



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

**ALTERNATIVE REPORT ON IMPLEMENTATION OF  
INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL RIGHTS  
IN UKRAINE**

**PREPARED BY:**

The Analytical Group of the International Legal Council *LEGITEAM*  
(LEGITEAM):

1. Dr. Oleksandra Rudnyeva, Head of the Board
2. Dr. Ganna Khrystova, Program Director
3. Olena Uvarova, lawyer
4. Eduard Tregubov, lawyer

**WITH CONTRIBUTIONS BY:**

Kharkiv Center for Women's Studies, Ukraine, and  
Inga Kononenko, expert analyst

**PRINCIPAL SOURCES OF INFORMATION:**

- Legislation of Ukraine (specific references are made in the body of the report)
- LEGITEAM's legal practice



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

- O. Rudnyeva, J.D., G. Khrystova, J.D. et al.: CEDAW Guidance Commentaries, 1<sup>st</sup> Ukrainian edition, 2005 (408 p.)
- The Supreme Court of Ukraine and International Legal Council *Legiteam*: Model Court Cases on Implementation of CEDAW (based on LEGITEAM's practice), edited by O. Rudnyeva, 2006 (195 p.)



## CONTENTS

1. THE PREAMBLE
2. INTRODUCTION
3. AREAS OF STUDY:
  - Degree of Awareness of the UN International Human Rights Treaties Among Ukrainian Judges: Selective Statistic Analysis
  - The Place of International Treaties within the National Legal System of Ukraine. Degree of Obligation to Apply Them in Court Practices
  - The Position of the Supreme Court of Ukraine as to the Ways of Implementing International Human Rights Standards into Court Practices in Ukraine
  - Legislative Settlement for Enforcement of the Decisions of International Judicial Institutions and Relevant Bodies of International Organizations, Whose Jurisdiction is Recognized by Ukraine
  - The Principle of Non-Discrimination as a Major Principle of the International Covenant on Civil and Political Rights. Implementing It in Ukraine
4. RECOMMENDATIONS AS TO THE IMPROVEMENT OF UKRAINIAN LEGISLATION AND COURT PRACTICES IN THE LIGHT OF FURTHER IMPLEMENTATION OF ICCPR AND RELEVANT INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS (BASED ON LEGITEAM'S LEGAL AND LITIGATION EXPERIENCE)



## THE PREAMBLE

The authors of Alternative Report on ICCPR Implementation in Ukraine anticipate that the UN Human Rights Committee will take into consideration conclusions and recommendations laid down in this report at developing its own recommendations.

The report focuses upon the fundamental issues specified in ICCPR.

International Legal Council *Legiteam* is an international non-governmental organization. LEGITEAM unites both domestically and internationally recognized experts in law and young lawyers. It is operated under the guidance of the Board of Directors headed by Dr. Oleksandra Rudnyeva, an internationally recognized expert in gender and human rights law. One of the major areas of LEGITEAM's activities is introduction of core provisions of the UN and EU human rights non-discriminative dimension that are highlighted in its principal documents to the community of Ukraine.

Formatted: Font: Italic

Kharkiv Centre for Women's Studies (KCWS) is a non-profit, domestically and internationally recognized Ukraine's leading think tank and policymaking agency in gender issues, which was created in 1994, and since then, has pioneered a number of actions aimed at promoting women's status in Ukraine, most of which were laid in the foundation of new national policies.



## INTRODUCTION

Since winning its independence, Ukraine has undergone through a process of reforming its legislation. The key goal of that reform is to enhance the rule of law within the body of laws and their implementation within the law enforcement system and the courts. The legal reform was developed in a quite controversial way. Some of the new laws were designed in a progressive way; some of them still require changes due to their Soviet-style provisions.

Corruption in law enforcement bodies and lack of equal justice in the court are among the main problems.

The court system is currently undergoing extensive reforms. Some innovative procedures have been introduced very recently. Among them, there are mediation, social expertise, and recording of court hearings. Nevertheless, the judges have yet to become more open to cooperation with domestic and international non-governmental organizations. They have started to use international human rights instruments (provisions and jurisprudence of treaties) that has created more possibilities to strengthen the application of rule of law in court decisions.

But still, lack of fair justice, of real independence of a judiciary, though it is legally granted, of implementation of the spirit of the rule of law, and of awareness of international human rights instruments are among core barriers of democracy development in Ukraine. The new Ukrainian government has declared that full and equal access to justice is a key priority, which is an undisputed must. However its ultimate achievement requires considerable efforts on the part of governmental officials, such as the reform of the State Court Administration, reforms of the system of appointment of judges and their accountability, and increases in funding of courts and judges' work. True implementation of the government's declaration requires efficient actions on the part of human rights groups as well. First of all, a system of courts and law enforcement monitoring should be properly established. Alternative reporting to state bodies as well as to international human rights treaty bodies is also a very important task. Mediation, social expertise at courts, free legal aid for



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

disadvantaged groups that were introduced by non-governmental organizations require further development and attention as well.

For a number of years, International Legal Council *Legiteam* together with Kharkiv Centre for Women's Studies has been developing series of activities on enhancing rule of law, human rights protection for the disadvantaged through providing individual legal consultations for the public, legal professionals and human rights activists along with full litigation support for disadvantaged groups. Until 2004, however, all those activities were limited with the lack of human resource and of long-term aims. But, after a visit of two LEGITEAM experts to the Office of the High Commissioner for Human Rights and subsequent establishing of cooperation with the UN Committee on Human Rights and Committee against Racial Discrimination since in the said 2004, LEGITEAM's actions reviewed and essentially intensified. LEGITEAM experts were really concerned that in its concluding observations on the fifth periodic report on Ukraine, the Human Rights Committee expressed its concern that the provisions of international treaties do not occupy a high enough position in the legal hierarchy of Ukraine and noted that the standards contained in these treaties are not necessarily given primacy over contradictory national laws<sup>1</sup>. This leads to decreasing the level of protection of human rights both domestically and internationally.

LEGITEAM is known as an organization of legal professionals aiming to develop a mechanism of systematic implementation of the international human rights standards and instruments in a process of defense of the human rights and execution of the law in courts of Ukraine. In 12 months of 2005 LEGITEAM has delivered more than 856 individual consultations for citizens (based on the appointment), which needed support in preparing application for submission to the court, initiated 46 court applications and provided full support in their litigation. Also consultations for social institutions officers and law enforcement officers were given permanently on a weekly basis. All these activities were based on the methodology of introduction and full incorporation

---

<sup>1</sup> Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/CO/73/UKR, November 5, 2001, para. 8.



of the international human rights standards into a court practice and court decisions.

Legal professionals and judges of Ukraine have expressed their interest in consistent implementation of this information into their daily legal practice. Judges agreed that they know only about the European Convention on Human Rights and the standards and instruments which has been developed under European System, but absolutely nothing about similar mechanism which exist under the UN system. On December 21<sup>st</sup>, LEGITEAM delivered **an official presentation of the Legal Commentaries to** one of the core UN treaties, **Convention on Elimination of All Forms of Discrimination against Women**<sup>2</sup>. These Commentaries were developed specifically by LEGITEAM in close cooperation with the leading international experts in human rights, CEDAW and the UN system for Ukrainian judges' use. This presentation took place in the Plenary Hall of the Supreme Court of Ukraine (The Hallowed Hall where the historical court decision on reversing the results of the 2<sup>nd</sup> round of elections of the President of Ukraine was adopted in December 2004) under the presidency of the Acting Head of the Supreme Court of Ukraine, Judge Petro Pylypchuk. For the first time, access to this hall was granted to international legal experts attending the presentation, which was the ultimate acknowledgment of the work done by LEGITEAM. The Supreme Court Judges and judges of the Court of Appeal, recognized lawyers, and the Head of the Constitutional Court of Ukraine officially declared the need for continuance of the work pioneered by LEGITEAM with the ultimate goal of strengthening international standards in protecting human rights in Ukraine in courts of law. Also, Judge Pylypchuk proposed to establish official cooperation between the Supreme Court of Ukraine and LEGITEAM in preparing the Special Ruling of Plenum of the Supreme Court of Ukraine, *On Application of International Human Rights Treaties in Court Practice of Ukraine*.

---

<sup>2</sup> See *Presentation of Guidance Commentaries to Convention on Elimination of All Forms of Discrimination Against Women Delivered* (Informational server of the Supreme Court of Ukraine, December 21, 2005 [online [www.scourt.gov.ua](http://www.scourt.gov.ua)]).



## AREAS OF STUDY

### **Degree of Awareness of the UN International Human Rights Treaties among Ukrainian Judges: Selective Statistic Analysis**

In 2004-2005, International Legal Council *Legiteam* together with Kharkiv Center for Women's Studies hosted 17 workshops attended by 653 Ukrainian judges (10% of all the judges in Ukraine). The following findings were made in the course of those workshops:

- 70% of the judges believe that international standards of human rights are part of the Ukrainian legislation;
- 60% of the judges believe that international standards of human rights are part of Ukrainian court practices;
- only 16.6% of the judges are familiar with provisions of the International Covenant on Civil and Political Rights (only 55.6% are aware the Covenant exists at all), 7.8% are familiar with the International Covenant on Economic, Social and Cultural Rights (with only 41.2% being aware of its very existence), 5.5% are familiar with the Convention on the Elimination of All Forms of Discrimination Against Women (49% know such international legal instrument exists), 7.8% are familiar with the Convention on the Elimination of All Forms of Racial Discrimination (with 46% being aware of its existence), 16.6% of Ukrainian judges are familiar with the Convention on the Rights of the Child (with 51.5% being aware of its existence), 41.15% are familiar with the European Convention on Human Rights and Fundamental Freedoms (63.2% know of its existence);
- only 2.2% of the judges respondents claim to be applying provisions of the International Covenant on Civil and Political Rights in practice; 57.8% never do that because they are not familiar with this international legal instrument; 13.3% do not apply it on the pretext of absence of necessity to do so; all the rest provided no reply;



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

- 1.1% of the judges respondents apply provisions of the International Covenant on Economic, Social and Cultural Rights in their practice; 56.7% never do that because they are not familiar with this international legal instrument; 20% do not apply it on the pretext of absence of necessity to do so;
- 1.1% of judges respondents apply provisions of the UN Convention on Elimination of All Forms of Discrimination Against Women, 60% never do that because they are not familiar with this international legal instrument, 15.5% do not apply it the pretext of absence of necessity to do so.

Judges regard information on decisions of the UN Commission on Human Rights as the most useful for their practice. It is worth mentioning here that in Ukraine, those who actively practice law as well as the legal community in general have a **very limited access to decisions of UN Committees** including the **UN Committee on Human Rights**. Under Ukrainian laws, though, decisions of international judicial institutions in particular cases where Ukraine is recognized to have acted in breach of its international obligations are binding for Ukrainian courts. However, decisions of UN Committees are not officially translated into Ukrainian, and those select translations that appear in Ukraine are done solely due to NGOs' efforts. The only other remaining possibility to gain such information is to access the UN Human Rights Commissioner's website for all the decisions made by UN Committees; however, for some of them, Russian language versions are not available. Thus, **the government of Ukraine is failing to make sufficient effort to ensure Ukrainian people have free access to the practice of UN Committees**.

These shortcomings result in the low degree of Ukrainian judges' expertise regarding provisions of international treaties, which Ukraine has recognized as binding. Data received by International Legal Council *Legiteam* in the course of a series of trainings for Ukrainian courts support these findings. As a result, **international standards of human rights are not being incorporated into court practices in Ukraine**. The actual situation shows that Ukraine does not duly comply with its obligations despite the fact that it has recognized the requirements of international treaties as binding at the legislative level. **We are**



**calling the UN Committee on Human Right to pay attention to this problem and to recommend Ukrainian government to take appropriate steps to implement international human rights standards into the judicial practice in Ukraine** (namely, to adapt the Special Ruling of Plenum of the Supreme Court of Ukraine, *On Application of International Human Rights Treaties in the Court Practice of Ukraine*, in the shortest possible time considering recommendations of relevant NGOs to provide free access to practices of UN Committees, to create the system of consistent training for judges and other members of judicial community on international mechanisms of promotion and protection of human rights etc.).

### **The Place of International Treaties within the National Legal System of Ukraine. Degree of Obligation to Apply Them in Court Practices**

Paragraph 1, Article 9 of the Constitution of Ukraine reads that international treaties that are in force and recognized as binding by the Verkhovna Rada (Parliament) of Ukraine, make part of the national legislation of Ukraine. Besides, if an international treaty (to which Ukraine is a party and which has duly taken effect) establishes other rules than provided by the corresponding Ukrainian law, then, under Paragraph 2, Article 19 of the Ukrainian International Treaties Act of June 29, 2004 the rules of the said international treaty are to be applied.

The provision, according to which *international treaties make part of the national legislation*, is also stipulated in the Civil Code of Ukraine (Paragraph 1, Article 10), Family Code of Ukraine (Paragraph 1, Article 13) and other Ukrainian laws. Under Article 3 of the Criminal Code of Ukraine, the legislation of Ukraine on criminal liability is contained in the Criminal Code, which is based on the Constitution of Ukraine and generally accepted *principles and provisions of international law*. Ukrainian criminal liability laws are to conform to provisions of international treaties in effect recognized as binding by the Verkhovna Rada (Parliament) of Ukraine.



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

Ukrainian government agencies are to be guided by provisions of international treaties. Thus, under Article 4 of the Procuracy Act of November 5, 1991, #1789-XII, one of the objectives of the prosecutor's office is to protect social, economic, political and personal rights and freedoms of the individual guaranteed by the Constitution, other laws of Ukraine and *international acts* from illegal infringements. One of the goals of the parliamentary control exercised by the Verkhovna Rada Human Rights Commissioner is to protect the rights and freedoms of the individual proclaimed by the Constitution of Ukraine, laws of Ukraine and *international treaties, to which Ukraine is a party* (Article 3, Verkhovna Rada Human Rights Commissioner Act of December 23, 1997, #776/97-BP).

In administrative courts, justice is administered in conformity to the Constitution of Ukraine, the Administrative Procedures Code and international treaties recognized as binding by the Verkhovna Rada (Parliament) of Ukraine. Under Paragraph 1, Article 4 of the Commercial Procedures Code of Ukraine, the court makes *decisions based on the Constitution, other laws of Ukraine, international treaties, to which Ukraine is a party* as provided by the Code. It is important that the Supreme Court of Ukraine reviews on cassation rulings and writs of the Higher Commercial Court in case they were appealed on the grounds of their non-compliance with *international treaties* recognized as binding by the Verkhovna Rada (Parliament) of Ukraine (Article 111-15, Commercial Procedure Code of Ukraine). In its Information Letter of November 18, 2003, #01-8/1427 *On Jurisdiction of the European Court of Human Rights in Ukraine*, the Higher Commercial Court of Ukraine refers to Article 9 of the Constitution of Ukraine and Article 17 of the Ukrainian International Treaties Act of December 22, 1993 (it corresponds to Article 19 of the Ukrainian International Treaties Act (in effect since June 29, 2004)<sup>3</sup> and emphasizes that commercial courts must be guided by *the provisions* of duly ratified *international treaties* in administration of justice.

---

<sup>3</sup> Under the Final Provisions of the Ukrainian International Treaties Act of June 29, 2004, #1906-IV, the Ukrainian International Treaties Act of December 22, 1993 and International Treaties on Ukrainian Territory Act of December 10, 1991 became invalid



The problem of correlation of the legal force of international treaties and domestic legislation in Ukraine is tackled as follows. The principle of the top legal force of the Constitution of Ukraine is generally accepted. In order to determine correlation of the legal force of international treaties and Ukrainian laws we need to analyze the existing Ukrainian legislation.

The effect of international treaties in Ukraine is regulated by the Ukrainian International Treaties Act of June 29, 2004, #1906-IV. Under Paragraph 2, Article 19 of the above act, if an international treaty (to which Ukraine is a party and which has duly taken effect) establishes other rules than provided by the corresponding Ukrainian law, *the rules of the international treaty* are to be applied. A similar provision was contained in Ukrainian International Treaties Act of December 22, 1993, #3767-XII, which became invalid after the new Ukrainian International Treaties Act of June 29, 2004, #1906-IV came into effect.

In addition to the above, the provisions on the predominance of international treaties are stipulated in branch legislation. These are, first of all, the codes: the Civil Code of Ukraine (Par. 2, Art. 10), the Commercial Code of Ukraine (Par. 4, Art. 39; Par. 2, Art. 72), the Civil Procedures Code of Ukraine (Art. 2), the Commercial Procedures Code of Ukraine (Art. 4), the Administrative Procedures Code (Par. 6, Art. 9), the Labor Code of Ukraine (Art. 81), the Housing Code of Ukraine (Art. 193), the Forest Code of Ukraine (Art. 103), the Water Code of Ukraine (Art. 112), the Code of Ukraine on Bowels (Art. 69), and other laws.

*The Supreme Court of Ukraine follows the principle of the predominance of international law in its practice.* For example, it applied the following provision in generalization of court practices on resolution of disputes related to the application of laws on taxation of companies:

*If an international treaty (to which Ukraine is a party and which is ratified by the Verkhovna Rada) establishes other rules than provided by the Ukrainian legislation on taxation, the rules of the international treaty are to be applied.*



## **The Position of the Supreme Court of Ukraine as to the Ways of Implementing International Human Rights Standards into Court Practices in Ukraine**

At present, the experts of the International Legal Council *Legiteam* participate in development of **The Ruling of Plenum of the Supreme Court of Ukraine On Application of International Human Rights Treaties in Court Practices of Ukraine**. The findings of the draft ruling emphasize that international treaties (to which Ukraine is a party and which have duly taken effect) foster development of interstate cooperation in various areas of the society's life and properly ensure sustainability of national interests tackling the goals and objectives and following the principles of Ukrainian foreign policy as provided by the Constitution of Ukraine. Moreover, by way of their predominance over Ukrainian domestic legislation, international treaties can change the regulation format of legal relations established by Ukrainian laws. This Ruling is of paramount importance for further development of court practices and Ukrainian law application in general. The fact that the highest court in the nation has recognized the necessity to take measures to encourage application of international treaties, to which Ukraine is a party, in Ukrainian court practice is a positive step on the behalf of the government.

The Draft Ruling examines such issues as the concept and place of the generally accepted international law principles and provisions within the national legal system, the concept and place of international treaties, the procedure and formats to be used by Ukraine to recognize international treaties as binding, interpretation of international treaties' provisions, the formats of implementation of self-implementing and nonself-implementing provisions stipulated in international treaties etc.

Special attention should be given to the following major provisions of the draft:

1. It draws the attention of courts to the necessity of taking into account provisions of international treaties, which Ukraine has recognized as binding in a due legal manner, generally accepted principles and provisions



of international law, and practices of international judicial institutions, whose jurisdiction is recognized by Ukraine.

2. The Supreme Court of Ukraine emphasizes that it should be taken into account that an international treaty, which the Verkhovna Rada of Ukraine has recognized as binding, has predominance over national laws or by-laws except the Constitution of Ukraine. This ruling is based on the international law principle of due performance under international treaties as well as on provisions of Articles 9 and 10 of the Constitution of Ukraine and Articles 15 and 19 of the Ukrainian International Treaties Act. This principle is stipulated in Article 27 of the Vienna Convention on the Law of Treaties, under which a state party cannot repudiate an international treaty on the grounds that it is contrary to its national legislation.

When a case is heard, decision on a collision of an international treaty provision and a provision of Ukrainian law falls under the jurisdiction of the court except for cases, where the court has doubts as to the conformity of the international treaty to the Constitution of Ukraine. In such case, the court has to pass a judgment to suspend the case until the Constitutional Court of Ukraine hears the case on compliance of the international treaty provisions with the Constitution. Also, the court has to turn to the Supreme Court of Ukraine to file an affidavit with the Constitutional Court of Ukraine as to the compliance of the above provisions with the Constitution. In such situation, the court cannot decide a case without applying the provisions of the international treaty on the grounds that they are contrary to the Constitution of Ukraine using only the principle of the direct effect of the constitutional provisions.

3. One of the provisions of the draft Ruling of the Supreme Court Plenum inspired flat objections of LEGITEAM experts. Under Article 14 of the Ukrainian International Treaties Act of June 22, 2004, the coming into effect of an international treaty is not related to the time of its official publicizing or registration. The draft stressed that despite the above provision of the Ukrainian legislation, international treaties, to which Ukraine is a party and which determine citizens' rights and duties, can only



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

be applied by the court if officially publicized. The Supreme Court grounded its position referring to Paragraph 3, Article 57 of the Constitution of Ukraine, under which laws and by-laws determining citizens' rights and duties are invalid if not publicized with the community in a way stipulated by law. In its comments and recommendations for the draft Ruling, International Legal Council *Legiteam* insisted that the provisions of Paragraph 3, Article 57 of the Constitution of Ukraine should not be interpreted as suggesting that international treaties, to which Ukraine is a party and which determine citizens' rights and duties, can only be applied by the court if officially publicized. Such interpretation is contrary to the spirit of the Constitution as well as of principles and provisions of international law on human rights. Under Paragraph 1, Article 57 of the Constitution of Ukraine, which should provide the context for Paragraph 3 of that article as well, every person is guaranteed to know his/her rights and duties. This provision is one of the major juridical guarantees of human rights. Paragraphs 2 and 3, Article 57 of the Constitution of Ukraine are aimed exclusively at providing mechanisms for realization of this guarantee. This is why its interpretation should by no means lead to restriction of the rights and possibilities of an individual. Understanding the provision of Paragraph 3, Article 57 of the Constitution of Ukraine as such, under which international treaties, to which Ukraine is a party and which determine citizens' rights and duties can only be used by the court if officially publicized, can in fact lead to restriction of individuals' rights and deprive individuals of the possibility to access these right as well as ways to protect them that are stipulated in international treaties that took effect by ways provided in the treaties themselves.

Such interpretation is consistent with Article 14 of the Ukrainian International Treaties Act, under which international treaties come into effect for Ukraine after it recognizes the international treaty as binding following the provisions of this law as well as the procedures and time limits stipulated by the treaty or as otherwise agreed by the parties. This provision conforms to the requirements set out by Paragraph 2, Article 57 of the Constitution of Ukraine, which reads



that laws and by-laws, determining citizens' rights and duties are to be publicized with the community in a way specified by law. In addition to that, Article 21 of the Ukrainian International Treaties Act that institutes the procedure for publicizing international treaties is devoted specifically to international treaties in effect and does not relate the effect of an international treaty to the time of its official publicizing. In this respect, failure of the court to apply provisions of an international treaty, which came into effect in a way stipulated by the treaty itself (it could be the time the state submits its ratification instrument to the body specified in the treaty or accession by a certain number of states etc.), but was not officially publicized, should be considered illegal.

**We are calling the Committee to express its position on the issue of international treaties coming into effect.**

4. International Legal Council *Legiteam* suggested that when administering justice, the courts should use the following manner to apply international treaties in effect, to which Ukraine is a party:

- separate application of international treaty provisions, which includes:
  - application of an international law provision if domestic law contains a direct reference to it;
  - application of an international treaty provision to regulate domestic relations if there are loopholes in domestic legislation;
  - application of an international treaty provision if there is a collision with domestic legislation provision regulating the same relations.
- simultaneous application of international treaty provisions and domestic legislation provisions regulating disputed relations:
  - parallel equivalent application of an international treaty provision and a similar domestic legislation provision that regulate the same disputed relations and are not contradictory to each other;



- application of an international treaty provision and a domestic legislation provision that clarifies the international treaty provision.

**International Legal Council *Legiteam* suggested that it is necessary to draw the attention of judges to the fact that existence of similar domestic legislation provisions regulating disputed relations should not preclude from applying international treaties.** Special attention was given to this issue as in the course of the workshops for judges it turned out that Ukrainian judges were sure that international treaties could only play an accessory role in regulating domestic relations. This misconception leads to ignoring provisions of international human rights treaties. Such attitude on the part of judges entails serious consequences where domestic legislation contradicts provisions of international treaties. Besides, we believe that even if an issue is similarly regulated both by domestic legislation and international law on human rights, it should not completely exclude the possibility (and in certain cases, the necessity) to apply international treaties, thus only underscoring the respect for human rights on behalf of the justice and demonstrating that the government is diligently discharging its obligations. Although, one should avoid situations where such references are formalistic, and it takes to improve legal awareness in Ukrainian legal community to do so.

5. LEGITEAM stressed the necessity of drawing attention of judges to the fact that the importance of international treaties for regulating domestic relations should not be reduced to applying their provisions to make up for loopholes and collisions of Ukrainian domestic legislation only. **When interpreting provisions of national legislation courts should consult international treaties, which Ukraine has formally recognized as binding.** In certain cases, taking such international treaty provisions into account can serve as a safeguard against formalistic application of domestic legislation provisions.
6. The draft Ruling states that should there be difficulties in international treaty application the courts rely on acts and decisions of international



organizations and specialized bodies that enjoy the jurisdiction to interpret corresponding international treaties or settle interpretation-related disputes.

Judicial practice of independent expert bodies that are created in accordance with the provisions of corresponding treaties or their Additional and/or Optional Protocols plays an important role in interpreting UN international treaties (thus, for example, International Covenant on Civil and Political Rights provides for creation of the Committee on Human Rights; Convention on Elimination of All Forms of Racial Discrimination – for the Committee on Elimination of Racial Discrimination; Convention on Elimination of All Forms of Discrimination Against Women – the Committee on Elimination of Discrimination Against Women etc). The Committees enjoy the jurisdiction to interpret provisions of corresponding international treaties. They fulfill this function, first of all, by reviewing reports of the state parties and individual complaints. Finalized interpretations of international treaties by the Committees are also reflected in General Recommendations they produce. These recommendations contain detailed advice for the state parties that can be used to determine the meaning of individual provisions of the corresponding international treaties.

**Legislative Settlement for Enforcement of Decisions of International Judicial Institutions and Relevant Bodies of International Organizations, Whose Jurisdiction is Recognized by Ukraine**

Enforcement of decisions of international judicial institutions and relevant bodies of international organizations, whose jurisdiction is recognized by Ukraine, in cases of human rights violations on the part of the government, is a problem in itself. Paragraph 3, Article 55 of the Constitution of Ukraine recognizes that every individual has the right to appeal for protection of his/her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations, of which Ukraine is a member or participant, after having exhausted all domestic legal remedies.



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

UN Committee on Human Rights is one of such bodies of international organizations, whose jurisdiction is recognized by Ukraine. Under Article 1 of the First Additional Protocol of the International Covenant on Civil and Political Rights, the Committee enjoys the jurisdiction to hear and decide individual and group communications on violations of rights spelled out in the International Covenant on Civil and Political Rights. Ukraine has recognized it as binding by the Decision of the Verkhovna Rada (Parliament) of Ukrainian Soviet Socialist Republic, *On Accession of Ukrainian Soviet Socialist Republic to the Optional Protocol of the International Covenant on Civil and Political Rights* of 25 December, 1990, and Ukraine's Legacy Act of September 12, 1991.

Decisions of international judicial institutions and relevant bodies of international organizations, whose jurisdiction is recognized by Ukraine, on cases of individual communications on violation of rights by the government are unconditionally legally binding. As to decisions of the European Court of Human Rights, Ukraine adopted a separate law, *On Enforcement of the Decisions and Implementation of Practice of the European Court of Human Rights*. **Ukrainian legislation provides no enforcement procedures for UN Committees' decisions that definitely complicates implementation of international human rights standards in Ukraine.**

To start with, decisions in individual cases passed by international judicial institutions and relevant bodies of international organizations, whose jurisdiction is recognized by Ukraine, embody the will of international treaties ratified by Ukraine, and not the will of the above bodies or institutions. They are just as binding for the state parties, as the international treaties themselves are. The failure of the state to enforce the decisions of the international bodies or institutions means failure to fulfill its international obligations and can entail imposition of relevant international sanctions.

Ukrainian procedural legislation sets out procedural consequences of the decision of an international judicial institution, whose jurisdiction is recognized by Ukraine, to regard a Ukrainian court's decision as violating Ukraine's international obligations. Such decisions are reviewed by the highest court in the nation, the Supreme Court of Ukraine. It should be noted that the opinion



of a relevant international judicial institution in respect of the violated right is binding for exceptional circumstances-related review of court decisions in civil cases if the appeal stems from the decision of an international judicial institution, whose jurisdiction is recognized by Ukraine, to regard the court decision as violating Ukraine's international obligations. The court opinion passed after the hearing of the complaint in relation to the abovementioned exceptional circumstances in any case has to complement the opinion of the relevant international judicial institution, whose jurisdiction is recognized by Ukraine, and must not contradict it. Passing the opinion that contradicts in essence or subjects to doubt the opinion of the relevant international judicial institution means that Ukraine fails to fulfill its international obligations. According to the generally accepted international principle of due fulfillment of the obligations by the states, such obligations are binding for all branches of the government, judiciary included.

The Criminal Procedures Code of Ukraine does not provide for the possibility to appeal court decisions in relation to exceptional circumstances. The absence of such provisions, though, does not mean that if a relevant international judicial institution, whose jurisdiction is recognized by Ukraine, regards Ukrainian court's decision in a criminal case as violating Ukraine's international obligations, such decision of the international institution invokes no obligation to review corresponding decisions of national courts within the national legal system and to ensure restoration of individuals' rights and freedoms.

Thus, Ukrainian legislation contains two different terms, "a relevant **international judicial institution**, whose jurisdiction is recognized by Ukraine" and "relevant **bodies of international organizations, of which Ukraine is a member or a party**" (the latter covers HRC and other UN HR Treaty bodies). Decisions of the "relevant **international judicial institutions**, whose jurisdiction is recognized by Ukraine" are clearly pointed as the legal ground to review the final Ukrainian court decision as the one that violates Ukraine's international HR obligations. Judicial practice needs clear interpretation of these terms **as synonymic**. In other words, an individual has a right to apply for protection of his/her rights and freedoms to relevant **bodies**



*of international organizations, of which Ukraine is a member or a party,* but there are no mechanisms to implement their decisions at the national level.

### **The Principle of Non-Discrimination as a Major Principle of the International Covenant on Civil and Political Rights. Implementing It in Ukraine**

The International Covenant on Civil and Political Rights came into effect (for Ukraine as well) on March 23, 1976.

One of the major principles underlying the rights granted by the International Covenant on Civil and Political Rights is the **principle of non-discrimination**. Thus, Article 2 of the Covenant reads that each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 of the Covenant provides that the States Parties undertake to ensure the equal right of *men and women* to the enjoyment of all civil and political rights set forth in the Covenant. Article 4 of the International Covenant on Civil and Political Rights points out that even in time of public emergency, which threatens the life of the nation, and the presence of which is officially proclaimed, the States Parties may take measures derogating from their obligations under the Covenant, provided that such measures do not involve *discrimination* solely on the ground of race, color, sex, language, religion or social origin. A separate article of the Covenant (Article 24) devoted to the principle of non-discrimination of children, especially on the grounds determined by the Article 2. Article 26 of the Covenant, while reiterating the provisions of Article 2 of the Universal Declaration of Human Rights, emphasizes that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection *against discrimination on any ground* such as race, color,



sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Similar provisions are part of the International Covenant on Economic, Social and Cultural Rights. A specific article of the Covenant (Article 3) establishes the principle of *equality of men and women*, under which the States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.

Ukrainian legislation makes wide use of the term “discrimination” and its derivatives, which shows that this term has been accepted as legal. These terms are used in **443** Ukrainian laws and by-laws.

The analysis of the laws and by-laws containing the term “discrimination” and its derivatives allows to conclude that the grounds for discrimination can be (but are not limited to) as follows: sex, religion, race, color, national or social origin, language, marital status, political or other opinion, property, birth or other status, age, health, children, any form of social segregation, ethnic origin etc.

Ukrainian laws and by-laws know the following types of discrimination: budgetary (related to specific local authority budgets and their functions, etc.); gender; taxation and social discrimination.

The legislature uses the following derived terms: discriminatory provision; displays of discrimination; victim of discrimination; discriminatory character; discrimination between the states.

The Constitutional Court of Ukraine has utilized the concept of discrimination in its rulings. The analysis of the Constitutional Court Ruling of July 7, 2004, #14-пп/2004 on constitutional inquiry of 56 members of Ukrainian Parliament as to the consistency with the Constitution (constitutionality) of the Section 2, Paragraph 1, Article 39 of the Higher Education Act (the case on age limitations for candidates for top executive offices in higher educational institutions) brings to the conclusion, that *the sole body of constitutional jurisdiction in Ukraine understands **discrimination as establishing certain unjustified,***



***ungrounded and unfair differences (requirements) in legal status contrary to the provisions of the Constitution.***

The Supreme Court of Ukraine also uses the term “discrimination” in its practice. As determined by the Supreme Court, discriminatory attitude towards juveniles is in place where for the same offence adults are punished either by imprisonment or restraint of liberty, while juveniles are punished by imprisonment only. As restraint of liberty is a more lenient penalty than imprisonment, such approach leads to the situation where juveniles are subjected to a tougher penalty. Unfortunately, the Supreme Court has not come up with a general definition of discrimination.

The High Commercial Court of Ukraine used this term in its practice as well. It understands discrimination as no single treatment of commercial subjects, by differentiating them on the grounds of certain characteristics (e.g., presence or absence of relations with a non-resident).

We can see how the legislature interprets the term “discrimination” if we look at the Trade Unions and Their Rights and Activity Guarantees Act of 15, 1999, #1045-XIV. Article 5 is titled Prohibition of Discrimination on the Grounds of Affiliation with Trade Unions. Analysis shows that the legislature understands discrimination as restriction of labor, social, economic, political and individual rights and freedoms guaranteed by law on the grounds of certain characteristics (specifically, of affiliation or non-affiliation with trade unions).

Article 161 of the Criminal Code of Ukraine provides for criminal liability for *any direct or indirect restriction of rights granting direct or indirect privileges to individuals on the grounds of race, color, political, religious or other convictions, sex, national or social origin, property, residence or other status*. The above actions are punishable by a fine of up to 50 tax-free minimal incomes or correctional labor for a term of up to two years, or restraint of liberty for a term of up to five years with or without deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years. It is worth mentioning that the same actions accompanied by violence, defraud or threats, and/or committed by an official (Paragraph 2, Article 161 of the Criminal Code of Ukraine), as well as same actions if committed by an



organized group (Paragraph 3, Article 161 of the Criminal Code of Ukraine) constitute aggravating characteristics for this offence and entail tougher penalties.

*The principle of equality of men and women* that the Covenant gives special attention to makes part of Ukrainian Constitution. Article 24 of the Constitution of Ukraine states that equality of the rights of women and men is ensured by providing women with opportunities equal to those of men in public, political, and cultural activity, in obtaining education and professional training, in work and its remuneration; by special measures for the protection of work and health of women; by establishing pension and retirement privileges; by creating conditions that allow women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood including provision of paid childcare leaves and other privileges to pregnant women and mothers. On September 8, 2005, the Verkhovna Rada of Ukraine adopted **the Equality of Rights for Women and Men Act** that came into effect on **January 1, 2006**. This act has a long legislative history behind it. The necessity to have a law in place that would provide a mechanism for gender equality, have parity status of men and women in all sectors of society life as a goal, ensure equal rights and possibilities for men and women, and eliminate discrimination on the grounds of sex was not evident to all then, and is not evident now, after the came in effect. The supporters of this law stood their grounds and argued the following:

1. Women make approximately 53% of Ukrainian population. At the same time, they make only **30%** of its entrepreneurs. They stick mainly to small and medium businesses. There are very few women in big business. Women usually establish their businesses solely on their own initiative and not as part of any government programs. As a rule, their businesses are related to retail trade, medicine, culture and science.
2. For employees, the discrimination manifests in **salary rates**. In general, salaries paid to women make **2/3 of those of men**. Gender inequality in salary rates is a direct violation of the principle of equal remuneration of the



same work. Women take low-paid jobs in almost all industry sectors. Labor market shows one more pattern: men are forcing women out of well-paid promotion-friendly jobs.

3. Low representation of women in the top government bodies. The last Parliament elections that were held by party tickets and majority ballot took place on March 31, 2002. 33 parties and party blocks ran for the Parliament of Ukraine, but none of those positioning themselves as women-oriented made its way to the Verkhovna Rada. As to the members of the Parliament, over 8 % of members of the 1998 Parliament were female, while in 2002, they made only 5.1% of all MPs (23 women: 14 by party tickets and 9 by majority ballot). In 2002, the representation of women in municipal and village councils increased and made approximately 43%. In regional councils, this number never outgrew 10%, and in the Verkhovna Rada, it fell to 5.1% in 2002. As a result of 2006 Parliament Elections, only 40 women became MPs, which makes 8% of all MPs. Women make the majority of civil servants – 74.8%. It should be noted, however, that most of those women are low-level civil servants. Women make 67.6% of Grade 6 public officers (the lowest level), while only 6.6% of Grade 1 public officers are female. Correspondingly, it is exactly the opposite with their male counterparts. Thus women are severely underrepresented at the levels where most important government decisions are made.
4. **Domestic violence** is one of the latent problems of this society. **One woman out of five** is estimated to have experienced domestic violence. Official data show that the number of individuals on police record for systemic family-related offences is constantly increasing. In the past five years, it has grown by 16%.
5. Traditional social stereotypes substantially limit promotion opportunities for women. A woman has lower chances of finding employment when looking for a job. In addition, employers often point out that the competition is for men only.



6. Quite often, Ukrainian women have to live abroad as illegal immigrants, which frequently leads to negative consequences as they become objects of trafficking and sexual exploitation.

On December 17, 2005, Kharkiv hosted a field meeting of the Verkhovna Rada Commission on Human Rights, Minority Rights and Ethnic Relations where Equality of Rights for Women and Men Act was discussed. International Legal Council *Legiteam* provided its assessment of the and focused on the following:

- 1) the law makes wide use of the term “positive actions” (in particular, articles 1, 3, 7, 12, 16 and 19 of the law), and **government agencies need a clear interpretation of this term;**
- 2) the law provides for gender evaluation of Ukrainian legislation. Under Paragraph 4, Article 4 of the law, the procedure for gender evaluation is to be determined by the Cabinet of Ministers. Its **Regulation should draw attention to the following issues:** **a)** what principles and criteria should govern these evaluations; **b)** what bodies should have the authority to conduct gender evaluation of the current legislation; **c)** what laws are to undergo gender evaluation (for example, these could be acts directly relating to persons of one or another sex or providing different conditions for their right implementation, different number of rights etc., or the acts that could lead to discrimination if implemented, or acts based on the existing stereotypes or traditions); **d)** what the consequences of finding the Act in effect inconsistent with the principle of equal rights and possibilities for men and women are; **e)** the bodies conducting gender evaluation of draft legislation (it has to be an external body, that is, evaluations cannot be conducted by the body that developed the draft of one or another law; what the procedure for making gender evaluations by the body is, and who is to become the agent of gender evaluations) etc.;
- 3) Under paragraph 2, Article 22 of the Equality of Rights for Women and Men Act, persons of any sex or groups can file communications on violation of equality and possibilities of men and women with the UN Committee on Elimination of Discrimination of Women. This provision needs to be



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

interpreted by relevant bodies with regard to the Optional Protocol to the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). It is important that under Article 2 of the Optional Protocol to CEDAW, communications may be filed by or on behalf of individuals or groups of individuals under the jurisdiction of a State Party, claiming to be victims of a violation of *any of the rights* set forth in CEDAW by that State Party, which means, ***solely women's rights***. Thus, the clarification for such provision should assert that one can only communicate with the CEDAW Committee in respect of the violation of rights of a woman or group of women. A communication can be filed by any person or group, but exclusively in the interests of a woman or a group of women, and only in case when there is evidence to prove that a woman or a group of women could not represent their interests themselves.



**RECOMMENDATIONS AS TO IMPROVEMENT OF UKRAINIAN LEGISLATION  
AND COURT PRACTICES IN THE LIGHT OF FURTHER IMPLEMENTATION  
OF INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS**

Non-discrimination on any discriminatory grounds is a fundamental principle for all human rights and freedoms without exception provided for by this Covenant. Securing them is a necessary requirement for the State Party to fulfill its obligations under the Covenant. Despite this, **the principle of non-discrimination is often violated by the government of Ukraine just as by individuals, both when establishing the rights provided for in the Covenant at the legislative level and when implementing them.** International Legal Council *Legiteam* came across the examples of discriminatory legislation and practices as well as other forms of violation of rights and freedoms guaranteed by the Covenant. **We believe it necessary to draw the Committee's attention to these violations and urge it to recommend Ukraine to stop the violations and to guarantee protection and support for violated rights and freedoms of individuals in compliance with international standards of human rights.**

1. One of the major rights provided by the Covenant is the **right to life, which is recognized as inherent to every individual** (paragraph 1, Article 6 of the Covenant). In general, Ukraine had fulfilled its obligations under this article of the Covenant. Article 3 of the Constitution of Ukraine contains the provision, pursuant to which the individual, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the top social value. Article 281 of the new Civil Code of Ukraine (in effect since January 1, 2004) is also devoted to the right to life. This article looks at such issue as euthanasia and prohibits it as well as medical, academic and other experiments that infringe this right in any way including sterilization, and recognizes relevant rights in full only for competent individuals who are legally off age.



Article 281 of the Civil Code of Ukraine also lays grounds for legislative provisions on legal abortions in Ukraine. For the first time, it explicitly draws a direct link between artificial fetus wastage and the right to life. It states that artificial fetus wastage of less than 12 weeks can be carried out if sought by the woman. Artificial fetus wastage between 12 and 22 weeks is only allowed in cases provided by law.

To implement this provision, the Cabinet of Ministers of Ukraine passed the Regulation of February 15, 2006, #144, *On Implementation of Article 281 of the Civil Code of Ukraine*. This regulation substantially alters the list of grounds, conditions and time limits for legal artificial fetus wastage of over 12 weeks that were earlier governed by the Cabinet of Ministers' Regulation of November 12, 1993, # 926, *On Artificial Fetus Wastage Between 12 and 28 Weeks*.

First, the maximum time limit for artificial fetus wastage was changed from 28 to 22 weeks, which, unquestionably, is a positive innovation.

Second, permits for artificial fetus wastage for this period are not to be given out by the health care institution where the woman receives treatment, but by the commissions created correspondingly by the Ministry of Health of the Autonomous Republic of Crimea, health care departments at regional state administrations, Sevastopol State Administration and the Main Health Care Department of Kyiv State Administration that are government agencies.

Third, the list of the grounds for artificial fetus wastage for this period has been substantially altered. The previous CM Regulation contained the List of Medical Indications for artificial fetus wastage between 12 and 28 weeks and the List of Social Indications that could justify artificial fetus wastage between 12 and 28 weeks. The latter included:

- a woman has three or more children;
- divorce during pregnancy;
- the death of the husband during pregnancy;
- rape-related pregnancy;
- imprisonment of the woman or her husband;
- the woman is deprived of parental rights;



- a woman has already a disabled child;
- serious illness or injury of the woman's husband that led to his permanent disability during his wife's pregnancy.

The new CM Regulation contains **only** the List of Medical Indications justifying artificial fetus wastage between 12 and 22 weeks. There is no List of Social Indications that can justify artificial fetus wastage between 12 and 22 weeks. In addition to medical indications, the Regulation mentions the following grounds:

- the age of the pregnant women is under 15 or over 45;
- rape-related pregnancy;
- the woman becomes disabled during her pregnancy.

We believe it necessary to draw the attention of the Committee on Human Rights to the fact that, on one hand, such changes eliminate social indicators of biological preconditions of human existence, which leads to better protection of the potential right to life. The majority of these social preconditions, though, were related to the husband's role in child support and upbringing. In reality, these changes lead to the situation when, with the above grounds in place, the burden of child support and upbringing rests solely on the woman. This, in its own turn, can be regarded as a provision leading to actual discrimination of women and is contrary to the provisions of **Article 23 of the Covenant on Equality of Rights and Responsibilities of Spouses** that include responsibility to support and raise children. We believe it is important to draw the attention of Ukrainian government to the need to change such discriminatory status of women by providing and ensuring additional state social guarantees on child support.

Another problem closely related to the **right to life** and health is the problem of protection of mothers and infants from the danger of joint stay in the conditions that Ukraine is able to provide. The major objective of every government and civil society is to ensure the best possible health of the nation. Physical, psychic and social health of the individual starts with the first minutes of his/her life, the first contact with the world and the first touch to



his/her mother. The World Health Organization emphasizes that joint stay of the mother and infant starting with the first minutes of his/her life saves the infant from the solitude and indifference of the outside world and is a major precondition for the formation of a healthy, emotionally stable and socially active individual.

In order to ensure conformity to the international health standards for mothers and children and to improve health care for infants in Ukraine, the Ministry of Health issued the Order of April 4, 2005, #152, *On Introduction of Medical Treatment Protocol for Healthy Infants* (in effect since May 1, 2005). This Act introduces **mandatory (!)** joint stay of mothers and infants. This means that in Ukraine, the mother and the infant are to stay in the same room for 24 hours a day *starting with the birth and until they leave the hospital*. This includes the following stages:

- 1) skin-to-skin contact in the delivery room;
- 2) joint transportation of the mother and the infant to their hospital room;
- 3) breast feeding only on the infant's need;
- 4) mother care for the infant;
- 5) justifiably minimal interference by the medical staff;
- 6) discharge of all prescriptions and therapy in their room in the presence of the mother and with her informed consent.

Contraindications for the joint stay of the mother and the infant are open TB and acute mental diseases of the mother. Nobody takes into account serious physical and emotional problems experienced by most women after the delivery. They may not be regarded as complications from the medical point of view, however: physical need for a long sleep as a way to regain bodily strength lost during the delivery; the mother's inability or difficulty in moving without help during the first week after the delivery; inability to lift weighty objects; physical and psychic exhaustion, possible postpartum depression. ***These circumstances, in the opinion of the women we surveyed, lead to their complete inability to ensure safety and health of their infants and their own safety after the delivery without outside help.***



To avoid potential danger of inflicting damage to the life and health of mothers and infants, we ask the Committee on Human Rights **to focus Ukrainian government on these urgent problems and recommend the following:**

- to consider the potential danger of the post-delivery joint stay of the mother and the newborn without outside help for physical, psychic and social health, of both the mother and the infant;
- to take into account world practices of providing proper joint stay of the mother and the newborn;
- to take into account physical health of the mother, her ability (inability) to take care of the infant on her own without constant outside help;
- to ensure the mother can have rest after the delivery, which should include taking care of the infant by family members or medical staff all through her sleep she needs to regain her bodily strength;
- to ensure the presence of necessary medical staff able to provide required medical assistance for the infant and to introduce shift duty for medical staff of at least 1 medical staff member for 6 mothers with infants;
- to create necessary conditions to enable the mother to take care of her infant with help from family members, with necessary medical examination of the latter before the delivery. This is provided for in Ukrainian law, but is not implemented practically, as there is no mechanism to let in family members to the infant rooms, and there are no minimal conditions for that (in particular, 6 or more women in one hospital room make it impossible for the family members to stay there round the clock);
- to make sure that women are well informed about the conditions, specifics and difficulties of the joint stay of the mother and the infant, and about her right to receive necessary assistance from the medical staff and family members before the delivery;
- to introduce corresponding amendments to Ukrainian legislation.

**2. In its practice, LEGITEAM has come across several outcrying cases of Ukraine's failure to fulfill its international obligations and ensure**



**protection of human rights.** Olena V. Petrenko's case<sup>4</sup> is one of the cases constituting violation of the general principles of the State Party's compliance with its obligations under the Covenant, as well as violation of Articles 6, 7, 12, 16, 17, 23, 24 and 26 of the Covenant.

On March 3, 2004, Olena V. Petrenko, born 1975, single, gave birth to Mykhailo V. Petrenko. The father did not recognize the child, and the newborn's patronymic (middle name – a derivative from the father's name as required both by Ukrainian legislation and tradition) was registered according to information provided by the mother as ruled by paragraph 1, Article 135 of the Family Code of Ukraine. After the complicated delivery, Olena and her infant had to find shelter with strangers as due to careless actions of her mother and unlawful actions of certain officials Olena lost the place of her permanent residence.

Since 1983, Olena Petrenko resided together with her mother in a room in a residence hall owned by Proton Radio Electronics Factory. In 1993, her mother met a man and started cohabiting with him in common-law marriage. Later she gave birth to their common child. The same year, the family moved in with the new husband's parents, but neither Olena, nor her mother were ever registered as residents<sup>5</sup> at that apartment as the husband's parents objected to it. However, Olena and her mother were still registered as residents at their residence hall room and could live there.

The relations of the girl and her stepfather were tense; he started to pick on her using physical and mental violence, which led to her attempted suicide. Olena jumped out of the window of the 9<sup>th</sup> floor apartment, but accidentally, stayed alive. After a long treatment, Olena actually became permanently disabled, but retained the ability to move on her own and to lead an active life. Olena became a student at Municipal Housing Technical School and graduated with excellence. Throughout all that time, Olena received no support from her mother. After her injury, they practically stopped seeing each other.

---

<sup>4</sup> The first, second and last names are changed. However, the woman under discussion gave her consent to disclosure of her name.

<sup>5</sup> At the time of the described events, mandatory resident registration has not yet been abolished in Ukraine.



**INTERNATIONAL LEGAL COUNCIL  
LEGITEAM**

After recovery, Olena did not go back to her mother and stepfather and started to live with strangers. When she turned 16, Olena received her domestic identification document with a stamp of residency registration at the residence hall of Proton Radio Electronics Factory. However, when Olena requested for permission to actually live there, the residence hall administration refused to provide it. When Olena got her I.D. changed because of the official change of her middle and last names, the municipal housing department officials and the residence hall administration refused to re-register her at the residence hall and to stamp her new I.D. with the proof of permanent residency registration. Olena turned to her mother who could prove her own and her daughter's right to reside in the residence hall, but her mother refused to help. Thus, Olena lost not only the possibility to actually live at the place of her registered residence, but also the registration itself certified with the stamp in the I.D.

The absence of permanent residence registration made it impossible for Olena to get a regular job with all necessary paperwork completed according to the legislation effective at that time. Therefore, Olena made her living by knitting or gardening – profession she acquired at the vocational school. The absence of permanent residence registration also made it impossible for her to get registered at the Unemployment Center and to receive unemployment benefits as registration of the unemployed is done only at places of their permanent residence that have to be confirmed with the corresponding stamp in their I.D.'s. The same reason made it impossible for Olena to obtain the official permanent disabled status that would have allowed her to receive disability pension.

On April 1, 2004, during the forth visit to the child care hospital, the doctors examined young Mykhailo Petrenko and saw bruises and other signs of bodily harm on the baby's body. Olena was at a loss and could not explain how the bruises appeared. Doctors of the child care hospital immediately took the baby away and offered her to expropriate her parental rights in writing. Olena refused pointblank. The child was sent to the hospital, but because of the lack of justified reasons to keep him at the hospital, he was transferred to the child asylum. The decision to transfer the baby to the child asylum was made by the



district Custody Council that looked at the formal circumstances of the case and paid no attention to Olena's explanations regarding her complicated life situation and her request to give her child back. The district executive council officials have emphasized more than once that Olena has nowhere to live with her child and has nothing to feed him with, that the child is deprived of his father's care and that Olena is not able to take care of her child on her own as she herself needs to be taken care of etc. **It should be emphasized that under the Family Code of Ukraine these circumstances can by no means serve as grounds for depriving the person of his/her parental rights.**

The district executive council filed an application with the district court demanding to deprive Olena V. Petrenko of parental rights for her son, Mykhailo V. Petrenko, on the grounds of child abuse. Olena denied the lawsuit. Her interests were represented in court by Dr. Ganna O. Khrystova, a LEGITEAM lawyer. The case was being heard in court for almost a year. Throughout all that time, Olena was regularly seeing the baby, providing financial support for him and the asylum, taking care of his health, development etc. Those facts were seconded by testimonies of the Head Doctor and counsel of the child asylum. Olena did something that everybody thought was impossible to do – she restored her permanent residence registration at the Proton Factory residence hall, though she still was not allowed to actually reside there and continued living at her friends'. Anyway, that enabled her to get a regular job and get registered as a disabled person. All the required evidence was presented to the court. As to the child's bruises, Olena explained that the baby could have hit the crib at night when tossing in his sleep. Olena was very exhausted at that time and could not remember that for certain. She has never incurred any bodily harm to the baby and could not possibly imagine that. The court heard all the arguments of the parties and ruled to dismiss the lawsuit of the district executive council and not to deprive Olena of her parental rights.

The court decision was not appealed and came into effect a month later (on April 29, 2005). The very next day elated Olena went to see the Head Doctor of the child asylum with the purpose of taking her son back. But she was not



allowed to take the child on the grounds that he was sent to the asylum by the decision of the district executive council and it was for the district executive council to make the decision to return the child into his mother's care. After a year of efforts to return the child, having won the lawsuit, Olena could not get her son back. The court decision was not enforced. Olena completed all the paperwork the district executive council required and filed it for review of the Custody Council, but that agency failed to make a positive decision as it was not sure that the apartment Olena lived in was suitable for the child. Here we have a situation when in breach of the court decision; an individual with all parental rights is not allowed to live together with her child. Instead of encouraging the woman to fulfill her parental duties and assisting her in overcoming various routine and financial difficulties, government agencies are depriving the child of his family environment.

At present, the only way out is to file a complaint with the court as to the unlawful conduct of the child asylum staff and the district executive council officers. This means that both the mother and the child are facing another litigation – another year apart.

**3.** The cases of violation of **Article 12 of the Covenant** are numerous and result in substantial restraint or violation of property rights of individuals. Paragraph 1, Article 12 reads that everyone lawfully within the territory of a State Party shall, within that territory, have the right to liberty of movement and freedom to choose his/her place of residence.

V. M. Loboichenko has turned to LEGITEAM seeking protection of her violated rights. She is a private owner of an apartment in a multistory apartment block. On May 11, 2006, somebody posted an offer-type advertisement on the porch door saying that between May 15, 2006 and June 1, 2006 Ukrtelecom Service Center would be installing telephone land lines for the price of UAH 220 each. On May 13, 2006, Ms. Loboichenko went to the company's customer service department at the address listed in the ad to apply for installation of a telephone land line under the conditions specified in the same ad, that is, for the price of UAH 220. While she was discussing the contract, the service clerk



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

let her know that because she was a private owner of the apartment where the land line was to be installed, but was not registered there as a permanent resident (this form of registration is a derivative of the previously abolished procedure of mandatory registration at the place of permanent residence), the installation price for her was UAH 1,220, and not UAH 220 as previously advertised in the offer. The price of UAH 220 for the installation of telephone land lines could only apply to her if there were any extras left after contracts were made with all registered individuals residing in that apartment building. While standing in line waiting for the next available clerk, Ms. Loboichenko observed that the advertised price of UAH 220 was actually granted to the individuals who were registered permanent residents.

The above actions are openly discriminatory by nature. The owner (co-owner) of the apartment and the person who is registered there as a permanent resident have equal rights for installation of a telephone land line and have no privileges or advantages as compared to each other in this respect. We also want to bring the Committee's attention to the fact that Ukrtelecom Company was the only institution that provided telecommunications services during Soviet times and now remains the unquestionable leader on the telecommunications market. For this company, the practice of infringing the rights of housing owners to the advantage of individuals that are registered as permanent residents is common and widespread in all regions and in all relations. ***Thus, acts of discrimination of housing owners and restriction of their rights to the advantage of individuals registered as permanent residents constitute substantial violation of Ukrainian law and Ukraine's international obligations, including those under Article 26 of the Covenant.***

4. We would like to bring to the Committee's attention the fact that in practice, there are cases when the fact of a child living with one of the parents is regarded as grounds for restricting this parent's **right to free choice of the place of residence**. Olga V. Shipilo turned to International Legal Council *Legiteam* seeking protection of her rights. She had divorced the father of her



child. When the divorce was granted, it was decided that the child would be living with his mother, Olga Shipilo.

Some time later, Ms. Shipilo decided to change the place of her residence. To do so, she sought services of a real estate agency. After the search, the agents managed to find an option that met Ms. Shipilo's financial ability as she was raising her small child on her own. Under Article 657 of the Civil Code of Ukraine, real estate deals are to be certified by the notary, so Ms. Shipilo turned to the notary private to certify her sale and purchase contract. She also showed him the permission from the Custody Council to make this deal (as required by paragraph 2, Article 177 of the Family Code of Ukraine). The notary refused to certify the contract on the grounds that if Ms. Shipilo moved to the new apartment the child's place of residence was going to change. And under Article 160 of the Family Code of Ukraine, the place of residence of a child of under ten years of age is determined with both of his/her parents' consent. The child's father, Sergiy O. Shipilo, refused to give his consent for the change of his child's place of residence. Like that, he made it impossible for Olga Shipilo to enjoy her right to free choice of the place of residence.

Ukrainian legislation does not seem to have a unified approach to this issue. Under Paragraph 1, Article 160 of the Family Code of Ukraine, the place of residence of the child of under ten years of age is determined with his/her parents' consent. Literal interpretation of this provision, as we see, leads to the restriction of the right to free choice of the place of residence. On the other hand, the Civil Code of Ukraine explicitly states that the place of residence of an individual of under ten years of age is his parents' (foster parents') place of residence, or the place of residence of the parent (foster parent) he/she lives with, or the educational or health care institution he/she lives at.

This issue needs to be clarified by the Supreme Court of Ukraine. Such clarification will allow preventing human rights violations under Article 12 of the Covenant. The Supreme Court of Ukraine is to draw the courts' attention to the fact that **a child's living with one of the parents should by no means be regarded as a ground restraining the latter's rights, in particular, the right to free choice of the place of residence.** Such interpretation of this provision



is in full conformity with international standards of human rights. Current practices, however, are such that after the parents' divorce the child most often stays and lives with his/her mother, and a different interpretation would result in the violation of women's rights.

Here, to avoid violation of the other parent's rights, the parent that has custody over the child should timely inform the other parent of changes of the child's place of residence in order for the father (or mother) not to be restricted in his/her rights to see the child and to participate in the child's upbringing and support.

**5.** Judges' formalistic approach to the division of parents' duties of child support after the divorce is an extremely widespread problem for Ukraine. This can, to some extent, be explained with the fact that legislation leaves loopholes for such formalistic approach.

Here we would like to cite one real situation as an example. At the same time, we would like to point out for the Committee that the described case is no exception and is typical for the overall approach of judges to these and suchlike issues.

Olena I. Moiseenko has turned to International Legal Council *Legiteam* for counsel. She said she was married to Volodymyr V. Nosach for 11 years. They had three common children. When the divorce was granted, Ms. Moiseenko did not bring up alimony-related issues because, as she said, she and her husband reached an agreement as to the amount and terms of child support payments. The total monthly amount of child support payments for three children was to make UAH 1,200 (twelve hundred). Ms. Moiseenko was happy with the agreed amount. The child support was paid regularly for a year. Besides, the defendant promised to buy things and medications the children needed. However, a year later, the children's father has substantially decreased the amount of the child support payments. In the course of the whole year, he paid only UAH 725 in wire transfers.



**INTERNATIONAL LEGAL COUNCIL  
LEGITEAM**

Olena Moiseenko filed a lawsuit with the court asking the court to make Volodymyr Nosach pay monthly support of three underage children in the amount of UAH 1,200 and to partly carry accidental expenses related to the support of three underage children.

The oldest child, 12, often gets sick, as his medical record shows. The medical records of the younger children show they are being treated for insulin diabetes and are registered as disabled children. Ms. Moiseenko is not able to work outside home because her children require constant care. Besides, before her children were diagnosed with insulin diabetes and recognized to be in need of constant care, Olena Moiseenko tried to get a job. She got registered at the Unemployment Center, but could not find work as each time employers learned she had three children, they found formal pretexts to refuse her. She cannot prove she was getting refused because of her three children and has no idea how this could be done. During the last year, the support from the children's father made about UAH 140-150 a month, an amount insufficient even to buy food for the children, to say nothing of the medication, clothes, vacation, toys etc.

According to Ms. Moiseenko, Volodymyr Nosach, did not see his children, had a new spouse, but did not have other children. The children were undergoing a lot of mental suffering; they were asking about their dad and wanted him to come see them.

Having heard the case on the financial support for three underage children, the court saw that the children's father earned the minimal salary and his income amounted to UAH 290 as the record provided to the court showed. Under such conditions, Volodymyr V. Nosach could not pay more than a total of UAH 145 per month for three children, the amount that conforms to Ukrainian legislation. The court came to the conclusion that the financial support for three children should not exceed the total of UAH 145 a month.

The court disregarded the fact that Mr. Nosach held the position of the executive director of a limited liability company. He has not changed either his position or his workplace in 9 years, yet in the last year, his income decreased



drastically; a widespread practice for Ukrainians to conceal their real incomes to dodge taxes as a rule.

Ukrainian courts do not take into account that, for objective reasons in such situation, a mother of three children cannot get a job, while the father of the children is healthy and able to work, with a degree in the field that is now in demand at the labor market and with long professional experience as an executive officer.

The society is fostering stereotypes of male and female roles in supporting and raising common children, according to which all the responsibility for raising children rests on their mother, while the father can reduce his role to formal participation in their support. Here is the result: the father of three underage children uses a formalistic approach to the interpretation of Ukrainian family law provisions and participates in their lives by merely paying UAH 140 a month. Thus, he forgets he carries the same responsibility as the children's mother for their support and upbringing. The society, however, believes the sole reason for the wide spread of such situation is a so-called natural order of things. The society tends to condemn mothers who do not participate in their children's support and upbringing leaving them with their fathers a lot more than fathers who act likewise.

**This situation can be corrected by using international human rights standards, in particular, the International Covenant on Civil and Political Rights, in Ukrainian court practice.**

Thus, the provisions of Ukrainian domestic legislation stipulate the amount to be paid for child support. A formalistic approach to their implementation leads to discrimination of women as usually, the husband pays a specific rather small amount of money that is by no way sufficient to support a child, yet is in compliance with the provisions of Ukrainian domestic legislation. The woman who, by her status, is fully in charge of raising a child cannot take her responsibilities formally despite the amount of her income and available finances. An application of international treaty provisions allows avoiding such situations. The use of these provisions by courts would allow to implement the principle of actual equality versus the principle of the formal one, with all the



circumstances taken into account, and to establish equal duties for the child support for both parents. **In this respect, we are calling the Committee to draw the attention of Ukraine to the necessity of implementing international standards of human rights into Ukrainian court practices.**

6. Another problem is the lack of due diligence on the part of the bodies charged with enforcement of court decisions as to child support payments to be made by debtors timely and in full. LEGITEAM has handled cases when child support payments were more than five year overdue. Such situation is unacceptable and it continues to grow worse because **Ukrainian legislation does not have efficient mechanisms in place to influence the bailiffs.** They face no negative consequences except for the rulings recognizing their unlawful actions. We are calling the Committee to draw Ukraine's attention to this problem and to urge it to incorporate effective mechanisms for holding bailiffs liable for lack of due diligence in the line of duty.

7. We would like to draw the Committee's attention to the violation of Article 27 of the Covenant stating that ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Kharkiv Center for Women's Studies has turned to LEGITEAM for legal assistance. This organization was not allowed to place its social advertisement posters at Kharkiv subway stations because the advertisements were made in Russian. The refusal was made on the grounds of Article 6 of the Advertisement Act of July 3, 1996, #270/96-BP, providing that the choice of the language for advertisements is to be governed by Ukrainian legislation on languages and regulations, while recognizing Ukrainian as the state language of Ukraine.

The officials of Kharkiv subway did not take into account that under Article 9 of the Constitution of Ukraine, international treaties recognized as binding by



the Verkhovna Rada of Ukraine make part of Ukraine's national legislation. The European Charter for Regional or Minority Languages ratified by Ukraine on May 15, 2003, #802-IV recognizes Russian as the language, which the provisions of this international law instrument are applicable to. Kharkiv subway is located in the area with predominance of the minority language (Russian, in this case), yet its administration failed to take into account the principle of prevalence of international law instruments ratified by Ukraine over the national legislation.

The cases of violations of language rights in respect to language minorities are quite widespread in Ukraine.

**8.** Domestic violence against women is reportedly a serious problem in Ukraine that is present at all levels of the society. However, the government of Ukraine takes measures to prevent the spread of domestic violence. A workgroup of legal experts led by KCWS in cooperation with members of the Verkhovna Rada of Ukraine developed the Prevention of Domestic Violence Act that was adopted by the Verkhovna Rada of Ukraine on November 15, 2001. Thus, Ukraine went the furthest of all the NIS countries in its attempts to protect its people from domestic violence.

The adoption and coming into effect of the Prevention of Domestic Violence Act is the first step on the way of addressing this problem efficiently that leads to greater protection against family-based violence for women in Ukraine. During four years after adoption of the Act, the government of Ukraine developed the secondary pieces of relevant legislation necessary for application of this Act in daily practice.

Chapter I of the Prevention of Domestic Violence Act contains General Provisions, which describe definitions used in the Act (domestic violence, physical domestic violence, sexual domestic violence, psychological domestic violence, economic domestic violence, victim of domestic violence, prevention of domestic violence, clear and present danger of domestic violence, restraining order, victimized behavior regarding domestic violence etc.).



Chapter I also designates bodies and structures responsible for taking steps to prevent domestic violence, namely:

- a specifically designated and authorized body of executive power on prevention of domestic violence;
- a department of local police and juvenile criminal police;
- bodies of custody;
- specialized institutions for victims of domestic violence;
- crisis centers for victims of domestic violence and members of families with clear and present danger of domestic violence (crisis centers);
- centers of medical and social rehabilitation for victims of domestic violence.

Chapter I contains grounds for actions to prevent domestic violence, namely:

- an application of aid filed by a victim of domestic violence or a member of a family where a clear danger of domestic violence is present in his/her regard;
- a clearly expressed desire of a victim of domestic violence or a member of a family where a clear danger of domestic violence is present in his/her regard to have domestic violence prevented, if the application was filed not him/her personally;
- information about incidents of domestic violence or about clear and present danger of domestic violence in regard of a minor or an incapable member of the family.

Chapter II is titled Bodies and Structures Designated to Prevent Domestic Violence. It describes powers and the order of formation and activity of such bodies and structures in detail. It also provides integrated activities of both state bodies and non-governmental organizations (NGOs) with the purpose of preventing negative domestic phenomena that lead to incidents of violence.

Chapter III defines Special Measures of Prevention of Domestic Violence. They include:

- an official warning of unacceptability of domestic violence;



- an official warning of unacceptability of victimized behavior regarding domestic violence;
- preventive reporting of family members guilty of committing acts of domestic violence;
- restraint orders.

Restraint orders make a principally new legal standard in Ukraine. They can be applied to legal persons, 16 years old and above at the moment of issuing such orders and have a limit of 30 days.

A preventive order may preclude the person it is issued to from committing certain action (actions) regarding the victim of domestic violence, namely:

- to commit specific acts of domestic violence;
- to obtain information on whereabouts of victims of domestic violence;
- to search for the victim of domestic violence if the said victim of domestic violence stays at the place unknown to the perpetrator of domestic violence at his/her own will;
- to visit the victim of domestic violence if he/she temporarily stays away from the joint family residence;
- to have telephone conversations with the victim of domestic violence.

Chapter IV provides Legal Responsibilities for Perpetuating Domestic Violence.

Chapter V is focused upon Financing of Bodies and Structures Designated to Prevent Domestic Violence.

Chapter VI contains provisions on Protection of Rights of Household Members in the Course of Actions Aimed to Prevent Domestic Violence.

Chapter VII contains Conclusive Provisions that rule enforcement of this Act.

Overall, it was expected that the Prevention of Domestic Violence Act would become an efficient tool in combating this social phenomenon in Ukraine as courts of law, law enforcement bodies, and public officials, particularly at the local level, were strongly encouraged to apply to it in their daily activities. However, there is the risk of responsible bodies' formal attitudes. With the mechanism of prevention and elimination of domestic violence, the state



**INTERNATIONAL LEGAL COUNCIL  
LEGITEAM**

receives an excuse to interfere with personal and family lives, privacy of which is granted by Article 32 of the Constitution of Ukraine. For this reason, international and domestic bodies should consider possible means to overcome the gap between the responsibility of the state to protect women from domestic violence and the threat of the state's groundless interference with private lives. One of such safeguards is provided in the Prevention of Domestic Violence Act itself. According to it, the process of investigation of incidents of domestic violence may be initiated only upon the application of the victim herself/himself. However, there are numerous occasions when official bodies charged with combating domestic violence treat its incidents in a formal, negligent way. That brings forth another crucial task of developing objective criteria of disclosure and proper objective identification of facts of domestic violence as at present, decisions in cases of domestic violence are, as a rule, subjective and are based solely on complaints and testimonies of case parties who are usually members of the same family and are unable to remain impartial. As for the law enforcement bodies, they continue to remain extremely reluctant to deal with this phenomenon and recognize the fact of presence of domestic violence in the majority of cases only because of the pressure to fulfill the state's obligations on combating domestic violence.

The fact that domestic violence is a problem that exists in the private realm considerably complicates implementation of provisions of the Prevention of Domestic Violence Act. A number of factors were identified as such that currently prevent women and girls in Ukraine from lodging complaints of incidents domestic violence, among them being negative social stereotypes regarding the subordinate status of women in family relationships and lack of specially trained law enforcement personnel and members of the judiciary. These two groups frequently mirror prevailing social stereotypes concerning domestic violence in their attitudes and, as a result, often actively discourage women and girls from pressing official charges against perpetrators of violence. Law enforcement officers and criminal justice professionals do not consider domestic violence to be a serious crime, rather a misdemeanor. This is one of the reasons why most women who file complaints against their husbands or



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

domestic partners are advised by police, psychologists and even by their counsel to “kiss and make up”. Some prosecutors were known to refuse to pursue prosecution even when women victims were severely injured. Those who suffered light injuries or were abused emotionally or economically can not prosecute their cases because of the lack of proper assistance of responsible social institutions. We are calling the Committee to urge the government of Ukraine to address this problem and to develop positive measures that would enable women of Ukraine to receive full and unrestricted protection of their right to freedom from violence including domestic violence.

Women in Ukraine usually do not speak publicly about domestic beatings. Police officers, in their turn, are reluctant about responding to domestic battering calls, rarely remove the perpetrator, and do almost nothing to protect women victims’ rights. On average, 30-40% of calls to police departments are related to domestic violence; of them, 60% come from women who are being beaten, and 40% are from neighbors complaining about the abuse they chanced to witness. Doctors, who routinely treat battered women, reveal that 1/3 to 1/2 of injured women who come to trauma wards report that members of their family beat them. The most frequent injuries women suffer during domestic assaults are concussions, abdominal injuries and broken limbs<sup>6</sup>.

Women wishing to press charges of domestic violence frequently come under pressure from lawyers and the police to reconcile with their husbands or partners. Some prosecutors refused to take up cases of domestic violence even in situations where women suffered serious injuries.

Thus, fulfilling of standards of due diligence by the state has to include development and introduction of clear definitions of the permissible degree of the state’s interference with the individuals’ private lives in cases of reported or alleged domestic violence and measures aimed at overcoming negative stereotypes regarding women’s status and domestic violence among the law enforcement bodies in particular, and among the public at whole.

---

<sup>6</sup> O. M. Rudnyeva, G. O. Khrystova, *CEDAW Implementation in Ukraine: State vs. Civil Society* (collection of articles and documents). 2<sup>nd</sup> Amended Edition. *Spaik*, Kharkiv, 2004. 276 p.



We are calling the UN Committee on Human Rights to focus attention of Ukraine on the problem described above. We believe that in order to duly comply with its international obligations on prevention of domestic violence, Ukraine needs to pass an expository statute that would provide clarifications for the major problems experienced by the police and other agencies in their practical activities on prevention of domestic violence and/or prosecution for its commitment. In particular, **such statute will have to address the following:**

- a) unlawful actions of the authorized bodies in cases when they recognize as domestic violence and use domestic violence preventive measures only in respect to those actions that do not entail criminal, administrative or civil liability. This is not correct, as in any case, both the actions that do not entail juridical liability and administrative or criminal offences constitute acts of family violence if committed by one family member in respect to another family member. Domestic violence preventive measures are to be used in every case;
- b) unlawful actions of the authorized bodies that regard complaints of family violence as complains of committed offences, although very often domestic violence is not a crime. As a result, the authorized bodies do not use necessary measures to prevent and stop domestic violence, and victims receive written refusals to institute criminal proceedings on the grounds of absence of the corpus delicti. Such actions are substantially breaching Ukrainian laws on prevention of domestic violence.

Here, we would like to draw special attention of the UN Committee on Human Rights to the fact that one of the major practical problems is **the absence of the officially adopted methodology of the psychological domestic violence detection**. Certain NGOs that have been involved with the problem for a long time have developed such methodologies, however. We are familiar with the results of the work done by Kharkiv Center for Women's Studies. The government can use these findings and build on the instructions for detection of psychological violence to be used by the authorized bodies in charge of prevention of the domestic violence.



**Besides, Ukraine must eliminate discrepancies in its legislative regulation of preventing and overcoming domestic violence in the shortest possible time** (i.e., to specify in the form of a law the time period, for which official warnings on inadmissibility of domestic violence as well as official warnings on inadmissibility of victimized behavior in regard to domestic violence are made as the possibility to deliver a restraint order is conditioned by these two warnings etc.).

9. On December 21, 2005, LEGITEAM delivered **an official presentation of Guidance Commentaries** to one of the core UN treaties, **Convention on Elimination of All Forms of Discrimination against Women**<sup>7</sup>. These Commentaries were developed specifically by LEGITEAM in close cooperation with the leading international experts in human rights, CEDAW and the UN system for Ukrainian judges' use. This presentation took place in the Plenary Hall of the Supreme Court of Ukraine (The Hallowed Hall where the historical court decision on reversing the results of the 2<sup>nd</sup> round of elections of the president of Ukraine was adopted in December 2004) under the presidency of the Acting Head of the Supreme Court, Judge Petro Pylypchuk. For the first time, access to this hall was granted to international legal experts attending the presentation, which was the ultimate acknowledgment of the work done by LEGITEAM. The Supreme Court Judges and judges of the Court of Appeal, recognized lawyers, and the Head of the Constitutional Court of Ukraine officially declared the need for continuance of the work pioneered by LEGITEAM with the ultimate goal of strengthening international standards in protecting women's human rights in Ukraine in courts of law. Also, Judge Pylypchuk proposed to establish official cooperation between the Supreme Court of Ukraine, the Council of Judges of Ukraine and LEGITEAM in preparing the Special Statement of the Council of the Supreme Court of Ukraine *On Application of International Human Rights Treaties in Court Practices of Ukraine*. Such recognition of the quality of the work done mainly by young

---

<sup>7</sup> See attached *Presentation of Guidance Commentaries to Convention on Elimination of All Forms of Discrimination against Women Delivered* (Informational server of the Supreme Court of Ukraine, December 27, 2005 [online [www.scourt.gov.ua](http://www.scourt.gov.ua)]).



lawyers accentuates the importance of this new initiative and its potential not for Ukraine only, but for the other countries in the region as well.

**10.** In October and November 2003, women imprisoned at Kachanovsk Penitentiary for First-time Convicts # 54 (Kharkiv region) were surveyed by Kharkiv Centre for Women's Studies and LEGITEAM as to what factors they believed were not taken into account at the preliminary investigation and court hearings of their cases.

The survey was done in three stages. At the first stage, a special questionnaire was developed; at the second stage, the experts studied personal records and other related documents as well as data of the initial psychological diagnostics of 817 convicts and selected 200 individuals who committed crimes against life and health. At the third stage, all the members of the select respondent group filled in the questionnaire with the use of protective technologies.

The survey allowed to identify a number of substantial violations of the rights of the accused, defendants and convicts; in particular, violations of various paragraphs of articles 2, 7, 9, 10 and 14 of the Covenant. It also allowed to make a number of comments and recommendations as to the improvement of the administration of criminal justice in respect to ensuring and protecting rights of convicted women. We would like to draw the Committee's attention to following problems and ways to settle them:

1. Criminal conduct of women is a result of interaction of internal and external factors where internal factors include personal qualities and characteristics determined by the prior influence of the social environment and biological characteristics. External factors that produce criminal conduct in women are situations of internal aggression, rough relationships, domestic violence, emergence of the "beaten wife syndrome" and the "developed helplessness syndrome" in women, both formed in the course of lengthy periods as a result of indifference on behalf of the society, law enforcement, judges and family members. Domestic violence as a concept is widely ignored at



trials and when assigning punishment, as ideas of what can be regarded as acceptable in marriage varies substantially depending on social and cultural factors. That is why inviting psychologists and psychiatrists to attend the trials would ensure a more complete and comprehensive assessment of the case in court as they can not only evaluate the woman's mental state at the time of committing a crime (e.g., a murder), but also clarify what factors are important for the formation of violent and aggressive conduct of women.

2. When assigning punishment, courts pay little attention to whether women have underage children. Mothers cannot provide as much parental care to their children in correctional institutions as when they are free; they cannot create physical, psychological and emotional stereotypes in their children's mentality that would later support social and economic realms of the country.

That is why alternative penalties are to be wider used for women with children. The examples of alternative penalties for women could be as follows: surety (in a disguised, covered way is in place in the Criminal Code in the form of suspended sentences for women with small children), probation, nighttime restrictions, founding hospitals etc. Alternative penalties are also appropriate for women who do not have children or families. Lengthy imprisonment terms (of over 3 years) decrease their social activity; weaken family ties, leads to unwillingness to form a family.

The same recommendation works for male offenders, as prisons distort both women's and men's social and gender roles. Prison is an institution that desexualizes its subjects. At present, when gender priorities are determinant for cultures, the existing type of correctional system as it is lacks adequacy and is in fact, dangerous.

3. Two important social and legal concepts are ignored when assigning and serving punishment: *parenthood* and *housekeeping*. The still used notions, *motherhood* and *family*, do not reflect the whole complex of social and cultural artifacts of the present time. That is why it is important that a completely new welfare infrastructure is created for



INTERNATIONAL LEGAL COUNCIL  
LEGITEAM

convicted women. Until now, women in Ukrainian prisons feel themselves to be accidental victims; thus, they believe the society has to support them as they were suffering for the rest of the society. That is why social rehabilitation programs have to operate first and foremost, with shaping skills of self-reliance and socially and generally useful activity and suppress any manifestations of dependant behavior on the part of convicts. To decrease the shock effect experienced by all released convicts, it is also critically important that social work with women starts long before their release from correctional institutions.

The efforts to get rid of the symptoms of dependant behavior should not be aimed at convicts only but at their relatives, close environment, institutions and companies, which provide jobs for ex-convicts, as well. Without doubt, the widespread ideas of the dependency inclinations of the “poor” or “petty offenders” that exist in the society are close to reality, but to a large extent, they are brought to life by social policies. That is why social work with convicted women should not be about correcting them or providing them with financial support, but it must be about teaching them to lawfully, within the framework of the law exercise their consumer potential and form their goals in conformity with their long-term prospects.

4. "Barrack-type" of sentence serving practiced in Ukrainian correctionals for economical purposes has formed a specific prison subculture that has no analogues in world penitential practices. Barrack sentence serving for convicted women in the conditions of male-dominated culture leads to formation of gender ghettos with all inherent discrimination and violence. This is why attitudes of lawyers, psychologists and sociologists towards women's criminality are particularly traditional, patriarchal, stereotypical, and most attempts to settle the problem of women's criminality are limited to means of reviving traditional family ties.

Barrack sentence serving needs to be substituted by serving sentences in smaller groups that allow to provide each convict with serious personality-



oriented help from psychologists and institution social workers with the ultimate purpose of formation of the feeling of independence and healthy individualism with women in correctional institutions.

5. To introduce new social policies into practice, it is necessary to hold a whole range of educational trainings, workshops and consultations for court, social service and correctional institutions personnel. At present, it is very important for administration of correctional institutions to interact with convicted women and for the society to interact with ex-convicts, because a most human and well-considered law is helpless when convicts and the society are separated by hostility and discrimination. Creation of rehabilitation sections at correctional institutions alone, unfortunately, cannot solve the problem.
6. To effectively restructure penitential system and to bring down repeated offending in women, the changes in social and family policies are to be accompanied by extension of the labor market for women. If made easier, accessible well-paid and prestigious jobs for women can allow to stop marginalization and asocialization in women even after committing an offence and serving a conviction. In such a way, we can bring down the number of repeated offences in women's criminality. The extension of the labor market for women can move along several guidelines:
  - a) in the long-term prospective, it is necessary to increase motivation of convicted women to receive secondary professional and higher education. Correctional institutions should be able to meet these needs of the convicts;
  - b) development of a system of benefits (tax breaks, loans) for entrepreneurs providing jobs for ex-convicts;
  - c) encouragement and support of economic flexibility of women released from imprisonment and provision of them with jobs and places to stay.



**INTERNATIONAL LEGAL COUNCIL  
LEGITEAM**

7. To review the existing strategies of the social and family policies. At present, both scholars and practical social workers see clear indicators of the crisis in family values and traditions. Critical tendencies demonstrate that the society acutely needs to legalize various types of housekeeping to balance old-style principles of social policies, strengthening old family values and traditions. Nowadays, a nuclear family is not the only possible, economically and politically correct family format. Quality increase in activities of women, shift in stereotypes of raising boys and girls, development of advanced technologies in almost all spheres of employment result in internal corrosion of the nuclear family. These are the tendencies that determine the development of modern family policies. Transformation of the family policies will allow single women and single mothers to acquire a more stable social status, which, in its own turn, will decrease the risks of repeated offending in women.