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HAUT-COMMISSARIAT

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HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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20 November 2017

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 6, 10, 15, and 17 of the concluding observations on the report submitted by Ukraine (CCPR/C/UKR/CO/7), adopted by the Committee at its 108th session in July 2013.

On 19 June 2015, the Committee received the reply of the State party. At its 121st session (16 October-10 November 2017), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see CCPR/C/121/4). I hereby attach a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. The Committee requests the State party to provide this information in the context of its next periodic report due on 26 July 2018.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency Mr. Yurii Klymenko
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
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Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/121/4:

Assessment of replies[1]

A **Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.

B **Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.

C **Reply/action not satisfactory:** A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.

D **No cooperation with the Committee:** No follow-up report has been received after the reminder(s).

E **Information or measures taken are contrary to or reflect rejection of the recommendation**

Ukraine

Concluding observations:	CCPR/C/UKR/CO/7, 23 July 2013
Follow-up paragraphs:	6, 10, 15 and 17
First reply:	CCPR/C/UKR/CO/7/Add.1,19 June 2015
Committee's evaluation:	Additional information required on paragraphs 6**[C]**, 10**[B][B]**, 15**[C][B][B][C]** and 17**[B][B]**
Non-governmental organizations:	Human Rights House Foundation, 6 June 2016[2] Coalition of Human Rights Organizations, 4 July 2016[3]

Paragraph 6:

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 violation of the Covenant, in accordance with article 2, paragraph 3, of the Covenant.

Summary of State party's reply

The State party highlights different provisions of the Criminal Procedure Code of 2012 and other laws related to fundamental guarantees, fair trial and the right to redress.

[1] Full assessment available from CCPR/C/119/3 and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf

[2] See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/UKR/INT_CCPR_NGS_UKR_24405_E.pdf.

[3] See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/UKR/INT_CCPR_NGS_UKR_24422_E.pdf.

Information from non-governmental organizations

Centre of Policy and Legal Reform and Human Rights House Foundation

A bill was submitted to the Parliament on 19 May 2015, proposing that relevant decision of international organizations on the protection of human rights constitute grounds for review of national judicial decisions by the Supreme Court.

The High Specialized Court of Ukraine for Civil and Criminal Cases has repeatedly rejected applications for review of cases arguing that the Committee "is not a judicial body, while its decisions in their form and content are not adjudications and are not legally binding."

Committee's evaluation

[C]: The information provided by the State party is not relevant to the recommendation. The Committee notes however the submission to the Parliament on 19 May 2015 of a bill that would recognize decisions related to human rights protection adopted by international organizations as grounds for review of national judicial decisions, and requires information on the progress of the bill in question, including clarification as to whether the Views adopted by the Committee under the First Optional Protocol would constitute grounds for review, on the nature of the review by the Supreme Court and possible outcomes, and on any other relevant measures aimed at implementing the recommendation of the Committee. The Committee reiterates its recommendation.

Paragraph 10:

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 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.

Summary of State party's reply

The State party elaborates on its anti-discrimination legal framework, including article 24 of the Constitution, the Act amending certain legislative acts on preventing and combating discrimination (30 May 2014) and the Act on the Principles of Preventing and Combating Discrimination (4 October 2014). It highlights the definitions of prohibited forms of discrimination, the liability for violations and the remedies available to victims of discrimination, the amendment of article 60 of the Civil Procedure Code relating to the principle of sharing the burden of proof in discrimination cases, and the criminal responsibility for violation of the right to equal treatment on the grounds of race, ethnicity or religion incurred under article 161 of the Criminal Code.

The Ministry of Health Order No. 60 of 3 February 2011 on the improvement of medical care for persons requiring a change or correction of sex will be amended to take account of

the Committee's concerns.

The draft laws on the prohibition of propaganda aimed at children to promote homosexual relations (No. 1155) and on amendments regarding protection of children's rights in a safe information environment (No. 0945) have been withdrawn and will be given no further consideration.

Information from non-governmental organizations

No Borders Project and Human Rights House Foundation

Cases of discrimination, hate speech and violence against LGBT community remain quite widespread and unaddressed due to improper legal classification of these crimes, unwillingness and inability of law enforcement agencies to investigate them, and underreporting because of mistrust and fears of re-victimization and disclosure of victims' sexual orientation.

Ministry of Health Order No. 60 of 3 February 2011 was still in effect but provided for compulsory inpatient psychiatric examination for up to one month rather than 45 days. The Action Plan on Implementation of the National Strategy for Human Rights for the period until 2020 provides for the elaboration and approval by 2018 of a new procedure for providing medical care to persons requiring change (correction) of sex that would clearly define medical and legal aspects. The creation of the working group required to monitor the situation in the country and to study international practice in this regard was pending.

Draft law No.1155 was withdrawn on 15 April 2014 and there were suggestions to also withdraw the draft law No. 0945.

As to positive steps, a law was adopted on 12 November 2015 prohibiting discrimination at work including on the grounds of gender identity and sexual orientation.

Committee's evaluation

[B]: The Committee appreciates the information on the anti-discrimination legal framework. It regrets however that the State party provided no concrete information on the implementation of the Committee's recommendation to combat hate speech, discrimination or violence against LGBT persons. Information is therefore required on measures taken to: (a) state clearly and officially that the State 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; (b) provide specific training to law enforcement officers, prosecutors and judges on how to deal with violence motivated by sexual orientation or gender identity; (c) investigate and sanction potential discrimination, hate speech and acts of violence motivated by a person's sexual orientation or gender identity (please provide relevant statistics since 2014); (d) guarantee the freedom of expression and association of LGBT persons and defenders of their rights in practice.

[B]: The Committee welcomes the explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in the workplace introduced by the law of 12 November 2015. It requires further information on the progress made in amending the Ministry of Health Order No. 60 of 3 February 2011 on the improvement of medical care for persons requiring a change or correction of sex, including the content of any proposed or adopted regulations and their compatibility with the Covenant.

The Committee requires confirmation that the bill No. 0945 has been withdrawn.

Paragraph 15:

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

Ukraine

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.

Summary of State party's reply

The State party refers to the prohibition of torture in article 28 of the Constitution and elaborates on the content of articles 127(1) and 365(1) of the Criminal Code that provide for criminal liability for torture and for abuse of power or official authority, respectively. It highlights the provisions of the Criminal Procedure Code on pretrial investigations, judicial control of detention, safeguards against unlawful and arbitrary detention and access to legal assistance, and describes the procedure for investigating allegations of use of force by law enforcement officials. The State party provides information on monitoring of penitentiary institutions by the Public Council set up by the State Prison Service, the national preventive mechanism and the Commission for State Policy on Criminal Enforcement.

Article 107 of the Criminal Procedure Code permits video recording of interrogations and such decision is taken by the person responsible for the proceedings. Video recording is mandatory if requested by participants in the proceedings. A suspect or accused person has the right, subject to some exceptions, to use a technical device to record any proceedings in which he or she is involved (article 42(3)(11) of the Criminal Procedure Code), and article 224(5) of the Code also permits photographing or making audio or video recordings of proceedings.

No further amendments to the Criminal Procedure Code are necessary.

Information from non-governmental organizations

Ukrainian Helsinki Human Rights Union and Human Rights House Foundation

Torture and ill-treatment of persons deprived of liberty remains a systematic problem despite some progress in combatting them. NGOs note some positive developments, including the Criminal Procedure Code of 2012; the police reform; a quite effective national preventive mechanism; the amendments to the Criminal Procedure Code concerning the legal status of convicts; and the National Human Rights Strategy of 25 August 2015 containing a plan of action on combating torture and ill-treatment.

The crime of torture is still classified in the majority of cases as abuse of power or official position (article 364 of the Criminal Code), abuse of power or authority by a law enforcement officer (article 365) or coercion to testify (article 373). Article 127 ("Torture") of the Criminal Code does not provide for direct responsibility of officials for torture and, as a rule, this article is not applied as a corroborate classification. Torture also remains a crime of medium gravity punishable under article 127 with imprisonment of up to five years; in practice such a sanction translates into two to three years of imprisonment or often a conditional sentence. The existence of several articles that contain similar elements of the crime promotes ambiguity in interpretation, classification and punishment of torture and ill-treatment.

Investigations into complaints of ill treatment are not prompt, independent and effective. The Law "On the State Bureau of Investigation" of 12 November 2015 provides for the establishment of an independent investigation mechanism for cases of torture and ill-treatment by 20 November 2017, but this process has been delayed and repeatedly postponed.

Video recording of interrogations is possible under the Criminal Procedure Code, but is not mandatory. The person interrogated is not entitled to request a copy. The adoption of regulations on the use of means of surveillance and control in places of detention is provided for in the Action Plan on implementation of the National Human Rights Strategy for the period until 2020. Prison or detention facilities were mainly not equipped with video surveillance systems.

Committee's evaluation

[C]: The Committee notes the information provided by both the State party and the NGOs,

but regrets that the State party has not provided specific information in response to the Committee's concern and recommendation related to the investigation and prosecution of torture and ill-treatment in practice and to remedies provided to victims. The Committee therefore requires specific information on measures taken to ensure that acts of torture and ill-treatment are promptly, thoroughly, and independently investigated, that perpetrators are prosecuted under the appropriate criminal provisions and are sanctioned in a manner commensurate with the gravity of their acts and that victims are provided with effective remedies, including appropriate compensation.

[B]: The Committee notes the positive developments in combatting torture and ill-treatment. However, it requires information on the implementation of the plan of action on combating torture and ill-treatment that is part of in the National Human Rights Strategy of 25 August 2015, including the development of a bill abolishing statutes of limitations for torture, the introduction of a mechanism for separate statistical reporting of torture crimes and their mandatory publication.

[B]: The Committee notes the timeline of 20 November 2017 for the establishment of an independent investigation mechanism for cases of torture and ill-treatment, as set out in the Law "On the State Bureau of Investigation" of 12 November 2015, and requires information on the progress made in that regard.

[C]: The Committee notes that recording of interrogations is still not mandatory under the criminal procedure legislation and regrets the State party's statement that no amendments to its legislation are necessary in this regard. It also regrets the lack of information on efforts to equip places of deprivation of liberty with video recording devices. The Committee requires information on the adoption of regulations on the use of means of surveillance and control in places of detention as provided for in the Action Plan on implementation of the National Human Rights Strategy for the period until 2020. The Committee reiterates its recommendation.

Paragraph 17:

The State party should ensure that judges are not subjected to any form of political influence in their decision-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.

Summary of State party's reply

The Right to a Fair Trial Act was adopted on 12 February 2015 and aimed at establishing transparent and objective procedures for the appointment and dismissal of judges. It sets out precise grounds for judges' responsibility and various disciplinary proceedings, a different composition of the High Judicial Qualification Commission and the High Council of Justice and guarantees access to justice, including direct appeals to the Supreme Court.

The Act was referred to the Venice Commission for comments and the joint opinion of the Venice Commission and the Human Rights Directorate of the Council of Europe on the Judicial System and Status of Judges Act and on amendments to the High Council of Justice Act notes that constitutional provisions contain more serious problems affecting the independence of the judiciary than the Acts in question and amendments to the Constitution are required to bring the judicial system into line with European standards. In particular, the Verkhovna Rada should lose its role in the appointment of judges for an indefinite term and in their dismissal; the composition of the High Council of Justice should be changed to ensure that a substantial part, if not the majority, of its members are judges elected by their peers; the role of the Verkhovna Rada in lifting judges' immunities should be eliminated; and the powers of the President to establish and abolish courts must be removed.

The criminal case opened under article 365(3) of the Criminal Code against the former

Ukraine

Prime Minister Yulia Timoshenko was closed by the Supreme Court on 14 April 2014 for absence of a crime. Article 365 of the Criminal Code has been amended to address the concerns raised by the Committee (Act No. 746-VII of 21 February 2014 bringing the legislation into line with article 19 of the UN Convention against Corruption).

Information from non-governmental organizations

Centre of Policy and Legal Reform and Human Rights House Foundation

The Right to a Fair Trial Act of 12 February 2015 contains a number of positive provisions, including a competitive procedure for the selection of judges and members of the High Council of Justice and the High Qualification Commission of Judges; direct appeals against judgments of higher courts to the Supreme Court and expansion of grounds for such appeals; implementation of a system for regular evaluation of judges by various actors; and introduction of six disciplinary penalties instead of two. However, the main drawback of the law is the preservation of political influence on judges: final decisions on appointment, career and dismissal of judges remain under the control of the President and the Parliament.

The independence of judges is negatively impacted by the absence of specific criteria for their evaluation when deciding on career promotion. Provisions making judges dependent on local authorities (state service accommodation) and the Security Service (surcharge for access to state secrets) have also been retained.

A bill amending the Constitution was submitted to the Parliament on 25 November 2015. It introduces a number of European standards regarding permanent appointment of judges, including the removal of the Parliament's power to appoint and dismiss judges; a High Council of Justice made up mostly by judges; and restriction of judicial immunity to functional immunity. The bill still contains certain problematic provisions, such as a political mechanism for appointing and dismissing the General Prosecutor. The comments by the Venice Commission were addressed to a large extent in the final draft. The bill received the preliminary approval of the Parliament on 2 February 2016.

The Criminal Procedure Code adopted in 2012 decreases the risk of recurrence of political bias. The new Act "On Prosecution Service" approved on 14 October 2014 has not yet fully entered into force resulting in an incomplete reform of the prosecuting authorities, therefore judges continue to be subject to political influence.

Yulia Timoshenko was released based on the Resolution of the Verkhovna Rada of 22 February 2014. The problem of selective, politically motivated prosecution is still relevant for the criminal justice system.

Committee's evaluation

[B]: The Committee appreciates the measures taken to ensure the independence of the judiciary, including the efforts to amend the Constitution, and the adoption of the Act "On Prosecution Service" and of the Right to a Fair Trial Act on 14 October 2014 and 12 February 2015, respectively. It requires additional information on the content of these provisions and their implementation, and on the extent to which political interference with the judiciary is eliminated and appointment, promotion, suspension and dismissal of judges is governed by clear and objective criteria.

[B]: The Committee welcomes the closure of the criminal case against the former Prime Minister Yulia Timoshenko, but requires additional information on the amendments to article 365 of the Criminal Code introduced by the Act No. 746-VII of 21 February 2014, and on any other efforts to prevent politically motivated prosecutions.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 26 July 2018