UKRAINE

Follow-up - State Reporting
i) Action by Treaty Bodies, Including Reports on Missions

CCPR A/58/40 vol. I (2003)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

Overview of the application of the follow-up procedure

265. At its seventy-first session, in March 2001, the Committee began its routine practice of identifying, at the conclusion of each set of concluding observations, a limited number of priority concerns that had arisen in the course of the dialogue with the State party. The Committee has identified such priority concerns in all but one of the reports of States parties examined since the seventy-first session. Accordingly, it requested that State party to provide, within one year, the information sought. At the same time, the Committee provisionally fixed the date for the submission of the next periodic report.

266. As the Committee's mechanism for monitoring follow-up to concluding observations was only set up in July 2002, this chapter describes the results of this procedure from its initiation at the seventy-first session in March 2001 to the close of the seventy-eighth session in August 2003. These are described session by session, but in future reports this overview will limit itself to an annual assessment of the procedure.

State party	Date information due	Date reply received	Further action
...			
Seventy-third session (October 2001)			
...			
Ukraine	1 November 2002	4 September 2002	At its seventy-sixth session, the Committee decided to take no further action.

CCPR, A/62/40 vol. I (2007)

CHAPTER VII. FOLLOW-UP ON CONCLUDING OBSERVATIONS

220. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/61/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2007.

221. Over the period covered by the present annual report, Mr. Rafael Rivas-Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State. In view of Mr. Rivas-Posada's election to the Chair of the Committee, Sir Nigel Rodley was appointed the new Special Rapporteur for follow-up on concluding observations at the Committee's ninetieth session.

222. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[1] Over the reporting period, since 1 August 2006, 12 States parties (Albania, Canada, Greece, Iceland, Israel, Italy, Slovenia, Syrian Arab Republic, Thailand, Uganda, Uzbekistan and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 12 States parties (Brazil, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Mali, Moldova, Namibia, Surinam, Paraguay, the Gambia, Surinam and Yemen) and UNMIK have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

223. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided before 1 August 2006 to take no further action prior to the period covered by this report.

...

Eighty-eighth session (October 2006)

...

State party: Ukraine

Report considered: Sixth periodic (on time) submitted on 1 November 2005.

Information requested:

Para. 7: Steps to ensure the safety and proper treatment of all persons held in custody by the police; guaranteed freedom from torture and ill-treatment; establishment of an independent police complaints mechanism; independent inspection of detention facilities (art. 6).

Para. 11: Guarantees of detainees' right to be treated humanely and with respect for their dignity; relieving overcrowding; providing hygienic facilities, and assuring access to health care and adequate food; identifying alternative sanctions (art. 10).

Para. 14: Protection of freedom of expression; investigation and prosecution of attacks on journalists (arts. 6 and 19).

Para. 16: Protection of all members of ethnic, religious or linguistic minorities against violence and discrimination (arts. 20 and 26).

Date information due: 1 December 2007

Next report due: 2 November 2011

...

Note

1/ The table format was altered at the ninetieth session.

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE
Ninety-third session
SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL

...

Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/93/R.1)

1. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, introduced his report contained in document CCPR/C/93/R.1.

...

4. ...He recommended that Paraguay should include outstanding information in its third report, which was due on 31 October 2008, and that the information already submitted by Ukraine should be considered at the ninety-fourth session.

...

39. The draft report of the Special Rapporteur for follow-up on concluding observations was adopted.

...

CCPR, A/63/40 vol. I (2008)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

194. In chapter VII of its annual report for 2003,[20] the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/62/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2008.

195. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-first, ninety-second and ninety third sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

196. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[21] Over the reporting period, since 1 August 2007, 11 States parties (Bosnia and Herzegovina, Brazil, Hong Kong Special Administrative Region (China), Mali, Paraguay, Republic of Korea, Sri Lanka, Suriname, Togo, United States of America and Ukraine), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 10 States parties (Barbados, Central African Republic, Chile, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Honduras, Madagascar, Namibia and Yemen) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

197. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2007 to take no further action prior to the period covered by this report.

198. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I.

21/ The table format was altered at the ninetieth session.

...

Eighty-eighth session (October 2006)

...

State party: Ukraine
Report considered: Sixth periodic (on time), submitted on 1 November 2005.
Information requested: Para. 7: Ensure the safety and proper treatment of all persons held in custody by the police; measures to guarantee freedom from torture and ill-treatment; establishment of an independent police complaints mechanism; video-surveillance of interrogations of criminal suspects; independent inspection of detention facilities (art. 6). Para. 11: Guarantee the right of detainees to be treated humanely and with respect for their dignity; reduce prison overcrowding including by using alternative sanctions; provide hygienic facilities; ensure access to health care and adequate food (art. 10). Para. 14: Protection of freedom of expression; investigation and prosecution of attacks on journalists (arts. 6 and 19). Para. 16: Protection of all members of ethnic, religious or linguistic minorities against violence and discrimination; provision of robust remedies against these problems (arts. 20 and 26).
Date information due: 1 December 2007
Date information received: 19 May 2008 … [in translation]
Action taken: 17 January 2008 A reminder was sent.

Recommended action: To be considered at the ninety-fourth session.
Next report due: 2 November 2011
...

CCPR, A/64/40, vol. I (2009)

VII. FOLLOW UP TO CONCLUDING OBSERVATIONS

237. In chapter VII of its annual report for 2003, [20] the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/63/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2009.

238. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-fourth, ninety-fifth and ninety-sixth sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

239. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. [21] Over the reporting period, since 1 August 2008, 16 States parties (Austria, Barbados, Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, France, Georgia, Honduras, Hong Kong Special Administrative Region (China), Ireland, Libyan Arab Jamahiriya, Madagascar, Tunisia, Ukraine and United States of America), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 11 States parties (Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Panama, Sudan, the former Yugoslav Republic of Macedonia, Yemen and Zambia) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party. [22]

240. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2008 to take no further action prior to the period covered by this report.

241. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

...

Eighty-eighth session (October 2006)

...

State party: Ukraine

Report considered: Sixth periodic (on time), submitted on 1 November 2005.

Information requested:

Para. 7: Ensure the safety and proper treatment of all persons held in custody by the police; measures to guarantee freedom from torture and ill-treatment; establishment of an independent police complaints mechanism; video-surveillance of interrogations of criminal suspects; independent inspection of detention facilities (art. 6).

Para. 11: Guarantee the right of detainees to be treated humanely and with respect for their dignity; reduce prison overcrowding including by using alternative sanctions; provide hygienic facilities; ensure access to health care and adequate food (art. 10).

Para. 14: Protection of freedom of expression; investigation and prosecution of attacks on journalists (arts. 6 and 19).

Para. 16: Protection of all members of ethnic, religious or linguistic minorities against violence and discrimination; provision of robust remedies against these problems (arts. 20 and 26).

Date information due: 1 December 2007

Date information received:

19 May 2008 Partial reply (responses incomplete with regard to paragraphs 7, 11, 14 and 16).

Action taken:

17 January 2008 A reminder was sent.

16 December 2008 A letter was sent to request additional information.

6 May 2009 A reminder was sent to the State party.

Recommended action: If no information is received, a further reminder should be sent.

Next report due: 2 November 2011

...

20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I.

21/ The table format was altered at the ninetieth session.

22/ As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Mali, Sri Lanka, Suriname, Namibia, Paraguay, and the Democratic Republic of the Congo.

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

...

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for Follow-up on Concluding Observations (CCPR/C/99/2/CRP.1)

...

2. **Mr. Amor**, Special Rapporteur for Follow-up on Concluding Observations, said that, while he commended the excellent work of the secretariat, it was regrettable that the relevant staff did not have more time to devote to follow-up on concluding observations. At the Committee's request, he had undertaken to supply details of the contents of the letters sent to States parties concerning follow-up in which the Committee asked for further information, urged the State to implement a recommendation or, alternatively, noted that a reply was satisfactory.

...

11. A letter had been sent to Ukraine on 26 April 2010 indicating which issues required further information or action; that should now be followed up by a reminder.

...

24. **The Chairperson** said that, if there was no objection, he took it that the Committee wished to adopt the Special Rapporteur's recommendations.

25. *It was so decided.*

...

CCPR, A/65/40 vol. I (2010)

...

Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,[16] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,[17] an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[18] Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.[19]

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

...

Eighty-eighth session (October 2006)

...

State party: Ukraine

Report considered: Sixth periodic (on time), submitted on 1 November 2005.
Information requested:
Para. 7: Ensure the safety and proper treatment of all persons held in custody by the police; measures to guarantee freedom from torture and ill-treatment; establishment of an independent police complaints mechanism; video-surveillance of interrogations of criminal suspects; independent inspection of detention facilities (art. 6).

Para. 11: Guarantee the right of detainees to be treated humanely and with respect for their dignity; reduce prison overcrowding including by using alternative sanctions; provide hygienic facilities; ensure access to health care and adequate food (art. 10).

Para. 14: Protection of freedom of expression; investigation and prosecution of attacks on journalists (arts. 6 and 19).

Para. 16: Protection of all members of ethnic, religious or linguistic minorities against violence and discrimination; provision of robust remedies against these problems (arts. 20 and 26).

Date information due: 1 December 2007

Date information received:

19 May 2008 Partial reply (responses incomplete with regard to paras. 7, 11, 14 and 16).

28 August 2009 Supplementary follow-up report received (para. 7: some recommendations not implemented, some replies incomplete; para. 11: replies satisfactory in parts, incomplete in others; para. 14: replies incomplete; para. 16: replies satisfactory in parts, incomplete in others).

Action taken:

17 January 2008 A reminder was sent.

16 December 2008 A letter was sent to request additional information.
6 May 2009 A reminder was sent to the State party.

26 April 2010 A letter was sent indicating that the procedure was complete with regard to the issues concerning which the information supplied by the State party was considered to be largely satisfactory: provision of hygienic facilities and adequate food in detention facilities (para. 11); and claims for restitution of Muslim property (para. 16). The letter also included a request for additional information on certain questions: investigation of deaths in detention (para. 7); relieving prison overcrowding (para. 11); use of alternative sanctions to reduce the prison population (para. 11); protection of freedom of opinion and expression (para. 14); and availability of remedies for discrimination based on the victim's ethnic, linguistic or religious identity (para. 16). Lastly, it highlighted the points concerning which the Committee considered that its recommendations had not been implemented: establishment of an independent police complaints mechanism (para. 7); and the introduction of a system for videotaping the interrogation of criminal suspects as a safeguard (para. 7).

Recommended action: A reminder should be sent.

Next report due: 2 November 2011

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[16] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

[17] Ibid., *Sixty-Fourth Session, Supplement No. 40*, vol. I (A/64/40 (vol. I)).

[18] The table format was altered at the ninetieth session.

[19] As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

Follow-up - Reporting
ii) Action by State Party

CCPR CCPR/CO/73/UKR/Add.1 (2002)

Comments by the Government of Ukraine on the concluding observations of the Human Rights Committee

1. Article 3 of the Ukrainian Constitution stipulates that the human being, his or her life and health, honour and dignity, inviolability and security are recognized as the highest social value. The principal duty of the State is to affirm and uphold human rights and freedoms.

2. Ukraine has passed laws to protect human and citizens' rights and freedoms. For example, the articles of chapter 3 of the Ukrainian Criminal Code specify that crimes against life, health, freedom and dignity shall attract criminal liability.

3. The Marriage and Family Code of Ukraine establishes the personal and property relations that obtain within the family between spouses, parents, children and other family members. In addition, the rights arising in the context of marriage and family relationships are protected by the courts, agencies of tutelage and guardianship, and the civil registry authorities.

4. The State authorities, including the law enforcement agencies, take preventive steps to eliminate the causes of and factors that breed crime, including domestic violence against women.

5. On 15 November 2001 the Verkhovna Rada of Ukraine passed the Prevention of Domestic Violence Act, seeking to tackle the problem of cruelty to women in the family environment; the Act outlines the legal and organizational aspects of preventing domestic violence, and names the bodies and institutions that are responsible for taking preventive action in this sphere. The Ukrainian State Committee for Family and Youth Affairs has drafted and submitted for the consideration of the Cabinet of Ministers a procedure for investigating reports and information about actual or potential cases of domestic violence. Under article 3 of the Act, the Ministry of Internal Affairs' responsibility for taking action to prevent domestic violence devolves upon militia beat officers and the branch of the criminal militia handling juvenile affairs.

6. Pursuant to the International Covenant on Civil and Political Rights, the Ukrainian Ministry of Internal Affairs is taking steps to comply with the stated wish of the President and Government of Ukraine that it should adopt a considerate attitude to citizens and their families as a component of Ukrainian society, take measures to protect them against unlawful acts and raise the general culture of militia officers.

7. In order to fulfil the requirements of the Prevention of Domestic Violence Act, the Ministry of Internal Affairs has taken a series of organizational measures. Ministerial Order No. 307 on measures to implement the Prevention of Domestic Violence Act was signed on 28 March 2002. Article 2 of this Order states that, in conjunction with the State Committee for Family and Youth Affairs and the Ministry of Health, the Ministry of Internal Affairs shall draw up an

interdepartmental instruction on cooperation and information-sharing in domestic violence cases.

8. By Order No. 329 of 9 April 2002, the Ministry of Internal Affairs validated the instructions on the procedure for drawing up a preventive register of persons who have committed domestic violence. Guidelines have been produced for internal affairs officers involved in the prevention of domestic violence, as has a bill to amend the Ukrainian Code of Administrative Offences to cover responsibility for domestic violence.

9. The State Committee for Family and Youth Affairs and the Ministry of Internal Affairs have jointly prepared a draft Order of the Cabinet of Ministers on a procedure for investigating reports and information about actual or potential cases of domestic violence.

10. Furthermore, the Ministry of Internal Affairs has proposed to the coordinators of the "Social initiatives to prevent domestic violence" project and the Ukrainian Research Institute for Social and Forensic Psychiatry, Alcoholism and Drug Dependence that technical guidance and support should be provided to field officers enforcing the Act.

11. A proposal has been made to add sections on domestic violence to statistical reports. Five articles about the problems of preventing domestic violence have appeared in the national press.

12. The topic of violence against women is reflected in the new National Action Plan for the advancement of women and the promotion of gender equality in society in the period 2001-2005.

13. As part of the "Harmony" Project, an American delegation is holding meetings with representatives of the Ministry of Internal Affairs, public relations officers, training officers and psychologists, discussing experience with cooperation between police forces and the public in the United States of America, including work with schoolchildren and families. Under the "Preventing Domestic Violence" Programme, eight exchange visits have taken place between 1999 and 2001 between delegations from the Ministry of Internal Affairs and American law enforcement structures. A study plan for the social and humanitarian training of rank-and-file officers and junior managers in Ukrainian internal affairs agencies has been drawn up and approved for the academic year 2002/03.

14. Work has started on establishing a network of specialized institutions for victims of domestic violence: crisis centres and shelters for battered women, and medical and social rehabilitation centres for victims of domestic violence. As part of the programme of cooperation between the State Committee for Family and Youth Affairs and the United Nations Children's Fund (UNICEF) in the period 2002-2005, there are plans to open five crisis centres (shelters) every year, to be funded in part by UNICEF and local budget resources. As part of a project being pursued with Winrock International, a network of "Woman for Women" information and counselling centres has been set up and is operating in nine regional centres in Ukraine.

15. As it currently stands, Ukrainian law provides adequate safeguards for the cultural identity of national minorities, but the rapid development of inter-nationality processes and the increasingly active stance taken by representatives of ethnic associations and their desire to be

involved in these processes, mean that the existing mechanisms for shaping the legal basis of State ethnic policy need to be fine-tuned.

16. Article 24, paragraph 2, of the Ukrainian Constitution stipulates that there shall be no privileges or restrictions on grounds of race, skin colour, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, or linguistic or other characteristics.

17. The process of democratization which has begun in independent Ukraine has activated constructive forces in Ukrainian society and in the Roma community itself which could have a real impact on the problems facing the Roma. The situation of the Roma has started to change for the better: the emergence of a significant number of Roma voluntary associations bears witness to the ethnic and cultural renaissance of this national minority.

18. Close cooperation between the State Committee for Nationalities' Affairs and Migration and voluntary organizations is facilitated by a consultative body reporting to the President, the Council of Representatives of National Minority Voluntary Organizations, which includes a Roma representative.

19. With backing from international organizations, the State Committee for Nationalities' Affairs and Migration is working constructively on issues pertaining to the adaptation and participation of Roma in social processes and the satisfaction of their educational, linguistic and public information interests.

20. A proposal by the Government of Finland to establish a Europe-wide Roma forum has recently been examined under the auspices of the Ministry of Foreign Affairs and in partnership with the State Committee for Nationalities' Affairs and Migration.

21. Along with other national minority voluntary organizations, Roma societies - which have branches in most Ukrainian oblasts - are conspicuously active.

22. Thanks to the support of the Ukrainian Government and the efforts of Roma voluntary organizations in Ukraine, 19 Roma national and cultural associations have been formed; their activities focus on the development of the Roma ethnic identity, language, culture and traditions.

23. Most regions inhabited by Roma have amateur artistic and performing groups; human rights centres are also being set up, and there are Roma Sunday schools in two towns.

24. In some regions closer and more businesslike contacts are starting to develop between Roma and the authorities, for example with oblast, local and district administrations, voluntary associations of other national groups, and international organizations and foundations.

25. Alongside the progress that is being made in the cultural and educational development of the Roma people, there are also negative points. Some of these have historical roots: early marriages, low education levels, inadequate housing, sanitation and hygiene. Others are economic and relate to a want of social support (large-scale unemployment, low pay, low benefits and allowances etc.).

26. The main problems facing the Roma in Ukraine, as in other countries with a Roma population, are unsatisfactory living conditions and lack of education, unemployment, and poor integration into national economic, cultural and political life. The relative isolation of the Roma from society feeds a certain level of prejudice against them in the workplace, educational establishments and medical institutions. Consequently the problems which all ethnic groups are now experiencing have affected the Roma most of all.

27. Moves to uphold the rights of the Roma and afford them social protection have not yet been fully put into practice. State bodies - in particular the State Committee for Nationalities ' Affairs and Migration - do nevertheless react in due time to instances of prejudice against persons of Roma nationality.

28. The Ministry of Internal Affairs has made a study of all reports and information received this year and the year before from representatives of national minorities, including Roma. No reports have been received of prejudice against Roma, nor have there been any complaints connected with the fact that the complainant was of Roma origin.

29. On 7 June 2002 the Ministry of Internal Affairs took part in the National Forum of Roma Communities, during which it gave a presentation on matters to do with passport arrangements.

30. The Government does not think there is any need for a special independent authority to investigate offences committed by members of the militia, since this matter is regulated under Ukrainian law. Under the Office of the Procurator Act, procuratorial bodies include special offices and departments to ensure that the law is adhered to in the course of police operations, initial inquiries and pre-trial investigations, including those conducted by agencies of the Ministry of Internal Affairs. One of the functions of the procuratorial system is to ensure that the law is observed during the enforcement of judicial decisions in criminal cases, and during the application of other coercive measures which entail restrictions on citizens' personal freedom.

31. Furthermore, under article 85, paragraph 17, of the Ukrainian Constitution, the Verkhovna Rada has the power to appoint and dismiss the Commissioner of the Verkhovna Rada of Ukraine and hears his or her annual reports on the observance and protection of human rights and freedoms in Ukraine. The Commissioner's mandate has already been explained.

32. After 1917 citizens of Jewish nationality were buried in practically all working cemeteries in Ukrainian towns and villages where there existed appropriate conditions for burial according to national and religious rites. Under current Ukrainian laws and regulations, working cemeteries in Ukrainian towns and villages are not divided along national lines.

33. According to article 42 of the Regulations respecting the Laws and Customs of War on Land - the Annex to the Convention respecting the Laws and Customs of War on Land, done at the Hague on 18 October 1907 - a territory is considered occupied when it is actually placed under the authority of the hostile army. During the period in question (1942), Ukraine was occupied by Nazi invaders and could not be held responsible for the actions of the occupying State, including the confiscation and destruction of Jewish cemeteries. Article 43 of the

aforementioned Regulations states that, the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

34. Articles 42 and 43 of the Regulations respecting the Laws and Customs of War on Land - the Annex to the Convention respecting the Laws and Customs of War on Land, done at the Hague on 18 October 1907 - were amplified in the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War and the Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), which stipulate that the Occupying Power must take all measures to ensure order in the territory that it has captured. The life and honour of civilians, their property, religious beliefs and families, must be respected. Specifically, article 53 of the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War states that any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations. Article 53 of the Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) indicates that without prejudice to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

(a) To commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(b) To use such objects in support of the military effort;

(c) To make such objects the object of reprisals.

35. The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 came into force in Ukrainian territory on 6 May 1957.

36. Proposals by foreign organizations to build Jewish cemeteries in Ukraine on a joint basis have been turned down on occasion because Ukraine is an ethnically mixed State where there are mixed marriages and the establishment of cemeteries on national and religious lines could create a situation conducive to the development of social tensions in society.

37. In pursuing their activity as independent professionals, journalists exercise their rights and fulfil their obligations as laid down in the Information Act, the Television and Radio Broadcasting Act, the Ukrainian Mass Print Media (Press) Act and the Act on State Support for the Mass Media and the Social Protection of Journalists.

38. In the performance of their duties, professional journalists operate under the legal and social protection of their editorial office. The honour, dignity and inviolability of journalists is protected by law.

39. A journalist's professional activity may not constitute grounds for his arrest or detention, or for the confiscation of material which he has gathered, handled or prepared, or of equipment used in the course of his work.

40. Furthermore, it is an offence under article 171 of the Ukrainian Criminal Code for an official or group of persons intentionally and by prior arrangement to obstruct the legitimate professional activity of a journalist or to persecute a journalist for fulfilling his professional obligations or for making criticisms.

41. Under article 1 of the Pre-Trial Detention Act, detention in custody must be carried out in strict conformity with the Ukrainian Constitution and the requirements of the Universal Declaration of Human Rights and other international legal norms and standards for the treatment of detainees; custody must not be combined with the deliberate causing of physical or mental suffering or degradation.

42. Torture is an offence under article 27 of the Criminal Code of Ukraine. Torture, i.e. the intentional causation of severe physical pain or physical or mental suffering by means of beating, victimization or other violent acts calculated to coerce the victim or another person to commit acts contrary to his will, is punishable by 5 to 10 years' deprivation of liberty.

43. In line with the commitments which Ukraine entered into when it became a member of the Council of Europe, and pursuant to comments and recommendations made by the experts of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during their visits to Ukraine, the following organizational and practical steps are being taken.

44. The Ministry of Internal Affairs and the Ministry of Justice have devised specific measures which lie at the heart of a variety of special programmes, for example the Comprehensive programme to improve personnel work and enhance the authority of the militia in the period 1999-2005; the Programme to foster partnership between the militia and the general public in the period 2000-2005; and the Programme "The People and The Militia - Partners".

45. In May 2001 the issues of legal compliance in the work of internal affairs agencies and steps to reinforce law and order were reviewed by the central administrative board of the Ministry of Justice, which approved a Plan of organizational, practical and guidance measures to reinforce discipline, law and order.

46. In addition, the Ministry of Internal Affairs and the State Department for the Execution of Penalties have issued a joint decree (No. 300/73 of 23 April 2001) on observance of the law when detaining persons suspected of an offence, the choice of pre-trial detention as a preventive measure and observance of the statutory periods for detention and custody during pre-trial investigations. The decree was registered with the Ministry of Justice on 30 August 2001 as No. 761/5952. It outlines measures to ensure that investigators stay within the law when detaining suspects, choosing pre-trial detention as a preventive measure, and observing the statutory periods for detention and custody. Specifically, provision is made for a monthly check of the

list of persons released from temporary holding facilities, comparison of this information with criminal case-files, analysis of the justification for remand in custody and the monitoring of developments in such cases. Every month, investigators based at internal affairs authorities (offices) must check information supplied by remand units on the justification for the detention of accused persons under investigation; the number of persons released from custody upon expiry of the pre-trial detention period, imposition of a different preventive measure, cancellation of the preventive measure on grounds including exoneration of the remand prisoner, or closure of the criminal case on grounds of rehabilitation; the time a prisoner has spent on remand, if over two months; and, when remand unit authorities are notified that an accused has been told his pre-trial investigation is over and has been presented with the criminal case-file for perusal, the extension of his remand in custody, or the recalculation thereof by a procurator or other agencies.

47. Provision is made for regular checks (at least once a quarter) at all investigative units without exception on legal compliance in respect of arrest and detention, on observance of the statutory periods for the detention of accused persons (suspects) and on the resolution of complaints about breaches of the law during detention and custody.

48. The Ministry of Internal Affairs has introduced a monthly survey of legal compliance during arrest and detention, which was approved on 27 November 2001 (No. 8845/3b) and has been forwarded to the relevant agencies in the field together with instructions on how the survey is to be compiled.

49. Article 22, paragraph 3, of the Code of Criminal Procedure of Ukraine prohibits attempts to obtain evidence from the accused or other parties to proceedings by violence, threats or other unlawful means.

50. Article 29 of the Ukrainian Constitution states that anyone who is arrested or detained must be informed of the reasons for his arrest or detention, apprised of his rights and afforded the opportunity to defend himself personally as soon as he is apprehended, or to have the assistance of a lawyer.

51. Articles 106 and 115 of the Code of Criminal Procedure state that a body of inquiry or an investigator must immediately notify a relative of the detainee of the fact of his arrest or detention.

52. Article 21 of the Code of Criminal Procedure states that a suspect, accused person or person standing trial shall be afforded the right of defence prior to initial interrogation, i.e. before police custody or pre-trial detention.

53. A ruling by the Ukrainian Constitutional Court of 16 November 2000 states that a suspect, accused person or person standing trial has the right to choose any counsel.

54. According to article 373 of the Criminal Code, it is an offence to coerce someone to testify, and article 374 makes it an offence to infringe a detainee’s right of defence.

55. Every detainee or remand prisoner has the right to complain to the procuratorial bodies or

the courts that he has been forced to make a statement.

56. Both the Criminal Code and the Code of Criminal Procedure state that no charge may be based on evidence obtained by unlawful means.

57. Article 101 of the Ukrainian Code of Criminal Procedure defines “bodies of inquiry” as:

The militia;

The tax militia, in cases of tax evasion and concealment of foreign-currency earnings;

The security agencies in cases legally assigned to their jurisdiction;

Commanders of military units and forces and chief officers of military institutions, in all cases involving offences committed by military personnel subordinate to them and reservists during military reserve exercises, and also offences committed by employees of the Ukrainian Armed Forces in connection with their official duties or at the place where the unit, force or institution is stationed;

The customs authorities, in cases of smuggling;

The governors of correctional labour institutions, remand units, secure hospitals and secure institutions for young offenders, in cases involving violations of the established procedures by staff at such institutions, and offences committed on the premises of these institutions;

The State fire inspectorate, in cases involving fires and breaches of fire safety regulations;

The frontier guard service, in cases involving violations of national frontiers;

Captains of maritime vessels engaged in long-distance voyages.

58. Bodies of inquiry are responsible for taking such investigative steps as are necessary to uncover evidence that a crime has been committed and to identify the perpetrators.

59. Under articles 106 and 115 of the Ukrainian Code of Criminal Procedure, the body of inquiry or the investigator of a criminal case may detain any person suspected of an imprisonable offence for up to 72 hours, but only if one of the following circumstances applies:

When the person is apprehended in the act of committing the offence or immediately after its commission;

When witnesses, including victims, specifically identify the person as being the one who committed the offence;

When clear incriminating evidence is discovered on the suspect, his clothing, about his person or at his dwelling.

60. When other information to hand arouses suspicion that a person has committed an offence, that person may be detained only if he has attempted to abscond, he has no fixed address, or his identity cannot be established.

61. Whenever a person is detained on suspicion of a crime, the body of inquiry or investigator must compile a report indicating the grounds, reasons, hour, day, month and year, the place of detention, the detainee's statement, and the time when the suspect was officially notified of his right to consult with a lawyer upon being detained. A copy of the report is immediately transmitted to the procurator.

62. At the procurator's request, the material serving as grounds for detention will be transmitted to him. If a procurator monitoring the legality of detention ascertains that a person has been detained without justification, he will take steps to secure the detainee's immediate release.

63. If a detainee wishes to appeal against his detention in a court of law, the chief officer at the place of detention will immediately transmit his complaint to the court.

64. Thus, by law, an offender cannot be detained for more than 72 hours. This period is granted to the body of inquiry or the investigator to clarify whether a person is party to an offence and to decide whether to use remand in custody as a preventive measure.

65. Article 101, paragraph 7, of the Code of Criminal Procedure states that, in cases involving violations of national frontiers, bodies of inquiry shall include the frontier guard service, or units thereof which have investigative capabilities (under article 5 of the Police Operations Act of 18 February 1992, responsibility for conducting investigative work in the Frontier Troops devolves upon investigative units). The commanders of Frontier Troops Units head bodies of inquiry.

66. Bodies of inquiry carry out the investigations to uncover evidence of a crime and to identify the perpetrators (Code of Criminal Procedure, art. 3).

67. Article 7, paragraph 3, of the Frontier Troops Act of 4 November 1991 states that the Frontier Troops are entitled to hold persons who have breached Ukraine's national frontier, frontier regulations or the rules pertaining to border crossings in administrative detention for up to three hours in order to prepare a report or, in cases where it is necessary to establish the detainee's identity and investigate the background to an offence, for up to three days provided that a procurator is notified of the detention in writing within 24 hours, or for up to 10 days with procuratorial authorization if the offender has no identity papers. They can also search detainees, examine and, if necessary, confiscate items discovered on their persons.

68. Persons in administrative detention are held in temporary holding facilities or other facilities specially adapted for the purpose.

69. In 2001, bodies of inquiry of the Frontier Troops detained 16,785 people for breaches of the law relating to Ukraine's national frontier. Of these detainees:

10,074 were detained for 3 hours;

5,113 for 72 hours;

1,598 for 10 days.

70. In the first six months of 2002, a total of 10,995 people were detained, of whom:

8,405 were detained for 3 hours;

1,684 for 72 hours;

906 for 10 days.

71. Article 12, paragraph 1, of the International Covenant on Civil and Political Rights states that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

72. These rights shall not be subject to any restrictions except those which are provided for by law and are necessary to protect national security, public order (*ordre public*), public health or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant (art. 12, para. 3).

73. The provisions of article 12 are fully reflected in the Ukrainian Constitution, article 33 of which says that everyone who is lawfully present in the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right freely to leave the territory of Ukraine, except where restricted by law.

74. However, until recently the constitutional right to freedom of movement and free choice of place of residence was in practice restricted by certain State authorities through the imposition of a residence permit system.

75. By its Decision No. 15-rp/2001 of 14 November 2001, the Constitutional Court struck down as unconstitutional paragraph 4 (1), concerning registration (deregistration), of the Internal Affairs Authorities Passport Service Regulations as ratified by Council of Ministers Decision No. 700 of 10 October 1994, which required the internal affairs passport service to apply a permit system as the general rule for choosing one's place of residence.

76. Pursuant to this ruling, Decision No. 13 of the Cabinet of Ministers of 10 January 2002, amended paragraph 4 (1) of the Passport Service Regulations to state that the passport service shall, within its sphere of competence, deal with the preparation and issuance of passports and other documents and the registration of citizens and their chosen places of residence, and shall ensure that citizens and officials abide by the rules of the passport regime.

77. Any private individual lawfully present in Ukrainian territory now has the right to be

registered in Ukraine, and internal affairs bodies are not entitled to obstruct their registration.

78. The Verkhovna Rada is due to pass a law that will regulate the registration of private individuals and specify the restrictions that may be applied to the right to freedom of movement and freedom to choose one's place of residence.

79. In recent years Ukraine has significantly intensified its efforts to reshape its legislation on nationalities. The Refugees Act, the Immigration Act and the Citizenship Act, all passed in 2001, fully comply with international legal norms and the current Constitution of Ukraine, and protect the rights and freedoms of individuals, including those of foreign citizens, present in Ukrainian territory.

80. According to the National Minorities of Ukraine Act, national minorities are defined as groups of Ukrainian citizens from a non-Ukrainian ethnic background who display a sense of national self-awareness and community.

81. Discussions in recent years both in theory and in practice, and the recommendations of conferences, forums and round tables organized by Ukraine's national minority voluntary organizations require a clearer definition of the approaches and criteria that could be used to ascribe the representatives of one or another of Ukraine's ethnic groups to a particular national minority. These desiderata will be taken account of in the new version of the National Minorities of Ukraine Act, which is in preparation.

82. Article 10, paragraph 3, of the Ukrainian Constitution guarantees the free development, use and protection of Russian and other national minority languages of Ukraine. Article 11 of the Constitution stipulates that the State shall promote the development of the ethnic, cultural, linguistic and religious identity of all peoples and national minorities of Ukraine.

83. Pursuant to article 6, paragraph 1, of the National Minorities of Ukraine Act, the State guarantees all national minorities the right to national and cultural autonomy: the right to use and be taught in their mother tongue, the study of their mother tongue in State educational establishments or via national cultural societies, the development of national cultural traditions, the use of national symbols, the celebration of national holidays, the profession of their religion, the satisfaction of their needs in literature, art and the mass media, the establishment of national cultural and educational establishments, and any other activity not contrary to current law.

84. The main concern of the central authorities and local government is to translate into reality current legislation to uphold the rights of national minorities and satisfy their ethnic, cultural and social needs.

85. In recent years the sense of ethnic solidarity in voluntary associations has increased sharply. On 1 January 2002 there were 778 associations with a national-cultural focus, 28 of which were of nationwide standing.

86. The new convocation of the Verkhovna Rada has set up a Committee for Human Rights, National Minorities and Relations Between Nationalities. Local authorities have established departments and offices for relations between nationalities and migration issues.

87. The State is taking steps to address the issue of deported persons returning to Ukraine. More than 263,000 Crimean Tatars and more than 12,000 persons of other nationalities have returned to the Autonomous Republic of Crimea alone.

88. This year Ukraine acceded to the United Nations Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967. In implementing these international instruments, as of 1 January 2002 Ukraine had granted refugee status to 2,983 people from 49 countries, or six times more than the Russian Federation (532).

89. The largest group of refugees is from Afghanistan (1,587 people or 53 per cent of the total).

90. In addition, Ukraine is home to 2,793 people who have fled the military conflict zone in Abkhazia (Georgia). Under Cabinet of Ministers Decision No. 674 of 29 June 1996 these people receive help with settlement, job-placement and medical services.

91. Pursuant to a decision of the Cabinet of Ministers dated 1 July 2001, Ukraine's first refugee centre has been opened in Odessa oblast. The issue of whether to establish a similar centre in Kiev oblast is being decided.

92. The Militia Act imposes on the internal affairs agencies the duty to protect the lives, health, rights and liberties of citizens, their property, and the interests of the State and society. If people break the law, regardless of their racial or national origin or political, religious and other beliefs, the militia must take steps to ensure citizens' safety and uphold public order.

93. If militia officers violate the rights and liberties of individuals and citizens, including Roma and foreigners, such persons have the right to apply to the law enforcement bodies for protection.

94. If the allegations made in such a report are borne out, criminal proceedings are instituted against the militia officers concerned and a pre-trial investigation is carried out.

95. Ukrainian law guarantees the right of all persons, without distinction as to ethnic origin, language or religion, to practise their religion and perform the rites thereof. Article 35 of the Ukrainian Constitution provides for the universal right freely to espouse any personal philosophy or religion, including the freedom to practise any religion or to practise no religion at all, to perform religious rites and ceremonial rituals alone or collectively, without hindrance and to conduct religious activity.

96. The direct or indirect restriction of rights or the establishment of direct or indirect privileges for citizens on the grounds of race, skin colour, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, or linguistic or other characteristics is an offence punishable under article 161 of the Ukrainian Criminal Code.

97. The Freedom of Conscience and Religious Organizations Act establishes that all religions, faiths and religious organizations are equal in the eyes of the law, and the bestowal of any privileges or the imposition of any restrictions on a religion, faith or religious organization at the expense of others shall not be permitted.

98. The practical embodiment of these rights is demonstrated by the fact that people professing different religions coexist peacefully in Ukrainian territory: members of the Reformed Church, Lutherans, Jews, Muslims, Karaites, Krymchaks, etc. Differentiation on national lines (Russians, Bulgars, Greeks, Moldovans, Romanians, Slovaks, Poles) does occur in religious organizations, but the national spiritual needs of believers are satisfied by holding services in national languages. The emphasis on satisfying the spiritual, cultural and religious needs of national minorities is a feature of policy towards all traditional faiths, and also towards certain new religious movements operating in Ukraine.

99. On 1 April 2002 there were 844 officially registered national minority religious communities. Since independence their number has increased by 617, or by a factor of 4.5. Since 1992 the number of communities affiliated to the German Evangelical Lutheran Church and the Armenian Apostolic Church has increased eightfold; the number of Jewish communities by a factor of 5.5; and the number of Muslim communities thirteenfold. Eighty-eight per cent of national minority religious organizations have premises to hold prayer meetings, which is 12 per cent more than the comparable index for the availability of places of worship for religious organizations. National minority religious organizations are served by 591 clerics, 75 per cent of what they require. With the assistance of the local authorities, ethnic religious minorities are setting up elementary religious schools.

100. The upward trend in the number of ethnic religious communities is continuing, and the rate of increase is accelerating. This empirical fact highlights the ethnic identity of national minorities and the importance which they attach to it.

101. The State is making a constant effort to establish equal conditions for the exercise by national minorities of their right to religious choice and religious freedoms on the same footing as persons belonging to the nation that represents the majority of the population. It supports the integration of ethnic religious minorities into Ukrainian society and makes consistent efforts to develop the religious identity of ethnic communities, while paying special attention to the strengthening of religious infrastructure, the return of places of worship and religious property, the setting up of religious educational establishments and the publication of religious literature; it also encourages cultural ties between ethnic religious minorities and their co-religionists abroad.

102. It is a criminal offence to violate citizens' equal rights on the grounds of race, nationality or attitude to religion. Article 161 of the Ukrainian Criminal Code stipulates that actions calculated to foment national, racial or religious hatred or enmity, diminish national honour and dignity or outrage the feelings of believers, directly or indirectly to restrict the rights or to bestow direct or indirect privileges on the grounds of race, skin colour, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, or linguistic or other characteristics, shall be punishable by a fine of up to 50 times the minimum wage before tax or by punitive deduction of earnings for up to five years, with or without forfeiture of the right to exercise certain official duties or engage in a specified activity for up to three years.

103. It should also be noted that, under article 67, paragraph 1 (3), of the Criminal Code, the commission of an offence motivated by racial, national or religious hatred shall be deemed an

aggravating circumstance for sentencing purposes.

CCPR, CCPR/C/UKR/CO/6/Add.1 (2008)

Comments by Ukraine on the Concluding Observations of the Human Rights Committee (CCPR/C/UKR/CO/6)*

[19 May 2008]

Paragraph 7

1. Ukraine has made unremitting efforts to bring its national legislation into line and comply with international human rights standards. Guided by the Constitution, the Procurator's Office Act and orders of the Procurator General, procurators at all levels systematically monitor compliance with the legislation governing the execution of court decisions in criminal cases and the enforcement of other coercive measures involving restrictions on personal freedom.

2. To ensure regular oversight of all remand facilities and penal colonies, interviews are held once a month with prisoners on personal matters, and decisions taken by the administration are reviewed to ensure that they are lawful. Article 24 of the Penal Enforcement Code of Ukraine specifies the persons who have the right to visit penal institutions for the purpose of monitoring conditions. Procurators are required to investigate and hear complaints from detainees and persons in custody of the violation of their rights and freedoms. In accordance with article 25 of the foregoing Code, oversight committees have been entrusted with public monitoring of observance of the rights of convicted prisoners while serving their sentences.

3. In the case of the fatal beating of a 36-year-old man in Zhytomyr on 7 April 2005, the Procurator's Office of Zhytomyr province instituted criminal proceedings against Mr. Y. for murder on 7 April 2005 under article 115, paragraph 1, of the Criminal Code.

4. According to the report of the pretrial investigation, at approximately 10.50 p.m. on 6 April 2005 Inspector P. of the Zhytomyr municipal division of the Directorate of the Ministry of Internal Affairs of Ukraine in Zhytomyr province handed over Mr. Y., who was drunk, to the on-duty unit of the division and filed a police report on the administrative offence described in article 173 of the Code of Administrative Offences of Ukraine. Mr. Y. was put in pretrial detention cell No. 2 in the on-duty unit of the Zhytomyr municipal division. Mr. Y.'s health deteriorated significantly between 1 and 6 a.m. on 7 April 2005. Inspector P. and Duty Officer K. of the Zhytomyr municipal division pretrial detention centre believed that Mr. Y. was pretending to be ill and inflicted bodily harm on him. This was evidenced by bruises and abrasions on his chest, right and left rib fractures and lung injuries, which resulted in his death in the on-duty unit of the Zhytomyr municipal division at 7.35 a.m. on 7 April 2005.

5. The criminal case against K. and P. was referred to the Bohun District Court in Zhytomyr for consideration of the merits on 27 April 2005 under article 121, paragraph 2, and article 365, paragraph 3, of the Criminal Code. The court investigation is currently under way.

6. In the case of the fatal beating of a man in a Kharkiv pretrial detention facility on 17

December 2005, the Procurator's Office of the Oktyabr district of Kharkiv instituted criminal proceedings against the facility medical personnel on 22 December 2005 on charges of improper performance of their professional duties leading to the death of a person in custody.

7. According to the report of the pretrial investigation, Mr. M., who was being held in custody, was checked into the detention facility dispensary on 29 November 2005 for hypertensive vegetative vascular dystonia accompanied by loss of consciousness, falling out of bed and bumping into walls while moving around the cell. On 17 December 2005 Mr. M. died in the medical ward of the Kharkiv detention facility as a result of craniocerebral trauma, with irritation of the meninges, which had occurred four to five days previously, leading to severe vomiting and inhalation of vomit into the respiratory tract. According to the conclusions of an additional forensic examination, the Kharkiv detention facility medical personnel's actions were timely, comprehensive and sound.

8. As a result of the pretrial investigation, the criminal case was closed on 29 May 2007 under article 6, paragraph 2, of the Code of Criminal Procedure of Ukraine. There are no grounds for reversing the decision to dismiss the criminal case.

9. With respect to the case of Mykola Zahadhevsky's death in pretrial detention in April 2004, it should be noted that the division for monitoring the execution of court decisions of the Kharkiv pretrial detention facility has no record on file of that person. Furthermore, no deaths occurred in the institution in 2004.

10. Under article 85-2 of the Code of Criminal Procedure, inquiry bodies, investigators, procurators and the courts have the right to videotape the interrogation of crime suspects during criminal investigations. The Office of the Procurator General considers that such recordings could be used on a permanent basis when conducting investigations of suspects, which, in its view, would reduce the number of cases in which suspects retract their testimony.

11. In recent years the Government of Ukraine has taken a number of steps to promote human rights in the internal affairs bodies, as follows:

- The post of adviser to the Minister of Internal Affairs on human rights and gender issues was established in October 2004.
- A citizens' human rights board under the Ministry of Internal Affairs and similar boards under the Ministry offices in the provinces were set up in December 2005. The citizens' boards are collegiate bodies in which members of civil society and law enforcement agencies meet to identify the most urgent problems relating to respect for human rights and the activities of the internal affairs bodies and to develop strategies to overcome them.
- Mobile teams for monitoring the observance of citizens' constitutional rights and freedoms were launched in August 2006 to carry out independent inspections of prisons for detainees and persons in custody; they constitute a unique instrument to ensure civil oversight of the activities of the internal affairs bodies of Ukraine. These mobile teams are deemed equivalent to the national preventive mechanisms called for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment.

- An office to monitor the observance of human rights in the activities of the internal affairs bodies was established in January 2008. The aim is to create a system of in house monitoring of observance of human rights in the work of the internal affairs bodies in accordance with international law enforcement standards.

12. It should be noted that the Act of Ukraine to amend the Criminal Code and the Code of Criminal Procedure (on making criminal sentences more humane) entered into force on 7 May 2008.

13. Under this Act, torture is punishable by three to five years' deprivation of liberty and is defined as "beating, tormenting or any other violent act by which severe physical pain or physical or mental suffering is intentionally inflicted for such purposes as forcing the victim or a third person to commit acts contrary to his or her will, including obtaining from the person or a third person information or a confession and punishing the person for an act which the person or a third person has committed or is suspected of having committed, as well as for such purposes as intimidating or discriminating against the person or a third person".

14. Such a definition of the term "torture" is consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Paragraph 11

15. Today 407 (84 per cent) of temporary detention facilities meet the established requirements. The cells of these militia facilities are equipped with individual bunks, washstands and windows allowing sufficient access to natural light and air. The facilities have exercise yards. Detainees are provided with three meals a day, which are fully funded by the State. Eighty institutions were temporarily shut down for major repairs. Medical assistance to persons in pretrial detention facilities is provided by 29 medical units and 3 first-aid posts with a 9 per cent shortfall in medical staff.

16. Additional information: as at 1 January 2008, there were 535 special militia facilities, including 487 temporary detention facilities, which can hold up to 9,800 persons, 36 holding and processing facilities with 1,300 places for persons arrested for vagrancy and 12 special holding facilities with 390 places for persons under administrative detention. According to the Ministry of Internal Affairs these institutions hold 6,300 persons daily.

17. Yet the status of observance of citizens' constitutional rights in remand centres is a cause for concern, as 103 prisoners died during the past year, while the overall average annual population of such institutions declined. Almost half of all deaths occurred in Kyiv and Donetsk remand centres.

18. Circulatory and respiratory disease accounted for 44.2 per cent of deaths in remand centres and 64 per cent in penal institutions.

19. Improper conditions and medical care, inadequate funding and overcrowding in certain

pretrial detention facilities (such as the Donetsk, Kyiv, Simferopol and Kherson remand centres) contribute to poor outcomes of disease among prisoners in those facilities.

20. There have been cases of critically ill tuberculosis patients who have died within 10 days after being hospitalized, because they were not sent for treatment in time. Yet the Health (Framework) Act of Ukraine provides for medical assistance in places of detention, incorporating all the international experience in this area.

21. The World Bank Tuberculosis and HIV/AIDS Control Project in Ukraine is being implemented to prevent the spread of HIV/AIDS and tuberculosis and provide adequate treatment in prisons.

22. The project seeks to address the tuberculosis and HIV/AIDS epidemic in Ukraine by supporting the national tuberculosis control strategy developed in accordance with international standards and the national programme on the prevention of HIV infection and assistance to and treatment of persons affected by HIV and AIDS for 2004-2008. The project includes three components: tuberculosis; HIV/AIDS; and prisons.

23. The prison tuberculosis subcomponent focuses on four areas: building institutional and technical capacities; diagnosis; monitoring; and treatment.

24. The prison AIDS subcomponent focuses on preventive measures for persons living with HIV and enhancing national capacities.

25. Total funding for the prison component amounts to $9.9 million.

26. The Government has signed a memorandum of understanding with the World Health Organization on the prevention, diagnosis and treatment of tuberculosis and introduced advanced methods recommended by the Organization and optimal programmes to deal with the disease.

27. As at 1 January 2008, 104 special wards in communal tuberculosis treatment centres, totalling 400 places, had been set aside for the internal affairs bodies. Between 150 and 200 patients are treated daily in such wards under the supervision of militia officers. In 2007, 680 patients were treated.

28. It should also be noted that in 2007:

- 121 hospital workers and some 300 nurses in the prison system underwent further training in specialized departments of the Academy of Postgraduate Studies and obtained qualifications and certificates of completion of training in accordance with the law.
- 113 HIV-positive prisoners received antiretroviral drug treatment, which is twice as many as in 2006. As at 1 January 2008, 5,017 prisoners out of an overall prison population of 150,000 in 181 National Penitentiary Service institutions were registered as HIV-positive.
- 215 persons were treated for HIV in general hospitals for prisoners in Darivka penal colony No. 10 in Kherson province, which is 35 per cent more than in 2006.
- The introduction of a range of disease control measures made it possible to prevent

outbreaks of intestinal infection, measles, flu and acute respiratory viral infections.

- A software programme for infectious disease prognosis and epidemiological monitoring has been introduced.
- To improve prevention and care of persons in detention, a bill has been drafted amending certain legislation of Ukraine concerning persons suffering from active tuberculosis.
- In Donetsk province an infectious disease section has been established for prisoners suffering from HIV/AIDS.
- The State Penal Service has established wards in 11 specialized treatment facilities for inpatient treatment of prisoners serving life sentences.
- The Kherson province tuberculosis hospital has established a unit specializing in treating tuberculosis patients serving life sentences.
- All medical facilities are equipped with ultrasound and new X-ray machines. The medical equipment in remand centres has begun to be replaced.
- Routine repairs were performed in all treatment facilities and medical units of institutions and in some remand centres of the State Penal Service of Ukraine.
- Repair and construction work was performed at 45 sites, including the ongoing construction of 14 new temporary detention facilities, the restoration of 18 institutions and 13 major repairs, costing 28 million hryvnias. Work was completed on reconstruction of the temporary detention facility of the Storozhynets district division of the Department of the Ministry of Internal Affairs in Chernivtsi province and major repairs of the temporary detention facility of the Tsiurupynsk district division of the Department of the Ministry of Internal Affairs in Kherson province.

29. Construction of a new temporary detention facility of the Stakhanov municipal unit of the Department of the Ministry of Internal Affairs in Luhansk province and the restoration and major repairs of 12 institutions in the Zhytomyr, Ivano-Frankivsk, Kyiv, Lviv, Rivne and Sumy provinces and in Kyiv were scheduled for completion in the first quarter of this year. Two institutions of the Autonomous Republic of Crimea and Kyiv province are scheduled for completion in the second quarter and a temporary detention facility of the Novohrad-Volynskyi district division of the Department of the Ministry of Internal Affairs in Zhytomyr province in the third. Repair and construction work will be completed on 16 institutions in total.

30. Some 30 million hryvnias have been set aside for construction and repair work at 35 sites of special militia facilities in 2008.

31. It should be noted that, in accordance with the requirements of the Procurator General, procurators are conducting comprehensive inspections of special facilities of the internal affairs bodies and the State Department of Corrections. As a result of such oversight by procurators, in 2007, 5,055 complaints were examined (compared with 4,812 in 2006), 13,498 cases of intervention by the procurator's office were documented (11,997), 9,950 officials were disciplined (9,114), criminal proceedings were instituted in 344 cases (286), 295 unlawfully detained persons were released from special facilities of internal affairs bodies and 89 were released from correctional facilities in which they had been held without just cause.

32. In an effort to bring the conditions of prisoners and persons in custody into line with

international standards, in 2006 the Government approved a national programme (2006-2010) to improve the conditions of detention of convicts and persons in custody.

33. The main objectives of the programme are to improve the institutional and legal functioning of the State Penal Service; to bring the conditions of detention, health and material well-being of convicts and persons in custody into line with legal requirements; to upgrade the equipment and technology in educational institutions; to support the activity of enterprises of the State Penal Service; and to renew and maintain in good working order engineering facilities and security and communications technology and equipment.

34. The implementation of these measures under the programme will help to improve conditions of detention for convicts and persons in custody.

35. It should be noted that during the past three years cooperation with civil organizations has increased. Various civil organizations visited institutions of the State Penal Service 6,168 times in 2005, 8,227 times in 2006 and 9,467 times in 2007.

36. International organizations are also displaying a growing interest in cooperating with institutions of the State Penal Service. During the past three years alone members of international organizations visited Penal Service institutions 845 times, including 145 times in 2005, 233 in 2006 and 467 in 2007.

37. The number of inspections of State Penal Service bodies and institutions by various monitoring agencies has increased noticeably, as have the visits by representatives of foreign States, religious and civil organizations and the media.

38. To ensure more humane and better conditions of detention of persons in custody, the Pretrial Detention Act has been amended to improve the legal situation of persons in custody and their conditions of detention. These include removal of certain disciplinary penalties against prisoners such as deprivation of the right to purchase food or receive parcels for a month; efforts are also being made to provide adequate access to legal literature to persons in remand centres, including explanations of certain constitutional legislative provisions.

39. The Act of Ukraine to amend the Criminal Code and the Code of Criminal Procedure (on making criminal sentences more humane) provides for reducing the penalty for minor offences and specific categories of persons.

40. This law will promote the effective implementation of State penal enforcement policies and bring the procedures and conditions for serving sentences into line with international standards, taking the European Prison Rules into account.

Paragraph 14

41. The position of Ukraine is that the State must defend freedom of opinion and freedom of expression, including the right to freedom of the press.

42. One of the objectives of the Ukrainian Government is to improve the legislation relating to information. In addition, efforts to that end are provided for in the action plan to fulfil the duties and obligations of Ukraine arising out of its membership in the Council of Europe.

43. As a matter of priority in the area of information, the action plan seeks to create an enabling environment for pluralism in media coverage of processes and events in Ukraine and abroad and to provide the necessary legal conditions for the exercise of the right to freedom of expression and access to information.

44. Accordingly, two bills have been introduced: one on access to public information and another on protection of the professional activities of journalists, which is intended to set out the main areas of professional activities of journalists, their rights and obligations, guidelines for investigative reporting, the procedure for accrediting journalists and liability for violating the law on protection of the professional activities of journalists.

45. On 8 February 2008 the Kyiv Court of Appeal announced that it had completed the investigation into the murder of the journalist Heorhiy Gongadze in November 2000 and begun oral hearings, which would be resumed on 21 February 2008.

46. The criminal case (inflicting serious bodily harm, premeditated murder) against Rybakov and others for the 2001 killing of Ihor Alesandrov, director of the Donetsk regional television station, and other crimes was tried on 6 July 2006 by Luhansk Province Court of Appeal. The accused were sentenced to various prison terms. The Supreme Court of Ukraine did not overturn the sentence in this case in its ruling of 23 January 2007.

47. The Procurator's Office of Zaporizhia province conducted an investigation into the death in December 2003 of Volodymr Karachevtsev, head of the Melitopol independent journalists' union and deputy editor of the newspaper Kuryer, whose body was discovered on 14 December 2004 at his home in Melitopol. At the scene of the incident investigators found no damage to the front doors or locks to his apartment; he was hanged by his sweater collar from the refrigerator handle by force of body weight; his blood alcohol level was 2.8 grams per litre, indicating an advanced stage of inebriation; and there was no evidence of bodily harm aside from strangulation marks. As no one was implicated in the death of Karachevtsev, a decision was taken on 16 April 2004 against filing criminal proceedings in regard to his death under article 6, paragraph 2, of the Code of Criminal Procedure. The Procurator's Office concurred with this decision.

48. The Ministry of Internal Affairs is implementing the Act on State support for the mass media and the social protection of journalists and the Presidential Decree on additional measures to ensure freedom of the media and on further strengthening freedom of expression in Ukraine.

49. Last year the internal affairs bodies initiated criminal proceedings in 60 cases involving offences against media workers. They included 3 robberies, 16 thefts, 22 petty thefts, 8 cases of criminal mischief, 3 offences involving bodily harm, 2 cases of unlawful taking of vehicles, 2 cases of intentional destruction or damage to property, an offence against inviolability of the home and 3 offences under article 171 (obstruction of the lawful professional activities of journalists) of the Criminal Code. As a result of action taken, 41 crimes in this category were

solved, including 2 robberies, 12 thefts, 9 petty thefts, a case of wilful infliction of moderate bodily harm and 5 acts of criminal mischief.

50. Statistical data show that 64 crimes were committed against media workers in 2000, 154 in 2001, 77 in 2002, 169 in 2003, 129 in 2004, 87 in 2005 and 68 in 2006. On average, 80.1 per cent of the offences registered each year by the internal affairs bodies between 2000 and 2007 were property offences, including petty theft, theft, robbery, fraud and extortion, property destruction or damage and unlawful taking of vehicles; 17.5 per cent were offences against the person, including infliction of bodily harm, criminal mischief and death threats; and 2.4 per cent came under other categories, including motor vehicle incidents, unlawful handling of weapons and explosives, coercion, offences against the inviolability of the home, desecration of graves and sale of counterfeit currency.

Paragraph 16

51. The Government has made tireless efforts to uphold the rights and freedoms of ethnic minorities, combat racism, xenophobia and anti-Semitism and ensure harmonious ethnic relations.

52. The Government is seriously concerned about the recent cases of xenophobia and racial violence and is resolved to prevent the use of racism for political purposes. The country condemns racial intolerance and racially based crimes. Nevertheless, it should be noted that such cases do not represent a systematic occurrence.

53. Articles 24 and 35 of the Constitution specify that there must be no privileges or restrictions based on religious belief and that every citizen has the right to freedom to profess or not to profess any religion.

54. The Ethnic Minorities Act, Local Government Act, Print Media (Press) Act, Television and Radio Act, Information Act and other laws contain provisions guaranteeing equal rights of persons regardless of race or ethnicity.

55. Moreover, article 4 of the Civil Associations Act states that civil associations whose purpose is to advocate war, violence or cruelty, fascism or neo-fascism, to incite ethnic or religious hatred or to restrict universally recognized human rights are not entitled to legal registration and the activities of such associations which have been registered are prohibited by law.

56. Article 161 of the Criminal Code makes incitement to ethnic strife, offences against the honour and dignity of peoples and ethnically motivated restrictions on the rights of citizens a punishable offence.

57. Ukraine signed the Additional Protocol to the Convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems in April 2005, in order to prevent the spread of xenophobia and racist and anti-Semitic information through computer systems.

58. The State Committee on Ethnic and Religious Affairs is responsible for developing and implementing State policy in the area of inter-ethnic relations and protection of the rights of ethnic minorities.

59. The Committee constantly monitors the content of publications on inter-ethnic relations with a potential impact on social, political and inter-ethnic stability in the country. If necessary, the Committee sends letters to law enforcement and judicial bodies.

60. In addition, extensive efforts have been made among various ethnic groups, including national and regional cultural and educational events, public statements and media advertisements, concerning equality of human and civil rights and freedoms irrespective of race, ethnicity, language, belief or affiliation with civil associations or groups.

61. Ukraine takes a clear position against acts of xenophobia, anti-Semitism and ethnic intolerance.

Activities of the Interregional Academy of Personnel Management

62. It should also be noted that the procuratorial authorities have received complaints of civil rights violations on the basis of ethnicity or belief by the President and other officials of the Interregional Academy of Personnel Management and its publications. Following investigations by the Procurator's Office in Kyiv they decided against instituting criminal proceedings on 12 occasions between 2002 and 2007 with the agreement of the Procurator General's Office.

63. The Ministry of Internal Affairs reviewed the complaint by the head of the oversight board of the Interregional Academy of Personnel Management, G.B. Shchekin, alleging that he had been attacked and that the President of the publishing house Stolichnye Novosti, V.Z. Rabinovich, had been involved in the offence in connection with the activities of the Academy. It was found that the Holosiiv district division of the Kyiv Municipal Department of the Ministry of Internal Affairs is in charge of criminal proceedings, in relation to a beating inflicted on Shchekin on 10 October 2004.

64. In response to instructions of the Cabinet of Ministers of Ukraine and requests by State institutions, members of parliament and a number of civic organizations, the Ministry of Education and Science of Ukraine has examined aspects of the anti-Semitic incidents at the Academy and related publications in the media.

65. Eminent specialists from the National Academy of Sciences of Ukraine and institutions of higher education who took part in the review of the teaching, research and educational work of the Academy showed that inter-ethnic relations had been studied from various perspectives at the Academy in disciplines such as political science, sociology, philosophy, social policy, politics and religion, religious holidays and rites, religious studies and others.

66. These studies include specialized courses on ethnopolitology, ethnosociology and "ethno State studies". The courses use officially approved materials, most of which bear the stamp of the Ministry of Education and Science.

67. The publications Personal and Personal Plus, the content of which is considered by several civil organizations to be anti-Semitic, are not mentioned in the list of recommended reading materials of the curriculum.

68. The Academy's charter, however, allows it, as a private corporation, to provide publishing services in addition to its educational activities, under a license from the State Committee on Information Policy, Television and Radio (Series KV No. 6048 and DK No. 8).

69. For the purpose of preventing potential outbreaks of ethnic strife, the administration of the Academy has been repeatedly advised not to publish anti-Semitic content in its publications and to ensure that an attitude of respect for all ethnic minorities living in Ukraine is maintained during discussions.

Investigations of acts of violence against Jews

70. The law enforcement agencies closely follow any incidents involving members of the Jewish and other ethnic communities or their property.

71. On 29 August 2005 the Pechersk district division of the Kyiv Department of the Ministry of Internal Affairs instituted criminal proceedings in the case of an attack on yeshiva students under article 229, paragraph 2, of the Criminal Code. The investigation resulted in the indictment of five persons and referral of the criminal case to the court. The case was remanded for further investigation on 31 October 2007 and taken over by the Pechersk district division of the Kyiv Municipal Department of the Ministry of Internal Affairs on 24 January 2008. The investigation is currently under way.

72. Concerning the attack on a rabbi and his son in Kyiv, on 11 September 2005 the Holosiiv district division of the Kyiv Municipal Department of the Ministry of Internal Affairs initiated criminal proceedings under article 196, paragraph 2, of the Criminal Code against Mr. R. and Mr. P., who were accused of criminal mischief resulting in the bodily harm of Israeli citizen M.Z. Menis and his son M.M. Menis. The indictment was filed with the court on 25 November 2005 and a conviction handed down on 29 December 2005.

73. Last year unidentified persons committed criminal mischief against the executive director of the Union of Jewish Religious Communities of Ukraine, Mr. Tamarin, who said that he and his wife had suffered bodily harm in Zhytomyr on 7 August. Criminal proceedings were instituted for violation of civil rights based on race, ethnicity or belief.

74. On 7 March 2007, Litovchenko, Bredenko and Melnik, local residents of Odessa, were arrested for conspiracy to commit vandalism on 18 February 2007, involving the desecration with swastikas of tombstones and monuments in the Third Jewish Cemetery, monuments to holocaust victims on Prokhorovskaya street and in the neighbourhood of the third stop on the Lustdorf road, as well as a memorial plaque at 44, Richelieu street in Odessa.

75. The Dnipro district division of the Kyiv Municipal Department of the Ministry of Internal Affairs received a report of damage to property of the Simcha Jewish school, at 22 B, Vatutin

street, on 22 October 2007. It was found that three minors were detained by officers of the district division on charges of setting fire to mattresses and breaking school windows. In this case, a decision against initiating criminal proceedings was handed down on grounds of lack of evidence of a crime.

76. The Ministry of Internal Affairs is taking the necessary steps to prevent ethnically or racially motivated offences. It constantly monitors the activities of members of informal radical groups. A plan providing for appropriate action and preventive measures has been adopted and is being implemented under the supervision of senior officials of the Ministry of Internal Affairs.

77. The Ministry of Internal Affairs has developed the following organizational and practical measures to combat the unlawful activities of pro-Nazi radical youth groups in the context of an increase in crimes against foreign nationals:

- A special division to prevent and detect crimes committed by and against foreigners has been established in the Criminal Investigation Department of the Ministry of Internal Affairs

- The Ministry of Internal Affairs has instructed the heads of the criminal investigation units of the Main Directorate of the Ministry and its departments in the Autonomous Republic of Crimea, the provinces, Kyiv and Sevastopol, as well as the transport units, to meet personally with representatives of diplomatic and consular missions and expatriate and foreign community leaders in order to provide them with objective information on incidents involving foreign nationals, the circumstances of crimes committed against them and measures taken to solve these crimes

- Cooperative relations have been established with the media to provide full and accurate coverage of incidents involving foreigners and members of ethnic minorities

- Consideration is being given to the question of redeploying militia patrol and guard units for community policing so that they will be as close as possible to the largest concentrations of foreign nationals (educational institutions, dormitories, places of recreation and other locations)

- A range of preventive measures are systematically carried out to identify conflict situations involving foreign nationals and potential perpetrators of offences against foreigners, including racially-based crimes

78. On 16 October 2007 the Main Directorate of the Ministry of Internal Affairs and its departments were instructed to step up their preventive action against members of radical youth groups and to solve crimes against foreign nationals.

79. Senior officials of the Ministry constantly monitor progress in implementing the measures it has set out.

80. It must be emphasized that 153 Jewish cultural organizations are now registered in

Ukraine. They have launched the International Tolerance Centre in Kyiv, which conducts annual surveys on the prevention of all forms of racial discrimination in Ukraine.

81. The "Sources of Tolerance" summer camps held each year for children and young persons and the regional tolerance clubs have become an effective means of promoting tolerance among young persons belonging to different ethnic groups.

82. In January 2008 representatives of State authorities and civil society took part in the International Day of Commemoration in Memory of the Victims of the Holocaust. The participants in the event described the holocaust in no uncertain terms as a terrible historical tragedy and a singular warning about the perils of persecution on the grounds of race, ethnicity, religion or political beliefs.

83. The President and Government of Ukraine closely monitor issues relating to social stability. An important development in inter-ethnic relations was a meeting held by President V.A. Yushchenko with representatives of Jewish civil organizations and leading Ukrainian intellectuals to discuss the promotion of the rights of the Jewish community and general opposition to all forms of xenophobia in Ukraine.

84. In addition, on the instruction of the President of Ukraine a subdivision for the detection and suppression of acts intended to incite racial or ethnic strife has been established within the Security Service of Ukraine, and consideration is being given to setting up an expert advisory body on xenophobia, racial discrimination and intolerance. The expert conclusions of such a body would form the basis for instituting criminal proceedings for violations of civil rights based on race, ethnicity or belief, under article 161 of the Criminal Code.

85. The position of ambassador-at-large to combat racism, xenophobia and discrimination has been introduced in the Ministry of Foreign Affairs.

Issues relating to the resettlement of the Crimean Tatar population

86. The establishment of the necessary conditions for the return, resettlement, social rehabilitation and integration of Crimean Tatars who were previously deported, as well as Bulgarians, Armenians, Greeks and Germans is a major government policy priority.

87. As at 1 January 2008, there were 250,000 formerly deported Crimean Tatars and members of other ethnic groups living in the Autonomous Republic of Crimea.

88. Government programmes and the relevant laws and regulations have been adopted to address the complex social and economic problems of former deportees. Particularly noteworthy is the programme for the resettlement of formerly deported Crimean Tatars and persons of other ethnic origin who have returned to take up residence in the Autonomous? Republic of Crimea and for their rehabilitation and integration in Ukrainian society for the period up to 2010, which was approved by the Cabinet of Ministers in 2006.

89. It should be noted that Ukraine is dealing alone with the independent financial and

economic implications of the return, resettlement, social rehabilitation and integration of former deportees. Starting in 1991, State budget funds have been set aside for the resettlement of returnees, including the construction of housing, utilities and community and cultural facilities.

90. More than 950 million hryvnias have thus been spent on major construction work in the past 17 years for the resettlement of returnees, enabling the construction of 440,000 square metres of housing and seven schools for 2,024 children, the installation of 853 kilometres of plumbing, 1,170 kilometres of power lines, 110 kilometres of roads and 292 kilometres of gas pipelines and the commissioning of community and cultural facilities.

91. However, not all problems have been resolved with regard to the resettlement, rehabilitation and social integration of former deportees, especially in the areas of housing and employment. Ukraine is making every effort within its financial means to address these problems and issues. The State budget for 2008 will allocate 71,428,000 hryvnias for measures relating to the resettlement of former deportees.

92. In addition to political, legal, social and economic problems, it is crucial to address the issue of returnees' rehabilitation and integration in Ukrainian society.

93. The Government has regarded the development of ethnic education and teaching children in their mother tongue as an important aspect of social and cultural rehabilitation. There are 15 schools in the Autonomous Republic of Crimea at which Crimean Tatar is the language of instruction.

94. The Government of Ukraine has taken several steps to publish textbooks and other study materials to meet the needs of Crimean Tatars. Under a State quota, higher education institutions in the Autonomous Republic of Crimea train teachers for general education schools providing instruction in Crimean Tatar.

95. Newspapers are published in Crimean Tatar, and the State-run television and radio broadcasting company Krym has a staff of Crimean Tatars.

CCPR, CCPR/C/UKR/CO/6/Add.2 (2009) [French]

Informations supplémentaires reçues de l'Ukraine sur l'application des observations finales du Comité des droits de l'homme (CCPR/C/UKR/CO/6)

[21 août 2009]

Informations

Alinéa «a»

La législation ukrainienne en vigueur prévoit un ensemble de procédures permettant de créer des mécanismes indépendants destinés à recevoir les plaintes concernant les actes commis par des membres de la police.

Depuis sept ans déjà, une permanence téléphonique fonctionne dans les services de la sécurité intérieure du Ministère ukrainien de l'intérieur. Des collaborateurs expérimentés de ces services assurent des permanences et examinent de manière continue et en temps voulu les informations (plaintes) relatives à des infractions à la législation, notamment à la législation sur la lutte contre la corruption, et à des faits illicites commis par des fonctionnaires, des organes et des départements du Ministère de l'intérieur, et traitent ces informations en vue de porter rapidement à la connaissance des départements de la sécurité intérieure du Ministère les questions susmentionnées.

Les numéros des permanences téléphoniques figurent sur des panneaux d'affichage dans les locaux des organes et départements du Ministère de l'intérieur, dans la presse locale, sur le site Internet officiel du Ministère de l'intérieur et dans l'hebdomadaire traitant des questions sociales et juridiques publié par le Ministère et intitulé *Imemem zakonou* (Au nom de la loi).

En application de la décision n° 1km/1, prise le 11 mars 2006 par le Collège du Ministère de l'intérieur, tous les centres de détention provisoire ont été équipés de permanences téléphoniques au moyen desquelles les personnes en détention avant jugement peuvent, dès qu'elles en font la demande, dénoncer une violation de leurs droits ou de leurs intérêts légitimes.

En janvier 2008, une Direction chargée de veiller au respect des droits de l'homme par les organes du Ministère dans le cadre de leurs activités a été créée au sein du Ministère de l'intérieur. Cette Direction a pour mission de mettre en place un système de contrôle interne du respect des droits de l'homme dans l'activité des organes du Ministère de l'intérieur conformément aux normes internationales relatives au maintien de l'ordre.

Sont membres de la Direction les Vice-Ministres de l'intérieur en poste dans toutes les régions d'Ukraine, qui sont totalement indépendants des responsables des organes locaux du Ministère. Au cours de l'année 2008, les Vice-Ministres ont reçu 2 677 personnes et recueilli 1 827 plaintes concernant des faits illicites commis par des membres de la police; ils ont ordonné l'ouverture de 1 233 enquêtes internes visant à vérifier les allégations faisant état de violations des droits de

l'homme de la part de policiers.

Au cours des cinq premiers mois de 2009, les Vice-Ministres de l'intérieur chargés des questions relatives aux droits de l'homme ont reçu 314 personnes, 250 plaintes, et ont ordonné l'ouverture de 144 enquêtes internes.

L'article 29 de la Constitution dispose que chacun a droit à la liberté et à l'intégrité de sa personne. Une personne ne peut être arrêtée ou placée en détention que sur décision motivée d'un tribunal et uniquement dans les cas et selon les modalités prévus par la loi. Toute personne arrêtée ou placée en détention doit être immédiatement informée des motifs de son arrestation ou de sa détention, doit se voir expliquer ses droits et donner la possibilité, dès sa mise en détention, de se défendre personnellement et de bénéficier de l'assistance d'un avocat. En outre, conformément au paragraphe 3 de l'article 40 de la Constitution, le contrôle du respect de la légalité, par les organes chargés des investigations, de l'enquête préliminaire et de l'instruction incombe aux services du Bureau du Procureur. Ainsi, les plaintes concernant des faits d'agents de la police sont examinées, non par le service dont dépend l'agent incriminé, mais par les services du Bureau du Procureur. À l'issue de l'examen de ces plaintes, différentes décisions sont prises, qui peuvent aller jusqu'à l'ouverture d'une action pénale.

En complément du mécanisme garantissant le respect des droits de l'homme par les organes du maintien de l'ordre, il existe également la possibilité, pour les personnes dont les droits ont été bafoués, de saisir la justice. Depuis le 14 décembre 2006, les modifications apportées au Code de procédure pénale permettent de faire appel devant la justice d'une décision relative à l'ouverture d'une action pénale. L'existence d'un tel mécanisme garantit aux personnes contre lesquelles des poursuites ont été engagées illégalement la possibilité d'être rétablies dans leurs droits.

Actuellement, le Code de procédure pénale prévoit la possibilité de filmer le déroulement de l'instruction. À cet égard, l'enregistrement sur support vidéo est largement utilisé pour consigner les éléments de preuve, en particulier au cours des enquêtes concernant des infractions graves et particulièrement graves. Les modalités de l'enregistrement sur support vidéo sont régies par l'articlem 85-2 du Code de procédure pénale.

Comme suite aux conclusions et recommandations du Comité de l'ONU, la Direction générale des enquêtes du Ministère de l'intérieur a recommandé à ses subdivisions de filmer les interrogatoires si elles sont équipées pour ce faire.

Alinéa « b »

Le 22 décembre 2005, le Procureur de l'arrondissement Oktiabr de la ville de Kharkiv a engagé une procédure pénale contre le personnel médical du centre de détention provisoire (SIZO) de Kharkiv pour manquements à ses obligations professionnelles ayant entraîné la mort du prévenu A. J. Melkonian.

Il a été établi que A. J. Melkonian était décédé le 17 décembre 2005 à l'infirmerie du SIZO de Kharkiv. Selon les conclusions de l'expertise médico-légale, sa mort avait été provoquée par une asphyxie mécanique due à l'obstruction des voies respiratoires par des vomissures.

Selon les conclusions de la commission d'expertise médico-légale, le personnel médical du SIZO qui est intervenu a agi en temps voulu et de manière appropriée.

Par conséquent, l'affaire pénale a été classée sans suite conformément au paragraphe 2 de l'article 6 du Code de procédure pénale.

Le 7 avril 2005, le Bureau du Procureur de la région de Jytomyr a engagé une procédure pénale contre des agents de la division municipale de Jytomyr de la Direction du Ministère de l'intérieur de la région de Jytomyr en vertu du paragraphe 1 de l'article 121 et du paragraphe 3 de l'article 365 du Code pénal.

L'enquête préliminaire a établi que, le 6 avril 2005, parce qu'il avait commis une infraction administrative, un habitant de la région, M. Ia, a été conduit à la division municipale de Jytomyr de la Direction du Ministère de l'intérieur de la région de Jytomyr - fait qui a été consigné dans un procès-verbal - et qu'il a été placé dans une cellule de détention provisoire.

Le 7 avril 2005, des agents de la police, se rendant coupables d'un abus de pouvoir, ont délibérément roué M. Ia de coups de poing et de coups de pied qui ont atteint les organes vitaux, ce qui a entraîné la mort de la victime.

Cette affaire pénale est actuellement examinée par le tribunal de l'arrondissement Bogoun de la ville de Jytomyr.

S'agissant de l'affaire Nikolaï Zakhadkevsky, il nous est impossible de communiquer des informations sur sa mort en avril 2004, car nous ne sommes pas en mesure de déterminer le lieu où elle serait survenue. Si des informations sur le lieu de sa mort présumée nous parvenaient, des vérifications complémentaires seraient effectuées.

Alinéa « c »

En Ukraine, des contrôles sont constamment effectués dans les locaux et les établissements spécialisés du Ministère de l'intérieur, où sont appliquées des mesures de contrainte dans les lieux de détention provisoire et dans les établissements pénitentiaires où sont exécutées les peines privatives ou restrictives de liberté à temps et les peines de privation de liberté à perpétuité. Lors des contrôles, une attention particulière est portée à l'application, par les autorités des établissements susmentionnés, des dispositions de la législation ukrainienne interdisant de violer les droits garantis par la Constitution en général et notamment ceux relatifs aux conditions de vie, d'hygiène et à l'alimentation des condamnés.

Les mesures susmentionnées visent principalement à contrôler le respect des droits des condamnés et des détenus et à prévenir les traitements inhumains ou autres traitements cruels à l'égard de ces personnes.

Au cours du deuxième semestre de 2008, les services du Bureau du Procureur de l'Ukraine ont effectué des contrôles du respect du droit aux soins médicaux des condamnés et des détenus dans

les établissements du Département d'État chargé de l'application des peines, ainsi que les centres et établissements spécialisés du Ministère de l'intérieur où sont appliquées des mesures de contrainte. À la demande des services du Bureau du Procureur, le Département d'État a simplifié les modalités relatives à la fourniture de l'assistance médicale aux personnes condamnées à des peines privatives de liberté dans les hôpitaux spécialisés relevant du Ministère. De plus, grâce à cette intervention du Bureau du Procureur, des mesures ont été élaborées pour permettre au personnel médical qualifié des établissements médicaux communaux d'apporter l'assistance médicale nécessaire aux personnes détenues dans les établissements du Service pénitentiaire national.

À la demande du Bureau du Procureur, des chambres spéciales ont été prévues dans les établissements communaux de traitement de la tuberculose de toutes les régions d'Ukraine pour fournir l'assistance médicale nécessaire aux personnes atteintes de la tuberculose placées en détention provisoire pendant l'instruction.

Au cours de l'année 2008 et du premier semestre de 2009, les services du Bureau du Procureur ont réalisé des contrôles du respect du droit des détenus condamnés et provisoires ainsi que des personnes placées en garde à vue de recevoir des soins médicaux, une alimentation correcte, des produits frais et de suivre un régime diététique dans les établissements du Département d'État chargé de l'application des peines ainsi que dans les centres et dans les établissements spécialisés du Ministère de l'intérieur où sont appliquées des mesures de contrainte. Les agents du Bureau du Procureur général de l'Ukraine se sont déplacés 23 fois pour effectuer les contrôles susmentionnés en vue de prévenir les violations du droit à la santé des détenus condamnés et provisoires, garanti par la Constitution. Lors de ces vérifications, de nombreuses violations du droit à des soins médicaux, à des conditions de vie correctes et à l'alimentation ont été constatées. En vue de faire cesser les infractions à la législation et de rétablir dans leurs droits les personnes lésées, les collaborateurs du Bureau du Procureur général de l'Ukraine ont, à eux seuls, communiqué 20 signalements aux responsables des établissements d'exécution des peines, dont l'examen a abouti à la prise de mesures disciplinaires à l'encontre de 68 agents du Service pénitentiaire national. Le fait de conserver dans les infirmeries des centres pénitentiaires des médicaments dont la date de validité est expirée et le fait de ne pas hospitaliser en temps voulu les condamnés dans les établissements médicaux spécialisés du Ministère constituent les infractions les plus courantes.

Pendant le premier semestre de l'année en cours, les services du Bureau du Procureur ont effectué des contrôles du respect des droits des citoyens garantis par la Constitution pendant leur période de détention dans les établissements spéciaux des organes du Ministère de l'intérieur.

À l'issue des contrôles et en vue de faire cesser les infractions à la législation constatées et de rétablir dans leurs droits les personnes lésées, le ministère public est intervenu 591 fois, 264 agents des organes du Ministère de l'intérieur ont fait l'objet de mesures disciplinaires et 28 personnes qui étaient détenues illégalement ont été libérées.

Les services du Bureau du Procureur accordent une grande attention à l'organisation de la restauration dans les lieux où sont appliquées des mesures de contrainte, dans les centres de détention avant jugement et dans les établissements d'exécution des peines. Les normes relatives

à l’alimentation des personnes privées de liberté sont fixées par le Cabinet des ministres. Pour déterminer les normes relatives à l’alimentation des condamnés, il est notamment tenu compte de l’état de santé et de l’emploi de l’intéressé ainsi que de ses maladies antérieures. Les personnes qui ont eu la tuberculose reçoivent chaque année, au printemps et à l’automne, un complément d’alimentation et des soins préventifs. En outre, les condamnés mineurs, les femmes enceintes et les femmes ayant des enfants dans les foyers pour enfants des centres pénitentiaires reçoivent une alimentation plus riche.

Par ailleurs, en vertu du Code de procédure pénale, les condamnés ont le droit d’acheter des produits alimentaires avec l’argent gagné dans l’établissement pénitentiaire, le règlement se faisant par un jeu d’écritures; et certaines catégories de condamnés, telles que les personnes âgées, les personnes ayant un handicap de catégorie 1 ou 2, les mineurs, les femmes ayant des enfants dans les foyers pour enfants des établissements pénitentiaires et les condamnés séjournant dans les établissements médicaux des centres de détention bénéficient également du droit de recevoir, par virement, des sommes provenant de leur pension ou d’autres revenus.

Alinéa « d » (+ « e »)

Alinéa « e »

Ces derniers temps, le problème du surpeuplement des établissements pénitentiaires perd de son acuité car les tribunaux appliquent des peines de substitution à la privation de liberté, telles que des travaux d’intérêt général et des peines restrictives de liberté. De plus, presque tous les ans, le Parlement (Verkhovna Rada) adopte une loi d’amnistie en vertu de laquelle des personnes purgeant des peines privatives de liberté dans des centres pénitentiaires sont libérées. Par ailleurs, les services du Procureur contrôlent constamment le taux d’occupation des centres de détention et s’assurent que l’espace dont disposent les condamnés correspond aux normes prévues par le Code de procédure pénale. Actuellement, selon les informations du Département d’État de l’administration pénitentiaire, les établissements du Service pénitentiaire national comptent environ 107 000 détenus condamnés à des peines privatives ou restrictives de liberté. Dans le même temps, le nombre maximum de détenus que peuvent accueillir ces établissements, compte tenu des normes relatives au nombre de mètres carrés par détenu fixé par le Code de procédure pénale, est de 122 038.

Compte tenu de leur importance et des préoccupations qui y sont liées, les questions relatives au respect du droit des détenus provisoires et condamnés à des soins médicaux, à des conditions de vie normales et à l’alimentation ont été examinées à trois reprises par le Bureau du Procureur général lors de sessions des conseils collégiaux (2006, 2007 et 2009).

Les hauts responsables du Bureau du Procureur général ont ordonné aux procureurs de région et aux procureurs assimilés d’organiser des contrôles du respect de la légalité dans les établissements spéciaux de la police où sont appliquées des mesures de contrainte et d’inviter à cet effet des spécialistes des organes territoriaux de sécurité sanitaire, du service sanitaire et épidémiologique ainsi que du service des incendies en vue de prévenir les violations du droit des détenus à des soins de santé, à des conditions de vie normales et à l’alimentation.
Un document contenant des propositions visant à mettre fin aux violations des droits garantis aux

citoyens par la Constitution lorsqu'ils séjournent dans les salles d'accueil des personnes conduites dans les permanences de la police et dans les lieux où sont appliquées des mesures de contrainte a été remis au Ministre de l'intérieur.

Alinéa « f »

Conformément à l'article 10 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière.

Dans la Constitution ukrainienne, le système de droits et de libertés a été établi en tenant le plus grand compte des instruments juridiques internationaux et du niveau de développement de la société et de l'État ukrainiens. La Constitution fixe et garantit les droits et les libertés non seulement du citoyen mais aussi de tout être humain. De plus, les droits et libertés de l'homme sont placés au premier plan.

L'article 34 de la Constitution ukrainienne garantit à tout citoyen le droit à la liberté de pensée et de parole, à la libre expression de ses opinions et de ses convictions et dispose que chacun a le droit de réunir, de conserver, d'utiliser et de diffuser des informations oralement, par écrit ou par tout autre moyen de son choix.

Ainsi, au droit traditionnel à la liberté de pensée et de parole est venu s'ajouter, pour la première fois, dans la nouvelle Constitution, le droit à l'information.

Conformément aux instruments internationaux modernes, les obligations des États en ce qui concerne la liberté de manifester ses opinions sont absolues. Pourtant, ce droit protégé est loin d'être absolu. Il est assorti de certaines restrictions et de garde-fous pour lesquels il n'existe pas de norme européenne clairement définie. Le paragraphe 2 de l'article 34 de la Constitution dispose que l'exercice de ces droits peut être restreint par la loi dans l'intérêt de la sécurité nationale, de l'intégrité territoriale ou de l'ordre public en vue de prévenir les troubles et les infractions, de protéger la santé de la population, la réputation ou les droits d'autrui, de prévenir la diffusion d'informations confidentielles ou pour préserver l'autorité et l'impartialité de la justice.

Ces dispositions de la Constitution correspondent pleinement aux normes du droit international, notamment à l'article 19 de la Déclaration universelle des droits de l'homme et à l'article 10 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales ainsi qu'aux dispositions du Pacte international relatif aux droits civils et politiques.

Les mécanismes internationaux de défense des droits de l'homme auxquels a adhéré l'Ukraine constituent une garantie supplémentaire pour la protection des droits et libertés de l'homme. La ratification par l'Ukraine de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (adoptée par le Conseil de l'Europe le 4 novembre 1950) représente une importante avancée dans cette direction. En devenant partie à ladite convention, l'Ukraine a contracté l'obligation de protéger les droits de l'homme, d'intégrer les dispositions de cet

instrument dans son droit interne et s’est engagée à ce que ses tribunaux tiennent compte des dispositions de la Convention lors de l’examen des plaintes. Les citoyens ukrainiens ont désormais la possibilité de s’adresser à la Cour européenne des droits de l’homme pour obtenir réparation en cas de violation de leurs droits. Les États parties à la Convention sont tenus de ne pas faire obstacle à l’exercice effectif de ce droit et doivent garantir à toutes les personnes et à tous les citoyens les droits civils et politiques consacrés par ladite convention.

Il importe de noter que la Cour européenne des droits de l’homme, comme cela a été mentionné dans l’un de ses arrêts, protège non seulement les informations et les idées perçues comme positives ou qui suscitent l’indifférence mais également celles qui ne sont pas admises par l’État ou par quelque catégorie de la population que ce soit. Sans cette exigence de pluralisme, de tolérance et de largeur de vue, une société démocratique ne peut pas exister.

Il convient en outre de mentionner que les tribunaux de droit commun n’appliquent pas encore suffisamment les dispositions de la Convention et la jurisprudence de la Cour européenne des droits de l’homme. Des efforts dans cette direction sont accomplis principalement par la Cour constitutionnelle de l’Ukraine, qui a rendu plusieurs arrêts faisant référence à des instruments internationaux relatifs aux droits de l’homme. La Cour constitutionnelle assure le contrôle de la constitutionnalité et la protection des principes de l’ordre constitutionnel, des droits et libertés fondamentaux de l’homme et du citoyen, la primauté du droit et l’application directe de la Constitution sur tout le territoire ukrainien.

Le Président de l’Ukraine est le garant du mécanisme de protection des droits et libertés de l’homme et du citoyen.

L’organisation de la protection des droits et libertés de l’homme et du citoyen est assurée notamment par le Cabinet des ministres, les organes locaux de l’administration publique et les collectivités locales, dans la limite de leurs compétences.

Le contrôle parlementaire du respect des droits et libertés constitutionnels de l’homme et du citoyen est assuré par le Commissaire aux droits de l’homme du Parlement ukrainien. Chacun est habilité à obtenir la protection de ses droits en saisissant le Commissaire aux droits de l’homme du Parlement et chacun a le droit, une fois épuisés tous les recours de droit interne, de saisir les institutions judiciaires internationales compétentes ou les organisations internationales dont l’Ukraine est membre ou auxquelles elle est partie.

Les tribunaux de droit commun assurent la protection des droits et des libertés constitutionnels des citoyens (art. 55 de la Constitution). Chacun a le droit de contester en justice les décisions, actes ou omissions des pouvoirs publics, des collectivités locales autonomes et de leurs fonctionnaires et agents.

La disposition constitutionnelle relative à la liberté d’expression est mise en œuvre à l’aide d’un ensemble d’actes législatifs conformes aux normes juridiques internationales.

L’Ukraine occupe l’une des premières places au sein de la Communauté d’États indépendants (CEI) en ce qui concerne le nombre de lois relatives aux activités des médias et visant à renforcer

la transparence et le niveau d’information de la population.

La loi sur l’information, la loi sur la presse en Ukraine, la loi sur les agences d’information, la loi sur la propriété, la loi sur la publicité, la loi sur l’appui de l’État aux médias et sur la protection sociale des journalistes ainsi que d’autres lois créent un vaste champ juridique et définissent les mécanismes de la réalisation du droit à la liberté de pensée et de parole, à la libre expression de ses opinions et de ses convictions et à l’information, garanti par la Constitution.

Les médias et les journalistes jouent un rôle important en ce qui concerne la réalisation du droit des citoyens à la liberté de pensée et d’expression.

Pourtant, ces dernières années, le journalisme est devenu une activité dangereuse en Ukraine. Les faits illicites commis par des membres des services de répression - organes de la police, service de la sécurité de l’Ukraine, administration fiscale - qui ont persécuté des journalistes ou exercé des pressions sur certains éditeurs qui avaient fait paraître des articles critiques dans la presse, ont aujourd’hui un grand retentissement au sein de l’opinion.

Le Bureau du Procureur de l’Ukraine prend les mesures nécessaires chaque fois qu’il est fait obstacle aux activités légales d’un journaliste.

De plus, une attention particulière est apportée aux plaintes et aux dénonciations relatives à des violations des droits des journalistes et des médias.

Ainsi, le 27 février 2009, les services du Procureur de la région de Tcherkassy ont ouvert une procédure pénale en vertu de l’article 15 et du paragraphe 2 (5) de l’article 115 du Code pénal pour une tentative d’homicide contre le rédacteur en chef du journal *Antena*, V. L. Vorotnik dont on a fait sauter la voiture. L’enquête suit son cours.

En ce qui concerne l’agression dont a été victime l’équipe de tournage de la société de radio et de télévision Grad, qui a été contrainte de remettre la cassette vidéo qui avait servi à filmer des personnes se rendant au conseil municipal de la ville d’Odessa, les services du Procureur de la région d’Odessa ont ouvert, le 11 février 2009, une procédure pénale en vertu du paragraphe 1 de l’article 171 du Code pénal. Le conseil municipal de la ville d’Odessa ayant fait appel de la décision relative à l’ouverture de la procédure pénale, le bien-fondé de cette décision est actuellement examiné par la Cour suprême de l’Ukraine.

En vertu de l’article 97 du Code de procédure pénale, le Bureau du Procureur de la région de Lviv examine la plainte formée par le rédacteur de l’émission télévisée intitulée *Zona Konflikta* (zone de conflit) concernant les faits commis par des agents des services de police du district de Zolotchiv, qui ont fait obstacle au tournage d’un sujet sur des personnes résidant dans un foyer et ont tenté de confisquer la cassette contenant le film.

Les services de police de l’arrondissement de Petchersk enquêtent, en vertu du paragraphe 2 de l’article 296 du Code pénal, sur une affaire concernant des faits de hooliganisme commis le 2 octobre 2008 contre le photographe de la maison d’édition «Kommersant-Oukraïna».

Les services des procureurs jouent un grand rôle en matière de protection des droits de l'homme car c'est précisément le Procureur qui a pour fonction de veiller au respect des lois par les organes d'investigation, d'enquête préliminaire de police et d'instruction ainsi qu'à l'exécution des décisions judiciaires et au respect et à l'application des lois en général. Toute personne peut, pour obtenir la protection de ses droits, former une plainte auprès de tout procureur, quel que soit son rang. Le Procureur qui a reçu la plainte est tenu, dans les limites de ses compétences, de l'examiner au fond et de prendre une décision conformément à la législation en vigueur.

Alinéa « g »

En Ukraine, la question des droits et des libertés est clairement délimitée par un ensemble de lois et d'actes normatifs qui régissent ce domaine dans l'intérêt de la personne, de la société et de l'État.
Il s'agit avant tout des articles pertinents de la Constitution, de la loi sur la liberté de conscience et les organisations religieuses et des arrangements et accords internationaux ratifiés par l'État.

De l'avis des experts, l'Ukraine est un État stable du point de vue des relations interethniques et interconfessionnelles, qui n'a connu aucun conflit grave fondé sur l'appartenance religieuse ou ethnique. Dans le même temps, des experts internationaux et nationaux, des responsables religieux et des médias attirent l'attention des pouvoirs publics sur des manifestations de xénophobie, d'antisémitisme et de racisme.

Le suivi systématique de ces problèmes confirme la diminution constante de ces cas d'actes antisociaux fondés sur l'appartenance ethnique et religieuse. Alors qu'en 2007 et 2008, sept faits illicites avaient été commis, on n'en a enregistré que deux en 2009. Aucun cas d'incitation publique à la xénophobie ou au racisme de la part de représentants d'associations et d'organisations religieuses n'a été enregistré.

Les services des procureurs contrôlent systématiquement le respect des lois visant à prévenir le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée.
Les contrôles effectués ont établi que les organes du pouvoir exécutif mettent en œuvre, aux niveaux national et régional, certaines mesures organisationnelles et pratiques visant à prévenir les conflits interethniques et religieux, à prévenir la xénophobie, le racisme et les actes attentatoires à l'égalité des citoyens pour des motifs fondés sur des convictions politiques, religieuses ou autres, sur le sexe ou l'appartenance ethnique.

Conformément au paragraphe 8 de l'article 25 de la loi sur les autorités locales, il incombe aux organes locaux du pouvoir exécutif d'assurer l'application de la législation relative aux minorités ethniques, aux migrations et à la liberté de culte. À cet égard, dans certaines régions d'Ukraine, il est apparu que ces organes ne respectaient pas leur obligation de mettre en œuvre la politique nationale relative aux relations interethniques.

En particulier, le Comité de la République autonome de Crimée chargé des relations interethniques et des déportés n'assure pas la coordination des activités des autorités locales visant à mettre en œuvre le Plan global d'action relatif au développement des traditions et cultures nationales et à l'amélioration des relations interethniques, adopté par le Conseil des

ministres de la République autonome le 22 janvier 2008. Les subdivisions structurelles des autorités locales chargées des questions relatives aux relations interethniques s'occupent en fait uniquement de la répartition des ressources budgétaires affectées à l'installation des anciens déportés et ne s'attachent pas comme elles le devraient à promouvoir la tolérance et à réduire la conflictualité dans les relations interethniques et interconfessionnelles.

Les services des procureurs ont également constaté des violations de la loi sur les autorités locales et de la loi sur les minorités ethniques dans les régions de Dnipropetrovsk, de Kyiv, de Kirovohrad, de Poltava et de Vinnytsya.

En 2007, le Ministère de l'intérieur a élaboré le Plan de lutte contre le racisme à l'horizon 2009. Dans le cadre de ce plan, l'objectif principal et prioritaire des services du Ministère de l'intérieur est d'identifier les groupuscules et organisations de jeunes extrémistes, de mener auprès de leurs membres un travail d'information et de prévention, d'assurer l'état de droit dans les lieux où vivent de nombreux étrangers et de prévenir toute manifestation de xénophobie et de racisme.

Le Ministère de l'éducation et des sciences, les services chargés de l'éducation, les établissements d'enseignement général, les institutions périscolaires, les établissements d'enseignement professionnel et technique et les établissements d'enseignement supérieur de tout type et de tout niveau effectuent un travail systématique de prévention des violations des droits liés à la race, l'appartenance ethnique ou l'attitude à l'égard de la religion.

Le Ministère de l'éducation et des sciences, l'Institut de recherche scientifique du Ministère de l'intérieur et l'Institut national pour le développement de la famille et de la jeunesse relevant du Ministère de la famille et de la jeunesse ont élaboré conjointement et diffusé en vue de leur mise en œuvre des recommandations portant sur des méthodes et des activités visant à prévenir l'augmentation des manifestations de racisme et de xénophobie parmi les enfants, les élèves et les étudiants.

Des activités ont également été entreprises par les enseignants, en collaboration avec des comités de parents, en vue de développer chez les enfants et chez les jeunes des valeurs spirituelles, un sens moral, des attitudes tolérantes et la capacité de vivre dans une société pluriethnique.

Toutefois, les contrôles effectués par les services des procureurs ont fait apparaître que les organes de l'État chargés de la prévention des infractions ne mettent pas en œuvre toutes les mesures possibles visant à prévenir chez les jeunes la délinquance liée à l'intolérance raciale ou ethnique. En 2008 notamment, les services du Ministère de l'intérieur ont identifié quatre bandes criminelles à visée raciste alors qu'en 2007 ils en avaient découvert 12.

Contrevenant en cela aux dispositions des articles 10 et 11 de la loi sur la police et à celles de l'article 5 de la loi relative aux organes et services chargés des enfants et aux établissements spéciaux pour enfants, les agents des subdivisions de la police criminelle chargés des enfants ne prennent pas toujours les mesures permettant de découvrir en temps voulu les motifs et les circonstances des faits de délinquance juvénile et d'identifier les bandes d'adolescents ayant une conduite asociale ainsi que les adultes qui entraînent des mineurs dans la délinquance.

Par exemple, un contrôle effectué par les services du Procureur de la ville de Kirovohrad a permis de découvrir un groupement d'étudiants à orientation antisémite et raciste, qui existait depuis deux ans.

Il a également été établi, lors de contrôles réalisés par les services des procureurs, que les organes judiciaires chargés d'enregistrer les associations et de veiller à ce qu'elles respectent les dispositions des statuts, n'appliquent pas pleinement les dispositions de l'article 25 de la loi sur les associations. En particulier, la Direction principale de la justice de Kyiv, qui a enregistré 222 organisations de jeunes n'a effectué, en 2008, aucun contrôle du respect de leurs statuts par ces organisations. La même situation a été constatée dans les activités des directions judiciaires des régions de Vinnitsya et de Nikolaevsk.

En 2008, en vue de faire cesser les infractions à la législation visant à lutter contre la xénophobie et la discrimination fondée sur l'appartenance raciale ou ethnique, les services des procureurs ont ouvert au total 144 procédures pénales et ont introduit plus de 2 700 plaintes, dont l'examen a abouti à l'application de mesures disciplinaires à l'encontre d'environ 2 500 fonctionnaires.

L'article 161 du Code pénal réprime les actes délibérés visant à porter atteinte aux droits de personnes en raison de leur appartenance raciale ou ethnique ou de leur attitude à l'égard de la religion. En outre, conformément à l'article 67 dudit Code, le fait de commettre une infraction motivée par l'animosité ou des dissensions raciales, ethniques ou religieuses constitue une circonstance aggravante. L'instruction concernant les infractions visées à l'article 161 du Code pénal est du ressort des services des procureurs.

Il y a quelques années, certaines publications, telles que le journal « Silski Visti » (Nouvelles rurales), les revues et le journal de l'Académie interrégionale de gestion du personnel, faisaient paraître des articles sur ce que l'on appelle la « question juive », qui « déformaient » le rôle des juifs dans l'histoire ukrainienne.

Ces périodiques publiaient régulièrement des sujets à relents antisémites et des articles à orientation antiaméricaine et anti-israélienne, ce qui avait suscité des réactions dans l'opinion publique et l'indignation d'organisations juives, notamment internationales, et avait donné lieu à des actions en justice.

Le Bureau du Procureur général avait alors chargé des instituts scientifiques de l'Académie nationale des sciences de l'Ukraine d'étudier certaines des publications en question, à la suite de quoi l'Institut d'études politiques et ethnonationales I. F. Kouras, l'Institut d'études linguistiques I. I. Potebni ainsi que l'Institut de l'État et du droit V. M. Koretski avaient présenté des conclusions d'experts.
Selon ces conclusions, les publications visaient à susciter chez les lecteurs des sentiments négatifs et malveillants à l'égard des juifs. Il était cependant précisé qu'elles n'étaient pas susceptibles d'inciter à commettre des faits illicites et ne contenaient pas d'expressions assimilables à de la propagande proclamant l'infériorité d'un groupe ethnique particulier. Elles ne faisaient pas non plus l'apologie du génocide, de la déportation ou de la répression et ne visaient pas à obtenir la restriction de droits ou de libertés garantis aux citoyens par la Constitution. Les experts arrivaient à la conclusion que ces publications ne manifestaient qu'une

volonté de porter atteinte à l'honneur national, à la dignité et à la sensibilité de citoyens en raison de leur origine ethnique.

Il n'était pas possible, en se fondant sur de telles conclusions, de qualifier d'infraction les faits des auteurs de ces publications. C'est pourquoi, le 24 juillet 2006, le Bureau du Procureur de Kyiv a refusé d'ouvrir une procédure pénale, compte tenu de l'absence, dans les faits des collaborateurs du journal de l'Académie interrégionale de gestion du personnel «Personnel-Plus», d'éléments constitutifs de l'infraction réprimée par l'article 161 du Code pénal.

De plus, selon les résultats de contrôles effectués par les services des procureurs au sujet des questions susmentionnées, au cours des années 2002 à 2007, le Bureau du Procureur de l'arrondissement de Golosseev de la ville de Kyiv a, à plusieurs reprises, refusé d'ouvrir une procédure pénale concernant des collaborateurs et des publications de l'Académie interrégionale de gestion du personnel en se fondant sur les paragraphes 1 et 2 de l'article 6 du Code de procédure pénale.

Le Bureau du Procureur général de l'Ukraine a accepté ces décisions.

Le Bureau du Procureur de la ville de Kyiv, après avoir examiné une saisine du grand rabbin d'Ukraine, Moshe Reuven Asman, a fait appel de la décision du conseil municipal de Kyiv d'inscrire l'ensemble immobilier constitué du cinéma «Kinopanorama» et du bâtiment sis au 19, rue Chota Roustaveli sur la liste des immeubles destinés à être privatisés.

Dans les limites de leurs compétences, les services des procureurs luttent contre la discrimination en recourant aux mesures prévues par la législation en vigueur.

Au cours des années 2007 et 2008, les services des procureurs ont ouvert cinq procédures pénales concernant les faits suivants: profanation de cimetières juifs (Odessa et Tchernigov), incitation à la dissension et à la haine raciales (région de Kirovohrad), faits ayant entraîné des lésions corporelles graves, homicide volontaire (Kyiv).

En 2009, le Bureau du Procureur de Kyiv a ouvert deux affaires pénales pour coups et blessures infligés à un ressortissant azerbaïdjanais, qui sont actuellement examinées par la justice.

Durant la période considérée, six affaires pénales ont débouché sur des décisions de justice concernant 15 personnes qui avaient commis des infractions visées à l'article 161 du Code pénal. Des condamnations ont été prononcées à l'encontre de 12 de ces personnes; l'une d'elles a fait l'objet de mesures de contrainte à caractère éducatif et deux ont été exonérées de la responsabilité pénale à la faveur d'une amnistie.

Alinéa «h»

Au 1er juin 2009, la communauté musulmane était représentée, en Ukraine, par 536 associations religieuses qui disposaient de 311 lieux de culte.

Les musulmans n'ont pas, à l'échelle de l'Ukraine, de structure d'administration unique. Cinq

centres spirituels musulmans, dont les statuts ont été enregistrés, fonctionnent aujourd'hui: l'Administration spirituelle des musulmans de Crimée compte 352 associations religieuses et 281 lieux de culte; l'Administration spirituelle des musulmans d'Ukraine compte 72 associations religieuses et 41 lieux de culte; le Centre spirituel indépendant des musulmans d'Ukraine rassemble 21 associations religieuses et possède 15 lieux de culte; l'Administration religieuse des sociétés musulmanes indépendantes d'Ukraine dénommée «le Mouftiat de Kyiv», enregistrée en 2006, compte 16 associations religieuses; l'Administration spirituelle des musulmans d'Ukraine «OUMMA», enregistrée en 2008, englobe 11 associations religieuses et possède un lieu de culte. Il existe par ailleurs 64 associations religieuses indépendantes, qui ne sont rattachées à aucun centre spirituel.

Les associations religieuses musulmanes sont principalement concentrées dans la République autonome de Crimée.

Les communautés musulmanes de la République autonome disposent de 281 lieux de culte, parmi lesquels 47 mosquées leur ont été restituées en vertu de décisions du Conseil des ministres de la République autonome de Crimée et de collectivités locales, et 80 ont été construites. Des dirigeants d'entreprises, d'établissements et d'organisations ont cédé aux communautés musulmanes ou mis à leur disposition plus de 100 édifices et locaux destinés au culte.

Selon les documents présentés par l'Administration spirituelle des musulmans de Crimée, seuls quatre édifices qui servaient autrefois à célébrer le culte musulman n'ont pas été rendus aux associations religieuses musulmanes. Soixante-seize pour cent des associations religieuses disposent de lieux de culte, ce qui n'est que de 2 % inférieur à la moyenne statistique pour l'Ukraine, qui est de 78%.
Depuis 1993, plus de deux milliards de karbovanets-coupons et 3 567 000 hryvnias prélevés sur les ressources budgétaires ont été consacrés à la réfection et à la restauration de lieux de culte musulmans ayant un intérêt historique et architectural. À titre de comparaison, pendant la même période, 150 millions de karbovanets-coupons provenant du budget de la République autonome de Crimée et 350 000 hryvnias provenant du budget de l'État ont été alloués à la restauration d'églises orthodoxes.

Il convient de mentionner que s'est tenue en avril 2009 une réunion d'organisations du Conseil des représentants des administrations et centres spirituels des musulmans d'Ukraine nouvellement institué auprès du Comité d'État pour les nationalités et les religions. Ce Conseil est chargé de coordonner les relations et le dialogue des centres spirituels musulmans avec les organes du pouvoir exécutif, notamment pour ce qui concerne l'élaboration d'un mécanisme efficace de restitution des biens et des lieux de culte qui appartenaient aux communautés musulmanes.

L'aspect pratique de la restitution des édifices destinés à la célébration du culte est aujourd'hui assuré par la Commission chargée de la réalisation des droits des associations religieuses, qui relève du Cabinet des ministres et a pour mission d'élaborer des recommandations concernant la restitution aux associations religieuses des lieux de culte et d'autres biens qui leur appartenaient; d'analyser les propositions des organes du pouvoir exécutif concernant la libération des locaux par les entreprises et organismes qui occupent les édifices destinés à être restitués aux

associations religieuses et leur déménagement.

Les dirigeants des centres spirituels musulmans d'Ukraine ne portent pas aujourd'hui devant le Gouvernement de questions épineuses concernant la restitution des lieux de culte, et le processus de restitution se déroule dans le cadre de réflexions et de prises de décisions concertées.

Le Comité d'État pour les nationalités et les religions a élaboré un projet de loi sur la restitution des lieux de culte aux associations religieuses. Son principal objectif est de définir les modalités juridiques de la restitution aux associations religieuses des édifices destinés au culte qui leur appartenaient avant qu'ils ne deviennent propriété de l'État (situation au 1er juillet 2009).