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**Project on strengthening and protecting women's and children's rights in Ukraine
(TRES)**

**Strengthening the Protection of Children's Rights through
the European Social Charter (revised)**

Seminar

Kyiv, 15-16 February 2011

**Meeting report
by
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The views expressed in this document are those of the author and do not necessarily reflect official positions of the Council of Europe or of the European Union

On 15-16 February 2011, with the support of the Project on Strengthening and Protecting Women's and Children's Rights in Ukraine (TRES), an international research and practice seminar "Strengthening the protection of children's rights through the European Social Charter (revised) (*hereinafter – the seminar*) took place in Kyiv.

The seminar was attended by representatives of the Ukrainian and Bulgarian state authorities and research institutions, which contribute to the development of public policy in the field of the protection of socio-economic and other rights of women and children against all forms of discrimination, other national experts in this area, as well as officials representing the social programs of the Council of Europe being implemented in Ukraine. In particular, the seminar was attended by the Executive Secretary of the European Committee of Social Rights (Council of Europe) Mr Régis Brillat, whose reports and comments made an invaluable contribution to the work of the seminar and the achievement of its expected results. The reports of the participants were followed by their active discussion moderated by Olena Kochemyrovska, consultant for social policy (National Institute for Strategic Research under the President of Ukraine).

In his welcoming speech Mr Ake Peterson, Representative of the Secretary General of the Council of Europe for the coordination of co-operation programmes in Ukraine, emphasised that their contribution would be extremely important for the European Union and the Council of Europe, since the latter was striving to assist Ukraine in such areas, according to the priorities determined by the Ukrainian public and government agencies, as well as national experts.

Mr Sergey Polyuk, Project Coordinator in health care and social policy, European Union Delegation to Ukraine, noted that, according to the reports of Ukraine with respect to international institutions (UN Human Rights Committee, UN Committee on Children's Rights, European Committee of Social Rights etc.), Ukraine has ratified a number of international instruments. However, not much has been done towards their implementation. Cases of abandoning of children, trafficking in children, violence towards children, as well as cases of infanticide and other illegal actions, are still rather common. A lot has yet to be done, both in terms of legislative support, and in terms of combating the violation of women's and children's rights in Ukraine more robustly. Thus, seminar participants will be able to make both recommendations to the state, and send a message to civil society.

The following topics have become the key subjects of discussion:

1) European and UN standards for the sanction of any display of violence, as well as other manifestations of breaching children's rights, primarily the requirements of the European Social Charter (revised), as well as the procedures and results of Ukraine's reporting under international treaties, to which Ukraine is a party (based on the example of the national annual reports of the Government of Ukraine regarding the implementation of the provisions of the European Social Charter (revised), and the recommendations of the UN Committee of the Rights of the Child upon the results of the consideration of Ukraine's state report (2011));

2) The role of state agencies and other Ukrainian institutions (the Verkhovna Rada Commissioner for Human Rights, relevant ministries and their departments, judicial and law enforcement bodies, centres of social services for families, children and young persons, etc.), as well as civil society in the area of the protection of children from cruel treatment and other forms of the infringement of their rights and the experience of Bulgaria in this area. Special focus was placed on the best practices of children's participation in the exercise of their rights (through the experience of "children's" ombudsmen).

3) The experience of Bulgaria and Ukraine, as well as the position of the European Committee of Social Rights in the area of combating all forms of discrimination against women and children.

Régis Brillat, the Executive Secretary of the Council of Europe's European Committee of Social Rights, in his reports "**European Social Charter and Children's Rights**" and "**European Committee of Social Rights case law regarding children**", explained the stages of developing the European Social Charter (revised), its key principles, the monitoring mechanism, as well as the provisions concerning the protection of children's rights. He noted that the Council of Europe was established in May 1949, several months after the adoption of the Universal Declaration of Human

Rights by the UN. One of the first tasks of the Council of Europe was the adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms for the purpose of transforming the Declaration's ideals into a binding European agreement. The Convention was adopted on 4 November 1950, and was transformed into a well-known and effective treaty of the Council of Europe, which was ratified by all member states of the Council of Europe.

However, the Convention does not proclaim all rights granted by the UN Universal Declaration of Human Rights, and is limited to the so-called "civil and political" human rights. Due to the necessity to secure social and economic human rights, the European Social Charter was drafted, which was adopted in 1961 and approved in the new version after a radical review in 1996. As such, the Council of Europe assumes that the violation of socio-economic rights may cause the violation of civil and political human rights. Thus, the European Social Charter (revised) (*hereinafter – the Charter*) complements the European Convention on Human Rights and determines the list of socio-economic rights and freedoms, as well as the mechanism of control based on collective complaints and state reports, which guarantees the implementation of its provisions by member states. It guarantees a wide range of rights in the area of housing, health protection, education, employment, social security and movement, as well as the prohibition of discrimination. As of now, only Portugal and France have recognised all the provisions of the Charter. Italy and the Netherlands have recognised all provisions, except one.

The European Committee of Social Rights is a regulatory body of the Council of Europe, which takes decisions as to whether the state of affairs in countries that have ratified the Charter, correspond to the obligations undertaken. The Committee is composed of unbiased experts and carries out its activities in two areas complementing each other: firstly, the Committee evaluates the situation in member states based upon the submitted materials of the countries' annual reports, and publishes "conclusions". It has been ten years since the Committee also started considering collective complaints filed by 14 states' trade unions, employers' organisations and non-governmental organisations, which have agreed to take part in this procedure. The members of the European Committee of Social Rights acting on their own behalf are elected for 6 years by the Committee of Ministers of the Council of Europe, with the possibility of re-election for another term.

Each year the Secretary General of the Council of Europe receives reports of member states regarding the implementation of certain provisions of the Charter. All states report simultaneously regarding the same provisions, which guarantees equal attention to each. This is unique, and the Committee should keep it at any price: this is a single Council of Europe monitoring body, working on the basis of the consideration of separate provisions, rather than separate states.

The second procedure is a procedure for the consideration of collective complaints, similar to the procedure of consideration of claims by the European Court of Human Rights. The Committee handles the files submitted to it by applicant organisations and considers the situation only in the respondent country.

However, the combination of the two systems (consideration of reports and consideration of complaints) enables the Committee to carry out any investigation horizontally, i.e. in all member states; during the consideration of submitted reports, having considered the complaint, the Committee checks both the circumstances which resulted in the filing of the claim against the state, and the resolution of similar problems in all other member states of the Charter.

When the European Committee of Social Rights identifies that the circumstances contradict the requirements of the Charter, the Committee of Ministers of the Council of Europe accepts the decision for intervention. The procedure is similar to that of the enforcement of the European Convention on Human Rights, called "the Enforcement of Court Decisions". The Committee of Ministers is assisted by the Government Committee of the Charter, which consists of representatives of the states party to the Charter and observers from the European social partners. The Governmental Committee holds meetings twice a year and considers the reaction of countries to the conclusions of the European Committee of Social Rights regarding decisions of non-compliance. In exceptional cases, when the reaction of the state is not sufficient, the Cabinet of Ministers may address recommendations to the states concerned.

In the conclusion regarding the monitoring procedure, Mr Régis Brillat noted that it is important that **states should not just react to the conclusions on the violation of certain provisions of the Charter, but should take an active stance regarding prevention of such violations**. This creates the conditions for better and more effective implementation of the Charter.

Mr Brillat noted that the Charter guarantees the *child's rights* in many circumstances from the moment of birth to the moment of coming of age through the following two means:

- Firstly, many rights guaranteed by the Charter especially concern children; for example, article 16 (a family's right to social, legal and economic protection), which protects the rights of children as family members, as well as Article 11 (right to health protection);

- Secondly, the Charter contains specific rights, which concern exclusively children, in particular, Article 7 (the right of children and young persons to protection) and Article 17 (right of children and young persons to social, legal and economic protection).

The Charter guarantees the rights of children from the moment of their birth (in some cases, prior to that) and up to 18 years of age in relation to the following:

A. Pre-natal protection - protection of motherhood

B. Family's rights

C. Legal status of a child

D. Criminal liability and criminal law regarding children

E. Protection of children's health

F. Special protection of children - protection from violence, abuse and exploitation, special protection of socially vulnerable groups of the population

G. Right to education

H. Prohibition of children's labour

I. Special working conditions for young persons of 15 to 18 years of age

J. Rights of migrants' children

Mr Brillat explained the content of these rights for children, thereby confirming the conclusion that the *Charter contains a very detailed list of children's rights*. However, the effective exercise of rights granted depends on a number of factors:

- level of awareness of the Charter in its states party among the representatives of state authorities, judges, social workers and other institutions;

- commitment of all governments, parliaments and judicial authorities in each European state to the active implementation of the Charter;

- participation of *children themselves* in the implementation of the Charter, since the strategy of the Council of Europe involves the development of Europe not only for children, but together with children.

Finally, Mr Brillat emphasised that the main issue for the implementation of the Charter by member states was the compliance of their policy with human rights. For all its importance, the Charter itself is a subsidiary mechanism for the protection of human rights. At the same time, the state carries the main load, having to create an effective mechanism for protecting the child's rights (and human rights in general) at the national level.

Judge of the Supreme Court of Ukraine, Olga Shapovalova, decided to dedicate her report "**Guarantees of children's rights in the current Ukrainian law**" to a comparative analysis of the provisions of the European Social Charter (revised) and the Ukrainian national legislation in terms of criminal and criminal procedural aspects. She noted that the Charter contains standards regarding the protection of children's rights, in particular:

- part I point 7 of the Charter: “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed”;

- part I point 17 of the Charter: “Children and young persons have the right to appropriate social, legal and economic protection”.

The parties undertake to:

- according to Article 7.10 of the Charter: Ensure special protection against physical and moral dangers to which children and young persons are exposed and particularly against those resulting directly or indirectly from their work.
- According to Article 17.1 of the Charter: a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; b) to protect children and young persons against negligence, violence or exploitation.

An analysis of the provisions of the Criminal Code of Ukraine and Code of Criminal Procedure from the standpoint of compliance of the national law with the requirements of the European Social Charter (revised) gives grounds to conclude that the applicable law in general satisfies the principles of international standards regarding the rights of underage persons, and contains special procedural standards, aimed at improving the protection of their rights. However, some drawbacks to the law and other problematic issues still exist and need to be urgently resolved.

All international documents in the area of the protection of children’s rights are based on the principle of the protection of the child’s best interests. The European Social Charter (revised), which has been ratified by Ukraine, is not an exception to this rule. One of the manifestations of the principle of the child’s best interests in the Ukrainian national legislation is the *establishment of certain specific provisions of criminal procedure with the involvement of minors*.

The participation of underage persons in criminal proceedings can be considered in terms of several aspects:

- persons that committed a crime;
- persons who are victims of crime;
- witnesses of crime.

As noted by Ms Shapovalova, the objective of her report is limited to an evaluation of the mechanism for observing child victims’ and witnesses’ rights.

An analysis of substantive criminal law enables us to draw the following conclusions: a new aggravating circumstance was added to the Criminal Code of Ukraine of 2001, in article 67 (The List of Circumstances that Aggravate a Punishment): “Committing a crime towards a minor”. A range of articles within a special part of the Criminal Code of Ukraine provide for liability for crimes against a child, or consider the commitment of a certain crime against a child as a qualifying circumstance, in particular:

- Article 115.2.2. “Intentional manslaughter”, the Criminal Code of Ukraine;
- article 149.2 and 149.3, “Human trafficking or another illegal dealing in human beings”, the Criminal Code of Ukraine;
- Article 150 “Exploitation of children”, the Criminal Code of Ukraine;
- Article 150-1 “Use of a minor for begging”, the Criminal Code of Ukraine;
- Article 155 “Sexual relations with a person who has not reached puberty”, the Criminal Code of Ukraine;
- Article 156 “Corruption of Minors”, the Criminal Code of Ukraine.

Concerning criminal proceedings, Article 168 of the Code of Criminal Procedure provides for some specific provisions as regards interrogation of child witness; article 171 of this Code – attendance and interrogation of the victim. **Thus, the Code of Criminal Procedure does not stipulate any specific standards regarding the interrogation of a child victim.**

Article 45 of the Code of Criminal Procedure of Ukraine, “Compulsory participation of the defender” indicates that the participation of a defender in the interrogation, pre-trial investigation and in the consideration of a criminal case in the court of first instance is obligatory in the cases of persons suspected or accused of a crime in the age of under 18 – from the moment the person is recognised as a suspect or charged. However, **the applicable criminal procedural law of Ukraine does not stipulate that a representative of an child victim – a professional defence attorney – should participate in the case on an obligatory basis.**

Article 27 of the Code of Criminal Procedure of Ukraine stipulates that criminal liability *can only be initiated upon complaint of the victim.*

- Crimes stipulated by article 125, article 126.1 of the Criminal Code of Ukraine, as well as crimes provided for by article 356 of the Criminal Code of Ukraine regarding actions damaging to the rights and interests of some citizens, are only initiated upon the complaint of the victim, who has the right to support prosecution in such cases. In such cases, the interrogation and pre-trial investigation are not taking place. The afore-mentioned actions are liable to end, if the victim comes to terms with the accused (the person on trial).
- In exceptional circumstances, when an aggrieved party, due to his/her helpless state, dependence of the accused, or for other reasons cannot protect his/her legitimate interests, the prosecutor opens a case even if the victim's complaint is not available.

Thus, Ms Shapovalova reached the conclusion that in Ukraine *a child victim in the criminal proceedings is not provided with the necessary defence, especially in those cases when he/she is a victim of sexual crimes or crimes related to exploitation, committed by parents, tutors, adoptive parents, as well as in cases of private prosecution.*

The absence of legally-defined specialised courts in cases where the aggrieved parties are minors remains a fundamental problem.

- Courts have one of the main functions in consideration of cases regarding minors.
- This means that special services should be provided by courts, such as the availability of professionals experienced in such cases, with practical knowledge and, perhaps with a special education in the area of child psychology and pedagogy, with high ethics, concern for the child victim and his/her future, and with a willingness to help him/her and the family to find the most effective way for his/her rehabilitation.

Ms Shapovalova determined the following ways of resolving the issues:

- improvement of criminal procedural laws as regards support of the rights of child victims;
- introduction of specialised courts not only in cases where perpetrators are minors, but also those cases where victims are minors;
- without this Ukraine will not be able to assert confidently that of fully comply with all the provisions of international law and, in particular, the European Social Charter (revised) for the protection of children's rights.

Yuliya Ilcheva, expert, Department for International Organisations and International Legal Co-operation, Directorate of European Policy and International Cooperation, Ministry of Labour and Social Policy of Bulgaria, noted in the report of the **Bulgarian Experience in implementing the National Strategy on the Rights of the Child** that:

The Bulgarian Constitution assures that children enjoy the protection of the State. Their rearing and upbringing until they reach 18 years of age is a right and obligation of their parents, but it is assisted by the State.

Bulgaria is also a party to all the important international treaties and recommendations in the field of child protection, including the UN Convention on the Rights of the Child and its two Optional Protocols. The implementation of the principles of the Convention in Bulgaria started with the adoption in 2000 of the Child Protection Act. This act regulates the rights, principles and measures for child protection, the state and municipal bodies responsible for policy creation and implementation, and the mechanism for their cooperation. The rights of the child are also a key element in the Family Code, the Social Assistance Act, the National Education Act, the Healthcare Act, the Protection against Discrimination Act, Family Support for Children Act etc.

The Child Protection Act establishes the creation of a State Child Protection Agency which is a central, specialised body of the Council of Ministers. The Chairperson of the State Agency is in charge of the direction, coordination and control of child protection policies.

The Child Protection Act also provides for the creation of a National Child Protection Council which brings together state institutions and NGOs. The Council consults the Agency's chairperson on the National Strategy and the National Programme on Child Protection, and on the agency's policy and the synchronisation of legislation.

The state child protection policy is implemented and adopted by the National Assembly National Child Protection Strategy with a 10 year time-frame, from 2008 until 2018. The strategy is built on the principles set in the Child Protection Act. Annually, the Council of Ministers approves a National Programme for its implementation. These documents are based on the notion of ensuring that the interests of the child, and the respect of the rights of all children in Bulgaria, are supreme. They combine the efforts of all institutions concerned in the planning and the execution of the actions set-out. The Strategy was developed following an assessment of the circumstances of children living in Bulgaria.

Successes in recent years:

1) The Child Protection Agency opened, initially with the help of UNICEF, and now maintains a 24 hour hotline for children. Bulgaria is the 14th EU country that has introduced a harmonised telephone line. It is free of charge and used for consultations, the provision of specialist information and crisis intervention.

2) Another success is the creation of a new approach towards the deinstitutionalisation of children. It started as a project and now there is a comprehensive political policy aimed at closing all institutions for children within 15 years. It is supported by an Action Plan for those 15 years that has been approved by the EU Commission and is funded by the EU Operational Programmes.

3) For all related institutions, there has been created a Coordination mechanism for cooperation for work with cases of children victims or at risk of violence and for cooperation in crisis situation intervention;

4) 9 crisis new centres for child-victims of human trafficking have been opened;

5) In 2010 the Council of Ministers adopted a National Program for Guaranteeing the Rights of Children with Disabilities. One of the main goals of the Program is guaranteeing equal access for children with special educational needs to quality education in mainstream schools and kindergartens.

Challenges:

With a view to strengthening the preventive role of the state in cases of children's rights violations, in 2010 Ukraine started the drafting of a new legislation in the field of child and family support. It shall make all measures, not only policies for children that are already at risk, but also stronger preventive policies and measures, the central focus of the law. The idea behind the new legislation is the integration of every text related to family and children into a single legislative act. Child support will also include the family support and the principle of responsible parenting.

Oleksiy Lazarenko, chief specialist of the department for monitoring of observance of human rights in the activities of interior agencies of the Ministry of Internal Affairs of Ukraine, spoke at the seminar on the report "**Consideration of the peculiarities as to juvenile aspects while performing official duties by the law enforcement officers**", wherein he determined the causes

and circumstances of minors' illegal activities. He noted that, according to Article 1 of the UN Convention on the Rights of the Child and Article 1 of the Law of Ukraine On Protection of Childhood, a child is defined as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. According to various evaluations, the teenage period comprises the period of a child's development from 11 to 18 years of age.

In the CIS (Ukraine, Russia, Belarus) the teenage period includes two categories of children – *minors and underage persons*. These terms are most often used in the case law. According to Article 6 of the Family Code of Ukraine a minor is a child until he/she reaches fourteen years of age, an underage person is a child from fourteen to eighteen years of age. Criminal responsibility in Ukraine starts at 16 years of age (although under the criminal law of Ireland – from 7, Portugal – from 12 years of age). However, for some types of crimes criminal liability may start at 14 years of age. From 14 years of age a child may refer to a court for protection of her/his rights or interests.

The analysis of the social and demographic characteristics of young persons who have committed offences evidences that one of the main causes of Young persons' deviant behaviour is their social and educational neglect.

**Number of children (by category)
delivered to the Police**

Category \ Year	2006	2007	2008	2009	6 months of 2010
Orphans	1275	1115	1960	986	834
Children from dysfunctional families	14023	12772	15966	8291	7994
Children from boarding schools	1717	1497	4664	2086	1761

So, every third child (32.8%) on records of the criminal police for children's affairs is an orphan or has just one parent.

The current situation with respect to teenage crime can be characterised by the following *key facts and overall trends*:

- a considerable increase of the number of violent crimes and crimes committed with aggravated circumstances among young people;
- the number of drug-related crimes is growing;
- the process of globalisation and the increased mobility of large groups of society has resulted in an increase in criminal activity relating to the intolerance of other cultures;
- in many cases, crimes are motivated by less obvious reasons; various actions may reflect, for example, standards of certain subcultures, teachings or traditions originating from religious radicalism, or coercion to use violence as a means of building gender identity. Aggressive and criminal behaviour is rather often positively displayed in the mass media, creating a confused picture of social norms which is adopted within the context of certain youth subcultures;
- children and teenagers in difficult situations constitute a ready-made reserve force for organised crime, and for those involved in armed conflicts, human and drug trafficking, and sexual exploitation;
- family splits, forced labour migration, poverty and the death of one or both parents, results in the forced independence of many young people.

Risk factors, which complicate the teenage years of many young people, include: physical instability, poor communication skills, emotional immaturity, and unfavourable micro- and macro-social relations.

Young persons have been shown to exhibit specific behavioural traits, including:

- 1) a reaction to emancipation (an extreme degree is vagrancy);
- 2) a tendency to form groups with persons of the same age (forming own subculture);
- 3) the pursuit of hobbies.

In the opinion of national researchers, one common characteristic of young persons with deviant behaviour is low self-esteem, which is a negative basis for resolving their psychological and social issues. Another significant social factor inherent in the formation of deviant behaviour, is *living in a criminal environment*. Thus, there exists an antisocial (anti-community) element which, if it results in the formation of a definable group, can motivate deviant behaviour, if the mode of living of such a group seems attractive to a person who is not part of it. The way of life of this "model" group, which the young person considers prestigious and thus desires to be a part of, can motivate his/her antisocial activities.

Mr Lazarenko summarised that, when sentencing young persons, it should be assumed that the punishment should be, primarily, aimed at correcting the child, and when carrying out a punishment, educational means should be used to correct his/her behaviour. At the same time however, the avoidance of punishment may result in a distortion in the juvenile offender's perception of the adequacy of society's reaction to the offence committed.

A vital issue pertaining to the prevention of young persons' deviant behaviour is the implementation of special programmes aimed at the improved integration of young people. In the Recommendation No. R (87)20 of the Committee of Ministers to member states of the Council of Europe "On Reactions to Juvenile Delinquency" the Committee recommends the governments member states to review, if necessary, their legislation and practice:

to undertaking or continuing particular efforts for the prevention of juvenile maladjustment and delinquency, in particular:

- a. by implementing a comprehensive policy promoting the social integration of young people;
- b. by providing special assistance and the introduction of specialised programmes, on an experimental basis, in schools or in young peoples' or sports' organisations for the better integration of young people who are experiencing serious difficulties in this field;
- c. by taking technical and situational measures to reduce the opportunities offered to young people to commit offences;

Natalia Popova, acting Head of the International Relations Department and Head of the International Cooperation and European Integration Sector of the Ministry of Labour and Social Policy, presented the "**National Annual Reports of the Government of Ukraine as to the implementation of the European Social Charter (revised)**". She noted that the Ministry of Labour and Social Policy is a central executive body responsible for the coordination of cooperation with the Governmental Committee of the European Social Charter. The ratification of the Charter, which took place on 14 September 2006, contributes to the inclusion of Ukraine into the unification process of law in Europe and the improvement of their implementation in Ukraine.

Ukraine has acceded 74 out of 98 provisions of the European Social Charter (revised). According to the obligations undertaken, member states of the Council of Europe have to supply on an annual basis, by October 31 of the relevant year, annual national reports regarding compliance with the provisions of the Charter, according to the **new** reporting procedure, which has been in effect since 2007.

The provisions of the Charter are divided into four thematic groups:

Group 1 (2007)	Group 2 (2008)	Group 3 (2009)	Group 4 (2010)
Employment, training and equal opportunities	Health, social security and social protection	Labour rights	Children, families, migrants
Article 1 Article 9 Article 10 Article 15 Article 18 Article 20 Article 24 Article 25 (<i>not ratified</i>)	Article 3 Article 11 Article 12 (<i>not ratified</i>) Article 13 (<i>not ratified</i>) Article 14 Article 23 Article 30	Article 2 (<i>clause 3 not ratified</i>) Article 4 (<i>clause 1 not ratified</i>) Article 5 Article 6 Article 21 Article 22 Article 26 Article 28 Article 29	Article 7 Article 8 Article 16 Article 17 Article 19 (<i>not ratified</i>) Article 27 Article 31 (<i>paragraph 3 not ratified</i>)

Thus, each provision of the Charter becomes the subject of reporting every four years.

For Ukraine the Revised Charter came into force on 1 February 2007. The order of the Cabinet of Ministers of Ukraine of 26 April 2007 (No. 237-p) approved an Action Plan regarding the implementation of the provisions of the European Social Charter (revised) for 2007-2010. Consequently, an interdepartmental working group has been set up to prepare annual reports.

In October 2008, Ukraine submitted its first report regarding the implementation of the provisions of the European Social Charter (revised). It concerned thematic group 2: health, social security and social protection. A second report was submitted in October 2009 and, in October 2010, Ukraine submitted its third report regarding the thematic group 4: children, families, migrants.

Ms popova emphasised that, once the reports have been sent to the Ministry of Foreign Affairs of Ukraine for the purpose of their transmission to the Council of Europe, they *are placed on the website of the Ministry in the International Cooperation section*. Currently, three national reports are posted on the website.

The third report concerns, in particular, issues which are currently being considered at our seminar. In this Ukrainian report it is indicated that, according to Article 188 of the Ukrainian Labour Code, it is not allowed to employ persons under sixteen years of age. With the consent of a parent or a person substituting him/her, as an exception, persons who have reached fifteen years of age can be employed. In addition to this, at each company, institution or other organisation, special records should be kept relating to employees who have not reached eighteen years of age, detailing their date of birth (Article 189 of the Labour Code of Ukraine).

It should be also noted that, in article 188 of the Labour Code of Ukraine, it is stipulated that, in order to prepare the young persons for productive work, it is allowed to recruit students of general secondary schools, vocational and specialised secondary schools to perform light work, after they reach fourteen years of age, with the consent of a parent or a substitute for a parent, as long as it is not harmful to their health, and does not affect the learning process.

Article 7, paragraph 9 of the Charter provides for the medical control of minor persons, who are employed in occupations prescribed by national laws or regulations. The Labour Code (Article 191) stipulates that all persons under eighteen years of age can be recruited only after a

preliminary medical control and, subsequently, are subject to a compulsory medical control on an annual basis until reaching the age of 21.

The new draft Labour Code also provides for a compulsory medical control for young persons prior to the training in the professions related to difficult work, work with harmful substances or in unsafe working conditions, including underground work.

This is to ensure the special protection of children and young persons from the physical and ethical dangers that they may encounter and, in particular, from those directly or indirectly arising from the work they perform (Article 7, paragraph 10). The third report of the Government of Ukraine noted the efficiency of tri lateral co-operation between the Government, trade unions and employers' organisations in the context of the International Labour Organisation project regarding the prevention and elimination of child trafficking for the purpose of labour and sexual exploitation, in the countries of Central and Eastern Europe.

In the course of implementing the ILO International Program for the elimination of child labour, an important action was taken, which contributed to the protection of children's rights from economic exploitation, in particular:

- approval of the Concept for the Prevention and Elimination of the Worst Forms of Child Labour and the Action Plan regarding the implementation of this Concept;
- the concept of the "worst forms of child labour" was inserted into article 21 of the Law of Ukraine on the Protection of Childhood in 2005.

An important step was the adoption of the Law of Ukraine on a nationwide National Action Plan, to implement the UN Convention on the Rights of the Child for the period ending 2016 (5 March 2009, No. 1065-VI). The National Action Plan provides for the establishment and development of a nationwide system for monitoring child labour, as an efficient mechanism for the prevention and elimination of child labour. With a view to developing and implementing a system for monitoring child labour in the context of the ILO-IPEC Program, the project 'Support of the implementation of the system for monitoring child labour in Ukraine' (April 2008 – March 2009) was carried out.

Education is of paramount importance in the prevention of child labour, as a lack of access to education may encourage the child going out to find work. Education, in turn, contributes to a child's appreciation of the value inherent in continuing at school, which prevents severe forms of exploitation of their labour.

In addition, it should also be emphasised that the fulfilment of the obligations undertaken by member states of the Council of Europe is subject to monitoring by the European Committee of Social Rights, based on the consideration of national reports. Each state shall receive the final conclusions of the Committee regarding the compliance or non-compliance of domestic law and its implementation with the provisions of the Charter, one year after the scheduled report has been submitted. In January 2011, Ukraine obtained the final conclusions on the second report of the Government of Ukraine. These conclusions are currently being translated from English to Ukrainian and will soon be posted on the web site of the Ministry of Labour.

In January next year, 2012, Ukraine will obtain the final conclusions on the third report. According to the usual practice of handling these final conclusions, the Ministry of Labour, upon their translation, shall send them to the central executive bodies involved in the preparation of the respective reports, so that the conclusions can be processed and action taken, to improve national legislation and practice. Responses to the final comments, as well as the submission of new information for the new reporting period, must be shown in the following report according to the same thematic group. Ms Popova noted that each provision of the Charter becomes the subject of reporting once in every four years. So, regarding thematic group 3: children, families, migrants, examined in the third report of the Government of Ukraine, the next reporting year will be 2014 (seventh report of the Government of Ukraine).

Maria Alekseyenko, Chairman of the Board of the All-Ukrainian NGO Women's Consortium of Ukraine, in her report **The role of NGOs in protecting children's rights** identified the possible international mechanisms for the protection as a resource for the state and NGOs.

She noted that the European Social Charter (revised) specifies that the Parties undertake, “either directly, or in co-operation with public and private organisations, to take all appropriate and necessary measures (...):”

When does the necessity for more active steps made by public organisations arise?

- when some services are not available;
- when the authorities do not focus attention on the violation of rights;
- when information on the violation of obligations is missing;
- when the existing protection mechanisms do not work;
- when the level of understanding of human rights is low.

What actions can NGOs take?

- monitoring the situation;
- informing the public;
- initiating petitions, proposals and inquiries;
- carrying out public expert inquiries;
- initiating judicial review.

The process of reporting to international organisations is an important instrument for an improvement at a national level.

What is the purpose of state reporting to international organisations?

- evaluate the progress and achievements;
- identify gaps;
- improve the situation of citizens.

Thus, the submission of accurate information, open discussion, self-criticism, and openness to dialogue are crucial. Generally, reporting does not entail sanctions.

The latest report of Ukraine under articles 16, 17 of the Charter contained the following provisions:

- “Every child has the right to live with parents or with one parent...”.
- “Father and mother have equal rights and duties towards the children”.
- “Rearing of children in a family is the basis for the development of a child’s personality”.
- “The state supports parents or persons substituting them in upbringing of children and protects the right to a family...”.
- “Increased criminal liability for failure to fulfil parents’ duties towards children”.
- “Children have the right to contact the relevant agencies and services in case of a breach of their rights and, in particular, may resort to legal proceedings from the age of 14”.
- “The plan for the development of education for 2009 – 2013 provides for actions to increase the number of boarding institutions for orphans and children otherwise deprived of parental care”.
- “The ILO develops and improves the support of boarding-type institutions, which provides for an increase in the material and technical base of existing institutions and studies the potential to create a boarding-type institution in every district”.
- “About 73% of children are in such boarding institutions”.
- “Concerning children with significant defects in physical and mental development, the agencies for labour and social protection care for such children within the network of 55 orphanage-boarding schools”.

- “In all regions of Ukraine, one of the key priorities is the restoration of pre-school departments within general education boarding schools for orphans and children otherwise deprived of parental care, and the resumption of their activities ...”

The UN Committee for Children’s Rights has recommended to Ukraine:

- to change attitudes towards children;
- to solve legal inconsistencies relating to children’s age (criminal liability, marriage);
- to develop services for the support of families and, in particular, parents;
- to ensure access to education and out-of-school activities;
- to ensure the protection of children by law and within legal procedure;
- to prevent children from being held in institutions.

NGOs may familiarise themselves with the report; spread the information on the key provisions, and contribute to changing attitudes towards children.

Olena Temchenko, Head of Unit on protection of children’s rights and gender equality, in the Office of the Commissioner on Human Rights of the Verkhovna Rada of Ukraine, dedicated her report to the subject **The Role of the Commissioner of Verkhovna Rada of Ukraine in the system of protection of children’s rights**. She noted that a separate structure dealing with children’s rights was set up under the Verkhovna Rada Commissioner Office. The Commissioner has 3 representatives, one of whom is a *representative of the Verkhovna Rada Commissioner for the protection of children’s rights, equality and non-discrimination*. At the Office of the Verkhovna Rada Commissioner a *team for the protection of children’s rights and gender equality has been established*. In addition, Verkhovna Rada Commissioner subsidiaries were set up in the following regions of Ukraine: the Autonomous Republic of Crimea, Dnipropetrovsk, Donetsk, Lviv and Transcarpathian regions.

However, the Verkhovna Rada Commissioner and its organisational units are restricted, in particular, as regards filing claims with courts. The Commissioner cannot interfere with the activities of the court and has no representational function in the interests of the aggrieved child.

Ms Temchenko remarked that the level of the population’s legal awareness has increased, as evidenced by a number of appeals from children. Among these appeals, regarding breaches of children’s rights, over 70% are made by children themselves. In the past 3 years, 7,500 thousand children contacted the Commissioner, and this number is constantly growing. For the purpose of maintaining a child’s right to an individual and a collective appeal, a representative of the Commissioner has been actively involved in work on the third protocol to the UN Convention on the Rights of the Child.

The Commissioner is actively engaged in the improvement of the Ukrainian legislation on the protection of children’s rights, however has no legislative initiative. The Commissioner works together with the relevant ministries (the restructured Ministry of Education and Science, Youth and Sports), the Ministry of Healthcare, the Ministry of Labour and Social Policy (which is also subject to reform) and others. The Commissioner also submits the appeal to the President of Ukraine in cases where the necessity exists for legislation in settlement of certain issues.

Among key issues regarding the Charter, which occur in the complaints received to the Commissioner, the labour rights of children, in particular the absence of a list of ‘light’ work in which children can be employed under 14 years of age; a violation of the rights of children suffering from haemophilia through the absence of respective medicine; and a breach of the housing rights of orphans and children deprived of parental care. In general, the Commissioner, as well as his/her representatives, are actively incorporating the issue of the children’s rights in all areas of their activities.

Svitlana Sulimova, Deputy of the Council of the Vinnytsia region, candidate of science in public administration, head of Vinnytsia city center of social services for families, children and youth, presented the report **‘Institutional strengthening of the protection of children’s rights: public representation of the Commissioner for children’s rights (children’s ombudspersons**

of Vinnytsia), in which she reported on the best practices and initiatives regarding the protection of children's rights in Vinnytsia. Ms Sulimova started with the statistical data:

- As of 1 January 2011, 72,000 children reside in Vinnytsia, including:
 - 396 orphans and children deprived of parental care (90 orphans and 306 child deprived of parental care);
 - 85 children living in 44 dysfunctional families;
 - 3,342 children living in 1,008 families with many children;
 - 8 children in 6 adoptive families;
 - 22 children who committed an offence (a court sentence is available).

Upon order No.D-231 of 5 April 2007, Vinnytsia City Mayor V.B. Groismann started to set up the *Public Representation of Ombudspersons for Children's Rights (children's ombudspersons) in Vinnytsia*. The children's ombudsperson in Vinnytsia is a public representative of children's rights with government authorities and local government bodies – everywhere where children's rights should be represented and protected. The purpose of the children's Ombudsperson is the effective protection of children's rights, as proclaimed by the UN Convention on the Rights of the Child, other international agreements binding for of Ukraine, Constitution and Ukrainian laws.

The key tasks of the children's ombudsperson are:

- contributing to the implementation of the UN Convention on the Rights of the Child in Vinnytsia;
- strengthening the awareness of children and the wider community on their rights, through education agencies and the mass media;
- monitoring of the observance of the children's rights in the city;
- solving questions pertaining to the protection of children's rights as a priority of local government agencies, as well as facilitating changes in the attitude of the city community towards children's issues;
- providing specific assistance to those children whose rights have been violated, through local support agencies, the authorities and law enforcement bodies.

By a decision of the city council, according to article 26 of the Law of Ukraine on Local Self-Governance in Ukraine, with a view to ensuring adequate living and development conditions for the youngest members of the community of Vinnytsia, more active involvement of children and young persons in solving important city problems in their own interests has been sought, facilitated by the close cooperation and effective coordination of the efforts of all executive bodies of the city Council, representative offices of state bodies, children's institutions and agencies.

To ensure the most favourable living conditions and development of children in the city, the implementation of a new urban policy regarding children and young persons, as well as taking on board international experience, has been approved in **the Program "Vinnytsia is a Child Friendly Town" for the period of 2010-2014**. Regulation on the annual report on the status of children in Vinnytsia has been decided. In addition, the Coordination Board for the Implementation of the Program "Vinnytsia is a Child Friendly Town" for the period of 2010 – 2014 was set up, as well as a Children's Advisory Board.

The Program "Vinnytsia is a Child Friendly Town" for the period of 2010-2014 comprises the following sections:

Section I. Informing the community of children's rights, forming a culture which is supportive of children, and implementing the principle of non-discrimination towards children in everyday life

Section II. Creating an institutional basis for the implementation of children's rights in local self-governance, and taking into account children's rights in making any decisions

Section III. Health care and recreation, access to high quality medical services for all children without exception

Section IV. Access to high quality schooling, pre-school education and child-rearing tailored to individual abilities and needs

Section V. Development of abilities, culture and recreation of children, promoting patriotism and respect for family values

Section VI. Physical training and sports. Providing conditions for a healthy way of life

Section VII. Infrastructure (urban environment)

Section VIII. Safety of children

Section IX. Social protection, proper conditions for social adaptation and the protection of the interests of orphans, children otherwise deprived of parental care and disabled children.

Section X. Legal protection of children from negligence, cruel treatment, exploitation and violence

Section XI. Status of families with children (poverty, occupation, one-parent families and families with many children)

Section XII. Environmental circumstances

Section XIII. Vocational guidance and preparation for adulthood

Section XIV. Monitoring of the programme of implementation

The program “Vinnytsia is a city convenient for everybody” has also been approved in the city. It envisages:

- to equip high-rise blocks of flats, where wheelchair-bound disabled people live, with entrance ramps, according to the State Construction Regulations;
- to equip the streets with audible devices at pedestrian crossings, to equip residential areas and other such places where people with functional limitations live, with ramps (sidewalks, public transport stops, etc.), according to the State Construction Regulations;
- to equip municipal community facilities - shops, hospitals, administrative, cultural, sports, educational institutions - according to the State Construction Regulations assuring unhindered access for people with functional limitations;
- to ensure that the municipal community facilities commissioning is subject to compliance with the State Construction Regulations;
- to facilitate the adaptation of public transport to carry wheelchair-bound people;
- to ensure stable functioning in the city of the Transportation Service for Wheelchair-Bound People;
- to ensure the possibility of facilitated emergency contact using SMS messages to 101-102-103-104 for people with impaired hearing or speech functions;
- to ensure information support, and advertising of the programme, via large-scale public awareness campaigns and third sector engagement in the programme's implementation;
- to ensure facilitated contact with rescue services 101-102-103-104 by people with impaired hearing or speech “Hear me”.

Relevant problems to address in 2011:

1) The orphans and children otherwise deprived of parental care, especially boarding school residents, experience significant social adaptation problems. The number of children in this group has been growing rapidly in the city recently. 181 orphans were under the social care of the Vinnytsia Municipal Centre of Social Service for Family, Children and Youth in 2011 (as compared to 34 persons in 2006). Learning the basics of business may be one of the areas of socialisation.

Solutions

Establishment of a Business School for children and young people - orphans and children deprived of parental care - with first-year students of economic faculties at vocational schools and

higher educational institutions (with the assistance of business consultants from Peace Corps USA, in English). Sources of financing – out-of-budget.

2) No strongly formed ideas and beliefs that children possess rights exist in the wider population, thus it is necessary to build such a mentality, including that of parents and children. Furthermore, democratic traditions remain insufficiently developed in society, and more than 90% cases of domestic violence against children are suppressed. Finally, the events held in 2010 to monitor compliance with the legislation banning the sale of alcohol beverages and tobacco products to the minors demonstrated numerous violations.

Solutions

The organisation of an online photo competition in 2011 “The rights of the child in our city through children’s eyes,” at the website of children’s ombudspersons and involving a large audience composed mainly of children, school children, and children’s NGOs. Then, the submission for consideration by the Children’s Deliberative Council of a report on the most serious violations of children’s rights, as highlighted by the contest, and taking relevant decisions by the Council to address the problems. Financing - out-of-budget.

3) Computer addiction, dangers related to children’s use of Internet in the absence of parental supervision and the ignoring of WEB safe user rules have become in recent years a major threat, not only to the psychological health of the child, but also, in some cases, a source of various kinds of negative impact and even violence against children.

Solution

The creation and maintaining an Internet section dedicated to the “Children’s Safety on the Internet” Programme at the children’s ombudsperson WEB-page, development and introduction, in the city’s telecommunications space Financing - out-of-budget of the video “Children’s Safety on the Internet”.

Oksana Filipishina, Deputy Director of the State Department for Adoption and Protection of Children’s Rights in the Ministry of Ukraine for Family, Youth and Sports in her report “**The right of children and Juveniles for appropriate social, legislative and economic protection in the Recommendations of the UN Committee on the Rights of the Child in Ukraine (2011)**” explained the process of Ukraine’s reporting on the fulfillment of its obligations under the UN Convention on the Rights of the Child and the main provisions of the final comments of the UN Committee on the Rights of the Child on the results of the analysis of the third and fourth consolidated periodic reports of Ukraine, as approved on 3 February 2011.

Ms Filipishina noted that due to the findings of this analysis, the Ukrainian delegation (8 people) of which she was a member, was asked 97 questions.

First of all, the UN Committee on Human Rights asked whether the administrative reform would have no negative impact on the rights of the child. The state responded that all functions of the relevant departments (in particular the department for the adoption and protection of children’s rights) will be retained by the Ministry of Education and Science, Youth and Sports, or will be transferred to the Ministry of Labour and Social Policy. In any event, they asserted, children would not suffer, since child-protection mechanisms are built into Ukrainian policy from the bottom, up - that is starting with the child and upwards to the supreme authorities. So, whatever supreme body of state power addresses matters of children’s rights protection, while the problem will be addressed, children on local level will continue receiving assistance. Ms Filipishina noted that for such purposes the budget for 2011 already included the appropriate means, knowing that it increased compared to 2010 in 7 times and is over UAH 70 million.

The UN Committee on the Rights of the Child stressed the necessity to further provide social benefits to families. Currently the program of targeted support to families has already been elaborated, however, the standards of social welfare benefit provision should be developed, and, in particular, children’s benefits should be strictly linked to the minimum subsistence level.

Important activities have been maintained as regards the monitoring of the Convention’s implementation, in particular the collection of data on the implementation of the *National Action Plan on Implementation of the UN Convention on the Rights of the Child till 2016*. Ukraine annually

collects extensive information on the rights of the child: full statistical data on children aged 1-17 is collected, covering children in schools, and children attending alternative educational institutions. However, statistical data should be wider in view of differentiation by sex and age.

The next set of questions from the UN Committee on the Rights of the Child concerned decision-making in the best interests of the child, taking due account of the child's view in the family, addressing the matters relating to the child himself/herself or his/her family. The state mentioned that there are nearly 17 million families in Ukraine, and that 6 million families have children, so the state can't guarantee that each family takes due account of the child's view. However, in discussing this matter workshop participants highlighted that *the state should make every effort to ensure that the child's view is taken into account by authorised governmental bodies, primarily courts, when taking decisions concerning a child or their family's fate.*

The next problem related to criminal justice for young persons (juvenile justice). The state confirmed its readiness to introduce juvenile justice, however certain social movements were intensively opposed to this process, as they did not understand its real purpose and thus viewed it as dangerous. In addressing this point, the Committee expressed its deep concern. Participants of the seminar stressed the need to hold large-scale campaigns explaining the core purpose of juvenile justice and positive best practices for its implementation in various countries.

The Committee focused attention on matters related to domestic violence and the abuse of children. The main recommendations of the UN Committee on the Rights of the Child concerned the need to develop adequate legislation on the protection of child-victims of violence, and to introduce effective mechanisms for the timely identification of such victims of violence, which are currently lacking in Ukraine (phone help lines with the numbers of 3 digits maximum, Internet help lines, etc.).

The Committee also paid attention to the problems of orphans and children otherwise deprived of parental care. The government delegation mentioned that the percentage of orphans and children otherwise deprived of parental care in alternative educational institutions had increased (over 76%). However, attitudes towards these children of the wider public remain inadequate, i.e. the understanding that children requiring parental care are of various ages, and that not only very small children need families, but so also older children (over 10 years old) need placement in stable families. The current situation in Ukraine is that there are 600 persons per 100 willing to adopt very young children: even those suffering very serious health problems have been adopted by foreign residents and moved abroad for medical treatment. However the situation for older children is quite different – nobody wants to adopt them, while they have just as real a need for a family. Whilst it is self evident that the programme of boarding institutional reform (2007) needs revision, there remains no clear understanding of the form of institution that will result from the reform. Ms Filipishina called on all interested stakeholders to contribute to the *development of the concept of boarding institutions and the development of appropriate, associated regulations.*

It was also noted that, in comparison to the situation in 2005, Ukraine achieved significant success in addressing the problem of homelessness and neglected children. As a result, the problem of overcoming these phenomena is no longer on the current agenda, and effective prevention is now the order of the day.

The protection of migrant workers' children is a distinct problem. In the course of discussions, Régis Brillat confirmed that the European Committee of Social Rights unanimously recognised that where migrant workers legally reside in the territory of the state, their children enjoy state support for the duration of their stay, but if working parents are in the country illegally, the liability for the protection of the child's rights is borne by the state of their citizenship. Mr Brillat believes this approach is too categorical.

Finally, Ms Filipishina noted that Ukraine considered the procedure of reporting to the UN Committee on the Rights of the Child not simply as an opportunity to report on their achievements, but as a chance to discuss the problems which remained in the country in the field of the protection of the child's rights. Ukraine proposed to submit the next report in September 2018 and hopes that, during this period, it will be able to take due account of all 96 recommendations issued by the UN Committee on the Rights of the Child.

Ms Filipishina underlined that the Recommendations of the UN Committee on the Rights of the Child will soon be translated into Ukrainian and made public. At the same time, the Ukrainian public has actively responded to the event: “*Women’s Consortium of Ukraine*,” an NGO, has already provided unofficial translation of the recommendations and disseminated the document among interested members of the public.

Participants expressed a high degree of interest in the report of **Doichin Doychev**, *Secretary General of the Commission against Discrimination* of Bulgaria, entitled “**Protecting Children from discrimination**,” in which he presented Bulgaria’s positive experiences in the field of preventing all forms of discrimination, through a special commission for protection against discrimination. He noted that Bulgaria had adopted the Framework Law on Protection against Discrimination, which, in particular, provides for definitions of direct and indirect discrimination, a list of 19 grounds of discrimination, and indicates that the burden of proof in discrimination cases is lies with both parties to the action.

To ensure the implementation of the Framework Law, *the Commission against Discrimination* was formed (*hereinafter – the Commission*), which is a permanent independent body consisting of 9 members, 5 of whom are elected by Parliament, and the remaining 4 by the President, for a period of 5 years. The Commission is responsible for combating discrimination, hearing the facts of the discriminatory behaviour, before imposing fines and issuing binding instructions to state authorities, enterprises, institutions, and other organisations in the event the facts are proven, with a view to eliminate such discrimination. The Commission further conducts independent sociological research, etc.

Citizens may address the Commission directly, bringing actions against discrimination, and may submit claims both themselves and via NGOs, free of charge. All trials take place within one month of the complaint, which is a very short period of time, especially compared to judicial proceedings. In the collection of evidence, the Commission may file requests with a commercial court, which then issues a permit obliging the relevant state authority or commercial enterprise (institution, organisation) to surrender the required information. The parties may represent themselves on their own or they may engage lawyers.

If the commission determines, through the trial process, that discrimination has in fact occurred, it may impose a fine between 2 and 10 thousand euros on governmental bodies and corporate entities, instruct the party on how the discriminatory behaviour should be corrected, and set a maximum period in which the required changes should be made (discriminative practice, policy, etc.). Any Commission’s decision on the basis of the fact that discrimination occurred, may be appealed to the Supreme Administrative Court.

In order to monitor the implementation of the Commission’s decisions, the Commission submits a report to the Parliament. Moreover, the Commission contains a special structural unit responsible for monitoring the execution of the Commission’s decisions.

Among interesting examples of the Commission’s decisions, Mr Doichev cited the decision on the discrimination of children, and parents with children, in the METRO CASH AND CARRY supermarket chain, where the entry of parents with children under 7 is banned. The same ban in this chain is valid in Ukraine as well. The corporation declared that these actions are in the children’s best interests, as this chain is intended solely for merchants. However, the Commission took the decision that this policy was age discrimination and issued a binding instruction to senior management to revise the general conditions and ensure children’s access to the supermarkets, and imposed a fine: the ban is no longer in force in the supermarket chain. Therefore, *despite expressing care for children, the corporation was still penalised for setting limitations designed to protect them, and was told it should rather create safe conditions in its supermarkets for any persons without discrimination*. This approach should be incorporated by Ukraine in trying similar cases.

Moreover, the Commission also held 4-5 successful mediation procedures – they are fast, effective, and final, and are insufficiently developed in Bulgaria, but have the same proper prospects.

Mr Doichev summed up that there are not many commissions operating in Europe, but they address discrimination claims only by specific attributes, rather than all 19 as does the Bulgarian Commission. These commissions are components of the European network EQUINET, which is composed of national structures on elimination of discrimination.

As concerns the discrimination of children, Mr Doichev noted that there is a special article on the protection against discrimination in all laws on the rights of children (on education, etc.). Children are also covered by the Framework Law on the prevention of discrimination. The activities on cultivating tolerance in children should start at school. Mr Doichev presented the range of projects on informal training of youth, tolerance lessons, etc. initiated by the Commission.

Finally, **Volodymyr Stadnik**, *Senior Lecturer, Department of General Law of the National Academy of Internal Affairs of Ukraine*, presented the report on “**Actual problems on ensuring the rights of children in the light of the European Social Charter (revised)**”. The reporter again underlined that the European Social Charter (revised) is the main document of the Council of Europe in the sphere of ensuring economic and social human rights, the ratification of which is necessitated both by Ukraine’s membership in this international organisation and the intentions of Ukraine to accede to the European Union.

While harmonizing the national legislation and practices with the Charter, states, including Ukraine, should take due account of the specifics of legal assessment activities conducted by the Council of Europe bodies responsible for state compliance reports. The Charter contains imperative and dispositive legal standards.

As far as the latter is concerned:

1) they provide opportunities for the parties to establish their own dispositive obligations depending on the relevant economic and social conditions (the main indicator of compliance with the obligations by the state is a general trend of compliance with the goal and continuous increase in guarantees);

2) there exists a need for the study and consideration of interpretations of such provisions by the European Committee of Social Rights, since the most of the conclusions delivered by this body will eventually be formalised in the form of recommendations and observations of the Committee of Ministers of the Council of Europe.

Mr Stadnik addressed in detail the implementation problems in Ukraine of the provisions of Articles 7 and 17 of the Charter which comprehensively cover the protection of children, focusing primarily on compliance with these provisions with respect to children serving prison sentences. He indicated that the analysis of applicable legislation regarding regulation of such sentences for young persons, provides an opportunity to state that there is a real need to harmonise this set of rules with the Constitution of Ukraine and provisions of the Charter.

In summary, Ms Stadnik underlined that, in general, the Ukrainian legislation is consistent with all the binding, and some of the additional articles of the Charter. They are ensured by legislative provisions and, in certain matters, in particular the protection of children’s labour rights, the legislation sets even higher standards. At the same time, to ensure full compliance it has been necessary to conduct harmonisation activities by amending and supplementing the Ukrainian Labour Code and other regulatory acts of Ukraine. Mr Stadnik proposed:

1) to consider the possibility of forming a special national group (commission or other) to monitor the Charter’s application;

2) to consider adding the following provisions to the Charter:

- the inter-relation and interdependence of protections for the social and economic rights of children with other international regulations;
- on the specifics of regulating legal relationships with certain categories of children (orphans, disabled, convicts, prisoners, homeless and neglected children);
- to create a section covering children as a specific group, demanding special social and economic protection and regulation of their labour, etc.;

- to foresee the peculiarities as to the implementation of the Charter provisions under the conditions of execution and serving a sentence;
- to consider the possibility of assigning liability for actions inconsistent with the Charter.

In summary, the General Rapporteur, Hanna Khrystova, emphasised the following conclusions and recommendations of the Workshop.

The European Social Charter (revised) (*hereinafter – the Charter*) underlies *the statutory goals of the Council of Europe – democracy, rule of the law and human rights*. Ukraine ratified the Charter by the Law of Ukraine dated 14 September 2006 No.137-V, and acceded to *27 articles (74 paragraphs) of the Charter*. In so doing, Ukraine confirmed its European alliance and undertook to encourage the provision of reliable conditions for the implementation of the rights and freedoms of citizens in all their actions. At the same time, the Verkhovna Rada *did not ratify three of the nine mandatory articles* including Art. 12 (the right to social security), Art. 13 (the right to social and medical assistance) and Art. 19 (the right of migrant workers and their families to protection and assistance). Ukraine also did not accede to Art. 4, para.1 of the Charter ensuring the right to fair remuneration (“to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living”). At the same time, all the above rights (except the right of migrant workers) are guaranteed by the Ukrainian Constitution.

Upon ratification of the Charter, the government of Ukraine approved *the Action Plan on the Implementation of the European Social Charter (revised) for 2007-2010* (Order of the Cabinet of Ministers of Ukraine dated 26 April 2007, No.237-r). *The Action Plan should become an effective instrument for monitoring of the implementation of Charter provisions by Ukraine*, which may be used by international monitoring bodies or international expert panels, as well as by those government agencies responsible for Charter implementation and Ukrainian NGOs operating in this domain.

In 2011, the Council of Europe will celebrate the 50th anniversary of the Charter. The celebration will coincide with the Ukraine’s Presidency of the Committee of Ministers of the Council of Europe. It is vital for Ukraine to contribute to the celebration of the anniversary by taking the following steps, in particular:

- to recognise all provisions of the Charter which have not yet been ratified;
- to recognise the *Additional Protocol of 1995 providing for a system of collective complaints*. It should be underlined that, contrary to the consequences of judgments delivered by the European Court of Human Rights in cases against Ukraine, the procedure of trying collective complaints does not endanger the state by obliging any additional expenditure from the state budget for payment of compensations to individuals, since decisions of the European Committee of Social Rights in collective complaints contain only the general steps which the state should take to correct detected violations and non-compliance with the Charter;
- to take steps to ensure the adequate training and response to the conclusions of the European Committee of Social Rights upon consideration of the annual reports of State Parties to ensure the timely translation of conclusions and their communication to the general public;
- to ensure proactive measures to prevent potential violations of the Charter;
- to raise awareness of the Charter among representatives of the courts, law enforcement bodies and other government agencies, as well as social workers, researchers, teachers and the general public;
- to facilitate the effective implementation of Charter provisions in the justice system of Ukraine by implementing them in judicial proceedings. The Charter is a part of the national legislation of Ukraine and it is subject to direct application by Ukrainian courts and other governmental bodies: in the event of inconsistencies with the provisions of the Ukrainian domestic legislation, the Charter prevails.

Courts may apply provisions of the Charter when trying specific cases:

- to strengthen relevant interpretation of provisions of the Ukrainian domestic legislation in the light of European human rights standards;
- to interpret the Ukrainian domestic legislation so as to ensure compliance with the Charter;
- to apply Charter rules directly, where individual provisions of the Ukrainian domestic legislation do not comply with the Charter.

In applying Charter provisions, the courts should take due account of their interpretation, as contained in the conclusions and decisions of the European Committee of Social Rights.

The European Social Charter (revised) is an extremely important and multifaceted instrument, which concerns many areas of social life. It applies to rights for residence, health, education, employment, and social welfare, and bans discrimination. Although the Charter protects the rights of all persons, the most vulnerable, especially children, enjoy special protection. There are a lot of problematic areas in Ukraine relating to the protection of children's rights, and they require special attention in the light of the Charter, primarily, Art.7 and 17 of this fundamental instrument of the Council of Europe. From among the most pressing problems, we should mention the following:

I. Child labour in Ukraine, including hard manual labour of children under the relevant age (15 years old), is quite often the only way for such children to earn a living for themselves and their families. The acceptance by low-income families of the notion of child labour and its rewards dominates in some groups of the society. However, every effort should be made to protect children's rights in the labour and employment domain, in accordance with international obligations of Ukraine, regardless of the status of individual citizens, and should:

- establish the necessary conditions for the adequate combination of children's labour and their education;
- establish a list of employment in which children under 15 may be engaged, and do the same for young persons between 15 and 18, in all economic sectors;
- build a database of all low-income families, and a system of transparent identification of their social welfare and indicators of their socio-legal status;
- facilitate the engagement of children in the implementation of Charter provisions within the scope of the Council of Europe strategy on building a Europe, not only *for* children, but also *with* children.

II. Violence against children and other forms of child abuse (sexual exploitation, trafficking in children, etc.) are gross violations of the rights of the child. A child needs higher socio-legal protection, thus necessitates special attention to cases where children are victims of crime. However, in practice, children who fall victim to violence continuously face obstacles at the following three stages:

- *at the stage of instigating proceedings on violence against them;*
- *at the stage of his or her participation in criminal proceedings, as a victim or witness of crime;*
- *upon completion of criminal proceedings on violence against them, and in the delivery of the court's judgment.*

1) At the stage of instigating proceedings on violence against a child, domestic legislation is characterised by inadequate legal procedures and ineffective support from the substantive law, which defines the operations of those agencies and services responsible for combating the abuse of children primarily the Police.

The lack of opportunity to inform the authorities about the facts of abuse in person is a direct violation of international standards on the rights of child victims of abuse.

These circumstances are due to the controversial regulation of the procedure for accepting applications and reports from the general public, at the departmental level (interdepartmental), as provided for in the regulatory acts of the Ministry of Foreign Affairs of Ukraine.

According to paragraph 2.1. of the Order of the State Committee of Ukraine for Family and Youth, the Ministry of Internal Affairs of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Health Protection of Ukraine “*On approval of the procedure of considering applications and reports on abuse of a child or a real threat of abuse of a child*” dated 16 January 2004 No.5/34/24/11, “application (report) on the facts of abuse of a child shall be submitted either **by the child** or individuals at the place of residence, if there is evidence of abuse or a real threat thereof”.

Nevertheless, this provision remains declarative and is not implemented in practice by foreign affairs bodies, primarily due to a provision of the Order of the Ukrainian Ministry of Internal Affairs “*On procedure of acceptance, registration and consideration of applications and reports about crimes committed or being prepared*” dated 14 April 2004, No.400. The procedure **does not provide for** a special procedure of accepting and registering an application submitted by a child, while the general rules of application acceptance may not be exercised if the application is filed by a child under 16.

Thus, departmental regulatory acts of the Ukrainian Ministry of Internal Affairs should be brought in line with international standards as soon as possible, to ensure that children can file statements of claim regarding violence, or other unlawful acts, directly.

2) Children’s participation in criminal proceedings as victims or witnesses of crime.

The current Ukrainian Criminal Procedural Code, dated 28 December 1960 (*hereinafter – CPC of Ukraine*), contains various provisions establishing legal guarantees of compliance with the rights of the child in the procedural rules of inquiry, pre-trial investigation and judicial proceedings.

A simultaneous analysis of the regulatory provisions of the current Ukrainian CPC demonstrates a significant imbalance in the scope of secured children’s rights when participating in criminal proceedings, regardless of his/her procedural status. In particular, legal guarantees prevail in the Ukrainian CPC, for the child who is the suspect or the defendant in a criminal case, and these relevant provisions form a separate section of the Ukrainian CPC: Section Eight “Proceedings in juvenile crime cases”.

However, inconsistencies in legal guarantees of the rights of the child-witness and victim in criminal proceedings are obvious. For instance, it has been highlighted many times, that *the procedure for the interrogation of minors whether they be witnesses or victims of crime*, is inconsistent in Ukraine with international standards of the rights of the child.

The criminal procedural law of Ukraine stipulates for individual actions that, to ensure the best interests of the child witness and victim of a crime:

- the child should be interviewed in the absence of the accused;
- the child should be interviewed outside the courtroom, including outside the court building using technological means;
- the court should deliver a judgment, taking due account of the opinions of all parties to the proceedings.

In any event, *the majority of provisions contained in international instruments relating to interviewing children have not been incorporated into the domestic legislative framework of Ukraine*. Moreover, international standards on the rights of the child extend the requirements relating specifically to interrogation and other investigative actions, to all persons under 18, whilst those relating to interrogating witnesses who are minors in the Ukrainian criminal procedural legislation, cover only *persons under 16*. Therefore it is necessary:

- to harmonise the Ukrainian criminal procedural law with international standards, which requires certain standards to be met when interviewing child victims or witnesses of crimes: this is an issue to be addressed at the stage of elaborating a new Ukrainian criminal procedural code, which is currently underway;

- to elaborate a methodology for interviews with child victims and witnesses of crimes, which can be used by the law enforcement bodies when interrogating children.

In order to harmonise the Ukrainian legislation with international standards on the participation of child witnesses and victims of crimes in criminal proceedings, a bill was drafted and submitted to the Verkhovna Rada of Ukraine "*On amending and supplementing the criminal and criminal procedural codes of Ukraine (on interviews with child victims and witnesses)*". This draft law introduces many innovations to comply with the international requirements regarding child interviews, and incorporates the best practices of EU and Council of Europe member states. Adoption of this law will allow a new approach to the child participation in criminal proceedings.

It is worth highlighting that the draft law concerns amendments to the current Criminal Procedural Code of Ukraine and at the same time its provisions should be specifically incorporated into the new *draft Criminal Procedural Code of Ukraine* elaborated by the Ministry of Justice of Ukraine, and it is planned to submit this to the Verkhovna Rada of Ukraine for its urgent approval.

3) Upon completion of criminal proceedings regarding violence against a child, and delivery of the court's judgment, the child victim of violence often feels a real threat of re-victimisation. This is due to the fact that, in certain cases relating to violence against children, *courts often unreasonably apply release from the execution of sentence of probation or apply sentences which do not result into the deprivation and limitation of freedom*. This trend is fully consistent with modern European standards for reform of the penitentiary system of Ukraine and the gradual transition from punitive to restorative justice. On the other hand, this approach requires the state to develop coherent and effective implementation of preventive and educative measures for convicted persons, and such corrective training under these programmes should be adjusted according to the specificity of the case, in particular, crimes against children. However, the system of such measures is not developed properly in Ukraine, thus, post-sentencing, where the punishment is not related to the deprivation or restriction of liberty, the accused continues to reside close to the abused child, even cohabiting with them. This situation *endangers the life and health of the child and that of other members of the family, and should not be ignored by the state*.

To this end, the Ukrainian legislation should provide for the possibility for the courts to evict the person who has committed violence against the child from the residence they share with the child, or to forcedly divide the accommodation, or force its exchange (if it is found that the offender does not possess any other place in which to live). This provision should concern all persons who have endangered a child's life, health, safety and inviolability, regardless of their title to the property where the child resides (right of ownership, right to use, etc.).

The legislation should also ensure the ability to swiftly temporarily evict the person suspected of sexual crime against a child with whom he/she lives. The eviction should be implemented through a restraining civil injunction, until the court resolves the case (where the offender is not subject to the preventive measure of detention). It is proposed to include this injunction in the new Law of Ukraine "*On the prevention of domestic violence*".

III. The courts often violate the provisions of the Charter and other international legal instruments (UN Convention on the Rights of the Child, Convention of the Council of Europe on the Exercise of Children's Rights, Convention for the Protection of Human Rights and Fundamental Freedoms ratified by Ukraine) and the Ukrainian legislation, as it relates to taking due account of the child's view and interests in resolving family issues. The courts should eliminate such violations and specify in their judgments how they have taken account of the child's view, or how the court has engaged the child's consent (in the interview with the child in courtroom, from the conclusion issued by the tutorship and guardianship authority, testimonies of the parties to an action, etc.), and should reproduce in more detail the court's decision to interview the child throughout the judicial process.

The courts should eliminate the formal approach to the child in the resolution of cases related to children's property rights and non-property rights and interests, and should avoid *treating the child as object rather than the subject of the proceedings*, seeking contact with the child and

eliciting the child's view. Courts should further create the appropriate conditions for exercising the child's rights in court's proceedings.

Children's awareness of their procedural rights should be proactively raised; thus, large-scale public awareness campaigns aimed at engaging young people are necessary to address their rights, and to highlight the special features of the exercise of such rights.

As early as 2005, the Chairman of the Supreme Court issued an Order recommending that the courts develop and *gradually introduce a system of juvenile justice in Ukraine*. During this period, the concept of juvenile justice has been limited to the cases where offences have been committed by minors (*criminal justice in juvenile cases*). The concept of juvenile justice should be modified, the increased specialisation of courts should continue and a specialist branch should be developed by Ukraine to try all cases with the active participation of children, where proceedings relate to their rights and interests, including offences or otherwise illegal actions that they commit.

Participants also reached the conclusion that the following actions are necessary:

1. to consider whether it is appropriate to introduce the institutions of ombudsperson for gender matters and ombudsperson for the protection of children's rights, at central and regional level;

2. to address the issue of founding a system of temporary child family placement in Ukraine, which is consistent with the Guidelines for the Alternative Care of Children approved by the GA UN Resolution A/RES/64/142, and continue intensive activities to deinstitutionalise the system of placement of orphans, and children otherwise deprived of parental care, and phase-out of "classic" boarding schools;

3. with a view to the effective and timely elimination of discrimination, to research whether it is appropriate to establish a Commission against Discrimination in Ukraine, following best practices in certain European countries, in particular Bulgaria;

4. to introduce gender-oriented standards of national and departmental reporting, as the basis for the implementation of Charter provisions, specifically as concerns the strengthening of the non-discrimination principle in labour and education;

5. while reforming the Ministry of Ukraine for Family, Youth and Sports, and the internal structure of the Ukrainian Ministry of Foreign Affairs, the process of administrative reform should proceed so as to protect the best interests of the child, which demands the restoration and upgrade of the functions and competencies in the sphere of the protection of children's rights, by the relevant structural units of government agencies at national level.