedural Code<sup>x</sup> and the Code on Administrative Offenses, adopted under the USSR, fail to meet the standards of human rights;
- Overloading of courts and lack of transparency in their operation;
- Insufficient funding of the judiciary;
- Insufficient professional level of many judges; lack of professional responsibility among the judges;
- High rate of judges' corruption.

18. On October 15-16 the Venice Commission of the Council of Europe approved the conclusion on the Law on judiciary and judges' status<sup>xi</sup> passed in 2010. Despite positive assessment of certain measures, i.e. random distribution of cases among judges in courts, bringing State Court Administration under control of the judicial power and liquidation of court martial, the conclusion contains over 30 serious reprimands and recommendations with respect to changes in this law.

19. The Law "On introducing changes to legislation on inadmissibility of abuse of the right to appeal", passed by the Parliament in May 2010 can be considered one of the reform's components. The Law envisages that the High Administrative Court as court of the first instance has jurisdiction over the cases concerning Central Election Commission's defining of the election or all-Ukrainian referendum results, and also appeals against actions or inactivity of the Parliament, President, High Council of Justice (HCJ). The appeal is not stipulated. Besides, the law entrusts the HCJ with very broad competences in appointing and dismissing judges and chief justices and initiating disciplinary proceedings against judges and in requesting any courts documents. The competences of the HCJ with regard to judges' dismissal, specifically, for breach of oath – which is a very vague definition in itself and makes room for the dismissal of any disobedient judge.

20. The Venice Commission was very critical with regard to this law. Commission's conclusions contain concerns with the increasing role of the HCJ, formed by the political bodies and argued that the competences of HCJ should eventually diminish. They also expressed their alarm with regard to politicization of the disciplinary proceedings against judges and decreasing the role and competence of the Supreme Court. Till now the recommendations have been neglected.

21. The HCJ consists of twenty members. The Parliament, President, Judges' Congress, Attorneys' Congress, Congress of Representatives of Law Schools and Academic Institutions appoint three members each, while all-Ukrainian Conference of the Prosecutor's Office Officials appoints two members. By virtue of their office the Chief Justice of the Supreme Court, Minister of Justice and Prosecutor General are also members to the Council. In order to change the procedure for the HCJ forming, the Constitution should be changed. Anyway, there are no justifiable grounds for such broad competences of the said body. If parliamentary majority and the President represent one political force, then this political force appoints the executive officials (principals of law schools, ministers, prosecutor general etc.) and no more than 7 members of the HCJ can preserve their independence.

22. The HCJ activity had adverse effect on judges' independence, diminishing it and leading to their further politicization and outside manageability. Political dependence brought to life most bizarre court decisions, from the courts of first instances up to the Constitutional Court. However attack on judges' independence was felt in other areas as well. The authorities launched personnel rotation in the courts in order to gain total control over the judicial system. Today the chief justices of the major courts all originate from Donetsk region and are somehow linked to the leading political power. For example, the Chief Justice of the HSC, contrary to legislation, for a period of time combined his office with the office of the member of the Parliament.

23. The HCJ influence is felt in the judges' dismissal for breach of oath. The instances when the prosecutor's office through its representatives in HCJ initiated disciplinary action against judges, who allegedly broke the oath passing rulings against the prosecutor's office, are quite numerous.

24. We were informed that on June 7, 2011 Prosecutor's General Deputy, a member of the HCJ, submitted a motion on dismissing three judges of the appeal court of Kyiv – I.Moroz, V.Lashevich and L. Bartashchuk. The judges in question passed a ruling to release the convict from custody on the grounds of absence of evidence that would justify his further detention. This ruling was completely in line with Article 29 of the Constitution and Article 5 of the European Convention on Human Rights which proclaim right to liberty as indispensable human right that no one needs to prove. It is also supported by case-law of the European Court establishing "presumption in favour of release". Prosecutor in court could not show any grounds in favour of detention and, in fact the Prosecutor's General Deputy accused judges that they failed to prolong detention in absence of grounds for that.

25. The Strategic Litigation Centre reported in November 2011, that, according to the documents it obtained, the prosecutor's office made a motion to HCJ concerning dismissal of judge Roman Brehey. He became persona non grata after passing two acquittals on thoroughly justified basis. The judge also passed additional resolution pointing errors committed during the investigation. The appeal court quashed these rulings and remanded cases to court. The prosecutor's office, however, decided to use extra-judicial measures to penalize the judge.<sup>xii</sup>

26. It is also noteworthy that the Prosecutor's General Office initiated the investigation by HCJ of all the judges of Criminal Judicial Chamber of the Supreme Court on the eve of the elections of the Chief Justice of the Supreme Court.

27. According to our information, the pressure on judges exercised by the Prosecutor's General office and HCJ has become mass and systematic. In general the situation when one of the parties, discontent with the outcome of the trial, can influence the court via administrative pressure is inadmissible. Under European standards on judges' independence, "In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner"<sup>xiii</sup>.

28. Dependence and politicization of the judges was manifested most vividly at the time of criminal investigations against the opposition leaders Lutsenko, Tymoshenko, Ivashchenko et al. Using selective criminal prosecution, current administration convicted the opposition leaders with a lot of violations of their right to fair trial.

29. The situation with unreasonably long court procedures and work overloads per one judge is aggravating dramatically (on the average, the work load per one judge has increased to 130 cases a year; and to 138 cases a year – per one judge of the High Administrative Court). The instances of non-compliance with court decisions in cases where the state is a party are becoming more numerous. Corruption in courts is not decreasing either; in public opinion, courts still rank first most corrupt state institutions, and the number of complaints about their operation is growing. Selection of judges and the quality of legal education in law schools also leave much to be desired.

30. Judiciary reform significantly reduced the term of initiating the proceedings against authorities. In particular, the administrative process envisages the shortened statute of limitations – from one year to six months, with the special provision on one month's term in some cases. Thus, "one month's term is established to appeal in administrative court the decision of authority, on the basis of which monetary damages can be imposed". It applies, for example, to all the cases on payment of social benefits. The limitations for appeals and cassations for this category of cases have also been significantly restricted. The current terms are too short, taking into account the necessity to provide relevant evidence, and violate the right of access to courts.

31. There is another aspect of violation of right to fair trial. In July 2010 the changes establishing simplified procedure for the claims filed by communal and housing services' companies were introduced into the Civil Code.

32. The aforementioned changes seriously aggravated access to courts in cases when the courts issued mandates concerning the payments of arrears. As a result of mandative proceedings the respondent does not have any information concerning the court's mandate issued on the basis of the claim, its contents and relevant evidence, subsequently being denied the opportunity to defend his position in court.

33. Besides, the courts, as a rule, do not request from the claimant the documents supporting his claims, i.e. the evidence that the respondent agrees with the claims, or there are incontestable facts that certain services have really been provided or had to be provided. All this evidence is mandatory for this type of proceedings. In fact, mandative proceedings in this category of disputes has turned into mass violations of the communal services' consumers' rights to fair trial.<sup>xiv</sup>

34. The respondent, as a rule, learns about a court mandate after the hearing is closed and he/she is served a copy of the court order. Only at that point the respondent can initiate proceedings of appeal against the said mandate.

35. Prior to August 3, 2010 the court had to annul the order unconditionally if the debtor did not agree with it, but after introducing aforementioned changes the respondent is obliged to provide justification of his appeal against the court mandate. Consideration of appeal does not ensure the rights, guaranteed by Article 14 of the ICCPR and Article 6 of the ECHR to submitting party. On the contrary, this approach basically transfers the burden of proof of groundlessness of claim, on the respondent.

36. Moreover, taking into account complexity of legal and factual circumstances in the majority of disputes of this nature and the fact that the majority of respondents belong to indigent population, the state should provide legal pro bono assistance, although it is not stipulated by the law.

#### ***Recommendations:***

- Changing immediately the procedure of forming HCJ, namely, entrusting the Judges' Congress with authority of its forming; or liquidating this body with transfer of its functions to the bodies which meet the criteria of independence.

- Broadening competences of the Supreme Court, especially granting the opportunity to all parties to approach it in cases of jurisdictional conflict, different interpretation of material and procedural legal norms; entrusting the Supreme Court with authority to review the cases independently without interference from the specialized courts.

- Improving procedure for administrative trial in compliance with Article 14 of the ICCPR and Article 6 of the ECHR.

- Developing and adopting legal norms for reasonable terms for cases consideration. Envisaging the mechanisms for compensation for violation of right to trial within reasonable time.

- Envisaging special budget line in the State Budget to cover the costs of execution of the courts' decisions in cases where the authorities, state organizations and institutions are debtors.

- Defining by the law strict evidence of incontestability of claimant's claims in the mandative proceedings.

- Providing pro bono legal assistance in the disputes with communal services' companies, specifically, at the stage of initiating and hearings of appeals on decisions, made on claims filed by these companies.

### **Freedom of associations and peaceful assemblies**

37. Legislation regulating peaceful assemblies is neither accurate nor unambiguous. On the one hand, the freedom of peaceful assemblies is regulated by Article 39 of the Constitution, which requires notifications with respect to meetings, as well as the procedure for restriction of this freedom by court exclusively under specific circumstances spelled out by law. The special law, however, has not been adopted. Hence, unjustified restrictions of this freedom, as courts can interpret the provision at their own discretion. On the other hand, contrary to the Constitution, the practice of adopting local normative and legal acts, regulating the freedom of peaceful assemblies, by local state administrations and local self-governments, is very popular. The scope of the freedom is unreasonably and unjustifiably narrowed.

38. The courts widely apply the Order of the Plenum of the Supreme Council of USSR Presidium of 28.07.1988 "On procedure for organizing and conducting meetings, rallies, parades and demonstrations in the USSR". The validity of this order is most dubious. Exercising the right to peaceful assemblies becomes rather complicated under the circumstances.

39. The courts use one and exclusive method of restricting the freedom of peaceful assemblies – by banning them. The other possible restrictions, i.e. in terms of time, venue, use of specific means etc, practically are not used by the courts.

40. Court decisions on banning of peaceful assemblies often refer to incapacity of law enforcement bodies to ensure due protection of public order as the main reason for prohibition. In fact, it contradicts the very essence of the peaceful assemblies – the duty of the state to ensure the safety of those who participate in them.



41. The courts predominantly ban peaceful assemblies in cases when several organizers advise of their intention to hold their meetings at the same time and venue. Moreover, the courts ban all the appealed peaceful assemblies.

42. Sometimes the courts apply their prohibition to all peaceful gatherings in certain places or at certain times. This restriction, arguably, is unnecessary in democratic society. Besides, such a decision covers undefined category of persons, thus, depriving them of the right to appeal the restriction.

43. Appeal procedure against the court decisions on restricting the freedom of peaceful assemblies does not guarantee the possibility the appeal to be heard before the beginning of the announced meeting.

44. The disproportionate use of force and special measures by the law enforcers against participants of peaceful assemblies has been registered.

45. Law enforcement officials practically are never held responsible for the abuse of power or for exceeding their competences, illegal obstructions of peaceful assemblies. It can be explained by the fact that prosecutor's office never investigates properly the cases of human rights' violations committed by law enforcers.

46. In cases when quarrels or brawls arise in the course of peaceful gatherings, or provocations initiated by adversaries, militia officials often fail to act, thus creating a threat for health and life of participants.

47. The practice of groundless stopping of peaceful assemblies with subsequent detention of their participants has become widely spread. Almost always there is no appropriate court warrant and no immediate threat of crimes or mass upheaval. The law enforcers motivate the stopping of peaceful gatherings, referring to isolated offenses, although often not a single participant is later prosecuted due to the absence of offense.

48. The law enforcers hinder public participation in the peaceful gatherings. The State Road Inspection officials often forbid the motorists bringing passengers to the meeting's venue, or stop the vehicles and take the drivers' licenses away. There have also been cases of obstructing public access to squares and streets where peaceful gatherings were to take place.

49. Often the law enforcement officials tend to favour one of the participating parties and to take sides if counter-meetings are being held by political adversaries.

50. Preventive pressure has been put on participants and organizers of peaceful gatherings by law enforcers (Security Service, Ministry of Interior) and public officials (CEOs of organizations, principals of high schools etc). The goal was to talk employees or students out of participating in the respective event.

51. In order to diminish protests, the authorities often put pressure on participants after the events. In particular, the facts of pressure from fiscal or controlling bodies on entrepreneurs who participated in the meetings; initiation of criminal proceedings on alleged hooliganism etc. have become known.

52. We welcome the new law on public associations, passed in 2012 and meeting international standards. However, we are concerned about still valid provision on administrative liability for the activity of non-legalized public associations, which we see as unwarranted interference into these entities' operation.

### ***Recommendations***

- Passing a special law on freedom of peaceful assemblies in total compliance with international law, and, specifically ICCPR and Siracusa Principles on the Limitation and Derogation of Provisions of it, the ECHR and decisions of the ECHR, as well as Guidelines on Freedom of Peaceful Assemblies of OCSE and CoE. Bringing other provisions of law into compliance with international standards.

- Improving the appeal procedure with respect to court decisions on restricting the right to peaceful assemblies so that appeal would be attainable before the beginning of the event.

- Systematic and regular training for the law-enforcing officials and judges concerning the use of international legal norms with respect to freedom of peaceful gatherings, with the participation of experts from international and human rights organizations.

- Eliminating Article 186-5 of the Code on Administrative Offenses, which establishes liability for leadership of participation in non-registered public associations.

### **Access to information**

53. We are happy to report that in 2011 the new law On Access to Public Information was passed in line with the international standards. However, respective changes, stipulated by this law, have not been introduced into other laws to date causing a lot of confusion as to its use. Hundreds of ministerial and departmental by-laws restricting the access to public information have not been amended either.

54. After new laws on information were passed, it was expected that the Cabinet of Ministers would invalidate its Resolution № 1893 of November 27, 1998 On the Procedure of Registering, Storing and Using Documents and Other Material Information-Carriers, Classified as Confidential and of Governmental Property, as it is contrary to the new law. In particular, this Resolution allows authorities supplying any official document with the stamp “For internal use only” at their own discretion, while the law explicitly reads that, first, “access to information, and not to a document, is restricted”, and, second, only two categories of information fall under the definition of confidentiality, and only under exceptional circumstances after being subjected to trilateral test; third, based on consistent interpretation of Articles 6 and 9 of the law decisions of authorities cannot be regarded as confidential information..

55. Instead, the Cabinet of Ministers on September 7, 2011 adopted Resolution № 938 On amendment with Regard to Access to Information, under which the words “confidential information which is governmental property” in Resolution № 1893 are replaced with “official classified information”. This step undertaken by the Cabinet of Ministers is an impudent violation of the law On Access to Information, as the words “confidential information which is governmental property” and the term “official classified information” as interpreted by the law On Access to Information are legally incompatible categories.

56. The Master Plans for the development of settlements and populated areas are still kept secret, although they are the main documents of local self-government, which determines development and zoning of a given area. It is this very document that holds socially significant information, specifically, on the issues of social and economic development of a city, public safety, environmental information etc. The laws On Access to Public Information and On Regulating Urban Development (2011) which annulled the concept of “confidential information which is governmental property”, establish the procedure for classifying information and require guaranteed access to the open portions of master plans, by making them public, e.g. on local self-governments’ web-sites. Despite public nature of the aforementioned document and requirements of the law, the master plans are still unavailable for the public at large.

57. The practice of keeping master plans secret directly contradicts to international commitments, specifically, Article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR. Making master plans closed for public deprives citizens of the information concerning intentions of local self-governments as to the changes in urban development zones and applicable construction restrictions, plans on priority development and plans for alienation of property in private ownership for common good. It leads to the violations of people’s right to own property.

### **Recommendations**

- Introducing changes to the legislation with the goal of implementing provisions of the law On Access to Public Information;
- Introducing changes to the law on protection of personal information; bringing it into compliance with the international standards;
- Removing the stamp “For internal use only” for the documents which under the Resolution № 1893 of the Cabinet of Ministers of November 27, 1998, required such stamp as containing the confidential information which is governmental property; applying the stamp to the information which under p.2 of art. 6 and art. 9 falls under the category of “ official classified information”;

- Annuling Resolution № 1893 of the Cabinet of Ministers of November 27, 1998;
- Annuling the Decree of the President № 493 of 21.05.1998 “On State Registration of the Normative and Legal Acts”;
- Making all the normative and legal acts bearing the stamp “Not to be made public” open to the public; analyzing all the documents with stamp “For internal use only” as to the expediency of its use;
- Revising the norms of the article 15 of the law On State Secret and leaving secret only fragments which contain the state secret instead of the whole documents;
- Compiling open registry of all the normative acts of the Prosecutor’s Office and open database for all normative acts regulating rights and duties of the citizens;
- Providing opportunity for all community members to familiarize themselves with all local self-governments’ and local state administrations’ decisions;
- Making Master plans for urban development open to the public.

<sup>i</sup> Annual Human Rights Reports for the years 2004-2011 available in English at: <http://www.helsinki.org.ua/en/index.php?r=a2b3>.

<sup>ii</sup> Olexandra Matviychuk. *Harassment of civil society in Ukraine in 2011*. See: <http://khp.org/index.php?id=1321886708>; Yevhen Zakharov, Borys Zakharov. *Political persecutions in contemporary Ukraine*. See: <http://khp.org/index.php?id=1321885956>; Steadfast in Protest - 2011 Report, 2011 is the 14th year that an Annual Report is produced by the Observatory for the Protection of Human Rights Defenders, [http://www.fidh.org/IMG/pdf/obs\\_2011\\_uk-europecis.pdf](http://www.fidh.org/IMG/pdf/obs_2011_uk-europecis.pdf), p.490-496.

<sup>iii</sup> The Tax Code Protesters’ Maidan (or Maidan-2) was the most important event in Ukraine in 2010 in the field of human rights. For the first time since the Orange Revolution about one hundred thousands of people, outraged by the government’s actions, came out onto the main square of the capital to stand up for their freedom, rights and interests. Find more information: *The Tax Code Protesters’ Maidan*, <http://www.helsinki.org.ua/en/index.php?id=1298382468>.

<sup>iv</sup> Please find more information at: *Political Persecution in modern Ukraine 2010–2011*, <http://khp.org/en/index.php?id=1321878732> and <http://www.helsinki.org.ua/en/index.php?id=1332397140>; and in special Legal monitoring reports of the Danish Helsinki Committee: <http://www.helsinki-komiteen.dk/Dokumenter/LM-Ukraine.III.English.pdf>, <http://www.helsinki-komiteen.dk/index.php?view=article&id=54:legal-monitoring-in-ukraine-ii&format=pdf>, [http://www.helsinki-komiteen.dk/index.php?view=article&catid=1%3Alatest-news&id=49%3Alegal-monitoring-in-ukraine&format=pdf&option=com\\_content](http://www.helsinki-komiteen.dk/index.php?view=article&catid=1%3Alatest-news&id=49%3Alegal-monitoring-in-ukraine&format=pdf&option=com_content)

<sup>v</sup> See earlier recommendations to Ukraine provided following UN UPR. In its Resolutions №1300 (2002) and №1336 (2003) EC Parliamentary Assembly called upon all the EC members to use all the necessary measures to become a party to or sign this international document, and also to introduce immediate changes into the national legislations. The Joint position of EU Council on International Criminal Court of June 13, 2003 stated that comprehensive adherence to Roman statute is important in ensuring complete efficiency of the International Criminal Court operation. UN General Assembly at its 60-th session approved the resolution (document A/60/L.25 November 18, 2005), and appealed to all states who are not yet members of Roman Statute to consider its immediate ratification or joining it.

<sup>vi</sup> Adopted on December 20, 2006 UN General Assembly Resolution A/RES/61/177.

<sup>vii</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.RES.53.144.En>

<sup>viii</sup> Communication No. 1412/2005, Butovenko v. Ukraine. [http://www2.ohchr.org/english/bodies/hrc/docs/A.66.40\\_vol.II\\_partI.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/A.66.40_vol.II_partI.pdf).

<sup>ix</sup> Nechiporuk and Yonkalo v. Ukraine (no. 42310/04, 21 April 2011), <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=884618&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

<sup>x</sup> By the time of devising this report the new Criminal/procedural Code, adopted by the Verkhovna Rada of Ukraine, has not come in force.

<sup>xi</sup> Available at: [http://www.venice.coe.int/site/dynamics/N\\_Opinion\\_ef.asp?L=E&OID=588](http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=588).

<sup>xii</sup> <http://hr-lawyers.org/index.php?id=1321538484>

<sup>xiii</sup> Recommendation № (94) 12 of the Committee of EC Ministers, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=534553&SecMode=1&DocId=514386&Usage=2>.

<sup>xiv</sup> Over 70 thousand of court mandates<sup>xiv</sup> have been issued on such claims