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HUMAN RIGHTS COMMITTEE

Eighty-eighth session

SUMMARY RECORD OF THE 2408th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 23 October 2006, at 3 p.m.

Chairperson: Ms. CHANET

later: Ms. PALM
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT
(agenda item 6) (continued)

Sixth periodic report of Ukraine (CCPR/C/UKR/6; CCPR/C/UKR/Q/6;
HRI/CORE/1/Add.63/Rev.1) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Ukraine resumed their places at the Committee table.
2. Mr. KOTLYAR (Ukraine) said that constitutional amendments had been introduced in December 2004 to extend the powers of the Office of the Public Prosecutor, giving it competence, inter alia, to monitor the observance of the law by executive bodies and local governments. In addition, a bill had been prepared to amend the legislation governing the Public Prosecutor's Office with a view to bringing its role and functions into line with international standards. However, following the critical assessment by the Venice Commission, its adoption had been postponed pending further constitutional reform.
3. Recently adopted gender-equality legislation provided for the establishment of equal rights councils and the appointment of ministerial gender officers; the Ministry for Youth and Sport was responsible for monitoring compliance. While the establishment of the equal rights councils was pending, the Ministries of Justice and Internal Affairs had appointed deputy ministers for gender affairs. No information was available on gender-specific job advertisements.
4. Mr. YATSENKO (Ukraine) said that the Ukrainian Parliament's Commissioner for Human Rights (Ombudsman) had found violations in one third of the complaints received. The high incidence of violations was partly due to the fact that the Constitution guaranteed a large number of rights, such as the right to free health care, whose implementation was hampered by budgetary constraints. The Ombudsman's Office had urged the authorities to release additional funds in order to ensure enjoyment of those rights.
5. Police harassment and ill-treatment of members of minority groups continued to cause concern at the local level. The Ministry of Internal Affairs had repeatedly called on local police forces to take measures to prevent such acts, and efforts had been stepped up to train law enforcement officials in human rights.
6. Mr. ZADVORNY (Ukraine) said that, as a result of joint action by the Ministry of Internal Affairs and the Ombudsman's Office, fewer complaints of police harassment and ill-treatment of minority groups had been received in recent years.
7. Mr. KOTLYAR (Ukraine) said that no system was currently in place to implement the Committee's concluding observations. The Government was exploring the possibility of introducing a procedure similar to that used for the enforcement of European Court of Human Rights judgements. Updated information on the implementation of the Committee's recommendation in the Aliiev v. Ukraine case would be provided in writing.

8. The list contained in the Ukrainian State of Emergency (Legal Rules) Act of 16 March 2003 of constitutional human and civil rights and freedoms that could be temporarily restricted, admittedly, did not coincide with the list contained in the Covenant. However, it complied with the provisions of the European Convention on Human Rights and thus did not constitute a violation of international norms. The Act provided that the Secretary-General of the United Nations must be informed of the declaration of a state of emergency and consequent temporary restrictions on rights and freedoms.
9. Efforts were being made to ensure greater transparency and accountability in the selection of judges, inter alia, through the introduction of competitive examinations. The new system aimed at ensuring that both the appointment and transfer of judges were based on merit only. In order to curb corruption, the previously low salaries of judges had been gradually increased, subject to available resources. Different legal-aid models were currently being introduced at the local level.
10. The rights of detainees, including the right to be represented by a lawyer of one's choosing, were guaranteed in the Constitution. The Code of Criminal Procedure determined the role of lawyers in criminal proceedings, namely, to protect and establish the rights of the defendant at all stages. All interrogations must take place in the presence of a lawyer. In order to raise awareness among detainees, the Ministry of Internal Affairs had issued guidelines for law enforcement officials on procedures for informing detainees of their rights immediately upon their arrest.
11. The Ministry for Youth and Sport had prepared a police manual on domestic violence, based on surveys conducted by the Ministry of Justice, the Ministry of Health and NGOs. Measures aimed at combating domestic violence were implemented in close cooperation with NGOs. A network of regional consultation centres offered advice and support for victims of domestic violence and shelters had been set up in some regions. As a result, the number of complaints of domestic violence had decreased.
12. Although the principle of non-refoulement was incorporated in domestic legislation, it was not always enforced in practice, partly because the large inflow of refugees exceeded the capacity of the State Committee for Ethnic Minorities and Migration responsible for processing refugee applications. Applications were being processed in close cooperation with the regional UNHCR Office.
13. With regard to the deportation of 11 Uzbek nationals on 14 February 2006, he said that the Government had thus far issued no official statement acknowledging that the measure constituted a violation of domestic and international law. The Ministry of Justice, on the other hand, had declared the deportation unlawful.
14. Mr. ZADVORNY (Ukraine) said the Ombudsman's Office, too, was of the view that the deportation of the 11 Uzbek nationals shortly after their arrest on 7 February 2006 constituted a violation of domestic and international law. The Office had followed the case closely and urged the authorities to respect international norms. Further investigations into the case were currently being carried out with a view to preventing such violations in the future.

15. Mr. KOTLYAR (Ukraine) said that legislative amendments were being prepared to bring the definition of torture into line with the language used in the Covenant. The Public Prosecutor's Office was competent to open criminal investigations into torture allegations and initiate disciplinary proceedings.
16. Victims of trafficking were often reluctant to report or testify, which hampered efforts to combat such crimes. Ukraine therefore took a comprehensive approach to the problem of trafficking, based on cooperation between the police, social workers and psychologists. Furthermore, victims of trafficking had access to the newly established victims' protection programme.
17. Ms. SHESTAKOVA (Ukraine) said that a unit within the Public Prosecutor's Office was responsible for monitoring compliance with the law within the armed services. There had been a decrease in the number of crimes connected with rape in the military: in 2005, 207 criminal cases had been brought and 303 persons prosecuted; in 2006 those figures were 143 and 106 respectively.
18. Mr. KOTLYAR (Ukraine) said that in 2003 the Minister of Defence had issued special instructions to the effect that the commanders of military units were no longer authorized to categorize violations of the rules of conduct governing relations between servicemen as routine breaches of military discipline. All persons found guilty of such offences would be punished in accordance with the provisions of the Criminal Code.
19. It had been proposed to introduce a gender quota in order to raise the level of participation of women in legislative bodies, but the initiative had not received adequate support in the parliament.
20. Sir Nigel RODLEY asked whether the shelters for victims of domestic violence had been established through the Ministry for Youth and Sport and whether they were available only to women under the age of 35. The delegation should comment on reports that the location of such shelters was made available on the Internet and that they gave priority to the interests of the family rather than to female victims of violations. He requested information concerning so-called "victim behaviour" and reports that the police warned persons filing complaints of domestic violence that engaging in such behaviour would serve to mitigate the sentences of offenders.
21. Regarding the arrest and deportation of the Uzbek citizens referred to earlier, he asked whether the Ministry of Justice had acknowledged that a procedural or substantive violation of the principle of non-refoulement had been committed. He requested examples of cases in which prosecutors had initiated proceedings on the basis of abuses revealed through inspections of detention centres. He would be grateful for more information on the nature, scope and methods of the witness protection programme.
22. Mr. KOTLYAR (Ukraine) said that information concerning shelters for victims of domestic violence and so-called "victim behaviour" would be provided to the Committee in due course. The Ministry of Justice and the Ombudsman's Office had acknowledged the violation of the principle of non-refoulement on both procedural and substantive grounds.

23. Ms. SHESTAKOVA (Ukraine) said that, in 2005, the Public Prosecutor's Office had dealt with some 3,000 appeals relating to illegal investigative procedures, of which 34 had been admitted; in the first nine months of 2006, the number of such appeals had dropped to 716, of which 26 had been admitted. Disciplinary action against police officers in relation to all types of violations, including illegal investigative methods, had resulted in the imposition of various sanctions and three criminal proceedings.

24. Mr. KOTLYAR (Ukraine) said that information concerning the witness protection programme would be provided to the Committee in due course.

25. Regarding question 17 of the list of issues, he said that overcrowding in prisons was an acute problem in Ukraine, despite the fact that some improvements had been made in recent years. In 2001, legislative reforms had resulted in the transfer of responsibility for ordering detention during pretrial proceedings from prosecutors to the courts, which had had the effect of decreasing reliance on pretrial detention. On the basis of a Supreme Court recommendation, a campaign was currently under way, involving many NGOs, to encourage the courts to seek alternatives to pretrial detention. The level of imprisonment consequent on criminal sentencing had decreased from 37 per cent in 1999 to 26 per cent in 2004. The Ministry of Justice had drafted a bill to amend the Code of Criminal Procedure so as to bring it into conformity with international standards. Among the changes proposed, the bill provided that the cells of convicted prisoners should be at least four square metres in area, that a monitoring commission should be set up to carry out prison inspections, that compulsory labour by prisoners should be abolished and that the duration of pretrial detention should be limited to 18 months. Abuses committed against persons held in police custody or prison could be reported to the Public Prosecutor's Office, the Ombudsman's Office, an international judicial body or the complaint mechanisms of the international treaty bodies.

26. Mr. YATSENKO (Ukraine) said that the Ombudsman's Office had been instrumental in dealing effectively with such complaints. Most places of detention did not have proper sanitary facilities, plumbing or lighting. Major improvements to prison facilities had been made in Kiev and Sevastopol; however, such improvements were costly, and the Government was seeking financial assistance from donors to continue those programmes.

27. Ms. SHESTAKOVA (Ukraine) said that, pursuant to the Constitution, a unit had been set up within the Public Prosecutor's Office with responsibility for monitoring the prison system, including places of detention. In the past two years, that unit had noted a large number of violations of the law relating, inter alia, to conditions of detention and health standards, and had taken disciplinary action in 37 cases. The media had been informed about some of those violations.

28. Mr. KOTLYAR (Ukraine) said that Ukrainian legislation did not distinguish between traditional and non-traditional religious organizations (question 18 of the list of issues). The role of the State with respect to religious organizations was to ensure that they complied with the law. A religious organization that wished to be recognized as a legal entity was required to register its statutes. A department within the Ministry of Justice was competent to approve registration or refuse it on the grounds of non-conformity of the organization's statutes with the provisions of the Constitution. Such decisions could be challenged in court. Between January and

September 2006, there had been 107 requests for the registration of statutes or of amendments to previously registered statutes of religious organizations. Of those, 100 had been granted and 7 had been denied on the grounds of discrepancies with the current legislation. The law provided that if there was a problem with its statutes, a religious organization could amend the provisions in question and resubmit the statutes for registration.

29. The general climate of freedom of expression for journalists had improved considerably since 2004 following the so-called journalists' revolution, when several hundred journalists had refused to cover the election campaign in protest at the system of media censorship and harassment of journalists (question 19). In general, the media were free and free speech was guaranteed. It was difficult to determine whether reported attacks against journalists at the local level were related to their professional activity or were personal in nature.

30. Ms. Palm (Vice-Chairperson) took the Chair.

31. Ms. SHESTAKOVA (Ukraine) said that a local court in Kiev was currently conducting hearings in the case of a local administrator who had confiscated the entire run of a particular newspaper, and a criminal case was under way involving a physical attack on a film crew that had been prevented from working by a local deputy.

32. Mr. ZADVORNY (Ukraine) said that, according to the Ombudsman's Office, the situation of journalists had improved considerably in the past few years. Whereas in 2002 there had been three cases of the death or disappearance of a journalist, from 2004 to the present date there had been no such reported cases. On the other hand, arrests and detentions of journalists and physical violence against them were still being reported, although a downward trend was evident. While journalists appeared to enjoy more freedom of speech than had previously been the case, little progress had been made in effectively dealing with violations of their rights. The Ombudsman's Office had taken measures to uphold the rights of journalists in many individual cases brought to its attention, but further measures were needed at all levels to ensure freedom of speech and access to information.

33. Mr. KOTLYAR (Ukraine) said that under legislation adopted in 2006, no natural or legal person could have more than a 35 per cent share of control of television or radio stations (question 20). The domestic legislation on media control and restricting monopolies in that sector was in line with international standards. It established that private broadcasting companies could hold only one licence at the national, regional or local level. The Ministry of Justice had drafted a law on media ownership in order to increase transparency. Registration applications for new print media were denied only when the information provided in the application was incomplete. Applications for new broadcast media were submitted on the basis of open competition, the results of which could be challenged in court.

34. The initial investigation into Georgiy Gongadze's death had been ineffective, as confirmed in 2005 by the European Court of Human Rights (question 21). The Court had found that the investigation had violated articles 2 and 3 of the European Convention on Human Rights in relation to the right to life and the right not to be tortured. Three police officers had admitted to Mr. Gongadze's murder and the court was currently hearing evidence from other witnesses.

The ruling by the European Court would facilitate further investigations into the officials who had ordered the murder. A special committee had been set up to monitor the new investigation in the wake of a televised parliamentary hearing on the sixth anniversary of Mr. Gongadze's disappearance.

35. A total of 11 attacks motivated by religious or ethnic hatred had been reported in 2005 and 2006 (question 22). Thus far, three people had been convicted for such attacks and several other investigations were ongoing. The President had publicly condemned the incidents in 2005. The phenomenon had been examined by the Ministry of Internal Affairs and brought to the attention of the police. In 2005, the President had decreed that education at all levels should include teaching on tolerance and inter-religious understanding.

36. Mr. ZADVORNY (Ukraine) said that while the Committee's concern was justified, reports of anti-Semitism in Ukraine had often been overstated. The President had said that there was no discrimination against Jews at the State level, which had been confirmed by a well-known Jewish NGO. The Ombudsman's Office had received no reports of discrimination against Jews in the labour market. While measures should be taken to prevent all inter-ethnic conflict, no incidents of Islamophobia had been reported.

37. Mr. KOTLYAR (Ukraine) said that his Government had acceded to the Convention on the Civil Aspects of International Child Abduction and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (question 23). Parliament was currently considering ratification of the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and amendments to domestic legislation to bring it into line with that instrument.

38. Mr. YATSENKO (Ukraine) said that many large families lived in poverty and the number of orphans and children not cared for by their parents had more than doubled over the previous decade. Currently, the number of intercountry adoptions of Ukrainian children was excessive and the Ombudsman had received many more complaints in that regard than in previous years. A number of intercountry adoptions took place illegally and many foreign adoptive parents did not comply with the requirement to report to their local Ukrainian embassy on children's progress. Moreover, the Ukrainian authorities had been denied access to several children who had been adopted in the United States and were believed to be in danger. The Ombudsman had made proposals to the President on measures to protect Ukrainian children adopted abroad, including bilateral agreements with the States concerned.

39. Mr. KOTLYAR (Ukraine) said that the rights of the Crimean Tatar minority were fully protected under domestic legislation (question 24). A State programme for their resettlement had been approved for the period 2006 to 2010 and included measures for their social reintegration and adaptation. A significant budget allocation had been made for housing and for social and cultural events to facilitate the resettlement of that minority. Education in the Tatar language was available to all Crimean Tatar children.

40. Ms. Chanet (Chairperson) resumed the Chair.

41. Mr. ZADVORNY (Ukraine) said that most members of the Crimean Tatar minority had returned and currently represented about 12 per cent of the population. The Ombudsman had recommended several measures to the Government to resolve problems with housing and education, although the amount of land allocated for housing Crimean Tatars remained insufficient.
42. Mr. KOTLYAR (Ukraine) said that no nationality or race was particularly represented among detainees in his country (question 25). While many foreigners were detained as a result of illegal immigration, there was no discrimination on grounds of nationality in that regard.
43. All university and law school students studied human rights law, as did those training to be civil servants (question 26). Courses in human rights legislation, including the Covenant, were also mandatory for police officers, lawyers and judges.
44. Ms. WEDGWOOD, Country Rapporteur, said that greater efforts should be made to ensure that all foreigners held in detention in Ukraine enjoyed the rights they were entitled to under the Covenant, particularly the right to legal counsel. She requested further information on the availability of anti-retroviral treatment and HIV/AIDS prevention measures in prisons. She asked whether measures were being taken to reduce excessively lengthy periods of pretrial detention. Impartial organizations, such as the ICRC, should be given access to prisons to investigate conditions and talk to prisoners, since prisoners would be unlikely to complain to official bodies comprising former prison officers for fear of retaliation.
45. Turning to the issue of freedom of religion, she said that the Committee had been informed that, following the return of Tatars to Crimea, there had been cases of anti-Tatar and anti-Muslim violence, which had been encouraged by the Ukrainian Orthodox Church. Although the State had not directly incited that violence, it was responsible for protecting vulnerable and minority groups. Efforts should be made to avoid stereotyping of national and ethnic groups in school textbooks. She considered the statement that anti-Semitism did not exist in the State party to be something of an exaggeration. Efforts must be made to improve awareness of religious diversity and the dangers of anti-Semitism through school curricula, particularly by providing education on the Holocaust. She wished to know whether the Interregional Academy for Personnel Management, a university-level institution with a policy of anti-Semitism, still had the authority to award degrees. She wondered why there were so few publications in Hebrew in the State party.
46. Mr. ANDO said that the Committee remained concerned about cases of harassment and attacks against journalists; efforts were accordingly required to improve freedom of expression in the State party. Employment monopolies within the media should be eliminated. He wished to know the competence, power and composition of the State Television and Radio Broadcasting Committee, and how that Committee's neutrality was ensured. He wondered why the National Tax Inspectorate was authorized to intervene in the work of media companies, and what measures were taken to prevent illegitimate intervention. He asked what supervision the State could exercise to monitor agreements concluded between the proprietors and staff of media organs (CCPR/C/UKR/6, para. 293).

47. Mr. WIERUSZEWSKI asked whether the Ombudsman's Office received sufficient funding, and whether the public had adequate access to the Office at the regional and municipal levels. On the question of trafficking in children for adoption, the measures taken by the Government were commendable. He nevertheless wished to know what was being done to ensure their implementation. What measures had the Government, as opposed to the Ombudsman's Office, taken to ensure that the Crimean Tatar minority enjoyed their rights under articles 26 and 27 of the Covenant?

48. Mr. SOLARI-YRIGOYEN said that in its concluding observations on the fifth periodic report of Ukraine (CCPR/CO/73/UKR), the Committee had expressed concern that conscientious objection to military service was accepted only for religious reasons and only in the case of certain religions, which appeared in an official list (para. 20). Although the Committee had recommended that the list should be extended to other religions and to non-religious convictions, the State party had not taken any measures to that end. He asked why periods of alternative service remained longer than those of military service, and whether the Government planned to rectify that situation. He wished to know what effects the change to a professional army would have on conscientious objection.

49. Mr. KOTLYAR (Ukraine), referring to question 17 of the list of issues, said that persons suffering from HIV/AIDS and tuberculosis in detention received proper treatment. Although there was a lack of financial resources for improving prison conditions, the number of cases of tuberculosis in prisons had decreased. That notwithstanding, the number of cases remained high. Medical treatment was provided in pretrial detention facilities, in accordance with the law.

50. A number of complaints had been received about the incitement of anti-Semitism by the Interregional Academy for Personnel Management. Court cases involving the content of some of the Academy's publications had not found any violations of the law. The Academy had issued a significant number of unauthorized diplomas, which the Ministry of Education had recently cancelled.

51. The State Television and Radio Broadcasting Committee was responsible for all State television broadcasts and for registering all media organs in Ukraine. Although the role and significance of that Committee were limited, and the prospect of its disbandment was widely supported, it was mentioned in the Constitution and its abolition would require a constitutional amendment. Media organs were private enterprises and therefore paid taxes. Pursuant to a new agreement between the State Tax Inspectorate and the Ukrainian Association of Press and Periodical Publishers all inspections would be scheduled in advance in order to ensure that they were no longer used as a form of harassment. The State did not have any role or influence in the agreements between the staff and proprietors of media organs.

52. Mr. ZADVORNY (Ukraine) said that the problem of limited access to the Ombudsman's Office at the regional and municipal levels was connected with the lack of funding from the State budget. Although the Office had representatives in all regions and in the Autonomous Republic of Crimea, their work could not be developed without an increase in funding. The main problems were practical ones, such as the poor state of the buildings and unsatisfactory working conditions, and could only be solved through increased financial resources. He hoped that in the coming year, budgetary allocations to the Ombudsman's Office would be increased in order to enable the Office to improve its facilities.

53. Mr. KOTLYAR (Ukraine) said that although much had been done to improve the situation of Crimean Tatars, problems remained to be addressed. A presidential decree had been issued on the need for new legislation on conscientious objection to military service. That new legislation was currently under discussion. The issue of the period of alternative service would be addressed in the new law. The law on alternative service would remain in force until the professional army was established.

54. The CHAIRPERSON, thanking the delegation of Ukraine for its responses to the Committee's questions, said that the Committee had taken note of the positive developments in the situation of human rights in Ukraine, as well as issues that continued to give cause for concern. Those issues would be presented to the Government in the Committee's concluding observations at the end of the current session.

55. Mr. KOTLYAR (Ukraine) said his Government was aware that many problems remained to be tackled, and that efforts must be made to ensure that all legislation was implemented effectively. Additional information would be submitted to the Committee in writing in due course.

The meeting rose at 5.55 p.m.