

## ЗАХИСТ ПРАВ ЛЮДИНИ І ГРОМАДЯНИНА



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CURRENT CHALLENGES TO HUMAN RIGHTS AND FREEDOMS  
 AND THE OMBUDSMAN INSTITUTION  
 Establishment of the Ombudsman Institution  
 as a Response to Human Rights Challenges

**ABSTRACT.** The article examines the genesis of the institution of the Ombudsman of Ukraine – the Ukrainian Parliament Commissioner for Human Rights. The role of the Ombudsman is shown both in protecting the rights of individuals as well as in overcoming the systemic violations of human rights. The essence of modern challenges to human rights and freedoms is revealed: poverty, migration, human trafficking, modern terrorism, sea piracy, armed conflicts, wars, humanitarian disasters, dehumanization of society. The activity of the First Ombudsman of Ukraine on bringing the legislation of Ukraine and law enforcement practice in line with European and international human rights standards is analyzed. The need to form a modern legal culture based on international standards in the field of human rights and freedoms and the rule of law is analyzed. The article investigates monitoring mechanism of the national human rights institution performed through the Annual and Special Reports to the national Parliament. It also reveals forms of cooperation of the Ombudsman of Ukraine with national, international and European structures in the field of human rights. It is shown that not only the institution of the Ombudsman, in terms of its legal status, should be independent in the spirit of the Paris Principles, but the person in this post should also have personal independence. There are shown ways to establishing peace through the search for compromises and a trustful dialogue between the authorities and society. The innovation of the article is the analysis of the Ombudsman institution as a mechanism for the extrajudicial protection of human rights in the context of modern challenges to human rights and freedoms. A new term is introduced into scientific circulation – “the case law of the Ombudsman”.

**KEYWORDS:** challenges to human rights and freedoms; international human rights standards; the Paris principles; the First Ombudsman of Ukraine; poverty; migration; human trafficking; sea piracy; terrorism; the armed conflict in eastern Ukraine; annual and special reports of the Ukrainian Parliament Commissioner for human rights; human rights mechanisms; Ombudsman case law; the European court of human rights.

The ombudsman does not easily fit in the standard separation of powers doctrine despite being an element of the state human rights protection mechanism. A thorough analysis of the evolution of the ombudsman institution inevitably leads to the conclusion that historically, it emerged in response to challenges such as violations of civil rights and freedoms, abuse of power, mainly by the government, the lack of public confidence in the judiciary, and deep social and political crises during different periods in the history of nations. The pressing need to address such challenges led to introducing an institution for extrajudicial protection of human rights, i. e. the ombudsman.

The institution has also emerged in response to the demand for a highly credible instrument for protection of human rights and freedoms against government red tape, indifference, and disregard for the law and international human rights standards as well as morality. An Ombudsman does not have the same institutional authority as other branches of government and has to assert his/her own authority through courageous efforts which in turn is instrumental in making those efforts all the more effective.

Such challenges prompted the setting up of the Ombudsman institution in Sweden more than two hundred years ago, and subsequently in other countries. In Ukraine, the establishment of the Parliament Commissioner for Human Rights *was directly linked to the deep economic, social and political crisis following the country's independence and secession from the Soviet Union.*

The crisis resulted in the erosion of many sectors of economy, unemployment, mass impoverishment, and increasing violations of human rights amid a fierce fight between the emerging criminal oligarchies for publicly-owned assets, state power, and media influence.

The Constitution of Ukraine was adopted at the peak of those processes in 1996 as a social and political compromise. For the first time ever, the Ukrainian Parliament Commissioner for Human Rights (Ukrainian Ombudsman) was institutionalized in the Constitution. The huge social importance of this public function immediately became evident. During the two years between the Ombudsman's institutionalization in the Constitution and the adoption of the Law of Ukraine *On the Ukrainian Parliament Commissioner for Human Rights* in 1997 and subsequent election of the first Ukrainian Ombudsman in 1998, the Parliament of Ukraine received tons of written public complaints and petitions against the most gross violations of civic rights and freedoms that were addressed to the then as yet non-existent Ombudsman. Those complaints and petitions manifested public hope that justice and rule of law would triumph and become a social standard.

Since my first days in office as Commissioner for Human Rights, the government did everything it could to prevent the institution from succeeding. My colleagues and I had to work without any remuneration for almost a year as no public funding was initially allocated to the constitutional

institution. For the first few years, the Secretariat of the Commissioner for Human Rights did not have its own office so my colleagues and I had to move into my tiny former office at the Parliament.

Nevertheless, the institution of the Ukrainian Ombudsman made steady progress, essentially in spite of the government's hostile attitude. Just like the European Ombudsman Institute, we never received proper support during our formative years. Having put together a team of like-minded people, I kept repeating time and time again that *the Ombudsman must always be in opposition to the authorities, albeit constructive opposition. An Ombudsman cannot be the government's darling*. Why should an ombudsman be in opposition to the government at all times? As far as human rights are concerned, the government is the principal offender. However, the opposition must be constructive and, ideally, leave room for cooperation in combating and preventing human rights violations or discrimination.

*Back in those days, I felt great support from the European Ombudsman Institute, which I first joined in 1998 following the invitation. My two European colleagues, Anton Canellas, God rest his soul, the Catalan Ombudsman and President of the European Ombudsman Institute, and Marten Oosting, the Dutch Ombudsman and President of the International Ombudsman Institute, visited Ukraine in 1999. The three of us had a meeting with Ukrainian Prime Minister Valeriy Pustovoitenko. Following the meeting, the funding for the Ukrainian Ombudsman was unblocked which significantly helped the institution to achieve its financial independence.*

*It is important that not only an Ombudsman institution should be legally independent but the person holding the ombudsman office must be personally independent as well. He/she must be independent not only institutionally but also independent in spirit. Since an ombudsman's decisions are not binding, his/her moral authority is all the more important to ensure that violations of human rights and freedoms are effectively eliminated. During the first few months of operation, the guarantees of independence of the Ukrainian Ombudsman were provided by the Council of Europe, OSCE, the UN Resident Coordinator in Ukraine, and the IOM Representative in Ukraine which largely helped the institution in its development.*

Back then, the rule of law principle was not yet ingrained in Ukraine's legal culture which forced the Ombudsman to work hard to earn public respect to both the principle itself and the independence of the Ombudsman as a crucial element in the promotion of the rule of law.

*Since day one, the main focus of the Ukrainian Ombudsman has been on promoting respect to human rights and dignity. My many years of experience as the Ukrainian Ombudsman have proved that protection of the rights and freedoms in Ukraine is impossible without fundamentally changing the government's and the general public's attitudes to human rights and developing*

a modern legal culture based on international human rights standards and the rule of law. The role of an Ombudsman in that regard is especially important. When I as the first Ukrainian Ombudsman undertook this highly complicated mission, I received invaluable support from my colleagues at the European Ombudsman Institute, particularly my dear Nikolaus Schwarzler, one of the founders of the EOI, Norwegian Ombudsman Arne Fliflet, Polish Ombudsmen Ewa Łętowska and Adam Zielinski, as well as my colleagues from Sweden and Denmark Kerstin André and Hans Gammeltoft-Hansen, all of whom generously shared their precious experiences with me.

First and foremost, the new legal culture required real equality before the law and unavoidability of punishment, particularly for law enforcement officers and the judiciary. Although these legal principles were enshrined in the Constitution of Ukraine, Article 248<sup>3</sup> of the Civil Procedure Code of Ukraine provided that no decisions, actions or omissions of law enforcement officers, military servicemen, or judges fell under the jurisdiction of courts, effectively creating a whole caste of untouchables. *One of the very first important tasks of the Ombudsman was to openly challenge the bureaucracy to protect human rights. It was crucial to break the closed loop where the government could be immune.*

I filed a constitutional motion to render the provisions of the article in question unconstitutional and subject to revocation as non-compliant with Articles 55 and 124 of the Constitution of Ukraine. On May 23, 2001, the Constitutional Court of Ukraine supported the Ukrainian Ombudsman's claims in full by rendering Article 248<sup>3</sup> of the Civil Procedure Code of Ukraine unconstitutional. In effect, from that day on, any person was entitled to appeal unlawful actions, omissions and decisions of law-enforcement and judicial agencies to courts. The so-called caste of untouchables was eliminated in Ukraine.

The ombudsman institution was a totally new mechanism of extrajudicial protection of human rights and freedoms in Ukraine, mainly by virtue of its moral authority and based on international human rights standards. Ukraine used to be a far cry from compliance with international human rights standards so it was necessary to increase awareness of the latter and promote their enforcement. That is why the Ombudsman had to develop own strategy to promote international standards and the rule of law.

In terms of promoting legal culture and international human rights standards, one of the main tasks of the first Ukrainian Ombudsman was to facilitate Ukraine's accession to international human rights instruments and their effective implementation in the national law. Upon the Ombudsman's recommendation, a number of international and European conventions were ratified including the 1951 UN Convention Relating to the Status of Refugees, the 1977 European Convention on the Legal Status of Migrant Workers, the 2000

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UN Convention against Transnational Organized Crime and the supplementing Protocol to prevent, suppress and punish trafficking in persons, especially women and children, the 2006 UN Convention on the Rights of Persons with Disabilities, and the 2002 Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In 2008, the Ombudsman's *Special Report on Compliance with International Human Rights Standards in Ukraine* was presented to the Ukrainian Parliament<sup>1</sup>. The report was primarily based on comments and recommendations made by the UN treaty bodies with respect to Ukraine's compliance reports since independence. The report was not only a summary of the implementation of international human rights standards in the Ukrainian law, but it also set new goals in the area. The unique character of the report was acknowledged by the United Nations. When the UN Secretary General KOFI ANNAN saw the English version of the report he told me that it was the world's first ever research paper of its kind. At his request, the report was published on the UN web portal among other UN documents.

On October 22, 2010, the Ukrainian Ombudsman presented to the Parliament the *Special Report on Ukraine's Compliance with European Standards of Human Rights and Freedoms marking the 60th Anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms*. For the first time, the general public was presented with a comprehensive review of Ukraine's fulfillment of its human rights obligations as a Council of Europe member. In December 2010, the *Special Report on Compliance and Protection of the Rights of the Child in Ukraine*<sup>2</sup> was presented to the Parliament of Ukraine marking the 20th anniversary of ratification by Ukraine of the UN Convention on the Rights of the Child. The Report was also published on the UN web portal.

I believe that the Ombudsman's reports along with conclusions and recommendations contained therein are the source of the so-called *soft law*. The soft law forms the basis of the Ombudsman's efforts to enforce provisions of the international public and private law and is, in fact, the *Ombudsman's case-law*. The mandate and competence of the Ukrainian Ombudsman were assessed by the UN as fully compliant with the Paris Principles adopted by UN General Assembly in its Resolution 48/134 of 20 December, 1993, relating to the status of national institutions for the promotion and protection of human rights, particularly in terms of independence, transparency, and impartiality when advocating and protecting human rights and freedoms. Therefore *in March 2009, the Bureau of the International Coordinating Committee of National*

<sup>1</sup> Nina Karpachova, *The status of observance of the international standards of human rights and freedoms in Ukraine: special report of the Ukrainian Parliament Commissioner for Human Rights* (Kyiv 2008).

<sup>2</sup> Nina Karpachova, *State of Observance and Protection of the Rights of the Child in Ukraine. Special Report of the Ukrainian Parliament Commissioner for Human Rights. On the occasion of the 20th anniversary of ratification by Ukraine of the United Nations Convention on the Rights of the Child* (Kyiv 2010).

*Institutions for the Promotion and Protection of Human Rights accredited the Ukrainian Ombudsman to “A” status* which entitles the Ombudsman to participate in sessions of the UN Human Rights Council and take the floor under any agenda item along with official delegations. Summing up the above, the Ukrainian Ombudsman institution came a long way from being totally ignored by the authorities to cooperation and government support and, eventually, to international recognition. That said, it should be noted that an ombudsman cannot hide behind the Paris Principles if appointed unlawfully. No functional immunities would apply either, as the Paris Principles contain specific requirements for political and cultural pluralism<sup>3</sup>.

I should point out that it took me years in office as the Ombudsman dealing with problems and challenges resulting in gross violations of human rights and freedoms in Ukraine, until I realized that global processes were as much to blame for human rights abuses as domestic problems.

On April 14, 2008, *the International Conference ‘Current Challenges to Human Rights and Freedoms’* was held in Kyiv. The conference was an initiative of the Ukrainian Ombudsman in partnership with the UN Office in Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, and the Parliament of Ukraine. It marked the 60th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the Ukrainian Parliament Commissioner for Human Rights. The Conference was attended by Ombudsmen and representatives of NHRIs and international organizations from more than fifty European, Asian, African, and Latin American countries. The Conference adopted the Kyiv Declaration in which the participants noted the emerging new challenges to human rights and freedoms that threatened not only certain countries but the very existence of humankind including the following:

- global financial and food crisis,
- poverty, starvation and drought leading to the spread of epidemic infectious diseases, – increasing gaps in social and economic development, both between and within countries, giving rise to migration flows, xenophobia, intolerance, violence, and trafficking in persons, especially women and children, – escalation of international conflicts, including military conflicts, in the fight for energy resources and raw materials,
- continuing global militarization, wars, international conflicts, and escalation of terrorism all of which deprive people of their fundamental right

<sup>3</sup> Sadly, in April 2012, in violation of the criteria and provisions of the Law of Ukraine On the Ukrainian Parliament Commissioner for Human Rights as well as the Paris Principles, the administration of President Yanukovich appointed a person from among former Deputy Ministers of Justice of Ukraine to the high constitutional post of the Ombudsman of Ukraine in a non-competitive manner. This was specifically pointed out in the Monaco Declaration and Resolution on Ukraine (para. 12) adopted by OSCE <<https://www.oscepa.org/documents/all-documents/annual-sessions/2012-monaco/declaration-1/1260-2012-monaco-declaration-rus/file>> (accessed: 15.02.2021).

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to life, and – dehumanization of society that limits the potential for spiritual development, originality and multiculturalism.

Only a few years passed, and all of the above challenges to human rights and freedoms became a shocking reality for our nations.

### *Poverty as a Present-Day Challenge to Human Rights*

Since my first days in office as the Ukrainian Ombudsman, it became obvious that the main challenge to human rights and freedoms in Ukraine is the increasing poverty of its people which in itself constitutes a violation of human rights and compromises all other rights. More than 70 percent of Ukraine's population were and still remain poor. For the Ukrainian Ombudsman, fighting poverty as the fundamental cause of human rights violations was the main focus from day one and remained such for many years. After all, the main principle underlying the efforts of a true ombudsman is staying close to people, feeling their pain like your own, and keeping one's heart open.

My very first systemic case grew out of a total of more than 11,000 public petitions. It was a constitutional appeal to the Constitutional Court of Ukraine seeking to force the government to acknowledge the ownership rights of Ukrainian depositors to their depreciated savings at the USSR Sberbank and pay back the inflation – adjusted savings. The government resisted the payback fiercely. Nevertheless, the Constitutional Court upheld the claims contained in the constitutional appeal. Thus, the Ukrainian Ombudsman successfully managed to protect the rights of millions of people to compensation for the loss of savings due to high inflation as well as their ownership rights to the savings. The Constitutional Court ordered the government to pay the savings adjusted for inflation back to the depositors.

Starting 1998, I regularly participated in international human rights forums in Beijing and made several official visits to China which gave me an opportunity to learn first-hand how China managed to eradicate mass poverty.

The global poverty reduction must in fact be attributed, first and foremost, to China's successful efforts. According to the UN, the number of people living in extreme poverty has declined by more than half, falling from 1,9 billion in 1990 to 836 million in 2015, which meets the corresponding Millennium Development Goals target<sup>4</sup>.

The next important step in the right direction was to make the Ukrainian government acknowledge mass poverty as a systemic problem violating the rights and freedoms enshrined in the Constitution of Ukraine, which the government had previously been unwilling to do. With that in mind, the Ukrainian Ombudsman made a public statement in 2000 urging to condemn

www.pravolia.com.ua

<sup>4</sup> The Millennium Development Goals Report 2015 (*United Nations*) <[https://www.un.org/millenniumgoals/2015\\_MDG\\_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf)> (accessed: 15.02.2021).

poverty as a disgraceful phenomenon and a challenge to human rights and make the fight against poverty a priority objective for all government agencies<sup>5</sup>.

It took me numerous petitions to the President and the Prime Minister of Ukraine as well as a series of public statements, including in parliament, before poverty was officially recognized as a challenge to human rights and freedoms in Ukraine. I also managed to initiate the development of the first and later the second government programs to eradicate poverty in Ukraine, which commenced in 2000.

This is still a pressing problem in Ukraine. As a result of the global financial crisis, the slowdown of Ukraine's economy led to a further increase in the level of poverty. The situation most adversely affects the rural population, families with many children, and retirees. The distinguishing feature of poverty in Ukraine is its spread even among the working population, as well as inherited poverty. In certain regions of Ukraine, poverty transforms into pauperism making those regions effectively depressed.

*During my time in office as the Ombudsman, I received almost 1.3 million complaints from Ukrainian nationals, foreigners, refugees or persons seeking refuge, and stateless persons.* The main focus of the Ombudsman has always been the most vulnerable groups such as children, people with disabilities, elderly people, the homeless, ethnic minorities, and women. Considering the wide gap between the rich and the poor in the Ukrainian society, I paid special attention to social discrimination. We managed to protect the right to higher education of the talented young poetess, Yuliya Manjulei, a wheelchair user with severe cerebral palsy. We helped to restore justice and protect the rights of Yuriy Murashov, a school teacher and chairman of the Ukrainian Helsinki-90 Committee who died tragically, and his family's rights. We successfully fought for employment opportunities for Vitaliy Marchenko, a blind musician and composer, which he had been denied for many years. We restored the reputation of Nataliya Kobeleva, a forty-year-old single mother who had been driven to suicide by the authorities of the town of Alushta in the Crimea and managed to protect the rights of her underage son for use of a small land plot, 400 square meters in area, that was their sole means of livelihood.

The gap between the rich and the poor in Ukraine keeps growing dramatically. There is currently a factor of 45 income difference between them whereas the average income difference across Europe does not exceed a factor of 4,5. During the crisis, the richest Ukrainians significantly increased their wealth. The deceleration of GDP growth between 2010 and 2013 was accompanied by rapid capital concentration in the hands of a few oligarchies controlled by or affiliated with the Yanukovich clan, which further divided the society.

<sup>5</sup> Nina Karpachova, *Compliance and Protection of Human Rights and Freedoms in Ukraine. The First Annual Report of the Ukrainian Parliament Commissioner for Human Rights* (Kyiv 2000) 339–53.



Poverty also undermines the *right of the poor to a fair trial*. Even if a court rules in favor of common people, it would still take years of effort to ensure that the ruling is properly enforced as more than 70 percent of decisions of domestic courts are never executed. This explains the increasing number of applications to the European Court of Human Rights. However, 95 percent of judgments of the European Court are not executed by Ukraine in their entirety because the government has not addressed the systemic issues that require legislative amendments, improvement of law enforcement, and comprehensive measures to ensure execution of the ECtHR pilot judgments.

For example, in September 2015 the government's aggregate ECtHR judgment debts related to welfare payments alone ranged between UAH six and nine billion according to different estimates, or US\$ 260 and 400 million! Despite Ukraine's obligations under the Millennium Development Goals, the share of the poor in Ukraine has only increased instead of diminishing.

In March 2010, I suggested to Ukraine's top leadership to develop a new anti-poverty strategy focusing on reducing the disastrous income gap between the rich and the poor and securing the right of every person to a fair access to national resources. In my speech during the parliamentary hearings on 12 June 2013, I particularly suggested to introduce a progressive income tax and a wealth tax<sup>6</sup>.

I believe that under current conditions, governments, transnational corporations, and civil society in all countries of the world should direct their efforts toward fighting corruption, increasing the social responsibility of businesses, and facilitating the implementation of adequate work programs. Another highly important problem is international responsibility of the developed countries for the implementation of an open and non-discriminative world trade system. A national government cannot bear today all the responsibility for securing, compliance and protection of human rights anymore. Such responsibility has to be shared by transnational corporations and intergovernmental military-political blocs that operate across borders and must therefore comply with international standards of human rights and freedoms.

### *Migration and Human Trafficking*

Another challenge is mass labor migration which also stems from the global financial crisis and the tragic gap in social and economic development between different countries of the world. Poverty and unemployment forced millions of my fellow nationals to seek a better life abroad. This has resulted in mass migration of Ukrainians abroad in search of jobs and a better life.

<sup>6</sup> Nina Karpachova. The speech during the parliamentary hearings on compliance with human rights and freedoms in Ukraine, 12 July 2013. See: Стан дотримання прав людини в Україні: парламентські слухання <[http://static.rada.gov.ua/zakon/skl7/5session/par\\_sl/sl1206113.htm](http://static.rada.gov.ua/zakon/skl7/5session/par_sl/sl1206113.htm)> (дата звернення: 15.02.2021).

Consequentially, a range of problems concern not only donor countries but host countries as well, such as illegal migration, poor working conditions, irregular working hours, lack of workplace safety, occupational hazards, and lack of respect for human dignity.

During my time in office as the Ukrainian Ombudsman, I realized that the most important thing to be done was to change the government's and the general public's negative stereotypes of migrant workers and urge the government to face the problems of as many as 5 to 7 million Ukrainian nationals working abroad who make up a large portion of Ukraine's population and provide foreign exchange remittances whose volume exceeds the State Budget. This required implementation of effective mechanisms for promotion and protection of their rights.

In 2003, I presented the *Special Report on Compliance and Protection of the Rights of Ukrainian Nationals Abroad* to the Ukrainian Parliament<sup>7</sup>.

The report represented the Ombudsman's combined response to many violations of the rights of Ukrainian nationals working abroad. The report not only offered a comprehensive analysis of the problem but also recommendations and suggestions that could help develop a long-term public policy on migration with due account of global development prospects and the interests of Ukraine and its population.

Another important step in that direction was the petition from the Ombudsman to the President of Ukraine to ratify the *1977 European Convention on the Legal Status of Migrant Workers*. The Ukrainian Parliament eventually ratified the Convention on March 16, 2007. Additionally, the Ukrainian Ombudsman filed a petition to the President of Ukraine to ratify the *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* that applies to both legal and illegal migrant workers. Sadly, to this day, Ukraine has not ratified the Convention. On the other hand, nearly 7 million migrant workers have come to Ukraine from abroad since Ukraine's independence. My stance on migrants has always been consistent: no people are illegal just as *there should be no place for double standards vis-a-vis migrants, either in Ukraine or abroad*.

To reinforce the rights of migrants, the Ukrainian Ombudsman signed bilateral cooperation agreements with the countries that have the most migrants of Ukrainian origin including Poland, Russia, Azerbaijan, Kazakhstan, Portugal, Spain, and France, as well as an agreement with the Ombudsman of Buenos Aires, the capital city of Argentina, which is home to more than 200,000 ethnic Ukrainians.

<sup>7</sup> Nina Karpachova. The Special Report of the Ukrainian Parliament Commissioner for Human Rights on Compliance and Protection of the Rights of Ukrainian Nationals Abroad. See: Н Карпачова, *Стан дотримання та захисту прав громадян України за кордоном: Спеціальна доповідь Уповноваженого Верховної Ради України з прав людини* (Омбудсман України 2003) 190.

Another problem that is closely interwoven with migration is *human trafficking* which Ukraine has faced since the first years of its independence. While still a Member of Parliament of Ukraine and Vice Chairwoman of the Parliamentary Committee on Human Rights, I developed and proposed a draft law on amendments to the Criminal Code of Ukraine that introduced new offences involving trafficking in persons and organs and applicable criminal penalties. In 1999, the National Coordination Council for the Prevention of Human Trafficking was established under the Commissioner for Human Rights. The Council drafted the first two national anti-trafficking programs.

2,5 million people across the world become victims of human trafficking every year, and the total of 21 million become involved in this transnational crime industry. More than 70 percent of them are women and children. In the areas controlled by ISIL terrorists, an entire human trafficking network has been established involving adolescents and even newborns. Human trafficking is the third largest criminal industry only behind arms and drug trafficking, and these crimes are closely interrelated.

In 2011, Ukraine adopted the Law *On Countering Human Trafficking* and the Cabinet of Ministers issued six resolutions on the issue, one of which named provision of government assistance to the victims of human trafficking a top priority.

Since the armed conflict began in Eastern Ukraine, kidnapping and sex trafficking of women and young girls has become a new challenge for the nation. Fighting the disgraceful practice of human trafficking in the 21st century requires an entire array of preventive measures as well as eradication of mass poverty and other root causes of such practices.

#### *Modern Terrorism as a Manifestation of the Global Crisis*

Another new challenge to human rights and freedoms across the world that stems from the global financial crisis is the increase in international terrorism which is now the main threat to the fundamental right to life.

The threat should be attributed to unfair distribution of resources and national wealth in many countries of the world, mass poverty, the increasing gap between poor and rich countries, gross violations of fundamental human rights, and prevalence of force over the rule of law in international relations where the stronger economies go so far as to declare their national interests in foreign territories and try to destabilize the situation by instigating internal conflicts and civil wars as well as deploying their military bases across many countries of the world. As a result, the people of the poorest countries resort to arms.

The experience of the global war on international terrorism that began in 2001 leads us to a conclusion that international terrorism cannot possibly be defeated by military force alone. Ultimately, to conquer this evil, we need to address the humanitarian crisis in the countries that are the main sources

of international terrorism. I addressed that issue at the international conference that took place in Kyiv in October 2011, in my speech *'Bringing Terrorists to Trial. Ensuring European Standards and Learning from Best Practices'*<sup>8</sup>.

It should be noted that it is not only the international terrorism but the use of military force against terrorism has led to large-scale gross violations of human rights in different countries of the world, above all the right to life. The most vivid examples are the wars in Afghanistan, Iraq, Libya and Syria.

As the Ukrainian Ombudsman, I was involved in the liberation of Ukrainian nationals, crew members of *Navstar-1* ship who were wrongfully arrested and convicted in war-torn Iraq and subjected to the horrors of the notorious Abu-Ghraib Prison. Together with Amnesty International and Ukrainian diplomats, we assisted in the liberation of 23 Ukrainian professionals who had been taken captive by the forces of the National Transitional Council of Libya. I also had to initiate the proceedings to protect the rights of families of the Ukrainian nationals who had been killed in the terrorist attack on Dubrovka theater in Moscow during a *Nord-Ost* musical performance.

*The international maritime terrorism has manifested itself in unprecedented pirate attacks and seizures of cargo ships in the Gulf of Aden.* Not only Ukraine but other nations as well appeared unprepared for this new challenge to human rights and freedoms.

With more than 100,000 Ukrainian seamen working on board foreign-flag ships, Ukraine is the world's third supplier of seamen behind the Philippines and Russia. Virtually every fifth ship seized by pirates had Ukrainian seamen on board. From 2008 to 2011 alone, my colleagues and I had to protect the rights of nearly 150 Ukrainian seamen captured on 17 seized ships. The following were the most difficult cases to protect the rights of international crew members that I as the Ombudsman was involved in:

- MV *Faina* captured by Somali pirates. The ship carried tanks, weapons and ammunition through Kenya to South Sudan. The military cargo could explode anytime, especially during an attempted attack on the vessel. I had to fly to Kenya twice to negotiate with the Kenyan Prime Minister, parliament's Speaker, Defense Minister and Chief of the General Staff as well as ambassadors of Somalia, United States and Russia to Kenya to prevent the military assault on the ship. With Kenyan support, we contacted over the phone the leader of Al-Shabaab insurgency group that seized the *Faina*. We stopped the military plan to free the vessel thus saving lives of the crew and continuing the release negotiations. I had to protect both alive crew members and the rights of captain Vladimir Kolobkov, a Russian national who died when the ship was seized. The Ukrainian Ombudsman had to fight to preserve the captain's body

<sup>8</sup> 'Сучасний тероризм породжений передусім кризою існуючого світового порядку – Ніна Карпачова' (Укрінформ, 26.10.2011) <[https://www.ukrinform.ua/rubric-other\\_news/1265519-suchasniy\\_terorizm\\_porodgeniy\\_peredusm\\_krizoyu\\_snuyuchoho\\_svtovogo\\_poryadku\\_\\_nna\\_karpachova\\_1051780.html](https://www.ukrinform.ua/rubric-other_news/1265519-suchasniy_terorizm_porodgeniy_peredusm_krizoyu_snuyuchoho_svtovogo_poryadku__nna_karpachova_1051780.html)> (дата звернення: 15.02.2021).

for it to be properly buried in his hometown St. Petersburg. I made sure that compensation would be paid to all the affected seamen as well as Kolobkov's widow and daughter.

– *Ariana* where there were two women among crew members. The captivity was very long – eight months – because of protracted bargaining between the pirates and the shipowner. To save women in the first place, I had to address the EU Ombudsman Nikiforos Diamandouros as *Ariana* was owned by a Greek company;

– *Lehmann Timber* that appeared to be in a triple captivity (by pirates, then by a storm of force 7, with a broken engine, and finally by the shipowner who refused to pay compensation). The Ombudsman was in direct contact with the sailors at every stage of the captivity and helped rescue the crew, using different methods including collaboration with the European Union Naval Force ATALANTA (EU NAVFOR), an operation launched specifically to combat piracy in the Gulf of Aden. At the closing stage, the Ukrainian Ombudsman arranged a charter flight to Oman where I went to Port of Salalah to protect and ensure the proper return of the seamen home. Captain Valentin Bartashov, a Russian national, said at a press conference in Kyiv after the rescue that he had now a second homeland – Ukraine.

The top priority for the Ukrainian Commissioner for Human Rights was to demand that Ukraine ratify the United Nations Convention *on the Law of the Sea of 1982 to build an integrated system of protection of sailors' rights*. Another objective was to persuade Ukrainian government to set up an interdepartmental coordination center to counter piracy.

I am confident that both shipowners and shippers should consolidate efforts and take concerted action to ensure safety of seamen in the Gulf of Aden and similar water areas. Moreover, one cannot knock out piracy without addressing the all-round poverty in Africa and the humanitarian catastrophe in Somalia. The international community and international organizations should coordinate their actions to meet these global challenges.

This issue remains pressing. In 2008, I delivered a speech in Kyiv at the international conference 'Today's Challenges to Human Rights and Freedoms'. The event was held to mark 60 years of the Universal Declaration of Human Rights and 10 years of institution of the Ukrainian Parliament Commissioner for Human Rights and gathered my colleagues from 50 countries<sup>9</sup>.

I emphasized there that *an urgent objective for the whole global community was to develop and adopt, at the UN level, a comprehensive convention on combating international terrorism*.

<sup>9</sup> Доповідь Уповноваженого Верховної Ради України з прав людини (Омбудсман України) Ніни Карпачової "Сучасні виклики правам і свободам людини" "Сучасні виклики правам і свободам людини: Матеріали Міжнародної конференції, присвяченої 60-й річниці Загальної декларації прав людини і 10-й річниці Омбудсмана України (Н Карпачова ред, К. І. С. 2010) 17.

In 2012, the Ukrainian Ombudsman drafted a *Special Report on Observance and Protection of Ukrainian Sailors' Rights*<sup>10</sup> and filed a motion to the President of Ukraine to ratify the ILO's Maritime Labour Convention of 2006<sup>11</sup>.

This move would help protect economic and social rights of the seamen and eliminate their bondage by crewing companies and shipowners.

### *Social Conflicts and Wars*

A global financial and economic crisis inevitably gives rise to many problems. One of them is the enhancement of the right-wing radicalism, nationalism and neo-fascism. These ideologies offer simple answers to complicated issues to numerous small business owners going bankrupt on a massive scale – merely by pointing to the enemies: people of other nationalities, religious beliefs or external enemies. Striking is the hypocrisy which puts stake on such social forces as alleged fighters for democratic values and freedoms. Just remember the Arab Spring which eventually transformed into an “Arab winter” and then into the “Arab war”. The consequences of such actions are dialectic and foreseeable.

Obviously, we should first analyze the above global processes to understand today's most pressing issues of human rights and freedoms. In our globalized society, internal problems appear to reflect international contradictions and conflicts very often.

The global crisis affected Ukraine and resulted in a 15 % drop in GDP in 2009 and a growing influence of nationalist organizations in the society. In my Annual Report 2009 to the Parliament, I stated that the lower rate of racial, ethnic and religious violence and murders by subcultural groups such as skinheads and nationalist youth in 2008–2009 was also due to the fact that representatives of these organizations had gone into politics. Big businesses supported them, first in the western Ukraine, and then their ideology was legitimized at the national level.

*Ukraine's new Maidan protests were spurred not only by EU integration ideals, but also by dramatic social injustice, arbitrary rule, long and frequent infringement of human rights and dignity.* Before the Maidan revolution, all these violations had ignited a riot in Vradiivka, Mykolaiv Oblast.

After Berkut special police force beat protesting students and young people at the Maidan on November 30, 2013, I made an immediate statement:

*<...> it is bitter and painful that the Ukrainian government has failed the test of democracy, rule of law and respect of human rights. In fact, the authorities reneged on their constitutional obligation to protect the civil right to peaceful*

<sup>10</sup> Н Карпачова, *Стан дотримання та захисту прав моряків України: спец. доп. Уповноваж. Верховної Ради України з прав людини* (Омбудсман України 2012).

<sup>11</sup> The Convention took effect in 2013, but Ukraine has not ratified it yet.

*assembly as required by Article 39 of the Ukrainian Constitution, Article 11 of the European Convention on Human Rights, Article 21 of the International Covenant on Civil and Political Rights, Article 20 of the Universal Declaration of Human Rights and case law of the European Court of Human Rights, in particular, ‘Verentsov v. Ukraine’ and ‘Shmushkovych v. Ukraine’. A civilized democratic society guarantees respect for human rights and dignity, personal inviolability, freedom of expression, the right to peaceful assembly and demonstrations. All the persons guilty of gross violations of human rights that took place in Ukraine now should be punished in accordance with domestic laws and European standards. If the government becomes a major perpetrator of human rights, people should rise to protect their rights!*

*As Ukraine’s first Ombudsman and member of the EOI Board and Executive Council, I pushed for de-escalation of violence by both sides and resolving issues through negotiations from the very beginning of the conflict at Maidan. I stressed that in my address dedicated to the Human Rights International Day on October 10, 2013 as well: ‘At this crucial moment, both the government and opposition should engage in a public dialogue with representatives of the new society and youth to listen to one another and develop a fair roadmap for the crisis recovery. There is no other way – no one can get positive results through force’.*

*When the Maidan confrontation reached the critical phase, I addressed the Verkhovna Rada on January 29, 2014 with an appeal to overcome the social and political crisis in Ukraine. I stated that ‘a threatening transformation of the political conflict into large-scale disorders and a social divide may eventually result in the loss of the state integrity. To avoid a tragic scenario of the developments, we should have negotiations between the government and opposition and cancellation of the repressive laws adopted on January 16, 2014 in defiance of Article 22 of the Ukrainian Constitution to restrict civil rights and freedoms’.*

In my address, I invited members of parliament to adopt a reviewed law of Ukraine on Ukrainian referendums to ensure that Ukrainian people were able to express their opinions on vital issues to prevent disruptive turmoils in the future. I called on all the conflicting parties to hold back from unlawful actions and the use of force, continue the dialog to find peaceful ways to address all problematic issues following the principles of the rule of law, Constitution and laws of Ukraine and international commitments of Ukraine in the area of human rights and freedoms.

*On February 18, 2014, when armed clashes began at Maidan, I publicly addressed the President of Ukraine Viktor Yanukovich as I could not reach him over the phone. I said in particular that mopping up EuroMaidan under the pretext of a counter-terrorism operation was a full-on provocation towards a civil war in Ukraine and the responsibility for this lay with the government, while the escalation of a civil conflict into a civil war would lead to multiple civilian casualties in Ukraine.*

That same night I called Rinat Akhmetov, a well-known businessman who had influence on many members of the parliament, and asked him for help to convene an extraordinary session of the Verkhovna Rada to stop the armed conflict. Unfortunately, both sides had already launched the violence flywheel...

*During the March confrontation in the Crimea I repeatedly went to Simferopol and Sevastopol under the mandate of the EOI General Secretary. My peaceful mission was to monitor the situation objectively, prevent escalation of the confrontation into an armed conflict and assist in releasing illegally detained representatives of both sides. In September 2014, I presented a relevant report to the EOI Board.*

*After the bloody events in Odessa and as the new government launched the counter-terrorism operation, I made another public statement, stressing, in particular that*

The horrible tragedy that happened in Odessa on May 2 should stop all confronters and make them abandon militant methods they are using in the bloody pursuit of their goals. Our history tells us that any confrontation inevitably results in reconciliation, but the loss of human life is irreparable and leaves deep scars on people's hearts and minds! Today the government, policy-makers and society should act together to stop the fratricidal conflict and find ways for the reconciliation.

I made another emphasis in my address that my country was being pushed into a full-scale civil war. We could prevent it only by stopping the standoff and moving from military methods to a public dialogue.

It was clear even at the time that the first step toward reconciliation could be to recognize the opposite side as a negotiator rather than an enemy. A foundation for the reconciliation and recovery from the crisis could lie in the unconditional and guaranteed respect for human rights, dignity and personal inviolability for all Ukrainian nationals.

I publicly upheld the proposal made by *the Germany's foreign minister Frank-Walter Steinmeier* and called on the Ukrainian authorities to leverage negotiation instruments offered by the OSCE to find a compromise and establish a trust-based dialogue between the government and society. Regrettably, the authorities made this right step only after three destructive months of the counter-terrorism operation which claimed lives of thousands of Ukrainians on both sides of the conflict, including children. Eventually, President PETRO POROSHENKO agreed to negotiations and Minsk Accords after the nation suffered a tremendous number of human casualties among Donbas civilians and representatives of both belligerents, tens of thousands of injured people and millions of refugees and internally displaced persons.



The military conflict in the eastern Ukraine and blockade of Donbas have led to blatant, large-scale and regular violations of human rights by both sides: holding of hostages, rape and torture, murders and extra-judicial executions, compulsory labor, looting and plunders, human and firearms trafficking, lack of access to medical assistance and medications, considerable restriction of movement and economic blockade as well as discontinued social payments to pensioners, people with disabilities, children and women. All these facts contain elements of genocide. Since the beginning of the conflict, OHCHR has recorded a total of 3,375 conflict-related civilian deaths. The number of injured civilians is estimated to exceed 7,000<sup>12</sup>.

Ukrainian sociologists say that Donbas residents would need at least 125 years to overcome their collective psychological stress. My contacts with people representing different sides of the conflict persuade me that all people involved in the confrontation suffer a deep psychological trauma which requires long and hard remedy efforts from Ukraine.

I am confident that today Ukraine's top-priority objective is to guarantee the right to life by de-escalating the armed conflict in Donbas and ensuring a diplomatic and public dialogue between the warring sides through international mediation of the OSCE, United States, Russia, Germany and France.

New challenges for human rights have emerged in my country because of the devastation of the national economy, increase in unemployment, sharp restriction of the guaranteed social and economic rights by the new government followed by frozen and reduced wages, pensions and social payments in real terms to low-income and vulnerable people as life became more expensive and inflation grew. It leads to a new wave of radicalization of social protests in the situation when people have millions of firearms in their hands.

Unfortunately, the perpetrators of the crimes and murders of Maidan protestors have not been punished, the events that killed at least 117 people and injured more than 2,295. Nor has anyone been held liable for the violence and failure to provide medical and other help during the tragic events on May 2, 2014 in Odessa<sup>13</sup>.

Moreover, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns said in a statement that most evidence of the crimes in Maidan and Kyiv had been destroyed, and the investigation into Odessa crimes was being deliberately delayed<sup>14</sup>.

<sup>12</sup> Report on the human rights situation in Ukraine 1 august 2020 – 31 January 2021 <<https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf>> (accessed: 15.02.2021).

<sup>13</sup> According to 10th Report of the UN Human Rights Monitoring Mission in Ukraine. See: Report on the human rights situation in Ukraine 16 February to 15 May 2015 <<https://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>> (accessed: 15.02.2021).

<sup>14</sup> 'ООН: Большинство доказательств преступлений на Майдане уничтожено' (*Korrespondent.net*, 18.09.2015) <<https://korrespondent.net/world/worldabus/3565156-oon-bolshynstvo-dokazatelstv-prestupleniy-na-maidane-unychtozheno>> (дата звернення: 15.02.2021).

My forecast regarding further developments in the area of human rights and freedoms in Ukraine is unnerving. Results of the parliamentary elections show quite poor chances that a stabilizing political power can emerge in the country. Therefore, we need to be prepared to face new challenges and threats to human rights and freedoms.

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## СУЧАСНІ ВИКЛИКИ ПРАВАМ І СВОБОДАМ ЛЮДИНИ ТА ІНСТИТУТ ОМБУДСМАНА

### Створення інституту омбудсмана як відповідь на виклики правам людини

АНОТАЦІЯ. У статті розглядається генеза інституту Омбудсмана України – Уповноваженого Верховної Ради України з прав людини. Роль омбудсмана показана як у захисті прав індивідів, так і в подоланні системних порушень прав людини. Розкрито сутність сучасних викликів правам і свободам людини: бідність, міграція, торгівля людьми, сучасний тероризм, морське піратство, збройні конфлікти, війни, гуманітарні катастрофи, дегуманізація суспільства. Проаналізовано діяльність Першого омбудсмана України щодо приведення законодавства України та правозастосовної практики у відповідність до європейських і міжнародних стандартів прав людини. Проаналізовано необхідність формування сучасної правової культури на основі міжнародних стандартів у галузі прав і свобод людини та верховенства права. Стаття досліджує механізм моніторингу національного захисту прав людини, що здійснюється через щорічні та спеціальні звіти до національного парламенту. У ній також розкриваються форми співпраці Омбудсмана України з національними, міжнародними та європейськими структурами у галузі прав людини. Вказано, що не лише інститут омбудсмана з точки зору його правового статусу повинен бути незалежним у дусі Паризьких принципів, а й особа на цій посаді також повинна мати особисту незалежність. Показано шляхи встановлення миру через пошук компромісів і довірчого діалогу між владою та суспільством. Нововведенням статті є аналіз інституту Омбудсмана як механізму позасудового захисту прав людини в контексті сучасних викликів правам і свободам людини. У науковий обіг введено новий термін – “практика Омбудсмана”.

Ключові слова: виклики правам і свободам людини; міжнародні стандарти прав людини; Паризькі принципи; Перший омбудсман України; бідність; міграція; торгівля людьми; морське піратство; тероризм; збройний конфлікт на сході України; щорічні та спеціальні звіти Уповноваженого Верховної Ради України з прав людини; механізми прав людини; Практика омбудсмана; Європейський суд з прав людини.