



Pre-election campaign in Kyiv. While the March 2006 elections were assessed in general as free, fair and democratic, those responsible for rigging the 2004 elections were not brought to justice.
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During 2006 Ukraine continued developing the democratic institutions and processes which the “Orange Revolution” in 2004 had set in motion.

In January and March, amendments to the constitution adopted during the “Orange Revolution” and supported by the previous government came into force, changing the form of government from a presidential to a combined parliamentary–presidential system. The constitutional changes were criticized by the Council of Europe Venice Commission and many Ukrainian experts, among other things for having been adopted in clear violation of the procedure provided by law.

From a human rights perspective, the amendments were detrimental in that they re-introduced the so-called general supervision by the prosecutor’s office over the observance of the law in the country, which paved the way to violations of the right to a fair trial. Moreover, the amendments led to a conflict over division of po-

wer between the president, the prime minister and the parliament, which continued throughout the entire year. Given the conditions of constant battle over authority, it was extremely difficult to introduce long-awaited reforms.

The 26 March parliamentary elections were held in accordance with the new constitution and on a proportional representation basis according to candidate lists of political parties. At the same time elections of local and regional self-governments were held, also run on the basis of proportional representation and closed party lists. Both international and domestic observers assessed the elections in general as free, fair and democratic.

During the year laws were developed under the auspices of the National Commission for the Strengthening of Democracy and the Rule of Law aimed at fulfilling Ukraine’s commitments to the Council of Europe, as well as under the EU-Ukraine Action Plan.¹ Among them were bills en-

suring the right to a fair trial, freedom of peaceful assembly, freedom of religion and conscience and the right to privacy. In addition, dozens of international documents in the area of human rights were ratified, including the European Social Charter and the Optional Protocol to the Convention against Torture, as well as all supplementary protocols to the European Convention on Human Rights (ECHR).

However, following the change in government in August 2006, it became difficult to predict the fate of the draft laws, which have the potential to significantly improve the human rights situation; toward the end of the year, there were gradual indications of a return to the old, authoritarian ways of government, reminiscent of the pre-revolution style of administration.

Another problem was increasing poverty. While poverty had diminished between 2000 and 2005, from 70 to 28% of the population living under poverty line, in 2006 the situation began to deteriorate again. This negative development was linked to the two-to-three-fold rise in tariffs on communal charges and on electricity. Due to ineffective mechanisms for protecting vulnerable groups in society an increase in the poverty rate by 10-15% was expected in 2007.²

Elections

At the beginning of 2006 some trials were still underway against individuals implicated in election frauds during the 2004 presidential elections. However, it was not the initiators of vote-rigging who were convicted but rather lower-ranking officials who had carried out their plans. Only a few heads of electoral commissions were punished, including eight heads of district electoral commissions. A large number of suspects were rehabilitated under a relevant law adopted by the parliament. The chairman of the Central Election Commission, who was dismissed from his post during

the 2004 elections, was appointed to head the committee on the justice system in the newly-elected parliament.

Despite ineffective investigations and the failure to prosecute those responsible for rigging the elections of 2004, the 2006 elections were more democratic and in general complied with international standards. This was in a large extent thanks to the clear position of the police not to intervene in political processes, and also to the absence of direct pressure on voters or on the mass media. The Committee of Voters of Ukraine stated that both the parliamentary and local elections "took place in a free and transparent fashion, with no cases of pressure on voters or members of electoral commissions, the media or observers, with rare exceptions, being reported." This assessment was shared by international observers from the OSCE and the European Union.³

Torture, ill-treatment and police misconduct⁴

Torture and ill-treatment of persons deprived of their liberty remained one of the most serious human rights problems in Ukraine. Of major concern were the inhumane conditions in temporary detention centers (ITTs) with overcrowded cells, appalling sanitary conditions and the lack of appropriate medical care. Despite calls by NGOs over years for urgent improvements, virtually nothing had happened by the end of 2006.

During the year the European Court of Human Rights (ECtHR) handed down three judgments against Ukraine finding violations of article 3 of the ECHR (prohibition of torture and ill-treatment). There was a clear trend towards an increase in the number of complaints to the ECtHR due to the lack of proper and effective investigation into allegations of torture and ill-treatment by Ukrainian authorities. As of the end of 2006, the number of cases

where the ECtHR was in communication with the government was significantly higher than in all previous years. Forty complaints were submitted by human rights groups.

◆ On 23 October, the ECtHR found a violation of article 3 in the case of *Koval v. Ukraine*.⁵ The court concluded that the applicant had been detained in unacceptable conditions, which had clearly had a detrimental effect on his health and well-being. The court specifically cited the lack of medical treatment and assistance and stated that the “nature, duration and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on his health could be qualified as inhuman and degrading.”

On a positive note, the Ministry of Internal Affairs (MIA) made some efforts toward abolishing torture and ill-treatment within the police force. Between January and end of August, 4,211 disciplinary measures were brought against police officers for abuses, 297 officers were dismissed, and 495 criminal investigations were launched over allegedly unlawful actions by the police.

At the same time, the implementation of a mechanism for monitoring ITTs began in cooperation with human rights NGOs. Groups consisting of representatives of the MIA and human rights defenders started carrying out unannounced visits to ITTs and reporting their findings to the MIA.

The situation in places of deprivation of liberty, such as prisons and penal colonies, was different. The State Department for the Execution of Sentences received 473 complaints about alleged cases of abuse by prison staff over 18 months (as from January 2005). No one, however, was known to have been prosecuted for alleged abuses, which clearly showed the lack of will within that body to fight misconduct. Such an atmosphere of impunity in the penal system also contributed to the

numerous cases of group suicide attempts, which took place during the year in some penal colonies.

In addition, special units of the State Department for the Execution of Sentences to “fight terrorism in places of deprivation of liberty” carried out systematic controls in penitentiaries, which appeared to serve as training for the anti-terrorism units. According to official figures, such units were called in 43 times to carry out searches of prisoners and the premises in penal institutions and remand detention centers (SIZOs). Human rights NGOs claimed, however, that the actual number of such searches in all penal institutions during the year was many times higher.

Right to a fair trial

The failure to safeguard the right to a fair trial created major problems in the area of human rights by depriving people of opportunities to defend their rights. For example, the non-observance of the right to a fair trial resulted in thousands of violations of property rights. The problems included lengthy periods for review of cases because the courts were overloaded; infringement of equality of arms; non-observance of the presumption of innocence; and the failure to execute court rulings.

The considerable problems over the protection of property rights were largely attributable to failings in the work of the judiciary, in particular, corruption, and to the non-execution of court rulings against the state or state enterprises ordered to pay to the plaintiffs. In 2006, the ECtHR issued over 100 judgments against Ukraine for violations in this respect. An increase in such judgments was predicted.

The average workload of judges increased: in just the first six months, a judge had to consider approximately 127 cases, in some courts even more than that. Its workload increasing each year, the Supreme Court was not able to keep up with

reviewing cases: during the same period the court had about 55,700 civil cases to deal with, of which only 24% were completed.

Moreover, according to the State Bailiff Service, only 48.6% of court rulings were actually executed in the first half of 2006 - and no improvements were reported later in the year.

In addition, a high level of corruption in courts remained a serious problem and was partly related to the pitiful financing of the courts: not more than 50% of the necessary funding was allocated from the state budget. Judges' salaries were very low, and the dilapidated physical conditions of courts often made it impossible to hold court hearings.

However, some important legal steps were taken to improve the dismal situation

of the judiciary and courts. These included the approval on 4 April by the National Commission of a strategy plan for judicial reform, in which the Venice Commission's comments were included; a plan issued by the president through Decree No. 361/2006 in May, and an action plan for its implementation; and the drafting of a series of laws such as the Draft Law on the Judiciary,⁶ the Draft Law on the Status of Judges,⁷ and the Draft Law on Court Fees, which were submitted to parliament at the end of the year.

Also in a positive move, a law that came into force in June introduced an open register of all court rulings in Ukraine, also accessible over the internet.⁸ At the end of the year the register contained about 300,000 rulings.

SOURCES FOR FURTHER INFORMATION:

- ♦ The Ukrainian Helsinki Human Rights Union, at www.helsinki.org.ua

Other organizations:

- ♦ Kharkiv Human Rights Protection Group, at www.khpg.org
- ♦ Committee of Votes in Ukraine, at www.cvu.org.ua

Publications:

- ♦ Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine*, annual reports for 2004 and 2005. The report on developments in 2006 will be published in May 2007.
- ♦ OSCE/ODIHR, *Final Report on the 26 March 2006 parliamentary elections in Ukraine*, 23 June 2006, and other reports on the elections, at www.osce.org/odihr-elections/17714.html
- ♦ *Ukraine – EU Action Plan: Implementation Measures for 2006, Adopted by the Regulation of the Cabinet of Ministers of Ukraine from 27 April 2006*, No. 243-p, Kyiv, 2006, at www.kmu.gov.ua/document/41026238/Zahody_2006_Eng_26_05_06.doc

Endnotes

¹ *Ukraine – EU Action Plan: Implementation Measures for 2006*, Adopted by the Regulation of the Cabinet of Ministers of Ukraine from 27 April 2006, No. 243-p, Kyiv, 2006, at www.kmu.gov.ua/document/41026238/Zahody_2006_Eng_26_05_06.doc. For

example, with the direct participation of UHHRU and other NGOs, the following bills were drawn up: "On the Action Plan Regarding the Performance of Ukraine's Obligations Pursuant to its Membership in the Council of Europe" (passed by Presidential Decree No. 39/2006, 20 January 2006) and the Instructions of the Cabinet of Ministers "On Approving Measures for the Implementation in 2005 of the EU-Ukraine Action Plan."

- ² See also "Appeal from the Ukrainian Helsinki Human Rights Union concerning Reform of the System of Social Subsidies," 29 November 2006, at www.helsinki.org.ua/en/index.php?id=1164810201.
- ³ For more details on the parliamentary elections in Ukraine, see the website of the Committee of Votes in Ukraine at www.cvu.org.ua/elections.php?lang=eng&mid=parlam. See also OSCE/ODIHR, *Final Report on the 26 March 2006 parliamentary elections in Ukraine*.
- ⁴ Based on information from the Kharkiv Human Rights Protection Group. For more information, see its website at www.khpg.org/en/index.php?r=a2b4c2.
- ⁵ Application No. 65550/01. For more details, see the judgment at the ECtHR website, <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=9916081&skin=hudoc-en&action=request> or www.helsinki.org.ua/en/index.php?id=1161627132.
- ⁶ Available in English at UHHRU website <http://helsinki.org.ua/files/docs/1159977647.pdf>.
- ⁷ Available in English at UHHRU website <http://helsinki.org.ua/files/docs/1159977707.pdf>.
- ⁸ Available in Ukrainian at <http://reyestr.court.gov.ua>.