

IHF FOCUS: elections; freedom of expression and media; peaceful assembly; judicial system and independence of the judiciary; fair trial and detainees' rights; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; freedom of religion; freedom of movement; women's rights.

The year 2001 was characterised by political unrest in Ukraine. A bloc of NGOs and opposition political parties was formed to call for the impeachment of President Kuchma, who was accused of involvement in corruption as well as the disappearance of the journalist Georgiy Gongadze in 2000. Discontent with the President also gave rise to mass protests throughout the republic. However, the President dismissed the demands for his impeachment and ordered the police to stall the demonstrations, which in some cases resulted in the use of excessive force.¹

Public dissatisfaction increased when the popular and reform-minded Prime Minister Viktor Yushenko was forced to resign following a vote of no confidence in the Parliament in April. The vote against him was carried out by an alliance of communists and deputies who had close ties to business interests, but it was also believed that the President had approved of the move.² Following his ouster from the Government, the former Prime Minister set out to form a new political coalition movement together with like-minded politicians and to run in the March 2002 parliamentary elections.³

In a setback for President Kuchma, the results from the controversial referendum in 2000, which sanctioned a considerable strengthening of the President's powers in relation to the Parliament, remained unimplemented.⁴ The year also saw several positive legislative developments, such as new legislation on parliamentary elections and the judicial system, a new Criminal Code, which included important new provisions on torture and trafficking in human beings and prostitution, as well as abolishment of the *propiska* system. However, human rights monitors noted that new progressive

legislation had in the past seldom led to improvements in practice.

Moreover, persistent patterns of human rights abuses in many areas gave rise to serious concern. Pressure against the independent media increased, including several physical attacks against and the death of two journalists. Likewise political opponents, in particular those involved in the anti-Kuchma bloc, were the targets of allegedly politically motivated intimidation and criminal charges.

Arbitrary detentions as well as torture and ill-treatment of detainees by law enforcement officials continued to pose severe problems. During trials, due process violations continued to occur and court rulings were not always enforced efficiently. Conditions in prisons and detention facilities did not improve noticeably, minority religious communities and conscientious objectors were discriminated against, police xenophobia and anti-Semitic propaganda increased, and the spread of HIV was not satisfactorily combated.

Elections⁵

In October, a new Election Law was finally adopted after five earlier presidential vetoes. The new law regulated the preparation and conduct of elections for the unicameral Parliament (*Verkhovna Rada*). In comparison with the legislation previously in place, the new law introduced substantial improvements that largely corresponded with recommendations made by the OSCE/ODIHR and the Council of Europe.

The electoral system remained mixed: half of the 450 representatives were to be elected from nation-wide party lists on the basis of proportional representation and the rest of them from single mandate constituencies on a majority basis. The electoral threshold was retained at 4%.

A number of provisions of the law were aimed at increasing the efficiency, transparency and accountability of the electoral process. District and local electoral commissions were to function under the Central Election Commission and to be composed of representatives from different political parties, and both international and political party observers were granted the right to monitor all stages of the electoral process, including the processing of results.

The law also provided for detailed rules regarding the voting procedures and the handling of ballot papers and stated that results from vote counts should be displayed in polling stations without delay. Other provisions emphasised the right of candidates to enjoy equal access to media and campaign facilities and laid down the right of citizens to file complaints related to the electoral process with an electoral commission or a court.

While the new law as a whole established an adequate legislative framework for holding democratic elections, it also contained some problematic provisions and omissions. For example, the law failed to foresee any role for non-party domestic observers; to enable international and political party observers to cross-check vote count results from electoral commissions at different levels; and to provide for sufficiently clear regulations on how interference with the work of electoral commissions was to be prevented; how envisaged checks on the finances of candidates and parties were to be carried out; and how media outlets were to comply with the requirement to provide impartial coverage of the election campaign.

Moreover, the ODIHR feared that the district and local electoral commissions would be overburdened and would have preferred to see an additional level in the hierarchy of electoral commissions. Since the new law was very detailed, the ODIHR also believed that a lot of effort would be needed for election administrators, public

officials, judges and other professionals to become familiarized with it.

As of the end of the year amendments to the Administrative Code, which were needed to establish penalties for violations of electoral rights regulated in the Election Law, had not yet been adopted.

Freedom of Expression and Media

Pressure against Independent Media and Journalists

The situation for independent media deteriorated. While state-owned media was biased in its reporting, independent media faced various forms of pressure and impediments. Independent media outlets were for example subjected to arbitrary tax audits, sanitary inspections and sometimes even to outright censorship, while critical journalists were fired from their jobs, intimidated, violently assaulted or detained and charged with criminal offences.⁶

◆ On 7 February, the Military Cartographic printing facility in Kyiv refused to print an issue of *Kommersant-Ukraine* because a photograph on the front-page of the newspaper was "anti-presidential".⁷

◆ On 12 April, the Ukrainian National Audio-visual Council announced that it would cancel *Radio Continent's* license, and give its frequency to another station. Reportedly *Radio Continent* had been critical of the authorities in its reporting. Its owner, Sergei Sholokh, had also previously received several threats.⁸

◆ On 7 June, the Minsk District Court in Kyiv found Oleg Liachko, editor of the weekly *Svoboda*, guilty of defaming former Prime Minister, Vasyl Durdynets, and Odesa Interior Ministry head, Ivan Hryhorenko. The verdict came almost four years after the charges were brought and after an earlier trial ended in acquittal. Mr Liachko received a two-year suspended prison term and was barred from all journalistic activities. The verdict was considered an example of retribution for critical reporting on official corruption.⁹

◆ On 12 July, unknown assailants attacked Oleh Velychko, director of the corporation that owns the TV-station *Avers*, in Lutsk. As a result of the attack two of his ribs were broken and he got brain concussion.¹⁰

◆ On 15 November, traffic police officers stopped a truck transporting the latest edition of the opposition newspaper *Khersonskii Visnyk* near the city of Mykolaiv. All issues of the edition were confiscated and all attempts by the newspaper to get them back proved unsuccessful.¹¹

Death of Journalists

Little progress was made in clarifying the circumstances around the apparent abduction and murder of the journalist Georgiy Gongadze, who disappeared in 2000 when he was investigating high-level corruption. The Government claimed that the case was not political and that "hooligans linked to the mafia" were responsible. A former presidential bodyguard who made public audiotapes that allegedly tied President Kuchma to Mr Gongadze's disappearance faced criminal charges, while American FBI experts who were invited to help investigate the case were reportedly denied access to evidence.¹² During the year two other journalists were allegedly killed for political reasons.

◆ On 24 June, Oleh Breus, publisher of the weekly *XXI Vek*, was shot dead when driving back to his home in the city of Luhansk. Eyewitnesses reported seeing two men fleeing the scene, one of them holding a pistol. The motive for the murder remained unclear. Mr Breus had already received a death threat in December 2000.¹³

◆ On 3 July, Igor Aleksandrov, journalist and director of the independent TV-station *Tor* was brutally attacked in Slavayansk. A group of unidentified individuals entered the TV-building and beat him with baseball bats until he fell unconscious. Four days later he died at a local hospital. Mr Aleksandrov's colleagues believed that the attack was connected to his work with the programme "*Bez*

Retushi", which had carried out investigations into and reported critically on local authorities and local business and criminal groups. Mr Aleksandrov had previously been subjected to harassment by the authorities, and in 1998 he had been sentenced to two years imprisonment and banned from working as a journalist on charges of violating legislation on campaign coverage. As of the end of the year, the reasons for Mr Aleksandrov's death remained unsolved.¹⁴

Given the increase in violent attacks against journalists, the Government decided in late 2001 to allow journalists to carry guns with rubber bullets. However, many journalists and freedom of the press organisations were sceptical of these regulations. For example, Mary Mycio, head of the IREX legal defence and education programme in Ukraine, considered the regulations an unfortunate admission from the authorities that they were either unwilling or unable to protect journalists from carrying out their work.¹⁵

Harassment of Political Opponents

In May, when facing demands for his resignation and impeachment, President Kuchma issued a decree according to which state secretaries were to assist the Government and its departments in their daily work. Opponents believed that the decree represented an attempt by the President to bolster authoritarian rule and to deprive ministers of all real powers.¹⁶ During the year persons critical of the President and those around him also faced pressure and criminal charges.¹⁷

◆ In January, Deputy Prime Minister Yuliya Tymoshenko, leader of the Fatherland Party, was charged with forgery, tax evasion and bribery during her time as head of the national energy complex from 1995-1997. A month later she was arrested and had to remain in detention until late March when she was released on the basis of a district court decision. In May, the Supreme Court ruled that the initial arrest of Ms Tymoshenko had been unlawful. However, she still had to comply with travel restrictions pending trial.

Moreover, some time after her release from custody Russian prosecutors brought additional corruption charges against her. Ms Tymoshenko had become increasingly critical of President Kuchma and the charges against her were believed to be politically motivated. As a result of the legal case against her, she was dismissed from the Government. In the summer Ms Tymoshenko announced that she was to lead a newly created electoral opposition bloc in the 2002 parliamentary elections.¹⁸

Peaceful Assembly

The authorities generally respected the right to freedom of assembly. However, in some instances persons who peacefully exercised this right to voice criticism against the President for his alleged involvement in corruption and the disappearance of the journalist Georgiy Gongadze were subjected to excessive force and arrested. For example, the police assaulted participants in anti-presidential demonstrations and dismantled their tent villages on dubious legal grounds in Kyiv, Kharkiv, Cherkassy, Rivne and Ivano-Frankivsk.¹⁹

◆ During the night of 12 January, the police broke up a tent village, which a group of people had set up in the main square of Kharkiv in protest against President Kuchma. Police officers armed with batons reportedly surrounded the camp and dragged protesters out of their sleeping bags before arresting them. Some of the protesters were also beaten and two were injured.²⁰

◆ On 9 March, on the anniversary of the national poet Taras Shevchenko's birth, mass protests against the President took place in central Kyiv. Fighting reportedly broke out between protestors and the police, as a result of which both demonstrators and police officers had to be taken to hospital. Numerous people were arrested. Later on some protestors said that the police had provoked the violence, while others claimed that the police had used force

against them even though they had only expressed their grievances in a peaceful manner.²¹ In June, 19 persons arrested in connection with the protest were charged with organising mass disorders, a crime that carried a penalty of up to more than 10 years in prison. The trial started in October, and as of the end of the year the case was still pending. A majority of the persons on trial were members of the radical Ukrainian National Assembly-Ukrainian National Self-Defence, a group that believed the case to be politically motivated.²²

Judicial System and Independence of the Judiciary

The Constitution guaranteed the independence of the judiciary, but in practice the judicial system remained under strong influence of the executive branch. The courts were funded via the Ministry of Justice and an overload of work and a lack of funding and staff on their part rendered them vulnerable to political pressure. Some judges also continued to function according to old Soviet norms and applied guidelines originating from the executive branch. Some courtrooms were in very bad conditions and lacked adequate equipment.²³

In the summer, the Parliament passed a number of amendments to laws regulating the system of justice, including the Law on the Court System and the Criminal Procedure Code. These amendments replaced interim constitutional provisions, which expired at the end of June, and represented a progressive development. Under the amendments, a unified court system with four levels was established: local courts, regional courts, specialized high courts and the Supreme Court were to function according to a hierarchy. The specialized high courts included the former arbitration courts, which were turned into commercial courts, and military courts, which were charged with all cases involving military officials.

The Constitutional Court remained outside of the general court system. The amendments also provided for a new ap-

pellate process according to which regional courts were to function as appellate courts for lower-level courts. The regional courts were thus granted the right to independently reconsider cases examined by the lower level instances and to rescind decisions taken by these. Moreover, the amendments transferred the right to issue arrest and search warrants from prosecutors to courts, which was a measure aimed at curbing the overly extensive powers enjoyed by the prosecutors.²⁴

During the year the Parliament also adopted a new Criminal Code, which entered into force on 1 September. The new code firmly established the principle of *corpus delicti* and penalized a number of offences that previously had not been punishable, including interference with private correspondence; obstruction of legal political, civil and trade union activities; and failure to pay salaries and social benefits for more than a month.

Penalties for many other crimes were reduced, and a number of alternative forms of punishment were introduced, e.g. detention for one to six months, public work assignments and limitations on the freedom of movement. Further, the new code contained an explicit ban on the death penalty, which had not been applied in the republic since 1997, and stated that life imprisonment could not be used for persons who were under age, older than 65 or women who were pregnant at the time of committing the crime they were charged with or at the time of the court verdict.²⁵

The Ukrainian Committee Helsinki-90 welcomed the revision of the Criminal Code but regretted that some of the most questionable provisions from the old law were retained in the new law, and that some of the new provisions actually were worse than those previously in place. For example, the wording of the article on "disclosure of information damaging the State's reputation" appeared to motivate the targeting of critical voices, such as human rights activists.²⁶

Fair Trial and Detainees' Rights

Trials were often dragged out and as a result detainees were held for lengthy periods in pre-trial detention. Although provided for by law, release on bail was rarely used. By law, detainees also had the right to receive legal counsel from the time they were arrested, and to have the costs covered by the State if they could not afford to pay themselves. However, in practice this right was regularly violated and detainees were interrogated without the presence of a lawyer, which exacerbated the risk of police officers resorting to verbal and physical abuse. Detainees were also sometimes deprived of the right to communicate in private with their lawyers and to inform their relatives of their arrest.²⁷

In court the position of the prosecution remained disproportionately strong and confessions extracted under torture, including during the 72-hour-period that suspects could be held without a warrant, were regularly admitted. Several judges also ignored relevant legal norms and applied outdated legislation, including Soviet era provisions. Meanwhile standards laid down in the Constitution and international human rights treaties were rarely invoked. Cases were also frequently remitted for additional investigation. Unreasonably strict sentences were sometimes handed out in criminal cases, and in civil cases court decisions often remained unimplemented, in particular if they contradicted the interests of the ruling elite.²⁸

Torture, Ill-Treatment and Police Misconduct

The State Tax Administration (STA) continued to act outside all due control when exercising its law enforcement powers, thus functioning as a virtual paramilitary body. Tax police officers reportedly intimidated businessmen and other citizens under the pretext of both real and fictitious tax irregularities, forced their way into offices and homes, confiscated property without a warrant and carried out arbitrary arrests.

The victims of the pressure exerted by the STA included a number of former bank officials and political opponents.²⁹

◆ In March, former bank officer Borys Feldman was arrested on charges of tax evasion. After he had spent almost seven months in custody, the Pechersk Local Court in Kyiv ruled that he was detained illegally and should be immediately released. However, the same day, the republic's Deputy General Prosecutor ordered that the release should not be effected, even though he did not have such powers by law. Mr Feldman was also denied the right to appeal this decision.³⁰

A positive development included the fact that the new Criminal Code contained an article defining torture as a specific crime. However, in spite of this, the pattern of torture and ill-treatment by law enforcement officials continued to persist from previous years, with the perpetrators rarely being brought to justice. Police officers reportedly punched, hit and kicked detainees and used various torture techniques on them, including suffocation.

Once initiated, investigations into cases of alleged abuse by police officers were slow and inconclusive. According to the Government, about 185 cases of abuse by law enforcement officials were reported, while about 200 police members were charged with such crimes in 2000. During 2001 the Parliamentary Committee on Human Rights reportedly received more than 300 complaints concerning human rights abuses by law enforcement officials, and 50 of them dealt with physical and psychological violence.³¹

◆ On 12 July, Niyazy Gafarov, a Crimean Tatar, was shot dead in a police station in the Crimean capital of Simferopol. The police claimed that he had attempted to attack a police officer with a knife. However, his relatives reportedly discovered handcuff marks on his wrists, suggesting that he could not have made use of a knife after he was arrested. The body also bore visible traces of torture.³²

In the army, ill-treatment and torture of conscripts was common. Army officers often silently tolerated abuses, and sometimes even participated in them. According to official information, approximately 15% of all cases brought to military courts dealt with alleged hazing. Meanwhile those recruits who left the army because of hazing could be sentenced to up to seven years imprisonment. A considerable number of recruits who had been subjected to abuse reportedly attempted to commit or committed suicide.³³

Conditions in Prisons and Detention Facilities

Conditions in prison and pre-trial detention facilities continued to fall short of international standards. Many facilities were overcrowded and did not meet even basic sanitation norms. According to the State Penitentiary Department, no new penitentiary facilities had been built in the last ten years, and only one had been reconstructed.

Cells in the penitentiary facilities were not adequately heated or ventilated, and the food served to detainees was often of poor quality. While tuberculosis and other diseases were widespread, detainees were not always granted access to medical care. Torture and ill-treatment also remained a serious problem, a fact that was acknowledged by the Commissioner for Human Rights, who had the right to visit and monitor places of detention.³⁴

In the summer, in commemoration of the 10th anniversary of the republic's declaration of independence, the Parliament adopted amnesty legislation that provided for the release of about 35,000 prisoners. The amnesty primarily applied to women and persons who had been sentenced for non-violent crimes.

At the time of the amnesty, official statistics indicated that there were about 230,000 prisoners in Ukraine.³⁵ A relatively new category of prisoners was made up of those who initially had been sentenced to death but whose sentences later had been

commuted into life imprisonment. As of the end of the year the number of these prisoners was 593.³⁶

Religious Intolerance

Article 35 of the Constitution established that citizens enjoyed the right to freedom of religion and that there was no state religion. However, the Ukrainian Committee Helsinki-90 expressed concern over efforts to unite all Orthodox communities in the country into one Orthodox Church. While not opposing the efforts as such, the Committee feared that the State would attempt to use the united Orthodox Church as a tool to exert political influence and to undermine the position of so-called non-traditional religious communities. This fear was substantiated by the fact that negative attitudes towards minority religious communities had manifested themselves in both public discussions and in the media.

Minority religious communities were also subjected to discrimination by local authorities. By law, religious communities were not required to register with the authorities, although registration involved a number of advantages. However, non-traditional communities were sometimes treated as illegal if they had not registered. Moreover, when applying for registration, they sometimes had to go through arbitrary registration processes or were denied registration on the grounds that they were "sects" or "cults".³⁷

Conscientious Objection

Military service or community service was compulsory for male citizens, military service being 1 to 2 years (18 months on average) and community service two years. The 1992 Law on Alternative Non-military Service was discriminatory in two basic respects. Firstly, the right to alternative service was only granted to those who objected military service on religious grounds and belonged to religious communities that were officially registered. Other conscien-

tious objectors could be charged with evasion of military service and sentenced to up to three years imprisonment under the Criminal Code. Secondly, the length of the community service still rendered it punitive although the term had been reduced from three years to two in 1999.³⁸

Freedom of Movement

In October, new regulations regarding the entry, exit and transit of foreigners were introduced. Under the new regulations foreigners visiting the republic were no longer obliged to register with and submit their passports to the police but were instead to be registered at checkpoints situated at border crossings. The new regulations also granted citizens of countries with which Ukraine has concluded non-visa agreements the right to enter the republic without a specific invitation.³⁹

In November, the Constitutional Court repealed the *propiska* system that had remained in force during the first post-Soviet decade. To replace it the Government introduced a new registration system, due to take effect in January 2002.⁴⁰ According to the new system citizens are still required to register with local authorities within 10 days after moving to a new place, but there are no restrictions on choosing the place of residence. However, people still have to submit a number of documents – e.g. a letter from their employer – for the purpose of registration. Moreover, they have to prove that they have signed an official lease with their landlords, a requirement that critics believed would make it difficult for many citizens to register since landlords have to pay up to 40% of their rent incomes in tax and are often unwilling to inform the authorities of their lease activities.⁴¹

Information about the new registration system was scarce and few citizens knew what concrete changes would result from it.⁴² According to the Ukrainian Committee Helsinki-90, in practice, the formal abolishment of the *propiska* system did not bring about any real changes.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

After revising a periodical report submitted by Ukraine in August, the UN Committee on the Elimination of Racial Discrimination expressed regret that national legislation did not contain adequate provisions prohibiting discrimination on the grounds of race and ethnic or national origin. At the same time the Committee voiced particular concern over social discrimination and police brutality experienced by Roma.⁴³

The police also arbitrarily stopped in the street and searched dark-skinned persons or those believed to originate from the Caucasus, and requested refugees who resided legally in the country to pay bribes in order not to be detained.⁴⁴

Moreover, there were reports indicating an increase in anti-Semitic propaganda.

◆ In late 2001, the Prosecutor's Office in Crimea opened a criminal case against *Russkii Krym*, a newspaper controlled by the Russian Movement of Crimea, regarding its publication of anti-Semitic material. An article in the newspaper had reportedly dealt with "tricks of the Jews and their ominous role in the contemporary fate of the Russian people." The proceedings were launched under a Criminal Code provision prohibiting instigation of interethnic enmity. The prosecutor said that he would recommend that the court ban the newspaper.⁴⁵

Social Rights

HIV/AIDS⁴⁶

The first case of HIV was registered in Ukraine in 1987 and since then the number of infections has grown rapidly. According to estimates 300,000 persons were infected with HIV as of the end of 2001, which was the highest figure in the area of the former Soviet Union.

Most of the infected persons were intravenous drug users who had become infected by sharing needles with other drug addicts, but the rate with which HIV was

transmitted sexually was also on the rise, in particular among sex workers and in prisons. The Government has declared HIV/AIDS a national emergency and adopted a national strategy to deal with the problem.

However, NGO activists called for increased efforts to bring the epidemic under control in the country. Above all, they criticized the fact that the Government had taken few steps to help provide cheaper treatment for those infected with HIV. Antiretroviral drugs, which can be used to effectively prevent the transmission of HIV from mother to child during birth and also to prevent the onset of AIDS in adult patients, were scarcely available and too expensive for most persons infected with HIV to afford. A doctor working with Doctors without Borders in Odessa and Crimea said that 99% of all the persons living with HIV/AIDS in the country did not receive any treatment.⁴⁷

While ignorance about the causes and transmissions of HIV remained widespread, persons living with HIV/AIDS often experienced discrimination and social exclusion: they were fired from their jobs, forced to leave their homes and rejected by friends and relatives.

Women's Rights⁴⁸

Trafficking in Human Beings

When the new Criminal Code was adopted, Article 149 on "Trafficking in Human Beings or Other Illegal Transition of a Person" was moved from the section on crimes against the life and health of a person to that on crimes against the will, honour and dignity of a person.⁴⁹ That crime carries a term of imprisonment of three to eight years.

According to the second part of Article 149, persons who commit the same acts involving minors, several persons, a person who is financially or otherwise dependent on the offender, commits the acts repeatedly, or previous collusion or abuse of official position, can be imprisoned from 8-15 years, with the confiscation of property.

The changes to the anti-trafficking legislation in the Ukrainian Criminal Code brought it further in line with international norms on combating this crime, in particular the UN Convention Against Transnational Organized Crime and the additional Protocol to Prevent, Suppress and Punish Trafficking in Human Beings especially Trafficking in Women and Children,⁵⁰ although the new law does not fully meet their requirements.

Changes also appeared in the Criminal Procedure Code, in particular Article 11, which defines the main provisions on pre-trial investigation. Additions to the Article on "Investigative Jurisdiction" shifted duties concerning trafficking cases from prosecutor investigators to police investigators.⁵¹ As a result, responsibility for the operational search and investigation of criminal cases related to Article 149 of the Criminal Code are now carried out by the internal affairs bodies.

Prior to the adoption of the new Criminal Code, prostitution was not regarded as a crime in Ukraine. Previously, prostitution threatened only public order, and the coercion of women into prostitution was punished in accordance with the Criminal Code. Article 303 on "Prostitution or Coercion or Engagement in Prostitution" was amended by the new Criminal Code, according to which "Systematic prostitution, that is the provision of sexual services for material gain, is liable to a monetary fine ranging from 50 to 500 officially set tax-free minimal incomes or to community work for up to 120 hours⁵²".

Since the article entered into force, there have been discussions about the first part, which inflicts responsibility for prostitution, and its damaging effect on detecting cases of trafficking. Representatives of some law protection organizations (including foreign ones) have stated that the criminalization of prostitution in Ukraine will create a situation in which trafficked persons will not complain to law enforcement bod-

ies that they were forced to work in sex the business. The article could also be a motive for traffickers to blackmail their victims: if the police learn about pimp actions, then trafficked person will also be accused of prostitution.

Special subsections on combating crimes related to trafficking in human beings were created in the structure of the main Criminal Investigation Department of the Ministry of Interior of Ukraine and in the regional Interior Affairs Departments in 2000 to prevent, ascertain and detect cases of trafficking in human beings. Between March 1998 and December 2001, 145 cases were initiated under the article on "trafficking in human beings". Despite the difficulties connected with the detection and investigation of these cases, it is possible to observe positive changes in the number of initiated cases: while only two cases were initiated in 1998, the corresponding figure was 90 in 2001.⁵³

Article 172 of the new Criminal Code criminalizes the illegal dismissal of employees for the private reasons of the employer, as well as other severe violations of the labour legislation. At the same time, such acts committed towards a pregnant woman or mother with a child under the age of 14 or a handicapped child are considered to be aggravating circumstances. Article 164 on the refusal to pay alimony is also an important provision, since statistics show that mothers are given custody upon divorce in the vast majority of cases. The code shows that the Government protects motherhood over fatherhood, even when the woman committed a crime. In this regard, the code contains *inter alia* provisions related to reformatory work for pregnant women and women on maternity leave⁵⁴, the application of life imprisonment as punishment for women who were pregnant at the time of the alleged crime or at the time of sentencing⁵⁵, as well as a number of other provisions governing the rights of women in detention.⁵⁶

In November 2001, the Supreme Council adopted a law "On the prevention of domestic violence," which had been worked out over a period of several years by lawyers and representatives of women's organizations. The law defines the legal and organisational basis for preventing domestic violence, as well those bodies and organisations responsible for its implementation. The law also adopts a wide definition of violence by including terms such as physical, sexual, psychological, and economic violence in the family. According to the law, violence in the family is defined as "all deliberate acts of a physical, sexual, psychological or economic nature by one family member towards another family member, if such acts violate the constitutional rights and freedoms of the family member and citizen and cause moral damage, or damage to physical or psychological health." The law is gender neutral in this regard, since it does not specify the sex of the victim.

The preventive measures are to be carried out by the State Committee of Ukraine for Family and Youth Issues and accordingly its regional, city and local departments, who are to coordinate all the activities. The district police officers and criminal police on youth issues of the Ministry of Interior, orphan guardian bodies, centres of medical rehabilitation of victims of domestic violence and special crisis centres (whose creation is planned) are also included in realisation of these measures. One positive as-

pect of the wide recruitment of different state bodies and services is that different state bodies must oppose violence. However, on the negative side, the staff is not ready for this work, and there is no knowledge, understanding or recognition of this problem as important.

Serious concerns were raised about a new statement on the "provocation behaviour" of a family member as a result of which he (she) becomes a victim of domestic violence. According to the law, after three cases of such behaviour, which could ultimately result in domestic violence, the district police officer or criminal police department on youth issue a notification.

This statement is more subjective and serves more to protect the perpetrator.

A draft law "On the equal rights of men and women" was prepared by Gender Initiative Group of the Supreme Council of Ukraine with the participation of specialist lawyers and NGOs. In addition to articles on equal rights and possibilities for men and women (which is enshrined in Article 24 of the Constitution of Ukraine), the draft proposal also offers a state mechanism to regulate this rule. It has not yet passed even the first hearings, thereby indicating the absence of a real understanding of these problems in society. It also reveals the lack of understanding that for real equality in all spheres, a change in the status of women is not possible without a change in the status of men.

Endnotes

- ¹ Information from the Ukrainian Committee Helsinki-90.
- ² *RFE/RL Weekday Magazine*, Askold Krushelnycky, "Yushchenko Fails Confidence Vote", 26 April 2001.
- ³ *RFE/RL Weekday Magazine*, Askold Krushelnycky, "Former Prime Minister Outlines Political Comeback", 17 July 2001.
- ⁴ The 16 April 2000 advisory referendum on amendments to the Constitution was carried out in violation of international standards. If these results had been implemented, they would have created a serious setback to Ukraine's development towards democracy. For

- more information, see IHF, *Human Rights in the OSCE Region 2001*, at www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Ukraine.pdf.
- ⁵ Based on OSCE/ODIHR, *Review of the Law on Elections of People's Deputies*, November 2001, at www.osce.org/odihr/documents/reports/election_reports/ua/ua_rev_dept26nov01.php3.
- ⁶ Ukrainian Committee Helsinki-90
- ⁷ International Press Institute (IPI), *Waging War on the Media - World Press Freedom Review 2001*, at www.freemedia.at.
- ⁸ Ibid.
- ⁹ Committee to Protect Journalists (CPJ), 19 June 2001.
- ¹⁰ Ukrainian Committee Helsinki-90
- ¹¹ Ibid.
- ¹² IPI, op.cit.; CPJ, *Europe and Central Asia 2001 – Ukraine*; and RFE/RL *Weekday Magazine*, "Officials Thwart FBI Probe of Journalist's Death", 17 April 2002.
- ¹³ IPI, op.cit.
- ¹⁴ Ibid.
- ¹⁵ RFE/RL *Weekday Magazine*, Askold Krushelnicky, "New Regulation Allows Journalists to Carry Non-lethal Handguns", 29 January 2002.
- ¹⁶ RFE/RL *Newsline*, 30 and 31 May 2001.
- ¹⁷ Ukrainian Committee Helsinki-90
- ¹⁸ RFE/RL *Newsline*, 8 January, 14 February, 28 March, 2 April and 8 August 2002.
- ¹⁹ Ukrainian Committee Helsinki-90
- ²⁰ RFE/RL *Weekday Magazine*, "Police Strikes Protestors' Tent City", 12 January 2001.
- ²¹ Ukrainian Committee Helsinki-90; Infobank News Agency, *Ukraine Today*, 12 March 2001; and Amnesty International (AI), *Concerns in Europe January-June 2001*, at <http://web.amnesty.org/ai.nsf/index/EUR010032001?OpenDocument&of=COUNTRIES\UKR&AINE#UKR>.
- ²² RFE/RL *Newsline*, 20 June and 3 October 2001. See also IHF and Ukrainian Committee Helsinki-90, "Empty Statements About Embracing European Values Are Contradicted by Demonstrators in Custody, Violations of Due Process Standards and Illegal Operations of Tax Authorities," at www.ihf-hr.org/appeals/011016ukr.htm.
- ²³ Ukrainian Committee Helsinki-90
- ²⁴ Ibid.; and Infobank News Agency, *Ukraine Today*, 9 July 2001.
- ²⁵ NTV, 1 September 2001, at www.ntvru.com/world/01sept2001ency; and Infobank News Agency *Ukraine Today*, 9 April 2001.
- ²⁶ Ukrainian Committee Helsinki-90
- ²⁷ Ibid.; and AI, *Ukraine Before the UN Human Rights Committee*, 15 October 2001, at www.web.amnesty.org/ai.nsf/index/EUR500012001?OpenDocument&of=COUNTRIES\UKRAINE.
- ²⁸ Ukrainian Committee Helsinki-90
- ²⁹ Ibid.; and IHF and Ukrainian Committee Helsinki-90, "Empty Statements About Embracing European Values Are Contradicted by Demonstrators in Custody, Violations of Due Process Standards and Illegal Operations of Tax Authorities."
- ³⁰ Ukrainian Committee Helsinki-90
- ³¹ Ibid.; *UN Human Rights Committee Concludes Review of Report of Ukraine*, 16 October 2001, and *UN Committee Against Torture Issues Conclusions and Recommendations on Report of Ukraine*, 21 November 2001, both at www.unhchr.ch; and AI, *Ukraine before the United Nations Human Rights Committee*.

- ³² Ukrainian Committee Helsinki-90
- ³³ AI, *Ukraine before the United Nations Human Rights Committee*.
- ³⁴ Ibid.: Ukrainian Committee Helsinki-90; and Freedom House (FH), *Nations in Transit 2001*, at www.freedomhouse.org/research/nattransit.htm.
- ³⁵ *RFE/RL Newslines*, 9 July 2001.
- ³⁶ Ukrainian Committee Helsinki-90
- ³⁷ Ibid.
- ³⁸ Ibid.; and AI, *Ukraine Before the UN Human Rights Committee*.
- ³⁹ Infobank News Agency, *Ukraine Today*, 25 June and 1 October 2001.
- ⁴⁰ NTV, 20 November, 2001, at <http://ntvru.com/world/20Nov2001/propiska.html>.
- ⁴¹ *Transitions On Line*, Irina Sandul, "On the Move", 8 February 2002.
- ⁴² Ibid.
- ⁴³ *UN Committee on Racial Discrimination Starts Adopting Concluding Recommendations on Report of Ukraine*, 16 August 2001; and *UN Committee on Racial Discrimination Adopts Title Remaining Conclusions on Report of Ukraine*, 16 August 2001, both at www.unhchr.ch.
- ⁴⁴ Ukrainian Committee Helsinki-90
- ⁴⁵ *RFE/RL Newslines*, 7 December 2001.
- ⁴⁶ Based on *Doctors without Borders Activity Report 2000-2001*, at www.msf.org; *RFE/RL Weekday Report*, Lily Hyde, "HIV Cases Skyrocket While Government Ponders Options", 25 June 2001; and *RFE/RL Weekday Report*, Robert McMahon, "AIDS Declared National Epidemic", 22 June 2001.
- ⁴⁷ The director of the national AIDS Centre, Alla Scherbynska, on the other hand, stated that Ukraine had been admitted to a programme jointly launched by the UN and five large pharmaceutical companies holding patents on antiretroviral drugs, which would allow the Government to buy drugs at discounted prices.
- ⁴⁸ This section is based on information received from Levchenko Ekaterina, PhD, president of international women's HR centre "La Strada- Ukraine", Kiev, 19 April 2002
- ⁴⁹ Article 149 states that "Trafficking in human beings involves the sale or other paid transfer of a person, as well as any other illegal transaction with respect to a person, concerning the legal or illegal transfer of that person via the state boarder of Ukraine, with or without that person's consent, with the aim of further sale or paid transfer of that person to another person(s) for sexual exploitation, use in the pornography business, engagement in criminal activities, debt bondage, adoption for commercial purposes, use in armed conflict, or the exploitation of the labour of that person." *The Criminal Code of Ukraine: official edition.-K.,2001.-p.97-98*.
- ⁵⁰ Ukraine joined UN Convention in December 2000 during its signing but it did not sign the Protocols.
- ⁵¹ *The Criminal Procedure Code of Ukraine*, K. Atika, 2001, p. 65-66.
- ⁵² *The Criminal Code of Ukraine: official edition-K., 2001*.
- ⁵³ Sixteen cases were initiated under Article 149 in the first four months since the adoption of the new Criminal Code.
- ⁵⁴ Article 57.
- ⁵⁵ Article 66 prohibits life imprisonment for such women.
- ⁵⁶ Articles 66, 67, 79, 115, 116.