

**Written Submission of the Ukrainian Helsinki Human Rights Union
(NGO) for review under the Universal Periodic Review by a Working Group of
the UN Human Rights Council in May 2008**

Ukraine¹

- 1. Human Rights Institutions**
- 2. Right to fair trial**
- 3. Freedom of association**
- 4. Prohibition of the discrimination**

1. Human Rights Institutions

1.1. Human rights organizations are disturbed by the fact that a considerable number of the different UN Committee's recommendations passed on to the Ukrainian Government have still not been implemented. There is no single State body ensuring that these recommendations are acted upon, nor has there been any legal act setting out a specific Action Plan for implementing the recommendations.

1.2. Despite a considerable increase in funding for the office of the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine (the Human Rights Ombudsperson) over the last five years, the quality of its work has not improved. The Ombudsperson's Secretariat does not have a general register for all complaints received, and there is no effective monitoring over how the substance of these complaints is dealt with. Most of the complaints addressed to the Ombudsperson are automatically sent on to those whom the complaints are about. For example, a prison's complaints against the actions of the State Department for the Execution of Sentences are sent to the same Department. The Ombudsperson does not take other decisions with respect to such complaints. For this reason the role of the Ombudsperson in defending human rights remains insignificant.

1.3. The Human Rights Ombudsperson Nina Karpachova is politically engaged and falsifies checks into citizens' complaints. These are some of the conclusions reached by the civic human rights organizations who have been monitoring her activities since she was re-appointed 100 days ago in February 2007.²

2. Right to fair trial

2.1. According to sociological surveys, an absolute majority of the public believe that the most important issue in the country is to ensure justice and independent court proceedings. Those who had approached the courts deemed the following to be the court's main problems: excessively long court proceedings (10.4%); lack of responsibility of judges (9.7%); insufficient level of information to individuals (9.5%), expensive lawyers' fees (9.3%). Those who had not had dealings with the courts also believed the main problems to be excessively long court proceedings (16.1%); overly high official expenses (12.9%); the need to pay bribes (12.8%); unfair court rulings (12%); inefficient enforcement of court rulings (11.5%). Thus, inefficiency of the courts' work is deemed an even greater problem than their level of corruption.³

¹ This information based on the materials of the Annual human rights reports of the Ukrainian human rights organization which was prepared Ukrainian Helsinki Human Rights Union in 2004, 2005 and 2006. Available in English on our website: <http://www.helsinki.org.ua/en/>. For more information please contact the Ukrainian Helsinki Human Rights Union office@helsinki.org.ua, yavorsky@helsinki.org.ua.

² More information: <http://helsinki.org.ua/en/index.php?id=1179489915>, <http://khp.org/en/index.php?id=1177634301>, <http://helsinki.org.ua/en/index.php?id=1167390541>, <http://helsinki.org.ua/en/index.php?id=1159957244>, <http://www.khpg.org/en/index.php?id=1180993891>.

³ Analytical report on the results of a study "Corruption and the provision of services in the Ukrainian judiciary". Kyiv International Institute of Sociology, 2006 – p. 4

2.2. Fair court proceedings and adequate protection of human rights and fundamental freedoms are possible only where there is impeccable procedural legislation. However, legal regulation of criminal proceedings has not been reformed since Soviet times. The Criminal Procedure Code of Ukraine from 1960, despite some updating, does not meet European standards with regard to human rights protection. The economic courts examine disputes applying rules which are not in line with contemporary trends in civil legal proceedings. Despite the adoption of the Code of Administrative Justice of Ukraine, a law has yet to be passed on administrative procedure which would define the standard relations between an individual and the authorities (public officials) adherence to which should be verified by the administrative courts.⁴ Cases involving administrative offences are generally examined with infringements of a number of standards of the right to a fair trial, numerous restrictions on the right to defence and the lack of possibility of appealing a ruling in the appellate courts, etc.

In the case of *Gurepka v. Ukraine*⁵ the European Court of Human Rights stated, in particular, that certain administrative offences due to the harshness of the penalties could effectively be classified as criminal. *“In the light of its settled case-law, the Court has no doubt that, by virtue of the severity of the sanction, the present case was criminal in nature and the purported administrative offence was in fact of a criminal character attracting the full guarantees of Article 6 of the Convention and, consequently, those of Article 2 of Protocol No. 7”*. In this case the European Court also examined the review procedure set out in the Code of Administrative Offences. This procedure, for example, could only be initiated by the prosecutor or on the decision of the president of a higher court. Given that this procedure was not directly accessible to a party to the proceedings and did not depend on his or her motion and arguments, the Court considers that it was not a sufficiently effective remedy for Convention purposes. It therefore found that there had been a violation of Article 2 of Protocol No. 7 to the Convention.

2.3. One of the key issues for fair court proceedings is the guarantee of judges' independence. This involves, on the one hand, the general guarantees of judicial independence and on the other guarantees with regard to each individual judge. The main criterion for impartiality is financial and administrative independence. The selection procedure for judges is not transparent which can encourage abuse and dependence of judges on public officials involved in the procedure.

2.4. There is no clear legally established system for determining judges' remuneration. An inadequate level of material provisions for judges has made such positions unattractive for highly-qualified lawyers. At the same time, the favourable conditions the posts offer for receiving certain benefits which are questionable from the point of view of their legality, are leading to their becoming attractive to people whose aims have nothing in common with the impartial administering of justice.

2.5. The inadequate material and social provisions for judges, especially those of local courts, places the independence of judges in jeopardy. This is exacerbated by a lack of appropriate financing of the courts which forces the latter to seek other options for meeting their requirements with regard to a good level in administering justice.

2.6. Judges in administrative posts carry out administrative and economic functions not intended for judges. The chairpersons of courts distribute cases among judges, form panels of judges for review of cases, have influence over judges' career issues and social provisions (holidays, bonuses, etc). In view of this, it would be sensible after the elimination of the State Judicial Administration's dependence on the executive branch of power, to make court personnel subordinate to that body. The chairpersons of courts in turn, due to the need to get additional funds for the court, depend on those who allocate these funds: local and central authorities, as well as commercial enterprises.

⁴ Item 3, Section 1 of the Strategy Plan for improving the justice system to ensure fair trial in Ukraine in accordance with European standards // Adopted by Presidential Decree from 10 May 2006 №361/2006.

⁵ Judgment of the European Court of Human Rights in the Case of *Gurepka v. Ukraine*, 6 September 2005 (Application № 61406/00).

2.7. It is not uncommon for judges in handing down judgment to experience pressure both from the authorities, and from the interested parties. Flawed procedure for instituting criminal proceedings against judges allows this to be used by the accused party in order to exert influence.

2.8. An ineffective system of judge accountability in some cases allows them to avoid professional liability, while in others creates favourable conditions for exerting pressure on those judges who demonstrate independence and integrity in their work.

2.9. Administrative pressure is much more often brought to bear on judges via disciplinary proceedings, as well as proceedings over violating their judge's oath. The latter generally provides wide scope for manipulating the wide-ranging content and inexact text of the oath.

2.10. American Bar Association analysts believe that one of the most serious problems for the judicial system comes from external influences on the judgments handed down by judges. This can take many forms. "The perception of judicial corruption is widespread, and while judges are reluctant to discuss bribery or improper influence from court chairmen and upper-level courts, they are rather straightforward about the interference coming from other branches of government, as well as from prosecutors, advocates, and the media".

2.11. Various forms of influence are applied, ranging from letters, telephone calls and personal visits to the judges and chairpersons of the courts, to open criticism of the court rulings in specific cases if they have a different view as to a just outcome. Such non-procedural relations between different parties and the judge are not prohibited by law and are a common occurrence.

2.12. It is established practice that the State Budget designates funding for the judiciary which is considerably less than what is needed to provide for the real needs of the courts, especially those needs directly related to the administering of justice. Despite the fact that the role and functions of the courts, and their workload, have radically increased, the methods for determining annual expenditure on them have not changed in any significant way over the last many years.

2.13. It should, however, be noted that according to figures from the State Judicial Administration of Ukraine (SJAU) ⁶ the level of spending on the direct administration of justice in the 2006 Budget came to 59.7% of actual needs which influenced the organization of the court's work accordingly.

2.14. Considerable problems are presented by the incomplete funding of the courts. Even the small amounts allowed for by the Budget do not actually reach the courts. Under-funding of court bodies on 1 January 2007 constituted 87.4 million UAH. The programme for judges' accommodation, for example, failed to receive more than 30% of the planned amount.

2.15. On the other hand, a considerable part of funding for the judiciary is not used as intended or with other infringements of legislation. Audits carried out in from 2004-2006 found financial irregularities amounting to 13766.0 thousand UAH including 1432.1 thousand UAH on unlawful expenditure; 954.4 thousand UAH on non-Budget loan indebtedness; 6.8 thousand UAH on untargeted expenses, with other infringements of financial discipline to the sum of 11,372.7 thousand UAH.⁷ We are unaware of any criminal proceedings over these violations.

2.16. The overwhelming majority of courts are in cramped and unsuitable premises. There are not enough courtrooms, consulting chambers, rooms for remand prisoners brought to the court or defendants, for court managers, for prosecutors and lawyers, witnesses, etc. This means that the premises stipulated by procedural legislation and which are needed in order to properly examine cases are not available. In a lot of cases, judicial examination is postponed, leading to proceedings being dragged out and violation of people's rights and legitimate interests. The court, designed to administer justice, in fact is forced to break the law.

2.17. There have been a good few cases where courts newly-created in connection with judicial and legal reforms have simply not been provided with premises which has halted any further measures linked with the reform process.

3. Freedom of association

⁶ Results of the SJAU's work in 2006: <http://gca.court.gov.ua/court/info/getfile.php?id=14389>.

⁷ Ibid.

3.1. The situation as far as freedom of association is concerned did not change to any significant degree in 2006. Current legislation on associations, passed in the main at the beginning of the 1990s, has long failed to meet modern conditions and the needs of a civil society. The main problems remain as follows:

- Legislation does not allow for the possibility of registering certain types of organizations. This applies, for example, to socially beneficial organizations which are not essentially charitable, and whose work is not confined to only defending their own rights and interests, this preventing them from being classified as civic organizations;
- Obstacles when registering associations as well as with receiving non-profit-making status and the related tax concessions;
- Restrictions on types of associations' activities with regard to where they can be carried out (for example, a ban on activities in another city or region where the organization is not registered);
- Restrictions on kinds of activities (for example, limitations on publishing activities, access to information, defending other people's rights, etc);
- Lack of incentives in legislation and administrative practice for strengthening and developing associations and improving their cooperation with the authorities. While this issue does not directly concern the right to freedom of association, it is one of the important factors in evaluating the level of development of democracy in the country.

3.2. Numerous provisions in Ukrainian legislation, including the above-mentioned, fail to comply with Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 22 of the International Covenant on Civil and Political Rights and other international agreements to which Ukrainian is a signatory.

3.3. Ukrainian legislation allows for many types of organizations which can be categorized as non-governmental and non-commercial (or non-profit making): citizens' associations (political parties and civic organizations), youth and children's civic organizations, employers' organizations, trade unions, charitable organizations, religious organizations, creative unions, associations of businesses, institutions and others. However there is effectively no general legislation on the activities of all non-profit making organizations. The majority of the organizations listed above act according to legislation for them alone, which sets down the particular procedure for their creation and their special legal status.

3.4. Ukrainian legislation basically divides these organizations into two main groups:

- organizations which meet only the needs of their members (all citizens' associations);
- organizations created for other people (charities).

Following on logically from this division, legislation imposes restrictions on the kinds of activities of these organizations. For example, activities based on defending rights and freedoms are illegal, while citizens' organizations formally have the right only to defend the rights of their members. Such an entirely formal division is effectively a restriction on freedom of association.

3.5. Therefore to a full extent the activities of human rights organizations which defend the rights and fundamental freedoms of all individuals, including those of members of their organizations, do not correspond to any form of association stipulated in legislation.

3.6. It should also be noted that Ukrainian legislation does not allow for the creation of mixed organizations, for example, associations of citizens' organizations and charities, or organizations which would have the right to conduct mixed activities, both for their own members, and for third parties. Ukrainian legislation also lacks provision for the creation of organizations which unite both legal entities and individuals, as members of the organization (founders). This division has existed since Soviet days and reflects an undemocratic approach to the fundamental institutions of a civic society, the development of which it seriously hampers.

3.7. Another limitation pertains to territorial restrictions on the activities of associations. Each association is registered according to a territorial principle as one of the following: international, nationwide organizations, regional, local (within the confines of a city, village or district in a city). Moreover, in order to receive a larger territorial status, one needs the appropriate

groups within the organization. This demand partially explains the large number of associations in Ukraine with a significant percentage of them being in fact fictitious, invented in order to receive broader status. Associations have the right to extend their activities only over the area they are registered in. For example, an association which is registered in the Darnytsa district of Kyiv does not have the right to carry out its activities in other districts of Kyiv.

4. Prohibition of the discrimination

4.1. In Ukraine there is no official policy on countering discrimination following on from the task and action plans set by government authorities.

4.2. There are no norms in Ukrainian legislation which establish a general prohibition of discrimination. Usually norms which are too general and unspecific are contained in different laws for particular fields. However in no legal act, barring the Law “On equal rights and opportunities for men and women”, is there a definition of direct and indirect discrimination, nor a mechanism for protection against discrimination. As a result of this, there are no court rulings which directly punish acts of discrimination. This means that where a person has been discriminated against, the protection mechanisms are ineffective due to shortcomings in the legislative base. There are effectively no other mechanisms either. For example, the provisions in the Criminal Code (Article 161) are worded in such a way as to be impossible to apply with this confirmed by official data on the lack of sentences handed down under this Article.

4.3. Discrimination on various grounds is fairly widespread. People experience discrimination most often on the following grounds: their ethnic origin (for example, Roma and people from Africa and Asia), gender, their state of health (for example, people living with HIV or AIDS, tuberculosis, hepatitis, and the disabled), sexual orientation (for example, homosexuals) and with regard to their age.

4.4. According to sociological research, discrimination is most often encountered in the labour sphere, medical services and receiving social services.

4.5. The number of incidents of discrimination is constantly rising as a result of the lack of effective mechanisms of protection and the difficulties of punishing people for such behaviour.

4.6. The public attitude to Roma remains negative, with sociological surveys showing that prejudice against them is more widespread than in relation to any other national minority. Studies into national tolerance applying the Bogardus scale carried out several times between 1992 and 2006 by the Institute of Sociology showed that the level of intolerance towards Roma was over 5 on this scale. The results suggest that in the mass perception, the Roma are not considered permanent residents of Ukraine. The Roma experience the highest degree of intolerance and suffer greatly from social discrimination. The level of unemployment among the Roma is, on average, the highest, their living conditions are worse than those of other ethnic groups. They experience more difficulty with access to education, medical services and the judicial system. School attendance figures for Roma children remain low. Ukrainian Roma face regular systemic discrimination in virtually all sectors, including but not necessarily limited to access to personal and other documents, education, housing, health care, employment and social services.

4.7. We should also mention that there has been an increase in the number of cases of discrimination against people from the Caucuses, Asia and Africa. The US State Department’s Country Reports on Human Rights Practices in Ukraine for 2000, 2001, 2002 and 2003 speak of an increase in complaints over racial discrimination against people of Asian or African origin. Reports have also become more frequent of acts of violence against people from Africa, Asia and the Caucuses. Members of these groups claim that law enforcement officers constantly ignore, and sometimes even support acts of violence against them. People from these groups are especially discriminated against at work, when renting accommodations, as well as when exercising their right to education.