EUROPEAN PARTNERSHIP FOR DEMOCRACY

OPORA

Report on civic monitoring of implementation of the EU-Ukraine Association Agenda

December, 2011 – September, 2012

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Report on civic monitoring of implementation of the EU-Ukraine Association Agenda is prepared within an EU-funded project entitled "Enhanced civic engagement with reforms in Ukraine in the framework of European Neighbourhood Policy". The project is implemented by two partner organizations - Civil Network OPORA (Ukraine) and European Partnership for Democracy (Belgium)

The publication contains general findings of a comprehensive monitoring of the "Political Dialogue" section of the EU-Ukraine Association Agenda (democracy, human rights and rule of law). The report covers the monitoring period from December 2011 to September 2012. The publication is intended for a wide audience, including experts, policy makers and researchers

The views expressed in this publication do not necessarily reflect the views of the European Commission

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CONTENT

ABOUT THE PROJECT

Starting from April, 2011 two partner organizations – European Partnership for Democracy (Brussels) and Civil Network OPORA (Ukraine) implement an EU-funded project titled "Enhanced civic engagement with reforms in Ukraine in the framework of European Neighbourhood Policy". The main Project objective is to boost Ukraine's European integration efforts through the fulfilment of its obligations in the framework of the European Neighbourhood Policy. The key policy area, which is a reflection of the government's intentions on the path to European integration, is the area of political dialogue (democracy, human rights and rule of law), which will be carefully analyzed during the project implementation.

The project will be implemented in two stages. First, following a mapping, a monitoring on the fulfillment by the government of its obligations regarding the implementation of the reforms stemming from the Association Agenda will be conducted. The focus area for the monitoring activities will be democracy, human rights and rule of law, more specifically elections and judicial reform, fight against corruption, media freedom, civil society development, national minorities etc.

The second stage includes civic education and information and communication campaigns. A sub-granting programme on the relevance of the Association Agenda for citizens' daily lives will be implemented, feeding back input from the grassroots to the government, based on the results of the monitoring. In order for the activities of the second stage to be successful Ukrainian NGOs specialized in the area of democracy, rule of law and human rights will be mobilized. The last event to be organized is a national conference, aiming at presenting the project's achievements vis-à-vis the target groups; discussing those achievements; making recommendations for future actions; and drawing the project's conclusions.

All news and documents designed within the Project activities can be found on the web-page: http://www.eu-ukraine.org.

MONITORING METHODOLOGY

The active phase of the civic monitoring of the "Political Dialogue" section covers the period starting from December, 2011 until September, 2012. The research includes ten thematic fields, which correspond to the "Political dialogue" sub-titles. OPORA and EPD attracted independent experts for the analysis of each of the specific fields:

- Constitutional reform in Ukraine – Yaryna Zhurba, The Centre for Political and Legal Reforms
- The functioning of local government in Ukraine – Oleksandr Neberykut, CN OPORA
- Reforming the public administration system – Vadym Triukhan, IMG Partners
- Legislative reform – Olha Aivazovska, CN OPORA
- Reforming the judiciary and the judicial system – Tetiana Ruda, The Centre for Political and Legal Reforms
- Ensuring respect for human rights and fundamental freedoms – Taras Hataliak, Association of Ukrainian monitors on Human Rights
- The freedom of expression and information – Viktoriia Siumar, Institute of Mass Information
- Ensuring the freedom of expression, assembly and association – Volodymyr Chemerys, Institute "Republic"
- Ensuring the rights of persons belonging to national minorities – Yuliia Tyshchenko, Ukrainian Center for Independent Political Research
- Combating corruption – Denys Kovryzhenko, independent expert.

The overall **purpose** of the monitoring is to evaluate the fulfilment of the Ukrainian government's obligations within the section "Political Dialogue" of the EU-Ukraine Association Agenda. In other words, the project partners and monitors try to answer the following question: "How successful is Ukraine in implementing its obligations in the context of the European Neighbourhood Policy regarding the implementation of the reforms in the area of democracy, rule of law and human rights?" We should not forget that the Association Agenda is a joint document, and that each of the parties committed its responsibilities for AA implementation. Thus, while monitoring the commitments of the Ukrainian Government, we should also keep in mind the EU actions in this direction, for instance its contribution to the implementation of priorities through relevant technical assistance projects or sector budget support programmes. Therefore, the **object** of monitoring is not only the Ukrainian side, but the European one as well.

Generally, the **subject** is AA implementation, in particular each of the AA priorities within the "Political Dialogue" section agreed on 20 May 2011 by the Joint Committee at Senior Official's Level of the EU-Ukraine Association Agenda[1]. It should be mentioned that for the year 2011 the Cabinet did not come up with instructions to the bodies of state power with regard to preparing action plans for their activities in the framework of the Association Agenda implementation, as it was done in 2010[2].

At the same time, on February 29, 2012 the President signed an order "On the development and adoption of a Plan of priority measures for 2012 to integrate Ukraine into the European Union" [3]. According to one of the paragraphs, the government should provide regular reporting (every three months) on the fulfilment of AA priorities. As a follow-up to this order, the Cabinet adopted on April 5 the decree No. 184-p[4] instructing central bodies of the executive power to provide for the implementation of the President's order. However, any information and details on how the decree is performed have not been made available so far. In this context, the project's monitoring experts had to create their own models for measuring priority implementation and had to develop their own lists of steps to be taken by state authorities in order to guarantee the priorities' achievement.

The **methodological approach** used for the monitoring is that of objectively verifiable indicators (OVI). This approach is a widely used and approbated instrument for policy analysis, planning, management, monitoring and reporting in EU programmes and projects.

A key advantage of this approach is its objectiveness. This approach can be used by monitoring experts with different expertise, and results in similarly structured observations and conclusions. The developed indicators, if agreed with all interested stakeholders, do not leave much room for diverging and/or biased interpretation of the achieved results. All monitoring conclusions are based on official open sources of information.

At the preparatory stage of the monitoring campaign experts defined the main criteria for evaluating AA implementation. Thus, attention was paid to:

1. *Progress assessment of priority implementation*
   Activities taking place in the reporting period were evaluated; the contribution of these activities to the overall achievement of the specific AA priority was assessed.
2. *Forecast assessment*
   Assessment of what remains to be done to achieve the AA priority; assessment of the likelihood of such an achievement.
3. *Impact assessment*
   A general assessment of the impact of AA priority fulfilment on the development of a certain policy area of the policy dialogue and/or of reforms that take place in the respective sector of AA.

For each of the priorities, experts prepared concrete recommendations on how to ensure their achievement.

More details about the monitoring methodology can be found at the web-page: http://www.eu-ukraine.org/eu-ukraine-documents-and-policy-papers/

1 http://www.eeas.europa.eu/ukraine/docs/2011_12_eu_ukraine_priorities_en.pdf
2 Order of the Cabinet of Ministers dated 04.02.2010 No. 66758/147/1-09 and dated 13.02.2010 No. 66758/149/1-09
3 http://president.gov.ua/documents/14566.html
4 http://zakon2.rada.gov.ua/laws/show/184-2012-%D1%80No.n9

MONITORING RESULTS

2.1.1. Promoting an inclusive constitutional reform process designed to further develop a constitutional system of effective checks and balances between state institutions, in the light of the relevant recommendations of the Venice Commission

Although the rule of law, people's power and division of powers are settled in the Constitution, none of these principles are properly implemented in a real life or at least one can observe some progress in their implementation.

One should understand, that those problems that impede a directed and consecutive development of Ukraine as a democratic state where citizens' rights and freedoms are guaranteed, are caused by defects in some of Constitutional norms and mainly by rough breach of the Constitution.

The Constitutions reform is stipulated, first of all, by a need to establish more precise system for organization of public power by introducing mechanisms to the Constitution which will prevent authorities from abusing power in the future. The main task of the Constitutional reform implies establishing of more effective mechanism that would guarantee authorities' activity in the legal scopes. It is hard to overestimate fulfillment of this task since basis of political life will depend on it, i.e. whether it will the rule of law or self-will of people who gain the authority.

Thus, the first priority of the Association Agenda regarding strengthening the stability, independence and effectiveness of institutions guaranteeing democracy and the rule of law is promoting an inclusive constitutional reform process.

❖ Analysis of Implementation of the Priority

For a proper understanding of the essence of the priority, one should generalize key remarks and recommendations on the constitutional reform in Ukraine made by the Venice Commission in its conclusions. These recommendations can be divided in two sections – those referring to the procedure of the Constitutional reform, and those referring to the needed constitutional changes.

According to the recommendations of the Venice Commission, the constitutional reform should be conducted:

- With an absolute observing the procedure of introducing amendments to the Constitution;
- In an open and transparent way, with a wide public discussion and in the atmosphere that helps hold a discussion;
- The process of constitutional reform cannot be influenced by the election campaigns, and constitutional changes cannot be a subject for short-term political assumptions.

With regard to the constitutional reform key recommendations and positions of the Venice Commissions are the following:

- A comprehensive constitutional reform in Ukraine should strengthen the stability, independence and effectiveness of state institutions through a clear division of competencies and effective checks and balances. It should also introduce additional mechanisms and procedures of parliamentary control over the actions and intentions of the executive.
- The management system should be utmost clear, constitutional reforms should nor create preconditions for additional misunderstandings or political conflicts;
- The amendments to the Constitution of Ukraine should be based on real consensus among all political forces and the civil;
- No amendments that are unsatisfactory form the legal point of view can be introduced in order to achieve political compromise or other political tasks[5].

It should be stressed, that the Venice Commission (European Commission for democracy through law) is a consultative body for the Council of Europe, the member of which Ukraine is starting form 1995. Entering the Council of Europe Ukraine together with other principles have as well to accept the principles of the rule of law and of the enjoyment of human rights and fundamental freedoms, and collaborate sincerely and effectively in the implementation of the aim of the Council[6].

Resolution of the Parliamentary Assembly of the Council of Europe regarding "The functioning of democratic institutions in Ukraine" on October, 2010 mentioned that "the only manner in which lasting political stability can be ensured is through constitutional changes that establish a clear separation of powers, as well as a proper system of checks and balances between and within the executive, legislative and judicial branches of power".

One should also realize that the fact of conduct of constitutional reform does not necessarily mean implementation of the AA priority and responsibilities taken in front of the Council of Europe. The key issue is the reform essence and what it is targeting at. Constitutional reform that does not meet afore mentioned criteria, may only deepen problems with democratic development of Ukraine and estrange it from taken responsibilities.

The bodies authorized for taking compulsory decisions referring to conduct of constitutional reform in Ukraine are Verkhovna Rada, the President and Constitutional Court. Activity of these bodies regarding priority fulfillment in December, 2011 – September, 2012 cannot be evaluated unambiguously. The process of promoting an inclusive constitutional reform in Ukraine has been very controversial so far. On the one hand, there have been some actions by the Ukrainian Government that can be characterized as steps towards the fulfillment of the Association Agenda Priority. On the other hand, a series of decisions made by the authorities goes against the substance of the AA Priority.

5 The general list of recommendations of the Venice Commission is based on its Opinions: 1) On the Constitution of Ukraine CDL-INF(1997)002, adopted on 7-8 March, 1997; 2) on three draft laws on amending the Constitution CDL-AD(2003)19, adopted on 15 December, 2003; 3) on the procedure of amending the Constitution CDL-AD(2004)030, adopted on 11 October, 2004; 4) on amending the Constitution adopted on 8 December, 2004, CDL-AD(2005)015, adopted on 13 June 2005; 5) on the draft Constitution of Ukraine, designed by a working group headed by V. Shapoval L-AD(2008)015, adopted on 13-14 June 2008; 6) on draft law on amending the Constitution of Ukraine, proposed by V. Yanukovych, O. Lavrynovych and other paerlamentarians CDL-AD(2009)008 dated 16 March, 2009; 7) on a draft law on amending the Constitution of Ukraine proposed by the President CDL-AD(2009)024, adopted on 15 June 2009; 8) on constitutional situation in Ukraine CDL-AD(2010)044, adopted on 20 December, 2010.

6 http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm

Therefore, actions towards the fulfillment of the Association Agenda Priority are the following:

1. **Formation of the Constitutional Assembly as a consultative body under the President has been completed and started to function.**

The President issued a Decree "The question of formation and organization of the Constitutional Assembly" on January 25, 2012, and adopted a Concept of formation of the Constitutional Assembly. The Concept implies that the Assembly is a special body under the President of Ukraine, which was set up to elaborate proposals for amendments to the Constitution of Ukraine. The drawback of this situation is that the name chosen for the consultative body under the President does not fully meet the essence of the body and may deceive citizens regarding the status of the Assembly. In the theory and practice of constitutionalism the Constitutional Assembly should be a politically independent body formed by the constituent power of people through elections. A consultative body under the President dealing with drafting a draft law on amending the Constitution should have had a different name.

It also should be mentioned that the decree is based at the Concept for Constitutional Assembly which differs from the one that was evaluated by the Venice Commission. Thus, the Commission for democracy and the rule of law under the President drafted a Concept for establishment and functioning of the Assembly and sent it to the Venice Commission. On March 3, 2011 the Venice Commission adopted a Concept paper for the establishment and functioning of a Constitutional Assembly of Ukraine[7]. However, the Presidential decree approved another Concept[8], which was not reviewed by the Venice Commission.

According to the decree, complement of the Constitutional Assembly makes up 100 people – representatives of scientific and educational institutions, political parties and non-governmental organizations defined in the decree. One of the main tasks of the Assembly, according to the Concept paper is also to hold a public event to discuss a draft law (draft laws) on amending the Constitution with experts, including international ones from the Venice Commission ("European Commission for democracy through law"). Putting such a task as a separate one for the Assembly is a positive fact.

On May 2012, having signed a decree the President approved a membership of the Constitutional Assembly (certain institutions and political parties had an opportunity to submit their candidates till April, 15). Oppositional political parties which could delegate 5 representatives, refused to participate in Assembly's activities. **Membership of the Assembly met mostly negative public feedback.** Designing a draft law on amending the Constitution is a very important and responsible task, thus people involved into this process should be professional and virtuous. However, along with well-known experts a number of odious people were included into the Assembly's stuff which does not seek public trust because of their political activity, corruption scandals and other affairs.

On June, 20 the first meeting of the Assembly took place, where seven commissions and their membership were defined, Coordination Bureau was established by the Head of the Assembly, deputy head, secretary and heads of seven commissions.

2. **The issue of immunity for the People's deputies of Ukraine was put on Agenda of the Constitutional Court and Verkhovna Rada several times.**

The parliamentary immunity (immunity for the People's deputies of Ukraine) is one of the tasks to be solved by the Constitutional reform. The consideration of the parliamentary immunity separately is also an acceptable option welcomed by the public.

7 Opinion of the Venice Commission CDL-REF(2011)012, adopted on 3 March 2011.

8 http://www.president.gov.ua/documents/14411.html

In June, 2012 Verkhovna Rada elaborated a draft law on amendments to the Constitution (regarding guarantees of officials' immunity) registered under the No. 3251 from 03.10.2008. On July, 5 the document was submitted to the Constitutional Court in order to receive an opinion regarding it. However, in June another draft law on amending the Constitution concerning guarantees of officials' immunity was proposed to Verkhovna Rada (№ 10530). On July, 10 the Constitutional Court issued an Opinion on the draft law No. 10530[9], and on August, 27 on the draft law No. 3251[10]. The Court concluded that the latter corresponded to the Art. 157 and 158 of the Constitution of Ukraine, therefore, it is a "green light" for its preliminary adoption according to the procedure foreseen by the Art. 155 of the Constitution.

Despite some progress in the priority implementation, there are still problems which hinder constitutional reform in Ukraine and that confirmed some tendencies that questioned prospects of a proper reform. The key problems are the following:

1. **While adopting new laws one can often observe cases when the President obtains plenary powers which are beyond the Constitution.**

The Law "On the State property Fund" dated 09.12.2011 entrusts the right to appoint deputy heads of the Fund to the President as well some of institutional powers regarding Fund's activities which are not foreseen by the Constitution. The Law "On amendments to the LoU "On Antimonopoly Committee of Ukraine" dated 23.12.2011 empowers the President with additional personnel and institutional powers in the Antimonopoly Committee. Such practice is a deliberate violation of the Constitution as the Art. 106 defines an exceptional list of President's plenary powers and it can be broaden by laws

2. **Every month the President signs dozens of decrees legal regulation of which are beyond his Constitutional powers.**

The Constitution does not foresee any right for the President to issue orders to state bodies. Such practice was also used by the President Kuchma. Its unconstitutional character was stressed by independent experts, however after Kuchma's cadence it has become a classical example of how the President goes beyond his powers. President Yanukovych not only restored this practice, he also started to use it in larger scopes.

The President, using provisions of some laws that broadened his powers (see above) or without any correspondence to laws, signs dozens of decrees legal regulation of which are beyond his Constitutional powers. Most of them consider appointment and discharge of deputy ministers and deputy heads of Central Executive bodies, appointment and discharge of state authorized persons of Antimonopoly Committee. The President cannot execute such rights.

3. **Total leveling of legal procedures.**

Non-private voting is now a usual thing observed at plenary sessions of Verkhovna Rada. Not only the Art. 84 of the Constitution saying that a parliamentarian should vote personally is violated, many articles of the Verkhovna Rada Regulations are not kept at all (violation of the procedure of draft laws consideration and their adoption in Verkhovna Rada, terms of draft laws consideration, elaboration of the draft law in the Commissions etc). The decision which collected while being adopted all potential violations of the legal procedure and demonstrated a low level parliamentarians' juridical culture was adopted on July 3, 2012 and considered the Principles of State

9 Opinion of the Constitutional Court of Ukraine regarding amending the Art. 80, 105, 126, 149 of the Constitution № 1-в/2012 dated 10.07.2012.

10 Opinion of the Constitutional Court of Ukraine regarding amending the Art. 80, 105 of the Constitution № 2-в/2012 dated 27.08.2012.

Language Policy. The process showed that it was not even clear which text (draft law) was put on voting. The Speaker of Verkhovna Rada V. Lytvyn refused to sign the law and resigned his office. However, once the Rada did not accept his resignation he decided to sign the document and keep his position.

The law itself contradicts Art. 10 of the Constitution. It violated an established consensus in the society regarding usage of language and made grounds for confrontation regarding this issue. This state of affairs does not contribute to a proper Constitutional Reform. The Venice Commission stressed more than once that the reform should be held in the atmosphere of public dialogue and the decisions achieved should display a position of a broad public consensus.

4. **The Constitutional Court shows lack of ability to stand for the rule of Constitution.**

Among the objectively verifiable indicators defined for the Priority assessment there is one dealing with the decisions of the Constitutional Court which should be reasonable and consecutive. However, the way how this indicator is fulfilled is totally unacceptable.

The only task that the Constitutional Court has is to guarantee the rule of Constitution as the Main Law of Ukraine. The Constitutional Court gave us many reasons to question its capacity to execute this task which is of utmost importance for the rule of law. During the period covered by this report, one can trace political aspect in decisions of the Constitutional Court. They sometimes lack solid reasons, logical legal positions. For instance:

- The decision No. 2-рп/2012 dated 20.01.2012 in fact has closed access to the massive of important public information. As it is explained in the decision, any information about officials, in particular, their property relations, if not related to execution of functions at work, is confidential. Therefore, collection, storage, use and dissemination of such information about officials without their consent will be treated as interference into their personal and family life and foresees legal liability, incl. criminal one. In particular, getting interested for instance how an official could buy something expensive which he/she were not able to cover with their official salary, can lead somebody into jail;
- The decision No. № 3-рп dated 25.01.2012 dealing with the procedure of establishing social payments and consideration of arguments in court. According to the decision of the Constitutional Court, the Cabinet of Ministers is authorized to regulate issues concerning the procedure and amounts of social payments and the courts while considering arguments should follow normative and legal acts of the Parliament. Such a provision contradicts one of the key grounds of ruling based on the rule of law saying that laws should be put in accordance with the Constitution, and all the bylaws, incl. acts issued by the Cabinet of Ministers should meet provisions of laws and the Constitution. The decision of the Court also contradicts the Art. 92 establishing a number of questions that can be regulated only by laws and cannot be transferred to the level of bylaws, as well as the Court's previous position declared on social payments;
- The decision No. 6-рп/2012 dated 13.03.2012 declares some norms of the LoU "On Prevention and Fighting Corruption" as constitutional, including those saying that the President of Ukraine, people's and local deputies, judges, ministers, prosecutors, state officials and officials of local self-government are obliged to present their income and outcome statements, financial liabilities in 2011 (since July 1, 2011). It is difficult to name a Constitutional norm that can be violated by actions aiming at combatting corruption and set up in a new anticorruption law. The court concluded that these norms contradict the demand of time irreversibility of laws. This formulation is absurd since the law states that "data about income and outcome statements, financial liabilities in 2011 should be presented once the law enters into force" and it was put like this in order to fulfill the principle of time irreversibility of laws.

- The decision No. 15-рп dated 11.07.2012 deals with voting for the Head of Verkhovna Rada. The decision was delivered two days prior to submitting a relative filed appeal that makes it impossible to properly consider the case, keep to all the procedures and come up with a professional decision. Political motivation of such hurry and the decision itself can be easily traced. The Parliamentary opposition addressed the Constitutional Court with an appeal concerning constitutional procedure of electing the Speaker when the issue of Lytvyn's resignation remained unsolved due to adoption of the law "On Principles of State Language Policy". The Constitutional Court concluded that a norm of the Regulations on Speaker's election which foresee secret bulletin voting should have been declared unconstitutional. This procedure is the only one way how a real and not fiction voting can be held in the parliament since at least parliamentarians' presence at the session is needed. It should be also mentioned that such procedure is also used for electing judges of the Constitutional Court in Verkhovna Rada, however concerning electing the Speaker it turned out to be unconstitutional.

To sum up, we should stress that in a situation where some steps are being taken towards the implementation of the Association Agenda, while at the same time the country's highest authorities constantly violate the current Constitution one can expect the constitutional reform to be profaned.

Even if one considers the formation of the Assembly as progress in the implementation of the Association Agenda, it should be stressed that this progress is nominal rather than substantive. The formation of consultative or other parliamentary bodies cannot compensate for the continuing lack of respect of the Constitution and the lack of efforts at putting Ukraine authorities back in their constitutionally defined place. If the authorities do not act within their constitutional powers, but try to profit from the weakness of courts and other state institutions that aim to guarantee the rule of law, the whole attempt to conduct a constitutional reform, including the formation of the Constitutional Assembly, risks being compromised.

❖ What Needs to Be Done to Implement the Priority

Thus, constitutional reform should be held in two stages. The first one aims to recover the prestige of the Constitution and people's trust to constitutionalized political institutions. The second stage should fix the best mechanism of state power for the country and create proper conditions for reforms in different spheres.

In order to recover prestige of the Constitution and gain people's trust to state bodies, the country's highest officials should stop violating the Constitution. Constitutional reform will not achieve its goals once it is based on regular disregard of current constitutional norms. Therefore, the reform should first of all start with the President's refusal from issuing orders and executing other powers which are beyond the Constitution and the practice of non-personal voting in Verkhovna Rada should disappear.
The second stage of the constitutional reform can only be started when at least some of the state bodies demonstrate their ability to keep to the Constitution.

Otherwise, one cannot expect positive effect from the reform since it won't be legitimate in people's eyes.

2.1.2. Strengthening of the functioning of local and regional self-government, including by reference to relevant standards contained in the European Charter on Local Self-Government

One of the Association Agenda priorities, within the thematic section of the Political Dialogue, is to strengthen the functioning of local and regional self-government, taking into account relevant standards contained in the European Charter of Local Self-Government. The need to implement this priority is caused by the fact that the current system of local self-government in Ukraine is completely ineffective because its basis remains the same as in the times of the Soviet Union — when there was rigidly centralised management, planned economy, and facade democracy. For an ordinary resident of a local community, the inefficiency of local self-government is especially evident in the fact that he doesn't receive all the necessary social and administrative services (childcare, public utility services, transportation services, first and secondary healthcare, etc), or these services are poor. It is especially important for rural communities and small town communities. Another significant demonstration of the inefficiency of local self-government that an ordinary citizen faces daily is the low level of economic development of communities, and imbalance in the distribution of resources. The problem is that local authorities are unable to manage their own financial resources independently, or simply don't have the necessary resources in sufficient quantity. Addressing these and other (equally important) problems is possible only on condition of a radical reform of the local self-government system, which includes changes in administrative division. Full implementation of the AA priority No.2.1.2 provides for changes of such nature. This is not about abstract legislative innovations or superficial editing of the legal framework but about systemic changes which an ordinary citizen can directly experience — better quality of public services and significant economic development.

Within the Agenda, the EU, in fact, hasn't put any additional specific requirements to Ukraine as to strengthening local self-government except those which the state has already committed itself to as a member of the Council of Europe (from 1995). Therefore, to implement the priority, Ukraine should fulfil its long-standing obligations before the Council of Europe in the field of local and regional development. First of all, this refers to **the need to bring the local self-government system in compliance with the exhaustive list of principles of the European Charter of Local Self-Government (ECLSG).** Ukraine's record on implementation of these principles in the legislative dimension and in practice is the main criterion for assessing success in implementation of the priority of the Ukraine-EU Association Agenda.

The primary responsibility for implementation of the priority was assigned[11] to the Ministry of Regional Development, Construction and Communal Living of Ukraine and the Ministry of Justice as well as the Subcommittee No.6 on Justice, Freedom and Security within the Committee on Ukraine and the EU Cooperation. Also, on the list of responsible executors of the priority No.2.1.2, there is no Ministry of Economic Development and Trade of Ukraine, whose direct powers include the formation and implementation of state regional policy (including drafting legal acts on regional policy and local self-government)[12]. This shows a purely formal approach to allocation of responsibilities for implementation of the priority between government agencies, and lack of a deliberate plan of the implementation of changes at the very beginning of the process.

The European Charter of Local Self-Government was signed by Ukraine in November 1996, and ratified in July 1997. The expected advantage of adopting the Charter was the fact that the legal framework which existed at the time was to be brought in compliance with the regulations of the Charter, and all its provisions were to be considered when developing new legislation in the field of local self-government. Already four years after the ratification of the Charter, the Congress of Local and Regional Authorities of the Council of Europe noted[13] the lack of reasonable efforts by Ukrainian authorities on implementation of the provisions of the Charter. Key remarks concerned the fuzziness of certain provisions of the Constitution[14], excessive number of often contradictory legal acts which regulate local self-government, and inefficiency of the principle of subsidiarity defined in Paragraph 3 of Article 4 of the ECLSG. Sadly, these problems and remarks remain relevant today.

According to the recent assessment of the Council of Europe[15], in Ukraine, at the level of the Constitution, laws, and practice, the requirements of the European Charter of Local Self-Government provided in the following articles haven't been fully or partially implemented — 3.1 and 3.2 (narrowed or inadequate interpretation of the concept of local self-government at the level of the Constitution and the laws of Ukraine); 4.2 (narrowed interpretation of the powers of local self-government in the Constitution of Ukraine); 4.3 (inefficiency of the principle of subsidiarity in practice due to fragmentation of administrative units); 4.4 (in practice, powers of local self-government may be limited by statutory documents of the CMU, and sectoral ministries and departments); 4.5 (excessive number of delegated powers of local self-government, in fact, turns executive committees of the councils into government agencies); 4.6 (inefficiency of the institute of public counselling in Ukraine); 6.1 (state over-regulation of internal administrative structure of local self-government); 8.1 (lack of clear procedures of administrative supervision of local self-government by the state); 8.3 (lack of the term of „proportionality" of the state control over local self-government); and current budget system doesn't meet the requirements of Article 9 (on financial resources of local self-government agencies) in general.

Thus, in order to really bring the Ukrainian legislation in compliance with the ECLSG and successfully implement the AA priority No.2.1.2, Ukraine must take the main and most important step — **conduct a radical reform of administrative division and local self-government.**

❖ Analysis of Implementation of the Priority

From the moment the AA came into force in November 2009 and until October 2011, the Ukrainian government has made minimal effort to implement the priority No.2.1.2. Primarily, this is evident in actual sabotage of the implementation of the **Action Plan on Implementation of the Concept of Local Self-Government Reform**[16] by M. Azarov government. Also, during 2010 and 2011, implementation of the Action Plan of the Concept of Forming the System of Professional Development of Local Self-Government Officials and Deputies of Local Councils failed[17]. Finally, the government postponed completion of the process of reforming local budgets from 2011 to

11 According to the Resolution of the CMU of 30/12/2011 No.14426/33/1-11 Allocation of Responsibilities of Government Agencies and Subcommittees Within the Committee on Ukraine and the EU Cooperation for implementation of the Ukraine-EU Association Agenda.

12 Provision on the Ministry of Economic Development and Trade of Ukraine approved by the Decree of the President of Ukraine No.634/2011 On the Ministry of Economic Development and Trade of Ukraine.

13 Recommendation 102 (2001) of the Congress of Local and Regional Authorities of the Council of Europe On the State of Local and Regional Democracies in Ukraine.

14 The Constitution of Ukraine was adopted before the ECLSG, therefore, certain provisions of the Constitution haven't been agreed with the principles enshrined in the Charter and required relevant changes.

15 Expert Opinion on Compliance of the National Legislation of Ukraine with the Principles of the European Charter for Local Self-Government (DPA/PAD 1/2010 of 30 July 2010).

16 The Order of the CMU of 02/12/2009 No.1456-r On Approval of the Action Plan on Implementation of the Concept of Local Self-Government Reform.

17 The Order of the CMU of 23/09/2012 No.1134-r On Approval of the Action Plan for the Period Until 2011 on Implementation of the Concept of Formation of the System of Professional Development of Local Self-Government Officials and Deputies of Local Councils

2014[18]. Thus, the government of M. Azarov having not formally cancelled the main reform acts of the previous government, revealingly hasn't implemented them, or has postponed their implementation. Furthermore, against the background of unreasonable delay of implementation of the reform, decisions which deepened and preserved the shortcomings of the existing local self-government system even more have been taken. Having adopted the Law on Regulation of Urban Planning[19], the Verkhovna Rada has significantly narrowed the possibilities of members of local communities to influence the policy of spatial development and planning. In Kyiv, proper local self-government was practically ruined because of the adoption of the Law On Amendments to the Law of Ukraine On the Capital of Ukraine — the Hero City Kyiv[20], which eliminated raion councils in the city and took the function of the executive officer from the Mayor.

It is also worth noting that in 2010, the President and the CMU took important measures aimed at the development of their own strategy of reforms in the field of local and regional self-government. In particular, special government agencies were created, whose objectives also included reforming the policy of regional development and the local self-government system — the Committee on Economic Reforms[21], the Council of Regions[22], and the Coordinating Centre for Implementation of Economic Reforms[23]. The Local Self-Government Fund of Ukraine was reorganised into the State Local Self-Government Fund, and its powers have been expanded[24]. However, after a year and a half period of work of various groups and councils, the acting government hasn't proposed any specific alternative scenario of the local self-government reform. Only in the end on 2011, government work aimed at implementation of the local self-government reform has intensified. This was preceded with numerous statements of the President of Ukraine on the urgent need of local self-government and its planned start in 2012. It is typical that in late 2012, the rhetoric of the President on immediate launch of the local self-government reform remains the same[25].

In October 2011, at the Ministry of Regional Development, Construction and Communal Living of Ukraine, **the Interdepartmental Working Group on Improvement of the System of Local Executive Authorities, Local Self-Government and Their Territorial Basis**[26]. The main objective of the group was to develop coordinated measures for drafting legislative acts on reforming local self-government, local executive authorities, and administrative division.

18 The Order of the CMU of 21/07/2010 No.1467 On Amendments to the Concept of Reforming Local Budgets.

19 The Law of Ukraine of 17/02/2011 No.3038-VI On Regulation of Urban Planning.

20 The Law of Ukraine of 07/09/2010 No.2500-VI On Amendments to the Law of Ukraine On the Capital of Ukraine — the Hero City Kyiv On the Procedure of Forming Raion Councils.

21 The Decree of the President of Ukraine of 17/03/2012 No.355/2010 On the Committee on Economic Reforms.

22 The Decree of the President of Ukraine of 09/04/2010 No.533/2010 On the Council of Regions.

23 The Decree of the President of Ukraine of 21/12/2010 No.1154/2010 Provisions on the Coordinating Centre for Implementation of Economic Reforms.

24 The Decree of the President of Ukraine of 24/06/2010 No.723/2010 On State Local Self-Government Fund in Ukraine.

25 For more information: The President's speech at the meeting of the Council of Regions in Yalta (3 June 2011) — http://www.president.gov.ua/news/20285.html. The President's statement at the meeting with candidates for the office of Heads of raion state administrations (31 August 2011) — http://www.president.gov.ua/news/21069.html. The speech of the President of Ukraine at the international municipal hearings *Development of Good Governance at Local and Regional Levels* (1 November 2011) — http://www.president.gov.ua/news/21776.html. The President's interview to journalists during the working visit to Odesa Oblast (17 November 2011) — http://www.president.gov.ua/news/21967.html. The report of the President of Ukraine at the first plenary session of the Constituent Assembly (20 June 2012) — http://www.president.gov.ua/news/24847.html. The speech of the President of Ukraine at the ceremonial meeting dedicated to the 20th anniversary of the Association of Ukrainian Cities (28 September 2012) — http://www.president.gov.ua/news/25565.html.

26 The Order of the Ministry of Regional Development, Construction and Communal Living of Ukraine No.224 of 06/11/2011.

In a few months, in February 2012, by the order of the President of Ukraine, another group was formed, of a higher level and at the CMU — **the Working Group On Improvement of Territorial Organisation of Authorities and Local Self-Government**[27]. The Minister of Regional Development, Construction and Communal Living headed it. The main objective of the group was to draft legislative acts on determination of the conceptual framework for improving the territorial organisation of authorities and local self-government; develop an action plan for reforming the territorial organisation of authorities and local self-government; run the experiment of improvement of the local self-government model; and regulate establishment and change of the boundaries of administrative units, names of settlements, and their categorisation. Activities of the group in determined strategic directions were ineffective — during the first seven months of its existence, the working group met for its meeting only once[28] (27 March 2012). Activities of certain thematic subgroups within the working group turned out to be more intense. In particular, one of the thematic subgroups drafted a new edition of the Law of Ukraine On Bodies of Self-Organisation of People. However, the text of the bill proposed by the group caused heavy criticism of the specialised national non-governmental organisation — the Association for People's Self-Organisation[29], which emphasised that some provisions of the document were contrary to the public policy of promoting the development of the civil society and slowed down the development of people's self-organisation movement. The Association for People's Self-Organisation encouraged the MRDCCL to provide for drafting an updated version of the bill involving the expert community and the interested public.

The issue of local self-government reform came into sight of the Constituent Assembly formed by the President in May 2012[30]. At the first meeting of the Constituent Assembly held on 20 June 2012, 7 commissions were created, among which was **the Commission on Administrative Division and Local Self-Government**. As of September 2012, only two meetings of the said Commission were held, and yet no developments as to the content of the local self-government reform have been introduced by the Commission.

Another working body, which indirectly is also designed to work on strengthening local self-government in Ukraine, is **the Coordinating Council on Civil Society Development** formed by the President in early 2012[31]. Within the Coordinating Council, the Working Group on Local Democracy and People's Self-Organisation operates (since May 2012), in the view of which the bill On Local Referendum and drafting the new edition of the Law On Bodies of People's Self-Organisation are.

Thus, in the last year, the authorities has formed four institutional platforms of different formats, the powers of which fully (Interdepartmental Working Group at the Ministry and the Working Group at the CMU) or partially (the Constituent Assembly and the Coordinating Council) include the issue of reforming the local self-government system. This is certainly commendable given the increased opportunities for expert discussion on statutory regulation of various aspects of local self-government and forming public opinion on the importance and nature of the reform.

27 Order of the CMU of 29 February 2012 No.169 On Formation of the Working Group On Improvement of Territorial Organisation of Authorities and Local Self-Government.

28 According to the information published on the website of the Ministry of Regional Development, Construction and Communal Living of Ukraine (http://minregion.gov.ua/).

29 See the Statement of the National Research to Practice Conference *Public Control in Housing and Utilities* (http://proosbb.info/2012/10-09/01:33/zayava-vseukrains1100koi-naukovopraktichnoi-konferencii-laquogromads-1100kiy-kontrol1100-v-zhitlovokomunal1100niy-sferi.html).

30 The Decree of the President of Ukraine of 17 May 2012 No.328/2012 On Constituent Assembly.

31 The Decree of the President of Ukraine of 25 January 2012 No.32/2012 On Civil Society Development in Ukraine.

However, it significantly slows down the pace of reforming and can lead to the subject of the local self-government reform being talked about again. Moreover, with several platforms for the reform discussion, there is no single responsible central body which would have the powers and political status (at the level of the Deputy Prime Minister) for coordination and implementation of the local self-government reform.

The Concept of Reforms. The political framework required for the implementation of the AA priority to strengthen the functioning of local and regional self-government was created in 2009 when the Cabinet of Ministers of Ukraine approved **the Concept of the Local Self-Government Reform**[32] **and adopted the Action Plan for its implementation**[33]. These documents were drafted with the Ukrainian and international expert community involved and received positive feedback from the leading European institutions, including the Council of Europe. According to the approved Action Plan, the comprehensive reform of local self-government was designed for three years, and was to be completed in 2012. The Concept and the Action Plan covered key and long-awaited areas of reforming the local self-government system — constitutional amendments on the establishment of executive bodies of raion and oblast councils, passing bills on administrative division, local state administrations, and communal ownership. However, none of the planned measures hasn't been implemented. The new government appointed in 2010 by the President of Ukraine Victor Yanukovych for almost three years revealingly sabotaged implementation of the current Concept and the Action Plan. Finally, in August 2012, the CMU reversed the order of the previous government on the adoption of the Concept of the Local Self-Government Reform and approval of the corresponding Action Plan. Thus, having recognised the failure to implement a coordinated comprehensive strategy of reforming local self-government.

Therefore, in 2012, the Ukrainian government returned to discussion of the Concept of Local Self-Government Reform in a new edition. Back in March 2012, the Ministry of Regional Development, Construction and Communal Living of Ukraine presented the new edition of the Concept of Reforming Local Self-Government and territorial organisation of authorities in Ukraine. Provisions of the document comply with the ECLSG, and actually duplicate the content of the Concept of 2009. However, on 21 May, the complete draft of the Concept approved by oblast councils and specialised organisations was withdrawn from the government. It is expected the that by the end of 2012, the new Concept will finally be approved by the Cabinet of Ministers, which will formally mean the beginning of the reform process.

Other Legislative Measures. Apparently, the adoption of certain bills aimed at improvement of the local self-government system should occur after the approval of the Concept of Reforming Local Self-Government rather than precede it. However, in the situation of adoption of the Concept being constantly postponed, selective and superficial regulation of problematic issues of local self-government is still better than none. However, over the last year, the expected progress hasn't been achieved here either.

Unfortunately, as of the end of 2012, certain bills haven't been properly prepared and haven't come into effect aimed at improvement of the local self-government system (On Unification of Local Communities, On Service at Local Self-Government, On Local Initiatives) registered in the Verkhovna Rada back in late 2011 and early 2012.
The bill **On Unification of Local Communities** (No.9590), which regulates the procedure of the merge of communities through their unification**, was returned by the Parliament** for revision in May 2012. The bill, in general, complies with the ECLSG but contains some shortcomings (especially, the way of state funding of the unification of communities is unclear), and isn't fully consistent with the existing draft of the Concept of Local Self-Government Reform.
Also, in September 2012, the Verkhovna Rada returned for further development the bill **On Service in Local Self-Government** (No.9673), which contains numerous contradictions, doesn't fully comply with the ECLSG principles, and was developed without active involvement of all stakeholders.

The bill **On Local Initiatives** (No.9404) aimed at increasing opportunities of the residents of local communities in the management of local affairs is still being considered by the Verkhovna Rada. The bill, in general, complies with the ECLSG provisions but the procedure of implementation of a local initiative proposed in it requires substantial simplification.
Also, the Additional Protocol to the European Charter of Local Self-Government remains not ratified, signed by Ukraine in October 2011, which will allow to expand the rights of residents to be involved in the life of local communities.

Search of the Model of Reforms. The most notable shift in the field of regional policy is the formation in January 2012 of **the State Regional Development Fund**[34], whose funds (on a competitive basis) should be used for investment projects, social and economic development programmes, and cross-border cooperation. In the State Budget 2012, the costs allocated for the State Regional Development Fund amount to 1 641,450 UAH[35]. In April, the Parliament approved the list of facilities and activities financed by the State Regional Development Fund[36]. However, a substantial disadvantage of the Fund's activities in 2012 was the lack of transparency in allocation of its funds. Only in July 2012, the Cabinet of Ministers adopted the Procedure of Preparation, Evaluation and Selection of Investment Programmes (Projects) which can be implemented at the expense of the State Regional Development Fund[37].

Furthermore, in the government, preparation of the project of the State Regional Development Strategy is still ongoing. Also, the Bill On the Principles of State Regional Policy (No.6462-d) registered in the Verkhovna Rada in June 2012 was already withdrawn in September.

❖ What Needs to Be Done to Implement the Priority

Thus, during 2012, the local self-government reform was actually slowed down, at the backdrop of unsystematic legislative initiatives and repeated political declarations of the country's leadership on the need of urgent reforming in this area. Also, no single government agency empowered and responsible for reforming local and regional self-government remains a substantial obstacle in implementation of the AA priority No.2.1.2.

Publication of the Concept of Local Self-Government Reform and the corresponding Action Plan is a key achievement of the government in the reporting period. This is another but, for now (before the official entry into effect of these documents), declarative step towards comprehensive local self-government reform in Ukraine. Paradoxically, the adoption of the Action Plan for Reforming Local Self-Government in Ukraine expected in 2012 will return the country to September 2009, when it was adopted, on the way towards implementation of the AA priority No.2.1.2 since the previous action plan hasn't been implemented yet.

32 The Order of the CMU of 29/07/2009 No.900 On Approval of the Concept of the Local Self-Government Reform.

33 The Order of the CMU of 02/12/2009 No.1456-r On Approval of the Action Plan on Implementation of the Concept of Local Self-Government Reform.

34 The Law of Ukraine of 12/01/2012 No.4318-VI On Amendments to the Budget Code of Ukraine and Other Legislative Acts.

35 The Law of Ukraine of 22/12/2011 No.4282-VI On the State Budget of Ukraine for 2012.

36 The Order of the CMU of 25 April 2012 No.243-r On Approval of the List of Facilities and Activities Financed by the State Regional Development Fund in 2012.

37 The Order of the CMU of 4 July 2012 No.656 On the State Regional Development Fund.

In this situation, the urgent political moves of government agencies should be the following — 1. immediate adoption of the Concept of Local Self-Government Reform and the corresponding Action Plan; 2. establishment of a single central executive authority empowered and responsible for implementation of the reform of local and regional self-government, and only then — 3. drafting thematic bills in compliance with the idea of the Concept and the Action Plan.

Also, one should understand that an effective reform of the local self-government and administrative division in Ukraine is impossible without amending the Constitution. Therefore, certain provisions of laws that must be adopted will inevitably conflict with some of the articles of the Constitution of Ukraine. First of all, the Constitutional Court of Ukraine should provide official interpretation of compliance of the Constitution of Ukraine with the European Charter of Local Self-Government. Based on the opinion of the CCU, necessary amendments to the Constitution can be made. At the same time, current legislation (especially, the Law of Ukraine On Local Self-Government, and Tax and Budgetary Codes) should be brought in compliance with the revised Constitution. Then, the Law On Administrative Division can be adopted. These are the most important and difficult steps which will allow to "strengthen the functioning of local and regional self-government in Ukraine, taking into account the relevant standards of the ECLSG".

2.1.3. Work closely together in reforming and enhancing the capacity of the public administration system in Ukraine on the basis of an assessment by SIGMA, including an effective fight against corruption

Implementation of the priority implies reforming civil service according to the EU norms and standards and on the basis of an assessment by SIGMA. To achieve this, norms of a new Law of Ukraine "On civil service" should fully include the results of SIGMA evaluation.

What concerns the reforms of civil service itself, a concrete division of responsibilities should be introduced at the level of political officials (ministers and their deputies) and administrative authorities – starting from the head of department and lower. Political influence on nominating and lobbying state servants should be as well eliminated.

Among the bodied responsible for cooperation in reforming and enhancing the capacity of the public administration system in Ukraine on the basis of an assessment by SIGMA, , including an effective fight against corruption are Verkhovna Rada, the President, National State Service, Security Service, Ministry of Internal Affairs and other authority bodies. However, there is no Action Plan for implementing the priority.

At the same time, the President on February 29, 2012 issued a decree "On development and approval of an Action Plan of urgent actions for Ukraine's intergration to the European Union in 2012". According to the Plan, the government should provide for implementing AA priorities (with monthly reporting). As far as we know, the Cabinet charged Central bodies of executive power to execute the decree. However, no detail information about how the task will be fulfilled is known.

Moreover, on March 12 the Presidnt another decree No.187 that provides a National Plan for 2012 in order to fulfill the Program of economic reforms in 2012-2014 titled "wealthy society, competitive economy, effective state". According to the Plan, the government in May- August 2012 should have adopted 18 normative and legal acts to execute the LoU on civil service, and a National State Service should have adopted 11 acts. The Civil Service should have also take a number of preparatory actions in order to implement the Program.

The Progress Report on Ukraine providing evaluation of the implementation of the European Neighbourhood Policy includes a very concrete precondition for "Bringing the law on civil service of November 2011 in line with EU norms, which would allow an EU sector budget support programme of EUR 70 million to advance"[38].

❖ Analysis of Implementation of the Priority

As of October 2012 this priority is not achieved. The so-called administrative reform, which should include civil service reform as well, begun with the adoption of Presidential Decree № 1085 of December 9, 2010 on optimization of the central executive bodies system. However, the adoption of this regulation has only misbalanced the system of central executive bodies, as most of them have been subjected to a re-organization without any vision of how to do it. Documents like a Concept, Strategy or an Action Plan identifying the key directions of the reform did not actually exist.

Basic laws such as "On the Cabinet of Ministers", "On the Central Executive Bodies," etc. have been adopted at the start of the "Optimization Decree". The new version of the Law of Ukraine

38 Implementation of the European Neighbourhood Policy in Ukraine. Progress in 2011 and recommendations for action. http://ec.europa.eu/world/enp/docs/2012_enp_pack/progress_report_ukraine_en.pdf

"On Civil Service" was adopted by the Verkhovna Rada of Ukraine only on the November 17, 2011 and was signed by the President of Ukraine only on the 10th of January 2012.

In addition, the following documents have been adopted: the decree of the President of Ukraine "On National Anti-corruption Strategy for 2011-2015", № 1001/2011, dated 21.10.2011; the Decree of the Cabinet of Ministers of Ukraine "On Approval of the State Program on Prevention and Combating Corruption for 2011-2015", № 1240, dated 28.11.2011; and the Decree of the Cabinet of Ministers of Ukraine "On the Procedures of the assignation of gifts received as gifts to the state, the Autonomous Republic of Crimea, local community, state or municipal institution or organization", № 1195, dated 16.11.2011.

It should also be noted that certain steps, which authorities have described as needed for the implementation of this priority, can be interpreted as adverse to its implementation. For example, under the slogan of "optimization" of the central authorities the President made a decision to reduce staffing of Ministries by 30% and the Cabinet Secretariat by up to 50%. As a result a large number of professional civil servants were released, often for political reasons. Instead, they were replaced by untrained staff originated mainly from Donetsk and some other eastern regions, who were often put in leadership positions. The issue of fight against corruption has been turned into an instrument for intimidating political opponents. Thus corruption became a uasual case in nowadays society.

In terms of priority implementation the following trends that occurred in December 2011 - April 2012 should be noted:

1. January 10, the President signed the revised Law of Ukraine "On Civil Service" (Law number 4050 of November 17). However, the timeframes established by the Constitution were not met, as the discussion of the adopted Law by the Verkhovna Rada took over six weeks, instead of the designated 10 days;
2. The National State Service announced that during the current year starting on January 1, 2013complex measures will be taken to fully enforce the law. 22 standard provisions governing the procedural aspects of the Law will be designed.
3. Assistance of the European Union needed to reform the civil service is stopped.
4. Drafts of 17 regulations designed to implement the new law "On Civil Service" were publicized on the National State Service site. In addition, decrees already signed by the Chairman of the National State Service and registered by Ministry of Justice were also published, including:
   - "On approval of the Procedures of civil servants' professional competence advancement" dated 04.06.12;
   - "On approval of the Procedures of civil servants' training" dated 04.03.12;
   - "On approval of the Procedures of candidate selection for positions in civil service" dated 05.04.12;
   - "On approval of the Procedures managing, recording and keeping personal files of civil servants" dated 04.05.12;
   - "On approval of Standard internal service regulations" dated 30.03.12;
   - "On approval of Standard regulation on the service deliveryof staff of a public authority, the authority of ARC or its apparatus" dated 05.04.12;
   - "On approval of Standard procedure of evaluating the results of service of civil servants" dated 05.04.12.

The very fact of public discussion and adoption is obviously a positive sign. However, the results of the discussion, as is customary, for example, in the European Union, have not been reported, and the effect on their implementation can be assessed only after some time.

5. The majority in the Parliament made a quite unexpected move in the fight against corruption. Signed by 153 pro-government deputies a petition № 04-01/6-69 (9603) of 19.01.12 «On the Compliance of paragraph 2 part 1 of Article 7 and paragraph 2 chapter VIII "Transitional and Final Provisions» of the Law of Ukraine «On Prevention and Combating Corruption" with the Constitution of Ukraine» was submitted and taken to consideration by the Constitutional Court of Ukraine. It is about a «ban for individuals identified in paragraph 1 of Article 4 of the Law «On persons authorized to perform state functions» to be a member of the board of an enterprise or organization created for the purpose of gaining profit.
   However, the document does not include paragraph 1 of part 1 Article 7 of this Law concerning the prohibition of business activities, which some courts interpret as having corporate rights as an enterprise founder. As a result, the decision of the Constitutional Court dated March 13, 2012, has been adopted. Under this decision the Constitutional Court of Ukraine has established that «a person authorized to perform functions of the state and local governments, as well as other natural and legal persons, have the right to own, use and dispose their property, in particular for the acquisition and exercise of corporate rights ...» [39].
6. On February 1, 2012 MPs received the draft law «On National Anti-Corruption Bureau»[40] (registration № 9746 from 24.01.12) drafted by Arseniy Yatseniuk. However, it was rejected at a plenary session of the Parliament in May.
7. On February 8, 2012 the Ministry of Justice of Ukraine issued the Order of Clarification on the Procedure of providing information from the Unified State Register of persons who have been involved in corruption[41].
8. A decree of the Cabinet of Ministers "On approval of the Order of calculating record of civil service" [42] (registration № 559 from 20.06.2012) was adopted. It should be mentioned that the Order itself does not answer the question of how the record of civil service would be calculated and includes four formal points. It means that while implementing the Order a number of disputable questions will arise between state officials and certain HR-services.
9. Two Laws of Ukraine that narrowed the sphere of operation of the Law of Ukraine «On public procurement» No.4881 dated 5.06.2012 came into force. As a result, legislation on public procurements suffered deterioration.
10. With a decree of the Cabinet No.411 dated June 27, 2012 a **Concept of a State Program for civil service development till 2016**[43] was adopted. The adoption itself, of course, is a positive step. However, the fact that an actual term of the previous Concept ran out in 2010 and, in fact, the next one has been adopted only in a year and a half, can prove for the lack of balance in the operation of state institutions which cannot develop in due time the most basic laws and normative documents and lobby their adoption.
    Also, the funds allocated for the Concept implementation for the next 5 years make up a ridiculously small sum of 25 mln UAH from the State budget and another doubtful 13 mln UAH received within the Technical assistance program since the EU stopped cooperation in this sphere because many norms of the Law "On Civil Service" collides with the norms and EU standards.

39 Decision of the Constitutional Court of Ukraine № 6-рп/2012 dated March 13, 2012 answering a constitutional communication signed by 53 people's deputies of Ukraine about compliance of the p. 2, p. 7 art. 7 and p. 2 chapter VIII of "Closing and transitional provisions" of the LoU "On basis for prevention and fight against corruption" to the Constitution: http://www.ccu.gov.ua/uk/doccatalog/list?currDir=6955

40 Draft law "On National Anti-Corruption Bureau": http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=42381

41 http://zakon1.rada.gov.ua/laws/show/n0003323-12

42 http://zakon2.rada.gov.ua/laws/show/559-2012-%D0%BF

43 http://zakon2.rada.gov.ua/laws/show/411-2012-%D1%80

11. The Cabinet of Ministers adopted an Action Plan for implementation of an institutional reform in the sphere of conducting sanitary and phytosanitary actions (decree No. 415 from June 25, 2012)[44]. For its essence it is the first complex document providing that sanitary and phytosanitary management should meet European standards and norms.

Therefore the following may be considered as positive results in implementing the priorities within the reporting period: **the development of regulations to the Law "On State Service"** and opening some of them, including those prepared by the National State Service, for public discussion and/or their adoption and publication. However, it is too early to draw conclusions about how they will improve public service regulations, particularly with regards to reducing corruption by civil servants.

However, the obvious negatives include the fact that candidates for positions in state and local authorities will be mostly chosen by their future superiors. Also, those checks will prolong the decision-making process concerning appointments. It is obvious that within a 15-day period set for special checks pursuant to the mentioned decree dated January 25, 2012, six state agencies that are authorized to implement checks (Ministry of Interior, Ministry of Health, Ministry of Education, Ministry of Justice, Tax Administration, State Migration Service) will not be able to complete the task.

In addition, the rejection of the draft law "On National Anti-Corruption Bureau" is another disappointment in the reporting period.

Also, as a result of 20 amendments and additions, the action field of the Law of Ukraine "On public procurement" was limited.

In general, the tendency to use Soviet-style governing practices is observed in the implementation of the priority. It is clear that the results of the SIGMA assessment are not fully taken into account; the law on government procurement is worsening; and cooperation with the EU is currently fully stopped.

❖ What Needs to Be Done to Implement the Priority

Challenges in the development of the civil service in Ukraine are rooted in the lack of political will necessary, firstly, for de-sovietization of most state institutions, and secondly, for bringing civil service legislation in line with EU norms and standards. It seems that without cooperation with the EU it is impossible to achieve these objectives.

Therefore, civil service reform should start with the introduction of relevant amendments to the Law of Ukraine "On Civil Service", prepared on the basis of the SIGMA assessment and agreed with the EU. At the same time, regulations that (following a Ukrainian "tradition") often negate all the achievements of the superior regulations should be consistent with this Law.

It should be noted that without highlighting political positions and clear guarantees of non-interference in the activities of civil servants for political reasons, as it occurred en masse in recent years, civil service reform will be incomplete.

To restore the authority of state officials it is necessary to ensure the equal and unconditional application of anti-corruption legislation in all cases - a task that can hardly be considered realistic in the present context, particularly given the lack of political will necessary for the formation of the National Anti-Corruption Bureau.

44 http://zakon2.rada.gov.ua/laws/show/415-2012-%D1%80

As a result of constant contraction of the action field of the Law of Ukraine "On public procurement", the EU has stopped its financial assistance in the sphere of civil service reform and all other programs. At the same time, dozens of millions of budgetary funds were taken out of the public control.

To improve the situation it is necessary to develop a new edition of the Law of Ukraine "On public procurement", to adjust it with the European Commission and provide for its fastest adoption.

2.1.4. Ensuring effectiveness of the voting system and the environment in order to continue conducting presidential and parliamentary elections in compliance with the international standards of democratic election and recommendations of the OSCE and the Office for Democratic Institutions for Human Rights

There is no progress in the implementation of this AA Priority. People's Deputies are elected to the Verkhovna Rada under the least successful for Ukraine, corrupt parallel voting system, which can be view as an obvious regression. There is no progress in preparation for the presidential election except ensuring proper administration of the State Registrar of Voters. Political elites withdrew the issue of codification of the electoral law from the agenda since none of political parties is concerned about the stability of relevant legal framework. It is usual for the Ukrainian parliamentary system to adopt a law governing conduct of the election campaign based on political expediency shortly before the election.

❖ Analysis of Implementation of the Priority

The voting system. Similar **parallel voting system** was used in 1998 and 2002. According to it, 225 deputies are elected by closed party lists while the remaining 225 — in single-member FPP election districts by relative majority. Key political players, including from the ruling side, and civic experts have publicly defended the proportional system with open regional lists. It combines party responsibility and provides proper influence of voters on the content of the list. The old proportional system with closed lists used in 2006 and 2007 caused internal party corruption and distanced deputies from the voters. However, instead of the broad discussion of the political bloc of the electoral law reform, the sole decision of the President, implemented through submission of the relevant bill by deputies of the Party of Regions, returned parallel, or "mixed" voting system to Ukraine. Support of the new edition of the Law of Ukraine On Election of People's Deputies with 366 votes in the Parliament is the result of political blackmail — a bill which copied the worst legal provisions on local election was submitted to the Parliament, and the opposition agreed to compromise in order to introduce a number of procedural changes. The Venice Commission, the International Foundation for Electoral Systems, and the OSCE-ODIHR have analysed and evaluated a totally different document. Legitimisation of this parallel voting system, in the realities of the 2012 parliamentary election, led to political and strategic loss of the opposition. The practice of parliamentary campaigns in 1998 and 2002 shows that in the Ukrainian realities, the FPTP component contributes to the effective use of administrative resource and bribery of voters, and, as a result, in most single-member districts, candidates who have access to resources have significant advantage. Furthermore, this system provokes political corruption in the Parliament, and inter-factional migration, which adversely affects the structuring of the Parliament. For example, from 1998 to 2002, around 600 transitions were recorded, the highest being 8 changes of the political overtone, already in the Verkhovna Rada of Ukraine, per deputy. Parallel system also doesn't motivate to use internal party democratic procedures as it keeps closed party lists. Either a party leader or a pressure group, rather than activists or voters, keeps playing the key role.

Activities of the Central Election Commission. During the reporting period, **the Central Election Commission** acted jointly; all the decisions and orders were taken after voting; since April — the active phase of preparation for the regular parliamentary election — the meetings were open; and the press service mostly promptly announced them on the official website www.cvk.gov.ua. The procedure of formation of the Commission, according to Article 6 of the Law of Ukraine On the CEC provides for nomination of 15 candidates proposed by the President, taking into account suggestions of deputy factions and groups. Thus, the composition of the Commission at the time

of formation in 2007 partly reproduced the map of the Ukrainian Parliament. However, the party principle of assigning officials could not but affected its work. Currently, grouping of the CEC members in two blocs, where the pro-government one prevails by 8 votes, is obvious. The parliamentary campaign showed disadvantage of the commission work in distribution of personal jurisdiction of the officials. Each of 15 officials is in charge of a number of oblasts (basic territorial divisions) within which a commission member performs certain supervisory, administrative, and advisory functions ranging from the stage of territorial organisation of the election to preparation and printing of voting ballots in respective single-member FPTP election districts. This approach can adversely affect the work of a CEC member as the functions of oblast curators can transform into protectionist in the future. Accordingly, the Central Election Commission shall revise the structure and system of the allocation of responsibilities, which will better ensure impartiality of the members while performing their organisational and advisory functions.

The system of decision-making among the CEC members remains public but not sufficiently transparent. Officials usually come to official open meetings with ready and pre-agreed drafts. During the electoral process, the CEC doesn›t provide sufficient transparency of certain decisions avoiding proper public discussion. It is worth mentioning prompt publication of the CEC decisions on the official website and effective operation of the section Election to the Verkhovna Rada 2012[45], thanks to which daily updated information on the election in terms of districts, commissions, and candidates can be tracked. At this stage of the priority implementation study, the role of the CEC is significantly narrowed in terms of evaluation of the election law violations by candidates of the campaign, and responding to them. The Law imposes organisational and administrative functions on the Commission. Only courts can determine a violation or degree of responsibility for committing it. However, to initiate a trial, there is often the lack of activity of the participants of the electoral process who avoid practices of appealing the actions of rivals in court. The Central Election Commission is only the executor of court decisions so the possibilities of this executive body to ensure the standards of the electoral process are rather small. The Civil Network OPORA, which observes the electoral process in the status of official observers from an NGO, notes the reduction of influence of the CEC on the election participants, taking into account abandoning the practice of de-registration of candidates during the campaign. Liberalisation of the election law concerning responsibility of participants of the electoral process for committed violations led to the opposite result. If in the Ukrainian election practice situations arose when candidates were eliminated from the election race being formally attributed minor violations, in 2012, no liability within the electoral process is provided for. Under inaction of law enforcement agencies, participants of the campaign began to resort to rigid — and sometimes illegal — fight for the votes using bribery, administrative resource, or smear. According to the CEC, during the reporting period, all the appeals of the Commission to the Office of the Prosecutor General are left without proper consideration.

High-quality performance of election commissions of various levels is properly supported despite the lack of sufficient funding, especially for implementation of the training component. The CEC, jointly with the International Foundation for Electoral Systems, held trainings on the application of the election law for all members of district election commissions, and produced a handbook for members of precinct election commissions funded from the budget. Such measures won›t solve the problem of the incompetence of members of DECs and PECs but they will largely reduce deficiencies of the system of formation of election commissions. Moreover, the Central Election Commission, jointly with the Coordinator of the OSCE Mission, is planning to open a special website where members of election commission can familiarise themselves with the materials on election procedures, regulations, and relevant legislation, recommendations of experts and the CEC, and forms of the documents of election commissions and samples of filling them out. The information

45 Accessed: http://www.cvk.gov.ua/pls/vnd2012/wp001

resource will contain multimedia materials (flowcharts, video materials) which will help commission members to familiarise themselves more with the matters of legislation and its application. However, the efficiency of these initiatives will be more significant if their implementation starts before the voting day.

The State Registrar of Voters has been operating since 2009; it has improved the system of registration of citizens with the right to vote as well as helped improve voter lists. This is one of the few systematic and progressive steps to promote the priority implementation on ensuring proper environment for organising parliamentary and presidential elections. Thanks to the unique — for Ukraine — integrated database, citizens can benefit from their suffrage to a greater extent. The publicity of the permanent Registrar is an obstacle to significant manipulations with voter lists, multiple inclusion of voters at different stations, or abnormal growth of their migration. At the official website of the SVR[46], every citizen can monthly view open statistics of changes in the Registrar. Such practice contributes significantly to the growth of trust of citizens and experts towards the process of forming voter lists.

Currently, a three-tier system of the bodies of the State Registrar of Voters — the Central Election Commission as its manager, 27 regional administrative bodies of the Registrar, and 754 maintenance bodies. The total number of voters whose data are stored in the Registrar is 36.106 million people. The largest is the department which operates data on citizens with the right to vote who are temporarily abroad — about 419,000 voters. The State Registrar of Voters is operated by 2,700 employees. In the Registrar, identification personal information on voters such as surname, name, and patronymic, residential address, and date and place of birth, are stored there. Maintenance bodies of the State Registrar monthly update the information on the basis of information of the Ministry of Internal Affairs, the Ministry of Justice, the State Penology Service of the Ministry of Defence of Ukraine, the Ministry of Healthcare, and foreign diplomatic institutions. Thus, information on the status of voters, attainment of the voting age or loss of the right to vote, going abroad, or permanent disability to move independently is constantly being revised. Every month, about 330,000 records are entered into the Registrar. If to compare the quality of voter lists before 2009 to those used at the previous local election, in general, their accuracy has increased significantly. The law also stipulates that voters have the right to check themselves in the lists directly at the station, and no later than 5 days before the election day, a precinct commission will submit information on correction of a voter's data or his inclusion into the Registrar. However, on the election day, any changes become impossible, even by court decision. Such rigid regulations are justified by practices of misuse of the voter's right to make changes in the list on the election day, which could lead to multiple voting at different stations. In general, this element of formation of proper environment for organising the election in compliance with the international standards is rather successful. However, to encourage voters to check their information in the Registrar, funding out of the State Budget for educational and informational elements should be increased.

Intervention of **government agencies in the electoral process** and misuse of administrative resources in favour of candidates of the party in power or self-nominated candidates; use of budget funds as illegal investments; and pressure of the law enforcement agencies are the trends of the 2012 parliamentary campaign. According to the Civil Network OPORA, which has the highest number of officially registered observers in Ukraine, misuse of the administrative resource is the most widespread violation of the election law. The Law On Political Parties and the Order of the Chief Directorate of Civil Service No.214 of 04/08/2010 On Adoption of the General Code of Conduct for Civil Servants, Paragraph 1.7 stipulates that civil servants shall refrain from expressing their political views and attitude towards political powers, parties, or blocs, and prevent their impact on discharge of their duties. However, in practice, abuse of officials and creation of non-

46 Accessed: www.drv.gov.ua

competitive conditions for participants of the electoral process who have no patronage of the government, remains unpunished though interferes with the electoral process in general.

Introduction of CCTV at the Stations. Adoption of the Law of Ukraine On Peculiarities of Ensuring Openness, Transparency and Democracy of the Election of People's Deputies on 28 October 2012 (No.10681) and **installation of CCTV at the stations** is an unsuccessful attempt to copy international experience in ensuring openness of the election. The CCTV model at polling stations proposed in the law can't be a serious obstacle to commit offences and prevent the fraud during the election. The grounds for such conclusions were legal provisions, technical parameters of the proposed system, and the lack of status of adequate evidence for video recordings in court.

Webcams proposed for video recording and broadcast, and the model of transmission and information storage doesn't allow to achieve the objectives, the implementation of which the law should ensure. Moreover, the Internet connection at some of the regular polling stations will become a major problem, including the rural area. How election rules have been changed is also disturbing as CCTV at the election was introduced due to the adoption of a special separate law but not due to amending the Law of Ukraine On Election of People's Deputies of Ukraine. Furthermore, the law No.10681 provokes substantial corruption risks as tender procedures for purchasing relevant goods and services have been cancelled. Also, there is no economic reasoning of the expediency of financial costs (nearly 1 billion UAH) at all for the implementation of this innovation, which doesn't match its practical use to ensure democratic standards of the election. A major drawback of this law is its adoption without extensive consultations with technical professionals or experts in election observation which could have significantly improved such electoral innovations. Negative expert opinion on the bill No.10681 prepared by the Chief Research and Expert Department of the Verkhovna Rada of Ukraine[47], which recommended the deputies to dismiss this bill, partly confirms the above arguments on imperfections of the proposed innovation.

Transparency of Funding of Candidates› Campaigns. Excessive liberalisation of the election law in the section on **funding of campaigns of parties and candidates**, and the lack of proper monitoring of the turnover of election participants provokes the lack of transparency. The Central Election Commission only selectively verifies the receipt, accounting, and resource use of campaign funds. Moreover, unfair anonymous campaigning; voter bribery; financing election commission members "in envelopes"; and hidden advertising in the media have become possible because there are no effective mechanisms to verify financial transactions of the electoral process participants. Voters aren't informed either about the sources of candidates' funds. In most cases, the origin of funds is attributed to parties. There is no possibility to check the transfer of resources from the original source to a political power, and then — to a campaign fund. Such system provokes deepening of political corruption in the country and accountability of the newly elected deputies to major financial sponsors. Candidates still aren't motivated to attract the resources of citizens, announce a fundraiser to finance the campaign, and thus mobilise their own voters. This way of financial provision for financial needs of a candidate is not common. In practices of the election campaigns, there was only one precedence of open public fundraising during the election of the President of Ukraine was reported, which candidate Anatoliy Hrytsenko rather successfully organised, and one — during the parliamentary one. The newly created political force the Democratic Alliance tried to raise money for the deposit, which is mandatory for registration of parties in the CEC its amount being 2,000 000 hryvnias. However, the accumulated amount was smaller and didn't cover the money deposit — accordingly, the party wasn't nominated in the national multi-member electoral district, and its representatives participated in the election at the level of several single-member FPTP ones.

The Law of Ukraine On Election of People's Deputies of Ukraine obliged participants of the electoral process nominated in single-member FPTP electoral districts to disclose declarations of

47 Accessed: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_2?id=&pf3516=10681&skl=7

income for the previous year of 2011. The voters had access to financial information of the candidates at the CEC website. However, no proper reporting on the expenses during campaign is provided for by law. That is, during 90 days of the election, citizens couldn't access information on how the campaign fund of a candidate or a party was formed, or who donated money for its support. According to the election law, a fund can be filled with voluntary contributions of citizens in the amount of no more than 20 minimal wages for a FPTP candidate, and personal funds of a candidate. Neither anonymous donations nor money from foreign nationals can be accepted.

Unfortunately, the Central Election Commission can only have selective control over accounting, revenues, and expenses from campaign funds. It is rather difficult to track transactions of 2,934 candidates registered in single-member FPTP electoral districts as the CEC has many other organisational functions. There are no additional employees who would specialise in assessing financial activities of candidates. The system of election administration doesn't provide for control over content of declarations of income, or expense reports of candidates after the campaign, therefore, it only nominally requires financial neatness and discipline from participants of the election. The law stipulates that all campaign events shall be settled by bank transfer and from a campaign fund. In general, the financial scheme of participants of the election and proper supervision of their compliance with the set requirements on income, expenditure, and accounting of funds engaged in conducting the election campaign requires urgent reform at the level of legislation.

Territorial Organisation of the Election. The 2012 election of People's Deputy, in compliance with the current Law of Ukraine On Election of People's Deputies, shall be organised in one multi-member national electoral district and 225 single-member districts within Ukraine, and at 116 polling stations abroad. The CEC, with its Regulation of 9 April 2012 No.65[48], determined the number of single-member electoral districts in the Autonomous Republic of Crimea, oblasts, and the cities of Kyiv and Sevastopol. It is worth mentioning that the calculation method chosen by the Commission is the simplest and, at the same time, the most logical — the number of districts is proportional to the number of registered voters. No significant deviations during determination of the number of districts, especially during the process of considering fraction remainders within the regions, were detected. The number of districts for the 2012 election in most of the regions matched the indicators of 2002 when the election to the VRU was conducted by the same mixed voting system. 5 oblast became exceptions. Due to the demographics and decrease in the number of voters compared to 2002, two districts were removed in Donestk Oblast, and one — in Luhansk Oblast. Due to redistribution, one district was added in Kyiv, and Kyiv and Ivano-Frankivsk Oblasts each.

The formation of 225 electoral districts was held within the statutory period, and was provided for the decision of the CEC No.82 of 28/04/2012 On Creation of Single-Member Electoral Districts On a Regular Basis Within the Autonomous Republic of Crimea, Oblasts, and the Cities of Kyiv and Sevastopol. The Central Election Commission immediately published information on the content of the regulation with 27 appendices on the official website. All electoral districts were formed in compliance with the principle of equal number of voters, and the number of each of them doesn't exceed the allowable error of 12%. The CEC in most cases has considered the administrative division within the regions. However, the boundaries of some electoral units can lead to complication of organising the election and failure to comply fully with the principle of equal opportunities for all candidates and parties.

Some newly created districts are much bigger in their length and area, compared to administrative electoral units of 2002. Compliance with the principle of equality number of voters without regard to geographical or administrative peculiarities of the region led to atypical electoral geography of some districts. Quite frequent is the formation of electoral districts of non-adjacent territories or administrative units, transport connection between which goes through another district. For some districts, political component of the decision on their formation was noticeable. Indeed, the boundaries of some districts matched the previous political activity of one of the potential candidates, or on the contrary, the CEC decision unpredictably divided the territory where a candidate with high rating had been working for a long time between two other ones. In both cases, it is territorial electoral units the boundaries of which significantly differ from 2002.

48 Accessed: http://www.cvk.gov.ua/pls/acts/ShowCard?id=27739&what=0

The formation of permanent electoral districts should be regulated by special Law On Territorial Organisation of Elections and Referendums, the draft of which has been pending in the Parliament for several years. The number of criteria that must be applied to formation of electoral districts should be increased to the maximum. In particular, the principle of territorial integrity and maximal compactness of electoral units. The process of developing district boundaries should have been organised with regard to suggestions and with real mechanisms of public involvement.

However, the formation of districts was also accompanied with court judgements which had significant resonance within the country and abroad, including citizens temporarily residing abroad. By the judgement of the Constitutional Court of Ukraine No.7-rp/2012[49], in the case involving a constitutional claim of 59 people's deputies of Ukraine, provisions of Section Two, Article 22 of the Law of Ukraine On Election of People's Deputies of Ukraine were recognised unconstitutional as to the uniform classification of overseas polling stations to all single-member electoral districts formed in the capital of Ukraine — the city of Kyiv. The Constitutional Court of Ukraine based its judgement on three main findings —

1. application of legal provisions, according to which the voters who residing or staying abroad vote for candidate for People's Deputy of Ukraine in single-member electoral districts formed in the capital of Ukraine — Kyiv, doesn't provide for reflection of the expression of will of those voters residing in the capital;
2. equal legal possibilities of candidates for People's Deputy of Ukraine who will stand for the election in single-member electoral districts in the city of Kyiv cannot be provided since possibilities of such candidates to form free expression of will of the voters residing or staying abroad are limited;
3. and legal requirement concerning uniform classification of overseas polling stations to all single-member electoral districts of Kyiv, with regard to the ratio of the number of voters residing or staying abroad and the voters in Kyiv is not consistent with the limit of deviation of the number of voters in a single-member electoral district, which is up to twelve per cent of the approximate average number of voters in single-member electoral districts.

The judges of the Constitutional Court of Ukraine Volodymyr Shyshkin and Petro Stetsiuk expressed dissenting opinions on this decisions, in which it was recognised unjustified. Associations of citizens of Ukraine staying abroad publicly expressed their disagreement with such interpretation of the Constitution and deprivation them of the right to vote in single-member FPTP electoral districts. Recognition of the provision on uniform classification of overseas polling stations to all single-member electoral districts being formed within the capital of Ukraine, narrows voting rights of citizens residing abroad.

Compliance with the Guarantees of Political Impartiality of Civil Service During Election. An election campaign is characterised by systematic use of administrative resource, which, unfortunately, confirms the fears of many experts and politicians who assessed risks of return of the mixed voting system.

49 Accessed: http://www.ccu.gov.ua/uk/doccatalog/list?currDir=173889

The most common cases are public campaigning support and patronage for certain candidates by officials of the local authorities during the discharge of their duties; participation of civil servants or public sector employees in campaigning activities of candidates and parties during working hours; use of equipment controlled by government agencies and local self-government in favour of certain candidates or parties; and use of the media controlled by government agencies and local self-government in favour of certain candidates or parties.

Resorting to such actions, officials revealingly ignored the legal provision on equal and fair treatment of participants of the electoral process by government agencies and local self-government, and their officials and employees (Article 3 of Section 5 of the Law of Ukraine On Election of People's Deputies). Civil servants and officials of government agencies and local self-government, unless they are candidates, shall be strictly forbidden to participate in election campaigning during working hours (Article 74 of Section 1 of the Law On Election of People's Deputies of Ukraine). Campaigning of officials during working hours are also contrary to provisions of the General Code of Conduct for Civil Servants, according to which civil servants shall refrain from expressing their political views and attitude towards political powers, parties, or blocs, and prevent their impact on discharge of their duties (Article 1.7 of the General Code of Conduct for Civil Servants approved by the Order of the Chief Directorate of Civil Service of Ukraine No.214 of 04/08/2010). Such actions are a sign of unfair struggle and lead to the fact that pro-government candidates (parties) get non-competitive advantage over their opponents in the electoral process. This is contrary to the provisions of the Ukrainian law (Article 4 of Section 5 and Article 68 of Section 6 of the Law On Election of People's Deputies of Ukraine) as election campaigning of parties (candidates) can be funded only from a campaign fund and those funds from the State Budget specifically allocated for it. Using own funds of the candidates or funds from other sources is prohibited.

The trend of the parliamentary campaign in Ukraine is an attempt of certain political forces and potential candidates to involve public sector employees to campaigning events. Such acts were reported at the backdrop of government projects on formation of a temporary network of social workers who should explain social initiatives of the President of Ukraine to people. Public observers, journalists, and political actors record examples political bias of social workers. Acting people's deputies of Ukraine position themselves as lobbyists of interests of electoral districts and publicly spread information on the amount of state funding they attracted for local needs. Quite frequent is the evidence of using official occasions for campaigning by civil servants who are going to stand for the election in single-member districts. Many of the local officials provide information, organisation, and resource support to future candidates.

In June 2012, initiatives of state and local government agencies on introduction of temporary full-time equivalents in social services caused the greatest interest before the election. The official reason for expanding and increasing funding for these services is the need to improve activities on implementation of social initiatives of the President of Ukraine and the government. According to the Deputy Prime Minister Serhiy Tihipko, in total, 12,000 temporary social workers will be trained in Ukraine. Compared to similar positions in social services, the wage of new employees is higher. All the oblasts will receive targeted subsidies for the maintenance of the network of social workers from the State Budget of Ukraine. Most of the full-time equivalents will be created in Poltava Oblast (908), the least — in the city of Sevastopol (15 persons). The decision of the Cabinet of Ministers of Ukraine[50] on implementation of this project caused severe political conflicts since there are objective risks of involvement of temporary employees in the election campaign of the Party of Regions and pro-government candidates. In particular, Ternopil Oblast Council didn't support redistribution of 12 million of hryvnias of the state subsidy for creation of 400 temporary positions. Deputies of the Council decided to test the validity of the initiative

50 Accessed: http://www.licasoft.com.ua/index.php/component/lica/?href=0&view=text&base=1& id=1199753&menu=1

on creation of full-time equivalents and proposed to implement this project after the election. In Sumy Oblast, OPORA observers reported the incident when during the visit to a 93 year old pensioner, a social worker tried to find out her political preferences. Also, he informed that with support of the authorities, the pensioner would have received a free device for digital television. In the same Sumy Oblast, local journalists carried out their own investigation on political bias of the new network of social workers. Having introduced themselves as heads of election headquarters of the Party of Regions, the journalists called local social services. Directors of this services readily informed the pseudo-members of the headquarters that all the recruited social workers had been interviewed in the Party of Regions. Investigation of the journalist of the website *Ukrayinska Pravda (Ukrainian Truth)* Mustafa Naiem on formation of list of supporters of the Party of Regions by the Department of Labour and Social Security of Zhytomyr Oblast State Administration who work in the subordinate services gained high publicity.

OPORA public observers note that social initiatives of the President of Ukraine and the Government have already become a significant factor of the electoral process. Under the pretence of informing the voters through the media, campaigning for the pro-government political force is conducted, and local initiatives on social work are being launched. In particular, "social mobile offices" have already started working, with the help of which officials of various social services hold mobile visiting hours. The development of full-scale social projects of the Government, which in its timing coincide with the election campaign, contain significant potential for political abuse.

❖ What Needs to Be Done to Implement the Priority

1. Proportional voting system with open regional lists will help to overcome political corruption in Ukraine. The latter, at the same time, motivates to introduce measures of the internal party democracy, ensure proper role of a voter and guarantees his influence on the formation of political elites, and create conditions for responsibility of a party for its deputies. Expert discussions around the issue of a new voting system should involve broader population and generate positive public opinion on its implementation. In order to avoid politically biased decisions, public dialogue should start at least 4 years before the next parliamentary election.
2. The Verkhovna Rada of the 7th convocation needs to consider recommendations of the Venice Commission, OSCE and ODIHR, Ukrainian experts, and codify the election law. Thanks to this act, the next election campaigns stand a chance to be conducted on the basis of quality legal framework, which in general will promote ensuring democratic standards in the organisation of the election.
3. The Central Election Commission should revise the principle of allocation of administrative functions among its members and provide for diversification of responsibility of the officials within oblasts of Ukraine, the AR Crimea, and the cities of Kyiv and Sevastopol. Moreover, the CEC should provide transparency of decision-making to a greater extent but not stop at the publicity of official meetings.
4. The newly elected Verkhovna Rada should properly consider the draft Law On Territorial Organisation of Elections and Referendums, and the CEC to avoid governing procedures by its own regulations and forming new legal provisions, which is not prescribed by the Law On the Central Election Commission and the Constitution of Ukraine.
5. The Verkhovna Rada of Ukraine should provide for increased funding for administration and constant update of equipment of the State Registrar of Voters, whose functioning should be sufficiently protected at the software and technical level, and the employees — motivated enough financially to perform statutory duties properly.
6. Transparency of funding of election campaigns of candidates and parties requires proper statutory regulation. Expert and political discussion on the sources of funding for parties

and filling campaign funds of a participant of the process should be started immediately after the 2012 parliamentary election.

7. Innovations of the electoral process, especially CCTV at the stations, should be properly evaluated after the end of the campaign. Systems for collecting information from the stations and legal effect of CCTV recorded video should be comparable with the scale of public funding.

The National Agency On Civil Service of Ukraine should develop and adopt a regulation that would ensure political impartiality of civil servants and officials of local self-government under conditions of the electoral process, and provide for administrative and criminal liability for malpractice; and initiate transparent control over compliance with the current legislation of civil servants on matters concerning the electoral process.

2.1.5. Continuation of reforms of the judiciary and the judicial system to further strengthen independence, impartiality, and professionalism of juridical branch of power and judges, in particular, by enhancing the training of judges, personnel of court and the prosecution as well as the staff of these institutions and employees of law enforcement officers

2.1.6. Effective implementation and introduction of the European standards in Civil, Criminal, and Administrative Codes and their respective codes of procedure

The judicial reform in compliance with the European standards remains one of the key priorities of the PDA, therefore, making progress in this area has a significant impact on the acceleration of the European integration of Ukraine. The main focus of the full judicial reform should be to increase the professional level of judges and criminal justice officials, strengthening of their independence as well as improving accessibility of justice. Achievement of these priorities will contribute to bringing the national judicial proceedings to the EU standards and implementation of the rule of law.

❖ Analysis of Implementation of the Priority

Unfortunately, **public acts on the implementation of the judicial reform in Ukraine showed no real intention to ensure the human right to fair trial.** Justice hasn't become more accessible or transparent. Political influence on the independence of judges has increased. Advantages of the reform are either distorted with practice or remained ink on paper (for example, introduction of special training for judges, competitive selection and appointment of judges, etc).

The system of the initial training of judges doesn't meet the European standards. Introduction of the mandatory special training of future judges has been postponed. Many experts question the integrity of results of selection of judges since some stages — in particular, checking the works of candidates — are not transparent, which gives opportunities for manipulation.

Regular training in the European standards of the protection of human rights for judges, court personnel and law enforcement agencies are not held, and separate short-term training events are not effective. In typical training programmes of the preparation of judges, associates and consultants of judges, and court personnel, too little attention is paid to the European standards and practice of the European Court of Human Rights. Indeed, only 4 hours are allocated for the training of judges on the European system of protection of human rights, application of the European Convention and practice of the European Court, and execution of its decisions. And for training of the court personnel on the relevant subject, 2 hours are allocated. As to the law enforcement and prosecution, training on the relevant subjects is not conducted at all, even within general training courses.

The trend towards **the increase of the political influence on courts** remains — authorities successfully implement the selection mechanism of the "right" judges and justice for disloyal judges. Transfer to superior courts occurs without competition, it is not even prescribed by the law. Selection of such judges is done behind the scenes, through the back door. Transfer of a significant number of judges from the eastern oblasts (mainly Donetsk Oblast) to the metropolitan courts[51] has become a rule causing a large number of vacancies.

Disciplinary practice against courts demonstrates the signs of the authorities using the disciplinary procedure for **pressure on judges**, in particular — from the prosecution. A judge can

51 Based on the analysis of regulations of the Verkhovna Rada of Ukraine on the transfer of judges.

be prosecuted even for acquittals[52]. The bodies of judicial self-government, which are designed to protect the interests of judges, are governed by political power and are not able to perform their duties.

Recognition by the European community of the existence of systematic problems in the Ukrainian justice is proved by **the resolution of the PACE — The Functioning of Democratic Institutions in Ukraine No.1865**, adopted on 26 January 2012[53]. In the said resolution, the PACE expressed deep concern over the lack of independent judicial system and numerous trustworthy reports on the initiation of disciplinary measures and dismissal of judges on the basis of complaints from the prosecution because the said judges took decisions contrary to the opinion of prosecution.

In order to improve the situation in the field of justice, in late April 2012, the President introduced to the Verkhovna Rada the draft Law On Amendments to Some Legal Acts of Ukraine (to strengthen guarantees of the independence of judges), which proposed to prohibit a prosecutor to initiate disciplinary action against a judge if a case is still under review and a prosecutor participates in it. In June, the President's initiative was supported by the members of the Parliament by passing the respective law. The said Law deserves appreciation, although it doesn't significantly change the situation with the pressure on judges through the mechanisms of disciplinary responsibility since the prosecution often, in case of getting an acquittal, demands to hold the judge liable in a totally different case (for example, for violating the period of case review). If the court supports the position of the prosecutor, the prosecution usually doesn't use damaging information against the judge.

One should also notice that the levers of prosecution of judges come not only from the prosecution. The fact of being controlled by representatives of the political authority of the disciplinary bodies — the Supreme Council of Justice and the Higher Qualification Commission of Judges — makes many judges be loyal to the authorities, even without any requests from them. Statutory grounds determined by the law for the liability in court (for example, violation of the period of review of cases) under conditions of high workload of judges, if required, can be applied to any of them, and, unfortunately, it is done in practice.

A positive step towards the improvement of justice in compliance with the European standards is the draft **Law On Amendments to the Law of Ukraine On Judiciary and the Status of Judges** developed by the Commission to strengthen democracy and confirm the rule of law (advisory body of the President). It provides for amendments to the legislation on judiciary and the status of judges, and is also aimed at improvement of procedural law. The bill takes into account the requirements of the Venice Commission and received its positive conclusion. Thus, its adoption can bring the Ukrainian justice to the requirements of fair trial but the bill still hasn't been published for public discussion, and there is no political will for introducing it in the Parliament.

Another important step towards the improvement of criminal justice was **the adoption** by the Parliament on 13 April 2012 of the new **Criminal Procedure Code of Ukraine**, which generally is able to provide fair pretrial investigation and criminal trial. At the same time, it contains many provisions which diverge from the European standards of human rights protection. Indeed, management of the pretrial investigation is scattered among various actors (prosecutor, investigator, head of the investigation agency); for some judicial — in their subject — functions are imposed on the prosecution; etc. The jury model is basically the return of the court of people's accessors called the "jury" — some cases will be reviewed by two professional judges with three

52 Prosecution Exerts Pressure on Judges for Acquittals // http://helsinki.org.ua/index.php?id=1321615455.

53 Resolution 1862 (2012) The Functioning of Democratic Institutions in Ukraine // http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta12/ERES1862.htm.

members of "jury". Thus, the requirement of the Constitution of introducing the jury will be met purely technically. Moreover, a disadvantage of the reform of criminal justice is the fact that when adopting new criminal procedural law, the authorities failed to simultaneously reform material criminal law and the system of bodies of criminal justice. However, the priority implementation in the field of criminal justice requires humanisation of substantive criminal law and prosecution reform.

This, in particular, was described in the annual message of the President of Ukraine to the Verkhovna Rada of Ukraine on the internal and external position of Ukraine in 2012[54]. Indeed, the President noted that implementation of the new model of the criminal process also requires to change the role of prosecution, which must transform from the post-Soviet body into an effective structure which meet the recognised democratic standards.

According to the President, the following measures shall become key in the field of prosecution reform in compliance with the European standards —

- prosecution shall abandon the function of general supervision;
- prosecutors shall focus exclusively on the field of criminal justice;
- the status of prosecutors shall be equal to the status of judges.

An important event in the field of justice was the adoption by the Verkhovna Rada, on 5 July, of the Law **On Advocacy and Legal Practice** introduced by the President, which takes into account recommendations of the European experts and provides for the formation of advocacy in Ukraine in compliance with the European standards. Indeed, the Law provides for formation of the independent system of bodies of lawyers' self-government (to be formed exclusively of lawyers) as well as a single National Bar Association that will unite all the lawyers of Ukraine. Moreover, according to the new Law, lawyers from foreign countries have got an opportunity to carry out legal practice in Ukraine. The Law has also improved disciplinary action of lawyers; investigative actions that violate privilege are prohibited; additional guarantees of independence of lawyers are provided; etc. The Law guarantees the right to get law aid from a lawyer at public expense.

❖ What Needs to Be Done to Implement the Priority

To sum up, it should be noted that the authorities failed to take sufficient measures to ensure implementation of the priorities of the PSA in the field of justice. There is no plan for priorities implementation for 2012. **However, to ensure the implementation of justice priorities, it is sufficient to do the following —**

1. Adopt the draft Law On Amendments to the Law of Ukraine On the Judiciary and the Status of Judges in the edition approved by the Commission on Strengthening Democracy and the Rule of Law. This will allow to —

    - strengthen judicial self-governance by ensuring proportional representation of each type of jurisdiction;
    - improve the procedure for holding judges liable to disciplinary action by ensuring competition and equity through the creation of separate Disciplinary Commission as well as clear and narrow definition of the grounds for disciplinary action and dismissal, provision for a broader range of disciplinary measures to provide for selection of the appropriate type of penalty subject to the gravity of offence;
    - improve the system of initial training of judges by strengthening the role of the National School of Judges in the provision of training for the judicial system;

54 Annual Message of the President of Ukraine to the Verkhovna Rada of Ukraine On the Internal and External Position of Ukraine in 2012 // http://www.president.gov.ua/docs/posl.pdf

- provide for a competitive basis for promotion of judges and ensure transparency at all stages of the selection procedure for judiciary positions;
- minimise the role of political authorities in the formation of the judiciary;
- improve access to justice by the court — not the plaintiff — by identifying an appropriate court for the trial as well as through determination of reasonable deadlines to appeal judgements and reduction of law exceptions for appeal judgements;
- facilitate access to the Supreme Court of Ukraine on the matters of conflicts of jurisdictions.

2. Introduce amendments to the new Criminal Procedure Code of Ukraine on ensuring the following —

- procedural equality and competition of the defence and prosecution as to collecting evidential information and presenting it before the court;
- judicial control over human rights that involves the possibility of restricting the rights and freedoms of persons only on the basis of a judgement;
- protection of the rights of suspects and defendants by prohibiting initiation of a criminal case against a certain person, in recognising a person as a suspect since his actual detention, or the use of measures to provide for criminal proceedings;
- reasonable periods of pretrial procedure to commence from the moment of recognising a person as a suspect, or his accusation;
- protection of interests of victims through recognition of this status for such persons from the moment of submission of a statement of offence; enabling support of charges in court in case of the prosecutor's denial to support them; and introduction of settlements;
- recognition of a prosecutor as procedural head of the pretrial investigation;
- improvement of the efficiency of pretrial investigation by abandoning formalised initiation of criminal cases; joining inquiry, pretrial investigation, and operational investigation into a single procedure; and reduction of the number of procedural documents during the investigation;
- updating the law of evidence and reduction of cases of obtaining written confessions as a result of torture or abuse of a person; charge; accusation of a person on the basis of testimony given by him as a witness; etc;
- revocation of inquisitorial authority of court to forward a case to additional pretrial investigation; provision of instructions for investigation on own initiative, etc.;
- introduction of the jury in compliance with the Constitution of Ukraine;
- introduction of procedures for the trial of criminal offences;

3. To conduct a cardinal prosecution reform immediately — deprive of the function of general supervision, direct its activities exclusively to the field of criminal justice as well as bring the status of prosecutors in the matters of recruitment, career, and liability to the status of judges.

4. Provide special systematic training programmes devoted exclusively to the European standards of human rights protection and practice of the European Court for judges, court personnel, and law enforcement officers.

2.1.7. Following up on the implementation of the judgments of the European Court of Human Rights and promoting the evolving jurisprudence of the Court as a major source of international human rights law, with the support of the EU

2.1.8. Promoting human rights awareness among judges, prosecutors and other law enforcement agencies by common measures on enhancing trainings of judges, prosecutors and law enforcement officers on human rights issues and in particular on combating torture and inhuman and degrading treatment

Within the monitoring period the priorities of the Association Agenda were not met. State policy on human rights in the past two years was not a priority for the government. There are less and less positive actions from the authorities to encourage Ukrainians to exercise their rights, while violations of human rights and fundamental freedoms are becoming more and more common. However, over the past seven months there was some progress in adopting regulations needed to enforce the European Court's decisions.

❖ Analysis of Implementation of the Priority

In particular, we should mention here the adoption of the new **Criminal Procedure Code** (approved by the Parliament on April 13, 2012) and the Law of Ukraine **«On State Guarantees for the Enforcement of the Judgment»** (approved by the Parliament on June 5, 2012). Some first positive steps are taken by the newly elected Verkhovna Rada of Ukraine Commissioner for Human Rights Valeria Lutkovska on the introduction of the National Preventive Mechanism under the Optional Protocol to the Convention against Torture (adopted on October 2, 2012).

On February 23, 2006 the Verkhovna Rada of Ukraine adopted the Law of Ukraine **"On the Implementation and Application of the Practices of the European Court of Human Rights (ECHR)".** According to this law, the Convention and the practice of the ECHR should be a source of law for legal proceedings in Ukrainian courts. Failure of the State to enforce judgments of the ECHR or their partial enforcement may result in special measures being adopted against the state, up to the termination of its membership in the Council of Europe. The government generally tries to avoid possible political consequences that come with being exposed to such measures. Thus ECHR's judgments are usually enforced on time. Here we should mention the politically motivated cases opened against opposition leaders and members of the former government, which were characterized by a non-transparent judicial process.

The Government commissioner for the European Court of Human Rights is assigned to ensure representation at proceedings in the European Commission on Human Rights and European Court of Human Rights on violation of the Convention. According to the latest data as of end of September, 2012 10400 cases against Ukraine were under referral in the European Court, which is 7,5% of the whole amount – informed a government commissioner for the European Court of Human Rights Nazar Kulchytskyi. According to ECHR statistics, the biggest number of cases relates to Russia, the second place occupies Turkey, the third – Italy, fourth place belongs to Romania and the fifth – to Ukraine.

For the same period The European Court issued 62 decisions against Ukraine. A good piece of job is done here by the Office of government commissioner for the European Court of Human Rights.

During 2011, 357 legal propositions were prepared by Ukraine concerning claims on violation of the Convention. In addition, during 2011, under paragraph 2 of Article 13 of the Law of Ukraine "On the Implementation and Application of the Practices of the European Court of Human Rights", an expertise on the compliance of 3291 regulations (draft regulations) with the Convention and protocols, as well as ECHR practice, was conducted, and as of October 17, 2012 there were 2784 expertises conducted[55]. During 2011 on 48 cases an amicable adjustment was achieved, during the first 9 months on 2012 there were only 18 of such cases. Additionally, thanks to application of a so-called "unilateral declaration" (when the government inform the European Court about conditions under which it is ready to fulfill a complaint; if accepted by the Court the case is cross out from the Court Register) in 2011 380 cases were adjusted, and during the first 9 months of 2012 462 cases were settled.

Measures for enforcement of the Court's judgments, including payments, compensations, etc. were applied. Thus, in 2011 UAH 25,021,734,79 were paid from the state budget in the framework of enforcement of the European Court judgments. As of October 9, 2012 UAH 29 424 028,08 were paid. Still, problems are observed in terms of general proceedings.
In order to apply general proceedings, all judgments of the ECHR are being translated into Ukrainian and full-versions of ECHR decisions are being published in the official printed edition of the weekly "Official Herald of Ukraine" as well as on the official website of the Ministry of Justice. Summaries of the ECHR decisions are also being printed in the publication "Governmental Courier". During 2011, 861 explanations concerning the Convention, the Court's judgments, procedures of appeal to the European Court[56] were prepared and provided to individuals (on the basis of appeal referrals and requests for information).

As a result of submission of most appeals against Ukraine to the European Court of Human Rights, the Court applied the procedure of a «pilot judgment» in the case of Yuriy Ivanov vs Ukraine (judgment of 15.01.2010) concerning non-enforcement of courts' decisions as the most common ones. The justification being the following: «(The) recurring and chronic nature of the problems that creates the ground for violations, the large number of victims of such violations in Ukraine and the urgent need to provide them with prompt and adequate compensation at the national level. «In order to ensure the fulfillment of Ukraine's obligations under the case Yuriy Ivanov vs Ukraine, 2033 claims on prolonged non-enforcement of national courts' judgments were submitted to The Government Agent before the European Court of Human Rights from ECHR. As stated in a press release from the Court of February 29, 2012, the analysis of claims shows the existence of about 2,500 similar cases.

In order to solve the problems that result in prolonged non-enforcement of courts' decisions, the draft law of Ukraine № 9127 **«On State Guarantees of the Enforcement of Judgments»** was developed and passed in the Parliament on June 5, 2012. In the draft does not concern the enforcement of all the judgments and court orders, but focuses only on those, where state bodies, state enterprises, institutions, organizations or entities are the defendant (debtor), as enforced disposal of their property is prohibited by law.

The undoubtedly positive aspect of this law is that it allows carrying out certain specific measures in order to address the non-enforcement of courts' decisions such as: the introduction of a special procedure for court decision enforcement, in cases where the respondent is the state; the calling off of the moratorium on compulsory enforcement of court decisions as well as the introduction of a mechanism of compensation in the case of prolonged non-enforcement of judgments.

55 Data of the annual report on the results of activity of The Government Agent before the ECHR in 2011.

56 Data of the annual report on the results of activity of The Government Agent before the ECHR in 2011.

However, the law contains significant shortcomings in terms of the implementation of most of these measures. The most important question remains open, this question being the financing of the enforcement of national courts' decisions where the defendant is the state, and of those decisions that will be approved by national courts in the future (for cases that are currently being referred). Indeed, the debt is to be covered in accordance with the procedure established by the Cabinet of Ministers of Ukraine, only starting 2013. Thus, the law should be reviewed.

Regarding ill-treatment, the situation in terms of torture seems to be worsening each year. This is shown in the results of the monitoring of the prevalence of unlawful violence in the internal affairs bodies of Ukraine, conducted by the Kharkiv Institute for Social Research. As of the end of 2011, the number of victims reached nearly one million people (in comparison to 780 - 790 000 persons in 2010).[57] However for the half of a year 2012 civil society organisations, in particular Ukrainian Helsinki Human Rights Union, observe a tendency towards reduction of a number of complaints concerning ill-treatment at police stations. This is proved by Yevhen Zakahrov, Head of the Board of the Ukrainian Helsinki Human Rights Union: "If in Kharkiv region starting from January (till June) the total number of victims of ill-treatment at police stations reduced from 88 to 17 persons, the situation in Ukraine is even more significant – if compared to previous year we have more than 200 people addressing Ukrainian Helsinki Union, now we have only 90 of them". This reduction Zakharov linked to newly nominated Minister of internal affairs Vitaliy Zakharchenko[58].

The existence of the problem of the usage of confessions made under torture in judicial practice is also recognized by international bodies. This is for example reflected in the ECHR decision in the case "Nechyporuk and Yonkalo against Ukraine" (judgment of April 21, 2012, attains the status in 3 months). A similar decision has been issued by ECHR on May 15, 2012 ECHR in the case "Kaverzin against Ukraine." The lack of a system of effective investigation of cases and the lack of objective and complete statistics have been identified among the factors affecting the prevalence of illegal violence in the internal affairs bodies. Indeed, the current system delegates such investigation to the internal affairs bodies or prosecutors condemning them to be biased.

As foreseen by the new Criminal Code which should enter into force on November, 2012, the State Investigation bureau should be established in Ukraine. Before the body is created, complaints on ill-treatment should be considered by investigative bodies under the Prosecutor's office. Furthermore, statistics of MIA of Ukraine and the Prosecutor General of Ukraine are in many ways a reflection of the current system of performance with all its characteristics - subjectivity, bias, exaggeration. For the first 9 months of 2012 there were 3607 people addressing because of tortures. In 100 cases out of them criminal cases were launched, another 3500 were left without consideration. Courts received 36 criminal cases dealing with ill-treatment subjected by the stuff of law enforcing bodies (75 persons). Out of them 23 person who are former officials of MIF are now under arrest[59].

One of the precautionary measures to prevent torture is a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or humiliating treatment and punishment, which was ratified by the Verkhovna Rada of Ukraine on July 21, 2006. A Department for the implementation of the national preventive mechanism at

57 www.khisr.kharkov.ua/index.php?id=1319741619

58 http://www.ukrinform.ua/ukr/news/chislo_skarg_na_torturi_v_militsiii_zmenshilosya_vchetvero_z_pochatku_roku___e_vgen_zaharov_1737482

59 http://www.ukrinform.ua/ukr/news/na_36_skarg_pro_katuvannya_v_militsiii_pripadae__odna_porushena_kriminalna_sprava_1762232

the Secretariat of The Government Agent before the ECHR has been created on the initiative of the newly elected Ombudsman, Valeria Lutkovska. The first steps towards the implementation of NPM were also taken. First, persons responsible for the coordination of the implementation of NPM will be assigned in each ministry. Second, by the end of June the schedule of regular visits to places of custody will be drawn up. The schedule will be prepared by the Department for the implementation of the national preventive mechanism at the Secretariat of the Ombudsman together with the Kharkov Institute for Social Research. Representatives of NGOs will as well be participating in the afore mentioned visits.

For the implementation of this specific priority, attention should be paid to the following:

1. National courts still do not always actively follow the European human rights standards, the norms of the Convention and the European Court practice; that is why improvement of the legal regulation of the ECHR decision enforcement should continue.
2. To arrange normative and legal acts of Ukraine and ensure their compliance with international standards of human rights defense and ECHR decisions.
3. The establishment of a National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, Humiliating or Degrading Treatment and Punishment should be speeded up.
4. An independent body - the State Investigation bureau - should be established in Ukraine in order to conduct effective investigation of allegations of police torture in accordance with a new Criminal Code.
5. MIA should elaborate new criteria to evaluate police effectiveness not linked to the quantative indicators of clearance of crime.
6. Foresee a compulsory removal of police officers that are under investigations or under checking facts of their participation in torture measures till the decision will be taken.
7. Provide court with a duty to initiate criminal cases under submission of the Ministry of Justice that it makes in connection with discovery of violation of ECHR Article 3.
8. Ukraine's President should veto the Law of Ukraine № 9127 "On State Guarantees of Enforcement of Judgments" and send it for revision.
9. Regular trainings, workshops, round tables on human rights and enforcement of the ECHR judgments for judges, prosecutors and other law enforcement agencies should be conducted.
10. Specialized trainings on the application of the ECHR judgments for judges, prosecutors and other law enforcement agencies should be developed and organized. As a result of these trainings, a final test or exam should be organized.

2.1.9. Cooperating on the development of a system of public broadcasting, including by exchange of best practices, the adoption of a legislative framework and its implementation in accordance with European and international standards

Creation and ensuring functioning of an independent system of public broadcasting is an important element in achieving European standards in Ukraine as it means providing equal conditions for citizens to access information and help make state authorities more transparent and open. However, there is little progress in fulfilling the priority and although some steps are taken in this direction, no real changes have been observed so far.

It can prove a lack of political will in order to introduce appropriate reform of the current system of state broadcasting, which is now urgent because of future parliamentary elections and the need of objective information about their conduct.

❖ Analysis of Implementation of the Priority

At the beginning of monitoring there were two draft laws public broadcasting: the first one registered in Verkhovna Rada by a parliamentarian of an oppositional BYUT party Andriy Shevchenko and elaborated by NGOs experts, and the other one which was prepared by the government and is not registered in the Parliament so far.

The President Yanukovych often stated in public that he will submit a draft law "On Public Broadcasting" as this issue is of utmost importance. He instructed a Humanitarian Council under the President to draft the document based on the "Concept for establishing and functioning of a National Public Television and Radio broadcasting company of Ukraine" adopted in 2010. However, later the document was not submitted to the Parliament, but to the Cabinet for its reviewing. After that, the draft law was sent to the Council of Ukraine for an expertise. In Ukraine the document elaborated by the Cabinet was strongly criticized by media-experts and the Council itself, and is now reviewed in the Administration of the President.

Another document which is a draft law № 7241 On amending the LoU "On the system of public television and radio broadcasting in Ukraine" was presented by the parliamentarians Andriy Shevchenko, Vladyslab Kaskiv and Yevhen Suslov. The committee of television and radio broadcasting agreed on the text in 2010. The draft law was considered in Rada on 21 February 2012, but its adoption was postponed.

The draft law designed by the Humanitarian Council under the President of Ukraine (the Concept was already agreed in 2010) and elaborated by the Cabinet of Ministers received critical feedback from the experts of Council of Europe. Then, the State institute of strategic researches also announced designing a draft law "On public broadcasting". Public hearings regarding the draft law were held in April and gathered experts and representatives of State Television and Radio broadcasting company of Ukraine.

The Cabinet of Ministers adopted the draft law on 9 June, 2011 and sent it to the Administration of the President. Then taking into account remarks of the Humanitarian Council was returned to the State Committee. The draft law was returned to the Parliament in February and June, 2012, and for the last time – on 7 September, having passed a complicated procedure of obtaining endorsement of all interested parties.

State Television and Radio broadcasting company of Ukraine on 7 September for the fourth time submitted to the Cabinet of Ministers a draft law "On public broadcasting" based on the Concept of establishing National Public Television and Radio Broadcasting Company of Ukraine.

The last version of the draft law foresees transformation of a National Television company of Ukraine, National Radio company of Ukraine and State Television company "Kultura" into a juridical person of public right which is a "National Public Television and Radio Broadcasting Company of Ukraine".

If this draft law on public broadcasting is not registered and adopted in first reading by parliamentarians of a current cadence, it will be removed from the agenda and will be considered by a new Parliament. However, here is a certain juridical collision since for the time being the draft law cannot be registered as there is an alternative document which was prepared by A. Shevchenko, V. Kaskiv and Ye. Suslov and consideration of which was postponed on 21 February.

So, the work on a draft law "On public broadcasting" done by state institutions shows that the process is getting deliberately complicated since once there is a political will it would be logical to continue to elaborate already registered document of Shevchenko. However, this document was put aside and the Parliament did not reconsider it, but at the same time state institutions several times coordinated their positions on another document which has not met European standards so far.

Thus, during the monitoring period no progress was observed in the Priority implementation from the Ukrainian side which rather imitated the process than took real steps for its implementation.

❖ What Needs to Be Done to Implement the Priority

In order to effectively adjust the work in the sphere of organizing a system of public television and radio broadcasting, it is necessary to:

1. Create a working group to elaborate a draft law "On Public Broadcasting" by representatives of the opposition, parliamentary majority, officers in charge of the sphere and independent experts from Ukraine and the EU. The group may be based at the national Institute for Strategic researches which is in charge of drafting a new draft law.
2. Activate experience exchange in the sphere of public broadcasting with European colleagues.
3. Define key positions in the Concept which should be illustrated in a draft law so that it corresponds to European standards and guarantees their fixing in the law.
4. Design a draft law in cooperation with independent media-lawyers who are familiar with the European legislature and put it into public expert discussion, take into account experts' recommendations before submitting the document to the Parliament.
5. Propose the Committee to include key provisions of the elaborated document to the draft law submitted by A. Shevchenko or reject the draft law and once a public compromise is achieved – to register and adopt a new draft law by representatives of the ruling and oppositional parties.
6. According to the law develop an Action Plan for transition of the State television and radio broadcasting company to the Public one.
7. Guarantee public process of transition of the State television and radio broadcasting company to the Public one
8. Guarantee open and public implementation of the law, in particular, during elections to the Supervisory board and management team of the Public broadcaster.

2.1.10. Cooperating to create the conditions necessary for journalists to work freely and shielded from threats or actual violence. This will include the exchange of best practices on effective protection of journalists by law enforcement agencies

Ensuring the freedom of speech is a crucial task for the establishment of democratic reforms and the rule of law in the country as well as for protecting human rights and freedoms. Freedom of speech is only possible if journalists' safety is provided by the law enforcement bodies.

However, during the monitoring period one can observe an increase in the number of cases when journalists' rights were violated and a lack of reaction and investigation regarding these cases.

Moreover, Ukraine again comes back to confrontation of press and authority and very often the journalists' rights are violated by police and officials. These conclusions are made by Institute of Mass Information. The sharp deterioration of the situation with observation of laws has been stated by experts for the last two years. The data show the following:

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Murdered and disappeared journalists	3	4	0	0	0	0	1	0	1	0
Arrests and detentions	1	2	8	2	3	1	5	0	4	2
Assaults, attacks and intimidation	23	34	47	16	29	13	15	30	26	23
Obstruction to professional activities, censorship	46	27	52	14	31	23	15	22	48	37
Economic, political and indirect pressure	30	37	60	12	15	22	33	27	44	32
Court appeals to Media and journalists	37	15	19	13	27	14	18	19	18	2
Court appeals from Media and journalists	29	15	4	6	7	9	4	4	11	6

Some progress was traced in the field of exchanging experience regarding effective protection of journalists by law enforcement bodies and strengthening communication of these structures with the public.

With the help of the movement of journalist organizations and the Ministry of Internal affairs on February 20, 2012, a training on journalists' safety at public events took place. Adrien Collin, a member of the International Federation of Journalists led the trainings. Thanks to the event journalists could broaden their knowledge about European practice of protecting mass media rights at public protests (40 journalists from prominent mass media participated in the trainings). The level of violations of journalists' rights for the next four weeks if compared to other periods has lowered till the start of the election campaign.

In July 2012, OSCE started a project aiming at improving cooperation between law enforcement agencies and journalists with the help of leading international experts. Experts chosen on the contest basis have already started their collaboration with the Ministry of internal affairs. Their conclusions and recommendations were presented to Ukrainian police representatives and journalists at the sitting of interdepartmental working group.

It is planned that within the project 120 representatives of law enforcement bodies and 80 journalists form different regions of Ukraine will pass a training session resulted in decreasing proneness to conflict. Heads of law enforcement agencies will be able to get familiar with the practice of interaction between authorities and journalists in France.

These issues are very urgent since one of the trends that can be observed now in Ukraine is few precedents of punishment of offenders who violate the journalists' rights. The number of precedents to bring the offenders to responsibility according to Art. 171 of Criminal Code in Ukraine (Obstruction of Journalists' Activities) is also extremely low.

An increasing tendency to limit journalists' access to state authorities, especially to the ministers of the Cabinet through accreditations' refusals, can as well be observed. Cases of pressure on journalists in order to influence their editing policy are also significant facts.

The result of such deterioration of the situation with freedom of speech is a sharp decrease of Media content quality. According to experts of Telecritika, TV news don't show protests, actions of Opposition, increase in prices and worsening of social standards. Instead, new programs turn into criminal. According to survey of the Academy of Ukrainian Press, a majority of Ukrainian leading Media avoids speaking about political and social issues and is oriented to easier topics. All these tendencies can prove that there is no freedom of speech due to the lack of conditions necessary for journalists to work freely and objectively.

At the start of monitoring we mentioned establishment of an institution aiming at solving all urgent problems in the frameworks of the Priority – i.e. protecting rights of journalists - and propose solutions. We speak about the interdepartmental working group headed by the press-secretary of the President Dariya Chepak. The group includes representatives of the Administration of the President, the Verkhovna Rada, State Television and Radio Broadcasting Company, the Prosecutor General's Office, the Ministry of internal affairs as well as independent experts.

During the monitoring period two sittings of the working group took place and were dedicated to the most serious cases of breaking journalists' rights. The delegation of the World Editors Forum visited one of the sittings that took place on 4 April. The delegates raised issues concerning pressure on journalists and independent media in Ukraine. They also met the President of Ukraine Viktor Yanukovych.

At the meeting a joint decision of non-governmental organizations and the Prosecutor's office to conduct a separate monitoring of violations of journalists' rights was made. Researches will be aimed at showing good practice of investigation of cases regarding journalists' rights violations and holding perpetrator responsible in particular according to the Art. 171 of the Criminal Code.

However, during the monitoring period the situation in Ukraine demonstrated negative tendencies in observing journalists' rights since the number of crimes against journalists was rising continuously and the number of investigations stayed the same.

There were no results in investigating a resonant assault of a head of "Road control" organization Rostyslav Shaposhnykov, intimidation of Olena Barannyk (Kharkiv) and other cases of violation journalists' rights that can be somehow connected to state officials and that were not properly investigated.

During the election campaign the level of proneness to conflicts between the authorities and media increased. Cases against journalists caused a row of protests and appeals against censorship, pressure and usage of law enforcement offices as tools for repression of independent media.

On the contrary, we should mention report of the law enforcement bodies about of murder of a Kharkiv journalist Vasyl Klymentyev who disappeared in 2010. The Ministry of internal affairs announced about the detection of a murder of Vasyl Klymentyev who disappeared in 2010. The main suspect in killing that was put on a federal wanted list is a former officer of Kharkiv Department for Organized Crime Control. However, it is not clear who ordered the murder.

In 2012 there were several resonant events where state authorities and law enforcing bodies put pressure on independent mass media:

1. On April 28, after an inspection the State Tax Administration announced that it has revealed violations of the law at Ukrainian's only opposition channel TVi. This served as a ground for bringing legal action against TVi's director Mykola Kniazhytskyi (part 3 Art. 212 of the Criminal Code about serious intentional tax evasion). On July 20 the TV channel was disconnected from broadcasting via cable operator "Triolan"; on September 6 the biggest operator, "Volia", transferred the TVi to the more expensive package of channels. As a result, in two months TVi lost 80% of their audience.

2. The Prosecutor's office brought an action against the Internet edition of "Livyi Bereh", accusing them of disclosure of private data about the People's Deputy Volodymyr Landik, for which there was an obvious public interest.

After the President put the cases against TVi and "Livyi Bereh" under his personal control, they were closed in less than one month. This clearly proves the existence of informal mechanisms for managing law enforcement bodies.

Moreover, a regress was noted in the implementation of the legislative part:

1. The parliamentarian from the Party of Regions proposed a draft law that implies the inclusion of a norm about defamation in the Criminal Code.

   On 19 September Verkhovna Rada adopted the draft law in first reading. It implies that "slander deliberate spreading of false information, discrediting honour, dignity and business reputation of a person, the offender faces a fine in the amount of from 200 to 500 tax-free minimum wages, or correctional labour up to one year, or imprisonment up to two years. In case the false information is being spread in mass media or by investigators, prosecutors or judges, the offender faces a fine in the amount of from 500 to 1000 tax-free minimum wages, or correctional labour from one to two year, or imprisonment from two to five years with the ban to hold certain positions or to be engaged into certain activities from one to three years".

   This legislative initiative was adopted in first reading and it can speak about authorities' willingness to control mass-media.

2. Amendments to the Criminal-Procedural Code proposed by civil society regarding protection of journalists' sources of information were not adopted by the Parliament. In September a working group that will be elaborating legislature to activate Art. 171 was established.

❖ What Needs to Be Done to Implement the Priority

In order to provide proper conditions needed for free work of journalists and their protection from threats and violence, the government should:

1. Ensure better investigation of crimes against journalists and punish the culpable.
2. Guarantee opening the cases in accordance with Article 171 of the Criminal Code if there are visible signs for this
3. Reject a draft law on criminal responsibility for defamation

4. Introduce more active communication of Ukrainian journalists with their European colleagues regarding journalists' defence.
5. Introduce stable reporting of police bodies (press-conferences of Prosecutor General's Office and Ministry of internal affairs every three months) about investigated cases against journalists.
6. Introduce identification signs for journalists in order to ensure their safety at mass protests.
7. Ensure observing by local authorities a legislative norm about unacceptable interference into mass media work.

The state should:

- Ensure no pressure from law enforcement offices and no interference into independent mass media activities
- Implement the legislature by TV providers that exclude TVi channel form their networks
- Ensure investigation of these cases

Ensuring safety and observing rights of journalists is a crucial task for establishing freedom of speech in Ukraine. Good quality journalism and free information field in the country is only possible if physical safety of journalists is provided and, therefore, might have a positive effect on political dialogue and reforms. Any improvements in this sphere strengthen the level of transparency of the process within the country and will bring Ukraine closer to European standards.

Mass media activity is crucially important during the election campaign. In fact, they are rare sources of objective information at the background of big media holdings which belong to Ukrainian oligarchs.

2.1.11. Expansion of cooperation to further strengthen the awareness of law enforcement agencies and courts on respect for the right of freedom of peaceful assembly, especially through the exchange of best practices, training, and cooperation on implementation of the legislation

In Ukraine, there is still no special law for people exercising the right to peaceful assembly. Therefore, only Article 39 of the Constitution of Ukraine (as directly applicable law) and Article 11 of the European Convention on Human Rights Protection and Fundamental Freedoms, ratified in 1997, are in force. Basically, these short regulations would have been sufficient to guarantee the Ukrainians freedom of assembly. However, both the Ukrainian courts and Ukrainian law enforcement officers interpret these regulations in a very particular way. And, of course, they interpret them in the interests of authorities rather than civil society. Therefore, familiarisation of the representatives of the Ukrainian judiciary and government with the European practices of ensuring the right to peaceful assembly and implementation of the regulations on freedom of assembly adopted in the legislation of European countries could significantly change the negative practice of violating the freedom of assembly in Ukraine.

Implementation of the priority provides for familiarisation of the law enforcement officers and courts with the documents of the Council of Europe, the European Union, the OSCE, the Venice Commission, and practices of the European Court and law enforcement agencies of the countries of Europe on freedom of assembly, achieving compliance of the Ukrainian legislation with the European principles of the freedom of assembly, establishing cooperation between law enforcement agencies of Ukraine and the EU in the field of freedom of assembly in order to provide for fundamental right to freedom of assembly in Ukraine.

To achieve this goal, Ukrainian courts and law enforcement agencies should apply the provisions of the European Convention on Human Rights Protection and Fundamental Freedoms, and practice of the European Court on freedom of assembly. Also, Ukrainian legislation on freedom of peaceful assembly should be reformed according to the Guidelines of the ODIHR of the OSCE on freedom of assembly and recommendations of the Venice Commission.

❖ Analysis of Implementation of the Priority

According to the wording of judgements of administrative courts which have reviewed the claims of local authorities to ban peaceful assembly, judges usually neither know nor apply to justice the provisions of the European Convention and practice of the European Court on the freedom of assembly. In general, according to the Secretary of the Plenum of HACU Mykhailo Smokovych, in 2011, administrative courts satisfied 88.9% of such lawsuits (from the total of 240 cases). According to the monitoring held by non-governmental organisations, in Kyiv and the Crimea, the courts satisfied 100% of such claims.

Law enforcement officers also aren't familiar with the European practice on ensuring the right to peaceful assembly, and in their activities, according to the monitoring of law protection organisations, allowed systematic violations of freedom of assembly (going assemblies even without a judgement, groundless detention of the participants of assembly).

In 2011, executive committees of Zhytomyr and Kaharlyk City Councils came to judgements contrary both to the Constitution of Ukraine and the European Convention concerning the freedom of assembly. Both judgements were appealed in court by representatives of non-governmental organisations.

At the same time, in 2011, courts recalled the judgements of Chernivtsi (10 February) and Simferopol (14 November) City Executive Committees, which had illegally restricted the freedom of assembly in these cities, at the lawsuits of representatives of the Institute Republic Non-Governmental Organisation. From 2007 to 2010, courts recalled similar judgements of the local authorities in Dnipropetrovsk and Donetsk. Also, during 2011, the decisions of local authorities that restricted the freedom of assembly, were recalled by the prosecution protest in Uzhhorod and Svaliava (Zakarpattia Oblast), and Lviv City Council recalled such decision itself. In all these cases, the courts and the prosecution referred to the provisions of the European Convention, which the statements of the Institute Republic contained. In general, courts recalled as unconstitutional all the 100% of the decisions of local authorities, which restricted the freedom of assembly, and against the representatives of non-governmental organisations filed lawsuits.

Back in 2008, the Cabinet of Ministers of Ukraine (Prime Minister Y. Tymoshenko) submitted a bill On Organising and Holding Meetings, Street Protests, and Demonstrations (registration No.2450) to the VRU. This project didn't comply with the European principles of freedom of assembly and significantly narrowed the implementation of this right even compared to the Constitution. On 3 June 2009, the Parliament passed this bill in the first reading. On 17 June 2010, the bill No.2450 should have been passed already in the second reading. However, due to protests by a number of NGOs, which later united into the National Initiative For Peaceful Protest!, the bill was withdrawn and forwarded to the Venice Commission. On 15 and 16 October, the Venice Commission handed down a negative opinion on this bill. As of 1 December 2011, this bill was in the Committee of Human Rights of the VRU without any progress.

At the same time, back in 2005, Ukrainian human rights defenders developed a bill On the Freedom of Assembly. This bill was submitted to the Parliament by People's Deputy V. Musiyaka, and in 2006, it was forwarded to the VRU for another first reading. During 2011, the Commission on Strengthening Democracy and the Rule of Law — advisory board of the President of Ukraine (Chair S. Holovatyi) — together with NGOs finalised this project and forwarded it to the Venice Commission. On 17 October 2011, the Venice Commission adopted a positive opinion on this bill. On 3 and 4 November 2011, the International Conference Freedom of Assembly — European Standards for Ukraine (organised by the Commission on Strengthening Democracy and the Rule of Law, Ukrainian Helsinki Human Rights Union, the International Renaissance Foundation, the National Democratic Institute, and the USAID) was held in Kyiv, where both the bill and the conclusion of the Venice Commission on it were presented. European experts from the Venice Commission, the ODIHR of the OSCE, and the European Court attended the conference. However, as of 1 December 2011, this project couldn't be submitted to the Parliament due to the fact that the Regulations of the VRU prohibited bills alternative to those adopted in the first reading.

Back in 2007, Kyiv National University of Internal Affairs of the MIA, jointly with the representative of NGOs, in the Community Council of the MIA on Human Rights developed *Guidelines On Law Enforcement During Assemblies*. This document was developed both on the basis of Ukrainian legislation and Guidelines of the ODIHR of the OSCE one the freedom of assembly and practice of the European Court on freedom of assembly. The same year, the *Guidelines* should have been put into effect by the order of the Minister of Internal Affairs (at that time, V. Tsushko) as instructions for law enforcement officers. However, in December 2007, the Minister and the government in general were dismissed, and successors of the minister (Y. Lutsenko and A. Mohyliov) refused to sign the relevant order. Instead, on 11 May 2010, by the order of the Minister of Internal Affairs No.170, *Instructions for Actions of Law Enforcement Agencies and Departments on Organisation and Securing Protection of Public Order*, which in certain provisions was contrary to the European principles of the freedom of assembly.

In general, it can be argued that despite the fact that the priority hasn't been implemented in 2011 and the period before that, there were attempts of promoting the priority, and the initiators of these attempts were the Ukrainian NGOs. These attempts achieved partial success (recalled decisions of certain local authorities that restricted the freedom of assembly, prevention of passing the bill No.2450, development of regulations to comply with the European principles of the freedom of assembly). However, the situation hasn't been changed by this partial success.

Injunctions. Indeed, if in 2011, local authorities filed 240 lawsuits regarding the ban of peaceful assembly to court, 89% of which were satisfied, within 5 months of 2012, 63.92% of such lawsuits were satisfied[60]. I.e., the percentage of bans has slightly increased but the number of lawsuits regarding the bans has decreased (in 2010, there were 20 lawsuits per month in average, and in the first half of 2012, 12.6 lawsuits per month).

In addition, in Kyiv, where most demonstrations take place, in 2012, the local administration filed only 2 lawsuits regarding the ban of demonstrations, and only one of them was satisfied. At the same time, Kharkiv District Administrative Court banned all the 23 lawsuits regarding the ban of demonstrations.

Therefore, in the reported period, the number of injunctions, compared to 2011, in Ukraine in general, and in Kyiv in particular, has declined but has significantly increased in Kharkiv region. This is due to the fact that most banned demonstrations in Kharkiv were associated Y. Tymoshenko being in Kharkiv Prison.

Unconstitutional Decisions of Local Authorities. In the reporting period, the practice of adoption of unconstitutional acts of local authorities which restrict the freedom of assembly. Indeed, on 6 December 2012, the Executive Committee of Irpin City Council of Kyiv Oblast adopted Decision No.292 On Allocation of Places and Equipment of Tents, Stands, Notice Boards, Demonstrations, Street Protests, and Other Mass Political Events in Public Places for Placing Materials of Election Campaigning, and on 21 August 2012, the Executive Committee of Brovary City Council of the same oblast adopted Decision No.394 On Determination of the Location in the Town of Brovary for Holding Meetings, Demonstrations, and Street Protests. All these decisions restrict the freedom of assembly, are contrary to both the Constitution of Ukraine and the European Convention regarding the freedom of assembly, and also can significantly affect the process of the election campaign in the said cities (regular parliamentary election in Ukraine will take place on 28 October 2012). All these Decisions were appealed in court by the representatives of the Initiative For Peaceful Protest!.

On the other hand, on 14 March 2012, Koroliovskyi Court of the town of Zhytomyr satisfied the lawsuit of the activists of the National Initiative For Peaceful Protest! to recall the unconstitutional decision No.325 of the Executive Committee of Zhytomyr City Council On Approval of the Provisions of the Procedure of Organising and Holding Mass Events in Zhytomyr, which was adopted n 12 May 2011. Also, administrative courts of appeal confirmed the unconstitutionality of such "provisions": on 18 January 2012 in Krasnoarmiysk (Donetsk Oblast), and on 16 May 2012 in Kyiv.

The police and European principles of the freedom of assembly. On 15 December 2011, the Community Council of the MIA approved the *Guidelines On Law Enforcement During Assembly*, further developed by representatives of NGOs — the members of the CC of the MIA, and suggested to approve them by order of the Minister of Internal Affairs (V. Zakharchenko). These Guidelines

60 Monitoring of Judgements of the Centre for Political and Legal Reforms http://www.pravo.org.ua/index.php/2010-03-07-18-06-07/adminyust/596-2012-06-01-14-41-29

are based on the European Convention, the practice of the European Court of Human Rights regarding the freedom of assembly, and the Guidelines of the OSCE on the freedom of assembly. However, these *Guidelines* still haven't been approved by the Minister's order. Based upon the fact that in August 2012, by the order of the Minister of Internal Affairs, the CC of the MIA was dismissed, the *Guidelines* doesn't stand a chance to become a regulation for the law enforcement officers in the nearest future.

Bill No.2450 On March 15, the Verkhovna Rada sent the government bill No.2450 to the second reading, which gave the opportunity to introduce amendments to it. The relevant Parliamentary Committee — on Human Rights — created a working group on further development of the bill of three representatives of the Ukrainian Initiative For Peaceful Protest!, representatives of the International Renaissance Fund, the Ukrainian Helsinki Human Rights Union, and the Centre for Political and Legal Reforms. The working group also joined the representatives of the PA, the MIA, the Ministry of Justice, and the Secretariat of the Cabinet of Ministers.

The activities of the working group lasted for 2.5 months; the last meeting was held on 31 May. As a result of the difficult negotiation, the working group have taken into account most of the comments of the Venice Commission. In particular —

- the bill now guarantees the right to spontaneous assembly (which could not be announced in advance), simultaneous and counter-assembly (demonstrations cannot be banned only on the grounds that they occur in the same place as our government likes to do);
- participants of a demonstration shall be entitled to install temporary structures (tents) without any special permission for the time of the assembly;
- place (demonstrations can be held right next to the buildings of authorities), time, number of people at the meeting, concerts, or visits of foreign delegations cannot be the basis to restrict an assembly;
- lack of notice shall not be is the basis for an automatic ban of an assembly;
- specific deadlines to appeal judgements on the ban of meetings (an appeal shall be considered before the start of the meeting) shall be set;

However, amendments to the Code of Administrative Offences (Article 185-1 of the Code allows police to detain participants of an assembly for the abstract "violation of the procedure of organising and holding meetings, demonstrations…") have been agreed so far — to the Laws On Police and On Local Government.

However, most disputes result from the provisions on notification deadlines. In the working group, representatives of the authorities (the Presidential Administration, the Ministry of Justice, the MIA) stand the ground regarding notification of an assembly 2 working days in advance. The proposal of the public is, according to the judgement of the Constitutional Court, to set differential deadlines of notification. And the basic deadline for a demonstration taking place in one locality to be set as 12 hours (for larger meetings, this deadline can be prolonged).
On 6 June, the meeting of the Committee on Human Rights of the VR, which supported the project that took into account the proposals of the Venice Commission only partly. The Committee recommended the Parliament to adopt this law having neglected the position of almost 160 NGOs (http://www.zmina.org.ua/2012/06/2931/) that suggested to adopt the bill No.2450 only after regular examination of the Venice Commission and taking into account the public opinion.

After the Chairman of the VR V. Lytvyn, the Committee on Human Rights of the VR, and the VR Commissioner for Human Rights V. Lutkovska had refused to forward the document to the Venice Commission, representatives of the NGOs initiated the bill to be forwarded to this international

expert structure through the Committee on Legislative Support of Law Enforcement of the VR. The Chairman of this Committee, the representative of the oppositional party Fatherland V. Shvets signed the respective proposal on 31 August 2012.

Yet, at the suit of the Adviser to the President of Ukraine M. Stavniychuk insisted, the Parliament decided to consider the bill No.2450 on 6 September. However, the representatives of the NGOs were concerned about the fact that the representatives of the acting government were trying to adopt the law which doesn't fully comply with the European principles of the freedom of assembly and restricts the freedom of assembly even compared to the existing practice in Ukraine, at all costs before the parliamentary election and without any consultation with the Venice Commission. Therefore, on 5 and 6 September, in 17 cities of Ukraine, protests against adoption of the bill No.2450 were held, and voting for it was postponed.

Given that the NGOs of Ukraine joined in the struggle for freedom of assembly, already for over 2 years don't allow the Parliament to adopt the law that will restrict the freedom of assembly, today, there is a strong likelihood that the bill No.2450 will be withdrawn from voting and forwarded for revision based on the opinion of public and the Venice Commission. As a result, sooner or later, a law which will comply with the European principles of the freedom of assembly will be adopted in Ukraine.

NGOs Familiarise the Authorities with the European Principles of the Freedom of Assembly
In the reporting period, a number of round-table discussions on the topic "The Freedom of Assembly. European Principles and Ukrainian Practice" were held (organised by the National Initiative For Peaceful Protest!) in Kyiv, Rivne, Kharkiv, Donetsk, Sevastopol, Cherkasy, Sevastopol, Luhansk, Mykolayiv, Kirovohrad, Zaporizhzhia, Cherkasy, Simferopol, Odesa, and Lviv. The round-table discussions were attended by human rights defenders , civic activists and politicians, representatives of the Ministry of Internal Affairs, judges of district courts, administrative courts of appeal and the HACU, representatives of local authorities, and journalists. The round-table discussions facilitated implementation of the priority since there were not only discussed the European principles of the freedom of assembly but also were distributed translations of several judgements of the European Court, case-law for the freedom of assembly, and the opinions of the Venice Commission.

It is worth emphasising that such familiarisation of the administrative and specialised courts, and law enforcement officers with the practice of the European Court of Human Rights was conducted not thanks to the efforts of the government bodies, which competence the implementation of the priority falls into, but the efforts of the NGOs through holding round-table discussions and conferences, and distribution of translations of the judgements of the European Court, opinions of the Venice Commission, and Guidelines of the ODIHR of the OSCE on the freedom of assembly at them.

On 16 January 2012, the European Court forwarded for communication to the Ukrainian government the statement of Mykhailo Shmukovych — the activist of Zelenka NGO of Odesa against whom an administrative case was initiated for organisation of the peaceful assembly in 2009 — and on 27 Februaty, the statement of Oleksii Verentsov — the activist of the Guards of Law NGO of Lviv on whom police officers used repression during the protest in October 2010.

Prosecution of Demonstration Participants In April 2012, Melitopol Line Police Station of the Southern Rail initiated a criminal case against the organisers of the demonstration of 3,000 people in the town of Novooleksiyivka (Kherson Oblast) who on 12 March blocked railway

traffic to protest against the cancellation of trains stopping in their town. That is, with such disproportional interference into implementation of the right to peaceful assembly, prosecution of demonstration participants started. So far, the organisers haven't been arrested, court hearing of this case will start in September 2012.

Therefore, in general, the priority hasn't been implemented. The situation can further developed either in the direction of progress — further implementation of the Priority — or in the opposite direction — European principles of the freedom of assembly will remain unimplemented in the Ukrainian reality.

❖ What Needs to Be Done to Implement the Priority

- To familiarise the judges of specialised and administrative courts, law enforcement officers, deputies, and officials responsible for implementation of the freedom of assembly with the Guidelines of the OSCE on freedom of assembly.
- To ensure judgements on peaceful assembly are made considering the European Convention and practice of the European Court.
- To cancel unconstitutional decisions of local authorities on the freedom of assembly.
- To obtain the opinion of the Venice Commission on the bill No.2450.
- To adopt a special law on the freedom of assembly that would comply with the European principles on the freedom of assembly and interests of the civil society of Ukraine.
- To obtain the judgements of the European Court on two cases which concern the freedom of assembly in Ukraine.

To implement the priority, three stages should be passed —

1. Familiarisation of courts and law enforcement officers with the European principles of freedom of peaceful assembly. These actions should be taken immediately by relevant government bodies since the process of familiarisation and training is not that quick.

2. Implementation of European principles of the freedom of peaceful assembly (in particular, practice of the European Court) into the practice of Ukrainian courts and activities of law enforcement agencies. These actions should be taken immediately by higher courts and the State Judicial Administration on courts, and the MIA — on the activities of LEA.

3. Implementation of the European Principles of Freedom of Peaceful Assembly into the Ukrainian Legislation In practice, some activities in this direction are carried out by the Presidential Administration and the relevant Parliamentary Committee on Human Rights. Other authorities, including the Ministry of Justice and the MIA, remain out of the process. It seems necessary to involve all the government bodies with relevant powers in the implementation process. The third stage can be held simultaneously with the first two.

2.1.12. Exchanging best practices on measures to protect minorities from discrimination and exclusion in accordance with European and international standards, with the objective of developing a modern legal framework. Developing close cooperation between the authorities and representatives of minority groups

Implementation of this priority will allow to create an effective system to fight against discrimination at legislative and institutional levels, provide for the protection of rights of various minority groups, meet the needs of national minorities and indigenous populations, diminish conflict issues in the field of interethnic relations in such regions of Ukraine as, for example, the Crimea. In the relevant field, implementation of the priority could provide for the following common elements —

- Development, adoption, and implementation of the legislation that complies with the criteria of the European Union in the field of protection of minorities, and actions against discrimination;
- Protection and support of the development of national minorities , indigenous peoples, ethnic groups in various areas of public life, preparation of bills on the rights of national minorities and previously deported people, and language policy taking into account recommendations and comments of the Council of Europe, the Venice Commission, and OSCE High Commissioner on National Minorities;
- Creation by the state, within relevant institutional structures, of the system of politics coordination in the field of interethnic relations and protection of minorities, and establishment and effective operation of advisory or consultative bodies on the problems of minorities.

One of the issues of implementation is formulation and implementation of the policy against discrimination. In the Ukrainian legislation, there are specific provisions on the issues of actions against discrimination — **the Constitution of Ukraine (Articles 24, 35, 37, and 26), Laws of Ukraine On National Minorities in Ukraine (No.2494-XII of 25 June 1992), On Provision of Equal Rights and Opportunities Between Women and Men (No.2866-15 of 8 September 2005), On Legal Status of Foreign Nationals and Statelessness (no.3773-17 of 22 September 2011), On Freedom of Thought and Religion (No.987-12, the latest edition of 3 February 2009), Convention on Human Rights Protection and Fundamental Freedoms, and Protocol No.12 of this Convention (ratified on 9 February 2006), etc. Some regulations on prohibition of discrimination can be also found in the Criminal, Civil, and Labour Codes of Ukraine. However, articles of the Criminal Code are rarely used due to the complexity of proving deliberate crime**[61]. This is also demonstrated by statistics. Indeed, in the period from 1991 to 2010, in Ukraine, there were registered only 42 crimes (from 1991 to 2003 — 17 crimes[62], from 2003 to 2010 — 25 crimes), liability for which is provided by Article 161 (Article 66 of the Criminal Code of 1960)[63].

Implementation of the relevant priority will also facilitate implementation of **the Action Plan on Visa Liberalisation (APVL)**[64], received by the Ukrainian party on 22 November 2010 at the

61 In 2009, the CC of Ukraine was amended having established liability for offence against the person and added aggravating circumstance — crime with motives of race, national, or religious intolerance. However, in practice, it appears that such amendments don't allow distinguishing crimes with xenophobic motives from the selection of other offences against the person since the said motive is not the only aggravating circumstance of the relevant part of certain articles of the CC.

62 M. Pankevych. Problematic Aspects of the Actus Reus Stipulated in Article 161 of the CC of Ukraine // Newsletter of Zaporizhia Law Institute. – 2005. - No.2. — pp. 164-170.

63 Certificate of the CID of the MIA of Ukraine on Criminal Investigation under Article 161 of the CC of April 2011

64 Action Plan on Liberalisation of the EU Visa Regime for Ukraine. The website of the Cabinet of Ministers of Ukraine.

Ukraine–EU Summit in Brussels, in paragraph 2.4.3 *"Adoption of comprehensive anti-discrimination legislation, as recommended by the UN and the Council of Europe monitoring bodies, to ensure effective protection against discrimination" (Block 4. External Relations and Fundamental Rights)*[65]. For the implementation of the ACVL, **the Decree of the President of Ukraine On the National Plan on Implementation of the Action Plan on Liberalisation of the European Union Visa Regime for Ukraine** was prepared on 22 April 2011[66]. However, implementation of the respective paragraph requires preparation and adoption of single integral "anti-discrimination" law, or amendments to all the existing laws related to different aspects of possible forms of discrimination, which would mean implementation of the APVL in the relevant part and bring Ukraine's prospects closer to acquisition of the visa-free regime with the EU.

It is worth emphasising that acquis communitaire of the European Union is introducing more legal and institutional commitments for its members. Indeed, adoption of the Directive of the Council of the European Union On Anti-Discrimination Policy (2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin[67]**)** showed the binding application of legal mechanisms in the EU member states on the formation and implementation of effective policy to support and encourage participation of national and ethnic minorities in the public life, including in politics, which equalises the chances of persons belonging to minorities in the labour market and public activities.

The result of preparation for the EU membership of countries of the Central and Eastern Europe[68] is the development and adoption of legislation that meets the criteria of the European Union in the field of protection of minority rights and anti-discrimination. The method for choosing principles established in the European (and international) law depends on the country, which is usually caused by legal traditions and existing culture of public administration. It is important that the country shall guarantee the achievement of objectives set in *acquiscommunitaire*. In some new EU member states, in connection with this, special laws on protection of the rights national and ethnic minorities have been developed, and special institutions were created to work on this issues.

Instead, when analysing government reports and reports of monitoring institutions, it can be concluded that **in the past decade, no significant progress has been reached in the fields of actions against discrimination.** As in Ukraine, there are virtually no legal, institutional, and judicial practices of protection against discrimination, statements aimed at rousing hatred, and acts of acute forms of xenophobia. Indeed, the European Commission Against Racism and Intolerance of the Council of Europe (ECRI)[69], finds no comprehensive civil and administrative articles in the

Accessed: http://www.kmu.gov.ua/kmu/control/uk/publish/article?showHidden=1&art_id=244813273&cat_id=223280190&ctime=1324569897648

65 Implementation of relevant tasks provides for such elements as Adoption of Comprehensive Anti-Discrimination Legislation; Compliance with certain recommendations of the UN, the OSCE /ODIHR, the Council of Europe/ECR and international human rights organisations in the implementation of policy against discrimination, protection of minorities and fight against hate crimes; Ratification of relevant documents of the UN and the Council of Europe against discrimination; etc. See http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-UKR.pdf

66 Decree of the President of Ukraine On the National Plan on Implementation of the Action Plan on Liberalisation of the European Union Visa Regime for Ukraine , 22 April 2011, No.494/2011 http://zakon2.rada.gov.ua/laws/show/494/2011

67 Decree of the President of Ukraine On the National Plan on Implementation of the Action Plan on Liberalisation of the European Union Visa Regime for Ukraine , 22 April 2011, No.494/2011 http://zakon2.rada.gov.ua/laws/show/494/2011

68 See Maria Spirova, European Integration and Minority Politics: Ethnic Parties at the EP Elections, Leiden University, Netherlands, Version of record first published: 16 Feb 2012.

69 The latest report of the ECRI on Ukraine (the fourth monitoring cycle) was adopted on 8 December 2011 and published on 21 February 2012. See ECRI REPORT ON UKRAINE (the fourth monitoring cycle). Adopted on 8 December 2011, Published on 21 February 2012. http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf.

Criminal Code which would have determined various fields where discrimination practices can be found; there are also no instruments or effective mechanisms of the implementation of the existing regulations, indemnification or compensation to victims of such acts. No improvement of the general situation of the Crimean Tatars was observed during the time that past since the publication of the Third Report of the ECRI, which states that specific functions of the Committee Against Racism and Racial Discrimination, as it turned out, haven't been transferred to another institution, and, as it turned out, at the moment, there is a certain "vacuum" as to the responsibility for managing this work.

The progress achieved in the area of fight against racism, is at risk of being lost comprehensively and strategically, and the efforts will become more and more scattered and ineffective. The Commission provides a number of recommendations aimed at strengthening the actions against discrimination in the fields of education, employment, housing, and health care. The Commission also recommends the authorities to take measures in order to improve collection of ethnic data, taking into account the principles of confidentiality, informed consent, and voluntary self-identification.

During the last years, the protection of minorities once again has become in the major foci of attention of the European public law. International organisations, the Council of Europe, the ECRN, and the HCNM of the OSCE note the need to bring the legislation on national minorities in compliance with the international regulations such as the Framework Convention for the Protection of National Minorities since the legislation is considered outdated and contains certain flaws and inconsistencies that need to be addressed.

Questions on negative trends in the institutional system concerning the matters of protection of minority rights. For example, as mentioned in the Fourth Report of the ECRI, the State Committee on the Matters of Nationalities and Religions, in particular, in the last years before its liquidation (in 2010) had started to play a leading role in the development, coordination and monitoring of the actions aimed against racism and xenophobia, including coordination of activities of the aforementioned Working Group (see §38-40 of the Third Report). The Committee notes that *"after the dismissal of the State Committee on the Matters of Nationalities and Religions in December 2010, its specific functions in the field of actions against racism and race discrimination haven›t been transferred to another institution, which resulted into the emergence of a vacuum of responsibility for such activities. At the moment, the progress achieved in the fight against racism in a coordinated and strategic manner is lost, and the efforts put are becoming increasingly chaotic and ineffective."*[70]

International monitoring mission express negative opinions on the termination of the Department for Human Rights Monitoring in the Ministry of Internal Affairs, which included monitoring of the incidents of racism as well as activities of groups of Neo-Nazis and skinheads, was terminated after the formation of a new one. Among other issues, the need for authorities to engage in open dialogue with minority groups is stated, in particular, with the Crimean Tatars on the matters related to their status in Ukraine in order to improve their position in the Ukrainian society, and to their requirement as previously deported people.

❖ Analysis of Implementation of the Priority

From December 2011 to September 2012, in the implementation of the priority, the matters of **development, adoption, and implementation of the legislation** against discrimination,

70 The report of the ECRI on Ukraine (the fourth monitoring cycle), adopted on 8 December 2011, published on 21 February 2012. CRI (2012) 6, accessed: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-UKR.pdf

development of bills on the rights of minorities, and language policy were emphasised in the activities of the government bodies. **The priority is in progress.**

It can be stated that during 2011, in Ukraine, no system state policy against discrimination of various minority groups was conducted. No system of protection against discrimination or help for its victims was developed. In the legislation, there are no clear definitions of discrimination, its types (direct and indirect), or standards or criteria of its proof. On 18 February 2012, the action plan of the MIA of Ukraine against racism and xenophobia until 2012 was approved. However, the experts state that after staff changes in the MIA of Ukraine in 2010, the respective Plan hasn't been fulfilled any more, and as of July 2011, not a single planned measure was taken. **On 19 August 2011, the Ministry of Justice of Ukraine published for discussion the bill of the Order of the President of Ukraine On the Strategy Against Discrimination in Ukraine in pursuance of paragraph 42 of the National Plan on Implementation of the Action Plan on Liberalisation of the European Union Visa Regime for Ukraine**[71].

The situation regarding legal support for implementation of the priority has become more dynamic in 2012. Indeed, on 24 April 2012, on the website of the Ministry of Justice, a developed bill On Fundamentals of Prevention and Actions Against Discrimination in Ukraine, which was submitted for public discussion, was presented. The said aim is proposed to be achieved through defining discrimination and its basic forms; introduction of the non-discrimination principle in the legislation of Ukraine; establishing a ban of discrimination with simultaneous determination of acts which are not considered discrimination; appointment of actors granted with powers to prevent and act against discrimination, which includes granting additional powers of prevention and actions against discrimination to the Commissioner of the Verkhovna Rada of Ukraine for Human Rights; and introduction of anti-discrimination examination, including mandatory examination for the bills of Ukraine, acts of the President of Ukraine, other regulations developed by the Cabinet of the Ministers of Ukraine, ministries, and other central and local executive authorities[72].

The bill drew criticism of experts due to incomplete definitions of key terms, ignoring some common types of discrimination, and lack of effective mechanisms protection from this illegal practice, including of **the Coalition Against Discrimination founded by 22 representatives of human rights NGOs**[73], who work with various aspects of the acts of discrimination, xenophobia, rousing hatred, etc.

Despite the procedure of public discussion, which should have lasted until 24 May, on 3 May, the Ministry of Justice informed of the adoption of the bill by the Cabinet of Ministers (without comments and suggestions made by the representatives of NGOs). On 14 May, the draft Law of Ukraine **On Fundamentals of Prevention and Actions Against Discrimination in Ukraine**[74] was registered in the Verkhovna Rada of Ukraine, and on 23 May, it was put on the agenda for consideration by the relevant Committee of the VR on Human Rights, National Minorities, and International Relations**.** On 5 June, the bill was passed in the first reading. On 5 July, further consideration of the bill was postponed. **However, on 6 September, the Verkhovna Rada of Ukraine adopted the respective bill in full.** The document defines, in particular,

71 Decree of the President of Ukraine of 22 April 2011 No.494/2011 the National Plan on Implementation of the Action Plan on Liberalisation of the European Union Visa Regime for Ukraine. [Electronic resource]. Accessed: http://zakon2.rada.gov.ua/laws/show/494/2011/page.

72 See EXPLANATORY NOTE to the draft Law of Ukraine On Prevention and Actions Against Discrimination in Ukraine.

73 http://www.antidi.org.ua/

74 Draft Law of Ukraine On Principles of Prevention and Actions Against Discrimination in Ukraine. Accessed: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1? id=&pf3511= 43370

that *discrimination is a decision, actions or omission aimed at restrictions or privileges in relation to a person and (or) a group of persons by signs of race, skin colour, political, religious and other beliefs, sex, age, disability, ethnic and social origin, family and property status, place of residence, language and other characteristics if they prevent the recognition and realisation of rights and freedoms of a person and a citizen on equal grounds. It is also set that draft laws of Ukraine, orders of the President of Ukraine, and other regulations developed by the Cabinet of Ministers, central and local executive authorities are subject to mandatory examination for discrimination.* However, experts think that despite the advantage of such step of the government bodies, the respective law somehow *narrows the features, according to which actions of discrimination can be committed, for example, in the Law, there are no such features as affiliation with political parties, associations, or trade unions, criminal record, experience of imprisonment, sexual orientation, and other features defined by the legislation of Ukraine, international agreements ratified by the Verkhovna Rada of Ukraine, or documents of international law which don't have to be ratified*[75]. Implementation mechanisms of the respective law may be problematic.

Government bodies worked on the development of bills in the field of protection of national minority rights. Indeed, on 12 March, the draft Law of Ukraine **On the Concept of State Ethnic Policy of Ukraine**[76] was registered in the Verkhovna Rada of Ukraine. The issues raised in the Concept were also discussed during the parliamentary hearings on "Ethnic Policy of Ukraine: Achievements and Perspectives", held on 11 January 2012. The bill was developed by the Ministry of Culture in pursuance of the Decree of the President of Ukraine No.615/2010 of 14 May 2010. On Additional Measures to Facilitate the Crimean Tatars, Other Persons Deported on Ethnic grounds, and Their Descenders Who Have Returned or Are Returning to Ukraine for Permanent Residence. **The bill is expected to provide for determination of basic principles, aim and objectives of the state ethnic policy at the legislative level.** In the bill, state ethnic policy is seen as a part of the state policy aimed at creating conditions necessary for harmonious development of the Ukrainian nation, indigenous peoples, and national minorities in Ukraine, and provides for effective mechanisms to consolidate all the ethnic components of the Ukrainian society.

At the same time, the **Draft Law of Ukraine On the Concept of State Ethnic Policy of Ukraine**[77], was registered in the Verkhovna Rada of Ukraine, submitted by People's Deputy of Ukraine Mustafa Dzhemiliev. Now, the bill is being processed in the Committees of the VR. According to the authors of the bill, the implementation of the Concept will ensure creation of balanced legislation, based on the best international standards, allow to preserve positive national experience in addressing a number of issues, provide for free development of an individual and the rights of all citizens of Ukraine of all nationalities, and establishing effective dialogue between the state and civil society. Implementation of provisions of the Concept will provide for full implementation of all international obligations on securing human rights, including the Copenhagen criteria to prepare Ukraine for integration into the European Union. However, there are no guarantees of further development of the situation regarding the relevant documents. Just as the situation regarding possible modernisation of the Law of Ukraine On National Minorities in Ukraine remains suspended.

75 For example, see the draft Law of Ukraine ON PROTECTION AGAINST DISCRIMINATION developed by the Coalition Against Discrimination in Ukraine within the project Anti-Discrimination Action, edition of 31 August 2011. Accessed: http://www.antidi.org.ua/netcat_files/225/279/ h_fab376ccace41ba49a90ff9db119cc5d

76 The draft Law On the Concept of State Ethnic Policy of Ukraine, 10152-1 of 12 March 2012. Accessed: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=42769

77 Draft Law On the Concept of State Ethnic Policy of Ukraine, 10152 of 7 March 2012. Accessed: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=42747

The Annual National Programme of Ukraine-NATO Cooperation for 2012[78] contained objectives on the protection of national minority rights to develop and introduce to the Verkhovna Rada of Ukraine the draft of the concept of state ethnic policy. However, those objectives defined as medium-term goals don't guarantee effective result as adoption of such documents requires extensive discussion, expert evaluation, and a compromise between the parties, community, and government, which is partly lacking now due to different interpretation of definitions of the concept and ways of implementation.

Ambiguous events unfolded around consideration of the bill aimed at rehabilitation of the Crimean Tatars. **Bill No.5515 On the Renewal of Rights of Persons Deported for Ethnic Grounds**[79] **was initiated by the member of the faction NU-NS Mustava Dzhemiliev.** However, on 17 May 2012, the Verkhovna Rada of Ukraine didn't vote for the adoption of the document in the first reading. M. Dzemiliev called the results of this voting a demonstration of disrespect of the Parliament of Ukraine and apparent reluctance to rehabilitate the Crimean Tatars[80].

However, on 20 June, the Verkhovna Rada of Ukraine passed in the first reading the draft Law On the Restoration or Rights of Persons Deported on Ethnic Grounds . The bill stipulates that Ukraine recognises deportation of peoples, national minorities, and persons from places of permanent residence on the grounds of decisions taken by the government agencies of the former USSR or union republics as illegal and criminal acts committed against them, and determines restoration of rights of the citizens of Ukraine among the deported people one of the priority directions of political, social, economic, cultural, and spiritual development of society. Ukraine recognises the acts of government agencies of the former USRR on rehabilitation of the deported persons forcibly relocated from places of their permanent residence, and restoration of their rights.

According to the bill, state policy on restoration of the rights of deported people shall be determined by the Verkhovna Rada of Ukraine in compliance with the Constitution of Ukraine, and provided by the government agencies and local authorities. The state shall facilitate voluntary return to Ukraine, adaptation and integration into the Ukrainian society of the deported persons and members of their families, provides conditions for their resettlement, provision of land, housing, employment, education, and preservation and development of ethnic, cultural, language, and religious authenticity.

However, there are no clear guarantees of the possibility of adoption of the relevant law as a whole since the process of consideration of different versions of the law continues from 2003, and now, there are no positive signs of possible completion of the process despite numerous recommendations of the CE and the OSCE. The situation around functioning of the consultative and advisory board to the President of Ukraine — the Council of Representatives of the Crimean Tatars under the President of Ukraine since this institution is now virtually inactive, consultations haven't been held since June 2011, the Head of the state doesn't participate in them, and the format of the Council causes conflicts in the Crimean Tatar Community[81].

78 **Decree of the President of Ukraine No.273/2012. On Adoption of the Annual National Programme of Ukraine-NATO Cooperation for 2012. Accessed: http://president.gov.ua/documents/14697.html**

79 Bill No.5515 On the Restoration of Rights of Persons Deported on Ethnic Ground s . Accessed: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=36832

80 National experts, numerous international organisations in their conclusions on the problem of interethnic relations in Ukraine emphasise the problems of the Crimean Tatars in Ukraine. The most burning fact is the lack of legislation on restoration of rights. The report of the ECRI on Ukraine (the fourth monitoring cycle), adopted on 8 December 2011, published on 21 February 2012. CRI (2012) 6, accessed: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-UKR.pdf

81 See Helpless Council. Paradoxes of the current dialogue of the authorities and the Crimean Tatars Yuliya Tyshchenko for the UP_ Thursday, 2 September 2010. Accessed: http://www.pravda.com.ua/articles/2010/09/2/5349052/

In early 2012, in order to improve current legislation in the field of interethnic and interfaith relations in Ukraine, the bill **Order of the CMU of Ukraine On the Adoption of the Concept of the State Target Programme for the Deported Crimean Tatars and Persons of Other Nationalities Who Returned to Ukraine, Their Adaptation and Integration into the Ukrainian Society until 2015 was adopted.** Adoption of this decision has been going on for years. In January 2012, the draft of the Programme of Resettlement of the Deported Crimean Tatars and People of Other Nationalities, Their Adaptation and Integration into the Ukrainian Society until 2015 was only submitted for legal expertise to the Cabinet of Ministers of Ukraine. According to the draft of this Programme, it is expected to allocate 25M UAH from the State Budget of Ukraine in 2012, 50M UAH in 2013, 225M UAH in 2014, and 248M in 2015. Only on **6 June 2012** , the Order of the Cabinet of Ministers of Ukraine **On Prolongation of Implementation Period of the Programme of Resettlement of the Deported Crimean Tatars and People of Other Nationalities Who Returned to Ukraine for Residence, Their Adaptation and Integration into the Ukrainian Society Until 2010**[82].

Considerable risks in the implementation of this programme is the issue of funding of measures. Indeed, according to the data of the Republican Committee of the Autonomous Republic of Crimea On International Relations and Deported Citizens, in 2011, a debt in the amount of 607,700 UAH appeared for a number of implemented social and cultural measures. Due to underfunding, national printed publications of the Crimean Tatars, Armenians, Germans, Bulgarians, and Greeks haven't been dated — the Republican Committee on Information satisfied the need of the said publications for no more than 60%; (through the Republican Committee on Information), strengthening of the base of national schools and classes with the national language of education, cultural establishments and national amateur groups, sports clubs (fight — Kuresh), media, the Republican Health Care Centre for Deported Peoples haven't been implemented — 190K UAH for these goals prescribed in the Programme weren't prescribed in the budget of the ARC for 2011; etc[83].

The draft Decree of the President of Ukraine On **the Strategy of Creation Equal Opportunities for the Romani of Ukraine until 2020**[84] is in progress, **the document is being developed by the Ministry of Culture**. The aim of the strategy is to create the basis for improvement of social position of the Roma population of the country through the provision of equal rights and opportunities, equal access to services and participation in all the areas of the public life of the country.

During the reporting period, controversial events took place around the ***formation of the language policy*** , which largely caused political confrontation in the society in general, and in the environment of national minorities. The leaders of national minorities emphasised that the inefficiently transparent nature discussion of relevant issues. Indeed, the Statement of

82 **On Prolongation of Implementation Period of the Programme of Resettlement of the Deported Crimean Tatars and People of Other Nationalities Who Returned to Ukraine for Residence, Their Adaptation and Integration into the Ukrainian Society Until 2010** . Accessed: http://zakon1.rada.gov.ua/laws/show/514-2012-%D0%BF

83 Information of the Republican Committee of the Autonomous Republic of Crimea On International Relations and Deported Citizens on the implemented measures for resettlement, social and cultural development of the deported citizens, and provision of interethnic harmony in the Autonomous Republic of Crimea, implemented at the expense of the State Budget of Ukraine and budget of the Autonomous republic of Crimea in 2011. Accessed: http://reskomnac.ark.gov.ua/obustrojstvo/inf-analiticheskie-material/433-informaciya-ob-itogax-roboty-reskomnaca-za-2011-god

84 Draft Decree of the President of Ukraine On the Strategy of Creation Equal Opportunities for the Romani of Ukraine until 2020. Accessed: http://mincult.kmu.gov.ua/mincult/doccatalog/document;jsessionid=38B2AF63D40CD44889B7DEEF7033A668?id=291786

the Congress of National Communities of Ukraine of 9 April 2012[85] mentioned the lack of open discussion of initiatives which involve minorities, manipulative nature of consultations, and the authors gaining support for the bill.

In general, on 25 August 2011, People›s Deputies of Ukraine V. Kolesnichenko and S. Kivalov introduced in the VR of Ukraine the **draft Law of Ukraine On the Principles of State Language Policy (No.9073)[86].** *The bill contained legal provisions, according to which regional languages or languages of the minorities of Ukraine addressed by measures aimed at the use of regional languages or the languages of minorities include the following languages — Russian, Belarusian, Bulgarian, Armenian, Gagauz, Yiddish, Crimean Tatar, Moldavian, German, Modern Greek, Polish, Romani, Romanian, Slovak, Hungarian, Rusyn, Karaim, and Krymchak. The bill suggests to determine that the main language of work, records, and documents of the government agencies and local authorities is the official language. Within the territory where a regional language (languages) is spread the regional language (languages) can be used in work, records, and documents of the local government agencies and local self-government.* The bill contained criticism of certain provisions by the European Commission for Democracy through Law (the Venice Commission), the OSCE High Commissioner on National Minorities[87]. In particular, in the Evaluation of the HCNM, the needs of unambiguity and feasibility of the language legislation for the system of regional languages and minority languages, realistic guarantees and clear procedures of implementation of relevant rights arising from international instruments in the field of human rights protection, protection of national minorities, neglecting the integration role of the official language in the version of politics introduced by the bill were pointed out.

However, reserved, and sometimes even negative opinions of national and international institutions and experts hadn't prevented further promotion of the bill, references of the authors and supporters of this language initiative by the party in power — the Party of Regions of Ukraine — to best practices of the European experience in the regulation of language policy, and provision for development of regional languages.

On 3 July 2012, the Verkhovna Rada of Ukraine passed the Law of Ukraine On the Principles of State Language Policy (No.9073) as a whole, prepared by the People's Deputies of Ukraine, the representatives of the PR — V. Kolesnichenko and S. Kivalov. During consideration of the issue, 248 people›s deputies only the second time supported the Chairman, Deputy Speaker of the Verkhovna Rada A. Martyniuk. The voting took place against the background of protest of the opposition in the VR, which hadn›t prevented the adoption of that decision. Representatives of the opposition in the Parliament declared that the law was adopted with violations of the procedures of the VR of Ukraine. In particular, no amendments introduced into the wording of the bill after the first reading were considered; no alternative bills were considered; and only 219 deputies voted for putting the bill on the agenda. The Chairman didn›t announce which edition was put to a vote.

On 8 August, the President of Ukraine V. Yanukovych signed the Law No.5029-VI and bound the Cabinet of Ministers to create a working group to involve the public, well-known figures of education, science, and arts, leading professionals on language issues for the development and

85 Statement of the Congress of National Communities of Ukraine http://maidan.org.ua/2012/04/zayava-konhresu-natsionalnyh-hromad-ukrajiny/

86 The Law of Ukraine On the Principles of State Language Policy. Accessed: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=41018

87 See Assessment of the Bill On the Principles of State Language Policy (no.9073), its correlation with the European Charter for Regional or Minority Language. Accessed: http://oporaua.org/articles/1450-ocinka-zakonoproektu-lpro-zasady-derzhavnoji-movnoji-politykyr-9073-jogo-koreljacija-z-jevropejskoju-hartijeju-regionalnyh-mov-abo-menshyn

introduction of systematic proposals on the improvement of legislation on the procedure of the use of languages in Ukraine. The purpose of activities is to provide comprehensive development and functioning of the Ukrainian language in all the areas of public life throughout the country, guarantee free development, use, and protection of all native languages of the citizens of Ukraine, implement commitments taken under treaties on these matters, and further introduce the European standards in this field. The order of the President also refers to the need to provide immediate development involving the said working group and adoption of the State Programme of Comprehensive Development and Functioning of the Ukrainian Language[88].

In August, a working group was working on the formation of possible amendments to the Law of Ukraine **On the Principles of State Language Policy** but as of early September, its composition hasn't been officially approved by the Cabinet of Ministers of Ukraine. Activities of the group are coordinated by the Deputy Prime Minister of Health Care Rayisa Bohatyriova having mentioned that, according to the Presidential order, the Law On the Principles of State Language Policy should be amended and improved[89]. However, chances for adoption of amendments to the bill before the end of the 2012 parliamentary election campaign remain rather small, which is indicated by the statements of the PRU heads — the leaders of the respective parliamentary faction.

At the same time, in August 2012, decisions on granting the Russian language the status of regional adopted Sevastopol City Council, and Donetsk, Kharkiv, and Zaporizhia Oblast Councils. These acts can be contrary to the Constitution of Ukraine since the issue of determination of the language policy fall within the competence of the Parliament. In particular, deputies of Kharkiv Oblast Council voted for adoption of the Decision On Urgent Measures on Implementation in Kharkiv Oblast of the Law of Ukraine On the Principles of State Language Policy on 30 August 2012. These events occurred against the backdrop of protests of local communities which object to these actions. Paradoxically, neither representatives of the Bulgarian national minority in Odesa Oblast[90], not the Crimean Tatars cannot get a decision on granting the status of regional to the languages of national minorities other than Russian out of the local councils, which, of course, causes resentment and protest of the representatives of the minorities.

So, as you can see, different areas of the priority implementation (securing the rights of national minorities, formation and coordination of the policy in the relevant fields) are at the implementation stage. On 6 September, the VR of Ukraine passed as a whole **the Law of Ukraine On the Principles of Prevention and Actions Against Discrimination in Ukraine, which is a positive step towards the priority implementation though certain regulations, the list of features being the basis of discrimination, and covert discrimination need clarification.**

Significant flaws include insufficient involvement of the target groups into the processed of discussion of relevant legal and institutional changes, lack of openness of discussion and publicity, and violation of deadlines of public discussion (as happened with the bill on actions against discrimination). Certain acts of government institutions — in particular, during the adoption of the language law — can significantly destabilise the situation in the country in general, cause severe conflicts; the lack of public dialogue and compromise regarding controversial issues of the social and humanitarian policy is noticeable in the provision the

88 THE ORDER OF THE PRESIDENT OF UKRAINE. On the Improvement of the Legal Support for the Use of Languages in Ukraine. Accessed: http://www.prezident.gov.ua/documents/14941.html

89 Bohatyriova Complained that "Linguists" Kolesnichenko and Kivalov Ignore Her, 4 September 2012, http://www.pravda.com.ua/news/2012/09/4/

90 On 15 August, the Town Council of Izmail in Odesa Oblast, at the extraordinary session, granted the Russian language the regional status. However, the deputies refused to consider the matter of granting the Bulgarian language the regional status equal to Russian. See http://www.unian.ua/news/522104-bolgari-vimagayut-statusu-regionalnoji-movi-v-izmajili.html

minority rights, national minorities, and ethnic groups. Even despite negative assessments of NGOs and community councils[91] the Law On the Principles of State Language Policy was passed in the Parliament. That is, the opinion of consultative and advisory institutions is considered rather indirectly, which offsets the possibility of effective participation of the minorities in the public life as it is typical for many European countries.

In the reporting period, neither institutional development nor increase of capacity of the Government to implement the policy against discrimination, protection of the rights of minorities and national minorities occurred; matters of the formation of special government agencies against discrimination aren't considered, or even debated. The lack of coordinated policy results into more negative incidents on the grounds of hate, hatred, and racial incidents.

❖ What Needs to Be Done to Implement the Priority

For further implementation of the priority, activities of the government in the legislative area, ways of informing and development of institutional capacity, and development of consultations and dialogue with various minority groups should be intensified —

- Provide for preparation and public discussion of the number of bills — the Law of Ukraine **On the Concept of State Ethnic Policy of Ukraine, the Law of Ukraine On National Minorities in Ukraine, other laws and regulations aimed at protection and support of the development of national minorities, indigenous people, and ethnic groups in various areas of public life considering recommendations and comments of the institutions of the Council of Europe, the Venice Commission, and the OSCE High Commissioner on National Minorities.**
- Introduce amendments to the Law of Ukraine On the Principles of State Language Policy considering recommendations and comments **of the Council of Europe, the Venice Commission, and the OSCE High Commissioner on National Minorities —** problems of securing the rights of minorities, experts, and analytical and scientific institutions.
- Increase institutional capacity of the Government **against discrimination, consider the relevant law taking into account recommendations of the OSCE, the Council of Europe, NGOs of minorities (national, ethnic, gender, sexual), which would provide for institutional mechanisms** against discrimination. Develop comprehensive anti-discrimination legislation. Eliminate the problem of the lack of official statistics on the amount of information on racial incidents or number of convictions for racial crimes; and facts of law enforcement agencies ignoring information on racial attacks. Renew the activities of the Interdepartmental Working Group Against Xenophobia and Ethnic and Racial Intolerance, including investigation mechanisms and fight against ethnic crimes.
- Increase the level of policy coordination in the field of interethnic relations, protection of minority rights; provide for effective functioning of advisory or consultative boards on the problems of minorities in government agencies.

91 See Opinion of the Commission on the Interethnic Relations and Protection of the National Minorities of Ukraine after the discussion of the draft Law of Ukraine On the Principles of State Language Policy, 27 June 2012. Accessed: http://mincult.kmu.gov.ua/mincult/uk/publish/article/291649?search_param=%D0%BC%D0%B5%D0%BD%D1%88%D0%B8%D0%BD&searchForum=1&searchDocarch=1&searchPublishing=1

2.2.1. Promoting cooperation in the Group of States against Corruption and the subsequent implementation of its recommendations

2.2.2. Implementation of the National Action Plan to fight corruption in cooperation with the relevant EU bodies

Throughout many years Ukraine has consistently taken the last places in the international "anti-corruption" ratings. Thus, in 2011 Ukraine has taken the 152nd place out of 182 in the Corruption perceptions index by Transparency International, although the state has taken the 146th place in the same rating in 2009. This confirms that the Ukrainian citizens think of the country as of an extremely corrupted one, moreover this opinion has become more firm as compared to the previous years. Corruption in Ukraine is spread both among the level of country's top leadership and local government. Penetration of corruption into all the spheres of social life results in the lack of trust to government institutions, doesn't promote establishing the rule of law, has a negative influence on the investment climate in the state and reduces the role of Ukraine on the international scene.

The agenda of association Ukraine EU has established the three main priorities in the sphere of overcoming corruption, such as - promoting cooperation within the Group of States against Corruption (herein after called GRECO)and the subsequent implementation of their recommendations in the anti-corruption sphere; concluding the process of ratification of UN convention against corruption and Criminal Law Convention on Corruption of the European Council; implementation of the National action plan on overcoming corruption in cooperation with corresponding institutes of EU. Implementing measures within these priorities would allow forming sufficient legal platform for raising the effectiveness of the state anticorruption policy and, therefore reduce the level of corruption in Ukraine. In return, reducing the level of corruption will promote economical reforms in the state, improve the investment climate, fortify the confidence of society in government institutions, and increase the role of Ukraine on the international scene.

❖ Analysis of Implementation of the Priority

1. Promotion of cooperation within GRECO and subsequent implementation of their recommendations.

According to the results of the first and the second rounds of estimation of Ukraine by GRECO, a set of recommendations concerning the anti-corruption sphere was prepared that would fundamentally bring the state's legislation in the sphere of preventing and resisting corruption closer to the international standards. The results of monitoring the process of fulfilment of these recommendations show that most of them were not fulfilled in a proper way.

In particular, GRECO has recommended to form an independent **specialized anti-corruption authority** that would be authorized to control the implementation of the state's anticorruption strategy and the actions within this strategy, as well as to initiate the activities aimed at overcoming corruption. February, 7th 2011 the Cabinet of Ministers of Ukraine has eliminated the position of Government Authorized representative on the issues of anti-corruption policy[92] introduced in March, 17th 2010[93]. Instead, in February 2010 the President has formed the National anti-corruption committee[94], as a consultative authority under the head of the state, that would promote

92 Decree of the Cabinet of Ministers of Ukraine of 7.02.2011 №86-p
93 Decree of the Cabinet of Ministers of Ukraine of 17.03.2010 №452-p
94 Decree of the President of Ukraine of 26.02.2010 №275 "On the Formation of the National anti-corruption committee"

the implementation of GRECO recommendations, prepare the proposals on implementation of consolidated state's anti-corruption policy, implement proposals on forming and following the anti-corruption strategy and measures aimed at preventing and overcoming corruption, etc.[95] At the same time, this authority can hardly be considered independent, the domain of competence would correspond to that of a specialized anti-corruption authority within the recommendations of GRECO. In April 2011 the Parliament has adopted the law "On Prevention and Overcoming Corruption", according to article 5 of which the implementation of anti-corruption strategy would be coordinated by an authority dealing with the issues of anti-corruption strategy to be formed by the President. June, 8th 2011 at the session of the National anti-corruption committee the decision was taken to handover the functions of this specialized authority to the Ministry of Justice of Ukraine[96]. However, the Ministry of Justice of Ukraine, as well as the National anti-corruption committee, cannot be considered an independent authority, because it is included into the system of the executive authorities and therefore does not have sufficient functional, operational and financial independence from the Government and the President. During the years 2010 – 2012 a number of laws were introduced for consideration of the Parliament, some of which provide for forming an independent, specialized anti-corruption authority. This especially refers to the Law "On the national service of overcoming corruption" (Law № 5031 of 2.03.2010) and the draft law "On the National anti-corruption bureau" (№9746 of 24.01.2012). However, only the first one affirmed the efficient guarantees of the independence of a specialized anti-corruption authority, the second one defining the National anti-corruption bureau as an authority subordinate to Verkhovna rada of Ukraine. None of these laws was supported by the Parliament. [97] **Thus, GRECO's recommendation about forming an independent anti-corruption authority was not implemented.**

GRECO has also recommended preparing and affirming a **detailed action plan for implementation of the anti-corruption strategy**, which must pass the international expertise. October, 23rd 2011 the President of Ukraine approved the State anti-corruption strategy for 2011 – 2015.[98] On the basis of this strategy the Cabinet of Ministers has prepared and approved the State program on prevention and combating corruption for 2011 – 2015.[99] The draft project of the state program was not submitted for public discussion. The second report on the course of implementation of the action plan on the liberalization of visa regime stated that the State program should have provided for the realistic terms of its fulfilment, strict division of responsibilities regarding its fulfilment between the corresponding bodies of authority, proper provision with human and financial resources, as well as indicators of its fulfilment and the order of its monitoring.[100] The final version of The State program was submitted for expertise to the Council of Europe. The international conclusion on the program was prepared in March 2012. It stated, in particular, that some of the indicators of the Program fulfilment are too "short and one-sided"; although the Program has defined the bodies responsible for its fulfilment, in some cases it is not fully clear which authority has the leading role in fulfilment of the priority; the terms of fulfilment of some of the measures are not clearly defined. [101]The Program does not provide for the financing of most

95 Item 3 of the provisions of the National anti-corruption committee, approved by the decree of the President of Ukraine of 01.09.2011

96 http://www.minjust.gov.ua/0/35525

97 Draft project of the Law "On the National Service of Overcoming Corruption" (№5031) was removed from consideration 13.03.2012, Draft project of the Law "On the National anti-corruption committee" (№5031) – 23.05.2012

98 Decree of the President of Ukraine №1001/2011 of 21.10.2011"On the National anti-corruption strategy for 2011 - 2015"

99 Decree of the Cabinet of Ministers of Ukraine №1240 of 28.11.2011 "On the Approval of the State Program on the Prevention and Overcoming Corruption for 2011 - 2015 "

100 SWD(2012)10 final. European Commission/High Representative of the European Union for Foreign Affairs and Security Policy. Joint Staff Working Document.Second Progress Report on Implementation by Ukraine of Action Plan on Visa Liberalisation. – p.12.

101 European Union/Council of Europe/Eastern Partnership Project on "Good Governance and Fight against Corruption". Assessment of the Ukrainian "State Programme for Prevention and Combating Corruption 2011 - 2015": Technical Paper prepared by Tilman Hoppe. – March 2012. – p. 3.

of its measures, while the main part of budget for its implementation (803.58 milllion UAH out of the total of 820.52 million UAH) is planned to be spent on electronic circulation of the medical forms. It is worth mentioning that the Government did not review the State program in order to implement the recommendations of the international experts that carried out its expertise. **Therefore, GRECO's recommendation regarding approval of detailed implementation plan of the anti-corruption strategy was followed only partially.**

GRECO recommended ensuring **the independence of the prosecution from any political influence and bringing it into conformity with the Constitution.** The Constitution does not provide for the prosecution to maintain the function of general supervision over abiding by the law by the prosecution. The lack of independence of the Prosecution is caused by the order of appointing and dismissing the General Prosecutor, who is appointed by the President with the approbation of the Government according to article 122 of the Constitution, and is dismissed at the discretion of the President. The Constitution also entitles the Parliament to give the Prosecutor a vote non-confidence, which causes his dismissal. As the Prosecutor's office is defined as a unified system by the article 121 of the Constitution, political dependence of the General Prosecutor enhances the dependence of the subordinate prosecutors. Thus, enhancing independence of the prosecutor requires the revision of the provisions of the Constitution and amendments to the Law "On Prosecution". In September 2008 a group of deputies introduced for consideration of the Parliament a draft project of a new edition of the Law "On Prosecution"[102]. The project provided for a number of guaranties of the independence of the Prosecution. However, the prosecutor's office would still maintain the function of general supervision over abiding by the law, defined earlier by the Constitution of Ukraine as in force on December, 8th 2004. The project was adopted in the first reading on April, 14th 2009, but was not considered by the Parliament afterwards. In 2012 several amendments were made to the Law "On Prosecution", aimed at bringing this Law into conformity with the new Code of criminal procedure, as well as reducing the amount of the acts of prosecutor's response. Thus, September, 18th 2012 the parliament has adopted a draft law as a Law №11074[103] which establishes that the prosecutors will not be entitled to issue letters of order and protests. Besides, the acts of prosecutor's response will be recommendatory to their addressees. At the same time, the amendments to the Law "On Prosecution" have not affected its independence and have not limited the function of general supervision over abiding by the law. **Therefore, this recommendation by GRECO cannot be considered implemented.**

One more recommendation to Ukraine by GRECO was to **decrease the level of immunity of the administrative officials**. May, 24th 2012 the deputies introduced for consideration of the Parliament a draft project of the Law №10530 «On Ammendments to the Constitution of Ukraine»[104]. The project suggested that the articles providing for obligatory consent of the parliament for detainment, arrest or bringing to criminal responsibility of a people's deputy, detainment or arrest of a judge, as well as the articles confirming the right for immunity of the head of the state, members of the parliament or judges, should be extracted from the Constitution. In 2008 a group of deputies have introduced for consideration a draft law No.3251 «On Ammendments to the Constitution of Ukraine»[105] that states that a people's deputy can be brought to criminal responsibility without the consent of the Verkhovna Rada, but cannot be detained or arrested before the verdict of guilty comes into force. According to the same draft law, the President of Ukraine cannot be

102 Draft project of the Law "On Prosecution" (№2491 of 19.09.2008)

103 Draft project of the Law "On Amendments to Some of the Constituent Acts of Ukraine on the Issues of Improvement of the Prosecution" (№11074 of 10.08.2012)

104 Draft project of the Law "On the Amendments to the Constitution" (№10530 of 24.05.2012)

105 Draft project of the Law "On the Amendments to the Constitution" (№3251 of 3.10.2008)

detained or arrested without the consent of the Parliament before the verdict of guilty comes into force, which will be a ground for his pre-term resignation. However, the draft law did not provide for reviewing of the scope and the order of abolition of the judicial immunity.

Both draft laws were forwarded to the Constitutional Court of Ukraine to receive confirmation about their correspondence to the articles 157 and 158 of the Constitution of Ukraine. The Constitutional Court has confirmed that the draft law No.10530 corresponds to the articles 157 and 158 in the matter of revision of the scope and procedure of abolition of the deputies' immunity. At the same time, the articles about abolition of the Presidential and judicial immunity, as well as the order of detaining or arrest of judges, were not considered corresponding to the articles 157 and 158 of the Constitution. [106]In the conclusion report the Constitutional Court emphasized that the "abolition of such guarantee of justice as the judicial immunity can indirectly lead to restriction of the right for court protection, guaranteed by the article №55 of the Constitution of Ukraine". As for the draft law №3251, it was considered to correspond fully to the articled 157 and 158 of Constitution.[107] September, 6th 2012 Verkhovna rada has taken a decision to include the draft laws №3251 and №10530 to the agenda of the day session of the Parliament, but none of them were reviewed afterwards. **The recommendation of GRECO about restricting the immunity of the administrative officials was not implemented. Moreover, the Decision of the Constitutional Court №1-в/2012 dated July, 10th 2012 has practically made it impossible to restrict the judicial immunity on a legislative level, which demonstrates Ukraine's regress in the implementation of GRECO recommendations.**

GRECO's recommendation on regulating the procedures of interaction between the public administration and the physical or juridical person was implemented only partially. Thus, the draft project of the Administrative Procedural Code of Ukraine[108], which has passed the expertise by the native and foreign experts and was forwarded by the Government to the Parliament in 2008, was withdrawn by the Cabinet of Ministers in 2010 and was not resubmitted for consideration of the parliament. At the same time, September 6th 2012 Verkhovna rada has adopted the Law "On Administrative Services", which became one of the preconditions of improvement of the interaction between the public administration and the recipients of administrative services. However, this Law has a number of shortcomings: enterprises and establishments were extracted from the list of the subjects of administrative services; it provides for the possibility of determining the list of the services only by the law, but not by the acts under the law; the price of the administrative service is determined by its "social and economical value", and not by its cost; it contains a clause stating that the administrative services can be delivered only via their administrators, etc.[109]A drastic change of relations between the public administration and the physical or juridical persons cannot be possible without the adoption by the Parliament of the Administrative Procedural Code of Ukraine and the Law "On the Administrative Fee", which were not adopted. Implementation of the Law "On the Administrative services" requires the adoption of a number

106 The Conclusion of the Constitutional Court of Ukraine №1-в/2012 of July 10th 2012 on the case of application of Verkhovna Rada of Ukraine about conclusion on the conformity of the draft law on the amendments to the Constitution of Ukraine regarding the immunity with the articles 157 and 158 of the Constitution of Ukraine (the case of amendments to the articles 80, 105, 126, 149 of the Constitution)

107 The Conclusion of the Constitutional Court of Ukraine №2-в/2012 of August 27th 2012 on the case of application of Verkhovna Rada of Ukraine about conclusion on the conformity of the draft law on the amendments to the Constitution of Ukraine regarding the guarantee of the immunity of some of the administrative officials with the articles 157 and 158 of the Constitution of Ukraine (the case of amendments to the articles 80, 105 of the Constitution)

108 The draft project of the Administrative Procedural Code of Ukraine №2789 of 18.07.2008 submitted by the Cabinet of Ministers of Ukraine

109 B. Tymoshchuk. Verkhovna rada has adopted the Law "On the Administrative Services"; http://www.pravo.org.ua/index.php?option=com_content&view=article&id=1001&catid=183&Itemid=272

of acts under the law as well as implementation of a number of measures, in particular expanding the network of the centers of delivering administrative services, training of administrators for such centers, etc.

GRECO, as well as other international organizations has repeatedly recommended Ukraine to strictly define the **hierarchy of normative legal acts.** In 2010 a people's deputy Y. Miroshnytchenko has introduced for consideration of the Parliament the draft law "On Normative Legal Acts". It was adopted by Verkhovna Rada of Ukraine in the first reading on May 20th 2011, though it was not reconsidered afterwards. The draft project has a number of shortcomings, both conceptual and technical, that have to be eliminated before it is adopted as a law. [110]**Thus, during the years 2011-2012 there was no progress made on the issue of strict definition of the hierarchy of normative legal acts in Ukraine.**

Enhancing the effectiveness of overcoming corruption calls for the legal regulation of the state purchase, including providing for transparency of the purchase procedures, preventing conflict of interests in the work of committees of competitive bidding, bringing the purchase procedures into the conformity with the EU law, establishing a clear connection between the value of the object of purchase and the difficulty of the procedure for its members. GRECO has also emphasized the necessity of improving the purchase regulation so as to bring it into conformity with the European standards and providing for the transparency and accountability of purchase. Although the Law "On State Purchase", adopted June 1st 2010 had a number of positive innovations as compared to the previous legislation (first of all, related to providing transparency of the information about planned and accomplished purchase), it also had a number of shortcomings. Furthermore, it was modified 20 times during the years 2011-2012. These changes have abolished the necessity to agree the purchase from one member with the Ministry of Economic Development and Trade of Ukraine; have decrease the number of statements for purchase, that were supposed to be promulgated on the website of the ministry; a lot of kinds of purchase were no longer in the field of operation of the law, including the kinds that are made with the funds other than the state ones by the enterprises with the state or municipal share of over 50% of the statute capital assets, etc.[111] May 24th 2012 Verkhovna rada of Ukraine has adopted the Law "On the Peculiarity of Purchase in the Certain Fields of Economical Activity". This Law has regulated the order of purchase by the natural monopolies; in addition it has defined a number of cases when monopolies can make a purchase without the procedure of competitive bidding, provided by the Law "On State Purchase". In the course of reconsideration of the Law "On State Purchase", none of the clauses that do not fully correspond to the EU law and the better practice of EU countries were changed. In particular, the procedures of purchase are far from corresponding to the procedures of EU countries; the law contains rather frame definitions of the qualification demands to the members; does not provide for any connection between the difficulty of the procedure and the amount of funds to be spent for the purchase (for instance, the purchase for the amount of 100 000 UAH involves the same difficulty as the purchase for 10 000 000 UAH). All the above-mentioned allows to conclude that **during the years 2011 – 2012 the field of state purchase has faced the decline in legal regulation of the transparency and optimization of the purchase procedures, instead of its improvement. Therefore, the recommendation of GRECO was not implemented.**

110 For example, the Conclusion of the Principal scientific expert board of the Executive office of Verkhovna rada on the draft project of the law; http://w1.c1.rada.gov.ua/pls/zweb_n/webproc34?id=&pf3511=39123&pf35401=184270

111 O.Khmara. Tender Law=corruption!// Ukrainska Pravda, 31.05.2011; http://www.pravda.com.ua/articles/2011/05/31/6255774/. Also: http://nashigroshi.org/2012/08/01/yanukovych-pidpysav-samyj-koruptsijnyj-zakon-v-istoriji-ukrajiny/. As a result of the removal of the purchase of state enterprises from the field of operation of the law "On State Purchase ", the Law extends only to an inconsiderable part of the purchase (in 2011 the state enterprises have made a purchase amounting to 250 billion UAH out of the total of 325 billion UAH)

A group of countries have suggested to introduce a number of measures aimed at **preventing corruption in public services** in Ukraine, in particular to implement the reform of public services, make civil servants responsible for informing about the cases of corruption and ensure their protection from possible adverse consequences of such informing, and adopt a code of conduct (ethics) of civil servants.

On 17 November 2011, the Parliament adopted a new edition of the Law On Civil Service, which will come into effect on 1 January 2013. Apart from a number of advantages, this Law also has a number of significant disadvantages. In particular, it doesn't clearly divide political and administrative positions, doesn't provide efficient mechanisms to prevent servants to engage in political activities (for example, membership of civil servants in political parties is allowed), or requirements to professional competence of higher categories of positions (subgroup I-1) or carrying out transparent competitive selection to fill the positions of the 1st group; complicated classification of civil service positions is prescribed as well as concentration of civil service powers at the National Agency of Civil Service (whereas those powers should be divided between several governmental agencies). Among the disadvantages of the Law, there is securing the right to initiate internal investigation only for the entity of its purpose, setting a short period (10 days) to conduct internal investigation, keeping bonuses as a part of wage of a servant, optional testing for the office etc[112]. Thus, the new Law On Civil Service can hardly be considered a significant step forward towards reforming public service.

On 11 January 2012, the Cabinet of Ministers introduced to the Verkhovna Rada the draft Law On Service in Local Self-Government (registered No.9673). According to the results of the expert discussion of the bill, a number of its provisions had been criticised, and on 6 September 2012, the Parliament returned it to the Government for revision. Thus, service in local self-government is still governed by the outdated Law On Service in Local Self-Government of 2001, which doesn't include innovations of the new edition of the Law On Civil Service. Given this, it can be stated that **GRECO recommendations on reforming public service have been implemented only partially.**

On 17 May 2012, the Verkhovna Rada of Ukraine adopted the Law On the Code of Ethical Conduct. The Law prescribes the principles of ethical conduct for persons authorised to perform the functions of the state and local self-government, including the principles of legality, priority of interests of the state and local community, political impartiality, tolerance etc. This Law is a framework, and doesn't define mechanisms to prevent or resolve the conflict of interest, or the procedure of financial control in the area of public service. In the degree of detail of the provisions, the new Law is significantly inferior to the General Code of Conduct for Civil Servants, approved by the order of the Chief Directorate of Civil Service No.214 of 4 August 2010, which, inter alia, defined the procedure of resolving the conflict of interest in the area of public service. Provisions of this General Code could have been used in the Law On the Code of Ethical Conduct, which would allow to it them mandatory for officials of the local self-government, for whom the General Code of Conduct for Civil Servants is advisory. However, this hasn't been done. Accordingly, **GRECO proposals on adoption of the model code of conduct (ethics) for officials of the public sector Ukraine has implemented partially.**

According to Section 7 of Article 5 of the Law On Principles of Preventing and Combating Corruption, officials of the government agencies, local self-government, and legal persons, in case of corruption or obtaining information on committing it, shall take measures to stop the violation

112 For more information, see V. Tymoshchuk, O. Kurinnyi New Law on Civil Service: Innovations and Problems; http://www.yurincom.com/ua/analytical_information/?id=10288

and inform about it a specially authorised body in the anti-corruption area. Article 20 of this Law provides that persons assisting in preventing and combating corruption shall be protected by the state, which is carried out in the manner prescribed by the Law On Safety of Persons Involved in Criminal Proceedings of 1993. The latter provides for relatively effective mechanisms to servants who report crimes but doesn't provide for appropriate mechanisms for persons who report administrative corruption. No steps towards broadening the provisions of this Law or specifying provisions of Article 20 of the Law On Principles of Preventing and Combating Corruption in a separate act during 2011 and 2012 have been made. **Given this, one can assume that GRECO recommendations on the need to implement protection mechanisms for servants who provide information on corruption haven't been implemented in Ukraine.**

According to the results of the first and second evaluation rounds of Ukraine, GRECO proposed to introduce **liability of legal persons for corruption offences**. On 11 June 2009, the Parliament adopted the Law On Liability of Legal Persons for Committing Corruption Offences, which was cancelled on 21 December 2010. After abolition of the law, no bills that would provide for possibility of holding legal persons liable for committing acts of corruption haven't been introduced to the Parliament. This allows to conclude that **Ukraine hasn't implemented the relevant recommendation of GRECO**.

2. Completion of the ratification process of the UN Convention Against Corruption and Criminal Law Convention on Corruption of the Council of Europe

The UN Convention Against Corruption was ratified on 18 October 2006 though the Law on its ratification should have come into effect simultaneously with the entry into force of the Law On Amendments to Certain Legal Acts On Liability for Corruption Offences. Although this law was adopted[113], a number of provisions of the Convention still haven't been reflected in Ukrainian legislation. Indeed, no specialised independent anti-corruption body empowered with coordinating functions in the area of preventing and combating corruption (Article 6 of the Convention); the procedure of acceptance, service, and termination of office in governmental agencies hasn't been fully brought in compliance with the principles embodied in Article 7 of the Convention (see above); neither appropriate mechanisms of encouraging officials to report corruption (Section 4 of Article 8 of the Convention) nor mechanisms preventing the conflict of interest (Section 5 of Article 8 of the Convention) haven't been introduced; administrative procedures that don't facilitate public access to public administration (Article 10 of the Convention) hasn't been substantially amended; no liability for committing acts of corruption for legal persons (Article 26 of the Convention) has been provided ; etc. **Thus, although the UN Convention Against Corruption has been ratified and come into effect, the issue of bringing Ukrainian legislation in compliance with its provisions remains relevant.**

As the UN Convention Against Corruption, the Criminal Law Convention On Corruption of the Council of Europe (ratified on 18 October 2006) came into force in Ukraine simultaneously with the entry into effect of the Law On Liability for Corruption Offences. Monitoring of Ukraine implementing the provisions of this Convention as well as the Additional Protocol to it was conducted by GRECO within the framework of GRECO Third Evaluation Round[114]. According to the results of GRECO monitoring, GRECO has formed 7 recommendations for Ukraine, in particular — to introduce amendments to legislation on criminal liability in the section of liability for bribery

113 The Law On Amendments to Certain Legal Acts On Liability for Corruption Offences of 7/04/2011 No.3207-VI.

114 GRECO Third Evaluation Round. Evaluation Report on Ukraine. Incriminations (ETS 173 and 191, GPC 2), adopted by GRECO at its 52nd Plenary Meeting (Strasbourg, 17-21 October 2011); http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_One_EN.pdf

in the private sector aimed at expanding liability for bribery on all officials of the private sector; to provide for criminal liability for giving or receiving any unlawful benefits in any form (both financial and non-financial) regardless of their value; to provide for liability clearly for trading in influence, and giving and accepting bribery in cases where benefits are provided not to the official himself but to a third party (legal or natural); to increase liability for bribery; etc. After GRECO published these recommendations, the Criminal Code of Ukraine hasn't been revised. **Accordingly, the issue of bringing the Criminal Code of Ukraine in compliance with the Criminal Law Convention on Corruption of the Council of Europe also remains relevant.**

3. Implementation of the National Anti-Corruption Action Plan in cooperation with relevant institutions of the EU

The State Programme On Preventing and Combating for the Period of 2011 to 2015 determined a number of measures to be taken within the framework of implementation of the Programme in 2012. Most of these measures, as of October 2012, weren't taken. This includes, for example, introducing to the Verkhovna Rada of Ukraine the draft Code of Administrative Procedures, adoption of the new edition of the Law On Service in Local Self-Government, the Law On Involvement of Public in Formation and Implementation of the State Policy, the Law On Liability of Legal Persons for Corruption Offences, creating one call centre for provision of administrative services, creating 24 centres of external audit of procurement procedures, and a system of efficient control of expenses of the officials and members of their families. Given that there are only a few months before the end of 2012, the prospects of implementing these activities within the period set by the State Programme seem rather illusive. **In connection with it, in 2012 the progress of implementation of the State Programme On Preventing and Combating Corruption for the Period of 2011-2015 can be hardly considered satisfactory.**

❖ What Needs to Be Done to Implement the Priority

During 2011 and 2012, no substantial progress towards implementing the priorities in the area of combating corruption defined by the Ukraine-EU Association Agenda was made. Most of GRECO recommendations in the anti-corruption area haven't been implemented; in the Ukrainian legislation, provisions of the UN Convention Against Corruption and the Criminal Law Convention on Corruption of the Council of Europe are not fully reflected when most measures of the State Programme on Preventing and Combating Corruption for the Period of 2011-2015 planned for 2012 are unlikely to be implemented by the end of 2012.

Key recommendations on priority implementation of the Ukraine-EU Association Agenda are as follows —

- It is worth considering the possibility of revising the provisions of the Constitution of Ukraine, including through adoption of a new version of the basic law, which would provide for creating independent bodies within the system of government agencies, including a specialised anti-corruption body, narrowing the scope of immunity of people's deputies of Ukraine and judges, changing the procedure of appointment and dismissal from the office of the Prosecutor General in order to strengthen the independence of prosecution, and changing the procedure of forming the High Council of Justice to expand representativeness among its judges. Relevant constitutional provisions should be specified in new laws (for example, on the specialised anti-corruption body), or existing ones (for example, in the Law On the Office of the Prosecutor General).
- The State Programme On Preventing and Combating Corruption should be amended so that it would more clearly determine indicators of its implementation and the expected

results of the measures determined by the Programme, and provide for proper funding of the Programme's measures and clear division of responsibility for the implementation of appropriate measures.
- Managing interaction between public administration and recipients of administrative services requires to create a proper legal basis for such interaction, including through adoption of the Code of Administrative Procedure and the Law On Administrative Fees. Provisions of these Laws as well as of the new Law On Administrative Services should be developed in relevant bylaws. Consideration should be given to the possibility of more active introduction of e-governance in activities of public administration, expanding the network of training centres for provision of administrative services, and intensifying training for administrators of such centres.
- In order to standardise the procedures of adoption of legal acts and determine their hierarchy, the Law On Legal Acts should be adopted, which has been in progress for over 10 years, and the need to adopt it was many times emphasised by GRECO and the Anti-Corruption Network of the Organisation for Economic Cooperation and Development.
- Existing regulation of the procurement procedures should be brought in compliance with the EU law. The Government and the Parliament should abandon the practice of regular exclusion of certain kinds of procurement from the scope of the Law On Conducting Government Procurement as well as consider extending this law to companies with the share of state or communal ownership over 50%. The latter should be amended to provide for the following — a) establishing a connection between the complexity and duration of the procurement procedure and the amount of money used for the procurement; b) increasing a minimal threshold at which procurement should be conducted in compliance with the Law On Conducting Government Procurement; c) establishing effective mechanisms to prevent the conflict of interest in the work of members of competitive tendering committees; d) bringing the content of procurement procedures in compliance with the EU law.
- In order to strengthen integrity in public sector, it seems necessary to revise the provisions of the new Law On Civil Service taking into account suggestions of experts, in particular — a clear division between political and administrative positions, introduction of a transparent competitive bidding for all kinds of administrative positions, strengthening independence of servants, deconcentration of powers on public service management etc. The Cabinet of Ministers shall speed up the revision of the bill of the new edition of the Law On Service in Local Self-Government, and ensure its adoption by the Parliament in 2012. At the legislative level (for example, through adoption of a separate law or laws), the procedure of prevention and regulation of the conflict of interest in public service should be defined more clearly as well as financial control of the public service while allocating the responsibility of submitting declarations on private interests to persons authorised to perform functions of the state or local self-government. The laws on public service should be complemented with provisions that would provide for effective mechanisms of protection of servants who report on cases of corruption from dismissal and other negative consequences of such reporting.
- The Ministry of Justice of Ukraine should speed up the development of the bill on liability of legal persons for corruption offences as well as provide for its consideration and adoption by the Parliament in 2012.
- The provisions of the Criminal Code of Ukraine should be brought in compliance with the Criminal Law Convention On Corruption of the Council of Europe and the Additional Protocol to it, also taking in account GRECO recommendations based on the results of the Third Evaluation Round of Ukraine.
- The Ministry of Justice of Ukraine should conduct more active work on the current coverage of the progress of implementing the State Programme on Preventing and Combating Corruption for the Period of 2011-2015.

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