
UKRAINE

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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In 2010-2011, a journalist reporting on corruption disappeared and several human rights defenders were victims of judicial and administrative harassment as well as threats, physical assault, attempt to commit in a psychiatric institution and searches. In addition, several peaceful rallies held in favour of the defence of human rights were repressed. Although the legal framework in which human rights defenders operated remained restricted, a draft law on freedom of association discussed by the Parliament could improve the registration of NGOs. A draft Law on Peaceful Assemblies was also adopted at first reading providing a number of improvements but still falling short of international standards.

Political context

The February 2010 presidential election put an end to the political turmoil that affected Ukraine in recent years. Yet, the first year of the presidency of Mr. Viktor Yanukovich, leader of the Party of Regions, was marked by severe restrictions on democratic freedoms and civil liberties as upon taking office, Mr. Yanukovich ensured strengthened presidential control over the legislature, the police, the judiciary, the Security Services of Ukraine (SBU), the Public Prosecutor's office and local administrations¹. In addition, in December 2010, several members of the former Government were arrested and accused of "abuse of power"².

While the international community welcomed the new stability, it expressed concern over restrictions being placed on fundamental freedoms, in particular on freedom of expression³. Indeed, 2010 was marked by many new cases of pressure put on journalists, political activists and human

1/ After his election, the President appointed to key high level positions within the judiciary, police and SBU individuals close to him. A judiciary reform that was seen as harmful to the courts' independence was also enacted in July 2010. Before the local elections of 2010, a new electoral law ensuring the presidential party's victory was adopted. On September 30, 2010, the Constitutional Court decided to annul the 2004 amendments to the Constitution that had shifted powers to the Parliament, depriving the Parliament of the power to appoint and dismiss cabinet ministers. See Ukrainian Helsinki Human Rights Union (UHHRU).

2/ Including the former Minister of Economy, the former Prime Minister and leader of the *Batkivshchyna* party, the former Minister for Transport and Communications and Deputy Head of the State Customs Service, the former First Deputy Minister of the Ministry of Justice, and the former Interior Minister. As of April 2011, some remained detained.

3/ See Parliamentary Assembly of the Council of Europe (PACE) Resolution, October 5, 2010, as well as European Union Progress report on implementation of the European Neighbourhood Policy, *Country Report on Ukraine*, May 25, 2011.

rights defenders and a serie of politically motivated criminal prosecutions⁴. A number of newspapers, independent journalists and writers reported being harassed and subjected to searches, documents confiscations and interrogations by law enforcement agencies after criticising the Government, local authorities and representatives of the ruling party.

Another acute problem that tarnished Ukraine's human rights record, was the unexplained deaths of several people while in police custody. During 2010 and the beginning of 2011, more than fifty people have died in police stations⁵. In addition, corruption and the arbitrary use of powers remained a serious concern within the police and other law enforcement agencies.

Legal developments on freedoms of association and peaceful assembly

On November 1, 2010, Draft Law No. 7262-1 on Public Organisations was registered in the Parliament of Ukraine. The current 1992 Law On Citizen Associations poses many obstacles to the registration of civil society organisations, in particular as associations may only defend the interests of their members or constituency⁶. It also unduly restricts types of activities that may be undertaken, for example selling their own publications or services and reinvest the proceeds in the organisation's activities or institutional capacity and the geographical scope of the association. The draft law, which was still pending adoption as of April 2011, would simplify the registration procedure and allow citizens to unite to discuss social and community issues. In particular, it envisages the registration of public organisations in three business days, instead of up to forty days with the current law. Finally, public organisations will not only be able to protect the rights of their constituencies, but also any other public interests, including human rights and environmental activities.

Moreover, in June 2010, the Parliament adopted at first reading, a draft Law on Peaceful Assemblies, which had not been adopted in final reading as of April 2011, due to the negative opinion of the Venice Commission of the Council of Europe on the current draft. According to the Commission,

4/ See UHHRU Statement, December 22, 2010.

5/ See Kharkiv Human Rights Protection Group (KHRG) Open Letter to the President, March 30, 2011 as well as UHHRU.

6/ A civil society organisation may only be involved in defending the rights of its own members and is not entitled to engage in human rights protection.

the draft contains some improvements⁷, while it fails amongst others, to “reflect sufficiently the presumption in favour of holding assemblies and the proportionality principle”⁸. In particular, a provision should be included in the draft law requiring the authorities to give immediate written confirmation of receipt of notification in all cases; it should be explicitly mentioned in the law that a failure by the authorities to provide timely confirmation will be tantamount to acceptance of the assembly; the liability and penalties for lack of adherence to the law should be clearly set out; in principle, every public space should be seen fit to host an assembly; the prohibition of assembly in the immediate vicinity of high risk facilities should be limited to areas closed to the public, the draft law should clearly define and limit actions connected with keeping the peace and security during assemblies that can be taken by the law enforcement bodies; it should also specify that officials can use force only as a last resort in proportion to the aim pursued, and in a way that minimises damage and injury.

Disappearance of a journalist reporting on corruption

In 2010, a journalist reporting on corruption disappeared. On August 11, 2010, Mr. **Vasyl Klymentyev**, Editor-in-Chief of the Kharkiv-based *Noviy Stil* newspaper, known for being critical of the administration, went missing. At the time of his disappearance, the journalist was investigating several high-profile corruption cases involving local officials. Before disappearing, he was allegedly threatened as well as offered bribes for not disclosing sensitive information. A police officer who was a potential witness equally disappeared subsequently. He had taken Mr. Klymentyev to the Pechenizke water reservoir to take photographs of a property owned by the Regional Director of Taxes, Mr. Stanislav Denysyuk, and three other local officials, including a former member of the SBU. On August 17, 2010, Mr. Klymentyev’s mobile phone was found near the Pechenizke water reservoir. Mr. Klymentyev’s partner, Ms. Valentina Udovenko, was also harassed. His lawyer’s apartment was searched on September 2, 2010 by police officers and members of the local special forces. He lodged a formal complaint, which had led to no result as of April 2011. Ms. Udovenko’s apartment was also repeatedly searched, for instance on September 2, 2010. Several days later, as she intended to participate in a

7/ These include: the change in the title, which now only mentions “peaceful assemblies” instead of “peaceful event”, the recognition of simultaneous assemblies, counter demonstrations and spontaneous assemblies; the clarification and extensions regarding the organiser of a public assembly; and the provisions concerning the possibility of receiving legal protection in case of restriction of assemblies and other violations of the right to freedom of peaceful assembly. Furthermore, the procedure of restriction of peaceful assemblies was amended and delegated to the courts.

8/ See European Commission for Democracy Through Law (Venice Commission), OSCE/ODHIR Joint Opinion on the Law on Peaceful Assemblies of Ukraine, Document CDL(2010)099, October 8, 2010.

press conference to be held in Kiev about her partner's disappearance, she was ordered by the local authorities not to leave Kharkiv. As of April 2011, the investigation into the disappearance of Mr. Klymentyev was suspended⁹.

Harassment and assault against human rights defenders

In 2010, several human rights defenders faced judicial harassment as a way to obstruct their human rights activities. They were also subjected to physical assaults, to which the authorities failed to adequately respond. For instance, on September 8, 2010, Mr. **Ruslan Zabily**, an historian working on political persecution during the Soviet Union, Head of the National Memorial Museum of Victims of the Occupation Regimes "Tyurma na Lonskoho" in Lviv, was arrested by six officers belonging to the SBU and taken to their headquarters for approximately fourteen hours, before being released. The officers did not identify themselves and Mr. Zabily was not informed either of the reasons of his detention nor of charges against him. During the time of detention, he was not granted access to his lawyer. His personal computer containing historical material and academic research was confiscated and not returned to date. One month after his arrest, the case was classified for security reasons, and Mr. Zabily was interrogated again in February 2011 by the SBU. He then found out that he was accused of "attempting to reveal a State secret" and "intending to commit a crime" under Article 328 and Part 1 of Article 15 of the Criminal Code. As of April 2011, a criminal investigation against Mr. Zabily remained clouded in secrecy. It remains unclear which documents in his possession at the time of his arrest present a threat to the State if revealed¹⁰. In 2010, Mr. **Andriy Fedosov**, Head of a monitoring project in psychiatric institutions run by the mental disability rights organisation "Uzer", based in Evpatoria, was the victim of several acts of harassment. On May 11, 2010, he was beaten by unknown assailants in Evpatoria. He had to stay in bed for three days following the attack. From February to April 2010, Mr. Fedosov had been filming poor living conditions at several governmental psychiatric institutions in the Crimea region. He also reported cases of unlawful confinement in psychiatric institutions, cases of torture and ill-treatment of patients. On April 25, 2010, he had received anonymous threats of physical assault over the phone demanding him not to publicise his findings. On April 26, he gave a press conference on this issue. Though alerted, the police reportedly failed to take action. After the assault, he filed a complaint at the police but the assault was not investigated. Moreover, in July 2010, Mr. Fedosov was detained for one day

9/ See Institute of Mass Information (IMI) and Reporters Without Borders (RSF) Press Releases, September 9 and 10, 2010.

10/ See UHHRU.

in relation to an offence allegedly committed by him when he was 15 years old¹¹. In October 2010, Mr. Fedosov was informed by the Ministry of Internal Affairs that a financial inspection into his organisation's accounts was underway at the request of an anonymous person. The police tried to interrogate Mr. Fedosov several times, including once when he was home on sick leave. Every time he refused to respond so the policemen left. He was asked for the statute of the organisation and its financial documents. Following the intervention of the Ukrainian Helsinki Human Rights Union (UHHRU), the police of Evpatoria finally decided not to continue the inspection¹². On October 29, 2010, Mr. **Andriy Bondarenko**, a trade union activist and defendant of workers' rights in Vinnitsa, south west Ukraine, was ordered by the Vinnitsa Regional Court of Appeals to undergo a 30-day compulsory psychiatric examination after sending multiple complaints to the Prosecutor's office about violation of workers' rights. The prosecutors cited his "excessive awareness of his own and others' rights and his uncontrollable readiness to defend these rights in unrealistic ways" as a problem¹³. A psychiatric examination scheduled for December 13, 2010 did not take place as Mr. Bondarenko refused to submit to the examination. In December 2010, his lawyer lodged an appeal before the High Court on Criminal and Civil Cases, but the hearing had not been scheduled as of April 2011¹⁴.

The work of human rights defenders was also paralysed by searches and confiscation of important documentation and equipment. For instance, on October 15, 2010, at 11 p.m., the police raided the office of the Vinnitsa Human Rights Group under the pretext of investigating pornography distribution by the group's Coordinator, Mr. **Dmytro Groisman**, who provides support to asylum-seekers and campaigns against torture and ill-treatment of migrant workers. Mr. Groisman's flat was searched with the authorisation of the court whereas the office of the Vinnitsa Human Rights

11/ On May 12, 2000, in the village of Litin in the Vinnitsa region, a sports school was robbed. Mr. Fedosov was later accused of the robbery. On September 20, 2010, the charges against him were dropped since it was proven that he was in a closed children's hospital at the time and could not have committed the alleged crime.

12/ See Uzer and UHHRU.

13/ Since 2007, the Vinnytsya Prosecutor's office had asked local health authority officials four times to request compulsory psychiatric examination of Mr. Andriy Bondarenko but the Leninskiy Court of Vinnitsa had always denied their request. Yet, Mr. Bondarenko underwent voluntarily three examinations in August 2007, August 2010 and October 2010, all of which confirmed that he was mentally healthy. In August 2010, the Prosecutor's office accused him of forging the data during the examination. On August 31, 2010, the Leninskiy Court of Vinnitsa dropped the criminal charges.

14/ The High Court on Criminal and Civil Cases subsequently ruled out the decision to submit Mr. Bondarenko to a psychiatric examination. The Prosecutor's office demanded the hospitalisation again but the new case had not been examined as of April 2011. See UHHRU.

Group, located in the same building, was searched without judicial authorisation. During the search, financial reports, confidential information about clients and refugee cases, including written confidential correspondence between the Vinnitsa Human Rights Group and the European Court of Human Rights regarding three cases, were seized. The police reportedly confiscated over 300 items including files of the UN High Commissioner on Refugees, CD-ROM, USB-sticks and a laptop. As of April 2011, the documents and equipment had not been returned and the investigation remained pending¹⁵.

Ongoing obstacles to freedom of peaceful assembly

In 2010, several peaceful rallies held in favour of the defence of human rights were repressed. For instance, in May 2010, Ukrainian environmental activists acting to prevent deforestation of Gorky Park in Kharkiv, a 1,800 hectare, forest park, were denied the right of peaceful assembly and expression. On May 20, 2010, under the order of the Kharkiv City Council plans to build a new road and commercial leisure facilities, loggers began clearing trees in Gorky Park. Yet, the order of Kharkiv City Council disregarded formal procedures such as conducting a public consultation by the State Environment Protection Department in 2007 and procurement of land allocation and land inspection certificates. During the first week alone, the loggers cut down 20% more trees than permitted by a decision of the Executive Committee. On May 20, local citizens and environmental activists therefore started a 14-day peaceful protest. They gathered in the park and attempted to stop the falling by standing in front of the trees, sitting in the trees, and chaining themselves to the trees. On May 28, security guards started to break up the human chain formed by the demonstrators. As a result of a clash between the activists and the police, a dozen activists were arrested, including environmental activists Messrs. **Andrei Yevarnitsky** and **Denis Chernega**. They were taken to the Dzerzhinsky district police station, where they were held approximately eight hours before being brought before a judge. Eight people, including the two environmental activists, were charged with “not following legal orders of a police officer”. Messrs. Yevarnitsky and Chernega received the longest sentences, that is fifteen days in “administrative” detention. The other activists were sentenced to a few days’ imprisonment. On June 18, the sentences of Messrs. Yevarnitsky and Chernega were reduced on appeal to nine days. They were released the same day as they had already completed 21 days of detention. Similarly, on June 2, a peaceful protest of 200 people was dispersed by force by the crew of woodcutters,

15/ See Vinnitsa Human Rights Group Press Release, November 18, 2010.

security guards employed by the City Council and employees of a construction company. Over fourteen days of protest, several demonstrators and journalists suffered injuries caused by being beaten, wire traps set by the guards and falling from trees caused by the guards. The police took no action to protect them. They were also subjected to threats and insults¹⁶. On each occasion, they lodged complaints but the authorities failed to ensure their safety and to open an investigation. On October 12, 2010, the police attempted to arrest Mr. **Oleksiy Verentsov**, a lawyer and leader of the local human rights NGO “Vartovi Zakonu” (Guards of the Law), during a peaceful protest against the lack of progress in criminal and other cases concerning citizens’ rights that lasted for several days in front of the Regional Prosecutor’s office. As the crowd started chanting “Shame!”, ultimately he was not arrested. Two days later, on October 14, 2010, Mr. Verentsov and his colleague Mr. **Ihor Tanychkevych** were arrested on charges of violating Articles 185 and 185.1 of the Code on Administrative Offences, in particular for “disregarding lawful instructions by a police officer to cease the demonstration in absence of a permit”. However, under Article 39 of the Ukrainian Constitution, a permit is not required for peaceful demonstrations. During the court hearing held on October 14, 2010 before the Halytsky District Court in Lviv, Mr. Oleksiy Verentsov’s and Mr. Ihor Tanychkevych’s lawyer was not granted access to the courtroom and the witnesses were not interrogated. The hearing lasted about one hour. Messrs. Verentsov and Tanychkevych were sentenced to three days of prison for “breaching the order of conduct of a peaceful assembly”. On October 18, Mr. Verentsov appealed the decision of the court only after being released since he was not allowed to see his lawyer earlier. On October 27, the Court of Appeal rejected it. Mr. Tanychkevych also lodged an appeal on October 18 and the Court of Appeal ruled out the decision of the first instance court, opening the way for a criminal investigation against Mr. Tanychkevych. On December 14, the Prosecutor’s office finally decided not to file criminal charges against him. On the same day, the Prosecutor’s office also decided not to bring charges against police officers and members of the court as he denied the claim that Mr. Verentsov’s rights had been violated during his arrest. Mr. Verentsov’s lawyer lodged an appeal before the European Court on Human Rights for unlawful detention. The application was pending as of April 2011¹⁷.

16/ See Kharkiv Human Rights Protection Group Open Letter to the Human Rights Commissioner of the Council of Europe, June 7, 2010.