

INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS
ICCPR

HUMAN RIGHTS
COMMITTEE

UKRAINE

**NGO
PROGRESS REPORT
ON THE FOLLOW-UP
OF THE CONCLUDING OBSERVATIONS
(CCPR/C/UKR/CO/6)
OCTOBER 2008**

**Ukrainian Helsinki
Human Rights Union (UHHRU)**

**Donetsky Memorial
(Donetsk)**

**Vinnytsya Human Rights
protection group**

International Renaissance Foundation

**Kharkiv Human Rights
Group**

NON EDITED VERSION



UKRAINE

Status:

Concluding observations adopted in October 2006

State replies due in October 2007

State replies submitted in May 2008

NGO PROGRESS REPORT ON THE FOLLOW-UP OF THE CONCLUDING OBSERVATIONS

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General comments

Ukrainian Helsinki Human Rights Union (UHHRU)

1. After 2004 there was a noticeable improvement in observance of rights and liberties. This process, however, proved more to do with a weakening in the regime itself which had made a conditional step towards the people which increased the level of freedom. There were various factors involved including fear of the new people in power who expressed the wish to punish criminals, significant reshuffling of those in positions of authority, as well as many others.
2. The weakening of pressure brought to bear by the State on the individual resulted in greater opportunity to exercise those rights and freedoms which the State must not interfere with as it pleases, for example, freedom of speech, freedom of association, the right to free elections, freedom of business enterprise and so forth. Yet where the State had a duty to do something to improve the situation (fulfill its positive duties, for example, by ensuring proper investigation into cases of torture, enforcement of court rulings, etc), the situation could not change radically since nothing was done to achieve this. We can speak at present of a consistently bad situation as regards the prohibition of torture and ill-treatment; the right to life in the context of investigations into cases where life was taken; the right to a fair trial; the right to privacy; the right of access to information; and others.
3. Despite Item 19 of the Committee's Recommendations, Ukraine has not made an official translation of the Committee's Recommendations or of the Government's Sixth Report, and has not ensured that these are made widely available. They are not available in Ukrainian. Furthermore, Ukraine has not taken any general measures on carrying out the recommendations, and has not for example, adopted a General Action Plan for implementing the Committee's Recommendations.
4. Recommendations from UN bodies, the Council of Europe and OSCE are practically not being implemented and are ignored, and State representatives at meetings of these bodies look feeble since they have virtually nothing to talk about barring certain progress in the MIA. We must report therefore that there is no systematic policy at all on improving observance of rights and freedoms.¹
5. Without court protection any right is doomed to exist only on paper, and therefore many rights become meaningless where the right to a fair trial is not ensured. This mechanism for protection of rights is still not as effective as it should be. The courts are overloaded and judicial examination of cases goes beyond any reasonable timescale. Judges are too dependent on figures of authority, or even on those in charge of the judiciary, with this placing a question mark over their impartiality in examining cases of public importance, especially when one of the parties is a State body. Furthermore, even those court rulings which come into effect are often not enforced. When virtually two thirds of all court rulings are not enforced, it is difficult to speak of real protection of ones rights through the courts.
6. The work of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine (the Human Rights Ombudsperson) remains not effective and unsystematic. Although the Ombudsperson's Secretariat has received proper financing over recent years, its influence has not grown. To a large extent the Ombudsperson's reputation and trust in her were undermined by her political engagement, participation in the elections as number 2 on the candidate list of one of the political parties, and then her combination of deputy mandate with her position. Yet even if we do not consider this, then with the exception of some isolated cases, her activities have not been effective.
7. It has been three years since either parliament or the public saw reports from the Ombudsperson on human rights in the country, although this should be a systematic summary of the problems regarding human rights observance. The Ombudsperson virtually does not use the important instrument of constitutional submission. The Ombudsperson's Secretariat does not have a register of complaints, and no results of the review of open proceedings are evident. Furthermore, the majority of complaints are simply sent to other authorities, the police, prosecutor's office or Department for the Execution of Sentences, etc. Nor is the confidentiality of the applicant preserved this placing the

1 An exception is the Presidential Decree № 39/2006 "On an Action Plan for fulfilling Ukraine's duties and commitments arising from its membership of the Council of Europe" Available at <http://www.president.gov.ua/documents/3854.html>, as well as the Concept Strategy for Judicial Reform and reform of criminal justice.

- person who complains at direct risk from the people against whom he/she is complaining. The Ombudsperson is thus not using the most effective mechanisms for influence. It must however be said that there has been an increase in the amount of information provided about her activities.
8. The Ombudsperson explains her insufficient activity as being due to shortcomings in legislation. However when she submitted a draft law on broadening her mandate², one could not observe ways for extending her powers. The Ombudsperson proposes that she be given the procedural right to appeal as a party in court proceedings which cannot fail to elicit bemusement. The Ombudsperson cannot provide a substitute for the system of legal aid to members of the public, and on the other hand this leads to a clear infringement of the principle of equality of parties in any court process. For example, appearing on the side of the victims in a criminal case, she is effectively taking part in the prosecution which is anything but the function of this structure. Such rights can be simply called a form of pressure on the court. It is clear that the Ombudsperson's office has to this day not understood that the importance of its role lies in its own proceedings and administrative methods of human rights protection. What is vital to achieve is that decisions of the Ombudsperson become mandatory for the authorities³, and if the latter don't agree with them, they can appeal against them in an administrative court. That is, it would be worth strengthening the significance of the decisions of this body.
 9. Last year the Ombudsperson finally decided to create a network of regional representatives. However it is paradoxical that in this she will be assisted by the heads of local State administrations – representatives of the local authorities⁴, over whom these representatives should be watching. The clear conflict of interests does not bother the Ombudsperson, yet one can hardly hope for effective work.
 10. It is thus clear that the court and parliamentary systems for defending rights and liberties are weak and often not effective.

² Cf. Draft Laws № 1302 from 7 April 2008 on amendments to the Code of Administrative Procedure of Ukraine (on participation in a case of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine), http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=31246; № 1301 from 07.04.2008 Draft law on amendments to the Civil Procedure Code (on participation in a case of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine), http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=31245, № 1299 from 28.12.2007 on amendments and additions to the Criminal Procedure Code on providing the Authorised Human Rights Representative of the Verkhovna Rada and representatives with the possibility for court defence of human rights and freedoms, http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=31243.

³ There is an attempt at this in Draft Law №2569 from 27 March 2008 on introducing amendments and additions to the Law "On the Authorised Human Rights Representative of the Verkhovna Rada" (on the binding power of decisions by the Ombudsperson on eliminating violations of citizens' rights and freedoms), http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=32619.

⁴ Cf. for example, Viktor Yushchenko: "The influence of the institution of the Ombudsperson on decision-making in the country should be heightened" // <http://www.president.gov.ua/news/9641.html>.

Concluding observations selected for the follow-up procedure

Paragraph 7

7. Some members of the police have mistreated persons arrested on criminal charges and persons held in detention, including the fatal beating of a 36-year-old man in Zhytomyr on 7 April 2005; the fatal beating of a man in the Kharkiv detention centre on 17 December 2005; and the death of Mykola Zahadhevsky in pre-trial detention in April 2004. The Committee notes the forthright admission of the Human Rights Ombudsman, on 11 October 2005, that acts of torture continue to occur in pretrial detention facilities. (art. 6)

The State party should ensure the safety and proper treatment of all persons held in custody by the police, including measures necessary to guarantee freedom from torture and from cruel, inhuman or degrading treatment. The State party should consider the establishment of an independent police complaints mechanism, such as a civilian police review board, as well as the safeguard of videotaping the interrogation of criminal suspects. The State party should also provide for the independent inspection of detention facilities, with the authority to interview any inmates in private.

Comments from Ukrainian Helsinki Human Rights Union (UHHRU)

1. Another problem remains the activities of the law enforcement agencies. It is through their actions that violations occur of the right of freedom from torture and ill-treatment, the right to life In the context of a lack of effective investigation, the right to liberty and personal security in the context of arbitrary detention and arrest, the right to privacy as regards the use of investigative operations measures (for example, wiretapping, surveillance over Internet users, covert searches, etc) and the collection of personal data, as well as many other rights and freedoms. After 2004 a sharp reduction was observed in human rights violations by the law enforcement agencies. However the situation has gradually and in part got worse again.
2. There are quite often reported cases of torture, cruel or inhuman treatment by police officers. There are also often cases of ill-treatment in places of confinement controlled by the State Department for the Execution of Sentences. Yet, with rare exceptions, there is virtually never an effective investigation resulting in those guilty being punished. There are numerous cases where there is no investigation into suspicious deaths, whereas such investigations are the duty of the State in safeguarding the right to life. There is particular procrastination in cases where the person suspected has links with high-ranking public officials. The classic example is the failure to bring to conclusion virtually any investigation into the deaths in road accidents where the car responsible was driven by somebody with connections.

Comments from Donetsk Memorial on the replies submitted by the State party

1. Comment on § 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 ».*
2. As a matter of fact, the functions of the oversight committees do not include public monitoring; such monitoring is just mentioned in the Code and the preamble to the Regulation on the Oversight

Committees which was developed by the Department itself. The committees are made up of the local officials and often exist only nominally. There no public report on the activities of such committees, while the detained even do not know that they can complain to such committees. Therefore, the oversight committees only imitate public control. The Department is unable to provide at least two or three examples when an initiative oversight committee would reveal any violations of rights of the detained which would be fixed by the Department. The committees have achieved a zero result, which reflects their true efficiency.

3. Comment on § 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. »*
4. The Penal Department fully ignores the CoE recommendation to set up an independent inspection body to check up the penitentiary institutions. The Public Board created by the Department is chaired by a former head of the Department; it does not respond to the proposals of human rights organizations to discuss the cases of violation of human rights in such institutions.

Comments from Vinnytsya Human Rights Protection Group on the replies submitted by the State party

1. Comment on §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. Majority of complaints about ill-treatment are not proved in the course of the so called «*public prosecutor's checks*». These checks are done in such a way that in the majority of cases the Prosecutor's office refuse to initiate a legal case, which is done on the grounds of mere explanations by the law-enforcement personnel without questioning the complainants on the subject of their complaints
3. Comment on § 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 ».*
4. Over 2006-2007 the convicted from Stryzhavska colony No81 and the labour settlement no 100 (in Kharkiv region) provided the information on the fact that the local public prosecutors were personally present at mass beating of the convicts, and the beating itself was done in the presence of the convicts in order to convince them in the futility of filing any complaints to the public prosecutors. The convicts of Вязні Stryzhavska colony No81 informed the Vinnytsya human rights protection group that their complaints to the overseeing prosecutor's office where publicly opened by the administration of the colony and many of the complaints remained unanswered.
5. Comment on §11 : « *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* ».
6. Mobile groups in their current format do not have anything in common with the national

preventative mechanisms (NPMs) created according to OPCAT. The Ministry of Foreign Affairs' efforts to consider the mobile groups as NPMs are unacceptable. The mobile group's staff does not have the right to a private meeting with the detained in the course of Criminal Procedure Code, they do not take part in the investigations and checks regarding the complaints about illegal modes of treatment filed by the detained. Mobile groups are generally financed out of the funds received under grant schemes and the Ministry of Foreign Affairs do not take any initiative to finance them out of the budgetary funds. The State Human Rights Commissioner is completely left outside the scheme of mobile groups activity.

7. Comment on §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 »*
8. This is not true as Art 127 of the Criminal Code of Ukraine completely bars the application to the special subjects –e.g. personnel of law-enforcement authorities, investigators and prosecutors. It is applicable only for private individuals that do not act as the state agents. This also concerns part 2 of the above mentioned article that has never been applied, as it stipulates for the commitment of criminal actions by law-enforcement personnel not related to the performance of their duties, but only during non-working hours.
9. Comment on §24: *"The prison AIDS subcomponent focuses on preventive measures for persons living with HIV and enhancing national capacities"*.
10. . Ministry of Foreign Affairs of Ukraine in contrast to the State Department for Penal Jurisdiction of Ukraine has not yet introduced the procedure for the treatment of HIV-AIDS patients with ant retrovirus medications in places of temporary detention.
11. Comment on §28: *"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"*.
12. Over 2007-2008 there have been filed multiple complaints of former convicts regarding the fact that the tuberculosis patients did not receive the relevant treatment and were forced to hard unpaid work.
13. Comment on §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 ».*
14. The convicts are fully deprived of effective possibility to appeal in court against imposed disciplinary punishments. On the legislative level the convicts are banned from alienating any belongings or foodstuffs in favour of other convicts, recurrent violation of this regulation may become grounds for making the convict answerable for criminal offence. Men sentenced to life imprisonment are deprived of the possibility to have long visits.

Paragraph 11

11. There is grave overcrowding in detention and prison facilities, and a lack of adequate sanitation, light, food, medical care, and facilities for physical exercise. The high incidence of HIV/AIDS and tuberculosis among detainees in facilities of the State party is also a cause for concern, along with the absence of specialized care for pre-trial detainees. (art. 10)

The State party should guarantee the right of detainees to be treated humanely and with respect for their dignity, particularly by relieving overcrowding, providing hygienic facilities, and assuring access to health care and adequate food. The State party should reduce the prison population, including by using alternative sanctions.

Comments from Ukrainian Helsinki Human Rights Union (UHHRU)

1. On 4 and 5 March of 2008 the Ukrainian government forcibly returned 11 ethnic Tamil asylum-seekers to Sri Lanka. It is feared that their return to Sri Lanka will expose them to the risk of serious human rights violations including torture and ill treatment. Amnesty International has strongly condemned Ukraine's actions, which are a violation of international human rights and refugee law. The organization is also concerned that the asylum-seekers were not offered access to fair and efficient asylum procedures while in Ukraine. All 11 asylum-seekers were registered with the United Nations High Commissioner for Refugees (UNHCR) in Kyiv between August 2007 and January 2008, and six of them had applied to the Ukrainian authorities for refugee status. They were detained by the State Security Services (SBU) at the end of January and, according to the UNHCR, they were not offered interpretation or independent legal advice. On 27 February the six applications were rejected by the Khmelnytskyi migration services for procedural reasons. They were given no right to appeal.⁵
2. On 28 July 2008 the Prosecutor General took the decision to hand Oleg Kuznetsov, a Russian national granted refugee status in Ukraine, to the Russian authorities. During the night of 28-29 July 2008 a Russian national Oleg Kuznetsov was, in enforcement of a decision by the Prosecutor General Oleksandr Medvedko extradited to Russia. Mr. Kuznetsov had been granted refugee status in Ukraine, yet was handed over to the country which he fled from due to well-founded fear that he could be subjected to torture and ill-treatment, as well as other human rights violations. Oleg Kuznetsov had been detained by Ukrainian law enforcement officers in Kyiv a year ago, on 19 July 2007. The following day, the Shevchenkivsky District Court in Kyiv remanded him in custody. Soon afterwards, Kuznetsov applied for refugee status but remanded in custody from that time on.
3. On 5 March 2008 the State Committee on Nationalities and Religions granted Kuznetsov refugee status, finding his fears of flagrant violations of his basic rights in the Russian Federation to be well-founded. On 21 April he received his refugee identification card. Despite this, Oleg Kuznetsov remained in custody pending extradition, although in accordance with Article 3 of Ukraine's Law "On refugees", such extradition was impossible.
4. The Prosecutor General's Office considered remand in custody of a refugee to be lawful arguing that it had first protested against the decision of the State Committee, and after this protest was rejected, had lodged an appeal against the decision with the court. All efforts by Kuznetsov's lawyers to have him released by a court order were in vain. However, on 21 July the Prosecutor's Office lost the case with the court upholding the lawfulness and valid grounds for granting Kuznetsov refugee status.⁶

Comments from Donetsk Memorial on the replies submitted by the State party

⁵ More information in English available at: Ukraine forcibly returns 11 Tamil asylum-seekers // <http://www.helsinki.org.ua/en/index.php?id=1204924967>; Painful lessons // <http://www.helsinki.org.ua/en/index.php?id=1205317783>.

⁶ More details on this case available at: The Prosecutor General has overstepped domestic and international law. What next? - Open Appeal from the Ukrainian Helsinki Human Rights Union // <http://www.helsinki.org.ua/en/index.php?id=1217414538>; Position of the Ukrainian Helsinki Human Rights Union regarding the extradition of a refugee by Ukraine's Prosecutor General // <http://www.helsinki.org.ua/en/index.php?id=1217838754>.

1. Comment on §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.*
2. The number of deaths in the pretrial facilities has become alarming, but there also various reasons of such cases, and the staff is often not responsible for such deaths. It also does not seem possible to investigate the reasons on an independent basis, as the Department allows only the Ombudsman to do that and does not support any initiative to monitor observation of human rights in its institutions coming up from other organizations.
3. Comment on §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 ». The State Penal Service has established wards in 11 specialized treatment facilities for inpatient treatment of prisoners serving life sentences*
4. The dynamics of the number of HIV-positive prisoners is in particular revealing – from 1917 people on 1.1.2004 (10 per 1,000 prisoners) to 5,017 on 1.1.2008 (33.5 per 1,000 prisoners), i.e. in 3.3 times in four years.
5. Existence of treatment facilities for the prisoners serving life sentence does not mean that such prisoners are actually treated. For example, the prisoners of Dnipropetrovsk Correctional Centre No. 89 complain about rather serious problems with the medical service.
6. Comment on §32-34: 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.*
7. This programme was passed with certain procedural violations, and as a result local authorities are unaware that they have to fund quite a number of measures envisaged by the programme, as they have not considered it and have not allocated any resources. The programme, just like its predecessors, has no efficient implementation mechanisms and is to a large extent more of a declaration, and not a carefully developed action plan reconciled with all responsible parties. None of the previous programmes has been at least half fulfilled, while it is rather characteristic of the Penal Department to issue plan which remain unimplemented, rather than work on the fulfillment of the programme.
8. Comment on § 35-36: 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 ».*
9. The statistics provided by the Department on the number of visits paid by NGOs is partially not confirmed by facts and partially faked, even though the general trend shows an increase of such visits to the Department institutions. Instead, the majority of such visits is related to the provision of assistance by NGOs to such institutions, organisation of educational and cultural events, and has practically nothing to do with monitoring or public oversight of human rights.

10. The statistics about the visits of international organisations is also rather artificial. Thus, 178 out of 467 visits in 2007 were paid in Ternopil oblast where there are only 3 (!) penitentiary institutions, and only 2 visits were paid to Dnipropetrovsk oblast which has 12 such institutions, and 4 visits to Luhans oblast with the same number of institutions. Therefore, the statistics provided is rather unreliable in terms of reflecting the real situation with the openness of such institutions for NGOs. In addition, there is still a special procedure for foreigners to visit penitentiary institutions, when there is a need to ask for the permission of the Department for each such case and inform the Security Service of Ukraine on each visit, and a permit is issued only upon the completion of such reconciliation procedure.
11. Comment on §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.*
12. Ukraine lacks monitoring agencies, and in the recent three years only two-three monitoring have been completed by NGOs. There are even more cases when the Department denied monitoring to NGOs without explaining the reasons. In addition, the results of such monitoring exercises have no whatsoever influence on the functioning of the Department. Over the recent three years, Donetsk Memorial has been publishing its Reports on Human Rights of Prisoners every year, including its recommendations on how to improve the situation. The Department not only takes no measures in reply to such recommendations, but even does not consider them and does not come up with any response to the proposals made in the above reports.
13. Some territorial offices give no information on their functioning. Over the recent two years, civil organisations have won seven court cases on the failure of the Department offices and even the head of the Department to provide information (the head of the Department would refuse to issue information on the number of deaths among the prisoners).
14. Comment on §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.*
15. Along with few positive changes on the disciplinary punishments, the Department still keeps the disciplinary punishment with work despite of the Paragraph 28 of the International Prison Rules. Moreover, the refusal to fulfil such a punishment is often classified as the final argument to announce the relevant prisoner a persistent violator and add 2-3 years of imprisonment for him/her (Article 391 of the Criminal Code). The prisoners are prohibited to hang reproductions from magazines and photos of their relatives next to their beds.
16. Access to the legal literature is also rather ephemeral, when there are 2-3 copies of the European Prison Rules per institution keeping more than one thousand prisoners. Apart from publishing the Rules in its newspaper, the Department has not provided the document to the prisons.

Paragraph 14

14. Violent attacks against journalists, as well as the harassment of journalists, still pose a persistent threat to the freedom of the press. The Committee is concerned at the assassination of journalist Heorhiy Gongadze in November 2000, the killing of Ihor Aleksandrov, director of the Donetsk regional television station, in 2001, and the death of Volodymyr Karachevtsev, head of the Melitopol independent journalists union, in December 2003. (arts. 6 and 19).

The State party should protect the freedom of opinion and expression, including the right to freedom of the press. The State party should vigorously investigate and prosecute attacks against journalists.

Comments from Ukrainian Helsinki Human Rights Union (UHHRU)

1. After 2004 there was a considerable easing in pressure on the media and journalists from the authorities, however during the last two years pressure has been gradually increasing, especially at the local level.
2. In the view of the Institute for Mass Information, Ukraine is gradually improving its situation according to all the "classic" criteria which international human rights structures use to assess the situation with freedom of speech. At the same time a dangerous trend is emerging in the country with the spread of "jeansa" – commissioned texts containing covert advertising. The situation could lead to the loss of the right to the profession since it exists with the tacit consent of the media owners, a large percentage of politicians and the journalists themselves".
3. "Reporters without frontiers" consider that it is easier for journalists to work now than before, however through polarization of society and the press, it is hard for journalists to take an independent editorial position. They cite as an example the closure of the television programme "Toloka" on UT-1⁷ i, the resignation of the Editor of "Gazeta-24"⁸ because one of the main shareholders wanted to dictate the political line.⁹
4. The Institute for Mass Information has stated that Ukraine is gradually becoming a country with a relatively low level of serious violations of the principles of freedom of speech. This is reflected first and foremost in the fact that there have not been any killings or suspicious disappearances of journalists for a few years running. No journalist is behind bars for any offence linked with carrying out journalist work.

Information on recorded offences¹⁰

	2002	2003	2004	2005	2006	2007
Journalists killed or missing	3	4	0	0	0	0
Arrests and detentions	1	2	8	2	3	1
Beatings, assault, intimidation	23	34	47	16	29	13
Obstruction in carrying out professional duties, censorship	46	27	52	14	31	23

⁷ See the report on the work of the Commission investigating the temporary suspension of broadcast of the UTV-1 talk-show "Toloka" <http://1tv.com.ua/about/1tvnews/07/04/03/18/05.html>.

⁸ See also "Vitaly Portnikov will be dismissed from "Gazeta 24" for skiving off if he doesn't withdraw his statement about censorship <http://helsinki.org.ua.index.php?id=1196345223>; Portnikov leaves "24", Knyazhytsky – from "Tonis" Over censorship <http://helsinki.org.ua.index.php?id=1191918482>.

⁹ "Reporters without frontiers" "It's dangerous to be a journalist these days // Radio Svoboda <http://www.radiosvoboda.org>.

¹⁰ For data from IMI monitoring over many years, see http://imi.org.ua/index.php?option=com_content&task=view&id=172036&Itemid=42. See also the description of violations. Institute for Mass Information Chronicle of Infringements of Freedom of Speech <http://imi.org.ua/media/hronique.doc>.

5. Last year did not bring the desired progress in the Gongadze investigation. The court hearings into the case against the men who carried out the killing – former high-ranking officers of the Ministry of Internal Affairs [VIA] lasted all twelve months. However there were no results in the search for those who ordered the killing and those who organized it. The verdict with respect to the men who carried out the murder was handed down in March 2008 however on this the investigation reached a dead end, with the organizer of the crime being declared in his absence Oleksy Pukach who has for years being in hiding. Other witnesses who could point to those who really ordered the killing were not named in court. Valentine Telychenko, lawyer representing Georgy Gongadze's widow, believes that the Prosecutor General is creating a show of carrying out an investigation into those who ordered and organized the killing of the journalist. At a press conference, reported by Ukrainian News, she stated: "On the one hand the Prosecutor General is simulating an investigation into those who ordered and organized the crime. The investigation team is inept, and pretence is underway."¹¹
6. The Supreme Court on 22 June upheld the verdict against the killers of the journalist Ihor Aleksandrov. The ruling from the Luhansk Regional Court of Appeal which sentenced 5 men to periods of imprisonment from 3 to 15 years for their involvement in the killing of the journalist was passed in July 2006. The Prosecutor General soon afterwards applied to the Supreme Court to review the sentences which the prosecutor's office believed too lenient... Compensation awarded to the relatives of the journalist was not paid since the investigators did not take care to record the property of the accused at the right time.¹²
7. The most brutal attack on a journalist was the assault on 7 December on Maxim Birovash, correspondent for the newspaper "Business". It took place in the lift of his apartment block. When he got into the lift, two men entered it, knocked him to the ground, grabbed his bag and fled. He says that the bag contained internal correspondence of the Ministry of Internal Affairs, protocols of meetings of the commission on passport provision, and other documents forming the basis for a journalist investigation into machinations over issuing passports. The journalist was due to present these documents during a court hearing on 10 December in connection with a civil suit brought by the Chair of the Consultative Council of the private concern SSAPS [Single State Automated Passport System] Yury Sidorenko. In November representatives of the company lodged a defamation suit against Maxim Birovash and "Business" demanding compensation of 46 million UAH. The journalist links the attack to his professional activities given that the assailants took virtually none of his personal things, discarding the bag in the entrance to the block. However a pocket computer and all documents relating to the SSAPS case had disappeared. Maxim Birovash reported the attack to the Darnytsa District Police and within a few hours one of the assailants was detained. They found two telephones on him belonging to the journalist with the memory cards removed. The Darnytsa Police initiated a criminal investigation into the robbery. On 18 February the man detained then was sentenced to five years imprisonment. The databases of Mr. Birovash's investigations were never found since the other assailant has still not been caught.¹³

¹¹ Prosecutor General accused of simulating activity on Gongadze case // UHHRU website, 17.09.2008.

¹² Institute for Mass Information Chronicle of Infringements of Freedom of Speech,
<http://imi.org.ua/media/hronique.doc>.

¹³ Ibid. See also <http://www.khpg.org.ua/en/index.php?id=1197931105&w=Birovash>.

Paragraph 16

16. Problems of anti-Semitism and impositions on Muslim religious activities persist in Ukraine. Members of the Jewish community have suffered physical assaults, including attacks on Jewish day school students, Yeshiva students, and a rabbi and his son in Kiev. The Committee also is concerned about the anti-Semitic activities of the Inter-Regional Academy of Personnel Management (MAUP). In addition, there are unresolved claims for restitution of Muslim religious property, including places of worship, and discrimination against the Tatar community in the Crimea. (arts. 20 and 26)

The State party should ensure that all members of ethnic, religious, or linguistic minorities are protected against violence and discrimination. The State party should provide robust remedies against these problems. The next periodic report of the State party should contain information on human rights training for the police, and on the investigation and prosecution of acts of private violence.

Comments from Ukrainian Helsinki Human Rights Union (UHHRU)

1. Of concern is an increase in hate crimes. The number of racially-motivated murders and physical attacks has risen significantly in recent years. At present there are no effective steps towards overcoming the problems of discrimination, racism and xenophobia.
2. Up till 2005 the level of xenophobia in Ukraine was relatively low and did not exceed that in other post-totalitarian countries. It was lower than in other Central and East European countries – Bulgaria, Romania, Poland, Hungary, the Czech Republic, Slovakia and the Baltic Republics and considerably lower than in Russia. However in 2005 various informal groups of young people aimed at violence based on racism and national enmity, including “skinheads”, became more active. These militant and aggressive young people who often use Nazi symbols, attacked people who didn’t look Slavonic, for example, people from Asia, Africa, the Middle East, the Caucasus and so forth. Their violence was directed against foreign students, asylum seekers, refugees, immigrants, businesspeople and tourists. Some employees of embassies and UN representative offices, as well as members of their families, were also victims. The US and French embassies put warnings on their sites about such violence.¹⁴
3. According to information from the Congress of National Communities of Ukraine [CNCU], these attacks began in October 2006 and their number has been rising rapidly. In 2006 CNCU monitoring recorded 16 attacks, two resulting in the death of the victim; in 2007 there were already approximately 90 victims, with five of them killed; while in the first three months of 2008 45 people suffered such attacks with 2 fatalities.¹⁵ CNCU experts believe that this is only the tip of the iceberg since only those cases which came to public notice with a pronounced racist nature are recorded. In response to an information request from the Kharkiv Human Rights Protection Group, the Ministry of Internal Affairs [MIA] informed that from January to April 2008, 160 crimes were committed against foreign nationals, this including 7 murders. 91 cases were solved, including 6 of the murders. According to the Deputy Minister of Internal Affairs Mykhailo Verbensky, two murders had been racially motivated. During this period the MIA recorded 33 crimes involving threats against the life or health of people from Asia or Africa of which 28 were solved. The President of the African Centre in Ukraine Charles A. St. Jebo maintains that more than one thousand people suffered during this period, mainly people from Africa, India, China, Pakistan and Iran.¹⁶
4. In Ukraine the most active and aggressive are considered to be the far-right groups from the so-called “White Power – Skinhead Spectrum”, the Ukrainian branch of the worldwide extremist network “Blood and Honour”, and the militarized neo-Nazi sect “World Church of the Creator Ruthenia”, WCOTC). They are united by an ideology of racism and nationalism based on establishing their

¹⁴ European Commission against Racism and Intolerance: Third Report on Ukraine, Strasbourg: CRI(2008)4, 2008, n.117.

¹⁵ Viacheslav Likhachev, Xenophobia in Ukraine. Material from monitoring, 2007-2008, Kyiv

¹⁶<http://www.rbc.ua/rus/newsline/2008/04/02/340999.shtml>;
<http://www.ridnews.com/content/view/809/77/>.

- superiority over other races and nationalities. The most numerous groups of skinheads were seen in Kyiv, Dnipropetrovsk, Zaporizhyya, Lviv, Sevastopol, Chernihiv and the Crimea. Whereas in Russia there are tens of thousands within the skinhead movement, according to preliminary figures from the Ministry of Internal Affairs (MIA), in Ukraine there are presently no less than 500 skinheads aged from 14 to 27, in groups of between 20 and 50 people without clear structure or organization.¹⁷
5. It was in 2005 that closed festivals of neo-Nazi groups from Ukraine and Russia became regular events in Lviv and Kharkiv. They are organized unofficially by the Ukrainian National Labour Party with overtly racist songs. The organization "Patriot of Ukraine" which in 2007 held a series of torch marches in Kyiv and Kharkiv, using xenophobic and racist slogans, regularly organizes so-called military "training" for its activists at abandoned industrial sites, in forest camps and tourist bases. There are no less than 30 permanent websites of a neo-Nazi or nationalist nature (Radical Ukrainian Nationalism, the real patriots' site, Nachtigal, Blood & Honour Ukraine and others).¹⁸
 6. At the same time, MIA statistics show a clear trend upwards in the number of crimes against foreigners. Over the last five years the number of offences where foreign nationals suffered has doubled – from 604 in 2002 to 1178 in 2007. The large majority of crimes were committed against citizens of CIS countries (63.5%), with the number against nationals of other countries therefore 36.4%. The greatest friction is seen in the Crimea, Kyiv and the Odessa, Donetsk, Lviv and Kharkiv regions¹⁹. Clearly these statistics do not present the total picture of hate crimes. Not all crimes committed with respect to foreign nationals are linked to the person's nationality, and the statistics also do not include crimes against Ukrainian citizens from different ethnic groups.
 7. The rise in racially-motivated crime forced the authorities to react. In November 2007 the Ministry of Foreign Affairs introduced the position of Special Ambassador on Combating Racism, Xenophobia and Discrimination. The Special Ambassador's tasks are to work on preventing inter-ethnic and inter-faith conflict and coordinating measures and action in this area with other ministries and departments. A separate section has been created in the Security Service [SBU] on identifying and preventing action aimed at inciting ethnic or national enmity. The MIA drew up an "MIA Action Plan on countering racism for the period up till 2009".²⁰ Since the beginning of 2008 special criminal investigation units for fighting racially-motivated violent crimes have been functioning in Kyiv, Odessa, Lviv and Luhansk. The first court sentences under Article 161 of the Criminal Code (violation of equality on the basis of race, ethnic origin or attitude to religion). Whereas up till 2007 only one person had been convicted under that article (the organizer of a pogrom in a Kyiv Synagogue after a football match in April 2002), in the first four months of 2008 four sentences were handed down under this article for assaults on foreigners.
 8. On the other hand there is no information about the scale of application of Article 67 § 1.3 of the Criminal Code which envisages as an aggravating circumstance "committing a crime on the basis of racial, national or religious enmity or discord".
 9. Overall from 2005-2007 only seven criminal investigations were initiated under Article 161. One of the reasons is that the victims of racist attacks do not report such attacks as they don't expect to receive real protection. Another is the unsuccessful, in our view, wording of the crime which in many cases seriously complicates proving guilt. Article 161 punishes for "deliberate actions aimed at inciting ethnic, racial or religious enmity and hatred, at denigrating a person's ethnic honour and dignity or causing offence with regard to religious beliefs, as well as direct or indirect restrictions of rights or imposition of direct or indirect privileges on the basis of race, skin colour, political, religious or other convictions, gender, ethnic or social origin, property, place of residence, or on the basis of language or other grounds".
 10. It is firstly extremely difficult to prove intent to commit these acts, especially when dealing with publications of a xenophobic nature. In the second place, one cannot use this article to prosecute in cases which unfortunately arise quite frequently when the denigration or insult to ethnic honour and dignity is not against a specific person, but against an ethnic group or people as a whole. Criminologists are divided with respect to the possibility of applying Article 161 in such cases. For example, one theoretical-practical commentary to the Criminal Code states that "in committing a crime offending the feelings of an individual in connection with his nationality or religious convictions, the culprit plans in this way to denigrate the nation as a whole. Therefore the manifestation of only personal animosity to a representative of another nation (race) – the

¹⁷ Oleh Martynenko: Racism and xenophobia in Ukraine: new challenges in human rights protection <http://www.khpg.org.ua/en/index.php?id=1212543971>

¹⁸ ibid

¹⁹ ibid

²⁰ <http://www.mvs.gov.ua/mvs/control/main/uk/publish/article/83652>

reluctance to establish close relations, accept the rites of worship of another religion and become friendly – does not establish the elements of the crime foreseen in Article 161.²¹ In another commentary we read an opposite view: “denigration of ethnic honour and dignity of citizens takes place if there is deliberate offence to a specific individual in connection with their belonging to one or other nation.”²²

11. In our view, it is not possible to apply Article 161 to an ethnic group or nation since the article refers to “deliberate actions aimed at... denigrating ethnic honour and dignity, or causing offence” specifically to individual citizens. Furthermore, the very title is about citizens, and the article is in Section V of the Special Part of the Criminal Code “Crimes against the electoral, labour and other personal human rights and civil liberties”. The present version of the Code does not allow at all for attacks on the honour and dignity of ethnic groups, races, peoples and ethnic groups. Articles therefore need to be added to the Code with the corresponding elements of crimes, not forgetting however the need for proportionality with respect to intrusion into freedom of expression.
12. If discrimination against the Roma, immigrants from the Caucasus, Asia and Africa increased significantly in 2007, anti-Semitism actually decreased, and this was despite the political crisis and parliamentary elections which have always marked rises in anti-Semitism. It should be noted that there were also attempts by some political technologists during the September early elections to play the anti-Semitism card, using Jewish roots in attempts to discredit some leaders in the election campaign, for example, Yulia Tymoshenko and Yury Lutsenko. However circulation of several pieces of anti-Semitic material did not influence the electorate’s choice. And the single political force which took part in the elections with a xenophobic principle of ethnic proportional representation in its programme, the all-Ukrainian association “Svoboda” received 0.75% of the overall number of votes cast.
13. The reasons for the decrease in public demonstrations of anti-Semitism in 2007 are, in our view, linked with the gradual reduction in the anti-Semitic activities of the Inter-regional Academy of Personnel Management (MAUP). This gives grounds for describing the character of public manifestations of anti-Semitism in Ukraine as artificial.
14. Over recent years MAUP was the single prominent centre for the publication of anti-Semitic material. Whereas in 2006 676 anti-Semitic publications were recorded, in 2007 the figure was 542 with the drop become sharper: 183 publications in the first quarter; 137 in the second; 147 in the third (the period of the election campaign) and 75 in the fourth. This reduction continued through the first months of 2007. One has the impression that criticism of MAUP by Ukrainian society and the government (activation of opposition to anti-Semitism by the government became more noticeable from autumn 2007), attempts by the Ministry of Education to strip MAUP of its license, the closing of several branches have forced MAUP to stem their campaign of anti-Semitism.
15. It should also be noted that the rise in the index of social distance according to the Bogardus scale which has since 1994 been carried out each year by the Academy of Sciences’ Institute of Sociology affected Jews to a much lower degree than members of other ethnic minorities and groups living in Ukraine. In relation to Jews this index rose from 3.63 in 1994 to 4.6 in 2007. The level of social distance of Ukrainians with regard to Jews is lower than that towards Romanians, Hungarians, Poles and members of other European communities, not to mention the traditional “leaders” – Roma, people from Africa, Asia and the Caucasus. We should also point out that the increase in racially-motivated violence observed against people from Africa, Asia and the Caucasus did not affect Jews.
16. As before, the most discriminated against ethnic minority remains the Roma. “The programme for the social and spiritual revival of Roma, created in 2002 and completed in 2006, has remained virtually unimplemented, in particular because of inadequate financing (100 thousand UAH). This programme envisaged opening special classes for Roma children in kindergartens and elementary grades so that the children could catch up with other children. However many of the aims have not been achieved. According to Roma organizations, only 68% of Roma people are literate and only 2% have higher education. The main reason for this is poverty and the lack of effective programmes aimed at changing stereotypes about Roma people. Parents of other children don’t want their children to study together with Roma children, particularly because tuberculosis is much more widespread among Roma than among other ethnic communities. A lot of Roma do not have access to running water, electricity, roads, means of transport and communication, and one in ten Roma is living in unsanitary conditions. One half the Roma are able to eat each day. Through lack of money

²¹ Theoretical-practical commentary to the Criminal Code. – 4th edition, revised and supplemented // Y.V. Aleksandrov, P.P. Andrushko, V.I. Antipov and others. Kyiv: ACK, 2005, p. 300.

²² Theoretical-practical commentary to the Ukrainian Criminal Code. In three volumes. Volume 2: Special Part (Articles 109-254) / P.P. Andrushko, T.M. Arsenyuk, O.F. Bantyshev and others – K.: Forum, 2005, p. 164.

access to medical care is considerably worse than for representatives of other communities. Unemployment remains a major problem. According to Roma organizations on 38% of Roma people are working, and only 28% work fulltime. The gravity and link between the problems faced by Roma in areas such as education, employment, housing and healthcare require in-depth research and a concerted effort by all relevant governmental bodies in cooperation with Roma organizations in order to adequately resolve them.²³

The situation for the Crimean Tatars

17. Discrimination towards the Crimean Tatars increased noticeably in 2007. This was in the first instance linked with conflict over squatters occupying land sites which heightened in 2007. Squatting was for all residents of the Crimea virtually the only possible way of getting land to build a home and run their household. It has been used not only by the Crimean Tatars, but by others living in the Crimea. As of November 2007 the Crimean Prosecutor's Office had calculated five thousand cases of unlawful use of land, of which about five hundred cases of land occupation had been carried out by Crimean Tatars.²⁴ However the Russian language press of the Crimea, using this subject for its own ends, wrote only about Crimean Tatars squatters, and unfurled a real anti-Tatar and Islamophobic information campaign. Xenophobia against Crimean Tatars is seen in insults, acts of vandalism against sacred places, in particular Muslim cemeteries, and even physical assault. Sometimes conflict over land sites or everyday rows turn into mass inter-ethnic confrontations with a large number of participants on each side and a large number of people hurt.
18. The law signed on 30 January 2007 by the President "On amendments to some legislative acts of Ukraine on increasing liability for squatters occupying land sites" allows for a heightening of administrative liability and the introduction of criminal liability for occupying land and building on it. In the Crimea this law began being applied against the Crimean Tatars after the end of the holiday season, at the beginning of November.
19. On 1 November there was a clash in Simferopol between representatives of the construction firm "Olvi-Crimea" which was laying claim to an area of land of 2.6 hectares in order to build a residential block, and the Crimean Tatars who had seized this piece of land and built twenty temporary buildings. Several hundred people on each side were involved in the confrontation and it was only the intervention of the police that averted a mass brawl. The Crimean Tatars, moreover, complained about the behavior of the police, alleging that the latter had taken part in beating up Crimean Tatars. Several dozen men, including police officers, received injuries. It should be noted that the Crimean Tatars at the beginning of 2006 held an indefinite picket against what they believed to be the unlawful decision by the Simferopol City Council to hand over the land site to "Olvi-Crimea". The Crimean Prosecutor protested against the ruling handed down by the court in favour of the firm and lodged an application with the court to have the City Council's decision declared unlawful.
20. On 6 November a special police operation was carried out against Crimean Tatars on Ai-Petri. In the morning, up to a thousand police officers, military service men from the internal military forces, and the "Berkut" unit, together with technology and arms carriers. They demolished a building belonging to a private businessman Y. Mukhatayev, on the basis of a court warrant allowing the demolition, and another seven unfinished buildings and the café-bar "Eden" which there had been no court order to demolish. There were no more than 40 Crimean Tatars; they tried to stop the bulldozers, but were brutally beaten and subjected to special methods. Seven Crimean Tatars were hospitalized with medium severity injuries, one of whom had a bullet wound in his stomach. The police detained 28 Crimean Tatars and 23 had protocols drawn up on administrative offences under Article 185 of the Code of Administrative Offences (persistent non-compliance with a legitimate instruction or demand from the police). Following a ruling from the Yalta Court, 18 of them received administrative arrest of between 3 and 13 days. Five were fined.
21. Crimean Tatars asserted that the bullet wound was inflicted by the police. The fate of the criminal investigation initiated over the wound is not known.
22. In response Crimean Tatars held a number of mass events demanding an independent enquiry into the behaviour of the Crimean police and the dismissal and punishment of its head Anatoly Mohylyov.
23. We should also point out the long-standing problem over the failure to allocate land to the Crimean Tatars for the construction of a Soborna [Assembly] Mosque. The Crimean Tatars have been trying in

²³ European Commission against Racism and Intolerance: Third Report on Ukraine, Strasbourg: CRI(2008)4, 2008, 65-83.

²⁴ «Voice of the Crimea», №47, 16 November 2007

vain to get land for the Mosque for ten years already. On 30 November deputies of the Simferopol City Council revoked their own decision passed in June 2004 to allocate land on the outskirts of the city, after all the necessary documents had been gathered and the design drawn up and agreed. Up till 2004 the Crimean Tatars had had three applications for land sites turned down and the land had been used for other purposes.

24. The statement issued on 6 November by the Mejlis of the Crimean Tatar people asserts among other things: "In a situation where the Ukrainian government is openly ignoring the need to reinstate the rights of the Crimean Tatar people, numerous problems continue to accumulate and deepen regarding the return and settlement of the indigenous people in their native land – the Crimea. This includes the allocation of land; employment; the return of places of worship; education in their native language; the development of their national culture; the restoration of historical names, and many other issues. Such State policy is perceived by the authorities of the Autonomous Republic of the Crimea as the leadership in intensifying discrimination against the Crimean Tatars. Their numerous appeals receive no positive reaction from the executive and representative bodies of power in the Crimea and the agreements reached between the Mejlis of the Crimean Tatar People with the autonomy's leaders on problem situations are not fulfilled. For example, the issue of allocation of land sites for the construction of housing and places of worship has not been resolved." It is hard not to agree with this assessment of the situation for the Crimean Tatars.