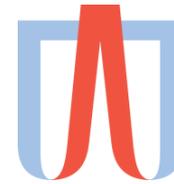




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Уповноважений
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з прав людини



**UKRAINIAN
HELSINKI
HUMAN RIGHTS
UNION**



**Executive Summary of the Thematic Report
“HUMAN RIGHTS AS AN ICEBERG IN THE OCEAN OF REFORMS”
following the monitoring of the National Human Rights Strategy
implementation in the period January 2016 – June 2017¹**



¹ The Thematic Report is the result of the joint work of the Public Platform for Monitoring the Implementation of the National Human Rights Strategy, which unites efforts of participants under the Memorandum of Cooperation between civil society representatives and the Ukrainian Parliament Commissioner for Human Rights. *More details are available at <http://hro.org.ua/index.php?r=2.2>.*

Introduction and description of the current situation

The National Human Rights Strategy has been in effect for two years already. The framework paper, which has not only encompassed the most pressing demands of society in this field, but has also become a kind of a touchstone for measuring the effectiveness of reforms.

This period was characterized by the diminishment of euphoria over the adoption of the National Strategy and the Action Plan for implementation thereof and the absorption into the routine activity to develop undoubtedly relevant, but sometimes very ambitious prospects. Unfortunately, in this way, human rights institutions and civil society were offered to “toughen up” to overcome parallel challenges. The society witnessed the prevalence of tactical security priorities over the values of human rights. The civil society anxiously kept watch over rising threats to independence of human rights institutions, media outlets and non-governmental organizations. Despite such experiments, human rights community still remains optimistic about the joint work of the State and society to overcome challenges our country is facing with and to make progress in enforcing human rights standards nationally.

Making monitoring of the National Strategy a priority of the Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations is remarkable in this regard. There is a hope that such positive example will be extended over the whole Parliament.

At the same time, the Public Platform for the National Strategy monitoring decided to change approach towards preparation of alternative reports on the status of the National Strategy implementation. In addition to a statistical analysis of the Action Plan’s implementation, the reports will be focused on particular thematic directions within the National Strategy. However, the selection of such themes in no case reduces the importance of other, no less relevant ones.

Therefore, the publication in Ukrainian provides the detailed analysis of the following themes that can be roughly grouped together in such categories as “effective investigation”, “compensation and protection mechanisms”²: introduction of the institute of constitutional complaint, provision of high-quality and accessible free legal aid, ratification of the European Convention on the Compensation of Victims of Violent Crimes, ensuring effective investigation into crimes related to torture and crimes committed in the anti-terrorist operation area.

Conclusions

The Action Plan’s execution slowly brings us closer to implementation of the strategic direction envisaged by the National Strategy. However, a dangerous tendency of encroachment on independence of the human rights protection system is a threat to the democratic principles. Therefore, the civil society monitoring of the National Strategy and the Action Plan’s implementation precisely aims at preventing the reversal of achievements related to human rights protection.

Progress in the Action Plan’s enforcement

- ***Procedure for filing a constitutional complaint by individuals and legal entities is defined by the Law of Ukraine “On the Constitutional Court of Ukraine.”***³

The introduction of the institute of constitutional complaint is a significant step to ensure the rights and freedoms of every person. Since now a person, who believes that the law of Ukraine (or its separate provisions) referred in the final judicial decision in his/her case is in conflict with the Constitution of Ukraine, may appeal it to the Constitutional Court of Ukraine.

² The report is based on the materials of the Ukrainian Parliament Commissioner for Human Rights, the Association of Ukrainian Human Rights Monitors on Law Enforcement, the EU Advisory Mission, the Ukrainian Helsinki Human Rights Union.

³ Law of Ukraine no.2136-VIII “On the Constitutional Court of Ukraine” dated July 13, 2017 – <http://zakon3.rada.gov.ua/laws/show/2136-19>

- **Rapid development of the free legal aid system and formation of new quality standards for free secondary legal aid in civil and administrative cases.**

The said is being important given that before there were only quality standards for free legal aid and the mechanism for proper monitoring to ensure the protection in criminal proceedings.

- **Adoption of the Law of Ukraine “On the State Bureau of Investigation”⁴ to establish the legal basis for the agency to investigate into law enforcement officers’ misconduct.**

According to the European standards for an effective investigation into ill-treatment, this is the State Bureau of Investigation that has to act as an independent body for investigating complaints about deprivation of life or torture, cruel, inhuman or degrading treatment or punishment on the part of a representative of any state agency.

- **Drafting the Disciplinary Statute for the National Police of Ukraine⁵.**

Being a normative improvement of the procedure for disciplinary investigations upon citizens’ complaints, it guarantees the utmost protection of the victim’s right to a fair and effective consideration with due regard, in particular, to the applicant’s full participation in conducting a disciplinary investigation upon his/her request; the possibility for applicant to involve independent experts in such an investigation and suspend law enforcement officers from work for the period of the investigation; taking measures to protect an applicant and other parties from the pressure exerted by law enforcement officers.

- **Working out draft law “On Compensation to Victims of Violent Intentional Crimes.”**

This law seeks to strengthen the protection of rights and provide state support to victims of violent intentional crimes. The State must introduce compensation systems for victims in the territory where these crimes are committed, especially in cases when perpetrators are not known or have no funds.

- **Establishing the Interdepartmental Commission on Application and Implementation of International Humanitarian Law (IHL) in Ukraine⁶.**

The Interdepartmental Commission coordinates the actions of state authorities aimed at the application and implementation of IHL rules, collection and monitoring of information on compliance with the IHL rules in Ukraine and cases of their violation, as well as contributes to the development of a mechanism for the proper recording of such violations, proposes actions to be taken to address them, analyses the effectiveness of the ways to redress the revealed violations.

Recommendations

1. To the Ministry of Justice of Ukraine:

- to conduct an outreach campaign on the subject, procedure for submission and consideration of constitutional complaints;
- to consider necessity of strengthening the institutional capacity and independence of the free legal aid system when conducting competition for the position of Director of the Coordination Center for Legal Aid Provision and creating a new concept of the free legal aid system development;
- to intensify work on preparation of an implementation package for ratification of the European Convention on the Compensation of Victims of Violent Crimes;

⁴ Law of Ukraine no. 794-VIII “On the State Bureau of Investigation” dated November 12, 2015 – <http://zakon3.rada.gov.ua/laws/show/794-19>

⁵ Draft Law no. 4670 «On the Disciplinary Statute of the National Police of Ukraine” dated May 16, 2016 – http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59106

⁶ The Cabinet of Ministers’ Resolution no. 329 “On establishment of an Interdepartmental Commission on Application and Implementation of International Humanitarian Law in Ukraine” dated April 26, 2017 - <http://zakon2.rada.gov.ua/laws/show/329-2017-rr>

- to legally regulate the independence of investigation into the facts of misconduct within the penitentiary system in accordance with the European standards.

2. To the Cabinet of Ministers of Ukraine

- to take measures for accelerating establishment of the State Bureau of Investigation within the deadlines set by the Criminal Procedure Code of Ukraine (no later than November 2017), prioritizing the investigation into incidents of torture among its activities;
- to determine at the state level positions on the legal definition of an international armed conflict, the status of its participants and protected persons.

3. To the Ministry of Internal Affairs of Ukraine

- to ensure the complainant's direct participation and the involvement of lawyers or other legal professionals, human rights defenders, independent experts during the disciplinary investigation into all manifestations of misconduct;
- to provide adequate guarantees for protecting the right to life as well as legal remedies and mechanisms for effective investigation into violations of the right to life in the conflict-affected territories.

4. To the Ministry of Temporarily Occupied Territories and Internally Displaced Persons of Ukraine

- to launch the Interdepartmental Commission on Application and Implementation of International Humanitarian Law in Ukraine.

The authors hope that the attraction of public attention to these issues and a further broad discussion thereof will accelerate adoption of the necessary laws and regulations, and the appropriate measures will be taken by the Government in order to improve the situation in the identified areas.

The work of the Ukrainian Helsinki Human Rights Union on monitoring implementation of the National Human Rights Strategy is supported by the U.S. Agency for International Development (USAID) in frames of Human Rights in Action Project being implemented by UHHRU.

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**Detailed information on the topic
“INVESTIGATION INTO THE CRIMES COMMITTED
IN THE ANTI-TERRORIST OPERATION ZONE”**

(an extract from the Thematic Report “Human Rights as an Iceberg in the Ocean of Reforms” following the monitoring of the National Human Rights Strategy implementation in the period January 2016 – June 2017)

The armed conflict in the East of Ukraine, which has been lasting for three years already, is accompanied by a large number of different kinds of crimes. For instance, in February 2017, the press service of Ukraine’s Ministry of Foreign Affairs reported more than 9.8 thousand people killed, about 23 thousand people wounded and almost 1.8 million internally displaced people since the beginning of Russian aggression⁷. In this regard, the issue of ensuring the right to life has become extremely urgent.

The National Strategy has also defined the provision of adequate guarantees for protecting the right to life, legal remedies and mechanisms for effective investigation into violations of the right to life as the first strategic objective. The Action Plan provides for 21 tasks aimed at achieving these results. It was expected that they would have been achieved in the first quarter of 2017.

However, the UHHRU experts’ study on the state of the investigation into the killings and disappearances in the ATO zone uncovered the following systemic problems:

- non-regulated jurisdiction between pre-trial investigative bodies;
- ineffectiveness of the mechanism for the pre-trial investigation into death/killing and disappearance of persons in the ATO zone;
- lack of contact between victims and investigators (in fact, victims have no up-to-date information on the conduct of pre-trial investigation, victims are not informed about taken investigative actions);
- in some cases, the results of the molecular genetic tests are incorrect;
- investigators close criminal proceedings because of the person’s death in case of the coincidence of DNA-profiles in connection with the lack of criminal evidence. In the course of criminal proceedings, no activities are carried out to find circumstances of the person’s death⁸. That is, investigators, after examining the materials of criminal proceedings in respect of a person’s disappearance constituting a criminal offense under Part 1, Art. 115 of the Criminal Code of Ukraine (intentional murder), and having identified a person based on a DNA profile, make a decision to close a criminal proceeding in connection with the lack of criminal evidence.

Moreover, **due to the absence of legal qualification of an international armed conflict and the status of its participants at the national level, investigative bodies give different legal characterizations for the same socially dangerous acts** – i.e. crimes against the fundamentals of national security, crimes against the life and health of a person, or crimes of a terrorist nature.

⁷ About ten thousand Ukrainian citizens died as a result of the Russian aggression in Ukraine – Ministry of Foreign Affairs <https://dt.ua/UKRAINE/vid-rosiyskoyi-agresiyi-v-ukrayini-zaginuli-mayzhe-10-tis-gromadyan-ukrayini-mzs-234002.html>

⁸ Total impunity in the ATO zone: investigation of killings and disappearances – <https://helsinki.org.ua/files/docs/1450250376.pdf>

Let us also draw attention to the fact that reliable statistics on the total number of crimes is an important basis to develop effective measures for combatting crimes committed in result of the armed conflict. However, such information is not displayed separately in the statistical records – there is only data on the total number of socially dangerous acts committed in the GOU-controlled territory of Donetsk and Luhansk oblasts.

The activities of the Interdepartmental Commission on Application and Implementation of International Humanitarian Law in Ukraine, which was established in accordance with the Cabinet of Ministers' Resolution no. 329, have not yet been launched. The Commission is an advisory body within the Cabinet of Ministers to promote the fulfillment of international legal obligations of Ukraine in the field of international law. The tasks of the Commission include, in particular, drafting proposals to apply and implement the rules of international humanitarian law in Ukraine, facilitating coordination of the executive authorities in the application and implementation of the IHL rules, collecting and monitoring information on compliance with the IHL rules in Ukraine and cases of their violations, as well as assisting in development of a mechanism for the proper recording of such violations, preparing proposals for actions to address the revealed violations, and conducting analysis on effectiveness of the measures taken.

The Commission is chaired by the Minister of Temporarily Occupied Territories and IDPs. However, so far there is no information on the approval of the Commission's members and the commencement of its work.

Recommendations:

To the Cabinet of Ministers of Ukraine

- to determine at the state level positions on the legal definition of an international armed conflict, the status of its participants and protected persons.

To the Ministry of Temporarily Occupied Territories and Internally Displaced Persons of Ukraine

- to launch the Interdepartmental Commission on Application and Implementation of International Humanitarian Law in Ukraine.

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