

Ukrainian Parliament Commissioner for Human Rights Human Rights  
Defender of the Republic of Poland Defender of Rights of the French  
Republic European Commission



# Report

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**Tuesday, September 3, 2013**

## **Basic political rights**

### **Opening Ceremony**

The first day of the seminar on the cooperation between ombudsmen of the Eastern Partnership countries began with the official opening ceremony featuring welcoming speeches by Valeriya Lutkovska, the Ombudsman of Ukraine; Dr Ryszard Czerniawski, Deputy Ombudsman of the Republic of Poland; Stéphanie Carrère, a representative of the Secretariat of the Ombudsman of the French Republic; Andrii Olefirov, Ukraine's Deputy Minister of Foreign Affairs; Valery Patskan, Head of the Parliamentary Committee on Human Rights, National Minorities and Inter-Ethnic Relation; Nataliya Agafonova, a representative of the Parliamentary Committee on Legal Policy.

Valeriya Lutkovska welcomed the participants and gave the floor to dr Ryszard Czerniawski.

Dr Ryszard Czerniawski noted that this year Poland celebrates 25 years since the institution of Ombudsman was created. He stressed that in Poland and Ukraine face many common problems in the area of human rights protection. Among them, dr Czerniawski identified the most troubling ones as the rights of people with disabilities and the separation of the state interests and the rights of citizens. He believes that the office of the ombudsman restricts the activities of the state on the one hand and enables citizens to report a violation of their rights anytime and get help without any charges. In Poland, the Ombudsman receives about 60,000 complaints annually, ranging from pleas for legal advice to complex cases that reach the Supreme Court. Dr Czerniawski also recalled how, thanks to the expertise of Prof Irena Lipowicz, Poland chose not to ratify the ACTA treaty which would limit the rights of citizens and their freedoms online. The speaker thanked the hosts and encouraged the participants to exchange their experiences.

Ukraine's Parliamentary Commissioner for Human Rights Valeriya Lutkovska gave her thanks to the organisers for their decision to hold the conference in Kyiv. She outlined the main themes of the event: the political rights of citizens and the role of the Ombudsman in resolving them; the problems faced by people with disabilities; the limits of security services' activities in relation to human rights. She expressed the hope that the conference would be useful for the participants and gave the floor to Stéphanie Carrère, a representative of the Secretariat of the Ombudsman of the French Republic.

Stéphanie Carrère appreciated the hosts' warm welcome and conveyed the greetings of the Human Rights Defender of the French Republic Dominique Baudis. She recalled that the cooperation dates back to 2009, and many interesting workshops have been carried out since then. Ms Carrère expressed the hope that this work would continue in the future, possibly in a broader format, for the inspiration of other ombudsmen in Europe.

Deputy Foreign Minister of Ukraine Andrii Olefirov welcomed the participants on behalf of the Ministry of Foreign Affairs and thanked the French and Polish colleagues for agreeing to hold this event in Kyiv. He underlined that optimal conditions have developed for the signing of the Association Agreement between Ukraine and the EU during the Eastern Partnership Summit in November this year. This is an important step towards the formation of Ukraine as a modern European state and towards introducing basic democratic principles to all areas of life. The Ombudsman in Ukraine plays an important role here. Chairman of the Parliamentary Committee on Human Rights Valery Patskan stressed that the Ukrainian Ombudsman's

office is a professional team but unfortunately it does not enjoy the right of legislative initiative. Therefore, the necessary regulations are prepared jointly with the respective parliamentary committee. In this cooperation, extremely important amendments have already been made to the Law on Ombudsman and a bill on peaceful assemblies has been drafted.

The representative of the Parliamentary Committee on legal policy Nataliya Agafonova expressed her gratitude for the invitation. She remarked that real mechanisms of human rights protection should be put to work in Ukraine. The workshop, in her opinion, will help to identify covert problems and elaborate some legal basis for their resolution.

### **Keynote speech**

Karolina Miksa, a representative of the Human Rights Defender of the Republic of Poland, devoted her speech to the freedom of assembly. She invoked the international treaties and conventions that protect this fundamental political right and told about the recent amendments to the Polish Law on peaceful assembly. They concern the priorities during simultaneous gatherings and the personal responsibility of the organisers for the harm caused by their participants. According to the Ombudsman of the Republic of Poland, these rules can lead to abuses by the state. They contradict the Polish legislation, international treaties, decisions of the Constitutional Court of Poland and the European Court of Human Rights. Ombudsman filed an application to the Constitutional Court to determine the conformity of given regulation with Constitution. At the moment, this issue is under consideration in the Court.

Ms Miksa cited two examples that present Ombudsman actions concerning freedom of assembly in the past. The Mayor of Poznan banned an equality parade in the city because he feared aggression from the opponents of the LGBT community. Having considered the matter, the Supreme Administration Court ruled that the authorities must protect participants of assembly not at the expense of their rights. The European Court of Human Rights stressed that fears of the opponents' aggression cannot serve as a reason to ban the gathering.

In the second case, the LGBT activists did march through the streets of Warsaw in spite of the ban imposed by the mayor who referred to the fact that the organisers allegedly failed to provide a roadmap of their march. The European Court of Human Rights ruled in this respect that state must allow peaceful demonstrations. The Constitutional Court of Poland examined the complaint filed by the Ombudsman and also reviewed the decision of the Warsaw mayor and held that the prior notice of the assembly accords with the Constitution but such requirements should not be used to ban assemblies.

### **Basic political rights in Azerbaijan**

In his speech, Absalladin Aliyev, the Deputy Head of the Department on Torture Prevention of the Secretariat of the Ombudsman of the Azerbaijan Republic, dwelt on the basic political rights in the country, namely the freedom of speech, the right to information, the right to petition the government, freedoms of assembly and association, the right to vote, the right to participate in politics and public administration. According to him, the Ombudsman monitors closely the protection and promotion of these rights which are part of Azerbaijan's legislation. The Rights Defender participates in the law amendment, monitoring of a

number of governmental programmes, comes up with initiatives, and contributes opinions and recommendations.

In particular, the Ombudsman has suggested a number of programmes to ensure the freedom of speech, the protection of journalists and development of the news media. The focus is on improving the regulatory framework, in particular, by adopting the Law on defamation, conceptualising special developmental programmes, conducting trainings and seminars for journalists. In 2011, the Law on Ombudsman was amended and the powers of the Ombudsman to control how the authorities respond to the citizens' information requests. Also, the Ombudsman proposed to strengthen the control over how governments process the citizens' petitions. Speaking of the freedom of assembly, the representative of Azerbaijan said that in his country has special locations designated for rallies and caucuses. The Ombudsman recommends that law enforcement agencies should prevent violence and take only legally doubtless action towards the offenders. To increase the awareness of law enforcement officers, it has been proposed to hold special training sessions. Educational activities are also carried out in the context of the right to vote. The staff of the Ombudsman's office also monitored the vote.

Mykhailo Chaplyga, the Commissioner's Representative and Head of the Communication Policy and Public Relations Department, noted that Ukraine understands the problems voiced by the speakers. For instance, two bills on the freedom of assembly are registered for consideration in the Parliament. Another bill involving the criminalization of defamation has recently been submitted to Verkhovna Rada but it was removed from the agenda after the intervention of the Ombudsman.

### **Basic political rights in Moldova**

Karolina Kazachuk welcomed the participants on behalf of the Centre for Human Rights of the Republic of Moldova and focused on the situation with peaceful assemblies in her country. She noticed that a 2008 law on meetings suggested new classification and introduces new concepts: assembly with a limited number of participants (up to 50 people), a spontaneous assembly (initiated and brought about in a direct response to the events occurring in society), simultaneous assemblies (different groups convene at the same time in the same place). Ms Kazachuk emphasised that the right to peaceful assembly is general but may be restricted by the authorities within the limits prescribed by the Constitution of Moldova and the European Convention on Human Rights as gatherings could take place in public and block public roads.

Ms Kazachuk exemplified this with a situation in Bălți in August 2012. An organization that advocates the unification of Moldova and Romania initiated a rally and while it was taking place the clashes broke out, which gave the government the right to halt the meeting. Having considered these events, the Ombudsman decided that the new law was flawed. Parliamentary Advocates consider it necessary to amend the law with regard to the powers and duties of the organisers and participants of the assembly, as well as the order of the official notification. Ms Kozachuk recalled the conflict over the LGBT march in Chisinau in May 2013. The City Hall demanded a change to the route of the march so as to avoid clashes. Referring to the decision of the European Court of Human Rights in a similar case, the Ombudsman appealed to the authorities for reconsideration of their decision and keeping the safety of the marchers on the specified route. As a result, the march took place in the city centre yet through a different route, as decided by the organisers.

Ms Kazachuk noted that the number of violations during peaceful assemblies has decreased, in part thanks to the dialogue between religious communities, civil society and public authorities.

### **Basic political rights in Armenia**

Ombudsman of the Republic of Armenia Karen Andreyan reckoned that the progress toward liberal democracy in the former Soviet republics is still under question despite the stabilisation of the situation since 1991. Speaking about Armenia, he told about the application of the new Law on freedom of assembly, passed in 2011. According to the Ombudsman, the new law brings a lot of standards in line with international law. This applies to the duty of public authorities to protect the participants of the assembly, the permission for foreigners and stateless persons to organise and participate in rallies, minimised restrictions on the rights of assembly and so on. However, problems arise in practice. For example, last year there have been cases where the police opposed the installation of tents during the rallies, which was not always justified. A few weeks ago, the police used force against 50 protesters who blocked the main street of Yerevan in a protest against illegal construction. On this issue, the Ombudsman is yet to announce his opinion in the near future. Mr Andreyan said that a legal framework has lately improved and is of lesser interest for the discussion of political rights compared to its application in practice.

Speaking of electoral rights, the Ombudsman noted that the recent parliamentary and presidential elections were held in Armenia on the new Electoral Code adopted in 2011. Among the new amendments one can find the settlement of electoral disputes in court and the introduction of quotas for women in the CEC; it also clarified the issue of assistance to the voters, extended the definition of the grounds for the invalidation of elections, changed the principle of the commissions formation from partisan to non-partisan. More importantly, the law was passed openly and after an extensive discussion. Following the elections, the Ombudsman's office issued two reports that assessed the elections more critically than international monitors. According to Mr Andreyan, a lot is still to be done, for example, concerns the electoral rights of prisoners, the voting of Armenian citizens abroad, etc.

The Ombudsman also praised the improvement in the state of freedom of speech in the country. This applies to both Internet and conventional news media.

### **Basic political rights in Georgia**

David Managadze, the senior legal counsel of the Secretariat of the Ombudsman of Georgia, recalled the regulations that protect human rights in Georgia and outlined some of the practical aspects of their use. For example, what has changed in terms of electoral rights is that since 2012 the EU nationals can vote if they were born and lived for the past 5 years in Georgia. The problems associated with the freedom of assembly are alike over the entire post-Soviet space. For example, in May 2013 there were clashes at a demonstration in support of LGBT. As a result, those members of the church who instigated the people to protest against the LGBT rally were sentenced to a fine. Speaking of the freedom to access information, Mr Managadze stressed that the people in Georgia enjoy the opportunity to get information from the authorities both in person and electronically. A new law requires state agencies to post on their websites the information on the number of employees, their salaries, bonuses etc. As a rule, it takes 10 days to receive the answer to the information request. Otherwise, the case can be considered in court, which in most cases requires the government agencies to provide the required information in its entirety.

According to Mr Managadze, there are two major problems in the issue of political rights in Georgia and former Soviet Union countries. The first one is restricted freedom of assembly, when some groups of people cannot openly express their views without fear of arrest and aggression. The second one is restricted freedom of choice and political beliefs, although the last elections in Georgia managed to change

the parliamentary majority as a result of the free will. The representative of Georgia believes that the problem lies not in the legislation itself but in the lack of effective mechanisms for the exercise of the rights of citizens.

### **Basic political rights in Ukraine**

Mykhailo Chaplyga, the Commissioner's Representative and Head of the Communication Policy and Public Relations Department, concentrated on the situation with freedom of expression, freedom of peaceful assembly and to rights to association. Mr Chaplyga noted that the Ombudsman is not explicitly mentioned in the Law on elections and thus unable to take an active part in the electoral process. On the other hand, the Ombudsman shall monitor the exercise of the rights, so the Office of the Commissioner in the last parliamentary elections has worked closely with NGOs. A special representative was appointed to monitor the election process, and a civic committee was set up to monitor the media reports, NGOs, citizens' complaints, verify them and pass the information to the Commissioner so she could react. These elections revealed that the legislation is flawed, and the electoral law ought to be codified soon. A new draft law will be introduced to the Parliament in the nearest future that takes into account the recommendations of the Ombudsman and international organisations. The changes concern the formation of commissions, voting by the address other than the address of registration, etc. Mr Chaplyga noted that the monitoring of the electoral process is a work in progress because the results have not been established in several election constituencies yet.

Speaking of the right of citizens to form associations and NGOs, the Ukrainian representative said that the new law enacted in 2013 conforms to all international norms. Its amendments include the abolition of the territorial status of NGOs, their right to defend not only their members but also other citizens, simplified registration procedure, etc. The Ombudsman's Office continues its work to improve the law. To this end, a working group has been established. The Commissioner is also cooperating closely with the trade unions.

Another resonant theme revolves around the adoption of the Law on peaceful assemblies. The Office of the Ombudsman became a communication platform for discussing it. At this point there are two drafts registered in the Parliament. Mr Chaplyga reassured that in the current parliamentary session one of them would be taken as basis to be finalised through common effort. He also noted the position of local authorities that often take too much liberty in regulating the right to peaceful assembly as one of the problems to be resolved with the adoption of the Law.

### **Discussion**

Ombudsman of the Republic of Azerbaijan Prof Elmira Suleymanova shared the information on her country's achievements in terms of human rights. She mentioned an electronic service system through which one can obtain the information, a document or a certificate within 15 minutes. Other references were to the introduction of the principle of one-stop shop in public administration services for small and medium enterprises; public readings in the regions; monitoring the condition in prisons, mental institutions, orphanages; the on-going dialogue with business.



Mr Chaplyga reminded that Ukraine has a Law on access to public information that provisions electronic communication. He enquired about the experience in providing administrative services like the issue of passports.

Prof Suleymanova remarked that Azerbaijan plans to digitise its administrative services and switch to electronic document flow by 2015. The advantages of this system are obvious: it saves time, eliminates corruption and red tape. However, this system will become effective only when every citizen can use it and understand its convenience.

Mr Managadze described the experience of Georgia in this aspect. Electronic service was introduced 5 to 6 years ago. The system is based on citizen's personal number which allows keeping track of all the data on the person electronically. It facilitates rapid issue of documents and certificates. The system is now implemented at the regional level as well (the so-called Houses of Justice). In the experience of the Georgian side, it is better to introduce it swiftly rather than gradually; careful preparation remains essential though.

Ms Lutkovska wondered whether many Georgians refused identification numbers for religious reasons and how the authorities settle this.

Mr Managadze said that some members of the Orthodox Church in Georgia do oppose the ID- cards. At this stage, the Ministry of Justice declares that citizens have the right to take an alternative no-number ID-card, but technically it is impossible. The number is given upon the receipt of the birth certificate and accompanies a man to the end of his life. It cannot be changed or reused.

Ms Lutkovska stressed that Ukraine is encountering a similar problem. Despite the fact that both the tax legislation and the Law on a single demographic registry suggest an opportunity to refuse numbering for religious reasons, people still turn to the Ombudsman for the protection of their rights.

Mr Managadze noted that only a few representatives of the Orthodox Church dismiss the ID- card. Officially, no one protested against them. Moreover, many in the clergy have their own ID-card numbers, social benefits numbers. But if a religious organisation does not want to receive such services from the state, it should be a general principle for its every member. In fact, there are not more than 2,000 of those who refused the number. He reiterated that the system is designed in such a way that changing anything in it is very difficult. Georgia has no answer as to how to merge the rights of religious groups and the general population.

Chairman of the Belarusian Helsinki Committee Aleh Hulak said that when Belarus switched to a system of individual numbers, the Orthodox Church declared that it was not contrary to the religious doctrine. There are groups that renounced the numbers, but they are extremely marginal. On this occasion, the Constitutional Court ruled that the rejecters shall have passports issued without individual numbers. A question was raised about how to protect personal data.

Ms Kazachuk noted that there is a similar situation in Moldova and reminded that passports have always had numbers. Therefore, it is unclear why the religious community is now beginning to protest against them.

In Georgia, according to Mr Managadze, some groups specifically oppose electronic chips in the ID-card, with which you can get all the information about the person. He reiterated that the official position of the Orthodox Church is that the ID-card is not contrary to religious doctrine. According to Mr Managadze , the

problem is rather a matter of general education of a small number of citizens who are influenced by “radical” religious leaders. The Church cannot teach a secular state what to do. Speaking of personal databases, Mr Managadze recalled that the state is obliged to protect this information to the maximum and to punish anyone who is puts the personal data of citizens to an illegal use.

One of Ukrainian participants proposed the following position: if a person does not want to get the number, it is implied that he or she does not want to deal with the state, to receive from it protection and assistance. It was noted that in Ukraine the issue of personal data protection is not settled yet either. Its importance has increased with the creation of a single demographic registry and single medical registry. Since 1994 Ukraine has had a Law on the protection of information, but in practice you can find personal information about virtually everyone on the internet.

Mr Managadze remarked that Georgia has no electronic medical record format yet. Case-histories can only be accessed by patients or their authorised representatives. To tackle this problem, many levels of data protection are needed as some disorders may cause discrimination, such as when applying for a job. The state should hire professionals who will be able to protect personal data against hacker attacks.

One participant recalled the problem of abuse by malicious officials. From this point of view, the mechanism of personal data protection is that citizens should have the technical and legal ability to know who and when accessed their personal data.

Ms Kazachuk added that apart from abiding the laws citizens must treat each other fairly.

Nataliya Zubar, a representative of the NGO “Maidan monitoring”, stressed that the most important point is precisely the responsibility for the safety of personal data. People need to know whom to contact if their personal information was misused.

Ms Lutkovska noted that Ukraine’s rather democratic Law on the protection of personal data proves an obstacle for a large number of constitutional rights. The situation is almost absurd. For example, it is impossible to obtain a certificate, a diploma, to claim a benefit without the consent to the processing of personal data. The Commissioner said that as of January 1, 2014 the Ombudsman’s office will be responsible for the protection of human rights in the processing of personal data. The intention is to change the priority of a technical protection of personal data to the protection of human rights in this process. But what this system could be like in practice, the Commissioner cannot say as of now.

### **Summary and questions and answers session with representatives of civil society organisations**

Moderator invited the NGO representatives to speak.

Nataliya Zubar, a representative of the NGO “Maidan-monitoring”, spoke about her work in the field of political rights protection. Thus, during the last election campaign, the organisation monitored abidance with the electoral law. The close cooperation with the Ombudsman helped not only detect the violations but also eliminate them. This also concerns the cases of administrative pressure, the use of cameras at polling stations, etc. Talking about freedom of assembly, Zubar said that in many communities the local authorities adopt their own rules governing the conduct of peaceful assembly and essentially limit human rights. Earlier this year, the Supreme Administrative Court committed to clarify the rules, since they are contrary to the Constitution and international treaties. Also, “Maidan-monitoring” has been cooperating in this matter with the local prosecutor’s office. Joint efforts have led to the cancellation of 27 of these rules.

The right to access to the information is not always possible to exercise in spite of a very good law. About 15% of the requests to the authorities remain unanswered. According to Ms Zubar, government officials should be educated over this issue.

Maksym Latsyba from the Ukrainian Centre for Independent Political Research spoke about his organisation's collaboration with the office of the Commissioner in preparation of the draft law on peaceful assemblies. By way of cooperation with the Office of the Ombudsman, the UCIPR prepared a chapter in the annual report of the Commissioner on the exercise of the freedom of assembly. The collaboration continued thereafter. The NGOs got involved into an information campaign to support the adoption of the Law. The Parliament has set up a working group, organised the roundtables with NGOs and diplomatic corps. Now two bills have been registered in Verkhovna Rada. The speaker felt hopeful that in the next six months the law would be adopted. But only common effort can make it the living standard.

Mr Latsyba also noted that the Ombudsman serves as a liaison between the authorities and civil society.

Oleksandra Matviychuk of the Centre for Civil Liberties described the results of a study conducted by her NGO: third sector activists were asked to evaluate the first year of the Commissioner's work. Despite some critical remarks and recommendations, the appraisal was very high and also applied to the communication established between the NGOs and the Ombudsman's office.

Ms Matviychuk also reported on the peaceful assemblies monitoring by Centre for Civil Liberties conducted in 12 cities of Ukraine. Some of the findings include the following: the public monitoring as such constrained offence; there is a lack of dialogue between the rally organisers and the police; both protesters and the police behave intolerantly. At the moment, the Centre is working on several systemic problems in this area. One of them is that peaceful conventions are often hindered by the so-called "athletes", young sporty people without uniform, insignia and other identification marks that bully the activists and the protesters to prevent them from gathering. Another problem is the use of force against journalists. It is also planned to hold a roundtable on the identification of the police at peaceful assemblies.

Ihor Rozkladay of the Institute of Media Law said that his organisation promotes the standards for freedom of expression and information, prepares trainings for journalists, and advises them on legal matters. Mr Rozkladay underlined that there has been lately an increase in conflicts with journalists covering peaceful assemblies. According to him, sometimes the police and the journalists act unduly. For example, many journalists are activists at the same time so the police is having a hard time trying to understand how to relate to this person. After all, there is an article in the Criminal Code which assumes responsibility for obstructing the work of journalists. In an attempt to solve this problem the Institute of Media Law appealed to the Office of the Ombudsman. As a result, it was decided to invite journalists, security services representatives, activists and discuss the problem case-by-case so recommendations could be developed on this basis. Mr Rozkladay also said that the Institute could boast of some projects in the areas of the right of access to information and protection of personal data.

Ms Zubar asked the representative of Poland what are the reasons for bans on peaceful assemblies and asked to describe the resonant cases.

Ms Miksa reiterated the instances she described in her keynote address. Several years ago, two parades in support of the LGBT movement were cancelled. One was so because of the risk of violence against the activists, the other was banned by the mayor. In 2011 again, the Independence Day celebrations were marked by clashes between the demonstrators and the police. In the following year, the police were

carefully prepared for such a development and, despite the large number of rallies on that day, the actions of the police were sane.

Ms Zubar asked about the attitude of Poland to one-man protests.

Ms Miksa emphasised that, in accordance with the law, the authorities should be notified about the gathering if it is attended by at least 15 people. According to the Defender of Rights, if the number of participants is less than 15 and the demonstration is peaceful, the police have no reason to suppress it. But local officials often behave differently, and this practice is difficult to change.

Ms Kazachuk asked whether Polish law restricts the range of symbols that can be used by the convenors.

Ms Miksa said that in Poland there are no restrictions on signs, symbols, objects carried by the participants. But they shall not be outlawed like the swastika or the coat of arms of the USSR. If the symbol is personally offensive for anyone, the police would not interfere but this person can then file a complaint.

Mr Chaplyga noted that the European Convention names moral grounds amid the reasons to suspend a gathering. But the Ukrainian Constitution has no such article. While preparing the Law on peaceful assemblies, it was discussed whether to include this paragraph in reference to the international agreement. According to Mr Chaplyga, in case of the inclusion of such a rule into law, the risk of abuse will be greater than the benefit from the care of public morality because, under the cover of such a regulation one can ban any gathering.

Ms Zubar added that one third of the court decisions that prohibit peaceful assemblies in Ukraine already include the argument that the slogans of the would-be demonstration will offend some people.

Mr Managadze said that the people of Georgia are not limited in the criticism of the authorities. In his opinion, one should fight not with what people think but with why they think so.

The representative of Poland recalled in this context that the government seems to forge all too often that tomorrow it will be their turn to be in the opposition.

Mr Chaplyga returned to the theme of designing the Ukrainian Law on peaceful assemblies. In his opinion, it is unlikely to write a law that would cater for all possible situations. But if one pays attention to how the law is applied in practice, to the actions of law enforcement bodies, to the betterment of the event organisers' legal culture, it will give the opportunity to bring about the full extent of the rights to freedom.

One participant asked what kind of the situation has developed in Poland with the protection of the rights of journalists and whether or not the office of the Ombudsman participates in it.

Ms Miksa reported that the Criminal Code of Poland contains the norm suggesting a fine, public works, and even a year in prison for public insult. According to her, over the past seven years, only one journalist has been sentenced to imprisonment. The Ombudsman of Poland considers that this provision is contrary to freedom of speech as guaranteed by the Constitution. But the Constitutional Court recently refused to hear the appeal on this issue. However, journalists are completely free to express their thoughts in the preparation of articles.

Mr Chaplyga told about the upcoming roundtable discussion about the status of partisan news outlets employees, as in their case it is sometimes impossible to define the line between journalistic work and party activism. For example, the police often do not realise who they were dealing with. This gives the

opportunity for abuse during elections and assemblies. Mr Chaplyga expressed the hope that this roundtable would help develop a mechanism for how all the participants of the process can be respectful to each other.













**Wednesday, September 4, 2013**

**Powers of the security services in the context of the civil rights guaranteed by the Constitution and international legal acts**

The Commissioner for Human Rights in Ukraine Valeriya Lutkovska welcomed the participants and gave the floor to moderator Karolina Szwarc, representative of the Ombudsman's Office of the Republic of Poland.

**Keynote address**

Ms Szwarc devoted her speech to some practical aspects of the Ombudsman's work in monitoring the observance of the rights and freedoms of the citizen by security services. The problem is that a number of Polish laws do not sufficiently detail the activities of the security services, forcing the executive branch to issue explanations and instructions and thus interfere in the jurisdiction of the Parliament. This is a violation of the Constitution, as the restriction of the rights and freedoms of citizens can only be performed by the Parliament and only to the necessary extent.

Ms Szwarc named a few aspects of the intelligence services' work that affect citizens' rights: gaining access to confidential telecommunications databases by security services; the use of technical equipment in operational control; the use of operational control; wrong address confirmation purposes; the obligations of law enforcement personnel towards the detainees; the use of coercive measures. In such cases, the Human Rights Defender had to analyse legal conflicts thoroughly. The Defender addressed the Constitutional Court as well as to the competent authorities with a request to modify the flawed legislation.

**Powers of the security services in the context of the civil rights guaranteed by the Constitution and legislation in Ukraine**

Ukraine's Ombudsman V. Lutkovska spoke about her experience in this context. According to her, at this point in Ukraine the situation is non-standard, as two criminal procedure codes are in force. The new one which came into force in 2012 is used for the recent proceedings. And the old one regulates the proceedings initiated before the entry into force of the new Code. Ms Lutkovska enumerated the bodies carrying out pre-trial investigation in Ukraine and focused on the rights of the Ombudsman in this area, such as the possibility to collaborate with the heads of law enforcement agencies, including the Prosecution, the right to open proceedings on its own initiative, the ability to review all operational materials, the possibility to meet the victim, etc. Moreover, several special units are kept at the Secretariat of the Commissioner for the control of law enforcement agencies.

In the experience of the Ombudsman, particularly severe violations of human rights are related to carrying out operative investigation. The major human rights violations identified by the Secretariat of the Commissioner include: illegal searches-related (searches without a court order, at night, partial witnesses at search, search by the wrong address, etc.) and the implementation of operational procurement of drugs (provocation and falsification of crime, illegal interrogation methods). Unfortunately, the operational procurement is often conducted not to identify the drug supply chain, but in order to take drug consumers to the criminal court. It has nothing to do with the fight against drug trafficking; it just improves the statistics.

The Ombudsman does not only respond to isolated cases of violation of the individual rights in the operational investigation. After systematising and analysing the information, the Commissioner petitions the cases. Systemic problems are reflected in the annual or special reports of the Commissioner to the Parliament.

### **Powers of the security services in the context of the civil rights guaranteed by the Constitution and legislation in Armenia**

Hayk Abgaryan, Head of the Department of International Affairs of the Secretariat of the Ombudsman of the Republic of Armenia, talked about the protection of human rights in the field of law enforcement. The Commissioner seeks to work closely with law enforcement agencies on the basis of the Paris Principles; however, in his annual address to the Ombudsman in 2012 highlighted the problems in the work of the police, prosecutor's office, the Special Investigation Service.

Mr Abgaryan pointed out that the police human rights record has improved over recent years, although problems remain with the methods of obtaining a confession, bans on peaceful assemblies and installation of protest tents, detention by the police without arrest. In response to these problematic conditions, the Ombudsman suggested an investigation to finalise the legislation.

Armenia's representative also dwelt on the functions and powers of the Prosecutor's Office and Special Investigations Service; the structure investigating crimes committed by law enforcement officers, prosecutors, judges. Most actions brought by the Prosecutor's Office are transferred on to a special service. Much work is being done on the amendments to clarify the distribution of the powers of these structures. As a summary, Mr Abgaryan stressed that, despite some problems related to the law enforcement agencies work, the Ombudsman notes a positive change in the work of law enforcement agencies and their appropriate response to the Commissioner.

### **Powers of the security services in the context of the civil rights guaranteed by the Constitution and legislative acts in Azerbaijan**

In his speech, Vugar Maharramov , the head of the Department for the Prevention of Torture of the Secretariat of the Ombudsman of the Azerbaijan Republic, reminded about the national legislation, international treaties and conventions relating to the rights and freedoms of citizens, as well as their possible limitations for the sake of national security. According to him, isolation of human rights and freedoms provided by the Constitution of the Republic is prohibited within the operational investigation, intelligence and counterintelligence activities.

Mr Maharramov said that the activities of intelligence services are subject to internal (by the actors themselves) and external control (the President). The supervision of the abiding to the rule of law is vested upon the Parliament and the Prosecutor General. Equally important is the public control over the activities of intelligence services that is carried out according to the Law on access to information.

In turn, the Ombudsman collaborates closely with law enforcement authorities and takes the necessary measures to stop the violation of human rights. For example, the Commissioner's Office has a division for the protection of the rights of persons in custody. The Ombudsman also met with those kept in detention centres and prisons, draws attention to the conditions of their detention, medical care and food quality,

record keeping. In addition, the Commissioner submits proposals for the improvement of the legislative framework. For example, a Law on the rights of prisoners with the proposals of the Commissioner was recently adopted.

### **Powers of the security services in the context of the civil rights guaranteed by the Constitution and legislation in Georgia**

Nino Trapaidze, chief expert of the Secretariat of the Ombudsman of Georgia, stressed that the Georgian Constitution guarantees the rights and freedoms in accordance with international documents. The Criminal Procedure Code, the Law on investigative activities and other regulations must be consistent with internationally recognised human rights and freedoms. On the other hand, the law enforcement authorities must ensure the safety of citizens, prevent and investigate crimes. Therefore, to carry out operative investigations, such as arrest, surveillance, search, photographing and videotaping, allows limitations of human rights. Ms Trapaidze shared the experience of Georgia in dealing with procedural aspects of the investigation, and also spoke about the work of the Ombudsman in this area. According to her, one of the main problems is the actions of security services without prior court decisions in cases where such decisions are necessary according to the Georgian Criminal Code. There are violations in the form of searches without a court order, the pre-trial detention without extreme necessity, operational surveillance without a court order, invasion of privacy and the collection of sensitive information without proper legal basis. The Ombudsman of Georgia is actively working to prevent these violations.

### **Powers of the security services in the context of the civil rights guaranteed by the Constitution and legislation in Moldova**

Gheorghe Bosîi, senior consultant at the Centre for Human Rights of Moldova, in his speech listed the civil rights guaranteed by the Constitution of Moldova in the context of their intersection with the work of security services. He stressed that efforts to ensure public safety cannot infringe upon the legitimate rights and freedoms. No interference in family privacy, infringement of the rights of private property; the state ensures the secrecy of correspondence and telephone conversations. No one can be prosecuted for expressing their views.

Mr Bosîi listed laws which ensure the proper work of security services: Law on special investigative activity, on the fight against terrorism, on the fight against money laundering and terrorist financing, on countering extremist activities, on the State Security. According to legislation, the person against whom special investigative actions were carried out has the right to get information about them from a prosecutor or a judge. Also, that person is entitled to compensation for material and moral damage. The Moldovan representative stressed that it is prohibited to carry out investigative measures to reach tasks not explicitly stated in the respective Law. And if the information was collected with violations, it is considered invalid.

A person whose rights have been violated may file a complaint with the parent body of national security or to the prosecutor. The prosecutor or the judge must take action on how to reinstate infringed rights.

## Discussion

Azerbaijan's representative asked the Polish delegation if the state accepted the Ombudsman's proposals to change the rules for the treatment of prisoners in the aspect of the use of coercive measures.

According to Ms Szwarc, the Ombudsman was interested to see if the use of force by the police did not violate the Constitution regarding the right to privacy and personal security. After all, the use of force by the police, itself a restriction of personal rights, is stipulated in the documents of the Ministry, and to restrict the rights and freedoms of citizens is only possible through parliamentary acts. First, the Commissioner addressed the Minister of Justice to remedy the situation, but without waiting for an answer from him, she appealed to the Constitutional Court. The verdict was handed down a few months ago, the Court agreed with the arguments of the Ombudsman. Now the Polish parliament is working to change the Criminal Procedure Code concerning the powers of the police to use force in the event of failure of the suspect to take the required tests, such as an alcohol blood test after a road accident.

Chairman of the Belarusian Helsinki Committee Aleh Hulak asked to share the experience of effective measures that put into practice the right of a person to know of any operational investigation that was conducted against that person. While this is guaranteed by all laws, in reality it does not work. There is no mandatory notification procedure. Generally, this practice is not in the interests of security services.

The representative of the Ministry of Internal Affairs of Ukraine stressed that the new Criminal Procedure Code states a clear duty of the prosecutor, or of the investigator on behalf of the prosecutor, to inform the person, in respect of whom a covert investigational activity was performed, within 12 months from the date of termination thereof. It is too early to discuss the practical application of this rule, as the new Criminal Procedure Code has just entered into force.

Yuriy Sevruck, Deputy Head of the Department for supervision of law observance by enforcement agencies of the General Prosecutor's Office, added that at present only the accused are informed about operative investigation, as it has not passed a year yet since the entry into force of the new Criminal Procedure Code. Non-suspects will be notified about such activities from November 20 onwards. This will be strictly supervised by prosecutors. Responding to specific questions of the participants, Mr Sevruck said that the investigators will only notify the people because the surveillance materials are supposed to be destroyed by the time of notification. He also told about the law that regulates remedy for damages caused by the investigating authorities.

Mr Maharramov asked how many complaints of torture the prosecutors received this year and whether these cases are investigated. The representatives of the Ukrainian side said that this year prosecutors are investigating about 20,000 criminal cases; the majority of them are complaints of the crimes committed by law enforcement officials. The Criminal Code holds torture punishable. But courts often classify such actions as misdemeanours. Under the new Criminal Procedure Code, each complaint containing the information about a possible crime, a criminal investigation begins.

Denys Zaskoka, Head of the First department of the Legal service of the Legal support department of the Security Service of Ukraine, admitted that, in accordance with national law, at the time of the antiterrorist operation human rights can be limited to certain extent. He asked whether the security services in other countries have the right to restrict human rights under the simplified procedure in similar situations, for example to violate the secrecy of correspondence, disrupt the telephone connection, etc.

Ms Trapaidze explained that the national legislation in such situations does not entitle special services to restrict the rights of all people, to wiretap all the phone calls. There should be a clear identification such as a specific telephone number of the person or the persons whose rights are being restricted.

The representative of Azerbaijan said that his country's legislation provisions restrictions of human rights when it comes to national security. Then, by the court decision the security services can wiretap telephone conversations, read mail, and so on.

Continuing the discussion, Mr Zaskoka referred to the Law on combatting terrorism. It provides, in the case of antiterrorist operation, the possibility the national Security Service to perform operational and technical measures in the communication channels and systems. This is done in order to find terrorists, to identify their goals, accomplices, and to prevent further attacks. But this procedure is not regulated by law, so, for example, during an antiterrorist operation in Dnipropetrovsk such permission was given by court.

A representative of the Office of the Ombudsman in Ukraine asked how often his colleagues struggled with finding a balance in situations where the police unreasonably restrict the rights of citizens for the sake of fighting crime. According to the participant, the Constitution stipulates that the authorities must act within the limits and in the course outlined by legislation. But it often happens that the internal documents of the law enforcement agencies expand beyond the limitations stipulated in the legislation. For example, the police expanded in their documents the lists of persons subject to fingerprinting. Sometimes law creates a rule without explaining the procedure for its execution, as is the case with informing people about the surveillance.

Mr Managadze said that Georgia's penitentiary facilities are under constant video surveillance to ensure security. Some consider this to be a violation of privacy. He asked whether other countries have rules that require informing the detainee that he is under surveillance.

Mr Sevruk said that the legislation establishes notifying of covert investigative actions only if the person was under criminal proceeding and there was a court warrant to conduct undercover investigations. Wherever video surveillance is a security tool, the observed will not be informed.

A representative of the Secretariat of the Ombudsman of Ukraine noted that this topic is quite controversial. For example, police stations keep CCTV records and persons are warned about it. In the penitentiary institutions, units for prisoners serving life sentences are equipped with video cameras. In turn, representatives of the European Bureau of the UN Sub-Committee against torture reckon that such 24/7 surveillance may put additional pressure on the person. This theme will be addressed by the Ombudsman in a discussion with the responsible officials in order to develop common principles, as the law allows installing video recording systems in the penal institutions, but the order of their use is not at all regulated. This regulation shall be provided by law.

A member of Azerbaijan delegation noted that according to the European standards CCTV in detention facilities is regarded as an invasion of privacy. This is allowed only in exceptional cases.

Azerbaijani Ombudsman Prof Suleymanova asked if the office of the Ukrainian Ombudsman does have internal documents on the work with mental patients. The Ukrainian part said that the Commissioner attained the right to monitor mental health facilities in November 2012. There is a common procedure for conducting inspections. Also it has been recently decided to establish a separate medical department which includes a high profile psychiatrist. In turn, the Defender of Rights in Azerbaijan cooperates with the nation's chief psychiatrist.

A representative of Georgia asked to clarify if it is possible to carry out concealed video surveillance in the prison hallways and cells by court warrant and without breaking the law. The Ukrainian side confirmed that the Criminal Procedure Code allows undercover investigation, also in respect of detained persons. In this case, the procedure for obtaining the permit is the same: the investigator applies to the court through the prosecutor.

Mr Managadze said that a law against crime culture was passed in Georgia a few years ago. As a result, many bosses of the criminal world ended up in prison. They have been under constant surveillance to prevent the organisation of the new crimes.

A representative of the Ukrainian penal system said that correctional officers are required to prevent accidents in the cells. In this case, surveillance is justified. The participant of the Ukrainian Ombudsman office noted that video surveillance is an extra tool to control the law enforcement officials. In the course of the monitoring it is often necessary to review CCTV footage where illegal actions of security services are sometimes captured.

Mr Bosîi said that Moldova practices video surveillance in police custody. The detainees are notified about this. In prisons the surveillance is conducted in cells where suicide-prone people are held.

Mr Hulak reported several specific cases from Belarus. A few years ago in order to find the terrorists responsible for the attack during the celebration of the Independence Day, the Minister of Interior instructed intelligence agencies to compile a universal fingerprints registry of all persons liable for military service. Later on, the prison system has been instructed to carry out the sampling of biological materials and their registration from persons serving sentences for serious felonies. To those who refused disciplinary sanctions applied. According to Mr Hulak, law enforcement is comfortable with exercising more rather than less power. This is understandable in emergency situations. But it is important to return to the normalcy thereafter.

### **Summary and questions and answers session with representatives of civil society organisations**

Moderator gave the floor to Vadym Pyvovarov, a representative of the Association of Ukrainian Human Rights Monitors. He devoted his speech to the Ombudsman office's campaign to involve civil society into the prevention of torture and ill-treatment. Among the forms of such cooperation Mr Pyvovarov listed the work of the Expert Council under the Commissioner for the implementation of the national preventive mechanism. Among other things, his responsibilities include recruitment, training observers and the coordination of their work as part of NPM. Also, the office of the Ombudsman established its new department that will deal with special proceedings, including the investigation of torture and ill-treatment in the structures of law enforcement. But without the participation of the public this new mechanism will not be effective, given the limited resources of the Secretariat of the Commissioner. The involved observers must be adults with no criminal record, and they should undergo special training. So far, all checks have been carried out jointly with the office of the Ombudsman, but in the longer run the people who prove themselves will be receiving an individual power of attorney from the office and will be able to conduct independent inspections.

Mr Pyvovarov spoke about the activities of a similar unit that operated previously within the Ministry of Interior. But the work of this department to prevent torture was ineffective, and it has been closed. The

Ombudsman's office will not only prevent abuse, but also investigate specific cases, systematise information, conduct educational work.

The speaker also talked about the establishment of regional offices of the Ombudsman. At the local level, NGO representatives will be receiving citizens in collaboration with the Office of the Ombudsman to interact with the local NGOs, collect information on violations, analyse and send it to the coordinating centre. The establishment of regional offices is necessary, not least as a way to relieve the workload of central office of the Ombudsman.

Yuriy Bilousov, representative of the Commissioner and Head of the Department on the implementation of the national preventive mechanism, added a few words about the NPM. According to him, in Ukraine there are about 6,000 places of "zero freedom". They are not only prisons, but also mental hospitals and orphanages, rehab schools, etc. All of these facilities are under the Ombudsman's monitoring. But, given the great number thereof, one department cannot cope with the task physically. Therefore, when there was a talk of creating NPM, it came to the belief that Ukraine is most suited for the Ombudsman+ model. This allows attracting the NGO representatives to the inspections. This is the only way to ensure regular visits to all places of "zero freedom". Now there are 72 of such public experts. Another establishment is the Advisory Council of NGO representatives. They select observers by themselves, train them and recommend to the Ombudsman. If the person is fit for the job, he or she receives the personal power of attorney from the Commissioner.

The fact that Ukraine has over 40 types "zero freedom" places determines the structure of the Department of NPM. It is divided into six sections, each of which deals exclusively with its own type of institutions. In August the department was created that consists exclusively of physicians. They submit a preliminary report to the Ombudsman about the nature of injuries with a due level of expertise.

The speaker emphasised that the office of the Commissioner managed to establish an efficient cooperation with prosecutors, as by law only the prosecutor's office has the right to investigate cases of torture and ill-treatment. The Ombudsman is vested with a function of parliamentary control. It was also decided to open regional branch offices. So far they are ten: three work as state agencies and seven other volunteer organisations act in collaboration with NGOs. In the near future they will be involved in the inspections. The representative of the Commissioner's office hopes that in the future this model will prove effective.

Responding to a question whether it turns out that the regional offices become separate NPMs, Mr Bilousov noted that NPM does not have to be "the NPM". For example, in the UK there are 18 NPMs; in New Zealand there are 7. The regional offices are not considered as separate NPMs. They are representative offices of the Commissioner, which have many different functions, and monitoring is just one of them. But this does not cancel the inspections from the central office.

In Azerbaijan, there were four regional offices, but over time they were disbanded, since the quality of monitoring was doubtful. According to a participant from the country, if both Azerbaijan and Ukraine have just one NPM, the monitor has to be performed by a single centre.

Mr Managadze said that not only the staff members but also specially hired experts get involved in the monitoring in Georgia. They are contracted for the period of monitoring. This allows rotation of experts to improve the objectivity. The Department of NPM has only 6 employees, but over 40 experts are involved in the monitoring. This year, they tried to recruit on a regional basis. The knowledge of the Armenian and Azerbaijani languages was welcomed. Such system has worked in Georgia for 4 to 5 years.



After the break, the moderator invited the participants to continue the questions and answers session. Mr Managadze said that his country practiced imprisonment for drug use, but it proved to be ineffective. Now Georgia is set on the decriminalisation of the article. Although the Criminal Code has not been revised, what changed are the juridical practices; the parliamentary acts also grant drug consumers amnesty. But there is another problem. Some people are upset that they were released from prison, as they would get their replacement therapy there for free and now will have to pay for it. The representative of Georgia asked what the situation with the decriminalisation of the drug use was like in other countries.

The representative of the Ukrainian Prosecutor General's Office said that the article of the Criminal Code criminalises the possession of drugs without intent to sell while there is no responsibility for drug consumption. Also, the person shall be exempt from criminal liability if he or she agrees to be treated for drug addiction during the investigation. Imprisonment is used very rarely.

A member of the Ombudsman's of Ukraine office admitted it is difficult to consume drugs without retaining them. Drug addicts are an easy prey for law enforcement services as they help them to improve performance statistically. According to the human rights monitor, there must be a policy of decriminalisation of drug users. This has been talked about in Ukraine for many years. He also added that in Ukraine at the legislative level a programme is underway to introduce replacement therapy. There are special centres providing such assistance. But there were times when clients of these centres in great numbers were closely watched by law enforcement services. Also, there is an inter-ministerial order on medical support to such persons. If a person is arrested, he or she must still continue to receive treatment. But this system is only working tentatively.

The representative of Azerbaijan said that the Criminal Code envisages the liability for drug possession as a three years imprisonment if the person was found to possess more than one dose. Azerbaijani human rights activists insist that such people need medical help, not a conviction. He underlined a tendency that drug consumption has recently been punished by forced treatment as misdemeanour.

Ms Szwarc noted that Poland used to punish the possession of any quantity of drugs. Now the Parliament decriminalised the article punishing the possession of narcotic substances in small quantities.

In Belarus, according to Mr Hulak, drug use is not an offence, but there is criminal liability for the possession of even the smallest doses. The policy on this issue is moving towards consolidating the resistance to repressive methods.

Mr Maharramov said that in some countries disposable syringes are distributed in prisons. In Azerbaijan, there is no such practice, despite the recommendations of the Ombudsman. He asked how things work in other countries. In Ukraine, according to a law enforcement official, prisons are not exactly handing out single-use syringes. By law, the presence of narcotics is prohibited there. Law enforcement agencies are rather struggling with drugs smuggled into the territory of prisons. The delegate from Azerbaijan responded to this that many officials feel the same way but in reality there are always drugs in prisons. This has unfortunately become a source of income for some unscrupulous employees of the penitentiary system. The distribution of syringes will help to at least reduce the spread of diseases transmitted through blood. According to the participant from Ukraine, this can only lead to an increase in drug prices in the walls of prisons.







**Thursday, September 5, 2013**

### **The rights of people with disabilities**

Moderator Valeriya Lutkovska, the Commissioner for Human Rights of Verkhovna Rada of Ukraine, welcomed the participants on the last day of the event by expressing appreciation for the past two days. Ms Lutkovska expressed joy at the presence of the Human Rights Defender of the Republic of Poland Prof Irena Lipowicz, and gave the floor to the keynote speaker, Mr Antoine Petty-Ferandi, the project manager in the office of the Defender of Rights of the French Republic.

### **Keynote address**

Mr Petty-Ferandi focused his speech on the UN Convention on the Rights of Persons with Disabilities and the mechanisms of its implementation in France. The Convention guarantees a wide range of economic and social rights on the basis of “the equality of all” – as emphasised by the speaker, this phrase is found in the text of the Convention 37 times. Mr Petty-Ferandi drew attention to the definition of persons with disabilities as persons with sensory impairments which, in interaction with barriers, may prevent them from participating in society on an equal basis with others. This does not, however, preclude the exercise of human rights by persons with disabilities. The Convention therefore establishes the principle of universal design of products and services, i.e. enabling their use by all people without special adaptation. Among the member states of the UN, 129 countries have signed the Convention and it has been ratified by 125. Among the countries of Eastern Partnership, the Convention has been ratified by Ukraine, Armenia, Azerbaijan, and Moldova while Georgia and Belarus refrained. In addition, 78 countries have ratified, and 90 countries have signed the Optional Protocol to the Convention. Among the countries of the Eastern Partnership, Azerbaijan and Ukraine have both signed and ratified it. The countries that have ratified the Convention are required to submit their initial reports on their performance to the United Nations. 7 initial reports to the relevant UN committee have already been processed. As stressed by Mr Petty-Ferandi, each country should establish the principle of independent mechanisms. In France, it is the duty of the President that has to establish coordination centres for the implementation of the Convention in all governmental bodies. The state must establish a national mechanism for the monitoring of this process with at least one independent component. It was decided to grant these powers to the Defender of Rights. State agencies, NGOs, the Ombudsman and the National Consultative Commission on Human Rights all cooperate closely on it, and by the end of 2013 France is to submit its report on the implementation of the Convention. Defender follows closely the violation of the rights of people with special needs (the disabled send more complaints than any other group). The monitoring is carried out in three areas: improving knowledge of the application of the Convention, gathering information on the implementation of various programmes for the disabled, the implementation of information law and raising the awareness of the Convention in regional offices and coordination centres. The Defender of Rights also develops international relations: in cooperation with the National Commission, his office held an event on the role of mechanisms in different member states of the Convention; the Defender takes an active part in the Working Group of the EU member states of the Convention, in particular by organizing the sixth semi-annual meeting of the Working Group. The participation in this meeting is also part of this work.

### **The rights of people with disabilities in Poland**

Karolina Miksa, Advisor of the Department of constitutional and international law, spoke first at some length on the constitutional mandate of the Polish Ombudsman and her credentials. Prior to 2011 Poland did not have an institution that would oversee the equal treatment of the disabled, but the law has invested the Ombudsman with such powers. The Human Rights Defender set up a small working group to tackle discrimination. External experts cooperate actively; it was them who prepared independent report on the subject and are already preparing the second one. The Ombudsman has published several reports on infrastructure, education and electoral rights. The government has not officially appointed yet a separate Human Rights Defender in charge of monitoring the implementation of the Convention, but despite that the Ombudsman determined the department of her office that would focus on that. Yet many steps concerning discrimination of the people with disabilities are already taken. Ms Miksa dwelt on the educational opportunities that exist in Poland for people with special needs, in particular, on the issue of education for the persons with hearing impairment. The Polish language uses two types of sign systems for the deaf: the “Polish sign language” (prevalent in the community) and “signed Polish” that is used mostly on television and in schools. Schools are not required to teach the deaf any of these systems. However, the most effective way of teaching the deaf seems to be learning sign language and written Polish at the same time. Generally, in Poland, the deaf receive lower grades and fewer pursue higher education compared to other groups. Teachers find it easier for themselves to use the “signed Polish” which is understood not by all students. The Ombudsman is therefore lobbying for the inclusion of the other system in the curriculum. In addition, most money the universities in Poland receive for the education of disabled persons is for the deaf, but even this is not enough to pay for the interpreters, especially in technical universities (in some cases, the state covers only 20% of the cost). The rest of the schools pay from their own budgets, but this does not apply to secondary schools. Although local authorities are obliged to support them, many officials refuse to do it. This is a violation of the right to education. The State Commissioner for Persons with Disabilities and the Defender of Human Rights work together to address this problem. In conclusion, Ms Miksa stressed that Poland transfers the emphasis from the care of persons with disabilities to activity and independence of those people to ensure their equal access to all levels of education and full integration in the society.

### **The rights of people with disabilities in Armenia**

Mane Adamyan, Advisor for international relations to the Human Rights Defender of the Republic of Armenia, noted that the UN Convention has set high standards, and Armenia has taken many steps to synchronise national legislation with it. But much remains to be done. As in many post-Soviet countries, there is a lack of antidiscrimination laws. Equal rights also depend on the economic situation in the country. In countries with lower levels of economic development persons with disabilities are often discriminated in employment, and there are stereotypes that allegedly a disabled person cannot just do the job. In Armenia only 9.8 % of the working people with disabilities are occupied. As problematic as this is also the freedom of movement. People with disabilities are isolated due to the non-compliance with the principle of universal design, their movement being restricted by the houses, cars, sidewalks, roads etc. that are not fit for them. Another important condition for the monitoring of equality is participation in political and social life, in particular, both as voters and as candidates. The Armenian Ombudsman cooperates with the Central Electoral Commission on the redesign of the polling stations. It is also the improvement of the Electoral Code which will enable persons with disabilities to vote at home. Particularly vulnerable to discrimination,

according to Ms Adamyán, are disabled children. The fact many are kept in special places increases the risk of discrimination. The literacy rate among disabled children is below that of the other groups. Outside the capital over 80% of the children with special needs are not covered by the education system (UNICEF data, 2012). Especially numerous are also the violations of the rights of women with disabilities. The Ombudsman has made a proposal to include the body monitoring the implementation of the Convention in one of the draft laws. Together with NGOs, the Human Rights Defender has prepared the «shadow report» on human rights, parallel to the governmental one.

### **The rights of people with disabilities in Azerbaijan**

Azerbaijan's Ombudsman Prof Elmira Suleymanova said that her country has about 5.5% of persons with disabilities (about 500,000). Among them there are 50,000 victims of the military conflict with Armenia. Azerbaijan ratified the Convention on the Protection and Rights of Persons with Disabilities and its Optional protocol. It has worked hard to bring national legislation into conformity with the Convention and to improve the living conditions for people with disabilities. However, in spite of many positive steps, according to Prof Suleymanova, there are still many problems. Indeed, in the present socioeconomic situation, they are not so easy to solve.

The Convention obliges the state to establish a mechanism for monitoring the compliance with the rights of people with disabilities. In Azerbaijan, the mechanism is active. On the one hand, there is a large steering group chaired by the Minister of Labour and Social Affairs, on the other hand, the one created by NPM, involving the participation of non-governmental actors. There are also bilateral meetings with reports on the action results. In turn, the office of the Commissioner for Human Rights has a special advisor on the matter. He explores the international practice and helps prepare the annual reports. For example, in the last year's report, the Ombudsman requested that the Government should ratify Article 15 of the European Social Charter establishing the conditions for the full participation in society.

Addressing the issue of persons with disabilities is very difficult. First of all, Azerbaijan is home to more than 90 ethnic groups, which reinforces cultural barriers. Secondly, the community of the disabled is fragmented. Different groups have their own nuances.

The Ombudsman offers to governmental agencies its recommendations, such as those on budget composition. For instance, the government has met the Commissioner's demands and organised the purchase and distribution of insulin for people with diabetes. The Ombudsman also appealed to the government for the support of large-scale campaign to collect blood for haematology clinics. Such cooperation has yielded results. In addition the office of the Commissioner conducts joint research with the government and international organisations. In one of these studies the focus was on the situations in which the children with disabilities live in families where other members have none, and vice versa, in which disabled parents raise children without disabilities.

Office of the Ombudsman makes every effort at their level to create the appropriate infrastructure. With the assistance of the relevant Ministry it began installing phones at a level comfortable for people with special needs. One third of polling stations have already installed special places for the disabled. The Ministry of Labour agreed to the proposals of the Commissioner to establish a special service supporting people with disabilities.

In conclusion, Prof Suleymanova urged all participants of the Eastern Partnership to consider creating separate areas for cooperation in the field of protection of the rights of persons with disabilities.

### **The rights of people with disabilities in Georgia**

Luka Chochua, a representative of the Secretariat of the Ombudsman of Georgia, opened his report with an analysis of national legislation concerning the protection of the rights of people with special needs. Georgia signed the UN Convention and its Optional protocol, but, unfortunately, the Parliament has not yet ratified it. In turn, the Constitution of Georgia states that discrimination, also on health grounds, is inadmissible. The Law on the protection of the rights of people with disabilities stipulates equal participation in public and political life of the country. There are also laws on the health service, social care, and a National Action Plan for 2015 – 2016. By and large, all branches of government must take into account the issues of protection of rights of persons with special needs, but, unfortunately, they do not always do it. Although much work has been done to bring the national legislation in line with international, but the implementation of these laws is yet to come.

Mr Chochua also listed some of the problems faced by people with special needs. He emphasised the lack of information first. Despite the good regulatory framework, people with disabilities are often unaware of the laws that protect their rights. They cannot get an answer to the request in an accessible format for them, to prepare and file a lawsuit, to address NGO etc. The second problem is the lack of professionals that provide social services upcountry. This is especially true of medical personnel. The lack of access to the education is another problem. In 2012, only a few schools educated children with disabilities. On the one hand, the parents did not have information on the available programmes, on the other hand, not all schools and teachers were ready for a special student. Also, according to the Law on the rights of persons with special needs, they must have access to all public buildings, from the airport to the minister's reception. A special action plan was developed, but in many cases the principle of accessibility is still violated. This often applies to new buildings, too. The speaker also mentioned the issues of unemployment, the lack of professionals who know sign language, etc.

According to Mr Chochua, the government is actively working on the issue of the ratification of the Convention. It will be a very important step to address the problems of people with disabilities.

### **The rights of people with disabilities in Moldova**

Tatiana Krestenko, a representative of the Centre for Human Rights of Moldova, remarked a significant progress in the protection of the rights of persons with special needs in the three years that have passed since the ratification of the Convention. Besides, special protection is guaranteed by the Constitution and the Law on social integration of persons with disabilities. The state provides facilities for treatment, education and so on. By March q all public authorities are required to submit reports to the Ministry of Labour, Social Protection and Family of the actions taken and the results of the implementation strategy for the integration of persons with disabilities. In turn, the Centre for Human Rights is working closely with NGOs in this field.



According to the Ministry of Labour, in 2012 in Moldova there were about 180,000 persons with disabilities, including 14,000 children (although the statistics may be incomplete due to the imperfect bureaucratic procedures).

Ms Krestenko also enumerated some aspects of the work on the integration of people with disabilities. Despite the fact that in the area of access to social information there is no significant progress, some measures are being taken. Thus, the Ministry of Health issued the order on the organisation of access to health services and installation of information stands. The law envisages that while allocating housing for persons with disabilities, one should consider the location of their work, rehabilitation facilities, and the residence of relatives. Also, there is an obligation to provide the conditions for access to cultural and educational institutions, and sports facilities. The local authorities with the assistance of non-governmental organisations have approved a list of positions that are appropriate for the preferential employment of persons with disabilities. Additional exemptions in health care and transport have been set, etc.

### **The rights of people with disabilities in Ukraine**

Nataliya Ivanova, the representative of the Ombudsman of Ukraine and Head of the Department on socio-economic and cultural rights, said Ukraine witnesses the constant increase in the number of persons with special needs. Now about 61 people out of 1,000 have a disability, this is due to environmental issues, industrial and traffic injuries, Ukrainians' low income and unbalanced diet, lack of a culture of healthy lifestyle, issues in healthcare system. The speaker listed the principal legal framework on this issue: the UN Convention and its Optional Protocol; the European Social Charter. Ukraine's government approved a national programme for the implementation of the Convention appointed the Commissioner for the rights of persons with disabilities. Ukraine proclaimed the principle of the transition from the medical to the social model of disabled people's integration into society.

Protecting the rights of people with disabilities is vital to the work of the office of the Commissioner. In the structure of the Secretariat there is no separate unit working exclusively with the disabled. People with disabilities are treated the way as anybody else, which just meets the principles of the social model. To better coordinate the work of the Ombudsman the Advisory Board was created by a number of NGOs. The forms of work include monitoring, response acts, chapter in the annual report, special report, cooperation with the respective parliamentary committee, roundtables, and workshops. The Ombudsman also takes part in all meetings of the government.

Among the areas in which more work must be done, Ms Ivanova underlined the availability of infrastructure, better health care and rehabilitation, employment, access to education. Many problems have been inherited from the Soviet period. With the assistance of the Commissioner many systemic problems were resolved: the mechanism changed that regulated the use of the pension funds allocated to special orphanages funds; the regime of admission to psychiatric hospitals was also changed; working groups were set up to deal with the problems of legally incompetent persons; the funding of children's boarding home was increased in one of the areas; a draft law was suggested to amend the material support for families that take care of persons with special needs. But despite the many positive examples, unfortunately, the equal status of persons with disabilities and other citizens has not yet been reached.

## Discussion

Mr Chochua noted that Georgia, too, has a problem with wheelchair access to public buildings. This problem originated in the Soviet era when people with disabilities were pushed outside of the public life. The Commissioner's office is working with local governments, construction companies, so that at least the new buildings could be constructed to meet the needs of persons with disabilities.

The Executive Director of the National Assembly of the Disabled of Ukraine Nataliya Skrypka believes that talking about the rights of people with special needs, one ought to consider two components: the state guarantees of the rights of persons with disabilities and the opportunity to fulfil these guarantees. In Ukraine, the Convention was ratified in 2009. In 2012, the state filed a report on the actions taken to implement the Convention to the UN Committee on the Rights of Persons with Disabilities. But the report contained information only on the state guarantees of the rights of such people, and nothing has been said about the possibility of their implementation. The Assembly cooperated with other NGOs to file a shadow report just about the practical aspects of their rights. The report was adopted but not yet examined, as is the government's. Ms Skrypka wondered whether the other countries have alternative reports and what was the reaction of the government to them.

Ms Miksa said that Poland has not filed its alternative report yet, as it has been party to the Convention for one year only. The government must submit a report next year. An independent report is also being prepared by the office of the Ombudsman. Mane Adamyan said that Armenia has already prepared an alternative report. It will soon be presented to the government and the public.

Mr Petty-Ferandi stated that France prepares two types of preliminary reports. One – the independent one – is compiled in the office of the Ombudsman; the other one demonstrates the NGOs' findings. These reports may be numerous. Mr Petty-Ferandi asked in what order in the Eastern Partnership countries submit reports. He also noted that the preparation of the independent report is performed in close collaboration with NGOs and the state.

Mr Hulak, Head of the Belarusian Helsinki Committee, said that in his country, as a rule, all of the reports are presented simultaneously. According to him, neither the reports nor the results are presented to the public. NGOs are trying to prepare a report as publicly as possible, shedding light on both achievements and challenges and offering the governmental bodies to interact in the process of the report preparation. But the government harshly eschews any criticism. The representative of Belarus enquired about the experiences in solving the people's with disabilities problems, especially in cooperation with business.

A representative of Azerbaijan said that the Ombudsman in his country has the "A" status in the UN Committee on Human Rights. This provides with the opportunity to provide an alternative report, and that did happen. He also added that the Ombudsman operates a public council, which includes organisations working with the disabled. But the Secretariat of the Ombudsman is also collaborating with other NGOs, those that are not members of this council.

A participant from Poland added that the reports are not available in parallel. First, the government proposes their own, and then the office of the Ombudsman together with NGOs produces an alternative report. It covers inter alia what the government chooses not to mention in their report, highlighting the areas of difficulty and suggestions ways for dealing with them.

A representative of Ukraine said that the national legislation requires that every employer must reserve 4% of jobs for persons with disabilities. Otherwise the penalty will apply that is used to money the fund for the

protection of persons with disabilities. Despite this legislative provision, the mass employment of disabled people is not observed. And employers from time to time try to lobby for changes in the law to eliminate this norm. Also, a participant noted that the Office of the Ombudsman is often contacting the charities of the large businesses to help particular people but the reaction is not always positive.

Ms Skrypka cited several examples of pressure on business to protect the rights of persons with special needs. One success was to get the drug companies duplicate the medicine labels in Braille. Also, in order to obtain a pharmacy licence, one has to make it architecturally accessible. Now the organisation is seeking to press on private carriers so that they make their vehicles available to all.

According to Prof Irena Lipowicz, the most important change concerns the attitudes towards people with disabilities in society and the state. Extremely important to this end is the cooperation with the media. The office of the Ombudsman conducts small briefings for the media as journalists do not always portray the persons with disabilities properly. A critical success for the change of social perceptions was a TV series starring a character with Down syndrome. People with disabilities are in fact a resource for the state, certainly not a burden. It is necessary to reveal their talents and capabilities. They do not want charity, but work and participation in political and social life. Prof Lipowicz noted that there are more MPs with disabilities now in the Polish parliament and it serves as an encouraging example for other people. She added that people with disabilities should come to the polling stations to vote like everyone else, instead of doing it over mail or on the internet (where they can). It is of course important to specially equip these areas. In conclusion, Prof Lipowicz urged the seminar participants to join the celebration of the International Day of people with autism which is celebrated on April 2.

Prof Suleymanova of Azerbaijan told about the kinds of educational work carried out by the office of the Ombudsman for persons with special needs and those who work with them (doctors, social workers). It encompasses posters, brochures, booklets, trainings and conferences.

### **Summary and questions and answers session with representatives of civil society organisations**

The moderator invited the representatives of NGOs that protect the rights of persons with special needs to speak up.

Project Coordinator of the NGO “Coalition for Protecting Rights of the Disabled and People with Intellectual Disabilities” Yana Dragovenko said that the Coalition includes 113 NGOs covering 34,000 parents and professionals working with such people. The organisation’s leadership is on the Advisory Council of the office of the Ombudsman of Ukraine and in the expert group on the rights of people with disabilities. The speaker noted that Ukraine has recently mounted a campaign to ensure the rights of people with intellectual disabilities. According to her, this area contains two priority issues. The first one is the deinstitutionalisation of the existing specialised institutions. More than 260,000 people with intellectual disabilities reside in Ukraine, and half of them are in the need of permanent care. If families cannot provide proper care to such people at home, the government puts them in neuropsychiatric asylum. It is worth noting that the process of deinstitutionalisation of these institutions has already begun in the form of supporting open house accommodation populated by small groups. However, there still lacks the political will to create the conditions for the integration of these people into society. The second problem is the reform of the guardianship over adult people with intellectual disabilities. In Ukraine, the mechanism of the protection of the rights of the people who may not be aware of their actions is depriving them of their legal capacity. Such a person gets an appointed guardian who takes over all the important decisions. This is

inconsistent with the international obligations of Ukraine and completely violates the rights of such people. It is necessary to implement alternative mechanisms to protect the rights of people with intellectual disabilities, for example, supported decision-making. It involves the creation of individual support networks, the provision of personal assistants on legal issues, etc. The coalition asked to include these problems in the seminar's final document.

Chairman of the Union of Organisations of Disabled Persons Vasyl Nazarenko thanked the Parliament's Commissioner for the invitation to the seminar and for the openness of her work. He said that the Union has been around since 1990 and has offices in virtually all regions of Ukraine. The speaker noted that a lot has been achieved recently in terms of legislative protection of the rights of people with disabilities. For example, with the participation of organisations of the disabled persons a law on the basis of social protection of disabled persons was developed and adopted. An undoubtedly positive move was the ratification of the UN Convention and the Optional Protocol. However, there are many laws that are still contrary to the Convention. For example, the Law on citizens' associations worsens the position of the organisations to protect the rights of persons with special needs. In addition, the Law provides for the granting of certain rights and privileges to persons with disabilities only for a certain period of time. The organisation is trying to eliminate such inconsistencies with the assistance of the Commissioner and the support of parliamentarians and ministries.

Mr Nazarenko also spoke about the activities of the International Union of Organisations of Disabled Persons in Post-Soviet States and urged to join forces in the fight for the rights of persons with disabilities.

### **Summing up the results of the project**

Prof Irena Lipowicz opened the discussion on the format of future cooperation. She thanked those present for their participation in the project and encouraged to express their views on its shortcomings. In turn, she noted that the Polish delegation was very content with the work and the exchange of experience. The Ombudsman of Poland suggested to engage more NGOs and civic activists in such projects in the future and gave the floor to the French colleagues.

Stéphanie Carrère, on behalf of the French delegation, expressed their willingness to continue cooperation, albeit it depends in fact on the funding from the European Commission. She proposed expanding the cooperation and involving other ombudsmen from the Council of Europe states. It was noted that the involvement of NGOs to the discussion provided an opportunity to look at the work of the offices of ombudsmen in a new light.

Representative of the Armenian delegation Mane Adamyan thanked the organisers of the workshop for the opportunity to share experiences. At the same time, she remarked that during the conference she heard some statements about her country which, in her opinion, contradict historical facts. According to Ms Adamyan, political and historical issues should not be discussed at such meetings.

Azerbaijani Ombudsman Prof Elmira Suleymanova found that cooperation in this project was very helpful to improve the protection of the rights and freedoms of citizens. Talking about the peculiar relations of Armenia and Azerbaijan, she stressed that geographical neighbours have to trust each other, collaborate, and ultimately bring peace to the region. According to her, the international organisations should also take part in resolving the so-called frozen conflicts and restore the territorial integrity of Azerbaijan, returning home to a million of refugees.

She also suggested topics to discuss at future meetings. These were the protection of the rights of people with disabilities, the settlement of military conflicts, the implementation of the European Social Charter.

Prof Lipowicz said that the organisers would take notice of all suggestions to see the variety of ideas. She also recalled the tragically deceased dr Janusz Kochanowski, the former Human Rights Defender, who initiated the project. At the same time, Prof Lipowicz asked the representatives of ombudsman offices to send to her website positive examples of the human rights and freedoms protection. She believes it can inspire many.

After the break, Prof Lipowicz offered not only to run a project on NGOs but also to focus on the scientific issues. Prof Suleymanova of Azerbaijan supported the idea. To her mind, it is necessary to define specific research questions to be used as foundation for questionnaires to survey and analyse the information received while distributing it among the project participants. In turn, Prof Lipowicz noted that these proposals should not double the work of the Innsbruck-based European Ombudsman Institute and other organisations. The Polish Ombudsman promised to inform about their response.

She also said that her delegation was impressed by the activity of the Ombudsman of Ukraine in social media and asked to improvise a short talk on the subject. The Secretariat member Mykhailo Chaplyga said that the work in social media, particularly in Facebook, is only a small component of the information policy pursued by the office of the Commissioner. This platform for communication provides the chance to track the target groups, discuss more, monitor the reaction of NGOs on the office's suggestions, and receive feedback. This makes the job of the Ombudsman even more open and transparent.

Prof Lipowicz also agreed that the Internet multiplies opportunities. For example, her office in Poland holds regular seminars and conferences on the rights of persons with disabilities transmitted online, which allows for a participation of thousands of online users.

The representative of the French office Stéphanie Carrère noted that the French Ombudsman does have accounts on Facebook and Twitter. But because of the team's small size this segment is hardly an example to follow. At the end of the year the situation is expected to improve though.

A representative of Georgia recalled that his country has not yet ratified the UN Convention on the Rights of Persons with Disabilities. He asked how the participating countries had been preparing to ratify it and what they did then. Prof Lipowicz said that Poland also took too long a time to ratify the Convention, as the government feared committing themselves to its obligations. Then the office of the Ombudsman began to organise "the Convention's birthday parties" every year, celebrating the date of its signing with the participation of NGOs and the press. It was a reminder of the need to ratify the Convention. Prof Lipowicz advised to ask the government for at least a road map for solving the problem when they say there is not enough money. In turn, K. Miksa noted that the financial question always arises when it comes to social rights. In her view, the change in the law is not as effective as changing attitudes. At the same time, the representative of Armenia advised to harmonise the domestic legislation into line with the Convention well in advance.

Prof Lipowicz stressed that it is important to lead by own example and asked how many people with disabilities are working in the offices of ombudsman, in the staff of the parliament, as judges and prosecutors. She noted that in her office people with disabilities work and are very successful. She also proposed to hold a competition among young people for the best essay on the situation of persons with special needs.

A representative of the office of the Ukrainian Commissioner said that the results of a competition in the field of combating discrimination are going to be announced next week. Also, in the Vinnytsia region a contest was held among children for the best picture on the theme of human rights.

A participant from Ukraine asked about the employment of persons with mental disabilities in France. Antoine Pitti-Ferandi reported that 20% of all complaints to the Ombudsman come from persons with disabilities and half of these complaints relate to the violations of their rights in the area of employment. The Ombudsman Secretariat prepared a special brochure that informs people how to protect their rights. According to him, the Ombudsman acts as both a mediator between the government and the people with special needs and a defender of their rights in court. The procedure of employment of people with disabilities was described the following way: a person submits documents to a special committee consisting of physicians and community organisations; the commission shall then examine the person's case and determine in which sector such a person can work better, given the type of their disability.

The representative of Poland said that people with special needs often informed NGOs of the violation of their rights.

In her closing remarks, the Commissioner for Human Rights in Ukraine Valeriya Lutkovska thanked the participants for their fruitful work. She said that when she joined the project she was impressed by the spirit of cooperation, the possibility to speak frankly about challenges and successes alike, to get advice or recommendation. Ms Lutkovska expressed the hope that this is not the end of the project as the ombudsmen cooperation stabilises society, and that is a necessary precondition for European development. The seminar raised very important topics, and even if a tiny fraction of what was discussed were implemented, it would be a great step towards a more humane society. On this conclusion, Ms Lutkovska declared the seminar closed.







