



Demonstrators shout anti-Kuchma slogans as they march to the Parliament building in Kyiv on 19 December, alleging Kuchma's involvement in the 16 September disappearance of journalist Georgy Gongadze. © APA/EPA/Sergei Supinski

IHF FOCUS: Referendum; legislation; freedom of expression and the media; independence of the judiciary; torture, ill-treatment and misconduct by law enforcement officials; conditions in prisons and detention facilities; death penalty; religious intolerance; conscientious objection; xenophobia and racial discrimination; protection of ethnic minorities; property rights.

The 16 April constitutional referendum increased President Kuchma's power. It was carried out in a manner that ran against recognized norms of democracy. The referendum characterized the increasing authoritarian rule and was a serious set-back in Ukraine's development towards democracy.

The judicial system remained "Soviet-minded", loyal to the executive, and practiced a biased and disproportionate sentencing policy. Torture and ill-treatment were commonplace and produced most of the "evidence" upon which the courts based their rulings. The conditions in prisons and detention facilities were inhuman, with serious overcrowding and extremely poor physical conditions.

The new Criminal Code was pending in Parliament, but it was expected to bring

little improvements to the old Soviet-era Code: what was even worse, some of its provisions were even more restrictive than those of the old Code.

Further, minority religious groups faced intolerance, and the situation of the Crimean Tatars remained unresolved. They, as well as other ethnic minority members, also faced police brutality.

Referendum

According to the Ukrainian Committee Helsinki –90, the 16 April 2000 constitutional referendum set back Ukraine ten years in the development of democracy and the rule of law.

According to official information, the voters overwhelmingly approved the modification of Article 90 of the Constitution to

allow the President to dissolve the Parliament, if it was unable to form a stable, working parliamentary majority within one month, or if it failed to pass the national budget submitted by the Government within three months. They also voted in favour of restricting the parliamentary immunity of deputies so that they could be arrested, detained and tried without the consent of the Parliament if accused of criminal acts; and in favour of reducing the number of members of Parliament from 450 to 300. In addition, they created a second chamber of Parliament, the members of which the President would *de facto* be able to appoint.

According to the Central Electoral Committee, the proposed modifications were approved with an approximately 86-percent majority of the vote, and the voter turnout was more than 81 percent.

However, the Ukrainian Committee Helsinki-90, which monitored both the preparations and voting, noted that the way the referendum was organised and carried out had nothing in common with the recognized norms of democracy and threatened to reverse all democratic achievements of the last decade. The Committee reported widespread involvement of local authorities in collecting signatures for holding the referendum in the first place, a strong governmental propaganda campaign for the referendum, pressure on the voters to vote "correctly" and irregularities in the polling procedure.

The process of collecting signatures for the referendum was carried out by local authorities during working hours - under the threat of losing their jobs. In numerous cases government employees did not receive their salaries until they had collected the necessary number of signatures. At many schools, hospitals and other government institutions, propaganda for the referendum was part of the official staff meetings.

State-owned mass media (which in Ukraine was the main source of information) did not even mention the views opposing the referendum. Under strong pres-

sure, also commercial mass media ended up presenting only the opinions in favour of the referendum. Virtually only the opposition papers, which had small circulations, gave some space to opposition views, whereas the majority of the commercial press was forced to support the official position under fear of reprisals (closure, legal action and forced bankruptcy, etc.), which have been common in recent years. As a result, the electorate received almost exclusively one-sided information about the referendum and could not make an informed decision.

During the polling, pressure on the voters reached a level not seen in independent Ukraine. The Ukrainian Committee Helsinki -90 recorded a widespread practice of heads of government institutions (schools of all levels, hospitals, state-owned industries, etc.) forcing their staff to vote for the amendments under the threat of dismissal. For example, staff members of university faculties were threatened with dismissal not only if they failed to vote but also if they failed to persuade their students to vote. As a result, teachers threatened their students that they would be expelled if they did not vote. In schools, teachers - under threat of losing their jobs - held meetings for parents and threatened to punish the children if the parents did not vote. In villages similar pressure on peasants was exerted by *kolhoz* chairmen, who told their employees that they would withhold cattle fodder, gas for heating, etc. if they refused to vote.

The polling was organised in a way that made public control extremely difficult. The polling actually lasted 10 days (from 6 to 16 April), whereas independent observers were allowed only to voting stations on the official day of voting, i.e., 16 April. The entire staff of various government institutions were forced to vote in advance, a possibility provided for by law to those who would not be present in their constituency on the day of elections. In total, one third of the vote was cast in advance, a procedure that

could not be observed. Such an unprecedented high percentage raised doubts about its veracity, particularly as in some regions (e.g., in Donetsk and Dnepropetrovsk oblasts), over 50 percent of the ballots were allegedly cast in the days prior to 16 April. In some cases, school directors had to report on a special form the number of their staff members who had used this alternative.

On 16 April, when independent observers were allowed formally to monitor the voting, the majority of more than 30,000 electoral districts could not be visited by observers because of a lack of resources. The observers of Helsinki –90 recorded various irregularities, including one person voting for whole families and the use of forged ballots. The election officials ignored all protests.

President Kuchma publicly labelled those opposing the referendum “not real Ukrainians.” In the name of all people of Ukraine, the President put pressure on the Parliament to amend the Constitution to increase his own power. Initially, the referendum was assumed to be advisory and its results not legally binding. However, on 27 April, President Kuchma submitted to the Parliament a draft bill to amend the Constitution along with the results of the “popular vote.” On 17 May the President told the journalists that he would personally amend the Constitution if the Parliament failed to do so.² There was considerable opposition in the Parliament against the amendments.

Should the amendments be passed, the procedure would create a dangerous precedent and seriously jeopardize parliamentary democracy in Ukraine. In practice, the President would then be able to change the Constitution at will using the currently established mechanism to manipulate the electorate and making members of Parliament vulnerable to pressure.

In addition to violations of a democratic process, the referendum changed the political atmosphere in Ukraine and contributed significantly to the recent tendency

toward more authoritarian rule. A large part of the population remained disappointed with democratic institutions and practices. According to the Ukrainian Committee Helsinki –90, the relationship between State and the citizens was returning to that similar to the communist era, when people were afraid of any person of authority, and when state activities were attributed to the “will of the people” and approved in phoney elections by 99 percent of the vote.

The IHF issued a press release to denounce the attempts to reduce drastically the powers of the Parliament and noted that making such basic changes to the Ukrainian Constitution through referendum would in itself run against the principle of the rule of law and the OSCE standards, since it would be a breach of the existing Constitution and other legislation. The IHF said the referendum reflected the 1996 Belarusian referendum that resulted in dictatorship and warned about the possible manipulation of the vote. It also noted that, under the present circumstances, the proposed second chamber could be under the control of the President.³

Prior to the referendum, the Parliamentary Assembly of the Council of Europe asked President Kuchma to postpone the referendum until the Parliament had adopted a new law on referenda. It also warned that it would consider suspending Ukraine’s membership if the referendum was conducted or its results were implemented unconstitutionally.⁴

Legislation

The Criminal Code has not undergone any significant changes during the 10 years of Ukraine’s independence. The Code of the Communist era basically remained in force still in 2000: only the most odious articles were removed. Generally, its structure and construction of separate articles were based upon the principle of the protection of the state interests at the expense of the interests of the defendants.

Among the most abusive provisions were Articles 56 (part 2, 3), 63, 66, 125, 126, 206, 211, 211, which provided for long prison terms for non-violent dissemination of ideas and manufacturing printed products or video materials. Those provisions clearly violated freedom of expression. In addition, Article 209, which was used to repress religious minorities during the Soviet era, remained in force as did Article 210, which actually allowed state interference in the intimate life of citizens.

What was more, during the years of independence, a number of new articles that seriously violate human rights, were adopted. Those included, for example, Articles 63 and 187 that provide for imprisonment for up to 12 years for participation in any way in any armed conflicts beyond the borders of Ukraine or for joining any foreign army. Article 187 violated freedom of association, and Article 187 provided for imprisonment for up to ten years for members of any organization who wore a uniform (for example, sports clubs or scouts). Article 187 violated freedom of peaceful assembly.

The Ukrainian Committee Helsinki -90 and other human rights NGOs demanded that the Criminal Code be revised as a whole and based upon internationally guaranteed human rights.

At this writing a new Criminal Code was pending in Parliament and had passed the first reading. It was expected to be adopted in 2001. However, regrettably, it appears that the most odious articles of the old Code will be retained. Moreover, a number of the proposed articles are actually worse than those in the old Code. For instance, the proposed article on "subversive activity" is rewritten word by word from the legislation of Stalin times, and it can be interpreted to allow the imprisonment of virtually any person. Another article prescribes a punishment for "disclosure of information which damages the State's reputation." Under this law, any human rights activist could be arrested. As of this writing, no official comprehensive analysis of the draft

Criminal Code's compliance with human rights norms had been carried out. The Ukrainian Committee Helsinki -90 was in the process of carrying out this task.

Freedom of Expression and Media

The mass media that criticised the Government and other authorities were subjected to permanent pressure. The usual means of pressure was the sending of numerous checking commissions - including tax and fire inspections - to the editorial offices of the newspapers or TV-radio stations. After that, their bank accounts were frequently frozen under different formal pretexts.

The mass media have not become a real "fourth power" in Ukraine. Quite the opposite, over the last years the financial dependence of the mass media on the state bodies has substantially increased. The decrease in 2000 of libel cases against the mass media, as well as sensational conflicts between state bodies and the mass media, was not a result of improving freedom of expression, press, and speech: on the contrary, it simply characterized the increasing dependence of the media on the State, leading to the point that no resistance from the quarter of journalists and the media owners was possible.

The electronic mass media was virtually totally state-controlled, since the allocation of frequencies and airing time of television and radio stations - the very tools to control and manipulate the electronic mass media - were in the hands of the executive power. Printed media enjoyed a little more freedom, but the only genuinely independent papers had very small circulations.

More than 100 press outlets, including the most popular ones, received regular state financial support and the Government decided which papers were to receive such support. Exclusion from the list in most cases meant bankruptcy or at least a catastrophic drop in circulation. At the same time, the fiscal bodies limited the independence of mass media through restrict-

ing their commercial activity (including advertising, distribution, printing, etc.), thus contributing to the increase of their dependence on state allocated funds.

In addition, in 2000, severe administrative pressure on mass media was exercised in the form of unnecessary inspections by the fiscal, legal, administrative and other state bodies, plus legal repressions and libel cases against some particular newspapers, TV or broadcasting companies and individual journalists.

◆ On 16 September, Georgy Gongadze, the editor-in-chief of an Internet edition *Ukrainskay Pravda* (The Ukrainian Truth), who opposed President Kuchma, disappeared. The police failed to take active measures to investigate the disappearance - similarly in other cases of disappeared political opponents. Therefore, several NGOs organised a march with torches and other protest actions. Only the protests moved the police to hang up posters calling on people to report to the police any possible information on the fate of Gongadze.

On 28 October the leader of the Socialist party of Ukraine, Alexander Moroz announced at the plenary meeting of the Ukrainian Parliament that he had in his possession a tape with discussion on how to "neutralize" Gongadze. The voices on the tape resembled those of President Kuchma and the manager of the Security Service. This information caused a wave of indignation and launched long-term protests against Kuchma. The situation escalated following the uncovering of a decapitated unidentified corpse which was alleged to be the corpse of Georgy Gongadze. The investigators failed to identify the body - a fact that also contributed to increased opposition protests.

Independence of Judiciary

The independence of the judiciary - guaranteed by the Constitution - remained more declaratory than genuine. The overwhelming majority of the judges in Ukraine

started their career during the Soviet era when the judicial system was totally under the control of the Executive. A significant number of judges continued to act on the basis of the Soviet practices despite legislative changes and obediently fulfilled the orders of the executive power. What was more, the highest executive, President Kuchma, on several occasions commented on court decisions and even directly called for the termination of some of them noting that "courts understand their independence perversely and self-sufficient."

Judges frequently simply ignored the legal norms to be applied. The most widely spread violation was the fact that judges passed sentences on the basis of information extracted by investigators through coercion, including "confession" submitted under torture. They also typically refused to base their judgments upon the Constitution and international human rights standards ratified by Ukraine. If there were contradictions between the Constitution or international standards and other laws (most often outdated Soviet era legislation), the old legislation took precedence. The Constitution was cited in a couple of dozen of court rulings in 2000, and international law only in a handful of cases. What made the issue worse was the fact that there was no possibility to initiate proceedings against a judge for procedural violations or for direct ignorance of the laws and passing illegal sentences.

Since its establishment, the Constitutional Court has taken no effective measures to abolish numerous legal provisions that violate the Constitution. For example, since 1998, the presidential decree provided that the tax police had the right to confiscate the property of the persons who they declared debtors. However, confiscation without a court decision contradicted the Constitution. The tax police also had the right to carry out searches and arrest people. Their activities have been arbitrary and abusive.

In the majority of Ukraine's regions, the courts actually remained penitentiary bod-

ies that took sides with the prosecution like they did during the Soviet era. This cooperation was demonstrated in the establishment of "Coordination Committees on Crime Fighting" jointly by judges and representatives of the Ministry of Interior and the Procurator's Office where they prepared indictments together.

Sentences were extremely severe. In many cases, employees of state enterprises, who had not received their salaries for many months, were sentenced to 5-8 years in prison for stealing food or other necessities worth a few dollars. Such sentencing practice resulted in a rapid growth of the prison population: it more than doubled during the past 10 years.

Soldiers Rights

Under law, all judicial cases concerning military servicemen were handled by military tribunals, not civilian courts. In contrast to civil courts, hearing at those tribunals were closed, and the investigations were carried out by the Military Procurator's Office, a separate body that was not accountable to civil authorities. Convicted military servicemen served their punishment in so-called "disciplinary battalions", which were jails with a very strict regime and treatment that was under even less control than normal prisons or labour camps.

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

In most court cases, the prosecution and the conviction were based upon the accused pleading guilty because obtaining such a confession was important for the career of investigators, according to the Ukrainian Committee Helsinki -90. As a result, the use of torture against persons on remand was a general routine rather than an exception. The law forbade torture but did not declare inadmissible "evidence" extracted under torture in court proceedings.

The most common torture methods included beating, kicking, electroshocks and

placing a gas mask over the face of the victim and blocking the air hose until the victim was close to suffocation. Often, the victims' arms were bound behind their backs and then pulled toward the feet, bending the body to form an arch for as long as an hour. Another popular method was to place the suspect in a special steel case and beat heavily on the case to mentally break the suspect with the unbearable noise. In addition, men under investigation were threatened with being placed in cells together with "violent homosexuals who have AIDS or other contagious diseases."

There were no statistics on the use of torture, but NGOs estimated that there were several thousands of cases each year. The Parliamentary Ombudsman, Nina Karpachova once said that 30 percent of prisoners were victims of torture.

The attempt to submit to the Parliament a draft a law on criminalizing the use of torture - a law that would also define torture - met with resistance from the Security Service and Ministry of Justice of Ukraine: both of them regarded such amendments "worthless." However, following long debate in the beginning of 2000, the Parliament adopted the "Law on Responsibility for Usage of Torture". The law prescribed that a definition of the term "torture" be included in the Criminal Code, and it provided for rather strict penalties for the use of torture - but failed to declare inadmissible "evidence" extracted under torture.

Conditions in Prisons and Detention Facilities

The conditions in most places of imprisonment could be characterised as extremely inhuman and humiliating. According to the official data, there were 126 labour camps for convicted adults and 11 working farms for juveniles, 32 pre-trial investigation facilities of the Ministry of Internal Affairs, and 6 pre-trial investigation facilities of the Security Service: one of the latter ones was closed in 2000 because of the regular use of torture.

According to official data, as of 1 January 2000, more than 220,000 persons were held imprisoned in all facilities. The pre-trial detention facilities were overcrowded: often 3-4 times more people were kept than they were designed for. As a result, the elementary sanitation standards were not observed, and sometimes the prisoners had to sleep in turns because of lack of bunks. In spite of such overcrowding, release on bail was nearly never used although it was provided for by law: according to official statistics only 500 people were released on bail in 1999, while the total number of people kept in pre-trial investigation facilities amounted to 40,000: most people under investigation spent all or nearly all the time of investigation and court hearings in jail. In some cases, a court decided to release a person on bail, but the prison officials refused to release him.

By law, the maximum pre-trial detention period was 18 months, but there were many ways to get round this regulation. The Ukrainian Committee Helsinki –90 was aware of several cases where people were held in pre-trial detention for 2-3 (or even more) years.

◆ Fidel Komar, Yury Megera, Valeriy Cherniy, Alexander Tkachuk, and Victor Tkachuk spent three years and 10 months each in a Kyiv pre-trial investigation facility.

Upon release, no compensation was available for the exceeded time in detention.

The situation was somewhat easier in labour camps, which, however were also approaching the limits of overpopulation. In 2000, in an attempt to ease the situation in prisons, 30,000 persons who had not committed serious crimes - primarily women, juveniles, and invalids – were let off.

There were no adequate ways to protect inmates against inhuman treatment both in the pre-trial investigation facilities and labour camps. Particularly, they were deprived of legal counsel and medical care. The attempts of human rights NGOs to obtain access to visit pre-trial investigation fa-

ilities and labour camps met with decisive resistance from the Ministry of Internal Affairs.

The use of torture and ill-treatment was presumably even more widespread in other places of imprisonment than in pre-trial facilities and labour camps. These other places of imprisonment included wards of temporary custody that numbered as many as 522, and well as cells at all regional and town police departments. The cells looked like small cages (sometimes as small as 1.5 by 3 metres) and had no hygienic infrastructure. By law, the maximum time of detention in such cells was 72 hours. However, in reality it was much longer, frequently up to 15 days. Most detainees in such cells were subjected to extremely rough treatment, including beating and torture.

As a rule relatives and the lawyers of the apprehended persons were informed about the detention only after the arrestee had been transferred from temporary cells to a pre-trial investigation facility. This fact contributed to arbitrary abuse. The Ukrainian Committee Helsinki –90 received regularly information about cases where detainees held in temporary cells had not been allowed to see a legal counsel for two weeks.

There were a whole number of places of temporary detention with unclear legal status which were actually under no civilian control at all. Such places were in the first place meant for foreigners who stayed in Ukraine illegally, but the Ukrainian Committee Helsinki –90 had information of Ukrainian citizens placed in such facilities just because their appearance seemed suspicious to the police officer and they could not produce their passports. The largest facility of this kind was under the jurisdiction of the Border Guards, the rest were under the control of the regional administration of internal affairs. Usually the term of detention there amounted to 30 days. The detainees had one meal a day and there was no heating during the winter.

Death Penalty

On 30 December 1999, the Constitutional Court found the death penalty to be in contradiction of the article of the Constitution that guarantees the right to life. It also ruled that all the articles of the Criminal Code that provided for a death sentence were inconsistent with the Constitution. Thus, on 1 January 2000, all such laws expired in Ukraine, and all the death sentences handed down before that date were automatically converted to different terms of imprisonment. The Parliament abolished the death penalty in March 2000.

Religious Intolerance

The relations between State and religious communities were particular.

There was no consistent state policy aimed at limiting religious freedom, but in numerous cases local authorities interfered arbitrarily in the activities of various religious communities. Communities that enjoyed the support of local authorities profited from various benefits and privileges. In the Eastern and Southern Ukraine, and especially in the Crimea, the Ukrainian Orthodox Church under the Moscow Patriarchy enjoyed that status; in Central Ukraine the Ukrainian Orthodox Church under the Kyiv Patriarchy; and in Western Ukraine the Ukrainian Autocephalic Orthodox Church. The needs of minority religions were generally ignored and authorities often refused to register them.

◆ For several years, the Universal White Brotherhood Church "Yusmalos" has attempted to register but in vain. It has not even received an official reply to its application for registration.

◆ The former Underground Orthodox Church ("True Orthodox Church"), which refused to be part of the church collaborating with the former communist authorities, has not been registered on the grounds of its support for "monarchism."

Most NGOs were of the view that state control over religious communities should be reduced. In particular, they recommended that the registration procedure should be simplified and an avenue be created to appeal against authorities' refusal to register a community. Also, they demanded more restrictions on the interference of state officials in church property, particularly places of worship: there were no attempts to solve the problems relating to arbitrary confiscation of church buildings and other property by the communist regime. Some NGOs promoted the abolition of the State Committee on Religious Affairs as well as the regional departments dealing with problems concerning religious issues that were set up during the communist regime but still had considerable administrative power.

The Ukrainian Committee Helsinki –90 expressed its deep concern about the relations between the State and new "non-traditional" religious communities. Prejudicial attitudes of authorities, police officers and journalists led to brutal discrimination and violation of the basic rights of members of minority religions that were often called "totalitarian sects". The mass media played a key role in creating negative atmosphere through spreading misinformation or unchecked sensational "facts" about religious minority communities.

Conscientious Objection

Generally, all male Ukrainian citizens had to perform military service. The length varied from 1-2 years, the average term being 18 months. The law "On Alternative Non-military Service" was discriminatory: under its provisions, the civil service was at least twice as long as the military service, i.e., as a rule, three years. The right to an alternative service was only provided on religious grounds and only to members of officially registered religious communities whose doctrine forbade military service. Pacifists and other conscientious objectors were seen as

avoiding the military service and faced up to three years imprisonment. As of early 2001, several such cases were pending in the courts. Numerous cases were being under investigation in the Procurator's Offices.

Xenophobia and Racial Discrimination

Despite legal guarantees for the equality of all nationalities, persons whose appearance differed from that of the majority population – particularly people of African, Asian and Caucasian origin, but also Tatars and Roma – were regular targets of police abuse. Police had the right to stop them for identity checks, and, if their documents were suspicious, to detain them. Police officers demanded money from them and often ill-treated them until they paid. In addition to harassment by the police, Africans often fell victim to ultra-rightist racist aggression. Such cases were, as a rule, not investigated by the police.

◆ At the end of August 2000, a group of about 50 unidentified persons attacked a hostel for foreign students of the Lugansk Medical Institute. They were armed with iron rods and sticks, shouted racist slogans, beat Indian and Sri-Lankan students, and demolished furniture. The militia arrested several attackers.

Since the beginning of the war in Chechnya, the police and security services have targeted Chechens staying in Ukraine temporarily. They are regularly detained and their homes are searched – allegedly because of suspected terrorism.

Protection of Ethnic Minorities

Crimean Tatars

The return of Crimean Tatars from the places where Stalin sent them into exile met with active resistance by the Russian ethnic majority in Crimea and their majority in the Supreme Council (Parliament) of the Autonomous Republic of Crimea.

The Ukrainian Government took no measures to improve the situation of the returning Tatars. The local authorities of the Autonomous Republic of Crimea still strongly opposed their repatriation as well as the integration of those who had already returned. Similarly, the central authorities did not take any measures to improve the situation and to restore the rights of the Crimean Tatars.

The most recent version of legislation on the privatisation of land deprived many Crimean Tatars of being allocated land in Crimea.

It was proposed that more modern legislation be adopted for solving the problem of the integration of the Crimean Tatars and providing them with equal rights with other ethnic groups. First of all, a new special law on the status of Crimean Tatar people was needed, which would define them not as "a national minority" as it has been done so far, but as an "indigenous people" in accordance with the UN documents such as the Convention No. 169 of the ILO and the Constitution of Ukraine. In particular, such a law should recognize the status of the *Mejlis* of Crimean Tatars as an official representative body of the whole Crimean Tatar people with the right to represent the interests of this people in contacts with all state bodies. *De facto*, *Mejlis* has been exercising this function for nearly 10 years, but this fact has not been admitted *de jure*.

Property Rights

During the three-generation Soviet rule, property rights were not an issue, a fact that has influenced the people's attitude up to today. In the first seven years of Ukraine's independence, no laws were adopted on the return of property confiscated during the communist era or for compensation. A 1999 presidential decree restored the right for private land ownership. The decree, however, did not provide for any restitution to former landowners or their heirs.

Apart from the presidential decree, no legislation has been adopted on private ownership of land or privatisation of housing

In addition, most people lost all their savings (in the Saving Bank of the USSR, which was the bank in the Soviet era) in

1990-92 when the State illegally withdrew all these savings. It seemed unlikely that they will get the money back in the near future. The same applied to state loans from citizens, whose term of payment expired long ago.

Endnotes

- ¹ Based on the *Annual Report 2000* of the Ukrainian Committee Helsinki –90.
- ² RFE/RL Newsline, 10 and 28 April, 18 May 2000.
- ³ IHF, "Ukraine Referendum Threatens Rule of Law: Process Resembles that in Belarus," press release 15 March 2000.
- ⁴ RFE/RL Newsline, 5 April 2000