Ukraine[1]

IHF FOCUS: freedom of the media; freedom of association and peaceful assembly; judicial system, independence of the judiciary and fair trial; torture, ill-treatment and police misconduct; prisons; freedom of religion; international humanitarian law (accountability for past abuses).

The social and political situation in Ukraine during 2003 was aggravated by continuing economic problems. In addition, qualified economists were slowly removed from central positions and replaced by amateurs loyal to the ruling coalition, which further worsened the situation.

In 1991, following Ukraine's independence, the country's leadership proclaimed its intention to move toward democracy, the protection of human rights and the creation of an active civil society. Regrettably, in the following decade, these declared endeavors turned out to be empty promises and in 2003 a backward tendency was even stronger, according to the Ukrainian Committee "Helsinki –90" (IHF member). Using patriotic phrases, the ruling coalition even tried to work toward the exclusion of Ukraine from membership in the Council of Europe.

In 2003, political power was further concentrated in the hands of political forces surrounding President Kutchma. These circles resorted to displays of what they called "democratic reforms" and rhetoric about the international obligations and treaties in the field of human rights signed by Ukraine. It was clear, however, that this lip service only aimed at rallying public support for the ruling coalition.

Media freedoms were violated on a daily basis. The presidential administration tried to control the dissemination of information and journalists were attacked and even died under circumstances that suggested the existence of politically motivated campaigns against them.

Laws were applied selectively, mainly in cases where they favored those in power. The judicial system fell short of international standards set for the independent judiciary and operation of courts. This problem was coupled with the fact that law enforcement bodies resorted to illegal measures, including torture: "evidence" extracted under duress was standard evidence in courts.

State authorities failed to deal adequately with past abuses. While Nazi atrocities were condemned and their victims treated as victims of genocide, similar acts by the Stalin-era authorities were not recognized as crimes against humanity.

Employers failed to meet requirements under labor legislation. Contrary to the law, in practice the Labor Code was only implemented in state-owned enterprises. There was no effective remedy against violations of this code in private enterprises. In the private sector, trade unions were not allowed. Violations of labor rights were facilitated by the high unemployment rate as individuals often endured poor working conditions in exchange for unemployment.

Freedom of the Media[2]

Article 34 of the Constitution protected the right to freedom of expression and information and article 15 prohibited censorship. Restrictions on these rights, however, were excessively wide and there were no provisions specifying that these limitations were only legitimate when "necessary in a democratic society," as required by the European Court of Human Rights (ECtHR). Media laws adopted in the early 1990s were relatively progressive at the time but they were not always implemented correctly and efficiently and in some cases they contained contradictory provisions. In 2002, the Council of Europe noted that a review of and amendments to media legislation were needed

[1] Unless otherwise noted, based on information from the Ukrainian Committee "Helsinki –90" (IHF member).
[2] Unless otherwise noted, based on ARTICLE 19, *Pressure, Politics and the Press: the State of Media Freedoms in Belarus, Moldova and Ukraine*, October 2003, at http://www.article19.org/docimages/1700.doc.

as "much of it lags behind European standards…"[3] In January 2003 the Council of Europe's Parliamentary Assembly criticized the situation of freedom of expression, which involved violence used to intimidate journalists and the failure to properly investigate crimes against them.[4]

Under international pressure and protests at the national level, several pieces of legislation were re-considered or adopted during 2003. At the same time, some state institutions pursued more restrictive practices, which fulfilled their own objectives.

On 28 April, President Kuchma signed the Law On the Insertion of Changes to Certain Laws of Ukraine which Guarantee Unimpeded Use of the Human Right of Freedom of Speech. The law was originally drafted by civil society and, despite some negative changes made during the parliamentary process, it introduced several positive provisions. These included article 47(1) of the Law "On Information, and on Exemptions from Liability," which states that "nobody should be sued for the expression of value-judgments" and that "value-judgments shall not be proven."

In July the parliament approved a law relating to broadcasting, "On Amending the Law of Ukraine 'On the National Council for Television and Radio'." The draft law defined more clearly the responsibilities, as well as the supervisory and regulatory powers of the National Council for Television and Radio Broadcasting (NCTR), the rules on the appointment of its members as well as the body's accountability.

Article 277 of the new Civil Code of Ukraine, which came into force on 1 January 2004, establishes that "negative information disseminated about a person shall be considered false." "Negative information" can be understood as any form of criticism or description of a person in a negative light. This provision is not only a clear breach of the right to freedom of expression but also turns reality on its head: something that is true but negative will be considered false.

While Ukraine had a large number of print and electronic media outlets, there was little variety of opinions and views. State-run media was under strict state control and private media outlets were mostly owned by oligarchs closely linked to governmental structures.

State and local authorities interfered with the right of freedom of expression by giving direct "instructions" on reporting, denying access to information, intimidating journalists and filing court cases against them, and exerted pressure on media owners to demonstrate personal loyalty to those in power, particularly the president and his entourage. Tax inspections, economic sanctions and refusal of licenses were also common means used by the authorities to coerce media owners into obedience. In the regions the media was heavily influenced by the local authorities. In addition, financial difficulties severely impaired the development of media outlets.

Of the total number of television stations (over 800), only 1.7% were state-owned and 35.2% partially state-owned. However, the influence of the state was much more substantial as many private television stations were effectively not functioning or were not influential. In addition, the main television channels were all owned or under the influence of pro-presidential forces. The head of national television UT was also appointed by the president.

The government directly interfered in the operation of the media in the form of issuing "guidelines" for reporting known as *temnyky*. These were reportedly sent to media outlets on a regular basis from the Information Policy Department of the Presidential Administration. *Temnyky* included recommendations on the content of news programs mainly on key national television and radio stations but also in print media. It could, for example, "instruct" the media to be silent on or provide

[3] Council of Europe, *Compliance with Member States' Commitments, Freedom of Expression and Information: experts' report on the situation in Ukraine, following their visit to the country from 18 to 20 November 200, at* http://lms.coe.int/uhtbin/cgisirsi/VxEvQjswrC/190670015/9#top.

[4] PACE Recommendation 1589, adopted on 28 January 2003, at http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1589.htm.

unbalanced coverage of certain facts; give a twist to a story by providing value-judgements; or to present facts out of context. Failure to comply with *temnyky* could result in harassment in the form of tax inspections, lawsuits with the sole purpose of intimidating the media, licence revocation and other measures. *Temnyky* were normally sent by fax on papers without a letterhead and consisted of eight to ten pages in Russian containing instructions on the week's political news.

Part of the manipulation of information was also the widespread practice of articles specifically "commissioned" to discredit certain individuals and officials, through the dissemination of false or private information.

Harassment of Journalists

Government officials typically withheld information of public interest from critical journalists on various grounds and many were denied entry to important meetings and press conferences. Obstacles to accreditation were frequent. What was more, there were numerous cases of physical attacks on journalists and several were killed under suspicious circumstances. According to the International Press Institute (IPI), 18 journalists have been murdered in Ukraine since it became an independent republic in 1991.[5]

While Ukraine no longer had criminal defamation laws, the wide use of civil defamation provisions was of serious concern in 2003. In March it was reported that Ukrainian courts were examining eight defamation lawsuits against the media, with the overall amount in damages claimed by the plaintiffs exceeding the country's budget for 2003. Journalists accused courts of being biased in making decisions against the media in cases brought by powerful individuals such as public officials and successful businessmen. There were also reports of cases in which state bodies sent letters to or phoned the judicial authorities to influence court proceedings. In order to avoid being personally targeted, many journalists chose to publish using pseudonyms.

Criticism of the president was especially dangerous.

- A high-profile case and dangerous precedent was seen in the criminal case against Tamara Prossyanyk, editor-in-chief of the newspaper *Informatsiyny Buleten* (from the Kremenchuk, Poltava region, central Ukraine) in April. The case was launched by the General Prosecutor's Office and concerned the publication of materials critical of President Kuchma, which supposedly prevented the president from carrying out his professional duties. The case was brought under article 334(1) of the Criminal Code (interference in the activity of a statesperson). Other journalists were questioned as witnesses. Other newspapers involved in the legal action were *Cherkaska Pravda* (Cherkasy), *Antena* (Cherkasy), *Rivnenskiy Dialoh* (Rivne), *Volyn* (Rivne) and *Pozytsiya* (Sumy). On 24 April 2003 it was reported that Kuchma would ask the general prosecutor to discontinue the ongoing legal proceedings. The case was finally closed in May after the Freedom of Speech and Information Committee (FOS) submitted a request to the General Prosecutor's Office to drop the case.

Disproportionate sentences were imposed for the protection of public officials.

- On 14 February, the Court of Yevpatoria (Crimea) sentenced the local newspaper *Yevpatoriyskaya Nedelia* and its Editor-in-Chief, Volodymyr Lutiev, respectively, to pay MP Mykola Kotliarevsky 500,000 and 250,000 hryvnyas (€79,260 and €39,630). Kotliarevsky had brought a lawsuit against the paper for harming his dignity and reputation.

According to the Institute for Mass Information (IMI), seven journalists had died or "disappeared" by the fall of 2003. Although law-enforcement agencies normally stated that the deaths were not due

[5] International Press Institute (IPI), "IPI concerned about events surrounding journalist's death," 27 November 2003, at http://www.ifex.org/en/content/view/full/55668/.

to the journalists' professional activities, there were serious suspicions pointing to the contrary as the large majority of journalists in Ukraine had reported being threatened because of their jobs.

- On 1 July, three unknown persons mugged Andriy Ivanets, deputy editor-in-chief of the Simferopol weekly *Krymskie Novosty*. Although Ivanets was not certain that this accident was related to his professional activities, a few days before the mugging the paper's journalists and its editor-in-chief had declared that they would leave the newspaper due to the pressure exercised on them by the newspaper's owners to provide biased coverage of political events.

- On 14 July, Volodymyr Yefremov, a journalist from Dnipropetrovsk and member of IMI was killed in a car crash. Yefremov's family believes that he was murdered because he agreed to testify in a case involving the Ukrainian former Prime Minister, Pavlo Lazarenko, which might have revealed widespread corruption among high-ranking officials. He had also monitored press freedom violations. Following this case, IMI received two anonymous videotapes showing the accident.

- Volodymyr Karachevtsev, chairman of the Independent Regional Union of Journalists, acting editor-in-chief of the *Kuryer* newspaper, and reporter for the vlasti.net Internet publication died on 14 December in Melitopol (Zaporizhzhya region), under suspicious circumstances. He was apparently found hanged from the handle of a fridge. Forensic experts concluded that his death was the result of mechanical asphyxia caused by the hanging. Police believed it was an accident but did not rule out murder. Karachevtsev had received several death threats after writing articles about corruption among local government officials and businessmen.[6]

There was little progress in the official investigation into Georgiy Gongadze's murder and as of the end of 2003 his killers still remained at large. Gongadze, press-freedom advocate and outspoken critic of the Ukrainian government disappeared on 16 September 2000 and his headless body was found two months later.

Internet[7]

On 19 August, under the influence of the Ukrainian intelligence services, the government introduced a draft law to parliament, which aimed at legalizing the registration and interception of Internet and telephone telecommunications. Officially, this draft law was intended to introduce telecommunications surveillance in order to fight crime. On 17 July, the state telecommunications commission had, however, asked telecom operators and Internet service providers (ISPs) to install equipment to monitor all traffic they handled.

On 18 November 2003 there was a first reading in parliament of a draft law on computer domain use. The text leaves wide scope for interpretation and gives the authorities new judicial means to censor online publications.[8]

Freedom of Association and Peaceful Assembly

Throughout the year the Ministry of Justice carried out checks on political parties. The main task was to find out which of them violated the new provisions of the Law on Political Parties. These strict new provisions stipulated that, to be registered, each new political party should submit to the ministry no less than 10,000 signatures of its members. These had to represent members in two thirds of all Ukrainian *rayons* (districts) and of at least two thirds of all *oblasts*, i.e. larger regions. In

[6] IPI, "IPI concerned over circumstances surrounding journalist's death," 17 December 2003, at http://www.ifex.org/en/content/view/full/55668/.
[7] Reporters Without Borders (RSF), "RSF concerned about secret police attempts to control the Internet," 28 October 2003, at http://www.ifex.org/en/content/view/full/54543.
[8] RSF, "RSF warns of risk of abuse over government's Internet regulation," 25 November 2003, at http://www.ifex.org/en/content/view/full/55225/.

addition, they had to represent two thirds of the districts in the cities of Kyiv and Sevastopol and of the Autonomous Republic of Crimea.

The law was not to have retroactive effect on those parties that had already been registered, however in practice several dozens of political parties were outlawed or forced to unite with other parties. The law was abused by high-ranking state officials who ordered the directors of various enterprises all over the country to collect necessary signatures within their own companies and to submit them to the ministry. At the same time, it was very difficult to register local units of opposition parties.

The situation regarding registration of NGOs was no better. The Law on Associations of Citizens, adopted in 1992, was completely out-dated, including many restrictions on civic activities. The freedom of NGOs was also restricted due to the absence of a law on peaceful, public mass assemblies. As the existing law did not recognize terms such as "a picket-line," "a tent village" etc., organizing pickets or setting up a tent village in protest were automatically considered illegal.

In addition, NGO offices were checked by sanitary and fire inspectors, tax administration officials and similar authorities without any adequate reason and only in order to obstruct their activities.

- In the Donetska *oblast*, one of the *rayon* organizations of the Congress of Ukrainian Nationalists was closed down by the local tax administration, and another *rayon* organization of was closed down by order of the local mayor.

Judicial System, Independence of the Judiciary and Fair Trial

A positive development in the judicial system in 2003 was the fact that for the first time courts began to refer to international human rights conventions ratified by Ukraine when announcing verdicts. In the provinces, however, progress towards such practice was very slow.

Most applications from Ukraine to the ECtHR were submitted under article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which guarantees the right to a fair trial. This fact demonstrates the myriad of problems related to the Ukrainian courts and the administration of justice.

The laws adopted by parliament in 2000-2001 during the judicial reform resulted in a significant increase in the workload of courts. The judicial reform embraced the whole Ukrainian judicial system, but the formal improvements were not accompanied by measures to hire adequate numbers of staff and appropriate technical and logistical support for court houses to implement the changes. As a result, the number of cases awaiting trial for six months or longer increased. The same applied to the execution of court decisions.

According to the minister for justice, in 2002 the judicial system received only 86% of the share allocated to it in the state budget. In 2003 the portion remained the same. Lack of funds and financial dependence on the local executive made judges—particularly those working in small courts in rural areas—vulnerable to pressure from local authorities. The so-called "telephone justice" was commonplace, i.e. judges asking local authorities for "advice" before pronouncing verdicts in the courtroom.

2003 also saw a growing number of questionable court verdicts, yet most of these verdicts were upheld by the Court of Appeal. In addition, courts were increasingly used by the executive and the presidential administration to repress political opposition.

A negative consequence of the 2000-2001 court reform was the fact that citizens were virtually deprived of the right to appeal against doubtful court decisions. In practice, a defendant could

appeal to the court of higher jurisdiction only through the head of the court that had ruled on the case, a fact that considerably restricted the right of appeal.

In 2003 the post of the head of the Supreme Council for Jurisprudence was occupied by S. Kivalov, a member of parliament, despite the fact that the law forbids MPs to take any other jobs while they serve as members of parliament. This situation may have serious consequences as all documents signed by the head of the Supreme Council for Jurisprudence may turn out to be illegal.

The 2001 changes to the Criminal Procedure Code stripped the defense of the few rights it had enjoyed. The law provided for equality of arms, but in practice the equal status of defense was violated in many ways. In reality, courts had turned into yet another body of investigation and had lost the very essence of their role—the objective treatment of all parties to a case.

The prosecution frequently brought to trial cases that lacked evidence. To remedy this failure, the defendant was held in detention as long as more evidence was collected against him. The judge was forced to turn a blind eye in face of such misconduct by the prosecution because it would be costly to the state to prolong the proceedings. In practice the court had two options to solve the problem: either to allow the prosecutor to start collecting evidence against the defendant while the trial was ongoing, or to return the case to re-investigation. In both cases, the defendant could be held in detention for practically an unlimited time without a verdict.

- The Ukrainian Committee "Helsinki –90" submitted several appeals on behalf of M. Vitruk who has been held in detention since May 1999 without a court verdict. On 6 November 2003, a judge of the Kyiv City Appeal Court decided that the evidence presented by the prosecutor against him was insufficient, but—instead of acquitting Vitruk—the judge sent the case for re-investigation. M. Vitruk remained in prison.

Under article 48 of the Criminal Procedure Code, barristers no longer had the right to ask questions during preliminary investigation (i.e., confrontation of the suspect, interrogation of suspects and defendants). They could only start questioning parties after the trial had begun. The defendant was also not allowed to submit appeals and intercessions during pre-trial investigation.

Barristers could be dismissed from a case by a judge or an investigator for "putting obstacles in the way of the inquiry" or for "divulging information learned whilst carrying out their duties" (article 48 of the Criminal Procedure Code). As a result, a barrister who informed the court about the torture of the defendant could be dismissed. At the same time, the media often published comments by the prosecution or police officials, which violated the presumption of innocence.

The police often interrogated detainees without the presence of their lawyers. Effective defense was also obstructed by the fact that barristers had no access to investigation materials until the prosecution had referred the case to trial and the trial had begun (article 240 of the Criminal Procedure Code).

Sometimes cases were investigated by individuals who were not authorized to lead an inquiry. Interrogations were often terminated if it was obvious that they would not provide evidence for the prosecution. Sometimes defendants were illegally kept in detention after the expiry of the maximum term of pre-trial detention, which was two months. The poor formulation of article 237(4) of the Criminal Procedure Code resulted in an ironical situation in which the defendant could not be legally released after being held beyond the legal term of detention because the court was not allowed to change or cancel the preventive measure of detention that was no longer valid.

Equality of arms was also violated by article 249(1) point 2 of the Criminal Procedure Code, which stated that a case must be returned to the prosecution if required by it. Even in cases in which judges would acquit a person due to lack of evidence, they had to send the case back to the prosecution for additional investigation.

- The case of Boris Feldman, who was arrested in March 2000 and sentenced to nine years' imprisonment, was still pending in the Luhansk Regional Court of Appeal as of the end of 2003. Feldman was arrested on charges of tax evasion, which many barristers believed to have been fabricated. Initially, the case contained 29 volumes of court materials—down from the original 120 volumes. The judges refused to review the case and automatically confirmed the original court decision. In 2003 the case arrived at the Supreme Court of Ukraine, containing only 21 volumes.

The most common problem in the work of courts was passing sentences that were based on "evidence" obtained under torture or other forms of psychological and physical violence.

- The case of Judge Y. Vasylenko attracted much public attention. In 2002, while working as a judge at the Kyiv Court of Appeal, he started a criminal case against President Kuchma, among others, on charges of abuse of power and participation in the kidnapping of journalist Georgiy Gongadze. By law, the act was completely lawful, yet, the Supreme Council for Jurisprudence terminated the case and disciplined Vasylenko.

Another violation of the right to a fair trial was the inability of parties to a case to make additions to their complaint or to state their arguments against the other party's cassation. According to article 329 of the Criminal Procedure Code, the question of sending a case to the Civil Chamber of the Supreme Council for Jurisprudence was to be considered by three judges behind closed doors. The situation was further complicated by the fact that there was no avenue to appeal a refusal to satisfy a complaint.

Torture, Ill-Treatment and Police Misconduct

The Ukrainian Committee "Helsinki –90" received information about the systematic use of torture or ill-treatment and inhuman or degrading treatment or punishment by law enforcement officials during 2003.

On 21 February, a suspect jumped out of the window of the 3rd floor of the investigation facility (IVS) in Kirovohrad because he could not stand the torture he was subjected to. According to his lawyer, many of her defendants had complained of torture at the same facility. The methods used were forcing the victim into "a parrot pose,"[9] placing a gas mask over the victim's face to block his air supply, and the use of electro-shocks on ears and genitals. In addition, victims were deprived of sleep, food, and were constantly beaten.

- Oleksiy Zakharkin (24) from Kalush spent a week without food and sleep at several police stations in Ivano-Frankivsk. His family found out about his detention on 23 May 2003 when Zakharkin was taken to hospital with a broken vein: he had bitten a vein in a desperate attempt to escape torture. He said that police officers had cuffed his hands under his knees and hanged him upside down, beaten him with a 1.5-liter plastic bottle full of water, and placed a a gas-mask full of liquid over his head so he could not breath. After a week of torture he was taken to the Kalush police station and warned not to tell anybody. Reportedly, the policemen were later promoted. Zakharkin also stated that another detainee had had his kidney injured as a result of beatings.

- On 19 March, Stanislav Samofalov and Mykola Lyakhovych, prisoners held in the Luk'yanovka Detention Facility No. 13, went on hunger-strike to protest the beating and the ban on correspondence, food parcels from outside and visits of relatives. The two men had been arrested for participation in a clash with the police during a 9 March 2001 demonstration.

[9] "Parrot" is a position in which the victim is forced into a crouching position, with his arms held around his legs. A pole is then passed through the gap between the bent knees and the elbows, the ends resting on two trestles or desks. The victim is held in a position with his head hanging downwards.

Samofalov would have needed medical attention but he was refused it. Samofalov fainted during the court session. Judge Volyk, however, refused to let him be taken to hospital. On another occasion the judge refused to break the session to let Samofalov go to the toilet (Samofalov suffers from an urological disease). The judge said "Relieve yourself into your pocket!"

According to a survey carried out among police officers by the Internal Affairs Academy of Ukraine, most officers stated that the use of torture was acceptable. Thirty percent stated that torture was commonly used, 36% said that it was used sometimes, 33% said very seldom, and only 3.5% insisted that torture was never used.

Article 127 of the Criminal Code prescribed punishment for the use of torture, but it was not implemented: not a single police officer had been found guilty under this article by July 2003. If a police officer was charged with torture, as a rule he would, at the most, be found guilty of misconduct. According to official data, as of 1 May, 246 cases of alleged misconduct by 272 police officers were pending in court or prosecutor's offices. Almost 130 of them were related to alleged overstepping police powers and 54 to abuse of power. Such crimes carried a much more lenient punishment than torture.

The statistics of the Ukrainian Committee "Helsinki –90" painted a graver picture: during the first eight months of the year, 892 people in only one region, namely the Luhansk Region, complained of illegal police conduct, but not a single criminal case against a police officer was started.

The Ukrainian Committee "Helsinki –90" also pointed out that it appeared that the government authorities were not aware of international instruments for the prevention of torture.

Prisons

Ukrainian detention facilities were overcrowded. There were 45,000 pre-trial detainees while the official capacity of the facilities was only 36,000 places. Due to lack of beds in overcrowded cells, detainees often had to sleep in turns.

It was estimated that 9,900 of the total of approximately 200,000 prisoners in all facilities were ill with tuberculosis. All diseases spread fast, speeded up by the fact that healthy persons were sometimes kept together with infected inmates.

The government failed to follow the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued following the CPT visit to Ukraine in 2002. Among other things, the CPT recommended improvements to the hygiene and other physical conditions of detainees, lack of space, inadequate health care, contacts with the outside world, etc. The CPT expressed already then concern over the lack of progress in numerous areas, many of which had no important financial implications and could have been implemented without delay.[10]

The Ukrainian Committee "Helsinki –90" investigated conditions in facilities supervised by the Donetsk Department on the Problems of Execution of Punishments. Its inmates insisted that torture and degrading treatment had started in its institutions when Colonel Kuybyshev took office as the head of the department in March 2003. Other incidents of unlawful conduct included:

[10] CPT, *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 10 to 26 September 2000*, at http://www.cpt.coe.int/documents/ukr/2002-23-inf-eng.pdf.

- In March, OMON (riot police) troops were lead into several Correctional Labour Institutions to beat the inmates. One inmate was beaten to death by riot police in ITU No. 24. Many others were wounded and beaten prisoners were taken to hospital.

- Several inmates died in 2003 in the ITUs No. 57, 120, 28, and 32 in Horlivka reportedly as a result of beatings by OMON officers.

- In Yelenivka TZ-52 the cells were excessively cold and nutrition was not of acceptable quality. Its inmates were placed in punishment cells without adequate reasons.

In the HIK-96 TZ of Rivnenskiy Department of Executing Punishments that is situated in Horodysche (Rivnenska *oblast*) 14 inmates started a hunger strike on 24 February protesting the unbearable living conditions: the facility was cold, the walls were damp and inmates had no possibility to wash their clothes.

In the Kharkiv Correctional Labour Colony (ITK) No. 25, the head of the colony allegedly beat inmates, tortured them using a gas mask and burned them with a cigarette.

When addressed about allegations of torture, ill-treatment and other misconduct, the leadership of the Department on the Problems of Executing Punishments admitted that there had been complaints but all of them had been investigated and turned out to be unsubstantiated.

Freedom of Religion

The relationship between the state and religious associations was regulated by the Law of Ukraine on the Freedom of Conscience and Religious Associations (No. 987-XII), which was adopted in April 1991. The main provisions of the law basically corresponded to international standards for freedom of religion. However, there was a considerable gap between the law and its implementation.

According to article 8 of the law, religious associations were not obliged to register with any state body, but registration with local authorities was obligatory for those religious associations that wished to have the status of a legal entity (article 13). According to article 148(1) of the law, in order to obtain that status, a religious association must have a membership of at least ten adults (not younger than 18) who would hand in an application and a statute of the association to a special division of the *oblast* administration for registration. A religious association that was registered as a legal entity enjoyed a number of advantages compared to those without registration, including the right to open a bank account and to be a part of civil process in court, e.g. to protect the community's dignity in court, which was necessary in Ukraine.

In practice, local authorities often considered religious activities carried out by non-registered religious associations to be illegal. Such association faced harassment and were often publicly slandered—but were unable to legally defend themselves. The media often disseminated rumors and lies about such religious groups calling them "cults" or "sects."

Despite the fact that the state and the majority Ukrainian Orthodox Church of the Moscow Patriarchy (which is a branch of the Russian Orthodox Church) were separated and all religious should have had equal footing, Orthodox priests were often presented in the mass media and used by some state officials as experts in the field of religious problems and their beliefs presented as the only correct ones.

Many state officials promoted the concept of one unique traditional canonic church. However, at least four churches competed for this status: the Ukrainian Orthodox Church of Moscow Patriarchy (not recognized by the Universal Patriarchy), the Ukrainian Orthodox Church of Kyiv Patriarchy, the Ukrainian Orthodox Church of the Constantinople Patriarchy, and the Ukrainian Autocephaly Orthodox Church.

During 2003 two draft laws on the freedom of conscience and religious associations were discussed in parliament. One of them (by MP Lilia Hryhorovich) gave the Ukrainian Orthodox Church of the Moscow Patriarchy privileged status as the "traditional" church of Ukraine. The other (by MP Les Tanyuk) made registration obligatory and introduced a precondition stating that a religious community would need a positive opinion from a council of experts on religion. Both drafts were turned down.

Activities of the radical wing of the Russian Orthodox Church of Moscow Patriarchy, which originated in Russia, contributed to an atmosphere of religious intolerance. Their leader, Alexander Leonidovich Dvorkin, was a leader of the "anti-sectarian" movement in Russia and vice-president of the international "anti-sectarian" organization "Dialogue-Centre." Known for his extreme intolerant attitudes toward so-called "new" religions, he spread offensive propaganda against all religious associations that did not belong to the Moscow Patriarchy and expressed racist views toward a Ukrainian priest of Nigerian origin. The influence of Dvorkin's activity on state officials was enormous, particularly on the police and high-ranking officers in the secret service. Anyone who did not agree with him was labeled a "sectarian."

Minority religions faced serious problems, including the harassment of individuals.

- On 18 June, Alla Trofimets and Russian citizen Varvara Kozhevnikova, both of whom belonged to the unregistered religious association "the Great White Brotherhood Usmalos" in Eupatoria (Autonomous Republic of Crimea), were taken by militia to the City Department of Internal Affairs and interrogated. All the questions dealt with purely religious issues, the main topic being their attitude toward the Orthodox Church.

- The local authority of the city of Sevastopol refused to return to the Ukrainian Greek Catholic Church (400 members) the cathedral, which had formerly belonged to it. The reason for this was reportedly the fact that the Ukrainian Greek Catholic Church had never been "traditional" in Crimea.

- In Kharkiv, the local administration refused to register the religious association of the Ukrainian Autocephaly Orthodox Church.

- In Izmail, local hooligans prevented the local branch of the registered Charismatic Church "the Sun of the Truth" from worshiping and praying together. In addition, the hooligans broke windows and beat the praying people. When Rev. Kshanovskiy complained about this to the police, the officers advised him "to pray as normal people do."

International Humanitarian Law

Accountability for Past Crimes

The Statute of the International Criminal Court (ICC) was signed by the Ukrainian government but not ratified by the parliament due to the fact that national legislation was not in line with the ICC statute. The Ukrainian Committee "Helsinki-90" was not aware of any practical steps taken by the parliament to amend Ukrainian legislation in order to make the ratification possible.

The Convention on the Non-applicability of Statutory Limitations to War Crimes And Crimes Against Humanity (1968) has been applied only against Nazi collaborators who had committed war crimes and crimes against humanity. Most cases of mass extermination of population committed by Soviet-era officials have been excluded for the reason that such acts did not constitute a violation of domestic law of the country during the time they were committed. This interpretation is contrary to article 1 of the above-mentioned UN Convention.

- As a result of this interpretation, a court terminated a case on the mass extermination of intellectuals from Ukraine, Poland, Belarus and Moldova, committed by the People's Commissariat for Internal Affairs (NKVD, predecessor of the KGB) in the 1930s, with hundreds of thousands of victims whose bodies were dumped in Bykivnia, near Kyiv. According to the court, such an act did not constitute a violation of domestic law at the time it was committed.

Participants of the civil war in 1942-1954 led by the Ukrainian Insurgent Army (*Ukrayinska Povstanska Armiya, UPA*) for the independence of Ukraine against both the German Nazi and Soviet Communist occupation were not recognized as a combatant part of the war and were thus treated as former criminals. At the same time veterans of the Ministry of Interior forces (*Narodniy Komissariat Vnutrennikh Diel, NKVD)* continued to enjoy all benefits and privileges guaranteed to war veterans. They had participated in mass extermination and ethnic cleansing of civilian populations carried out by the Communist Soviet regime in western Ukraine, including the burning of Ukrainian villages, deportation of the Polish population to Poland, and deportation of the western Ukrainian population to Kazakhstan and Siberia during the same civil war.

Moreover, some individuals who had been brought to justice for Stalin-era crimes were recently rehabilitated. The Ukrainian Committee "Helsinki –90" criticized this measure as a very dangerous precedent for the future direction of developments in Ukraine.