
ADVANCE UNEDITED VERSION

Human Rights Committee

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Item 6 of the provisional agenda

**Consideration of reports submitted by States parties
under article 40 of the Covenant**

Concluding observations on the seventh periodic report of Ukraine, adopted by the Committee at its 108th session (8–26 July 2013)

1. The Committee considered the seventh periodic report submitted by Ukraine (CCPR/C/UKR/7) at its 2980th and 2981st meetings (CCPR/C/SR.2980 and CCPR/C/SR.2981), held on 8 and 9 July 2013. At its 3002nd meeting (CCPR/C/SR.3002), held on 23 July 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the seventh periodic report of Ukraine and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/UKR/Q7/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the ratification of, or accession to, the following international instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, on 19 September 2006;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 25 July 2007;

(c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 4 February 2010;

(d) The 1954 UN Convention relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness, on 25 March 2013.

4. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of the Law on Refugees and Persons in Need of Complementary or Temporary Protection in Ukraine, in July 2011;

(b) The adoption of the Law on Combating Trafficking in Human Beings in October 2011, and of the State Targeted Social Programme on Combating Trafficking in Human Beings for the period up to 2015, in March 2012;

(c) The adoption of the new Code of Criminal Procedure on 13 April 2012, which provides, inter alia, increased safeguards against arbitrary detention, torture and ill-treatment and unfair trial;

(d) The designation of the Parliamentary Commissioner for Human Rights as the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment as of 4 November 2012, together with representatives of civil society ("Ombudsman+" model).

C. Principal subjects of concern and recommendations

5. The Committee notes that the Covenant is an integral part of the domestic legal system and that its provisions may be directly invoked in court. It regrets, however, the very limited information on cases in which the provisions of the Covenant have been invoked or applied by the State party's courts of law (art. 2).

The State party should take measures to ensure that judges and law enforcement officers receive adequate training to enable them to apply and interpret domestic law in the light of the Covenant and disseminate knowledge of the provisions of the Covenant among lawyers and the general public to enable them to invoke its provisions before the courts. The State party should include in its next periodic report detailed examples of the application of the Covenant by domestic courts and access to remedies provided for in the legislation by individuals claiming a violation of the rights contained in the Covenant.

6. The Committee is concerned by 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. 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 are provided with effective remedies (art. 2).

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.

7. While welcoming the new mandates entrusted to the Parliamentary Commissioner for Human Rights, including the function of national preventive mechanism against torture as of 4 November 2012, and control over the observance of legislation on personal data protection as of 1 January 2014, the Committee is concerned that, if no adequate resources are allocated, the effective functioning of the institution may be affected (art. 2).

The State party should provide the Office of the Commissioner for Human Rights with additional financial and human resources commensurate with its expanded role, to ensure fulfilment of its current mandated activities and to enable it to carry out its new functions effectively. It should also establish regional offices of the Commissioner for Human Rights, as planned.

8. The Committee welcomes the adoption of the Law on principles of preventing and combating discrimination as well as the proposed amendments relating inter alia to a reversed burden of proof in civil proceedings and recognition of sexual orientation as a protected ground in the Labour Code. Nonetheless, the Committee is concerned that sexual orientation and gender identity are not explicitly included in the non-exhaustive list of grounds of protection in the anti-discrimination law, and that the law provides for insufficient remedies (only compensation for material and moral damage) to victims of discrimination (arts. 2 and 26).

The State party should further improve its anti-discrimination legislation to ensure adequate protection against discrimination in line with the Covenant and other international human rights standards. The State party should explicitly list sexual orientation and gender identity among the prohibited grounds for discrimination and provide victims of discrimination with effective and appropriate remedies, taking due account of the Committee's general comment No. 31 (CCPR/C/21/Rev.1/Add. 13, para. 16). It should also ensure that those responsible for discrimination bear administrative, civil and criminal responsibility in appropriate cases.

9. While noting the steps taken by the State party to promote gender equality, the Committee is concerned about the continued underrepresentation of women in decision-making positions in the public and political sphere, in particular in Parliament and Government (arts. 2, 3 and 26).

The State party should intensify its efforts to achieve equitable representation of women in Parliament and at the highest levels of the Government within specific time frames, including through temporary special measures, to give effect to the provisions of the Covenant. It should adopt a State programme for equal rights and opportunities of women and men and other measures aimed at ensuring gender equality, and effectively implement them.

10. 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 the 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. 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)" 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).

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 transexuality, hate speech or

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 ensure 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 laws.

11. The Committee is concerned at reports of hate speech, threats and violence against members of ethnic groups, religious and national minorities, in particular Roma, Jehovah's Witnesses and Crimean Tatars, resulting in physical assaults, acts of vandalism and arson, most of which are committed by groups driven by extreme nationalist and racist ideology. It is also concerned that article 161 of the Criminal Code (inciting ethnic, racial or religious animosity and hatred) which requires proving deliberate action on the part of the perpetrator is rarely used and that such crimes are usually prosecuted under hooliganism charges.

The State party should strengthen its efforts to combat hate speech and racist attacks, by, inter alia, instituting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity. The State party should also intensify its efforts to ensure that alleged hate crimes are thoroughly investigated, that perpetrators are prosecuted under article 161 of the Criminal Code and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated.

12. While welcoming the steps taken by the State party to improve the situation of Roma, including the adoption of "The strategy on protection and integration of Roma minority into the Ukrainian society for the period up to 2020", the Committee remains concerned at the prevalence of discrimination, including the difficulties encountered in access to personal documents, education, health care, housing and employment (arts. 2, 16, and 26).

The State party should increase its efforts to combat discrimination against Roma. It should create the necessary conditions for their social integration and equal access to social services, health care, employment, education and housing. The State party should remove any obstacles, including administrative, to ensure that all Roma are provided with personal documents, including birth certificates, which are necessary for them to have access to their basic rights. It should allocate sufficient resources for the effective implementation of the Strategy on protection and integration of Roma.

13. The Committee is concerned at the very high rates of death in custody (CCPR/C/UKR/Q7/Add.1, para. 89), delayed investigation of such cases and lenient or suspended sentences imposed on those found responsible. The Committee also regrets the lack of information regarding the measures taken to address these problems (arts. 2 and 6).

The State party should take immediate and effective steps to ensure that cases of death in custody are promptly investigated by an independent and impartial body, that sentencing practices and disciplinary sanctions against those found responsible are not overly lenient, and that appropriate compensation is provided to families of victims.

14. While welcoming the efforts made by the State party to combat and eliminate domestic violence, the Committee is nonetheless concerned about the persistence of this phenomenon (arts. 2, 3, 6 and 7).

The State party should strengthen its efforts to prevent and combat all forms of domestic violence, including by adopting a new law on prevention of domestic violence and ensuring its effective implementation. It should also facilitate complaints from victims, ensure that they are thoroughly investigated, that perpetrators are prosecuted and punished with appropriate sanctions and that victims, including children, have access to effective remedies and means of protection, including an adequate number of shelters available in all parts of the country. The State party should also ensure that law enforcement authorities, as well as medical and social workers are provided with appropriate training to deal with cases of domestic violence, and awareness-raising efforts should be continued to widely sensitize members of the public.

15. 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. It also remains concerned 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.

16. While appreciating the State party's efforts in preventing and combating trafficking in persons, including the adoption of the State Targeted Social Programme on Combating Trafficking in Human Beings for the period up to 2015 and the establishment of additional centres of social and psychological assistance to victims, the Committee is concerned about the persistence of such practices in the State party. It also regrets the lack of information on the existence of any legal alternatives to removal of victims to countries where they may face hardship and retribution (art. 8).

The State party should continue its efforts to prevent and eradicate trafficking in persons, including by effectively implementing the existing relevant legal and policy frameworks and by cooperating with neighbouring countries. It should ensure that allegations of trafficking in persons are thoroughly investigated, that those responsible are brought to justice, and that victims receive adequate medical care, free social and legal assistance and reparation, including rehabilitation. The State party should also ensure that legal alternatives are available to victims that may face hardship and retribution upon removal.

17. 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-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.

18. The Committee expresses concern at reports of breaches of the non-refoulement principle in practice. It is also concerned at the high number of asylum applications rejected at the preliminary stage of consideration without conducting a personal thorough interview with the applicants, the prolonged periods of administrative detention, the short five-day time limits for appeals against negative decisions and reported breaches of an appeal's suspensive effect, as well as at reports of limited access to legal aid and interpreters (arts. 2, 7 and 13).

The State party should ensure that all persons applying for international protection are given access to a fair and full refugee determination procedure, are effectively protected against refoulement, and have access to counsel, legal aid and an interpreter. The State party should ensure that detention is only used as a last resort, and where necessary, for as short a period as possible and provide alternatives to detention. It should also consider increasing the time span for filing appeals and ensure that rejected applicants are not deported immediately after the conclusion of the administrative proceedings before they can submit an appeal against a negative asylum decision.

19. While taking note of the State party's plans towards an all-volunteer army as of 2017, the Committee notes that the provisions of the Law on Military Service which permit conscription remain in force, as does the Law on Alternative (Non-Military) Service, and that according to the statistics provided by the State party several hundred young men have performed such service in recent years (CCPR/C/UKR/Q7/Add.1). The Committee therefore expresses its concern that no measures appear to have been taken to extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions (art. 18).

The Committee reiterates its previous recommendation (CCPR/C/UKR/CO/6, para. 12) and stresses that alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and should neither be punitive nor discriminatory in nature or duration by comparison with military service.

20. The Committee expresses concern at reports of threats, assaults, harassment and intimidation of journalists and human rights defenders due to their professional activities and expression of critical views (arts. 2, 6, 7, 9 and 19).

The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. Any restrictions on the exercise

of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant. Furthermore, the State party should ensure that acts of aggression, threats and intimidation against journalists are investigated, prosecuted and punished and victims are provided with appropriate remedies.

21. The Committee is concerned at the lack of a domestic legal framework regulating peaceful events and at the application by domestic courts of outdated regulations which are not in line with international standards and severely restrict the right to freedom of assembly. It is also concerned at reports that the success rate of local authorities' applications in court for banning peaceful assemblies may be as high as 90 per cent. The Committee notes that a draft law on the procedure for organizing and holding peaceful events has been recently submitted to Parliament (art. 21).

The State party should ensure that individuals fully enjoy their right to freedom of assembly. The State party should adopt a law regulating the freedom of assembly, imposing only restrictions that are in compliance with the strict requirements of article 21 of the Covenant.

22. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the seventh periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also requests the State party, when preparing its eighth periodic report, to broadly consult with civil society and non-governmental organizations.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 6, 10, 15 and 17 above.

24. The Committee requests the State party, in its next periodic report, due to be submitted on 26 July 2018, to provide specific, up-to-date information on all its recommendations and on the Covenant as a whole.
