2,975 petitions to the Commissioner (including the ones regarding violations during criminal proceedings — 82%, in civil and administrative proceedings — 12%).

326 legal and normative acts processed and proposals submitted

210 proceedings instituted by the Commissioner

210 proceedings completed

67 court session monitoring activities in order to observe rights of litigants

28 entries of information into the URPTI following the inspections initiated by the Commissioner and the measures taken

2,228 acts of response and letters to the public authorities, institutions and organisations sent

Key events, challenges and tendencies

The key problems of access to justice in 2022 were failure to respect a reasonable time for judicial hearing of cases, violation of procedural rights during the pre-trial investigation, inadequate enforcement of court decisions and decisions of other authorities (officials), limitation of access to court decisions.

The ECHR has repeatedly stated that there are issues associated with everyone's guaranteed right to a fair trial. As of the end of 2022, 10,400 applications against Ukraine were considered by the ECHR. In total, in 2022, the ECHR delivered 144 judgements in the cases against Ukraine, 21 of which stated violation of Article 6 of the Convention (right to a fair trial).

Also, in the Concluding observations of the UN Human Rights Committee on the eighth periodic report of Ukraine on the implementation of the International Covenant on Civil and Political Rights of 09.02.2022, the Committee expressed its concerns regarding everyone's guaranteed right to a fair and public trial by a competent, independent and impartial court. In particular, it was connected with the lack of measures to fully ensure the independence of judges and prosecutors; the lack of transparency in the procedure for the appointment and dismissal of prosecutors; the challenges faced during the qualification assessment of judges; the insufficient number of judges in the State party, which had resulted in delays and lack of access to justice for a significant number of citizens. The Committee was also concerned about reports of persons, including children, being held in pretrial detention for long periods, contrary to the Covenant.

Another problem in the national legal system is **impossibility to ensure a fair trial as there is no competent High Council of Justice (HCJ).** Therefore, lack of adequate human resources in the judicial system affects adherence to the procedural time limits in consideration of civil and administrative cases. Moreover, the matter of efficient justice also depends on whether the persons administering justice can be

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held liable.

The resolution of the HCJ of 05.08.2021 suspended distribution of complaints against the judge's disciplinary offence (disciplinary complaints) submitted in accordance with the Law of Ukraine "On the Judiciary and the Status of Judges" among the HCJ members.

Since the judiciary is independent and cannot be controlled by any other national public authorities except for the HCJ, inactivity of the latter results in legal impunity of judges when they consider cases.

Resolution of this issue depends to a considerable extent on operation of the specialised authority responsible for selection of staff for the judicial system and disciplinary proceedings against judges, the HCJ, activities of which will enable observing the citizens' right to a fair and public trial within a reasonable time.

At attempt to resolve the issue of excessive duration of civil, economic and administrative proceedings was the draft law submitted by the Cabinet of Ministers of Ukraine to the Parliament "On Amending Certain Legislative Acts as to Resolution of the Issue of Excessive Duration of Civil, Economic and Administrative Proceedings" (registration No. 8083). However, there are no efficient mechanisms for observing the right to a trial within a reasonable time.

Moreover, the problem of **insufficient funding of the judiciary and understaffing of courts with judges** remained unresolved in 2022.

The powers of all the members of the HQCJ Ukraine were terminated early by Law of Ukraine No. 193-IX of 16.10.2019 "On Amending the Law of Ukraine 'On the Judiciary and Status of Judges' and Some Laws of Ukraine on Operations of the Judicial Governance Bodies". As a result, all the competitions that had been announced and had not been completed by the HQCJ Ukraine were actually suspended for an indefinite period of time. There has been no selection of judges and filling of vacancies since November 2019 due to no qualified composition of the HQCJ Ukraine. Law of Ukraine No. 1629-IX of 13.07.2021 "On Amending the Law of Ukraine 'On the Judiciary and Status of Judges' and Some Laws of Ukraine on Resumption of Operations of the High Qualification Commission of Judges", which provided for resumption of operations of the HQCJ Ukraine by establishing the Competition Commission with international experts for the competition for the position of a member of the HQCJ Ukraine, entered into force on 05.08.2021.

The HCJ appointed the first composition of the Competition Commission, which was supposed to select members of the HQCJ Ukraine, on 17.09.2021. The Competition Commission started its official activities only at the beginning of 2022. However, on 24.02.2022, the Chairperson of the Competition Commission informed of temporary suspension of the Commission's operations due to the imposition of martial law in Ukraine. The Competition Commission responsible for selecting candidates for positions of members of the HQCJ Ukraine held its first official meeting after the full-scale invasion of Ukraine by Russian on 13.07.2022 and started the competitive selection procedure. Formation of the HQCJ Ukraine had not been completed as of the end of 2022.

It should be noted that the judiciary has had shortage of the judges authorised to administer justice for the last several years. Therefore, there is an excessive work load in the courts, which results in violation of a reasonable time for hearing.

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Moreover, in 2022, the entire judiciary faced the problem of adequate financial support of judicial proceedings. Thus, the courts often informed that they could not send summons, notices and other information from court, including procedural documents, by mail because those mailing expenditures were not sufficiently funded; due to the full-scale military invasion by the Russian Federation on 24 February 2022, a considerable portion of the court premises has been destroyed or damaged, and the level of payroll for the court staff is inadequate.

It should be noted that as of the end of 2022 the number of persons whose powers as a judge were terminated in connection with expiration of the 5-year period of their office and whose qualification assessment had not been completed was 290, including 4 persons who had not taken the judge's oath and had not been enlisted to court. However, such persons retained their status of a judge, so they received the monthly judicial remuneration from the State Budget in the amount of the fixed salary as prescribed by the Law of Ukraine "On the Judiciary and Status of Judges" in 2022. In particular, the total amount of the judicial remuneration accrued and paid in 2022 to the judges whose powers had been terminated in connection with expiration of the 5-year period was UAH 309.6 million, including UAH 272.7 million in local general courts, UAH 21.3 million in local administrative courts, and UAH 15.6 million in local economic courts.

In 2022, the new problems **caused by the martial law** were added to the issues of human resources in the local courts and no mechanism for disciplinary liability of judges, which had not been resolved by restoring the constitutional functions of the HCJ and its bodies.

After the full-scale military invasion of Ukraine by the RF, the Ukrainian judiciary faced lots of organisational, material, technical and procedural issues, which need to be resolved as promptly as possible for adequate administration of justice in courts of any jurisdiction.

As a result of the hostilities by the Russian Federation, 12 court premises have been ruined (2 premises have been partly ruined), and 97 court premises have been partly damaged: broken windows, no electric power, heating and water supply in some of them, damaged ceiling, internal doors, destroyed internal partitions between offices, damaged court rooms etc. The windows were broken or damaged in some buildings of the local courts at the beginning of hostilities, and then the buildings suffered additional damage. The largest number of damaged/ruined court premises is located in Kharkiv (20 premises), Mykolaiv (18 premises), Donetsk (15 premises) and Kherson (14 premises) Oblasts.

However, within a month following the liberation of the territories temporarily occupied by the Russian Federation in Kyiv, Zhytomyr, Chernihiv and Sumy Oblasts, almost all the courts in those oblasts the premises of which had been damaged resumed their operations. Nevertheless, Borodianka District Court of Kyiv Oblast the building of which was destroyed by the bombing has been working in the new leased premises since May 2022.

Imposition of the martial law has caused **changes in the jurisdiction of the courts** located in the temporarily occupied territories, in the territories where there are active hostilities or adjacent territories.

The Verkhovna Rada of Ukraine has amended certain legislative acts and transferred some of the powers of the inactive HCJ to the President of the Supreme Court. The territorial jurisdiction of court cases of 80 courts was changed by the order of the President of the Supreme Court during the year due to their inability to administer justice in the temporarily occupied territories of Ukraine as well as in the damaged

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or fully destroyed courts. As a result, the cases were resubmitted for automated distribution in the courts to which they had been transferred, and the hearing was recommenced. It affected observance of the right to a trial within a reasonable time, as guaranteed by Article 6 of the UN Convention for the Protection of Human Rights and Fundamental Freedoms.

Moreover, it was established based on the petitions submitted to the Commissioner that when the territorial jurisdiction had been changed, and the cases had been transferred to the courts located in the territory without hostilities, citizens' rights to access to justice were sometimes violated as a result of neglect of their official duties by the staff of the corresponding courts.

Limitation of access to justice as a result of inadequate organisation of changes in the territorial jurisdiction of courts results from loss of judicial cases, inability to find case papers or some procedural documents.

The reason for the above-mentioned violations is lack of the legal and normative act that would regulate the procedure for transferring cases in case their territorial jurisdiction changes.

Moreover, Law of Ukraine No. 2455-IX of 27.07.2022 "On Amending Certain Laws of Ukraine regarding Activities of Private Enforcement Officers and Enforcement of Court Decisions, Decisions of Other Authorities (Officials) during the Martial Law" **introduced the moratorium on scheduled and unscheduled inspections of private enforcement officers** during the martial law.

Impossibility to inspect private enforcement officers and no mechanism for disciplinary liability of private enforcement officers have caused persistent violations of the rules of professional ethics by private enforcement officers and non-fulfilment or improper fulfilment of their duties.

The martial law has also affected **access to court decisions.** According to Article 2(2) of the Law of Ukraine "On Access to Court Decisions", all court decisions are open and shall be made public in electronic form at least the next day after they are produced and signed, except for rulings on attachment of property and temporary access to belongings and documents in criminal proceedings, which are to be published not earlier than on the day of submission thereof for enforcement. Limitation or adjournment of general access to electronic resources of the USRCD on any grounds other than the ones prescribed by the Laws of Ukraine "On Access to Court Decisions", "On State Secret" is not allowed.

However, the full general access to the USRCD as well as access to such services of the website as "Judiciary of Ukraine", "Progress of cases", "List of cases scheduled for hearing" with data on the day, time and venue of the hearing of the case were limited from 24 February to 20 June 2022. General access to court decisions in the USRCD still is sometimes limited.

Response to violations of human and civil rights

Procedural rights in civil and administrative proceedings

In 2022, 670 petitions were received. They contained 790 reports on violation of human rights in administrative and civil proceedings as well as at the stage of enforcement of court decisions.

Also, petitions were received during the year as regards the law enforcement officers exercising their

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powers in cases as to administrative offences, including 298 regarding procedural violations during the hearing, 153 regarding improper performance of their official duties and abuse of their rights by the law enforcement officers, and 77 regarding unlawful omission of the authorities and persons responsible for enforcement of court decisions and other decisions subject to enforcement.

As it has been started above, due to lack efficient mechanisms for observing the right to a trial within a reasonable time, the Commissioner's response is associated with this issue.

In September 2022, the Commissioner was approached by citizen S. regarding violation of a reasonable time for hearing of her case (more than two years) by the judge of Dzerzhynskyi District Court of Kharkiv. The petitioner emphasised that Dzerzhynskyi District Court of Kharkiv had been hearing the civil case based on her claim for revoking the dismissal order, reinstating her in her position, and collecting the average income for the forced absenteeism since 2020.

Following the inspection conducted by the Commissioner, on 03.12.2022, Dzerzhynskyi District Court of Kharkiv informed the Commissioner that no decision had been delivered in that case.

Therefore, citizen S. could not defend her rights in court for more than 2 years as a result of unreasonable delays in hearing.

Alongside with changes in the territorial jurisdiction, the Commissioner received 29 reports of violation of the citizens' rights to access to justice as a result of neglect of their official duties by the staff of the corresponding courts.

A number of the petitions submitted to the Commissioner were dedicated to assistance in adequate transfer of cases in order to enable access to justice.

In September 2022, the Commissioner was approached by citizen T. regarding the long-term hearing of the civil case by Polohy District Court of Zaporizhzhia Oblast; the proceedings in the case had been instituted based on her claim. In order to prevent violation of the petitioner's right to access to justice, the Commissioner instituted the proceedings in which the territorial jurisdiction of the petitioner's case was changed by the order of the President of the Supreme Court. The Commissioner sent the requests to Ordzhonikidze District Court of Zaporizhzhia Oblast and Solone District Court of Dnipropetrovsk Oblast in order to establish the fact of transfer of the case papers to those courts. In response, the courts informed that the care papers had not been received.

The Commissioner conducted a review of assistance in adequate transfer of cases in order to enable access to justice. In December 2022, the Commissioner applied to the SJA Ukraine to find out about legal regulation of the procedure for transferring court cases upon changes in the territorial jurisdiction of courts during the martial law.

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According to the SJA Ukraine, the first-instance and appellate courts were given recommendations for the cases of seizure of the settlement and/or court or an immediate threat thereof in Instruction of the President of the Supreme Court No. 6/0/9-22 of 13.03.2022. Cases are carried away provided that it is possible; it is applicable to the cases heard by the judges or at least the most important (high-profile) cases, materials of the criminal proceedings where a person has been placed into custody, proceedings regarding minors; proceedings regarding especially grave crimes; other cases consideration of which can be of material significance for the process participants. It there is no possibility, case papers must be kept in safe boxes at the court premises.

On the one hand, this information shows that there is a specific mechanism for preserving case papers, but it cannot be considered to be efficient in terms of practical implementation as it mostly contains abstract, judgement-based categories that are within the discretionary powers of the staff of the corresponding court.

At the same time, it is necessary to draft the legal and normative act on transfer of court cases from the courts located in the areas of hostilities whose territorial jurisdiction has been changed, which directly corresponds to prevention of violation of the right of access to justice under Article 6 of the Convention for the Protection of and Fundamental Freedoms.

Ensuring enforcement of court decisions is an integral element of the right to a fair trial since enforcement proceedings are the final stage of the litigation. In 2022, the Commissioner received 45 petitions regarding failure of the private enforcement officers to take the actions to enforce court decisions as prescribed by the Law of Ukraine “On Enforcement Proceedings”.

The Commissioner has contacted the MoJ several times in order to resolve the matter of liability of private enforcement officers under the specific petitions, but the factor that prevents any disciplinary actions against the persons is the moratorium on inspections of private enforcement officers that has been mentioned above.

In August 2022, the Commissioner received the complaints from citizen S. regarding the omission and unlawful actions by the private enforcement officer of the enforcement district in Poltava Oblast. In his complaints, the petitioner informs that the petitioner fully enforced the decision in accordance with the enforcement document (notary writ) within the enforcement proceedings: in particular, he paid the enforcement fee and the private enforcement officer’s fee, but the enforcement proceedings remained open.

Thus, in October 2022, the Commissioner received the complaint from citizen K. regarding the omission by the private enforcement officer in the enforcement district of Odesa Oblast, which constituted failure to complete the enforcement proceedings after the actual enforcement.

The Commissioner sent numerous letters to the MoJ based on the petitioners’ complaints and asked to conduct inspections and respond. However, the Ministry of Justice of Ukraine informed that, according to point 61(3) of Section IV “Final and Transitional provisions” of the Law of Ukraine “On the Authorities and Persons in Charge of Enforcement of Court Decisions and Decisions of Other Authorities”, scheduled and unscheduled inspections of private enforcement officers were not conducted during the martial law.

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Such inspections will be conducted by the Ministry of Justice of Ukraine after the martial law is terminated or cancelled, based on the written request of a party to the enforcement proceedings.

The above means that it is necessary to resume scheduled and unscheduled inspections that, according to point 61(3) of Section IV "Final and Transitional Provisions" of the Law of Ukraine "On the Authorities and Persons in Charge of Enforcement of Court Decisions and Decisions of Other Authorities" have been suspended for the period of martial law.

Therefore, in December 2022, the Commissioner sent the recommendation to the MoJ for the actions to be taken to amend the Law of Ukraine "On the Authorities and Persons in Charge of Enforcement of Court Decisions and Decisions of Other Authorities" by revoking point 61(3) of Section IV "Final and Transitional Provisions" of the Law in terms of cancellation of the moratorium on scheduled and unscheduled inspections of private enforcement officers.

In response to the recommendation, the Ministry of Justice of Ukraine explained that there was an alternative mechanism for influencing the private enforcement officer's activity during the martial law. In particular, according to point 61(4) of Section IV "Final and Transitional Provisions" of Law No. 1403-VIII, during the martial law imposed in accordance with the Law of Ukraine "On Legal Regime of Martial Law", the private enforcement officer's activity may be suspended for a month by the order of the Ministry of Justice of Ukraine based on the recommendation of the head of the structural subdivision of the MoJ in charge of implementation of the public policy for enforcement of decisions, upon approval of at least five members of the Disciplinary Commission, in case signs of gross violation (the gross nature of the violation is justified in the text of the order) of the legislative requirements for enforcement of decisions by the private enforcement officer during the performance of his or her official duties.

Also, according to the seventeenth indent of point 102 of Section III "Final and Transitional Provisions" of Law No. 1404-VIII, during the martial law a resolution or another procedural document (or a part thereof) that is issued by the private enforcement officer in enforcement proceedings and is inconsistent with the legislative requirements for enforcement of decisions may be revoked upon request of a party to the enforcement proceedings or a person whose rights have been violated, by the resolution of the head of the structural subdivision of the Ministry of Justice of Ukraine in charge of implementation of the public policy for enforcement of decisions or the acting head, except when there is information on the litigation initiated by the person who has filed the request, in connection with the dispute between the same parties on the same matter and grounds.

Moreover, during the martial law, a private enforcement officer shall have the right to resolve to revoke the resolution or another procedural document (or a part thereof) issued by him or her in the enforcement proceedings, upon request of a party to the enforcement proceedings or at his or her own initiative provided that there are objective grounds (the eighteenth indent of point 102 of Section XIII "Final and Transitional Provisions" of Law No. 1404-VIII).

It is prescribed by point 1 of Section V of the Procedure for Inspecting Operations of the State Enforcement Service, Private Enforcement Officers approved by Order of the MoJ No. 3284/5 of 22.10.2018, registered with the MoJ under No. 1195/32647 on 22.10.2018 that during the martial law the

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Ministry of Justice of Ukraine inspects compliance with the legislative requirements by a private enforcement officer as regards enforcement of decisions during the performance of his or her official duties based on the data in the automated enforcement proceedings system.

However, such mechanisms for inspecting operations of private enforcement officers during the martial law and enforcement of decisions cannot be considered to be sufficiently efficient and the ones that will result in use thereof and imposition of disciplinary penalties upon the enforcement officers who have violated the legislative requirements for enforcement proceedings. Suspension of the private enforcement officer's activity for a month does not entail any penalties to prevent recurrence of the violation.

The private enforcement officer's ability to revoke his or her own resolutions at his or her own discretion cannot be treated as an efficient mechanism since the he or she also becomes a decision-maker on his or her own actions directed at enforcement of the court decision.

The information that the MoJ checks the private enforcement officer' compliance with the legislative requirements for enforcement of decisions during the performance of his or her professional duties based on the data in the automated enforcement proceedings system is true, but the automated enforcement proceedings system is used in order to obtain information on the progress of the enforcement proceedings, which is confirmed by the reviews conducted by the Commissioner. The Ministry of Justice of Ukraine merely provided the information form the automated enforcement proceedings system on progress of enforcement proceedings, and although such information contained some data on failure to perform or improper performance of certain enforcement actions, it did not result in disciplinary penalties imposed upon private enforcement officers, which could prevent recurrence of the violation in the future.

Given the above, the alternative mechanism proposed by the MoJ contrary to the full-scale resumption of inspections of private enforcement officers cannot be considered efficient and the one preventing unlawful omission by private enforcement officer or urging them to perform their duties in good faith.

Procedural rights in criminal proceedings

In 2022, 1,545 oral and written petitions were considered on the matters of observance of rights in criminal proceedings. They contained reports on 3,628 violations, including violation of the right to judicial protection of human and civil rights and freedoms — 1,340; the right to efficient pre-trial investigation and a reasonable time thereof — 597 and illegal termination of criminal proceedings — 68; violation of rights by the law enforcement officers — 1,003; right to registration of statements of and reports on criminal offences with the URPTI — 153; right to a fair trial in criminal proceedings for a reasonable time — 114; right to adequate enforcement of court decisions — 19.

The Commissioner submitted 5 motions to the authorised bodies, sent requests and letters regarding inspections, official investigations and response measures based on the information on violation of procedural rights in criminal proceedings, namely the right to efficient pre-trial investigation, procedural actions and procedural decisions within a reasonable time, enforcement of the court decision in criminal proceedings.

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Following the consideration of the documents by the Commissioner's Secretariat, the procedural rights of more than 60 persons were resumed; in particular, the public prosecutors revoked 10 resolutions on termination of the criminal proceedings, delivered 13 other procedural decisions and took procedural actions in order to restore the right to efficient pre-trial investigation (to change the jurisdiction, to terminate the criminal proceedings, to change the prosecution group, to initiate suspension of the investigator from the office, to give written instruction); the investigators and public prosecutors entered data into the URPTI and instituted 23 criminal proceedings, provided copies of their procedural decisions to the applicants and enabled to examine papers of the criminal proceedings; violation of the procedural rights of the parties to criminal proceedings and work regulations by 22 officials was confirmed during the official reviews.

It was established within the proceedings instituted based on the petition of attorney Sh. on behalf of N. regarding omission by the police officers in form of failure to abide by the court decisions and return the property that was temporarily seized during the pre-trial investigation within the criminal proceedings that the property (funds) had been seized during the search on 15.04.2019 at the place of residence of N.

On 15.09.2020, the investigating judge ruled to revoke the property attachment.

Despite the requirements of Article 169(4) of the CrPCU regarding the need to return the temporarily seized property after the attachment is revoked as well as two other rulings of the investigating judge of 28.07.2021 and 17.06.2022, which obliged the investigator to return the seized funds, the omission of the investigators of the National Police of Ukraine in performance of the requirements of the criminal procedural law and enforcement of the court decisions lasted almost 2 years.

Owing to the persistent correspondence between the Commissioner's Secretariat and the pre-trial investigation bodies and the motion filed by the Commissioner to the Head of the National Police of Ukraine on 20.07.2022, the rights of N. were finally restored, the property was returned to the owner on 17.08.2022, and the disciplinary offences by 10 officials of the National Police of Ukraine of different levels were confirmed during the official investigation.

Owing to the response of the Commissioner's Secretariat to the petition of T. regarding violation of his constitutional rights and freedoms in connection with the long-lasting (for 15 years) pre-trial investigation during which the applicant had been subjected to remand in custody and had spent 4 years behind the bars, the Kyiv City Prosecutor's Office resolved to terminate the criminal proceedings due to lack of elements of the criminal offence in the act (based on paragraph 1(2) of Article 284 of the CrPCU).

Following consideration of the letter from the Commissioner's Secretariat of 02.11.2022 based on the petition of M. against Lviv District Prosecutor's Office regarding violation of the petitioner's rights to pre-trial investigation within a reasonable time (the pre-trial investigation lasted almost 8 years), on 10.11.2022 the investigator resolved to terminate the criminal proceedings due to lack of elements of the criminal offence in the act based on paragraph 1(2) of Article 284 of the CrPCU.

Lots of petitions (1,003) received in 2022 contained reports on arbitrary actions by the law enforcement

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officers who violated rights during detention, unlawful deprivation of liberty, cruel treatment, violation of the right to defence, detention in inadequate conditions, failure to inform relatives of detention or arrest, and disregard of legislative requirements.

It was established during the proceedings instituted in accordance with Article 17 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" based on the petitions against violation of the civil rights and freedoms by the officers of the SSU by requesting information, documents and interviews that M. had been detained at the work place 5 days before the start of the pre-trial investigation, namely 19.03.2022, within the criminal proceedings data on which were entered into the URPTI on 23.03.2022. The officers of the SSU failed to draw up procedural documents on detention of M. in accordance with the requirements of Article 208(5) of the CrPCU, and failed to notify the public prosecutor, relatives, body (institution) authorised by the law to grant free legal aid of the detention. The fractured rib was found during the medical examination of M.

Following the proceedings based on the petition of attorney H., the data were obtained that citizen H. had been detained by the officers of the SSU on 02.03.2022 at the place of residence, and he was held without any procedural documents and a change to contact and see the defender for more than 2 days.

Moreover, the location of two persons who communicated with the SSU still is unknown.

The UN Committee against Torture treats enforced disappearance as a form of torture. In its decision under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/54/D/456/2011, hereinafter referred to as the "Convention"), the UN Committee recalls that enforced disappearance entails multiple human rights violations and a failure by the State party concerned to comply with the obligations contained in the Convention, and constitutes in itself, in relation to the disappeared person, or in relation to the person's relatives, a form of torture contrary to the Convention.

Pursuant to the information confirmed during the proceedings instituted based on the petitions about violation of the civil rights and freedoms guaranteed by the Constitution of Ukraine, namely the right to respect for dignity, liberty and security, to professional legal aid, to inviolability of the home, as well as requirements of the CrPCU that prescribe rights of parties to criminal proceedings, the motion was sent to the Prosecutor General for response as prescribed by the law.

As a result, data under all the applications and reports on unlawful actions of law enforcement officers that have elements of criminal offences must be entered into the URPTI, and the investigation must be conducted.

The real challenge for the entire judiciary has been work during the war. All the areas of public relations have been adjusted. It has also affected administration of justice.

Right to access to court decisions

The Law of Ukraine "On Access to Court Decisions" does not contain such grounds for limiting access to

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the USRCD as cyber attack threats, prevention of threats for life and health of judges and litigants, and imposition of martial law or state of emergency all over Ukraine or in some areas.

In order to adhere to the principle of legal certainty of the legislation, the MoJ has been proposed to consider drafting the law to supplement Article 4(4) of the Law of Ukraine "On Access to Court Decisions" with the rule on possible limitation of the right to free use of the official web-portal of the judiciary of Ukraine for the period of martial law or state of emergency. In August 2022, the MoJ informed that the proposals would be considered in drafting of the laws aimed at improvement of judicial proceedings.

On 1 November 2022, the Cabinet of Ministers of Ukraine registered the draft law "On Amending Section XII 'Final and Transitional Provisions' of the Law of Ukraine 'On the Judiciary and Status of Judges' regarding Administration of Justice during Martial Law" (registration No. 8168) with the Verkhovna Rada of Ukraine. In particular, this draft law suggests that the SJA Ukraine may limit the right to free use of the official web-portal of the judiciary of Ukraine during the martial law or state of emergency in order to protect information therein.

However, the legal uncertainty still has not been eliminated.

Lawfulness of limitation of the right to liberty and security of person

The CrPCU has been amended more than all the other procedural codes in connection with the armed aggression against Ukraine and imposition of the martial law. In particular, in April 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amending the Criminal Procedure Code of Ukraine as regards Improvement of the Procedure for Criminal Proceedings during Martial Law", which prescribed without limitation that in case martial law was imposed, and a person was detained without a ruling of an investigating judge, court under Article 208 of the Code, or there were justified circumstances giving grounds to suppose that the suspect of the crime could escape to evade criminal liability, the designated official could decided to detain such person without a ruling of an investigating judge, court or a resolution of the head of the prosecution authority, and the period of such detention could not exceed 216 hours from the moment of detention, which was determined in accordance with Article 209 of the Code.

It was emphasised by the Commissioner that everyone was guaranteed the right to liberty and security by Article 29 of the Constitution of Ukraine. A person can only be arrested or detained based on the justified court decision and on the grounds and in accordance with the procedure prescribed by the law. Where it is essential to prevent or terminate the crime, the duly authorised bodies may place a person into custody as a temporary restraint, which has to be checked by court within 72 hours. The detained person shall be immediately released unless he or she is serviced a justified court decision on placement into custody within 72 hours after the detention. Although the martial law has been imposed in Ukraine, the right guaranteed by Article 29 of the Constitution of Ukraine may not be limited during the martial law.

Therefore, the Commissioner emphasised the need to bring paragraph 1(6) of Article 615 of the CrPCU in line with the Constitution of Ukraine. In July 2022, a letter was sent to the Verkhovna Rada Committee on Law Enforcement regarding the need to eliminate the inconsistency of Article 615 of the CrPCU in terms of lawfulness of limitation of everyone's right to liberty and security.

The Verkhovna Rada of Ukraine adopted Law of Ukraine No. 2462-IX of 27.07.2022 "On Amending the

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Criminal Procedure Code of Ukraine to Improve Certain Clauses on Pre-Trial Investigation during Martial Law", which resolved that issue.

However, the matter of adapting the procedural legislation to the martial law needs to be resolved.

Lack of legal regulation providing for possible resumption and extension of procedural time frames based on the circumstances caused by the martial law or state of emergency in Ukraine

Following the expert analysis of the effective legislation and examination of the case law of courts of different levels, the Commissioner detected lack of legal regulation providing for possible resumption and extension of procedural time frames based on the circumstances caused by the martial law or state of emergency in Ukraine.

The Council of Judges of Ukraine and the Supreme Court have tried to partly resolve the problem. On 02.03.2022, the Council of Judges of Ukraine recommended all the courts to apply the balanced approach to the matters associated with returning different procedural documents, leaving them without consideration, setting different time frames and, where possible, extending them at least until the expiration of the martial law.

The order of the President of the Supreme Court of 04.03.2022 also recommended the courts to consider that imposition of the martial law in the specific territory was a good reason for resuming procedural time frames.

Therefore, amendments need to be made to the legislation as regards resumption and extension of procedural time frames during the martial law and state of emergency in order to ensure efficient and timely protection of rights, freedoms and interests of litigants.

The proposed amendments are supported by the Supreme Court, the Council of Judges of Ukraine and the High Council of Justice.

After the amendments proposed by the Commissioner had been considered, the Committee of the Verkhovna Rada of Ukraine on Legal Policy informed that the proposals had been brought to the attention of MPs who were members of that Committee and could consider them in their legislative drafting work as holders of the right of legislative initiative.

The issue still has not been resolved at the legislative level.

Lack of legal regulation providing for possible procedural actions within criminal proceedings as a video conference during litigation by means of litigants' own devices

It was established by the Commissioner that the rules of the CrPCU do not provide for a court session as a video conference by means of litigants' own technical devices, the way it is regulated in the civil, economic and administrative proceedings.

The Regulation on the Procedure for Operation of Individual Subsystems of the Unified Judicial Information and Telecommunication System approved by Resolution of the High Council of Justice No. 1845/0/15-21 of 17.08.2021 does not limit possibility of a video conference outside the court premises by

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means of own technical devices to a separate type of judicial proceedings, so it is possible within criminal proceedings. However, the CrPCU does not expressly provide for such possibility.

Nevertheless, the start of active hostilities in Ukraine has changed the courts' attitude to possibility of remote criminal proceedings by means of own technical devices.

In its letter No. 2/0/2-22 of 03.03.2022 "On Certain Aspects of Criminal Proceedings during Martial Law", the Supreme Court recommended that in case a party to criminal proceedings could not participate in the court session via video conference communication by means of the technical devices prescribed by the CrPCU due to objective circumstances, such party could be allowed to participate by means of other devices as an exception, but his or her procedural rights and obligations must be explained.

This approach is now understandable as the judges face forced long breaks in judicial proceedings because the accused, witnesses and experts are in temporarily occupied territories, witness and experts cannot be interviewed because their location is not known, the persons have been internally displaced etc.

Therefore, although the recommendations given in the letter of the Supreme Court cannot replace the effective legislation, they are actively used by courts in practice. The criminal proceedings are conducted by means of own technical devices of public prosecutors, attorneys, witnesses and other parties to judicial proceedings. EasyCon, ZOOM and other software are used for court sessions.

Moreover, one of the activities to improve access to justice in accordance with the Strategy for Developing the Judiciary and Constitutional Judicial Proceedings for 2021-2023 approved by Decree of the President of Ukraine No. 231/2021 of 11.06.2021 is the need to develop electronic judicial proceedings.

With due consideration of the above, in October 2022, the Commissioner sent the letter to the Verkhovna Rada Committee on Law Enforcement and suggested drafting the law providing for possible procedural actions within criminal proceedings as a video conference during litigation by means of litigants' own technical devices.

In November 2022, the Verkhovna Rada Committee on Law Enforcement informed that the draft Law of Ukraine "On Amending the Criminal Procedure Code of Ukraine as regards Gradual Introduction of the Unified Judicial Information and Telecommunication System" (registration No. 8219) was registered with the Verkhovna Rada of Ukraine on 23.11.2022. In particular, it amended Article 336 of the CrPCU, which provided for possible procedural actions as a video conference during litigation by means of own technical devices.

The issue still has not been resolved at the legislative level.

Lack of legislative regulation providing for disclosure of information on activities of the Qualification and Disciplinary Commission of Public Prosecutors

In pursuance of Law of Ukraine No. 1554-IX of 15.06.2021 "On Amending Certain Legislative Acts of Ukraine as to First-Priority Actions to Reform the Prosecution Authorities regarding Individual Aspects of the Transitional Provisions", the effect of certain clauses of the Law of Ukraine "On the Prosecutor's Office" was resumed in terms of formation of the designated authority in charge of disciplinary

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proceedings and determination of its powers.

On 17.09.2021, the Committee of the Verkhovna Rada of Ukraine on Law Enforcement approved appointment of three members of the designated authority in charge of disciplinary proceedings, in accordance with paragraph 1(4) of Article 74 of the Law of Ukraine "On the Prosecutor's Office". Those members were appointed to the office by the Commissioner's order on 20.09.2021.

Therefore, the qualified composition was formed on 20.09.2021. According to resolution of the authority No. 16зп-21 of 26.10.2021, it would start to operate on 03.11.2021. The designated authority in charge of disciplinary proceedings is made of eleven members, three of whom are appointed by the Ukrainian Parliament Commissioner for Human Rights in consultation with the committee of the Verkhovna Rada of Ukraine responsible for organisation and activities of the prosecution authorities.

On 28.08.2021, the Ukrainian conference of public prosecutors adopted the Regulation on the Operating Procedure of the Designated Authority in Charge of Disciplinary Proceedings.

However, there is no procedure and mechanism by means of which the Commissioner can receive information on activities of the members of the designated authority in charge of disciplinary proceedings appointed based on his quota. Therefore, the matter requires normative regulation.

Right to a fair trial within a reasonable time in criminal proceedings

One more challenge for justice in criminal proceedings was the impossibility to transfer case papers from the courts located in the area of hostilities or in the temporarily occupied territory after the territorial jurisdiction had been changed.

The problem that required legal regulation was established during the consideration of petitions from the prisoners held in the state institutions Mykolaiv pre-trial detention centre", "Cherkasy pre-trial detention centre", "Zaporizhzhia pre-trial detention centre" regarding the unjustified extension of their detention, delays in consideration of acts of indictment on the merits of the charges by court due to impossibility to transfer case papers from the courts located in the area of hostilities or in the temporarily occupied territory to the designated after the territorial jurisdiction had been changed. In particular, the clauses of the CrPCU do not prescribe the mechanism for restoring materials of the criminal proceedings that have been carried out by the court, but has not ended in a verdict. Such legal uncertainty created conditions for violating the right to a fair trial within a reasonable time, as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

With due consideration of the above, on 20.10.2022, the Commissioner sent the letter to the Verkhovna Rada Committee on Law Enforcement regarding draft law No. 7494 of 27.06.2022 "On Amending the Criminal Procedure Code of Ukraine to Elaborate the Clauses on Restoration of Lost Materials of Criminal Proceedings, to Cancel the Pre-Trial Restraint for Military Service during Martial Law" and made proposals to be considered in the draft law for the second reading. In particular, it was proposed to amend Article 615-1 of the CrPCU by supplementing it with the clauses that lost materials of the criminal proceedings were to be restored if the act of indictment, the motion to apply involuntary medical or correctional measures, the motion to discharge the person from criminal liability had been sent to court, but there had been no preliminary hearing; the litigation had been started, but the court had not delivered a decision; the court had delivered a decision, but it had not entered into force.

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The Commissioner's proposals were fully taken into consideration by the Verkhovna Rada of Ukraine. The Law entered into force on 11.12.2022.

Therefore, the legislation provides for restoration of lost materials and elimination of the objective cause of violation of the right to a trial in criminal proceedings within a reasonable time.

Recommendations

The Verkhovna Rada of Ukraine should ensure consideration and adoption of:

- draft Law of Ukraine "On Amending Certain Legislative Acts as to Resolution of the Issue of Excessive Duration of Civil, Economic and Administrative Proceedings" (registration No. 8083);

- draft Law of Ukraine "On Amending Section XII 'Final and Transitional Provisions' of the Law of Ukraine 'On the Judiciary and Status of Judges' regarding Administration of Justice during Martial Law" (registration No. 8168);

- draft Law of Ukraine "On Amending the Criminal Procedure Code of Ukraine as regards Gradual Introduction of the Unified Judicial Information and Telecommunication System" (registration No. 8219).

The Committee of the Verkhovna Rada of Ukraine on Legal Policy should initiate development and submission to the Verkhovna Rada of Ukraine for consideration amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code Ukraine and the Economic Procedure Code of Ukraine regarding judicial proceedings during martial law or state of emergency in terms of resumption and extension of procedural time limits during martial law and state of emergency.

The Ministry of Justice of Ukraine should develop and submit to the Cabinet of Ministers of Ukraine of Ukraine for consideration the draft law on amending the Law of Ukraine "On the Authorities and Persons in Charge of Enforcement of Court Decisions and Decisions of Other Authorities" by revoking point 61(3) of Section IV "Final and Transitional Provisions".

The State Judicial Administration should draft the legal and normative act on transfer of court cases from the courts located in the areas of hostilities whose territorial jurisdiction has been changed.

The Prosecutor General's Office should:

- request and examine information on the persons held in custody in the state institutions "Mykolaiv pre-trial detention centre", "Cherkasy pre-trial detention centre", "Zaporizhzhia pre-trial detention centre" in the criminal proceedings materials of which have been lost, and ensure submission of motions to restore the lost materials of the criminal proceedings in order to eliminate and prevent violation of their rights to a fair trial within a reasonable time and personal liberty;

- organise reviews of compliance with the law by the prosecution authorities during consideration by the designated officials of statements and reports on unlawful actions of the law enforcement officers during the martial law with signs of criminal offences in 2022;

- amend the Regulation on the Operating Procedure of the Designated Authority in Charge of

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Disciplinary Proceedings (as adopted by the Ukrainian conference of public prosecutors on 28.08.2021), which should provide for the mechanism for informing the Commissioner of activities of the members of the Qualification and Disciplinary Commission of Public Prosecutors appointed based on his quota.

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