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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

Ukraine¹

IHF FOCUS: elections; freedom of expression, free media and information; peaceful assembly; torture, ill-treatment and police misconduct; arbitrary arrest and detention; freedom of movement.

The political developments in Ukraine in 2004 were dominated by the tumultuous aftermath of the October presidential elections. The first two rounds of elections, like earlier Ukrainian elections, were riddled with violations of international standards for free, fair and democratic elections. As a result of the re-run of the second round of elections, Viktor Yushchenko was elected president on 26 December. The leader of the so-called Orange Revolution, he pledged to make Ukraine a European democracy.

The “Orange Revolution” was a reaction to the authoritarian rule of President Leonid Kuchma and his governments since 1994. His era was characterized by sweeping presidential powers, a history of flawed elections, strict government control over the state-run media, harassment of independent media outlets and journalists, infringements on freedom of association (including of political parties), the absence of an independent judicial system, and widespread corruption.

In the course of 2004, there appeared to be a slight relaxation of media freedoms, however, during the election campaign, state media openly supported the pro-government candidate and incumbent prime minister, Viktor Yanukovich. Several critical media outlets were suspended and journalists fired. Access to information of public interest or importance was barred under illegal practices by public authorities.

Large-scale arrests and short-term detention of opposition activists, particularly members of the PORA public campaign, were commonplace during the election campaign and especially during the election crisis from October to December. In addition, police violently cracked down on rallies drawing attention to social problems. It was virtually impossible for the opposition to organize legal demonstrations, because courts, as a rule, banned them under pressure from local authorities.

Torture, ill-treatment and other police misconduct remained a serious problem. Despite a new law on residence registration, freedom of movement and the right to choose one’s residence continued to be restricted.

¹ Based on information from the Ukrainian Helsinki Human Rights Union (UHHRU).

Elections

Presidential Elections

Viktor Yushchenko, the leader of the political opposition, was elected president on 26 December, following a tumultuous election campaign and three rounds of elections, the first of two which were riddled with massive irregularities of international standards for free, fair and democratic elections.

Yushchenko's main rival was the incumbent prime minister, Viktor Yanukovich. He was supported by the government and the incumbent president, Leonid Kuchma.

The first round in the presidential elections was held on 31 October and resulted in a narrow victory for Viktor Yushchenko. Because none of the candidates obtained the absolute majority of votes, the second round was held on 21 November.

Mass protests started the day after the second round of elections when official returns differed markedly from polling results. Three different exit polls gave Yushchenko up to a 5-11% lead, while official results stated that Yanukovich had won by 3%. In the following ten days, mass demonstrations and counter-demonstrations continued by the supporters of the two candidates. On 3 December, the Supreme Court declared the elections invalid and ordered a re-run, which was held on 26 December and was won by Viktor Yushchenko.

The whole pre-election campaign was characterized by bias in favor of Yanukovich. He obtained open support from authorities, both in terms of preferential access to state media and public resources to run his campaign, and in the selection of election committee members to facilitate his success.

The IHF and its Ukrainian affiliate, the Ukrainian Helsinki Human Rights Union (UHHRU), reported that, in the run-up to the election, police targeted hundreds of individuals and organizations believed to support the opposition. Unsanctioned searches of premises and arrests were carried out, opposition activists were beaten, and peaceful assemblies were dispersed. Army units were used to create an atmosphere of fear among the population. Politically motivated persecution increased; journalists were dismissed and students were expelled from universities if they expressed support for the opposition. The state used administrative resources to influence and pressure voters. For example, workers in various institutions and industries were routinely forced to collect signatures for Yanukovich's registration as a candidate and to participate in rallies in his support.²

Voter lists were drawn up inadequately, while electoral commissions and election procedures failed to live up to national or international standards. Independent Ukrainian NGOs were not allowed to observe the elections.³

In spite of repeated appeals from governments, international organizations and Ukrainian and international human rights NGOs, Ukrainian authorities – including the Central Electoral Commission (CRC) – chose not to address the known problems prior to the election, and, consequently, the elections were riddled with massive violations of European and international standards for free, fair and democratic elections.

The International Election Observation Mission (IEOM)⁴ later cited the same problems as the IHF and its Ukrainian affiliate and stated that the first round of elections constituted “a step backward from the 2002 elections.”⁵

² IHF and UHHRU, “Ukraine: Violations of international standards have increased ahead of 31 October 2004 Presidential Elections,” 28 October 2004, http://www.ihf-hr.org/viewbinary/viewhtml.php?doc_id=6111.

³ Ibid.

⁴ The IEOM consisted of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP), and the NATO Parliamentary Assembly.

- Ten people were arrested at a polling station in Sumy on the night of 31 October for asking the results of the vote count for the presidential elections to be displayed according to the regulations. Election officials reportedly refused to post the results and called the police. The ten were charged that night with insubordination to the police and were released shortly afterwards. However, on 13 November, police detained all ten people again at their homes at 6 A.M. Six of them were sentenced to 10 days' administrative detention according to the Code on Administrative Infringements. Lawyers and families of the accused were not admitted to the trial and were not told where the detainees were taken.⁶

The authorities failed to take remedial action to correct election abuses between the two rounds of voting and the IEOM reported that "State executive authorities and the CEC displayed a lack of will to conduct a genuine democratic election process."

The IHF and the UHHRU reported that during the second round of the presidential elections on 21 November 2004, there was massive, fraudulent use of absentee ballots by state institutions (which forced employees to submit absentee ballots to employers), and the denial of hundreds of complaints lodged about these practices. Polling station commissioners were forced by state authorities to manipulate voter lists and allow organized multiple voting, which resulted in inflation of turnout rates and results. In violation of the law, local authorities supported activities in favor of Yanukovich. Law enforcement authorities failed to secure the safety of voters, resulting in violence against voters and observers.⁷

During the re-run on 26 December, the same kind of irregularities took place as during the previous rounds, but on a significantly smaller scale. The main problems were the inaccurate voter lists and voting outside election stations. However, the UHHRU stated that the irregularities were not serious enough to affect the results of the poll.

Freedom of Expression, Free Media and Information

There were a large number of TV and radio stations, newspapers and magazines in Ukraine, but little variety in reporting on news and opinions in 2004. The state-owned media were strictly under government control. Their TV channels had the largest coverage in Ukraine, about 95% of all territory, but they were entirely uncritical of state bodies and the ruling political forces.

The National Council on TV and Radio Broadcasting, the state body regulating public TV and radio, was an easy target for interference from the president and parliament, because its members could be removed at any time by the executive or legislature. Due to a lack of independence and to inadequate legislation, the procedure for issuing licences to media outlets was biased and non-transparent, and the council's control function was a mere formality. In December, President Kuchma vetoed changes to the law governing this council, which aimed to provide the body with the guarantees of functional and financial independence.

There was no obligation to make the names of media owners public, and anti-monopoly limitations in the media were ineffective. As a result, all powerful Ukrainian informational resources (radio, TV and newspapers) were concentrated in the hands of a few people who were, in turn, connected to and dependent

⁵ International Election Observation Mission, "Presidential Election, Ukraine – 31 October 2004, Statement of Preliminary Findings and recommendations," 1 November 2004, http://www.osce.org/documents/odihr/2004/11/3771_en.pdf.

⁶ Amnesty International, "Ukraine: Arrested for requesting election results," 16 November 2004, <http://web.amnesty.org/library/Index/ENGEUR500052004?open&of=ENG-UKR>.

⁷ IHF and UHHRU, "Brutal Violations of Human Rights and the Election Law in Ukraine," 26 November 2004, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3998. See also IHF and UHHRU, "Accountability Needed in the Aftermath of Ukrainian Elections," 2 December 2004, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3999.

on the highest state officials of the Kuchma administration. Thus, the media did not criticize the authorities and were not able to express alternative ideas. Media that attempted to provide balanced information were subject to pressure from law enforcement, tax and other controlling bodies in order to stop their broadcast.

- Sergiy Sholoh, former owner of Radio Continent, received political asylum in the United States on 28 June. Radio Continent had been transmitting the programs of Radio Free Europe/Radio Liberty and on 3 March its equipment was seized by police. Sholoh stated that he was forced to publicize a version of the circumstances surrounding the murder of the journalist Georgiy Gongadze that aimed to clear President Kuchma of accusations that he was involved in the murder.⁸ He also claimed to have been persecuted by law enforcement officials and threatened by members of the Social Democratic Party of Ukraine (United) (SDPU), which was part of the ruling coalition.
- The broadcasting of the independent Channel 5 was permanently suspended in various parts of Ukraine (Donetsk, Lugansk, Kharkiv, Dnipropetrovsk and many others). The channel was said to be having “technical” problems but its board of directors suspected that the real reason was the independence of the channel in covering news events.

In addition, journalists were often persecuted for spreading materials critical of the government, President Kuchma and pro-governmental political forces. Law enforcement agencies investigated crimes connected with attacks on reporters, but intimidation and threats from state officials rendered their efforts virtually useless. Moreover, law enforcement or tax officials were sometimes directly involved in such persecution.

- Serhiy Boiko and Valerij Salamov, director and deputy director respectively of the Volia Cable Network in Kyiv, were arrested on 29 June and charged with unlicensed broadcasting and dissemination of pornography. The Ministry of Culture and Art defined these channels as pornographic, but Volia argued that as a telecommunications network provider, it cannot be held responsible for the contents of the programs its individual broadcasters send through its cable networks. Nevertheless, the company stopped broadcasting erotic TV shows. Volia Cable Network suspected that the real reason for the arrest of its directors was the fact that it also broadcast the opposition Channel 5. Serhiy Boiko and Valerij Salamov were released a few days after their arrest on the order of a court in Kyiv, which decided that the Volia cable worked legally and that the charges of the prosecutor’s office were groundless.

The practice of sending media outlets unofficial instructions regarding their news agenda, interpretation of official political information with precise quotations, “instructions” on which events should be highlighted and which events and persons should be ignored was widespread. These instructions, so-called *temnyky*, were not formal, but local monitors said that they were sent by the administration of President Kuchma. Failure to comply with them led to pressure on media bodies and their owners from law enforcement and other authorities. Journalists and reporters were, therefore, under constant pressure from media owners and managers to use self-censorship and were often faced with losing their jobs if they expressed their thoughts freely. During the presidential elections, *temnyky* instructed the media to support the pro-government candidate Viktor Yanukovich.⁹

Elections

In comparison to 2003, freedom of expression improved somewhat on the national TV channels in the run-up to the presidential elections at the end of 2004. The national TV started to provide information in a slightly more balanced way, and also gave access to the representatives of the opposition in their programming. However, the situation on the local level deteriorated in comparison to 2003.

⁸ Georgiy Gongadze, a press freedom advocate and outspoken critic of the Ukrainian government, disappeared on 16 September 2000 and his headless body was found two months later. In early 2005, the Yushchenko administration stated that his killers had been caught but it was still unclear who had ordered the killing.

⁹ International Election Observation Mission, “Presidential Election, Ukraine – 31 October 2004, Statement of Preliminary Findings and Recommendations,” 1 November 2004, http://www.osce.org/documents/odihr/2004/11/3771_en.pdf.

Despite some improvements during the presidential campaigns, state television UT-1, state-owned Radio 1 and nation-wide private channels with large audiences (1+1, Inter and ICTV), provided disproportionately higher access to pro-government Viktor Yanukovich than to the opposition leader, Viktor Yushchenko. For example, in the first two weeks of September, live coverage of Yanukovich in news items on UT-1 exceeded coverage of other major candidates by nearly ten times and exceeded live coverage of Yushchenko by 818 times.

In addition to barring state media access to Yanukovich's main rival, state-controlled TV, in particular UT-1, consistently spread misinformation about the presidential candidates by promoting a positive impression of Yanukovich while airing largely negative coverage of Yushchenko. For example, the latter was accused of harboring extremist views and being allied with extremist organizations. In the most extreme cases, opposition figures were presented as terrorists and criminals.¹⁰

Changes in news coverage mirrored, to some extent, the political turmoil in late 2004. For example, on 28 October, 42 broadcast journalists from several major national pro-government TV channels in Kiev issued a public statement rejecting practices of informal censorship and pledged to provide objective coverage of both presidential candidates. However, interviews with journalists in the eastern cities of Donetsk and Lugansk, the strongholds of the pro-government candidate Viktor Yanukovich, indicated that media control and persecution of journalists continued. The government either marginalized or stamped out opposition media, and turned most remaining outlets into mouthpieces of the local administrations. The few remaining journalists who struggled to express alternative political views faced hostility from local authorities.

- Vladimir Chistilin, editor-in-chief of the informational agency Status Quo in Kharkiv (the only regional informational agency in the city), was dismissed on 29 October, ostensibly, for staying away from work. However, he was informed about this decision only on 1 November. Chistilin claimed that his dismissal was politically motivated.
- On 21 November, Sergiy Formanyuk, the deputy editor for *Ostrov*, the only major opposition paper in Donetsk Province, was attacked when he attempted to enter a polling station with his video camera. He was reportedly stopped at the entrance to the building by three unidentified men and a fourth man who identified himself as the chairman of the Electoral Commission in charge of the polling station. The chairman requested that Formanyuk provide documentation in addition to his accreditation. Formanyuk took out his tape recorder to record the ensuing conversation, but the chairman grabbed it and ordered the three men to attack him. The unknown men dragged him out of the building and kicked him while he was lying on the ground. They also tried to take the video camera. Police standing nearby did nothing to intervene even though they could clearly see what was happening. The police did not open an investigation, despite Formanyuk's efforts to file charges against his assailants.

Access to Information

It was extremely difficult to gain access to information of public interest or importance at local or central public agencies. New amendments to the Administrative Code and legislation on state secrets, press, and protection of information empowered officials on any level to decide for themselves what information should be considered confidential.

According to the law adopted in May 2004, it is prohibited to collect, receive, use, disseminate and store information that contains state or other protected secrets even in cases which they would be of significant public interest and have been retrieved from open sources. This practice considerably limited the scope of rights provided by the Constitution regarding the spread of information, including by journalists and the media. As the law (or any other law) does not define state secrets or other protected secrets, it paves the way to a great deal of self-censorship from journalists and the media.

¹⁰ IHF and UHHRU, "Ukraine: Violations of international standards have increased ahead of 31 October 2004 Presidential Elections," 28 October 2004, http://www.ihf-hr.org/viewbinary/viewhtml.php?doc_id=6111.

Progressive laws regulating access to information and state secrets established in the early 90s were undermined through illegal or quasi-legal practices. In particular, authorities used classifications such as “not for publication,” “not for printing” and “for service use only,” which were not defined by law.

The list of information to which access could be denied included, for example, state or other legally defined secrets, confidential information owned by the state, open information important for the state, information held by the National Academy of Sciences, the armed forces and other military units, law enforcement agencies, as well as state enterprises, establishments and organizations.

Only the concept of “state secret” was defined by law, and the list of information classified as “for service use only” was not public. The list of issues considered state secrets was published immediately after its adoption in 1995 but was later made secret along with its later amendments. As a result, there were no clear, transparent legal regulations on the basis of which authorities would decide which information was accessible. The decision was left at the discretion of individual public officials.

The UHHRU tested how widely these illegal classifications were applied by analyzing all the documents issued by several central agencies between 2000 and 2004. Most such documents were issued by the president of Ukraine and the cabinet of ministers. While the president used the classification “not for publishing” in most cases, the cabinet of ministers usually classified their documents as “not for printing” and agencies used “for service use only.” The titles of all the documents classified as “for service use only” were listed in publicly accessible databases, from which it was possible to understand roughly the content of the document. However, the documents classified as “not for printing” or “not for publishing” were represented only by numbers and dates of issuance, which made it impossible to understand the information these documents contained.

The great number of untitled documents issued by the president and the cabinet of ministers prompted the UHHRU to investigate the dynamics of their adoption over a longer time. It appeared that the widespread use of the classifications “not for printing” and “not for publishing” began as early as 1994, prior to the Kuchma era, and many such documents had been issued during election campaigns. In such periods, the number of unlawfully classified secret documents amounted to about 10% of all issued legal documents. Furthermore, it was clear that the president made many more documents secret than did the cabinet of ministers or any other body.

Defamation and Morals

In May, new legal regulations were introduced regarding defamation by the media. They provided for higher court fees and a higher level of proof to make defamation litigation for compensation successful. As a result, the number of defamation suits by public officials against media outlets and journalists decreased significantly. In addition, according to the new law, public authorities no longer can demand pecuniary compensation for the publication of false information, but rather only a retraction.

However, the new Civil Code that came into force in January 2004 provides that “negative information disseminated about a person is incorrect” and that “any information disseminated by a state body is true.” These provisions created additional basis for the persecution of journalists and media outlets.

A new law came into effect in January 2004 establishing a body for the protection of public morality. The body was charged with preventing the spread of harmful materials that potentially violate public morality (pornography, erotic materials, violence, brutality, etc.) and imposing sanctions for the distribution of such materials. It also was in charge of issuing licenses to the entities that were spreading materials suspected of belonging to this category and approving their materials. In practice, such an approval procedure amounted to censorship, which is prohibited by the Constitution of Ukraine. The UHHRU criticized the fact that while the law did not provide clear criteria for what could violate public morality, it inflicted harsh penalties for violations: high fines, closure of media outlets and even criminal charges.

Peaceful Assembly

According to the Department for Public Communication of the Ministry of Interior, in the period between 1 May and 1 September, more than 10,000 public assemblies were held in Ukraine, in which seven million citizens took part, almost all of which were held without incident. In reality, numerous violations by local authorities, courts and law enforcement agencies of the right to peaceful assembly took place in 2004. The number of violations grew since 2003, largely due to the presidential elections.

By law, local authorities had to be “informed” about demonstrations or other public assemblies. There were, however, no precise provisions on the procedure to do so. Thus, local authorities, law enforcement agencies and the majority of the courts interpreted the definition of the advance notice term in a very broad way. According to their opinion (formed during Soviet times), advance notice should be not less than 10 days. While the provision requiring notification of state bodies about public meetings was not in conflict with European standards *per se*, the ten-day rule was not reasonable in that it hindered spontaneous peaceful mass meetings on the occasion of an unexpected situation.

By law, authorities did not have the right to generally ban a meeting in specific places, but such a prohibition could be imposed temporarily during a state of emergency in the country as a whole or in smaller regions. However, administrative practice in Ukraine showed that local executive bodies throughout the country had their own regulations (in contradiction with the Constitution) that prohibited any mass events in city centers. As a result, for example in Kyiev, the authorities allocated the place for the meetings and demonstrations at the outskirts of the city or at the stadium.

The Constitutional Court defined on 1 April 2001 that precise terms on the right to assembly should be provided by law and commented that: “These terms should not limit the right provided by article 39 of the Constitution of Ukraine, but should guarantee this right and at the same time should provide the possibility to appropriate executive power or local self-governmental bodies to organize free meetings, rallies, processions and demonstrations, keeping the public order and protecting the rights and freedoms of other persons.”

On 23 March 2004, President Kuchma submitted to the parliament a draft law that, if adopted, would have further restricted the right to peaceful assembly. However, the bill did not gain the necessary support.

Police acted with excessive force against demonstrations protesting social problems and injustice, resulting in physical injuries to demonstrators. Some initiators and activists of peaceful assemblies suffered administrative persecution, such as a three-hour detention and fines.

- On 15 May, police in Kyiv forcefully cracked down on the peaceful picket of “SOS,” which took place near the parliament. “SOS” participants – parents who believe that their children have been sentenced to prison illegally – had informed local authorities in advance of their action. However, the picket, consisting of nearly 30 elderly women and men, was forcefully disbanded. Some participants were injured, but the Prosecutor’s Office of Pechersky District refused to investigate police violence and initiate proceedings despite evidence of excessive force.
- Students from Sumy, who initiated a peaceful protest action against the amalgamation of three local universities and the appointment of O. Tsarenko (member of parliament) as university principal, suffered from court bans, forceful police actions and direct persecution of participants. In May, Costiantyn Yelishkevych, a journalist from the Sumy regional TV and Radio Company, was fired from his job because he held a speech at the student rally. On 1 August, Sumy police invaded a tent camp of students in Shevchenko park. Before setting up the camp, the students had informed local authorities about their intended action. No court ruled against the assembly, but police still destroyed the camp. More than 20 students were arrested, and nine of them were sentenced to one-day administrative arrest under article 185 of Code of Administrative Offences. Further student rallies were banned on 6 August, and more than 30 demonstrators were arrested and sentenced to one-day administrative arrest under article 185 (“disobedience to law enforcing organs”). One of the rally participants, Viacheslav Kobyliaikov, ended up in the hospital with serious injuries.

The main hindrance for organizing public opposition assemblies legally were the courts of law. At the request of local authorities – but with no legal basis – they banned a number of pickets, rallies and demonstrations, in most cases citing a threat to public order or claiming that another (pro-government) event would take place at the same time. One of the main reasons for this was the dependence of the courts on local authorities. In many cases, courts prohibited public meetings right before they were due to take place. It was almost impossible to successfully appeal such decisions and moving the time of the meetings often created additional conflicts. Respublica Institute documented only two cases in which courts did not accede to requests of local authorities to ban public events: on 19 May, the Town and District Court of Lutsk refused to accede to the request of the Lutsk Municipal Council, and on 9 June, the Leninsky District Court in Kirovograd refused to accede to the request of the Kirovograd Municipal Council. In both cases local authorities tried to ban the actions of “Our Ukraine” coalition. If the organizers wished to appeal the first-instance decision to a higher court, the appeal procedure took so long that that it was pointless to do so.

Some participants of opposition rallies suffered persecution following an illegal rally.

- Two activists of “Our Ukraine,” Ivan Varchenko and Eugene Zolotariov, were sentenced to 10 and 15 days administrative detention respectively by the Kyivsky District Court in Kharkiv under article 185 of the Code on Administrative Offences in Ukraine. On appeal, their sentences were reduced to three days.
- On 22 May, in Mukacheve, police detained Costiantyn Sydorenko, who had earlier taken part in protest actions. On 25 May, the Mukacheve Town and District Court sentenced him to five days of administrative arrest according to article 185 of the Code of Administrative Offences.

Authorities did allow pro-government rallies and some others to take place, including one held in Sympheropol to commemorate the 60th anniversary of the deportation of the Crimean Tatars, which drew a reported 25,000 participants. In addition, a number of smaller rallies against the war in Iraq held in May and June in Kyiv, Sumy, Khmelnytsky and other towns were organized by NGOs and political (Communist and Socialist) parties and held undisturbed with no negative consequences for participants.

Many public meetings that were part of pre-election campaigns were prohibited. Most of them were part of Viktor Yushchenko’s campaign, but in some cases, courts in Lviv banned public assemblies of the SDPU, which was part of the government coalition and supported Yanukovych. Many rallies scheduled for 1 May were banned by court decisions in Kyiv, Lviv, Mukacheve and other towns. However, many rallies were also banned after that date.

- Ordzhonikidze District Court of Zaporizhzhia banned the action of the opposition coalition “Our Ukraine,” which was to take place on 15 May.
- The Suvorov District Court in the region of Kherson acceded to the request of the Kherson municipal council on prohibiting the Kherson branch of the opposition Ukrainian People’s Party to hold a rally on 17 May.
- The Gorodne District Court in the Chernigiv region banned a rally by the Socialist party and the Chernigiv trade union of entrepreneurs in the village of Senkivka on 26-27 June during the “Friendship-2004” international festival.

Election Rallies

The closer the elections came, the more restrictions were imposed on opposition meetings. Some election meetings and rallies were banned and the police blocked the way to prevent citizens from the provinces from joining meetings in Kyiv held by the opposition candidate. Kyiv was practically closed off from the rest of

the country.¹¹ In the east of Ukraine (in Lugansk and Donetsk regions and particularly in Crimea), police failed to secure the safety of opposition demonstrators.

- Some 30 people with hammers attacked the participants of a meeting in support of Viktor Yushchenko in Lugansk on 29 November. Ganna Nizkodubova, a reporter of the Ukrainian News agency, and Yevhen Savchenko, a journalist with the local newspaper *Luganchane*, were among those attacked. The mob took Nizkodubova's camera and broke Savchenko's nose. Police failed to react adequately. While the Lugansk Regional Department of the Ministry of Interior claimed that no complaint had been filed regarding the incident, Nizkodubova and her colleagues insisted that they complained to local police and demanded a criminal case be initiated for "hooliganism."

Torture, Ill-Treatment and Police Misconduct

Torture and inhuman and degrading treatment in police custody remained widespread practice in 2004. Such abuses were frequent particularly during the first 72 hours of detention when detainees did not have contact to a lawyer or relatives.

Between 2 July 2003 and 1 July 2004, 436 reports of alleged cases of torture were gathered by several human rights NGOs, including the Kharkiv Human Rights Protection Group (KhHPG) and its regional partners, which provided legal and financial support to victims of torture. It also prepared 20 complaints for the European Court of Human Rights (ECtHR) on cases of torture, one of which was declared admissible.¹²

The Ukrainian human rights ombudsman has estimated that each year 30% of all detainees may become victims of torture or ill-treatment by law enforcement agents.¹³ Another serious concern was that courts used as evidence "confessions" extracted under physical or psychological pressure.

- Vladimir Vishnyakov, from the village of Piyatigorskoye (Kharkiv region), was severely beaten on 9 March by law enforcement officials resulting in a brain concussion and ear and kidney injuries. On 12 March, militia officers requested help from the local hospital, but in spite of the serious injuries, the doctor in charge refused to treat and hospitalize Vishnyakov. Only on 15 March, following an appeal from a parliamentary deputy, was Vishnyakov finally hospitalized.
- On 20 May, Ivan Nechyporuk was detained under suspicion of drug possession and murder. The next day, officers of the southwestern division of militia in the city of Kryvyj Rig tortured Nechyporuk with electric shocks and beat him with a metal crowbar to force him to confess to the crimes. Nechyporuk fell unconscious several times. Militiamen also detained Nechyporuk's wife, Natalia Yonkalo, who was eight months pregnant, brought her to the local militia station and made her wait in a cold room. She was interrogated by several officers for about four hours who tried to force her to give a statement against her husband. Nechyporuk was kept in police custody until 22 June, during which time he was not allowed to see his relatives and was deprived of food and water for long periods. Nechyporuk and Yonkalo filed a complaint with the ECtHR.
- On 3 September, Constantin Kurazov, a refugee from Chechnya with Ukrainian citizenship, was detained on the order of the chief of the local Division of Internal Affairs under suspicion of involvement in the terrorist act in Beslan, North Ossetia, in September. He had no access to legal counsel or his relatives during his detention and was given no opportunity to try to prove his innocence. Kurazov was reportedly beaten in order to make him confess to having participated in the Beslan incident. Later, he was placed into an isolation facility and charged with "vagrancy and mendicancy." Kurazov was later taken to the Department of Internal Affairs to check his documents,

¹¹ Ibid.

¹² *Afanasyev v. Ukraine*, Application No. 38722/02.

¹³ Human Rights Watch, "Opportunity for Reform: Human Rights Agenda for Ukraine, Letter to President Yushchenko," 21 January 2005, <http://hrw.org/english/docs/2005/01/21/ukrain10012.htm>.

which appeared to be in order, and returned to the detention center and kept there until 22 September.

- In spite of being seriously ill, Gennadiy Drozdov was kept in an overcrowded cell at a temporary detention center in Sevastopol (Crimea). The Sevastopol Group for Human Rights Protection and two partners¹⁴ took the initiative to defend him and sent letters to the Crimean and national authorities. As a result of the complaints, Drozdov was transferred to a hospital for three months and then sent back to a pre-trial detention center.

Article 127 of the Criminal Code states that perpetrators of torture must be punished, but the provision was not well defined and local monitors were not aware of any case in which a police officer had been sentenced for torture in 2004. No official statistics were available about punishments against police officers accused of misconduct.

On 8 June, the ECtHR declared admissible an application submitted by a client of KhHPG, Aleksey Afanasiev, under articles 3 (prohibition of torture) and 13 (effective remedy) of the European Convention on Human Rights and Fundamental Freedoms (ECHR). This was the first complaint against Ukraine under article 3 that has been declared admissible by the ECtHR.

Arbitrary Arrest and Detention

It was common practice to use administrative detention for short periods of time as a means of detaining individuals when there were no sufficient grounds for holding them as criminal suspects. This practice was increasingly used against opposition activists during the pre-election time. In this way, authorities used law enforcement bodies as an instrument of political struggle.

Local human rights organizations were especially worried about the numerous arrests and detentions of the activists of the opposition public campaign PORA. They were usually arrested when they peacefully disseminated campaign materials, publicly expressed their political views, or otherwise exercised their constitutionally guaranteed rights to freedom of expression and peaceful assembly. Dozens of PORA members and other activists were arrested every day and held at police stations for up to 72 hours (the maximum detention period without bringing charges) under fabricated accusations such as the possession or dealing of drugs, rape, dealing in counterfeit money, theft, and in the most extreme cases, terrorism.

- On 16 and 17 November, PORA activists in Kharkiv faced massive harassment. For example, without presenting their IDs, police officers in plain clothes arrested two PORA activists, Ruslan Herman and Anton Vlasov, who were disseminating campaign materials in support of Viktor Yushchenko. They were forced into separate cars where their passports were taken from them and the registration page was torn out. They were taken to the Lenin District Police Station where they were kept for about six hours. No explanations were given to them and no detention protocol was prepared. Only after intervention by the lawyers from “Our Ukraine” Kharkiv Office were the detainees released. Afterwards, they complained about the illegal actions of the Lenin District police officers to the prosecutor.
- Later on the same day six unidentified individuals believed to be acting under orders from local authorities tried to force their way into the apartment of PORA activist Victor Kharchevskiy, where several students from Kyiv were staying temporarily. The intruders threatened the occupants and demanded that they open the door. Some time later, two police officers arrived, allegedly checking to see who lived in the apartment as the rent was allegedly long overdue. PORA activists requested that representatives of the KhHPG and journalists from the Objective media group come to the apartment. Upon the arrival of a KhHPG representative, the six intruders disappeared. After the police had also left, four men in plain clothes arrived again around midnight demanding that the door be opened, and spent the whole night and the next morning at the door. The PORA activists were

¹⁴ Public Committees on Defence of Citizens’ Constitutional Rights and Freedoms in Lugansk and Severodonetsk.

able to go out only at noon on 17 November in front of TV cameras and other media, who had been notified about the situation. However, later that day, Kharchevskiy and five other PORA activists from Kyiv were arrested when they were distributing election materials. They were held at a police station under the pretext of having committed an administrative offence. Following intervention by KhHPG attorneys, the PORA activists were released pending a court hearing on 25 November. Oleksandr Korol and Oleksandr Nedashkovskiy, two other PORA activists, were also arrested by the police although the police officially denied this.

In many regions, law enforcement officers routinely arrested opposition activists during visits by campaigning Prime Minister Viktor Yanukovich.

- Before the first round of elections, on 18 and 19 October, the police arrested 17 people who disseminated printed materials critical of the prime minister when he was visiting Chernihiv and Poltava.
- On 16 November, mass arrests were carried out in several regions, including Luhansk, Kherson and Mykolaiyv. Militia officers arrested some dozens of students who handed flowers to law enforcement officers, and held them in custody for 6-8 hours.

During the election-related mass arrests and subsequent detention of opposition activists, no detention protocols were kept of those who were taken into custody. Arrested activists were advised to keep away from all political activity and sometimes threatened by police, who claimed to have evidence of their alleged criminal activity.

The majority of cases brought against detained individuals were dismissed by the courts. However, the Ministry of Internal Affairs continued to arbitrarily arrest and hold political activists and treated them with increasing brutality as political tumults escalated towards the end of the year.

Freedom of Movement

During the Soviet era, the *propiska* system empowered state authorities to decide where citizens were allowed to reside. Without a residence permit, citizens did not have access to the work market, education, medical care and other basic necessities and services in a specific municipality.

On 14 November 2001, the Constitutional Court of Ukraine decided that the *propiska* system contradicted the Constitution. However, the system continued to be used as long as a new procedure of citizens' registration was not established.

On 1 January 2004, a new Law on the Freedom of Movement and Free Choice of Place of Residence came into force. While the law continued to allow strict control over the movement of citizens around the state, it also brought about improvements. It no longer left it to local authorities' discretion to decide whether or not to permit a citizen to registration and it simplified the registration system. The exact letter of the law was, however, not always followed, in that authorities sometimes asked citizens for additional documentation when registering in addition to what was officially required by law.

The law also introduced the required registration of temporary places of residence, defined as a residence held from one to six months. Such a registration was required within seven days of arrival to a new municipality, even for travel for the purpose of business, vacation, or medical treatment. Fines could be imposed on those who did not follow the procedure for changing a place of residence. At the same time, the law's provisions on temporary registration were partly confusing and contradictory.

Local monitors noted that the given legislation did not determine an order of transfer from the *propiska* system to a new registration system, which led to negative social and economic consequences. The law declared that the provision of rights cannot depend upon place of residence, but, in practice, all social,

pension, medical, public utilities were linked to the place of registration, as new mechanisms of rendering these services had not yet been developed. In addition, the simultaneous registration of the place of residence and the place of temporary whereabouts was unnecessary.

Ukraine did not yet have an automated central system of registration. This had a negative impact on the efficiency of the authorities' actions and realization of the rights of citizens. For example, numerous mistakes were detected in the lists of electors due to invalid data concerning places of residence.

Carrying a passport at all times was common in Ukraine, as one had to produce a passport in order to carry out many daily tasks such as entering state institutions or buying a train ticket. Legislation entitled law enforcement personnel to arrest a person with no identification document or passport on his/her person. The person could be detained for a few hours or even days until his/her identity was confirmed. Such legislation often led to blackmailing by militia officers and other abuse of power.

The application to travel abroad required completing a number of bureaucratic procedures and lasted about three months. It cost around EUR 50 in total, which was the equivalent of one and a half times the minimum monthly salary in Ukraine. As a result, a significant number of people could not afford to obtain such a passport.

There were several categories of people who were prohibited from travelling abroad due to interests of national security because they had access to state secrets in their work place. They had to voluntarily sign an obligation not to go abroad.

In addition to the above-mentioned restrictions on free movement that were provided by law, freedom of movement was especially limited during the pre-election campaign.

- During June and July, police blocked a number of Yushchenko supporters from going to Kyiv or to other cities to participate in demonstrations. Roads were closed, police carried out identity checks and forced drivers to stop their journies under various pretexts. Also, the Ministry of Transportation gave unofficial orders to ban the sale of train tickets to Kyiv during mass demonstrations in November.