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# INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS

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## ANNUAL REPORT 1999

### Ukraine<sup>1</sup>

#### IHF Focus:

Elections; freedom of expression and the media; peaceful assembly; judicial system and independence of the judiciary; torture, ill-treatment, and misconduct by law enforcement officials; conditions in prisons and detention facilities; death penalty; religious tolerance; conscientious objection; protection of ethnic minorities; restrictions on local self-government; social and economic rights; property rights.

Most basic human rights were violated in Ukraine in 1998. The government repressed the media, particularly prior to the March elections. The judicial system still bore characteristics of the Soviet era, with the judiciary identifying itself with the prosecution, and handing down severe sentences for minor crimes. Torture and ill-treatment of detainees was commonplace, and special forces used violence to disperse demonstrations. The Crimean Tatars were not allowed to vote in the elections and, together with other minorities, faced attacks by the militia and extremist groups.

In January the Ukrainian parliament adopted the Law on the Human Rights Commissary (the ombudsman's office), and Nina Karpachova, who had headed the parliamentary Human Rights Commission from 1994 to 1998, was elected the first ombudsman.

### Elections

#### Parliamentary Elections

On 29 March elections for the Verhovna Rada (parliament), local governments and mayors were held. Parliamentary elections were held for the first time under the mixed majority and proportional system. Voter turnout was 69.64 percent. The victor was the Communist Party, with 24.68 percent of the votes (84 mandates). Other parties that overcame the 4-percent threshold were: the Popular Rukh with 32 seats, the Socialist Party with 29 seats, the Greens with 19 seats, the Popular Democratic Party with 17 seats, the Hromada party with 16 seats, the Progressive Socialists with 14 seats, and the United Social Democrats with 14 seats.

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The IHF has consultative status with the United Nations and the Council of Europe.

MEMBER AND COOPERATING\* COMMITTEES IN:

Albania – Austria – Azerbaijan – Belarus – Bosnia-Herzegovina – Bulgaria – Canada – Croatia – Czech Republic – Denmark – Finland – France – Georgia<sup>3</sup>  
Germany – Greece – Hungary – Italy – Kazakhstan – Kosovo – Kyrgyzstan – Latvia – Lithuania – Macedonia – Moldova – Montenegro – The Netherlands  
Norway – Poland – Romania – Russia – Serbia – Slovakia – Slovenia – Sweden – Switzerland – Ukraine\* – United Kingdom – United States – Uzbekistan<sup>3</sup>

COOPERATING ORGANIZATIONS:

The European Roma Rights Center – Human Rights Without Frontiers – Mental Disability Advocacy Center

More than 400 official observers from 34 countries monitored the voting process, 199 of them as representatives of the OSCE. Numerous irregularities were reported. During the election campaign, the opposition newspapers Pravda Ukrainy and Vseukrainski Vedomosti were closed down. A number of candidates were arrested although, according to the election law, they enjoyed immunity.

- On 13 March Michael Brodsky and Oleg Mesel-Veselyak, independent candidates for the parliament, were arrested in Kyiv. Despite numerous protests, they remained in detention through the elections and could not carry out their campaigns. Nevertheless, Brodsky was elected while in prison.

- The Central Election Commission refused to register the party of Women of Ukraine, ignoring two court decisions ruling that the refusal to register them was illegal.

The militia arrested many activists of the opposition, held them for up to 24 hours, confiscated their materials and threatened them not to continue their campaigns. On many occasions – particularly concerning the Ukrainian National Assembly - the militia openly admitted that their measures were politically motivated.

After the elections, lawsuits were filed in dozens of constituencies for violations of election laws. The reaction of the courts reflected the dependence of the judiciary on the executive power: the elections were declared invalid only in those constituencies in which the opposition had won. Reelections were ordered in some districts, and several lawsuits were not completed at all.

- The election of former Minister of Justice, Sergey Golovaty, to parliament was declared illegal after he had given an oath as member of parliament.

## Local Elections

Local elections were characterized by similar irregularities as the parliamentary elections.

In Odessa, a number of supporters of Edward Gyvits, the incumbent mayor of Odessa, were arrested during the election campaign. The special unit of the Ministry of the Interior used force against participants of pre-election rallies and occupied the Odessa city hall.

## Freedom of Expression and the Media

A number of provisions of the criminal code - articles 561 (2-3), 63, 66, 125, 126, 211, 2111 and 2061 - provide for long prison terms for non-violent acts of dissemination of different ideas, and producing printed or audio-visual materials. On the basis of the ill-formulated article 187-6 (creation of military-like formations), authorities could arrest even members of a regular sports club.

## Freedom of Expression

Although persecution for political conviction was no longer commonplace, Helsinki-90 received information about a number of such cases. As a rule, activists of unpopular, small, rightist groups faced repression.

- In November Evgeniy Fil and Vasiliy Derevlyaniy, activists of the Ukrainian Conservative Republican Party, were convicted on the basis of the article 187-6.

Sometimes criminal charges were brought on political motives.

- Following clashes between communists and ultra-rightists in Lviv, where both sides acted equally violently, criminal proceedings were initiated only against the ultra-rightists.

The security service and the Ministry of the Interior frequently placed members of anarchist groups in preventive detention for 3-7 days, without any court procedure. This often occurred just prior to visits of foreign delegations in Kyiv, to stop them from arranging rallies. Activists of the Ukrainian National Assembly and other legally registered rightist parties were frequently held for periods between 24 hours and 15 days, ill-treated and threatened not to continue their activities, particularly during the election campaign.

## Freedom of the Media

Independent media faced constant pressure. Authorities filed criminal libel suits against journalists who had criticized their activities, and the fines imposed on "guilty" media outlets were large enough to force them to close down. Others were shut down directly or threatened to be shut down by authorities on suspicious grounds such as registration, tax, or fire security irregularities. Pro-government media outlets

were left in peace.

Criminal libel could be punished with a three-year prison sentence.

- On 28 January the Information Ministry banned the opposition daily Pravda Ukrainy (formerly the Communist Party daily), citing a registration irregularity. The paper charged president Kuchma, seeking compensation for damages.<sup>2</sup> Criminal charges, which were believed to be fabricated, were brought against its editor-in-chief, Mr. Horobets, who was arrested in the fall.

- The publication of Vseukrainsky Vedomosty, one of the most popular newspapers, was suspended. Just prior to its closure, a bomb exploded in its office.

- The transmitters of radio station Kievsky Vedomosty were disconnected several times.

- Minister of Interior, Gen. Yuriy Kravchenko, brought libel charges against the most popular Ukrainian newspaper, Kievsky Vedomost, after the paper revealed that the minister had used prisoner labor to construct his villa in the country. The paper was sentenced to pay some US\$2.5 million for "moral damage," for falsely accusing him of corruption. Two of its journalists were also sentenced to pay the minister 27,000 hryvnia (approximately US\$6,800) for writing "incriminating articles."<sup>3</sup> Should the Supreme Court uphold the sentence, Kievsky Vedomost would go bankrupt.

- On 10 December Politika's editor-in-chief Oleh Lyashko said that he had been informed by a court that the paper's registration had been revoked, forcing it to shut down. He said no representative of the paper was asked to appear in court. A few months earlier the paper's publication had been suspended because of a criminal case launched against it by tax officials. The paper had published a series of articles alleging corruption within President Kuchma's office. <sup>4</sup>

Several newspapers published the letter of Evgeniy Kushnaryev, head of the presidential administration, in which he demanded that the Attorney General's Office check up on activities of a number of opposition papers and initiate criminal proceedings against them.

Journalists were threatened and ill-treated. In most cases, the perpetrators were not found.

Andrey Yavetsky, a critical journalist with the newspaper Kievsky Vedomosty, was arrested for "avoiding regular military service." He was detained awaiting trial, and faced a three-year prison sentence. The fact that men called up for military service in other similar cases were not usually arrested pending a trial suggested political motivations. A few days earlier, the Attorney General's Office had issued a statement that it would not "tolerate sweeping and false criticism of the president" and the "distorted description" of its activities. Local journalists and human rights activists believed that Yavetsky's arrest was an attempt to intimidate the independent press.

### Peaceful Assembly

Articles 1876 and 1878 of the criminal code restrict the right to peaceful assembly.

Special divisions of the Ministry of the Interior frequently used excessive force to disperse peaceful rallies. In most cases, the special regiment Berkut (Golden Eagle) resorted to beatings. This regiment was created at the end of the 1980s under the name OMON, and was assigned specifically to break up demonstrations and unrest. In 1998, Berkut was active, for example, in Lviv and Cherkassy.

- In February and March Berkut brutally beat Crimean Tatars who demanded electoral rights in Simpheropol.
- On 24 September independence day, Berkut beat up dozens of coal miners in the city of Lugansk. The miners had organized a demonstration against the government's failure to pay their wages.

Berkut operated with full impunity. None of its members were known to have been charged for ill-treatment or subjected to disciplinary measures for misconduct, despite the fact that in recent years they have killed and seriously injured dozens of individuals.

### Judicial System and Independence of the Judiciary

#### The Criminal Code

The criminal code had not undergone any significant changes during the seven years of independence; only some of the most notorious provisions of the Soviet era code

were removed. However, the entire conception of the code remained directed toward the protection of the interests of the state and judicial bodies, not those of individuals.

### Independence of the Judiciary

The courts were greatly dependent on the executive power. Most judges took their posts in the Soviet era and continued the old practices. They frequently, openly ignored post-Soviet legal provisions, particularly those regulating the course of an investigation. In most regions, the courts still saw their role as part of the prosecution. The judges ruled on the basis of information submitted to them by investigators, even if they knew that it was obtained through illegal methods, including torture. Typically, courts did not invoke the constitution or international human rights conventions. If a law was in contradiction with the constitution or international law, priority was given to national law. There were no adequate ways to seek remedy for such judgments or other violations of fair process.

The lack of division of powers was also demonstrated by the fact that judges, together with the Ministry of the Interior and the Attorney's General's Office, composed the so-called Coordinating Committees to Fight Criminality, which actually prepared the prosecution against the accused.

The close links between the prosecution and the judiciary led, among other things, to few acquittals and extremely harsh penalties, mostly incarceration. In the first six months of 1998, more than 126,000 criminal cases were considered, and only 444 acquitted. In recent years, more than 4,000 convictions have been based on article 80 on "illegal currency operations." This article provides for a five-year sentence to anyone who has traded in foreign currency amounting to more than US\$100. Sums larger than US\$500 carry a sentence of up to 10 years, and the confiscation of one's property. Even more common was sentencing of employees of government enterprises, who had not received their wages for many months and had stolen food or other necessities, to 5-8 years in prison.

The Constitutional Court took no stand on numerous decrees issued by the executive power that clearly violated the constitution. One of them was the presidential decree, in force since 4 August, which allowed tax police to order confiscation of property without a court decision.

### Military Courts

By law, military servicemen who were charged with a crime stood trial in military courts. Hearings in such courts were closed, and investigations were conducted by the Military Attorney's Office. Those convicted had to serve prison terms in special "disciplinary battalions," which were, in fact, special military prisons with a very strict regime and particularly harsh regulations. These institutions were outside any civilian control.

### Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Charges and court sentences were usually based on confessions, which were frequently extracted under duress. The use of torture and ill-treatment was prohibited by law, but still a widespread practice.

The most commonly used torture methods were "elephant," "swallow," beating, and electroshocks. In "elephant," militia officers placed a gas mask on the face of the victim, and blocked the air hose until the victim was close to suffocation. This was repeated several times. "Swallow" meant that the victims' arms were bound behind his/her, back and then pulled towards the feet, bending the body to form an arch. Former detainees told that they had been held in such a position for more than an hour. Others were beaten or kicked on the soles of their feet, kidneys, and head. The targeted place was often covered with a book or other object to hinder visible marks of torture. Electric shocks were also used. Another popular method was placing the suspect in a special steel case and beating heavily on the case to break the suspect through the unbearable noise. In addition, suspects were often ill-treated by turning off the heat in their cells in winter, or forcing them to sleep without a blanket.

It was impossible to establish how many individuals were subjected to torture and ill-treatment by the militia. However, human rights NGOs estimated that several thousand fall victim to such abuse each year.

As abuse appeared to be part of most criminal procedures, the perpetrators enjoyed immunity. Ukrainian Committee Helsinki-90 was aware of only two cases of prosecution of law enforcement officials for the use of torture. In one of them, some 50 security service members were charged with torturing a detainee to death in Lviv. With time, however, their number diminished to seven officers who had directly used torture. Later, it turned out that the victim had been arrested by mistake.

## Conditions in Prisons and Detention facilities

Conditions in prisons and detention facilities were inhuman and humiliating. According to official information, there were 126 "labor farms" for convicted adults and 11 "labor farms" for juveniles. Pre-trial detainees were held in 32 investigation facilities of the Ministry of the Interior, and six facilities of the Security Service. The official number of inmates varied each month between 200,000 and 224,000, some 40,000 of them pre-trial detainees. The investigation facilities were overcrowded, accommodating often three or four times their official capacity. Since May 1997, it has been illegal to give any information about conditions in detention facilities. Any official who discloses such information may be punished with eight years' imprisonment.

Overcrowding has led to extremely poor sanitary conditions, and sometimes forced inmates to sleep in shifts because of a lack of beds. Regardless of such overpopulation, courts seldom released defendants on bail (only 500 individuals were on bail in 1998) or handed down suspended or alternative sentences. Most suspects spent the time of investigation and trial proceedings in jail. In extreme cases prison officials did not release a person on bail despite a court ruling. According to the law, the maximum pre-trial detention period was 18 months, but this time could easily be prolonged. Numerous people were held in investigation facilities for 2-3 years or more. Those later found innocent had no right to compensation.

The situation in the labor farms was somewhat better, though they too were full. In 1998, the government tried to solve the problem by amnestying some 15,000 convicts who had committed minor crimes.

Inmates had no adequate avenues to file a complaint for inhuman treatment. The fact that inmates were frequently denied access to a lawyer or medical care made their situation even more vulnerable. The Ministry of the Interior rejected all attempts of NGOs to visit such investigation facilities.

There were 522 isolation facilities for temporary detention and short-term isolation in all city departments of the militia. Local monitors feared that torture and inhuman treatment was even worse in those facilities. In addition, conditions in them were extremely poor; the cells were small and had no sanitary infrastructure.

By law, a person could be held in short-term isolation cells for no longer than 72 hours, but in practice this time limit was often exceeded to up to 15 days. The



maximum detention period in isolation facilities for temporary detention was 15 days, in some cases up to 30 days, but some were held for more than 2 months. Almost all detainees in such facilities were subjected to extremely rough treatment, including beatings and torture. As a rule, relatives and lawyers were notified about the arrest only after the suspect's transfer to an investigation facility (sometimes weeks later), a fact leading to abuse by interrogators.

In addition to the above-mentioned facilities, there were a number of other places of detention with unclearly regulated status and, therefore, hardly any supervision at all. Most of them were designed for foreigners who had entered Ukraine illegally, but Ukrainians were sometimes placed there if the militia had arrested them as "suspicious" persons, and they could not identify themselves. The largest of such facilities was under the jurisdiction of the Border Guards, the others under the regional Administration of Internal Affairs. The term of detention was usually 30 days. Those facilities had no heating, and inmates were given only one meal a day.

## Death Penalty

Since May 1997 Ukraine has been a member of the Council of Europe. It has also signed (but not ratified) the Sixth Protocol to the ECHR, which aims at the abolishment of the death penalty. In 1998, five articles of the criminal code still provided for a death sentence, but the draft criminal code no longer contains the death penalty. Despite a declared moratorium on executions, courts continued to hand down the death penalty, and the Supreme Court declared that this practice would continue until the death penalty was officially abolished. A draft law on the abolishment of the death penalty was submitted to the parliament in January 1997, but was still pending as of the end of 1998.

According to unofficial information, 231 individuals were sentenced to death in 1997, and fourteen were executed.<sup>5</sup> The figures revealed a worrisome tendency towards the increasing use of the death penalty. In 1998, 167 death penalties are known to have been handed down. It was, however, impossible to receive figures about the real number of executions because, since May 1997, any information on the place, time, and methods of executions, as well as where the executed had been buried, was regarded as a state secret. An official who provided such information could be imprisoned for eight years.

## Religious Tolerance

Article 208 of the criminal code, that was used to repress religious minorities during the Soviet era, remained in force. Intolerance and prejudices among authorities in many regions led to failures to register religious associations and grant permits to build churches and other religious meeting places. Non-traditional religious groups known as "sects" faced the most prejudice. Opposition to them was promoted by majority churches, the media, and local officials.

There were also conflicts between traditional churches. Thus, in central and eastern Ukraine, Greek Catholic communities were not registered and not allowed to build religious sites. The problem was most acute in Crimea, where local authorities adopted a number of illegal decisions that discriminated against Catholics and Muslims.

## Conscientious Objection

Male citizens of Ukraine were obliged to carry out a regular military service, which lasted 1-2 years, the average being 18 months. Those who refused on grounds of their conscience could carry out an alternative non-military service.

The Law on the Alternative Non-military Service, however, was discriminatory in that alternative service was twice as long as military service. In addition, the right to alternative service was provided only on religious grounds, and only to members of officially registered religious communities whose doctrines forbid military service. If non-religious pacifists or members of non-registered religious groups refused to carry out military service, they were prosecuted for avoiding military service, and faced imprisonment for up to three years. As of the end of 1998, the Attorney's General's Office had initiated dozens of criminal proceedings (according to some sources hundreds) against young men who were not allowed to carry out an alternative service.

## Protection of Ethnic Minorities

Despite legal guarantees for equality of individuals regardless of their ethnic origin, ethnic Africans, Asians, Caucasians, Tatars, and Roma fell victim to racially motivated abuse by the militia. Militia officers had the right to stop all non-Ukrainian

looking individuals to check their identity and, if the documents appeared suspicious, to arrest the individuals. As a rule, militia officers humiliated and insulted the victims, and demanded money from them to allow them to go. In addition, members of ultra-nationalist groups assaulted non-Ukrainians. The militia typically failed to investigate such cases adequately, or even condoned the criminals.

### The Crimean Tatars

The return of some 250,000 Crimean Tatars from the places of Stalin's deportation to their historical home in the Crimea had been met with active resistance by the ethnic Russian majority and the parliament of the Autonomous Republic of Crimea. The central government in Kyiv was reluctant to take measures to improve the situation of the Tatars.

The most acute problem of the returning Tatars, who had Uzbek or other former Soviet republic citizenship, was the difficulty in acquiring Ukrainian citizenship. As of end of 1998, some 80,000 Crimean Tatars – i.e., more than half of the adult Tatar population in Crimea – did not have Ukrainian citizenship, and were therefore deprived of the right to take part in the elections. Tatars also faced considerable restrictions on the freedom of movement.

On 20 October Ukrainian authorities stated that they had simplified the naturalization rules for Tatars.<sup>6</sup> As of this writing it was too early to evaluate the effects of the new policy.

In February and March, tens of thousands of Crimean Tatars demonstrated to protest their difficult situation and demanded for electoral rights in the March elections. The militia dispersed the rallies with force. Tatar leaders were threatened that, should they continue rallies and civil disobedience, authorities would send the army to calm the protests.

After six years of discussions, the parliament on 23 December approved a new constitution for Crimea. It allows Crimea to have its own government and legislature, and permits the republic to independently sign foreign trade deals.<sup>7</sup>

### Restrictions on Local Self-Government

On 13 January, at the proposal of President Kutchma, the parliament abolished the

immunity enjoyed by members of Radas, i.e. local governments. Soon after, numerous members of local governments were arrested. In Crimea, where most of the arrests were carried out, they were officially justified as a "campaign to liquidate mafia groupings."

- In February 677 people were arrested in Crimea, among them Sergey Voronkov, a deputy of the Sympheropol City Rada; Nikolay Diskin, former Yalta City Mayor; Ivan Shevchuk, deputy of Yalta Rada; and Aleksander Kovalenko. Shevchuk and Kovalenko were taken to an unknown place and, as of end of 1998, their whereabouts remained unknown.

- On 13 March Vasiliy Shpilkin, a member of parliament from Crimea, was arrested in Kiev.

- On 20 March Vladimir Shevyov, a deputy of the Crimean Rada and chair of the Party of the Economic Rebirth of Crimea, was arrested.

On 3 March President Kuchma issued a decree that allowed him to appoint the mayor of Yalta. This decree violated the constitution and the law on local self-administration, which stated that mayors are elected.

At the insistence of the Attorney General's Office, the city courts of Kyiv and Sevastopol decided to cancel the elections of mayors. They stated that, according to the constitution, the two cities had the status of a district. It was believed that the real reason was the desire of the presidential administration to limit the right to local self-administration.

### Social and Economic Rights

In late 1998, official sources stated that the backlog of unpaid wages amounted to about 6 billion hrn. (approximately US\$1.5 billion). NGOs, however, estimated that the wage arrears amounted to closer to 9 billion hrn, and the pension arrears up to 3 billion hrn.<sup>8</sup> In practice, millions of people continued to work normally, but unpaid. In the past years, wage arrears of 2-3 months had been regarded as normal, but in 1998 most state companies failed to pay salaries for six months or more. Some state employees had not received salaries for 2-3 years.

The situation of those workers for whom there was no work, but who had not been

officially laid off, was even worse. Companies held them officially on their payrolls, but on "unpaid vacation." They were not eligible for unemployment payments or to look for other jobs.

The non-payment of wages led to a dramatic and even ironic situation. The state, that failed to pay legal wages, punished heavily its own employees who could no longer pay their rents, gas, water and electricity bills to the state. Water supplies, heat and electricity were cut off without a court procedure, and not only for those tenants who were unable to pay: whole blocks of house were punished collectively, including those who had paid their bills.

## Property Rights

The government failed to pass laws on the return of state property to individuals from whom it was confiscated during the Communist era, or their descendents. Nor were any provisions adopted to pay compensation for such property. There were no laws to legalize private ownership of land or the privatization of state enterprises and housing. Even the money that individuals had deposited during the Soviet era in savings accounts in the governmental Savings Bank of the USSR was illegally withdrawn in the early 1990s. No compensation for the lost savings was foreseen in the near future.

In 1998, the president and the government issued a number of decrees and orders that seriously violated property rights. A 4 August presidential decree gave the tax police the right of confiscate property without a court decision, and to conduct searches and arrests without such restrictions as were imposed upon Ministry of the Interior officials and security service members. Several reports were received about arbitrary use of this decree.

## FOOTNOTES:

1. Unless otherwise noted, based on Ukraine: the General Situation of the Adherence to the Human Rights in 1998, a Short Resume by the Ukrainian Committee Helsinki-90.
2. RFE/RL Newsline, 29 January and 9 February 1998.
3. RFE/RL Newsline, 5 June 1998.
4. RFE/RL Newsline, 10 December 1998.
5. As of this writing, 1998 data was not yet available.

6. RFE/RL Newslines, 21 October 1998.
7. RFE/RL Newslines, 28 December 1998.
8. The annual budget for 1999 was 23 billion hrn.