

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 88TH SESSION UKRAINE, 6TH REPORT

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Information submitted to the Committee

On 3 November 1999 Ukraine submitted its 6th periodic report to the Human Rights Committee (the Committee) regarding the implementation of the *International Covenant on Civil and Political Rights* (ICCPR or the Covenant).¹ While the report was submitted on time, this current examination took place nearly seven years after its submission. The Committee provided a list of issues² to be taken up during the session. However, this list was not submitted to the State party until September. The State responded rapidly but the Human Rights Committee's Secretariat was unable to translate the document from Russian in time for the session and so only one of the members of the Committee (Mr. Roman Wieruszewski) was able to read it beforehand.

¹ CCPR/C/U/UKR/6, 11 April 2006 (<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/UKR/6&Lang=E>).

² CCPR/C/UKR/Q/6, 27 September 2006 (<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/UKR/Q/6&Lang=E>).

Several members of the Committee described Ukraine's report as a model for how to fit the Committee's guidelines and how to submit a report on time. The report addressed each article of the Convention individually and mentioned all relevant measures and policies. The report also contained a lot of numerical information to facilitate the understanding of the situation in Ukraine. There was no mention of the involvement of either non-governmental organisations (NGOs) or representatives of civil society in the drafting of the report. The Deputy Minister of Ukraine headed the delegation.³

Two NGOs submitted parallel reports. The European Roma Rights Centre submitted a report on discrimination and mistreatment of Roma people, particularly by the justice system. Conscience and Peace Tax International submitted a report on forced military service in Ukraine. Of particular concern was the wording of the law concerning military service, which appears to allow only a restricted number of religious groups to qualify as conscientious objectors. This also implies that non-religious objectors are not allowed to do alternative service. The Committee noted that they had received neither reports nor communications from local Ukrainian NGOs.

Ukraine has not made any reservations to the Covenant.

Themes and Issues⁴

Given the seven years that have passed since the report was submitted, the information contained in the report was not entirely applicable to the current situation in Ukraine. Indeed, the political climate has changed dramatically since the "Orange Revolution" of December 2004.⁵ Accordingly, most of the discussion was based on new and recent information provided orally by the State delegation. The delegation initiated the session by describing the changes that have taken place since December 2004, and listed a number of international conventions that Ukraine has recently signed and/or ratified. Since the list of issues was available only in Russian, the delegation had to reply to the issues orally. The level of detail that they went into in addressing the list of issues meant that the Committee did not have time to ask questions and comment on all the issues at hand.

Implementation

The Committee enquired to what extent the Covenant has been applied and enforced by national courts. The Ukrainian delegation stated that the Covenant can be invoked in front of Ukrainian courts and when there is a contradiction between national laws and the Covenant, the Covenant takes precedence.

The Committee also requested information concerning the work of the Ombudsman. The delegation stated that the Ombudsman has been addressed by 700,000 persons. The Ombudsman provides decrees with specific instructions to improve legislation which may lead to changes to the law. The Ombudsman analyses reports of local, State and administrative authorities and may be appealed to when people are wrongly placed in detention. The delegation also noted the unique position of the Ombudsman who, additionally, is a deputy member of parliament, thus having the right to initiate legislation. The Ombudsman has used this position to propose legislation to change the Constitution.

³ The State delegation was also comprised of the Deputy Head in the Prosecutor General's Office, the Deputy President of the Higher Administrative Court, the Councilor of the Ombudsperson, and a representative from the Permanent Representation of the Ukraine in Geneva.

⁴ For a press release of the proceedings, please see [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/897393AB1C5A1D2CC1257210004EC31F?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/897393AB1C5A1D2CC1257210004EC31F?OpenDocument).

⁵ Mass demonstrations led to a change of government, followed by the first free and fair elections.

The Ombudsman provided the Committee with two special reports on the realisation of human rights for Ukrainians abroad and the protection of human rights of minorities in Ukraine. The report on national minorities provides a more complete picture of the situation on minority rights in Ukraine, including the Roma and Crimean Tartars. Lastly, the delegation noted that with the help of the United Nations Development Program (UNDP), a compendium of all UN treaty bodies' concluding observations on the Ukraine has been published.

Gender Equality

The Committee asked about the status of equality between the sexes due to the salary gap between men and women. The delegation noted Ukraine's history of being a patriarchal society where cultural stereotypes impede equality of gender. The delegation stated that Ukraine is addressing the issue of gender equality and that the constitution and domestic law guarantee equality between sexes. In 2005, the *Equal Rights of Women and Men Law* was adopted. This law comprehensively addresses gender equality in all spheres of social life including: eliminating gender discrimination; defining the State gender policy consisting of equal social and legal protection; positive affirmative action; establishing a number of instruments to address gender discrimination; and also stating that when national law is exhausted a person is able to submit complaints to the UN *Convention on the Elimination of Discrimination Against Women (CEDAW)*. The Ombudsman informed the Committee that in November of this year a parliamentary hearing on the issue of preventing gender violence and ensuring equal rights will be held.

The Ukrainian delegation provided statistics on the representation of women in State institutions. For 2006, women represent 8-9% of deputies (39 out of 450 positions). This is up from 5% in 2002. Female representation is much higher in local offices; at times women occupy 20-50% in local bodies. The delegation also noted that women have a predominant role in civil service, but this consists of lower posts.

The Ukrainian delegation noted that there certainly is domestic violence - appeals have doubled concerning this issue. They also provided surveys stating that one in five women have been subjected to physical violence by another person or sexual partner. 19% of young women in Ukraine have been subjected to physical violence by their husbands. To combat domestic violence the delegation noted that the 2001 *Domestic Violence Act* has allowed victims recourse, established police authorities to investigate trafficking crimes and created committees, crisis centres and asylum for those fleeing domestic violence.

Derogation of Rights in Case of Emergency

The Committee asked the delegation for its views on permissible derogations in times of emergency. The delegation replied that the *Ukrainian Constitution* sets out general rules for martial law and state of emergencies. Two rights from the Covenant are non-derogable: freedom of expression and freedom of religion. The delegation noted that these are not stated in the Constitution and concluded that these two rights can be restricted in times of emergency.

Additionally, the delegation was asked to comment on the validity of Ukraine's declaration of a state of emergency on 6 December 2005.⁶ The delegation admitted there was a minor violation that stemmed from the Government not specifying an end date for the state of emergency.

Torture

The Committee questioned the delegation on how national laws protect the right of a person not to be deported to a country in which he or she would face torture and other cruel, inhuman or degrading treatment or punishment. The delegation replied that Article 6 of the *Administrative Justice Code* states that foreigners

⁶ The state of emergency was declared due to the emergence of cases of Avian Influenza.

have the same rights Ukrainian citizens. This *Administrative Justice Code* ensures that non-citizens have access to courts. Article 32 requires domestic border and security bodies to have a court decree before they may deport foreigners; all other instances are illegal.

Regarding concerns by the Committee for a case involving ten Uzbeks⁷ the delegation admitted there were procedural violations. The Uzbeks were not allowed to either appeal the deportation or consult with domestic or United Nations High Commissioner for Refugees (UNHCR) lawyers. Although there was no consultation between Ukraine and the UNHCR about the deportation the delegation noted that there is 'good' coordination with the UNHCR but that it is not always effective. After further questioning by the Committee the delegation stated that the Ukrainian Ombudsman had said the violation was procedural and substantive.

The Ukrainian delegation supported the Committee's view that an independent body is needed to report on the mistreatment of individuals by the police. The delegation remarked that a major event in relation to this was the ratification of the *Optional Protocol to the Convention Against Torture* in July of 2006.

In response to the Committee's questions concerning acts of torture and ill-treatment perpetrated by law enforcement officials the delegation stated that inspections of facilities and persons in detention are carried out every ten days. These are carried out under the auspices of the Administration of Internal Affairs. Similarly, a mobile task force was created within the Ministry of Interior, which carries out inspections of detention facilities and includes human rights activists and NGOs. The delegation stated that there is a procedure for individuals in detention to submit complaints to the prosecutor's office.

The delegation informed the Committee that in January 2005 comprehensive amendments had been adopted for the protection of detainees. The police are prohibited to interview or interrogate detainees until a lawyer is present. There are enhanced procedural rights for detainees and privacy for the detainee and their counsel. The definition of torture was changed to reinforce criminal prosecution, aligned more fully with the UN *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Trafficking

The Committee requested the delegation to provide details of the steps taken to combat the trafficking of women and children for sexual exploitation due to the increased number of trafficking cases. The delegation drew attention to the fact that Ukraine was the third European state to define trafficking of people as a crime in 1998. They added that the trafficking of persons is a complex matter, involving many States and that the fight against this crime is not simple. Ukraine is pursuing this issue with vigour. It has organised and produced seminars with NGOs combined with an international programme including events to combat trafficking that was launched in 2003 and will continue until 2008.

Additionally, the delegation stated that in 2006 42 people were sentenced for the trafficking of people. Over 600 people who were trafficked out of Ukraine have been returned with the help of NGOs and the police.

Right to fair trial

The Committee asked what measures Ukraine employs to ensure that suspects are advised of their right to counsel. According to the delegation most citizens in Ukraine, approximately a third of which are below the poverty line, do not receive proper legal representation. The delegation admitted that legal representation has been inefficient because the payment by the State is low and lawyers are not willing to take cases. The

⁷ The case involves ten Uzbeks that filed for asylum status with the UN Refugee Agency (UNHCR) in Ukraine but were deported to their country of origin which involved the risk of torture.

delegation notified the Committee that the Government is currently testing different models to reform the system and the results of this will be finalised at the end of the year.

In addition, the delegation stated that a person cannot be interrogated or questioned until a lawyer is present, if one has been requested. Those who do not have funds for counsel will be appointed one by the State. Additionally, the family of the individual should be notified within two hours of the detention. The delegation noted that previously the allotted time was 24 hours, which provided time for abuses.

The Committee also asked for information on combating corruption in the judiciary. The delegation admitted that funding and corruption in the judiciary is a problem for Ukraine and that judicial reform was approved by the President. This judicial reform is comprehensive and is planned to take ten years. It will address how candidates are selected and will set up a system at the national level which is controlled by central institutions and is composed of tests and examinations. The delegation said that new laws are being submitted to prevent and combat corruption and they hoped that by the end of the year these laws will be adopted and brought in line with international standards.

Imprisonment and Pre-Trial Detention

In response to the Committee's questions about the conditions of prison facilities and how the detainees were treated, the delegation conceded that there was a problem of overcrowding and explained that the Government had implemented a number of measures. One such measure was that the responsibility for pre-trial detention has been transferred from the prosecutor's office to the courts, which has already diminished the number of people imprisoned. The delegation stated that Ukraine was working to improve the quality of prison facilities, but that these required massive funding, which at the moment only allowed the improvement of the Kiev and Sebastopol detention centres.

The Committee expressed concern that little is being done to provide health care for detainees, and that this may even be delayed during the pre-trial period of detention. Particularly, the Committee asked about HIV/AIDS awareness programmes, prophylactics, and treatment for tuberculosis (TB) infection. The delegation responded that it did have HIV/AIDS awareness programmes and that TB infections had significantly decreased. With regards to pre-trial treatment, the delegation responded that there were no limitations on the provision of health care.

Several members of the Committee asked if it was possible for prisoners to make complaints. The delegation replied that this was possible through the Ombudsperson. It added that it had established a task force to inspect the prison systems, and that these had led to thousands of disciplinary measures and over 100 prosecutions.

Freedom of Speech and Freedom of the Media

The Committee expressed concern that the Government may discriminate against certain religions and asked for information about the laws on the registration of religious organisations. The delegation responded that there is *de facto* recognition, but that legal recognition requires official registration. This is usually only refused if the organisation is not in compliance with the law. For instance, an organisation that promotes hatred of another group or has a military detachment would not be accepted. Secondly, the State Department can ask experts to provide a report on the organisation to see if it complies with the law.

Furthermore, given the political turmoil of 2004, the Committee expressed concern that the freedoms of expression and speech might have been violated. Linked to this issue, the Committee asked about the laws governing the media, if there could be monopoly ownership, and if there was repression of the media. The delegation declared that following the events of December 2004, the climate of freedom of expression had improved significantly. This was confirmed by a report from the Ombudsman's office. The delegation stated

that attacks on and repression of journalists was something local and was not systematic. However, they did concede that there were still several reports of violations, and that these are being thoroughly investigated. On the issue of the disappearance of journalist Georgiy Gongandze, the delegation stated that three policemen had confessed to murdering him and that the trial was ongoing. On monopoly of the media, the delegation stated that a commission has been created to ensure that nobody controls more than 30% of the media. In order to ensure this, the minister of justice has prepared a draft law on media ownership. The Committee asked about censorship in the media. The delegation stated that broadcasting services provide their own private censorship based on the law. The Government has no involvement in this process.

The Rights of the Child

The Committee asked for information regarding the trafficking of children and the regulations on adoption. For adoption in particular, the Committee was concerned that over 60% of adoptions are international adoptions. In response, the delegation stated that they had acceded to *The Hague Convention on Child Abduction* and *The Hague Convention on Inter-country Adoption*. It went further to say that by the end of the year it would have signed all the major conventions regarding the rights of the child. Although the delegation did not talk about trafficking directly, it expressed concern that international adoptions had increased dramatically, and that Ukrainian children abroad had sometimes been mistreated and abused. The delegation expressed its desire to have more control over the process of international adoption, particularly during follow-up and evaluation in the country to which the child is brought.

Racial, Religious, and Ethnic Crimes

A major area of concern throughout the discussion was the situation of minorities in Ukraine. The Committee asked about what was being done regarding racially, religiously, or ethnically motivated crimes. The delegation stated that it was aware of such crimes, and mentioned several examples of anti-Semitic attacks. It said that the State was working to stop the development of this phenomenon and that there had already been several prosecutions. One member of the Committee pointed out the existence of the Interregional Academy of Personnel Management that promoted anti-Semitism and racial hatred. The delegation stated that several of this academy's offices had been closed and that many of their diplomas had been invalidated.

Discrimination

The Committee expressed concern that minorities, and particularly the Crimean Tatar minority in Crimea⁸, were discriminated against. The delegation recognised that Ukraine was having a hard time dealing with the return of Crimean Tatars. However, it highlighted that the Government had made significant progress in terms of social and cultural rights and that education could now take place in the Crimean Tatar language. In this regard, however, the Committee stated that Ukraine must implement more pro-active measures to promote the rights of the Crimean Tatars. The Committee also asked why such a large percentage of those imprisoned were foreigners. The delegation stated that this was simply a product of circumstances as many foreigners were in Ukraine illegally and had accordingly been imprisoned. The delegation also reiterated that international law is taught in law schools and that "all those responsible" are trained in international law and Ukraine's obligations under the Convention so as to avoid discriminatory practices.

Military Service

The Committee asked the delegation about the status of military service in Ukraine. The Committee pointed out that derogation from military service was limited to certain religious groups and suggested that this be expanded to include non-religious groups. The Committee also expressed concern that the longer period of

⁸ The Crimean Tatars were expelled from Ukraine in the 1940s. They have been returning to their original lands over the past 15 years.

civil service compared to military service might be a form of punishment. The Committee also expressed concern that recruits are subjected to abuse and hazing⁹. The delegation agreed that the extended period of civil service was a form of discrimination. The delegation responded that a decree had been submitted to parliament to remove religion as the only criteria for alternative service. In conclusion, the delegation stated that by 2010 Ukraine would only have a professional army, and that this would remove all problems associated with military service and hazing. The Committee commended this move but suggested that removing compulsory military service might not be enough to solve the problem of hazing as many young individuals might still join the army for nationalist or financial motives.

Conclusions and Next Steps

The President of the Committee, Ms Christine Chanet, concluded the session by summarising the main issues covered during the session. She reiterated the Committee's comments that the report was on time and a model and commended the delegation on its high-level and varied representation. She noted the genuine will of the delegation to abide by international standards in Ukraine. Notably, she appreciated that the Convention has the status of national law and can be invoked in national tribunals. She thanked the representative of the Ombudsman's office for being present, as his contribution had provided a useful picture of the issues raised.

However, she stated that a number of violations remained. She pointed to the case of deported Uzbek nationals as an example that should not be allowed to reoccur. Also, she reiterated the Committee's mention that over 60% of persons in custody claimed they had been mistreated. She encouraged the State to continue its process of reform, particularly in the judiciary. Finally, she urged the State to be more pro-active in its protection and promotion of the rights of Crimean Tatars and in its protection of the media.

Generally speaking, the dialogue was fruitful and frank. Both the Committee and the delegation expressed their appreciation for the exchange. However, it is important to note that the session ran out of time and that the Committee was not able to conclude its round of questions. Accordingly, many issues will be considered in writing, outside of the regular time allocated for meetings.

The Committee's Concluding Observations are currently pending and are expected to be made publicly available towards the end of the current Committee session, which ends on 3 November 2006. This report will be updated when the Concluding Observations have been released.

⁹ Strenuous and humiliating initiation exercises or punishments for young recruits.

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