



UKRAINE

**Follow-Up Report to the review
under the International Covenant
on Civil and Political Rights**

Submitted by the Human Rights House Foundation
(as of May 2016)

This report is submitted by the Human Rights House Foundation (HRHF) in cooperation with the Centre for Civil and Political Rights (ICCPR).

The report is endorsed by the following organisations:

Members of the Human Rights House Chernihiv:

- Humanistic Technologies Center “AHALAR”, Chernihiv;
- “MART”, Chernihiv;
- Transcarpathian Public Center, Uzhhorod;
- Chernihiv public committee for human rights protection, Chernihiv.

Members of the Human Rights House Kiev:

- Centre for Civil Liberties;
- Human Rights Information Center.

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Timeframe and Relevant Documents

- August 2013: Adoption of the Concluding Observations <http://goo.gl/DNsgnA>
- June 2015: Special rapporteur letter to Ukraine (without answer to date) <http://goo.gl/pywtIs>
- Current Status (May 2016): Government follow-up report pending.

General observations

At the end of 2013/beginning of 2014, the Revolution of Dignity (Maidan events) occurred in Ukraine. It resulted in the overhaul of State authorities. In particular, in 2014, the new President and the new Parliament were elected. The new democratic government improved significantly the human rights situation, especially the adherence to political rights and freedoms. All political prisoners were released. In general, state policies improved significantly.

The previous recommendations of the UN Human Rights Committee were made in 2013, in the days of the previous State authorities. Therefore, some problems reflected in the previous recommendations of the Committee, particularly regarding political justice, are not relevant anymore.

Regrettably, Ukraine has not submitted a follow up report to the HR Committee so far. Neither has the government expressed a desire to cooperate with NGOs while preparing information for the Committee.

In 2015, Ukraine developed a National Strategy for Human Rights, approved by Presidential Decree No.501/2015, with wide involvement of the civil society, including human rights organisations. Its content, despite certain shortcomings, is quite progressive. It is the first time that a document of this kind has been approved at the State level. The recommendations of the UN Human Rights Committee have also been applied while developing the Strategy.

On 23 November 2015, the Government approved the Action Plan on Implementation of the National Strategy for Human Rights covering the period until 2020. Representatives of civil society were involved in its development.

These two documents provide partial solutions for implementing the UN Human Rights Committee's recommendations. They certainly constitute a positive step taken by the State. However, practice shows that similar plans often remain declarative. For this reason, there remains a need to further monitor the implementation of the UN Human Rights Committee's recommendations.

Recommendation 6	Grade	Overview
<p>The Committee is concerned at the State party's failure to fulfil its obligations under the First Optional Protocol and the Covenant by providing victims with effective remedies for violations of Covenant rights in compliance with Views adopted by the Committee.</p> <p>The Committee notes that legislative changes would appear to be required to ensure that all Views of the Committee, and not only those requesting the State party to review an individual case in the framework of criminal proceedings, are fully implemented and victims provided with effective remedies (art. 2).</p>	B2	<p>The problem remains primarily unsolved. Decisions of the UN human rights bodies, including the UN Human Rights Committee, are still not enforced and are not considered to be binding.</p> <p>Decisions of foreign institutions do not constitute grounds for any case to be reviewed – be it criminal, civil or administrative proceedings. The Government has not undertaken any actions toward implementing this recommendation.</p> <p>A Draft Law aimed at solving this problem was registered in the Parliament on 19 May 2015. It contains amendments to Ukrainian legislation that would ensure the implementation of decisions of international organisations on the protection of human rights¹. However, it has only been registered by two Deputies (Members of Parliament) without any support from the Government, and therefore has not been considered for a long time even at the first reading stage.</p> <p>The High Specialized Court of Ukraine for Civil and Criminal Cases has repeatedly rejected applications for cases to be reviewed. To justify this position, the Court has emphasized that the “UN Human Rights Committee is not a judicial body, while its decisions in their form and content are not adjudications and are not legally binding.”²</p> <p>The National Strategy for Human Rights does not solve this problem either.</p>
<p>The State party should reconsider its position in relation to Views adopted by the Committee under the First Optional Protocol. It should take all necessary measures to establish mechanisms and appropriate procedures, including the possibility of reopening cases, reducing prison sentences and granting ex gratia compensation, to give full effect to the Committee's Views so as to guarantee an effective remedy when there has been a</p>		<p>See the answer above.</p>

¹ Draft Law and supporting documents available in Ukrainian at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55226.

² Judges do not consider enforcement of UN committees must – lawyers, 12 December 2015, <http://hromadskeradio.org/programs/prava-lyudyny/sudy-ne-vvazhayut-vykonannya-rishen-komitativ-oon-obovyazkovym-advokaty>.

violation of the Covenant, in accordance with article 2, paragraph 3, of the Covenant.		
Recommendation 10	Grade	Overview
<p>The Committee is concerned at reports of discrimination, hate speech and acts of violence directed at lesbian, gay, bisexual and transgender (LGBT) persons and violation of their rights to freedom of expression and assembly. It is further concerned at reports that according to Ministry of Health order No. 60 of 3 February 2011 “On the improvement of medical care to persons requiring a change (correction) of sex”, transgender persons are required to undergo compulsory confinement in a psychiatric institution for a period up to 45 days and mandatory corrective surgery in the manner prescribed by the responsible Commission as a prerequisite for legal recognition of their gender.</p> <p>The Committee also expresses its concern at two draft laws “on propaganda of homosexuality” introduced in Parliament: (1) No. 1155 “On the prohibition of propaganda of homosexual relations aimed at children” and (2) No. 0945 on “Introduction of Changes to Certain Legislative Acts of Ukraine (regarding protection of children’s rights in a safe information environment)”</p>	<p>C</p>	<p>Cases of discrimination, hate speech and acts of violence directed at the LGBT community remain quite widespread³. No significant amendments to the legislation have been introduced, and no significant steps have been taken to improve the practice of investigating hate crimes. The absence of a legal framework for appropriate classification of these crimes, as well as unwillingness and inability of the law enforcement institutions to investigate them, do not contribute to a reduction of these crime rates. At the same time, a considerable number of these crimes, according to research³, remain concealed as victims are afraid to inform the police because of the low efficiency of law enforcement and fears of their sexual orientation being publicly disclosed.</p> <p>Ministry of Health Order No. 60 of 3 February 2011 is still in effect. But it provides for compulsory inpatient psychiatric examination at a psychiatric institution to last up to one month rather than 45 days.</p> <p>The Action Plan on Implementation of the National Strategy for Human Rights for the period until 2020 provides for development and approval by 2018 of a new <i>Procedure for providing medical care to persons requiring change (correction) of sex</i>, which is supposed to clearly define medical and legal aspects, while the procedure itself is supposed to correspond to the recommendations of the Council of Europe and UN Human Rights Committee. This requires a working group involving international experts to be created in order to monitor the situation in the country, and to study international practical experience⁴. However, it has not been created to date.</p> <p>Draft Law No.1155 was withdrawn by the author of the law on 15 April 2014.</p> <p>Draft Law No.0945 was introduced at the Parliament at first reading on 2 October 2012 and is still under consideration by the Parliament. However, a suggestion to remove the draft but none of this issues have been included in the agenda of the Parliament so far.</p>

³ See for instance: In the Crosscurrents Addressing Discrimination and Inequality in Ukraine The Equal Rights Trust Country Report Series: 5, London, August 2015, http://www.gay.org.ua/publications/antidi_report2015-e.pdf; Report on hate crimes against LGBT people in Ukraine in 2014, http://www.gay.org.ua/publications/odihr_2014-e.pdf; From Despair to Hope. LGBT situation in Ukraine in 2014, http://www.gay.org.ua/publications/lgbt_ukraine_2014-e.pdf.

⁴ See Chapter 2, Paragraph 64 of the Action Plan on Implementation of the National Strategy for Human rights for the period till 2020.

<p>that, if adopted, would run counter to the State party's obligations under the Covenant (arts. 2, 6, 7, 9, 17, 19, 21 and 26).</p>		<p>On 12 November 2015, the Parliament passed a law stipulating the general prohibition of discrimination at work⁵: “Any kind of discrimination in employment is prohibited, in particular, the following: violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of employees based on race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion of or actual HIV/AIDS status, family and property status, family responsibilities, place of residence, membership in trade unions or other associations of citizens, participation in strikes, court appeal or intention of appealing to court or other authorities to protect their rights or to support other workers in protection of their rights, linguistic or other grounds not related to the nature of work or conditions of its implementation.”</p> <p>Such a step is definitely a positive one as it is the first time that such a wide range of grounds for discrimination, particularly discrimination based on “sex, gender, identity and sexual orientation,” has been clearly defined at the legislative level.</p>
<p>While acknowledging the diversity of morality and cultures internationally, the Committee recalls that all States parties are always subject to the principles of universality of human rights and non-discrimination. The State party should therefore state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity. It should also take all necessary measures to</p>		<p>See answer above.</p>

⁵ Available only in Ukrainian at: <http://zakon5.rada.gov.ua/laws/show/785-viii>.

<p>guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights. The State party should also amend order No. 60 and other laws and regulations with a view to ensuring that: (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to 45 days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed. The Committee finally urges the State party not to permit the two draft bills “on propaganda of homosexuality” to become law.</p>		
Recommendation 15	Grade	Overview
<p>The Committee notes with concern the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions despite high numbers of complaints lodged, the absence of information on the sanctions imposed on perpetrators and the remedies provided to victims.</p> <p>It also remains concerned</p>	<p>B2</p>	<p>Torture and ill-treatment of detained and imprisoned persons remains a systematic problem. Instances are quite widespread, despite some progress being achieved by state authorities in combating them.</p> <p>Cases of torture and ill-treatment mainly occur in detention of a person suspected of committing a crime, as well as in places of imprisonment for persons serving their sentence. Failure to provide medical care and adequate detention conditions remains an acute problem.</p> <p>There are numerous reports⁶ of penitentiary services representatives exceeding their powers by physically abusing prisoners or placing them arbitrarily in solitary confinement.</p>

⁶ See, for example, Prisons rights. Annual report « Human Rights in Ukraine – 2015 », this chapter available only in Ukrainian at : <http://helsinki.org.ua/prava-v-yazniv/>

about the absence of a genuinely independent complaint mechanism to deal with cases of alleged torture or ill-treatment and the discretionary use of video recording during interrogations of criminal suspects (arts. 2, 7, 9 and 14).

The State party should reinforce its measures to eradicate torture and ill-treatment, ensure that such acts are promptly, thoroughly, and independently investigated, that perpetrators of acts of torture and ill-treatment are prosecuted in a manner commensurate with the gravity of their acts, and that victims are provided with effective remedies, including appropriate compensation.

As a matter of priority, the State party should establish a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment. It should also amend its Criminal Procedure Code to provide for mandatory video recording of interrogations, and pursue its efforts towards equipping places of deprivation of liberty with video recording devices with a view to discouraging any use of torture or ill-treatment.

The state of penitentiary facilities is still a systematic problem. The majority of them have long exceeded their period of operation. Despite some selective maintenance works, accommodation blocks and prison cells require renovation and reconstruction. Until now, Ukraine has not conducted any complex reconstruction of penitentiary system facilities, and convicts continue to be confined in overcrowded cells, in rooms with unsanitary conditions lacking sufficient lighting, ventilation, hot water, and heating, and without any possibility for privacy.

Patients of psychiatric hospitals constitute one of the most dependent and powerless groups under government control. They hardly have any opportunity to complain against actions of the institutions' personnel. In total, there are more than 6,000 psychiatric custodial institutions in Ukraine, including 144 psycho-neurological asylums and 70 psychiatric hospitals accommodating about 60,000 people.

The most widespread violation of the freedom from torture in these institutions is forcing patients to take medicines which do not improve their state or even worsen it⁷. There are numerous reports of patients experiencing humiliation, beatings and unauthorised use of psychotropic drugs aimed at "sedating" them.

In Ternopil region, monitors⁸ discovered that two men were kept in "solitary confinement" ("kartser") at Berezhanskyi psycho-neurological asylum. It was a closed cramped room with a metal grate on the door which was locked; there was no electric lighting, and no access to fresh air and water; a bucket was used as a toilet. The men were deprived of the possibility to wash and of the decent conditions to relieve themselves. The patients of the psychiatric institution did not have any underwear, outerwear and personal hygiene items. The condition of the premises was unsanitary. Fire safety standards were not met.

In Horodnianskyi psycho-neurological asylum immobile patients are not brought outside, while those who are able to walk are forced to work at vegetable gardens and auxiliary facilities.⁹ The patients were found in a horrible condition – without underwear and wounded. The condition of the asylum is highly unsanitary.

⁷ In his report "on certain forms of abuses in health-care settings" (A/HRC/22/53), the Special Rapporteur on torture affirmed that forced medication could in certain cases be considered as a form of torture or ill treatment (para. 69).

⁸ The conditions in the institution are so horrible that patients' desire to escape is not surprising <http://www.ombudsman.gov.ua/ua/all-news/all-activity/101115-ck-umovi-v-internati-nastilki-zhaxlivi-scho-zovsim-ne-divnim-viglyadaye-b/>

⁹ Criminal proceedings were started against the management of the psychiatric asylum and psychiatric hospital <https://tsn.ua/ukrayina/u-psiulikarnyah-na-chernigivschini-paciyenti-spali-u-vlasnih-viporozhnennyah-i-pracyuvali-do-11-godin-na-dobu-529586.html>

	<p>Ukraine has taken positive steps in combating these violations. These include the introduction of the new Criminal Procedure Code adopted in 2012, police reform with separate special training on combating torture and ill-treatment, changes to the police evaluation system, and a quite effective National Preventive Mechanism that functions with the involvement of the Ombudsperson and human rights organisations.</p> <p>Another positive step is the approval of the Law “On State Investigation Bureau” on 12 November 2015, which establishes a body independent from the police and responsible for investigating crimes committed by law enforcement agencies. However, until now the Bureau has not been formed and it is unknown how effective this body will be.</p> <p>Despite the aforementioned steps more need to be done to address the problems pointed by the HR Committee.</p> <p>The problem of classifying the crime of “torture” can be used as an example. In the majority of cases, the conduct of the law enforcement personnel is not classified as “torture,” but rather as abuse of power or official position (Article 364 of the Criminal Code of Ukraine), abuse of power or authority by a law enforcement officer (Article 365 of the CCU), or coercion to testify (Article 373 of the CCU). This makes it impossible to provide clear statistics on torture cases, as well as on the number of law enforcement officers convicted for torture. Clarity is not helped by other crimes not related to torture being concealed behind these three CCU articles.</p> <p>By avoiding clear classification of torture and the imposition of strict liability, the Ukrainian State maintains tolerance to torture. It is also striking that the sanction for a “torture crime” is quite soft – up to five years in prison, which in practice turns into two to three years or often a conditional sentence. This “soft” sanction is due to torture remaining a crime of medium gravity rather than a grave crime, which influences the severity of punishment.</p> <p>Independent, prompt and effective investigation into ill-treatment complaints is still unavailable. Investigations can last for years resulting in nothing, even given that the complaints are quite substantiated.</p>
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		<p>The new CPC has only established a possibility rather than an obligation to record interrogation on video. Moreover, the person interrogated is not entitled to request a copy.¹⁰ The aforementioned Action Plan on Implementation of the National Strategy for Human Rights for the period until 2020 provides for the development and approval of a legal act on the use of technical means of surveillance and control in facilities for convicted and detained persons, while ensuring appropriate guarantees against unreasonable restrictions of the right to privacy. However, until now no actions have been taken to implement this provision. Prison or detention facilities are mainly not equipped with video surveillance systems.</p>
Recommendation 17	Grade	Overview
<p>The Committee notes the various steps taken by the State party to reform the judiciary, but it is concerned that judges still remain vulnerable to outside pressure due to insufficient measures to guarantee the security of their status. It is further concerned that the State party still does not fully ensure the independence of judges from the executive and legislative branches of government and that their status is not adequately secured by law. The Committee also expresses particular concern about allegations of politically motivated prosecutions of elected politicians, such as former Prime Minister Yulia Tymoshenko, for excess of authority or official power pursuant to article 365 of the Criminal Code (art. 14). The State party should ensure that judges are not subjected to any form of political influence in their decision-</p>	B2	<p>The first attempt to reform the judiciary was undertaken on 12 February 2015, with the approval of the Law “On ensuring the right to a fair trial”¹¹ initiated by the President. The Law has a lot of positive provisions, but its major shortcoming is that political influence on judges remains unchanged. The power to make final decisions regarding appointment, career and dismissal of judges remains under control of political authorities, i.e. the President and the Parliament. The grounds for dismissal of judges for violation of oath are formulated vaguely, some of them being abstract, which can be used (as it was before) by the new authorities to “eliminate” disloyal judges.</p> <p>The impartiality of judges is negatively impacted by the absence of specific qualification criteria for evaluating judges of different levels while dealing with their career growth. Provisions making them dependent on local authorities (state service accommodation) and Security Service (additional payments for access to state secrets) remain unchanged. The new law also preserves the process of regulating the distribution of cases sub-legislatively. Aside from maintaining the mechanism, this has also opened new possibilities for “manual” distribution of cases by heads of courts.</p> <p>While evaluating the draft of the adopted law, the Venice Commission of the Council of Europe noted that political influence of the President and the Parliament on the judiciary remained, but further continuation of the reform required the Constitution to be amended: “The Commission recommended that the Constitution be amended, implying that</p>

¹⁰ Article 224 of the Criminal Proceeding Code of Ukraine. Available in English at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f6016>.

¹¹ Available only in Ukrainian at <http://zakon4.rada.gov.ua/laws/show/192-19/>

<p>making and that the process of judicial administration is transparent. The State party should adopt a law providing for clear procedures and objective criteria for the promotion, suspension and dismissal of judges. It should ensure that prosecuting authorities are not involved in deciding on disciplinary actions against judges and that judicial disciplinary bodies are neither controlled by the executive branch nor affected by any political influence. The State party should ensure that prosecutions under article 365 of the Criminal Code fully comply with the requirements of the Covenant.</p>	<p>a reform of the judiciary would be incomplete with regard to European standards without remedying deficiencies which find their origins in the constitutional provisions. The Venice Commission underlined that constitutional amendments should mainly concern the exclusion of the role of political organs in the appointment and removal of judges and the reduction of their role in the establishment of courts and in the composition of the High Council of Justice, a substantial part of which should be judges, elected by their peers, the elimination of the role of the <i>Verkhovna Rada</i> in lifting judges' immunities, the introduction of principles deriving from the European Convention on Human Rights in the Constitution, such as the right to a fair and public trial within a reasonable time by an independent and impartial tribunal.¹²</p> <p>For this reason, the Constitutional Commission under the President of Ukraine developed a Draft Law on Amendments to the Constitution of Ukraine (regarding the Judiciary),¹³ which was submitted to the Parliament on 25 November 2015. It introduces a number of European standards regarding permanent appointment of judges, including: removal of the Parliament's power to appoint and dismiss judges; introduction of the composition of the High Council of Justice where the majority will consist of judges elected by judges; restriction of judicial immunity to functional immunity; and reduction of the prosecution's functions.</p> <p>At the same time, the Draft Law still contains certain negative provisions, such as a political mechanism for appointing and dismissing the General Prosecutor. The Venice Commission has provided a significant number of remarks to this draft law, which were addressed to a large extent in finalising the draft¹⁴.</p> <p>On 2 February 2016, the draft law received the preliminary approval of the Parliament.</p> <p>In 2012, the new Criminal Procedure Code was approved by the Parliament. It was recognised by the Council of Europe as fully compatible with European standards in terms of fairness of the proceedings, which decreases the risk of recurrence of political bias. But the political cases referred</p>
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¹² § 13, Joint opinion of the Venice commission and the Directorate of human rights (DHR) of the Directorate general of human rights and rule of law (DGI) of the Council of Europe on the law on the judicial system and the status of judges and amendments to the law on the high council of justice of Ukraine adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015), <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29007-e/>

¹³ Draft Law on Amendments to the Constitution of Ukraine (regarding the Judiciary) No.3524 of 25.11.2015: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57209.

¹⁴ See: Secretariat Memorandum on the compatibility of the Draft Law of Ukraine on Amendments to the Constitution of Ukraine as to Justice as submitted by the President to the Verkhovna Rada on 25 November 2015 (CDL-REF(2015)047) with the Venice Commission's Opinion on the proposed amendments to the Constitution of Ukraine regarding the Judiciary as approved by the Constitutional Commission on 4 September 2015 (CDL-AD(2015)027) taken note of by the Venice Commission at its 105th Plenary Session (Venice, 18-19 December 2015), <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29043-e/>

	<p>to by the HR Committee were tried in accordance with the old CPC.</p> <p>The new Law of Ukraine “On Prosecution Service” approved on 14 October 2014 has not fully entered into force yet, which results in failure to conduct full reformation of the prosecuting authorities.</p> <p>For these reasons, despite certain positive steps, judges continue to be subject to political influence, and therefore the risk of recurrence of similar political trials remains.</p> <p>The problem of opposition leaders having been convicted on political grounds was solved in the following manner: Yuriy Lutsenko was pardoned by Presidential Decree issued on 7 April 2014, while Yuliia Tymoshenko was released from prison based on the Resolution of the Verkhovna Rada of Ukraine “On implementation of international obligations of Ukraine regarding release of Tymoshenko Yu. V.” of 22 February 2014 (immediately after the Revolution of Dignity ended). In fact, these cases were solved politically rather than legally and by means of the court review, and therefore Ukraine has not eliminated the causes of the aforementioned cases.</p> <p>The government should approve the January 2013 request of the UN Special Rapporteur on the independence of judges and lawyers to undertake a visit to Ukraine as a sign of good will towards the HR Committee’s recommendation.</p>
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