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**Written submission of the Ukrainian Helsinki Human Rights Union[1]
for the OSCE Supplementary Human Dimension Meeting
on Protection and Promotion of Human Rights: Responsibilities and Effective Remedies**

Session I: the role of national courts in promoting and protecting human rights

The right to a fair trial is guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is not, however, explicitly secured either in the Ukrainian Constitution or in legislation, with only individual aspects protected by law.

According to sociological surveys, an absolute majority of the public believe that the most important issue in the country is to ensure justice and independent court proceedings. Those who had approached the courts deemed the following to be the court's main problems: excessively long court proceedings (10.4%); lack of responsibility of judges (9.7%); insufficient level of information to individuals (9.5%), expensive lawyers' fees (9.3%). Those who had not had dealings with the courts also believed the main problems to be excessively long court proceedings (16.1%); overly high official expenses (12.9%); the need to pay bribes (12.8%); unfair court rulings (12%); inefficient enforcement of court rulings (11.5%). Thus, inefficiency of the courts' work is deemed an even greater problem than their level of corruption.[2]

Given the long-overdue need for reform of the justice system and the public demand for such from the authorities, in December 2005 the National Commission for the Strengthening of Democracy and the Rule of Law which is a permanent advisory-consultative body under the auspices of the President began drawing up a Strategy Plan for Judicial Reform. On 10 May 2006 the President approved a Strategy Plan for improving the justice system to ensure fair trial in Ukraine in accordance with European standards[3], prepared by the National Commission.

Fair court proceedings and adequate protection of human rights and fundamental freedoms are possible only where there is impeccable procedural legislation. However, legal regulation of criminal proceedings has not been reformed since Soviet times. The Criminal Procedure Code of Ukraine from 1960, despite some updating, does not meet European standards with regard to human rights protection. The economic courts examine disputes applying rules which are not in line with contemporary trends in civil legal proceedings. Despite the adoption of the Code of Administrative Justice of Ukraine, a law has yet to be passed on administrative procedure which would define the standard relations between an

[1] Prepared by UHHRU with the financial support of the Open Society Institute (OSI-Budapest). Find more information on: http://helsinki.org.ua/en/.
[2] Analytical report on the results of a study "Corruption and the provision of services in the Ukrainian judiciary". Kyiv International Institute of Sociology, 2006 – p. 4
[3] Presidential Decree from 10 May 2006 №361/2006.

individual and the authorities (public officials) adherence to which should be verified by the administrative courts.[4] Cases involving administrative offences are generally examined with infringements of a number of standards of the right to a fair trial, numerous restrictions on the right to defence and the lack of possibility of appealing a ruling in the appellate courts, etc.

An extremely positive move taken by the authorities in 2006 was the implementation of an open register of court rulings. The law adopted "On access to court rulings"[5] was drawn up by the Centre for Political and Legal Reform and tabled by National Deputy V. Onopenko.[6]

One of the key issues for fair court proceedings is the guarantee of judges' independence. This involves, on the one hand, the general guaranties of judicial independence and on the other guarantees with regard to each individual judge. The main criterion for impartiality is financial and administrative independence. The selection procedure for judges is not transparent which can encourage abuse and dependence of judges on public officials involved in the procedure.

There is no clear legally established system for determining judges' remuneration. An inadequate level of material provisions for judges has made such positions unattractive for highly-qualified lawyers. At the same time, the favourable conditions the posts offer for receiving certain benefits which are questionable from the point of view of their legality, are leading to their becoming attractive to people whose aims have nothing in common with the impartial administering of justice.

The inadequate material and social provisions for judges, especially those of local courts, places the independence of judges in jeopardy. This is exacerbated by a lack of appropriate financing of the courts which forces the latter to seek other options for meeting their requirements with regard to a good level in administering justice.

Judges in administrative posts carry out administrative and economic functions not intended for judges. The chairpersons of courts distribute cases among judges, form panels of judges for review of cases, have influence over judges' career issues and social provisions (holidays, bonuses, etc). In view of this, it would be sensible after the elimination of the State Judicial Administration's dependence on the executive branch of power, to make court personnel subordinate to that body. The chairpersons of courts in turn, due to the need to get additional funds for the court, depend on those who allocate these funds: local and central authorities, as well as commercial enterprises.

It is not uncommon for judges in handing down judgment to experience pressure both from the authorities, and from the interested parties. Flawed procedure for instituting criminal proceedings against judges allows this to be used by the accused party in order to exert influence.

An ineffective system of judge accountability in some cases allows them to avoid professional liability, while in others creates favourable conditions for exerting pressure on those judges who demonstrate independence and integrity in their work.

On the other hand, only two cases are known where parliament gave its consent to arrest judges[7]

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[4] Item 3, Section 1 of the Strategy Plan for improving the justice system to ensure fair trial in Ukraine in accordance with European standards // Adopted by Presidential Decree from 10 May 2006 №361/2006.

[5] Law of Ukraine "On access to court rulings" from 22 December 2005 // Vidomosti Verkhovnoyi Rady Ukrainy, 2006, № 15, p. 128. Available in Ukrainian at: http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3262-15. The Law came into force on 1 June 2006 and from 1 January 2008 all court rulings from all courts should be on the register.

[6] V. Onopenko was elected Chairperson of the Supreme Court in 2007. Prior to that he was the Chair of the Verkhovna Rada Committee on legal policy which was the profile committee for almost all draft laws pertaining to the judiciary.

[7] Precedents for consenting to the arrest and dismissal of judges // Yurydychna gazeta, №9 (93),1 March 2007. Available in Ukrainian at: http://www.yur-gazeta.com/article/934.

- Oleh Pampura, judge of the Arbuzynsk District Court in the Mykolaiv region (Verkhovna Rada Resolution from 22.02.2007);

- Zinovy Koval, judge of the Dolynsk District Court in the Ivano-Frankivsk regions (VR Resolution from 13.07.2000).

During the year the President only dismissed three judges in connection with criminal charges.

Administrative pressure is much more often brought to bear on judges via disciplinary proceedings, as well as proceedings over violating their judge's oath. The latter generally provides wide scope for manipulating the wide-ranging content and inexact text of the oath.

From 2003-2005 qualifying commissions of general court judges completed disciplinary proceedings and imposed disciplinary penalties against 250 judges (including 187 reprimands, 22 reductions in their qualification class and 41 recommendations to the High Council of Justice to dismiss the judges. The economic courts' qualifying commission received over 1 thousand appeals on the basis of which 45 disciplinary proceedings were launched and 4 judges received reprimands. The High Qualifying Commission launched 25 disciplinary proceedings against judges of appellate courts.[8]

American Bar Association analysts believe that one of the most serious problems for the judicial system comes from external influences on the judgments handed down by judges. This can take many forms. "The perception of judicial corruption is widespread, and while judges are reluctant to discuss bribery or improper influence from court chairmen and upper-level courts, they are rather straightforward about the interference coming from other branches of government, as well as from prosecutors, advocates, and the media".[9]

Various forms of influence are applied, ranging from letters, telephone calls and personal visits to the judges and chairpersons of the courts, to open criticism of the court rulings in specific cases if they have a different view as to a just outcome. Such non-procedural relations between different parties and the judge are not prohibited by law and are a common occurrence.

It is established practice that the State Budget designates funding for the judiciary which is considerably less than what is needed to provide for the real needs of the courts, especially those needs directly related to the administering of justice. Despite the fact that the role and functions of the courts, and their workload, have radically increased, the methods for determining annual expenditure on them have not changed in any significant way over the last many years.

It should, however, be noted that according to figures from the State Judicial Administration of Ukraine (SJAU) [10] the level of spending on the direct administration of justice in the 2006 Budget came to 59.7% of actual needs which influenced the organization of the court's work accordingly.

Considerable problems are presented by the incomplete funding of the courts. Even the small amounts allowed for by the Budget do not actually reach the courts. Under-funding of court bodies on 1 January 2007 constituted 87.4 million UAH. The programme for judges' accommodation, for example, failed to receive more than 30% of the planned amount.

On the other hand, a considerable part of funding for the judiciary is not used as intended or with other infringements of legislation. Audits carried out in from 2004-2006 found financial irregularities amounting to 13766.0 thousand UAH including 1432.1 thousand UAH on unlawful expenditure; 954.4 thousand UAH on non-Budget loan indebtedness; 6.8 thousand UAH on untargeted expenses, with other infringements of financial discipline to the sum of 11,372.7 thousand UAH.[11] We are unaware of any criminal proceedings over these violations.

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[8] Judicial Reform Index in Ukraine (Volume II). December 2005, American Bar Association, p. 61.
[9] Ibid, p. 45.
[10] Results of the SJAU's work in 2006: http://gca.court.gov.ua/court/info/getfile.php?id=14389.
[11] Ibid.

The overwhelming majority of courts are in cramped and unsuitable premises. There are not enough courtrooms, consulting chambers, rooms for remand prisoners brought to the court or defendants, for court managers, for prosecutors and lawyers, witnesses, etc. This means that the premises stipulated by procedural legislation and which are needed in order to properly examine cases are not available. In a lot of cases, judicial examination is postponed, leading to proceedings being dragged out and violation of people's rights and legitimate interests. The court, designed to administer justice, in fact is forced to break the law.

There have been a good few cases where courts newly-created in connection with judicial and legal reforms have simply not been provided with premises which has halted any further measures linked with the reform process.

Session II: the role of human rights defenders in addressing human rights violations

Current legislation on associations, passed in the main at the beginning of the 1990s, has long failed to meet modern conditions and the needs of a civil society. The main problems remain as follows:

- Legislation does not allow for the possibility of registering certain types of organizations. This applies, for example, to socially beneficial organizations which are not essentially charitable, and whose work is not confined to only defending their own rights and interests, this preventing them from being classified as civic organizations;
- Obstacles when registering associations as well as with receiving non-profit-making status and the related tax concessions;
- Restrictions on types of associations' activities with regard to where they can be carried out (for example, a ban on activities in another city or region where the organization is not registered);
- Restrictions on kinds of activities (for example. limitations on publishing activities, access to information, defending other people's rights, etc);
- Lack of incentives in legislation and administrative practice for strengthening and developing associations and improving their cooperation with the authorities. While this issue does not directly concern the right to freedom of association, it is one of the important factors in evaluating the level of development of democracy in the country.[12]

Numerous provisions in Ukrainian legislation, including the above-mentioned, fail to comply with Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 22 of the International Covenant on Civil and Political Rights and other international agreements to which Ukrainian is a signatory.

It is especially problematic that human rights NGOs are not given access to places of detention in order to carry out monitoring of the conditions in which detainees are held and the treatment they receive while being cut from the outside world.

Session III: the role of independent national human rights institutions in promoting and protecting human rights

The Human Rights Ombudsperson Nina Karpachova is politically engaged and falsifies checks into citizens' complaints. These are some of the conclusions reached by the

[12] For a more detailed discussion of these issues, see the Reports "Human Rights in Ukraine – 2004" and "Human Rights in Ukraine – 2005", which can be found at the UHHRU website www.helsinki.org.ua. Since the situation has not changed markedly, the conclusions in those reports entirely reflect the present situation.

civic human rights organizations who have been monitoring her activities since she was re-appointed 100 days ago in February 2007.[13]

It is now 5 months since Nina Karpachova began her third term in office. Her second was terminated prematurely by the Verkhovna Rada some seven months (rather than the ten days stipulated by legislation) after she was elected National Deputy (MP) from the Party of the Regions. She was then voted back in by her parliamentary colleagues despite a massive campaign by civic organizations throughout Ukraine, and quite unequivocal statements from officials in the Council of Europe and international human rights organizations regarding the inappropriateness of political engagement and clear conflict of interests in Karpachova's standing again.

During the first 100 days of her new tenure, Nina Karpachova launched only three investigations. And this is despite a Secretariat behind her boasting 120 people. The funding is allocated from the Budget. Human rights groups believe it to be 20 million UAH per year.

Yevhen Zakharov, former candidate for the post of Ombudsperson and chair of the board of the UHHRU, accuses Nina Karpachova of defending the interests of a certain political force, and not the rights of people who have been hurt by the State. In the 2006 elections Ms Karpachova was second on the candidate list for the Party of the Regions.

Other criticism involves her failure to respond swiftly to human rights abuses and her lack of openness. According to Yevhen Zakharov, the Ombudsperson's Secretariat has mastered the skills of ping-pong with complaints getting sent to the institutions which are being complained about.

Kateryna Levchenko, member of the Verkhovna Rada Committee on legislative backup for law enforcement work told those present that during her first 100 days in office, Nina Karpachova had several times infringed the principle of impartiality giving grounds for believing that her actions were politically motivated.

On 3 April 2007, for example, she addressed the dissolved Verkhovna Rada claiming that the President did not have the right to issue a Decree dissolving parliament.

Acting more like a political figure than a civil servant, on 11 April during an extended session of the Public Constitutional Assembly (attended by such formerly active politicians as Leonid Kravchuk, Volodymyr Lytvyn, Inna Bohoslovska and others) she presented proposals for resolving the political crisis which in no way differed from those of the coalition – a zero option (going back to before the first Decree dissolving parliament) or simultaneous parliamentary and presidential elections.

While the Ombudsperson's jurisdiction is limited to being intermediary in conflict situations between individuals and the State authorities, bodies of local self-government and their officials, Nina Karpachova on the pretext of worrying about public order, has interfered in conflict between branches of power. She has effectively taken on the rule of the Constitutional Court in giving her opinion as to the constitutionality or otherwise of the President's actions.

From the Ombudsperson's site, one can learn only that over the last 100 days Nina Karpachova has launched three investigations, has got three Ukrainian nationals released and is monitoring the situation with a Ukrainian woman serving a prison sentence in Thailand. She is also following a case where a mother was driven to suicide and is taking part in a court suit on the elections of the Mukachevo Mayor.

There is no other information about Ms Karpachova's activities on her official website.

It is vital that the necessary lack of political engagement of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine be reinstated. Only trust and respect for the Human Rights Ombudsperson from the public can make her / his work effective.

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[13] More information: http://helsinki.org.ua/en/index.php?id=1179489915, http://khpg.org/en/index.php?id=1177634301, http://helsinki.org.ua/en/index.php?id=1167390541, http://helsinki.org.ua/en/index.php?id=1159957244, http://www.khpg.org/en/index.php?id=1180993891.