

UKRAINIAN SOVIET SOCIALIST REPUBLIC

CCPR A/34/40 (1979)

248. The Committee considered the initial report (CCPR/C/1/Add.34) submitted by the Ukrainian Soviet Socialist Republic at its 153rd, 154th, 155th, 156th, 159th and 160th meetings, on 31 July, 1 and 3 August 1979 (CCPR/C/SR.153, 154, 155, 156, 159 and 160).

249. The report was introduced by the representative of the State party who gave further information on certain questions dealt with in the report.

250. The representative stated that international treaties concluded by the Ukrainian SSR, including the International Covenant on Civil and Political Rights, were implemented through domestic legislation and also through orders and decrees of the State authority. Many laws contained provisions whereby in the event of the divergence between them and an international treaty or agreement concluded by the USSR or the Ukrainian SSR the international agreement or treaty should apply. He pointed out that many provisions enacted since the submission of the report were directly related to the development and realization in practice of the rights and freedoms guaranteed by the Constitution and were also directly connected with certain provisions of the Covenant, for example, a law adopted by the Supreme Soviet of the Ukrainian SSR in December 1978 concerning the Council of Ministers of the Ukrainian SSR, a law concerning elections to the Supreme Soviet of the Ukrainian SSR and a law enacted in June 1979 concerning elections to the local councils of people's deputies. The first of those laws provided for greater participation in government by citizens, workers' collectives and social organizations. The second law gave effect to the electoral rights enshrined in the Ukrainian Constitution. The law provided that all citizens aged 18 years and over had the right to elect and to be elected to the highest State organ of the Republic. Previously, the age limit for the right to vote had been 21 years. The law considerably liberalized the conditions for the nomination of candidates as deputies and for the conduct of electoral campaigns. The third law, concerning elections to the councils of people's deputies was motivated by a concern for the creation of the best possible conditions and real guarantees for the exercise by citizens of their electoral rights. Work would continue in his country to further improve legislation so as to implement to the fullest extent the principles enshrined in the new constitution. One important item in the programme was the preparation of a code of laws of the Ukrainian SSR which was due to be published during the period 1982-1986.

251. Commenting on the report, all members of the Committee commended its comprehensiveness and the manner in which it had been prepared and expressed their appreciation for the valuable supplementary information which the representative of the Ukrainian SSR had given when introducing the report. Since both the USSR and the Ukrainian SSR, the latter being one of the former's constituent republics, had ratified the Covenant, information was requested on the respective responsibilities of the Republic and the Union in the implementation of the Covenant and on the manner in which differences in human rights legislation among the various Republics were

solved. Noting that the implementation of the Covenant depended a great deal on the detailed laws and practices in force in each State party, members inquired about the degree of federal control which was exercised so as to promote uniformity in the laws and practices of the constituent Republic to adopt different standards, as regards such matters as freedom of movement, conscience or expression from those which constituted the general norm in the Union as a whole. Referring to the statement in the report that the new Constitution fully guaranteed and ensured in practice the implementation of all the provisions laid down in the Covenant, it was noted that the provisions of the Covenant themselves were not incorporated in the domestic laws but that the domestic laws and practices were said to be in conformity with the provisions of the Covenant. Questions were asked on whether the provisions of the Covenant could be invoked before the courts; whether a person could raise the matter of inconsistency between the law and practices of the Republic and the provisions of the Covenant without the risk of repressive or punitive action being taken against him by the authorities and whether the rights and freedoms contained in the Constitution also applied to dissidents.

252. More information was requested about the organs of Government, how they were constituted, their powers and their relationships with one another; about the elected bodies, at the national and local levels, through which the people exercised power; and about the separation of powers between the Executive and the judiciary, in particular whether it was possible for the judiciary to pronounce on the constitutionality of a given law. Questions were also asked concerning the role of the Communist Party in relation to the organs of Government; how it exercised its influence within the State and its prerogatives within the system of Government; whether there were other political parties; and what restrictions there were on the formation of other political parties. Noting the commendable and exhaustive participation of the people in the making of the Constitution, some members wondered whether measures had been taken to publicize the Covenant in the official languages of the Republic and to disseminate it widely among the people and whether the authorities would consider making the report of the Ukrainian SSR to the Committee known to the people generally. Some members observed that the Constitution of the Republic spoke only of citizens, while the Covenant was, with the main exception of article 25, concerned with everybody. In connection with article 31 of the Constitution which states that every citizen of the Ukrainian SSR is a citizen of the USSR, one member asked about the implications of this uniform citizenship in view of the application of the rights contained in articles 12, 13 and 25 of the Covenant.

253. With reference to article 1 of the Covenant, it was noted that article 69 of the Constitution stated that "the Ukrainian SSR shall retain the right freely to secede from the USSR" and questions were asked as to how this provision could be implemented; whether, if a discussion on this matter was opened and suggestions were made to that effect, such suggestions would be considered lawful; what was the situation in practice; and were the citizens able to discuss the subject of self-determination and express nationalist views.

254. Some members noted that there were no specific provisions in the Constitution for the prohibition of discrimination on the grounds of "political or other opinion" as stated in article 2 of the Covenant and asked whether persons were discriminated against if they promoted political views which were at variance with those of the Government. Questions were asked on the extent

to which an individual had an effective remedy when his rights had been violated; whether the State was vicariously liable for the acts of officials; how many officials had been condemned since 1976 on charges of illegal action committed in the exercise of their functions; and how many claims for compensation had been satisfactorily met. Noting the importance of the institution of the Procurator of the Republic some members requested more information on the role he played in the Ukrainian legal system, on the manner in which he could ensure the protection of civil and political rights, the extent to which his powers were subject to judicial control, whether he cumulated judicial and executive powers in this regard and, given his subordination to the Procurator of the USSR, the extent to which he was independent.

255. With regard to article 3 of the Covenant concerning the equality of rights between men and women, members commended the Ukrainian SSR for its achievements in this respect and for the impressive figures quoted in the report to that effect. More information was requested concerning the participation of women in the youth organizations and in the higher bodies of the Communist Party and governmental organs.

256. With regard to article 6 of the Covenant, some members asked what were the most serious crimes referred to in the report for which capital punishment could be imposed; whether the death penalty had been abolished and if so when had it been reintroduced; whether there was a debate concerning its abolition; how many people had been condemned to death recently and for what crimes; whether there was a possibility of pardon by or appeal to higher bodies of the Union; and how was the maintenance of the death penalty reconciled with the statement in the report that punishment is aimed at reforming and re-educating convicted persons. The question was also asked as to whether a person could be sentenced to death for committing an economic crime.

257. In connection with articles 7 and 10 of the Covenant, information was requested concerning the circumstances in which a person could be kept in solitary confinement and for what period of time was a detained person entitled to receive his lawyer and members of his family while awaiting trial. More information was also requested on the treatment of prisoners in general, whether prisoners were provided with sufficient food, medical care and whether a system of supervision existed to inspect conditions in the prisons. In the case of persons who were sentenced for long periods of time and were sent to prisons or labour camps outside the territory of the Republic, information was requested on the facilities provided for contact between the prisoners and their families and on whether they were allowed to communicate in their own language or, through an interpreter, in the language of the region where the prisoners were detained. Information was sought on whether psychiatric treatment was resorted to in the case of healthy persons for political beliefs which were different from those of the society in which they lived. Information was requested on the statement in the report that the legislation of the Ukrainian SSR established criminal and disciplinary liability for officials guilty of violating the rules for the treatment of persons accused of crimes or sentenced to deprivation of liberty.

258. With regard to article 8 of the Covenant it was noted that in accordance with the Constitution every citizen had the right to work, including the right to choose his trade, taking due account of the needs of society. Questions were asked as to who decided what the needs of the society were; what

specific or practical restrictions existed on the right to work; whether there were any penal provisions which made so-called "parasitism" a punishable offence; and whether someone could work independently without running the risk of being accused of parasitism if the competent State organ deemed him not to be "socially useful".

259. With regard to article 9 of the Covenant, the question was asked as to whether there were any circumstances in which a person might be detained, for instance, if he was of unsound mind or suffering from an infectious disease; whether persons were detained without trial for political reasons and if so under what laws. Information was also sought on the maximum and average period of time for which persons were so detained. Further clarification was requested as to the meaning of article 52 of the Constitution which provides that no one may be arrested except by a court decision or on the warrant of a procurator; and as to the legality or otherwise of pre-trial detention and the implementation of article 9, paragraph 4, of the Covenant which provides for the early trial of a person arrested or detained on a criminal charge or for his release.

260. With regard to article 12 of the Covenant, clarification was requested concerning the statement in the report that the question of liberty of movement was governed by a number of normative instruments. Questions were asked on whether a citizen needed permission to change his place of residence; whether he had the right to go abroad to study, to emigrate or for tourism purposes or was subject to punitive measures if he applied for a visa; whether any restrictions existed with regard to the freedom of movement within the Union; and whether Tartars were free to return to their native region. The question was also asked as to whether the Government of the USSR had the right to deprive someone in the Republic of his citizenship and, if so, for what reasons.

261. Commenting on article 14 of the Covenant, members of the Committee asked whether there were administrative and military courts in the Republic; for which offences the "Comrades" courts were competent and whether their competence was based on legal rules adopted by legislative bodies; how the independence and impartiality of tribunals were guaranteed; whether it was possible to pass a judgement which was not in conformity with the ideology of the State; how the comrades' courts and the peoples' courts which had the same competence could co-exist; what was the role of the assessors, particularly in the supreme court, and what measures were taken to prevent interference in their work; did the assessors pronounce purely on questions of fact or, like the magistrates, on questions of law as well; and what was meant by the terms "educational effect of the public hearing" and "juridical socialist conscience" referred to in the report. Questions were also asked as to what were the cases and the grounds for holding judicial proceedings in camera; whether relatives of the accused and the press could be excluded from a public hearing; could the prosecutor prevent the accused from calling certain witnesses; whether the defendant or his counsel had the right to participate in the hearing at the courts of appeal. In this connection questions were asked about the legal profession and about the rights and guarantees enjoyed by lawyers in the performance of their duties.

262. With reference to article 17 of the Covenant, the representative was requested to provide information on the laws which protect the right of privacy; on the provisions which authorize exceptions from the principle of inviolability of residence; on the remedies available to an individual

whose letters were confiscated or whose telephone was disconnected on orders of the competent authorities.

263. In connection with article 18 of the Covenant, members of the Committee asked for clarification concerning the separation of State and Church; whether religious propaganda was allowed on an equal footing with atheistic propaganda; what were the "religious practices" referred to in the report which disturbed public order and therefore prohibited; and what was the legal regime in force governing religious education in the light of the right of parents to ensure the religious and moral education of their children in conformity with their convictions as provided for in the Covenant.

264. With reference to article 19 of the Covenant, questions were asked as to what extent it was possible to dissociate oneself from the dominating ideology of scientific communism or to promote ideas for change and improvement in the existing order although they were at variance with those of the Government. Could article 48 of the Constitution, proclaiming freedom of speech and the press "in accordance with the interests of the people and in order to strengthen and develop the socialist system", be interpreted as limiting that freedom and being inconsistent with the Covenant? What guarantees did the citizen have that their right was not violated because of this provision? Did the citizen have the right of peaceful dissent and what measures were available to guarantee this right? The report stated that the freedoms contained in the Constitution "may not be exercised to the detriment of State or public security...". What was meant by "public security"; who decided what it was and to what extent this regimentation and control were, in practice, destructive of the freedoms guaranteed by the Covenant? In this connection the question was asked why peaceful dissent should be considered as a threat to public security, if the system was overwhelmingly accepted by the people. The representative was requested to provide the Committee with all the laws which restrict the rights provided for by article 19 of the Covenant.

265. With regard to articles 21 and 22 of the Covenant, it was pointed out that the Constitution contained restrictions on the right of peaceful assembly and freedom of association as it appeared that the right or freedom concerned could only be exercised to the extent that it aimed at building communism. The representative was asked whether within the present legal framework it was possible to establish a political party other than the Communist Party. Members of the Committee asked in what circumstances a group of citizens could set up a trade union and under what conditions such a union would be entitled to assistance in its work from State bodies and public organizations; whether trade unions enjoyed the right of collective bargaining; whether the State recognized the right to strike and, if so, was the right to strike provided for in any legislation. Referring to article 6 of the Constitution which provided that the Communist Party was the nucleus of the political system, members asked whether this was in conformity with the freedom of political thought guaranteed by the Covenant and whether a person who was a regular visitor to a church, mosque or a synagogue could be a member of the Communist Party. The representative was requested to provide the Committee with all the legislation which restricted the right of peaceful assembly and the freedom of association.

266. With reference to articles 23 and 24 of the Covenant, the representative was requested to

provide information on the experience of the Republic in dealing with problems of taking care of children of working mothers. One member wondered whether the role assigned to the family to take an active part in the building of communism, as stated in the report, was in conformity with the Covenant. Explanations were requested as to why the building of communism was made conditional on the aid and protection given to the family. Information was sought on the role of the judicial system in reconciling the partners in cases of divorce and on the inheritance system in the Republic. More information was requested on the legal status of illegitimate children in the Republic and on the nationality of children whose parents were of different nationalities.

267. With reference to article 25 of the Covenant, clarification was asked of the meaning of "the principle of democratic centralism" as contained in article 3 of the Constitution. Questions were asked as to the extent to which this provision was in conformity with the rights protected by articles 19 and 25 of the Covenant if that principle meant free discussion before, but not after, the adoption of decisions. In this connection, questions were asked on the extent to which, if people did not have the right to propose changes in the leadership directly, democracy could be said to prevail in the Republic. Questions were also asked on whether a citizen who was not a member of the Communist Party could present himself as a candidate for election or be elected to a public post and how much choice the voter had when elections took place. Commenting on article 47 of the Constitution which, *inter alia*, stated that persecution for criticism was prohibited, the representative was asked whether a citizen could safely exercise political criticism or criticize the Communist Party. Concerning article 9 of the Constitution, clarification was requested as to the purpose and meaning of the expression "strengthening of the system of people's control".

268. Commenting on article 27 of the Covenant, members of the Committee asked whether non-Ukrainian Soviets living in the Ukraine were obliged to learn the Ukrainian or Russian languages or both of them; and whether measures had been taken to protect the Ukrainian language inside as well as outside the territory of the Republic. Information was requested on the situation and rights of the Tartars, Jews and other minorities; on whether their rights were defined in legislative enactments; and the extent to which they could exercise the rights provided for by article 27 of the Covenant. In this connection information was sought on the basis of the proposition in the report to the effect that national groups undertook to develop a socialist culture which was undivided in its spirit and basic content and, at the same time, national in form. The question was also asked as to the difference between the terms "nations", "nationalities", "national groups" and "compact population groups of nationalities" as used in the report.

269. The representative of the State party replied to the questions and comments summarized in the preceding paragraphs. He stated that, as regards the status of the legislation of the Republic and that of the Union and the possibility of conflict between the two systems, certain matters fell within the competence of the Union, while others, such as road transport and road construction were within the competence of the Republic. The majority of questions lay within the joint competence of the Union and the Republic. The Union provided the basis for legislation and set forth certain basic principles and the Republics elaborated their own legislation but every effort was made in the Republics to standardize provisions reflecting the norms set down in the Covenant. He stated that in 1957 the Supreme Soviet had enacted a special law concerning the delimitation of competence between the

Union and the Republics and that, as a result of that new situation, the Ukrainian SSR had entered upon a new stage in the elaboration of its legislation. According to the Constitution, laws of the Republic should be enacted by the Supreme Soviet of the Ukrainian SSR or by a nationwide vote (referendum) held by decision of the Supreme Soviet of the Republic. The Council of Ministers of the Republic, that is, the Government of the Ukrainian SSR, was the highest executive and administrative body of State authority of the Ukrainian SSR and should be responsible and accountable to the Supreme Soviet of the Ukrainian SSR. Members of all Soviets of Peoples' Deputies of regions, districts, cities, city districts, settlements and villages, were elected on the basis of universal, equal and direct suffrage by secret ballot. The people were constantly consulted through popular votes or referenda. Thus the principle that all power belonged to the people was being effectively implemented. As to the role of the Communist Party in the political system of the Republic, he stated that according to the Constitution the Party was the leading and guiding force of Soviet society and the nucleus of its political system, and of all State and public organizations. All Party organizations functioned within the framework of the Constitution of the USSR. All State and public affairs were decided upon by the Supreme Soviet after they had been widely discussed by the people, the press and other media. The representative explained that questions relating to complaints concerning the implementation of the provisions of the Covenant could be widely and publicly discussed. The Covenant was widely published in the languages of the Republic and it was discussed by the people, the press and legal circles. As the Covenant was officially published in the Republic, officials concerned were expected to be aware of and familiar with the provisions of the Covenant otherwise they would not be retained as officials.

270. Replying to a question under article 1 of the Covenant the representative stated that the Constitution provided for the possibility of secession but that such a matter had never been discussed. If it were to be discussed, article 5 of the Constitution which provided for the submission of major matters for nationwide discussion and to a popular vote, would apply. He noted that there was no danger of assimilation of Ukrainians since Ukrainian language and culture were amply protected. The Ukrainian language was mandatory in all schools and 70 per cent of all publications in the Republic were in the Ukrainian language. No special measures were required to protect the rights of Ukrainian citizens, in other Republics, because these rights were the same all over the Union. In reply to a question on whether there was Ukrainian nationalism, he said that Ukrainians were patriots and against all those who attempted to sow discord among them.

271. In reply to a question in connection with article 2 of the Covenant concerning the possibility of discrimination on the ground of political opinion he called the attention of the Committee to the second paragraph of article 32, as well as to articles 46, 47, 48 and 49 of the Constitution which prevented discrimination for political opinion. He also pointed out that the Constitution provided for full protection of the rights of individuals, including the right to lodge complaints against the actions of officials, State and public bodies and to receive compensation for damage resulting from such actions, where appropriate.

272. Replying to a question under article 3 of the Covenant, he stated that women played a very active part in State and social life in the Ukrainian SSR and held many responsible posts in State bodies including the judiciary and there were also many women among the scientists of his country.

273. Commenting on the questions raised concerning article 6 of the Covenant, the representative stated that in the Ukrainian SSR every effort was made to preserve and maintain human life. He explained in detail the various measures taken by the Government to ensure the implementation of the right to health protection provided for in the Constitution. He stressed that the death penalty was an extreme form of punishment applied in the case of premeditated murder in extreme circumstances, rape bringing about death, and in a number of other extreme crimes. The question of the possibility of repealing a death penalty was under consideration but preventive legislation made it necessary at present to retain that punishment for very serious crimes. Amnesty could be granted by the Presidium of the Supreme Council. He informed the Committee that recently there were persons who were condemned to death for economic crimes.

274. Replying to questions under articles 7 and 10 of the Covenant, the representative stated that solitary confinement was applied, as a rule, as a punitive measure to a prisoner who had violated the regulations. In accordance with the Correctional Labour Code alternative measures could be taken such as a warning, reprimand or movement to a smaller sized cell. Medical services in the prisons were provided and organized in accordance with public health regulations. He explained that in accordance with the said Code, punishment was not applied or executed for the purpose of inflicting physical suffering or degrading human dignity, but was aimed at reforming and re-educating convicted persons. He further stated that the law on health provided that in the interests of the health and safety of the population, the authorities were empowered to order individuals suffering from tuberculosis, venereal diseases, alcoholic problems and psychic disorders to receive treatment in medical establishments but that persons suffering from psychic disorders could, on no account, be committed to psychiatric institutions unless they presented a real danger to the community. Replying to other questions, he gave a detailed account of the hygiene and working conditions prevailing in prisons and of the various programmes designed for the rehabilitation of prisoners. He pointed out that, in exceptional cases, and due to the fact that some prisons were too small to accommodate all prisoners of the same category, some of them had to serve outside the territory. He stressed that there was no problem for the family to visit their relatives in prison.

275. Replying to questions under article 8 of the Covenant, the representative pointed out that all citizens had the right to choose occupations in keeping with their education, training and abilities, to receive material compensation for the work they did, and to medical treatment when they were ill. In reply to questions concerning the possibility of conflicts between the interests of the individual and those of the society in the Republic, he thought that the provisions of the Constitution which required every citizen as a matter of duty and honour to engage in socially useful work were compatible with the Covenant. The requirement that work should be socially useful should not be considered as a limitation to the right to work since all work offered in the Republic was socially useful. Systematic parasitism was punishable in his country because it was unjustified, for the possibility existed for every individual to do interesting work in accordance with his abilities. Writers and artists were in a different category; those who wished could engage in creative activity and could sell their work if the public was willing to buy it.

276. Replying to questions under article 9 of the Covenant, he stated that the requirements contained in this article were fully reflected in the legislation of the Republic, which enumerated the

reasons for which a person could be lawfully detained. The procurator must be informed within 24 hours of the arrest of an individual and must make a decision within the following 48 hours on whether to release or detain the individual. In general, detention could not exceed two months, but in accordance with the Code of Criminal Procedure the duration could be extended to a maximum period of nine months. Replying to other questions he stated that the defence counsel was called in when the accused person was charged, and that, when minors or individuals with physical or psychological handicaps were involved, the defence counsel was called in at the earliest stages of the proceedings. The Code of Criminal Procedure provided the accused person with certain rights including the right to a defence and the right to call witnesses and experts as required by the case.

277. Replying to questions raised under article 12 of the Covenant, the representative stated that there was no legal limitation to the freedom of Ukrainians to choose their domicile but merely a factual one since in order to live in a certain place it was necessary to have a job and a dwelling there. This was so in the case of the Crimean Tartars who mostly now lived in Kazakhstan, where they had all that they required to meet their needs. They could, as every other citizen, visit the region of their birth whenever they so wished. Replying to another question he stated that the law on citizenship of the USSR, which was adopted in 1978 and entered into force in July 1979, determined questions relating to the procedure of claims and requests for citizenship. In accordance with this law the Supreme Soviet could deprive a citizen of his citizenship if he became a threat to the security of the State.

278. Regarding questions raised under article 14 of the Covenant, the representative stated that the courts were entirely independent and subject to no pressure or interference. In accordance with the Constitution judges were elected and were therefore subject to the control of the electors. He explained that the comrades' courts were not legal organs of the State but communal bodies. They enjoyed a special status which had been recognized by the Supreme Court and their purpose was to prevent violations of the law and halt any anti-social activities. In 1977, the Presidium of the Supreme Soviet adopted a special decree which stated that, rather than increasing the number of criminal proceedings, minor offences could be dealt with in the comrades' courts which were entitled to impose fines ranging from 10 to 30 roubles and also compel offenders to apologize publicly for their acts. He explained that in accordance with the Constitution proceedings in all courts were open to the public and all the rules of the civil and criminal procedural laws were scrupulously observed. Hearings in camera were only allowed in cases where minors were involved and in sexual and other very special cases. He assured the Committee that the legislation of the Republic in this matter fully covered the requirements of article 14 of the Covenant. The judge decided who could participate in the proceedings. The Penal Code of the Republic dealt with the rights of the accused in the proceedings including the right to be present at the Court of the first and second instance; the right to submit evidence; to learn the result of the preliminary examination and to lodge a complaint against abusive procedure; to receive the documents concerning his accusation; to request for additional witnesses; and to participate in court proceedings.

279. In connection with a question relating to article 17 of the Covenant, in particular as to the possibility of seizure of correspondence, he stated that privacy of correspondence and communications was protected by law. The home was inviolable under the Constitution and no one

without lawful grounds could enter a home against the will of those residing in it.

280. Replying to questions relating to article 18 of the Covenant, he stated that no pressure was put on anyone to be either a believer or an atheist and that believers and non-believers were on an equal footing before the law in the Ukrainian SSR. All religious societies in the Ukrainian SSR were registered with the Council for Religious Affairs and they were entirely free to run their own affairs. The Ukrainian laws contained no ban on the conduct of religious propaganda - the holding of religious services, was indeed, he stated, nothing other than religious propaganda. Propaganda also took place through religious literature and publications, the receipt of which was perfectly legal. It was true that persons who were active members of any religious group could not become members of the Communist Party, since, under the Party's statutes, its members were required to adhere to the philosophy of dialectical materialism. Under Soviet legislation, the religious education of children took place privately, in the family, among relatives; but there was no ban on the participation of children in religious services. Taking into account that article 18 of the Covenant allowed for the possibility of certain limitations on the right to freedom of belief, he saw no conflict between that article and the legislation and practice of the Ukrainian SSR.

281. Replying to questions related to article 19 of the Covenant, the representative stated that the laws of the Republic in this respect were designed to protect the interests of the citizens and of the society as a whole, which was fully in accord with the Covenant. Accordingly, a citizen would be only punished for his views if those views were converted into actions which constituted crimes against the socialist order. The relevant decisions were taken by the courts and concerned such matters as the slandering of the State or individual citizens, the dissemination of pornography, the conduct of war propaganda and other matters, many of which had been referred to in the declaration on the role of the mass media recently adopted by UNESCO. He indicated that any group of citizens could monitor the implementation of the Covenant, if they acted within the framework of the law. As to the question on whether there was not an incompatibility between the ban on anti-Soviet agitation and propaganda and the prohibition of discrimination on the basis of the political opinions of individuals, he stated that an individual would be punished only if he overstepped the boundaries of the law and undertook activities which threatened to disrupt the security of the State. He informed the Committee that it was the court which decided whether freedom of speech was being used for anti-social purposes, and it was for it to impose punishment accordingly.

282. Replying to questions relating to article 22 of the Covenant, he stated that in accordance with the Constitution no one had a monopoly of political activity. Consequently those elected to the Soviets of Peoples Deputies and even to the Supreme Soviet of the Republic included a percentage who were not members of the Communist Party. He also pointed out that the fact that trade unions were not required to register with State bodies was designed to ensure a basis for the free and voluntary creation and functioning of trade union organizations. With regard to the right to strike he explained that in the conditions of the Ukrainian society economic strike had been abandoned as a method of defending the interests of the workers. As regards mass action, he referred to article 48 of the Constitution which guaranteed workers freedom of assembly and the freedom to conduct street processions and demonstrations.

283. As regards article 23 and 24 of the Covenant, he stated that in the event of divorce the interests of the children were fully protected. Every provision was made for the care of the children of working mothers. As to the question whether one of the functions of the family in his country was the construction of communism, he stressed that that did not constitute a violation of the Covenant because the construction of communism was the highest aim of development in Ukrainian society. Replying to another question he stated that children whose parents were both Ukrainian SSR citizens would be Soviet citizens and that if one of the parents was a foreigner they would still be Soviet citizens.

284. In reply to questions under article 25 of the Covenant, the representative stated that the right to submit candidacy for elections was not limited to members of the Communist Party. Members of the youth organizations, trade unions and persons in the military service also enjoyed this right. At present 30.9 per cent of the Deputies were non-Communist Party members. With regard to the process of the election of deputies, new laws had been adopted concerning the election to the Supreme Soviet and to the local councils of Peoples' Deputies. According to these new laws deputies could be dismissed and asked to retire if the people who had elected them were not satisfied with the performance of their functions. Recently more than 60 deputies had been dismissed for a number of reasons.

285. Replying to questions relating to article 27 of the Constitution he stated that the equality of rights of all Soviet citizens of whatever nationality was a principle enshrined in the Constitutions of both the USSR and the Ukrainian SSR. In accordance with articles 34 and 43 of the Ukrainian Constitution all citizens had the right to education in their own language. Jewish communities in his country had the right to open their own schools. As a rule court proceedings were conducted in the Ukrainian language but they could be conducted in the language of the majority of the population of the locality in question. According to the Constitution citizens who did not know the language of the proceedings could address the court in their own language and the services of an interpreter would be provided. Any granting of privileges to citizens because of racial or national differences and any incitement to hostility or hatred between nationalities were punishable by law. The term "nationality" meant the fact of belonging to a distinct "national group" or "nation", the latter terms being used for either small or larger groups of people with the same language, culture and historical background. The study of Ukrainian was compulsory in all schools. It was entirely up to the parents to decide whether they wished their children to attend a school giving instruction in their own language. There were radio broadcasts and newspapers in all the languages used in his country.

CCPR A/40/40 (1985)

628. In accordance with the guidelines adopted at its thirteenth session regarding the form and contents of reports from States parties (CCPR/C/20) and having further considered the method to be followed in examining second periodic reports, the Committee prior to its twenty-fifth session entrusted a working group with the review of the information so far submitted by the Government of the Ukrainian Soviet Socialist Republic in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representatives of the Ukrainian SSR, which was transmitted to the representatives of the reporting State prior to their appearance before the Committee, and appropriate explanations on the procedure to be followed were given to them. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of the Ukrainian SSR would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

629. The Committee considered the second periodic report of the Ukrainian Soviet Socialist Republic (CCPR/C/32/Add.4) at its 609th to 613th meetings held from 15 to 17 July 1985 (CCPR/C/SR.609/613).

630. The report was introduced by the representative of the State party who drew the Committee's attention to certain legislative steps which had been taken in the Ukrainian SSR since the submission of its second periodic report. In particular, the Supreme Soviet of the Ukrainian SSR had adopted a Code of Administrative Offences codifying all Acts in force in the Republic concerning responsibility for actions constituting administrative misdemeanours. On 20 May 1985, the Presidium of the Supreme Soviet of the Ukrainian SSR had adopted a Decree which introduced amendments and additions to articles of the Civil Code on compensation for harm caused to a citizen by unlawful administrative acts of a State or public organization or of officials in the performance of their duties. On 1 March 1985, the Presidium of the Supreme Soviet of the Ukrainian SSR approved another Decree simplifying the procedure for ensuring receipt of maintenance payments for minor children and providing fuller guarantees covering the property rights of mothers and children. The representative noted that the foregoing measures, as well as others, demonstrated the central importance the Ukrainian SSR attached to the improvement of social relations, the strengthening of the rule of law and the protection of the rights and interests of citizens. Great importance was also attributed to the development and extension of socialist democracy and to the growing involvement of citizens in running the affairs of the State and of society. In that connection, he drew attention to the election on 24 February 1985 of some 527,000 deputies to the Republic's Supreme Soviet and local Soviets of People's Deputies.

631. Members of the Committee expressed appreciation for the detailed second periodic report of the Ukrainian SSR, which had been prepared in full compliance with the Committee's guidelines as well as for the lucid introductory statement made by the State party's representative.

Constitutional and legal framework within which the Covenant is implemented

632. With reference to that issue, members of the Committee wished to receive information on the division of responsibility between the USSR and the Ukrainian SSR concerning the implementation of the Covenant, the role of the Communist Party in the implementation of the Covenant, promotional activities concerning the Covenant and factors and difficulties, if any, affecting the implementation of the Covenant. They also wished to know whether the Ukrainian SSR maintained diplomatic representatives in foreign countries, what part non-governmental organizations and trade unions played in the Ukrainian SSR in the promotion and development of human rights, what measures had been taken against certain groups, such as the Helsinki monitoring group concerning the defence of human rights, whether a person alleging that his rights recognized under the Covenant had been violated could seek a remedy directly before a court and to what extent the Covenant was available and had been disseminated to the people of the Ukrainian SSR in their own languages. More specific information on the general division of responsibility between the USSR and the Ukrainian SSR in an individual case was also requested.

633. In his reply, the representative of the Ukrainian SSR stated that the provisions of the Covenant were reflected both in all-Union and in Republican legislation and that legislative competence was divided between the USSR and the Union Republics into three groups. Matters within the exclusive competence of the USSR included, for example, legislation in the spheres of civil aviation, merchant shipping, customs etc. Road transport, housing and communal services, local industry etc., fell within the exclusive competence of the Union Republics. The largest group comprised the laws falling within the realm of joint Union-Republican competence, in which Union organs established the fundamentals of legislation and the Republics issued Republican codes. The provisions of the Covenant were reflected in all those legislative instruments.

634. With regard to the role of the Communist Party in the implementation of the Covenant, he noted that the Communist Party was the ruling political party in the Soviet Union occupying a special place in the country's political system and that its policies were carried out through representative organs of the State constituted on an elective basis by both Party and non-Party members. All Party organizations functioned strictly within the framework of the Constitution and, like all public organizations in the Soviet Union, the Party had the right to put forward legislative proposals. It played a particularly important role in the adoption and execution of strategic policy decisions.

635. The representative explained with regard to promotional activities concerning the Covenant that there was a global process of renewal of existing legislation, in which all provisions of the Covenant were reflected; a wide range of activities was designed to educate officials on matters of law and to control and evaluate the work of officials. Officials found to have violated the law not only risked being relieved of their duties but also, in the case of serious misdemeanours, incurred responsibility under the Criminal Code or the Code of Administrative Offences.

636. On the question of the factors and difficulties affecting the implementation of the Covenant, he noted that difficulties in formulating laws were extremely rare and that difficulties affecting the Covenant's implementation tended to be of a subjective nature. They were mainly dealt with through insistence on better knowledge of the law among officials and by punishing wilful violations

and other deviations from socialist standards by public officials.

637. Replying to additional questions, the representative said that although the Ukrainian SSR was entitled to exchange diplomatic representation at all levels the need to do so had not arisen. The Republic had concluded several international treaties with other countries, relating particularly to movements of population and the position of aliens. With regard to the Helsinki group, he stated that since its activities sometimes took the form of illegal actions, in certain cases measures had been taken to ensure strict compliance with the law. The right to compensation for errors made by persons acting in an official capacity could be pursued in the courts, but there were alternative channels for doing so, for example through the administration, trade unions and the procurator's office. The full text of the Covenant was published in Ukrainian and was available in the many public libraries in the country. Public officials had access to the Covenant and were required to be acquainted with its provisions. The Constitution of the Ukrainian SSR was based on that of the USSR because their general political and economic systems were uniform in character but there were differences in such areas as the administrative-territorial structure, budgeting, etc.

Non-discrimination and equality of sexes

638. With regard to that issue, members of the Committee wished to receive information particularly concerning non-discrimination for political and other opinion and the position of members of the Party as compared to that of non-members, as well as on women's equality with men in practice. In addition, it was asked how many women held policy-making posts in the Communist Party and whether article 35 of the Ukrainian Constitution allowed for the adoption of restrictions on foreigners contrary to article 2 of the Covenant and, if so, what recourse was available to them.

639. Replying to those questions, the representative of the State party pointed out that the provisions of the Covenant were fully covered in his country's Constitution and that citizens of the Ukrainian SSR were equal before the law without any distinction. Members of the Party could therefore have no special privileges that were not available to other citizens even though they bore added responsibility. With regard to women's equality with men in practice, the 1978 Constitution set forth a much more complete list of the means of ensuring the exercise of those rights than earlier instruments. He noted that 36 per cent of the members of the Supreme Soviet and 49.6 per cent of the members of local Soviets were women and that the Chairman of the Presidium of the Supreme Soviet of the Republic, a member of the Politburo of the Central Committee of the Party, the Deputy Chairman of the Council of Ministers and several Ministers were also women. More than half of the highest posts in the fields of culture, science, health and education were held by women. There were also many women members of the Central Committee of the Party. In regard to political or other opinion and the position of members of the Party as compared to that of non-members, he said that there were no limitations on the freedom of opinion of either and that if a citizen refrained from expressing his opinion through illegal acts, no action was taken against him. A person could be held responsible for slandering the Soviet way of life and system, but that was a matter of the internal competence of the State and it was completely in conformity with the Covenant for a country to define the scope of forbidden acts. Foreigners enjoyed all kinds of rights, including the right to

work, leisure, health care, social security, property, education, culture, freedom of conscience, freedom to marry and found a family and inviolability of the person. Limitations related only to a few areas, such as service in the army or work in elective bodies.

Right to life

640. With reference to that issue, members of the Committee wished to receive information on the application of the death penalty, for what offences and how often had it been applied, on other aspects of the right to life and any observations made by the Ukrainian SSR on the Committee's General Comments relating to article 6. They also asked whether the Supreme Court, acting as a court of first instance, with no appeal possible, could try cases involving capital offences.

641. The representative stated that the death penalty had always been considered to be an exceptional measure in his country. Persons who had not attained the age of 18 at the time of commission of the crime and women who were pregnant when the judgement was rendered or was to be executed could not be sentenced to death. As to which specific crimes were punishable by death, he said that the death penalty was envisaged for crimes against the State, banditry, counterfeiting, speculation involving large amounts of currency, murder with especially serious aggravating circumstances, rape in the case of a dangerous recidivist, corruption and bribery with aggravating circumstances and attempts on the life of a policeman. The hijacking of an aircraft in flight or on land carried a penalty of 3 to 10 years' imprisonment; if the hijacking entailed violence or caused an accident to the aircraft, the penalty was increased to 15 years. In practice, however, the death penalty was applied almost exclusively for murder with aggravating circumstances.

642. With regard to other aspects of the right to life, which included the development of health care, consolidation of peace, prevention of nuclear war and reduction of infant mortality, the representative fully shared the views expressed in the Committee's General Comments 6 (16) and 14 (23).

643. Regarding cases tried by the Supreme Soviet in the first instance, the representative stated that the death penalty was applied on the basis of all Union laws in conjunction with the laws of the Ukrainian SSR. A person sentenced by the Supreme Court could apply to the Supreme Soviet of the Ukrainian SSR and then to the Supreme Soviet of the USSR for a pardon, which was often granted by the supreme authorities. Thus, although there were no further judicial appeals, the possibility for a condemned person to save his life did exist.

Liberty and security of the person

644. With reference to that issue, members of the Committee wished to receive information concerning the law and practice relating to pre-trial detention and detention in institutions other than prisons, the remedies available to persons (and their relatives) alleging unlawful detention (art. 9, para. 4, and art. 2, para. 3, of the Covenant), the relationship between the courts and the procurators in that area, observance of article 9, paragraphs 2 and 3 of the Covenant, contacts between arrested persons and lawyers and the practice of compensation for unlawful arrest (Decree of 18 May 1981).

645. Some members also asked whether there was any procedure in the Ukrainian SSR for judicial control of arrest similar to that provided by habeas corpus and whether there was any provision under which an arrested person could be released on bail pending either trial or appeal; how long a detainee might be lawfully held incommunicado before being charged; whether a detainee might be visited by his relatives during that period subject to the agreement of the investigating officer; and whether it was customary to detain persons in custody on suspicion. Members of the Committee also requested more specific information on the role of the procurator and the judicial powers of his office. In addition, they asked for more information concerning provisions for punishment of acts of slander and disobedience in prison. It was also asked whether a detainee could communicate with defence counsel before the investigation was completed.

646. In responding to the questions, the representative of the State party explained that under the Criminal Code and the new Code of Administrative Offences there were a number of rules regulating in detail the grounds for detention, its permissible duration and the procedure for complaints. The investigating officer was responsible for informing the relatives and the work place or educational institute of the detainee's whereabouts. In the case of minors, the parents had to be notified. The time-limit for administrative detention was three hours; persons charged with crossing a border illegally might be detained for identification up to 72 hours. The procurator had to be notified in writing within 24 hours and further detention could be authorized only by him. The Code of Criminal Procedure listed the following grounds for detention: when a person was caught in the act of, or immediately after, committing a crime; when eyewitnesses, including victims directly identified the person as the offender; and when clear traces of a crime were discovered on the suspected person or his clothing or in his keeping or in his dwelling. In every case of detention, the investigatory body had to draw up a report stating the grounds for the detention. The detention of a suspect had to be reported to the procurator in writing within 24 hours. Within 48 hours of receiving such notification, the procurator had to authorize the continued remand in custody of the person concerned or his release. The detainee retained his right to complain to a higher body. Detention in institutions other than prisons was governed by detailed legislation.

647. With regard to the role of the procurator, the representative noted that, for the purpose of article 9, paragraph 3, of the Covenant, the procurator discharged the duties of "a judge or other officer authorized by law to exercise judicial power". Only when the investigation was carried out by the court itself was a decision on the matter taken by the court. While there was provision in the Code of Administrative Offences for an accused person to have contact with a lawyer, the question was dealt with in greater detail in the Code of Criminal Procedure. Unless otherwise provided, the detainee or a close relative could ask for the assistance of a lawyer.

648. With regard to compensation for unlawful arrest or detention covered in article 9, paragraph 5, of the Covenant, there was detailed legislation in the Ukrainian SSR providing for full compensation for both loss of earnings and injury caused by loss of housing and other rights.

649. Replying to other questions, the representative stated that an individual might be released pending trial if suitable guarantees were forthcoming. One such guarantee was the detainee's written assurance that he would not leave his place of residence; such a guarantee might be given

by an official at his work or his educational institute or by a social or other organization of which the detainee was a member. Release on bail was not practised because it would treat people unequally. The normal period of investigation was up to two months. When the case was very complex, the period could be extended to a total of six months on the authorization of the procurator of the Ukrainian SSR, and to a maximum of nine months, with the express authorization of the procurator of the Soviet Union. During pre-trial detention the procurator was responsible for granting or refusing visits to the defendant; after sentencing such visits were strictly regulated by law. In general, the presence of a defence counsel was allowed from the moment the preliminary investigation had been completed with the exception of cases involving minors and mentally handicapped persons where the presence of a defence counsel was authorized at an earlier stage. The role of the procurator in the Soviet system was sui generis. His major responsibility was to ensure that the law was correctly implemented and he was responsible for ensuring that the rights of citizens were respected, in particular that pre-trial detention was applied only in extreme cases. The procurator's office had no administrative powers and its function was to monitor the application and the strict observance of laws by State bodies and by all institutions.

650. Turning to the question of punishment for acts of slander and defamation against the State or system, he said that under the Criminal Code the systematic and intentional dissemination of deliberate falsehoods defamatory to the Soviet State or social system was a punishable offence. That did not mean that no criticism was allowed; on the contrary, criticisms of State institutions and managers of State enterprises appeared in the mass media and there was no question of regarding such criticism as a punishable offence. Under article 42 of the Constitution, every citizen had the right to submit proposals to State bodies and public organizations for improving their activity and to criticize shortcomings in their work; officials were obliged to examine all proposals and to take appropriate action. Moreover, persecution for criticism was prohibited. The punishment of wilful disobedience of authorities in correctional institutions was considered as punishment of an additional crime and not as an increase in the original sentence.

Treatment of persons, including prisoners and other detainees

651. With reference to that issue, members of the Committee wished to receive information on measures and mechanisms to prevent or to punish treatment contrary to articles 7 and 10 of the Covenant. They asked whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, whether relevant regulations and directives were known and accessible to detainees, whether a sentence of corrective labour involved a change of domicile for the offender, what measures and mechanisms had been put into place to ensure compliance with article 7 of the Covenant; whether every single complaint made was fully investigated and whether those found responsible were brought to trial and punished. It was also asked whether judges in the Ukrainian SSR had the right and duty to visit prisons, whether any legislative acts specified the frequency of visits by supervisory commissions, whether a prisoner could submit his complaint to members of the supervisory commission or to the procurator without members of the prison staff being present, what punishments there were for violating the legal regime of the corrective labour institutions, what action had been taken to prevent the detention of a healthy person in a psychiatric institution and what remedies were open to a person who had suffered from such detention, and how

many times a person could be placed in solitary confinement as a disciplinary measures and what the conditions of such confinement were. One member asked about the application of suspended sentences.

652. In responding, the representative of the State party said that there were three mechanisms to prevent treatment contrary to articles 7 and 10 of the Covenant, the systematic monitoring of the activities of corrective labour institutions by the Ministry of the Interior, the supervision of penal institutions by procurators, and measures of social control of corrective labour institutions, particularly through observation commissions established in regions where corrective labour institutions were located. Members of those commissions included representatives of trade unions, of Komsomols, and members of other social organizations; officials from the procurator's office and the Ministry of Justice were excluded. The commissions had right of access to convicted persons to ensure that they were treated in accordance with the law to help them on the road to rehabilitation. Members of the commissions had the right to confer with the director and other officials of the establishment concerned and to propose improvements in running the establishment and in the treatment of prisoners. It was the function of the procurator's office to ascertain the legality of detentions in corrective labour institutions and to look into complaints from detainees.

653. The representative further stated that the United Nations Standard Minimum Rules for the Treatment of Prisoners were fully complied with in the Ukrainian SSR, as its rules and regulations clearly showed, and that the relevant regulations and directives were prominently displayed in corrective labour establishments so that no detained person could fail to be aware of them.

654. He also said that, in accordance with the Criminal Code, a sentence was given not just to punish the crime but to rehabilitate the offender so that in future he would observe the rules of law in socialist society. In all cases, the accused had the right to any number of meetings of unlimited duration with a lawyer, alone. Meetings with the lawyer were also possible following conviction and during appeal procedures as well as when a person was remanded for sentence. The procurator was also duty-bound to visit the place of detention and to meet the detainee.

655. With reference to the question of whether healthy persons could be held in psychiatric institutions, he stated that, if during the preliminary investigation a person's mental state gave rise to doubt, a compulsory psychiatric examination was ordered and, if the person was recognized as being socially dangerous, he might be committed to a psychiatric institution. If he or his lawyer or relatives did not agree with the court's decision, they could apply to courts all the way up to the Supreme Court to have the examination repeated.

656. Replying to the question on suspended sentences, he pointed out that the court was entitled to impose a number of obligations on a person who had been granted such a suspension, such as the obligation to repair any harm done, to accept employment, to remain at the same domicile, to submit to treatment for alcohol or drug abuse, and to ask the pardon of the victim. If that person failed to carry out such obligations the court was entitled to revoke the suspension. Corrective labour was applied either in the place of employment or at some place decided by the acting body.

657. The representative also drew attention to the Corrective Labour Code which defined the types of disciplinary measures that were fair and in keeping with the general principles of the law, including deprivation of privileges or temporary isolation from other prisoners. The law provided that in the application of disciplinary measures account was to be taken of all the circumstances so that the punishment would be commensurate with the nature and seriousness of the offence. Solitary confinement did not exist as a form of punishment under the legislation of his country. However, a dangerous recidivist could be kept in isolation for up to six months, with the possibility of that period being extended.

Right to a fair trial and equality before the law

658. With reference to that issue, members of the Committee wished to receive information on observations, if any, on the Committee's General Comment relating to article 14 of the Covenant. They requested further explanation of the statement that removal of judges by majority vote safeguarded their independence (Act of 5 June 1981) and asked about the extent of the obligation to guarantee legal defence (Decree of 16 April 1984), for example with reference to the stage of proceedings and to economic criteria. They also wished to know how a defendant was able to exercise his right of choice of a lawyer in practice, how the College of Advocates was organized and how its members were remunerated, what the role of representatives of public organizations was and whether provision of free legal aid depended on the outcome of the case. Referring to the provision where by the Supreme Court could act as a court of first instance, it was asked in what cases it could do so and what the nature of its position as a court of first instance was. Questions were also asked concerning the independence of the court and the presumption of innocence in a case where a very biased press article was published shortly before the court heard the appeal.

659. In his reply, the representative of the State party said that his country had examined and agreed with the Committee's General Comment on article 14 and had no special observations pertaining thereto. Concerning the removal of judges, he explained that the Act of 5 June 1981 placed responsibility for the decision to remove a judge from his post with those who had elected him. The only grounds for his removal were betrayal of the trust of the electorate or performance of acts unworthy of his mandate and no higher body or State authority was empowered to make that decision. The Presidium of the Supreme Soviet of the Ukrainian SSR could decide only on matters involving the retirement of a judge at his own request or his election to a higher court.

660. The Decree of 16 April 1984 stipulated that not just the procurator, but all those concerned with the case, must respect the accused person's right to defence. A lawyer was appointed by the College of Advocates only in cases in which the accused person did not want counsel but was under a legal obligation to have one. The Criminal Code established that defence counsel was mandatory if the defendant had a mental or physical deficiency that prevented him from exercising his right to defence; if he was a minor; if he did not speak the language in which the case was being conducted; if there was more than one person accused and one of them already had counsel; if the crime committed was punishable by the death penalty; if a procurator was involved; if confinement in a psychiatric institution was possible; and if the accused person, who was a minor at the time the crime was committed; had reached the age of majority at the time of the trial. The right to defence

counsel was independent of economic criteria. If a defendant was unable to pay for counsel, he could be fully or partially released from the obligation to pay defence costs.

661. Replying to other questions, the representative explained that a defence lawyer was chosen by the accused himself, by his relatives or by persons entrusted with that task and that the choice was entirely free. A defence counsel was appointed on the initiative of the procurator only when, for various reasons, the accused had not chosen one himself. The College of Advocates was a self-managing organization, responsible for admissions to and exclusions from the College, the organization of its work and the payment of advocates. It was controlled by the Ministry of Justice only with respect to the strict observance of the law. Personal arrangements between a client and a member of the College of Advocates were prohibited. A person was not precluded from asking a relative or representative of an official organization or workers' collective to defend him. A defence counsel could not be replaced without the consent of the accused. Upon decision of the court, representatives of public organizations might be allowed to participate in court proceedings as public prosecutors or as public defence counsel. Such persons were chosen by vote at meetings of the public organization or work collective concerned and their functions were confirmed in the records of that meeting.

662. On the subject of legal aid, the representative stated that ordinary clients paid the lawyer's fees to the College of Advocates, which retained 30 per cent and gave 70 per cent to the advocate concerned. Advocates working under the free legal defence scheme were paid out of the funds accumulated from the 30 per cent retained by the College.

663. The representative also explained that the Supreme Court's role as a court of first instance was exercised only in a very small number of complicated cases with wide repercussions and where especially highly qualified judges were required. In cases where the Supreme Court acted as a court of first instance there was no higher court to which an appeal could be made against the verdict. However, upon the protest of the President of the Court himself or of the procurator, the decision could be reviewed by the Plenum of the Supreme Court. The case might also be considered by the Supreme Court of the USSR if a Union law had been violated. There could be concern over situations in which the press published articles before cases were heard, but when informed of such cases the authorities took the necessary steps. The presumption of innocence was set forth in the law and was applied, although unfortunately cases of violation of that principle due to ignorance of the law did sometimes occur.

Freedom of movement

664. With regard to that issue, members of the Committee wished to receive information on procedures and restrictions concerning travel of Ukrainian citizens. Concerning internal travel, they asked whether a Ukrainian citizen could move to another area for a short-term visit, not requiring housing, without the need for registration or permission. In addition, some members requested more information on the situation of the Crimean Tartars and their right to return to the Crimea and to settle there in order to reconstitute their community. Some members also asked about restrictions on the freedom of citizens to leave the country, inquiring specifically into the foundation of the legal

control of emigration and into the reasons for the significant drop in emigration figures in recent years.

665. The representative, in his reply, stated that freedom of movement throughout the territory of the Republic was granted to all citizens with no discrimination on any basis whatsoever. Every citizen could select his own residence and enjoyed freedom of movement throughout the Ukrainian SSR and the other Republics without having to ask permission. The State had honoured the commitment, laid down in the Constitution and set forth in detail in the Housing Code, to provide housing for all citizens. Freedom of movement also applied equally to the Crimean Tartars, many of whom had entered the Ukrainian SSR and lived throughout the territory, with their families, in keeping with current legislation and the passport regulations. Of the deputies of the local Soviets, 265 were of Tartar nationality, which showed that the Tartars not only enjoyed full citizens' rights but participated actively in the implementation of State policy. Any citizen of Tartar nationality could enter the Crimea or any other region of the Republic.

666. In regard to questions concerning emigration, he said that during the five-year period culminating in 1979, there had been an increasing wave of emigration by Jews. Many of those requests had been conditioned by propaganda by Zionist organizations and reflected only a hazy understanding of what emigration would entail. Many of those who had emigrated had subsequently sent letters requesting re-entry to the Ukrainian SSR. Others had written to their friends and relatives back home in such a way that they had decided not to apply for emigrate. He read out the annual figures on applications for exit permits in the previous five years, which had dropped from 9,215 in 1980 to 322 in the first six months of 1985. All refusals had been based strictly on the provisions of the Covenant and had primarily involved persons working in jobs connected with State security or persons who had responsibilities such as material obligations to support aged parents. Appeals against refusal of a request to emigrate were submitted first to the regional division of the Ministry of the Interior, then to the Ministry of the Interior itself, and finally to higher government instances. When the higher authorities reviewed the cases they usually found the rejections to have been well-founded.

Freedom of thought, conscience and religion

667. With regard to that issue, members of the Committee wished to receive information on freedom of religion in law and in practice and the reasons for applying criminal law to members of religious communities, as well as the frequency of that practice. Clarification and justification was also requested of the provisions of the Decree of 1 November 1976, which required the registration of religious communities with the National Council for Religious Affairs of the Council of Ministers of the USSR. They noted that the law prohibited collective religious practice in places other than the locally recognized prayer-houses. Members asked for justification of that law and the criteria for refusing registration of certain religious denominations. Clarification was sought on whether ministers could give religious teaching in a family and the right of parents to ensure the religious and moral education of their children in conformity with their own convictions. The particular situation of the Catholic Uniate Church was also mentioned. Some members wanted to know about the situation regarding the teaching of religion and the training of priests.

668. Replying to those questions, the representative of the State party said that freedom of conscience was enshrined in article 50 of the Constitution and that the Criminal Code made incitement of hostility or hatred on religious grounds a criminal offence. He stressed that all citizens were equal before the law regardless of their approach to religion, that it was not permitted to use religion against the State or individuals and that the Church and the State practised mutual non-interference in their respective internal affairs. A decree dated 1 November 1976 of the Presidium of the Supreme Soviet of the Ukrainian SSR had ratified the regulations governing religious associations and gatherings and authorized all that was necessary to carry out the functions of the Church, subject only to the interest of the State and the rights of other citizens. It stipulated that religious organizations should not engage in activities other than those required for ministering to the religious needs of believers. Religious organizations had to apply for registration, but that was true of any other voluntary organizations of citizens with the exception of the mass organizations. In the Ukrainian SSR, there were 6,200 religious organizations covering 20 denominations. The largest groups were the Russian Orthodox Church and the Baptists, followed by the Roman Catholic Church, the Reformed Church, the Seventh Day Adventists and a number of others.

669. In addition, the representative explained that in order to effect registration, not less than 20 persons must submit a written application to open a place of worship or establish a religious association. Activities by religious organizations which involved disturbances of public order, harmed citizens' health or in any way encroached on their person and rights and duties were prohibited. Religious associations could receive voluntary contributions but could not request compulsory contributions. The restrictions on religious organizations were based on the separation of Church and State and that of Church and school. Religious associations of children, young people or women were prohibited. Children, however, could be taught religion by their parents privately, could also profess their religion and could attend services. Seminaries had been set up to provide religious training; there was a religious seminary in Odessa and a number of others in the USSR. He also pointed out that recent legislation had established administrative liability for the violation of laws concerning religious associations. It defined the actions entailing such liability, such as the refusal of religious leaders to register their associations with State authorities or the violation of rules on holding religious meetings. The Criminal Code established responsibility for the infringement of the right of citizens on the pretext of conducting religious services.

Freedom of expression, assembly and association

670. With regard to that issue, members of the Committee wished to receive information on freedom of expression in law and practice, the relationship between the expression of views and punishable actions and the status of peace movements and peace propaganda. They also asked for additional information on trade unions in the Ukrainian SSR, how the Republic granted trade-union freedom, which was one of the rights contained in the Covenant, and how the concept and the actual exercise of freedom of trade unions were assured in a social and economic system based on patterns of production and labour organization which differed from those that had given rise to the classic concept of trade-union freedom.

671. In responding, the representative informed the Committee that article 48 of the Constitution

set forth freedoms guaranteed to citizens, such as freedom of speech, of the press and of assembly, meetings, street processions and demonstrations. The State wished to involve the largest possible number of people in the discussion of current problems and believed that the accumulation of individual views could help to solve such problems in the framework of the country's own democratic machinery. No citizen was held accountable before the law for his views or opinions on any question, provided that they were based on facts known to all citizens and that they neither undermined State or public security, nor infringed the rights of citizens or the interests of society. The Criminal Code, however, prohibited anti-Soviet propaganda which might subvert the social system and also propaganda inciting persons to racial hatred or national hostility. Moreover, article 125 of the Criminal Code established liability for the offence of slander, which was considered to be the oral dissemination of deliberately misleading information.

672. With regard to peace movements and peace propaganda in the Republic, the representative said that the Committee for the Defence of Peace provided a forum in which the widest sections of the population, as well as public organizations such as the Soviet Committee of War Veterans, the Committee of Soviet Women and religious associations, were able to express their desire for peace and the prevention of nuclear war.

673. Replying to other questions, he explained that trade unions in the Ukrainian SSR were self-managing organizations formed by workers to pursue their activities in accordance with their rules and, in that sense, they were no different from trade unions in market-economy countries. However, there were differences since they were integrated into the Soviet political system which consisted of the State and its organs, the Party, the Komsomols, and other organizations and work collectives as well as trade unions which, within the framework defined by the law and in accordance with their statutes, decided on political, economic, social and cultural matters. They also contributed to formulating economic plans and the distribution of national income and their role extended into the area of social policy such as housing, provision of social security benefits, social insurance, pension funds and the welfare of workers, including their health and leisure. Trade unions also had a say in the running of economic enterprises: commissions composed of equal numbers of management and trade-union representatives existed to settle disputes between management and the labour force and trade-union representatives had the final say should the commission fail to settle any dispute. Trade unions had the right to demand the dismissal of a manager in certain circumstances as well as the right of legislative initiative in labour matters. Trade unions were organized on industry lines, with each industry and trade represented by its own union.

Right to participation in public affairs

674. Members of the Committee wished to receive information on the application in practice of the legal provisions for instructing and recalling deputies and on how the law of 17 June 1983 of the USSR with regard to work collectives was applied in practice.

675. In his reply, the representative of the State party said that deputies were required to meet their electors regularly to report on their work. A distinctive feature of socialist democracy was the dependence of deputies on the electors; deputies who had not justified the confidence of their

constituencies could be recalled at any time. Turning to the activity of work collectives, he said that they were not only concerned with economic development but played an active role in political decision-making at the State level. They took part in discussing and deciding on State and public affairs, in planning production and social development, in training and placing personnel, in improving working conditions, as well as in discussing and deciding on matters pertaining to the general management of enterprises and institutions. The Act on Work Collectives and the Enhancement of their Role in the Management of Enterprises, Institutions and Organizations of 17 June 1983 had been shown by a follow-up investigation to have been instrumental in promoting initiative and the involvement of workers in the decision-making process and to have great potential for developing creative activities in enterprises.

Protection of minorities

676. With regard to that issue, members of the Committee wished to receive information on the protection of minorities against hostile propaganda and persecution, on cultural aspects of the life of various ethnic groups in the Ukrainian SSR, and asked why Ukrainian was not mentioned as an official language in the Constitution of the Ukrainian SSR.

677. Replying to the questions raised by the members of the Committee, the representative pointed out that article 32 of the Constitution proclaimed that citizens of the Ukrainian SSR were equal before the law. The Constitution also stipulated that judicial proceedings should be conducted in the Ukrainian language or in the language spoken by the majority of the people in the locality. He also informed the Committee that there were 20,500 schools in the Republic with 7.5 million pupils; Ukrainian was the medium of instruction in about 15,000 of those schools, and Russian in about 4,400. In some parts of the Republic there were Hungarian, Moldavian and Polish language schools. Newspapers were published in various languages; there were 1,275 newspapers in Ukrainian, 456 in Russian, 6 in Moldavian, 5 in Hungarian and 1 in English.

678. The representative stated that Russian was taught as a second language in all Ukrainian schools and in the schools in the Republic where Russian was the language of instruction, it was compulsory to study Ukrainian. As for Ukrainian not being mentioned as an official language in the Constitution, the question had not arisen for historical reasons and all the previous Ukrainian Constitutions had been silent on that point. The Ukrainian SSR differed in that respect from some of the other Union Republics.

General observations

679. Members of the Committee expressed their appreciation for the report of the Ukrainian SSR. Its excellent presentation by the representative of the State party and his comprehensive knowledge and willingness to answer every question immediately had been particularly impressive. Members were pleased to have been furnished with details about new legislation to ensure the enjoyment of human rights in the Ukrainian SSR and to note the responsible attitude of the Ukrainian SSR to a continuing fruitful dialogue with the Committee.

680. Some members expressed doubts about the implementation of certain articles of the Covenant or the effectiveness of certain legislation in practice. It was noted that there were differences of interpretation of the Covenant among members of the Committee and that it was natural that there should also be differences among Governments. The views expressed by the representative of the Ukrainian SSR had increased the Committee's understanding of the problems encountered in implementing the Covenant.

681. Concluding the consideration of the second periodic report of the Ukrainian SSR, the Chairman welcomed the desire of the State party for a dialogue with the Committee and warmly thanked the delegation for promptly answering all the questions that had been posed and for its co-operation with the Committee.

CCPR A/46/40 (1991)

186. The Committee considered the third periodic report of the Ukrainian Soviet Socialist Republic (CCPR/C/58/Add.8) at its 1028th, 1029th and 1031st meetings, on 5 and 6 November 1990 (see CCPR/C/SR.1028, SR.1029 and SR.1031).

187. The report was introduced by the representative of the State party, who noted that many changes bearing on human rights had occurred since the submission of the report. As a result of the first multi-candidate elections held on March 1990, representatives of many different political groups now sat in the Ukrainian Supreme Soviet. A new law had abolished the monopoly previously exercised by the Ukrainian Communist Party over all areas of public life, and it was no longer necessary to be a member of a particular political party in order to work for bodies concerned with internal affairs and national security. The adoption of a Declaration of State Sovereignty of the Ukrainian Soviet Socialist Republic had led to considerable debate about the future role of the Ukrainian SSR within the USSR, as well as to a number of difficult legal problems that had not yet been overcome.

188. In addition, the Supreme Soviet had appointed a commission to draw up a new Constitution and had under consideration a number of bills relating, *inter alia*, to economic independence, consumer rights, citizenship, public organizations, freedom of movement, and the right of citizens to complain directly to the courts against unlawful acts committed by officials. On 27 October 1990, a Constitutional Court had been established which could, *inter alia*, consider complaints from individuals about violations of their constitutional rights but, in that regard, the psychological barrier created by the old doctrine of state paternalism, which had encouraged people to believe that human rights came second to the interest of the State, would need to be overcome. Committees of People's Deputies had been established to ensure that new legislative proposals were consistent with human rights and to safeguard the rights of people who had suffered in the Chernobyl nuclear disaster. Efforts were also being made to publicize human rights issues, and training courses were being held for persons working in areas where human rights considerations were particularly relevant.

Constitutional and legal framework within which the Covenant is implemented

189. With regard to that issue, members of the Committee wished to receive detailed information on the legal effect of the Ukrainian Declaration of State Sovereignty of 16 July 1990, particularly in terms of its relationship to the existing Constitution of the Ukrainian SSR and the Constitution of the USSR. They also wished to know the extent to which the provisions of the Covenant had been enacted into domestic law; what measures were contemplated to ensure consistency between the Covenant and new constitutional or other legal instruments; and how the USSR Act of 30 June 1987, as supplemented by section 31-A of the Code of Civil Procedure of the Ukrainian SSR, had actually been implemented, what the status of the Covenant would be under the new Constitution and whether it would give the Covenant priority over national law.

190. In addition, members wished to know whether section X of the Ukrainian Declaration of State

Sovereignty implied any changes in the status of international law relative to domestic legislation; whether individuals could invoke the Covenant in accordance with the new Code of Civil Procedure; whether citizens complaining of arbitrary actions by officials could appeal directly to a court without first exhausting all administrative remedies; whether it was planned to set up special bodies to deal with human rights issues in the Republic; what was the status of non-governmental organizations; what was the relationship between the Commission on Human Rights and the Constitutional Court, on the one hand, and the Supreme Court on the other; what measures had been taken to disseminate information on the rights recognized in the Covenant; whether any special factors or difficulties had affected the implementation of the Covenant; whether the public had been informed about the submission of the Republic's third periodic report; and whether the Commission on Human Rights had been given an opportunity to make any contribution to the report. Clarification was also requested as to the precise meaning of the terms "socialist democracy", "socialist law and order" and "democratic centralism" used in the report, the role of the Communist Party within the Republic, and on how the right of the Ukrainian SSR to secede from the USSR could be exercised at the present stage.

191. In connection with the recognition by the Ukrainian SSR of the jurisdiction of the International Court of Justice with regard to six international human rights treaties, members wished to know whether that recognition would be broadened to encompass other international treaties, such as the Covenant; what the implications were for the State-to-State dispute settlement procedures already in existence under some of those instruments; whether that change in approach had any practical implications in terms of the Republic's accession to the Optional Protocol; and whether accession to the Optional Protocol was in any way linked to accession by the USSR.

192. In his reply, the representative of the State party noted that there were a number of discrepancies between the respective legislation and Constitutions of the Republics and those of the USSR, which were the subject of negotiations aimed at finding mutually acceptable solutions. The Supreme Soviet of the USSR had recently decided that the powers entrusted by the Republics to the USSR had to be more clearly defined. The Declaration on State Sovereignty, which represented the Republic's intention to conduct its own state, economic and political life on the basis of specific principles, was to be incorporated into the new Constitution. The law on the procedures for secession from the USSR had been adopted on 3 April 1990, and, on its entry into force, an order of the USSR Supreme Soviet had been promulgated providing for the holding of referendums in the Republics. If the question of resorting to article 69 of the Constitution ever actually arose, there would not only be a call for a referendum but also a great deal of publicity, since the issue affected the fate of all the people.

193. The new Constitution would contain a norm giving priority to the Republic's international treaty obligations, including those stemming from the Covenant. Treaties would not be directly incorporated into domestic legislation, but it would be possible to refer to them in the courts. The primacy of international law over national law was already recognized. The Civil Code, for example, provided that if an international treaty established rules that differed from those in Soviet civil legislation, the rules of the treaty would apply. The decision by the authorities of the Ukrainian SSR in April 1989 to remove reservations regarding the recognition of the jurisdiction of the

International Court of Justice represented a first step towards improving the implementation of its commitments regarding international monitoring.

194. Under section 31-A of the Code of Civil Procedure of the Ukrainian SSR, citizens could complain not only against actions of individual officials but also against those of collegiate bodies. The Supreme Soviet had recently taken direct responsibility for monitoring the protection of citizens' rights through the consideration of complaints relating to the activities of the various state organs. The Supreme Court of the Republic was responsible for hearing individual cases of violations of citizens' rights, while the Constitution Court was empowered to rule on the constitutionality of the laws themselves. Accession to the Optional Protocol would require the agreement of all government and legislative bodies which, it was hoped, would be forthcoming in the near future. The result of the Committee's consideration would be reported to the Human Rights Commission and to the public, thus encouraging further attention to human rights issues. Within the Republic's multi-party system, the Communist Party expressed its views in Parliament on a pluralistic basis. The concepts of socialist democracy and socialist centralism were characteristic of the class approach that had long been followed in the country. In the new Constitution, the concepts of legality and democracy would be applied without qualifying them with the term "socialist".

Self-determination

195. With reference to that issue, members of the Committee wished to know whether the validity of any enactments of the USSR Council of Ministers or of USSR Ministries had been actually suspended by the Supreme Soviet of the Ukrainian SSR; what the impact of the Declaration of State Sovereignty would be in that regard; and whether the USSR Constitution would continue to have precedence over the Ukrainian Constitution and over domestic law.

196. In his reply, the representative of the State party said that the adoption of the Declaration was one of the clearest indications of the Ukrainian nation's strong desire that its right to self-determination should be respected. It had been possible, even before the adoption of the Declaration, for the Supreme Soviet of the Ukrainian SSR to repeal legislation adopted by the USSR Council of Ministers that was not in conformity with Ukrainian legislation. However, where a Union agreement had been concluded in which the Republic had assigned part of its competence to Union bodies, the competence and jurisdiction of the Union bodies would have precedence.

Non-discrimination and equality of the sexes

197. With regard to that issue, members of the Committee wished to know the extent to which the principle of equality of rights and equality before the law contained in article 32 of the Constitution of the Ukrainian SSR was applicable to aliens. Observing that political opinion was not one of the grounds for discrimination referred to in article 32 of the Constitution, they also wondered whether, in the light of the current situation and the amendment of the provisions governing the role of the Communist Party, attention had been given to broadening the provisions relating to non-discrimination.

198. In his reply, the representative stated that the Supreme Soviet had recently voted in favour of reviewing the legislation in order to improve the status of women. While there was no discrimination based on sex, in practice there were still substantial inequalities which were extremely difficult to overcome. Aliens had the same rights under the Constitution as citizens of the Republic, with the sole exception of the right to political participation. Under the new Constitution, membership of any party would no longer be grounds for discrimination.

Right to life

199. In connection with that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and carried out since the consideration of the second periodic report of the Ukrainian SSR; whether any consideration had been given to the abolition of the death penalty; whether there had been any prosecutions, and if so with what results, under articles 108 (2) and 123 (2) of the Criminal Code; and what measures had been taken to protect the right to life against the risk of nuclear disaster and environmental pollution, particularly subsequent to the accident at Chernobyl. Although welcoming the fact that the number of crimes carrying the death penalty had fallen from 17 to 6, members wished to receive further information about the draft new Principles of Criminal Legislation. They also wished to know why the provision that the death penalty would not be applied either to women or to men over the age of 60 had not yet been applied and whether the right to appeal against a death sentence was provided for in legislation. Concern was also expressed over the fact that statistical data relating to the application of the death penalty was considered confidential.

200. In his reply, the representative of the State party pointed out that the number of death sentences imposed and carried out had gone down by one third. Four bills relating to the publication of sentencing statistics had been drafted since 1986 but none had yet become law and the problem would be fully dealt with only when a political decision had been taken in Parliament. Under the draft new Criminal Code, the death penalty would be retained only for aggravated homicide, crimes against the State, spying, terrorism and acts of violence against minors. Although the threat of the death penalty had not proved to be a deterrent to crime, it was likely that, in a referendum, 80 per cent of the population would be in favour of maintaining it. Article 123 (1) had been applied in 16 cases, mainly for banditry and serious crimes such as hostage-taking.

201. Death sentences were reviewed by the Court of Appeal at the request of the accused person and could, in exceptional circumstances, be dealt with by the Supreme Soviet. Moreover, it was possible in all cases to apply for a pardon. Under the new Principles of Criminal Legislation, not only pregnant women, but all women, would no longer be subject to execution, and the same would apply to men over the age of 60. These provisions had not yet been applied since they had not yet been approved by Parliament.

202. With regard to questions raised relating to the protection of the right to life against the risk of nuclear disaster and environmental pollution, the representative explained that after the accident at Chernobyl, a "high-risk" area within a radius of 300 kilometres had been designated and the inhabitants within that area had been moved into new housing that had been built for them.

Subsequently, the high-risk area had been extended and a decree concerning liability in cases of non-compliance with instructions relating to environmental protection had been adopted. Other texts relating to the protection of citizens who had suffered losses in the disaster were currently under consideration. A moratorium on the construction of new nuclear plants and power stations had also been imposed.

Liberty and security of the person and treatment of prisoners and other detainees

203. With reference to that issue, members of the Committee wished to know what were the conditions and the maximum duration of solitary confinement; what were the main differences in the regimes of prisons and corrective labour institutions or educational labour colonies; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with in all such places of detention; whether there was any mechanism to prevent abuse of the judicial powers of the procurator and what recourse was available to persons who had been victims of such abuses; what was the maximum legal period of detention without trial; and whether there was any provision for a regular review by a court of such detention.

204. Members also wished to know whether the courts of first instance were required to invalidate any sentence based on a forced confession; whether persons responsible for ill-treating prisoners were liable to criminal prosecution or disciplinary sanctions; whether measures had been taken to inform persons under arrest that they had the right to communicate with counsel; whether the legislation of the Ukrainian SSR contained a specific provision comparable to article 9, paragraph 3, of the Covenant; whether the provision according to which the procurator had to decide on the lawfulness of detention was compatible with article 9, paragraph 4, of the Covenant; whether damage caused to a citizen as a result of unlawful arrest or detention entailed automatic reparation by the State; whether it was still possible for a person to be compelled to undergo psychiatric treatment without any authority being informed; and whether the system of forced and compulsory labour in the Ukrainian SSR was compatible with article 8 of the Covenant.

205. In his reply, the representative of the State party pointed out that, under the Ukrainian Criminal Code, prisoners could be placed in solitary confinement for up to a year, depending on the type of establishment where they were serving their sentences. Decisions on such matters were strictly regulated by law and were taken by the prison administration in agreement with the procurator. In general, offenders were subjected to different prison regimes depending on their personality and the gravity of the offence they had committed. The Standard Minimum Rules for the Treatment of Prisoners were generally complied with, but they were not observed everywhere because many persons working in penal institutions did not know about them. The fact that procurators had the power to order pre-trial detention did not necessarily involve violations of the Covenant. The Supreme Soviet had decided in 1989 to set the maximum period of pre-trial detention ordered by a procurator at 18 months. Abuses committed by an organ of inquiry were punishable and the responsibility of the State or of the person involved was engaged in that case.

206. Responding to other questions, the representative said that the legislation of the Ukrainian SSR did not contain any provision similar to that of article 9, paragraph 3, of the Covenant. Alternative

forms of detention set out in the new article 168 of the Criminal Code included fines and extra work at the convicted person's usual place of work. Compulsory labour was imposed as a replacement for a custodial sentence and was, therefore, in no way inconsistent with the Covenant. Confessions obtained by physical or psychological coercion could not be accepted by the court of first instance but, in practice, some persons had been convicted on the basis of such confessions. The Procurator's Office and the Ministry of the Interior had, however, instituted proceedings against the officials who had exerted pressure to obtain confessions.

207. Referring to the possibility of the assistance of counsel after arrest, the representative said that there were a number of problems in that area, notably owing to the shortage of lawyers. Consideration was being given to methods for providing legal assistance and the new Code of Criminal Procedure would contain provisions in that regard. In 1989, the authorities had adopted provisions relating explicitly to psychiatric help, setting out guarantees for those confined and stressing that individuals who were not mentally ill should not be confined in psychiatric hospitals.

Right to a fair trial

208. With regard to that issue, members of the Committee wished to know what qualifications were necessary for appointment as a judge and what were the grounds for dismissing a judge; what the procedures were for recalling or dismissing a judge before the expiry of his term; what guarantees there were for ensuring that the terms and conditions of service and other emoluments and privileges of judges were not altered to their detriment during their terms of service; whether there were any changes envisaged in the organization of advocates and lawyers; whether membership of a political party was a necessary condition for being elected or appointed as a judge; under what circumstances a trial could be held in secret; whether it was envisaged, pursuant to article 3 of the Declaration of State Sovereignty, to separate the judicial from the executive powers of the Procurator's Office; and whether any organs other than the courts were authorized to impose administrative detention. In addition, it was inquired whether the Procurator's Office still exercised direct control over the way the courts applied the law and, if so, whether the judiciary could then be considered as being independent. Observing that the executive power retained the right to rule on the constitutionality of a given law, members wished to know what the precise role of the Constitutional Court was and whether it could challenge decisions by the Supreme Soviet.

209. In his reply, the representative of the State party underscored that it had been proposed, under the current judicial reform, to appoint judges on the recommendation of a qualified panel of judges for a period of 10 years. Judges could not be dismissed unless they had committed a serious offence, such dismissal being decided by the Supreme Soviet. Judges' emoluments were still quite low. Candidates for appointment as judges had to have very thorough legal training, be at least 25 years of age, and have practised as a lawyer. Bar associations existed thus far only at the regional level, for specific districts, but there were plans to set up a bar council and other professional organizations which would defend the interests of all officials and court officers. Although a trial could be held in secret if a state secret had to be protected or if it involved details of the accused's private life or information involving minors, the verdict was always handed down in public.

210. Replying to other questions, the representative said that the reform of the judiciary now in process was intended to strengthen its independence to make it a genuine instrument for the defence of the law and of citizens' interests. The Supreme Soviet had also decided to depoliticize the judiciary. The Procurator's Office was not an organ of executive power and the Supreme Soviet could override an appeal petition or a protest from the Procurator's Office. The courts could impose administrative detention only when questions relating to administrative offences were brought before them directly. The Supreme Court did not have the right to rule on the constitutionality of given legislation. The most recent constitutional amendments provided for the establishment of a constitutional court with responsibility for the application of the law and for guaranteeing the constitutionality of the texts adopted.

Freedom of movement and expulsion of aliens

211. With reference to that issue, members of the Committee wished to know whether any consideration was given, in the context of the current reform movement in the field of civil and political rights, to the situation of the Crimean Tartars who had not yet been able to return to their earlier homes in the Ukrainian SSR; what the prospects were of early enactment by the Supreme Soviet of the USSR of the new draft law on entry into and departure from the USSR; whether the decree of the Presidium of the Supreme Soviet of the USSR on "Measures for preventing infection with the AIDS virus", adopted on 25 August 1987, had been applied in practice; and under what circumstances aliens were required to undergo medical examinations.

212. It was also inquired whether the Ukrainian SSR intended to adopt a law on the right to leave the country before the new USSR act had entered into force; what the required procedure was, in practice, for a national of the Ukrainian SSR who wished to leave the country; whether the documents issued to a Soviet citizen wishing to leave the country were valid for one destination only and whether they permitted his return to the USSR and to the Ukrainian SSR; whether the new legislation on the matter would also be applicable to persons who had previously submitted applications and had been turned down; whether a person infected with the AIDS virus would be authorized to enter the country; and under which circumstances aliens could be expelled from the USSR. Members expressed special concern about the fact that the draft law on the right of entry into and departure from the USSR retained the principle that access to state or public sector information could be grounds for refusing a passport and noted, in that same regard, that the definition of "state security" did not seem to coincide with the meaning of the term "national security" used in article 12 of the Covenant.

213. In his reply, the representative of the State party agreed that historic injustice had been done to the Crimean Tartars who had been moved against their will from their ancestral lands. They now had to be returned to their place of origin, but such a step gave rise to very difficult problems relating to housing and employment. The Ukrainian authorities, together with the Government of the USSR, were nevertheless considering the problem with a view to organizing a mass repatriation of the Crimean Tartars.

214. The new draft law on entry and departure from the USSR was scheduled to be adopted at the

current session of the Supreme Soviet of the USSR and would bring the provisions regarding the possibilities of leaving the country and returning to it into line with the Covenant. The new provisions would not have a retroactive effect but the files of persons who had been refused on one or more occasions would be treated on an equal basis with other files. At present, the exercise of the right to leave the country was impeded by currency requirements as well as the obligation to have a residence permit. When the State no longer had a responsibility to provide housing for all, many difficulties would be eliminated and the obligatory residence permit could be abolished. The abrogation of a number of regulations, which had hitherto prevented people from moving to major cities such as Moscow, Leningrad or Kiev unless they were in possession of a special permit, was under consideration by the authorities. Aliens permanently resident in the USSR could be required to undergo a medical examination at the request of a health service. If they refused, they were invited to leave the country. However, the authorities tried to avoid recourse to repressive methods in combatting AIDS.

Right to privacy

215. With regard to that issue, members wished to know which authorities could request the interception of private communications and what was the exact nature and purpose of the public reprimand set forth in article 130 of the Criminal Code.

216. In his reply, the representative of the State party said that the secrecy of correspondence and the inviolability of the home were guaranteed to citizens by the Constitution. However, the procurator could issue a decree derogating from that right in cases involving convicted criminals. No public reprimand had been imposed in the last 10 years by Ukrainian courts and it was planned to abolish that punishment by excluding it from the new Criminal Code.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

217. With reference to that issue, members of the Committee wished to know what was the relationship between the new bill on freedom of conscience, which had just been enacted by the Supreme Soviet of the USSR, and the Act on Religious Associations in the Ukrainian SSR of 1 November 1976; whether all the rights of the Uniate Church had now been fully re-established, including its religious ties with the Holy See; whether any complaints had been lodged under article 134 (1) of the Criminal Code of the Ukrainian SSR; what measures had been taken to guarantee respect for pluralism in television programmes, particularly during elections; whether it was possible to set up an independent radio or television network; and whether there were provisions designed to punish the dissemination of false information. Additional information was also requested on recently drafted legislation relating to the press and to the lifting of censorship restrictions, as well as on the legal regime governing conscientious objection.

218. In his reply, the representative of the State party explained that the recently adopted legislation on freedom of conscience in the USSR, which was considerably more democratic than the legislative provisions currently in force in the Ukrainian SSR, would prevail over the latter. The new law

specified that the activities of the Uniate Church were lawful and fully recognized its rights. Virtually all the denominations in existence in Ukraine could be registered under it. A large number of press organs were functioning in the USSR without any censorship, and it had been decided that any social, governmental, scientific or other organizations, and even individuals, should have the right to engage in activities in the media. Permission to publish was granted without restriction and no censorship was allowed. No special permission was required for publications printing fewer than 1,000 copies.

219. Responding to other questions, the representative noted that there was as yet no real private television network in the Ukrainian SSR. During electoral campaigns all candidates had an opportunity to explain their programmes and anyone who came under criticism from the media could exercise a right of reply. During the previous six months, 16 complaints had been filed under article 134 (1) of the Criminal Code, and the officials implicated had had to explain the adverse decisions against the complainants in court. Disclosure of state or military secrets; incitation to war, hatred or racial or religious intolerance; and dissemination of pornography or interference in the private life of citizens were prohibited by law. Any citizen who considered that he had been offended or injured could bring a complaint before a court and obtain compensation. The law establishing criminal liability for an attack on the honour and dignity of state officials had been repealed by the Supreme Soviet, and the new decree stated that only attacks on the honour and dignity of the President of the Republic could lead to prosecution.

Freedom of assembly and association

220. In connection with that issue, members of the Committee wished to know what progress had been achieved in establishing the basis for and regulation of public associations or organizations, including political parties other than the Communist Party of the Soviet Union; whether there had been any further progress in drafting legislation that would provide a framework for the legalization of informal organizations; whether all political parties had been allowed to register in time to put forward their candidates; whether the provision in the Ukrainian Constitution according to which the aim of associations was the construction of socialism had been amended; what conditions had to be met for a demonstration to be permitted; what penalties were prescribed in cases of contravention of the established procedure for the organization and conduct of assemblies; whether a meeting could be prohibited on the grounds that it was contrary to the Constitution of another Federative Republic; and whether investigations had been undertaken into the conduct of the police forces in dispersing students in October 1989.

221. In his reply, the representative of the State party said that, in addition to the Communist Party, the Republican Party, the Social Democratic Party, the Green Party and two Christian parties currently sat in Parliament. The legislation that continued to regulate the registration of social organizations dated back to the 1930s and had obviously become obsolete, but a new law on social organizations would enter into force on 1 January 1991. The activities of organizations could not give rise to any interference on the part of public authorities save in cases authorized by law. Electoral campaigns were financed directly by the State. Where an application for registration by a party or an organization had been rejected, it was possible to bring the matter before the courts,

which might possibly reverse the decision. Organizations could not be dissolved by the State unless their activities were harmful.

222. Permission was not needed for indoor meetings but it was necessary to apply for permission in other cases, and penalties could be assessed when a meeting was held without such permission. In each region, a representative of the authorities and an executive committee were responsible for decisions as to whether to allow public meetings and demonstrations. Meetings could be prohibited only if their purpose was contrary to the Constitution and if there was a danger of disturbance of public order, and such decisions could be appealed before a superior body. The Office of the Procurator had recently conducted an investigation into the conduct of law enforcement officials on the occasion of action to prevent demonstrators from entering police premises, and it had concluded that the behaviour of the police had not been reprehensible.

Rights of persons belonging to minorities

223. With reference to that issue, members of the Committee wished to know whether any institutional measures were envisaged by the Government of the Ukrainian SSR to deal on a systematic basis with the problems of minorities and with the promotion of progress and reconciliation among the various national groups.

224. In his reply, the representative of the State party pointed out that although the problems of minorities in the Ukrainian SSR were not as serious as in other Republics, they nevertheless existed in connection with the resettlement of the Crimean Tartars in their homeland; the guarantee of the cultural rights of groups of Hungarian or Polish origin living in the west of Ukraine; and problems affecting the Russian-speaking population, which accounted for 20 per cent of the total population. School textbooks were published in Polish, Hungarian and Tartar, and steps were also being taken to make the resettlement of the Tartars easier by providing building materials and guaranteeing certain services. Legislation on the rights of minorities was currently under consideration in the Supreme Soviet providing, *inter alia*, for the establishment of national councils that could help, in particular, to resolve language problems.

Concluding observations

225. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation and openness in presenting the third periodic report of the Ukrainian Soviet Socialist Republic and for having engaged in a fruitful and constructive dialogue with the Committee. Although the report had been drafted in conformity with the Committee's guidelines regarding the form and contents of reports from States parties under article 40 of the Covenant, members regretted that it did not contain specific references to actual practice in the implementation of legislative provisions. The State party had clearly demonstrated the intention of its Government, and of the recently elected Supreme Soviet, to guarantee to all persons under its jurisdiction the rights recognized in the Covenant. It was also clear that there had already been positive changes in legislation pertaining to civil and political rights, as well as improvement in actual practice.

226. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been entirely allayed, including those relating to the non-publication of statistics in respect of the death penalty; the absence in the legislation of the Ukrainian SSR of provisions equivalent to article 9, paragraph 3, of the Covenant; abuses of psychiatric treatment; administrative detention; corrective labour; the length of pre-trial detention; the right to freedom of movement and the definition of the concept of State security, which appeared to exceed the limits prescribed in article 12, paragraph 3, of the Covenant; and the right to freedom of expression. Members were also of the view that the judicial role of the Procurator's Office should be reconsidered; that human rights should be more precisely spelled out in the Constitution and in legislation; and that efforts should be made to continue to bring about changes in the habits of the law enforcement authorities and to create conditions, including economic conditions, that would be conducive to the genuine exercise of human rights. Members of the Committee also urged the State party to ratify the Optional Protocol to the Covenant.

227. The representative of the State party said that the Ukrainian Soviet Socialist Republic had at all times endeavoured to discharge conscientiously the obligations incumbent upon it under international instruments. Difficulties subsisted in the transitional phase through which the Ukrainian SSR was passing, and the Committee's comments would certainly help in overcoming them. The remaining problems were not only legislative but were bound up with patterns of behaviour and states of mind and mental attitudes that were difficult to change. The views expressed by the Committee would be made public.

228. In concluding the consideration of the third periodic report of the Ukrainian SSR, the Chairman thanked the representative of the State party for having provided, through his detailed replies, the concrete information that was lacking in the report. In the new legislation that the Ukrainian SSR had undertaken to draw up and to promulgate, it would be important to take account of all the rights established in the Covenant and to ensure that only those restrictions and derogations expressly provided for were authorized. The progress made in the protection of human rights in the Ukrainian SSR was unquestionable, but it should continue.

UKRAINE

CCPR A/50/40 (1995)

305. The Committee considered the fourth periodic report of Ukraine (CCPR/C/95/Add.2) at its 1418th to 1420th meetings (see CCPR/C/SR.1418 to 1420), on 11 and 12 July 1995, and adopted 17/ the following final comments:

1. Introduction

306. The Committee welcomes the fourth periodic report of Ukraine and views with satisfaction the cooperative attitude of the delegation in engaging in a frank and constructive dialogue with the Committee. The Committee appreciates the fact that the report did not conceal difficulties encountered by the State party in implementing the Covenant. However, those difficulties were described in very broad terms and without describing the steps envisaged by the State party to overcome them. Furthermore, the report did not provide sufficient information on the implementation of the Covenant in practice. The additional information provided in the oral replies given by the delegation to the questions posed and comments raised by the Committee members have enabled the Committee to gain a clearer picture of the overall situation in the country, especially with regard to Ukraine's approach to compliance with the obligations undertaken under the Covenant.

2. Factors and difficulties affecting the application of the Covenant

307. The Committee notes that it is necessary to overcome vestiges of the totalitarian past and that much remains to be done to strengthen democratic institutions and respect for the rule of law. In this connection, the Committee notes that the Government's efforts in restructuring the legal system and endeavors to implement better the Covenant have been hampered by lacunae in the national legislation as well as by a continuing resort to a large number of outdated - albeit still in force - laws of the former regime, many of them incompatible with corresponding provisions of the Covenant. The Committee also notes that extremist and discriminatory attitudes are emerging in the country that are not conducive to the full promotion and protection of human rights. In addition, this period of transition to a market-oriented economy has been marked by severe economic and social difficulties.

3. Positive aspects

308. The Committee expresses its satisfaction as to the fundamental and positive changes which have recently taken place in Ukraine. These changes will create a better political, constitutional and legal framework for the full implementation of the rights enshrined in the Covenant.

309. The Committee welcomes the fact that, through the adoption of the Act on the Effect of International Agreements on Ukrainian Territory in December 1991 and of the Act on Ukraine's

International Treaties in December 1993, international treaties ratified by Ukraine are now

17/ At its 1440th meeting (fifty-fourth session), on 26 July 1995.

automatically part of the domestic legal order. The recognition by Ukraine of the competence of the Committee to receive and consider communications from individuals under the Optional Protocol to the Covenant and its willingness to adopt appropriate procedures to implement the Committee's views without delay is of particular importance for the effective implementation of the Covenant.

310. The Committee welcomes the many other recent legal developments in Ukraine and the present progress in the transition towards democracy and pluralism. In general, the Committee is encouraged by the adoption of the Act on Provisional Detention in June 1993 and of the Decree of the Ukrainian Cabinet on Programmes for Bringing up to World Standards the Conditions of Detention in January 1994, which take into account the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Committee also welcomes the adoption of the Acts on the Ukrainian Public Prosecutor's Office in November 1991, the Legal Profession in December 1992, the Status of Judges in December 1992, and the Self-Governance of the Judiciary in February 1994, aimed at strengthening the independent status of the judicial system and improving judicial guarantees for individuals.

311. The Committee also notes the adoption by the Government of Ukraine of the 1991 Act on Freedom of Conscience and Religious Organizations, of the 1993 Acts on Information and on Printed Media, of the 1993 Act on Television and Radio Broadcasting and of the Act on Public Association of Citizens. The adoption by Ukraine of the Act on Environmental Protection in 1991, along with special provisions in the Penal Code establishing liability for the preparation, processing or selling of radiation-contaminated foodstuffs or other products and their accession to the nuclear non-proliferation treaties are also a welcome development.

312. The Committee further notes the adoption by the Supreme Council of Ukraine of the 1991 Declaration of Rights of the Nationalities of Ukraine, which was given legal force through the Act on National Minorities in 1992.

313. The Committee takes note with appreciation of the confirmation by the delegation that victims of past human rights violations are entitled to compensation. It further welcomes the efforts initiated by the Government of Ukraine to encourage and facilitate the return of minorities displaced by the Soviet regime and especially the resettlement in Crimea of the Crimean Tartars.

4. Principal subjects of concern

314. The Committee is concerned by the continuing applicability in Ukraine of a Constitution which does not provide guarantees and recourse procedures in full conformity with the Covenant. Furthermore, it has not been made sufficiently clear during the consideration of the report whether, under the law and in the practice of the courts and administrative authorities, provisions of the Covenant are systematically applied in precedence to a conflicting provision to domestic law.

315. The Committee expresses its concern about actual cases of discrimination against women and, in general, the persistence - in a climate of economic and social difficulties - of gender disparities in practice with regard to such issues as equal pay, the equitable participation of women in the conduct of public affairs and in the economic, social and cultural life of the country. The State party has not yet adopted effective measures to overcome attitudes based on traditional roles which hinder equality between men and women. Additionally, the Committee regrets the high level of family violence within the country and recalls that the Covenant requires States parties to implement measures of protection.

316. The Committee expresses its deep concern about the current trend in Ukraine to impose and carry out an increasing number of death sentences, and about the inhumane circumstances in which those sentences are carried out. It recalls that under article 6 of the Covenant a sentence of death may be imposed only for the most serious crimes.

317. The Committee is concerned that the guarantees contained in articles 7, 9, 10 and 14 of the Covenant are not fully complied with. In particular, it is concerned that torture and ill-treatment of persons committed by members of the police and other security forces continue to be reported, particularly to the Public Prosecutor's Office. In this regard, it is concerned that the right to personal security may be restricted without any involvement of a judicial body. The Procurator's functions during the investigation process as well as throughout the trial do not ensure the minimum requirements contained in articles 9 and 14 of the Covenant. Furthermore, cases of administrative detention, in particular of vagrants, denial of access of detainees to legal counsel and long periods of pre-trial detention are matters of great concern.

318. The Committee is also concerned at the conditions in places of detention, whether in prisons or curative labour establishments, which do not comply with article 10 of the Covenant or other international standards. Prison overcrowding is a further matter of concern to the Committee.

319. The Committee expresses concern that the independence of the judiciary has not yet been ensured. In this connection, it regrets that the Constitutional Court, which is to be established under the Act on the Constitutional Court of June 1992, has not yet been set up. The Committee is further concerned by the very long delays in the administration of justice, which are not in conformity with the requirements of both articles 9 and 14 of the Covenant, and notes in that regard that the judicial system in Ukraine cannot be efficient until there is a sufficient number of well-trained and qualified judges and lawyers. The absence of special provisions for juvenile offenders is also a matter of concern.

320. The Committee is further disturbed by continuing obstacles to freedom of movement in Ukraine and in particular by the legal provisions that allow for the rejection of passport applications from holders of State secrets. The requirement of exit visas and the persistence of the internal passport are unacceptable and incompatible with article 12 of the Covenant.

321. The Committee expresses its concern that, although Ukraine adopted a domestic refugee law

in December 1993, currently no concrete measures have been taken to implement this law, or to establish a refugee determination procedure for asylum-seekers in Ukraine.

322. The Committee expresses concern arising from the information in the report, corroborated by cases brought to its attention, that there are incidents and situations which may be conducive to acts of discrimination on ethnic, gender, religious, linguistic or property grounds. The Committee regrets that appropriate steps have not yet been taken by the authorities to resolve those difficulties and, in particular, to prevent and suppress the advocacy of national, racial or religious hatred in conformity with the requirements of article 20 of the Covenant. This situation is particularly alarming in that it may undermine harmonious relations with minorities. In that regard, the Committee regrets that the definition of minorities under the Declaration of the Rights of the Nationalities of Ukraine does not conform fully with article 27 of the Covenant, which grants protection to persons belonging to all ethnic, religious or linguistic minorities, and not only to those belonging to "national" minorities. Lastly, the Committee notes with regret that measures have not yet been taken to grant automatically Ukrainian citizenship to Crimean Tartars who have returned to Crimea.

5. Suggestions and recommendations

323. The Committee recommends that the constitutional reform presently under way be accelerated in order to ensure the adoption and implementation of the new Constitution and that the text of the Covenant be taken into account in that regard. In drafting new legislation affecting human rights, attention should systematically be paid to the establishment of effective guarantees for the safeguard of civil and political rights. In that regard, the authorities may avail themselves of the advisory services and technical cooperation programmes developed by the Centre for Human Rights.

324. The Committee urges the Government to set up an independent body, such as a human rights ombudsman, to monitor the implementation of the law in conformity with the obligations under the various human rights instruments to which Ukraine is a party, and to receive complaints by individuals.

325. The Committee recommends that the State party review and include information in its next periodic report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the first Optional Protocol to the Covenant, also bearing in mind the obligations under article 2 of the Covenant.

326. With respect to the rights of women, the Committee believes that affirmative measures should be taken to strengthen their participation in the political, economic, and social life of the country, as well as positive measures to ensure effective protection against domestic violence.

327. The Committee recommends that Ukraine study measures to limit the categories of crimes punishable by death to the most serious offences, in conformity with article 6 of the Covenant, with a view to its prospective abolition, and to make when appropriate more extensive use of the rights of commutation or pardon.

328. The Committee emphasizes the need for greater control over the police. There should be intensive training and educational programmes in the field of human rights aimed at law-enforcement officials. Steps should be taken to strengthen recourse procedures for victims of police abuse and detained persons. Adequate follow-up to reports of such abuse should be ensured by thorough investigations and appropriate penal and administrative sanctions. Prison conditions should be brought into compliance with article 10 of the Covenant and with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

329. The Committee recommends that, in order to ensure the independence and impartiality of the judiciary, as well as the confidence of the individuals in the proper administration of justice, further steps be taken to speed up and complete the reform process. Measures for juveniles should be appropriate to their needs and status. Furthermore, vigorous efforts should also be made to encourage a culture of independence among the judiciary itself and to establish a well-trained and independent legal profession. A first priority should, for instance, be to adopt a law containing all the safeguards set forth in the Covenant.

330. Existing provisions limiting or restricting the exercise of the right to freedom of movement, including the internal passport requirements, as well as the legal provisions relating to holders of State secrets, should be reviewed to bring the legislation fully in conformity with article 12 of the Covenant.

331. The Committee recommends that Ukraine undertake to implement its domestic refugee law of December 1993 and, in this connection, that it seek assistance and advice from relevant international organizations, including UNHCR.

332. The Committee expresses the wish that vigorous measures will be taken to give full implementation to article 20 of the Covenant.

333. The Committee welcomes the publication of the report in Ukraine and the Government's intention to disseminate the record of the dialogue. It emphasizes that the text of the Covenant and the Optional Protocol should be widely publicized in the languages spoken in Ukraine, so that the public can be made fully aware of the rights enshrined in the provisions of these instruments. It also recommends that education in human rights and democracy be included in school and university curricula and that its comments be widely disseminated and incorporated into the curricula of all human rights training programmes organized for law-enforcement officials and administration officers.

CCPR A/57/40 vol. I (2002)

(74) Ukraine

(1) The Committee considered the fifth periodic report of Ukraine (CCPR/C/UKR/99/5) at its 1957th, 1958th and 1959th meetings, held on 15 and 16 October 2001. At its 1971st and 1972nd meetings, held on 24 and 25 October 2001, it adopted the following concluding observations.

Introduction

(2) The Committee welcomes the detailed report submitted on time by Ukraine. It regrets, however, that while providing information on legal norms and enactments governing Ukraine's obligations under the Covenant, the report lacks information on the implementation of the Covenant in practice. The Committee notes the State party's undertaking to submit additional written information in response to the Committee's questions.

Positive aspects

(3) The Committee expresses its appreciation for the considerable changes which have taken place in Ukraine since the submission of the last report. These changes constitute a positive constitutional and legal framework for the further implementation of the rights enshrined in the Covenant.

(4) The Committee welcomes the adoption of the new Constitution in June 1996, which gives legal recognition to human rights and freedoms of the individual.

(5) The Committee welcomes the abolition of the death penalty, including during time of war. The Committee hopes that the State party will ratify the second Optional Protocol to the Covenant.

(6) The Committee notes with satisfaction the State party's ongoing efforts to reform its legislation, including the new Law on Refugees of 2001, the Law on Immigration of 2001, the Citizenship Law of 2001 and the decriminalization of libel. The Committee also welcomes the establishment of a new Constitutional Court, the adoption of a new Criminal Code, the enactment of new legislation relating to the protection of human rights and the creation of an appeal court system.

(7) The Committee welcomes the establishment of the Office of the Ombudsman charged with the responsibility for protection of human rights in Ukraine.

Concerns and recommendations

(8) The Committee is concerned that in the case of a clash between the Covenant rights and domestic laws the latter might prevail. Neither through examination of the report of the State party nor during the discussion with the delegation could the Committee obtain a clear understanding of

how potential conflicts between Covenant rights and domestic laws are resolved.

The State party must ensure the effective implementation of all Covenant rights, in accordance with article 2 of the Covenant and including through independent and impartial courts of law operating in compliance with article 14.

(9) While recognizing that there has been some progress in achieving equality for women in political and public life, the Committee remains concerned that the level of representation of women in Parliament and in senior positions in both the public and private sectors remains low.

The State party should undertake appropriate measures to give effect to its obligations under articles 3 and 26 so as to improve the representation of women in Parliament and in senior positions, in both the public and private sectors. The State party should consider the adoption of positive measures, including educational measures, to improve the status of women within the society.

(10) The Committee notes with concern that domestic violence against women remains a problem in Ukraine.

The State party should take positive measures, including through enactment and implementation of adequate legislation and training of police officers and sensitization of the population, to protect women from domestic violence.

(11) The Committee expresses concern that under the state of emergency, as envisaged in article 64 of the Constitution of Ukraine, the right to freedom of thought under article 34 of the Constitution and the right to freedom of religion could be restricted in a manner incompatible with the provisions of article 4 of the Covenant.

The State party must ensure that its framework for emergency powers during a state of emergency is compatible with article 4 of the Covenant, taking into account the Committee's General Comment No. 29.

(12) The Committee notes with concern that the Office of the Ombudsman is seriously under-resourced.

The State party should provide adequate human and material resources to the Office of the Ombudsman to enable it to carry out its work effectively.

(13) The Committee is concerned about allegations of police harassment, particularly of the Roma minority and aliens.

The State party should take effective measures to eradicate all forms of police harassment, and set up an independent authority to investigate complaints against the police. It should take steps against those held responsible for such acts of harassment.

(14) The Committee regrets that the delegation did not provide the requested information about measures taken to combat racism and anti-Semitic acts and publications, and about the situation of Jewish cemeteries confiscated under Nazi occupation.

The State party is requested to provide the information sought by the Committee by the deadline stipulated in paragraph 25 below. The State party should take effective measures to prevent and punish racist and anti-Semitic acts and inform the Committee by the deadline stipulated in paragraph 25.

(15) The Committee remains concerned about the persistence of widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials.

The State party should institute a more effective system of monitoring treatment of all detainees, so as to ensure that their rights under articles 7 and 10 of the Covenant are fully protected. The State party should also ensure that all allegations of torture are effectively investigated by an independent authority, that the persons responsible are prosecuted, and that the victims are given adequate compensation. Free access to legal counsel and doctors should be guaranteed in practice, immediately after arrest and during all stages of detention. The arrested person should have an opportunity immediately to inform a family member about the arrest and the place of detention. All allegations of statements of detainees being obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture.

(16) The Committee is concerned at reports of bullying and hazing (dedovshchina) of young conscripts in the armed forces by older soldiers, which in some cases have led to deaths, suicides and desertion.

The State party should strengthen measures to end these practices and prosecute offenders, and take steps by way of education and training in its armed forces to eradicate the negative culture that has encouraged such practices.

(17) The Committee remains concerned about the permissible length of detention as a □temporary preventive measure□ (up to 72 hours) in the custody of law enforcement authorities and before detainees are informed of charges brought against them, and about the practice of extending the period of such detention for up to 10 days in certain cases on the initiative of a prosecutor. Such practice is incompatible with article 9 of the Covenant. The Committee is also concerned that no effective mechanism exists for monitoring such detention.

The State party should take all necessary measures to reduce the length of such detention and to improve judicial oversight so as to ensure compliance with Covenant rights. The Committee also requests detailed information about the composition, manner of appointment, functions and powers of the □body of inquiry□ referred to by the delegation, as well as information on its actual practice.

(18) The Committee remains concerned about the continuation of practices involving the trafficking of women in Ukraine. The State party should take measures to combat this practice, including through the prosecution and punishment of those found responsible, and give full effect to the provisions of article 8 of the Covenant.

(19) The Committee is concerned about the continued existence of the propiska system, which is incompatible with the right to freedom of movement and choice of residence provided for in article 12 of the Covenant.

The State party should abolish the system of internal permits and give full effect to the provisions of article 12 of the Covenant.

(20) The Committee notes with concern the information given by the State party that conscientious objection to military service is accepted only in regard to objections for religious reasons and only with regard to certain religions, which appear in an official list. The Committee is concerned that this limitation is incompatible with articles 18 and 26 of the Covenant.

The State party should widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions, and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.

(21) The Committee is concerned about the intimidation and harassment, in particular by government officials, of human rights defenders.

The State party must take measures to end the intimidation and harassment of human rights defenders. Reported instances of intimidation and harassment should be investigated promptly.

(22) The Committee is concerned about reports of intimidation and harassment of journalists. It is further concerned about the absence of criteria for granting or denying licences to electronic mass media, such as television and radio stations, which has a negative impact on the exercise of freedom of expression and the press provided for in article 19 of the Covenant. It is also concerned that the system of government subsidies to the press may be used to stifle freedom of expression.

(a) The State party should ensure that journalists can carry out their activities without fear of being subjected to prosecution and refrain from harassing and intimidating them, in order to give full effect to the right to freedom of expression and of the press provided for in article 19 of the Covenant;

(b) The State party should take effective measures to define clearly in law the functions and competences of the State Communications Committee of Ukraine. The decisions of the State Communications Committee should be subject to judicial control;

(c) The State party should ensure that clear criteria are established for payment and withdrawal of government subsidies to the press, so as to avoid the disbursement of such subsidies for the purpose of stifling criticism of the Government.

(23) The Committee expresses its concern about the vague and undefined concept of "national minorities", which is the dominant factor in the State party's legislation on national minorities but does not cover the entire scope of article 27 of the Covenant. The Committee is also concerned about reports of cases of discrimination and harassment of persons belonging to minorities.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination, and that members of these communities can enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

Dissemination of information about the Covenant

(24) The Committee calls upon the State party to publicize the text of these concluding observations in appropriate languages, and requests that the next periodic report be widely disseminated among the public, including non-governmental organizations operating in Ukraine.

(25) Pursuant to rule 70 (5) of the Committee's rules of procedure, the State party is invited to provide, within a period of 12 months, information about steps being taken to address the issues raised in paragraphs 10, 13, 14, 15, 17, 19 and 23 of the present concluding observations.

(26) The Committee requests the State party to submit its sixth periodic report by 1 November 2005.