

IHF FOCUS: elections; freedom of expression, free media and information; independence of the judiciary and fair trial; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; ethnic minorities; racism, xenophobia and anti-Semitism.

One year after the Ukrainian presidential elections and the launch of the Orange Revolution, there were signs of some improvements leading towards democracy and respect of the rule of law. However, much remained to be done by both the political leadership and public authorities to show their commitment to carrying out genuine reforms and changing old, inadequate practices. At the end of the year, it appeared that much of the work would have to be carried out by Ukrainian civil society, which also played a central role in the historic changes of 2004 and reforms in their aftermath. Their increased efforts and contribution – together with vibrant free media – continued to keep a critical eye on the work of the government and also contributed to the renewal and strengthening of government institutions at all levels.

One of the undeniable achievements of the new government during 2005 was a significant change in the political climate of Ukraine. Unlike during the Kuchma era, the losing side in the landmark 2004 elections was also given access to the state-run media and was free to organize and work politically without harassment. Society as whole became freer and it was possible to observe a genuine transition from a totalitarian society towards a democratic one.¹

Most changes, however, were related to administrative practices – the legislation remained largely the same, making major improvements impossible in many fields of human rights. Essential problems remained in police operation, and centered around frequently reported cases of torture, ill-treatment, illegal arrest and detention.

The basic problems with the judicial system (excessively long judicial proceed-

ings, the failure to execute court rulings and the chronic underfunding) continued to plague the courts in 2005. The lack of funds turned into a dramatic existential question for some courts, which were virtually closed down, and forced others to seek funding from the authorities, thereby putting their independence at serious risk.

The number of violations of freedom of expression and media freedom fell markedly in 2005: the media started to display a wide range of variety and the programs of state-owned television and radio stations were more balanced. Nevertheless, some manipulation still took place and journalists continued to face problems in their work. In addition, the ownership of the media remained a crucial question, with media concentration hindering the development of the pluralism. The fact that there was no public broadcast media contributed to this problem.

Access to information of public importance remained restricted, with public authorities applying regulations that did not have the force of law. In addition, the president and other authorities continued to issue secret decrees and classify documents without legitimate reasons.

In October, a new problem arose with the attempts by the government to introduce a new identification number system. The Ministry of Interior submitted to the government a package about a new ID card with an electronic chip that would contain a wide variety of sensitive personal information. The card would be used in all sectors of life, including tax administration, pension funds, etc. Human rights activists voiced concern about the fact that the new card would grant various authorities virtually unrestricted access to sensi-

* As reported by the Ukrainian Helsinki Human Rights Union. The section on the Roma minority, however, was provided by the European Roma Rights Center (ERRC, IHF cooperating organization).

tive personal data and so pave the way for abuse of such data.

Although the human rights situation improved in 2005, the improvements were not firmly entrenched by the end of 2005. Reforms are crucial in many areas: of particular importance is the uncompromised enforcement of the rule of law so as to ensure that the improvements achieved in the human rights field will become irreversible, noted the Ukrainian Helsinki Human Rights Union (UHHRU).

Elections

The October and November rounds of the 2004 presidential election in Ukraine were characterized by bias in favour of the incumbent president, Viktor Yanukovich, and violations of international standards for free and fair elections. The 26 December re-run was won by his rival Viktor Yushchenko, and while the manner in which the poll was conducted showed progress, irregularities were still recorded. In 2005, investigations were conducted into the reported irregularities.

According to Interior Ministry and the prosecutor's general's office, more than 700 criminal cases involving 6,000 people were initiated regarding election violations. About 250 had been submitted to courts by the end of the year and in some cases court judgments were proclaimed. In most cases chairmen of election stations were punished, but perpetrators of election-related crimes were also found in the ranks of the police: 250 law enforcement officers were involved in election violations, 40% of them being representatives of the middle and higher echelons of the police force.

With regard to the systematic and organized character of the violations committed during the elections, it remained unclear why the perpetrators on regional level were not brought to justice and punished - only in a handful of cases were investigations initiated into such alleged violations.

At the same time, the former political leaders who now made up the new opposition declared that the investigations into and judgments on election irregularities were politically motivated. The UHHRU was unable to confirm such claims, nor the alleged limitations of any political activities by citizens by the new government.

◆ On 21 July, the Rivne City Court proclaimed its judgement on the criminal case against Vasyl Gerus, the former editor of the Rivne city council's weekly newspaper "7 days." The court found him guilty of obstructing election rights (article 157.2 of the criminal code) and misuse of office (article 364.2). According to the judgment, he had used his office to create obstacles for the election of Viktor Yushchenko by publishing a forged political program under the title "Political goals of Yushchenko" prior to the second round of elections. He received a three-year prison sentence suspended for one year. Gerus appealed the sentence.

Freedom of Expression, Free Media and Information

The number of infringements regarding freedom of expression fell significantly in the course of 2005: the media started to reflect a wide range of opinions. Overall, the programs of state-owned television and radio stations were more balanced, although some manipulation still took place. There was no government pressure on journalists and workers from the state-owned media were gradually ridding themselves of their earlier pro-regime bias. However, a legal basis for the creation of public service media and a move to privatize at least some of the state-owned media are still needed to avoid a possible reversal of these positive trends.

Ukraine had no public television or radio. The Law "On Public Television and Radio Broadcasting in Ukraine" was adopted a few years ago but the necessary amend-

ments to this law were not approved by the parliament by the end of 2005.

Nor did Ukraine have laws in place to impose anti-monopoly restrictions on the ownership of media. As a result, all influential national information resources such as radio and television stations and newspapers were controlled by a closed group of individuals.

On 7 July, the parliament adopted amendments to the Law "On the Election of Members of Parliament" that made impossible a considerable number of the violations and fraudulent acts that took place during the 2004 presidential election. However, these amendments also considerably limited freedom of speech and the media's capacity to discuss political issues during the election campaign. The definition of "political advertising" contained is so vague that it can be interpreted to cover almost all information disseminated by the media about political parties or candidates. At the same time by law, all such "advertising" must be paid from party funds. In the run-up to the March 2006 election, one newspaper was closed and measures were taken against another one. Seven TV companies were sanctioned in different ways. In addition, this law resulted in a low level of political discussion since any critical remark could be viewed as "political advertising."

The new law also prohibits foreign journalists and mass media that operate in Ukraine from covering the election process. While these restrictions were partly lifted by the parliament in December, the legislation still gave rise to concern.

Access to Information

One of the main demands of the Orange Revolution and the promises made by the new leaders in its wake was to abolish the all-embracing secrecy within the government and to introduce real transparency. This was not, however,

achieved in the course of 2005. Even the notorious old practice of issuing secret presidential decrees marked "not for publication" was continued. This old relic of the Soviet era represents a grave threat to democracy and the rule of law.

The level of access granted to information did not meet international standards. Ukraine did not have an efficient system of accessing information kept by government agencies and local self-governments and authorities often disregarded their duty to provide complete information on issues of public importance at the request of individuals. Instead they tended to give formal responses to the applicants or simply ignored such requests. This resulted in a virtual deprivation of information to legal entities such as NGOs, businesses, etc.

The 2003 Law "On Information" was outdated; it not only fell seriously short of European standards for access to information but essentially focused on how to protect the secrecy of information rather than granting access to it. While the law defined only the concept of "state secret," an unofficial and unpublished list of information subject to state protection existed and was used by different state bodies. Thus, decisions on limiting access to information were not based on legal and public regulations but on opinions of officials tasked with protecting such information. Authorities classified information using stamps such as "not for print," "not for publication," and "restricted" - none of which were provided for by law. The criteria used by authorities to classify information were broad, vague and arbitrary.

As a result of an initiative of Ukrainian human rights NGOs led by the Kharkiv Human Rights Protection Group, the head of the legal service in the presidential administration assured in April that the issue of classifying presidential decrees would be streamlined and the UHHRU was told that

the criteria for classifying information would be changed so as to put an end to arbitrary and groundless restrictions on access to information. In addition, President Yushchenko ordered the Ministry of Justice to prepare bills on access to information and on the openness of information of the state bodies. In practice, however, nothing changed, not even after additional NGO requests to the presidential secretariat and the cabinet of ministers to disclose at least the titles of some documents within a deadline of one month - as required by law.

As the authorities did not react to the requests, four NGO activists filed a case with a court charging the president with a violation of the law on access to information. The case was pending as of early 2006.

Attacks on Journalists

With a considerable increase in freedom of speech, journalists also faced fewer problems. Fewer cases of assaults on journalists and press persecution were registered and journalists were no longer ruled by *temniks*, ("advice" messages from the government on how to report on important issues). While incidents of pressure and threats on the press from the authorities still took place, these acts were sporadic, only occurring in some specific regions, and were no longer part of a purposeful state policy.

Despite improvements, the Institute of Mass Information reported in the course of 2005:² 23 cases of beatings, assaults, and intimidation on journalists and reporters; 14 cases of impediments to fulfil professional activity, or censorship; 12 cases of economic, political or other indirect pressure; 10 lawsuits against media and journalists; and 4 lawsuits by media and journalists. Most of these violations took place in the regions.

◆ On 13 March, unknown persons beat a journalist and a photographer of the newspaper *Vhoru* in Kherson while they

wanted to cover the seizure of the shop "Columbia" by the bailiffs who acted in violation of a Supreme Court decision. Several people attacked the two journalists and seized their camera and dictaphone - they were quickly returned but without a film and cassette, which were burnt demonstratively. The police officers on the site remained inactive.

◆ On 23 August, Liudmila Bashkirova, a journalist with the newspaper *Vecherniye Vesti* (Evening News) received threats of physical violence against her and her child. She said that the problems had started after she had written a number of critical articles about alleged illegal acts (including robbery) committed by the Kherson regional governor, Borys Silenkov, while serving as the mayor of Nova Kakhovka. After the articles were published, an unknown person called the journalist and advised her to write a "nice article" about Silenkov. When she refused to do so, the person started to threaten her with physical violence, noting that he also knew about her daughter. He said, "we are just warning that we will pave you into asphalt." When Bashkirova came home with her daughter, they found a package with a piece of asphalt at their door, wrapped in the newspaper with the article about Silenkov. She reported the case to the police but no investigation results had been published by the end of the year.

◆ On 10 November, Georgy Popov, the second secretary of the Donetsk branch of the Communist Party of Ukraine, and editor-in-chief of *Communist Donbass*, was brutally knocked down and beaten by two strangers when he was opening his apartment door. Popov was hospitalized with a serious cranio-cerebral trauma. The party regarded the attack at Popov as a revenge for his political activities, especially because of the highly critical speech he had given at a meeting on 7 November.³

In a positive development, in some cases courts also ruled in favor of human rights.

◆ On 3 October, the panel of judges of the Civil Court Chamber of the Supreme Court overrode the execution of a Pechersk District Court judgment against Oleg Yeltsov. Yeltsov had been ordered to pay a sum equivalent to about EUR 13,400 in damages for reprinting (in line with copyright regulations) in *Ukraina Criminalna* a Radio Freedom/Ukraine Service article that implicated the Eural Trans Gaz company in multi-million shadow deals with the Russian Gazprom. The article was published on 18 August 2003.

◆ On 10 November, the chief of the Cherniviv police filed a lawsuit against the TV Company NTN, which had aired a story accusing policemen of torturing prisoners. Mykhailo Koval, a pensioner in Cherniviv, claimed in the NTN program “Svidok” (Witness) on 27 September that policemen had tortured him and his family, giving the name of the alleged torturers, including the chief of the Cherniviv city police department. The chief sued NTN for defamation and damage to his honour, dignity and business reputation. The lawsuit was submitted to the Desniansky District Court of Cherniviv.⁴ Citing the right to freedom of expression and the the Convention Against Torture, the court ruled that Koval had the right to consider himself as a torture victim.

While there was no longer pressure from the government on journalists and reporters, they were under permanent pressure from mass media owners and managers. These permanently stressful conditions made it difficult for journalists to express their thoughts freely and forced them to use self-censorship in order to keep their jobs.

The office of the prosecutor general declared progress in the investigation into the

killing of journalist Georgiy Gongadze in 2000.⁵ In March 2005, the government announced that the killers (police officers) had been arrested. A trial against them started in December, however it was suspected that the orders to kill Gongadze came from higher ranks of the police or the executive.

Independence of the Judiciary and Fair Trial

The independence and efficiency of the judiciary – and the respect for the rule of law in general – remained serious problems. While direct pressure from authorities on the courts decreased, there was still a long way to go to achieve genuinely independent judiciary. Moreover, grossly inadequate financing made the efficiency of the courts illusory.

A thorough reform of the *prokuratura* system was still not in sight. On the contrary, the constitutional amendments of 8 December 2004 gave back to the *prokuratura* the old Soviet-style “general oversight” functions, which undermines the creation of a strong and independent judiciary. This was a massive setback for a much-needed reform and a breach of Ukraine’s commitments made on joining the Council of Europe in 1995.

The main problem of the independence of judiciary in 2005 was probably the dramatic lack of funding. The state budget provided only 48% of the real needs of this branch of power, but even this financing was not actually given to the courts, leaving them in many regions practically without funds. Some regions decided to administrate justice strictly within the allocated funds - which effectively stopped the hearings of all cases in their courts. The lack of funding led some courts to ask for charitable donations or funding from the local authorities, thereby putting their independence seriously at risk.

Another problem was the duration of court hearings. Following the 2001 reform,

the burden of the Supreme Court and local courts grew dramatically. At the end of 2005, the number of cases pending in the Supreme Court was about 60,000, with each year adding 3,000 to 10,000 new cases.

Another concern was the non-execution of court judgements or the failure to execute them within a reasonable time. It was especially hard to get fulfilment of a court judgement regarding payments from state bodies or enterprises owned even partially by the state. According to the law, the assets of such enterprises cannot be sold to cover their debts, and with no money on the accounts, the judgements remained unexecuted. In addition, the non-execution of sentences could, in many cases, be attributed to the poor performance of court execution services that were often corrupt. The European Court on Human Rights (ECtHR) ruled in more than 80 cases in 2005 that Ukraine had violated the right to a fair trial by failing to execute court decisions.

In July 2005 the parliament adopted a new administrative procedure code that came into force in September 2005. It provides for a separate system of administrative courts. A new civil procedure code will be enacted at the same time. Generally these changes bring Ukrainian procedural legislature up to European standards.

However, according to experts, the main disadvantage is the elimination of independent expertise for courts: now every expert needs certification from the Ministry of Justice and so potentially can be put under pressure from the executive power in cases where a state body is involved in the dispute. This novelty also violates the equality of arms, giving rise to questions about the right to a fair trial.

Arbitrary Arrest and Detention

Arbitrary detention in police custody remained an unpunished everyday prac-

tice. The problem was mainly attributable to weak legal provisions in domestic law regulating police arrest and detention. A vague definition of grounds for arrest without court warrant negated any effective mechanisms of protection against arbitrary arrest by police.

An arrest without a court warrant was constitutionally allowed only "in the event of an urgent necessity to prevent or stop a crime" (article 29). Yet the novelties in the criminal procedure code state this requirement in a vague manner, and arrests without court warrants were rather the rule than the exception.

Moreover, legislation allowed the investigator in charge of a case to extend the term of detention for a period exceeding three days without addressing the court. According to the constitution, however, the detainee was to be brought before a judge within 72 hours. Although declared to be maximal, this timeframe was, in practice, the usual one, and the detainees were rarely brought before judges any earlier. The police were not liable for unjustified delays if they managed to observe the 72-hour rule. When an arrested person faced the judge, the latter virtually never ascertained whether the duration of police custody was well founded or whether the period of custody was excessive. The judge was also allowed to extend the detention period to ten days and police to keep the arrested in custody for over 72 hours under specific circumstances (article 165-1.8 of the criminal procedure code).

Such long, uncontrolled custody facilitated not only torture but also helped cover the traces of torture. Poorly defined grounds for lawful arrest, the lawfulness of going ahead without a court warrant, the resulting possibility of avoiding a preliminary review of the grounds for arrest, and the lack of real liability for unlawful detention all explained why the police so eagerly, and unfoundedly resorted to detention.

◆ On 29 April, a judge of the Moskowsky District Court dropped charges and closed a case against Igor Miroshnichenko due to lack of evidence of a misdemeanor by police. Igor Miroshnichenko and his wife Ms. Puptyatina-Ryashentseva were summoned to the Kharkiv Regional Department of the Interior Ministry on 4 December 2004 to be interviewed as witnesses regarding the murder of Julia Kobzar. When they arrived at the station, two officers asked Miroshnichenko to go with them to the Moskowsky district police station while his wife was being interviewed. As Miroshnichenko refused, he was arrested and brought to the other station where Lieutenant Yunnikov wrote the protocol about Miroshnichenko having committed a crime but did not record his detention. Miroshnichenko was interrogated on several occasions on the murder case, day as well as night, deprived of food and sleep and pressured to confess having raped and killed Julia Kobzar. On 5 December Miroshnichenko's lawyer demanded that Miroshnichenko be released until a court considers the charges. Ms. Puptyatina-Ryashentseva asked a prosecutor to interfere in the case and investigate the illegal acts by the police, but the prosecutor's office failed to take any action. On 6 December 2004 Miroshnichenko was released with an order to appear before the court the following day. A judge of the district court found Miroshnichenko guilty of committing an administrative misdemeanor and fined him UAH 136 (EUR 23). Miroshnichenko appealed the case and it was remitted to the district court. He also asked the prosecutor's office to initiate criminal proceedings against the police officers who had held him in illegal detention, but this was in vain. In June 2005, he filed a complaint about the case with the ECtHR under article 5 (right to liberty and security of person) of the European Convention on Human Rights (ECHR).

The law and legal practices essentially hindered access to a lawyer. This right was at the discretion of the investigator in charge who could cite "special rules" for denying access on no acceptable grounds.

Torture, Ill-Treatment and Police Misconduct

According to UHHRU, torture and ill-treatment by law enforcement officials constituted a systematic and widespread practice in Ukraine. It was used mainly during preliminary investigation at police stations and occurred most often within hours after an arrest. An additional problem was the 'hazing' of recruits in the new armed forces, including degrading and physical abuse by older recruits and officers. Moreover, conditions in pre-trial facilities, detention facilities and certain penitentiaries amounted to cruel, inhuman and degrading treatment or punishment.

No effective mechanisms were in place to prevent torture and other brutality, therefore, torture and cruel treatment by the police usually remained unpunished, or worse, was perceived as normal police practice.

UHHRU noted that torture of suspects was rooted in social perceptions that the elimination of crime justifies any methods. When investigating crimes, police officers mainly sought to yield a confession on which they could base their case. For these reasons (and despite their declared respect for human rights), legislators, administrative bodies and courts were reluctant to modify the established laws and practices that not only failed to efficiently prevent torture but also created favorable conditions for the high incidence of torture at the hands of the police.

Police made extensive use of detention without a court decision, which was mandatory under the law (see Arbitrary Arrest and Detention, above). Courts routinely convicted suspects solely on the ba-

sis of confessions, many of which were obtained under torture or other duress. Impunity for torture and lack of responsibility on the part of the state as a whole was caused by sluggishly ineffective and biased investigations into instances of torture. Prosecutors' offices that were legally obliged to investigate such cases performed this function reluctantly and superficially, usually limiting their investigation to questioning individuals indicated by the victim. In the majority of instances, their denials of torture sufficed to refuse or suspend investigation. Often cases were closed without appropriate fact-finding. In many cases, prosecutors applied a provision imposing no time constraints "if the perpetrator is not identified"- this happened even in cases where the victim pointed out the alleged perpetrators of torture.

Yet another problem was the need to qualify torture as a criminal offence entailing a proper established punishment. On 12 January 2005, the Ukrainian parliament adopted the Law "On Amendment of Some Legislative Acts of Ukraine," which came into force on 16 February. This law amended section 127 of the criminal code to deal specifically with the subject of responsibility by law enforcement officers in torture cases. While new provisions are more in line with international standards, they do not fully correspond the torture definition of the UN Convention Against Torture. Moreover, the new sections of the law were not used in proceedings against abusive police officers.

The investigations into alleged torture depended almost entirely on the willingness of the prosecutor to further the case and his or her agreement was essential in obtaining access to forensic medical evidence. The criminal code provides the defense with a chance "to obtain, in writing, conclusions of experts on issues requiring special knowledge" (article 48) but not the plaintiff.

Moreover, only state-run expert institutions were able to share their forensic expertise and the impartiality of the expertise could easily be jeopardized by pressure from the law enforcement or prosecutors.

The following cases were characteristic of police brutality:

◆ On the night of 17 April, the Donetsk energy plant was robbed by an armed group. Ch., who was on duty at the facility at that time, was beaten and bound by the robbers. On 19 April he went to Kuibyshev district police station of Donetsk to give a statement about the incident as a witness but was held there overnight. The following day, the investigators of the case summoned Ch.'s mother to the police station. One of the investigators read her what he said was a confession from her son to participation in the robbery and a document allegedly signed by him stating that he waived the right to receive legal assistance. The mother noticed that the signature was not her son's. She was not allowed to attend the court hearing regarding Ch.'s detention. Later, at Ch.'s request and under pressure from his relatives, a lawyer was assigned to assist Ch. While Ch. did not claim that he was tortured during interrogation, it later turned out that he had had a dictaphone in his pocket and it had recorded the first interrogation, with incidents of torture. Nevertheless, no investigations were conducted into the torture and the perpetrators remained unpunished.

◆ On 7 December 2004, officers of the tax police in the Dzerzhinsk region of Kharkiv arrested Mr. Gabibullaev at his workplace in the firm "Vtormet." After searching his office they took him to the Dzerzhinsk district tax police department where he was interrogated by a senior officer. He was denied access to an attorney on the ground that he was questioned as a witness and he "does not need one." He was then beaten, threatened and blackmailed by the interrogators, and sustained a

haematoma on his forehead, dizziness and a pain in his ribs. Nevertheless, he had to stay the whole day at the tax police department. After his release he felt sick and was taken to the hospital where he was examined; doctors certified a broken rib and bruises on the forehead. He asked the prosecutor to initiate criminal charges against the abusive police officers but the prosecutor refused because the tax police officers did not admit to having ill-treated Gabibullaev. On 16 March 2005, however, the prosecutor's office of the Kharkiv region informed Gabibullaev that his case was being looked at with the view of possibly initiating criminal charges against the officers. Nothing was heard of, nor was any progress made in the case after this. Therefore, in July, Gabibullaev submitted a complaint to the ECtHR under articles 3 (prohibition of torture) and 13 (right to effective remedy) of the ECHR.⁷

The following case demonstrated a moderately positive court outcome:

◆ On 2 November, the Novozavodsk District Court of Chernihiv handed down a two years' suspended imprisonment sentence to two police officers who were found guilty of ill-treating Volodymyr Ovsienko in February 2002. Both were also suspended from working in law enforcement. The court awarded the victim UAH 5,000 (EUR 853, instead of the UAH 50,000 required by the prosecution) in compensation for moral damage. Ovsienko had been arrested on suspicion of having stolen a typewriter from the police station and attempting to set the station on fire. The police officers humiliated him and beat him with batons all over his body so brutally that he eventually signed a "confession." The injuries all over his body were certified by hospital physicians. The next day he filed a complaint to the prosecutor's office.⁸

On a positive note, the Interior Ministry became more open and cooperative with human rights organizations. NGOs took part

in a program to systematically inspect places of detention, producing important results in the course of 2005 and serving as a model for similar cooperation in other countries. Nevertheless, similar reforms were yet to be carried in the judicial system, the operation of the *prokuratura* and the Security Service (SBU) in order to efficiently fight torture and other abuse by the police.

On 5 April, the ECtHR gave a judgment in the case of *Afanasyev v. Ukraine*,⁹ finding Ukraine guilty of violating the articles 3 and 13 of the ECHR. The case concerned the torture of Mr. Afanasyev in the district police station of Kharkiv. Human rights activists have submitted to the ECtHR more than 30 applications concerning violations under article 3 of the convention.

Conditions in Prisons and Detention Facilities

Conditions in remand and other police facilities, in pre-trial detention facilities, penitentiaries, special hospitals, disciplinary battalions and other similar institutions constituted a major human rights problem. The European Committee for the Prevention of Torture (CPT) has concluded that their conditions fail to meet European standards.¹⁰

According to the UHHRU, the conditions in most detention and remand facilities and in a number of penitentiaries were cruel and inhuman, and in some places serious enough to constitute torture. The catalyst for this situation was the serious overpopulation of the facilities and a permanent lack of funding.

While article 11 of the Law "On Preliminary Detention" prescribes 2.5 square meters per detainee in a cell, the Ukrainian average was a mere 1.8 square meters, and in a number of institutions even less: e.g. 1.5 square meters in Simferopol, Luhansk and Kharkiv detention facilities; 1.3 in Kherson; 1.2 in Kryvyi Rih; and 1 in Donetsk.

Comparative data on the official capacity of detention facilities and their real population lead to serious conclusions. It

appeared that the number of detainees increased by 10-15% every year, while the actual capacity remained the same. This may be explained by the facility administrations' need to accommodate the detained regardless of how many arrive, while funding was provided as per registered capacity. As the number of pre-trial detainees grew, the administrations of such institutions were forced to announce greater capacity figures: otherwise, the traditional shortage of allocated funds for inmates' rations would become catastrophic. In reality, the budget covered only 35-40% of the real needs calculated under the existing standards and was long overdue for review. According to UHHRU, these miscalculations were one of the principal causes of cruel and inhuman treatment.

Ethnic Minorities

*Roma Minority*¹¹

Police abuse, although by far not the only pattern of gross violations of Roma rights, was the most widespread and violent type of abuse against Roma. Widespread racial prejudice, including that among law enforcement officials, increased the vulnerability of Roma who were targeted by the police often solely on the basis of their ethnic background. The problems of police brutality were aggravated by lack of trust in the justice system resulting in widespread acquiescence to police abuse.

Police misconduct against Roma included torture and ill-treatment in police custody, fabrication of incriminating evidence, daily harassment and intimidation by the police, and racist anti-Romani discourse. Perpetrators usually avoided justice and continued to commit human rights violations with the confidence that the "system" would never fail them. Practice showed that the worst consequence that an abusive police officer could expect was demotion or transfer from one police department to another.

While of all CIS countries Ukraine had the largest number of Romani organizations doubling as civil rights movements and reacting to violence against Roma; their letters of concern to prosecutors, police chiefs, and in very serious cases, to the general prosecutor and/or the ombuds-person, alleging racist violence committed by police officers remained discarded. The authorities would often reply to letters of concern twice: first to inform the complainant that they had instructed the relevant (normally local) authority to undertake an investigation into the allegations; and then, a couple of weeks later, informing the complainant of the results of the investigation - stating that no unlawful actions were found and the police had acted in accordance with the law.

◆ Early in the morning of 20 January police officers and members of the special police force *Berkut*, wearing masks and carrying truncheons, broke into the homes of nearly all Romani families in the Romani neighborhoods of Radvanka and Telmana Street in the western Ukrainian city of Uzhgorod in order round up the men and take their fingerprints. Many Roma reported that they were sleeping when the officers started banging on their doors and windows. The officers reportedly broke forcefully into the homes if doors were not opened immediately. Upon their entrance into the homes, police officers and members of *Berkut* ordered all adult Romani men, including the elderly and infirm and teenage boys to get dressed quickly and get on the bus which then took them to the city police station for fingerprinting.¹² *Romani Yag*, a leading local Romani organization, invited the local police leadership and the head of the Department of Fight against Criminality to discuss the raid, and the police explained that raid had been a necessary "prophylactic" action which was carried out as a consequence of the increased criminality among the Romani population.

On a positive note, some of the events of 2005 indicated that the new political elite may be more open to listening to problems Roma in Ukraine face. On 12 April, for example, a parliamentary hearing “On the situation of the Romani people,” organized by the Human Rights Committee of the Ukrainian Parliament, was held for the first time.

Another promising sign was growing human rights awareness of the Roma themselves – despite threats faced by many activists. More and more organizations and individual Romani activists expressed an interest in joining the human rights movement and doing something about their worrying human rights situation. This was reflected by the increasing number of Romani victims of human rights abuse who decided to challenge the abuse in courts.

Discrimination in access to housing was another serious problem faced by Roma.

◆ The Kremenchug-based Romani organization *Amaro Deves* reported that the Kremenchug train station authority refused to provide its employee E.M. Kutsenko, a Romani woman and her family, with adequate accommodation on the basis that “all Gypsies should live in Gypsy caravans and tents. She [Ms Kutsenko] is the only one who capriciously demands a separate apartment with all conveniences.” It was common in Ukraine that publicly-owned companies provided accommodation for their employees. In 1985, Kutsenko, who has two children, registered for a basic accommodation provision. In 2005 her employer provided her with a one-room wooden barrack lacking basic facilities.

Racism, Xenophobia and Anti-Semitism¹³

The number of assaults on foreigners with a darker skin color (especially of Asians and African origin) increased in Ukraine in 2005. Such assaults were frequently carried out by groups of youth dressed in attire reminiscent of military uniforms. While

outbursts of racism, chauvinism, xenophobia and anti-Semitism still remained sporadic, they gave rise to concern as Ukraine lacked national instruments for effective protection against violations motivated by anti-Semitism and xenophobia, or against inflating discriminatory publications.

Article 161 of the criminal code envisaged “for deliberate actions designed to provoke national, racial or religious hostility...” punishment in the form of a fine of up to 50 minimum wages, corrective work for two years, or deprivation of liberty for five years, and sometimes with the loss of the right to be appointed to certain posts for three years. In the past, in some cases that received a lot of public attention, criminal charges were initiated under this article. However, it was virtually impossible to get anybody actually convicted of this crime because the crime involved direct intent, with the particular aim of stirring up ethnic hostility in the country or in a specific region, of denigrating the honor and dignity of representatives of particular ethnic groups.

In practice this meant that in court the author of a provocative article had to state that he or she intended to stir up ethnic hostility. Furthermore, as a general rule, admission of guilt by the accused could not be the sole proof in a criminal case, there needed to be additional proof, such as a note in the accused’s own handwriting clearly indicating such intent.

Article 18 of the Law “On Printed Mass Communication Media (the Press) in Ukraine” allowed for the suspension of publication of print media by a court in cases where article 3(1) was infringed, in particular, “for stirring up racial, ethnic or religious hostility.” However, there was no agreement among lawyers as to whether “suspension of an issue of the print media” denoted the suspension of the publication as a whole, or just a prohibition on publishing one specific issue of it. Litigation helped on

occasion¹⁴ and the State Committee for Nationality and Migration Affairs demanded that the courts suspend issues of *Idealist*, *Personnel* and *Personnel Plus*.

However, such cases eventually reached the Supreme Court of Ukraine where any convictions were overturned.

Ukrainian media laws were extremely liberal and unsuitable for stopping the spread of publication of papers that incited to hatred against minority groups. Anti-Semitic or anti-Tatar (the latter primarily in the Crimea) publications, which appeared from time to time were seen by many as harmless and amusing. Articles with lines such as "Power to God, Ukraine for Ukrainians, Israel for the Jews¹⁵..." or "Mejlis terrorists are committing atrocities while the Crimean authorities do nothing... People have no one to protect them"¹⁶ elicited no particular reaction.

◆ The newspaper *Krymskaya Pravda*, in an article entitled "Stalin Deserves the Gratitude of Crimean Tatars," referred to the past World War: "... practically all Crimean Tatars of call-up age took the side of the enemy ..., the majority of Crimean Tatars gave their allegiance to the occupying army either directly or at the level of moral support."¹⁷

◆ In the newspaper *Idealist* it was entirely usual to find utterances such as "... the time has come to push the Jews out of Ukraine ..."; "The Jews are the incurable, pathological, always returning parasites, vampires, criminals of all times and peoples..."; "Every Ukrainian man and woman should understand and help deport one Jew each to Israel";¹⁸ "For all peoples among whom Jews are living, the question of their expulsion en masse becomes a question of life or death."¹⁹

◆ The magazine *Personnel* and the newspaper *Personnel Plus*, which were published by the biggest private higher educational institute in Ukraine (the International Academy for Personnel Manage-

ment, IAPM) were teeming with anti-Semitic and xenophobic publications: "The mark of an Orthodox Hasid or Orthodox Jew, as well as of many other Jews, is an absolute hatred of non-Jews."²⁰ "Ukrainians nobly and hospitably granted the Jewish equal minority rights. Instead of being grateful, in the host's house, the guest behaves arrogantly, aggressively and won't get off the host's back."²¹ Recently, the Head of IAPM even used the pages of his publication to "expose" Viktor Yushchenko's links with mysterious "Zionist circles." The same educational institution regularly publishes books with the same leanings, such as Yury Bondar's *Freedom of Speech: the Ukrainian Yardstick. Academic Issue*²²; G.G. Mets, *The World Association of Nations: Its true Nature and Aims*²³; M.I. Senchenko, *Latent Structures of World Policy. Outline of Conspiracy Theory* (2003); and "'Personnel' against Zionism," articles²⁴; Vasyly Yaremenko, *Jews in Ukraine Today: Reality Without Myth!* Incidentally, it was the reprint of an excerpt from the latter which caused the Shevchenkivsk District Court in Kyiv to suspend publication of the newspaper *Silski visti* ("Rural News"). It was baffling that no one registered objections about IAPM itself, even though the institute had financed the publication of the provocative article as advertising.

Ironically, IAPM itself usually reacted instantly to all publications and television features which accused the institute of anti-Semitism, and lodged lawsuits demanding that inaccurate information be publicly refuted. What was more, IAPM often won such cases. It is possible that the recent ruling of the ECtHR in the case *Ukrainian Media Group vs. Ukraine*²⁵ will force certain Ukrainian judges to take heed of article 47(1) of the Law of "On Information" and to understand that opinions and arguments of people are not facts, but value judgments which it is impossible, by definition, to prove or disprove.

Endnotes

- ¹ IHF and the Ukrainian Helsinki Human Rights Union, "Human Rights in Ukraine One Year After the 'Orange Revolution,'" 19 December 2005, www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4168.
- ² Institute of Mass Information, "Press freedom barometer," at <http://eng.imi.org.ua/?id=barometr>.
- ³ Institute of Mass Information, "Press Freedom for November 2005," at <http://eng.imi.org.ua/?id=barometr>.
- ⁴ Information from the Chernigiv Public Committee on Human Rights.
- ⁵ Georgiy Gongadze, a press freedom advocate and outspoken critic of the former Ukrainian government, disappeared on 16 September 2000 and his headless body was found two months later.
- ⁶ By Ukrainian law, suspects have immediate access to legal counsel but not witnesses. This provision was frequently abused by police officers.
- ⁷ Based on information of the Kharkiv Human Rights Protection Group, www.khpg.org.
- ⁸ Website of the Kharkiv Human Rights Protection Group, "Human rights in Ukraine," at www.khpg.org/index.php?id=1132159090.
- ⁹ Application no. 38722/02, 5 April 2005.
- ¹⁰ See, for example, the *Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December 2002*, CPT/Inf (2004) 34, at www.cpt.coe.int/documents/ukr/2004-34-inf-eng.htm. The CPT carried out new visit to Ukraine from 9 to 21 October 2005. Its report had not yet been published as of this writing.
- ¹¹ This section was provided by the European Roma Rights Center (ERRC, IHF cooperating organization).
- ¹² For details, see ECCR, "In the Wrong Place at the Wrong Time: Human Rights Prospects for Roma in Ukraine," at www.errc.org/cikk.php?cikk=2291&archiv=1#33.
- ¹³ Based on article by Viacheslav Yakubenko (member of UHHRU), "Beat up the Jews, Save Freedom of Speech?" Available at www.khpg.org.
- ¹⁴ In December 1995, on the petition of the Ministry for Press and Information, an issue of the newspaper *Oppositsiya* was stopped. Exactly five years later, the newspaper *Dzherzeltsya* met the same fate as a result of a claim lodged by the Association of National Cultural Organizations of Ukraine.
- ¹⁵ *Idealist*, No. 4 (79), 2003. In all excerpts from *Idealist* cited here, a term for Jewish people is used in a way which is generally considered to be offensive and avoided in both Ukrainian and Russian (*translator's note*).
- ¹⁶ *Krymskaya Pravda*, 12 April 2005.
- ¹⁷ 2 February 2005.
- ¹⁸ No. 4 (79) 2003.
- ¹⁹ No. 11 (86) 2003.
- ²⁰ *Personnel*, No. 5, 2002.
- ²¹ *Personnel plus*, No. 1, 2004.
- ²² Library of the magazine *Personnel*, 2004.
- ²³ Library of the magazine *Personnel*, 2003.
- ²⁴ Library of the magazine *Personnel*, 2002.
- ²⁵ Application no. 72713/01, 29 March 2005.