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„Green Book" of the Ukrainian Parliamentarism: talking points

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The present paper summarizes the informational and analytical study "Green Book of the Ukrainian Parliamentarism", prepared by the Agency for Legislative Initiatives with the active support of the Parliamentary Development Project for Ukraine, Indiana University. The Green Book relies on the number of studies of the Ukrainian parliamentarism, undertaken in 2004 – 2007, in particular, those of the parliamentary privilege and indemnities, logistical and financial support of MPs, organization of the legislature's activities, mechanisms of parliamentary oversight, etc. Please refer to the web page www.parliament.org.ua for the full text of the Green Book and other related materials. Authors did not seek to examine all aspects of the legislature's functioning; instead, they focused on some issues of salience to the society in general and efficient operation of the parliament in particular. Discussion of the given material should expand the range of issues to be reflected in the Rules of Procedure of the Verkhovna Rada of Ukraine and other laws regulating operation of the Ukrainian legislature. Also, the most efficient and well-balanced solutions for issues raised should be found. Through widening the range of issues, determining specific solutions based on extended consultations with all parties concerned (MPs, officials of the Secretariat of the Verkhovna Rada of Ukraine, representatives of think tanks, etc.) we will be able to draw up "The White Book" of the Ukrainian Parliamentarism. It is our belief that latter will give basis for raising efficiency of the parliament.

1. Restriction of the parliamentary privilege (*deputy immunity*)

Article 30 of the Constitution of Ukraine reads, "National deputies of Ukraine shall not be held criminally liable, detained or arrested without the consent of the Verkhovna Rada of Ukraine". Thus, the parliamentary privilege bears, *de facto,* the absolute nature. Instead, foreign experience demonstrates that such approach is not typical for the majority of democratic states. MPs do not enjoy immunity against criminal prosecution in Austria, Germany, Kyrgyzstan, Latvia and Slovakia. The parliamentary privilege does not cover both criminal and administrative prosecution in Australia, Great Britain, Spain, Malta, Canada, Columbia and New Zealand. When the parliamentary privilege applies to criminal liability of MPs, it is not absolute. For example, the Portuguese law sets forth that if a Member of Parliament commits a crime with prescribed punishment in a form of imprisonment for three and more years, when the deputy immunity shall not apply. The same procedure is observed in Sweden, where the privilege does not cover crimes with prescribed punishment in a form of imprisonment for two and more years, in the USA and Ireland, where a MP has no immunity against liability for a high treason and severe crimes. In many states, the immunity is not applicable in cases of *flagrante delicto* (USA, Bulgaria, Lithuania, Moldova, Germany, Hungary, France, Japan and others). If a MP commits a crime outside of the parliamentary building or not on his/her way to the parliament, he/she may be made liable on the general basis in Ireland, USA and Norway. Moreover, legislative changes restricting scope of the parliamentary privilege were adopted in many "old democracies" in recent years. For example, laws of France, Italy, Japan, and Belgium were supplemented with provisions allowing law enforcement bodies to launch investigation into acts of MPs without consent of the parliament. Taking into consideration the above mentioned, the constitutional scope of deputy immunity requires significant revision. At the same time, full cancellation of the parliamentary privilege is hardly advisable in Ukraine, given lack of the many years' experience of democratic transformations. Here, one may refer to many states of Eastern Europe, where some forms of the deputy immunity are secured at the constitutional and legislative levels

2. Strengthening the legislator-constituency relations

In the majority of democratic states, legislators maintain connection with their constituency through personification of the election system. The majority electoral system (relative or absolute majority), when a MP has to maintain close ties with his/her voters in order to win the next campaign, promotes the most active interaction of legislators and the constituency. However, even states, which do not conduct elections in majority constituencies (that is, almost all EU states), operate such forms of the proportional election system, which allow electoral personifying, and, therefore, connecting legislators and voters. Such personification is achieved by preferential voting, when candidates get their mandates depending on the number of votes cast for a candidate (Belgium, Greece, Denmark (partly), Estonia, Latvia, Luxemburg, Cyprus, the Netherlands, Poland, Slovenia, Finland, Sweden), and not the order established by the party. Also, people may vote for "closed lists" in smaller constituencies (in other words, a constituency gets the smaller number of mandates, and a list contains 10-15 names) — such proportional systems are applied in Austria, Spain, Portugal, partly in Czechia and Slovakia (in these states, candidates who win 10%+ votes, shall get mandates irrespective of the order established by the party).

The Ukrainian type of the proportional system — when people cast their votes for "closed" party lists in the single multi-mandate constituency — fails to promote political responsibility of legislators, development of the inter-party democracy and legislator-constituency relations. That is why one may find the same electoral system in only one of 27 EU states — in Slovakia. But voters there have some (restricted) leverage over selection of party candidates entering the parliament (each voter has 4 preferences, he/she may give to candidates from one list).

Domestic legislators tried to incorporate mechanism promoting the legislator-constituency relations into the current electoral system for many times. Thus, they put bills assigning elected deputies to "conditional" 450 constituencies for consideration of the legislature, but such approach is defective given the nature of a representative mandate — a MP does not represent an individual category of voters, but the nation in general. Politicians and experts suggested other solutions, in particular, restoration of the mixed or even majority electoral systems. However, given the fact, that the majority of European states (except for Ireland, Malta, Great Britain, France, Lithuania, Germany and Hungary) practice the proportional electoral system, it is hardly advisable to restore the majority or mixed electoral systems. Therefore, legislator-constituency relations should be strengthened through the personified proportional electoral system. What personification mechanism should be established at the legislative level — is an open question (that is, should they increase the number of constituencies and preserve voting for closed lists or introduce voting for individual candidates on a party list).

3. Cancellation of the imperative mandate

For a long time, efficiency of the parliament was impeded by instable faction composition and common practice of "faction switches". Such instability was caused by the number of factors — the majority electoral system, laying special emphasis on individuals, not party affiliation, concentration of power in hands of the President (which promoted creation of "pro-Presidential" majorities in the Verkhovna Rada of 1999 – 2004) etc. From time to time, experts suggested various solutions for the problem, like incorporation of the "parliamentary majority" term into the Constitution, establishment of liability for failure to form the parliamentary majority (pre-term dissolution of the parliament), failure to enter (or

for switching) a deputy faction (pre-term termination of a MP' office). On December 8, 2004, such mechanisms were added to the new wording of the Constitution.

Here, one should note that the imperative mandate contradicts the democratic standards. (Please see comments by the Venice Commission concerning the bill on making amendments to the Constitution # 4180, which was subsequently passed by the Parliament and signed by the President). So, it is not a common practice — imperative mandate was secured by laws of the former USSR; today, it exists in socialist states — the People's Republic of China, the Democratic People's Republic of Korea, Vietnam, Cuba. Only one state — India — applies the same form of imperative mandate like Ukraine.

However, in practice, the legislators did not accomplish their goals (to strengthen party discipline, to prevent faction changes) by implementing the imperative mandate; actually, transfers of opposition MPs to the parliamentary majority gave grounds for pre-term dissolution of the parliament of previous convocation. Thus, expediency of imperative mandate is rather doubtful. Objectives set by initiators of the imperative mandate cannot be achieved by legislative means only; instead, parties should be more careful when nominating their candidates on various levels.

4. Bringing logistical and financial support of national deputies of Ukraine in compliance with foreign standards

The majority of democracies applies the following principles of logistical and financial support of MPs: a) transparency of funding — information on basic and additional payments is open and accessible for all; b) direct recovery of expenses incurred in the course of MP's activities instead of the system of benefits (rules of procedure and internal regulations of parliaments usually provide for direct funding or reimbursement of living, travel expenses, fees of MP aids, expenses dealing with fulfillment of MP's functions); c) temporary accommodation (service housing available for a MP during his/her office, can not be privatized); d) correlation of reimbursement made and fee payable to officials of lower ranks (in European states and USA, ratio of MPs' and ministers' wage to wage of officials of the lowest rank usually does not exceed 400 %, while in Ukraine MPs' wage correlates with wages of "rank-and-file" officials in ratio 1;40); e) restrictions on general funding of deputy's activities (in some states, rates determining sums payable (in particular, reimbursement of travel expenses) are established by laws); f) in the remuneration of labor, presence of a MP at committee meetings and parliamentary sittings are taken into consideration. Ukrainian legislation and practice demonstrated that approaches to logistical and financial support of legislators fail to comply with the above principles. In particular, following issues should be solved in the sphere of logistical and financial support of national deputies of Ukraine: 1) to assure transparency of remuneration of labor of national deputies of Ukraine; 2) to replace the existing benefits (free passage etc.) with direct funding (reimbursements); at that, a sum payable should be the minimum one as sufficient for due operation of a MP; 3) to establish mechanisms for providing service housing to national deputies for the term of their office only; 4) to clarify algorithms of remuneration of MP's labor (for example, according to paragraph 5 of Article 33 of the Law On Status of a National Deputy of Ukraine, the rule of thumb is that absenteeism of a deputy does not imply nonpayment of a MP's salary — deduction shall be made upon submission of the Committee on the Rules of Procedure only).

5. Implementation of disciplinary liability of MPS

Legislation of many foreign states provides for some mechanisms allowing MPs to fulfill their duties and protecting rights of their colleagues. In particular, the most efficient

mechanisms include: a) a reprimand to a MP, who fails to fulfill his/her duties, as required by the Rules of Procedure; b) penal sanctions, if a MP does not participate in work of committees and the parliament; c) denying a right to access to meetings of the parliament or its bodies for a limited period, e.g., one month (in case of gross violations of the Rules of Procedure); d) termination of a speech, if a MP repeats himself, puts a slight on the Speaker and MPs, deviates from the subject. The Law On Status of a National Deputy of Ukraine defines liability of third persons that prevent MPs from fulfilling their duties, while breach of duty by MPs does not give grounds for bringing deputies to responsibility, including administrative sanctions. In turn, lack of legal liability of MPs for failure to fulfill their duties impedes implementation of some provisions of the Rules of Procedure and the Law On Status of a National Deputy of Ukraine.

6. Refining the procedure of appointment / dismissal of the Head of Secretariat of the Verkhovna Rada of Ukraine

Subject to clause 13 of the Regulation on Secretariat of the Verkhovna Rada of Ukraine, the Head of Secretariat shall be appointed to and dismissed from his/her office by the parliament upon submission of the Chairman of the Verkhovna Rada of Ukraine. Such approach to the procedure of appointment / dismissal of the Head of Secretariat is non-typical for the world practice: in the majority of foreign states, the Head of Secretariat is a civil servant; the procedure of his/her appointment or dismissal secures his/her political neutrality. That is why, many foreign legislatures usually do not appoint / dismiss the Head of the Secretary. In Ukraine, the Head of Secretary depends on the parliamentary majority (that elects and recalls the Chairman of the Verkhovna Rada who, in turn, nominates the Head of Secretary). As the Regulation on the Secretariat of the Verkhovna Rada and Article 8 of the Rules of Procedure of the Verkhovna Rada do not give the exhaustive list of grounds, on which office of the Head of Secretariat shall be terminated ahead of time, and do not specify his/her tenure (which could have been an additional safeguard for his/her neutrality), an office of the Head of Secretariat bears political nature. In certain conditions, factions comprising the parliamentary majority may use it as a «bargaining chip». Taking into account the above, the Regulation on the Secretariat of the Verkhovna Rada or the Rules of Procedure should contain provisions securing political neutrality of the Head of Secretariat of the Verkhovna Rada of Ukraine. This goal may be accomplished by various means. In particular, they may establish a procedure of the Head's election, which takes into account position of a parliamentary majority and opposition. For example, a candidacy for the Head of Secretariat of the Verkhovna Rada may be nominated by MPs — members of a parliamentary minority, and approved by the majority of the constitutional composition of the legislature. Neutrality of the Head of Secretariat may be also secured by an exhaustive list of grounds for early termination of his /her office (respective grounds should be similar to those defined in the law on civil service).

7. Structural improvement of the Secretariat of the Verkhovna Rada of Ukraine

One should note the complicated structure of the Secretariat of the Ukrainian legislature and lack of clear subordination among individual structural elements thereof, which is non-typical for many foreign states. In foreign states, structural divisions of secretariats being responsible for legal support of the legislature form a single unit, which is subordinated to the Speaker of the parliament or the Head of Secretariat. In Ukraine, legal support of the legislature is vested upon various structural units having different functions, authorities and subordination, namely the Main Research and Expertise

Department, the Main Legal Department, the Unit for Legislative-Judicial Relations. Similar approach is applicable to distribution of functions and authorities in organizational support of the parliament — such duties are vested in the Main Department for Documentary Support, the Main Organizational Department, the Informational Department etc. It should be noted that not only the Secretariat of the Verkhovna Rada of Ukraine, but also the Office of the President of Ukraine, secretariats of ministries and other central executive agencies used to split functions among divisions with different subordination and break up their organizational structure. We believe that the main reason for it is inadequate remuneration of labor of civil servants: a low official salary is compensated by the system of bonuses, and the scope of competence depends on the rank of a civil servant. As a result, the number of units and managerial positions with such units rises. Defective structure of secretariats of various agencies, including the Secretariat of the Verkhovna Rada, causes some problems, in particular — inefficient cooperation, differences in salaries payable to officials bearing the same functions and responsibilities (a unit head gets higher salary than an official, who performs the same functions). In this connection, reorganization of the Secretariat of the Verkhovna Rada of Ukraine becomes an urgent issue. In particular, it is necessary to decrease the number of structural units, to consolidate divisions having similar functions etc.

8. Clarification of Place and Role of Parliamentary Secretariat in Legislative Process

As of today, expert analysis of draft laws tabled at the Verkhovna Rada for consideration is carried out by a large range of agencies – Main Research and Expertise Department and Main Legal Department of the Verkhovna Rada Secretariat, parliamentary committees (and secretariat of respective committees). The process of rendering conclusions to the draft laws for factions and groups also involves representatives of relevant factions and groups. However, it should be noted that in practice, there is no significant difference between expert conclusions rendered by the Main Research and Expertise Department and Main Legal Department of the Verkhovna Rada Secretariat: in fact, the Main Legal Department studies a narrower scope of aspects (legal expertise) and carries out necessary research at the stage of preparation of bills for the second reading whereas the Main Research and Expertise Department examines a wider scope of issues (legal technique, sometimes - potential implications of the law, etc.) at the stage of preparation of the draft law for the first reading. The approach to identification of the expert agency also deserves a critical view: when expert assessment is done by a limited number of agencies (one or two) then chances are high that not all shortcomings and advantages will be discovered in the course of expert examination. It should also be mentioned that recently, committees and MPs have begun to actively involve specialists from these departments into the process of development of draft laws that pre-determines departments' attitude to the draft laws prepared with the help of their experts. Hence, there are grounds to say that there is a need to revise the place and role of various agencies of parliamentary Secretariat in the legislative process. First, the Main Research and Expertise Department should be re-organized and merged with the Main Legal Department. This suggestion is founded on the experience of other states – in a number of countries, legal support of parliamentary activities is provided by one and not several units of the Secretariat. Second, the main workload of rendering expert analysis of draft laws should be taken not by the Secretariat's departments whose task is to provide for activities of the parliament as a legislative body but by committees' and factions' secretariats. In view of this, two needs emerge: 1) the need to increase the number of staff lawyers and other experte in committees' and factions' secretariats through a simultaneous reduction of

the size of the re-organized Main Legal Department; 2) the need to revise functions and authorities of the Main Legal Department in the legislative process. In our opinion, in the future the Main Legal Department is to perform three major functions: provide legal consultations to the Verkhovna Rada Chairman and the parliament, assist MPs in development of draft laws (in terms of proper form, conformity with the constitutional provisions, requirements of the parliamentary Rules and other legislative acts), represent the parliament in the Constitutional Court of Ukraine and courts of general jurisdiction.

9. Strengthening Role of Institute of Legislation of the Verkhovna Rada of Ukraine in Research and Development Support of Parliamentary Activities, Its Agencies and National Deputies of Ukraine

Unlike many other states, Ukrainian Parliamentary Secretariat in fact has no special agency responsible not for the current activities of parliament and its departments but for evaluation of possible implication of laws, development of proposals to improve legal regulation of certain spheres, research in the most important policy areas and provision of comprehensive information to the parliament and MPs on the problems that are to be regulated by legislature. We believe that these responsibilities should be vested into the Institute of Legislation of the Verkhovna Rada of Ukraine. Its status today is provided for in the Provision of the Institute of Legislation of the Verkhovna Rada of Ukraine approved as far back as in 1994[1] that today fails to meet either the contemporary needs or the approaches to the legal regulation of activities of parliamentary research bodies in other democratic states. Hence, its role in research support of parliamentary activities is constantly decreasing and the number of its tasks (i.e. development of the most important bills, research of legislative system of other states and adaptation of Ukrainian legislation to the international law norms) are more successfully performed not by the Institute but by the units of the Verkhovna Rada Secretariat, committee secretariats or independent think-tanks. We see several causes of this situation – insufficient financing for the Institute, lack of experts who have to perform the Institute's tasks, obscure description of the Institute's rights in relations with other parliamentary bodies, departments of parliamentary Secretariat, research agencies and institutions, executive bodies and other.

10. Enhanced Transparency of Financing of Parliamentary Committees

In many other states, transparency of activities of parliamentary committees is ensured through: a) creation of committee web-pages by all parliamentary committees; b) publication of materials by opposition on issues within the committee's responsibilities on the committee web-site (e.g. in the USA); c) publication of the committee secretariat's membership on the committee web-site together with the contact information of the committee staff; d) publication of minutes of the committee meetings and committee hearings on the committee web-site; e) publication of reports on committee's activities; f) publication of information on planned and held meetings and hearings.

Meanwhile, according to the effective Ukrainian legislation, committee leadership is not obliged to disclose information about the date, time and location of the committee meetings, agenda and participants of the meetings. Law does not provide for the mechanisms of publication of information on the nature and results of discussions at the committee meetings. There exist such declarative and lacking relevant mechanisms norms as provisions of the Law "On Committees of the Verkhovna Rada of Ukraine" according to

[1] Resolution of Presidium of the Verkhovna Rada of Ukraine #150/94-ПВ dd. October 7, 1994 "On Creation of Institute of Legislation of the Verkhovna Rada of Ukraine'

which committees are obliged to inform the leadership of governmental agencies, enterprises, institutions and organizations whose representatives were deemed necessary to be present at the committee meeting as well as the authors of draft laws in due time but not less than three day before the meeting in writing about the time and place of the meeting and issues that will be discussed. The contents of minutes and records of the committee meetings and results of voting of committee members are at best known only to the committee members. Many committees of the Verkhovna Rada have no web-pages and approaches to their contents are not uniform. Thus, activities of parliamentary committees in Ukraine cannot be considered transparent.

11. Improved Regulation of Oversight Powers of National Deputies of Ukraine

Unlike the majority of other states, Ukrainian legislation does not provide for a clear delimitation between the subject of deputy interpellations and deputy appeals. Experience of other states shows that the subject of interpellations (inquiries) typically is a question concerning the policy objectives and motives whereas subjects of appeals are other questions. Instead, Ukrainian legislators based a distinction between the interpellations and appeals on the procedure of their submission. Study of foreign experience also proves that there are restrictions concerning the subject of interpellations (for instance, inquiries may not request disclosure of classified information – state or commercial secret and personal information; inquiries may not deal with the private life of the Head of State, give instructions to bodies and officials that are not directly subordinate to the parliament). Ukrainian legislation, however, does not directly specify the nature of interpellations; it is determined mainly by the Constitutional Court decisions (Decision on interpellations and appeals of national deputies of Ukraine to the investigation bodies and pre-trial investigation authorities, Decision on forwarding an inquiry to the President of Ukraine and some other). In view of this, there is a need to specify the subject of interpellations at the legislative level. In most democracies, interpellations and appeals are to be published in official papers. There is no provision on such publication in Ukrainian legislation. Normally, the rules of procedure in other legislatures clearly state in which cases a response to an inquiry is to be provided in writing and in which – in an oral form immediately at a plenary session in presence of the MP who made the interpellation. Ukrainian legislation, again, fails to regulate this issue.

12. Creation of Adequate Condition for Work of Temporary Investigation Commission

As of today, the Rules of Procedure of the Verkhovna Rada of Ukraine regulate only activities of the special temporary investigation commission (created to inquire into the proves of criminality of actions of the President that constitute grounds for termination of powers of the Head of State pursuant to the procedure provided for in Article 111 of the Constitution of Ukraine) whereas regulation of activities of other temporary investigation commissions is restricted by determination of procedure of their creation and termination. The Rules of Procedure contain a number of norms, according to which specific powers and authorities of temporary investigation commissions as well as procedure for their further work should be regulated by a special law – the Law on Temporary Investigation Commissions, Special Temporary Investigation Commissions and Temporary Special Commissions of the Verkhovna Rada of Ukraine. A respective bill was tabled at parliament by MPs of the 4th convocation Yu.Karmazin, O.Bandurka and M. Onishchuk (registration No6450 dd. April 3, 2006). However, after the bill was vetoed three times by the President, the parliament cancelled it. Thus, identification of the status of temporary special and

investigation commissions is still relevant. The list of problems that require solution aimed to create adequate conditions for functioning of investigation commissions in Ukraine should also contain: unclear list of issues that can be considered at the meeting of temporary investigation commissions; measures taken to ensure safety of commission members and grounds for taking relevant measures; rights and responsibilities of individual commissioners; powers and authorities of investigation commissions' leadership – chairs, deputy chairs and commission secretaries; procedure for hearing testimonies and explanations by the investigation commission, responsibility for a refusal to provide testimony, explanations or other materials, provision of invalid information and grounds for a refusal to provide information; procedural aspects of consideration of issues by the commission, procedure for inviting witnesses, experts, etc; possibility for participation of representatives of persons, with regard to whom the inquiry is carried out and procedure for their involvement; possibilities for the commission members to disclose information received in the course of investigation, responsibility for unsanctioned disclosure of such information; mechanisms for appealing against the decisions and actions of the commission, reimbursement for harm inflicted by illegal action in the course of investigation.

13. Improved Status of the Verkhovna Rada Commissioner for Human Rights (Ombudsman)

Analysis of provisions of the Law "On Verkhovna Rada Commissioner for Human Rights" shows that Ukrainian legislators opted for an unconventional in the majority of states way by extending powers and authorities of the Ombudsman to all state authorities, local self-government bodies, officers and staff of relevant bodies as well as enterprises, institutions and organizations regardless of the form of ownership. In other states, a number of institutions are taken out of the Ombudsman's jurisdiction, namely the highest governmental institutions responsible for formulation of the state policy (head of state, government and parliament), political figures (ministers and members of parliament), judicial bodies and representative local self-government bodies.

The Law "On Verkhovna Rada Commissioner for Human Rights" gives to the Ombudsman a right to invite officers and staff members, citizens of Ukraine, foreigners and stateless individuals to provide oral or written testimony concerning the circumstances of the case under examination. At the same time, the law does not provide for any mechanisms ensuring implementation of this right. For instance, the Law does not contain any legal liability for a failure to follow the summons, ungrounded refusal to provide testimony or conscious provision of unreliable (including incomplete) information. The law also fails to answer a question whether the individuals summoned by the Ombudsman to provide testimony, refuse to provide the required information if it is confidential (state or office secret, advocate secret, personal data or other kind of classified information).

According to the law, the Ombudsman also has a right to attend meetings of the collegial bodies (Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, Prosecutor's General Office, etc). Yet, the goal of such attendance is not clarified as well as the Ombudsman's rights during the discussion of issues related to the Ombudsman's activities, etc. The law contains no requirements concerning the procedure and grounds for notification of the Ombudsman on the date, time and location of a meeting of the collegial body and the agenda.

The Ombudsman has a right to appeal to the court to protect citizens' rights and freedoms who for some reason cannot do it themselves and personally or through a representative take part in the court proceedings in *cases* and according to the *procedure* established by law. At the same time, procedural legislation fails to provide a clear

definition of a status and rights of the Ombudsman taking part in the proceedings – does the Ombudsman act as a representative or an independent participant of the process? In view of this, it is not clear, for instance, whether the Ombudsman has a right to change the stated claims, withdraw the claim or accept an amicable settlement agreement. With regard to criminal proceedings, the Ombudsman's role in it is obvious – he/she may participate only as a representative of the suspect, defendant or complainant and has the representative's rights as provided for in the Code of Criminal Court Procedures.

There is a set of other questions that today remain unanswered and related to the parliamentary Ombudsman's activities: namely, this refers to the question whether the Ombudsman has a right to participate in court cases on claims and appeals submitted by others; to represent interests of a citizen at any stage of the process; initiate a repeat consideration of the case after new circumstances were established and so on. Analysis of annual reports of the Verkhovna Rada Commissioner for Human Rights gives grounds to conclude that in many cases the Ombudsman's reaction acts are not implemented or are implemented only formally. There is a need to give a legislative answer as to the nature of the Ombudsman's recommendations – in the light of provisions of Article 6 of the Constitution such recommendations should not be imperative since thus the Ombudsman will go beyond the scope of powers of parliament itself. At the same time, such recommendations are to be considered by the addressees and the Ombudsman is to receive a response describing the results of consideration.

The law is also unclear in the part that describes the grounds for submission of the Ombudsman's reaction acts. For instance, it does not indicate how the Ombudsman is supposed to act after receiving a statement (complaint) from a citizen on incompatibility with the provisions of the Constitution of Ukraine. In our opinion, in view of the absence of a citizen's right to submit appeals to the Constitutional Court of Ukraine and a limited scope of right to submit a constitutional request to provide an official interpretation of Law of Ukraine (a constitutional submission of an individual citizen is considered only in the case of an ambiguous implementation of a certain law), submission of a citizen's statement of unconstitutionality of some normative legal act to the Ombudsman should oblige the Ombudsman to submit a respective constitutional appeal to the Constitutional Court of Ukraine (when constitutionality of relevant acts is to be ruled on by the Constitutional Court of Ukraine) or courts of general jurisdiction (when, respectively, constitutionality of relevant acts is not to be ruled on by the Constitutional Court of Ukraine). Finally, unlike many other states, Law of Ukraine "On Verkhovna Rada Commissioner for Human Rights" does not limit the term in office of the parliamentary ombudsman.

14. Improved Status of Accounting Chamber

After the key provisions of the law "On Accounting Camber of Ukraine" (namely those defining the scope of functions and responsibilities of the Accounting Chamber, objects of oversights, etc) were recognized unconstitutional, there appeared a legal gap in regulation of activities of the Accounting Chamber, and this gap has not been filled so far. At the same time, development of legislation that regulates activities of the Accounting Chamber is independent of the development of legislation regulating activities of other bodies responsible for financial oversight. For instance, on December 15, 2005 the parliament adopted the Law "On Amending Some Legislative Acts of Ukraine on Preventing Financial Violations, Ensuring Efficient Use of Budget Funds, State and Municipal Property". The Law introduced a notion of state financial audit and defined its subjects – the Accounting Chamber and Auditing Office departments. Yet, the forms of financial audit and powers through which the audit function is fulfilled were defined only for the auditing office. The

lack of unified provisions is also a typical feature of Ukrainian legislation regulating relationships between various agencies responsible for financial control – whereas internal audit bodies in the system of executive branch determine mechanisms of cooperation by issuing joint orders, fundamental principles of relationships between the Accounting Chamber and other financial audit bodies (State Tax Administrations, Customs Service) at the by-law level remain undefined.

The Constitution of Ukraine does not clearly provide for the grounds of early termination of authorities of the Chair and members of the Accounting Chamber. Hence, provisions that grant the Verkhovna Rada a right to appoint and dismiss members of the Chamber may be interpreted as discretional, i.e. as such that grant the parliament a right to dismiss members of the Chamber at any time and for any reason. In its turn, "politicization" of the Accounting Chamber members' positions can threaten independency of the Accounting Chamber members of outer influences by branches of power, including legislative power. That is why grounds for early termination of the Accounting Chamber members' authorities, determined by the law „On the Accounting Chamber of Ukraine", are to be also stipulated in the Constitution.

Regardless of amendments made to Article 98 of the Constitution by the Law dd. December 8, 2004, the Accounting Chamber authority limits still do not meet the requirements stated by the Lima Declaration. More specifically, the Accounting Chamber of Ukraine is deprived of *legal* basis for auditing the activity of target funds, funds of which do not belong to the State Budget, state-owned enterprises and enterprises with the state participation in statutory funds. Although in practice the Chamber does have control over these institutions' activities, to improve its efficiency constitutional limits of the Accounting Chamber control activity should by widened through making amendments to the article 98 of the Fundamental Law. In general, auditing the efficiency of budget funds usage by the Accounting Chamber requires extension of its authorities not only to activities directly related to budget funds usage but also to the part of the activity, that is not erectly related to spending the State budget funds (systems of management, functions and authorities distribution, accounting and reporting systems), in other words – to all financial, economic management activities of objects under control. The need to clarify the boundaries of oversight authorities of the Accounting Chamber is also explained by the fact that without clear limits it is practically impossible to implement legislative norms on administrative violations that provide for the responsibility for a failure to meet the *legal* requirements of representatives of the Accounting Chamber (since the question, to which extent these requirements are *legal* is not answered). Furthermore, there is such an important problem of identification of powers and authorities of the Accounting Chamber related to the oversight of the revenues of the State Budget of Ukraine and the Chamber's relationships with other bodies that perform oversight functions in this sphere – target funds, State Tax Administration, State Customs Service, etc.

Unlike the Main Auditing Department, the Accounting Chamber oversees the use of budget funds mainly not in terms of budget programs but in terms of individual areas of budget financing. This way of monitoring implementation of the State Budget is wider in its scope and requires significant organizational, personnel and material resources as well as direct audits in the field. At the same time, activities of local offices of the Accounting Chamber cover only a half of Ukrainian regions. Some of the offices are active in 2 – 4 oblasts. For these reasons, the Accounting Chamber today performs its functions mainly at an *oblast* level (selected oblasts), whereas raion and city levels of the administrative-territorial division of Ukraine are in fact out of the scope of the Accounting Chamber's oversight. Hence, there is a need to create local offices in all 27 regions, to define at a legislative level all principles of cooperation between these offices with other regional

departments of financial control agencies (oblast auditing departments, tax administrations, etc).

The level of independence of the Accounting Chamber and the scope of its oversight authorities only partially meets the standards identified in Lima Declaration of Guidelines of Auditing Public Finances.

In order to ensure higher efficiency of cooperation between the AC and parliament there should be created a special unit (department, office) in the Chamber's structure that will be responsible for relationships with parliamentary committees, factions and groups.

Although conclusions rendered by the Accounting Chamber pay primary attention to establishing the facts of illegal or improper use of budget funds, the Accounting Chamber restricts its recommendations to improvement of the existing legislative base. Respective recommendations should be formulated more clearly (for instance, identification of provisions that are to be cancelled or specific amendments to be introduced to relevant laws). There should also be introduced a provision, according to which the Accounting Chamber will provide its conclusions not only for the draft laws related to the State Budget and finances (as provided for in the Law "On Accounting Chamber of Ukraine") but also to the bills on other issues adoption of which can impact revenues or expenditures part of the State Budget.

The general nature of the Standard for Organization and Conduct of AC Audits not only fails to facilitate formulation of proposals on elimination of violations of applicable legislation but also hinders the process of establishment of such violations and justification of conclusions of examination of efficiency of use of public finances. The problem related to the obscure nature of the AC Standard acquires special importance in the absence of other documents regulating the process of the Chamber's performing its oversight function. Due to the extremely weak regulation of the AC's activities one can question, for instance, the authorities of the AC's staff to check internal management and accounting in the body under examination as well as mechanisms that help the leadership comply with the legislative requirements.