

Thank you, Mme President,

To begin with I wish on behalf of the delegation of Ukraine, the founding member of the United Nations, to join you, Your Excellency in your greetings to all and everyone in this room on the occasion of the UN Day, and to assure the Working Group that we consider our today's exercise and UPR in general as yet another contribution towards making our world a better place to live.

Ukraine recognizes that the UPR is a mechanism that shows gaps and weak places of the national human rights protection system. To this end it is crucially important to know the position of all stakeholders. Thus the maximum openness and widely public discussion were the defining features of the drafting of the national report of Ukraine.

I'd like to present the national report reflecting the achievements and actions taking for the implementation of the recommendations of the first cycle of the UPR and to give answers to some advanced questions.

It should be mentioned that namely in the last four years there was made a number of steps for establishing guarantees of protection of human rights in different areas. In this regard it is worth to note judicial reform, new antidiscrimination legislation and comprehensive criminal procedure reform that used to be an "overwhelming challenge" for the Ukrainian authorities. All the reforms have a common goal to promote the principle of the rule of law and enhance the guarantees of human rights protection.

Recognizing as one of the fundamental guarantees of protection of human rights an efficient and transparent criminal process, at the same time been facing a number of systemic problems such as deprivation of liberty, ill-treatment and use of inadmissible evidence, Ukraine at last has launched the process of **criminal justice reform** aimed at introduction of generally accepted international democratic standards.

On 13 April 2012 the new Code of Criminal Procedure was adopted and became the first step of reformation of the criminal justice system. As the next step the Law "On Bar and the Bar Association" has already been adopted and the Draft Law "On the Prosecutor's Office" is at final stage, as well the judicial reform is on process.

#### **As to detention on remand**

In spite of the fact that the old Code prescribed a range of preventive measures, in practice only two of them were used, namely:

obligation not to abscond and detention on remand. Decisions on detention were unreasoned in most cases. Prolongation of detention at the pre-trial stage was reasoned by the mere fact that the investigation was not completed. At the same time, prolongation of detention in trial stage did not require any argumentation and was not time limited.

The new Code prescribes detailed procedure of preventive measures application and stipulates as the main measures bail and home arrest, while detention is "an extraordinary preventive measure".

While examining a request on detention the court shall verify existence of well-founded reasons for detention and while reviewing such preventive measure the court shall evaluate persistence of risks which became the ground for detention and measures taken by the law-enforcement authorities to eliminate such risks.

We consider that the above mentioned requirements shall resolve a problem of unreasoned and extensive detention and of overcrowding of the Pre-trial Detention Facilities.

#### **As to a fair trial guarantees**

The right for the fair trial will be guaranteed by equal rights and opportunities in collecting evidences and their submission before the court, guaranteed right to defense, determination of clear criteria for admissibility of evidences, adversary proceedings and judicial control at pre-trial stage.

The new Code clearly regulates procedure of obtaining evidences by the parties in proceedings. In particular, the defense and the victim have the right to obtain material evidence, copies of the documents, information, expert reports, certificate of audits, inspection results. They also have the right to initiate the investigative actions and undercover investigative actions etc.

The new Code doesn't provide an opportunity to remit the case for additional investigation, which could be considered as court's prejudice, since judge, considering a person guilty, gives another chance for investigation and even indicates what actions should be taken to prove person's guilt.

The new point for the criminal justice of Ukraine is an introduction of the institution of investigating judge empowered to conduct a judicial control under pre-trial investigation.

Also, the criminal proceedings shall be substantially shortened due to the absence of the additional investigation institution, establishing admissible terms of pre-trial investigation, existence of an alternative investigating judge as well as strictly limited list of situations when the case may be remitted for the fresh consideration.

The new Code stipulates admissibility of evidences. Thus, evidences shall be considered inadmissible if they were obtained:

- as the result of actions which requiring court's approval but were obtained without such approval;
- as the result of torture, cruel, inhuman or degrading treatment or threats of such treatment;
- with violation of the person's right to defense;
- with violation of the right not to incriminate himself;
- with violation of the right to cross-examination;
- from witness who further recognized as suspected or defendant within this criminal proceedings.

These provisions are extremely important since in most cases the law-enforcement authorities violated human rights in order to obtain evidence that, subsequently were used during proceedings.

In particular, the European Court of Human Rights in its judgments reiterated that in most cases individuals are subjected to ill-treatment in order to obtain self-incriminating testimonies that further are used to prove their guilt.

Thus under the new Code the court's conclusions shall be reasoned exclusively by the testimonies obtained during the court's examination that shall eliminate grounds for ill-treatment against a suspected.

#### **As to investigation of complaints about ill-treatment**

The new Code shall resolve a problem of ineffective investigation under the complaints on ill-treatment and deprivation of life.

Thus, in the pilot judgment in case of "*Kaverzin against Ukraine*" the European Court stated that the main reason of ineffective investigation under the complaints on ill-treatment was conflict of

interests. As far as Prosecutor's Office was at the same time investigative, controlling and prosecuting body.

At the same time, under the new Code Prosecutor's Office can be investigative body only in cases concerning judges, high-ranking officials and law-enforcement officers. Besides, the Code envisages establishment of the separate body empowered to conduct investigation in above mentioned cases.

The new Code doesn't prescribe stage of delivering decision on institution or refusal to institute criminal proceedings, which used to cause unreasoned delays and resulted ineffectiveness of investigation. According to new procedure law-enforcement bodies obliged to register case and to start investigation from the moment of receiving a complaint.

We consider that these provisions shall eliminate a conflict of interests and increase effectiveness of investigation under the complaints on ill-treatment and deprivation of life.

Another pillar of protection of human rights is a **credible justice system**. Awareness of the need to increase public confidence to the judicial branch of power became a powerful catalyst for judicial reform, which was launched by adoption of the Law "On the Judicial System and Status of Judges". During 2011-2012 it was adopted a set of laws aimed on improving judicial system and administration of justice.

Presently in Ukraine functions a clear vertical structure of general jurisdiction courts headed by the High Specialized Courts and Supreme Court which ensure uniform application of laws and judicial practice.

The selection of judges is now performed based on the principles of competition and transparency. The procedure for initial appointment inter alia includes undergoing of special training by the candidates; passing qualification exam (through anonymous testing).

As a result of the judiciary reform the High Council of Justice shall be composed of 11 judges from 18 members. That is one of the guarantees of the judicial independence as far as the High Council of Justice is the body empowered to impose disciplinary sanction and to dismiss judges for the branch of oath.

The prosecutors who are the members of the Council cannot initiate such proceeding against a judge on the cases where the prosecutor's office was a party to.

An important element of the right to effective **legal aid** became the Law of 2011 on legal aid, which defined the content of the right to legal aid, the grounds and procedures for granting legal aid, the state guarantees there to.

Legal aid management model is based on the network of territorial branches of the Coordination Centre for Legal Aid - centres for providing free secondary legal aid. Until the end of 2012 there shall function 27 centres to provide free secondary legal aid in the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol, and two pilot centres in the cities.

In 2013 the Government plans to set up in addition 43 centres, and in 2014 - 24 centres in the cities of national and regional importance.

The advocates chosen through the open tenders shall provide the free legal aid in the mentioned centres.

It is also worth to mention an important international obligation that for years was not duly implemented, namely it is an issue of establishment of the National Preventive Mechanism under the OPCAT. This year a significant progress was made in the sphere. Thus by the Law amending the Law on the Parliamentary Human Rights Commissioner the legal basis for national preventive mechanism following the "Ombudsman Plus" model is laid down. Furthermore in the structure of the Ombudsman's Office the relevant department was established and the representative of the Ombudsman on this issues was designated.

On 2012 Ombudsman's representatives conducted visits to 106 custodial settings located in Crimea, Dnipropetrovsk, Kyiv, Lviv, Odesa, Ternopil, Kharkiv, Khmelnytsky and Chernihiv regions. Visited custodial settings were under the jurisdiction of the Ministry of Interior (49 institutions), State Penitentiary (19 institutions) and Border Services (3 institutions), the Ministry of Health (12 institutions) and the Ministry of Social Policy (23 institutions)

After the each visit, a report together with recommendations on elimination of the identified human rights violations is directed to the appropriate department or agency.

On 3 of October, 2012 was developed the Action Plan aimed at effective implementation of the national preventive mechanism which include the following activities:

- Selection and training of public monitors;
- Conducting trainings on NPM issues to the heads of custodial settings;
- Conducting visits to not less than 200 custodial settings. At this stage Regional Ombudsman offices which are supposed to be established next year will be also actively involved.

All the abovementioned reforms, actively implemented in Ukraine in recent years, have a common goal to promote the principle of the rule of law, ensuring that acts violating the human rights will not be unpunished.